

Arbitration

LELS (Mathew Aish)/Columbia Heights Police Department

Grievance Arbitration Between: BMS Case No.: **20 PA-1575**

Columbia Heights Police Dept. (Employer)

and

Law Enforcement Labor Services Inc. (LELS)

Mathew Aish (Grievant)

REPRESENTATION

Representing Columbia Heights Police Department

Joan Quade, Attorney

BARNA, GUZY & STEFFEN, LTD.

Representing Mathew Aish:

Renee Zachman, Attorney

Mark Schneider, Attorney

Law Enforcement Labor Services

ISSUE

Did the employer have Just Cause to Terminate Mathew Aish? If not, what is the appropriate Remedy?

INTRODUCTION

Mathew Aish was a police officer in Columbia Heights hired in 1999 and terminated on January 15, 2020. Law Enforcement Labor Services responded to the termination by filing a step one grievance on January 27, 2020. The termination stems primarily from an incident that occurred on October 27, 2019 in which the grievant, Mathew Aish, responded to a dispatch call regarding a driver operating a vehicle recklessly on city streets in

Columbia Heights and Fridley. The description relayed by dispatch was that of a white Taurus driving at speeds up to 80 miles per hour and traveling north in south bound lanes of traffic.

The concerns raised by the City leading to their decision to terminate revolve around the follow up reporting of this incident by Mathew Aish including concerns of truthfulness, accuracy and complying with a direct order to activate body worn camera at all times when engaging with non-departmental personnel. This direct order came about as a result of a 2006 incident in which Mr. Aish had falsely represented the sobriety test of another police officer from a neighboring jurisdiction. Due to the dishonesty involved in that event Mr. Aish was determined, by the Anoka County Attorney's Office, to be Brady impaired. As result of this designation the City is compelled to reveal the issues of Aish's dishonesty to defense council when Mr. Aish is involved in the prosecution of a crime. As a result of the 2006 incident the City imposed a requirement that Mr. Aish activate his body worn camera whenever interacting with non-departmental personnel in an effort to diminish credibility questions that would likely arise at subsequent criminal proceedings that involved Mr. Aish testifying on behalf of the City and to create a process that would enable the City to keep Mr. Aish employed.

An Arbitration hearing was held at the Columbia Heights Police Department offices on August 17 to 19, 2020.

FACTS

Mathew Aish was terminated on January 15, 2020 after 20 plus years of services as a police officer for the city of Columbia Heights. The incident that is largely the basis for this termination occurred at approximately 2:30 PM that afternoon in which a Columbia Heights Dispatcher announced that there was a driver proceeding recklessly on the streets of Columbia Heights. Two Columbia Heights police officers, Officer Joseph Pikala and Officer Mathew Aish, responded separately to the radio call. Due to the positioning of their squads it was Aish who was able first to get eyes on the reckless driver and position his squad behind the driver. Aish provided the radio contact after beginning to trail the reckless driver. He explained that he was traveling north on Main street crossing highway 694. This triggered the movement and positioning of two Fridley squads, one driven by

Officer Elasky and the other driven by an officer in training, Officer Bulman accompanied in his squad by Officer Fetrow. Both Fridley squads were positioned on Main Street facing south and waited as Aish following the suspect drove by them northbound. Once the reckless driver reached the two Fridley squads the Fridley officers turned on sirens, pulled a U turn and got in behind Aish. Almost immediately after the Fridley Squads completed their U turns the reckless driver ran a stop sign and Aish followed right behind through that stop sign. Aish announced that the driver was speeding up and said “This is going to be a pursuit and I am getting out.” At that time Aish pulled over to the curb and the Two Fridley officers fell in behind the reckless driver. Video footage from the rear of Officer Elasky’s car showed that once the Fridley squads passed Aish he pulled back out into traffic and began to follow behind the Fridley squads. It was clear in the rear camera video that once back in the traffic Aish turned his light back on and began to follow. GPS systems installed on the Fridley squads also recorded the speed the cars were traveling indicating that they were moving as fast as 58 mph. The front view camera on Bulman’s car also clearly shows the reckless driver turning left and running an additional stop sign and then turning right onto a residential street. It was at this time Fridley officers talked about conducting a PIT maneuver on the reckless driver. Bulman who was first behind the reckless driver was unable to do the PIT as Bulman was a trainee and not qualified to initiate a PIT. Elasky said he would PIT and proceeded to pass Bulman and performed the PIT disabling the White Taurus. Immediately behind Elasky were Bulman and Fetrow in a Fridley squad and right behind them, just seconds behind Elasky was Aish. All the officers, including Aish, ran up to the disabled car with guns drawn. Fetrow can be heard clearly screaming get your hands up. The driver was immediately pulled from his car and apprehended.

Once the driver was cuffed he was immediately was put in a Fridley squad car. At this point body cameras caught the debriefing that occurred amongst the officers. It is clear that shortly after the offender is place in the Fridley squad Aish turns off his body camera. Elasky continues to run his body camera and it is clear on his camera that Aish asks in a quiet tone, “Are you on?” referring to body camera. Elasky say “yes” and apologizes and explains that he has to stay on.

A few hours later Aish submits an incident report of the event referring the action as “Reckless driver complaint/ assist to Fridley PD”. The report does not refer to the action as a pursuit and thus not prompting the required state documentation of a pursuit. The city takes issue with characterizing this as an assist to another department and concludes that under Columbia Heights policy as well as State law this should have been filed as a Pursuit report and a state report submitted. Statements within the report that the City takes issue with are as follows:

- 1) As the Suspect passed one Fridley squad pulled over at the Home Depot the suspect began to accelerate again. He had been failing to pull over for my emergency lights and sirens for several blocks now, I had been directly behind him. *At this point I advised dispatch I was not going to continue and pulled over and let the Fridley squads take over. I observed as the driver continued to accelerate northbound on Main Street as he approached the stop sign at 57th Ave. I observed the suspect blow through the stop sign and intersection without making any attempt to slow or stop* (Emphasis added)
- 2) I continued to follow Fridley squads as they continued to try and get on the suspect to pull over and stop. *I followed at the posted speed limit* (Emphasis Added).
- 3) *I turned northbound on Starlight and observed the Fridley Officers PIT the Suspect vehicle. The Fridley officers were successful with the PIT and stopped the suspect at Starlight and Trinity. I activated my emergency lights and assisted taking the suspect into custody* (Emphasis added).

The City claims each of the above identified statements in the report are false and intentionally written that way to minimize Aish’s involvement in the event and thus making the event not appear as though it was a pursuit. If not a determined to be a pursuit then less reporting required and therefore no issue for failure to properly document. The video footage from Fridley squads confirms the inaccuracies in Aish’s report. Fridley squad footage and corresponding sound recording clearly shows Aish following suspect blowing through the stop sign at 57th Ave and stating suspect is accelerating and then stating he is pulling out. Secondly, the reports states he was following at the posted speed. The Fridley squad GPS computers record the vehicle speed. The computer

vehicle recorded speeds are contemporaneous with the video and show speeds of as much as 58 mph as the Fridley squads pursued and at the same time also showed Aish following right behind. In addition, the video also shows Aish arriving within just a few seconds of the completed PIT once again indicating he would have had to be moving as fast as the speeds of the recorded for the Fridley squads. Finally Aish reported that he did not turn on his emergency lights until he was on Starlight Street and after the PIT was completed. The rear camera view from Officer Elasky's car shows he actually turned on his emergency lights shortly after the Fridley squads passed him on Main Street and kept them on while following the Fridley squads.

In addition to vehicle video footage body camera footage was also presented at the hearing. The body camera footage from Officer Aish was turned on as Aish arrived at the scene where the suspect was apprehended. Aish's body camera remained on until the suspect was placed in the Fridley squad at which point he turned off his camera. Body camera video of Elasky remained on after Aish had turned his off. It is clear in Elasky's video that Aish walks up to him and asks in a low voice if Elasky is "on" understood to mean is your body camera on to which Elasky apologizes and says yes and indicates he is required to have it on. Elasky body camera reveals that Aish did continue to have conversations with two Fridley officers about the events leading to the PIT that this discussion was not recorded on Aish's body-worn camera. Evidence was also presented that Aish had a follow up phone conversation with Officer Fetrow before the end of his shift that night, which was not recorded. The testimony of Aish indicated that he apologized about "dumping" the situation back to Fridley but explained that he was feeling like there was a target on his back and he was not comfortable with his not knowing the Fridley streets like the Fridley officers did.

Within an hour and a half of this incident the previously referenced report was written and submitted. The report indicated it was an assist of another department never referring to the situation as a pursuit. This report was later reviewed and approved by Columbia Heights Sargent Fischer in which he did not identify any issues or concerns with the report.

The first identified concern regarding this incident came about by coincidence when Columbia Heights police captain, Lenny Austin, ran into Sergeant Kevin Titus, of the Fridley police, who was at the Columbia Heights

police department looking for body camera footage of Aish as a follow up to the report he was writing regarding the pursuit on the 27th of October. Austin was not aware of a pursuit that involved his department as Aish's report characterized the event as an assist to another police Department. This sent up a red flag for Austin and set the investigation in motion. Austin's initial review of Aish's report identified a peculiar set of facts, Fridley reported the event as pursuit but Aish's report indicated that he was following the suspect at the posted speed, it was this incongruous fact that raised a red flag. The ensuing investigation identified the previously mentioned inconsistency in Aish's report and several other concerns.

Aish has had a history involving serious issues with honesty to the point where the Anoka County Attorney has deemed him to be Brady impaired. Brady impairment is a label placed on police officers that have had an incident of dishonesty in their work history as a police officer. If a police officer is classified as Brady impaired the prosecution is required to reveal to the defense the honesty issues associated with the police officer which can impact that officer's credibility and thus their effectiveness as a witness in criminal prosecution. The incident leading to Aish's Brady impairment designation dates back to 2006 yet the designation as Brady impaired was not imposed until 2017.

The 2006 incident involved a Minneapolis police officer who had been arrested the night before and had his service revolver confiscated by the Columbia Heights police. He returned to the Columbia Heights police department the following morning to get his gun returned. He was acquainted with Officer Aish through their Minneapolis Police Academy training course years earlier. When he arrived to get his gun returned Corporal Bonesteel informed Aish not to give the Minneapolis officer his revolver if he did not register a 0.0 on the portable breath test. Aish went outside to administer the portable breath test (BPT) on the officer and then reported back to Bonesteel that the officer was Ok to drive and that he had blown a .04. A few minutes later he reported to Captain Lenny Austin that the Minneapolis officer blew a .06. Bonesteel asked Aish to return to give him the (BPT). Bonesteel knowing that the device saves the most recent test took a look at the BPT and discovered that the officer actually blew a .097 exceeding the legal limit to drive and not what Aish had reported to both him and to the Captain. The department took action based on this dishonesty and gave Aish a 13 day

suspension. However, no determination was made that Aish's dishonesty warranted the designation of Brady impaired.

The Brady impairment designation came about in 2017 when a Public Defender, responding to concerns expressed by his client, regarding the treatment he received from Mr. Aish when he was arrested prompted the Public Defender to request a look at Mr. Aish's Disciplinary file. It was the Public Defender, upon discovering the 2006 incident of dishonesty, sought to have a Brady impairment designation applied to Mr. Aish. The Anoka County Attorney reviewed the claim and determined that Aish was indeed Brady impaired as a result of the 2006 infraction.

The city was at that point of trying to determine if Mr. Aish could still effectively continue with the Columbia Heights police force or would this impairment make him effectively useless when testifying for the prosecution. The City decided not to terminate Mr. Aish but rather imposed a specific order directing his performance going forward. On May 31, 2017 the city imposed upon Mr. Aish the following order:

Until further notice, you will record all interactions with non-departmental personnel, regardless of how you come in contact with them, with your department issued body-worn camera while on duty. You will also record all phone conversations you have with witnesses, suspects, citizens and non-departmental personnel.

Further instances involving untruthfulness or ethical violations; failure to follow the order stated above or failure to follow departmental general orders or directives could result in disciplinary action up to and including termination.

It was this order, going forward, that would govern how Officer Aish would go about performing his work as a Columbia Heights Police Officer and it was the City's determination that Aish's lack of compliance with this order that led in large part to the City's decision to terminate Officer Aish.

As a result of the concerns raised by Aish's reporting of this incident the department conducted an audit of Aish's reporting for the months leading up to this event and determined that there had been two additional reporting inconsistencies by Aish in violation of Columbia Heights policies. Both involved

domestic situations, one on September 5, 2019 and once on September 9, 2019, in which the city claims, per policy, written reports were required for but Aish only documented the situations with notes entered into the CAD.

On July 12, of 2017, less than 2 months from the date this order was imposed, the grievant received a written warning, in part, for failing to comply with the May 31, 2017 written order relating to activating body-worn camera. This event involved a domestic dispute in which Mr. Aish either failed to activate the camera when gathering information from a domestic abuse complainant or failed to properly label his body-worn camera video evidence so it would be properly retained and could be used by the prosecution at a later date. The written reprimand imposed also included a warning to Aish that “Further violations of these or other policies could lead to more severe discipline including written reprimand, suspension or termination.”

RELEVANT POLICIES

101:13 Knowledge Policies, Procedures, Statutes and Ordinances

Whether on duty or off duty, all employees shall establish and maintain a working knowledge of departmental and divisional policies and procedures, and the relevant statutes and ordinances where applicable. When required, all employees shall take appropriate action. In the event of improper action or breach of discipline, it shall be presumed that the employee was familiar with the law, ordinance, rule, policy, or order in question.

500:1-5 Reports

Employees shall complete and submit all necessary reports, consistent with divisional policy, before going off duty, or at the discretion of the shift supervisor. Reports submitted by employees shall be truthful. No employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information.

500:3-5 Unsatisfactory Performance

Employees shall maintain sufficient competency to effectively and efficiently perform the duties and responsibilities of their positions.

Incompetence and unsatisfactory performance may include, but not be limited to:

- *A lack of knowledge of the application of laws required to be enforced;*
- *An unwillingness or inability to perform assigned tasks;*
- *A failure to conform to work standards established for the employee's rank, grade, or position;*
- *Neglect of duty;*
- *A failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention;*
- *Absence without leave; or*
- *A written record of repeated infractions of rules, regulations, directives, or orders of the Department, and repeated poor evaluations.*

500:3-9 Truthfulness

Employees shall be truthful whether under oath or not, except when deception is used to accomplish a law enforcement purpose. Employees shall not make false statements in conjunction with official duties or investigations.

500:5-3 Requests for Assistance

When any person requests assistance or advice, or makes a complaint or report either by telephone or in person, all pertinent information shall be obtained in an official and courteous manner. All such requests shall be acted upon consistent with established Department procedures.

500:6-4 Insubordination

Employees shall not refuse or fail to obey a lawful order given by a supervisor. Ridiculing a supervisor, or his/her orders, whether in or out of their presence, constitutes insubordination. Disrespectful, rebellious, or abusive language or gestures toward a supervisor is insubordination.

603:01:01 Pursuit

The attempt to stop another vehicle by a police vehicle when the emergency lights and siren have been activated and the subject vehicle fails to stop as required by law.

603:06 Reporting and Review

A. *At the conclusion of any pursuit initiated or participated in, the primary officer in the pursuit - or if the primary officer is unable to complete the report, the supervisor or senior officer on duty - must complete a report. This information may be incorporated into any other report prepared by the primary officer the report shall minimally include:*

1. *The reason for the pursuit, including specifically what information the officer knew at the time the pursuit began.*
2. *The route of the pursuit as best can be recalled*
3. *Traffic conditions, presence and location of citizens.*
4. *Any violations the driver of the fleeing vehicle committed during the pursuit.*
5. *Other Columbia Heights squads involved and any other agencies.*
6. *Damage to any vehicle, property, and/or injury to any person.*
7. *Supervisor on duty at time of the pursuit.*
8. *Road and weather conditions.*
9. *Time pursuit began and ended.*
10. *How, where, and why the pursuit concluded or was abandoned.*
11. *Charges filed, if any.*

B. *The primary officer must also complete the Minnesota Pursuit Reporting Form as required by Statute §626.5531. If the primary officer is unable to complete this form, the form shall be filled out by the supervisor or senior officer on duty.*

C. *The Pursuit will be reviewed and critiqued by a Captain, and will include the supervisor, and officers involved as soon after the incident as possible. The Captain will submit a summary of the critique and applicable reports will be forwarded to the Chief of Police. The critique will be done and applicable reports submitted for administrative uses, identification of training needs, and/or policy modification.*

EMPLOYER'S ARGUMENT

The grievant has a history of deceptive and untruthful behavior that has clearly been documented in the past and was clearly evident in the events leading to this termination. The evidence identifying the grievant's untruthfulness in this case cannot be refuted as it was collected from unbiased officer worn-body cameras, Squad car videos, and computer generated data from squad on board computers. This information is reinforced by direct testimony of witnesses and indisputable common sense. The grievant's past dishonesty requires no more evidence than the unequivocal fact that he was determined to be Brady Impaired by the Anoka County Attorney's office in 2017. The designation of Brady Impairment is applied when a police officer has been proven to have engaged in acts of dishonesty and thus their status of Brady impaired must be identified to criminal defense attorneys enabling an attack on the credibility of that officers testimony.

Officer Aish was disciplined in 2006, receiving a 13 day suspension, for lying to both his supervisor and to the Captain of the Columbia Heights Police Department regarding a breathalyzer test he performed on a fellow officer from the Minneapolis Police Department. He was told not to return a confiscated service revolver to that officer if the officer failed the breathalyzer test. Aish reported back to his supervisor that the officer was .04 and reported to the Captain that he was .06 but in actuality the test results were a .097 which clearly would not warrant return of the revolver. The PBT (Portable Breathalyzer Test) stored the most recent test conducted and it was from that that Aish was caught being untruthful to his superiors.

The Brady label was not applied in 2006 however, but rather came about serendipitously when a public defender requested Aish's disciplinary file in response to concerns that defense had regarding the way Aish had treated their client. It was that inquiry that brought Aish's 2006 discipline into focus and resulted in the Anoka County Attorney's determination that Aish was Brady impaired.

The Columbia Heights Police Department at that point had to determine what the impact would be on the department as a result of this Brady determination and could Aish continue to work for the department.

The City decided not to terminate Aish, but rather attempted to deal with the very serious credibility issue Aish now presented by imposing the following order:

Until further notice, you will record all interactions with non-departmental personnel, regardless of how you come in contact with them, with your department issued body-worn camera while on duty. You will also record all phone conversations you have with witnesses, suspects, citizens and non-departmental personnel.

Further instances involving untruthfulness or ethical violations; failure to follow the order stated above or failure to follow departmental general orders or directives could result in disciplinary action up to and including termination.

The department viewed this order as critical for Aish's continued employment and that this order was in effect a "Last Chance Agreement" for Mr. Aish.

Aish's clear violation of this order and his dishonesty was readily evidenced through an investigation that included a review of Aish's body-worn camera, Fridley officer's body camera, Fridley squad cameras, on board computers, and dispatch recordings. This data revealed that Mr. Aish, turned off his body camera while continuing to discuss the pursuit with Fridley officers and in three different places in his subsequent reporting of the event revealed that he intentionally misrepresented the facts of the pursuit in an effort to diminish the severity of the event and his involvement. The reason he did this was to justify reporting it as an "Assist to another police department" rather than properly reporting the events as a pursuit which it certainly was under Columbia Heights policy and state law. By minimizing the event and documenting it as an "Assist to another Department" it would severely diminish the scrutiny the report would be subject to by leadership in the Columbia Height Police Department.

Following are three excerpts taken from Aish's report which are irrefutable misrepresentations of the actual facts:

- 1) As the Suspect passed one Fridley squad pulled over at the Home Depot the suspect began to accelerate again. He had been failing to pull over for my emergency lights and sirens for several blocks now, I had been directly behind him. *At this point I advised dispatch I was not going to continue and pulled over and*

let the Fridley squads take over. I observed as the driver continued to accelerate northbound on Main Street as he approached the stop sign at 57th Ave. I observed the suspect blow through the stop sign and intersection without making any attempt to slow or stop (Emphasis added).

The camera squad video from Fridley officer Bulman's car clearly shows that Aish did not pull over prior to the suspect blowing through the stop sign at 57th Ave. rather the video is clear that Aish follows suspect right through the stop sign and then verbalizes that suspect is picking up speed and then acknowledges that this is going to be a pursuit and I am getting out.

The second misrepresentation in the report is his incorrect documenting of his speed. Stating:

- 2) "I continued to follow Fridley squads as they continued to try and get on the suspect to pull over and stop. *I followed at the posted speed limit.*" (Emphasis added)

Once again this is not true. The Fridley squad cars are equipped with a computer GPS system that tracks the speed of the vehicle and is shown contemporaneously with the squad video which clearly reveals that Bulman's vehicle was reaching speeds of 58 miles per hour nearly two time the posted speed limit leading up to the PIT maneuver. At the same time the Elasky rear squad video also shows Aish trailing the two Fridley vehicles but maintaining the same distance behind indicating that his vehicle would have to be traveling at the roughly the same speed. Finally, the squad video at the scene of the PIT maneuver shows Aish arriving within just a couple of seconds after Bulman's car arrives confirming that Aish would have necessarily been traveling at up to 58 miles per hour in order to arrive immediately after the Fridley squads.

Aish does not contradict this undeniable video evidence rather concludes that he was mistaken. He said he was so focused on the work at hand that he did not look down to track his speed and it just felt like they were moving at a slow pace. First, officers are trained to keep track of this type of information and an officer of 20 years should certainly be able to track his speed in this situation. In fact if, as he claimed, this was a very slow following there was nothing that should have been that adrenalin producing that should have so effected his ability to recognize or track the speed at which he was traveling. In addition, if he was not sure of his speed he should not be claiming he was traveling at the posted speed limit he should have explained that he was not sure.

In addition Aish testified that he was not sure exactly what the speed limit was on the streets he was traveling. Also, his claim defies common sense. We all have driven automobiles and we all can tell when we are traveling at a high rate of speed. Without tracking his speed he should certainly have known he was not moving at the posted speed. His claim does not seem like a mistake rather an intentional misrepresentation.

The third misrepresentation in his report is that he stated:

- 3) *I turned northbound on Starlight and observed the Fridley Officers PIT the Suspect vehicle. The Fridley officers were successful with the PIT and stopped the suspect at Starlight and Trinity. I activated my emergency lights and assisted taking the suspect into custody* (Emphasis added).

Once again the misrepresentation of the timing of Aish activating his emergency lights is also captured on Fridley squad video. While Aish claimed he did not activate his emergency lights until he arrived at the scene, after the PIT was completed, the Fridley squad rear camera video irrefutably proves otherwise. Rear camera video from Elasky's squad shows that after the Fridley squads passed Aish's squad which had been pulled over to the curb Aish then pulls away from the curb immediately after the Fridley squads pass him. The video also clearly shows that Aish activates his emergency lights shortly after pulling out which was well before the PIT occurred as documented by Aish.

All three of these misrepresentations tend to downplay the seriousness of the event, the role in which Aish played in this process and the likelihood his portrayal of the facts would lead anyone to believe that he had been involved in a pursuit. Aish does not document the event as a pursuit and rather drafts a report labeling it as an "Assist" to another department to ensure the lower level of scrutiny by his supervisors. Originally, Aish's plan would have worked for him and the report would have gone unchallenged had it not been for the purely coincidental encounter between Chief Lenny Austin had with Fridley Police Sargent Titus when the two bumped into each other at the Columbia Heights police department in which Titus explained that he was seeking documentation of a pursuit. Austin found it troubling to hear that there was a Pursuit involving his department and he had not been made aware of

the “Pursuit.” It was only a result of this chance encounter that prompted the ensuing investigation of Aish leading ultimately his termination.

The Columbia Heights policies very clearly defines “Pursuit”

Columbia Heights policy

603:01:01 Pursuit

The attempt to stop another vehicle by a police vehicle when the emergency lights and siren have been activated and the subject vehicle fails to stop as required by law.

All of the elements of the policy have been met under the facts laid out. The Union however claimed that these facts failed to establish a pursuit. The union argues first that this was merely a failure to stop not a felony fleeing as the suspect never acknowledged or made any gesture indicating he was aware of Aish’s presence. Without such awareness by the suspect the Union concludes that this was not fleeing thus there was no violation of law as required by the policy. Neither under the policy nor under state law is there any requirement that the suspect make some gesture to indicate they know they are being followed.

The state law defines fleeing as follows:

“To increase speed, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means with intent to attempt to elude a peace officer following a signal given by the peace officer to the driver of a motor vehicle.”

Contrary to the Union’s claim, each element of the State’s definition of “Pursuit” has been met as well as meeting all the requirements the City’s Pursuit policy. While the objective evidence presented at the hearing clearly shows that a pursuit occurred it is equally clear that Aish’s misrepresentations in his report intentionally attempts to blur the fact that there was a fleeing. An element of fleeing is that the driver “Increases speed” thus Aish misrepresented that he was traveling at the speed limit. Fleeing also requires an evasive maneuver by the suspect thus Aish documents that he pulled out of the pursuit before the driver ran through the stop sign at 57th Ave. thus before the evasive maneuver occurred and that also was not true. In addition, he failed to document that he was traveling at nearly 2 times the speed limit which is also an

evasive maneuver. Finally he said he did not turn on his emergency lights until he arrived at the scene of the PIT once the suspect was apprehended. Also not true. He turned on his lights and kept them on the entire time he followed the Fridley officers pursuing suspect. His failure to document accurately as to when he activated his lights is another dishonest attempt to avoid any conclusion that Aish's actions met the Columbia Heights "Pursuit" policy which requires activating emergency lights.

While the Union claims the "Violation of the law" requirement in the Columbia Heights "Pursuit" policy is a requirement to have a fleeing as defined by state law there is no such reference to a fleeing requirement in the policy. The policy merely requires "Failure to stop *as required by law*" Minnesota law requires that vehicles pull over and stop on the side of the road when approached by a police vehicle with its lights and siren are activated. Minn. Stat. §§ 169.20, subd. 5; 169.011. The suspect did not do this thus his actions are a pursuit under the Columbia Heights policy, regardless of whether there was a fleeing and thus should have been reported as a pursuit.

The Pursuit reporting requirement of Columbia Heights policy 603:06 (See below) was also clearly violated when Aish failed to document the Pursuit according to the policy. Not only do his actions violate Columbia Heights policy they also violate Minnesota *Statute §626.5531* as all pursuits must be documented with the state.

Columbia Heights Policy 603:06 Reporting and Review

At the conclusion of any pursuit initiated or participated in, the primary officer in the pursuit - or if the primary officer is unable to complete the report, the supervisor or senior officer on duty - must complete a report. This information may be incorporated into any other report prepared by the primary officer the report shall minimally include: (Emphasis added)

1. *The reason for the pursuit, including specifically what information the officer knew at the time the pursuit began.*
2. *The route of the pursuit as best can be recalled*
3. *Traffic conditions, presence and location of citizens.*

4. *Any violations the driver of the fleeing vehicle committed during the pursuit.*
5. *Other Columbia Heights squads involved and any other agencies.*
6. *Damage to any vehicle, property, and/or injury to any person.*
7. *Supervisor on duty at time of the pursuit.*
8. *Road and weather conditions.*
9. *Time pursuit began and ended.*
10. *How, where, and why the pursuit concluded or was abandoned.*
11. *Charges filed, if any.*

B. The primary officer must also complete the Minnesota Pursuit Reporting Form as required by Statute §626.5531. If the primary officer is unable to complete this form, the form shall be filled out by the supervisor or senior officer on duty.

C. The Pursuit will be reviewed and critiqued by a Captain, and will include the supervisor, and officers involved as soon after the incident as possible. The Captain will submit a summary of the critique and applicable reports will be forwarded to the Chief of Police. The critique will be done and applicable reports submitted for administrative uses, identification of training needs, and/or policy modification.

Aish's actions were clearly insubordination as he violated a direct order regarding body-worn camera and phone call recordings. The order states:

Until further notice, you will record all interactions with non-departmental personnel, regardless of how you come in contact with them, with your department issued body-worn camera while on duty. You will also record all phone conversations you have with witnesses, suspects, citizens and non-departmental personnel.

A clear violation of this direct order is easily seen when reviewing Aish's body-worn camera which shows Aish turning off his camera once the suspect is apprehended. Other officers at the scene clearly continue to run their cameras and in fact Aish asks in a low voice to Officer Elasky "Are you on?" Elasky says "Yes" and apologizes. Further he explains that he has to keep his on. Even with all this Aish does not activate his camera while continuing to debrief about the event. A second violation of

this order occurs a few hours later as Aish phones Fridley Officer Fetrow, without recording it, and once again discusses the Pursuit and apologizes for his needing to get out of the pursuit.

In 2017 Aish believed he was going to be terminated as a result of his Brady impairment. The Department decided not to terminate but imposed this very clear and very strict order to record outside interactions. It was understood that this was a last chance for Aish to keep his job. Failing to comply, as indicted in the order, could cause his termination. He understood that he could be fired for non-compliance but that did not stop him. Aish claims that former Chief Nadeau, prior to retiring, had softened the adherence to the policy recognizing that under certain situations the recording was not required when interacting with other departments. The Union however chose not have Nadeau testify to such modifications and no written modifications of the order were presented at the hearing. Beyond that, here was a situation in which there was a high speed pursuit of a reckless driver in a residential area. Apprehension of the suspect followed a risky PIT maneuver which was followed by all officers at the scene, including Aish, pulled out their guns and forcefully removed the suspect from his car. Under no circumstances would this have ever led anyone to the conclusion that any follow up debriefing between the two police departments was the type of interaction that would not need to be captured by Aish under his 2017 order.

UNION'S ARGUMENT

The employer fails all sense of objectivity when analyzing the facts of this case and only interprets them only through a lens of a strong predisposition to view the grievant, Mathew Aish, as dishonest causing the employer to view as a lie any honest explainable mistakes. Clear evidence of the employer's effort to judge all the actions associated with this event in a light most unfavorable to Aish the employer, without seeking any clarification or confirmation from Officer Elasky, jumped to the conclusion that when Elasky touched his body-worn camera at the time Aish asked if he were "On" the employer wrongly concluded that Elasky was book marking this point on his video as it was a

suspicious question to be asked. The truth of this action was revealed through Elasky's testimony at the hearing revealing that it was an innocent reflex action Elasky had developed regarding his body-worn camera and in no way was evidence of his concern and his need to bookmark. Quite the opposite was the testimony of both Fetrow and Elasky in that they both explained that it is quite common for officers to ask if another is "On" but not for nefarious reasons but rather to know so they can prevent expressing themselves in a way they would rather not have captured on video.

Mathew Aish was a police officer in the Columbia Heights police department for over 20 years. In 2006 he was disciplined for his dishonesty and has learned the hard way from his mistake. Since that day Aish has never shied away from letting others, especially new officers, hear about his troubles in an effort to help them learn from his mistake as he has.

This was not a pursuit under the Columbia Heights Pursuit Policy and there was no fleeing with respect to Officer Aish under the state law.

The employer insists on an interpretation of "fleeing" and "pursuit" that defies logic. The employer maintains a position as to what is a pursuit that runs completely contrary to the opinions of their officers, Fridley officers, as well as the opinion of a recognized expert Peter Dahl.

Further, the employer fails to accept the logical interpretation of the facts surrounding the events on October 27, 2019 and rather insists on labeling these as acts of dishonesty worthy of termination. The employer takes this unrelenting position even in light of the expert testimony of Peter Dahl who provided a reasonable and logical explanation for Aish's documentation of the events of October 27, 2019 that does not include any acts of dishonesty on Aish's part. Mr. Dahl is currently an adjunct instructor at Dakota County Technical College teaching Law Enforcement Customized Training, including basic and advanced law enforcement including driving involving pursuit and related issues.

Columbia Heights pursuit policy reads as follows:

603:01:01 Pursuit

The attempt to stop another vehicle by a police vehicle when the emergency lights and siren have been activated and the subject vehicle fails to stop as required by law.

Expert witness Dahl carefully reviewed all the evidence including squad video and provided an expert opinion that within a reasonable degree of police certainty Aish had not participated in a pursuit. Under the policy there are three required elements.

- 1) Attempt to stop the vehicle
- 2) Police squad lights and siren must be on
- 3) Vehicle fails to stop as required by law.

Dahl testified that the third element, fails to stop as required by law, was not met under these facts. Dahl testified that **“Under the Law”** is clearly a reference to the state law relating to fleeing, Fleeing therefore requires an attempt by the suspect to “Elude a peace officer” and that was not present. Aish speeding up to get in position to follow the suspect is not a pursuit as was confirmed by the testimony of Fridley Officer Fetrow. A pursuit requires an attempt to elude the officer and that did not occur. The suspect never acknowledged the officers presence as per the testimony of Aish who said the driver never looked in rear mirror or in any other way gave any indication that he knew he was being followed. He was never focused on the police car behind him. Fridley Officers Fetrow and Elasky confirmed this saying they could see the driver’s face as he passed them on Main Street and testified that he had a “Fixed 1000-yard stare” indicating he in no way was aware of the police car behind him. Consequently, from the time Aish got behind the suspect there were no eluding maneuvers or even increased speed to suggest the driver was aware of the police officer much less trying to elude the peace officer. Once it appeared as though the suspect became aware of Aish. Officer Aish bowed out of the process acknowledging the situation stating to dispatch “This is going to be a pursuit, I am getting out.” Up until this point there was no fleeing therefore no “Violation of the law” thus the elements of Columbia Heights pursuit policy had not been met according to the expert testimony of Peter Dahl. Dahl continues by refuting the interpretation provided by the City in which the City claims that it is a violation of the law if a driver does not pull over for an emergency vehicle. Dahl explains that the law referenced by the employer was

not sufficient to qualify as a violation of law under the policy as it is not a criminal violation of the law to fail to pull over rather it is a petty misdemeanor which is not a crime.

Further, not only did Aish testify that he understood the Columbia Heights policy to require a fleeing for there to be a pursuit that was also the testimony of Columbia Heights officer Pikala.

Regarding the Employer's argument that pursuit elements were also met when Aish subsequently reenters the police action following behind the Fridley officers this is equally not supported by the evidence. Both Fridley officers Elasky and Fetrow clearly testified that Aish had removed himself and was not part of the pursuit upon his reentry. Both officers said this was a two car pursuit, meaning both Fridley squads and that Aish was just doing what a good officer would do under these circumstances and that is to continue to follow the action so he could provide back up if needed and help with any issues at the scene of the apprehension. He did not reenter to become part of the pursuit. Fetrow clearly testified that Aish had done a good job with this event and if it were not for him most likely they would have not been able to track the suspect and he likely would not have been apprehended.

Simple mistakes or inaccurate documentation of the facts was not an attempt to lie but rather a predictable outcome when officers do not have access to squad video or other electronic recording of events prior to writing reports as well as understanding the physical and psychological impacts these police events have on an officer.

The City failed to establish any reason why Mr. Aish would have wanted to downplay his role in the events of October 27, 2019 to the point he was willing to lie about the events. Clearly, Mr. Aish had to write his report based on his memory only, as there was no squad video available for him to review. Had such video recording been available he would have been able to review it prior to writing his report and thus the report would have been more accurate.

The testimony of Mr. Dahl clearly explained the impact, both physiological and psychological, upon an officer involved in this type of police action. Mr. Dahl testified that officers undergo physical and psychological stressors when dealing with a "slow to stop" or pre-pursuit vehicle. For instance, officers experience auditory exclusion and may miss radio traffic. Officers' visual cone changes by maintaining focus on the activity straight out in front of the squad. Mr. Dahl also testified credibly that speed is the most difficult thing for an officer to determine both pre-pursuit and during a pursuit since gross motor skills take over during that timeframe. In fact, Mr. Dahl testified that police officers are not trained to monitor speed in a situation such as was presented to Officer Aish on October 27th, 2019. They are taught not to look down; rather they are to scan, breathe, and maintain the visual cone during the following of a suspect vehicle. In addition, Mr. Dahl also provided credible testimony to provide context to Officer Aish's specific circumstances in that he was in "job survival mode" as a senior officer; thereby adding a layer of distraction and anxiety under the circumstances.

There was no insubordination as a result of Aish turning off body-worn camera upon the completion of apprehension of the suspect on October 27, 2019.

On October 27, 2019 Officer Aish clearly turns off his body-worn camera only after the police action was over and the suspect was apprehended and placed in a squad car. From the time Aish exited his squad until the police action was completed he had his camera on and recorded the events. Aish testified that he did not turn off his camera until after the police action was completed and there was no continuing reason to have the camera running. The relevant action had been captured on his camera and the situation was over.

The order reads as follows:

Until further notice, you will record all interactions with non-departmental personnel, regardless of how you come in contact with them, with your department issued body-worn camera while on duty. You will also record all phone conversations you have with witnesses, suspects, citizens and non-departmental personnel.

Aish turning off of his body-camera was in no way an act of defiance but was merely his understanding of the situation and that the need for his camera video was over once the suspect was in the squad car. While the language in the order seems cut and dried as to when the camera must be activated the circumstances over the past two years reveal a watering down of the requirement to activate every time he is interacting with non-departmental personnel. Aish credibly testified that he sought clarification of this order from former Police Chief Nadeau, and from this interaction Aish understood there were exceptions, including community events like "coffee with a cop," community gym nights, and other public interactions in which there was no law enforcement activity occurring. Further, Aish explained that the body worn camera has an outward facing, visible, bright-red light that turns on when the camera is recording. Aish testified that the body worn camera makes an audible beeping noise while it is recording. This feature allows those in the vicinity to recognize and understand the device is on and recording. Aish testified that he has been in the direct presence of his supervisors (including Chief Austin, Captain Markham, and Captain Johnston) during public interactions in which his body-worn camera was not recording, and that the absence of the bright red recording light and beeping noise would make this fact obvious. Even though Chief Austin, Captain Markham, and Captain Johnston were present during the hearing, none rebutted or challenged the accuracy of Aish's testimony. This is telling and supports the credibility of Aish's testimony.

To the extent the written directive was clear and unambiguous at the time of its origination, Aish's supervisors' allowed ambiguity to be introduced when they created exceptions to the directive but failed to modify the written directive to reflect the understanding that "all non-departmental interactions" actually excluded certain events and circumstances. The weight of Chief Austin's testimony that Aish understood a violation of the directive could result in termination is weakened by the fact that he and other supervisors permitted exceptions to the directive and knew Aish's use of the body worn camera was inconsistent within the scope of the original

directive but made no effort to either enforce the original scope of the directive or modify it. Based on the enforcement or lack thereof of the 2017 order it is not possible to fairly conclude that Aish's decision to turn off the body camera once the police event concluded amounted to insubordination or in any way defied the order.

DISCUSSION AND ANALYSIS

The events of October 17, 2019 leading to the apprehension of a reckless driver as well as the follow up reporting and documentation of that event is the focus of my discussion and analysis as was the focus of the testimony and evidence presented at the arbitration hearing. While additional evidence was presented regarding reporting inconsistencies related to two separate domestic calls as well as the employee's previous performance reviews such evidence is not of sufficient enough impact to sway my decision. Likewise, the evidence presented regarding several commendations received by the grievant including the video regarding the return of a bicycle to a young child, while certainly admirable, is also not substantial enough to alter my decision based upon my analysis of the car chase in late October of 2017.

The evidence is clear that on October 17, 2019 the police departments of both Columbia Heights and Fridley were involved in a police action which ended in a pursuit by Fridley officers Elasky, Fetrow and Bulman. The grievant, Mathew Aish, was certainly involved in this action as well but he characterized and documented his involvement not as a pursuit but rather as an assist to another police department due to his assessment that once it was clear that it was going pursuit he got out of the process and let Fridley officers conduct the pursuit.

At the onset it is necessary to point out that Columbia Heights Police Captain Erik Johnston made clear in his testimony that Aish was not obligated to do the pursuit under the facts presented and was not disciplined as a result of handing the situation over to Fridley officers. In fact, there was support for this decision. Rather, Johnston testified that the termination was based upon the evidence that showed Aish had in fact conducted a pursuit under the Columbia Heights Pursuit Policy but failed to document it as such which is a violation of Columbia Heights policies. In addition, Johnston said the termination

decision was also supported by the evidence which showed that at three separate places in the report filed by Aish he was dishonest about in his description of the events of that afternoon specifically his comments regarding the following:

- 1) He was traveling at the posted speed limit.
- 2) He pulled out from the police action before the suspect ran the stop sign on at 57th Ave on Main Street
- 3) He did not turn on his emergency lights upon reentering the action behind the Fridley officers rather he turned them on once he reached the scene of the apprehension.

Johnston testified that he believed Aish intentionally documented the events incorrectly in an effort to diminish his involvement and therefore suggest that while he was involved it was not a pursuit and that a pursuit did not occur until Fridley took over in an effort to minimize the scrutiny his report would receive.

The final major issue that the City focused on in support of their decision to terminate was that Aish was insubordinate by failing to comply with a direct order in which he was to keep his body camera on whenever he interacted with non-departmental personnel and he was also to record all his phone conversations with non-departmental personnel.

In determining whether there was just cause to terminate it is incumbent that the following three questions be answered based upon my evaluation of the evidence presented at the hearing.

- 1) Was there a "Pursuit" as defined by Columbia Heights Pursuit Policy?
- 2) Were the incorrect statements made by Aish in his reporting of the October 27, 2019, intentional misrepresentations, or understandable honest mistakes? If they were understandable mistakes is it plausible then to believe that Aish did not engage in a pursuit thus supporting his reporting this event as an assist to another police department?
- 3) Was Officer Aish insubordinate when he turned off his body camera on October 27, 2019 and when he failed to record the follow-up phone conversation with Officer Fetrow?

Did Officer Aish engage in a "Pursuit" on October 27, 2019 as defined by Columbia Heights policy

603:01:01?

The Columbia Heights Pursuit policy defines "Pursuit" as:

The attempt to stop another vehicle by a police vehicle when the emergency lights and siren have been activated and the subject vehicle fails to stop as required by law.

The Union contends there was no Pursuit under the Columbia Heights Pursuit policy as there are three elements to that policy and only two of the elements were met on October 27, 2017. Unquestioned were the first two factors that police vehicle emergency lights and siren were on and the subject fails to stop, but the third factor required is that the failure to stop is "As required by law." The Union and their expert witness reject the employers assertion that "As required by law" is met through the non-criminal petty misdemeanor infraction resulting from a vehicle failing to pull over for an emergency vehicle. Rather, the Union contends the clear intent of the policy statement "As required by law" was that the failure to stop must be a violation of the state law regarding "Fleeing" Minn. Stat. 609.487. This statute defines the term "fleeing" and details the felony offense resulting from fleeing as follows:

609.487 (FLEEING PEACE OFFICER; MOTOR VEHICLE; OTHER),

Subdivision 1. Flee; definition. For purposes of this section, the term "flee" means to **increase speed**, extinguish motor vehicle headlights or taillights, refuse to stop the vehicle, or use other means with intent **to attempt to elude a peace officer** following a signal given by any peace officer to the driver of the motor vehicle (Emphasis added).

Subdivision 3. Fleeing officer; motor vehicle. Whoever by means of a motor vehicle flees or attempts to flee a peace officer who is acting in the lawful discharge of an official duty, and the perpetrator knows or should reasonably know the same to be a peace officer, is guilty of a felony and may be sentenced to imprisonment for not more than three years and one day or to payment of a fine of not more than \$5,000, or both.
Minn. Stat.

The union claims that the suspect made no attempt to elude Aish from the time Aish was in position to follow noting that the suspect traveled at the speed limit, did not engage in elusive driving and never made any gesture indicating he was aware of the police officer behind. Aish testified that he would need to see the driver look in

his rear view mirror or some other action to let him know that he knew he was being followed in order for there to be an attempt to elude. I do not infer from the law any such requirement of acknowledgement by the driver. First the law makes no mention of a requirement by the suspect to make a move or gesture that indicates awareness of the police. Clearly this was a chase during daylight hours but if this chase were at night it would be impossible to view the driver making such a move. Further, vehicles often have tinted windows such that seeing inside the car would be impossible. In addition, cargo vans often have no side or rear windows once again making the observation of an acknowledgment impossible. Therefore I do not conclude that the law would require the driver had to give such a visual cue as Aish suggested. Further, it is hard for me to believe that this driver was completely unaware of any of the officers as two were directly in his vision as he passed the Fridley officers on Main street with their lights on and sirens sounded and at the same time Officer Aish was directly behind the driver with flashing lights.

That being said however, the definition still requires an action that illustrates an attempt to elude. That is accomplished at the time the suspect runs right through the stop sign at 57th Ave and Main and Aish follows right behind him reporting to dispatch that the suspect ran the stop sign and is picking up speed at which point he declares "This is going to be a pursuit, I am getting out". Running a stop sign and speeding is an elusive action and contrary to Aish's report he did not pull over before going through the stop sign, he was right behind the driver as is clearly shown in the Fridley squad video evidence from officer Bulmans's vehicle. It is at this point that Aish bows out but that is too late to not consider this a "Pursuit".

Finally, I agree with the employer's position that Aish does reengage in the pursuit when he pulls in behind the Fridley officers, who at this time were indisputably involved in a pursuit. During this stage of the pursuit the Fridley GPS recordings clearly show speeds achieved of 58 mph. At the same time Elasky's rear video squad camera footage shows Aish maintaining his distance behind the Fridley vehicles which can only be accomplished by traveling at the same speed as the Fridley vehicles. In addition, Aish arrives at the apprehension scene within a few seconds of the Fridley officers once again confirming he was traveling at the same high rate of speed as the Fridley officers. While there may be some criticism as to the precise second to second accuracy

of the Fridley GPS it was clear to me that at some point during the pursuit the Fridley Squad traveled at 58 MPH, nearly twice the posted speed.

Officer Fetrow testified that she did not believe that Aish was involved in the pursuit. Her opinion was that only two vehicles, Elasky's and hers (Bulmans's) were the involved in the final pursuit. I do not see any limits in the City's policy regarding the number of cars which can be considered part of the pursuit. While I recognize the considerable experience of Officer Fetrow I do not think that her opinion is consistent with the Columbia Heights policy. Furthermore, I do not see her, as Fridley officer, to be an expert on the interpretation and application of the Columbia Heights policy.

Were the incorrect statements made by Aish in his reporting of the October 27, 2019, intentional misrepresentations, or understandable honest mistakes? If they were understandable mistakes could Aish plausibly have believed that he did not engage in a pursuit thus explaining his reporting this event as an assist to another police department?

The testimony of Captain Johnston made it clear that Officer Aish, as well as any officer, has the right to make a decision as to whether or not a situation justifies a pursuit as well as whether or not they can safely engage in the pursuit of a driver. Johnston was clear that had Aish decided not to pursue the driver based upon safety concerns, including his lack of familiarity with Fridley streets, that decision would have been honored and no discipline would have resulted. Further, the evidence indicated that with respect to the entire event Aish performed his duties properly and thus would not have been disciplined for role in this police action had he reported the events appropriately.

Why then did Aish report the events as an assist? While I cannot determine conclusively what was Aish's motivation the evidence presented at the hearing clearly indicated to me some sense of guilt on Aish's part for not continuing in the lead in the pursuit and seeing it through to conclusion. I base my opinion on the fact that Aish twice, completely unsolicited, provided his explanation to Fetrow and Elasky for bowing out of the pursuit and seeming to do so apologetically. Further, his explanation was not entirely truthful making it appear to the

Fridley officers as though his hands were tied because he did not have a supervisor on duty. The fact of the matter is, as confirmed by Aish's testimony, under Columbia Heights policy he was the most senior officer on duty and therefore was the defacto supervisor thus no supervisory approval was needed. Consequently, it may have been his guilty conscience that made him document the events the way he did so as to make it appear to all concerned that he never did pursue.

I do not believe that the previously identified incorrect statements in Aish's report were merely understandable mistakes made by a 20 year veteran police officer due to the stress of the situation, as was suggested by in the testimony of Peter Dahl. In Dahl's testimony he attempts to explain how the errors associated with the documentation of the vehicle speed was due to Aish's intense focus on the action in front of him thus making it ill advisable to even look down from his windshield to speedometer as this would be a dangerous distraction. Thus Dahl claims Aish was understandably off on his assessment of his speed. While I do not take issue with Dahl's explanation that officers are trained not to look down at the speedometer it is difficult for me as a driver myself to believe he could be traveling at nearly 60 MPH on a residential street and still believe he was traveling at the posted 30 mph. Further, if he was unaware of his speed he should have indicated such and if he is not certain of the speed limit on the streets, as he testified, he should not document that he was traveling at the posted.

Two other inconsistencies identified by the employer in Aish's report were 1) that he pulled out of the action before the suspect ran the stop sign at 57th Ave and 2) that he did not turn on his emergency lights until he arrived at the scene after the PIT was completed. Both statements were inaccurate as proved by the Fridley squad video. While the Union's argument makes sense that had the Columbia Heights squads been equipped with video Aish could have reviewed the video before filing the report and thus he would have written a more accurate report. On the other hand, it is also true that Aish knew that the Columbia Heights squads had no video thus his statements, while inaccurate, would have never likely be discovered. All three inaccuracies have the effect of downplaying Aish's role as it relates to a pursuit. It is difficult for me to cast this all off as innocent coincidental mistakes.

Finally, one cannot disregard the credibility question Aish's own employment history presents for Aish. His severe lack honesty in 2006 presents a substantial credibility concern for Aish in this case as it does for the City of Columbia Heights in his role as a police officer. While it may be said that Aish has been found to be honest in his work since that date as evidenced by no incidences of lying showing up in Aish's record since 2006. One must also consider the fact that in at least two cases Aish's dishonesty was only brought to light through quirky circumstances that could have otherwise remained undetected. Specifically, what I am referring to by "Quirky" is first, the completely chance encounter of Chief Austin and Sargent Titus leading to the investigation of this current pursuit issue. Secondly, the alert action of Officer Bonesteel requesting the BPT device which revealed Aish's dishonesty regarding the 2006 breathalyzer event. This factor along with Aish's previous dishonesty makes it difficult to give Aish the benefit of the doubt when it comes to questions of credibility. While there might be some element of simple mistake the report viewed as a whole leads me to believe that the inaccuracies were an intentional attempt to mislead leadership by downplaying his role, in an effort to make it appear as though no pursuit occurred by Columbia Heights officers .

The Union can counter that if the report was suspicious in its inaccuracies why was that not discovered by Sargent Ted Fischer who reviewed the report and signed off on it never requesting any clarification or in any way questioning the veracity. While it may be that the report should have raised red flags that in no way removes Aish from responsibility for his own inappropriate documentation.

Was Officer Aish insubordinate when he turned off his body camera on October 27, 2019 and when he failed to record the follow-up phone conversation with Officer Fetrow?

The order from 2017 specifically imposed on Officer Aish is clear that Aish's body camera must be on at all times when interacting with non- departmental personnel and his all phone conversations with non-departmental personnel must be recorded. At the hearing there was no dispute as to whether Aish turned off his body camera while continuing to interact with Fridley officers at the conclusion of the pursuit and there was no dispute that

Aish had an unrecorded phone conversation with Fridley Officer Fetrow as a follow up to the pursuit. The question that remains is whether the order had been watered down over the past two years based upon conversations and experiences to the extent that Aish was permitted to turn off his camera as he did.

The Union's position was that Aish had his body camera on at all relevant times when interacting with Fridley officers after the pursuit and he did not turn it off until it was clear the police action was over and the suspect was in custody in a squad car. He had captured on his camera the relevant information from the pursuit and apprehension and at that point, while there was still some continuing conversation, its content was not significant since the event was really over. What struck me about this event was that after Aish turned off his camera he asked a Fridley officer if he had his camera on and he was told not only "Yes" but Elasky apologized for it and explained that he had to have it on. It is at this point that it seems to me that an alarm should have gone off for Aish that maybe he needs to have his camera on. If another officer explains that he needs to have his camera on then Aish, who is under a direct orders regarding keeping his camera recording, should have recognized that at a minimum to be safe I need to turn mine back on.

Aish testified that he had questions about the order and tried to get clarification from former Police Chief Nadeau. Aish, testified that based on his conversation with Nadeau, he believed that there were recognized exceptions including community events like Coffee with a cop, community gym nights, and other public interactions in which there was no law enforcement activity occurring. There was no documentary evidence presented to support this testimony and the union did not have the former chief offer testimony to support this claim. While, without more direct evidence it is difficult for me to assume the there was a softening of the order, the events of October 27, 2017 are not in any way comparable to the situations in which Aish testified that a camera recording was not required. Gym Nights and Coffee with a Cop are a far cry from the aftermath of a police action involving a high speed chase in a residential area, a PIT maneuver and apprehension of a suspect with guns drawn. Even if such a softening did occur it is clear to me it did not include the interactions following the pursuit.

The Union also claims that there was acquiescence by the City to a softening of the order as Aish was at several inter-departmental police events along with police leadership and it was obvious that Aish did not have his camera on. The camera beeps when it is on and a visible red light is lit alerting those near the officer that his camera was on. The Union asserts that leadership certainly knew Aish was not recording while at these events yet there was never any suggestion or criticism to make Aish aware that this was not acceptable. I assume that at these events there is much activity and that while leadership could have noticed the camera was not on they most likely were focused on other things rather than Aish's camera. More importantly however, not recording at inter-departmental police events once again is considerably different from Aish turning off his camera while still at a crime scene.

In summary, I conclude that Officer Aish did engage in a pursuit under the Columbia Heights policy. He intentionally misrepresented the facts in his report to support his documenting of the event as an assist to another police department. Finally, he violated a direct order regarding recording interactions with non-departmental personnel. As a result of these findings I conclude that Officer Aish violated the following Columbia Heights policies:

101:13 Knowledge Policies, Procedures, Statutes and Ordinances

500:1-5 Reports

500:3-5 Unsatisfactory Performance

500:3-9 Truthfulness

500:6-4 Insubordination

603:06 Reporting and Review

CONCLUSION

Based on the analysis and discussion above there was "Just Cause" to uphold the employer's termination of Mathew Aish. Grievance is therefore denied.

Respectfully submitted by,

/s/Robert Altman (10/7/20)

Arbitrator, Robert Altman