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Re: The Grievance Arbitration Between
The Minnesota Teamsters Public and Law
Enforcement Employees Union, Local 320, and
The City of Coon Rapids
Minnesota Bureau of Mediation Services
Case No. 10-PA-0235
(Troy D. Osborn)

Gentlemen:

This letter responds to the request and written argument I received from each of you on August 8, 2010, in which you ask for my Supplemental Award concerning the disposition of this case.

Below, I set out the last paragraph of the Decision, which just precedes the original Award, issued on April 20, 2010, together with the Award itself, which makes reference to that paragraph:

By its incorporation of this paragraph, the award makes the grievant's reinstatement conditional upon his obtaining a CDL. So that the Employer's obligation to reinstate him is not open ended, the award provides that he must complete the process of relicensure within ninety days following May 18, 2010, unless unusual circumstance prevent[s] such relicensure.

AWARD

The grievance is sustained upon the conditions stated above. When the grievant again obtains his CDL, the Employer shall reinstate him without loss of seniority and without back pay. The time between the grievant's discharge on July 17, 2009, and his return to work after his relicensure shall be treated as a suspension without

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pay, undergone because of his temporary inability to qualify for the Parks Maintenance Worker's classification.

I retain jurisdiction for the purpose of resolving any disputes that may arise concerning the implementation of this award.

At the hearing, the parties stipulated that the grievant would be eligible to obtain his Commercial Driver's License ("CDL") on May 18, 2010, and I adopted that factual premise when I fashioned the Award, making it a condition that the grievant "must complete the process of relicensure within ninety days following May 18, 2010, unless unusual circumstance prevents such relicensure."

As the Union states in its request for a Supplemental Award, it now appears that the stipulation upon which the original Award was based was not correct because the Minnesota Department of Public Safety ("DPS") will not issue a Class D Driver's license to the grievant until February 4, 2011, and that it is a prerequisite to CDL licensure that the applicant have a Class D license. According to the Union, 1) that requirement was not foreseen and 2) it has been imposed because the DPS has applied its rules unfairly in a manner that extends the time needed by the grievant to obtain CDL relicensure beyond what was originally expected.

The Union now proposes that, because the original stipulation was in error in its statement that the grievant would be eligible for CDL relicensure within the ninety-day period following May 18, 2010, and because the award was based upon that stipulation, the award should be amended to recognize that he will not be eligible for CDL relicensure until after February 4, 2011. The Union argues that the discovery of the impediment to relicensure is an "unusual circumstance" that prevented the grievant's CDL relicensure within the time period expected at the time of the Award.

The Employer opposes the amendment of the Award proposed by the Union. It argues that the grievant should have understood the way in which the DPS would apply its rules and should have taken steps to reduce the time needed for him to obtain CDL relicensure. The Employer argues 1) that the DPS has not applied its rules erroneously, and 2) that the grievant could have taken steps to obviate what the Union claims was an erroneous application of the rules of the DPS. The Employer argues that, therefore, the alleged misapplication should not be considered an unusual circumstance within the meaning of the Award. In addition, the Employer argues that, because the City is operating on a constrained budget in difficult financial

times, an extension of the period during which the grievant can become eligible for reinstatement would be unfair.

In their written submissions, the parties have argued more extensively than I have described above about the meaning of the relevant rules of the DPS. They disagree whether the DPS has misapplied those rules and whether any alleged misinterpretation of the rules by the grievant should have been realized at the time of the hearing in this case.

I have not described those arguments fully because, regardless of attribution of fault for any misunderstanding of the DPS rules, it appears that an extension of the period during which the grievant remains eligible for conditional reinstatement will cause no harm to the Employer. The Supplemental Award, below, continues the provision in the original Award that the grievant is not entitled to pay or benefits during the time preceding his reinstatement. When the grievant obtains CDL relicensure, thereby triggering his right to reinstatement, he will remain, nevertheless, subject to the seniority provisions of the parties' labor agreement, as will any others who are serving in his classification at the time of reinstatement. Thus, the Employer will retain its contract right to adjust its work force in accord with its needs, subject to the layoff provisions of the labor agreement. In the interim, the Employer will not be required to provide the grievant with pay or benefits. I rule that what has occurred, as described above, is an unusual circumstance within the meaning of the original Award. Accordingly, I make the following Supplemental Award.

SUPPLEMENTAL AWARD

The period during which the grievant shall remain eligible for reinstatement, under the conditions stated in the original Award, is extended until ninety days following February 4, 2011. The other terms of the original Award shall remain in effect. The period between July 17, 2009, and his reinstatement shall be treated as a suspension without pay, undergone because of his temporary inability to qualify for the Parks Maintenance Worker's classification, and, during that period, he shall not lose seniority, but he shall not be entitled to back pay and benefits.

I retain jurisdiction for the purpose of resolving any disputes that may arise concerning the implementation of this Award.

October 17, 2010


Thomas P. Gallagher, Arbitrator