

IN THE MATTER OF ARBITRATION BETWEEN:

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) Grievant: Ronnie Hufnagel
)
)
RONNIE HUFNAGEL) FMCS Nos.:190301-04675(Dismisal)
) 190204-03852 (Demotion)
"Grievant")
)
)
And)
)
)
VILLAGE OF EL PORTAL.)
)
"Respondent")
)

BEFORE: Joshua M. Javits, HEARING OFFICER

APPEARANCES:

For the Grievant: M. Cristina Escobar
Assistant General Counsel
South Florida BPA

For the Respondent: Gustavo A. Bravo
Bravo Law

Place of Hearing: El Portal, Florida

Dates of Hearing: February 5 and 6, and April 9, 2020

Date of Briefs: April 30, 2020

Date of Award: June 24, 2020

ISSUES:

The Union proposes that the issue for consideration is as follows:

- 1) Whether the Village of El Portal had just cause to demote the Grievant, Ronnie Hufnagel, from the position of Lieutenant to Sergeant, and if not, what shall the appropriate remedy be?
- 2) Whether the Village of El Portal had just cause to terminate the Grievant, Ronnie Hufnagel, and if not, what shall the appropriate remedy be?
- 3) Whether reinstatement is a permissible remedy pursuant to the Collective Bargaining Agreement?

The Village proposes the following issues:

- 1) Whether the Village had just cause to demote the Grievant? If not, what shall be the appropriate remedy?
- 2) Whether the Village had just cause to terminate the Grievant? If not, what shall be the appropriate remedy?

BACKGROUND AND FACTS:

The Grievant, Ronnie Hufnagel, initially began working with the El Portal Police Department in 1998 as a Police Officer. She later served as a Corporal in

the El Portal Police Department for five (5) years and then as a Sergeant for approximately fourteen (14) years.

In July 2017, the Grievant, who was a Sergeant at the time, was appointed Acting Police Chief. She served in this position until April 2018 when she was appointed the Interim Police Chief of the Department.

It should be noted that the Grievant and Village Manager Christia Alou executed a Memorandum on April 15, 2018, under which the Grievant was appointed Interim Police Chief. This Memorandum provided that the Grievant was to be appointed to permanent Chief of Police for the Village if she met a number of requirements contained in the document. This Memorandum further provided that if the Grievant did not meet the listed requirements, she would be assigned to the position of Lieutenant within the Police Department.

At the hearing, Village Manager Christia Alou testified that, at the time she and the Grievant entered into the April 2018 Memorandum, she anticipated that the Grievant's Interim Chief of Police position would be converted to permanent a permanent position. There were, however, some 13 criteria that the Grievant would have to meet in order for her Interim position to be converted to the permanent position, Alou noted, If the Grievant met these criteria, she would, Alou testified, immediately go from Interim Chief to permanent Chief of Police.

If, on the other hand, the Grievant did not meet the listed requirements of the position, the Grievant would be reassigned to the position of Lieutenant. Manager Alou believed that the Grievant, as a Police Officer with twenty years of experience, would be able to perform the work duties of Lieutenant if she were demoted. Acceding to Alou, she and the Grievant did not discuss what the salary would be if the Grievant was demoted to the position of Lieutenant, however.

Village Manager Alou testified that between April 2018 and November 2018, there were a number of problems with the Grievant's job performance that resulted in the Grievant's demotion back to Sergeant. Alou testified that conflict between herself and the Grievant began because the Grievant was being uncooperative with management. She testified that one of the main problems concerned how the Grievant would schedule work shifts and award overtime to officers. Since the El Portal Police Department was a small precinct and had a limited financial budget, it was important that the Grievant come up with coverage and shift changes that would fall within the financial constraints of the department.

The Grievant did not, however, develop a new staffing schedule as management had sought. According to Alou, any available overtime hours was always given by the Grievant to the Grievant. Another problem was that the Grievant was supposed to come up with policies and procedures for the Police

Department. Despite being repeatedly asked to develop and submit policies and procedures to Manager Alou for review, the Grievant refused to ever do so. No reason was ever given by the Grievant for her refusal to come up with the new policies and procedures as had been requested.

Village Manager Alou testified that she would meet with the Grievant every Monday to discuss developments within the Police Department. However, whenever Alou would ask the Grievant to perform a particular task and then follow up with her, the Grievant would often fail to respond or would respond far too slowly. Alou testified that she was further concerned that the Grievant was not providing relevant information about the Police Department to her, the Village Manager. Although Alou told the Grievant many times that she should “keep [Alou] abreast of developments,” the Grievant simply refused to do so. According to Alou, the Grievant was deceptive and told lies about things that were going on within the department.

At one point, the Grievant started to bring a dog to work, Alou testified. Although the dog in question was a registered canine in the “community dog” program. Manager Alou told the Grievant that she was allergic to dogs and asked that the Grievant not bring the dog to work in the future. If the dog was a canine in the community dog, then the dog should have been used as part of the Department’s community policing program, Alou testified. The Grievant, however, refused to place the dog in the community policing program and

continued to bring the dog to work, despite Alou's instructions not to do so.

Village Manager Alou testified that the Grievant failed to notify Alou about an audit report that was performed by the McGrath Consulting Group in July 2018. This Report identified some 38 deficiencies in the way that the Village Police Department was being run and included criticism of the Grievant. The Grievant apparently failed to provide a number of documents to the consultant who was conducting the audit of the Police Department. Although the Grievant should have informed Manager Alou about this Report, she failed to do so. It was not until November 2018, several months after the report had been prepared, that Manager Alou learned about the report from the consultants who had been responsible for preparing it.

Village Manager Alou testified that the Grievant was also involved in a verbal altercation with the Village Mayor, Claudia Cubillos, in August 2018 over staffing issues. Apparently the dispute arose because the Mayor was concerned how the Grievant was scheduling police shifts. After this verbal altercation with the Mayor, the Grievant started to leave the Mayor out of communications about staffing and emergency responses. According to Alou, the Mayor was upset about the fact that the Grievant was not providing her with information that the Mayor required. Alou testified that she spoke with the Grievant about this and told the Grievant that she needed to "be respectful" when dealing with the Mayor. There was, however, no improvement in the Grievant's conduct towards the

Mayor, Alou stated.

Alou testified that she and the Mayor had to hold a meeting with the Grievant in August 2018 about the Grievant's failure to share relevant information with them. Apparently there had been a recent incident whereby the Police Department had taken a number of weapons from the home of a retired federal judge. Although the Grievant should have brought this incident to the attention of Alou and the Mayor, she failed to do so. When Manager Alou asked the Grievant during their meeting when she had not brought the incident to her attention, the Grievant did not reply.

Village Manager Christia Alou testified that conflict between the Grievant and her and the Village Mayor continued for the next few months. In November 2018, the Grievant was issued by two (2) written reprimands by Village Manager Alou.

The first written reprimand, dated November 1, 2018, alleged that the Grievant had acted in an insubordinate manner by sending a letter that was outside her authority and that should only have been sent with the Village Manager's permission. A second written reprimand, dated November 2, 2018, charged the Grievant with failing to perform her work duties by not properly coordinating patrol schedules.

Both of these written reprimands were presented to the Grievant on November 13, 2018. On this same day, Village Manager Christia Alou advised the Grievant that she had not met the listed requirements of the April 2018 Memorandum and that she would not be appointed to the position of permanent Chief of Police. The Grievant was then reassigned back to her former Sergeant position – not the position of Lieutenant that had been agreed to in the parties April 2018 Memorandum.

Village Manager Alou testified that the Grievant was not reassigned to a Lieutenant position. Although the April 2018 Memorandum provided that the Grievant was been awarded a Lieutenant position if she was not awarded the permanent Chief of Police position, Manager Alou testified that agreeing to reassign the Grievant to Lieutenant was designed to be a reward.

However, the Grievant's job performance over the 6 months she was Interim Chief of Police had shown her to be incompetent. Given the "nasty and negative" attitude the Grievant had shown during her time as Interim Police Chief, it was inappropriate to award her the position of Lieutenant. Alou testified that the Grievant had been "untruthful and deceptive" about a number of incidents that had happened in the Police Department over the prior months. It was for this reason that the Grievant was reassigned to the position of Sergeant

in November 2018, Alou explained.

The reasons given by Village management for refusing to award the Grievant the permanent Chief position were outlined in a November 14, 2018 Memo (See Union Exhibit 8). The two (2) reasons provided by the Village were: (1) the Village Manager Christia Alou's "evaluation and assessment" of the Grievant's job performance "did not meet the standards and objectives" expected; and (2) the Grievant's performance deficiencies as outlined in the McGrath Consulting Report.

At the hearing, former Village Police Chief Jose Antonio Perez testified that he was hired by the Village in mid-November 2018. He served as Interim Police Chief until January 2019. When he was interviewed for the Interim Chief position, Perez was told that he would be working with the former Interim Chief of Police, the Grievant, who had recently been demoted to Sergeant. Although former Chief Perez had been told the Grievant would be working under him, Perez was not given any specific orders or instructions regarding the Grievant, he recalled.

Retired Chief Perez testified that he only worked with the Grievant for some two to three weeks, as the Grievant was terminated in December 2018. According to Perez, the Grievant, however, demonstrated a complete lack of respect for Perez and his authority from the very beginning of his tenure at the

department. The Grievant failed to follow his orders and department guidelines repeatedly, Perez testified. Perez further testified that the Grievant also addressed him in an inappropriate manner repeatedly. Although the Grievant was counselled and reprimanded several times by Perez and the Village Manager for her ongoing misconduct, the Grievant's behavior did not improve.

One problem with the Grievant, Perez explained, was that she repeatedly refused to sign-off on police officer worksheets. As a Sergeant, the Grievant should have signed off these worksheets the day after they had been submitted. There were, however, approximately 120 worksheets within the Village Police Department that had not be signed off by the Grievant. Although former Chief Perez had repeatedly asked the Grievant to do so, the Grievant would not respond to Perez' instructions and would not perform the required task. Whenever former Chief Perez would instruct the Grievant to sign off on the worksheets, the Grievant would "just walk away" and ignore the request. It was the Grievant's job to follow her supervisor's instructions, but the Grievant would walk away and ignore the directives given by Perez.

According to Perez, he needed the Grievant – as his second in command – to be able to follow his instructions and directions. There were times when Perez was busy with other tasks, so he would often need the Grievant to supervise other officers within the department, he explained. The Grievant, however, would simply refuse to comply with Perez' instructions. Even for

relatively straightforward matters (like wearing the proper uniform to work or carrying handcuffs), the Grievant refused to follow the appropriate guidelines, Perez explained. The Grievant would repeatedly fail to wear the proper uniform to work despite being instructed to do by Perez. She also refused to carry a baton/spray and handcuffs – even though these items might be required to deal with a situation on the street. The Grievant also refused to check in via radio despite being repeatedly informed to do so, Perez testified.

Former Chief Perez testified that, although he had spent some 26 years working in law enforcement, he had never before witnessed the sort of insubordination shown by the Grievant. The Grievant's refusal to follow the established chain of command was the “worst [he had seen] in his career,” Perez stated.

Recalling another problem with the Grievant, Perez testified that, during a telephone call to the Florida Department of Law Enforcement (FDLE), he was informed that there was a pending certification problem with the Village Police Department. Apparently this problem stemmed from July 2018 when the Grievant was acting as the Interim Police Chief. There were, Perez explained, various problems in the way the Village Police Department operated and the FDLE had threatened to revoke the Department's access to FDLE's database until these problems were corrected.

These deficiencies were outlined to the Grievant in a letter from the FDLE in July 2018, Perez noted. The Grievant had failed to address these outstanding problems during her tenure as Interim Police Chief and she had failed to inform Perez about the problems when he assumed the post in November 2018.

According to Perez, he was completely unaware that the Village police Department might have its certification to the FDLE database revoked if these deficiencies were not addressed. When Perez asked the Grievant about the problems detailed in the July 2018 letter from FDLE, the Grievant did not provide any explanation. At no time did the Grievant tell Perez that she had formulated a plan to address FDLE's security concerns. Former Police Chief Perez testified that he was further concerned that the issues detailed in the McGrath Consulting Group Report – an audit of the police department that occurred under the Grievant's tenure as Interim Police Chief – were not corrected.

Whenever Perez reprimanded the Grievant or counselled her for insubordinate behavior or failing to obey a supervisor's directive, the Grievant would just walk away, Perez testified. According to Perez, the Grievant never said "I understand and will try to do better." The Grievant would make no comment/refuse to answer and walk away from him, Perez testified.

On one occasion, when Perez directed the Grievant to be present for a meeting with the Village Manager on December 2, 2018, the Grievant told Perez “Hey, I will be there when I can be there.” Her behavior, Perez stated, and her refusal to follow directives demonstrated total disrespect for Perez and the Village Manager.

Former Police Chief Perez denied that he had any personal animus towards the Grievant or that he was in any way biased against the grievant. Perez testified that he did not know the Grievant before assuming the Acting Police Chief position in November 2018. He “just wanted the Department to function properly” and the Grievant was not assisting in that goal, Perez explained. According to Perez, he “wanted to get the Grievant to commit and work with me” but the Grievant completely refused to do so. Although Perez had nothing to do with the Grievant's demotion from Interim Police Chief to Sergeant, the Grievant “did not seem to want to help me at all,” Perez stated.

Perez further noted that he had a problem with the way in which the Grievant was approving overtime hours. On December 3, 2018, the Grievant had approved her own personal overtime hours rather than having her overtime hours approved by her supervisor. According to Perez, he informed the Grievant that overtime hours were only to be approved by him and that it was inappropriate for the Grievant to approve her own overtime. The Village “did not

have a lot of money” and overtime hours needed to approved only by the Chief of Police, Perez testified.

Perez was also concerned that there appeared to be a lot of Police Officers in the office rather than being out on the streets working and patrolling. It was important that officers be patrolling to the streets in order to be visible and so as to prevent potential crimes. When Perez brought this issue to the Grievant’s attention, the Grievant offered explanations that were “not correct.” According to Perez, he believed that the Grievant was being untruthful with him and he had to warn the Grievant that her actions could result in severe discipline.

The Grievant's insubordinate conduct and refusal to follow instructions ultimately caused Perez to recommend that she discharged. According to Perez, he had provided the Grievant with plenty of notice about her failure to follow instructions and had provided her with ample opportunity to improve her work performance. Despite repeated counselling and warnings, the Grievant’s unacceptable work performance continued.

Although Perez insisted that discharge was solely his decision and was based on the Grievant's conduct since Perez had become Village Police Chief, he noted that the proposed discharge would have to be reviewed and approved by the Village Manager before it took effect. Perez insisted, however, that he was not instructed or asked by anyone else to terminate the Grievant’s

employment. The decision to remove the Grievant was based on the Grievant's repeated pattern of refusing to obey directions, Perez concluded.

Perez testified that he and the Village Manager met with the Grievant on December 10, 2018, to notify the Grievant that she was being terminated and to outline the incidents that had contributed to this decision. During the meeting, Perez told the Grievant that he had something to give her (Notice of Discharge – Village Exhibit 11) but the Grievant walked away and refused to accept the letter.

According to Perez, the Grievant left the room and refused to accept the letter he had attempted to give to her. Perez testified that, after the Grievant refused to personally accept the letter, he subsequently placed the letter in the Grievant's in-box at the police station. While Perez did not see the Grievant take the letter from her in-box at the station, he did notice that the Grievant's inbox was empty a few days later.

The Notice of Discharge alleges that the Grievant engaged in various instances of misconduct between November 19, 2018 and December 7, 2018, including disobeying orders/directives, insubordination, untruthfulness, neglect of duty, and failing to properly follow radio and patrol procedures.

A meeting between Village management and the Grievant took place on January 29, 2019. During this meeting, the Grievant and her legal representative met with Village Manager Alou to discuss the charges made against her. On February 21, 2019, Village Manager Alou recommended termination of the Grievant to the Village Council. The Grievant's termination did not go into effect until February 26, 2019, the date that the Village Council authorized the Village Manger's request for authority to terminate the Grievant.

Village Mayor Claudia Cubillos testified that she was involved in an incident with the Grievant on August 28, 2018. According to Mayor Cubillos, she was making "State of the Village" address to local residents on this particular day at the Village Hall. Following a dispute between Mayor Cubillos and the Grievant, the Grievant stormed out of the Village Hall and slammed two doors in Cubillos' face.

Cubillos testified that following this incident, the Grievant began to intentionally exclude the Mayor from safety deliberations. Cubillos noted that she served as the Chair of Public Safety, and argued she should have been provided with important information relating to public safety. However, following their dispute, the Grievant had retaliated against Mayor Cubillos and had intentionally refused to provide Cubillos with essential safety information.

At the hearing, the Grievant testified that she was initially reluctant to become the “Interim Police Chief” and informed Village Manager Alou and Village Mayor of this. According to the Grievant, she had concerns about assuming the “Interim Police Chief” position as she would have to take academic courses in order to obtain a BA degree (at the time she only has an Associate’s degree).

The Grievant testified that she was concerned about the political nature of the “Interim Police Chief” position. If she accepted the Interim Police Chief position, the Grievant would become would an “at-will” employee who did not have any sort of Union protection. This troubled the Grievant, she testified, as she was concerned that the Village Council or the Village Mayor might blame her for potential policing problems or alternatively might use her as a political scapegoat. The Grievant testified that she had seen this type of thing happen in the past. As the Grievant only had six (6) more years to go before she got her pension, she did not want to risk being made the scapegoat for any political problems that might arise while she acted as “Interim Police Chief,” the Grievant testified.

Another issue that caused the Grievant concern over accepting the Interim Police Chief position was that of pay. In the Grievant’s position as a Sergeant with the Police Department, she could make more money – when overtime hours were taken into account – than she would be paid as Interim Chief. These

various factors led the Grievant to question whether or not she should accept the Inertia Chief position in April 2018.

Based on the Grievant's concerns, the Village Manager Alou and the Mayor changed the written agreement (April 2018 Memorandum) they had prepared. Changes were made to say that if the Grievant was not made permanent Police Chief at the end of the six (6) month period, she would be demoted to the position of Lieutenant.

It should be noted that there were no Lieutenants in the Village Police Department – just Patrol Officers, Corporals, Sergeants, and a Police Chief. Since there was no salary provision for the Lieutenant position specifically identified in the parties' Collective Bargaining Agreement, it was agreed that the Grievant and the Village Manager/Mayor would negotiate a mutually acceptable salary should the Grievant be demoted to the position of Lieutenant.

At the hearing, the Grievant the Grievant explained how she timely attempted to address all of the deficiencies contained in the McGrath Report. However, the Grievant insisted that she needed the City Council approvals to expend the funds at every step and argued that there were numerous bureaucratic hurdles that prevented her from taking immediate action.

According to the Grievant, the Village Police Department was very small – with some 8-10 full-time officers only – and lacked IT infrastructure and other expertise. Introducing of these recommendations required coordination with the Council and others outside the Police Department, the Grievant testified.

At the hearing, the Grievant testified that she had a disagreement with the Village Mayor early in her tenure as Interim Police Chief. Apparently this disagreement centered on whether or not the Village Police Department should provide a Police Officer at a political event – “State of the Village.” According to the Grievant, she refused to provide a Police Officer for this particular event, because the Police Department was, according to the Grievant, extremely busy and did not have the resources to do so.

The Grievant further testified that there continued to be friction between the Police Department and the Mayor while the Grievant was Interim Chief. Another disagreement occurred when, following Hurricane Irma, the Police Department was helping perform safety duties after the Village’s traffic lights were out of order.

According to the Grievant, the Mayor announced at her “State of the Village” speech that the police were “monitoring” cleanup operations by private contractors. At the hearing, the Grievant testified that she informed the Mayor that the Police Department did not monitor this type of activity.

This became a particular point of contention between the Grievant and the Village Mayor. Apparently if the Police Department had monitored the cleanup operations by private contractors, FEMA might have reimbursed the Village for the hours of police activity. If, however, the Police Department did not monitor any cleanup activity, there would be no reimbursement made by FEMA. This became a real squabble between the Grievant and the Village Mayor it seems.

Up until this point in her Interim Chief tenure, the Grievant's relationship with the Mayor and the Village Manager, Christia Alou, had, in the Grievant's opinion at least, been good. However, following this spat between the Grievant and the Mayor, which occurred in August 2018, there was a major decline in trust and friendship between the parties, the Grievant testified. The Grievant testified that she believed her falling out with the Mayor precipitated her demotion from Interim Chief to Sergeant and then ultimately her termination.

According to the Grievant, she was not given a fair opportunity to succeed during the period she was "Interim Chief." The Grievant testified that she believed that Village management had essentially "set her up" and had intended to terminate her employment because of what was a personal dispute between the Grievant and the Mayor/Village Manager.

The Grievant testified that there continued to be friction between the Police Department and the Mayor while she was Interim Chief. Another disagreement occurred when, following Hurricane Irma, the Police Department was helping perform safety duties after the Village's traffic lights were out of order.

The Grievant further denied the suggestion that she failed to keep the Village Manager Christia Alou and the Council appraised and informed of developments within the Police Department.

She strenuously denied that she was in any way withholding information from the Village Manager of the Council/Mayor, or that she was otherwise lackadaisical in implementing the FDLE concerns. When the Grievant learned in July 2018 that the Police Department was not in compliance with FDLE procedures, the Grievant repeatedly notified Village Manager Alou and kept Alou up to date with developments.

The Grievant rejected any suggestion that she withheld information from the Village Manager or Chief Perez. According to the Grievant, Village Manager Alou had asked to be informed of all the Grievant's activities while Interim Chief.

The Grievant would send Village Manager Alou a monthly report of all her activities, so that Alou could present this information to the Village Council. She was in regular contact with Village Manager Alou and kept Alou up to date with everything that was going on in the Police Department, the Grievant insisted. Any suggestion that she did not keep the Village Manager up to date or failed to provide relevant information to Alou were entirely baseless, the Grievant testified.

At the hearing the Grievant denied that she failed to cooperate with the McGrath consultants who were performing auditing the Police Department. The Grievant noted that she was interviewed by the consultants for over one (1) hour. During this interview, the Grievant explained the Department's policies that had been in operation under the former Chief of Police. The Grievant then explained how she was revamping procedures and policies within the Department. However, because of the outstanding FDLE issues, the Grievant was focusing on this issue first, she explained.

The Grievant rejected the McGrath Report's assertion that she failed to cooperate with its consultants by failing to provide information and records. According to the Grievant, she had already provided this information/records to Village Manager Alou.

According to the Grievant, Village Manager Alou told her on November 13, 2018 that she was being demoted back to her former position of Sergeant. When Perez took over as Police Chief in November, he began sending the Grievant lots of emails. The Grievant insisted, however, that she responded to all of Perez' emails and provided all of the information that he had requested.

The Grievant noted that he only worked with Perez from November 19, 2018 until December 10, 2018. During this period of time, the Grievant was on a one-week long training course, so he only worked alongside Perez for a total of eight (8) days, she stated. When the Grievant was notified in December that she was being terminated, she was left "speechless."

The Grievant testified that she had never been informed of any of the allegations of misconduct prior to being terminated, nor was she given an opportunity to respond to the allegations. According to the Grievant, she was never given a notice of termination and was never provided a pre-disciplinary hearing to discuss the allegations against her.

POSITIONS OF THE PARTIES:

The Village's Position:

The **Village** contends that the discharge of the Grievant in the instant case was for just cause. According to the Village, its decision to discharge the Grievant in the instant case was based on her unacceptable work performance/failure to follow instructions and insubordinate behavior. All of the evidence presented at the hearing suggests that the reason the Grievant was discharged was because her work performance was deficient and not up to the standards required of someone in that position. Evidence and testimony presented at the hearing clearly demonstrated that the Grievant acted in a subordinate manner and failed to follow orders from Village Police Chief Perez. Despite being provided with repeated instructions from her supervisor, the Grievant refused to promptly and diligently discharge the duties of her position. Instead of following the orders given to her, the Grievant obstinately refused to perform the work duties required of her. Former Police Chief Perez testified that the Grievant showed a “total, systematic lack of respect towards me at all levels;” “failed to follow any guidelines, rules or order;” and “was the worst person I had ever worked with.” This testimony as corroborated by Village Manager Christia Alou, who testified that the Grievant was “untruthful, deceptive” and created “a negative and tense” work environment” after she was not awarded the position of Police Chief.

The Village insists that it provided the Grievant specific instructions and information about her performance deficiencies and notified her of what she needed to do in order to improve her work performance.

According to the Village, the Grievant has been unable to show that her separation was based on anything other than her level of work performance. The Grievant's deficient work performance and refusal to follow instructions from her superior was a legitimate reason for discharge, the Village insists. Village management honestly and reasonably believed that the Grievant's performance was inadequate. The Grievant failed to establish that the Village decision to discharge her was somehow motivated by personal animus or malice.

According to the Village, the Grievant failed to present any meaningful or credible evidence that would support her claim that management retaliated against her because of a personal disagreement the Grievant had with the Village Manager and/or Village Mayor. In contrast, Village management presented compelling testimony that its actions were based solely on the Grievant's poor work performance.

According to the Village, it provided the Grievant reasonable opportunity to demonstrate an acceptable level of work performance. It notes that the Grievant

was warned of her work inadequacies and provided sufficient opportunity for improvement.

The Village asserts that all of these deficiencies in the Grievant's performance were adequately outlined during meetings between the Grievant and her supervisors at the Village. Without doubt, the Grievant was given adequate warning of her alleged performance deficiencies.

According to the Village, the Grievant was provided with continuous feedback from her supervisor. Any suggestion that the Grievant had little to no warning about her deficient work performance is baseless, the Village asserts. The record shows that the Grievant received feedback from her supervisor that she needed to improve her level of job performance or else risk being severely disciplined. These warnings should have been sufficient for any reasonable person to understand that there were doubts about his/her suitability for continued employment with the Village. Despite the extensive efforts of the part of Village to improve the Grievant's level of performance, the Grievant's performance deficiencies continued.

The Village notes the credible testimony of former Police Chief Perez and Village Manager Alou to substantiate the allegations that the Grievant was repeatedly insubordinate and refused to obey orders. Former Police Chief Perez and Village Manager Alou denied having any sort of vendetta or personal dislike

of the Grievant. They further denied acting in bad faith in deciding to remove the Grievant from her position with the department. To the contrary, the Grievant was provided numerous warnings about her failure to follow instructions/orders from her supervisor. Despite being afforded numerous opportunities for improvement, the Grievant continued with her insubordinate behavior and obstinately refused to follow the directives of management. According to the Village, the Grievant essentially self-sabotaged her position with the Village Police Department by lashing out at former Chief Perez with insubordinate, deceptive and disruptive behavior. For the reasons outlined above, the Village requests that the Grievant's complaint be dismissed in its entirety.

The Village rejects the assertion that it did not give the Grievant a pre-determination meeting in the instant case. It notes that a pre-determination meeting between Village management and the Grievant took place on January 29, 2019. During this meeting, the Grievant and her legal representative were provided an opportunity to present evidence and to respond to the charges made against her.

According to the Village, the Grievant inexplicably failed to offer any evidence during the January 29, 2019 pre-determination meeting. Although the Village accepts that the Grievant had been placed on leave without pay prior to this meeting, it nonetheless insists that this does not in any way alter the effectiveness of the January 29, 2019 pre-determination meeting. The Grievant's

termination did not go into effect until February 26, 2019, the date that the Village Council authorized the Village Manager's request for authority to terminate the Grievant (a full month after the Grievant's pre-determination meeting with Village management). For that reason, the Village dismisses the Union's contention that the Grievant was denied a pre-determination meeting or that there was otherwise some sort of due process error in the way that Grievant's discharge was handled.

The Village notes that the Grievant was issued a letter by Village Manager Christia Alou dated January 21, 2019. This letter fully informed the Grievant of all of the allegations that had been made against her, the Village contends.

The Village further contends that the demotion of the Grievant to the Sergeant position was for just cause. It rejects the Grievant's assertion that she should have been demoted to the position of Lieutenant rather than Sergeant under the parties' April 2018 Memorandum of Agreement. Management notes that the position of Lieutenant did not exist at the time and there was no available Lieutenant position to which the Grievant could have been demoted. The position of a Lieutenant was something that predicated mostly on rank and stature, rather than it being a permanent position that provided additional salary of benefits to the office holder. To support its position, the Village notes that under the parties' CBA the decision to fill the vacancy of Lieutenant "shall not be subject to the grievance procedure." (See Article 21 of the CBA). The Village

insists that management's decision to bypass the Grievant from any vacant Lieutenant's position is therefore outside the Arbitrator's jurisdiction.

The Village further rejects the Grievant's claim that the Village Manager's April 2018 Memorandum with the Grievant constituted an employment agreement. According to the Village, even if the April 2018 Memorandum constituted an employment agreement that granted the Grievant a vested interest, the Grievant's demotion to Sergeant is nonetheless outside the purview of this arbitration. At most, the Grievant would have a breach of contract claim premised on an employment agreement that is outside the four corners of the CBA, the Village insists.

According to the Village, notwithstanding the arguments above, management had more than sufficient just cause to demote the Grievant from Interim Police Chief to Sergeant. Both the Village Manager and the Village Mayor testified at length about the various performance problems with the Grievant during this time. Despite repeatedly counselling the Grievant about her performance related issues, the Village Manager and Village Mayor were nonetheless forced to demote the Grievant to the position of Sergeant.

The Village notes the testimony of the Village Mayor which showed that the Grievant stormed out of a Village Hall meeting and slammed two doors in the Mayor's face. The Grievant then retaliated by intentionally excluding the Village Mayor, who was the Chair for Public Safety, from important communications

relating to public safety. The Village further notes that the Grievant failed to satisfactorily handle the July 2018 FDLE Audit Report that required her to correct deficiencies within the Village Police Department. The Grievant the failed to inform Village Manager Alou – and subsequently Chief of Police Perez – of the July 2018 Audit Report. According to the Village, the overwhelming evidence presented during the hearing shows that management had just cause to demote the Grievant to the position of Sergeant.

The Village argues that the parties' Collective Bargaining Agreement does not provide for reinstatement as a remedy. It notes that the parties' CBA provides only for "retroactivity" as a remedy in cases of this type. Article 3C of the CBA provides in the relevant part that "[T]he arbitrator's award may provide for retroactivity and shall state the effective date thereof." Had the parties intended that reinstatement be a remedy that was available under the CBA, the parties would have included language to that effect, the Village asserts. If the Arbitrator sustains the instant grievance, he may not direct the reinstatement of the Grievant to her former position, the Village insists. It would be inequitable to require the Village – a small municipality – to take on an additional salaried employee for a position where there is no vacancy, the Village argues.

The Union's Position:

The **Union** contends that the Agency did not have just cause to demote the Grievant from her Interim Chief of Police position to the position of Sergeant.

Under the terms of an April 2018 Memorandum under which the Grievant was appointed Interim Chief of Police, the parties agreed that the Grievant would be offered the permanent Chief of Police position if she met the listed performance requirements or, if she did not meet the performance requirements of the Interim Chief position, she would be assigned to the position of Lieutenant. Neither of these events occurred, however. It is undisputed that the Grievant was demoted from Interim Chief of Police to the position of Sergeant, the Union asserts. Under the terms of the Memorandum, it is abundantly clear that the Grievant should have been assigned to the position of Lieutenant if she did not meet the requirements to become permanent Chief of Police. Even if the Village had cause to demote the Grievant as management contends, it did not have the discretion to demote the Grievant to the position of Sergeant.

The Union further contends that the Village did not have just cause to terminate the Grievant in the instant case. It notes that the Grievant had almost twenty (20) years of discipline free employment with the Village up until just prior to her termination. However, just one month prior to her discharge, the Grievant was given two (2) written reprimands by Village Manager Christia Alou. Shortly thereafter, the Grievant was terminated by the Village.

The Union insists that management has failed to present substantial evidence that the Grievant failed to meet her performance requirements. During her testimony, the Grievant addressed each of the allegations that had been

made against her. Each of these allegations, however, were rebutted by the Grievant. The Grievant credibly explained that the allegations were incorrect or otherwise unfounded, the Union asserts. Complaints that the Grievant's work was not timely/accurate or that it was somehow not up to the level expected of someone in the Grievant's position is not credible. Moreover, suggestions that the Grievant would refuse to comply with work orders or instructions is entirely unfounded.

According to the Union, Village management was looking for any minor flaw in her work as a justification to discharge her following a personal dispute between the Grievant and the Village Manager/Mayor. The Village failed to prove that the Grievant failed to successfully perform her work responsibilities during the period in question, the Union maintains.

According to the Union, the Village failed to apply progressive discipline as required by the parties' CBA and instead summarily removed an officer who had for 20 years been an exemplary police officer. Assuming *arguendo* there was sufficient basis to discipline the Grievant, the Union insists that the Village has failed to prove that there was just cause to impose the penalty of discharge in this case.

The Union asserts that Village management terminated the Grievant on December 10, 2018, without providing her with the written notification outlining the reasons for her dismissal. At no time was the Grievant provided with a

termination notice detailing the specific incidents that the Village intended to rely on for her discharge. Village management was required to provide sufficient notice to the Grievant prior to the termination action, so that the Grievant would have the opportunity to respond to the allegations and to submit any mitigating evidence. The Village's failure to provide the Grievant with written notice of the discharge at the start of the termination process is a clear violation of the Grievant's due process rights. During her testimony, the Grievant credibly testified that she was never presented with a termination notice prior to discharge and was never made aware of the specific allegations made against her.

According to the Union, management should have served the Grievant with a termination notice detailing the specific allegations prior to terminating her. By failing to provide the Grievant with a termination notice and by failing to provide the Grievant with a predetermination meeting prior to discharge, the Village violated the Grievant's due process rights, the Union insists.

The Union argues that the Agency failed to prove that the penalty of removal as reasonable or appropriate in the instant case. Although the Grievant had 20 years of service and no history of misconduct or performance issues up until just one month before her discharge, Village management unreasonably chose to discharge the Grievant. Although Agency management had issued the Grievant with two (2) written reprimands in November 2018, it inexplicably chose to discharge the Grievant in December 2018. The penalty of removal against an

employee with a 20-years of service is neither reasonable nor warranted in this case, the Union maintains. For some inexplicable reason, the Village failed to even consider imposing progressive discipline.

The Union argues that the Grievant was not given a fair opportunity to succeed during the period she was “Interim Chief” and that Village management essentially “set up” the Grievant with the sole intent of terminating her employment because of what was a personal dispute between the Grievant and the Mayor/Village Manager. The Union notes that the basis for the Grievant’s termination in December 2018 took place only one (1) month after she had been demoted from Acting Chief of Police to Sergeant (See Termination Letter of December 9, 2018 – Village Exhibit 10).

According to the Union, the Village could have suspended the Grievant if the purpose of the discipline was to correct any perceived misconduct or to improve the Grievant's work performance. In this case, however, the Village failed to even consider suspending the Grievant. Given that former chief of Police Perez had only worked with the Grievant for approximately 2-3 weeks prior to deciding to terminate her, it is clear that he should have proposed a lesser degree of discipline. Inexplicably, however, Perez skipped all other progressive disciplinary steps and immediately terminated the Grievant.

For the reasons outlined above, the Union insists that the Village has

failed to prove that its decision to remove the Grievant was in accordance with the CBA and the applicable rules/regulations. The overwhelming evidence presented at the hearing establishes that the Grievant met the requirements of her position with respect to each performance standard. Moreover, the Agency committed a host of procedural violations which rendered its decision to terminate the Grievant defective. As such, the Union requests that the Grievant be reinstated to her former position and made whole for all losses sustained as a result of this unwarranted removal action.

DECISION AND AWARD:

The issues for consideration in the instant case are (1) whether the demotion of the Grievant from Interim Chief of Police to Sergeant on November 13, 2018 was for just cause; and (2) whether the decision to terminate the Grievant was for just cause.

The Grievant was a twenty (20) year employee of the Police Department of El Portal Village, a small jurisdiction in Northern Miami with only about eight (8) – nine (9) full-time police officers.

The Grievant served as Interim Chief of Police between April 2018 and November 2018, when she was demoted from that position to the position of Sergeant. The Grievant had served as Interim Police Chief for approximately six (6) months after being asked to do so by the new Village Manager, Christia Alou.

In April 2018, Village Manager Alou and the Grievant entered into a written agreement (Interim Police Chief Memorandum) which detailed the standards and criteria to be met in order for the Grievant to be awarded the permanent Chief of Police position. At the time, the Grievant had been serving as the “Acting” Chief of Police, a position she had filled several times in the past when the prior Chief of Police was away on vacation/leave etc.

However, on November 13, 2018, about six (6) months after the Memorandum of April 2018 (See Village Exhibit 4), the Grievant was demoted back to the position of Sergeant. This demotion to Sergeant was based in part on the Grievant’s poor work performance as the Interim Police Chief and in part due to a consultant report (“McGrath Report) that was critical of the Village Police Department and its practices. Following her demotion, the Grievant was made a Sergeant again – not the Lieutenant position that had been agreed to in the April 2018 Memorandum - and was paid at the Sergeant rate of pay – not the “salary to be determined” that was agreed in the April 2018 Memorandum.

According to the Union, the City’s demotion to the position of Sergeant rather than the position of Lieutenant as had been agreed to in the April 2018 Memorandum was a violation of what the parties had agreed.

The Union notes that the Grievant had served as “Acting Police Chief” for approximately ten (10) months prior to becoming “Interim Police Chief.” As the “Acting Chief,” the Grievant was essentially performing the same duties and responsibilities that she had been doing as the “Interim Chief,” the Union notes.

The Union believes that it is extraordinarily unusual for a police officer with over twenty (20) years’ experience to be summarily demoted in the manner that the Grievant was. Despite the Grievant performing the same job responsibilities as “Interim” Chief that she had been doing as “Acting Chief,” the Village decided to demote her after only a few short months. Instead of demoting the Grievant to the promised Lieutenant position as had been agreed in the April 2018 Memorandum, the Village demoted her to the position of Sergeant. Then, only one (1) month after this demotion, the Village terminated the Grievant in December 2018 for performance deficiencies and poor work performance.

The Union dismisses the Village’s suggestion that the Grievant’s work performance spectacularly declined during the six (6) month period from April 2018 through December 2018. According to the Union, even if the Grievant did not meet the standards required by the end of the six (6) month review period and was not going to be made permanent Police Chief, she should instead have been demoted to the position of Lieutenant (not Sergeant). The Grievant should also have received a “salary to be determined” when demoted to the position of Lieutenant, the Union argues.

Management insists that the Grievant failed to perform the listed “accomplishments” and “demonstrated abilities” outlined in the April 2018 Memorandum by the October 12, 2018, meeting at which the Grievant was either to be made permanent Police Chief or be demoted to Lieutenant.

The reasons given by Village management for refusing to award the Grievant the permanent Chief position were outlined in a November 14, 2018 Memo (See Union Exhibit 8). The two (2) reasons provided by the Village were: (1) the Village Manager Christia Alou’s “evaluation and assessment” of the Grievant’s job performance “did not meet the standards and objectives” expected; and (2) the Grievant’s performance deficiencies as outlined in the McGrath Consulting Report.

The McGrath Consulting Group was initially hired by the Village to evaluate and assess the performance of the Village Police Department. Following its preliminary review, the McGrath group found there were numerous deficiencies in the Village Police Department and it detailed these deficiencies in its report of January 2019. In particular, it is alleged in the McGrath Report that the Grievant failed to cooperate with the group by refusing to provide documentation requested by the group’s consultants.

The Village cited the McGrath Group's Report preliminary findings in its November 14, 2018, decision to demote the Grievant to the position of Sergeant. Village management further used the final McGrath Report in January 2019 to discharge the Grievant from her Sergeant position with the Village Police Department. According to the Village, there were several serious concerns laid out in the consulting group's report about the Grievant's work performance – even though the McGrath Group did, for the most part, focus on the Police Department's overall deficiencies.

One of the most serious allegations against the Grievant was that the Florida Department of Law Enforcement (FDLE) had found numerous deficiencies in the Village Police Department's compliance with FDLE requirements. One of the principal deficiencies was that the Department lacked the necessary computers/servers (including ability to encrypt information) to perform its functions. Because of this identified deficiency, the Village Police department could have been deprived of access to FDLE's criminal database of information, something that is essential for the Department to properly function as a police department.

The Grievant testified extensively at the hearing about how she timely attempted to address all of the deficiencies contained in the McGrath Report. However, the Grievant insisted that she needed City Council approvals to expend

the funds at every step and argued that there were numerous bureaucratic hurdles that prevented her from taking immediate action.

According to the Grievant, the Village Police Department was very small – with some 8-10 full-time officers only – and lacked IT infrastructure and other expertise. Introducing of these recommendations required coordination with the Council and others outside the Police Department, the Grievant testified.

The Grievant further denied the suggestion that she failed to keep the Village Manager Christia Alou and the Council apprised and informed of developments within the Police Department. She strenuously denied that she was in any way withholding information from the Village Manager of the Council/Mayor, or that she was otherwise lackadaisical in implementing the FDLE concerns.

The Grievant testified that there continued to be friction between the Police Department and the Mayor while she was Interim Chief. Another disagreement occurred when, following Hurricane Irma, the Police Department was helping perform safety duties after the Village[s traffic lights were out of order.

According to the Grievant, the Mayor announced at her State of the Village” speech that the police were “monitoring” cleanup operations by private

contractors. At the hearing, the Grievant testified that she informed the Mayor that the Police Department did not monitor this type of activity.

This became a particular point of contention between the Grievant and the Village Mayor. Apparently if the Police Department had monitored the cleanup operations by private contractors, FEMA might have reimbursed the Village for the hours of police activity. If, however, the Police Department did not monitor any cleanup activity, there would be no reimbursement made by FEMA. This became a real squabble between the Grievant and the Village Mayor it seems.

Up until this point in her Interim Chief tenure, the Grievant's relationship with the Mayor and the Village Manager, Christia Alou, had, in the Grievant's opinion at least, been good. However, following this spat between the Grievant and the Mayor, which occurred in September 2018, there was a major decline in trust and friendship between the parties, the Grievant testified. The Grievant testified that she believed her falling out with the Mayor precipitated her demotion from Interim Chief to Sergeant and then ultimately her termination.

In effect, the Union argues that the Grievant was not given a fair opportunity to succeed during the period she was "Interim Chief" and that Village management essentially "set up" the Grievant with the sole intent of terminating her employment because of what was a personal dispute between the Grievant and the Mayor/Village Manager.

The Union notes that the basis for the Grievant's termination in December 2018 took place only one (1) month after she had been demoted from Acting Chief of Police to Sergeant (See Termination Letter of December 9, 2018 – Village Exhibit 10).

In contrast, Village Manager Christia Alou denied that there were any bad feelings or animus between herself and the Grievant. According to Alou, the decision to demote the Grievant from Interim Chief to Sergeant and then to terminate the Grievant's employment altogether were based on the Grievant's work performance alone.

The evidence and testimony presented at the hearing indicates that the relationship between the parties was clearly good in April 2018, when both Alou and the Village Mayor believed the Grievant would succeed as Interim Chief and become the permanent Police Department Chief.

Both Alou and the Mayor wanted the Grievant to take the Interim Chief position and they changed the proposed contract so as to induce the Grievant to take the job. As a twenty (20) year Police Officer with the Department and after having served several times in the past as Acting Police Chief, the Grievant knew and understood the nature of the Chief position. It appears highly unusual that

the Grievant's work performance would so decline so rapidly over a six (6) month period that it would warrant a demotion and then discharge, the Arbitrator notes.

The Arbitrator notes that the individual mostly responsible for the Grievant's discharge was Police Chief Perez, the person who in November 2018 took over from the Grievant after she was demoted to Sergeant. Between November 2018 and the date of discharge, the Grievant accumulated a huge number of alleged offenses and performance related issues. The Union makes the case that the number of alleged deficiencies were so numerous that this suggests that Police Chief Perez was directed by Village Manager Alou and/or the Village Mayor to find fault with the Grievant's work as a pretext to remove her from the Department.

The Union believes that the Grievant has presented credible explanations for all of the allegations that had been made against her. According to the Union, the Grievant has been made a scapegoat for other problems within the Village/Police Department, including staffing costs that the Village was unable to sustain. It notes that the one (1) month period from when the Grievant was demoted to Sergeant on November 14, 2018, until she was discharged on December 10, 2018, contains the bulk of the allegations against the Grievant. It is inconceivable, the Union contends, that a twenty (20) year employee who was given major work responsibilities, including being Chief of the Police Department, should be deemed unfit for employment.

In contrast, the Village relies heavily on the testimony of former Police Chief Perez and the criticisms contained on the McGrath Report as compelling evidence that the Grievant simply was not performing her work duties satisfactorily.

The Arbitrator notes that the testimony presented by the Grievant stood at odds with that offered by Manager Christia Alou, the Village Mayor, and retired Police Chief Perez. The central thrust of the Grievant's defense is that the allegations made against her were part of a conspiracy whereby these parties wished to remove her from her position because of personal animus. On the other hand, Manager Alou, and retired Police Chief Perez strenuously denied the demotion/discharge of the Grievant was motivated by a personal dislike of the Grievant or and dismissed the notion that they were somehow "out to get" the Grievant as claimed.

In order to resolve this conflicting testimony, it is necessary to consider the credibility of each of the individuals involved and their possible motives. Certainly the Grievant's motive for lying in the instant case is obvious. The Union argues that the testimony of Manager Alou and Perez is just as likely to be motivated by self-interest.

However, the Arbitrator accepts the credible and compelling testimony of

Manager Alou and retired Police Chief Perez. Both Alou and Perez testified in great detail with respect to each of the allegations of misconduct against the Grievant. They went over each and every allegation of misconduct that resulted in the Grievant's demotion and then subsequent discharge. The Arbitrator was unable to discern any evidence of personal animus or retaliation against the Grievant.

In contrast, the Grievant's testimony that she was targeted because she had had a disagreement with the Village Mayor and that Alou and Perez were retaliating the Grievant appears far-fetched. Certainly there was no persuasive evidence that this was the case. The Grievant's testimony rings hollow relative to the objective testimony of management. The Arbitrator found the testimony of Perez and Alou to be fair and objective.

Both witnesses outlined the misconduct of the Grievant without any embellishment or exaggeration. They detailed the repeated incidents of misconduct on the part of the Grievant and explained that they were concerned that the Grievant's work performance was way below the standard expected of someone in her position. In contrast, the Grievant issued generic denials or claimed not to be aware of the allegations against her, the Arbitrator notes.

It appears to the Arbitrator that the Village's decision to demote and then its decision to separate the Grievant was based solely on her inability to work at

the level required of Interim Police Chief and then as a member of the Department. Despite repeated and ongoing attempts by Village management to improve the Grievant's level of performance, the Grievant was unable to raise her work to the required standards.

In his testimony, retired Village Police Department Chief , Antonino Perez, outlined in great detail what he perceived to be the Grievant's many instances of sub-standard work performance. Perez' testimony that the Grievant's work was well below the legitimate work standards expected of Agency employees was both credible and compelling. While Perez had only worked with the Grievant for some three (3) weeks prior to him recommending that she be terminated (See Village Exhibit 11), his interactions with the Grievant during this period were numerous and appear to have been all bad.

One incident concerned the Grievant's failure to submit daily worksheets for the purposes of pay-check review. Submission of these documents on a daily basis was essential so that management was able to know what Police Officers were and were not doing on a daily basis. Although the Grievant accepted that she knew and understood that it was her responsibility to review and submit these worksheets, she testified that she delegated this responsibility to others in the Department.

It is clear that the submissions of these worksheets were submitted, there were not submitted by the Grievant and they were submitted very late. The testimony and evidence presented at the hearing suggests that Perez did, in fact, tell the Grievant that she should personally submit these worksheets each day. For some inexplicable reason, the Grievant ignored Perez' repeated instructions to do so and even walked away/ignored Perez when he requested that she do so. The Arbitrator further notes that the Grievant refused to submit the monthly work schedule when asked to do so and was counselled for this.

On other occasions, the Grievant refused to respond to Perez' emails and requests for information. Most problematic, however, was the fact that the Grievant did not appear to behave in a respectful manner towards Perez. The overwhelming evidence presented at the hearing was one where the Grievant would simply ignore Perez instructions or outright refused to comply with instructions that had been given to her.

It appears clear that the Grievant was resentful and upset that she had not been awarded the permanent Chief of Police position and that she had been demoted to the position of Sergeant. This tension in the Police Department seems to have manifested itself in the Grievant being rude and disrespectful towards the individual who eventually assumed the position that the Grievant was denied, retired Police Chief Perez.

While one could argue that some of the allegations were relatively small issues (failing to provide uniform patches to officers, not addressing Perez by his title/rank, barging in on a meeting between Perez and Village Manager Alou), it does seem that the Grievant was acting out following her demotion. Moreover, in a uniformed service, especially law enforcement, where line of authority is vital to effective functioning, respect, or at least not showing contempt for such authority, is important. That said, there is no doubt that some of the Grievant's misconduct concerned major issues (deliberately refusing to follow instructions and refusing to provide essential information to management). The picture painted, though, was of an aggrieved and disgruntled employee who failed to comply with instructions/directives and who went out of her way to be insubordinate towards those supervising her.

Based on the evidence and testimony presented at the hearing, it appears that Alou and Perez both had serious and ongoing concerns about the Grievant's work. At the hearing, Perez testified most credibly and compellingly about the deficiencies he discovered in the Grievant's work. Perez' testimony about the inadequacies of the Grievant's work was overwhelming in nature and was essentially un rebutted in any meaningful way by the Grievant. Perez explained in great detail the lengths he went to explain what he perceived to be substantial weakness in the Grievant's work. Shortly after becoming the Grievant's Supervisor, Perez met with the Grievant and put the Grievant on performance standards.

Any suggestion that the Grievant was somehow unsure of what was expected of her or was not informed as to what she needed to do to meet the standards expected by management is without foundation. All of the facts presented at the hearing indicate that the opposite was true, the Arbitrator finds. This was not a case of a biased supervisor out to get the Grievant, as the Grievant has suggested.

To the contrary, the Arbitrator finds that Village management was genuinely concerned with the declining nature of the Grievant's work and the Grievant's repeated failure to follow instructions. For the Grievant to claim she was unaware of what complaints Perez had about her work or that she was entirely unaware of the allegations against her is baseless. All of the evidence and testimony presented at the hearing showed that Perez clearly outlined what actions had to be taken by the Grievant to meet the required level of job performance.

After carefully reviewing all of the evidence and testimony presented at the hearing, the Arbitrator finds that the Grievant simply refused to accept the authority of Perez following her demotion and refused to follow his instructions and directives. The testimony of Perez was overwhelming regarding the inadequacies of the Grievant's work. While he was her immediate supervisor for only a short period of time relative to her tenure in the Department, the

numerous, egregious and unjustified performance and attitude problems shown justify the adverse actions taken.

The Arbitrator is satisfied that, based on the testimony and evidence presented at the hearing, the Grievant was given adequate and sufficient notice of management's expectations in this regard. The testimony presented by retired Police Chief Perez and Manager Alou was not only credible and compelling, but also cogent and honest. They testified at great length about the efforts made to assist the Grievant and detailed the regular and repeated counseling given to the Grievant about her poor performance. Perez' and Alou's testimony was overwhelming regarding the inadequacies of the Grievant and her poor work performance.

While the Grievant attempted to suggest that neither Perez nor Alou provided sufficient notice of what was expected of her and did not outline the nature of the alleged misconduct, the facts of the underlying case clearly indicate that this was not the case. The Grievant was warned of her shortcomings, she was provided extensive assistance and advice of how to improve her work performance, and she was informed what she needed to do to bring her work performance to an acceptable level. This was hardly the act of someone who was deliberately trying to force the Grievant out of the Police Department, the Arbitrator finds.

The evidence and testimony suggest that the Grievant had been a conscientious employee with Police Department for some twenty (20) years and who had in the past tried her best to meet the standards of her position. However, the Arbitrator finds that there were legitimate questions about whether she was properly able to perform the work duties of an Interim chief of Police position. Then, after the Grievant was demoted to her former Sergeant position, the Grievant sought retribution by refusing to comply with instructions and acted in an insubordinate and disrespectful manner towards the new Chief of Police. It appears that Village management was genuinely and legitimately concerned about the Grievant's suitability for a continued position at the Department. The Arbitrator does not believe that the Grievant was in any way targeted as she has argued.

No meaningful evidence was presented that any member of Village management was "out to get" the Grievant or was retaliating against the Grievant. Suggestions otherwise appear to be nothing more than speculation that is unsupported by the facts. In contrast, there was ample and overwhelming evidence that the Grievant's work performance was not at the standard expected.

The Arbitrator finds that the criticisms of the Grievant's work were not motivated by a desire to retaliate against the Grievant, but rather were based on valid and legitimate reasons. The Arbitrator believes that Village Manager Alou's and Perez' detailed critiques of the Grievant's work to be honest and cogent.

These were not minor or isolated errors, but rather were real, substantial and increasingly serious errors, the Arbitrator finds. There was, the Arbitrator finds, no evidence that Agency management targeted the Grievant.

To the contrary, the Arbitrator finds that there were too many examples of the Grievant's work product not meeting the standards of her position. Despite management's repeated efforts to help the Grievant meet the standards required of her position, the Grievant's job performance failed to improve to the level that was expected of someone in her position.

The Arbitrator found the testimony of Village Manager Alou and Perez to be forceful, accurate, and objective. Extensive documentary evidence showed that Perez held numerous meetings with the Grievant and went to extraordinary lengths to help the Grievant's work performance improve. The Arbitrator is satisfied that management laid out their expectations to the Grievant and communicated to the Grievant her shortcomings. Any suggestion that Village management was somehow biased against the Grievant or that it retaliated against the Grievant is baseless. Management clearly had objective and legitimate reasons for its conclusions.

In sum, the Arbitrator finds that Village management made every effort to accommodate the Grievant throughout this process. Management acted in good

faith throughout the process and communicated concerns it had with the Grievant's work in a direct and straightforward manner.

Therefore, for the reasons outlined above, the Arbitrator finds that the overwhelming evidence establishes that the Grievant failed to perform her work duties to an acceptable level.

Testimony and evidence presented at the hearing indicates that the Grievant was aware of the incidents of misconduct alleged against her. Claims that the Grievant was not presented with a copy of the notice of discharge is baseless. Retired Police Chief Perez attempted to provide a copy of the notice of discharge to the Grievant when he proposed termination. The Grievant, however, refused to accept the notice of discharge at that time. Any suggestion that the Grievant was not provided with notice of the allegations against her is disingenuous. It makes no sense for the Grievant to claim she was not placed on notice of the charges against her when, in fact, she refused to accept the notice of discharge. It was nonetheless placed in her mailbox at the police station.

Similarly, the Arbitrator rejects the Grievant's claim that she was not provided with a pre-disciplinary meeting or was not afforded an opportunity to respond to the charges against her. A pre-determination meeting between Village management and the Grievant and her legal representative took place on January 29, 2019, the Arbitrator notes. During this meeting, the Grievant was

provided an opportunity to present evidence and to respond to the charges made against her. For whatever reason, though, the Grievant failed to offer any evidence during the January 29, 2019 pre-determination meeting.

That, however, does not negate the fact that the Grievant had the opportunity to respond to the charges against her and to present mitigating evidence.

While the Arbitrator finds that the discharge was for just cause, he nonetheless believes that the Grievant should have been paid from November 2018 until her discharge. Since there was no pre-determination meeting until January 29, 2019, and thus no opportunity for the Grievant to respond to the charges against her, it was neither fair nor appropriate to place her on leave without pay from November until her discharge. Procedural due process would have allowed for her to give her side of the story to the decision makers in a timely manner prior to putting her on unpaid leave and depriving her of pay.

Moreover, the Grievant should have been entitled to pay at the Lieutenant rank from the date of her demotion in November 2018. Under the terms of the parties' April 2018 Memorandum, it was mutually agreed that if the Grievant was not awarded the permanent Chief of Police position, she was to be assigned to the position of Lieutenant. Although there was no Lieutenant position at the Village Police Department at that time, and thus there was no agreed rate of pay

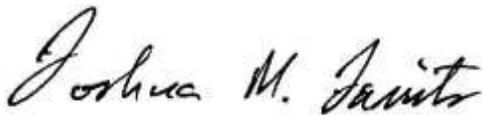
for that particular position, the parties agreed that they would enter negotiations to reach an acceptable wage package if the Grievant was assigned to the position of Lieutenant.

The terms of this agreement were clear, express and unambiguous, the Arbitrator notes. Once the Village concluded that the Grievant was not going to be awarded the permanent Chief of Police Position, it was contractually bound by the April 2018 Memorandum to assign the position of Lieutenant. Management's decision to demote the Grievant to Sergeant rather than to the position of Lieutenant was a violation of the parties' agreement, the Arbitrator finds. For that reason, the Arbitrator finds that the Grievant was entitled to the rate of pay of a Lieutenant from the date of her demotion to the date of her termination in accord with the April 2018 Memorandum.

Thus the Arbitrator directs the Village to pay the Grievant at the Lieutenant rate of pay for the relevant time period. To that end, he remands the issue of pay to the parties to reach a mutually acceptable agreement on the appropriate rate of pay. If the parties are unable to reach an agreement on the rate of Lieutenant pay the Grievant should have been paid, the Arbitrator directs the parties to use comparable police departments (e.g. Miami Police Department) as a template to reach a decision as to the Lieutenant rate of pay (using the percentage differential between the Sergeant rate of pay and Lieutenant rate of pay and applying it to the Village's pay range). The Arbitrator retains jurisdiction over this

matter should the parties have any difficulties implementing the remedy portion of this decision and award.

Therefore, for the reasons outlined above, the Arbitrator upholds the Grievant's demotion and removal in the instant case and denies the underlying grievance in the instant case. The Village is, however, directed to pay the Grievant at the Lieutenant rate of pay from the date she was demoted in November 2018 until the date of her discharge.



June 24, 2020

Joshua M. Javits, HEARING OFFICER

Date