

MINNEAPOLIS

# Fired Minnesota officers have a proven career saver: arbitration

Killing of George Floyd has prompted renewed scrutiny of Minnesota's system for disciplining police officers.

By Jennifer Bjorhus Star Tribune | JUNE 21, 2020 — 7:41AM

One Minnesota officer was fired for kicking an unarmed suspect who was already on the ground being attacked by a police dog.

Another was fired for repeatedly punching a handcuffed, intoxicated man in the face.

A third was fired after failing to write up nearly four dozen cases, copying a judge's signature onto search warrants and lying during the investigation.

They all got their jobs back, gun and badge intact.

The killing of George Floyd by a Minneapolis police officer triggered rage and a fresh wave of resolve to reform policing in the United States. It has also prompted renewed scrutiny of Minnesota's system for disciplining police officers, one that sets the bar high for firing officers for misconduct.

More than 80 police officers across Minnesota were fired and fought their discharge in arbitration over the past 20 years. About half got their jobs back, according to a Star Tribune analysis of decisions logged with the Minnesota Bureau of Mediation Services.

The true figure could be slightly higher. Minnesota's public records laws prohibit releasing any information at all when arbitrators overturn a decision to fire a cop without imposing any type of discipline. Such total exonerations, while uncommon, are erased from public record.

The arbitration records include 10 cases involving Minneapolis police officers. Eight of them got their jobs back — one of them twice.

Although the Minneapolis Police Department quickly fired the four officers involved in Floyd's death, it doesn't typically fire many officers. Assistant Chief Mike Kjos said there are more separations than arbitration records indicate. Some cases never go to arbitration, and some are negotiated and classified as resignations or retirements. Plus, the department can't make a termination public until the grievance process has played out.

The fact that firing an officer could end up in arbitration — and be reversed — weighs on decisions to officially terminate, Kjos said.

At a June 10 news conference announcing his withdrawal from contract negotiations with the Police Officers Federation of Minneapolis, Chief Medaria Arradondo noted the discipline and arbitration process as areas needing reform.

"There is nothing more debilitating to a chief from an employment matter perspective, than when you have grounds to terminate an officer for misconduct, and you're dealing with a third-party mechanism that allows for that employee to not only be back on your department, but to be patrolling in your communities," Arradondo said.

He repeated that Thursday at a news conference with Mayor Jacob Frey and several other elected officials from around the Twin Cities. If the Legislature is serious about making changes, they said, it will tackle arbitration.

Police reform efforts, however, collapsed at the Legislature Saturday as the special session ended without the Democrat-controlled House and Republican-controlled Senate finding middle ground on those issues.



RICHARD TSONG-TAATARII — STAR TRIBUNE

Minneapolis Police Chief Medaria Arradondo favors a DFL bill seeking the change the arbitration process for fired officers.

Rep. Michael Howard, DFL-Richfield, who authored the House arbitration reform bill, blamed the Senate: "Given the importance of this moment and with the world watching, it is deeply disappointing that the Senate chose to ignore Minnesotans crying out for change and instead walk away."

### **Obstacle to accountability**

The Bureau of Mediation Services says police officers win their jobs back at roughly the same rate as other public-sector employees.

Veteran arbitrator Laura Cooper, a retired University of Minnesota labor law professor, said arbitration is not a monolithic thing. It's a creature of agreement that can be altered. If employers don't like the discretion arbitrators have, they should change their labor union contracts, she said, to require specific consequences for specific violations of performance standards.

The process is designed to protect union employees from capricious decisions by employers, with a "just cause" standard for termination that has been universally accepted in collective-bargaining agreements, said Cooper and labor unions. Arbitrators are neutral and look just at the facts, they say.

Arbitration numbers capture only a fraction of the Minnesota officers fired each year, according to Law Enforcement Labor Services, the state's largest law enforcement union. Only the most difficult cases end up in arbitration, it says, and it's unfair to use them to judge police discipline. If law enforcement departments are losing cases, they need to look at how they're handling their discipline, said Sean Gormley, the union's executive director.

Police chiefs have decried arbitration as a major obstacle to police accountability. The high chance that a fired officer will be back in uniform undercuts the entire disciplinary system, said Chuck Wexler, executive director of the Police Executive Research Forum, a Washington, D.C., think tank.

In Minneapolis, some officers have gotten their jobs back not once, but twice.

Jason Andersen was fired in 2009 for a misdemeanor domestic assault charge that was later dismissed. An arbitrator ordered him reinstated after concluding there wasn't enough evidence the assault occurred.

He was fired again in 2010 after allegedly kicking a teen in the head and being untruthful about it during an investigation. An arbitrator ordered him reinstated again after concluding that Andersen, who told investigators he couldn't recall the details but knew he did not kick the teen in the head or face, could not be expected to remember an event from a year earlier without seeing his report on it, which he was not allowed to see.

Andersen was not fired, however, for shooting and killing Fong Lee, a teen who was running from police in 2006. He was cleared of criminal wrongdoing and in a wrongful-death lawsuit after a federal jury found he used reasonable force. He's now the MPD's chaplain coordinator.

Most recently, an arbitrator last fall overturned Arradondo's decision to fire Officer Peter Brazeau, who had repeatedly punched a belligerent drunk man in the face as the man lay handcuffed on his back.

The arbitrator agreed that Brazeau violated the use-of-force policy but reduced his discipline to an 80-hour suspension. According to the decision, the reason was that police leadership had enough confidence in Brazeau to appoint him a training officer while the matter was churning through the discipline process, and also because of the MPD's "lack of specific training as to how to deal with a handcuffed individual who continues to kick, flail and resist."

An MPD spokesman said neither Andersen nor Brazeau could comment for this story.

### **Reforms in play**

The House arbitration reform sought to change the way arbitrators are chosen for police misconduct disputes. It called for an arbitrator to be automatically assigned from a roster of specialists appointed by the governor.

Currently, the employer and union take turns striking an arbitrator from a list of seven as either too pro-employer or too pro-employee, until only one remains. Critics say that creates an incentive for arbitrators to maintain a 50-50 record. Employers and unions typically split the cost of an arbitrator.

Testifying recently at the State Capitol, Coon Rapids Police Chief Brad Wise discussed the effects of having discipline overturned.

“There’s nothing worse, in my view, for an organization than to lose an arbitration,” Wise testified. “I think it creates distrust within the workplace. Frankly, it saps the confidence of a police leader. And it makes police leaders be reluctant to even let cases go to arbitration for fear of losing them.”

Andy Skoogman, executive director of the Minnesota Chiefs of Police Association, called Howard’s measure a step in the right direction. His group wants all police officer termination cases heard by an administrative law judge.

The legislative push followed unsuccessful court challenges to arbitrators’ decisions.

The city of Richfield dug in its heels after its police chief fired an officer in 2016 after he verbally attacked a Somali teen and smacked him on the head. Among other things, Nate Kinsey failed to report his use of force as required. An arbitrator concluded Kinsey’s smack was not excessive and ordered him reinstated, cutting the discipline to a three-shift suspension and full back pay.

The Minnesota Supreme Court last year fully backed the arbitrator’s decision; Kinsey is back on the Richfield force.

Duluth, too, lost its challenge to an arbitrator’s decision to reinstate an officer who dragged an intoxicated, handcuffed man 100 feet. In December, the state Supreme Court denied its petition for review.

### **Improving accountability**

Cooper, the arbitrator, said she’d be “shocked” if any arbitrators were tracking their mix of decisions in the manner the chiefs association suggests.

“I think it’s scapegoating,” she said. “Ninety to 95% of the time if you actually read the decision, it makes perfect sense.”

Arbitrators work hard, she said, to weigh multiple factors to determine whether there was just cause for termination. The most common reason (<http://www.documentcloud.org/documents/6952876-ARTICLE-Tyler-Adams-Article-ABAJLEL-With-Cover-6.html>), she said, is that the investigation was not thorough, they didn’t properly notify the officer the behavior was wrong, or they imposed discipline that differed from what other officers received in similar circumstances.

In her mind, preventing excessive-force misconduct is a more effective way to improve accountability, she said. That means clear rules, better training and strong supervision.

Said Cooper: “I want a system that stops killing people unjustly.”