

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

In the Matter of the Arbitration between

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 754,

and

Case No.

CITY OF TAMPA FIRE DEPARTMENT,
_____ /

MOTION TO CONFIRM ARBITRATION AWARD

International Association of Firefighters, Local 754 (Local 754), moves the Court to enter an order confirming the award entered by Arbitrator John J. Popular, II, on July 30, 2020. In support of the instant motion, the Court is shown as follows:

1. Local 754 and the City of Tampa are parties to a collective bargaining agreement (CBA) which contains a grievance procedure that ends in binding arbitration. A copy of the relevant portion of the CBA is attached hereto as Exhibit 1 and made a part hereof.
2. Local 754 filed a grievance on behalf of one of its members, [REDACTED]. A true and correct copy of the grievance is attached hereto as Exhibit 2 and made a part hereof.
3. When the grievance was not resolved at the initial steps of the grievance procedure outlined in the CBA, Local 754 demanded that the matter be submitted for binding arbitration.
4. Arbitrator John J. Popular, II, was selected by the parties to serve as the arbitrator in the above referenced matter.
5. On July 30, 2020, Arbitrator Popular entered an award in favor of Local 754 pursuant to which Arbitrator Popular directed the City to reinstate [REDACTED], whose employment had

been terminated by the City, to his prior position, with seniority but without back pay. A copy of the Arbitration Award is attached hereto as Exhibit 3 and made a part hereof.

6. On August 4, 2020, Arbitrator Popular entered a substitute page of the Arbitration Award to correct a typographical error that had appeared in the original final page. A copy of the corrected page is attached hereto as Exhibit 4 and made a part hereof.¹ No basis exists, set forth in Florida Statute § 628.13, warranting the vacation of the Arbitrator's Award. The Arbitrator clearly had the authority to enter the award, there is no evidence that the Arbitrator engaged in any misconduct, that a party requested a postponement of this hearing that was not granted by the Arbitrator, or that there was no agreement between the parties to arbitrate Local 754's grievance.
7. WHEREFORE, pursuant to Florida Statute § 682.12, the Court is asked to enter an order confirming the arbitration award.

¹ Although the corrected page is dated July 4, 2020, it is evident from the cover page of the Award, which identifies the date of the award as July 30, 2020, that the corrected page was, in fact, executed by the Arbitrator on August 4, 2020. Indeed, the covering letter from Arbitrator Popular transmitting the award for counsel for the City and the undersigned counsel for Local 754 bears a date of July 30, 2020.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 20, 2020, I served this document, via email transmission, upon the City of Tampa, c/o Thomas M. Gonzalez, Esquire (Thomas.Gonzalez@grayrobinson.com) (Sherry.Knox@gray-robinson.com), Grey Robinson, P.A., P.O. Box 3324, Tampa, FL 33601-3324.

/s/ Robert F. McKee
ROBERT F. McKEE
Florida Bar Number 295132
yborlaw@gmail.com
ROBERT F. McKEE, P.A.
1718 E. 7th Ave., Suite 301
Tampa, FL 33605
(813) 248-6400/(813) 248-4020 (Fax)
Secondary Email: bdjarnagin@gmail.com

TAMPA FIREFIGHTERS



**AGREEMENT BETWEEN
THE CITY OF TAMPA
AND
LOCAL UNION NO. 754, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS, AFL-CIO**

**EFFECTIVE OCTOBER 1, 2016
THROUGH SEPTEMBER 30, 2019**

ARTICLE 5
GRIEVANCE PROCEDURE AND ARBITRATION

5.1 A grievance shall be defined as any difference, dispute or complaint regarding the interpretation or application of the terms of this Agreement including rights and working conditions.

5.2 All grievances filed shall refer to the specific section of this Agreement upon which the grievance is based and shall contain a concise statement of the facts alleged to support the grievance. Grievances shall be processed in accordance with the following procedure and shall be determined by application of the terms of this Agreement, the laws of the United States, the State of Florida, and the Charter and Ordinances of the City of Tampa. Only those grievances filed on the agreed upon Grievance Form may use this procedure.

Step 1. Within twenty-one (21) calendar days of the occurrence or the date on which the employee knew or should have known of the action giving rise to the grievance, the grievance shall be submitted to the Fire Chief (or designee). Within seven (7) calendar days the Fire Chief shall meet with the employee and a Union representative. After said meeting is held, the Fire Chief (or designee) shall respond to the grievance in writing within seven (7) calendar days with a copy to the Union President.

Step 2. If the employee is not satisfied with the written response of the Fire Chief (or designee), the grievance and all responses shall be submitted within seven (7) calendar days to the Director of Human Resources (or designee). Within seven (7) calendar days the Director of Human Resources (or designee) shall meet with the employee and a union representative unless said meeting is waived. After said meeting is held, the Director of Human Resources (or designee) shall

respond to the grievance in writing within seven (7) calendar days with a copy to the President of the Union.

5.3 Any grievance not resolved in the grievance procedure, after being fully processed may be referred to final and binding arbitration in the manner provided herein.

5.4 Arbitration

- A. Within ten (10) calendar days from the receipt of the response of the Director of Human Resources (or designee), the union shall give written notice to the City and shall at the same time request a list of seven (7) arbitrators from the Federal Mediation & Conciliation Service copies to be furnished to both parties. The Union shall provide payment of the filing fee.
- B. Within fourteen (14) calendar days after receipt of the list of arbitrators, the Union and the City shall meet and alternately strike names therefrom, the remaining name shall designate the arbitrator.
- C. As promptly as can be arranged but not more than thirty (30) calendar days unless mutually agreed by the City and the Union, the arbitration hearing shall be held. The arbitrator, in rendering his written decision, shall confine his decision to the controversy in question and he shall not have the authority to add to, take away from, alter or amend any provision of this Agreement.
- D. The decision of the arbitrator insofar as it is in conformance with paragraph "C" hereinabove, shall be final and binding on both parties.
- E. The expense of the arbitrator, including the cost of a certified court reporter, shall be borne equally by both parties.

5.5 The time limits contained herein shall be extended for seven (7) calendar days upon written notification of either party. Any extension greater than seven (7) calendar

days requires mutual written consent for reasonable circumstances. Official City holidays, annual leave and sick leave shall be excluded from the compilation of all time limits as applicable for the employee or the responder. If the employee or Union fails to appeal a grievance to the next step in the procedure within the time limits specified, the grievance shall be considered forfeited and no further action shall be taken. If management fails to observe the time limits, the employee shall have the right to move the grievance to the next successive step. If the City fails to respond within the time limits specified with respect to Step 2, the City will forfeit the grievance; however, such forfeiture shall not be considered a decision on the merits of the grievance or in any way establish a precedent.

5.6 Nothing contained herein shall prohibit the employees from utilizing the Civil Service appeal procedure except that once an employee or the Union reduces a grievance to writing and submits it according to the steps in this Agreement he shall not thereafter have access to Civil Service for the resolution of the grievance involved.

I.A.F.F. Grievance Number	I.A.F.F. GRIEVANCE	City Grievance Number
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Please attach any statements or information to support your grievance. Type or Print Neatly

Name (Employee Filing)		Employee Number	Phone	Job Title
[REDACTED]		71421	941-374-8015	Firefighter
Division	Step	Article/Section No. Agreement Violated	Date of Occurrence	Date Filed
Combat		31.6	5-7-19	5-13-19

LIST ALL THE FACTS CONCERNING THE GRIEVANCE

On May 7, 2019 [REDACTED] was dismissed from Tampa Fire Rescue. [REDACTED] charges and case has not yet reached its final disposition. Article 31.6 provides for reinstatement following acquittal after trial or dismissal of charges by the State Attorney's Office.

REQUESTED REMEDY

Following the time restrictions of article 5.2 we are filing this grievance, but in conjunction with article 31.6 we ask for an extension in hearing this grievance at Step 1 until the conclusion of this case and the final disposition is known to all parties.

Signature (Employee Filing Grievance)	Date	Signature (Supervisor)	Date of Report
[REDACTED]	5-13-19	<i>[Signature]</i> A. CARTER	5-13-19

(06/13) White - Employee Relations; Green - Fire Chief; Yellow - Supervisor; Pink - I.A.F.F.; Gold - Employee

John J. Popular II
Labor Arbitration & Mediation
PO Box 3034, Ocean City. MD 21843
PO Box 304, Indian Rocks Beach. FL 33785

jpp111934@aol.com

Office 727/596-9924 Cell 727/244-1190

July 30, 2020

Mr. Thomas Gonzalez
Gray / Robinson, Attorneys at Law
405 East Jackson Street, Suite 2700
P.O. Box 3324
Tampa, Florida 33602

Robert F. McKee
1718 E. 7th Ave., Suite 301
Tampa, Florida 33605

Subject: FMCS Arbitration #2011125-01691 Award
[REDACTED] Discharge

Gentleman,

Enclosed is my award for the above subject arbitration. You will note that the award is predicated on consistency of disciplinary practice with no consideration given to the length of service for this degree of employee misbehavior.

This will serve as an invoice in the amount of \$4000.⁰⁰ for the hearing, review of post hearing briefs and written award. Each party's share is \$2000.⁰⁰. Thank you for the opportunity to work with both parties again over the past 20 years.



John J. Popular II
Arbitrator

In the Matter of Arbitration

Between

**International Association of
Firefighters, Local 754**

FMCS Arbitration #201125-01691

And

City of Tampa Fire Department

John J. Popular II

Arbitrator

Hearing Date: June 3, 2020

Date of Award: July 30, 2020

Background

Pursuant to a demand for arbitration, the undersigned Arbitrator held an Arbitration Hearing at the Police Department Building in Tampa, Florida, June 3, 2020 to hear a grievance between The Tampa Fire Department (hereinafter referred to as the "City") and the Int'l Association of Firefighters, Local 754, AFL-CIO, (hereinafter referred to as the "Union") to hear a grievance concerning the discharge of [REDACTED] (hereinafter referred to as the "Grievant".)

Each party had a full and fair opportunity to present sworn witnesses Testimony and for such evidence each deemed necessary to their respective positions. As a "Discharge" dispute, the "City" was the moving party and responsible for the burden of proof. At the conclusion of the hearing, the parties agreed to submit post-hearing briefs on July 13, 2020.

Issues:

- (1) Was the Grievant terminated for "just cause" for his activity, April 3, 2019?
- (2) Was the penalty of discharge consistent with penalties imposed relative to three prior disciplinary actions, (i.e. [REDACTED])?

Relevant Rules & Policy:

Fire Rescue Rules & Regulations Section 102.01- Rules of General Conduct (2)

"Employees of Tampa Fire Rescue shall conduct themselves in a manner so as not to bring discredit to the good name or reputation of the Department or the City of Tampa." (4) "Employees shall not conduct themselves in an immoral, indecent, lewd or disorderly manner, or in a manner than an observer might construe as an

Act of moral turpitude... Employees shall not display acts of misconduct, neglect of duty, conduct unbecoming of a firefighter or an officer, or acts tending to discredit the Department, even though such acts may not specifically be set forth in these rules...Employees are also forbidden from such conduct while off duty.....”

Section 103.05, Uniform & Appearance Policy (10) “Uniforms shallbe worn on duty....while in route to or on duty. At no time will any uniform or part uniform be worn while off duty, except with the express permission of the Fire Chief.”

City Personnel Manual B28.2A (6) Insubordination; “Disorderly or Inappropriate Physical or Verbal Conduct and (4) Moral Turpitude (4) Arrest for a Misdemeanor involving moral turpitude or any 1st degree misdemeanor.”

Section 31.6 of the Collective Bargaining Agreement. Provides that any employee who has been dismissed because of an arrest by any Law Enforcement Agency will be reinstated provided that the employee is acquitted after a trial on the merits or all charges are dismissed by the State Attorney’s Office (T17).

Relevant Collective Bargaining Agreement Contract Language

Article 31.2 Discipline - “No employee shall be disciplined except for just cause. Progressive and appropriate discipline will be administered according to the seriousness of the offense.” Disciplinary action shall include:

D. Suspension. It is agreed the City shall consider the assigned employees Schedule when determining the duration of a suspension.

Article 31.6 – “Any employee who has been dismissed because of an arrest by any Law Enforcement Agency will be reinstated provided the employee is acquitted after a Trial on the merits or all charges are dismissed by the State’s Attorney Office. The employee shall notify the Director of HR in writing of the request for Reinstatement within (7) Calendar days following the determination of acquittal and shall include proof of the acquittal.”

Facts of the Dispute

The April 3, 2019 Arrest

The Grievant has been employed by the City since December, 2017. The Probationary period for employment is (12) months. The incident which led to Disciplinary action occurred on April 3, 2019. Although the Grievant was “Off Duty”, he was wearing his Firefighter uniform when he was arrested April 3, 2019 at 5:20 p.m. The incident which prompted the arrest was the Grievant’s Action of attempting to solicit Sex. As a matter of fact, he initiated contact with a Police woman who was working in an undercover capacity as a street-level Prostitute at the location of “124th Avenue East and Nebraska Avenue....” (T10)

Her report stated as follows: “ [REDACTED] motioned for me to come to his vehicle as he rolled down his driver side front window. I moved to the passenger side of the vehicle, during which [REDACTED] rolled down the front passenger side window and verbally stated “come here”. As I engaged in a conversation with [REDACTED] during which time he looked down at his groinrequested oral sex and advised he was “getting ready.”

"I questioned if [REDACTED] had a cover (i.e., "condom") to further confirm he wished for oral sex.... [REDACTED] advised he had napkins and would give me \$20. I then gave the verbal and physical indicator to my Backup units for them to move in and make the arrest." (T11)

"The Grievant's arrest resulted in widespread Media coverage"....all of which focus on the fact that this is a Tampa Firefighter in uniform who was arrested for Solicitation of prostitution". (T12-14) It is noted that only (4) months had elapsed between the end of the Grievant's probationary period, i.e. December, 2017-2018 and the April 3, 2019 date of arrest.

The Employers decision to terminate the Grievant was based on (1) the crime for which he was arrested, (2) being in uniform while "Off Duty" when he was arrested, (3) The brief period of time (i.e. 4 months) between the conclusion of his one year probationary period and the date of dismissal, (4) widespread News Media publicity of the April 3, 2019 arrest.

Comparable Levels of Prior Disciplinary Action imposed on [REDACTED], [REDACTED].

The Union cited prior comparable disciplinary events involving (3) Firefighters, (i.e. [REDACTED]). The disciplinary history pertaining to [REDACTED] infraction was comparable to that of the Grievant . (T51-53) [REDACTED] was suspended for a 2nd degree misdemeanor because his arrest was for the same offense as that of the Grievant, (i.e. Solicitation of prostitution (T66). [REDACTED] was also in uniform when he was arrested. (T61)

The third comparable incident involved [REDACTED] who also participated in the Diversion-Intervention Program (T63). [REDACTED] all participated in misconduct which was subject to discipline. Following the Department's reinstatement process, all three employees were acquitted (T67) and reinstated to employment with no back pay.

The key issue is why the penalty of discharge was imposed on the Grievant when compared to the rationale supporting reinstatement of [REDACTED]. The common denominator between the Grievants and the other 3 employees was the States Attorney's office which dismissed charges against all four employees (T67-70). The employer's rationale for termination of the Grievant is stated on page 9 of the transcript.

"It was a matter of what he was arrested for and the impact of the arrest on the reputation of the City of Tampa Fire and Rescue".

In effect, the rationale supporting the City's decision to terminate the Grievant boiled down to: (1) widespread media coverage of the Grievant's arrest and (2) the Grievant's brief seniority (i.e. 4 months between December 2018 and April 2019) as compared to the respective seniority dates of [REDACTED]. It's the arbitrator's opinion that serious disciplinary offenses (i.e. theft, fighting, insubordination) should not be watered down based on seniority.

On October 1, 2019 the Hillsborough County State's Attorney dismissed charges against the Grievant after being informed that the Grievant "has successfully completed the Misdemeanor Intervention Program (MIP)", thus was deemed as "an administrative nolle prosequi in the above styled cause".

Award

The fact scenarios of [REDACTED] are comparable to that of the Grievant and identical to that of [REDACTED]. As such, consistent administration applicable to the prior 3 aforementioned disciplinary actions are deemed by the arbitrator supporting discharge.

As the rationale to support a decision and award to (1) reinstate the Grievant to employment and seniority, but (2) denial of retroactive back pay.



John J. Popular II, Arbitrator

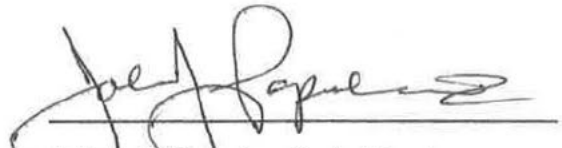
Date

7/4/2020

Award

The fact scenarios of [REDACTED] are comparable to that of the Grievant and identical to that of [REDACTED]. As such, consistent administration applicable to the prior 3 aforementioned disciplinary actions are deemed by the arbitrator ~~supporting discharge~~ ^{JJ "TYPO ERROR"}

As the rationale to support a decision and award to (1) reinstate the Grievant to employment and seniority, but (2) denial of retroactive back pay.



John J. Popular II, Arbitrator

Date July 21, 2020