

Chaska

Police Department

address all correspondence to
 SCOTT M. KNIGHT
 Chief of Police

10 April 2015

Joshua Lawrenz
 1528 Balinese Street
 Shakopee MN 55379

Re: Notice of Termination

Josh Lawrenz:

This is notice of your termination from employment with the City of Chaska. On April 8, 2015, a notice of pre-termination meeting was sent to you scheduling a meeting on April 10 to give you an opportunity to present any information you believed the City should consider before making a decision regarding your employment status. The City was notified on April 8 by Isaac Kaufman, LELS General Counsel, that you elected to waive your Loudermill rights. The pre-termination meeting was therefore cancelled.

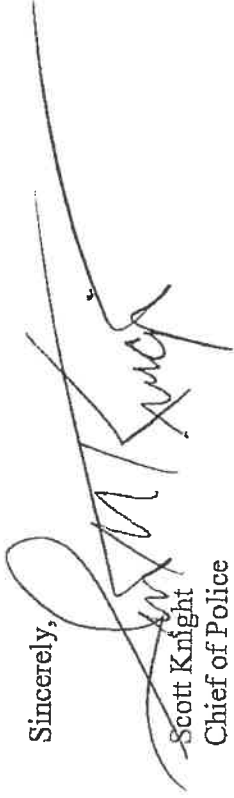
An extensive internal affairs investigation was conducted by an outside investigator regarding your conduct. Based upon the evidence gathered during the course of the investigation, you engaged in patrol activity resulting in the unauthorized and unlawful targeting of Hispanic/Latino drivers in violation of Chaska PD General Orders 12, 14, 33, 38, 50, 63 and 78, and Minnesota Statute 626.8471. During the investigation, you violated confidentiality directives and expectations, and provided untruthful answers during your interview in violation of General Order 14.

Based on the seriousness of your conduct and the totality of the circumstances, you have engaged in conduct unbecoming an officer which has brought discredit upon yourself and the Chaska Police Department, which has detracted from the respect and confidence of the community that is essential to law enforcement effectiveness, and which has seriously impaired your credibility as a law enforcement officer.

In accordance with Article X, Section 10.5, of the Labor Agreement between the City of Chaska and LELS, you are suspended for five (5) days without pay effective Monday 13 April 2015, and your termination is effective 4:30 PM, on Friday 17 April 2015.

On Friday 17 April, at 3:00 PM, you are directed to turn in any and all Chaska Police Department property which is in your possession; to include, but is not limited to, badges, portable radio, and police department insignia, etc.

Sergeant Kjorstad and other personnel will meet you on the police parking "ramp", outside of CPD garage space, on said date and time to receive the required department property from you.

Sincerely,


Scott Knight
Chief of Police
Chaska Police Department

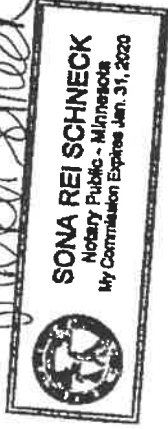
cc: Isaac Kaufman, LELS General Counsel
Personnel File

I acknowledge that I have received and read this notice.

REFUSED

Joshua Lawrenz





Minnesota (hereinafter "Union" or "LELS") provides for an appeal to final and binding arbitration of disputes that are properly processed through the grievance procedure.

The Arbitrator, Richard John Miller, was selected by the Employer and Union (collectively referred to as the "Parties") from a panel submitted by the Minnesota Bureau of Mediation Services. A hearing in the matter convened on September 29, October 1, 5, November 2-6, 9 and 20, 2015, in the City Council Chambers, Chaska City Hall, One City Hall Plaza, Chaska, Minnesota. The hearing was tape recorded with the Arbitrator retaining the tapes for his personal records. The Parties were afforded full and ample opportunity to present evidence and arguments in support of their respective positions.

The Parties' counsel elected to file electronically post hearing briefs with receipt by the Arbitrator no later than January 25, 2016. The post hearing briefs were timely submitted. The Arbitrator then exchanged the briefs electronically to the Parties' counsel on January 26, 2016, after which the record was considered closed.

The Parties agreed that the grievance is a decorous matter within the purview of the Arbitrator for decision.

ISSUES AS DETERMINED BY THE ARBITRATOR

1. Did the City have just cause to terminate the Grievant?
2. If not, what is the appropriate remedy?

STATEMENT OF THE FACTS

The Grievant in this case, Joshua Lawrenz, has been employed by the Chaska Police Department ("CPD") for 14 years, from 2001 until his termination on April 17, 2015. He was hired by the current Chief of Police, Scott Knight. The Grievant grew up in Chaska. During his tenure with the CPD, the Grievant was selected for multiple special assignments, and served in those assignments effectively. These included his tenure as a Field Training Officer beginning in 2008, and as both a Use of Force Instructor and Drug Recognition Expert beginning in 2012. (Union Exhibit #4; City Exhibit #25). As a Field Training Officer, the Grievant participated in the training of approximately three new Police Officers, teaching them the geography of the City, CPD policies and the proper way to write reports. He remained in all of those special assignments until shortly before being placed on administrative leave on August 27, 2014.

Prior to the events leading to his termination, the Grievant had never been disciplined above the level of a reprimand, and had received no discipline at all since 2006. (Union Exhibit #7). On all of the Police Officer Performance Evaluations in his file, the Grievant was rated as Average, Above Average or Outstanding in every category, including consistently high marks in the areas of public service, personal

contacts, judgment, and patrol activity. (Union Exhibits #1-#3). The Grievant's file also includes numerous commendations and letters of appreciation from CPD supervisors, other law enforcement agencies and members of the public. (Union Exhibits #5-#6). The CPD command staff had a high opinion of the Grievant and had identified him as a good candidate to interview for promotion to Sergeant.

The Grievant prided himself on engagement with the community and considered his public service-related skills to be his greatest asset as a Police Officer. He maintained a regular presence at locations like The Lodge (a City-operated facility for active older adults) and the 212 Medical Center, where he was well-liked and had positive interactions with people from a range of racial and ethnic groups.

Prior to the summer of 2014, the Grievant had never been accused of the appearance of or racial profiling or any other kind of discriminatory conduct in his policing. In 2011, the Grievant sent an e-mail to Carver County Sheriff Jim Olson in connection with a comment that a County Jail employee had posted on Facebook ("Three Nigs jacked the SA") -- the Grievant advised Sheriff Olson that he had told the County employee that he took offense at this racial slur, and that he was concerned "that such comments will paint all members of the law enforcement community and specifically the officers of the Chaska Police

Department and Carver County Sheriff's Office as 'racist' crumbling the community's trust, a trust that police officers and deputies around the country work hard every day to uphold and honor." The Grievant forwarded the same e-mail to Chief Knight. (Joint Exhibit #7, Tab 15).

The record also shows that for several years at the beginning of his career with the CPD, the Grievant shared a house with two other men, including one, Carlos Martinez, who is a native of Colombia. The Grievant and Mr. Martinez got along well as housemates; the Grievant never showed any kind of racial animus, nor did he ever treat Mr. Martinez differently because of his race.

The CPD assigns patrol shifts by four-month trimesters. During the first trimester of 2014 (January to April), the Grievant worked the overnight shift from 2100 to 0700 hours. On May 1, 2014, he began working the day shift from 0600 to 1600 hours. At the time he was placed on administrative leave on August 27, 2014, the Grievant had almost completed a full trimester on the day shift; he was scheduled to return to the overnight shift on September 1, 2014.

During his 14 years as a Police Officer, the Grievant had extensive experience working day, afternoon and night shifts, and learned that the nature of police work changes significantly depending on the time of day. For example, Police Officers

working at night respond to a higher volume of fights and domestic disturbance calls; there is also less vehicle traffic at night, so traffic patrol tends to be based on observable offenses, such as speeding violations or broken lights. By contrast, Police Officers working during the day have more time to check license plates for outstanding warrants and driver's license ("DL") violations.

Historically, the CPD encourages its Police Officers to be aggressive in their traffic patrol and to make a high volume of stops. This is reflected in CPD General Order 38.2.3, which in relevant part requires Police Officers "to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce motor vehicle laws." (Joint Exhibit #7, Tab 1C). The City has a reputation as a "gauntlet" for drivers - particularly alcohol or drug impaired drivers - to pass through the City, a reputation which Chief Knight strongly endorses. Once a year, each Police Officer is given a printout with his total number of traffic stops, warnings written, DUI arrests, etc., along with comparable totals for all other Police Officers (names omitted), which serves to motivate Officers to boost their traffic numbers. The patrol activity category used on the CPD's Officer Performance Evaluation form reflects, among other things, volume of traffic stops.

Prior to the summer of 2014, the Grievant had never heard Chief Knight or anyone else on the CPD command staff refer to "over-policing". To the contrary, the Grievant once stopped 23 drivers headed to or returning from the Minnesota Renaissance Festival, which is held in the adjoining city of Shakopee; rather than being criticized for over-policing, the Grievant was told "good job" and congratulated for "setting a record."

When he returned to the day shift in May 2014, the Grievant told fellow Police Officers and CPD command staff that he had been "lazy" on the night shift and decided to "get off his ass" and run traffic. The Grievant believed that he had been "in a funk" as a Police Officer (in part because he had been suffering from shingles), and decided to use the shift change as an opportunity to be more proactive in his traffic enforcement. He believed that this would be consistent with the CPD's expectations, including General Order 38.2.3. The Grievant told multiple other Police Officers, including supervisors, that he intended to "get out of his funk." (Union Exhibit #9).

With this self-imposed goal in mind, the Grievant began using stationary patrol as his primary method of traffic enforcement. Stationary patrol means parking a squad car on the shoulder of the roadway and looking for traffic violations; in addition to being safer and using less gasoline than driving around in the squad car, stationary patrol also allows a Police

Officer to target specific kinds of violations that are common in particular areas of the City. It is not mandatory for Police Officers to engage in stationary patrol. It is up to the discretion of the Police Officer to decide to engage in stationary patrol or simply patrolling the roads in a squad car. There are no CPD General Orders prohibiting or discouraging stationary patrol, or dictating how long a Police Officer may remain at one location when running stationary patrol.

During his 14 years with the CPD, the Grievant regularly conducted stationary patrol at locations all over the City, and had found it to be an effective means of traffic enforcement. The length of the Grievant's stationary patrol at one location would depend on the number of violations. The Grievant's "rule of thumb" was if he observed at least one violation every 20 minutes that would be enough for him to continue stationary patrol at that location. While conducting stationary patrol, in addition to watching for observable violations like texting while driving or driving without a seatbelt, the Grievant continuously entered random license plates into a database using his squad car computer, checking for outstanding warrants and for drivers operating with a suspended, revoked or cancelled license. Running license plates in this manner is a legally permissible and very commonplace method of traffic enforcement. (Union Exhibit #14).

During May, June and early July 2014, the Grievant moved to various locations around the City that he had identified as good vantage points to observe certain types of traffic violations usually for texting and seatbelt violations. (Joint Exhibit #7, Tab 13B). During the months of May and June 2014, the Grievant issued no citations for drivers having no DL.

Meanwhile, during this time period, Chief Knight demoted Sergeant Mike Duzan effective June 3, 2014, a colleague with whom the Grievant had a long standing personal friendship. The Grievant was upset with this decision and made it known to other Police Officers and CPD command staff. Sergeant Duzan was reinstated to the rank of Sergeant effective July 7, 2014, following the grievance process, subject to his compliance with the terms of a performance improvement plan ("PIP") implemented effective September 5, 2014, the same day Sergeant Duzan signed the PIP.

At each and every traffic stop that the Grievant made, he called out his badge number (407), the license plate number of the subject vehicle and the precise location where the stop had been made. When the Grievant issued a citation or made an arrest, he entered specific information about the stop into the CPD record management system ("RMS") on his squad car computer, including the location where he observed the traffic offense. Under some circumstances, this location can be a considerable

distance from where the subject vehicle is later pulled over. RMS data is accessible to anyone with access to the system, including supervisors. (Union Exhibit #14). It was the Grievant's expectation that all citations, incident reports and arrest reports that he wrote would be reviewed by a Sergeant. The Grievant also believed that supervisors were well aware of the areas where he was conducting stationary patrol. Those same supervisors responded very positively to the Grievant's more aggressive approach to traffic enforcement, telling him among other things that he was "crushing it" on the road and keep up the good work.

The Grievant did not conduct stationary patrol all day or throughout his entire shift. He continued to respond to calls for service (e.g., domestic calls and medical emergencies) as needed. He also made regular visits to community institutions like The Lodge and the 212 Medical Center, even while he was deliberately trying to boost his traffic numbers and "get out of his funk."

CPD has a practice of dividing the City into a north and south district - what is referred to as "district integrity." CPD General Order 50.1.1.2 states: "Patrol Officers shall patrol designated areas whose boundaries are determined by command staff." (Joint Exhibit #7, Tab 1D). In practice, however, when two Police Officers (or one Police Officer and one Sergeant) are

on duty, they typically decide between them who will be the "north car" and who will be the "south car" for that shift. At the beginning of the shift, a Police Officer enters information into his squad car computer, including his badge number, squad car number and the district (north or south) that he will be covering. That information is available to all other Police Officers with access to the computer system, including supervisors.

The record shows that district integrity has applied primarily to calls for service; in other words, when a domestic call, a medical emergency or a robbery originates in the north district, the Police Officer with the north car is dispatched to the call and is expected to respond to the call, provided that he is not already occupied with other police business. Police Officers had the flexibility to move from one district to another to conduct traffic patrol even though they were outside of their designated district. (Union Exhibit #8).

In the Grievant's case, he regularly ran stationary patrol in the north district (e.g., the Target parking lot or the Village/Woodcrest intersection) on days when he was driving the south car, and was identified as such in the CPD computer system. Similarly, the Grievant conducted stationary patrol in the south district (e.g., near the Snap Fitness at Chestnut Street and Chaska Boulevard) on days when he was driving the

north car. He was never once criticized for patrolling outside of his district or ordered by a supervisor to return to his district. Moreover, the Grievant was never unable to respond to a call for service or late in responding to a call for service because he was conducting traffic patrol outside his assigned district.

In the one to two week period prior to July 9 or 13, 2014, the Grievant ran a license plate of a white driver and learned the driver did not have a valid DL. Operating a motor vehicle without a valid DL is expressly prohibited by law under Minn. Stat. § 171.02, Subd. 1, and a basis for a citation. This made the Grievant wonder whether an NCIC query that showed no DL on file would be a legitimate basis to initiate a traffic stop. He had never pulled over a vehicle for that specific reason, nor did he recall receiving any training on the issue. Accordingly, the Grievant informally polled Police Officers and other law enforcement individuals to determine if they made stops based on license plates checks indicating the registered owner ("RO") did not have a valid DL on file. Approximately one-half of the individuals the Grievant polled said they made stops for that reason. (Joint Exhibit #1, Tab 13B). The Grievant did not consult with CPD command staff regarding his intent to begin stopping vehicles based on a DL check only.

Based on information obtained from these other law enforcement individuals, and in a continued effort to "get out of his funk," the Grievant began stopping vehicles whose registration query results showed no DL on file.

On July 13, 2014, one of the first days the Grievant was working following Mr. Duzan's reinstatement as Sergeant, the Grievant began running stationary patrol at the entrances and exits to the Brandonale and Riverview Terrace mobile home parks, where it is widely known by the Grievant and other Police Officers and CPD command staff that the resident population is primarily composed of individuals of Hispanic ethnicity. (Joint Exhibit #7, Tab 12A). On July 13, 2014, the Grievant stopped and cited four Hispanic residents. Tensions were high as of July 13, 2014, as his patrol activity led to citizen complaints and the public perception he was targeting Hispanic residents.

In July and August 2014, the Grievant worked an average of 20 shifts per month. During the 35-calendar day period of July 13, 2014 through August 16, 2014 (referred to as the "relevant time period"), for 20 consecutive work shifts, the Grievant conducted stationary patrol at the entrances and exits to the mobile home parks. The Grievant sat stationary in his squad for up to four hours (whether delegated to be in the south or north district for his shift) running the license plates of vehicles entering and exiting the mobile home parks. While sitting

stationary, the Grievant was positioned to observe and ran the license plates of vehicles driven by mobile home residents entering and exiting the mobile home parks. The Grievant also drove through the trailer parks and ran the license plates of parked vehicles and made note of those vehicles for which license plate checks indicated the RO had no valid DL on file or the license was revoked ("DAR"), cancelled ("DAC") or suspended ("DAS").

During the period of July 13, 2014 through August 16, 2014, the Grievant stopped and issued citations to nine Hispanic drivers for No DL, DAR, DAS and DAC. The nine Hispanic drivers stopped were not the RO's of the vehicle, the same gender as the RO or even close in age to the RO. Four of the nine stops occurred on July 13, 2014.

During the period July 13, 2014 to August 16, 2014, the Grievant made seven arrests, three arrests more than made by all Police Officers combined during that and the prior fifteen-month period. All the drivers the Grievant arrested were Hispanic. By conducting stationary patrol in those areas, the Grievant believed that he was serving his goals of being more proactive in his traffic enforcement, and to also comply with the CPD policy that required him "to patrol in a proactive manner" and "to actively enforce the motor vehicle laws." Traffic enforcement was not the Grievant's only purpose in patrolling

the Brandondale and Riverview Terrace mobile home parks -- he was also keeping an eye out for dangerous criminals who lived in or frequented the area.

Sergeant Kjorstad, the Grievant's primary supervisor during the relevant time period, acknowledges that as of July 2014, he was aware of the Grievant's increased patrol activities at the mobile home parks. Sergeant Kjorstad continued to give the Grievant positive feedback about his increased traffic enforcement, as well as Sergeant Brady Juell, another of the Grievant's supervisors. (Union Exhibits #14, 28). Based on these comments, it was the Grievant's belief that his supervisors were aware of his patrol activities at the mobile home parks, and that they fully approved of those activities.

By mid-July, the Grievant was aware of the unrest created by his stationary patrolling activities. On or about July 30, 2014, the Grievant noticed a white Toyota Camry that was repeatedly driving past him while he conducted traffic stops in the Riverview Terrace area. Eventually the vehicle pulled over and a male whom the Grievant recognized as Father Thomas Joseph, a priest at the St. Nicholas Catholic Church in Carver, Minnesota got out of his car. The Grievant previously had an encounter with Father Joseph in 2008, when he had written Father Thomas a citation for parking illegally in an intersection, which was contested by Father Thomas and resulted in Chief

Knights filing a complaint against Father Thomas with the Archdiocese of Minneapolis and St. Paul for his vigorous objection to receiving the citation. Chief Knight supported the citation given to Father Thomas by the Grievant.

In a July 30, 2014 e-mail to Chief Knight, the Grievant indicated that approximately two weeks prior and on July 30, 2014, he had two encounters with Father Joseph:

....I have been working stationary patrol at the entrance/exits of both Brandondale and Riverview terrace. During the past month, several individuals have been jailed for repeated driving offenses such as No MN DL, DAR, DAS, and DAC-IPS. On one occasion, a repeat violator attempted to walk away from the stop location and refuse to speak with me...this particular person was arrested for obstruction and no MN driver's license. Sorry if I drummed up some complaints...on the flip side, I have been approached twice now with complaints that I've derailed some drug activity due to my presence and I've been provided with other relevant drug information and information regarding unlicensed drivers and their patterns to try to avoid LE.

(Joint Exhibit #7, Tab 7B). Chief Knight replied to the Grievant's e-mail and addressed the issue of Father Thomas:

I did meet with him and his questions were general. I answered the obvious re traffic violations and told him I could not help him with others that lacked detail. He was so lacking in detail that I wasn't going to talk to you or anyone about it. I am not in the office today, but we can catch up on this when we see each other. Thank you for this information.

Id. Additionally, the Grievant posted an announcement in the RMS in which he discussed his safety concerns related to his patrol activity in the Brandondale and Riverview Terrace mobile home parks. The advisory referenced fueled tempers and anger

from the residents of the mobile home parks and reported that other residents were showing up at the traffic stops during the Grievant's work weeks of July 30-August 2 and August 7-11, 2014. (Joint Exhibit #7, Tab 7E).

On or about August 7, 2014, Chief Knight informed Sergeant Kjorstad of Father Joseph's complaint against the Grievant and directed that he obtain and analyze the Grievant's traffic stop data. During the period August 7, 2014 to October 25, 2014, Sergeant Kjorstad completed that task.

On or about August 8, 2014, Sergeant Kjorstad informed the Grievant he was directed to gather race data and indicated he was looking for information to refute Father Joseph's complaint. The Grievant was upset and conducted his own research without CPD command staff authorization, accessing DVS data and self-reporting the race of the individuals he stopped.

On August 8, 2014, Chief Knight met with the Grievant to discuss his patrol activity. The Grievant told Chief Knight he was running plates, making stops and issuing citations to drivers with no DL. Chief Knight advised the Grievant to consult with the Carver County Attorney's Office to be certain he has probable cause for the stops he was making. Chief Knight also requested the Grievant to submit a memo to him regarding his contacts with Father Joseph and his patrol/pattern statistics.

On August 8, 2014, following his discussion with Chief Knight, the Grievant met with Carver County Chief Deputy Attorney Ivy ("Attorney Ivy") and asked him about the legality of traffic stop based on running a license plate. As suggested by Chief Knight, the Grievant asked Attorney Ivy whether an NCIC result of no DL on file presented a reasonable suspicion to justify a traffic stop. (Joint Exhibit #7, Tab 13B). The Grievant never told Attorney Ivy that he was asking this question as a result of the discussion the Grievant had previously with Chief Knight. Although he was aware of complaints from the Hispanic community about his patrol activities, the Grievant did not mention these complaints because he did not believe them to be relevant to what Chief Knight had asked him to find out. Attorney Ivy responded that yes, having no DL on file was a "rock solid" basis for a traffic stop. Attorney Ivy added that the proper scope of such a traffic stop is limited, and that if and when a Police Officer reasonably determines that the driver of the vehicle is not the RO, and provided that there is no other articulable basis for the stop, the Police Officer must end the stop and allow the driver to leave. The Grievant admitted that he was already familiar with this principle and had applied it throughout his career as a Police Officer. Attorney Ivy provided the Grievant with copies of judicial opinions supporting the advice that he

had given to the Grievant. Id. The Grievant intended to share these legal opinions with Chief Knight.

The Grievant immediately advised Chief Knight what Attorney Ivy had told him. He offered to give Chief Knight the judicial opinions that Attorney Ivy had given him, but Chief Knight directed him to give those opinions to Sergeant Kjorstad instead because Chief Knight was recently diagnosed with cancer that required surgery, which was unknown to the Grievant at the time. Chief Knight sent the Grievant an e-mail thanking him for the documentation received from Attorney Ivy. (Union Exhibit #29). However, Chief Knight never actually reviewed the case law provided by Attorney Ivy.

At their August 8, 2014 meeting, Chief Knight directed the Grievant to provide a breakdown of his patrol patterns and statistics. The Grievant provided the requested information in an e-mail to Chief Knight on August 9, 2014. The attachment to that e-mail included an analysis of the Grievant's stops over a period of more than two months (June 1 to August 9, 2014), broken down by type of violation and by the race of the driver. (Joint Exhibit #7, Tab 13B). Chief Knight had not specifically asked the Grievant for race data, but the Grievant provided that information knowing that there had been complaints coming in from the Hispanic community, and wanting to be fully transparent. The data compiled by the Grievant showed that

during that period he had written citations and/or warnings on 170 drivers, of whom 95 (55%) were white, and 57 (34%) were Hispanic. (Joint Exhibit #7, Tab 13B). In breaking down the data by type of violation, the Grievant included a category for "NO MN DL"; he had stopped 22 drivers for that reason, all Hispanic. Id.

A few minutes after the Grievant e-mailed Chief Knight this analysis of his traffic stops, Chief Knight sent an e-mail to the Grievant thanking him for the information. (Union Exhibit #30). To the best of the Grievant's knowledge, Chief Knight had received the data breakdown and was aware of what it showed.

Notwithstanding the Grievant's safety concern by his increased enforcement in the mobile home parks as reported on August 9, 2014, in a posting of an item on the CPD's roll call messaging system with the heading, "Officer Safety Concerns," the Grievant continued to maintain a nearly daily presence in the area of the mobile home parks and continued to run plates, stop cars, issue citations, and arrest Hispanic drivers who had a second offense. The Grievant transported individuals he arrested to the Carver County Jail. The arrests the Grievant made for no DL on file led to a verbal altercation between the Grievant and Carver County Jail Sergeant Bryan Storms in mid August, 2014. Arrests and court hearings led to citizen complaints.

On August 18, 2014, the Grievant initiated an unscheduled meeting with then Lieutenant, current Captain, Ben Anderson during which he discussed concerns for his safety due to his patrol activity in the Brandondale and Riverview Terrace neighborhoods. The Grievant reported he decided to get "off [his] ass and work traffic" that summer. He was aware of Father Joseph's complaints to Chief Knight about these traffic stops and tickets he issued for no DL and Hispanic residents are "pushing" and he feels the need to "push back." The Grievant stated Hispanic citizens, including Father Joseph, are waiting for and filming him and he feels like he is "going to be shot" and his wife is "scared" for him and told him to "get out of there." The Grievant indicated Carver County Sheriff's Office Jail staff are upset with him for arresting no DL repeat offenders and he was upset that Jail Sergeant Storms released a female repeat offender who "was in a wedding and needed insulin." The Grievant stated that the CPD command staff is looking over his shoulder while Sergeant Kjorstad is running the statistics on his stops, he is on "an island," he is not supported by the Department, and he is not receiving "support" from Chief Knight, who "need[s] to publicly make a statement that someone" is trying to "discredit" him. (Joint Exhibit #7).

Following that meeting, Captain Anderson talked with Sergeants Kjorstad and Chris George who informed Captain

Anderson that the Grievant was running stationary patrol in the area of the Brandondale and Riverview Terrace mobile home parks, and the Grievant told the residents were waiting for and filming him and he feared for his safety. Captain Anderson directed that Sergeant Kjorstad meet with the Grievant and direct him to "stand-down" and stop running stationary patrol in the Brandondale and Riverview Terrace neighborhoods. A meeting with the Grievant was scheduled for 2:00 p.m. on August 19, 2014, for that purpose. (Joint Exhibit #7, Tab 6A).

On the morning of August 19, 2014, Sergeant Kjorstad met "car-to-car" with the Grievant to inform him of the meeting scheduled for 2:00 p.m. that day. The Grievant surreptitiously recorded the "car-to-car" exchange with Sergeant Kjorstad. The Grievant covertly recorded the August 19, 2014 discussion only for the purpose of helping his friend Sergeant Duzan to show that Sergeant Kjorstad believed Chief Knight is targeting Sergeant Duzan. The Grievant was a strong supporter of Sergeant Duzan and had openly opposed his demotion. The Grievant's recording of his August 19, 2014 meeting with Sergeant Kjorstad indicates:

The Grievant said to Sergeant Kjorstad, "This right here is what is wrong with our agency...and I'd like to tell the fucking Chief that too." (Joint Exhibit #7, Tab 13B, CD recording and Transcript ("Tr.") at lines 7 and 15).

In regard to Sergeant Duzan's demotion, the Grievant said, "Well, not only that, but he (Chief Knight) can keep that

shit up. It's only gonna (sic) freaking make his case look more....(inaudible)....I guarantee you that that's gonna (sic) be brought to Matt's (Podhradsky, City Administrator) attention." (Tr. 59).

Sergeant Kjorstad told the Grievant: "...you gotta (sic) stand down with Riverview and Brandondale, brother. I'm not saying don't give people tickets, use your discretion, use your judgment. You stop somebody on traffic and they deserve a ticket, give it to them. But you got to stop at least for now parking in front of the trailer park in front of Brandondale, in front of Riverview. It's creating this huge shit storm and you're not doing anything wrong, but what I don't want is you're feeling like you might get shot. The other thing, the other flip side is you might have to end up shooting somebody." After further discussion, Sergeant Kjorstad continued: "I'm just saying don't go park there....(inaudible)...and stir it up 'cause I think the Chief heard that you were worried about getting shot and so now he's like, 'That's it. We can't have that....If he's at risk of getting shot I don't want him there, you know?' He's so worried about your safety; that's where that comes from. And the reason I'm telling you not to go there is 'cause I know how, like, when you know you're right, I know how you are and you won't go somewhere else unless you're told to....And you're like, 'Oh, you want me not to work here? I'll work here even more.'" (Tr. 108-114, 130-131, 134-135, 140-142, 150).

The reason given for this directive to "stand down" was concern over the Grievant's safety; Sergeant Kjorstad told the Grievant repeatedly that "you're not doing anything wrong" and that "every one of your stops have been rock solid." (Tr. 110, 113). Sergeant Kjorstad stated explicitly that he did not believe the complaints being made against the Grievant ("They're lying about it....Continue to lie about it"). (Tr. 122-126).

The Grievant responded, "Well, I told Ben [Captain Anderson] that I said, 'They wanna (sic) fucking push? I'll push harder....I don't fucking care.'" (Tr. 152, 156).

Sergeant Kjorstad said, "And we don't have any contacts down there, so when they get rumors starting that you're saying that you're gonna (sic) deport them and that you're, you know, stopping Latinos and stopping people for no

reason, we don't have any way to counter that and so I feel (sentence stopped short)...." (Tr. 185-187).

The Grievant responded, "Why do we have to? Why are we being such pussies for it? We're the Police." (Tr. 189).

Sergeant Kjorstad said, "We're the Police, but at the same time they (sentence stopped short)." (Tr. 191).

The Grievant replied: "The same time we're being pushed out of, of doing our jobs right, people that are in our country 'a' illegally and 'b' that are violating our laws every day and clearly I've shown that." (Tr. 193-195).

The Grievant asked Sergeant Kjorstad: "Is this what you're supposed to tell me from the Chief? Otherwise if it's not, I'm just gonna (sic) go talk to the Chief." When Sergeant Kjorstad confirmed that was the Chief's directive, the Grievant said, "We'll have to have a little words then, today me and the Chief." (Tr. 221-226).

The Grievant said: "I'm gonna (sic) tell the Chief, 'Say, Chief,' I'll be frankly honest with him, I'm gonna (sic) say, 'You have to be very careful with what you tell me 'cause I have no problem calling the fucking Fox News, honestly, or writing an article in the Star Trib.'" (Tr. 246-248).

Sergeant Kjorstad told the Grievant that when the Chief hears he is going to be shot that "it needs to stop." (Tr. 276-278).

The Grievant replied: "And yeah...and it doesn't need to stop by me going away. It needs to stop by the Chief making some type of public statement that, 'Hey, listen. We welcome everyone in our community here in the City of Chaska. We are, however, not gonna (sic) tolerate unlicensed drivers on our roadway. We're not gonna (sic) stand by idly and allow you to put pressure on our Officers, use intimidation tactics by sending your vatos locos up to start walking by our traffic stops. We're not gonna (sic) go away by you filming us, okay?' The fact of the matter is you guys need to work out some type of transportation system so that you can provide for your family and it needs to be where you can't drive there; end of story.' I will the Chief that this morning, you can guarantee it." (Tr. 280-288, 290).

After further discussion, Sergeant Kjorstad cautioned the Grievant: "You know...when you have your conversation with the Chief, keep in mind (that), by policy, he can direct us to patrol wherever he wants." (Tr. 314-315).

The Grievant said: "I realize that...And I'm gonna (sic) tell the Chief, 'Guess what? I don't think the population that we serve is in agreement with the way you are directing me to patrol...and I want to know from the citizens if they feel that way. Put it in the paper, Chief.' I'd love to see what he would think to that. I can guarantee you the citizens of Chaska would be happy to know that there's anything between fifty to a hundred unlicensed people that were cited and taken off the road." (Tr. 317-334).

Sergeant Kjorstad said: "Yep, but what I'm saying is right now emotions are high. Your wife's uncomfortable for your safety. You have concerns for your safety. Your partners have concerns for your safety. I have concerns for all of our safety and the Chief is concerned. So he wants it fixed right now. He said, 'I want you (Kjorstad) to talk to him (Lawrenz) tomorrow and have him stand down at least for now. I don't want him to get hurt.'" (Tr. 336-340).

The Grievant replied: "I don't want him looking out for me. I want him looking out for the citizens. The citizens want me to do a certain job and it's not what he is asking me to do. He's asking me to look the other way." (Tr. 345-347).

Sergeant Kjorstad replied: "No, he's not....No, he's asking you not to give extra patrol specifically to that area, which is predominantly minorities." (Tr. 349-354).

The Grievant continued: "All right, tactic number two, I'm gonna (sic) find another spot in the City...And I'm gonna (sic) fucking blow it up even harder. I don't think the Chief knows when I get on something I can fucking terrorize it." (Tr. 389, 393, 399).

Sergeant Kjorstad indicated that there is a "trend" where certain minority groups are saying they "are over policed." (Tr. 401-402).

The Grievant said: "You mean the illegal immigrants? Then leave our fucking country! They don't have a foot to stand on in my book. They can't even make a complaint....They

need to be charged with a felony and deported then." (Tr. 404, 408-409, 413).

Sergeant Kjorstad attempted to clarify that he was referring to minorities generally and the Grievant said: "I got a funny feeling I'm gonna (sic) be asked to go home today." (Tr. 415-418).

The Grievant said: "I don't think the Chief has the perspective of the City though I think he's got his own perspective." (Tr. 426).

Sergeant Kjorstad replied: "He holds your safety above traffic tickets." (Tr. 429).

The Grievant said: "What I should tell the Chief is....The only stress that I have, Chief, isn't safety. My stress is caused by you and the fact that I'm not getting any support from my Police Department.' That's why I went to Ben and I told him yesterday, I said, 'I feel like I'm on my own little fucking island.' I said, "The Chief should say, "Hey nice fucking work down there." No, do I get that?'I just don't know how much I'm gonna (sic) hold my tongue with the Chief because it's about time he just fucking listened for a change, you know....I don't have anything to lose though, here." (Tr. 462-483, 487).

Sergeant Kjorstad reiterated that Chief Knight is concerned about the Grievant's safety. (Tr. 502).

The Grievant said, "If he were worried about my safety he would have put a roll call message in there and say, 'We're getting some negative push back from Riverview Terrace....I think we need to increase some enforcement down there.' I mean if I were Chief, you do one of two things; you either, one, put your tail between your legs and we just disappear like we're doing now or, two, you fucking hit it harder.... Like think right now, I think the pussy footing like over in Ferguson (Missouri), I think that's showing how well that's working." (Tr. 504-515).

The Grievant said: "....my biggest frustration though is that we're literally one little small incident in Chaska away from that situation (referring to Ferguson, Missouri) being eyed on Chaska....Urn and it pisses me off that one Police Officer and a ticket book and some motivation can have everyone go, 'Oh, we better not do this. We don't

want to upset the felonies, the felons that are in our country illegally.' Are you kidding me? We have 24 Officers on our Department and one person did that? What happens if we actually all hit it hard?" (Tr. 551-559).

The Grievant discussed that he was running plates at Target the previous day and he "got shit for it, nothing." Sergeant Kjorstad told the Grievant that "just being out of there is working." The Grievant replied: "Hey, they gotta (sic) get gas sometime (referring to the Super America convenience store/gas station near the mobile home parks)...Hey, Super America south...gotta (sic) get (gas), you know I wanna (sic) make those people feel safe." Sergeant Kjorstad said: "I'd stay away from that kinda (sic) place." (Tr. 576-590).

The Grievant asked Sergeant Kjorstad: "So, did you tell the Chief, 'Hey, Chief, he's not gonna (sic) stop unless you order him to stop?'" (Tr. 592).

(Joint Exhibit #7, Tab 13B).

On August 19, 2014, Captain Anderson and Sergeant Kjorstad met with Grievant at 10:30 a.m. Captain Anderson informed the Grievant that the CPD is "turning it down to zero" as far as doing traffic and sitting in the areas of the Brandondale and Riverview mobile home parks. Captain Anderson stated that Chaska is a large city, there were other areas to patrol and enforce and the CPD does not sit in on neighborhoods unless a specific circumstance occurs. Captain Anderson explained that this directive was from Chief Knight and was being issued due to the reported safety concerns activity and the negative perception that he is targeting Hispanic residents with the intent to deport, the tension created by his activity is not

fair to his partners who may not feel safe, and "it is time to stop." (Joint Exhibit #7, Tab 6A).

While the Grievant was angry and emotional and questioned Chief Knight's "stand-down" directive, he never again conducted stationary period at Brandondale or Riverview Terrace mobile home parks. (Union Exhibit #14).

The Grievant was on regularly scheduled days off during the period of August 20 through August 23, 2014. During August 19 and August 20, 2014, Chief Knight received unexpected calls from Carver County Judge Janet Cain and Carver County Sheriff Olson. Judge Cain reported that five Hispanic individuals appeared before her, including one elderly gentleman, who complained about the Grievant's tactics. Judge Cain stated there was probable cause for the stops in question, but she was concerned about the perception that the Grievant is targeting Hispanics. Sheriff Olson asked Chief Knight if he was aware that the Grievant was arresting Hispanic drivers for no DL, a citation that typically does not result in arrest. Chief Knight informed both Judge Cain and Sheriff Olson he was aware of and addressing the issue. (Joint Exhibit #7, Tab 6A).

During this same period, CPD Community Resource Officer Julie Janke approached Chief Knight and informed him of resident complaints regarding the Grievant's patrol activity in the Brandondale and Riverview Terrace neighborhoods, and the

perception that the Grievant is targeting Hispanics. (Joint Exhibit #7, Tab 6A).

Chief Knight directed Captain Anderson to direct Sergeant Kjorstad to meet with the Grievant on August 24, 2014, upon his return to work. In accordance with this directive, Sergeant Kjorstad informed the Grievant that Chief Knight received calls from Judge Cain, Sheriff Olson and information through Ms. Janke regarding the negative perception created by the Grievant's patrol activity in the Brandondale and Riverview Terrace areas. Sergeant Kjorstad also showed him a copy of an e-mail from a community organizer who contacted Chief Knight on August 22, 2014, to report concerns of racial profiling among Hispanic residents. (Joint Exhibit #7, Tab 6C).

On the morning of August 24, 2014, when he returned to work from his four days off, the Grievant had a second car-to-car meeting with Sergeant Kjorstad. The stand-down directive did not include a prohibition against running stationary patrol in other areas of the City--to the contrary, when Sergeant Kjorstad gave the Grievant the stand-down directive during their car-to-car meeting, he fully endorsed the Grievant's stated intent to focus his patrol on another neighborhood. (Union Exhibit #14; Joint Exhibit #7, Tab 13B). The Grievant began running stationary patrol at several locations along Highway 41, in the southern part of the City. Highway 41 is a main thoroughfare

through the City and a very popular area for all Police Officers to conduct traffic enforcement. (Union Exhibits #46, 52). The locations where the Grievant ran stationary patrol on Highway 41 were 1.5 miles or more away from Brandondale and Riverview Terrace mobile home parks, as well as across the Minnesota River from the Jackson Heights mobile home park in Shakopee; his decision to patrol those locations was unrelated to their proximity to those mobile home parks or to concentrations of Hispanic drivers. While conducting stationary patrol on Highway 41, there is no evidence that the Grievant ever stopped or wrote citations on any mobile home park residents.

At this meeting, Sergeant Kjorstad read an e-mail from Captain Anderson that contained the directive from Chief Knight. This directive stated in part, "this is the end of [Chief Knight] defending [Lawrenz]....This type of policing will not occur again....the intense over focus on a specific issue without being able to see the big picture..." (Joint Exhibit #7, Tabs 5C, 6C).

The Grievant was very upset by this message; he had now been told explicitly that when conducting patrol duties -- which inevitably include making difficult decision, some of which may be viewed negatively or met with hostility by members of the public -- he would be doing so without the support of Chief Knight.

Consequently, on August 25, 2014, the Grievant drafted a four-page letter to Chief Knight, which was critical of Chief Knight and the individuals who had lodged complaints against him. The letter also contained the following:

This morning, I learned that you have expressed to your command staff that my 'over-policing' has brought a negative light to the department and the community in which we serve. However, I was never told that any of my patrol tactics were wrong, nor was I counseled on better ways to perform my duties. Instead, I have received support from your command staff that they like seeing me working hard and have encouraged me to keep up the good work....

....I can stand tall and sleep well at night knowing that race has nothing to do with my increased patrol efforts.... During the summer months I have cited over 50 drivers with no MN license or a license status that is revoked, cancelled, suspended, or cancelled -- inimical to public safety. I have cited at least 50 motorists for expired registrations and at least 50 motorists for seat belt violations....

I have been approached by anonymous citizens in Riverview Terrace mobile home park, and these citizens have thanked me for my service. Additionally, they provided crucial drug information regarding the sales of drugs in the mobile home park. I documented this interaction with a Drug Information Report....

I apologize if race relations throughout our community have suffered due to my increased patrol efforts, as this was never my intention....

Over the past couple months, I have seen a positive change in transportation patterns. Several motorists that have been cited one, two or even three times for the same violations (No MN DL, DAS, DAR, DAC, DAC-IPS) are now car-pooling, riding bicycle, or arranging a ride with a valid driver or utilizing a Taxi service.

(Union Exhibit #34). The Grievant noted the request that he had made to Captain Anderson to have a squad car equipped with a

dashboard camera, or to be authorized to use a body camera system, in order to respond to the allegations being made against him. Id. Chief Knight and Attorney Ivy acknowledge that a dashboard camera would have provided valuable information regarding the Grievant's patrol activities.

The Grievant believed that this letter would result in retaliation so the Grievant e-mailed a copy to the other members of the CPD command staff and the City administration. The Grievant later shared the letter with his Union Stewards, Police Officer Mike Kleber and Police Officer Jamie Personius. (Union Exhibit #34).

Later that morning on August 25, 2014, the Grievant received an e-mail from Captain Anderson that began, "Thank you for your response and ceasing to conduct traffic stops in the manner to which we discussed." Captain Anderson also directed the Grievant to "document any minority contacts" during his patrol shift, including "[a]nything that you and I think will be of value to document the contacts." (Union Exhibit #36). The Grievant immediately replied by e-mail indicating that he has ceased conducting stationary stops in the area of Brandondale and Riverview Terrace, and would start completing a daily memo starting today. (Joint Exhibit #7, Tab 7I). At the end of his shift that day, the Grievant provided his patrol activity log to Captain Anderson. The log included three traffic stops, one of

a Hispanic driver and two of white drivers. The Hispanic driver was stopped at the intersection of Highway 41 and Crosstown Boulevard. (City Exhibit #23).

During this meeting, the Grievant informed Captain Anderson that prior complainants and others had no credibility with Chief Knight and it is unreasonable that Chief Knight would not defend him against false claims. The Grievant stated that when he goes to training everyone says Chief Knight is a joke, but he has always said that at least the Chief will back his Police Officers right away. At the close of the meeting, Captain Anderson believed that the Grievant may have understood the perception created by his patrol activity in the Brandondale and Riverview areas. (Joint Exhibit #7, Tab 6A).

During the morning of August 26, 2014, Captain Anderson reviewed the Grievant's patrol activity for that morning. Captain Anderson noted that the Grievant made eleven 11 traffic stops during a two-hour 38 minute period while running stationary patrol on Highway 41 on the south border of the City approximately 1.5 miles from the Jackson Heights mobile home park with a large Hispanic resident population. (Joint Exhibit #7, Tab 7J). One driver who was cited for having expired tabs was listed as Asian -- in an effort to comply with Captain Anderson's directive to "document any minority contracts." The Grievant had asked the driver to identify his race.

At about 2:30 p.m. on August 26, 2014, the Grievant was summoned to a meeting with Captain Anderson and Captain Robert Stock. Captain Anderson told the Grievant that based on his high volume of traffic stops, he "was failing to see the big picture and was just adding to an already volatile situation." In addition to the restrictions that had already been placed on the Grievant's traffic patrol activities -- which the Grievant had entirely complied with -- Captain Anderson informed the Grievant that he was prohibited from running random license plates looking for license violations, as well as from arresting drivers for having no DL on file without the approval of a supervisor. This was the first time in the Grievant's career with the CPD that restrictions like these had ever been in place. Captain Anderson also told the Grievant that he was being removed from his assignments as a Field Training Officer and Use of Force Instructor. (Union Exhibit #40).

The Grievant testified that he was unhappy with these directives and told Captain Anderson and Captain Stock that "my belief is that the citizens of Chaska would be appalled to learn that that as a specific group of individuals are using intimidation tactics against a single officer just because one motivated police officer has cited over 50 illegal immigrants for no driver's license." Captain Anderson became upset and yelled repeatedly, "Is that your goal?" According to the

Grievant, he told them that because undocumented immigrants are prohibited by law from obtaining a DL in Minnesota, there is a high correlation between undocumented immigrant status and citable license-related violations. (Union Exhibit #40).

Captains Anderson and Stock remember a different version of what was said during this meeting with the Grievant. During the meeting, the Grievant was angry and he raised his voice. He questioned whether Captain Anderson could redirect his patrol activity and stated "I am personally responsible for sending over 100 illegal immigrants back to Mexico." Captain Anderson's meeting notes, the accuracy of which were independently confirmed by the testimony of Captain Stock, indicate that the Grievant made that statement. (Joint Exhibit #7, Tabs 6A, 6B). The Grievant emphatically denies making any reference to "sending illegal immigrants back to Mexico."

Minutes after the August 26, 2014 meeting, Captain Anderson sent the Grievant an e-mail restating the restrictions that had been placed on him. The Grievant responded, "Thank you for the recap. These guidelines will be immediately followed." (Union Exhibit #39). Captain Anderson also sent an e-mail to other members of the CPD command staff advising them of the Grievant's status. Captain Anderson wrote:

Josh appears to be policing a population within a population. This may not have been his intent, but perception has now become a reality....There was PC

for his stops and there were no concerns over how he stopped cars, but the concerns were directed toward his fixation/over policing those areas and population, as well as his arresting of no DL violator...[This morning] Josh had stopped 11 vehicles in the first 2+ hours at work, many of them while sitting in the area of 41 & 4th and again many for expired tabs, etc...basically running plates again. Different location, same problem.

(Joint Exhibit #7, Tab 6G).

During the morning of August 27, 2014, Chief Knight received an e-mail from the Asian motorist stopped by the Grievant on August 26, 2014. The driver reported that the Grievant asked him his "race" and told the motorist that the City was monitoring stops. Chief Knight met with Captains Stock and Anderson and apprised them of the e-mail. Captains Stock and Anderson informed Chief Knight of the Grievant's statement during their August 26, 2014 meeting that he is "personally responsible for sending over 100 illegal immigrants back to Mexico." Chief Knight determined that an independent investigation was warranted and that the Grievant would be placed on paid administrative leave pending the outcome of that investigation. Chief Knight directed Captains Stock and Anderson to place the Grievant on paid administrative leave that same morning. (Joint Exhibit #7, Tabs 5D, 6A).

On August 27, 2014, Captain Anderson met with the Grievant and Union Steward Kleber and gave the Grievant a letter notifying him he was being placed on paid administrative leave

effective immediately. (Joint Exhibit #7, Tab 4C). The letter stated that the Grievant was under investigation for "Impartial/Bias Policing." The letter stated that the Grievant was prohibited from being present at the CPD unless required by the command staff or by an investigator; however, the Grievant was not told, verbally or in writing, that he was precluded from discussing the investigation or from having contact with CPD employees. Id.

According to the Grievant, he recorded the meeting and due to the short nature of the meeting, and on the advice of Union Steward Kleber, the recording was deleted from a squad recorder.

On September 1, 2014, at 9:00 p.m., the Grievant officially began his first day of paid administrative leave. A September 1, 2014 Facebook post the Grievant published reads: "Paid vacation T-(minus) 3.5 hours!" (Joint Exhibit #7, Tab 10).

On September 8, 2014, 25 members of the Hispanic community attended a City Council meeting and apprised the Council of their complaint that "one Officer has been targeting the Hispanic community." The meeting was attended and reported by the local press during the period September 11, 2014 to September 23, 2014. (Joint Exhibit #7, Tab 8).

Shortly after he had been placed on leave, the Grievant was given permission by Captain Stock to play on the CPD team in the Chaska City government's annual golf tournament. Chief Knight

then contacted the Grievant by phone to tell him that he was disqualified from playing in the tournament.

Thereafter, in late September 2014, the City retained Michelle Soldo of Soldo Consulting, P.C. to conduct the IA investigation, which took approximately five-six months to complete. Ms. Soldo submitted her investigative report to the City on or about February 5, 2015. (Joint Exhibit #7). For the duration of the Grievant's IA investigation, Captain Stock served as the CPD's Acting Police Chief as Chief Knight was on medical leave of absence.

On November 19, 2014, the City sent the Grievant a written order for him to cooperate with the IA investigation. The written order directed the Grievant not to disclose any information related to the IA investigation to any other City employees; however, the order also stated that the Grievant was "also allowed and may be required to speak to superior officers about the matter." (Union Exhibit #41). This was the first such non-disclosure order that the Grievant had been given, about two and a half months after he had been placed on administrative leave. At the same time, the Grievant was placed under Garrity, which he understood required him to answer her questions truthfully.

Via e-mail, Ms. Soldo directed the Grievant to identify, to the best of his ability, witnesses whom he believed she should

interview. In response, on November 21, 2014, the Grievant submitted a 24-page written statement that included names and other relevant information about numerous witnesses, both within the CPD and around the community. (Joint Exhibit #7, Tab 13B). The written statement addressed what the Grievant understood the charges against him to be; however, at that time he still had received no formal notice of the charges, and there had been no written complaint filed against him. Id.

During the investigation, Ms. Soldo interviewed more than 20 residents of the mobile home parks, some of whom made very serious allegations regarding the Grievant's conduct during traffic stops. These individuals appear in the record as unnamed, anonymous complainants -- Ms. Soldo did not provide their names to the City, nor did she include the names in her investigative report. (Joint Exhibit #7, pp. 5-8).

On December 11, 2014, the City issued for the first time a formal complaint against the Grievant. That complaint alleged that between approximately June 1 and August 26, 2014, the Grievant had targeted Hispanic residents with his traffic enforcement. The complaint further alleged that the Grievant had continued the prohibited behavior "notwithstanding PD command staff warnings and directives and his knowledge of complaints that his conduct created the perception of impartial/biased policing." (Joint Exhibit #7, Tab 4A).

Ms. Soldo interviewed the Grievant for two full days, on December 16 and 31, 2014, totaling about 11 1/2 hours. The Grievant asserts that he was truthful to the best of his ability at all times during these lengthy interviews. Although Ms. Soldo recorded both interviews, the recording of the first interview was lost due to a technical problem; as a result, the City has been able to provide a verbatim transcript of the second interview only. (City Exhibit #1).

On December 29, 2014, prior to the Grievant's second interview, the City issued a revised complaint, which significantly limited the time period during which the Grievant had allegedly targeted Hispanic drivers; instead of June 1 to August 26, 2014, the revised complaint stated that the Grievant had engaged in the prohibited behavior from July 13 to August 16, 2014, which has been deemed by the Arbitrator to be the relevant time period. (Joint Exhibit #7, Tab 4A). Ms. Soldo eventually determined that the Grievant had made 136 traffic stops during the relevant time period, of which 69 (or 51.1%) were of Hispanic drivers. (Joint Exhibit #7, p. 12). Ms. Soldo did not make any findings regarding how this compared with the percentage of Hispanics in the City overall, or in the Brandondale and Riverview Terrace mobile home parks in particular -- although according to Sergeant Brady Juell, a 20-year veteran of the CPD, the mobile home parks are "50 to 60%

Latino". (Union Exhibit #12, p. 6). Ms. Soldo also did not determine how 51.1% compared with the percentage of Hispanic drivers stopped by other Police Officers in the CPD.

During the second interview on December 31, 2014, the Grievant was asked about nine particular traffic stops (eight resulting in citations, and one in a written warning) where the City questioned the validity of the assumption that the driver was the RO. The Grievant explained the circumstances of those stops (nine out of more than 300 that he had made over the course of the summer) to the best of his ability. Ms. Soldo then sent a summary of the Grievant's interview -- not the complete transcript -- to the Carver County Attorney. (Joint Exhibit #7, Tab 14B). Based on that summary alone, the County Attorney provided an opinion regarding the constitutionality of the nine traffic stops and how that could affect the Grievant's testimony in future cases. (Joint Exhibit #7, Tab 14D).

During the interview process, the Grievant requested data on all traffic stops that he made over an approximately four-month period, from May 1, 2014, until he was placed on administrative leave on August 27, 2014. The data provided by the City was of limited use because it did not include cross streets; however, the Grievant was able to obtain the complete traffic stop data within a matter of a few days by making a data practices request to Carver County. Ms. Soldo then directed the

Grievant to provide a detailed analysis of the stops that he made during that entire four-month period. (Joint Exhibit #7, Tab 13G). In response, the Grievant plotted a map with all 324 of the stops that he made during that period, including the location and the type of traffic violation for each stop. There are clusters of stops clearly visible on the map in the areas all around the City where the Grievant had conducted stationary patrol earlier in the summer, as well as in the Brandondale and Riverview Terrace areas. (Union Exhibit #45).

Ms. Soldo submitted her IA report to the City on or about February 5, 2015. Ms. Soldo's report found that during the period July 13, 2014 to August 16, 2014, the Grievant engaged in patrol activity resulting in the unauthorized and unlawful targeting of Hispanic drivers, the Grievant's patrol activity contravened CPD General Orders 12 Law Enforcement Code of Ethics, 14 Code of Conduct, 33 Internal Affairs, 38 Community Relations, 50 Patrol, 63 Arrest, Search & Seizure, 78 Computer Systems including an agency-wide principle prohibiting "impartial/biased policing" and Minnesota Statutes 626.8471, which prohibits racial profiling. It was also found that the Grievant violated confidentiality directives and expectations, when he forwarded a Chaska Police Officer via a November 13, 2014 cell phone text message, a photograph of the Internal Affairs complaint dated December 11, 2014, and when he sent a

December 16, 2014 text message to a Chaska Police Sergeant about his investigatory interview with Investigator Soldo earlier that day. (Joint Exhibit #7, Tabs 1, 4D).

On April 8, 2015, Chief Knight sent the Grievant a letter indicating that "serious consideration is being given to terminating your employment with the City of Chaska" for the reasons set forth above in Ms. Soldo's report. The letter also indicated that the Grievant, with Union presentation, had the right to a Loudermill hearing scheduled for April 10, 2015, at 11:00 a.m. (Joint Exhibit #2). The Union notified the City on April 8, 2015, that they intended to waive the Loudermill hearing. (Joint Exhibit #3).

Based on the seriousness of the Grievant's conduct and the totality of circumstances, the Grievant's employment was terminated by Chief Knight effective April 17, 2015. Chief Knight's termination letter to the Grievant dated April 10, 2015, reads as follows in relevant part:

This is notice of your termination from employment with the City of Chaska. On April 8, 2015, a notice of pre-termination meeting was sent to you scheduling a meeting on April 10 to give you an opportunity to present any information you believed the City should consider before making a decision regarding your employment status. The City was notified on April 8 by Isaac Kaufman, IELS General Counsel, that you elected to waive your Loudermill rights. The pre-termination meeting was therefore cancelled.

An extensive internal affairs investigation was conducted by an outside investigator regarding your conduct. Based upon the evidence gathered during the course of the

investigation, you engaged in patrol activity resulting in the unauthorized and unlawful targeting of Hispanic/Latino drivers in violation of Chaska PD General Orders 12, 14, 33, 38, 50, 63 and 78, and Minnesota Statute 626.8471. During the investigation, you violated confidentiality directives and expectations, and provided untruthful answers during your interview in violation of General Order 14.

Based on the seriousness of your conduct and the totality of the circumstances, you have engaged in conduct unbecoming an officer which has brought discredit upon yourself and the Chaska Police Department, which has detracted from the respect and confidence of the community that is essential to law enforcement effectiveness, and which has seriously impaired your credibility as a law enforcement officer.

In accordance with Article X, Section 10.5, of the Labor Agreement between the City of Chaska and IELS, you are suspended for five (5) days without pay effective Monday 13 April 2015, and your termination is effective 4:30 PM, on Friday 17 April 2015.

On Friday 17 April, at 3:00 PM, you are directed to turn in any and all Chaska Police Department property which is in your possession; to include, but is not limited to, badges, portable radio, and police department insignia, etc. (Joint Exhibit #4).

On April 17, 2015, the Union, on behalf of the Grievant, submitted a Step 3 written grievance protesting the Grievant's termination and seeking a make whole remedy that the Grievant be immediately reinstated to his Police Officer position, including back pay and benefit loss from the time of his termination. (Joint Exhibit #5).

The grievance was denied by City Administrator Podhradsky on May 6, 2015. (Joint Exhibit #6). This resulted in the Union

appealing the grievance to final and binding arbitration pursuant to the contract grievance procedure.

On May 10, 2015, Dr. Karen Anderson, an emergency room physician, who is Japanese-American, sent an e-mail to Chaska Mayor Mark Windschitl, wherein she stated from her past experiences with the Grievant at the 212 Medical Center were professional. She protested his termination and the incorrect labeling of him as a "racist." (Union Exhibit #42). This e-mail was not solicited by the Grievant or his family.

On May 18, 2015, a group of the Grievant's supporters appeared at a City Council meeting to speak in opposition to the termination. These included the Grievant's wife Erica, but also a pastor and staff from a local hospital. (Union Exhibits #43-44). No CPD Police Officers attended the City Council meeting because it might be upsetting to the CPD command staff.

UNION POSITION

The Grievant did not engage in racial profiling -- specifically, that he targeted Hispanic drivers in his traffic patrol activities.

The IA investigation conducted by Ms. Soldo and her report, with conclusions, were incomplete and bias against the Grievant. Ms. Soldo and the City did not start with the presumption that the allegations against the Grievant were not true, and they did not go to great lengths to find ways to exonerate him. This

was proven by Ms. Soldo interviewing unnamed, anonymous witnesses residing in the Brandondale and Riverview Terrace mobile home parks, and relying upon their unsubstantiated allegations as proof of misconduct by the Grievant. She also excluded opinions favorable to the Grievant from fellow Police Officers and CPD command staff, which proved he was not engaged in racial profiling. Ms. Soldo did not include in her report any favorable comments about the Grievant's patrol activities from Sergeant Kjorstad in their August 19, 2014 car-to-car meeting. Ms. Soldo failed to interview only three of the eight named Police Officers regarding the practice of stopping vehicles for having no DL on file. Ms. Soldo provided incomplete and inaccurate information to Attorney Ivy.

The Grievant's co-workers, including supervisors, were fully aware of his patrol activities during the relevant time period. There was always a Sergeant on duty during every shift worked by the Grievant. In addition, the Grievant sent Chief Knight an e-mail on July 30, 2014, that put the Chief on notice that he was running stationary patrol at the mobile home parks, as well as the types of traffic violations that he was targeting, and that the Grievant had made no attempt to hide those activities.

The City's data do not show that the Grievant engaged in racial profiling. The Grievant was adamant that his patrol

stops during the relevant time period was to target violators of the traffic laws, without regard for the drivers' race or ethnicity, or for the racial demographics of certain neighborhoods. There is no evidence that the Grievant targeted Hispanic drivers at any time prior to the relevant time period.

Because the traffic stop data do not provide direct evidence of racial profiling, the City instead attempts to prove its case indirectly, by asking the Arbitrator to infer racial animus from the Grievant's actions and statements. These inferences are inapposite, and do not amount to clear and convincing proof that the Grievant engaged in racial profiling.

The length of time the Grievant spent patrolling the mobile home parks is not evidence of racial profiling. The Grievant's compliance with the CPD's district integrity practices is not evidence of racial profiling. The Grievant was not violating any established rules or expectations by conducting stationary patrol in the south district, where the mobile home parks are located, even on days when he was delegated to the north district.

The Grievant's arrest record before and after the relevant time period is not evidence of racial profiling. Allegations that the Grievant made nine unconstitutional traffic stops during the relevant time period are unsubstantiated and do not present evidence that the Grievant engaged in racial profiling.

The Grievant's statements during the August 19, 2014 car-to-car meeting between the Grievant and Sergeant Kjorstad are not evidence that the Grievant engaged in racial profiling.

The Grievant's patrol practices following the stand-down directive are not evidence of racial profiling as the Grievant fully complied with the directive.

The Grievant's alleged statement during his August 26, 2014 meeting with Captain Anderson are not evidence that he engaged in racial profiling as the Grievant never said he was "personally responsible for sending over 100 illegal immigrants back to Mexico."

The Grievant's behavior during the Asian driver's traffic stop on August 26, 2014, is not evidence of racial profiling. While the Grievant admits that he might have made a mistake in asking the Asian driver to identify his race due to Captain Anderson's directive to "document any minority contacts," the Grievant was not engaged in racial profiling.

The Grievant denies that his decision to conduct stationary patrol at the mobile home parks had anything to do with Sergeant Duzan's demotion.

There are mitigating circumstances which demonstrates that the Grievant has not and would not, ever engaged in racial profiling. First, there are Sergeants and a Police Officer who believed the Grievant would never target a minority group in his

traffic patrol. Second, none of the Grievant's performance evaluations ever questioned whether the Grievant engaged in racial profiling. Third, the Grievant's former roommate, a native of Columbia, stated that the Grievant never exhibited any traces of racial animus or negative opinions about Hispanics. Fourth, in 2011, the Grievant went out of his way to confront a Carver County employee who had posted a racial slur on Facebook ("Three Nigs jacked the SA"), and to notify both Sheriff Olson and Chief Knight of his concerns. Fifth, there was the highly favorable opinion given by Dr. Anderson, a minority member herself, who had numerous opportunities to observe the Grievant interacting with patients and staff of different ethnicities, both during medical emergencies and in more casual situations, who found the Grievant to be professional and respectful. Sixth, there was the testimony from Orville Folkerts, an active member of the Lodge, where the Grievant frequently visited while on duty. Mr. Folkerts was not aware of the Grievant having ever displayed racial animus or insensitivity of any kind. Finally, on May 18, 2015, a group of the Grievant's supporters appeared at a City Council meeting to state their opposition to the Grievant's termination as well their belief that he had not engaged in racial profiling.

One of the Arbitrator's tasks in this case is to determine whether, in the absence of sufficient proof that the Grievant

actually engaged in racial profiling, the public perception that he engaged in racial profiling amounts to just cause to discharge the Grievant and end his career in law enforcement. The record shows that the individuals who initially contacted Sergeant Kjorstad to complain about the Grievant's stationary patrol at the mobile home parks were misinformed. These complainants believed that the Grievant was violating the law by running their license plate numbers to check their vehicle registration, which the City acknowledges is untrue -- running random checks on license plates is a common and widely accepted police practice.

The allegations of untruthfulness do not provide just cause to terminate the Grievant. The City cannot prove by clear and convincing evidence that the Grievant was knowingly or deliberately untruthful in response to any of Ms. Soldo's questions during his two Garrity interviews. The Grievant was also honest with Chief Knight, CPD command staff and Attorney IVY.

The City is asking the Arbitrator to accept that because of the Giglio-impaired rule, a finding of untruthfulness automatically requires termination. Even if the City could prove by clear and convincing evidence that the Grievant has been dishonest, which it cannot, the Union disagrees with this broad application of Brady/Giglio. Attorney Ivy acknowledges

that in some jurisdictions, such as Ramsey County, Police Officers continue to be employed and to perform law enforcement duties even after having been labeled as Giglio-impaired Officers. Thus, the Arbitrator should reject the City's argument and instead apply a thorough just cause analysis to the instant grievance.

Based upon the foregoing and the entire record, the Grievant's termination was without just cause and therefore violated the terms of the Collective Bargaining Agreement. For this reason, the grievance should be sustained, and the Grievant should be reinstated to his position as a Police Officer and made whole.

CITY POSITION

The Grievant's termination is warranted based on the evidence in the record. The Grievant has engaged in patrol activity resulting in the prohibited targeting of Hispanic drivers.

In discharging the Grievant, the City acted in good faith based upon a thorough investigation in which it was proven that the Grievant engaged in the conduct set forth in the termination notice. It is apparent from the Grievant's Garrity statement and testimony at the arbitration hearing that he does not acknowledge his accountability for his conduct. He has never been repentant about his conduct or acknowledged that his

conduct detracts from the public's faith in law enforcement and tarnishes the badge and the CPD.

The CDP command staff, the Carver County Attorney's Office and the Hispanic community in Chaska can never trust the Grievant again based on the totality of his misconduct. He provided untruthful testimony in his Garrity statement and under oath at the arbitration hearing. He is Giglio-impaired and will not be allowed to testify for the Carver County Attorney's Office. The conduct exhibited by the Grievant is contrary to the policies of the CPD. It is also totally contrary to instilling public trust and confidence in the CPD.

It is an accepted principle in labor relations that unless the discipline imposed by the employer is arbitrary, capricious or discriminatory, a grievance arbitrator should not substitute his judgment for that of the employer. Because of the egregiousness of the Grievant's conduct, there were no facts to mitigate the penalty of discharge.

Based upon the evidence in the record and for all the foregoing reasons, the City requests that the Arbitrator find there was just cause for the discharge of the Grievant and deny the grievance in its entirety.

ANALYSIS OF THE EVIDENCE

The City is prohibited from depriving any person of life, liberty or property without due process of law. U.S.

Constitution, Amendment 14 and Minnesota Constitution, Article 1, Section 7. This "due process" right applies to public employers if an employee has a "protected property interest." Board of Regents v. Roth, 408 U.S. 564 (1972); Perry v. Sindermann, 408 U.S. 593 (1972). A "protected property interest" arises when there is a contract which supports an employee's "legitimate claim of entitlement" to employment. Roth, 408 U.S. at 564; Perry, 408 U.S. at 593. Examples of such "property interests" include collective bargaining agreements and civil service rules.

Article X, Discipline, Section 10.1 of the Collective Bargaining Agreement provides that "[t]he EMPLOYER will discipline PEACE OFFICERS for just cause only. Discipline will be in the form of: a. oral reprimand; b. written reprimand; c. suspension; d. demotion; or e. discharge."

At issue in this case is whether the City had "just cause" pursuant to Section 10.1 to impose discharge on the Grievant for the appearance of and racial profiling by his patrol activity in the targeting of Hispanic motor vehicle drivers. The definition of "just cause" originates from a Minnesota Supreme Court case, which states:

"Cause" or "sufficient cause," means "legal cause," and not any cause which the council may think sufficient. The cause must be one that specifically states to or relates to and affects the administration of the office, and must be restricted to something of a substantial nature or

direction affecting the rights and interest of the public. The cause must be one of touching the qualifications of the officer or his performance of his/her duties, showing he is not a fit or proper person to hold office.

State ex rel Hart v. Common Council, 55 N.W. 118, 120 (Minn. 1893).

This early definition came in a labor relations setting and is still quoted regularly by the courts and the administrative agencies in cases involving discipline of employees. In fact, in 2002, the Minnesota Supreme Court affirmed the following definition:

The term "cause" generally means a real cause or basis for dismissal as distinguished from an arbitrary whim or caprice. That is, some cause or ground that a reasonable employer, acting in good faith in similar circumstances would regard as a good and sufficient basis for terminating the services of an employee....

Hilliaoss v. Cargill, 649 N.W.2d 142 (Minn. 2002).

Misconduct must be based on inadequate performance of duties. Hughes v. Dep't of Public Safety, 273 N.W. 618, 621 (Minn. 1937). Misconduct notes an improper duty of office. In re: Discharge of Kelvie, 384 N.W.2d 901, 904 (Minn. Ct. App. 1986). The standards for just cause discipline and discipline for misconduct are equivalent. State ex rel Hart. The reason for just cause discipline must directly relate to the job being performed and the ability to adequately perform the job.

Because of the magnitude of the discharge penalty, the burden of proof rests on the City to justify the Grievant's

termination for such misconduct or deficient work performance. "Burden" and "quantum" of proof are two of the most involved aspects of the rules of evidence, which ordinarily are eschewed by arbitrators as being so complicated, theoretical and technical that they are unsuitable for such a relatively informal process. Consequently, rather than assigning to this case a quantum of required proof, such as proof beyond a reasonable doubt, preponderance of the evidence, clear and convincing evidence, or evidence sufficient to convince a reasonable mind of guilt, a better and more realistic approach to take is a determination of whether the Grievant, is guilty of the appearance of and racial profiling by his patrol activity in the targeting of Hispanic drivers and, if so, was his misconduct the type serious enough to justify his discharge.

At the onset, the Union objects to the conclusions of the IA report prepared by Ms. Soldo. Ms. Soldo's IA report concluded that during the period July 13, 2014 to August 16, 2014, the Grievant engaged in patrol activity resulting in the unauthorized and unlawful targeting of Hispanic drivers in violation of several CPD General Orders and the Minnesota Statute, which prohibits the appearance of and racial profiling. In addition, Ms. Soldo's IA report concluded that the Grievant violated confidentiality directives and expectations by forwarding a copy of the IA complaint to another Police Officer

and sending a text message to a Police Sergeant about his investigatory interview with Ms. Soldo earlier on the day of the interview.

The Union claims that the IA investigation was flawed and Ms. Soldo's IA report was incomplete and biased against the Grievant because Ms. Soldo conducted interviews and relied upon allegations by an unknown number of unnamed, anonymous residents of the Brandondale and Riverview Terrace mobile home parks. The Union also alleges: Ms. Soldo's IA report excluded opinions favorable to the Grievant; excluded comments from the August 19, 2014 car-to-car meeting between the Grievant and Sergeant Kjorstad that must be given appropriate weight that the Grievant did not engage in racial profiling; and failed to interview other important witnesses suggested by the Grievant or who were important to the Grievant's defense.

While the Arbitrator does not totally agree with the Union's allegation that Ms. Soldo's IA report was incomplete and biased against the Grievant, he will, in fairness to the Grievant, rely on the evidence adduced at the arbitration hearing rather than the conclusions reached by Ms. Soldo. This should come as no surprise to the Parties as arbitration is a *de novo (fresh, new) proceeding* and conclusions, recommendations or decisions made previously by others are not binding on the Arbitrator. As a result, the Grievant is entitled to have his

"day in court" determined on the evidence presented by the Parties at the arbitration hearing rather than the conclusions reached in Ms. Soldo's IA report.

The Union argues that it is unfair for the City to ignore all of the Grievant's traffic patrol activities outside the arbitrary "relevant time period" in determining whether the Grievant in fact engaged in the appearance of and racial profiling. The Union also argues that the City should be divided into three districts (north, southeast and downtown historic) with Engler as the district dividing line rather than the traditional two districts (north and south) with Highway 212 being the dividing line.

It is undisputed that there is no evidence that the Grievant targeted Hispanic drivers at any time prior to the relevant time period in any specific district whether the City is divided into three or two districts. In fact, the Grievant was not disciplined for any patrol activities outside of the relevant time period in any district. Thus, to expand the Grievant's traffic patrol activities outside the relevant time period from the first two and half months of the 2014 summer (from the beginning of May to Mid-July) or at any other times in the Grievant's entire 14 year career with the CPD, as argued by the Union, is not a valid comparison. The Grievant is not accused of any wrongdoing prior to the relevant time period, but

only is accused of engaging in the appearance of and racial profiling during the relevant time period in specific locations in the south district, namely the Brandondale and Riverview Terrace mobile home parks. The relevant time period in the south district stands alone for examination of whether the Grievant is guilty of the appearance of and racial profiling.

Minnesota Statutes, Section 626.8471, Subdivision 2

prohibits and defines "racial profiling" as

[A]ny action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than:

- (1) the behavior of that individual; or
- (2) information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

Racial profiling includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search.

The statute provides that racial profiling includes race or ethnic stereotype as factors, but not the exclusive factor, in selecting whom to stop and search. Section 626.8741, Subdivision 4 requires that "the chief law enforcement officer of every....local law enforcement agency....establish and enforce a written antiracial profiling policy governing the conduct of peace officers engaged in the stops of citizens."

CPD General Order 38 - Community Relations, Section 38.2 - Racial Ethnic Profiling/Impartial Policing, is the policy

written and implemented by Chief Knight in accordance with the requirements of Section 626.8741, Subdivision 4. This CPD General Order provides the following:

38.2 Racial Ethnic Profiling - Impartial Policing

38.2.1 Purpose

The purpose of this policy is to unequivocally state that racial and ethnic profiling in law enforcement are totally unacceptable, to provide guidelines for officers to prevent even the appearance of such a practice, and to protect our officers when they act within the dictates of the law and policy from unwarranted accusations.

38.2.2 Discussion

A fundamental right guaranteed by the Constitution of the United States to all who live in this nation is the right to equal protection under the law. Along with this right to equal protection is the fundamental right to be free from unreasonable searches and seizures by the police. Citizens are free to walk and drive our streets, highways, and other public places without interference so long as they obey the law. They also are entitled to be free from crime, and from the depredations of criminals, and to walk and drive our public ways safe from the actions of reckless and careless drivers.

The Chaska Police Department is charged with protecting these rights-for all-regardless of race, color, ethnicity, sex, sexual orientation, physical handicap, religion or other belief system.

Police officers are required to be observant, to identify unusual occurrences and law violations, and to act upon them. It is this proactive enforcement that keeps our citizens free from crime, our streets and highways safe to drive upon, and that detects and apprehends criminals.

This policy is intended to assist our officers in accomplishing this total mission in a way that respects the dignity of all persons, and yet sends a strong deterrent message to actual and potential lawbreakers that if they break the law, they are likely to encounter a Chaska Police Officer.

38.2.3 Policy

It is the policy of the Chaska Police Department to patrol in a proactive manner, to aggressively investigate suspicious persons and circumstances, and to actively enforce the motor vehicle laws, while insisting that citizens will only be stopped or detained when there exists reasonable suspicion to believe they have committed, are committing, or are about to commit an infraction of the law.

38.2.4 Definitions

Racial-Ethnic Profiling - Racial profiling has the meaning given to it in MN Statute 626.8471, Subd. 2, which states: "Racial profiling" means any action initiated by law enforcement that relies upon the race, ethnicity, or national origin of an individual rather than:

- (1) the behavior of that individual; or
- (2) information that leads law enforcement to a particular individual who has been identified as being engaged in or having been engaged in criminal activity. Racial profiling includes use of racial or ethnic stereotypes as factors in selecting whom to stop and search. Racial profiling does not include law enforcement's use of race or ethnicity to determine whether a person matches a specific description of a particular subject.

Reasonable Suspicion - Also known as articulable suspicion. Suspicion that is more than a mere hunch, and is based on a set of articulable facts and circumstances that would warrant a person of reasonable caution to believe that an infraction of the law has been, is about to be, or is in the process of being committed.

38.2.5 Procedure

- Officers will patrol the entire city, as assigned, directing their efforts toward those areas where there is the highest likelihood that they can be of service to the community, motor vehicle accidents can be reduced, and/or crimes can be prevented through proactive patrol.
- Officers will receive initial and ongoing training in officer safety tactics, and the laws governing search and seizure applications and functions.
- Officers will be sensitive to and respectful of courtesy, cultural diversity, and interpersonal communication issues.
- Motorists and pedestrians shall only be subjected to stops, seizures, or detentions upon reasonable suspicion

that they have committed, are committing, or are about to commit an infraction.

- Persons stopped, detained, and/or jailed will, at the appropriate time—allowing for officer safety considerations and investigative needs—be told why they have been stopped, detained, and/or taken into custody.
- Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense.
- Attempt to answer any relevant questions the citizen may have regarding the citizen/officer contact, including relevant referrals to other agencies when appropriate.
- Provide your name and badge number when requested, preferably in writing or on a business card.
- In the absence of a specific, credible report containing a physical description, a person's race, ethnicity, gender or sexual orientation or any combination of these shall not be a factor in determining probably cause for an arrest, or reasonable suspicion for a stop.
- For the purpose—only—of data collection, officers will note the race/ethnicity and sex of persons issued written warnings or citations, and those who are the subject of, or are mentioned in police reports. This information will only be collected, if it can reasonably be ascertained by the physical appearance of, or from the driver's license of, or from other documents provided by an individual. Officers are not expected to guess. If the race of an individual is in question, officers should document the contact as unknown.
- The following keys will be used for indicating race/ethnicity:

A - Asian or Pacific Islander

B - Black

I - American Indian or Alaskan Native

U - Unknown

W - White

H - Hispanic

- The deliberate and intentional recording of any false information related to data collection is prohibited, and would be cause for disciplinary action.
- Supervisors shall ensure all personnel in their command are familiar with the content of this policy and are in compliance.

38.2.6 Complaints of Racial or Ethnic Profiling

Any and all citizen complaints will be handled in accordance with CPD Policy 14.2.5 and General Order 33.

(Joint Exhibit #7, Tab C).

Sometimes actions speak louder than words and there are times that words speak louder than actions and there are even times where actions and words reach the same conclusion.

The Grievant took several actions in this case. The Grievant admitted that prior to July 13, 2014, he knew that many residents of Chaska who are Hispanic are undocumented immigrants who have not obtained a Minnesota DL because of their undocumented status in the United States. The Grievant admitted that an individual's status as an illegal immigrant has generated numerous citations for having no DL. (Employer Exhibit #1, pp. 40, 112, 159-160). He admitted knowing that a majority of the motor vehicle drivers who entered or exited Riverview and Brandondale mobile home parks would be Hispanic. The Grievant also admitted believing he would be able to stop a number of Hispanic drivers for no DL at these mobile home park locations.

Armed with this knowledge, whether delegated to patrol the north or south districts, during 20 consecutive work shifts from July 13, 2014 to August 16, 2014, the Grievant conducted daily stationary patrol at the entrances and exits of the Brandondale and Riverview Terrace mobile home parks. The Grievant ran the

license plates of vehicles entering and exiting the mobile home parks and followed, stopped, cited, and/or arrested Hispanic drivers when data indicated the RO of the vehicle had no DL on file. The Grievant made approximately 136 stops during this relevant time period.

The Grievant asserts that his stationary patrol activity at the entrances and exits of the mobile home parks targeted traffic violations and not a specific class of people. However, that assertion is refuted by the evidence showing that the Grievant relied on racial and ethnic stereotypes as factors in selecting where to engage in stationary patrol and whom to stop and search. When the Grievant conducted stationary patrol at the entrances and exits of two mobile home parks widely known to have predominantly Hispanic residents, versus conducting stationary patrol on Highway 41 where the race of drivers could not be reasonably anticipated, his patrol activity effectively focused on racial and/or ethnic stereotypes as factors in his stops of Hispanic drivers since he associated no DL violations with Hispanics.

The Grievant's racial/ethnic patrol activity had a disparate impact on Hispanics. Traffic stop records indicate that approximately 51.1% of all traffic stops conducted by the Grievant during the relevant time period involved drivers with Hispanic surnames. The Grievant stopped 69 drivers with

Hispanic surnames, 51 were issued citations, and 7 unlicensed Hispanic drivers were arrested. (Joint Exhibit #7, Tabs 12G-J).

Elementary law enforcement procedure provides that when stopping a vehicle solely on the basis of running a license plate and determining that the RO does not have a valid DL, the Police Officer must make some reasonable effort to determine whether the driver generally matches the description of the RO before making the stop. If the age characteristics of the driver do not generally match the age characteristics of the RO, the stop must cease or dissolve. Similarly, if the gender characteristics of the driver do not generally match the gender characteristics of the RO, the stop must cease or dissolve. (Joint Exhibit #7, Tab 14D). The Grievant recognized his obligations under these scenarios. (Employer Exhibit #1, pp. 52-53).

If a Police Officer asks the driver for a DL despite the fact that the age or gender characteristics do not generally match the age or gender characteristics of the RO, an unconstitutional seizure has occurred in violation of the 4th Amendment. (Joint Exhibit #7, Tab 14D). This is basic information taught in police Skills training.

During the relevant time period of July 13, 2014 through August 16, 2014, the Grievant stopped and issued citations to nine Hispanic drivers for No Minnesota DL, DAR, DAS and DAC.

The nine Hispanic drivers stopped were not the RO's of the vehicle, the same gender as the RO or even close in age to the RO. Four of the nine stops occurred on July 13, 2014. The nine stops are as follows:

Stop 1: ICR #14006270, 07-13-14, 1223 hours. Traffic stop of a Hispanic male driver (I.A.) of vehicle with male RO, who is 23 years older than the driver (V.I.J.F.). Male driver cited for driving after suspension.

Stop 2: ICR #14006273, 07-13-14, 1352 hours. Traffic stop of a Hispanic male driver (Y.R.) for a vehicle registered to a female owner (R.E.G.-Z.) with no Minnesota DL on file. Male driver cited for driving after suspension.

Stop 3: ICR #14006275, 07-13-14, 1422 hours. Traffic stop of a Hispanic female driver (M.E.R.-C.) for a vehicle registered to a male owner (M.J.-P.) with no Minnesota DL on file. Female driver cited for no Minnesota DL.

Stop 4: ICR #14006279, 07-13-14, 1454 hours. Traffic stop of a 27-year-old male Hispanic driver (L.A.A.-H.) who was driving a car registered to a 54-year-old Hispanic male with no registered Minnesota DL on file. There is a 27-year age difference between the RO and the driver. The driver was cited for no Minnesota DL.

Stop 5: ICR #14006449, 07-17-14, 858 hours. Traffic stop of a Hispanic female driver (A.T.) for a vehicle registered to a male owner (R.B.), who had a valid Minnesota DL on file. Justification for the traffic stop is not identified. The female driver was issued a warning for failing to obtain a Minnesota DL within 60 days.

Stop 6: ICR# 14007016, 07-30-14, 1306 hours. Traffic stop of a Hispanic female driver (M.A.G.) for a vehicle registered to a male owner (N.L.A.) with no Minnesota DL on file. Female driver cited for no Minnesota DL.

Stop 7: ICR #14007162, 08-02-14, 1157 hours. Traffic stop of a Hispanic female driver (V.C.-H.) for a vehicle registered to a male owner (E.A.J.) with no Minnesota DL on file. Female driver cited for no Minnesota DL.

Stop 8: ICR #14007170, 08-02-14, 1424 hours. Traffic stop of a 22-year-old, male Hispanic driver (J.H.), who was driving a car registered to a Hispanic female (G.A.-B.) with no registered Minnesota DL on file. The driver was cited for no Minnesota DL.

Stop 9: ICR# 14007674, 08-16-14, 1427 hours. Traffic stop of a Hispanic male driver (J.O.L.) for a vehicle registered to a female owner (M.A.-E.) with no Minnesota DL on file. Male driver cited for no Minnesota DL. This stop followed the Grievant's August 8, 2014 discussion with Chief Deputy Carver County Attorney Peter Ivy about the legal basis for stopping vehicles when the RO has no valid Minnesota DL on file.

(Joint Exhibit #7, Tab 12).

The City claims that the above nine stops did not follow case law and were invalid and unconstitutional. The Union claims that even though none of these individuals mentioned in the nine reports were ever interviewed by Ms. Soldo, and the Union was not advised of the names of some of the individuals called by the City as witnesses until after the beginning of the arbitration hearing, the City has not proven that these nine traffic stops were unconstitutional or improper or that the Grievant violated CPD General Order 38.2.5.

The United States and Minnesota Constitutions prohibit unreasonable searches and seizures. U.S. Constitution, Amendment IV; Minnesota Constitution, Article I, Section 10. However, Police Officers may conduct an investigatory stop of a vehicle under certain conditions. To justify the stop, "[t]he police must only show that the stop was not the product of mere

whim, caprice or idle curiosity, but was based upon 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" State v. Pike, 551 N.W.2d 919, 921-22 (Minn. 1996).

The Union claims that in Stop 5 it was reasonable under Pike for the Grievant to assume that the driver of the vehicle was the RO; because this stop resulted in a written warning, there is insufficient information in the record for the City to prove the Grievant knew that the driver was not the RO, and should have discontinued the stop.

The Union asserts that the Grievant is not a fluent Spanish speaker. Thus, according to the Union, when applying the Pike standard to an unfamiliar and possibly lengthy Hispanic name during an active traffic stop, it is reasonable to expect that a Police Officer in the Grievant's situation would sometimes unwittingly misidentify the gender of the RO.

With regard to Stop 6, the Union claims that it was difficult for the Grievant to determine the gender of the first name "N." ("N.L.A."). As a result, under Pike, it was reasonable for the Grievant to assume that the driver of the vehicle was the RO even after he observed that the driver was female, and the name of the RO did not require him to discontinue the stop.

Similarly, the Union claims that under Pike it was difficult for the Grievant to determine the gender of the first name of the RO, "G." ("G.A.-B") in Stop 8. As a result, under Pike, it was reasonable for the Grievant to assume that the driver of the vehicle was the RO even after he observed that the driver was male, and the name of the RO did not require him to discontinue the stop.

With regards to Stop 9, the Union claims the NCIC query on the vehicle identified the RO as "A.,E.M.L." Based on the standard format of these queries, the Grievant understood "E." to be the RO's first name -- with no specific gender association and "A." the last name. Under Pike, it was reasonable for the Grievant to assume that the driver of the vehicle was the RO; even after he observed that the driver was male, the name of the RO did not require him to discontinue the stop. In addition, the male driver (J.O.L.) had shoulder-length hair during the stop. On information and belief, even if the Grievant knew that the RO was female, he reasonably could have believed that "L." was female as well.

The Grievant also testified that he did not know with any certainty that "E.A.J." (Stop 7) and "M.J.-P." (Stop 3) were male names; therefore, under Pike, he was not required to discontinue those stops, even after observing that the drivers were female.

Regarding the citation issued in Stop 1, who is 23 years younger than the RO of the vehicle he was driving, the Grievant testified that he is frequently surprised by the discrepancy between a driver's actual age and how old they look. The Union claims that without a photograph of I.A., it is impossible to guess how old he looks, and whether, under Pike, the Grievant should have known at a glance that he was not the RO and discontinued the stop.

The Grievant also testified about the citations issued to L.A.-H. (Stop 4) and Y.R. (Stop 2), both on July 13, 2014. The Grievant claims that both drivers volunteered that they did not have a Minnesota DL. The Grievant explained that these admissions were made right away, before he had obtained any information rendering unreasonable his assumption that the driver was the RO, as required under Pike. The Grievant added that it is fairly common for a driver to admit preemptively that he does not have a license. The City acknowledges that where a driver volunteers such information, this provides an independent basis to continue with a traffic stop, even where the stop would otherwise be impermissible under Pike. However, both L.A.-H and Y.R. testified at the arbitration hearing that they never volunteered to the Grievant that they did not have a valid DL.

The Carver County Attorney's Office is responsible for the prosecution of crimes committed in the City. In spite of the

arguments being made by the Union that the nine stops were constitutional, the Carver County Attorney's Office determined that all nine stops during the relevant time period, all involving Hispanic drivers, were invalid and unconstitutional.

In the nine stops at issue, despite the fact that the age and/or gender characteristics of the driver did not generally match the age and/or gender characteristics of the RO, the Grievant continued the stops and issued citations. The Carver County Attorney's Office found that the Grievant compounded the constitutional violation by issuing citations when, once face-to-face, he knew the driver did not match the characteristics of the RO.

The Supreme Court's 1963 decision in Brady v. Maryland, 373 U.S. 83 (U.S. 1963) held that the prosecution violates due process when it "withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty." In Giglio v. United States, 405 U.S. 150, 153 (U.S. 1972), the Supreme Court extended the prosecution's obligations under Brady to disclosure of impeachment evidence. The Supreme Court clarified that all impeachment evidence, even if not a prior statement by a witness, falls within the Brady rule. Giglio mandated that the prosecution should disclose any and all information that may be used to impeach the credibility of prosecution witnesses, including Police Officers. This

impeachment information under Giglio includes information such as prior criminal records or other acts of misconduct of a prosecution witness, and promises of leniency or immunity offered to prosecution witnesses.

Based on Brady and Giglio, prosecutors are required to disclose to defendants any exculpatory evidence they possess which would impair the credibility of their witnesses. A "Giglio-impaired" Police Officer is one against whom there is potential impeachment of evidence that would cast substantial doubt on the Officer's credibility. There is no expiration date on the Brady-Giglio notice requirements.

On August 8, 2014, Chief Knight met with the Grievant to discuss his patrol activity, which created unrest in the community by his stationary patrolling activities in the Riverview and Brandondale mobile home parks. The Grievant told Chief Knight he was running plates, making stops and issuing citations to drivers with no Minnesota DL. Chief Knight advised the Grievant to consult with the Carver County Attorney's Office to be certain he has probable cause for these controversial vehicle stops. Chief Knight also requested the Grievant to submit a memo to him regarding his contacts with Father Joseph and his patrol/pattern statistics.

On August 8, 2014, following his discussion with Chief Knight, the Grievant met with Attorney Ivy and asked him about

the legality of traffic stop based on running a license plate. Attorney Ivy told the Grievant there is no expectation of privacy relative to a license plate. But, the Police Officer must have some articulable reason for probable cause. The Police Officer must determine that the age and/or gender characteristics of the driver generally match the age and/or gender characteristics of the RO. If the Police Officer gets to the car and determines that the characteristics do not generally match, the stop ceases and probable cause dissolves.

Attorney Ivy was somewhat puzzled by this question because it was unusual for the Grievant, with 13 years of law enforcement experience with the City at the time, to come to the Carver County Attorney's Office and asked such an elementary question.

Based on the question presented, Attorney Ivy indicated the Grievant had probable cause for the no Minnesota DL stops he was making. However, during this conversation, the Grievant did not indicate that he was stopping and citing Hispanic drivers for no DL on record while conducting stationary surveillance at the entrances and exits of the Brandondale and Riverview Terrace mobile home parks. The Grievant did not inform Attorney Ivy complaints had been made against him. The Grievant did not indicate that his inquiry was due to allegations of racial profiling. The Grievant did not inform Attorney Ivy that Chief

Knight had directed the Grievant to meet with him to discuss this matter.

According to the testimony of Attorney Ivy, all of this information would have been material and relevant to his discussion with and advise provided to the Grievant. It would have raised "red flags" for Attorney Ivy and significantly changed their conversation. Attorney Ivy testified that the Grievant essentially lied to him as the Grievant was untruthful with him and manipulated him through his lack of candor and dishonesty. As a result of the Grievant's untruthfulness, the Carver County Attorney's Office determined the Grievant's conduct with the stops created an issue under Giglio such that the Grievant has been determined to be Giglio-impaired and will not be allowed to testify for the Carver County Attorney's Office ever again.

The decision by the Carver County Attorney's Office that the Grievant is Giglio-impaired and will not be allowed to testify on behalf of the prosecution ever again is significant and problematic to the Grievant. The CPD is a small law enforcement agency. It does not have the luxury of having Police Officers work exclusively in the office or behind a desk without interaction with the public, which occurs in larger law enforcement agencies such as Minneapolis and St. Paul Police Departments. The CPD needs and requires every Police Officer to

be actively patrolling the City streets or responding to calls rather than sitting in the CPD office doing paperwork or other desk jobs.

Furthermore, the ability to testify in court is an essential function of a Police Officer. The Carver County Attorney's Office, the attorneys who handle Chaska prosecutions, will not be able to call the Grievant as a witness because of his conduct. They will be required by Brady and Giglio to notify defense counsel of the Grievant's conduct, which will be used to attack his credibility and character. It will, in turn, inevitably undermine the ability of prosecutors to prove any case in which the Grievant would be a witness.

Finally, as a result of the Grievant's misconduct in this regard and the determination that the Grievant is Giglio-impaired, the Carver County Attorney's Office dismissed all active prosecutions involving the Grievant as the primary Police Officer where the defendant had a Hispanic surname. The Carver County Attorney's Office will be asking the Department of Public Safety to vacate the nine citations and refund fines paid by the Hispanic drivers and the Office is still analyzing whether post-conviction relief may be warranted on cases in which the Grievant was involved.

It is noteworthy that all nine of the unconstitutional stops involved Hispanic male and female drivers, and there were

no unconstitutional stops involving non-Hispanic drivers. This indicates the Grievant engaged in discriminatory conduct. Based on actions of the Grievant in his August 8, 2014 conversation with Attorney Ivy, the Grievant engaged in manipulative conduct to cover up his misconduct.

It clear from the foregoing that the Grievant's actions resulted in the appearance of and racial profiling during the relevant time period as he engaged in patrol activity resulting in the prohibited targeting of Hispanic drivers. In addition to the Grievant's actions, his words alone or in combination with his actions, also sustains this same conclusion.

- When the Grievant was confronted with his comment that "I can fucking terrorize it" during the August 19, 2014 car-to-car conversation with Sergeant Kjorstad, the Grievant claims his words got jumbled and he meant to say "tenacious." However, the sentence, "I can fucking tenacious it" makes no grammatical sense.
- The Grievant takes no responsibility for his conduct and argues that his conduct is the fault of the CPD command staff. The Grievant claims that he made the inappropriate, disrespectful and unprofessional statements in the August 19, 2014 car-to-car conversation about Hispanic residents because he was "frustrated" by Sergeant Kjorstad simply telling him he was to not engage in stationary patrol at the entrances and exits of Riverview and Brandondale mobile home parks and not allowing him to do his job. This was a reasonable directive and it was not Sergeant Kjorstad's fault the Grievant made the statements that the Hispanic residents he stopped, cited and/or arrested are "illegal immigrants," people who "are violating laws every day," "felons that are in our country illegally," and "felons" who should "be deported." These statements are consistent with the Grievant's August 26, 2014 declaration to Captains Anderson and Stock that he

is "personally responsible for sending over 100 illegal immigrants back to Mexico" rather than the Grievant's claim that he told them that he has cited over 50 unlicensed immigrants or 50 illegal immigrants for no Minnesota DL. The fact that the Grievant does not have the authority to deport illegal or unlicensed immigrants back to Mexico (responsibility of U.S. Immigration and Customs Enforcement) does not mean that he never made the derogatory statement to Captains Anderson and Stock that he is "personally responsible for sending over 100 illegal immigrants back to Mexico." Clearly, these statements by the Grievant, combined with his patrol activity, created a real and public perception that he was targeting Hispanic drivers solely because they were Hispanic.

- The Grievant claims that Father Joseph was out to get him and the instigator behind getting him terminated. Yet, there is no evidence that Father Joseph was encouraging any of the residents who came forward to protest the Grievant's patrol patterns. Some of the residents did not even know Father Joseph.
- The Grievant claims that Chief Knight was simply out to get him and this is all due to "politics." No "political" motive was identified by the Grievant and the Grievant did not provide any evidence to support his claim that this was just "political." To the contrary, Chief Knight had no motive to terminate the Grievant since he supported his lengthy law enforcement career, other than the incident in question here. In addition, Chief Knight initially supported the Grievant by his August 7, 2014 request to Sergeant Kjorstad to find data to support the Grievant's patrol activity. Finally, Chief Knight was not involved in the IA investigation as he was on extended medical leave of absence during this period of time. (Employer Exhibit #25).
- The Grievant claims that Chief Knight knew exactly where he was patrolling and why he was patrolling that area. The Grievant cites the July 30, 2014 e-mail from the Grievant to Chief Knight in support of his arguments. However, the Grievant did not inform Chief Knight of the frequency or duration of his conduct engaging in stationary patrols at the entrances and exits to Riverview and Brandondale mobile home parks for 20 consecutive work days, the Grievant did not inform Chief

Knight that he was stopping Hispanic drivers when the age and/or gender characteristics did not match the age and/or gender characteristics of the RO and the Grievant did not inform Chief Knight of some of his immigration related comments to Hispanic drivers.

- The Grievant claims his supervisors (Sergeants) knew where he was patrolling during the relevant time period and did nothing to stop his conduct. It must be remembered that Sergeants, to the extent they were on duty during the Grievant's shifts, were performing many administrative duties and responsibilities as Sergeants. While Sergeants may know what district (north or south) the Police Officers are assigned for their shift, Officers are expected to work independently and within the CPD General Orders. Sergeants only listen to radio traffic to listen for alert tones where a Police Officer requires a Sergeant's assistance. The radio traffic only includes the Police Officer's badge number, license plate number and location of a stop. The radio traffic does not include information relative to the name of the RO, the name of the driver, the reason for the stop, whether the violation was first observed or whether the stop was illegal or unconstitutional; and Sergeants do not review citations in the normal course unless a complaint has been made by the public. The Grievant did not inform the Sergeants of the frequency or duration of his conduct engaging in stationary patrols at the entrances and exits to Riverview and Brandondale mobile home parks for 20 consecutive work days, the Grievant did not inform the Sergeants that he was stopping drivers when the age and/or gender characteristics did not match the age and/or gender characteristics of the RO and the Grievant did not inform the Sergeants that he make making immigration related comments to drivers. Rather, as a 14 year member of the CPD, the Sergeants simply took the Grievant at his word that he was "trying to get out of a funk."

This is not the typical he said, she said case. To the contrary, the Grievant claims that this is a he (Grievant) said and 14 other City witnesses lied about their testimony or their statements to get the Grievant terminated. The Grievant

testified that virtually every witness for the City including all members of the CPD command staff lied under oath. The Grievant testified that residents N.L., Y.R., L.A.A.-H., J.O.L., and F.C.-T. all lied during their testimony at the arbitration hearing as to the Grievant's interactions with them. However, these witnesses testified credibly about their interactions with the Grievant and the factual basis for their reasonable beliefs that the Grievant, through his patrol activity, targeted them because of their race/ethnicity and targeted other Hispanic residents. Despite their fear and apprehension of testifying at the arbitration hearing (most through an interpreter), these witnesses were unequivocal in their view that the Grievant targeted them because they are Hispanic.

The Grievant also claims that retiree Libbie Fairchild lied, IA Investigator Soldo lied, Attorney Ivy lied, Sergeant Juell lied, Sergeant Chris George lied, Sergeant Kjorstad lied, Captain Ben Anderson "flat out lied," Captain Rob Stock "flat out lied," and Chief Scott Knight lied. However, the evidence shows that in regard to the Grievant's claim that these individuals lied, it was the Grievant who lied under Garrity in his statements to Ms. Soldo during her IA investigation.

CPD General Order 14, Conduct, Section 14.2.2, Responding to Questions, requires a Police Officer to "respond fully and truthfully to all questions regarding the performance of their

official duties." The Grievant falsely stated he did not tell Captains Anderson and Stock that he was personally responsible for sending over 100 illegal immigrants back to Mexico, he falsely stated that Captain Anderson knew he was conducting stationary patrol at the entrances and exits of Riverview and Brandondale mobile home parks, he falsely denied sending a blind copy of his August 25, 2014 e-mail to other Police Officers, he falsely claimed it took him 6 hours to make 11 stops on August 24, 2014, when it was only two and one-half hours. He falsely claimed he was in the Riverview mobile home park (in a marked squad) because of a tip about drugs when the Drug Information Report was dated July 23, 2014, which was 10 days after he began his stationary patrol at the entrances and exits of Riverview. (Union Exhibit #25).

There is no reason for any of the City witnesses to lie during their testimony at the arbitration hearing. To believe the Grievant, and sustain his grievance, requires a finding that these 14 individuals lied under oath. In other words, the Arbitrator would need to establish that all 14 individuals "conspired" to get the Grievant terminated. There was no evidence of any conspiracy theory by any of these 14 witnesses. To the contrary, the irony of this case is that the Grievant engaged in the appearance of and racial profiling during the relevant time period on his own volition. The Grievant decided

on his own that he was going to "get out of his funk" even though he was never considered to be in a "funk." There is no evidence that anyone on the CPD command staff or his fellow Police Officers stated, or even implied, that his policing was inadequate, incompetent or lacking in the number of citations. Therefore, the Grievant had no justifiable reason to engage in the appearance of and racial profiling during the relevant time period. The harm caused to the Grievant by his actions and words were self-imposed and self-inflicted and were not caused by any of the 14 witnesses lying under oath "to get him fired." The Grievant was his own worst enemy and caused his own demise.

A Police Officer is "granted special powers" and is held out as someone "the public can trust." City of Brooklyn Center v. Law Enforcement Labor Services, Inc., 635 N.W.2d 236, 244 (Minn. Ct. App. 2001), rev. denied (Dec. 11, 2001). Police Officers are held to a higher standard of conduct than other public employees. This stems in part from the oath that Police Officers take to protect the public they serve. The public entrusts the safety and security of lives and property to the protection of Police Officers. In turn, Police Officers are expected to conduct themselves in an exemplary manner adhering to the regulations promulgated by the CPD. The CPD badge and uniform worn by all Police Officers are symbols of the public's faith and trust, and Officers must conduct themselves in such a

manner to be a role model to all citizens by adhering to the CPD General Orders and the state statute.

The Arbitrator knows that "good cops" who have excellent work records sometime make one or more bad decisions, which justifiably results in discipline, including discharge, for just cause. No one disputes that the Grievant was an excellent Police Officer for many years before engaging in his unlawful patrol activities during the relevant time period. The fact that he was a good Police Officer, however, does not exonerate him from punishment for what he did during the relevant time period.

Is the Grievant a racist? The answer is "NO." Did the Grievant engage in the appearance of and racial profiling during the relevant time period? The answer is "YES." The Grievant unfortunately made a serious error in judgment resulting in the appearance of and racial profiling during the relevant time period. His actions cannot simply be ignored or excused because he was a "good cop" before the relevant time period; to do so would constitute ignoring CPD General Orders and the state statute prohibiting the appearance of and racial profiling. The Grievant engaged in patrol activity resulting in the unauthorized and unlawful targeting of Hispanic drivers in violation of CPD General Orders and the state statute. His conduct brought discredit to himself and the CPD and detracted

from the respect and confidence of the community that is essential to law enforcement effectiveness.

The Grievant also provided untruthful answers during his Garrity interview in violation of CPD General Orders. If a Police Officer is not honest and truthful in his dealings, the integrity and honesty of the Officer will forever be called into question. The untruthfulness of a Police Officer is so egregious that it is destructive to a continuing employment relationship. In fact, the Grievant is Giglio-impaired and after testifying that virtually every member of the Police Department command staff lied at the arbitration hearing, there is simply no way the Grievant can ever return to the CPD.

Based upon the foregoing, the City had just cause pursuant to Section 10.1 of the Collective Bargaining Agreement to discharge the Grievant for violating CPD General Order, Section 38.2, Minnesota Statutes, Section 626.8471, Subdivision 2 and CPD General Order, Section 14.2.2.

AWARD

The grievance and all requested remedies are hereby denied.

Richard John Miller

Dated February 19, 2016, at Maple Grove, Minnesota.