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INTRODUCTION

In its "Introductory Statement," the City of Findlay (the "City") attempts to argue that the "Disciplinary/Recognition Procedures Section 26.1.2" with the attached Appendix "A"- Discipline Matrix ("Matrix") is somehow part of the collective bargaining agreement ("CBA"), between the parties.

Even a cursory review of the City's argument, discloses its major flaws.

As an initial matter, the City refers to the Management Rights clause of the CBA. (Appellants' Supplement ("Supplement") pp. 4-5, 38-39).

Unfortunately, the City fails to point out that the Management Rights clause is patently modified by language indicating that the City's general management rights are superseded by any contrary language in other more specific provisions of the CBA. (Supplement p. 4).

Thus, the general Management Rights clause would have no application to this case where more specific language exists on a relevant topic, such as the discipline and/or "just cause" provisions.

Further, the City's reference to CBA Article 10, Rules and Regulations, to support its position that the Matrix was part of the CBA, fails in several respects.

First, Article 10, Section 10.01, only applies to "Police Department and City of Findlay Rules and Regulations ("Rules") which relate to working conditions, conduct and performance."¹ Only the rules affecting "working conditions, conduct and performance" are expressly subject to the grievance procedure if they violate the CBA.

¹ Additionally, the City ignores the fact that there is no record evidence indicating the City's compliance with CBA Sections 10.02 or 10.03, which require notice to OPBA and referral to the Labor-Management Committee, prior to implementation. (Supplement p. 8). (cont.)

The Disciplinary Recognition Procedures and Matrix contained in Section 26.1.2. do not fit into the category of rules specifically set forth in Article 10.²

Moreover, even if it did, the Matrix could not be considered part of the CBA unless it further complied with Article 46, Appendices and Amendments. (Supplement pp. 33, 69).

Article 46 states specifically that, “[a]ll appendices and amendments to this Agreement shall [be] reduced to writing, dated and signed by the parties to this Agreement, and shall be subject to the provisions of this Agreement, unless the amendment(s) specifically supersedes terms of this Agreement.”³ (Supplement pp. 33, 69).

The Disciplinary Matrix does not meet the requirements of Article 46. It was never reduced to writing, dated and signed by the parties. The Matrix was unilaterally implemented by the City and was never intended to be considered part of the CBA. This is apparent from a review of the Matrix and the CBAs which are all part of the record in this case. It is further apparent from the fact that Appellee does not ever cite to the record, in support of its baseless contentions that the OPBA neither objected to the Matrix nor

Absent such compliance, the rule changes would never have complied with Article 10 and, thus, could never have become part of the collective bargaining relationship between the parties.

² Section 26.1.2, as it relates to this case, contains only the disciplinary process and procedure. This is different than the rules of conduct that Sergeant Hill was accused of violating (Appellants’ Appendix pp. 35-26, 42-44). Rules containing disciplinary process and procedure do not fit into the categories of working conditions, conduct and performance. Thus, Article 10 of the CBA, would not even apply to Section 26.1.2 and/or the disciplinary Matrix.

³ This is consistent with R.C. §4117.09(A) which specifically states that “[t]he parties to any collective bargaining agreement shall reduce the agreement to writing and both execute it.”

sought “to limit the contractual authority of the Matrix.” (Brief on the Merits of Appellee City of Findlay (“Brief of City”) at p. 1).

In fact, all of the record evidence is to the contrary.

The Opinion and Award of Jonathan I. Klein issued on January 1, 2013, contained in the City’s Appendix at pages 1-20, provides compelling evidence of the OPBA’s consistent opposition to the Matrix.⁴

Specifically, in the City’s Appendix at p. 12, the Arbitrator observes that “[a]ccording to the Union. . . it never agreed to the Matrix.” Further, at p. 19 of the City’s Appendix, Arbitrator Klein states that the Union asserted at the hearing that “it never agreed to the City’s Discipline Matrix, and it pointed out that the Discipline Matrix is not contained in the Collective Bargaining Agreement.”

Finally, it is further interesting to note that the City’s Appendix, at p. 19, supports the notion that the City itself did not believe that the Matrix was part of the CBA. This is illustrated by the Arbitrator’s observation that “[a]t the hearing, both Captain Young and Chief Horne testified that the City is not required to, nor does it always follow, the Discipline Matrix contained in Exhibit A of Section 26.1.2 of the Findlay Police Department Disciplinary/Recognition procedures.”

In sum, the Matrix is not referred to in the CBA, it was not signed off on by the parties, it is not attached to the CBA and neither party, prior to this case, ever claimed that it was, even impliedly, part of the collective bargaining relationship.

⁴ The grievance appeal decided by Arbitrator Klein dealt with a different issue between these same parties and, for the reasons set forth below, his decision is not germane to the resolution of this case.

As a result, in this case, Arbitrator James Mancini (“Mancini”) correctly relied on his authority under Article 39, Section 39.04 of the relevant CBA, (Supplement p. 27), to determine whether or not just cause for discipline existed and to fashion an appropriate remedy.

Consequently, Mancini’s Opinion and Award (Appellants’ Appendix pp. 44-68), clearly drew its essence from the CBA and was not, therefore, unlawful, arbitrary or capricious. Accordingly, the Court below exceeded its authority by affirming the trial court’s Order vacating the Opinion and Award of Mancini.

STATEMENT OF THE CASE AND FACTS

The City correctly states, at p. 3 of its Brief, that the key provision in the CBA is contained in Section 39.04 indicating that “[d]iscipline shall be imposed for just cause.”

The City then refers to Article 10 of the CBA which is not in any way relevant to this case. Prior to the arbitration hearing before Mancini, the parties stipulated that the issue before the Arbitrator, in this case, was “whether the City had just cause to terminate the Grievant, and if not, ***what is the appropriate remedy.***” (Appellants’ Appendix p. 59, emphasis added). Nothing in Article 10 of the relevant CBA, in any way, modifies the just cause provision in Article 39.

The City expressly states, at p. 4, that, in Article 10, “OPBA agreed to comply with all Findlay Police Department Rules and Regulations, including those relating to conduct and performance.” However, the rules enacting the disciplinary process and procedure - - such as those contained in Section 26.1.2 and the attached Matrix, are solely concerned with the City’s method for applying discipline, after an investigation has disclosed whether

an employee has violated the rules of conduct or failed to live up to the standards of performance, and are not referenced anywhere in Article 10.

Further, there is no record evidence that the City complied with the process, in Article 10, Sections 10.02 and 10.03, of referring the proposed changes to the Labor-Management Committee or giving the OPBA the requisite notice, prior to unilaterally implementing the changes to the Disciplinary/Recognition Procedures and attached disciplinary Matrix. (Supplement p. 8).

Even if the Matrix was intended to modify the CBA, which it manifestly was not, the City failed to comply with Article 46 of the CBA, and thus, the Disciplinary/Recognition Procedures with attached disciplinary Matrix could not be considered an appendix or an amendment to the CBA. (Supplement pp. 33, 69).

The underlying facts surrounding the discipline issued to Sergeant Hill are not seriously in dispute. They are adequately set forth by Arbitrator Mancini in his Opinion and Award beginning at p. 44 of the Appellants' Appendix.

The facts clearly support Arbitrator Mancini's conclusion to set aside the discharge penalty because the City did not prove all of the preferred charges against Sergeant Hill, including the most serious charges - - sexual harassment/hostile work environment. (Appellants' Appendix 64-66).

Thus, the Arbitrator was well within his authority, under the just cause provision of the CBA, to reduce the termination to a suspension, consistent with his broad remedial authority that was not impinged by an express provision of the CBA in this case. As a result, there was no lawful reason for the courts below to vacate Mancini's Opinion and Award under Chapter 2711 of the Revised Code.

LAW AND ARGUMENT

At pages 11-13 of its Brief, the City correctly describes and carefully explains the deference afforded by Ohio courts to the findings of fact and the interpretation of the CBA by arbitrators. In essence, the City agrees that the “Arbitrators act within their authority to craft an award so long as the award draws its essence from the contract.” (City’s Brief at pp. 12-13).

The City accurately continues, at p. 13, by explaining that this Court has instructed that “an award departs from the essence of the contract when: (1) the award conflicts with the express terms of the agreement, and/or (2) the award is without rational support or cannot rationally be derived from the terms of the agreement.” Ohio Office of Collective Bargaining v. Ohio Civil Serv. Emps. Assn., Local 11 AFSCME, AFL-CIO, 59 Ohio St.3d 177 (1991).

The City then cites Board of Trustees of Miami Twp. v. FOP, OLC, Inc., 81 Ohio St.3d 269 (1998) in conceding that arbitrators have broad remedial authority in fashioning a penalty under the undefined and/or unrestricted standard of just cause in a CBA.⁵

The City’s argument begins to fail, however, when it tries to claim that the just cause provision in the relevant CBA, in this case, is somehow tempered by “predetermined penalties” contained in the CBA.

Specifically, the City first cites to cases at pages 15-19 of its brief that stand for the proposition that an arbitrator is not free to depart from an express limitation in a CBA that explicitly dictates a disciplinary scheme.

⁵ The City further acknowledges the ability of an arbitrator to look outside the CBA for guidance in exercising his or her broad remedial powers. (City’s Brief at pp. 13-14).

The cases cited by the City in this regard, however, are inapposite to the case *sub judice*. A review of the relevant language in the applicable CBA in this case, discloses that the just cause language in Article 39 is unfettered. There is no specific contract provision in the record here that hinders an arbitrator's ability to determine just cause and fashion an appropriate remedy.

Thus, this case is not in any way similar to the facts in Ohio Office of Collective Bargaining, supra., where the CBA specifically required termination in cases of patient abuse. Neither does this case square with either Summit County Board of Mental Retardation and Developmental Disabilities v. AFSCME, 39 Ohio App.3d 175 (9th Dist. 1998) or Hocking Technical College v. Hocking Technical College Education Association, 120 Ohio App.3d 155 (4th Dist. 1997). The relevant CBA's, in those cases, contained express language requiring the imposition of specific penalties under certain circumstances that appeared to be present in each.

In acknowledgment of the fact that there is no express language in the CBA restricting the arbitrator's ability to determine the appropriate penalty in this case, the City's argument then evolves, at p. 19 of its Brief, into a desperate attempt to extend the law to cover the situation that exists here.

The first iteration of the City's novel expansion of existing law is that arbitrators should be bound by "predetermined penalties appearing in rules and policies" that are "referenced in the CBA or are created by an express delegation of authority in the CBA." (City's Brief at p. 19).

As an initial matter, the City cannot prove its case under either prong of the above proposed extension of the law. First, the predetermined penalties contained in the City's

Matrix are not referenced anywhere in the CBA and second, the Matrix was not created by any express delegation of authority contained in the CBA.

Rather, the Matrix was unilaterally promulgated, by the City, without proper notice or referral to the Labor/Management Committee as required by Sections 10.02 and 10.03 of the CBA. Further, the City's proposed application of the Matrix, to the facts of this case, would have the effect of emasculating the just cause provision of the CBA to the extent that it would be written out of the agreement. If the Court adopted the City's proposed mandatory application of the Matrix, once the Chief decided the level of discipline, there could be no further appeal of that decision.

The City is asking this Court to rewrite Article 39 of the CBA by obliterating the negotiated rights of the employee. For example, Section 39.04 indicates that "[d]iscipline shall be imposed only for just cause." (Supplement p. 27). Additionally, Section 39.06 indicates, *inter alia*, that:

The Notice of Discipline served on the employee shall be accompanied by a written statement that:

- a. The employee has the right to object by filing a grievance within ten (10) working days after receipt of the Notice of Discipline, but, the time limit excludes vacation, Holivac and sick leave.
- b. The Grievance Procedure provides for a hearing by an independent arbitrator as its final step.

It is beyond cavil, that the City's argument that the Police Chief has an unreviewable right to issue the level of penalty in this case, destroys the employee's contractual right to have an independent arbitrator determine just cause and review the grievance at its final step, under Article 39 of the CBA. Consequently, the City's

argument, along those lines, has the practical effect of eliminating Article 39 from the CBA, and, thus, cannot be sanctioned by this Court.

In fact, it is ludicrous to believe that there was a meeting of the minds by the parties that resulted in the Union delegating to the Police Chief sole discretion to determine the appropriate discipline to be meted out without any meaningful review on appeal.

The only Ohio case law relied on by the City to support its above-stated, tortured extension of the law, is an unreported decision from the Fifth District Court of Appeals for Guernsey County that flies in the face of binding precedent of this Court.⁶ See City of Cambridge v. AFSCME Ohio Council 8, AFL-CIO, Local 2316, et al., 2000 Ohio App. Lexis 1587 (5th Dist. 2000).

In particular, the City of Cambridge Court improperly applied this Court's decision in Ohio Office of Collective Bargaining, supra., while completely ignoring binding precedent of this Court in Board of Trustees of Miami Twp., supra., and Queen City Lodge No. 69, FOP, Hamilton County, Ohio, Inc. v. City of Cincinnati, 63 Ohio St.3d 403, 588 N.E.2d 802 (1992).⁷

Specifically, the CBA in the City of Cambridge case did not contain express contract language restricting the arbitrator's discretion in fashioning a penalty, so, Ohio

⁶ The City also relies on a case decided by the federal Eleventh Circuit Court of Appeals, which, in an Alabama case, upheld the portion of an arbitrator's decision that found a suspension unjust and voided a work rule, but, vacated the portion of the arbitrator's decision actually revising the rule. That case, in no way, supports the City's position here. See Bruno's Inc. v. United Food and Commercial Workers International Union, Local 1657, 858 F.2d 1529 (11th Cir. 1988).

⁷ In fact, Judge Hoffman's dissent in the City of Cambridge, supra., is much more in line with this Court's precedent. This is illustrated by his conclusion that, "[b]ecause the per se just cause language found in the work rule is not included in the parties' agreement, I find the arbitrator was not required to view such language as dispositive of the issue before him." Id. At p. 5 of 6.

Office of Collective Bargaining, provided no guidance. On the other hand, the facts in City of Cambridge, illustrated that the parties stipulated to allowing the arbitrator to decide the issue of whether appellant was discharged for just cause, and, if not, what the appropriate remedy should be. The CBA did not contain any restriction on or definition of the term just cause. Consequently, the arbitrator retained the broad remedial authority to fashion an appropriate penalty consistent with Board of Trustees of Miami Twp., supra., and City of Cincinnati, supra. Thus, the City of Cambridge case should not be followed by the Court here.

The City continues at pages 21-25 of its Brief by, once again, claiming, without any record support, that it properly promulgated Section 26.1.2 Disciplinary/Recognition Procedures and its attached disciplinary Matrix, pursuant to some illusory rule-making authority contained in the CBA.

Suffice it to say, as previously indicated, that the general Management Rights clause is not adequate to permit the CBA to be modified by a broad reference to the City's purported rule-making authority. Article 10, on its face, does not apply to the disciplinary process and procedure. There is no record evidence that the City complied with its own obligations under Article 10. Section 26.1.12, including the attached Matrix, is manifestly not a part of the CBA, as it does not meet the requirement of Article 46 concerning Appendices and Amendments.

Thus, the Matrix is neither expressly nor impliedly part of the CBA and Arbitrator Mancini was not bound by the Matrix in developing the penalty in this case.

On page 25 of its Brief, the City once again, completely misstates the record evidence by claiming, without record support, that "[t]he City and the Union negotiated

and incorporated into the collective bargaining agreement the disciplinary rules and the resulting penalties for violations of these rules.”

The City’s continuing restatement of this assertion, without any corroborating evidence, does not somehow magically make it true. As previously noted, the disciplinary process and Matrix were unilaterally developed and implemented by the City, were never negotiated between the parties and were not incorporated into the CBA, by reference, or in any other manner.

As a further matter, the cases cited by the City to support its position, on page 25 of its Brief, are not relevant here.

For example, the City cites to Chemineer, Inc. v. Local Lodge 225, International Association of Machinists and Aerospace Workers, AFL-CIO, 573 F. Supp. 1 (S.D. Ohio, 1983). In its Brief, however, the City fails to point out that the parties in Chemineer, Inc., stipulated to an issue which expressly required the Arbitrator to decide whether the grievant was discharged for just cause under the terms of the collective bargaining agreement and the Company’s rules and regulations.

Thus, the stipulated issue expressly required the Arbitrator to apply the Company’s rules and regulations, unlike the situation in this case. Moreover, Chemineer, Inc., a private sector case, was decided on the basis of federal law, in 1983, many years prior to this Court’s decision in Board of Trustees of Miami Twp., supra., and City of Cincinnati, supra. As a result, the Chemineer case is neither instructive, nor binding, in this case.

Additionally, Sears, Roebuck and Co. v. Auto, Pet. & Allied Ind. Union, 570 F. Supp. 650 (E. D. Missouri 1983), another case cited by the City, at p. 25, of its Brief, is

similarly, inapposite. That case required the Arbitrator to construe a last chance agreement, previously agreed to by all of the parties, which indicated, *inter alia*, as follows:

Any reoccurrence of discourteous and rude treatment of customers or obscene and disrespectful or subordinate actions with Management will result in immediate dismissal with no further warnings.

Id. at 652.

As a result of the binding last chance agreement, the Court in Sears, Roebuck and Co., above, held, at p. 653, that, “[t]he weight of authority supports the proposition that where the penalty for particular misconduct is a subject of unambiguous contractual provisions, the arbitrator lacks authority to substitute his own judgment on what the appropriate punishment is once he finds that the particular misconduct has occurred.” Obviously, this holding is not instructive here, where there is no last chance agreement or CBA provision that unambiguously sets forth the penalty for the alleged misconduct by Sergeant Hill.⁸

At pages 26-27 of its Brief, The City continues to ineffectively attempt to distinguish relevant precedent of this Court by repeated reference to its unsupported facts that, “[h]ere differently than in SORTA, the City and the Union negotiated and incorporated into the collective bargaining agreement the disciplinary rules and resulting penalties for violation of these rules,”

⁸ In Board of Control of Ferris State College v. Michigan AFSCME, Council 25, Local 1609, 138 Mich. App. 170, 361 N.W. 2d 342 (1984), the last case cited by the City, at p. 25, which is a 1984 case decided pursuant to a CBA entered under the Public Employment Relations Act of Michigan, the Court relied heavily on federal law indicating, once again, that “an arbitrator cannot ignore plain and unambiguous language in the collective bargaining agreement. . . .” As that did not happen in this case, Board of Control of Ferris State College, provides no guidance here.

The City's repeated reference to the illusory "negotiations" which purportedly incorporated the disciplinary process and penalties into the CBA, without any citation to record evidence, is telling. Without it, the City cannot succeed, in light of the contrary precedent of this Court.

Specifically, in Southwest Ohio Regional Transit Authority v. Amalgamated Transit Union, Local 62, 91 Ohio St.3d 108 (2001) ("SORTA"), in response to the exact same arguments asserted by the City here, this Court clearly indicated that the employer "did not have the right to unilaterally adopt automatic termination without possibility of reinstatement as a sanction. . . because such a sanction conflicts with the sufficient cause for dismissal found in Section 3(b) of the CBA." (91 Ohio St.3d at p. 111). As the court in SORTA further noted, allowing the employer to enforce automatic termination in the face of the just cause provision in the CBA, would result in "undermining the integrity of the entire collective bargaining process." (*Id.*). See also, International Assn. of Firefighters, Local 67 v. City of Columbus, 95 Ohio St.3d 101; 2002-Ohio-1936 (The City cannot agree to one thing at the bargaining table and then "take benefits away with rules and regulations which are narrowly construed."); City of Dayton v. AFSCME, Ohio Council 8, 2005-Ohio-6392, ¶18 and ¶19; 2005 Ohio App. Lexis 5745 (2nd Dist.) ("any sanction for the violation of a rule adopted by management remains subject to the just cause standard set forth in the CBA. . . management's rights to make and enforce workplace rules and regulations does not carry with it an unreviewable right to determine that a violation of those rules warrants discharge for just cause.")⁹

⁹ The City's citation to cases that it identifies as ("Warren 1") and ("Warren 2"), at p. 27 of its Brief, is not at all helpful to the resolution of this case. As the Court observed and the City noted, the work rules in that case were negotiated by the parties and (cont.)

The City's final and most legally untenable argument, which is contained at pp. 29-33 of its Brief, asserts that the "parties are bound by the interpretation of the CBA provided by Arbitrator Klein in final and binding arbitration which is preclusive upon the parties unless and until the language is changed in negotiations."

The above quote from the City's Brief, refers to an arbitration decision issued by Arbitrator Klein concerning the same parties, but involving a different grievance and separate fact pattern altogether. (City's Appendix pp. 1-20).

The City's argument, in this regard, is contrary to the majority view of commentators and courts alike.

Specifically, in Elkouri and Elkouri, How Arbitration Works, 7th Ed., Editor-in-Chief Kenneth May (BNA Books, 2012), the following is stated at p. 11-28:

Courts have asserted that the "black letter" law, as enunciated by the Supreme Court in *W.R. Grace & Co. v. Rubber Workers Local 759*, is that arbitral awards are not entitled to the same precedential effect as judicial decisions, nor are they considered to be conclusive or binding in subsequent arbitration cases involving the same contract language but different incidents or grievances.

Numerous courts concur in the observation stated in *Elkouri*, above.

For example, in *The Detroit Medical Center v. AFSCME Michigan Local 25, et al.*, 2006 U.S. Dist. Lexis 13480, 179 L.R.R.M. 2411 (E.D. Mich. 2006), the court considered this issue and stated:

As its third and final example of the arbitrator's purported failure to remain with the scope of his admittedly broad authority, Plaintiff contends that the arbitrator improperly disregarded the prior decision of two other arbitrators under similar facts, and instead awarded relief that these other arbitrators had deemed unwarranted. Yet, as Plaintiff concedes, prior arbitration decisions need not be accorded precedential (much less preclusive) weight

appended to the contract. In this case, the work rules were neither negotiated, nor were they appended to the contract.

in a subsequent arbitration proceeding. See, e.g., *International Union, UAW v. Dana Corp.*, 278 F.3d 548, 555-57 (6th Cir. 2002); *El Dorado Technical Services, Inc. v. Union General De Trabajadores de Puerto Rico*, 961 F.2d 317, 321 (1st Cir. 1992); *Blanchard v. Simpson Plainwell Paper Co.*, 925 F. Supp. 510, 516 (W.D. Mich. 1995). “Indeed, an arbitration award is not considered conclusive or binding in subsequent cases involving the same contract language but different incidents or grievances,” and “an arbitrator’s refusal to follow a previous arbitrator’s interpretation of a specific contractual provision does not expose an ensuing award to judicial tinkering.” *El Dorado Technical Services*, 961 F.2d at 321. Moreover, “Absent a contractual provision to the contrary,” the weight to be given to a prior arbitrator’s ruling is itself a matter “to be determined by the arbitrator.” *Dana Corp.*, 278 F.3d at 557. Thus, the arbitrator here was entitled to give the two prior arbitration decision whatever weight he deemed appropriate.

See also, *IBEW, Local 2150 v. Nextra Energy Point Beach, LLC*, 762 F3d 592, 597 (7th Cir. 2014) (“Indeed an arbitration award is not considered conclusive or binding in subsequent cases involving the same contract language but different incidents or grievances.”).

Additionally, the Supreme Court of Connecticut exhaustively reviewed the law on this topic and held:

In the absence of a specific contract provision to the contrary, an arbitrator is not bound to follow prior arbitration decisions, even in cases in which the grievances at issue involve the same parties and interpretation of the same contract provisions. Although an arbitrator may find well-reasoned prior awards to be a compelling influence on his or her decision-making process, the arbitrator need not give such awards preclusive effect. Rather, the arbitrator should bring his or her own independent judgment to bear on the issue to be decided, using prior awards as the arbitrator sees fit, as it is the arbitrator’s judgment for which the parties had bargained.

Town of Stratford v. International Association of Firefighters, AFL-CIO, Local 998, 248 Conn. 108; 728 A. 2d 1063 (1999).

The City’s contention, at p. 29 of its Brief, that “[a]rbitral precedent must be given effect,” is unsupported in the law. As a result, Arbitrator Mancini, in deciding this case, was free to totally disregard Arbitrator Klein’s prior decision between the same parties or

to give it any deference that he so desired. Consequently, Arbitrator Mancini's decision to refer to the disciplinary Matrix for guidance, without giving it preclusive effect, was well within his authority to determine just cause, including the issuance of an appropriate remedy. The finding of the Court below to the contrary, constitutes reversible error, and thus, this Court should vacate the decision of the Eighth District Court of Appeals in this case and confirm Arbitrator Mancini's Opinion and Award.

CONCLUSION

Affirming the decision of the Court below, would result in the rewriting of the CBA. This is due to the fact that it would eliminate the right of OPBA members to a review of discipline issued by the City, by an independent arbitrator, in accordance with the "just cause" provisions contained in Article 39 of the CBA.

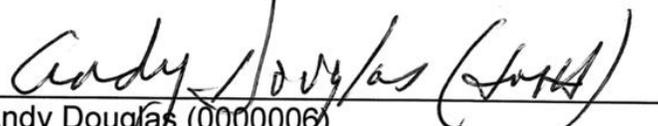
Moreover, the adoption of the City's alternative theory of this case would establish a new rule of law giving *res judicata* and/or *collateral estoppel* effect to prior arbitration decisions, while ignoring long-standing and consistently applied precedent of this Court permitting arbitrators broad remedial authority in determining just cause under a CBA.

For all of the foregoing reasons, the Court of Appeals should be reversed and Arbitrator Mancini's Opinion and Award should be reinstated.

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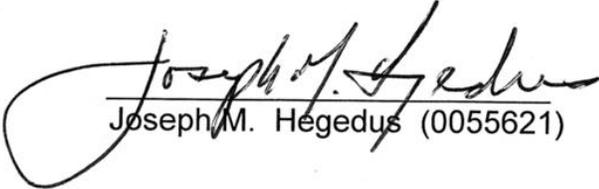
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