

IN THE MATTER OF ARBITRATION

X

BETWEEN

X

CITY OF CLEVELAND, OHIO

X

X

AND

X

X

**CLEVELAND POLICE
PATROLMEN'S ASSOCIATION
(CPPA)**

X

X

X

X

X

**DECISION IN
DISCHARGES AND
SUSPENSIONS
GRIEVANCES**

AAA FILE NO.: 01-16-0001-1033

HEARING: September 27, 28, 29/October 3, 4, 5, 11, 12, 13, 18, 19, 24, and
25, 2016; Cleveland, Ohio

ARBITRATOR: William C. Heekin

APPEARANCES

For the City

Jon M. Dileo, Attorney
Brad S Meyer, Attorney
David P. Frantz, Attorney

For the CPPA

Patrick Di'Angelo, Attorney
Marissa Serratt, Attorney

ADMINISTRATION

By way of an e-mail/letter from the American Arbitration Association, the undersigned was informed of his designation to serve as arbitrator in a matter then in dispute between the Parties. Accordingly, on September 27, 28, 29/ October 3, 4, 5, 11, 12, 13, 18, 19, 24, and 25, 2016, a transcribed arbitration hearing went forward where testimony and document evidence was presented. Upon receipt of post-hearing briefs, the record was closed and the matter is now ready for final resolution.

BACKGROUND

The Patrol Officers and Detectives employed by the City of Cleveland, Ohio (“the City”) Division of Police are represented in collective bargaining by the Cleveland Police Patrolmen’s Association (“the CPPA” or “the Union”). Thus, the City and the CPPA are each party to the instant collective bargaining agreement (“the Agreement” or “the CBA”, Joint Exhibit-1).

The basic facts of this matter are largely not in dispute. On November 29, 2012, at around 10:30 pm, Officer John Jordon initiated a traffic stop of a 1979 Chevrolet Malibu in downtown Cleveland that was driven by 43 year old Timothy Russell, where seated inside next to him in the front passenger seat was 30 year old Malissa Williams. In response, Mr. Russell drove off where Officer Jordon made an attempt to follow, but quickly lost sight of the Malibu. In noting that Officer Jordon did not radio in to dispatch to report what had just occurred, minutes later the Malibu was seen traveling at a speed of approximately 66 miles per hour while passing by the Cuyahoga County Justice Center, where the Cleveland Division of Police is headquartered. Standing outside as it drove by were Officers Vasile Nan and Alan Almedia, both of whom heard a loud noise which they believed was a gunshot fired from inside the vehicle. Accordingly, Officer Nan went to his zone car and made a broadcast over the police radio

channel that an “old Chevy just popped a round as he passed by” [City Exhibit – A(3), Radio Log]. While Officer Nan made an attempt to pursue only to lose sight of the Malibu, Officers David Siefer and James Hummel observed the vehicle from their zone car crossing the Detroit/Superior bridge leading to the near west side of Cleveland. Thus, with Officer Siefer from his front passenger seat calling out over the police radio channel what he was observing, a large scale vehicle pursuit began. It lasted more than 20 minutes travelling a distance of more than 20 miles through most of the Cleveland Police Districts on city streets and a portion of I-90, where speed levels of more than 100 miles per hour were reached. In total, of the 277 Cleveland Police officers who were on duty that night, 104 officers had at least some role in the pursuit; a pursuit where some 64 Cleveland Police vehicles as well as a number of vehicles from other law enforcement agencies, including the State Highway Patrol and the Cuyahoga County Sheriff’s Office, eventually became involved.

When the Malibu exited I-90 and continued on into the east side of Cleveland, approximately 15 police vehicles were in close pursuit and dozens more were not far behind. Shortly thereafter, the Malibu left the Cleveland city limits driving into East Cleveland, a separate municipality, followed by a long line of Cleveland Police vehicles. The pursuit reached its conclusion shortly thereafter when the Malibu drove into the one-way-in/one-way-out access to the parking lot of the East Cleveland, Heritage Middle School with Zone Car 215 driven by Officer Wilfredo Diaz following right behind. At this point, Officer Diaz’s police vehicle accidently struck the Malibu from the rear when the latter was approaching a grassy island located in the middle of the parking lot, thereby causing it to go into a spin and come to a stop up on the island. Accordingly, Officer Diaz jumped out of Zone Car 215 while it was still moving, at which point Officer Dymphora O’Neill, his partner who was seated next to him, stopped the

vehicle by putting it in park. Officer Diaz, who is left handed, drew his gun and ran to the almost immediate front of the Malibu yelling “stop”. There, according to his later testimony in seeing that the front seat passenger (Malissa Williams) had reached down to pull up a black object, he fired at her. The Malibu then drove off of the grassy island towards Officer Diaz, at which point he fired at the driver (Timothy Russell) before jumping out of the way.

Then, with a nearby officer broadcasting the words “shots fired” [City Exhibit – A(3), Radio Broadcast] and a considerable number of police officers and zone cars now in the Heritage Middle School parking lot area, a huge eruption of gunfire began. It started almost immediately after Officer Diaz (who fired a total of 4 shots) had fired his last round and the Malibu had come off of the grassy island driving back towards the access drive where Zone Car 238 had just parked. Accordingly, Officer Robert Radosevic, the driver of Zone Car 238, and Officer Scott Sistek, the passenger, had just gotten out of their vehicle when they saw that the Malibu was fast approaching. With a number of officers and zone cars located behind the Malibu, including Zone Car 215 (Officer Diaz and Officer O’Neill), Officer Sistek drew his gun and fired 12 rounds at the oncoming vehicle while running backwards, where he eventually fell to the ground in an effort to take cover behind Zone Car 238. The Malibu then collided with the passenger side of Zone Car 238 and came to a stop. Here, Zone Car 217 had just parked on the passenger side of Zone Car 238 and was facing the Malibu when the collision occurred. Almost immediately after the collision, Officer Michael Brelo, the driver of Zone Car 217, and Officer Cynthia Moore, who was seated next to him in the front passenger seat, both fired multiple rounds at the Malibu through their windshield where Officer Brelo was the first to fire. At this point, both exited their vehicle with Officer Brelo continuing to discharge his weapon as he ran to the rear of Zone Car

238. Officer Moore continued to fire through the windshield after having placed herself immediately outside of Zone Car 217 on the passenger side. In total, she fired 19 rounds.

In the midst of all this gunfire, officers were continuing to arrive at the Heritage Middle School, including Zone Car 243, where Officer Randy Patrick was the driver and Officer Paul Box the passenger. In stopping and exiting their vehicle, the two officers positioned themselves near the passenger side of Zone Car 217 very close to Officer Moore. From there, Officer Box stepped out from his cover and fired one shotgun blast at the Malibu, while Officer Patrick using his handgun fired 9 rounds at the same target. Also as shots were being fired, Zone Car 232 arrived and parked to the rear of the driver's side of Zone Car 243, where the driver, Officer Michael Farley, and the passenger, Officer Brian Sabolik, immediately exited the vehicle. While not wearing his ballistic vest, Officer Farley fired 4 rounds at the Malibu as he ran to Zone Car 238. Officer Sabolik, a rookie trainee, fired 2 rounds at the same target as he back-peddled to the rear of his zone car and then went to the driver's side from where he fired 2 more rounds. Officer Sabolik then ran to the rear of Zone Car 238, where he took cover until the gunfire stopped.

While these officers were firing from positions in front of the Malibu, more than 10 officers were located on the other side in the parking lot area. This group included Officer Diaz and Officer O'Neil, as well as Detective Michael Rinkus, the driver of Vice Car 282, and his partner, Detective William Salupo. Here, Detective Rinkus had pulled over as the Malibu started driving back towards the parking lot access drive, where it passed by him going in the opposite direction. Thus, he made a U-turn, stopped, exited his car, drew his gun, and then began running towards the Malibu (from behind) and the front of Zone Car 238 while firing 13 rounds before

stopping. After also exiting Vice Car 282, Detective Salupo followed Detective Rinkus where he fired 2 rounds while running.

Vice Car 388, where Detective Christopher Ereg was the driver and Sergeant Matthew Putnam the passenger, arrived as the Malibu was driving back towards the access drive. At about the time the Malibu struck Zone Car 238, Detective Ereg parked his vehicle at the top of a nearby hill, ran down the hill and stopped at a location near the front driver's side of Zone Car 238. From there, he fired a total of 6 rounds at the Malibu as it sat motionless after running into Zone Car 238. His partner, Sergeant Putnam, also ran towards the area where Zone Car 238 was parked. There, he took cover and did not fire his weapon. At about the same time, Vice Car 381, where Detective Michael Demchak was the driver and Detective Erin O'Donnell the passenger, arrived on the scene as Detective O'Donnell was hearing the aforementioned "shots fired" radio broadcast. In also parking on top of the hill next to the access drive, both Detective Demchak, who is now retired and not part of this arbitration preceding, and Detective O'Donnell ran down the hill towards the Malibu and Zone Car 238. Accordingly, Detective Demchak fired a total of 4 rounds from a position behind Zone Car 238, while Detective O'Donnell fired 12 rounds. There is much disagreement concerning the testimony of Detective O'Donnell and the physical evidence as to from exactly where she fired her rounds. Detective O'Donnell claims that it was from a position immediately next to the driver's side of Zone Car 238, while the City in questioning the credibility of her testimony argues that the physical evidence indicates that she fired from the hill side.

The last rounds were fired by Officer Brelo standing on top of the hood of the Malibu, where he fired 15 to 18 shots down through the windshield at Timothy Russell and Malissa Williams. As mentioned before, Officer Brelo had exited Zone Car 217 where he continued to

fire as he ran to the rear of Zone Car 238, at which point he climbed up onto the trunk of that vehicle. From there, he somehow moved to the hood of the Malibu where he fired these final shots. In total, Officer Brelo fired 49 rounds.

In all, 139 rounds were fired at the Malibu that night by 13 Cleveland Police officers during a period lasting approximately 17.8 seconds, excluding the very brief initial period when several shots were fired by Officer Diaz. The two suspects inside the Malibu were killed instantly with 24 bullets having struck Malissa Williams and 23 bullets having hit Timothy Russell. In addition, no gun was found inside the Malibu. As to the possibility that a gun was thrown out of the Malibu during the pursuit, a search was made of the Heritage Middle School parking lot area, the streets and roadways where the pursuit had taken place and the nearby waterways with the assistance of a dive team. Despite this extensive effort, no gun which may have been used by the decedents during the events of November 29, 2012, was ever found.

As to the decedents, it was later learned that sadly each of them had a very serious mental health condition, a long history of substance abuse, and a criminal record involving lower level offenses largely pertaining to substance abuse. The autopsy on the body of Timothy Russell revealed traces of alcohol, cocaine, and nicotine; while as to Malissa Williams traces of cocaine, marijuana, and nicotine were found. Also, included in Mr. Russell's criminal record was a prior instance where he had been the subject of a police vehicle pursuit. Both of the decedents were homeless where they had been living in and out of homeless shelters.

Almost immediately after the conclusion of the November 29, 2012, police pursuit and the tragic shooting deaths of Timothy Russell and Malissa Williams, a large scale investigation was begun. Early on, it was decided that the Ohio Attorney General's Office Bureau of Criminal Identification and Investigation ("BCI") would take the lead. This was due to the magnitude and

nature of what had occurred and the fact that where the shooting deaths took place – East Cleveland, Ohio – is a relatively small Ohio municipality and, therefore, didn't have the resources needed for such a large undertaking. Accordingly, in accordance with Police Division policy regarding any incident where deadly force is used, the officers involved in this arbitration proceeding (“the Grievants”) were initially placed on restricted duty. Several months later, BCI completed its investigation and issued a summary of its findings (Joint Exhibit – 36). In this connection, on February 5, 2013, Ohio Attorney General Mike DeWine at a press conference issued a “STATEMENT” (Joint Exhibit – 35) which contained the following “CONCLUSION” (Joint Exhibit – 35):

* * *

What you have just heard is a tragedy – a tragedy for Timothy Russell, a tragedy for Malissa Williams, and a tragedy for their families. This has also been very tough for each of the law enforcement officers involved.

To state the obvious, this chase could have ended without tragic results if Timothy Russell had simply stopped the car in response to the police pursuit. Perhaps the alcohol and the cocaine in his system impaired his judgment. We will never know.

We do know that each officer at the scene believed he or she was dealing with a driver who had fled law enforcement. They each also believed they were dealing with a passenger who was brandishing a gun – and that the gun had been fired at a police officer. It is now clear that those last two beliefs were likely not true.

* * *

These BCI findings led to criminal charges being brought by the Cuyahoga County Prosecutor against Officer Michael Brelo, where on May 30, 2014, he was indicted on 2 counts of voluntary manslaughter and thereby placed on unpaid leave pending the outcome of a bench trial before Judge John P. O'Donnell. In a verdict dated May 23, 2015, Judge O'Donnell

determined that the State did not prove its case beyond a reasonable doubt and, therefore, found Officer Brelo not guilty (Joint Exhibit – 37).

As to the City's administrative investigation of the events of November 29, 2012, and again due to the unprecedented magnitude and nature of what occurred, Michael McGrath – the City's Safety Director who at the time was the City's Chief of Police – several days later announced the creation of the Critical Incident Review Committee ("CIRC"). In doing so, Chief McGrath named Police Commander James Chura as the chair of a 10-member committee that included representatives from the City Division of Police, the City Office of Professional Standards, the City Office of Community Relations, and the City Law Department. Initially, CIRC worked in close cooperation with BCI where it was focused on the pursuit portion of the events of November 29, 2012. CIRC completed its investigation after the Brelo verdict and after having interviewed all of the Grievants.

On August 18, 2015, the City announced that it was bringing disciplinary charges against the Grievants, where as to the soon to be held, individual pre-disciplinary hearings Commander Chura would be the City's representative. Thus, with the Grievants pleading not guilty, the hearings took place in October and November of 2015 before Safety Director McGrath. During this period, Director McGrath began his final review of the Grievants' conduct on November 29, 2012, where in November and early December he met several times with his "Review Committee", which included Commander Chura and other members of CIRC. This review was mainly concerned with the question of whether or not in each individual case, and upon having determined that most of the charges were valid, there was "just cause" under the Agreement for termination or for a lengthy disciplinary suspension. Later on in December, Director McGrath conferred with Police Chief Calvin Williams and Mayor Frank Jackson. The review process

continued through most of January 2016, where Director McGrath met with Chief Williams, Mayor Jackson, Commander Chura, and others on January 20 and 21, 2016. Accordingly, after Director McGrath met with Chief Williams and Mayor Jackson on Friday, January 22, 2016, he deliberated the matter over the weekend. This included going out to the Heritage Middle School in order to again view the site of the November 29, 2012, shootings.

On January 26, 2016, Safety Director Michael McGrath announced his decision: Wilfredo Diaz, Christopher Ereg, Michael Farley, Erin O'Donnell, Brian Sabolik, and Michael Brelo would each be terminated; while Cynthia Moore, Paul Box, Randy Patrick, Scott Sistek, William Salupo, and Michael Rinkus would each be given a 21-day disciplinary suspension (22 days in the case of Detective Rinkus). In response, Commander Chura took great issue with several of the termination actions, to the point that he resigned from his position as a Police Commander, thereby demoting himself to the rank of Captain where one result was an annual salary reduction of approximately \$10,000. Also in response, the 12 instant grievances were filed by the CPPA on behalf of each of the Grievants (Joint Exhibit – 3), grievances which were later consolidated for purposes of this arbitration proceeding.

DISCUSSION AND FINDINGS

The issue to be resolved is the following: Were the Grievants terminated or suspended for “just cause” and, if not, what shall be the remedy?

The City, in greatly emphasizing the extremely large number of officers who became involved in the November 29, 2012, vehicle pursuit and the extremely large number of shots which were fired at its end when deadly force was applied, contends the Grievants were terminated or suspended for just cause since each engaged in serious misconduct by failing to act in accordance with Police Division policies, training, reasonableness, and restraint. In

acknowledging that the Grievants were faced with a “challenging and fear-inducing situation” that night, the City argues that nevertheless they all violated basic Police Division rules and policies both as to their involvement in the vehicle pursuit and their having chosen to use deadly force at its conclusion. While taking the position that the nature of what occurred and the combination of administrative rule violations involved has no precedent, it asserts that when they applied deadly force, the Grievants failed to follow their training and basic Police Division rules and policies concerning the use of necessary tactics, including knowing your target and always being mindful of the target backdrop. The City urges that the use of deadly force by the Grievants on November 29, 2012, was reckless, contagious, and unnecessary; where the result was a tragic loss of life and an extreme cross fire situation which endangered each of their own lives as well as the lives of the other officers present. As to the latter and in noting that there were a number of officers present who did not fire, it sums up the fact that no officer was injured or killed as a “miracle”.

While greatly pointing out that these actions were taken more than 3 years after November 29, 2012, the CPPA contends the City violated the Agreement when it acted to terminate or excessively suspend the Grievants without just cause. It argues that in each case, rights of due process were ignored while the discipline given amounted to disparate treatment, was not warranted by the particular facts involved, was excessive, and did not take into account mitigating factors such as an exemplary work record and years of service. In urging that when they applied deadly force the Grievants acted lawfully and in accordance with their training, the CPPA takes the position that all of these actions should be modified where instead each should be given minor discipline, re-training or re-instruction, back-pay, and any other relief deemed appropriate. While asserting that there is a lot of legal authority in support of the principle that

the Grievants should be judged by a reasonableness standard that fully considers the extremely dangerous and fast-breaking set of circumstances which they were working under at the time in question, the CPPA alternatively suggests that these discipline and discharge actions should be completely overturned where any administrative rule violations which may have occurred was due to a “systemic failure”; a point that Ohio Attorney General Mike DeWine made in a “STATEMENT” (Joint Exhibit – 35) issued on February 5, 2013, in conjunction with the release of the BCI report (Joint Exhibit – 36).

Initially, the CPPA asserts that there was a failure of procedural timeliness on the part of the City regarding the herein actions taken against several of the Grievants based on a contention that it violated a requirement of Article XXIX, Paragraph 74, that the “charges shall be disposed of by the Director of Public Safety within ninety (90) days of their filing”. Accordingly, it is found that this argument has been waived since it was initially raised at the time of the arbitration hearing. Therefore, the undersigned accepts the argument of the City that this is in accordance with arbitral law, where procedural defaults are not favored.

Turning to the merits and at the outset, it is felt necessary to make a number of general findings and observations. First, as to the “just cause” standard that is provided for in the Agreement and is the sole basis upon which the disputes that are the subject of these grievances are to be resolved, the undersigned concurs with the City as set out on page 35 of its post-hearing brief that this “is best understood through the words of Arbitrator (Harry) Platt, who explained that:

* * *

To be sure, no standards exist to aid an arbitrator in finding a conclusive answer to such a question and, therefore, perhaps the best he can do is to decide what a reasonable man, mindful of the habits and customs of industrial life and of the standards of justice and fair

dealing prevalent in the community ought to have done under similar circumstances and in that light to decide whether the conduct of the discharged employee was defensible and the disciplinary penalty just”.

* * *

Riley Stoker Corp., 7 LA 764, 767 (Platt, 1947).

Accordingly, the undersigned finds that as to the matter at hand the standard for “just cause” is what a “reasonable man” “ought to have done” under the very difficult and very dangerous “circumstances” which each of the Grievants was working under on November 29, 2012, in light of the Police Division administrative rules and policies that govern when an officer seeks to engage in a vehicle pursuit and to use deadly force. In addition, and regarding the justness of the disciplinary penalty that was imposed in each of these cases, as the CPPA points out, it is basic to “just cause” that factors such as an employee’s length of service and record of work performance are to be considered for purposes of possible mitigation. Also and in keeping with the definition of “just cause” offered by Arbitrator Platt, the penalty of summary termination is supportable if the misconduct at issue is so egregious there can be no question of the employee’s previous awareness of its complete unacceptability.

Second, since without dispute no gun was ever found regarding Timothy Russell and Malissa Williams and the events of November 29, 2012, (although the CPPA contends that, regardless, a gun was used where it points to the fact that gun powder residue was found in their vehicle), it is determined that gunfire originating from inside the Malibu was not established to have taken place. Accordingly, it is to be noted that evidence was later discovered that points to the distinct possibility that, with the Malibu having been more than 30 years old and in bad condition, the gunfire which was reported over the police channel that night while the pursuit was underway in fact may have been the sound of the vehicle’s engine “backfiring”.

Third, starting with Officer Nan's broadcast that an "Old Chevy just popped a round as he passed by" [City Exhibit – A(3), Radio Log] and the multiple police radio broadcasts made throughout the November 29, 2012, pursuit indicating that at least one of the occupants of the Malibu was brandishing a gun, it is found that the Grievants reasonably believed that the Malibu posed a grave threat to the public as well as to any police officer who would attempt to intervene. Accordingly, the information which the Grievants were working with included a broadcast from Officer Siefer while he was in the lead pursuit vehicle reporting that the passenger in the front seat of the Malibu appeared to be very angry and was turning around pointing a gun [City Exhibit – A(3) Radio Log]. At the same time a few of the police radio broadcasts indicated that the suspects were not armed, including one from Detective Kevin Fairchild when his zone car was in the lead position after the Malibu had exited I-90 and was travelling through the east side of Cleveland [City Exhibit – A(3) Radio Log]. However, just after Detective Fairchild's zone car had accidentally made physical contact with the Malibu, which was observed by Sergeant Patricia Coleman, it was incorrectly reported by her over the police radio channel that the suspects' car had "rammed into a police car" [City Exhibit – A(3), Radio Log]. In addition, Sergeant Coleman then stated that the passenger in the Malibu (Malissa Williams) was reaching under the car glove compartment and was "possibly loading a weapon" [City Exhibit – A(3), Radio Log].

Therefore, it is held that upon entering the Heritage Middle School parking lot area, each of the Grievants reasonably believed that at least one of the occupants of the Malibu was armed with a gun, had shortly before fired at a police officer, and was generally behaving in a very threatening manner. In other words, it is determined that upon entering this one way in/one way out parking lot area, each of the Grievants had a well-founded belief that they were about to

directly confront two extremely dangerous suspects – a belief reinforced by the fact that these suspects had just led them on a high speed chase lasting many minutes and covering many miles.

Fourth, as set forth in General Police Order (“GPO”) 3.2.02 (Joint Exhibit – 26) there are two very important Police Division rules regarding vehicle pursuits which are determined to apply to this matter: That an officer obtain the permission of a supervisor prior to joining a pursuit which is in progress and that an officer immediately notify radio dispatch or the Communications Control Section (“CCS”) of his/her having become engaged in a pursuit. Accordingly, it is held that each of the Grievants violated one or both of these rules on November 29, 2012. In addition, the undersigned finds that with adherence to these rules being understood as fundamental to the safety and effectiveness of what often is a dangerous, but many times necessary law enforcement activity, that they were widely not adhered to on November 29, 2012, cannot be seen as necessarily reflective of a systemic failure. This follows where it seems obvious that effective pursuit management most often cannot occur *unless the officer calls in*.

Thus, while the laudable “. . . desire of officers to protect each other and the public and the sense of brotherhood that undoubtedly permeates service on the force” likely was the motivation behind the widespread disregard of these rules as stated by the City on page 37 of its post-hearing brief, the undersigned cannot accept the contention of the CPPA that they were either negated or obscured by a past practice concerning the police radio channel needing to be kept clear during a pursuit. Therefore, in acknowledging that often there is a need to keep the channel open and that apparently there has been an unwritten policy to refrain from all non-essential communications during a pursuit, it cannot be found that the Grievants *reasonably* believed that they were free to not report in by radio as to having become involved in a police vehicle pursuit and/or to not obtain the permission of a supervisor prior to joining a pursuit

already in progress. In short, the undersigned cannot accept the suggestion that under the circumstances of the November 29, 2012, pursuit it was allowable for each of the Grievants to not call in regarding his/her participation.

Essentially, the fundamental and common sense nature of these established rules is reconfirmed upon a review of the events of November 29, 2012, where had they been adhered to there likely would have been many less police officers present as the pursuit was reaching its end point in the Heritage Middle School parking lot area. Moreover, there can be little doubt that the overwhelming sense of fear and confusion which each of the Grievants likely felt at that point was in significant part due to the presence of a large contingent of other officers, officers with whom they had not been in communication with either directly or indirectly. All of this is found to be directly attributable to there having been a lack of supervisory command and control during the course of the November 29, 2012, pursuit which largely stemmed from these basic vehicle pursuit rules having not been followed.

Fifth, it is overwhelmingly held that upon entering the Heritage Middle School parking lot area on November 29, 2012, almost all of the Grievants, in choosing to fire, directly contributed to an extreme “crossfire” situation, thereby greatly endangering the lives of the other officers present as well as their own lives. This is based on statements which were submitted by some of the Grievants as well as some of the other officers and supervisors who were present, the BCI summary report (Joint Exhibit – 36), the results of the CIRC investigation, the testimony of two expert witness called by the Defense at the Brelo criminal trial [City Exhibits – A(51) and a(54)], and the physical location of each of the Grievants when he/she fired in relation to each other where the Malibu (the target) was located roughly in the center of all of the firing. Thus, there is no basis upon which to not accept the conclusion of Ron Martinelli, an expert witness

called by the Defense in the Brelo trial [City Exhibit – A(54)], who testified was that there was “dangerous crossfire” in the Heritage Middle School parking lot area on November 29, 2012, and that it was a “miracle” no officer was “shot”.

Basically, in finding that all of the Grievants knew there was a considerable number of other police officers in the Heritage Middle School parking lot area – and that in almost all cases the Malibu (the target) was located roughly in the middle as compared to the location of each of these officers – it is held that, with the possible exception of Officer Diaz, they were all aware or should have been aware that there was a high risk of crossfire. Further support for this determination and that crossfire was central to what happened on November 29, 2012, is gathered from the undisputed fact that no gunfire came from inside the Malibu during the time it was in the Heritage Middle School parking lot area and that no gun connected to the activities of the suspects that night was ever found. Thus, the CPPA, in contending that gunfire did emanate from inside the Malibu, specifically acknowledges that this was *prior to its having entered the Heritage Middle School parking lot area*. Accordingly, it is held that the understanding of almost all of the Grievants that they were under fire at the time in question was based on the fact that the *gunfire was coming from other officers*. Critically, it is found that this crossfire was due to there having been widespread violations of long established Police Division policies and rules concerning use of deadly force tactics – including that, before firing, an officer must know his/her target, while at the same time greatly considering the backdrop of the target area.

Therefore and while emphasizing that most of these rules are fundamental to firearms safety in general, it is determined that these policies and rules were extensively covered at the Police Academy when each of the Grievants was a police cadet and are revisited each year during the annual firearms recertification training. Thus, in addition to knowing your target and to

always consider the target area backdrop, it is found that the Grievants received extensive training concerning other basic use of force tactics; including the importance of maintaining cover and distance, of resisting the natural urge to close in on a dangerous suspect (“the Cleveland rush”), of not directly confronting a felony suspect if other avenues are available, and of assessing and reassessing the situation.

Sixth, it is held that the CPPA was not able to establish that there was disparate treatment concerning these actions to discipline or discharge the Grievants. This follows in light of the nature of the events of November 29, 2012, and that each case involved violations of basic administrative rules and policies concerning officer engagement in a vehicle pursuit *and* an officer applying deadly force, which together is determined to be without precedent. In other words, the undersigned finds that the CPPA was not able to establish a direct comparison between the past cases which it cited and the particular circumstances of these discipline and discharge actions, where each involved violations of fundamental administrative rules and policies as to engagement in a vehicle pursuit and the use of deadly force.

Seventh, it is held that there is no firm basis upon which to conclude that any impropriety was involved as to the decision making process which Safety Director McGrath undertook in reaching his decision to impose a disciplinary suspension or termination regarding each of the Grievants in this matter. Accordingly and while understanding the concern raised by the CPPA regarding the fact that in some cases the penalty changed substantially during the course of his decision making process, the undersigned finds, as the City has argued, that in light of the scale and complexity of the events of November 29, 2012, the changes are not necessarily suggestive of impropriety. This follows where it is determined to have been reasonable and indeed to have been expected that Director McGrath would consider the views of Mayor Jackson, Chief

Williams, Commander Chura, and others. In addition, it cannot be held that the Grievants in this matter were denied their Constitutional right to due process as set forth in *Cleveland Board of Education v. Loudermill*, 105 S. Ct. 1487, 1491 (1985).

Against this backdrop, the undersigned will now address each of these grievances individually.

I
Officer Scott Sisteck

It is found that the City met its burden to establish that the 21-day disciplinary suspension given to Officer Scott Sisteck, who was a passenger in Zone Car 238, was for just cause. This follows upon determining that Officer Sisteck committed several administrative rule and policy violations both as to the pursuit and in having used deadly force when he fired 12 rounds at the Malibu as it was speeding towards him and he was running backwards. Regarding the pursuit, it is held that Officer Sisteck violated GPO 3.2.02 in that he became engaged “without permission from a sector supervisor” and without notifying CCS of his engagement. In addition, since Officer Sisteck did not request permission to leave the City he is determined to have violated another Police Division administrative rule. As to the use of deadly force administrative rule and policy violations, this is found to have occurred when Officer Sisteck fired despite knowing there were a number of officers in the immediate backdrop of his target area. Moreover, the undersigned accepts the contention of the City that this risking of tragic consequences was made worse by his having employed the inherently unsafe tactic of firing while running backwards, where he thus was not able to properly take aim. Also, while finding that Officer Sisteck had the option to get out of the path of the Malibu and not fire, it is determined that he violated GPO 2.1.01, which generally prohibits firing at a moving vehicle. Finally, the undersigned concludes

that the 21-day suspension appropriately takes into account the extreme stress which Officer Sistek was under at the time, where he found himself suddenly face to face with the Malibu speeding in his direction and almost striking him.

II Officer Cynthia Moore

It is found that the City met its burden to establish that the 21-day disciplinary suspension given to Officer Cynthia Moore was for just cause. This follows upon having determined that Officer Moore committed a number of administrative rule and policy violations, both as to her participation in the pursuit and in having used deadly force when she fired 19 rounds through the windshield of Zone Car 217 (her police vehicle) at the Malibu after seeing it crash into Zone Car 238. Regarding the pursuit, it is held that she violated GPO 3.2.02 in that she became engaged “without permission from a sector supervisor” and without notifying CCS of her involvement. Additionally, Officer Moore did not request permission to leave the City. As to the use of deadly force administrative rule and policy violations, Officer Moore fired despite having known there were a number of officers in the immediate backdrop of her target area. Moreover, she was not able to clearly see her target, the Malibu, since her vision was obstructed by the broken windshield glass which was the result of Officer Michael Brelo, her partner, having just before fired through the windshield. Finally, while the record makes clear that the option of taking cover and not firing was available to Officer Moore, the 21-day suspension appropriately takes into consideration the finding of Safety Director McGrath that her individual perception was that Timothy Russell was raising a weapon and that she was in extreme danger, where her zone car windshield had just been shattered by gunfire.

III Officer Randy Patrick

It is found that the City met its burden to establish that the 21-day disciplinary suspension given to Officer Randy Patrick was for just cause. This follows upon having determined that Officer Patrick committed a number of administrative rule and policy violations, both as to his participation in the pursuit and in having used deadly force when he fired 9 rounds at the Malibu. This was after he had left the cover of his police vehicle, Zone Car 243, and moved to a position next to Zone Car 217 near Officer Moore. Regarding the pursuit, it is determined that he violated GPO 3.2.02 in that he became engaged “without permission from a sector supervisor” and without notifying CCS of his involvement. In addition, since Officer Patrick began his participation miles away from the Malibu, it is found that he violated another GPO 3.2.02 standard regarding not becoming involved if “the distance . . . is so great that continuing the pursuit is futile”. Also, it is found that he did not request permission to leave the City. With respect to the use of deadly force administrative rule and policy violations, this is found to have occurred when Officer Patrick fired despite knowing there were a number of officers in the immediate backdrop of his target area. Furthermore, it is determined that he unnecessarily took a dangerous risk by leaving a place of cover behind his own zone car and moving to a position next to Zone Car 217, from where he fired the 9 rounds at the Malibu. Finally, the undersigned finds that the 21-day suspension appropriately takes into account the fact that when Officer Patrick discharged his weapon he was looking at the same broken windshield glass inside Zone Car 217 as Officer Moore, while also hearing bullets going by as well as the sounds of gunfire. Accordingly, this is understood to have supported his individual perception that he was under fire from the occupants of the Malibu.

IV
Officer Paul Box

It is found that the City met its burden to establish that the 21-day disciplinary suspension given to Officer Paul Box was for just cause. This follows upon having determined that Officer Box committed a number of administrative rule and policy violations, both as to his participation in the pursuit and in having used deadly force when he fired one shotgun blast at the Malibu. This was after he had left the cover of his police vehicle, Zone Car 243, and moved to a position next to Zone Car 217 near Officer Moore. Regarding the pursuit, it is determined that he violated GPO 3.2.02 in that he became engaged “without permission from a sector supervisor” and without notifying CCS of his involvement. In addition, since Officer Box joined the pursuit miles away from the Malibu, it is found that he violated the GPO 3.2.02 standard concerning not becoming involved if “the distance . . . is so great that continuing the pursuit is futile”. Also, it is found that he did not request permission to leave the City. With respect to the use of deadly force administrative rule and policy violations, this is found to have occurred when Officer Box fired despite knowing there were a number of officers in the immediate backdrop of his target area. Furthermore, it is held that he unnecessarily took a dangerous risk by leaving a place of cover behind his own zone car to move to a position next to Zone Car 217, from where he charged the Malibu and fired one shotgun blast. Finally, the undersigned finds that the 21-day suspension appropriately takes into account the fact that Officer Box discharged his weapon only once; as well as his individual perception that he was under fire from the Malibu after having located himself near the broken windshield glass of Zone Car 217, where he could feel the bullets flying by in addition to having been hit in his ballistics vest.

V
Detective William Salupo

It is found that the City met its burden to establish that the 21-day disciplinary suspension given to Officer William Salupo, who was a passenger in Vice Car 282, was for just cause. This follows upon determining that Detective Salupo committed several administrative rule and policy violations, both as to the pursuit and in having used deadly force when he fired 2 rounds at the Malibu from behind as it was speeding towards Zone Car 238. Regarding the pursuit, it is held that Detective Salupo violated GPO 3.2.02 in having become engaged “without permission from a sector supervisor” and without notifying CCS of his involvement. In addition, Detective Salupo did not request permission to leave the City. As to his use of deadly force administrative rule and policy violations, this is found to have occurred when Detective Salupo fired despite knowing there were a number of officers in the immediate backdrop of his target area. Moreover, the undersigned accepts the contention of the City that this unnecessary risk of a tragic accident was made worse by his employing the inherently unsafe tactic of firing while running. Also, while finding that Detective Salupo had the option to take cover and not fire, it is determined that in firing at the Malibu he violated GPO 2.1.01, which generally prohibits firing at a moving vehicle. Finally, the undersigned concludes that this 21-day suspension appropriately takes into account the extreme stress which Detective Salupo was under at the time, where he was feeling bullets going by and he witnessed Officer Sisteck go down near the Malibu after running backwards.

VI
Detective Michael Rinkus

It is found that the City met its burden to establish that the 22-day disciplinary suspension given to Detective Michael Rinkus, the driver of Vice Car 282, was for just cause. This follows

upon determining that Detective Rinkus committed several administrative rule and policy violations, both as to the pursuit and in having used deadly force when he fired 13 rounds at the Malibu from behind as it was speeding towards Zone Car 238. Regarding the pursuit, it is held that Detective Rinkus violated GPO 3.2.02 in having become engaged “without permission from a sector supervisor” and without notifying CCS of his involvement. In addition, Detective Rinkus did not request permission to leave the City. As to the use of deadly force administrative rule and policy violations, this is found to have occurred when Detective Rinkus fired despite knowing there were a number of officers in the immediate backdrop of his target area. Moreover, the undersigned accepts the contention of the City that he unnecessarily increased the risk of a tragic accident by using the inherently unsafe tactic of firing while running. Also, while finding that Detective Rinkus had the option to not fire, it is determined that he violated GPO 2.1.01, which generally prohibits shooting at a moving vehicle. Finally, this 22-day suspension is held to appropriately take into account the extreme stress which Officer Rinkus was under at the time, where he (like Detective Salupo) was feeling bullets going by and he saw Officer Sistek go down near the Malibu after running backwards.

VII Officer Michael Brelo

The undersigned finds that the City met its burden to establish that the summary termination of Officer Michael Brelo was for just cause. This follows upon having determined that the final 15-18 shots which he fired through the windshield at Timothy Williams and Malissa Williams while standing on the hood of the Malibu – at a point in time when reasonably they did not pose a threat – was an application of deadly force that had no basis in any Police Division administrative rule, policy or training as a police officer. Indeed Officer Brelo never

offered a reason or an explanation for these actions. Accordingly and upon finding that this clearly constituted an excessive use of deadly force, the contention of the City that it amounted to egregious misconduct where as a result the City no longer has trust and confidence in his ability to carry out the duties and responsibilities of a police officer is accepted. Additional support for this determination is gathered from the extraordinary fact that Officer Brelo fired a total of *49 rounds*, beginning with the shots he fired through the windshield of his zone car that was immediately followed by his giving up cover in order to run to Zone Car 238 while continuing to fire; where throughout he had to have known there were other officers located in his target area backdrop. Moreover, Officer Brelo recklessly exposed himself to the obvious danger of crossfire when he climbed up onto the trunk of Zone Car 238 and then stood on the hood of the Malibu. Furthermore and while emphasizing that his criminal indictment was not a consideration in reaching this determination, Officer Brelo joined the pursuit “without permission from a sector supervisor” and without notifying CCS, while in addition he did not receive permission to leave the City.

VIII Officer Wilfredo Diaz

The undersigned finds that the City did not meet its burden to establish that the termination of Officer Wilfredo Diaz was for just cause. At the same time, it is held that there was just cause to impose a severe disciplinary penalty mainly as to his having committed a number of administrative rule and policy violations regarding his use of deadly force when he fired the initial 4 rounds at the Malibu. While fully acknowledging the extreme stress which Officer Diaz was under in coming face-to-face with the Malibu and the two felony suspects, nevertheless, by not driving his zone car to a more distant location – but instead stopping in front

of the suspects' vehicle and leaving the cover of his vehicle to run up and yell "stop" – he unnecessarily put himself in an extremely dangerous and vulnerable position. In other words, it is determined that Officer Diaz failed to utilize basic use-of-force tactics which would have lessened the danger of his being shot and/or the sparking of a confrontation where firearms could be discharged. Stated otherwise, it is found that he did not act in accordance with the aforementioned rules, policies, and training, where his being left handed is determined to have not been relevant. In addition, what cannot be overlooked is his very unsafe action to exit his zone car while it was still moving, thus forcing his partner to stop the vehicle by putting it in park. Also, while finding that Officer Diaz had the option to get out of the path of the Malibu and not fire, it is determined that he violated the GPO 2.1.01 prohibition concerning firing at a moving vehicle. Furthermore and regarding the pursuit, it is determined that Officer Diaz violated GPO 3.2.02 in that he joined the pursuit "without permission from a sector supervisor" and without notifying CCS of his involvement, while also not having requested permission to leave the City.

What tips the balance in favor of reinstatement is a finding of the undersigned that the penalty of termination does not sufficiently take into account the fact that Officer Diaz had been with the Police Division for approximately four years prior to November 29, 2012, where his performance evaluations were consistently very positive (Union Exhibit – 68), and prior to that he had worked for the City's EMS service for four years as a paramedic. Also, an abundance of evidence was offered as to the special qualities of Officer Diaz as a person, community leader, and role model who has dedicated his life to law enforcement and public service (Union Exhibit – 68). Very importantly, Commander James Chura – who played a key role in the City's

handling of this entire matter as the chair of CIRC and without dispute is greatly respected by the City, the CPPA, as well as many others – gave the following testimony regarding Officer Diaz:

* * *

Like I said, his success story is he's come from the projects, worked his way out of there, you know, made something of himself and his family. I thought he was the most – one of the most honest and candid officers throughout this whole process. He didn't sugarcoat anything. He knew he made some tactical errors and he's learned from them. He's one of them that said he would not do the same thing again if he was in the same circumstances (Tr., p. 1560).

* * *

IX Officer Michael Farley

It is found that the City did not meet its burden to establish that the termination of Officer Michael Farley was for just cause. At the same time, it is held that there was just cause for imposing a severe disciplinary penalty where Officer Farley committed a number of administrative rule and policy violations regarding the pursuit and his use of deadly force. Moreover, all of this is found to have been aggravated by the fact that he was a Field Training Officer and, therefore, had responsibility for providing guidance and direction to Officer Brian Sabolik – his trainee/partner on November 29, 2012. Accordingly, as to the use of deadly force violations, he fired 4 rounds at the Malibu despite not being able to clearly see his target and despite knowing there were a number of officers in the immediate backdrop of his target area. Furthermore, it is determined that Officer Farley unnecessarily took the dangerous risk of leaving the cover of his zone car while not wearing his ballistics vest and employing the inherently unsafe tactic of firing while running. Regarding the pursuit, it is determined that he violated GPO 3.2.02 in that he joined the pursuit “without permission from a sector supervisor” and without notifying CCS of his involvement, while also not requesting permission to leave the City. Also,

since Officer Farley joined the pursuit despite being miles away from the Malibu, it is found that he violated the GPO 3.2.02 standard regarding not becoming involved if “the distance . . . is so great that continuing the pursuit is futile”.

What tips the balance in favor of reinstatement is a finding of the undersigned that what was not sufficiently taken into account is that Officer Farley had been with the Police Division for approximately sixteen years prior to November 29, 2012, and that his performance evaluations were consistently very positive (Union Exhibit – 69). Accordingly, what has to be fully considered is that Officer Farley is a long term, well-respected officer in the Police Division which is reflected in the fact of his having been a Field Training Officer and his having received a number of awards and commendations over the years. This includes his having received the Medal of Honor for bravery on July 29, 2013, when Officer Farley pursued and helped to apprehend a suspect who had shot a police officer (Union Exhibit – 69). Very importantly, Commander Chura testified as follows about Officer Farley during his pre-disciplinary hearing:

* * *

COMMANDER CHURA: Director, I just want to say that with the vest, Officer Farley was honest and forthcoming with that information. If it wasn't on the video we would never have known he wasn't wearing a vest. He's been critical of himself in this incident and I think he seeks to improve. I think he's an asset to the Division (Tr., p. 1552-1562).

* * *

X
Officer Brian Sabolik

It is found that the City did not meet its burden to establish that the termination of Officer Brian Sabolik was for just cause. At the same time, it is held that there was just cause for imposing a severe disciplinary penalty since Officer Sabolik committed a number of

administrative rule and policies violations concerning the pursuit and his use of deadly force when he fired 2 rounds as he back-peddled to the rear of his zone car upon exiting, followed by 2 more rounds being fired after moving to the driver's side. Accordingly, it is determined that Officer Sabolik fired despite not being able to clearly see his target and while knowing there were a number of officers in his immediate backdrop. Additionally, he employed the inherently unsafe tactic of firing while moving (backpedaling) and unnecessarily took the dangerous risk of leaving a position of cover. Regarding the pursuit, it is determined that Officer Sabolik violated GPO 3.2.02 in that he joined the pursuit "without permission from a sector supervisor" and without notifying CCS of his involvement. Also, he violated the requirement as to requesting permission to leave the City. Furthermore, since Officer Sabolik joined the pursuit despite being miles away from the Malibu, it is found that he violated the GPO 3.2.02 standard regarding not becoming involved if "the distance . . . is so great that continuing the pursuit is futile".

In finding that due to his actions on November 29, 2012, Officer Sabolik subjected himself to a severe disciplinary penalty, one consideration is that he had only a brief tenure of service with the Police Division. However, another consideration is the following testimony which was offered by Commander Chura at Officer Sabolik's pre-disciplinary hearing:

* * *

COMMANDER CHURA: Yes, Director. Officer Sabolik brought up it's been hard for him. And we've actually had three officers that were involved in this pursuit resign from the Division. I want to say I'm glad you're still with us. I think Detective Loomis said he had years of experience. He actually had months of experience when this occurred. And I think he did a great job of keeping his head in the circumstances and the chaos (Tr., p. 1552-1562).

* * *

In addition, as to Specifications #5 and #6 regarding the failure of Officer Sabolik to follow Police Division rules when he did not report an April 5, 2013, motor vehicle accident and also did not maintain auto insurance, the undersigned concurs with the CPPA that it is also appropriate to positively consider that he received several commendations (Union Exhibit – 70) during the same approximate three-year period of service after the events of November 29, 2012.

XI
Detective Christopher Ereg

The undersigned finds that the City did not meet its burden to establish that the termination of Detective Christopher Ereg was for just cause. At the same time, it is held that there was just cause for imposing a severe disciplinary penalty in having determined that Detective Ereg committed a number of administrative rule and policy violations as to his participation in the pursuit and having used deadly force. As to the latter, he left the cover of his police vehicle, Vice Car 388, and went down a hill where he placed himself near Zone Car 238 and fired 6 rounds at the Malibu, despite not having a clear view of his target and knowing there were a number of officers in the immediate backdrop of the target area. Regarding the pursuit, it is determined that Officer Ereg violated GPO 3.2.02 in that he joined the pursuit without notifying CCS of his involvement.

Additionally, all of this is found to have been aggravated by the fact that Detective Ereg as set forth in Specification #2 “took two photographs of a crime scene and did not submit those for evidentiary purposes”, where one was a *close-up* photo of the decedents while their bodies were still in the car. Here, the validity of Detective Ereg having sent this photo to a former Police Division partner, where he asserts that he thought it would help in identifying the decedents, is undermined by the fact that he also sent it to his father in Michigan. Basically, the

undersigned entirely concurs with the City that this is very disturbing officer misconduct in that it reflects an extreme lack of respect for the privacy of the decedents. At the same time and without other evidence of his underlying motive beyond the fact that this misconduct occurred, the undersigned cannot accept the contention of the City that the photo was necessarily intended as a “trophy”. In addition, the undersigned finds that the CPPA was not able to establish that this holding of Detective Ereg accountable for such misconduct constituted disparate treatment. This follows where the CPPA was only able to point to one comparable *close-up* “photo” of a decedent incident, which occurred in 2007 (Union Exhibit – 101), as well as to several instances of crime scene photos having been taken by other officers present at the scene on November 29, 2012, which were not fully developed in the record for comparison purposes.

What tips the balance in favor of reinstatement is a finding of the undersigned that what was not sufficiently taken into account is that Detective Ereg had been with the Police Division for approximately thirteen years prior to November 29, 2012, and that his performance evaluations have consistently been very positive (Union Exhibit – 75). Accordingly, what has to be fully considered is that Officer Ereg is a long term, well-respected officer and detective which is reflected in his having received a number of awards and commendations. This includes his having received the Medal of Heroism in 2010 regarding his role in a law enforcement action where he had to apply deadly force regarding a suspect who had a gun and fortunately the suspect survived and made a full recovery (Union Exhibit – 75).

XII Detective Erin O’Donnell

The undersigned finds that the City did not meet its burden to establish that the termination of Detective Erin O’Donnell was for just cause. At the same time, it is held that

there was just cause for imposing a severe disciplinary penalty concerning her having committed a number of administrative rule and policy violations as to her involvement in the pursuit and having used deadly force when she fired 12 rounds at the Malibu. Accordingly, it is determined that Detective O'Donnell left the cover of her police vehicle, Vice Car 381, and fired despite not clearly being able to see her target and having known (or should have known) there were a number of officers in the immediate backdrop of the target area. Moreover, it was overwhelmingly established, and despite being denied by Detective O'Donnell, that these rounds were fired from a nearby hill, where eleven of her shell casings were later found. Regarding the pursuit, it is determined that Detective O'Donnell violated GPO 3.2.02 in having joined the pursuit without notifying CCS of her involvement.

In addition, all of this is found to have been aggravated by the fact that Detective O'Donnell "obtained unauthorized photos not initially submitted for evidentiary purposes" as set forth in Specification #3 when shortly afterwards she took a *close-up* cell phone photo of the decedents while their bodies were still in the car. While noting that Detective O'Donnell was never able to give a reason for such behavior, the undersigned entirely concurs with the City that this is very disturbing officer misconduct in that it reflects an extreme lack of respect for the privacy of the decedents. Thus, the fact that on her cell phone she has photos of prostitution and drug ring arrests as was pointed out by the CPPA is determined to not necessarily be reflective of an established past practice. At the same time and without additional evidence as to her motive beyond the fact that this misconduct occurred, the undersigned cannot accept the contention of the City that the photo was necessarily intended as a "trophy". In addition, the undersigned finds that the CPPA was not able to establish that holding Detective O'Donnell accountable for this misconduct amounted to disparate treatment. This follows where the CPPA was only able to

point to one comparable incident, which occurred in 2007 (Union Exhibit – 101), as well as to several instances of crime scene photos having been taken by officers present at the scene on November 29, 2012, which were not fully developed in the record for direct comparison purposes.

What tips the balance in favor of reinstatement is a finding of the undersigned that what was not sufficiently taken into account is that Detective O'Donnell had been with the Police Division for approximately fifteen years prior to November 29, 2012, and that her performance evaluations were consistently very positive (Union Exhibit – 76). Accordingly, what has to be fully considered is that Detective O'Donnell is a long term, well-respected officer and detective which is reflected in her having received a "Chief's Commendation" in 2001 and 2005 as to the important role she played in the capture and arrest of some armed robbery suspects (Union Exhibit – 76). In addition, her supervisor, Sergeant Putnam, testified that "Detective O'Donnell is a very fine detective" (Tr., p. 1708).

Based upon all of the foregoing, it is held that the City met its burden to establish that the disciplinary suspension actions taken against Officer Scott Sisteck, Officer Cynthia More, Officer Randy Patrick, Officer Paul Box, Detective William Salupo, and Detective Michael Rinkus were for just cause. Accordingly, the grievances which were filed on behalf of these officers must be, and are, denied. As to Officer Michael Brelo, it is held that the City met its burden to establish that his termination was for just cause. Therefore, his grievance must be, and is, denied. As to Officer Wilfredo Diaz, Officer Michael Farley, Officer Brian Sabolik, Detective Erin O'Donnell, and Detective Christopher Ereg, it is held that the City did not meet its burden to establish that the termination actions taken against them was for just cause. Accordingly, the grievances filed on behalf of these officers are each sustained in part and denied in part. Therefore, the City is

directed to immediately reinstate these officers, where the period of time off work since each was terminated is to be considered as that of a disciplinary suspension. Back pay is denied.

AWARD

The grievances of Officer Sistek, Officer Moore, Officer Patrick, Officer Box, Detective Salupo, Detective Rinkus, and Officer Brelo are denied. The grievances of Officer Diaz, Officer Farley, Officer Sabolik, Detective O'Donnell, and Detective Ereg are sustained in part and denied in part as herein provided.



William C. Heekin
June 13, 2017
Cincinnati, Ohio