

**IN THE MATTER OF ARBITRATION**

**OPINION & AWARD**

**-between-**

**Grievance Arbitration**

**THE POLICE OFFICERS'  
FEDERATION of MINNEAPOLIS**

**Re: Employee Discipline**

**-and-**

**THE CITY of MINNEAPOLIS  
MINNEAPOLIS, MINNESOTA**

**Before: Jay C. Fogelberg  
Neutral Arbitrator**

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**Representation-**

For the Employer: Trina Chernos, Asst.City Attorney

For the Federation: Ann Walther, Attorney  
Dan Louismet, Attorney

**Statement of Jurisdiction & Uncontested Facts-**

The Collective Bargaining Agreement duly executed by the parties provides, in Article 5, for an appeal to binding arbitration of those disputes that remain unresolved after being processed through the initial steps of the procedure. A formal complaint was submitted by the Union on behalf of the Grievant on March 6, 2014, alleging that the Employer lacked just cause for issuing a 320 hour suspension to the Grievant. Eventually, the matter was appealed to binding arbitration when the parties were unable to

satisfactorily resolve their dispute during discussions at the intermittent steps.

The undersigned was then selected from a panel of neutrals mutually agreed upon by the parties and a hearing was convened in Minneapolis on October 29, 2014. At that time, each side presented oral arguments, witnesses, and supportive documentation. Thereafter, the hearing was deemed officially closed.

The parties have stipulated to the following statement of the issue.

**The Issue-**

Did the Grievant's suspension for 320 hours satisfy the just cause provision found in Article 4 of the parties' Master Agreement? If not, what shall the appropriate remedy be?

**Preliminary Statement of the Facts-**

The record developed during the course of the proceedings indicates that the Grievant, William Woodis has been a patrolman on the City of Minneapolis' Police Force ("City," "Employer," or "Department") for approximately the past twenty-five years. As such, he is a member of the Minneapolis Police Officers Federation ("Federation," "MPOF" or "Union") who represents all sworn law enforcement personnel employed by the City

save for those appointed to positions of Chief of Police, Assistant Chief of Police, Deputy Chief, Inspector and Commander. Together, the parties have negotiated and executed a collective bargaining agreement covering terms and conditions of employment (Joint Ex. 1).

On November 19, 2012, while off duty, Officer Woodis was involved in an altercation with other patrons at a bar in Apple Valley, Minnesota. As a result, he was charged with a misdemeanor (disorderly conduct). Consequently, per Departmental policy, their Internal Affairs unit undertook an investigation into the matter.

While the inquiry was being conducted, the Grievant was again involved in an off-duty incident when he was arrested for operating his motorcycle on a public thoroughfare while under the Influence of alcohol ("DUI"). Specifically, on Monday, May 17<sup>th</sup> of last year, Officer Woodis was stopped by a State Patrol Officer on Interstate Highway 35W in Bloomington, Minnesota. According to the arresting officer, the Grievant was "driving erratically." He was tested for alcohol consumption and taken to the Bloomington Police Department where he was charged with a "4<sup>th</sup> Degree DUI."

Officer Woodis eventually entered a guilty plea to both charges relating to his off-duty misconduct and was convicted in Hennepin County

District Court. Thereafter, Internal Affairs undertook another investigation per departmental policy. Their findings were subsequently passed along to a three-member "Discipline Panel" chaired by Deputy Chief Travis Glampe. Following their review of the incidents and the IA's investigatory results, the Panel sent their recommendation sustaining a "Level D" violation of the Code of Ethics based on the Grievant's two "criminal convictions for incidents occurring in less than six months (apart)" (City's Ex. 5). Their proposal called for a 320 hour "D Range" suspension which was to remain in Officer Woodis' personnel file permanently.

On February 18, 2014, the Department's Chief of Police, Janee Harteau, sent a formal written notice to the Grievant indicating that he was receiving a 30 hour suspension for the disorderly conduct conviction from November of 2012, and a 320 hour suspension for the DUI conviction (Employer's Exs. 20 & 6). Thereafter the Federation filed a formal complaint contesting the 320 hour suspension involving the off duty incident, alleging it was "excessive and therefore unjust.<sup>1</sup> Eventually the matter was appealed to binding arbitration for resolution after the parties were unable to resolve the dispute to their mutual satisfaction through the grievance process.

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<sup>1</sup> The 30 hour suspension pertaining to the disorderly conduct incident was not challenged.

**Relevant Contract & Policy Provisions-**

From the Master Agreement:

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. The unit of measurement for any suspensions which may be assessed shall be in hours....

From the City's Rules & the Department's Code of Conduct:

Rules & Charter Provisions  
Minneapolis Civil Service Commission

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11.03 Cause for Disciplinary Action

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B. Misconduct

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

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13. Criminal or dishonest conduct unbecoming to a public employee, whether such conduct was committed while on duty or off duty.

Department Code of Conduct  
Section 5-100

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5-101.02 Violations of the Code of Conduct

Any member of the Department who violates the code of conduct is subject to discipline. Discipline may range from a written reprimand to termination. Discipline shall be imposed following a sustained violation.

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All sworn and civilian members of the department shall conduct themselves in a professional and ethical manner at all time and not engage in any on or off-duty conduct that would tarnish or offend the ethical standards of the department.

**Positions of the Parties-**

The **CITY** takes the position in this matter that Officer Woods's suspension was for just cause. In support of their claim, the Department notes that police work differs significantly from other civil service jobs as it grants to law enforcement personnel significant authority and great responsibility when dealing with the public. By accepting the badge, Minnesota police officers swear to uphold the Code of Ethics to keep their private lives "unsullied" and to exhibit self-restraint. Officers recognize the badge of their office as a "symbol of public faith" and accept it as a "public

trust" (from the Code of Ethics). Policing, is also a very visible profession and the Department's image is extremely important in its relation to those whom it serves. The Administration asserts that credibility and a positive image goes a long way towards effectively fighting crime.

In this instance, the Department contends the Grievant's off-duty misconduct resulting in not one but two criminal convictions within a relatively short period of time (six months) adversely affects the trust the public has placed in them and which cannot be tolerated. Officer Woodis' conduct is particularly egregious as he himself violated the law on more than one occasion. Moreover, the Administration asserts that his misconduct endangered public safety – particularly when he was found to have operated a motorized vehicle while under the influence of alcohol. While this offense would normally not warrant a Level D violation and a 320 hour suspension, the fact that it occurred within six months of his earlier conviction demonstrates that he just does not “get it.” Although the Grievant's work record has otherwise been good, his repeated infractions of statutory law in a relatively short period of time warrant the increased penalty in the hopes that he will recognize the need to alter his off-duty behavior. Indeed, termination was taken into consideration as an option in this instance.

For all these reasons then, the Employer asks that the grievance be

denied in its entirety.

Conversely, the **FEDERATION** takes the position that the suspension issued to Officer Woodis was excessive and therefore unjust under the terms of the parties' labor agreement. In support of their claim, the Union argues that the Grievant has acquired a lengthy and favorable work record and has served the Department well. They note that he has taken full responsibility for his actions, and has freely admitted his wrong doing in connection with the two incidents, having pled guilty to both. Further , the Union claims that he was completely cooperative with the internal affairs investigation; that he apologized to his superiors, and accepted responsibility for his off-duty actions which he acknowledges were a violation of the Code of Conduct.

The MPF argues however, that the penalty imposed is excessive when the Grievant's excellent work record is taken into consideration. This they claim, was not done by the Department in the course of their deliberations. Discipline, in the Federation's view, should be constructive and corrective, not punitive and that is precisely what a 320 hour suspension is in this instance. Moreover, they urge that the magnitude of the discipline is heightened by the fact the Level D violation issued is

suppose to remain in Officer Woodis' personnel file indefinitely.

Finally, the Union claims that the Employer engaged in desperate treatment of this employee when they effectively suspended him for 32 days. The evidence demonstrates, according to the Federation, that other officers convicted of similar infractions received suspensions that were not nearly as severe as the one issued to the Grievant.

Accordingly, for the above-stated reasons, the Federation asks that its grievance be sustained and that the discipline issued to Officer Woodis be reduced to be more in line with what other members of the force have received for similar infractions.

### **Analysis of the Evidence-**

In a disciplinary matter such as this, it is nearly universal that management first establish the accused employee is indeed guilty as charged. Should that be accomplished, they then need to demonstrate that the discipline administered was fair and reasonable when all relevant factors are considered (assuming, of course, that there is no language in the labor agreement that limits a neutral's authority to review the penalty imposed). In this instance however, the initial evidentiary obligations of the City have been diminished by the unrefuted fact that the Grievant has

readily and repeatedly taken ownership of the two incidents that lie at the core of this dispute. In court, during the IA investigation, and at the hearing, Officer Woodis has apologized for his off-duty misconduct while recognizing its ramifications. At his Lauderhill Hearing in November of last year, he offered the following: "I am sorry for, for the embarrassment and, the black eye that this gave the police department" (Employer's Ex. 4)<sup>2</sup>.

In light of this evidence, the lone issue remaining concerns the reasonableness of the penalty administered to the Grievant by the Department. When considering this aspect of a disciplinary dispute, arbitrators often look for guidance by examining such factors as the grievant's work history, the investigatory procedure undertaken by the employer (due process), whether other employees have been disciplined for similar misconduct, and (assuming their adherence to the concept of progressive discipline) whether the penalty was excessive under the circumstances.

The Grievant's overall work record consisting of some 25 years with the Department as a patrol officer, has been characterized as "good" by the Employer, and "excellent" by the Union. The MPOF submitted Officer

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<sup>2</sup> Additionally, the evidence demonstrates that Officer Woodis notified his chain of command on the morning following his DUI arrest as required under the Code of Conduct, Section 5-105(7).

Woodis' Performance Appraisals for the past three years demonstrating that overall he has received favorable ratings from his supervisors (Union's Ex. D). A review of the documentation reveals that he consistently has earned high grades, receiving either "outstanding" or "satisfactory" marks within the four separate categories delineated. Displaying a "positive attitude," being "looked upon as a leader in confronting the most challenging issues," knowledge of his job, "willingness to help the younger officers on the shift," and displaying "excellent judgment and decision-making" are indicative of the reviewing supervisors' comments (*id.*). At the same time however, the profile of his work history indicates that he received a letter of reprimand and was suspended ("Severity Levels" A and C respectively) approximately 10 to 12 years ago in connection with matters relating to the performance of his job as a patrol officer (Employer's Ex. 19).<sup>3</sup>

The Federation has also raised the issue of desperate treatment in this instance. Desperate treatment normally exists when employees engage in

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<sup>3</sup> At the outset of the hearing, the Union objected to the exhibit in light of the number of years that have passed, arguing that it is not appropriate under the parties' sunset agreement. I can find nothing in the record however to support the claim. Moreover, an employee's work record is most often considered when evaluating the reasonableness of any discipline administered – both favorable and unfavorable. Indeed, the Employer's published Discipline Matrix acknowledges as much. Recognizing both mitigating and aggravating circumstances, the document states: "The Department recognizes that...an employee's actions and history may worsen or improve the overall picture of misconduct" (City's Ex. 23, p. 5). Here, as expected, the City has offered evidence of past disciplinary action taken against the employee while the Union has countered with the positive job appraisals he has received.

the same type of (alleged) misconduct under the same or substantially similar circumstances in the presence of the same or substantially similar mitigating factors but are assessed with significantly different penalties. The components to be measured and weighed, as the term is meant in arbitral principles of industrial due process include:

- The seriousness of the misconduct as compared to that of other employees afforded lesser penalties.
- The disciplinary record of the aggrieved as compared to others given lesser penalties.
- Evidence of willingness and ability to correct past performance and conduct problems.
- Length of total service with special reference to periods free of conduct performance issues.

Here, the Union offered three other examples where members of the force were charged with similar off-duty infractions but received considerably less discipline than what was issued to the Grievant. In March of this year another police officer (Officer "H") who also had compiled a favorable work record, was arrested for driving under the influence of alcohol. He subsequently took responsibility for his actions, apologized to the Department, and went through a chemical dependency assessment. He received a "C" level discipline and was suspended for 10 hours (Union's Ex. F).

In January of 2011, another officer ("T") was similarly arrested and charged with a DUI. When pulled over by the arresting officer, the evidence demonstrated that the driver attempted to influence him by identifying himself a member of the MPD, which by itself constitutes a separate infraction of the Code. Here too, the officer took full responsibility for the off-duty misconduct, was charged and convicted, apologized to the Department and went through a chemical dependency assessment. The matter was investigated and the Discipline Panel recommended a 10 hour suspension, which fell in the "C" level range (Federation's Ex. G).

In March of 2010, another "C" level violation was sustained against a third officer ("W") who was issued a 10 day suspension as a consequence. Here too, the employee was arrested, charged and convicted of operating a motorized vehicle while intoxicated. He attempted to influence the arresting officer by indicating that he was a member of the Minneapolis Police Department as well. In assessing the discipline to be imposed, the Administration again took into consideration mitigating circumstances which included the officer taking responsibility for his actions, apologizing, and an otherwise "exemplary" work record (Union's Ex. H).

The Employer counters that none of the examples offered up the by Federation were convicted of more than one violation of the law. Clearly

this is a distinguishing factor that must be taken into consideration when evaluating a desperate treatment assertion. At the same time however, it is undisputed that the work record of these three officers was taken into consideration as a mitigating factor when evaluating the discipline to be imposed. Further, their attitude (expressing remorse for their actions), their cooperation with the Department in the investigation that followed, and in some instances, enrolling in a chemical dependency evaluation and treatment program were factored in. Here, the evidence demonstrates that the mitigating factors for Officer Woodis were quite similar. Furthermore, in his favor is the fact that two of the three examples cited by the Federation included charges of attempted coercion where the employees sought to use their position with the MPD in order to “influence” the arresting officer – an additional infraction of the Department’s rules. There is no evidence that the Grievant committed any similar misconduct in the course of his arrest.

At hearing, Employer witness Deputy Chief Glampe allowed that the Employer is obligated to take into consideration other cases where similar misconduct was found by members of the Department and discipline administered as a consequence. Yet he only offered the following explanation: “We look at other cases and compare them to the extent we know the facts of other cases at hand.” The response is vague. Moreover,

the City offered no examples of similar discipline being imposed by the Department for similar misconduct. While no other issues were raised in connection with the Department's investigation into the matter, it would not be unreasonable to assume that they would consider their experience with other officers similarly charged in the course of their inquiry into the alleged infraction, when evaluating the penalty to be assessed. Claiming to do this as a matter of course is one thing, however failing to demonstrate that it was in fact done is quite another.

The concept of progressive discipline has been a part of the collective bargaining agreements executed between these parties for a significant number of years. It is widely held that it is utilized in the workplace for the specific intent of achieving acceptable performance from an employee by progressively increasing penalties – warnings (or counseling), written reprimands, and suspensions and/or demotion – to those who have failed to adhere to rules of conduct. Sometimes referred to as “corrective discipline” its very intent is to rehabilitate and to impress upon the accused, the growing urgency of compliance.<sup>4</sup> Certainly, its application has exceptions. Where the actions of an employee are so egregious and destructive to a continuing employment relationship – such as theft, willful injury to a fellow

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<sup>4</sup> See: *Roberts' Dictionary of Industrial Relations*, BNA 4th Ed.; at p. 624.

worker or property – there is no need to apply the normal intervening steps. Otherwise, it has been proven to be a useful tool in altering what is considered to be undesirable behavior within the work setting.

While the Grievant's actions are certainly quite serious and reflect poorly on the Department, at the same time they are not so extreme in my judgment as to completely ignore the concept of progressive discipline. To be clear, two convictions for off-duty misconduct within six months constitutes offensive and irresponsible conduct on the part of a seasoned experienced police officer. At the same time however, there are sufficient mitigating factors present here that warrant a reduced penalty – one that might serve to correct the behavior in issue rather than simply to punish. Unmistakably, it must be of such significance as to “get Officer Woodis' attention” – one of the primary reasons cited by the Administration for the inordinate penalty imposed.

During the course of the Loudermill Hearing, Officer Woodis related the epiphany he had experienced while sitting in the back seat of the highway patrol car following his arrest in May of last year:

“I was in the back of that police car, you know, that's when it hit me like a 2 X 4 in the face with the fact that I needed to change my life, and this DUI was sort of the situation that did that for me....I took the self-initiative to get an alcohol evaluation...and...to seek my counselor and to address any

issues in handling things in a healthy manner" (Employer's Ex. 4, p. 1).

This revelation would appear to be credible given the Grievant's overall conduct since the arrest. For example, it was learned that he has since spoken to younger less experienced members of the force, talking openly about his off-duty misconduct and using it as a teaching tool for others.

In the words of Deputy Chief Glampe the Department's discipline matrix is intended to be a "guideline," and is not inflexible. Here, the weight of the evidence while most certainly demonstrating justification for the imposition of discipline, nevertheless does not, in my judgment, adequately support the extreme penalty assessed against a long-term employee who has compiled an overall favorable work record. Moreover, I find that the Union has demonstrated desperate treatment to the extent that the discipline meted out to the Grievant was excessive by comparison to that given to other officers for similar off-duty unprofessional behavior.

**Award-**

For the reasons set forth above, I conclude that the Federation's grievance is sustained in part to the limited extent that Officer Woodis' 320

suspension is to be forthwith reduced to a 100 hour suspension. Accordingly, the City is to forthwith reimburse the Grievant for the difference between the wages and attendant benefits (if any) originally withheld and the modified discipline ordered here (220 hours). Their financial obligation however, shall be offset by any income the officer may have received while away from work during the final 220 hours of the original suspension.

This matter shall remain in the Grievant's file in accordance with the record retention guidelines mandated by state law.

I will retain jurisdiction in this matter for the sole purpose of resolving any dispute that may arise between the parties in connection with the implementation of the award.

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Respectfully submitted this 8<sup>th</sup> day of November, 2014.

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Jay C. Fogelberg, Neutral Arbitrator