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In Re the Arbitration between:

City of Minneapolis -- Police Department,

Employer,

**GRIEVANCE ARBITRATION  
OPINION AND AWARD**

and

Police Officers Federation of Minneapolis,

Union.

Discharge of Matthew Segulia.

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Pursuant to the terms of their Collective Bargaining Agreement, the parties have submitted the above captioned matter to arbitration.

The parties selected James A. Lundberg as their neutral Arbitrator from a list of Arbitrators maintained by the parties.

There are no procedural issues in dispute and the grievance is properly before the Arbitrator for a final and binding determination.

The grievant's employment was terminated on January 31, 2007.

The grievance was filed on February 14, 2007.

The hearing was conducted on August 23, 2007.

The record was closed on August 23, 2007 following oral arguments by representatives of the parties.

**APPEARANCES:**

**FOR THE EMPLOYER**

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**FOR THE UNION**

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**ISSUE:**

*Whether the Employer had just cause to discharge the grievant. If not, what is the appropriate remedy?*

**FACTUAL BACKGROUND:**

Matthew Segulia was employed as a Police Patrol Officer by the City of Minneapolis for nearly twenty (20) years. Mr. Segulia was hired in September of 1987 and was discharged January 31, 2007. Mr. Segulia was convicted of a crime that resulted in the loss of his legal ability to carry a firearm. Due to his inability to carry a firearm the grievant was unable to perform some of the essential functions of his job.

On November 18, 2005 at approximately 5:15 PM, Officer Segulia drove to the home of a former girl friend in St. Paul, Minnesota. Mr. Segulia had an altercation with his former girl friend and was observed by two plain clothes St. Paul Police Officers. The St. Paul Police Officers intervened by identifying themselves as Police Officers. Mr. Segulia gave some resistance to the St. Paul Officers and, while resisting, reached for his fanny pack. The Officers used a Taser on Mr. Segulia to immobilize him. Mr. Segulia had a firearm in his fanny pack.

Mr. Segulia was charged on November 23, 2005 with the following:

**Assault in the 5<sup>th</sup> Degree – Misdemeanor,**

**Obstructing Legal Process – Misdemeanor,**

**Possession of a Pistol with a Blood Alcohol Count of .10 or more --**

**Misdemeanor.**

According to a memorandum prepared by Lt. Kevin H. Stoll to Lt. Mike Davis, Lt. Stoll was notified by the St. Paul Police Department at 5:45 PM on November 18, 2005 that an off duty Minneapolis Police Officer had been arrested in the City of St. Paul. Lt. Stoll's memorandum included information that the grievant was carrying his hand gun at the time of the arrest and that his Blood Alcohol Count was .21.

The grievant was "Relieved of Duty with Pay" by letter dated November 18, 2005 and he was notified of an Internal Affairs Investigation by letter dated November 30, 2005. As a result of the Internal Affairs Investigation, the grievant entered into a Last Chance Agreement on April 3, 2006 with the Employer and the Union. The duration of the Last Chance Agreement was 10 years and the agreement gave the Employer the right to discharge the grievant for any violation of the terms of the agreement. The grievant was also suspended without pay for a period of three hundred (300) hours. The Last Chance Agreement was entered into in lieu of termination.

The grievant was not discharged for violation of the Last Chance Agreement.

On Tuesday November 14, 2006 the grievant was acquitted of assaulting his ex-girl friend and found guilty of disorderly conduct and possessing a pistol while under the influence of alcohol.

By notice dated November 15, 2006 the grievant was assigned to "non enforcement duty with pay." The notice suspended the grievant's authority to possess and carry a firearm in public on duty or off duty until further notice.

By notice dated January 10, 2007 the grievant was placed on "relieved of duty with pay" status. He was informed that his status would continue until a disciplinary

decision was made with regard to his conviction in November of 2006 on the two misdemeanor counts.

By notice dated January 19, 2007 the grievant was notified of a meeting to be conducted on January 26, 2007, wherein he was to be given an opportunity to respond to management's view that he was no longer able to perform the essential functions of his job. As a result of being convicted under **Minn. Stat. Section 624.7142, subd. 1 (4)**, the grievant was prohibited from carrying a firearm for a period of one year. The Employer determined that the ability to carry a firearm while on duty and completing a firearms qualification course are essential functions of the job.

By notice dated January 31, 2007 the Employer recommended that the grievant be discharged. The discharge was based on the grievant's inability to carry out the essential functions of his job. The Court's sentencing of Mr. Segulia in November of 2006 prohibited him from carrying a firearm for a period of one year. The Employer maintained that Mr. Segulia could not perform the essential functions of his job for a period of one (1) year. Hence, his employment was terminated.

The discharge was grieved by notice dated February 14, 2007.

**SUMMARY OF EMPLOYER'S ARGUMENT:**

The grievant forfeited his legal authority to carry a pistol for one full year through the sentence he received upon being convicted of violating **Minnesota Statute 624.7142. Civil Service Rule 11.03 (4)** defines failure to meet or continue to meet established requirement(s) of the position as substandard performance. **Police Department Rule 5-402** requires all officers, while on duty, to carry an MPD approved hand gun that they have qualified with. **Police Department Rule 5-410.02** requires all officers to attend

firearms training and notifies officers that failure to attend will be cause for discipline up to and including termination of employment. Also, **Police Department Rule 5-410** identifies receipt of a passing score on the MPD approved course for each Range training period to be a term and condition of employment. When Officer Segulia lost his legal authority to carry a pistol, he could not meet the established requirements of his position as a Police Officer.

In Officer Segulia's case the facts are not in dispute. The Sentence of the Court withdrew his ability to carry a handgun. He can not carry an approved hand gun while on duty and he can not qualify for the use of a hand gun. He simply is unable to meet essential requirements of his job and termination is the appropriate remedy.

There are two other police officers who work for the Minneapolis Police Department who have lost their ability to use a hand gun for an indeterminate period of time but have been assigned to perform work that does not require the use of a hand gun. Unlike Officer Segulia, the officers who have been retained by the Police Department lost their ability to use a hand gun as a direct result of medical problems. The Employer determined that they would accommodate the medical problems experienced by the two employees. The Department has no history of accommodating any employee for a non medical reason.

There is no rule or contractual provision that requires the Employer to retain a Police Officer who may not carry or qualify to use a hand gun for one year.

The Employer argues directly against reinstatement of the grievant for several reasons. Officer Segulia has a history of problems with alcohol, which have impacted his job and led to discipline. He admitted at hearing that alcohol has been a problem for him

for most of his life but he did nothing to address the problem over a period of twenty (20) years. If Officer Segulia is reinstated his loss of the use of a firearm and his conviction for having a pistol in his possession, while having a blood alcohol level of .21 will be raised every time he testifies before the court. Officer Segulia engaged in conduct that resulted in his inability to meet the essential requirements of his job and the circumstances that led to his failing to meet the essential requirements of his job, make reinstatement an inappropriate remedy.

**SUMMARY OF UNION POSITION:**

The Union acknowledges that there is no factual dispute in this grievance. The conduct of Officer Segulia is not in dispute nor is the 300 hour suspension he served or the terms of the Last Chance Agreement that he was working under at the time of his discharge. The Union contends that the discharge was too severe a punishment for a temporary loss of the ability to carry a fire arm.

The Employer currently has two Officers assigned to desk work indefinitely, because they are unable to carry a fire arm. Unlike Officer Segulia, the two Officers have medical conditions that have resulted in an indefinite loss of the ability to carry a fire arm. In both instances, a successful argument could be made that the disabilities that the Officers work with are permanent. At a minimum, there is no known time when either Officer's ability to carry a fire arm will be restored.

Officer Segulia will have his ability to carry a fire arm restored after November 9, 2007. While Officer Segulia was suspended pending investigation, he was not allowed to carry a weapon and he was assigned to work at a desk. The other two Officers who are not able to carry a weapon for indeterminate periods of time for medical reasons are

assigned to desk duty. Nothing prevents the Employer from assigning Officer Segulia to desk duty, until his ability to carry a fire arm is restored by the Court. In fact, the Federation argues that assigning the grievant to desk duty is a more appropriate remedy.

Officer Segulia has been with the Minneapolis Police Department for twenty (20) years. At all times during the investigation into his conduct and the investigation into the conviction that resulted in his loss of the ability to carry a fire arm, Officer Segulia has cooperated with the Employer. If Officer Segulia is assigned to desk duty without a fire arm until his ability to carry a fire arm is restored by the Court, he will be treated the same as other Officers in similar situations and appropriate consideration for his long tenure with the Police Department will have been given by the Employer.

The Employer also could place Officer Segulia on unpaid leave, until his ability to carry a fire arm is restored. Whether the Employer allowed Officer Segulia to take unpaid leave or assigned him to desk duty for the period that he was unable to carry a fire arm, he would still be required to meet all of the terms of his Last Chance Agreement. While the conviction for carrying a pistol while having a blood alcohol level in excess of .10 resulted in grievant's loss of the ability to carry a fire arm for one year, the Employer had already imposed a 10 year Last Chance Agreement and a 300 hour suspension upon the grievant for the underlying misconduct.

The Federation contends that termination is too severe in this instance. The grievant is a twenty (20) year employee. Other Officers who have lost the ability to carry a fire arm while on duty have been assigned to desk duty. Not only was discharge too severe but the treatment of Officer Segulia was disparate. The grievant should be

reinstated and either placed on unpaid leave or assigned to a desk, until the Court restores his ability to carry a fire arm.

**OPINION:**

Despite a strong argument for remediation presented by the Union, the Employer has established by sufficient quantum of proof that the discharge of Officer Segulia was for just cause. The fact that Officer Segulia lost his ability to carry a fire arm for a period of one year is not disputed. The facts that essential functions of the job of a Minneapolis Patrol Officer include the ability to carry a fire arm and to qualify with the fire arm are not disputed. In short, Officer Segulia lost the ability to carry a fire arm and contemporaneously lost the ability to carry out essential job requirements.

Nothing in the collective bargaining agreement, the past practice of the parties or the Department Rules requires the Employer to accommodate an Officers loss of the ability to carry a fire arm for non medical reasons. There is no evidence that unpaid leave has been granted to Officers, who have lost the ability to carry a fire arm. In fact, the Employer's witness testified that unpaid leave has not been granted in situations similar to Officer Segulia's situation.

The two Officer's with medical problems, who are unable to carry a fire arm but have been assigned to indefinite desk duty, face circumstances that are easily distinguished from those of Officer Segulia. The Minneapolis Police Department has made a medical excuse exception for officers who have lost the ability to carry a fire arm. Officer Segulia forfeited his ability to carry a fire arm due to a Court order not a medical impediment. Officer Segulia has not been the recipient of disparate treatment.

While Officer Segulia has served the City of Minneapolis for a period of twenty (20) years, longevity alone is not sufficient to reverse the Employer's decision to terminate his employment. The Arbitrator does not have the authority to create a new exception requiring the Employer to accommodate an Officer's loss of the ability to carry a fire arm for some reason other than a medical problem. In this instance, the Employer has established just cause to discharge the grievant and the discharge must be upheld.

**AWARD:**

*The Arbitrator finds that the Employer had just cause to terminate the employment of Officer Matthew Segulia.*

*The grievance is hereby denied.*

**Dated: September 7, 2007**

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**James A. Lundberg, Arbitrator**