
THE CITY OF MINNEAPOLIS

and

THE POLICE OFFICERS' FEDERATION
OF MINNEAPOLIS

MEMORANDUM OF AGREEMENT
GRIEVANCE SETTLEMENT AND AMENDMENT OF
DISPUTE RESOLUTION PROVISIONS OF LABOR AGREEMENT

RECITALS

A. The City of Minneapolis (hereinafter "Employer") and the Police Officers' Federation of Minneapolis (hereinafter "Federation") are parties to a Collective Bargaining Agreement (hereinafter "Labor Agreement") that is currently in force.

B. The Federation filed grievance Number 10-43 contesting the termination of Officer Patrick Tapp (the "Grievance"). On November 8, 2013, Arbitrator Jay Fogelberg ruled that the Grievance was not arbitrable (the "Arbitration Award"). The period for the Federation to move to vacate the Arbitration Award has not yet expired.

C. The Arbitration Award was based upon the Arbitrator's interpretation of certain language in the Labor Agreement.

D. The parties mutually desire to reach a final resolution of the Grievance and to amend the Labor Agreement to clarify the language at issue in the Grievance in the manner set forth below.

AGREEMENT

1. The Federation agrees that the Arbitration Award is final and binding and constitutes the final disposition of the Grievance. Accordingly, the Federation hereby waives any and all rights it may have to seek that the award be vacated.

2. Effective as of December 13, 2013, the following sections of the Labor Agreement are hereby amended as specified in the attached Appendix A: 4.2; 4.5; 5.1; 5.4; 5.5; 5.7; 5.8 and 5.9.

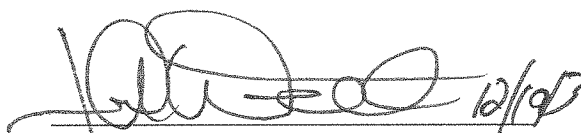
3. The Labor Agreement remains in full force and effect, except as amended by this Agreement.

FOR THE CITY OF MINNEAPOLIS:

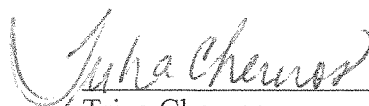
FOR THE FEDERATION:




Timothy Giles Date
Director, Employer Services 12/12/13



Lt. John Delmonico Date
President, POFM 12/19/13



Trina Chernos Date
Assistant City Attorney 12-17-13



James P. Michels Date
Attorney for POFM 12/19/13

APPENDIX A
(Marked to Show Changes to Current Language)

Section 4.2 Subject to the provisions of Section 4.5, a suspension, written reprimand, transfer, demotion (except during the probationary period) or discharge of an employee who has completed the required probationary period may be appealed by the Federation through the grievance procedure as contained in Article 5 of this Agreement. In the alternative, where applicable and subject to the provisions of Section 5.9, an employee may seek redress ~~through a procedure such as through the Minneapolis Civil Service Commission or the Veteran's Preference Board, or Fair Employment.~~ Except as may be provided by Minnesota law or by Section 5.10 of this Agreement, ~~once a written grievance or an appeal has been properly filed or submitted by the employee or the Federation on the employee's behalf through the grievance procedure of this Agreement or another available procedure, the employee's right to pursue redress in an alternative forum or manner is terminated.~~

Section 4.5 – Discipline of Personnel With Rights to Return to Bargaining Unit. If a Commander is removed (un-appointed) from the position *as the result of discipline*, any discipline shall be imposed while the employee holds the rank of Commander and shall not be imposed *after* the employee is removed and returned to his/her last held permanently certified title. Such removal of a Commander shall not cause the demotion of another employee holding the rank of the last held permanently certified title and any reduction in the rank shall be by attrition. Further, if discipline is imposed on a Commander for reasons based on conduct that occurred while serving as a Commander, ~~the employee such removal shall not have access be subject to the Settlement of Dispute procedures in Article 5 of this Agreement, but may have access to the Civil Service Commission appeal process.~~

Section 5.1 – Scope. This article shall apply ~~to all members of the bargaining unit, but only as to resolution of grievances and not to interest arbitration.~~

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 procedure to the maximum extent practical.

A “grievance” is any matter concerning the interpretation, application, or alleged violation of any ~~currently effective this a~~ Agreement between the City and the bargaining unit. Any document or notice provided by one party to the other via email or other mutually acceptable electronic means shall satisfy the requirement that such document be provided in writing.

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To initiate a grievance, the Federation shall, within the time period specified below, inform the Employer in writing on the standard grievance form.

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~~A grievance must be initiated commenced at step one no later than twenty (20) calendar days from the discovery of the grievable event(s) or from when the event(s) reasonably should have been discovered, or twenty (20) calendar days from the receipt of the Employer's response to a related letter of inquiry, whichever is earlier.~~

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~~A Class Grievance, one that impacts more than three (3) bargaining unit members, may be initiated at Step 2.~~

~~The Chief of Police shall have the full authority of the City Council to resolve the grievance.~~

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Subd. 1. - Step One.

~~To initiate a grievance, the Federation representative shall, within the time period specified below, inform the Employer in writing on the standard grievance form. If After filing a grievance, the Federation may expressly requests a discussion with the grievant's immediate supervisor of the aggrieved member(s), if any, or other ranking officer with authority to resolve the grievance as designated by the Chief concerning the written grievance. Such, such discussion shall take place within three (3) days after filing the grievance, unless the time is mutually extended. The discussion with such Employer representative shall be held with one of the following:~~

- ~~a. The employee accompanied by a Federation representative;~~
- ~~b. The Federation representative alone if the employee so requests;~~
- ~~c. The employee alone on his/her own behalf.~~

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Within ten (10) days after the grievance is filed or the discussion meeting concludes, whichever is later, the Employer shall give its decision in writing, together with the supporting reasons to the Federation. Each step one decision shall be clearly identified as a "step one decision."

~~A grievance must be commenced at step one no later than twenty (20) calendar days from the discovery of the grievable event(s) or from when the event(s) reasonably should have been discovered, or twenty (20) calendar days from the receipt of the Employer's response to a related letter of inquiry, whichever is earlier.~~

~~A Class Grievance, one that impacts more than three (3) bargaining unit members, may be initiated at Step 2.~~

Subd. 2 - Step Two.

If the step one decision is not satisfactory, a written appeal may be filed by the Federation with the Employer, within twenty (20) days of the date of the step one decision. Upon request of the City or the Federation, a meeting shall be held between the Chief of Police, and the Federation President. The meeting shall be scheduled by the Chief of Police, and held within twenty (20) days after receipt of the written appeal.

~~The Chief of Police, shall have the full authority of the City Council to resolve the grievance.~~

Within twenty (20) days after the step two meeting or receipt of the step two appeal, whichever is later, the Employer shall send a written response to the Federation. The step two decision shall clearly identify that answer as a "step two decision."

Subd. 3- Step Three - Regular Arbitration.

Within twenty (20) days of the date of the step two decision the Federation shall have the right to submit the matter to arbitration by informing the Director of Employee Services that the matter is to be arbitrated. ~~—If the grievance has progressed through the process to Step 3 without an the Federation receiving a receipt of a written step two decision from the Employer in accordance with the provisions of Section 5.7, the Federation may at any time submit the matter to initiate arbitration request the matter proceed to arbitration as if there had been a timely response~~ by informing the Director of Employee Services that the matter is to be arbitrated; or the Employer may at any time make a written inquiry of the Federation as to the status of the grievance. If the Employer makes such inquiry, the Federation shall have twenty (20) days from the date of such inquiry to inform the Director of Employee Services that the matter is to be arbitrated.

If the matter is to be arbitrated, a single arbitrator shall be selected from the panel of mutually agreed upon arbitrators. Arbitrators shall be selected from the panel on a rotating basis with each party having the right to strike one arbitrator.

The panel of arbitrators and the process for removing, replacing and renewing the arbitrators on the panel shall be reviewed by the parties within thirty (30) days of the ratification of this agreement or as soon thereafter as the parties are able to do so. Any changes to the panel or process shall be by mutual written agreement.

If a grievance is referred to arbitration and no arbitrators on the panel are available to hear the case, the party referring the grievance to arbitration shall petition the Bureau of Mediation Services to provide a list of seven (7) qualified arbitrators from which the parties may select an arbitrator to hear the grievance. The Employer and Federation shall select an arbitrator using the alternate strike method with the party exercising the first strike selected by coin flip. In scheduling arbitration hearings, the parties will give priority to grievances contesting the termination of an employee.

One observer representative of the Federation, the ~~Grievant aggrieved member(s), if any,~~ and all necessary ~~employee-Federation witnesses who are employees of the Employer~~ shall receive their regular salary and wages for the time spent in the arbitration proceeding, if during regular work hours. An additional Federation observer shall be allowed; however, the Federation shall provide the means for compensating the additional observer.

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 5.5 – Mediation. The City and the Federation, by mutual agreement, may utilize the grievance mediation process in an attempt to resolve a grievance before going to arbitration.

The objective of mediation is to find a mutually satisfactory resolution to the dispute. The parties shall mutually choose a mediator or have a mediator assigned by the Bureau of Mediation Services.

One representative of the Federation ~~and and the - the Grievant aggrieved member(s), if any, and all necessary employee witnesses~~ shall receive their regular salaries or wages for the time spent in the grievance mediation proceeding, if during regular working hours.

The following procedures shall apply to mediations conducted under this Section:

- (a) Arbitration time frames shall be tolled during the mediation procedure; however, there shall be no additional extensions without written mutual agreement.
- (b) Grievances that have been appealed to arbitration may be referred to mediation if both the Federation and the City agree.
- (c) Mediation conferences shall be scheduled in the order in which the grievance is appealed to mediation with the exception of suspension or discharge grievances, which shall have priority.
- (d) Promptly after both parties have agreed to mediate, the parties shall notify the Bureau of Mediation Services. The Bureau of Mediation Services shall arrange for the conference.
- (e) The mediation proceedings shall be informal in nature, and the goal will be to mediate up to three (3) grievances per day.
- (f) Each party shall have one (1) principal spokesperson that will have the authority to agree upon a remedy of the grievance at the mediation conference.
- ~~(g) One (1) Grievant will have the right to be present for each grievance.~~
- ~~(h)(g)~~ The issue mediated will be the same as the issue the parties have failed to resolve through the grievance process. The rules of evidence will not apply, and no

transcript of the mediation conference shall be made.

(+)(h) The mediator may meet separately with the parties during the mediation conference. The mediator will not have the authority to compel the resolution of a grievance.

(+)(i) Written material presented to the mediator or to the other party shall be returned to the party presenting the material at the termination of the mediation conference, except that the mediator may retain one (1) copy of the written grievance to be used solely for the purposes of statistical analysis.

(+)(j) If no settlement is reached during the mediation conference, the mediator shall provide the parties with an immediate oral advisory opinion. The opinion will involve the interpretation or application of the collective bargaining agreement and the reasons for his/her opinion. The parties may agree that no opinion shall be provided.

(+)(k) The advisory opinion of the mediator, if accepted by the parties, shall not constitute a precedent, unless the parties otherwise agree.

(+)(l) If no settlement is reached as a result of the mediation conference, the grievance may be scheduled for arbitration in accordance with "Step Three" of the grievance procedure.

(+)(m) In the event a grievance that has been mediated is subsequently arbitrated, no person who served as the mediator may serve as the arbitrator. In the arbitration hearing, no reference to the mediator's advice or ruling may be entered as testimony nor may either party advise the arbitrator of the mediator's advice or ruling or refer at arbitration to any admissions or offers of the settlement made by the other party at mediation.

(+)(n) By agreeing to schedule a mediation conference, the City does not acknowledge that the case is properly subject to arbitration and reserves the right to raise this issue notwithstanding its agreement to schedule such a conference.

(+)(o) The fees and expenses of the mediator and mediation office, if any, shall be shared equally by the parties.

Section 5.7 - Time Limits; Communications. Time limits, specified in ~~this procedure~~ Article 5 may be extended by written mutual agreement of the parties. When practical, the preferred method of giving notices and communications under this Article shall be by email. The failure of the City to comply with any time limit herein means that the Federation shall be deemed to have processed the grievance to the next step of the grievance procedure. Failure of the Federation ~~or its employees~~ to comply with any time limit herein renders the alleged violation untimely and no longer subject to the grievance procedure.

Notices or communications referenced under this Article shall be given:

To the Employer:

Chief of Police
Assistant Chief
Police Administration Secretary
Director of Employee Services

To the Federation:

Its President
Its Representative who signed the grievance
Its Office Administrative Assistant

Section 5.8 - Arbitration Expenses. The fees and expenses of the Arbitrator shall be divided equally between the Employer and the Association-Federation provided, however, that each Party shall be responsible for compensating its own representatives and witnesses. If either Party desires a verbatim record of the proceedings, it may cause such record to be made provided it pays for the cost of preparing the record. Further, if the party requesting the record requests submitting post-hearing briefs, such party shall at its cost provide a copy of the record to the other Party and to the Arbitrator.

Section 5.9 - Election of Remedy. The parties acknowledge that the facts and circumstances which form the basis of a grievance may also form the basis of claims which may be asserted by an individual employee in other forums. The purpose of this Section is to establish limitations on the right of the Federation to pursue a grievance in such situations.

Subd. 1 - Civil Service Rights.

Employees covered by Civil Service systems created under Chapters 43A, 44, 375, 387, 419, or 420 of Minnesota Statutes, by a home rule charter under Chapter 410 of Minnesota Statutes, or under Laws of Minnesota, 1941, Chapter 423 (collectively "Applicable Law"), may pursue a grievance through the procedure established under this section. When the subject matter of a grievance to which Article 5 applies is also within the jurisdiction of the Minneapolis Civil Service Commission appeals boards or appeals procedures created by Applicable Law Chapters 43A, 44, 375, 387, 419, or 420 of Minnesota Statutes, by a home rule charter under Chapter 410 of Minnesota Statutes, or under Laws of Minnesota, 1941, Chapter 423, the resolution of the dispute employee may proceed through the grievance procedure or the Civil Service appeals procedure. However, but once a written grievance the employee files or an appeal has been properly filed to the Civil Service Commission, or submitted on the employee's behalf with the employee's consent, the Federation's right to pursue a grievance under this Article is terminated.

Notwithstanding anything in the Civil Service Rules to the contrary, an employee's right to file an appeal with the Civil Service Commission expires on the later of: ten (10) days after the deadline for the Federation to file a grievance under this Article; or ten (10) days after the employee has received notice from the Federation of its final decision not to pursue a grievance. The Federation shall provide notice to the City of such decision

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~~promptly after providing notice to the employee, employee may not proceed in the alternative manner.~~

Subd. 2 – Rights of Veterans.

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~~Some employees covered by this Agreement may have the individual right to contest a removal from a position or employment under Minn. Stat. §197.46. Once an employee requests a hearing under Minn. Stat. §197.46, the Federation's right to pursue a grievance under this Article is terminated.~~

Subd. 3 – Other Rights of Employees.

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~~No action by the Federation under ~~thing in this contract~~ Agreement shall prevent an employee from pursuing ~~both a grievance under this contract and a charge of discrimination brought under Title VII, The Americans with Disabilities Act, the Age Discrimination in Employment Act, or the Equal Pay Act.~~~~