

**ARBITRATION**

**CASE: McDonald #1**

**City of SOMEWHERE**

**Employer,**

***Grievance: 05-240 (Officer Mike PEAR)  
and 05-241 (Officer Tom TOPP)***

**and**

**Union**

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**DECISION AND AWARD**

**PATRICK A. McDonald  
Arbitrator**

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## **II. INTRODUCTION**

This dispute arose when on or about April 11, 2005, Officers Tom TOPP and Mike PEAR were informed of disciplinary suspensions of three (3) and five (5) days off without pay, respectively, for violations of departmental policies and procedures. (Joint Exhibits 6 & 7). Grievances protesting this action were filed in a timely manner and were denied. (Joint Exhibits 3, 4 & 5). The grievances were not able to be settled through the initial steps of the grievance procedure and hence, were submitting for final and binding arbitration. The parties jointly selected your undersigned arbitrator to receive evidence and render a decision. Evidentiary hearings were held on May 2, 2006 and on June 22, 2006. At that time, both parties were ably represented and had the full opportunity of presenting testimony and exhibits. The parties supplemented this opportunity with helpful post hearing briefs. This matter is now ready for decision and award.

## **III. FACTS**

Both grievants in this case are officers in the SOMEWHERE Police Department. Officer PEAR has been employed by the City since December 7, 2000, while Officer TOPP was hired on May 7, 2001. Both officers attended the policy academy where they achieved passing marks and were in a field training program offered by the SOMEWHERE Police Department. According to witnesses, police officers in the City of SOMEWHERE are constantly updated on training issues ranging from legal updates in the field to defensive tactics to ethics in policing. (Joint Exhibits 13 & 14).

The incidents that led to the charges of discipline occurred on February 12, 2005. Prior to going out on the field that day, both officers were briefed by Lieutenant Daniel CLOCK, who was the watch commander on duty. During that briefing, Lieutenant CLOCK advised the grievants that they were being assigned to the “MAP” program, which stands for, “more aggressive patrol”. The vehicle assigned to the two grievants is unmarked, black in color and has no visible overhead lights or police markings except for the words “SOMEWHERE Police” on the back trunk lid. The vehicle is equipped for emergency operations with hidden emergency lights and siren. Both officers at the time were in full uniform. At the briefing, Lieutenant CLOCK told both grievants to be aggressive and concentrate on major crimes. During his briefing, he told the grievants, “I want no bullshit runs, felonies only”.

As a result of activities on that day, Officer TOPP submitted a injury report in which he stated he broke a finger during a prisoner chase. Inasmuch as this incident had not been previously reported, Lieutenant CLOCK investigated further and reviewed the entire in-car video for the two officers on February 12, 2005. (Joint Exhibit 12). As a result of this investigation, Lieutenant CLOCK recommended that both incidents on February 12<sup>th</sup> be combined and that the officers receive suspensions of time for their actions.

The in-car video was shown at the evidentiary hearing and included a videotape of both incidents occurring on February 12, 2005.

One incident shows a traffic stop on eastbound Five Mile Road near MAIN Street. The traffic stop was for, “driving an improperly licensed vehicle”. The video indicates that Officer TOPP approached the driver while Officer PEAR went to the passenger side of the vehicle. Officer TOPP removed the driver from the vehicle, had him turn around, hold his hands securely behind him and searched the individual, removing items from his person. Officer TOPP handcuffed the driver and had him stand in front of the police car.

Officer PEAR performed the same procedure on the front seat passenger and had him stand in front of the police vehicle. Officer PEAR also repeated this process on the rear seat passenger.

A LEIN check was performed and it was noted that the rear seat passenger had a felony warrant for dangerous drugs. That individual was then placed in the rear of the police car. According to the officers report (Joint Exhibit 8), the prisoner requested that he be allowed to remove his valuable watch and neck chain and turn those items over to the other two individuals with whom he was traveling. As a result, the prisoner was unhandcuffed, the items removed and he was re-secured and placed in the rear seat of the scout car. The prisoner then complained about pain in his legs. When Officer PEAR opened the rear door of the scout car, the prisoner jumped out and ran. Officer TOPP pursued the fleeing prisoner on foot, leaving Officer PEAR with the other two individuals.

According to Officer PEAR, he had the other two men, who were still in

handcuffs, get into the back of the police scout car. Officer PEAR then drove with lights and sirens on, westbound in the eastbound lanes of Five Mile Road. He did this for about one city block and then turned south into the City of OTHERPLACE. While driving in the City of OTHERPLACE and looking for Officer TOPP, Officer PEAR disabled the video equipment in his police vehicle.

According to the testimony received, neither officer notified the dispatch center of the prisoner's escape. They did not request any assistance and supervision was not notified of the incident until after the prisoner was re-captured and brought back into the station.

Officer PEAR testified that the events happened quickly and there was no time to radio out the incident. According to the evidence, dispatchers tried to contact the officers on the radio to check their status and Officer PEAR replied, "stand by".

The police incident report indicates that, "the other occupants of the vehicle, including their vehicle, were released at the scene." (Joint Exhibit 8). No other details of the handcuffing or searching were mentioned or documented. None of the individuals were listed by name in the police report or in the report narrative. The incident lasted approximately twenty-two (22) minutes.

The videotape further documents an earlier traffic stop made by the two officers at Five Mile and CARR. This traffic stop occurred at 5:21 p.m. and occurred prior to the MAIN stop. In this case, the vehicle was stopped for, "driving an improperly licensed

vehicle.” Officer TOPP approached the driver, requested his driver license and vehicle paperwork. The driver was not able to produce any identification. As a result, the driver was removed from the vehicle and Officer TOPP handcuffed him, searched him and placed him in the rear of the scout car. Officer PEAR searched the passenger but did not handcuff him. During the stop, the officers discovered that the driver had a suspended license and a warrant out for his arrest. After a search of the vehicle, both subjects were released and no tickets issued. Neither officer wrote a police report documenting this incident.

In addition to the witnesses attesting to facts in this case, Dr. L. APPLES, PhD, a former Professor of Criminal Justice at the University, testified as an expert witness on police practice. (Joint Exhibit 18). Dr. APPLES indicated that he had reviewed the in-car video as well as informational reports of the police officers. He also had reviewed supervisor reports. (Joint Exhibit 8, 12, 17 & 21). According to Dr. APPLES, regarding the MAIN stop, although the stop itself was valid, there were significant violations of proper police procedure following the stop. For example, Dr. APPLES indicated he could not find any legitimate basis for conducting several full-blown searches of the driver by Officer TOPP. He stated that Officer TOPP did not articulate that the subject was potentially dangerous, nor did the subject appear to be dangerous or armed in the video. Nowhere in his written documentation did Officer TOPP mention that the driver consented to the numerous searches of his person. Further, according to Dr. APPLES,

Officer TOPP clearly violated city policy when he did not advise dispatch of the fleeing prisoner.

Concerning Officer TOPP's actions at Five Mile and CARR, in the CARR stop, Dr. APPLES stated that Officer TOPP placed the driver under arrest when he handcuffed him and placed in the backseat of the police vehicle. At that time, the prisoner was not free to leave. This would have been a valid arrest because the driver did not have his license on his person and he had a suspended operators license. However, it was improper and a violation of policy to allow the individual to be let go. (Joint Exhibit 11E).

Concerning the actions of Officer PEAR, Dr. APPLES indicated that at the CARR Road incident, the search of the passenger appears to have been an illegal search and a search for no reason. If consent to the search had been given, then the search would have been valid. However, nowhere in Officer PEAR's explanation surrounding the incident did he indicate that consent had been given.

Regarding the MAIN stop, Dr. APPLES testified that Officer PEAR searched the front seat passenger and handcuffed him without probable cause with no articulated explanation. There was an absolute lack of documentation concerning this detailed incident. Further, Officer PEAR secured the two handcuffed individuals in his car, which was a violation of their rights, for they had done nothing illegal. It was also a violation of departmental policy. Officer PEAR further violated policy by his decision to drive the wrong way on Five Mile Road with the two handcuffed individuals in the back seat. It

was negligent on Officer PEAR's part and his absolute lack of mention of any particulars surrounding this incident, including the handcuffing and detention of these individuals was wrong and a violation of departmental policy.

Police Chief J. PLATES testified at the hearing. According to the chief, it was a violation of departmental policy not to advise dispatch of a fleeing felon. According to the police chief, he originally recommended three (3) days off for each officer. He emphatically denied that he had made a deal with the police union to recommend only one (1) day off for the two officers. According to the police chief, he noted that the final decision regarding the terms of suspensions was with the city administrator.

Mr. D. MOON, the City Administrator for SOMEWHERE, testified that pursuant to the Collective Bargaining Agreement, he has the authority to issue charges and issue a final written decision. He had reviewed all of the video and reports and the police officers statements, as well as the disciplinary histories with the department. As a result, he issued Officer PEAR a five (5) day suspension and Officer TOPP a three (3) day suspension. He noted, however, that these suspensions had not been carried out pending this arbitration hearing and decision. Mr. MOON said he was unaware of the police chief's recommendation when he issued the suspensions.

The UNION also presented several witnesses. The first was Local President, M. TEAS, a twelve (12) year veteran of the Police Department. According to Mr. TEAS, there was no written policy within the department on the writing of reports prior to these

incidents. Mr. TEAS further testified that based upon his experience, the MAP car is considered a high-priority vehicle and is used to hunt down and weed out crimes. It doesn't receive dispatch runs and many times, releases misdemeanor suspects in search of more dangerous felons. Mr. TEAS further testified that he recalled a discussion on May 24, 2005, with Police Chief PLATES regarding an agreement that the grievants TOPP and PEAR would accept the chief's recommendation of a one (1) day suspension.

Officer Tom TOPP testified in this matter. He recalls Lieutenant CLOCK stating that because he was assigned to the MAP car, he wanted, "no bullshit, no misdemeanors, felonies only." Officer TOPP testified that at the first traffic stop at CARR and Five Mile, the driver was asked for consent to search his person and his vehicle and this consent was given. In the second traffic stop at MAIN, Officer TOPP testified that the driver had no identification or drivers license. Once again, the suspect was asked for consent to search and was also advised that he was being cuffed pending proper identification. The suspect consented to the search of the car and himself. Officer TOPP said he did not issue a citation in these cases because he was concentrating on felonies. He said it was not unusual to release misdemeanors without issuing a ticket.

Officer TOPP explained that during the second incident when he began a foot chase after the prisoner, he did not call in the foot chase because his portable radio was difficult to pull out of his belt. Things happened quickly and he was unable to reach his portable radio at that point.

Officer Mike PEAR also testified in this case. He is a 5 ½ year veteran of the Police Department. With regard to searching suspects at vehicles, he routinely asks for consent. During both traffic stops, he asked for and was given consent to search both the persons in the vehicles. Officer PEAR testified that he was fearful of the passengers actions and that handcuffing them was for his security. He testified that the suspects names were run on the LEIN and the rear seat passenger was found to have a felony warrant. This passenger ultimately escaped during the arrest process. Officer PEAR testified that when the prisoner escaped and Officer TOPP immediately ran after the fleeing suspect, he thought of his partner's safety first and made a quick decision to proceed after his partner. He said both remaining suspects verbally volunteered to get in the police car and go search for Officer TOPP. He acknowledged that it was not a routine procedure to drive the wrong way down Five Mile with civilians in the rear. However, he did wait for traffic to clear and proceeded in a safe and cautious manner. He said that he did not call in the situation on his radio and turned off the camera when he heard Officer TOPP report on the radio that he had caught the suspect. According to Officer PEAR, he was not in pursuit, but was merely trolling the neighborhood looking for his partner.

The final witness for the Union was Officer G. CADDY, a ten (10) year veteran. Officer CADDY testified that he had worked at the MAP car with Officer PEAR on other occasions and they were both advised by supervisors to concentrate on felonies. As a result, suspects stopped on a misdemeanor charge were released on many occasions.

#### IV. RELEVANT CONTRACTUAL LANGUAGE

##### ARTICLE VIII

##### MANAGEMENT RESPONSIBILITY

- 8.1 It is recognized that the management of the department, the control of its properties, the maintenance of order and efficiency are solely responsibilities of the City. Other rights and responsibilities belonging solely to the City are hereby recognized, prominent among which but by no means wholly inclusive as follows:

The right to decide the number and location of facilities, stations, etc., functions to be performed, maintenance and repair, amount of supervision necessary, machinery and equipment, methods, schedule of work, together with the selection, procurement, design, engineering and control of equipment and materials, and the right to purchase the service of others, contract or otherwise, to enter mutual aid pacts with other communities, and expressly reserves the right to establish and maintain rules and regulations governing the operation of the police department and the employees therein; providing such rules and regulations are not in direct conflict with this Agreement, or Act 78 of the Public Acts of 1935. It is further recognized that the responsibility of the City for the management of the department, selection and direction of the working forces including the right to hire, suspend, or discharge for just cause, assign, promote or transfer in accordance with the rules and regulations of the Civil Service Commission for the fire and police departments pursuant to Act 78 of the Public Acts of 1935, as amended (except as provided in the maintenance of membership agreement contained herein), to relieve employees from duty because of lack of work or other legitimate and reasonable cause is vested exclusively in the City, except as modified by or otherwise provided in this Agreement.

##### **Procedural Rules and Policies of the SOMEWHERE Police Department**

Manual or Rules, Article III - Performance of Duty:

7. MALFEASANCE, MISFEASANCE and NONFEASANCE:

Malfeasance, misfeasance and nonfeasance of duty may result in disciplinary action.

*“Malfeasance” definition from the Manual of Rules.*

*“MALFEASANCE”:*

*Evil doing; ill conduct; the commission of some act which is positively unlawful; the doing of an act which a person ought not to do at all, or the unjust performance of some act which the party had no right or which he had contracted not to do.*

Manual of Rules, Article III - Performance of Duty:

13. KEEPING COMMANDING OFFICERS INFORMED:

Upon arrival at an emergency or unusual condition, members shall contact their immediate supervisor and keep him/her informed as to the conditions and whether additional assistance is needed.

Manual of Procedures, PR 11.15, Section III, B(9):

*“Officer(s), who has taken custody of a prisoner, shall be responsible for the health, safety and welfare of that prisoner and the prevention of escape.”*

Manual of Procedures, PR 11.05, Section IV, (A)(7):

Police vehicles conveying witnesses, prisoners, suspects or civilians shall not engage in any pursuit situation.

Manual of Procedures, PR 11.45, Section II, (C):

Any vehicle equipped with an in-car video recorder shall be operated with the systems power on. No officer shall take any action which disconnects the video system. The In-Car Video equipment shall activate when emergency beacons are activated or manually at the discretion of the officer. No officer shall take any action which interferes with the proper operation of the equipment or prevents it from activating automatically.

Manual of Procedures, PR 14.05, Performance Standards, Section III, (D, F, G, I, J, K):

PERFORMANCE STANDARDS

- D. Obtains necessary information from victims, witnesses and suspects to more fully develop cases;
- F. Reports are submitted in timely fashion with required block and narrative information completed;

- G. Reports exhibit few deficiencies in substance and organization;
- I. Charges offender under appropriate criminal or motor vehicle statute;
- J. Ensures the constitutional rights of suspects; and,
- K. Maintains control while handling prisoners.

Manual of Procedures, PR 12.01:

I. POLICY:

It is the policy of the SOMEWHERE Police Department to utilize an established procedure of discipline to maintain a high level of professionalism among its employees.

II. LEVELS OF DISCIPLINE:

A. Levels of discipline are as follows:

- 1. Level I (formerly Supervisory Counseling/Training)
- 2. Level II (formerly Verbal Reprimand)
- 3. Level III (formerly Written Reprimand)
- 4. Suspension
- 5. Demotion
- 6. Termination

B. The degree of disciplinary action shall depend upon the seriousness of the offense and on mitigating circumstances surrounding the offense. It should be understood that not all incidents of a minor nature need to be handled within the formal disciplinary procedure. Final disposition may result in one (1) or more of the above levels of discipline, but not necessarily in the order listed.

C. Level I discipline may be utilized as provided:

- 1. The infraction was minor in nature.
- 2. The officer has not received Level I discipline for any similar infraction within the past two (2) years.
- 3. The officer's past record indicates this action will be effective.

- D. Level II or III discipline, Suspensions, Demotions or Terminations may be utilized in those circumstances when there is a serious violation of policies, procedures or rules, and Level I disciplinary action would be inappropriate.
- E. All recommendations for disciplinary action shall be submitted to the involved officers division commander, via the chain of command, for approval.

## **V. CONTENTIONS OF THE PARTIES**

### **A. For the Employer**

The City of SOMEWHERE maintains that there was just cause for the two (2) suspensions in this particular case. In support of that assertion, it argues that there is no blanket officer safety exception to the search warrant rule, which might allow officers to immediately handcuff and search individuals. It points to the U.S. Supreme Court Case of Terry vs. Ohio.<sup>1</sup> Under Terry, there are two requirements to be met before a pat-down or stop-and-frisk is conducted. One requirement is the reasonable suspicion that a crime is occurring and two, reasonable suspicion that the person is armed. The pat-down search cannot be conducted simply for, “officer safety”. It must be more specific.

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<sup>1</sup>392 US-1(1968)

It also cites the case of People vs. Parham, the Michigan Court of Appeals case that holds that a pat-down search conducted merely as a routine, precautionary measure for an officer's personal safety during a traffic stop is unreasonable under the Fourth Amendment.<sup>2</sup> In a further U.S. Supreme Court case, Pennsylvania vs. Mimms,<sup>3</sup> the court noted that once police legitimately stop a vehicle, they have a right without more to order the driver out of the vehicle. Without further supporting testimony, however, that the suspect is particularly dangerous or may be armed, police are prohibited from conducting even a pat-down search. According to the City, in the instant matter involving both grievants, Officer TOPP had both drivers step out of the vehicles. He then not only performed a pat-down search but he performed full custodial searches of each individual. While Officer TOPP might have had firm ground to search under a lawful arrest, he would have then had to follow through with the entire arrest procedure. He did not do so. The same reasoning holds true for Officer PEAR's handcuffing and pat-down search of the front seat passenger in the Five Mile/MAIN incident. When the pat-downs revealed no weapons, the searches should've been stopped.

The City outlines the definition of what an arrest is. According to the City, it is the taking, seizing or detaining of the person, either by touching or putting hands on him or by any act which indicates an intention to take him into custody and subjects the person arrested to the actual control and will of the person making the arrest. (4 AM Jur, arrest, Para 7).

The City points out that in the Five Mile/CARR incident, Officer TOPP wrote in his informational report that the driver had no identification and was handcuffed. In this case, the

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<sup>2</sup>147 Mich App 358 (1985)

<sup>3</sup>434 US 106 (1977)

video does not show the driver was violent or threatening such that he should have been handcuffed right away. Officer TOPP also arrested and then un-arrested this individual. This also is a violation of departmental policy.

Finally, the City asserts that the two individuals who were placed in the backseat of Officer PEAR's car and were handcuffed, were under arrest under that definition. They were not free to leave and they were locked in the back of the police vehicle. They had not committed any crimes or wrongs and their arrest was simply wrong.

In summary, the City submits that it demonstrated that Officer PEAR violated at least six (6) departmental policies and rules ranging from not reporting his actions to false imprisonment of innocent civilians and violation of citizens civil rights. Officer TOPP violated at least three (3) departmental policies and rules ranging from not reporting his actions to violating the civil rights of individuals. Under these circumstances, the City maintains that the punishments are not excessive. It therefore requests that the grievances be denied and the suspensions upheld.

B. For the Union

The UNION maintains that just cause for the suspensions of the two grievants has not been demonstrated. Further, even if there is cause for some discipline, the three (3) and five (5) day suspensions respectively, are excessive and unnecessarily severe.

The UNION asks the arbitrator to review the videotape which shows that these two officers engaged all of the suspects in a courteous, professional manner and were merely trying to do the job they had been assigned to do. As a result, to punish these officers with five (5) and three (3) day suspensions is unjustified.

According to the UNION, an officer has every right to handcuff and detain suspects.

Moreover, police officers may search a suspect in their vehicle with the consent of the person. According to the UNION, every suspect did consent to the officers for each search. Moreover, the officers acted lawfully when they stopped the vehicles in question.

In Michigan, reasonableness is the test<sup>4</sup> is to be applied for both the stop and search of motor vehicles. The UNION emphasizes that the two officers were driving a MAP car and were not to deal with minor misdemeanor matters. Indeed, Lieutenant CLOCK had told the two grievants in no uncertain language that there was to be, “no bullshit, no misdemeanors, felonies only.” The two officers felt they were carrying out that order.

It is easy, according to the UNION, to use hindsight, but these officers had to make decisions quickly and without the ability to review their decisions at a later date. The police department in this case recognizes that the majority of the officers actions were consistent with policy in the department. Indeed, according to the UNION, the department issued new policies in training after this incident to change the accepted practice. None of the suspects made any complaints to the police department in this case. Even the supervisor who did the internal investigation only recommended written reprimands. According to the UNION, the appropriate penalty was the one originally agreed to be the chief of police, which was a one (1) day suspension for each of the grievants. The Union therefore requests the arbitrator to reduce the penalty accordingly.

## VI. ISSUES

1. Was there just cause for discipline in this case to each grievant?

2. If so, was the discipline excessive or unduly severe?

## VII. DISCUSSION AND DECISION

Both parties to this dispute have emphasized their views and the views of the State of Michigan as well as the United States Supreme Court, on the subject of searches and arrests. The Union in this case produced several witnesses who indicated that it was common within the City of SOMEWHERE for officers to detain suspects, handcuff suspects, make contact with citizens and then release them with no written report or documentation being made. Quite frankly, I find that the actions of the grievants amounted to more than merely detaining citizens.

At the Five Mile/CARR incident, it is clear that Officer TOPP handcuffed and placed the driver of the vehicle in the backseat of the police vehicle. The driver was not free to leave and was there for an extended period of time. He had been previously searched as well. Yet, despite the search, the cuffing and the arrest, that person was eventually released. No reason was given. Yet even the Union witnesses acknowledged that there was no rule preventing Officers TOPP and Officer PEAR from charging the driver with a misdemeanor of which he would have been clearly guilty.

The MAIN incident is even more blatant. The driver was subjected to a full search, although there appears to be no actions on his part that would justify such an action. The driver is then handcuffed and made to stand in front of the police car on a cold winter night in February. Much the same process occurs with the front seat passenger by Officer PEAR. These two

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<sup>4</sup>People vs. Whalen, 390 Mich 672 (1973)

individuals, after standing in front of the car for a period of time, are then told to get into the back of the police cruiser after a third individual is arrested and then flees the scene. I find it difficult to believe that both of these individuals handcuffed, volunteered to get into the backseat of a police cruiser for a ride while Officer PEAR drove the wrong way against traffic on Five Mile Road.

With the prisoner escaping and fleeing the scene, and Officer TOPP in pursuit, the grievants had a duty under the rules, Article III, to keep their supervisors informed as to what was occurring and whether additional assistance was needed. This was for their own safety. They did not do so. Their excuses for not calling in are weak. Likewise, the grievants had the responsibility for the health, safety and welfare of any prisoners and preventing their escape. Not only did the one prisoner escape, but two other individuals who appeared to be innocent of any charges, were placed in jeopardy in the backseat of the police cruiser as it traveled against traffic on Five Mile Road. This action was definitely in violation of procedure rule 11.05, Section IV, A7 of the manual of procedures.

Likewise, your arbitrator finds that Officer PEAR violated further procedures by taking the action of disconnecting the video system. No explanation was given for this action.

In summary, without getting into further details, it is clear that there was just cause for discipline in this case.

**Having found just cause for discipline, was the five (5) and three (3) day suspension reasonable considering all of the circumstances?**

In answering this question, your arbitrator looks at a number of factors. These include the

past records of the two grievants, their service record, the particular circumstances involved and the seriousness of the offenses themselves. Certainly, the number of offenses calls for more than mere letters of reprimand. Even giving the benefit of the doubt to both grievants concerning their search and arrest situations with the various citizens involved, there were still other blatant violations of departmental rules. Without more, the five (5) and three (3) day suspensions would clearly be justified.

Complicating the matter, however, are two concerns. First was the statement of the Lieutenant as he briefed Officer TOPP and Officer PEAR concerning his admonition of, “no bullshit, felonies only.” Under these circumstances, I can understand why the two officers may have felt some pressure not to issue any misdemeanor charges while they were using the MAP car.

The second concern I have is in regard to the allegation of the Union that the police chief had originally recommended a one (1) day suspension for each of the grievants and as a result, the grievants basically provided no defense at their original hearing, thinking they would receive a one (1) day suspension. The police chief acknowledged at the arbitration hearing that his recommendation was three (3) days suspensions for each of the grievants. However, Mr. Dale MOON, the City Administrator, explained that he was unaware of the police chief’s recommendation of three (3) days suspension when he gave out the discipline to the two grievants.

The witnesses testimony concerning what was agreed to or not agreed to between the Union and the police chief, is contradictory in nature. Under these circumstances, I do conclude that three (3) day suspensions to Officer TOPP and to Officer PEAR are deemed reasonable.

One last note. I respect the SOMEWHERE Police Department and the officers who constitute that department. They have a reputation for excellence in terms of law enforcement. They certainly do not need my suggestions or assistance in carrying out their goal. My job, according to the parties mandate, is to ascertain whether proper procedures have been followed under the Collective Bargaining Agreement in carrying out law enforcement duties. As a result, I do conclude that just cause has been demonstrated for discipline and that three (3) day suspensions are deemed reasonable under all of the circumstances.

#### VIII. AWARD

##### Grievance 05-240

1. The grievance of Officer Mike PEAR is sustained in part and dismissed in part. Just cause for discipline has been demonstrated, however, the five (5) day suspension is deemed unduly severe and is reduced to a three (3) day suspension.

##### Grievance 05-241

2. Just cause has been demonstrated for the discipline of Officer Tom TOPP. The three (3) day suspension is deemed reasonable under all of the circumstances. The grievance is denied.

Your arbitrator will continue jurisdiction over this matter for a period of thirty (30) days in the event clarification of this award proves necessary.

Respectfully Submitted,

Patrick A. McDonald

PMcD/clbh

Dated: September 5, 2006