IN THE MATTER OF ARBITRATION	)	**GRIEVANCE ARBITRATION**
	)	
between	)	
	)	
City of Champlin, Minnesota	)	**Jim Johans - Demotion**
	)	
-and-	)	
	)	**BMS Case No. 10-PA-1089**
Law Enforcement Labor	)	
Services, Inc., Local	)	
No. 295 (Sergeants)	)	**September 25, 2010**

))))))

Services, Inc., Local No. 295 (Sergeants) (hereinafter "Union") provides for an appeal to arbitration of disputes that are properly processed through the grievance procedure.

The Arbitrator, Richard J. Miller, was selected by the Employer and the Union (hereinafter "Parties") from a panel submitted by the Bureau of Mediation Services. A hearing in the matter convened on August 18, 2010, at 9:00 a.m. at the City Offices, 11955 Champlin Drive, Champlin, Minnesota. The hearing was tape recorded with the Arbitrator retaining the tapes for his records. The Parties were afforded full opportunity to present evidence and arguments in support of their respective positions.

The Parties elected to file posting hearing briefs with an agreed-upon submission date of August 26, 2010. The post hearing briefs were submitted in accordance with those timelines and received and exchanged on August 27, 2010, after which the record was considered closed.

The Parties agreed that the grievance is a decorous matter within the purview of the Arbitrator, and made no procedural or substantive arbitrability claims.

ISSUES AS FRAMED BY THE ARBITRATOR

1. Was the demotion of Jim Johans from Sergeant to Patrol Officer for just cause?
2. If not, what is the appropriate remedy?

STATEMENT OF THE FACTS

The City's Police Department is relatively small and consists of the Police Chief, Deputy Chief, three Patrol Sergeants, fourteen Patrol Officers and five Criminal Investigators. The Patrol Officers and Criminal Investigators are represented by LELS, as well as the Sergeants, but in a separate bargaining unit.

The main job responsibility of all Sergeants can be summarized as follows:

> 203.01 SERGEANT (GENERAL)
>
> Officers promoted to the rank of sergeant, without respect to their specific duty assignment, are the first-line representatives of management within the department. The primary responsibilities of this capacity are to guide, train, direct, and motivate those personnel over whom supervision is exercised. The ability of the sergeants as the first-line supervisors to carry out these responsibilities will determine the ability of the department to provide a consistent and effective law enforcement effort.

(City Exhibit #3, p. 1).

In a nutshell, the main responsibility of a Patrol Sergeant is to train, schedule, supervise, discipline, reward, and review subordinate Patrol Officers and Criminal Investigators under their command. (City Exhibit #3, pp. 1-2). With only three Patrol Sergeants to supervise a staff of nineteen Patrol Officers and Criminal Investigators, each Patrol Sergeant has to be able

to exert supervisory authority over each and every subordinate in a professional manner.

The Grievant, Jim Johans, was hired by the City in April 2002 as a Patrol Officer in the Police Department. The Grievant had four years of previous law enforcement experience, including full-time Patrol Officer experience with the City of Osseo. The City made quick use of the Grievant's skills and experience by assigning him to the position of Field Training Officer to train a new recruit, even when the Grievant was still on probation himself. The Grievant was assigned increasingly more job responsibilities and quickly was promoted to the position of Patrol Sergeant in August of 2004.

As Patrol Sergeant, the Grievant received excellent performance reviews. (Union Exhibit #14). In May of 2009, the Grievant was assigned to the position of Administrative Sergeant.

As an Administrative Sergeant, the Grievant was responsible for administrative duties such as scheduling, dissemination of information to personnel, the field training program, and other departmental programs. These administrative duties required the Grievant to drive an unmarked squad car, wear a suit and tie to work, and generally work at his desk during the course of the work day. The Grievant was the Administrative Sergeant from May to September 2009 when the position was eliminated by the City

Council for reasons unrelated to this case. In September 2009, the Grievant was given the title of Patrol Sergeant, but essentially maintained the same duties and responsibilities that he had in the Administrative Sergeant role. The differentiation was that the Grievant wore a patrol uniform to work, drove a marked squad car, and responded to emergency calls and crime scenes when needed. (Union Exhibit #17). Clearly, the Grievant was a well-liked and well-respected in the Police Department.

In March of 2009, the Grievant was going through a divorce and moved into a residence with several other City Patrol Officers. At the same time, City Patrol Officer Leslie Wilkinson was going through a difficult breakup with a long-term boyfriend and was experiencing similar emotional turmoil. In early summer 2009, Patrol Officer Wilkinson purchased her own home. The Grievant started helping her move into this home. He also assisted with things such as putting furniture together, painting, and general home maintenance activities. The Grievant and Patrol Officer Wilkinson had many things in common and started spending even more time together by going out to dinner after working on her home. Eventually they also started socializing together with other City Patrol Officers and mutual friends. By late summer 2009, Patrol Officers started commenting to each other about the friendship between the Grievant and

Patrol officer Wilkinson. Both the Grievant and Patrol Officer Wilkinson indicated they were just friends, they were spending a lot of time together, but they did not consider their relationship to be of a romantic nature.

In mid-August 2009, the Grievant and Patrol Officer Wilkinson scheduled a trip to ValleyFair Amusement Park with the Grievant's children from his previous marriage. They were both very excited about the trip. The Grievant had a discussion with City Deputy Chief Ty Schmidt about the trip and indicated to Mr. Schmidt that the Grievant and Patrol Officer Wilkinson were not dating and did not know where their relationship was headed at that point. The Grievant and Patrol Officer Wilkinson enjoyed their trip to ValleyFair and soon planned a trip to the Minnesota State Fair without the children. Patrol Officer Wilkinson characterized their relationship as suddenly progressing into more of a romantic friendship sometime between the ValleyFair trip and the Minnesota State Fair trip. At this point, the Grievant characterized their relationship as "dating." City Patrol Officer Jerry Gnerre also became aware of the romance and told the Grievant that he better speak with City Police Chief David Schwarze about it so that Chief was not surprised about to hear about the relationship from someone else in the Police Department.

The Grievant testified that sometime prior to the Minnesota State Fair trip, he and Police Chief Schwarze discussed the Grievant's relationship with Patrol Officer Wilkinson. The Grievant told Chief Schwarze that he and Patrol Officer Wilkinson were dating and that he planned on taking her to the State Fair. Chief Schwarze acknowledged the relationship and said something to the effect of "have fun, enjoy life, the two of you are good people, take her to the State Fair and buy her a corn dog, my wife and I do that every year." The Grievant perceived that Police Chief Schwarze understood the conversation and was supportive of their relationship.

Police Chief Schwarze, on the other hand, cannot recall this conversation with the Grievant. Police Chief Schwarze testified that sometime in September, 2009, the Grievant came to him and told him that he and Patrol Officer Wilkinson were going to Valley Fair together, but they were not dating. Police Chief Schwarze testified that he had a similar conversation with the Grievant during the summer of 2009, wherein the Grievant approached him and advised Mr. Schwarze that he had begun a "friendship" with a subordinate, Patrol Officer Wilkinson, but they were not dating.

The Grievant and Patrol officer Wilkinson did not make any formal "announcements" of their relationship to others in the

Police Department. They considered their relationship to be private and personal.

On December 14, 2009, the City Council had a work session, during which City Administrator Bret Heitkamp proposed a new Fraternization Policy. (Union Exhibit #2). On December 15, 2009, Police Chief Schwarze had a formal meeting with the Grievant. During this meeting, Police Chief Schwarze indicated he had been taken by surprise about the romantic relationship between the Grievant and Patrol Officer Wilkinson, and said that he had no idea that they had been even dating. Police Chief Schwarze indicated he did not know about the relationship until Chief Deputy Schmidt recently told him about it. He told the Grievant that the City was going to be implementing a new Fraternization Policy forbidding their relationship, and essentially asked the Grievant to end his relationship with Patrol Officer Wilkinson or possibly face termination. The Grievant was likewise caught off guard by the conversation because he was certain Police Chief Schwarze knew about the relationship between the two of them.

While there was some conflicting memories about who said what and when, in relationship to when Police Chief Schwarze might have first found out about the relationship between the Grievant and Patrol Officer Wilkinson, none of that really

matters, since all agreed that at some point the Chief found out and he was concerned.

Sometime between December 15 and December 21, 2009, Union Business Agent Kim Sobieck found out about the December 15, 2009 conversation between the Grievant and Police Chief Schwarze and asked Police Chief Schwarze for a copy of the proposed Fraternization Policy. (Union Exhibit #3). The proposed Fraternization Policy indicated that the Grievant could voluntarily demote himself or be terminated for the relationship. Id., p. 3. Between December 15 and the end of the month, the Grievant and Police Chief Schwarze had many conversations about the situation and attempted to formulate a mutual resolution prior to the new Fraternization Policy being implemented by the City Council.

For one full month, the Grievant, Union Business Agent Sobieck, and City officials attempted to find a solution that would resolve the City's concerns regarding legal liability and the Grievant's desire to avoid termination or demotion as a result of his relationship with Patrol Officer Wilkinson.

On January 21, 2010, the City provided the Grievant with his annual performance review. The performance review included critical remarks about the Grievant's romantic relationship with Patrol Officer Wilkinson. (Union Exhibit #15).

Ultimately, the discussions were not successful and the City Council ratified the new Fraternization Policy on January 25, 2010. (Union Exhibit #7). On January 26, 2010, the City notified the Grievant and Union Business Agent Sobieck about the new Fraternization Policy. (Union Exhibits #8, 9).

On January 28, 2010, the City held a meeting to discuss the situation with the Grievant. During this meeting, Chief Schwarze indicated he was going to read the Grievant a Tennessen and Garrity warning and ask him some questions. Police Chief Schwarze (DS) asked the Grievant (JJ) a limited series of nine questions:

DS: Are you aware of the Police Department's Fraternization policy which took effect on January 25, 2010?
JJ: Yes, I am.
DS: Were you given a copy of this policy on December 31, 2009 and January 26, 2010?
JJ: Yes.
DS: Have you read the Fraternization policy?
JJ: Yes.
DS: Do you understand this policy
JJ: Yes.
DS: Are you currently involved in a personal relationship with an employee of the Champlin Police Department?
JJ: Yes.
DS: What is the name of the employee you are currently having a personal relationship with?
JJ: Leslie Wilkinson.
DS: Do you understand that your existing personal relationship with this employee is in violation of Department policy?
JJ: Yes.

DS: Are you willing to voluntarily demote to a vacancy where the policy violation no longer exists or discontinue the relationship forming the basis for the violation of this policy?

JJ: No.

(Union Exhibit #10).

During this meeting, the Grievant also asked Police Chief Schwarze to review and approve his relationship and assignment as authorized under the new Fraternization Policy:

> Permanent assignments that place a Supervisor anywhere in the chain of command over a Relative other where a Personal Relationship exists, will not be permitted except in instances of an emergency or as may be reviewed and approved by the Chief of Police.

(Union Exhibit 9; Police 327.03, 1, E).

At the end of the meeting, Police Chief Schwarze passed the Grievant a letter over the table and told the Grievant that he was demoted to a Patrol Officer position effective January 29, 2010. (Union Exhibit #11). The Grievant immediately received a pay reduction from Sergeant to Patrol Officer. (Union Exhibits #18, 19). City Administrator Heitkamp also notified the City Council immediately. (Union Exhibit #12).

On February 1, 2010, the Union filed a grievance on behalf of the Grievant. (Union Exhibit #13). On February 3, 2010, the Grievant sent a memorandum to Deputy Chief Schmidt indicating the transition to patrol has been tough, and bringing forward a concern about the manner in which Sergeant Penney was discussing

his situation during roll call to other Patrol Officers. Id., p. 2. The Grievant did not receive any follow up information regarding his concerns. On February 9, 2010, City Administrator Heitkamp expressed a desire to move the grievance forward to arbitration, which was accepted by the Union on February 12, 2010. Id., pp. 3, 4.

CITY POSITION

The City's decision to demote the Grievant from a Patrol Sergeant to a Patrol Officer due to his continuing relationship with a subordinate officer in violation of the City's Fraternization Policy should be upheld. The City's decision was reasonable and the least damaging form of discipline the City could impose under the circumstances. The City's decision to demote the Grievant was not only appropriate in light of all the relevant circumstances, but the only real alternative the City was left with when the Grievant, using poor judgment, got involved in a relationship with a subordinate.

The Union and the Grievant should not be allowed to force the City to accept the liability risk for discrimination suits, investigations, arbitrations, morale problems, and safety issues to accommodate the Grievant's wanting both his personal relationship and a romantic relationship with a subordinate. It is not the Grievant or the Union who will, in the end, have to

pay for those actions, and considering that the City is already getting complaints, the probability of very expensive litigation and arbitration issues is a given. One can see from the news articles that the payouts for discrimination suits can be tens of thousands or over a million.

Based upon the forgoing evidence, the grievance should be denied and the Grievant's demotion upheld.

UNION POSITION

The Grievant and Patrol Officer Wilkinson had much in common when their friendship blossomed into a romantic relationship. They were young, successful Patrol Officers going through difficulties as the result of the loss of previous romantic relationships. The two of them were attracted to each other and the relationship is a continued expression of love between two consenting adults. The implementation of the Fraternization Policy to stop a consensual, loving, romantic relationship is simply unfair and cruel. The retroactive application of the Fraternization Policy in this case does not serve the purpose of correcting past behavior or stopping the relationship between the Grievant and Patrol Officer Wilkinson.

The City did not meet its burden of proof in establishing a legitimate need for the Fraternization Policy. The relationship between the Grievant and Patrol Officer Wilkinson is consensual.

There was no allegation from Patrol Officer Wilkinson, or any other Patrol Officer that sexual harassment of any kind had taken place thus exposing the City to any liability. The City did not submit any evidence that their relationship adversely impacted the workplace.

The City submitted a series of media publications on the topic of city employees in relationships gone wrong, which resulted in settlement payments. Not one of the media publications on the topic are regarding consensual, healthy, loving, romantic relationships which exist between the Grievant and Patrol Officer Wilkinson. The allegation of legal liability is not supported by a preponderance of the evidence in the instant case.

No allegation of decreased morale in the Police Department was brought forth prior to the hearing. In addition, no discussion about Union seniority rights occurred prior to the hearing. Finally, no safety complaints have ever been made against the Grievant in regards to his relationship with Patrol Officer Wilkinson.

The City offered no explanation as to why they choose to differentiate between this relationship and other intimate relationships in the Police Department. Several of the Patrol Officers live together in a roommate situation and socialize

together, but the City has not imposed the Fraternization Policy on them.

The City offered no proof of actual, adverse impact in the workplace as a result of the private relationship between Patrol Officer Wilkinson and the Grievant. The City's investigation in this regard was to ask the Grievant nine basic questions about his relationship with Patrol Officer Wilkinson, and the City had already decided to demote the Grievant. This constituted a failure of the City's part to conduct a fair and impartial investigation, which is paramount in any discipline case.

There is a lack of equal treatment in the instant case because the Fraternization Policy was specifically promulgated by the City to single out the relationship between the Grievant and Patrol Officer Wilkinson. The City did not provide any explanation - oral or written - as to why the Grievant was not allowed the consideration, review, and potential approval by the Police Chief to allow this relationship to continue without penalty, which is provided for in the Fraternization Policy.

The Union views the demotion of the Grievant to be equivalent to a termination in light of the career based consequences the Grievant faces as a result of the demotion. The Grievant faces immediate and severe financial consequences as a result of the demotion. The Grievant has an unblemished work

record that does not merit the harsh, permanent punishment of demotion.

Based upon the foregoing arguments, the demotion of the Grievant was without just cause and therefore violated the Agreement. The Grievant should be reinstated to his prior Sergeant position and made whole in every way.

ANALYSIS OF THE EVIDENCE

Article 9, Discipline, Section 9.1 of the Agreement provides that "[t]he Employer will discipline for just cause only." The "just cause" standard in this provision applies to all forms of discipline, including demotion. This "just cause" requirement implies a standard of reasonableness under the unique circumstances of each case. An employee will not be demoted by action which is deemed by an arbitrator to be arbitrary, capricious, discriminatory, unduly harsh, or disproportionate to the proven offense committed by the affected employee. The Employer's demotion of the Grievant must therefore meet the standard of reasonableness.

It is axiomatic in arbitration that to demote the Grievant, the Employer must have justifiable and legitimate business reasons. The City's position is that it not only had just cause to demote the Grievant from Patrol Sergeant to Patrol Officer, but that it had no other viable alternative, since the Grievant

was refusing to comply with the Fraternization Policy. While the Grievant claims that his demotion was without just cause, the evidence establishes that the romantic relationship between the Grievant and Patrol Officer Wilkinson could lead to lawsuits against the City by Ms. Wilkinson and other Police Department employees, and potential Union claims, and has lead to claims of preferential treatment, morale problems, and safety problems in the Police Department. The Union has already expressly stated it would not waive any claims it or its members have related to this situation.

The Union argue that all of the above claims made by the City are premature, since the Grievant and Patrol Officer Wilkinson are now engaged in a loving, caring, consensual, and romantic relationship. This romantic relationship could change quickly, as was evidenced by the fact that both the Grievant and Patrol Officer Wilkinson had previously been involved in loving and caring relationships that quickly changed for the worst, resulting in the Grievant's divorce and Patrol Officer Wilkinson's ending a long-term romantic relationship with her boyfriend.

The City's potential liability for a supervisor sexual harassment claim if the Grievant is reinstated to a Patrol Sergeant position where he could have supervisory authority over

Patrol Officer Wilkinson is not a "hypothetical" problem nor is the City "over-reacting." The record is replete with examples provided by the City of very real instances where departmental relationships have had disastrous financial consequences to employers across the nation costing them tens of thousand of dollars. (City Exhibit #22).

Employers are "vicariously liable" for harassment by supervisors. Faragher v. City of Boca Raton, 524 U.S. 775, 118 S. Ct. 2275, 141 L.Ed. 2d 662 (1998); Burlington Industries, Inc., v. Ellerth, 524 U.S. 742, 118 S.Ct 2257, 141 L.Ed. 2d (1998).

The most infamous case in recent history involved the Minneapolis fire chief Bonnie Bleskacheck who was removed as Minneapolis fire chief and demoted without severance pay after numerous allegations of inappropriate sexual conduct with other members of the fire department. At least four lawsuits were filed against Ms. Bleskacheck and the City of Minneapolis. Two of the lawsuits alleged sexual favoritism by Ms. Bleskacheck stunted their careers in the department. Of these lawsuits, one was brought by Jennifer Cornell, the chief's ex-partner of six years who shares custody of their two children. Ms. Cornell's case was settled for $65,000, and Ms. Cornell was promised a promotion within two years as settlement of her lawsuit.

Another sexual favoritism case was brought by Kathleen Mullen, a longtime friend who had previously dated Ms. Bleskacheck's then girlfriend. This case settled for $29,000 and Ms. Mullen was retroactively promoted to battalion chief.

Elondo Wright, a male firefighter, filed a civil Rights lawsuit against Ms. Bleskacheck, the City of Minneapolis, and another supervisor, claiming that as the only male in an all-female company, he was forced to train long hours while other firefighters were relaxing, and he also alleged that his female supervisors gave him eighty-six informal disciplinary write ups, while his male supervisors gave him a total of four.

Kristina Lemon, a female firefighter, sued claiming that Ms. Bleskacheck flirted with her and then punished her professionally after she declined Ms. Bleskacheck's advances. (City Exhibit #22).

The Bleskacheck cases are not the only cases involving interdepartmental relationships gone wrong. In 2010 St. Paul police officer Jessica Elizabeth Phillips had a relationship with fellow police officer Louis D. Ferraro. In January 2010, Ms. Phillips was charged with two gross misdemeanor counts of harassment and one gross misdemeanor count of unauthorized computer access for sending sexually explicit messages about her exploits with Mr. Ferraro to another woman who knew Mr. Ferraro.

Ms. Phillips eventually obtained an order for protection against Mr. Ferraro when the relationship became abusive. In April 2010, Mr. Ferraro was jailed for allegedly violating the order for protection more than seventy times. Notably, the Phillips/ Ferraro case did not even involve a supervisor/subordinate relationship, but instead demonstrates the problems which can occur when officers of the same rank become romantically involved. The supervisor/subordinate relationships are even more problematic.

A third Minnesota case took place outstate in Clay County, Minnesota where two years after Kathleen Cline claimed Sheriff Larry Costello sexually assaulted her on the job, Clay County settled a federal lawsuit by Ms. Cline for $1.5 million dollars. Ms. Cline sued Mr. Costello for harassment at work and for once forcing sex while on a trip they took together to interview a suspect. Mr. Costello maintained that Ms. Cline was the one who originally initiated the relationship and that all sex was consensual. Clay County's initial investigations into the incidents (as of approximately November of 2001) cost the County more than $28,000. (City Exhibit #22).

These cases demonstrate the problems that can ensue where supervisor/subordinate relationships are allowed to exist in the workplace. The City does not have to wait to be sued before they

can react. The City has the right to act before they are compelled to react, which was the reason for the promulgation of the Fraternization Policy, and also the Grievant's demotion. Not only could Patrol Officer Wilkinson sue, but other employees can sue if they feel they are being treated differently than Ms. Wilkinson because she has the relationship with the Grievant, a supervisor. It would be the City and not the Union or the Grievant that would have to bear the significant financial burden of a successful lawsuit.

Despite the fact that the Grievant understands and admits the problems his relationship with Patrol Officer Wilkinson poses, he does not want the Fraternization Policy to apply to him. He does not want to lose his Patrol Sergeant position and pay, but the reality is that this is a situation he created and continues to endure today. The Fraternization Policy is necessary, reasonable, fair, and serves an important City interest, that of protecting the City against the high potential liability that the supervisor/subordinate relations present in the workplace, as well as the safety concerns involving other Police Department employees and the general public.

Due to the small size of the Police Department, it is not possible to arrange a schedule where a particular Patrol Officer is never under the supervision of a particular Patrol Sergeant.

There is no way to schedule this romantic relationship problem away. In other words, due to the size of the Police Department, it is not possible to arrange a schedule where a particular Patrol Officer is never under the supervision of a particular Patrol Sergeant. (City Exhibit #3).

From the beginning of their friendship until the Grievant's demotion, the Grievant and Patrol Officer Wilkinson worked together a total of thirty-five hours on a "shift" in the course of this five-month period. (Union Exhibit #16). That is a significant amount and cannot be successfully argued by the Grievant as being insignificant. Additionally, even if the shifts only overlapped by one hour, it does not matter.

The Grievant and Patrol Officer Wilkinson also saw each other during training sessions and they attended two calls together. The first was a medical call, where an ambulance was called for an older man at a retirement community. The second was a robbery, or drug deal gone bad, where the Grievant arrived at the scene as a backup Patrol Officer. The Grievant did not direct Patrol Officer Wilkinson's work during either of these calls. Patrol Officer Wilkinson also called the Grievant one day and asked him for short-notice day off. The Grievant directed Patrol Officer Wilkinson to call another supervisor. While there was limited interactions between the Grievant and Patrol Officer

Wilkinson, there still was some interactions that could not be avoided between them. The scheduling of work hours between Patrol Officers, Criminal Investigators, and Sergeants is not done to accommodate romantic relationships. It is done based upon how best to serve the public and cover the police calls.

The Patrol Sergeants are still managers over all the patrols and must discuss and make decisions for all in the meetings. Patrol Sergeant Penney testified that he would not feel free to discuss discipline and other matters related to Patrol Officer Wilkinson or others, knowing that the information may be shared with Ms. Wilkinson by the Grievant.

The Union claims that the City mentioned that there was a schedule where the Grievant and Patrol Officer Wilkinson could work independently of each other. To accomplish this scheduling change, would require some Police Department employees to change their shifts. Unfortunately, there was unrefuted evidence that no one in the Police Department would be willing to give up their seniority on shift scheduling to accommodate the Grievant's romantic relationship with Patrol Officer Wilkinson.

Faced with potentially disastrous consequences if the Grievant were to continue to supervise Patrol Officer Wilkinson while they were engaged in a personal/romantic relationship, the City gave the Grievant the choice of ending the relationship with

Patrol Officer Wilkinson or voluntarily resigning his position as Patrol Sergeant in favor of a Patrol Officer position, where he would have no supervisory authority over Ms. Wilkinson. Unfortunately, the Grievant refused both options and the City was forced to implement a formal Fraternization Policy.

The reality is that this romantic relationship between the Grievant and Patrol Officer Wilkinson has already led to complaints of favoritism and has created a rift and morale problem in the Police Department between the Grievant and Sergeant Penny to the extent that the Grievant is not backing him up on calls because the Grievant admits animosity toward him.

The Union argues that it is unfair and unreasonable that the Fraternization Policy should be enforced "retroactively." In other words, the Union argues that supervisor/subordinate relationships existing prior to the implementation of the Fraternization Policy should be allowed to continue. The Union's position is without merit. If this argument is accepted it would affect other policies that are implemented and prohibit activities, actions, and procedures which are already being implemented by the Police Department. All new policies have to have a starting point and the Fraternization Policy was enacted for safety, liability, and morale concerns, which are justifiable reasons for "retroactively" applying the Policy to the Grievant's

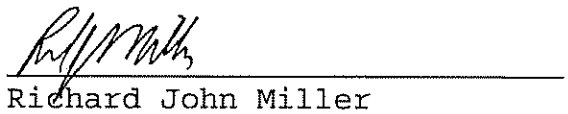
romantic relationship, which caused the Policy to be promulgated in the first place.

In the final analysis, the City had just cause under Section 9.1 of the Agreement to demote the Grievant and, in fact, took the most reasonable action it could under the circumstances. The City could have terminated the Grievant, but decided instead to demote him based on his excellent work record as a Sergeant. While it is unfortunate that the Grievant is losing money as a Patrol Officer compared to the higher wages paid to Patrol Sergeants, it must be remembered that the Grievant, and not the City, caused this loss.

The Grievant claims that his demotion is tantamount to being discharged. The Grievant misses the point. The Grievant was not demoted for poor work performance or conduct unbecoming a police officer, which are usually the cases for discharge of a police officer, but he was demoted for violating the Fraternization Policy. Most certainly, any potential employer, or even the City, would recognize that violating the Fraternization Policy, resulting in demotion, is far less severe than being discharged for poor work performance or conduct unbecoming a police officer. Moreover, the Grievant's excellent work record as a Sergeant should "trump" his demotion and make him employable once again if he so desires to leave the Police Department.

AWARD

Based upon the foregoing and the entire record, the grievance and all requested remedies are hereby denied.



Richard John Miller

Dated September 25, 2010, at Maple Grove, Minnesota.