

**IN THE MATTER OF ARBITRATION BETWEEN**

Minneapolis Police Officers Federation  
Minneapolis, Minnesota  
Union/Federation

and

City of Minneapolis, Minnesota  
Police Department  
Employer/City/Department

OPINION AND AWARD

Termination Grievance  
Officer Mukhtar Abdulkadir, Grievant

Award Dated: May 18, 2012

Date and Place of Hearing: April 24-25, 2012  
Offices of the City  
Minneapolis, Minnesota

Date of Receipt of Post Hearing Briefs: May 7, 2012

**APPEARANCES**

For the Federation: Brooke N. Bass, Esq.  
Bruno Law Offices  
5500 Wayzata Boulevard  
Minneapolis, MN 55416

For the Employer: Trina R. Chernos, Esq.  
Assistant City Attorney  
Minneapolis City Attorney's Office  
Room 210 City Hall  
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Minneapolis, Minnesota 55415

**ISSUE**

Was the termination of Officer Mukhtar Abdulkadir for just cause, pursuant to Article 4.1 of the labor agreement? If not what shall the remedy be?

## **WITNESSES TESTIFYING**

### Called by the Employer

Scott Gerlicher, Deputy Chief  
Minneapolis Police Department

Timothy J. Dolan, Chief  
Minneapolis Police Department

### Called by the Federation

Lt. Robert Kroll,  
Vice President  
Police Officers Federation of Minneapolis

Munira Maalimisaq,  
Wife of Grievant

Mukhtar Abdulkadir,  
Police Officer [Discharged]  
Minneapolis Police Department

## **JURISDICTION**

The issue in grievance was submitted to the Arbitrator for a final and binding resolution under the terms set forth in Article 5, Section 5.4, Subd. 3 – Step Three – Regular Arbitration. The Arbitrator was selected by direct appointment of the parties.

The parties mutually stipulated at the hearing that the grievance had been properly processed through the required steps of the grievance procedure without resolution, and that it was properly before the Arbitrator for a decision.

At the hearing the parties were given full and complete opportunity to examine and cross-examine witnesses and present their proofs. Final argument was provided through post hearing briefs which were received by the agreed upon deadline. With the receipt of the post hearing briefs by the Arbitrator, the record in this matter was closed. The issue is now ready for determination.

## STATEMENT OF THE ISSUE

The issue in this case is whether or not the Employer had just cause to discharge the Grievant, and if not what is the remedy? The sections of the Collective Bargaining Agreement that bear on this issue are contained in ARTICLE 4 – DISCIPLINE, and ARTICLE 5 – SETTLEMENT OF DISPUTES. They read in relevant part as follows:

### ARTICLE 4 - DISCIPLINE

Section 4.1 The City, through the Chief of the Minneapolis Police Department or his/her designee, will discipline employees who have completed the required probationary period only for just cause. ...

\* \* \* \*

### Section 4.4 – Investigatory Interviews

(a) Before taking a formal statement from any employee, the City shall provide to the employee from whom the formal statement is sought a written summary of the events to which the statement relates. To the extent known to the City, such summary shall include: the date and time (or period of time if relating to multiple events) and the locations(s) of the alleged events; a summary of the alleged acts or omissions at issue; and the policies, rules or regulations allegedly violated. Except where impractical due to the immediacy of the investigation, the summary shall be provided to the employee not less than two (2) days prior to the taking of his/her statement. If the summary is provided to the employee just prior to the taking of the statement, shall be given a reasonable opportunity to consult with a Federation representative before proceeding with the scheduled statement. [sic]

\* \* \* \*

(c) Nothing herein shall preclude an investigator, whether during or subsequent to the taking of a formal statement, from soliciting information which is beyond the scope of the pre-statement summary but which relates to information provided during the taking of the statement and which could form the basis of a disciplinary action.

\* \* \* \*

ARTICLE 5 – SETTLEMENT OF DISPUTES

\* \* \* \*

Section 5.4 – Grievance Procedure. Grievances shall be resolved in the manner set out below. The City will cooperate with the Federation to expedite the grievance procedures to maximum extent practical.

\* \* \* \*

Subd. 3 – Step Three – Regular Arbitration.

\* \* \* \*

The arbitrator shall render a written decision and the reasons, therefore resolving the grievance, and order any appropriate relief within thirty (30) days following the close of the hearing or the submission of briefs by the parties. The decision and award of the arbitrator shall be final and binding upon the City, the Federation and the employee(s) affected.

The arbitrator shall have no authority to amend, modify, nullify, ignore, add to, or subtract from the provisions of this agreement. The arbitrator is also prohibited from making any decision that is contrary to law or to public policy.

\* \* \* \*

Section 5.11 – Past Practices. Evidence of custom and past practice may be introduced for the following purposes:

- (a) to provide the basis of rules governing matters not included in the written contract;
- (b) to indicate the proper interpretation of ambiguous contract language; or
- (c) to support allegations that clear language of the written contract has been amended by mutual action or agreement.

The extent to which such evidence of custom and past practice shall be considered to bind the parties is governed by generally accepted principles of labor relations applicable to the purpose for which the evidence is offered.

In addition the above contract language the City has promulgated certain Rules, Regulations and Policies that bear on the issue as follows:

**Civil Service Commission Rule 11.03 (B)18.  
City of Minneapolis Police Department Code of Conduct Section 5-102.01  
Minnesota Law Enforcement Code of Ethics (08/01/91).  
Minneapolis Police Department Discipline Matrix (Rev. October 2009)**

They read in relevant part as follows:

CIVIL SERVICE COMMISSION RULE 11.03 (B) 18

The two primary causes for disciplinary action and removal are substandard performance and misconduct.

\* \* \* \*

(B) Misconduct

The following activities are examples of misconduct which may be cause for disciplinary action.

\* \* \* \*

18. Violation of department rules, policies, procedures or City ordinance.

CITY OF MINNEAPOLIS POLICE DEPARTMENT CODE OF CONDUCT  
SECTION 5-102.01  
MINNESOTA LAW ENFORCEMENT CODE OF ETHICS (08/01/91).

“As a Minnesota Law Enforcement Officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all; maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in

my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear of favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

**MINNEAPOLIS POLICE DEPARTMENT**  
**Discipline Matrix**  
 Rev. October 2009

Minneapolis Police Department  
*Discipline Matrix*  
 Rev: October 2009

<b>Code of Ethics</b>		<b>Range</b>	<b>Mitigating</b>	<b>Baseline</b>	<b>Aggravating</b>
5-102	DWI: First offense	C	10 hours	30 hours	50 hours
	Criminal activity: domestic assault, interfere with 911 call, sex crimes, theft, discharge weapon in populated area, narcotics, steroids, repeat DWI or any felony crime	D		Termination	
5-102	Identify self as officer with intent to gain special consideration	D	30 hours	40 hours	Termination
5-102	Misuse of police powers: search warrants, administrative subpoenas, credit checks, etc	D		Termination	
5-102, 3-811	Working off-duty while still on city time	D		Termination	
<b>Discretion</b>		<b>Range</b>	<b>Mitigating</b>	<b>Baseline</b>	<b>Aggravating</b>
5-103, 7-701	Inappropriate pat frisks, improper towing of vehicles	B	WR	10 hours	20 hours
5-103, 9-201, 9-206	Inappropriate search of person or car	C	WR	20 hours	30 hours
5-103	Inappropriate search of house	D	10hours	30 hours	40 hours
5-103	Inappropriate/egregious arrest	D	10 hours	40 hours	Termination
<b>Code of Conduct/Professional Code of Conduct</b>		<b>Range</b>	<b>Mitigating</b>	<b>Baseline</b>	<b>Aggravating</b>
5-105.10	Unprofessional conduct, indecorous language (not protected class)	B	WR	10 hours	20 hours
5-106, 3-302	Remain on duty until relieved; put self on detail without supervisor permission	B	WR	10 hours	20 hours
5-105.3	Accidental Firearm Discharge on Duty with no resulting injuries (excluding malfunction)	B	WR	10 hours	20 hours
5-105.18	Association with known criminals	C	20 hours	40 hours	50 hours
5-105.1	Failure to take appropriate police action	C-D	20 hours	40 hours	Termination
5-105.15	Language: biased based on protected class	D	30 hours	40 hours	Termination
5-105.20	Possession of duty weapon or other firearm while consuming alcohol, no criminal action	D	20 hours	40 hours	50 hours
5-105, 5-102	Referral to outside business with personal benefit to employee	D		Termination	
5-101.02	Failure to meet minimum job qualifications (some discretion on OFP with Lautenberg Amendment)	D		Termination	
<b>Reports</b>		<b>Range</b>	<b>Mitigating</b>	<b>Baseline</b>	<b>Aggravating</b>
5-306	Failure to complete CAPRS force screen	B	WR	10 hours	20 hours
5-307	Failure of supervisors to complete force review report in compliance with policy	C	WR	10 hours	20 hours
5-306	Failure to report use of force in CAPRS	D	30 hours	40 hours	Termination
<b>News Media</b>		<b>Range</b>	<b>Mitigating</b>	<b>Baseline</b>	<b>Aggravating</b>
6-202	Responsibility of MPD employees regarding news media	B-D	10 hours	20 hours	Termination

**FACTUAL BACKGROUND**

Involved herein is a grievance which arose when the Grievant was discharged effective March 28, 2011 for violation of Minneapolis Civil Service Commission Rule 11.03 (B)18 and Minneapolis Police Department Rule 5-102 – Code of Ethics. The Employer

conducted an Internal Affairs investigation, and a review by a Discipline Panel. The Discipline Panel recommended that a violation of MPD 5-102 Code of Ethics, Category “D” in the disciplinary matrix be sustained. A Loudermill hearing was conducted by the Discipline Panel with the Grievant and his Union Representative present. At the Loudermill hearing the Grievant was provided the opportunity to present his side of the story, and describe any mitigating factors that he believed should be considered. Following the Loudermill hearing the Discipline Panel affirmed its finding to Chief Dolan that the Grievant had violated MPD 5-102 Code of Ethics and recommended that his employment with the Minneapolis Police Department be terminated.

The Employer is a municipal corporation chartered under the laws of the State of Minnesota. The Federation is the exclusive bargaining representative of all sworn law enforcement personnel in the City except those appointed to serve in the positions of Chief of Police, Assistant Chief of Police, Deputy Chief and Inspector. At all times relevant to this grievance the Grievant was a member of the Federation and covered by the terms of the Collective Bargaining Agreement. The Collective Bargaining Agreement became effective on January 1, 2009 and continued in full force and effect through December 31, 2011.

At the time of the termination of his employment the Grievant was a Patrol Officer assigned to the First Precinct of the Department. He was hired on February 4, 2008 by the City as a part time Community Service Officer. On January 18, 2009 he was hired as a full time Police Officer. During his approximately two year tenure as a Police Officer

the Grievant was the subject of three complaints that were investigated by the Internal Affairs Unit of the Department. The first two of those complaints were not sustained, and he incurred no discipline for them. The third complaint underlies the Grievant's termination and the instant grievance. The record of this hearing does not show any discipline on the Grievant's record prior to his termination which is the subject of the instant grievance.

The matter that gave rise to the Grievant's termination relates to his arrest on charges of felony assault in the second degree, felony terroristic threats and misdemeanor domestic assault. Those charges arose out of an incident that occurred on January 20, 2011. In that incident the Grievant is charged with assaulting his wife.

The Grievant and his wife Munira Maalimisaq were married in 2006, and at the time of the incident leading to his termination they had two children. The Grievant and his wife are both of Somali descent, although from different tribal backgrounds. He is approximately 13 years older than his wife. At the time of the incident they lived in a home in Andover, Minnesota located in Anoka County.

At the time of the January 20, 2011 incident the Grievant was working nights, and his wife was taking classes during the day in pursuit of a Bachelor of Science degree in nursing. She also was working at a Credit Union, but quit that job on January 7, 2011. In this schedule they shared duties of taking care of their children. Occasional help was also provided by Maalimisaq's mother.

The evening of January 19, 2011 the Grievant and his wife were discussing her need for cosmetic dental work that would cost approximately \$7,000. Initially the Grievant agreed that she could go ahead with that work, but later that evening determined that they could not afford it at that time. Maalimisaq protested, and testified that she felt “total betrayal”. An argument between them ensued. At the hearing Maalimisaq testified that she was depressed, and that the Grievant suggested that she see a doctor for help, but that she denied she had any problem. She went on to testify that she was using illegal drugs at the time. After the argument they both went to bed.

The record presents conflicting stories about what happened the next morning. It is not disputed, however, that the Grievant awoke first, and was in the process of packing his things in preparation for leaving when he was approached by Maalimisaq. According to a statement Maalimisaq subsequently gave to the Anoka County Sheriff’s Office, she reported that the Grievant announced that he was leaving and taking the children. In her testimony at the arbitration hearing, however, she testified that she told the Grievant that she was leaving and was taking the children to her mother’s home. In any event, it is not disputed that another argument ensued. In a report prepared by the Anoka County Sheriff’s Office [City Exhibit 15] Maalimisaq stated that the Grievant was upset, grabbed her by the shoulders and threw her to the couch. That report then continues by stating that she then went to the bedroom upstairs and sat on the edge of the bed. The Grievant then was reported to have entered the room and punched her in the left side of her abdomen by her ribs. He then was reported to have gotten on top of Maalimisaq, and put a pillow over her head while she was screaming. The report continued by stating that one

of the couple's children had come to the room and was screaming at the Grievant to stop. Maalimisaq reported that she was able to get free and ran to closet as she was followed by the Grievant. The report further states that while inside the closet the Grievant took a holstered hand gun that was on a shelf, removed it from the holster and hit her with the butt of the gun causing bruises. The report states that Maalimisaq then left the closet and went to bathroom. The report continues by stating that about 12:30 PM Maalimisaq left the home and went to the Columbia Heights Police Station. She went there because she knew of that location inasmuch as her mother lived a block or so away. She requested to see an officer, but left before that was done. No evidence confirming that visit to the Columbia Heights Police Department was found in the record.

Maalimisaq is then reported to have gone to her classes. She was not able to concentrate, however, and went to a McDonald's where she ate. She is then reported to have called home, received no answer, and drove herself there. Upon arriving at the home she went to bed at approximately 1:30 PM. She testified at the arbitration hearing that she took some illegal drugs she kept in a Tylenol bottle before going to bed. Subsequently, at about 4:00 PM the Grievant wakened her. The Anoka Sheriff's Department report continues by stating that an argument resumed with the Grievant stating that he was leaving her. Maalimisaq testified at the hearing that she thought she needed to have something incriminating on the Grievant in order to have an advantage in a subsequent divorce proceeding should that occur. She accused him of seeing other women. In her report subsequently made to the Anoka County Sheriff's Office Maalimisaq stated that she was assaulted with kicking and slapping by the Grievant. She described their

relationship as violent. She stated that the Grievant had previously assaulted her and pointed his gun at her.

After being awakened by the Grievant Maalimisaq then left the home and went to her parents' home, where her 18 year old sister also lived. Maalimisaq testified that her sister opined that if she and the Grievant were divorced that he [the Grievant] would gain custody of the children. Maalimisaq and her sister then returned to the Columbia Heights Police Station. Upon discussing that matter with police officers there, it was determined by them that the incident occurred outside of the jurisdiction of the Columbia Heights Police Department. The Anoka County Sheriff's Office was notified, and Maalimisaq and her sister were subsequently transported there by Sheriff's deputies.

A Detective at the Anoka County Sheriff's Office took a statement from Maalimisaq and photographed the injuries to the right side of her face. The Detective's report of the interview with Maalimisaq stated that she was "quite visibly upset, emotional, crying and stated that the incidents were her fault".

Maalimisaq signed a "consent to search" form and the Anoka County Sheriff's Office conducted a search of the residence of Maalimisaq and the Grievant in order to locate the gun that was purportedly used in the assault. The gun was located in the residence, but in a duffel bag in the laundry and not in the closet where the alleged assault is reported to have taken place.

Shortly after making her statement to the Anoka County Sheriff's Office Maalimisaq significantly changed her recollections of what had happened. She testified that she had been high on drugs when she made the first statement, and had subsequently realized that she had made a serious mistake. She went to the Sheriff's Office and the Anoka County Attorney's Office and recanted all the accusations she had previously made against the Grievant. She also went to the Minneapolis Police Department First Precinct and attempted to advise them that she had lied. Personnel there told her that Internal Affairs would contact her, but they did not. There is no evidence in the record of this case supporting her testimony that she recanted her statement made to the Anoka County Sheriff's Department or that she went to the Minneapolis Police Department First Precinct and stated that she had made false charges against the Grievant. On September 9, 2011, after having engaged legal counsel, she prepared and signed an affidavit recanting her accusations. In the affidavit she stated that on the date of the incident she was high on drugs, and after the confrontation with the Grievant she went into the bedroom and "hit myself in the head with [an] alarm clock".

In April, 2011 Maalimisaq saw a doctor who advised that she was depressed. In May 2011 she attempted suicide. Following her attempted suicide she completed a 30-day residential drug rehabilitation program. She testified at the arbitration hearing that she is now clean and attending two Narcotics Anonymous and one Alcoholics Anonymous meetings each week and has a sponsor. In her affidavit she went on to state "To be clear, as you can see from my statement today as I am clean and sober, Mukhtar never hit me;

he never threatened to kill me nor said anything threatening; he never pointed a gun at me or hit me with a gun; he never assaulted me in any way”.

On January 21, 2011 the Anoka County Attorney’s Office charged the Grievant with felony assault in the second degree, terroristic threats, and misdemeanor domestic assault. The Grievant was taken into custody on that same date. He was released on bond and issued a Domestic Abuse No Contact Order to not contact his wife or children or possess a firearm. That order was modified on February 16, 2011 to eliminate the non possession of a firearm requirement in view of his job as a Police Officer with the City of Minneapolis, and also modified to permit limited visitation with his children.

On January 25, 2011 the Anoka County Sheriff’s Office received an anonymous tip that if they went to an apartment building where Maalimisaq and the Grievant had previously lived they could locate a neighbor who would inform them that the Grievant had previously accosted Maalimisaq. Detectives went to that location and located the neighbor, who confirmed that she had seen the Grievant physically force Maalimisaq back into the apartment when she attempted to leave. The neighbor did not testify at the hearing, but a written statement from the neighbor was taken by the Anoka County Sheriff’s Office Detective who investigated and was entered into the record of this hearing. The anonymous informant also supplied Anoka County Sheriff’s Detectives with an email dated January 22, 2011 that indicated the sender, likely Maalimisaq’s sister, feared for Maalimisaq’s safety. Attached to the email were seven photos of Maalimisaq that purported to show injuries she suffered at the hand of the Grievant. The Detectives

were not able to confirm that the injuries shown in the photos were actually on Maalimisaq's body. Maalimisaq's sister did not testify at the hearing, nor did any other member of her family.

Upon learning of the Grievant's arrest by Anoka County the Minneapolis Police Department placed him on paid relieved of duty status. He was charged with violating MPD Policy 5-102 Code of Ethics at level D. Level D is the highest level of the four disciplinary categories utilized by the City. An Internal Affairs investigation was conducted and completed while the criminal charges against the Grievant were pending. The Grievant's wife, Maalimisaq, was not interviewed in the course of that investigation.

A Discipline Panel reviewed the Internal Affairs Investigation and found the Grievant had violated MPD Policy 5-102 Code of Ethics. A Loudermill hearing was held, after which the Grievant's employment with the City was terminated. The Union filed the instant grievance on March 31, 2011. It proceeded through the steps of the grievance procedure without resolution, and was heard in arbitration on April 24 and 25, 2012.

On October 17, 2011 the Assault -2<sup>nd</sup> Degree-Dangerous Weapon charge and the Terroristic Threats-Reckless Disregard Risk charges were dismissed by the Court. The Grievant pled guilty to the misdemeanor Disorderly Conduct-Offensive/Abusive/Noisy/Obscene charge on October 17, 2011, but adjudication was stayed conditioned on one year of probation, domestic abuse counseling, no same or similar offenses, community service in lieu of court costs, confinement for time served,

and following the conditions of his probation. That period of probation and stay of adjudication will end on October 16, 2012. The no contact order that was issued on February 16, 2011 was vacated on October 17, 2011.

## **POSITION OF THE PARTIES**

### **Position of the Employer**

The City claims that it had just cause to discharge the Grievant. It seeks an order that the Arbitrator uphold the discharge and deny the grievance. In support of this position the City offers the following arguments:

1. The Minneapolis Police Department has just cause to discharge the Grievant. The violation of policy that led to the Grievant's discharge is reasonable and related to maintaining the public trust in the Department. The Grievant was aware of the rules and the consequences for violating them.
2. Progressive discipline is not required by the labor agreement or The Civil Service Commission Rules. Serious violations can result in termination on the first offense.
3. The Grievant violated MPD P/P 5-102, Code of Ethics. The City presented extensive proof that the Grievant committed misconduct justifying his discharge from employment. As a result of the physical assault on Maalimisaq the Grievant was criminally charged and ultimately pled guilty to the crime of disorderly conduct. His conduct is clearly unprofessional and offends the ethical standards of the MPD.
4. The Grievant's conduct was egregious. Maalimisaq reported that the Grievant punched her in the ribs, struck her in the face with his gun, threw her on the couch, held a pillow over her face, kicked her, and slapped her.
5. Maalimisaq had several opportunities during the period she was reporting the incident to Anoka County Deputies to change her statement, but did not. No law enforcement professionals or Alexandra House noted any signs of alcohol or drug use. Chief Dolan testified that his service in the Narcotics Unit caused him to believe that Maalimisaq could not have been functioning at work with the amount of drugs she claims to have

been taking, nor could she have recovered in only 30 days of a rehabilitation program.

6. Testimony revealed a pattern of the Grievant's violent tendencies. A former neighbor had observed the Grievant abusing Maalimisaq in the past. A family relative initiated contact with Anoka County Detectives to report the Grievant's violent tendencies. The Grievant offered no explanation at the arbitration for why this relative would make her report or why the neighbor would fabricate her report to law enforcement.

7. Although the Grievant refuses to accept any responsibility for the circumstances leading up to the events of January 20, 2011, it is absurd to conclude that this situation portrays the MPD in a positive light.

8. The Grievant's lack of credibility justifies discharge. There is significant contradictory evidence that undermines the credibility of the Grievant and his wife. The Grievant's testimony at the arbitration differs dramatically from his Garrity statement, his presentation at the Loudermill and the evidence. His lack of credibility demands denying the grievance.

After conferring with his attorney the Grievant spontaneously volunteered, in the course of his statement taken on February 11, 2011, that his wife had handled his gun. Such a statement was made because he knew his gun was in police custody and would be tested for DNA.

The Grievant's statement that culture in the Somali community is such that when women cry they hit themselves was not corroborated, and was actually denied by Chief Dolan's testimony based on years of frequent interaction with the Somali community. The Grievant did not offer any clarification of his statement during either his Garrity statement or at the Loudermill hearing. The Grievant was evasive in his response to Sgt. Chiodo's questioning during the IA investigation related to how Maalimisaq hit herself.

9. The letters of support from the Somali community that the Grievant presented at the Loudermill hearing purported to know the Grievant personally, yet he clearly did not even know the author of one of the letters. That significantly undermines the content of the letters. None of the authors of the letters were friends or family of the Grievant, and none were present during the January 20, 2011 assault. The evidence suggests that the Somali community did not want to learn the truth, but only to prove Abdulkadir innocent.

10. The Grievant did not rebut the City's evidence that he had assaulted his wife at their former residence in an apartment in Minnetonka. He merely stated that he did not know the person who made the accusation.

11. Maalimisaq's affidavit enhances the City's just cause to discharge the Grievant. The record shows that her initial report was accurate and credible, and was so regarded by law enforcement, the Anoka County Attorney's Office, and the Court. It was nine months after the assault that Maalimisaq first alleged in her affidavit that her injuries were caused by hitting herself with an alarm clock. It was not prepared until one month before the Grievant was scheduled to go to trial on criminal charges. This revised version of the facts does not match the original version previously provided law enforcement.

12. Chief Dolan testified that factors common to domestic abuse and the Somali community were evident here. It is not uncommon for women to take the blame in cases of domestic abuse due to control of them exhibited by their husbands. Chief Dolan explained that he believed that abuse is underreported in the Somali community because they do not trust the police system. The control the Grievant had over his wife is demonstrated by his denial of her having dental work done, and her forfeiture of a promotional opportunity at work because it conflicted with his work schedule.

13. The motives behind Maalimisaq's recanting are obvious. Only if he is reinstated will she obtain child support when they divorce.

14. The Federation presented no evidence at the arbitration hearing to mitigate against termination. The Grievant accepted no responsibility for his conduct on January 20, 2011. His completion of an anger management class provides no assurance that he will not reoffend. The Grievant is incapable of taking responsibility or taking corrective action and is therefore likely to reoffend. His employment history does not provide a basis for mitigation.

15. If Maalimisaq was a serious drug user the Grievant should have taken steps to stop it. Because he did not, a violation of the Code of Ethics can be found on that basis as well.

16. The Union is burdened to prove its claim of disparate treatment, and failed to do so. The cases cited by the Union where the grievants [Tillman, Dinh and Schnickel] were not terminated. Those cases were distinguished by Chief Dolan and Deputy Chief Gerlicher from those where termination was sustained [Abdulkadir, Andersen, Xiong, and Ulberg]. None of the cases in Federation Exhibits 10, 12, and 13 involved

a police officer striking the victim with a handgun or the victim claiming to have caused her own injuries. None involved a victim who reported past incidences of domestic violence by the officer. None involved a family member of the victim's initiating contact with the police to show them photos of the victim's injuries and lead them to other eye witnesses of the domestic abuse. The Federation did not provide evidence to show that the cases it cited were like the instant case and involved like circumstances. The record is totally devoid of any type of factual basis that would enable the Arbitrator to reverse Abdulkadir's discharge based on disparate treatment.

17. The City had just cause to terminate the employment of the Grievant and the grievance should be denied.

### **Position of the Federation**

It is the position of the Federation that the City did not have just cause to terminate the employment of the Grievant. In support of this position, the Federation offers the following arguments:

1. The Employer has the burden of proving just cause in a disciplinary proceeding. Arbitrators tend to require a higher standard of proof in a termination case when the offense charged is one of a serious nature. The standard of clear and convincing evidence of a rule violation was applied in the Ulberg termination grievance and should be applied here as well.
2. The Grievant did not have advanced warning that the conduct as alleged would lead to termination. He did not receive warning that involvement with the Anoka County Sheriff's Department, with no fault of his own would lead to termination.
3. Other employees involved in domestic situations were not terminated for this type of offense. Arbitrators hold that proper discipline requires consistency in rule enforcement. Consistency requires the rules be enforced evenhandedly. Consistency in applying a rule is important in determining whether employees have notice of the rule.
4. This case clearly deviated from the general disciplinary pattern applied by the Employer in the Tillman, Anderson, Dinh, and Schnickel cases. There was no basis for deviation. Consistency in rule treatment must be considered a factor in whether the Grievant in this case had advance notice that a domestic assault allegation was indeed a terminable offense.

5. The Employer's code of conduct rule is less significant in this matter because Officer Abdulkadir was terminated prior to the criminal disposition of his domestic assault matter. Arbitrators have considered that when an Officer is terminated prior to the disposition of the criminal matter, the criminal matter is less likely to be reasonably related to the safe operation of the Department's business.

6. The City of Minneapolis did not make an effort to discover whether Officer Abdulkadir violated the City's Code of Conduct Policy. It failed to perform a thorough internal investigation. Shockingly, MPD did not interview the alleged victim or the responding criminal investigators. There is no evidence to show that IAU even attempted to contact the Grievant's wife. There is no evidence that IAU attempted to get a copy of her formal and recorded statement from the Anoka County Sheriff's Department criminal investigators. They merely contacted them to receive copies of summary documents, and other hearsay documents including police reports.

7. In the Tillman, Anderson, Dinh, and Schnickel cases the City acknowledged obtaining independent internal affairs statements from eyewitnesses to such serious allegations is crucial to an independent and fair investigation. The City clearly has the knowledge and ability to conduct a proper independent investigation. Rather than follow those methods in this case, however, the City exclusively relied upon Officer Abdulkadir's Garrity statement, a hearsay account of a conversation with a City domestic advocate, and hearsay police reports. Much, if not all of the City's evidence comes from the case summary and related documents gathered by Sgt. Chiodo. It is absurd to rely on the case summary as evidence in this case. It is outrageous to rely solely upon Chief Dolan or Deputy Chief Gerlicher's hearsay testimony about the evidence. By the time that Deputy Chief Gerlicher or Chief Dolan testified about the incidents, the information is third and fourth hand or more removed from the original source of information.

8. The City implicitly acknowledges the importance of obtaining first-hand accounts in such cases. They could have used those same investigatory techniques in this investigation. The City could have contacted the many investigators and police officers from the two separate police agencies involved. At a minimum the City could have obtained more police reports, audio police statements, or transcribed police statements. The City could have contacted the neighbor, sister, or victim for internal affairs statements. The City did none of those actions. This shows the investigation was not completed in a fair and independent manner. The Grievant was terminated with the criminal charges still pending, and it did not perform a complete investigation.

9. The City of Minneapolis Police Department did not conduct a fair and objective investigation. The City did not follow internal investigative practices utilized in similar situations. It failed to thoroughly investigate as demonstrated by the following:

Failure to interview Ms. Augustine Ogbu regarding the alleged Fairfield Road, Minnetonka Incident.

Failure to interview the alleged victim, despite her going to the First Precinct and reporting that she had lied.

Failure to interview the Grievant's wife's family. Her sister would have had eyewitness information, but she was not interviewed.

Failure to interview Columbia Heights Police, Anoka County Deputies and Detectives, or Anoka County Attorneys.

Failure to gather evidence related to the Fairfield Road incident, the events at the Columbia Heights Police Department, and the events at the Anoka County Sheriff's Office.

Failure to investigate the victim's recantation of her earlier claims.

10. The Internal Affairs Unit investigation did not produce substantial evidence that the Grievant was guilty of a conduct policy violation. The testimony of the Grievant's wife was consistent with that of the Grievant at the arbitration hearing. Generally, all of the City's evidence was hearsay.

11. The City has not applied its code of conduct policy evenhandedly. It has not typically terminated an employee charged with domestic assault related incident for a first time offense. It typically considers whether this is the first instance of domestic abuse allegations, whether chemical dependency or anger management issues are involved, what is the employee's prior disciplinary record, and the employee's record of service. The City failed to treat this case in a manner similar to prior instances of domestic assault allegations.

12. The City prejudiced this case by failing to fully investigate.

13. The City completely failed to consider the wife's chemical dependency and mental health issues.

14. The City failed to consider Officer Abdulkadir's full record of service with the City Police Department. His record of service was not included in the investigation.

15. The termination of Officer Abdulkadir was not reasonably related to (a) the seriousness of the proven offense and (b) his record of service to the City. During his Garrity and Loudermill statements the Grievant admitted that he yelled at his wife, was frustrated with her behavior, and should have called 911. His admission is consistent with his wife's statement. He lost his temper, and yelled at his wife but this clearly does not rise to the necessity of his termination.

16. Three other Officers were only suspended after being convicted or pleading guilty to disorderly conduct. The Grievant similarly pled to that charge, but was terminated.

17. The City did not have the Grievant's record of service. It was not in the IAU file on this case. It did not have his performance evaluations despite the fact that he worked for the City for more than three years, was promoted, and was considered a good officer. Such missing evidence should be construed by the Arbitrator to be in the favor of the Grievant.

18. There is not a proven offense of domestic assault in this case. Indeed, the Grievant's wife is getting professional help, and he no longer trusts her. The Grievant is following the advice of counselors in dealing with his wife on a daily basis. He did not plead guilty to any criminal conduct, nor will he be found guilty. The Employer has not met its burden of proof in this matter.

19. The Grievant should be reinstated and made whole in every way.

### **ANALYSIS OF THE EVIDENCE**

The matter in dispute is whether or not the termination of the employment of the Grievant as a City of Minneapolis Police Officer is supported by just cause, given all the facts in evidence. The controlling contract language is found in Article 4, which specifies that disciplinary action may be imposed only for "just cause".

In order to sustain a finding of just cause for termination of a Police Officer based on a Code of Ethics violation as charged here, a showing must be made that the Officer is not a fit or proper person to honor the trust the public has placed in his office. A finding of just cause must be based on the record evidence adduced at the hearing with reference to the character of the Officer, and the qualifications necessary to fill his position.

The labor contract (Joint Exhibit 1) does not define the term “just cause”. Accordingly, a common definition of that term is applied. Standards for just cause can be found in the landmark reference: Just Cause, the Seven Tests, by Koven and Smith, 2<sup>nd</sup> Ed., 1992, BNA. These seven tests are attributed to the distinguished arbitrator Carroll R. Daugherty, and described in Enterprise Wire Co. (46LA 363, 1966). They are 1) reasonable rules and orders, 2) notice, 3) investigation, 4) fairness of the investigation, 5) proof, 6) equal treatment, and 7) fairness of the penalty. They serve as a useful frame of reference for analysis of the evidence in this case.

### **REASONABLE RULES/ORDERS AND NOTICE**

The evidence adduced at the hearing clearly shows that the Grievant was terminated based on a violation of MPD 5-102 Code of Ethics. Even a casual reading of that policy shows that it sets reasonable standards of conduct for the employees of the Department, and is reasonably related to maintaining the public trust. The Federation did not claim in the course of this proceeding that the policy was in anyway unreasonable. Accordingly, it is deemed to be reasonable.

The Federation asserts that the Grievant did not have notice of this policy because he was not provided advanced warning that the conduct as alleged would lead to termination. It further asserts that he did not receive warning that involvement with the Anoka County Sheriff's Department, with no fault of his own would lead to termination. The Federation's assertions are misplaced. The record shows that he acknowledged receipt of an electronic version of the Department's Policy and Procedure Manual on February 4, 2008 and again on January 20, 2009. Clearly the record shows that he had access to the policy, and should have been aware of it.

A reasonable person, reading the Code of Ethics would expect that discipline would ensue for its violation, and depending on the severity of the violation the discipline could be termination. The Code of Ethics addresses the high standards expected of Police Officers. Specific advance warning that conduct in violation of the Code would result in any particular level of discipline would, of course, be helpful to the employees covered by it. Such warning would underscore the importance the Department places on conforming to the Code, and would place the employee on specific notice of the penalties that could be imposed. It should not be surprising to any reasonable employee that discipline up to and including termination could result from violation of the Code. The absence of a specific statement of penalties to be imposed within the Code itself does not diminish the appropriateness of applying such penalties.

It is also important to note that on October 1, 2009 the Department issued a "Discipline Matrix" [City Exhibit 23] which was distributed to all Units, Divisions and Precincts.

Relative to the Code of Ethics the matrix clearly shows that the Department would terminate any employee who was found to have committed criminal activity or domestic assault. The Union did not assert that the Grievant did not have access to the discipline matrix. It is difficult to understand how the Federation can argue here that the Grievant was deprived of notice of the Code of the Ethics or the discipline that would result from a proven violation of it. The Code of Ethics is found to be reasonable and the Grievant had sufficient notice of it.

### **INVESTIGATION AND FAIRNESS OF INVESTIGATION**

The record of this hearing shows some serious problems with the City's burden to meet the standard of a thorough, complete and fair investigation. While it conducted an Internal Affairs investigation, that investigation relied very substantially on a summary report from the Anoka County Sheriff's Department. That summary reported what others had said or done. As such it is not the best evidence and much of it is hearsay.

The record shows no independent investigation of many aspects of the case. The City did not interview the Grievant's wife, Maalimisaq, or any member of her family who had knowledge of the incident on January 20, 2011 and could likely provide a firsthand report of the nature of the relationship between the Grievant and Maalimisaq. The Anoka County Sheriff's Office interviewed Ms. Ogbu and supplied the Minneapolis Police Department with a written copy of the statement she gave. There is no evidence, however, that the City interviewed Ms. Ogbu independently, and she did not appear to testify in this proceeding.

The record does not show that Maalimisaq's recantation was investigated, nor is there evidence that her alleged drug use was investigated. Importantly, no statement was taken from Maalimisaq at any time by the Minneapolis Police Department, and there is nothing to show that the Department received a copy of her statement given to the Anoka County Sheriff's Office. There is nothing in the record to show that the Department ever interviewed the Officers at the Columbia Heights Police Station, the Anoka County Sheriff's Department Deputies or Detectives. The City's Internal Affairs investigation relied too heavily on the summary report of the Anoka County Sheriff's Department for its report to be regarded as a fair and independent finding of fact. It contains statements and findings that could not be cross examined because those who gave those statements were not present in this hearing. The Department did interview the Grievant and independently obtained his version of the events that led to the charges against him, and he was present and testified.

## **PROOF**

The Employer has the burden to prove that the Grievant is guilty of the charges against him. The quantum of proof required in labor arbitration cases is not settled, however. Usually a preponderance of the evidence is sufficient. Some arbitrators will apply the higher burden of clear and convincing evidence in cases where criminal activity or moral turpitude is involved. That standard is frequently applied in such cases involving Police Officers. A sustained termination in those cases would likely make it difficult or impossible for the terminated Officer to obtain future work in law enforcement. In many

cases, arbitrators will render an award without ever specifying what standard of proof they applied. Regardless of what standard of proof arbitrators may have stated they applied in their awards, they will require that sufficient proof be presented to convince a reasonable person that a grievant is guilty of the charges against him/her.

Here the Grievant was criminally charged with felony assault in the second degree, felony terroristic threats and misdemeanor domestic assault. Those charges led the Department to charging the Grievant administratively with violating the Code of Ethics. The Department's Internal Affairs investigation, recommendation, review and eventual termination of the Grievant all occurred while the criminal charges against him were still pending. His termination became effective prior to the criminal charges being tried in Court. Eventually the two felony charges were dismissed and he pled guilty to misdemeanor domestic assault. The dismissal of the felony charges means that they effectively never existed. As to the misdemeanor domestic assault charge the Court withheld adjudication. That means, of course, that the Court has not made a final determination on that charge. Despite the Federation's urging to await the outcome of the criminal charges against the Grievant the Department proceeded through the administrative process that eventually led to his termination. Doing so raises the specter of the termination being overturned. It will never be known if the Department would have regarded the evidence it gathered in a different light had the Grievant been facing only the misdemeanor charge when the decision to terminate was in front of the decision makers in the Department. In any event, a reasonable person would likely be biased against the Grievant by felony and well as misdemeanor charges against him. As such a

more severe penalty would likely be imposed. There is nothing in the record to suggest that the Department was barred from proceeding administratively while the criminal charges were pending. By proceeding, however, the stage was set for asking if the same decision would have been made had the Grievant not been facing the most serious criminal charges.

The Code of Ethics requires that an Officer keep his personal life unsullied and that he refrain from conduct that would discredit the Department. There was no evidence offered that would show actual damage to the reputation of the Department occurred. To the contrary, the Somali community appears to have rallied behind the Grievant.

As to the evidence of what actually happened at the Abdulkadir home on January 20, 2011 the record presents a cloudy picture indeed. It is not disputed that the couple had a strenuous disagreement and that they were shouting at each other. As to whether actual domestic assault occurred, the record is not clear. It is known that Maalimisaq arrived at the Anoka County Sheriff's Department and is reported to have described an assault on her by the Grievant. There is, however, no statement from her in the record of this hearing. As such this Arbitrator has only the summary report from the Anoka County Sheriff's Department to gain an understanding of what she said at the time. The pictures taken by Anoka County Sheriff's Detectives showed redness along the right side of her face, and were characterized by them as consistent with being made by being struck by a gun. The gun was purported to be in the closet prior to the start of the alleged fracas, but was later found in a duffel bag in the laundry. There was no explanation as to how it got

there. The record shows that the Anoka County Sheriff's Office was intending to send the gun to the Minnesota Bureau of Criminal Apprehension for DNA analysis. There was no evidence that was done or what the outcome of the tests was.

Significantly Maalimisaq recanted her statement in which she alleged the assault. It is very troubling that her recantation was not investigated. The charges against the Grievant, both criminally and administratively were based entirely on the charges she made. She also testified, however, that she promptly recanted those charges. Regrettably, her recantation was not investigated after she reported it. To not investigate her recantation is troubling.

The testimony of Chief Dolan that domestic abuse is underreported in the Somali community, and that recanted allegations are not uncommon is fully credited. That said, however, the particulars of this case, including the admitted drug use of Maalimisaq give credibility to her recanted statement as well. Chief Dolan expressed some disbelief that she actually had the drug habit she professed to have. She may not have, but it was not investigated. Accordingly, this Arbitrator is left with the unrebutted testimony of the Grievant and his wife. That testimony supports her admitted drug habit. It must also be noted that drug users often demonstrate brittle behavior patterns that appear from the record to be present here.

## **DISPARATE TREATMENT**

The Union also argues that the Grievant was singled out for disparate treatment. The record shows that other Officers had been disciplined, but not terminated for violation of the Code of Ethics based on alleged domestic abuse. It is well established that every case is different, and it is difficult to find a similar set of circumstances applicable to similarly situated employees. The City appropriately points out that none of the cases in Federation Exhibits 10, 12, and 13 involved a Police Officer striking a victim with a handgun, or the victim claiming to have caused her own injuries.

The Federation points out that in the Tillman, Anderson, Dinh, and Schnickel cases the City acknowledged that obtaining independent internal affairs statements from eyewitnesses to such serious allegations is crucial to an independent and fair investigation. The City clearly has the knowledge and ability to conduct a proper independent investigation, but did not do so in this case.

The record supports the Federation's claim that the Grievant suffered disparate treatment when the Department did not conduct an independent and thorough investigation.

## **FAIRNESS OF THE PENALTY**

That brings analysis of the evidence to the point where the fairness of the penalty imposed is to be examined. The fairness of the penalty applied in this case needs to consider, among other things, the seriousness of the misconduct of the Grievant, the

adequacy of the proof presented, any prior disciplinary actions taken against him, and his overall service record. The Grievant's tenure with the Department is relatively brief. That said, his record does not demonstrate the presence of mitigating or exacerbating factors.

The record in this case supports a finding that the penalty of termination is too severe. Sufficient proof of the most serious charges against him was not provided in the record. What is shown in the record is that the Grievant and Maalimisaq had a stormy relationship with episodes of yelling at each other.

There is no doubt that the Grievant could have acted to diffuse the arguments that erupted from time to time. Indeed during the incident of January 20, 2011 it is not disputed that he was attempting to do that by leaving. The record supports, however, a finding that he participated in the heated discussions that followed. Accordingly, some penalty is appropriate. The Grievant's termination is overturned and he is issued a thirty (30) hour suspension without pay.

**IN THE MATTER OF ARBITRATION BETWEEN**

Minneapolis Police Officers Federation  
Minneapolis, Minnesota  
Union/Federation

and

City of Minneapolis, Minnesota  
Police Department  
Employer/City/Department

OPINION AND AWARD

Termination Grievance  
Officer Mukhtar Abdulkadir, Grievant

**AWARD**

Based on the evidence and testimony entered at the hearing, the termination of Grievant Mukhtar Abdulkadir is not found to be for just cause. The termination is overturned and a thirty (30) hour disciplinary suspension without pay is imposed. The Grievant is to be returned to work as a Patrol Officer with the Minneapolis Police Department with unbroken seniority and benefits. Backpay is awarded at the regular straight time rate of pay the Grievant would have earned had he not been terminated. Any unemployment compensation which the Grievant is not obligated to repay and any compensation from employment he undertook to replace the income lost due to his termination is to be deducted from the back pay awarded. The Grievant is to cooperate with the City by providing reasonable proof of such compensation.

May 18, 2012

Dated: \_\_\_\_\_

James L. Reynolds

\_\_\_\_\_  
James L. Reynolds  
Arbitrator