

IN THE MATTER OF THE ARBITRATION) ARBITRATOR'S
)
 BETWEEN) OPINION
)
 CITY OF WAPATO) AND
)
 "THE CITY" OR "THE EMPLOYER") AWARD
)
 AND)
)
 TEAMSTERS UNION LOCAL 760)
)
 "LOCAL 760" OR "THE UNION") *****GRIEVANT REDACTED*****
 Termination

HEARING: February 24, 2004
 Wapato, Washington

BRIEFS: Employer's received: March 25, 2004
 Union's received: March 25, 2004

HEARING CLOSED: March 25, 2004

ARBITRATOR: Timothy D.W. Williams
 2700 Fourth Avenue, Suite 305
 Seattle, Washington 98121

REPRESENTING THE CITY:
 Kevin Wesley, Labor Relations Consultant
 Layne Chiaramonte, Consultant Intern
 Don Lane, Police Chief

REPRESENTING THE UNION:
 Ken Pedersen, Attorney
*****GRIEVANT REDACTED*****, Grievant
 Joe Wurtz, Business Representative - Local 760
 Bob Koerner, Buisness Representative - Local 760

APPEARING AS WITNESSES FOR THE CITY:
 Mike Deccio, Police Officer
 Don Lane, Police Chief

APPEARING AS WITNESSES FOR THE UNION:
 Adrian Villa, Las Palmas Security
*****GRIEVANT REDACTED*****, Grievant

EXHIBITS

Joint

1. Collective Bargaining Agreement, January 1, 2001-December 31, 2003
2. Letter of Termination, February 2, 2003
3. Grievance, June 3, 2003

City

1. Notice of Assessment, Department of Labor, June 14, 2003
2. Letter to Grievant from WISHA, May 15, 2003
3. Written reprimand, Last Chance Agreement, April 8, 2003
4. Memo to Chief Lane, April 14, 2003
5. Notice of Internal Investigation, April 21, 2003
6. Notice of Internal Investigation, April 21, 2003
7. Memo to Chief from Grievant, April 25, 2003
8. Law Incident Table, January 12, 2002
9. Notice of Pre-Termination Hearing
10. Notice of Into to Administer Discipline
11. Notice of Pre-Discipline Hearing

Union

1. Booking Sheet for Gomez, Gascon
2. Request for Information, June 13, 2003
3. Request for Information, February 17, 2004
4. Grievant's Employment Evaluation, February 2, 2003
5. Officer of the Year Award, 2001
6. Life Saving Award, July 24, 2002
7. Life Saving Award Medal

BACKGROUND

The City of Wapato (hereafter "the City" or "the Employer") and Teamsters Union Local 760 (hereafter "Local 760" or "the Union") agreed to submit a dispute to arbitration. A hearing was held before Arbitrator Timothy D.W. Williams in Wapato, Washington on February 24, 2004. The parties stipulated that the grievances were properly before the Arbitrator to be heard and decided on their merits.

At the hearing the parties had full opportunity to make opening statements, examine and cross examine sworn witnesses, introduce documents, and make arguments in support of their positions. The Arbitrator made an audiotape of the hearing, but informed the parties that the tape was intended as a part of his personal notes and should not be considered an official transcript of the proceedings.

At the close of the hearing the parties were offered an opportunity to file post-hearing briefs. Both parties accepted and the briefs were timely received by the Arbitrator. Thus the award, in this case, is based on the evidence and argument presented during the hearing and on the arguments found in the written briefs.

Prior to issuing the award, the Arbitrator requested and was granted an extension of the time needed to file the award. The new date for issuing the decision was May 3, 2004.

SUMMARY OF THE FACTS

The City of Wapato (hereafter "the Employer" or "the City") and Teamsters Union Local 760 (hereafter "Local 760" or "the Union") are parties to a collective bargaining agreement (CBA) effective from January 1, 2001 through December 31, 2003. The grievances, in the instant dispute, arose under and are subject to that agreement.

The Grievant, Patrol Officer *****GRIEVANT REDACTED*****, worked for the City of Wapato Police Department from December of 1998 until his discharge on June 2, 2003.

On March 13, 2003, a city maintenance crew was working in the attic above the squad room (this is where the officers prepare reports and maintain their files). The crew had been cutting pipes and some of the officers feared that the insulation around the pipes contained asbestos. The Grievant, who had a background in construction work, took some initiative to determine if there was a safety problem. When he attempted to talk with the Chief, he was told that he had already been notified of the matter. The Grievant then taped off the squad room with barrier tape. The Department of Labor and Industries was also notified. Later, the Police Chief instructed the officers to return to the squad room. The Department of Labor and Industries inspected the Wapato Police Department on May 13,

2003 and found that there was no violation by the Department (City Exhibit #1) but that City maintenance was in violation.

After the March 13 incident, the Grievant brought a complaint, dated April 1, 2003, to the Department of Labor and Industries charging the Wapato Police Department with discrimination. The Grievant felt that because he had pressed the issue of the asbestos, his immediate supervisor, Sergeant Deccio, was treating him differently than he had before. In a letter, dated May 15, 2003, the Department of Labor and Industries dismissed the Grievant's complaint due to insufficient evidence (City Exhibit #2).

On April 13, 2003, Sergeant Deccio, the Grievant's immediate Supervisor, sent a memo to the Police Chief referencing an incident that had allegedly occurred on January 12, 2002, when the Grievant responded to a call at a Wapato night club. The memo stated in part that:

When [the Grievant] arrived on scene, he brought the suspect out of the car for the victim to identify. The suspect began yelling at the victim and being unruly. [The Grievant] advised him several times to stop talking, to no avail. He grabbed the suspect by the throat and choked him, forcing him to stop talking. The choke lasted for no more than a few seconds, as it was done before I could cover the distance and intervene. I believe that I was no more than 15 to 25 feet away. The suspect did not appear to be injured but was upset that he had been choked.

(City Exhibit #4)

The Grievant was issued a Notice of Internal Investigation on April 21, 2003 (City Exhibit #5). During the investigation, the Police Chief interviewed both Sergeant Deccio and the

Grievant. Sergeant Deccio stayed firm on his original complaint. The Grievant claimed he did not remember the specific incident.

The Police Chief tried to find the arrestee, but was unable to because he was an illegal alien. After conducting the pre-termination meeting and issuing a pre-termination letter (City Exhibits # 9 and #10), the Police Chief discharged the Grievant by letter, dated June 2, 2003. Specifically, the pertinent parts of the letter of discharge state:

My office has completed the internal investigation of your conduct in relation to your alleged use of unnecessary/excessive force during an arrest made on 1-12-2002. Specifically the choking of a suspect while the suspect was in your control and in handcuffs, as well as a pre-termination hearing on the matter.

The outcome of this investigation is the determination that you did in fact engage in the above referenced misconduct. This misconduct on your part constitutes:

Gross Misconduct
Conduct unbecoming an Officer
Unnecessary/Excessive use of force

This type of misconduct cannot and will not be tolerated by this department.

Therefore, I have made the determination that your misconduct warrants the termination of your employment.
(Joint Exhibit #2)

The Union filed a Memorandum of Grievance on behalf of discharged employee *****GRIEVANT REDACTED***** on June 3, 2003.

The Memorandum of Grievance, in part, stated:

"I am at this time formally protesting the termination of *****GRIEVANT REDACTED*****...until such time as I have had an opportunity to investigate the merits of such warning."

(Joint Exhibit #3)

Later, in a June 13 letter, the Union states:

In regards to the unjust termination, the Union is claiming full back pay, restoration of all benefits (including pension and Health and Welfare contributions) and return to previous job status for Officer *****GRIEVANT REDACTED*****. I thank you in advance for a timely reply to this information request.
(Union Exhibit #2)

The grievance was processed through the steps of the grievance procedure but the parties were unable to resolve the matter. Therefore, the grievance was submitted to arbitration.

STATEMENT OF THE ISSUE

At the hearing the parties stipulated to the following statement of the issue:

1. Did the City of Wapato have just cause to terminate Officer *****GRIEVANT REDACTED*****?
2. If not, what is the appropriate remedy?

APPLICABLE CONTRACT LANGUAGE

ARTICLE 17 - DISCIPLINE AND DISCIPLINARY PROCEDURES

- 17.1 The Employer has the right to discipline or discharge an employee for just cause. The Employer agrees to utilize progressive discipline except where the infraction would warrant more severe disciplinary action being taken. The Employer may discharge employees based upon the following examples of gross misconduct, but is not limited thereto:
1. Insubordination;

2. Conviction of a crime;
3. Malfeasance or Misfeasance;
4. Gross misconduct;
5. Drinking of intoxicants or use of drugs while on duty or coming to work while under the influence of intoxicants and/or drugs;
6. The illegal possession of illegal drugs while on duty.

The Employer will in good faith investigate any incident that could lead up to discipline and administer any discipline within thirty (30) calendar days of the knowledge of such.

In the event the investigation cannot be completed in the aforementioned thirty (30) calendar day period, the Employer shall advise the Union in writing as to the circumstances requiring additional time to conclude the investigation and administer any discipline. However, under no circumstances shall any such investigation and administered discipline be extended more than ninety (90) calendar days beyond the original thirty (30) calendar days.

Disciplinary records will, after two (2) calendar years from the date of the incident, and upon the employee's written request, be returned to the employee, unless in the intervening period related infractions have occurred in which case the time frame as specified above starts over from the date of the most recent related infraction.

For illustrative purposes only, the following list is typical of progression through progressive discipline. Although nothing contained herein shall limit the Employer's right to enter into any step or to skip steps in the disciplinary action process based on the severity of the infraction:

- | | |
|-----------------|--|
| First Offense: | Verbal Warning |
| Second Offense: | Written Warning |
| Third Offense: | Written Warning or Suspension
Without Pay |
| Fourth Offense: | Discharge |

- 17.2 Disciplinary actions or measures shall include only the following:
- A. Verbal warning
 - B. Written warning

- C. Suspension without pay
- D. Discharge

ARTICLE 18 - GRIEVANCE PROCEDURE

18.8: Step 3

- A. Final and Binding Arbitration: If the grievance has not been resolved at Step 2, either party to this Agreement may refer unsettled grievances to final and binding arbitration.
- B. Notice-Time Limitation: The referring party shall notify the other party in writing by certified mail of submission to arbitration within ten (10) calendar days after receipt of the Step 2 response.
- C. Arbitrator-Selection: After timely notice, the parties shall select an impartial arbitrator within thirty (30) calendar days, if possible, after the request is made to arbitrate. If the parties cannot mutually agree on an impartial arbitrator who is able and willing to serve on a timely basis, either party may request a staff member of the Washington State Public Employment Relations Commission (PERC) to act as an arbitrator to resolve the issue. However, either party may veto the use of a PERC staff member if said party believes there is a need for an expeditious hearing and decision. Either party may demand a list of eleven (11) qualified persons who are willing to abide by time limitations. A list of impartial arbitrators may be furnished by the American Arbitration Association (AAA) or the Federal Mediation and Conciliation Service (FMCS). The party demanding a paid arbitrator shall have the right to determine the organization from which the list of eleven (11) names is to be derived. The parties shall flip a coin to determine who will strike the first name, following which each will alternately strike one of the names submitted until only one (1) name remains. This person shall serve as the sole arbitrator subject to the following provisions.
- D. Decision-Time Limit: The arbitrator will conduct the arbitration hearing no later than thirty (30) calendar days from the date of selection. The arbitrator shall render a decision within fifteen (15) calendar days from the date of the hearing or receipt of the parties briefs,

as applicable. The parties may mutually agree to extend the time limits as set forth herein.

E. Limitations-Scope-Power of Arbitrator:

- i. The arbitrator shall not have the authority to add to, subtract from, alter, change or modify the provisions of the Agreement.
- ii. The arbitrator shall have the power to interpret and apply the terms of the Agreement and/or determine whether there has been a violation of the terms of this Agreement.
- iii. The arbitrator shall consider and decide only the question or issue raised in the initial written grievance.
- iv. In conduction an arbitration, the arbitrator shall keep a verbatim record of testimony either by tape recording or court reporter. The arbitrator shall also have the authority to receive evidence and question witnesses.

F. Arbitration Award-Damages-Expenses

- i. The arbitrator shall not have the authority to award punitive damages.
- ii. Each party hereto shall pay the expenses of their own representatives, witnesses and other costs associated with the presentation of their case, as well as one-half (1/2) the expenses of the arbitrator.

POSITION OF THE EMPLOYER

The Employer advances a number of different arguments in support of its basic position that the grievance is without merit and should be denied.

First, the Employer argues that it has the right to protect its citizens and ensure its citizens are treated with respect and dignity. The City contends that the "type of vigilante policing incident that occurred on 1-12-02 where a [Hispanic] suspect is choked while in handcuffs..." breaks down the trust and cooperation between the Hispanic community and the police department that they have been working so hard on building up (City's Brief, Page 8).

The City maintains that the reasonable action in this instance was to terminate the Grievant.

Second, the City argues that the Police Department needs to have the cooperation and trust of the Hispanic community (71% of the population) to effectively do its job. The testimony of the Police Chief explains that there has been a lot of time and energy put into improving the relationship between the Police Department and the Hispanic community. The City goes on to explain that when there is an issue of excessive force, the community looks to the department for "fair and just action" (City's Brief, Page 9). The City feels that it must send a clear message to the community that it will not tolerate this kind of action if it wants to continue building a more positive relationship with the community.

Third, the City insists that it has an obligation and responsibility to investigate the complaint of excessive force, especially one brought forth by a fellow officer. The City contends that it fully investigated this matter and came to the following conclusions:

1. A fellow police officer (Sgt. Deccio) felt that the excessive force was serious enough to warrant the filing of a written complaint,
2. The Grievant never denied the excessive force occurred,
3. Sgt. Deccio stood by his written complaint even in the face of a serious disciplinary action,
4. The Grievant omitted from his incident report relevant details of the event in question, (this has been verified by the Grievants own testimony)
5. The excessive force occurred as reported and was serious enough to warrant the termination of employment of the Grievant.

(City's Brief, Page 10)

Fourth, the City argues that it conducted a fair and impartial investigation. The City asserts that Chief Lane had the skill and background to conduct an internal investigation and that he did so in an impartial manner.

Fifth, the City maintains that it acted in a reasonable manner based on the information in its possession at the time of the termination. The City holds that it had the right to take this action based on the fact that they had "a written complaint by a fellow officer, a reasonable belief that the excessive force occurred as reported and the fact

that the Grievant never denied the excessive force occurred" (City's Brief, Page 11).

Sixth, the City claims that it fairly imposed discipline on both parties to the matter. The City contends that an excessive force complaint is one of the most serious charges that can be raised against an officer. They go on to explain that if there is a determination that the excessive force occurred, the only response to this is termination.

The City goes on to argue that the fact that Sgt. Deccio accepted the discipline imposed on him for not timely reporting this incident "lends veracity to his complaint" (City's Brief, Page 12).

Based on the above arguments, the City urges the Arbitrator to deny the grievance and to find that the City did have just cause to terminate the Grievant.

POSITION OF THE UNION

The Union advances three primary arguments in support of its basic position that the grievance should be sustained and that the Arbitrator should award an appropriate remedy.

First, the Union turns to the CBA and argues that the City of Wapato bears the burden of proof in this discharge case. They also contend that the City should have to prove its case by using the standard "beyond a reasonable doubt" rather than the customary "preponderance of evidence" (Union's Brief, Pages 8-9).

Second, the Union argues that the City of Wapato did not investigate and administer discipline within contractual requirements. The Union again turns to the CBA, Article 17, to support its contention that by taking more than the thirty days required by the CBA in administering its discipline to the Grievant, the City "breached the agreement, and its discipline of *****GRIEVANT REDACTED***** therefore cannot stand" (City's Brief, Page 9).

Third, the Union contends that the City failed to meet its burden of proof. The Union points out that the Grievant had not been previously charged with excessive force, he did not carry any of the traditional weapons used by law enforcement officers and that he was given a good evaluation three months before the allegation. Due to the Grievant's record, the Union claims that there needed to be more evidence against the Grievant than just one officer's account of an event that happened 15 months prior

to the date of the allegation for the City to implement a termination.

Based on the above arguments the Union urges the Arbitrator to sustain the grievance and grant the Union's requested remedy.

ANALYSIS

The Arbitrator's authority to resolve a grievance is derived from the parties' collective bargaining agreement (CBA) and the issue that is presented to him. The applicable provision of the CBA is found in Article 17, which reads in pertinent part:

17.3 The Employer has the right to discipline or discharge an employee for just cause. The Employer agrees to utilize progressive discipline except where the infraction would warrant more severe disciplinary action being taken. The Employer may discharge employees based upon the following examples of gross misconduct, but is not limited thereto:

1. Insubordination;
2. Conviction of a crime;
3. Malfeasance or Misfeasance;
4. Gross misconduct;
5. Drinking of intoxicants or use of drugs while on duty or coming to work while under the influence of intoxicants and/or drugs;
6. The illegal possession of illegal drugs while on duty.

The Employer will in good faith investigate any incident that could lead up to discipline and administer any discipline within thirty (30) calendar days of the knowledge of such.

(Joint Exhibit #1)

The parties stipulated that the issue for the Arbitrator to resolve is whether the Employer had just cause to terminate the

Grievant, Earhardt. If so, then the grievance should be denied. If not, then the grievance should be sustained and a remedy ordered.

The Arbitrator notes that in a labor arbitral proceeding involving a grievance, the employer is generally assigned the burden of proof in any matter involving the discipline or discharge of an employee. In all other matters the union is assigned the burden of proof. The instant grievance involves a dispute over whether the Employer had just cause to terminate the Grievants' employment. Clearly this is a matter of "discipline or discharge" and thus the burden of proof is assigned to the Employer.

As to the quantum or level of proof needed to fulfill the burden of proof, this Arbitrator has consistently taken the position that when an employee is charged with an infraction that casts a cloud on his reputation and character, then the standard ought be *clear and convincing*. Since the Grievant is charged with "use of excessive force," a charge that would make it very difficult to find new employment as a police officer, the Arbitrator finds that *clear and convincing* is the appropriate level of proof.

Among other factors, the just cause standard requires the Employer to find sufficient evidence to prove the charges against an employee and to faithfully execute any discipline/discharge procedures required by the CBA. The Employer contends that it

has met these and the other requirements of the just cause standard when it determined to terminate the employment of the Grievant. The Union strongly disagrees and emphasizes its belief that the evidence is at best weak and absolutely non-conclusive. Moreover, the Union points to what it considers a serious breach of contractual requirements related to the implementation of discipline/discharge.

Having reviewed the audio tape of the hearing, the written evidence and the parties' arguments, I am convinced that the Employer has failed to meet its burden of proof and that the Union's case is quite compelling. Support for this conclusion is provided in the following points of analysis.

Proof of Charges

The charge against the Grievant involves the unnecessary/excessive use of force during an arrest, when the suspect was in handcuffs (Joint Exhibit #2). Moreover, on cross-examination, Chief Don Lane acknowledged that this was the sole reason for the termination. Thus the critical question is whether the evidence clearly and convincingly supports the charge that the Grievant used excessive force by choking a suspect who was in handcuffs.

A careful review of the record shows that the only evidence that supports the charges is provided by Sgt. Deccio. Sgt. Deccio's written statement, dated April 14, 2003, some fifteen months after the alleged incident, is in evidence as City Exhibit

#4. Additionally, Sgt. Deccio's oral testimony is a part of the record. There is no other evidence, either in the form of written statements made at the time of the incident or in the form of testimony from the twenty plus persons present during the alleged event.

The absence of corroborating evidence is significant because I find Sgt. Deccio's written statement and his oral testimony substantially deficient. First, Sgt. Deccio's written statement has an obvious error. He states, "Ofc. *****GRIEVANT REDACTED***** brought the suspect back to the scene to be identified by the victm [sic]" (City Exhibit #4). The problem is that it was not the victim that was identifying the suspect. It was a security person from Las Palmas, Adrian Villa. Mr. Villa witnessed the incident in question and is so identified in the arrest record (City Exhibit #8). Sgt. Deccio not only made that mistake in his written memo, but duplicated that error in his oral testimony.

As directly related to the allegations resulting in the Grievant's discharge, this error on the part of Sgt. Deccio is not very significant. Whether Mr. Villa was a witness or a victim does not in and of itself address the issue of whether the suspect, while in handcuffs, was choked by the Grievant.

Indirectly, however, this error is significant because it raises questions about the accuracy of the overall statement. Sgt. Deccio's written statement was created some fifteen months after the incident. This fact immediately raises concerns as to

the accuracy of his memory. Those concerns are significantly amplified by obvious errors in the statement.

Further, I find troubling the fact that Sgt. Deccio's statement indicates that, "at least twenty people were standing outside when this occurred but none of them seemed to notice" (City Exhibit #4). Clearly, one of those standing outside did take notice. Mr. Villa had been asked to identify the suspect. The evidence clearly establishes that the suspect was yelling invectives in Spanish at Mr. Villa. The Grievant testified that Mr. Villa even took a step towards the suspect as a reaction to the verbal abuse.

Moreover, Mr. Villa was known to Sgt. Deccio because Sgt. Deccio had transported him from Las Palmas to the house where the suspect was apprehended in order to identify the pickup truck, a fact that is made clear in the arrest report (City Exhibit #8). Sgt. Deccio then transported Mr. Villa back to Las Palmas.

If the Grievant choked the suspect while in handcuffs, I am absolutely convinced by the evidence that Mr. Villa would have had to have witnessed the action. Given the fact that Sgt. Deccio had personal contact with Mr. Villa, one would think that Sgt. Deccio would have identified Mr. Villa as someone who could have corroborated his statement. Yet, Mr. Villa's name is not referenced in Sgt. Deccio's statement.

All in all, I am unable to find that Sgt. Deccio's testimony and written statement rise to the level of clear and convincing

evidence to prove the charge against the Grievant. His memory of the events is clearly flawed and there is no corroborating evidence whatsoever.

Fair Investigation

The just cause standard is generally read to require the Employer to conduct a fair investigation. Article 17.1 further requires the Employer to investigate "in good faith" and to administer any discipline that results from the investigation within thirty days. The Union's contention is that the City's investigation was neither timely nor was it fair - in good faith. A careful review of the evidence leads me to exactly the same conclusion.

First of all, the investigation did not meet the CBA's timelines of 30 days (notice of event on April 14 and termination on June 2). Moreover, Article 17 provides for an extension of the timelines by communicating with the Union. There is no evidence that the City ever attempted to communicate a need for an extension of the timeline to the Union. Further, the language of Article 17.1 does not require the Employer to seek approval from the Union with regard to an extension of time, but rather permits an extension of up to 90 days by simply communicating with the Union the circumstances that require the extension. I cannot see how this is an onerous burden on the Employer, yet it was simply ignored.

The heart of the problem, however, is not the violation of contractual timelines but rather the question of whether the investigation was conducted fairly and in good faith. This conclusion is based on two points of analysis. First, Chief Lane is not a dispassionate, neutral investigator. At the time that Sgt. Deccio wrote his statement about the alleged choking incident, there were a number of ongoing, negative interactions between the Chief and the Grievant. One set of negative interactions involved issues around potential asbestos contamination of the squad room. The activities around the asbestos matter lead ultimately to the Grievant filing a discrimination complaint with the Washington Department of Labor and Industries. This complaint was filed on April 1, 2003 with an ultimate response from the Department of Labor and Industries on May 15, 2003. That response found insufficient evidence to support the allegation of discrimination.

Regardless of the ultimate outcome of the discrimination complaint, the sequence of events leading to the Grievant's termination is quite revealing. On April 1, 2003 the Grievant files his discrimination complaint. On April 8, 2003 Chief Lane gives the Grievant a written reprimand, last chance agreement¹

¹ The parties indicated that this act of discipline has been grieved and is awaiting final disposition.

(City Exhibit #3). In the written reprimand, Chief Lane informs the Grievant that if his performance is not improved and maintained at "an acceptable level your employment with this department will be terminated" (City Exhibit #3, Page 2).

On April 14, 2003, 13 days after the Grievant filed his discrimination complaint charging Sgt. Deccio with inappropriate action and 6 days after the written reprimand, last chance agreement, Sgt. Deccio decides to write a memorandum concerning an allegation of inappropriate action by the Grievant committed some fifteen months earlier.

I take note of the fact that in a written statement, dated April 25, 2003, the Grievant specifically requested that the Chief have a "third party perform any investigation" (City Exhibit #7). Frankly, I am at a loss as to why the Chief did not make this choice even without the request of the Grievant. For one thing, the evidence indicates that the Chief had in the past made such a choice when an internal investigation against an officer was undertaken. For another, when the Chief conducts an investigation against an officer who has lodged a complaint against the department, it creates a strong perception that any negative results are simply retaliatory. As the head of the department, any complaint against the department ultimately leads to the Chief. Thus, no matter how objective and impartial the Chief might have acted when conducting the investigation, there is always the appearance that it was improperly motivated.

Second, at the time that Sgt. Deccio wrote his April 14, 2003 statement, Deccio was not a dispassionate individual. The Grievant's discrimination complaint specifically referenced Sgt. Deccio who is now bringing allegations against the Grievant which are sufficient to justify his termination. Thus, the allegations are clearly tainted by the sequence of events. There is, however, a dispassionate, neutral witness who was readily available to the Chief. Mr. Villa, it turns out, was not difficult to locate. In fact, with relative ease the Union was able to produce him as a witness for the Arbitration Hearing. Yet the Chief's testimony is that his sole effort to locate Mr. Villa was a message left on the answering machine at Las Palmas. Mr. Villa's testimony contradicts that of Sgt. Deccio. I cannot help but conclude that a neutral investigator would have made a substantially greater effort to locate and interview the only eyewitness of the event in question who was not a party at interest.

In summary, based on the above analysis I have concluded that the City neither met the thirty day requirement of the CBA regarding the imposition of discipline, nor did it conduct a fair and good faith investigation as required by Article 17.

Finally, I cannot help but comment on the City's basic concern with regard to the relationship between the Police Department and the Hispanic community. With 71% of the local community being Hispanic, the City's concern is legitimately

placed. Obviously, when communication problems created by a language and culture gap are exacerbated by the use of excessive force, everyone loses. My hope is that nothing in this arbitration decision diminishes the City's emphasis on building good relations with the Hispanic community. On the other hand, concern over the Police Department's reputation with the Hispanic community cannot serve as a substitute for clear and convincing evidence that the allegations against the Grievant are true. In my view, clear and convincing evidence supporting the charges has not been produced by the City and thus the grievance must be sustained.

CONCLUSION

Based on the above analysis I find that the City did not have just cause to discharge the Grievant. The evidence is insufficient to prove the charges, the investigation was not conducted according to the timelines of the CBA and the investigation was not conducted fairly and in good faith. As a result of these conclusions the grievance is sustained. An award and make whole remedy will be entered consistent with these findings and conclusions.

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Termination)	

After careful consideration of all oral and written arguments and evidence, and for the reasons set forth in the Opinion that accompanies this Award, it is awarded that:

1. The City of Wapato did not have just cause to terminate Officer *****GRIEVANT REDACTED*****.
2. The City is directed to reinstate Officer *****GRIEVANT REDACTED***** and to make him whole for lost wages and benefits. The Arbitrator will retain jurisdiction to resolve any dispute over the implementation of the remedy.
3. Per the requirements of Article 18, Section F (ii), the Arbitrator has divided his fees equally between the two parties.

Respectfully submitted on this the 3rd day of May, 2004, by,

Timothy D.W. Williams
Arbitrator