City of Grand Rapids
Employer

Grievance: GRPCOA GR# 19-01
(C.VanderKooi, Grievant)

and

Grand Rapids Police Command Officers Association (GRPCOA)
Union

DECISION AND AWARD

I. APPEARANCES

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II. INTRODUCTION
This matter comes before the Arbitrator as a Grievance filed by the Grand Rapids Police Command Officers Association (GRPCOA) protesting the fact that the City of Grand Rapids gave to Captain Curtis VanderKooi for

The Association Grievance in this matter initially challenged several contractual violations that became known to the GRPCOA on account of the disciplinary procedures utilized with Captain VanderKooi. The grievance was amended when

The Association and the City are parties to a Collective Bargaining Agreement (CBA), in effect from July 1, 2016 through June 30, 2019 when this matter first arose. (see Union Exhibit 1). The Grievant, Captain VanderKooi is a member of the Bargaining Unit represented by the Association covered by the CBA.

The initial grievance in this case was filed on May 23, 2019. It referenced how the city’s Civilian Appeals Board (CAB) had instituted its by-laws and amended the Employee disciplinary process regarding the Association’s members in alleged violation of the existing CBA.

When an order was issued to Captain VanderKooi on August 22, 2019 by the City Manager of the City of Grand Rapids, the grievance was amended to protest The grievance was advanced to arbitration after the Employer subsequently denied the grievance.

The arbitration hearing took place on September 25, 2020 and October 19, 2020. Both parties appeared through expert counsel at the hearing and were given the full
opportunity to present their witnesses and evidence. This matter is now ready for Decision and Award.

III. FACTS

As the Employer in its post hearing brief, emphasizes “this matter has a long and winding procedural history”. Much of that history was reiterated in the arbitration decision regarding timeliness and arbitrability issued by this Arbitrator on May 20, 2020.

On or about November 21, 2018, was apprehended after set a fire in a stairwell on the 12th floor of the Spectrum Hospital in Grand Rapids, MI. gained access to a helipad on the roof of the building, which was a restricted area. was secured by hospital security and GRPD officers took into custody.

The Grievant in this case, Captain Curtis VanderKooi has been a member of the Grand Rapids Police Department for He was not working on November 21, 2018. However, he saw a report about on the television local news later that day. The Grievant, Captain VanderKooi
The GRPD officially released a public statement concerning the arrest at 12:30 pm which described the incident at the hospital (Union Exhibit 3). Captain VanderKooi also received an email of the shift summary sent out at 4:02 pm which gave the name of the suspect (U-4). The shift summary information described the suspect with the abbreviation “WM” meaning “white male”.

During his testimony, Captain VanderKooi testified that

As a result, at 7:40 pm VanderKooi copied and pasted the information from the shift summary into an email to ICE agent, The email

As a witness at the arbitration hearing, VanderKooi said he decided to contact ICE

According to VanderKooi,

He pointed

1The GRPD arrest activity report for that same date includes a list of arrestees (U-43). Apart from eight other individuals indicated to be were also arrested by the GRPD. Captain VanderKooi did not contact ICE seeking information about any of those
out that

Two days later on Friday, November 23, 2018, ICE agent  sent a response email to Captain VanderKooi and agent indicating that he had interviewed the subject in jail that morning. He determined that was a foreign national illegally present in the United States (U-6). Captain VanderKooi did not immediately respond to the email from agent until his next shift, which was Monday, November 26, 2018. At 9:49 am on that Monday, November 26, 2018, VanderKooi sent a response to agents Attached to the email was a copy of the GRPD police report for the incident at the hospital. The police report also included the information that a passport had been found on the subject at the time of his arrest. During his testimony, Captain VanderKooi indicated that

Subsequently based upon the ICE investigation, was retained in that agents custody for a period of time until his personal attorney produced documentation showing he was a United States citizen.

It appears that on January 18, 2019, the Grand Rapids Police Department released a media statement on the arrest (Union-8), that statement read in part:

other individuals.
Our police department took this incident very seriously and believed it was a possible act of terrorism. In the interest of public safety and because it was a risk of federal airspace, we contacted federal authorities including the FBI joint terrorism force and ICE. It is standard for local police agencies to contact federal authorities anytime there is a possible act of terrorism. Grand Rapids Police Department policy requires this notification for incidents involving potential acts of terrorism...contacting ICE is not a routine part of our investigative process, we do this only when there is a potential risk to the public’s safety, specifically when there is a possible act of terrorism (U-8).

On January 23, 2019, the American Civil Liberty Union (ACLU) and the Michigan Immigrant Rights Center (MIRC) sent a letter to the Grand Rapids Mayor, Bliss and interim GRPD Chief , demanding an investigation regarding the contact with ICE concerning the incident at Spectrum Hospital (Union-9). The city interpreted this letter as a complaint against a police officer and handed it over to the GRPD Internal Affairs Unit (IAU) as of January 24, 2019 (U-10). The IAU undertook an investigation of the allegations in the complaint. Included in the investigation was an interview of Captain VanderKooi on February 7, 2019 (see U-11 and U-12). Captain VanderKooi was provided with a written Garrity warning at the commencement of the interview.²

The Assistant City Attorney, and the City Attorney were ordered to meet with the ACLU and MIRC on February 11, 2019 to brief them on the status of the IAU’s investigation. Also at that meeting were Grand Rapids City Attorney and Assistant City Attorney,
Following the City Attorney’s meeting with the ACLU and MIRC on February 11, 2019, Captain VanderKooi was again called in and interviewed by the IAU on February 12, 2019 (U-13).

Two days later on February 14, 2019, the Employer issued a complaint disposition report (CDR) which stated in part;

The investigation also found that Captain VanderKooi

The investigation did reveal

that

At

transcript of the IA interview was later created (U-12).
that time, Captain VanderKooi was the

During neither of those two prior arrests did Captain VanderKooi contact ICE (U-17, page 7).

Former acting deputy chief testified that the

On or about February 20, 2019, the results of the initial CDR were sent to the ACLU and MIRC and a subsequent public statement was released by the GRPD on February 22, 2019 (see U-18).

It appears on February 26, 2019 protesters appeared at a Grand Rapids City Council meeting, and disrupted the business of the city council causing the Mayor to gavel the meeting to close early (see U-19).

-9-
On the following day, MIRC emailed the Mayor and members of the Grand Rapids City Council requesting that the GRPD publicly commit to ceasing all cooperation and communication with ICE that is not actually “required by law” (U-20). On the following day, February 28, 2019 Captain VanderKooi

On March 6, 2019, the ACLU and MIRC filed an appeal with the Grand Rapids Civilian Appeals board (CAB) on behalf of

The ACLU also submitted a complaint to the Michigan Department of Civil Rights (MDCR) against the GRPD alleging discriminatory policies (U-27). The ACLU and MIRC also filed separate complaints with the MDCR on behalf of Mr. based upon the incident involving Captain VanderKooi (U-28).

The Grand Rapids Police Department then engaged in a renewed investigation of Captain VanderKooi.
On April 19, 2019 the Complaint Disposition Report-secondary report was issued by the GRPD (U-23). This second CDR determined that

In addition to the secondary CDR

Following the secondary CDR, the ACLU and MIRC filed a supplemental letter of appeal with the CAB on May 7, 2019 which alleged that “Captain VanderKooi acted based on recognizably Latino appearance and recognizably Latino name” (U-29).

The Civilian Appeals Board (CAB) hearing took place on May 15, 2019 (see U-31 and U-32).

At the CAB meeting, thirty minutes was allotted for a closed session review of

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5 Prior to the CAB hearing, City Attorney sent the ACLU a Cease and Desist letter on May 10, 2019, in which specifically referenced documents sent to the CAB which were outside the scope of the investigation and therefore inappropriate for consideration by the CAB (see U-30). Chairman, Robinson of the CAB acknowledged he had conversations with the representatives of the ACLU and MIRC prior to the CAB meeting (U-32)
At the conclusion of the hearing, the CAB members voted 6 to 2 to reverse the finding.

The CAB then reconvened again to approve written findings on May 22, 2019 (U-34 and U-35). In this case, it appears that the eight CAB members produced ten different personal rationales, some in verbal statements made on the record and some in written comments submitted after the May 15 hearing (U-36). After the CAB rendered its decision on appeal on May 22, 2019, the Employer issued its decision on August 22, 2019. At that time the City Manager

At the arbitration hearings, the Association presented two witnesses. The first was Captain who was also President of the Command Officers Association. The second association witness was the Grievant, Captain Curt VanderKooi. VanderKooi said
According to VanderKooi,

VanderKooi said

Captain VanderKooi emphasized that

Captain VanderKooi mentioned that

The City of Grand Rapids presented several witnesses, the first was

was the former Deputy Chief of Police for the City of Grand Rapids and the acting Deputy Chief of Police. At the time this matter was heard, worked with Internal Affairs during their investigation. According to
Later on during the second investigation, on the supplemental issue of

said attended the CAB hearing. role was to answer questions by
the board members. There was a large crowd present and a lot of bad calls. McWatters said

The second witness for the City was former Assistant
Attorney for the City of Grand Rapids and the Public Safety Liaison. was present at
the CAB hearings as the Legal Advisor and Liaison. indicated that

indicated that

Internal Affairs was present to answer any questions by CAB members.

indicated that
also indicated that

After direct, redirect, cross examination, and re-cross, the Arbitrator asked

The third witness for the City was Director of Oversight and Accountability, and a former Labor Relations Specialist and Liaison to the IAC Department.

As conducted the investigation, a major consideration was whether the investigation was impartial. According to ,

The final witness for the City was City Manager,

According to

He was then advised that the CAB had voted to reverse the findings of the Internal
That completed the testimony in this case.

IV. RELEVANT CONTRACTUAL LANGUAGE

ARTICLE 4. MANAGEMENT RIGHTS

SECTION 1
Except as otherwise specifically provided herein, the management of the City and the direction of the work force are vested exclusively in Management, including but not limited to the following: the right to hire; the right to discipline or discharge for just cause; the right to decide job qualifications for hiring; the right to lay off for lack of work or funds; the right to abolish positions; the right to make rules and regulations governing safety; the right to determine schedules of work; the right to subcontract work (when it is not feasible or economical for the City employees to perform such work); and the right to determine the reasonable methods, processes, and manner of performing work. In exercising these functions, Management will not discriminate against any employee because of his/her membership in the Union.

SECTION 2
Rules of conduct not inconsistent herewith and in effect at the date of this Agreement shall be continued. Management shall have the right to amend, supplement, or add to said rules during the term of this Agreement; however, Management shall first consult with the Union prior to any such amendments. Such rules shall be reasonable and shall relate to the proper performance of a Police Officer’s duties and shall not be applied in a discriminatory manner. It is recognized that rules covering off-duty conduct are related to proper performance of a Police Officer’s duties.

ARTICLE 7. DISCHARGE AND DISCIPLINE

SECTION 1
In cases of discharge or discipline, a representative of Management shall give prompt notice to the employee and to the President of the Command Unit. Letters of warning shall be given to the employee affected and placed in the employee’s personnel file.

SECTION 2
The affected employee shall be allowed to discuss his/her discharge or discipline with his/her steward or any other Command Unit representative. Management will make available an area where he/she may do so if he/she is required to leave the premises.

SECTION 3
A. In imposing any discipline on a current charge, Management will not take into account any prior infractions which occurred more than two (2) years previously nor impose discipline on an employee for falsification of his/her employment application after a period of two (2) years from his/her date of hire. If an employee completes two (2) years without a disciplinary action, letters of warning and/or suspension over two (2) years old shall be permanently removed from his/her personnel file upon request to the Director of Human Resources.

B. Every employee shall be entitled to and shall receive a copy of any and all notices, reports, complaints, or other information filed by an employee, supervisor, or any other City officer or department or division head in the employee’s personnel file which relates to, is, or may be made the basis for disciplinary action up to and including the discharge of such employee by the City.

SECTION 4
If Management has the reason to warn or reprimand an employee, it shall be done in a manner that is consistent with good employee relationship principles.

SECTION 5
Management shall not discipline or discharge any employee except for just cause.

SECTION 6
Written notice of disciplinary action or discharge shall cite the specific sections of rules and regulations and/or appropriate law(s) or ordinance(s) which the employee is alleged to have violated.

SECTION 7
An employee against whom charges have been made by Management may be represented by Command Unit representatives designated by the Command Unit upon request of the
employee.

SECTION 8. INVESTIGATORY COMPLAINTS
If a complaint is made against an employee which may result in disciplinary action, the following procedure shall apply:

A. If in the investigation of a complaint an employee is requested to appear before a member of Management, he/she shall be fully advised of the nature of the complaint and that the investigation may result in disciplinary action.

B. Upon the request of the employee for Command Unit representation, such request shall be granted and the Command Unit shall immediately provide such representation. When such representation has been requested, no questioning shall commence until the Command Unit representative is present.

C. Employees shall be required to answer questions relating to his/her performance as an employee of the Police Department as it relates to the complaint. Refusal to answer such questions may result in disciplinary action, including discharge.

D. A copy of this section shall be presented to any employee subjected to this procedure prior to the start of questioning. Said copy shall be signed by the employee to indicate receipt and shall also indicate his/her waiver of right to Command Unit representation, if any.

SECTION 9

A. A written counseling issued to an employee is not considered to be disciplinary in nature. It is the intent of a written counseling to document the discussions held with an employee regarding the department’s expectations of the employee concerning work performance and/or compliance with identified rules, regulations, procedures, or policies.

B. If a written counseling is issued to an employee, a copy will remain in that employee’s personnel file for a minimum of one (1) year from the date of occurrence. If during that one (1) year period there are no further behavior or performance issues addressed with the employee either through an additional written counseling or discipline, the written counseling shall be permanently removed from the employee’s personnel file upon request of the employee.

Article 17. Maintenance of Standards
Article 17. Maintenance of Standards. The City agrees that all conditions of employment not otherwise provided for herein relating to wages, hours of work, overtime differentials, and general working conditions shall be maintained at the standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions of improvement are made elsewhere in this Agreement.

CITY COMMISSION POLICY

SUBJECT: GRAND RAPIDS POLICE DEPARTMENT CIVILIAN APPEAL BOARD

PURPOSE: To encourage compliance with rules and regulations concerning the conduct of police officers during interactions with citizens; to encourage individuals who believe they have been mistreated by police officers to use the internal complaint process of the Grand Rapids Police Department to have that officer’s conduct reviewed; to create a process that fairly and evenhandedly evaluates and judges the conduct of everyone involved to determine whether or not a breach of departmental rules and regulations has occurred; and to afford the community a sense of confidence that the community itself is involved as necessary in reviewing the activities of its police officers.

POLICY:

A Civilian Appeal Board is hereby established within the Grand Rapids Police Department to act as a reviewing body for findings of fact made by the Grand Rapids Police Department with respect to complaints made by individuals who believe that they have been mistreated by police officers through:

(a) the use of excessive force;
(b) falsification/lying;
(c) civil rights violations; and
(d) hostility, discourtesy or other conduct unbecoming an officer when such conduct is committed in a context of racial animosity or prejudice.

For purposes of this policy, “racial animosity or prejudice” is evidenced by derogatory conduct or discriminatory behavior which involves expressions of prejudice through words, gestures, or actions directed at an individual based upon that person’s race, color, religion, gender or national origin.
(1) **Membership, Term of Office and Vacancy.**

The Civilian Appeal Board shall be comprised of nine (9) members. Each City Commissioner shall nominate one member, and the Mayor shall nominate three (3) members. The Mayor’s nominations shall be made so as to encourage that the members selected for the Civilian Appeal board constitute a diverse representation of the community at large. The Civilian Appeal Board shall be composed of those nominees approved by the City Commission.

Appointments to the Civilian Appeal Board shall be effective the first Monday in May for a term of two (2) years. No member shall serve on the Civilian Appeal Board more than three (3) consecutive full or partial terms or a total of six (6) years. Residency within the City is a continuing qualification for office for those members appointed. Members shall be deemed to have vacated and resigned their office if they cease to be a resident of the City during their appointed term. Mid-term vacancies will be filled as they occur by the appropriate appointing authority for the remainder of the term of the member leaving the Civilian Appeal Board. No individual may be appointed to fill a vacancy unless they would be able to serve out the entire term.

(2) **Investigation of Complaints.**

Individuals with complaints alleging that they have been mistreated by police officers through the use of excessive force; falsification/lying; civil rights violation; or through hostility, discourtesy or other conduct unbecoming an officer when such conduct is committed in a context of racial animosity or prejudice will be referred to the Internal Affairs Unit of the Grand Rapids Police Department. The Staff of the Internal Affairs Unit, with the assistance of an Assistant City Attorney, will conduct an investigation and prepare a proposed “Complaint Disposition Report” containing a summary of the facts regarding the complaint and a conclusion regarding whether the police officer(s) violated Grand Rapids Police Department Rules or Regulations. The Complaint Disposition Report, when approved by the Chief of Police, will be provided to the police officer(s) involved, the City Manager, the City Attorney, and the Labor Relations Division of the Human Resources Department. A copy of the Complaint Disposition Report will also be mailed to the complainant(s) at their last known address together with information advising the complainant regarding their right to appeal the conclusion reached in the Complaint Disposition Report to the Civilian Appeal Board.

(3) **Review by Civilian Appeal Board.**
If the Complaint Disposition Report concludes that the complaint is not sustained, was unfounded or that the officer is exonerated, the complainant may appeal to the Civilian Appeal Board by filing a written request for review with the City Attorney’s Office within fourteen (14) calendar days after the date of mailing of the Complaint Disposition Report. If a timely appeal is filed, the Civilian Appeal Board will review the conclusions contained in the Complaint Disposition Report and the evidence secured by the Grand Rapids Police Department during the investigation. The Civilian Appeal Board is not authorized to engage in separate investigation, to interview witnesses, or to hold evidentiary hearings, but it may remand the case to the Labor Relations Division to conduct supplementary interviews with the complainant, the officer(s), and witnesses in the event that it considers the record to be inadequate to complete its review. The Labor Relations Division will provide a written report to Civilian Appeal Board summarizing the actions taken and information received during the supplemental investigation.

The Civilian Appeal Board will meet as necessary to consider the matters referred to it in a timely fashion. Representatives of the Grand Rapids Police Department and the City Attorney’s Office will be present during the review process to provide information regarding the scope of the investigation and to answer legal questions. At the conclusion of its deliberations, the Civilian Appeal Board will prepare a written decision affirming, reversing or modifying the conclusions contained in the Complaint Disposition Report. If the Civilian Appeal Board reverses or modifies the conclusions in the Complaint Disposition Report, the written decision must contain sufficient detail to explain the reason for the reversal or modification. The Civilian Appeal Board has no jurisdiction to impose discipline or to recommend that discipline be imposed and its decision will not address or recommend potential disciplinary action. The decision of the Civilian Appeal Board will be submitted to the City Manager and a copy of the decision will be provided to the complainant(s), the police officer(s) involved, the City Attorney, the Police Chief and the Labor Relations Division.

(4) Final Disposition.

The Complaint Disposition Report as affirmed, modified or reversed by the decision of the Civilian Appeal Board will constitute the City’s final disposition regarding the complaint. If the decision of the Civilian Appeal Board concludes that the police officer(s) violated Grand Rapids Police Department Rules or Regulations, the City Manager will determine the disciplinary or other action to be taken.
V. CONTENTIONS OF THE PARTIES

A. Grand Rapids Police Command Officers Association - The Union makes a three prong approach in processing this grievance. First, it submits that the Employers unilateral adoption of by-laws for the Civilian Appeals Board violated Article 17, the Maintenance of Standards Clause in the parties Collective Bargaining Agreement. That clause requires that “all conditions of employment...relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at standards in effect at the time of the signing of this agreement...”. The Association points out that since the CAB makes up a part of the Employers disciplinary process, its operations are a part of the “general working conditions” of the GRPCOA Bargaining Unit Members. By adopting the by-laws unilaterally without an agreement of the GRPCOA, the CAB’s actions constituted a material change to the terms of conditions of employment and violated the parties Maintenance of Standards Clause.

More specifically, the Association contends that the Employer violated the Maintenance of Standards Clause when the CAB Board, first instituted its by-laws on August 16, 2017 after the parties had negotiated and completed the 2016-2019 CBA. As a result, the Association submits that the CAB by-laws were adopted unilaterally and without agreement of the GRPCOA.

Second, the Association asserts that the Employer engaged in several procedural abuses which rendered the investigatory process against Captain VanderKooi
fundamentally unfair. The Association cites nine different instances where this occurred. These instances included:

(1) The Employer allowed the ACLU and MIRC to submit a complaint for contrary to the plain language of Policy 800-02.

(2) On February 11, 2019 members of the City Attorneys Office were directed to meet with the complainants before the complainants disposition report was completed.

(3) The City Manager improperly influenced the GRPD to change the had been delegated to the Chief of Police.

(4) 

(5) The Employer conducted a full review into all contacts between Captain VanderKooi and ICE Officials at the urging of the ACLU and MIRC, even though neither group nor were involved in those contacts.

(6) Prior to the CAB hearing, the ACLU and MIRC engaged in ex parte communications with the CAB Chairmen attempting to influence the CAB process.

(7) Attorney for the City

(8) During the CAB hearing, the witnesses and the CAB Members engaged in discussions which disclosed the contents of Captain VanderKooi’s Garrity Statements, in violation of the Michigan Disclosures By Law Enforcement Officers Act.

(9) The Employer waited three months after the CAB’s determination to
Third, the Association contends that the Employer did not have just cause to
the grievant, Captain VanderKooi for an alleged In doing so, the CAB misapplied its standard of review and failed to afford any deference to the investigations and the conclusions of the AIU.

Further, the CAB lacked sufficient evidence to conclude that Captain VanderKooi engaged in a Instead, according to the Association, Captain VanderKooi’s actions were in accordance with the Grand Rapids Police Departments Manual of Conduct and complied with the IPP. The Association cites Section 13.5 of the Grand Rapids Police Departments Manual of Conduct which requires that “Employees shall report any suspected criminal activity including those pertinent to the Department of Homeland Security” (Union Exhibit 14).

Indeed engaged to what at least amounted to suspected

Thus, Captain VanderKooi was fully within his rights and indeed it was his duty to contact ICE, an agency within the United States Department of Homeland Security, to bring this matter to their attention. The actions of gave Captain VanderKooi

According to the Association, had Captain VanderKooi not reported the incident to Homeland Security, he might have been found to be derelict in duty, because
Based upon this three prong approach, the Association requests that the Arbitrator issue an order directing the Employer to render the Civilian Appeals Board by-law issued in 2017 not applicable to the GRPCOA and its Members and to cease and desist from taking any further action with disciplinary processes in violation of the Maintenance Standards clause in the CBA between the GRPCOA and the Employer.

Further, the Association requests that the Employers’

B. City of Grand Rapids - The Employer submits that the Unions grievance relates primarily to three claimed violations. First, the Union alleges the City unilaterally amended the CAB by-laws without providing notice or an opportunity to bargain. Second, the Union alleges that the amended by-laws expanded the role of the Chairperson beyond the original intent of the governing document ie: City Policy 800.02. Third, the Union alleges that a provision in the patrol union GRPOA contract limits the use of Garrity Statements in CAB proceedings.

In response, the City argues that the CAB is a proper delegation of the City Managers’ disciplinary authority. As a result, the City is not obligated to bargain over rights that are already vested with the City.

Second, the use of the Grievant’s investigative statements, did not violate the Collective Bargaining Agreement, or Michigan law.
Third, the CAB did not conduct an improper additional investigation but acted within its stated authority at all times. The City points out that the Union failed to identify how the CAB by-laws changed City Commission Policy 800.02 or the CAB Chairs Authority.

Finally, the City maintains it  

Concerning the first argument, the City maintains that the by-laws of the City’s CAB were recently enacted without any consultation or notice to the Command Unit. The City maintains that the by-laws have not changed since 2017. Further, the Union has not identified which changes were made and how those changes had any impact on the Grievants discipline. In order to prevail on this claim, the Union must demonstrate that the by-laws are a disciplinary procedure as opposed to a legitimate delegation of managerial authority. It has not done so. The CAB is a delegation of City Management Authority and therefore well within the City Managers vested authority under the City Charter. As a result, the City is under no obligation to bargain on a matter which has already been solely given to the City Manager.

According to the City, if the Arbitrator agrees with the Union that the CAB by-laws are a mandatory subject of bargaining, the City properly exercised its bargaining for rights as set forth in the management rights clause of the contract. Specifically, the City reserves the right to name “management” and to allow management functions to be
performed by the designated representatives. This includes the CAB.

Third, the CAB by-laws do not violate Michigan law or require the improper disclosure of Garrity Statements. The City maintains that it disputes this allegation. Further, however, it argues that the claim is simply not arbitrable. The GRPCOA allegation relating to use of Garrity Statements refers to terms of the Collective Bargaining Agreement between the Grand Rapids Police Officers Association and the City. However, there is no such provision in the GRPCOA agreement with the City. The Association in this case is attempting to bootstrap the Garrity provisions of the GRPOA agreement into its agreement. It can not do so.

Further, the City says that even assuming the Unions assertion could form the basis of an arbitration claim, Michigan law clearly permits the use of Garrity Statements during administrative hearings. As a result, it allows the use of such statements in the administrative proceeding such as the CAB hearing relating to Employee discipline. In this case, CAB members were only permitted to review the statement in chambers before the hearing. The statements were not made part of the record and were not disclosed to the public.

Finally, the City maintains that it has demonstrated

According to the City, the Grievants own conduct demonstrates the apparent fallacy of his own stated motivations.
As a result, the

The City maintains that the decision

The City points out that the Union failed to identify any cognizable arguments supporting its claims regarding the implementation of CAB by-laws or its role as a delegated portion of the City Managers sole vested authority.

For all these reasons the City submits that the grievance of the Association should be denied.

VI. ISSUE

1) Was there , Captain Curt VanderKooi when he requested a status check on a suspect arrested on November 21, 2018 (U-5) and a follow up email dated November 26, 2018 regarding the same suspect?
VII. DISCUSSION AND DECISION

In making this decision, may I first congratulate both parties to this dispute for their professionalism and courtesies demonstrated throughout this matter. Both legal counsel have acted professionally in keeping with the finest traditions of their profession. This case was thoroughly investigated and presented by the parties. It included sixty-two exhibits and eighty-four pages of post hearing briefs and two days of hearings.

Fortunately many of the facts in this case are not greatly at issue.

The Grievant in this case is Captain Curt VanderKooi

On or about November 21, 2018 it appears that was
was there that he was found and secured by hospital security and finally Grand Rapids Police Officers took him into custody.

The Grievant, Captain VanderKooi was not working on November 21, 2018.

On Monday, November 26, 2018 as Captain VanderKooi

It appears that after being detained for approximately three days, the prosecutor correctly determined that was a United States Citizen and Veteran and was released.  

On January 18, 2019, Interim Police Chief released a press statement regarding this incident (U-8). The Police Departments report, among other things stated,

“Our Police Department took this incident very seriously and believed it was a possible act of terrorism. In the interest of public safety and because there was a risk to Federal Airspace we contacted Federal Authorities including the FBI’s Joint Terrorism Task Force and ICE. It is standard for local Police Agencies to contact Federal Authorities at any time there is a possible act of terrorism. Grand Rapids Police Department Policy requires this notification for incidents involving

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6 Ultimately charges were dropped when Mr.
potential acts of terrorism. Our Police Departments number one priority is to keep our community safe...we are committed in being a welcoming community where immigrants and refugees feel safe, we want to reassure the communities safety - - not immigration status - - is our number one priority.

Approximately five days later on January 23, 2019, the American Civil Liberties Union (ACLU) and the Michigan Immigrants Rights Center (MIRC) wrote a letter to Interim Chief, of the Grand Rapids Police Department and the Mayor of the City and the City Manager, entitled “Demand for investigation into GRPDs’ role in calling ICE on United States Citizen, (U-9).

As a result of this demand, the Grand Rapids Police Department through its Internal Affairs Unit investigated the matter (U-10). In its Complaint Disposition Report (CDR), the Internal Affairs Unit found “this investigation has determined that Captain VanderKooi had justification to send name to ICE for further investigation based on the actions of at Spectrum Health Butterworth Hospital on November 21, 2018. Captain VanderKooi was unaware of the fact that possessed a United States Passport at the time of his arrest, and he was unaware that other GRPD Employees had interviewed him and the results of those interviews...However based on the information Captain VanderKooi had when making the decision to forward name to ICE it was reasonable to do so.

Had Captain VanderKooi known was a United States Citizen, he would still have been justified in sending his name to ICE to investigate ties to terrorism. behavior at the hospital showed several characteristics of a terrorist event and it was prudent to not only have ICE check his citizenship, but also any travel to foreign countries or affiliations with terrorist organizations, which DHS/ICE is tasked with doing.
Still on our report, this investigation has also concluded that while Captain VanderKooi requested a review of status, his request did not provide ICE authorization to detain nor was it a request that ICE detain him further...

It should be noted that

That supports the fact that the GRPD does not routinely send names of arrestees with Hispanic sounding names to ICE and confirms that Ramos-Gomez’s name was referred to ICE for the November 21, 2018 incident based on his unusual actions, which closely resembled a terrorist incident.

While the February 14, 2019 Internal Affairs report

On February 22, 2019, the City released a news report to the media concerning the Internal Affairs investigation (U-18). On February 26, 2019, protestors disrupted the business of the Grand Rapids City Council, causing the Mayor to gavel the meeting closed early (U-19). On the following day, February 27, 2019 MIRC emailed the Mayor of the City of Grand Rapids and members of the Grand Rapids City Council, calling out for among other things, Captain VanderKooi’s immediate replacement as the ICE Liaison, and publicly commit to ceasing all cooperation and communication with ICE, that is not actually “required by law” (U-20).

The following day, February 28, 2019, Captain VanderKooi was notified
On March 6, 2019 the ACLU and MIRC filed an appeal with the Grand Rapids Civilian Appeals Board (CAB) on behalf of (U-26). In addition to the CAB Appeal, these two organizations also asked the CAB to amend its by-laws to allow the ACLU to submit additional evidence and outside information as well as make a thirty minute presentation to the CAB on its case as to

On March 27, 2019 the ACLU submitted a complaint to the Michigan Department of Civil Rights against the Grand Rapids Police Department alleging discriminatory policies (Union-27). Separate complaints with ACLU and MIRC were also filed on behalf of (U-28).

As a result of these many actions, the Grand Rapids Police Department engaged in a renewed investigation of Captain VanderKooi.

In connection with this matter, Captain VanderKooi was brought in for a third AIU interview on April 2, 2019 where he was again questioned about

On April 19, 2019 a Complaint Disposition Report - secondary report was issued
By the letter dated March 6, 2019, the ACLU and MIRC appealed the decision of the Grand Rapids Police Department's Internal Affairs Unit regarding the Complaint filed regarding

That appeal asked the Civilian Appeals Board (CAB) to conduct a comprehensive review of the interactions of the Grand Rapids Police Department and the US Immigration and Customs Enforcement (ICE) regarding Mr. (U-26). That appeal also requested that the CAB make changes to its by-laws and in the event no by-law changes occurred, the organizations requested at least thirty minutes to make public comments concerning this investigation prior to a vote on
the appeal.

Following a hearing on this matter, the

(see U-33). The CAB reconvened
again to approve written findings on May 22, 2019. The City Commission policy
800-02 applies to the CAB. It requires that a written decision from the CAB must
contain sufficient detail to explain the reason for the reversal or modification. In this
case, the eight CAB members, produced several different personal explanations. Some
statements were made on the record and some written comments submitted after the May
15 hearing (U-36).

Approximately two months later on August 22, 2019, Grand Rapids City Manager,
issued the following memorandum to

dated May 23, 2019 was amended on August 29, 2019, to include
With this more detailed information on the record, let us now answer the issues mentioned in this Decision and Award. The first issue deals specifically with the email communication from the Grievant Captain VanderKooi to Officer dated November 21, 2018. That email mentioned some basic facts in terms of Mr. actions and his arrest by the Grand Rapids Police Department. The request made by Captain VanderKooi is a simple one

(U-5). Approximately two months later, a letter dated January 23, 2019 from the ACLU and MIRC was received. It included a “demand for investigation into GRPD’s role in calling ICE on United States Citizen” (see U-9).

As a result of the January 23, 2019 letter from the ACLU and MIRC, the Internal Affairs Unit was advised by the Interim Police Chief, David Kiddle the following day January 24, 2019 to open an investigation regarding this incident. Deputy Chief and Lieutenant were in charge of this investigation and its findings (see U-17).

(U-17). The investigation appears to have been well conducted and thorough. It’s on the record and all the parties of this dispute are well aware of its contents.

There was no evidence that the City of Grand Rapids or the Grand Rapids Police Department gave Captain VanderKooi, a written policy providing specific guidelines regarding making referrals to ICE.
It further appears the Captain VanderKooi did not receive any specific training about referrals.

I have considered the potential seriousness of the incident in this case. It involved the

I note that the

I also note that except for an email dated Monday, November 26, 2018 at 9:49 am from Captain VanderKooi to ICE Agents with an accompanying Police Report, the Grievant had no further direct involvement with this matter. Captain VanderKooi received an email of this shift summary report which gave the name of the suspect (U-4). He was described as with the abbreviation WM meaning “white male”.

Captain VanderKooi testified that

The report mentioned

According to the Internal Affairs Unit report,
In that in same investigation, the report concluded that

On March 6, 2019, the ACLU and MIRC appealed the decision of the Grand Rapids Police Departments Internal Affairs Unit. They asked the Civilian Appeals Board (CAB) to conduct a comprehensive review of the interactions between the Grand Rapids Police Department and the US Immigration and Customs Enforcement (U-26). A letter was also filed with the Michigan Department of Civil Rights regarding this matter on March 27, 2019 (U-27). This was followed by an ACLU and MIRC letter to the Grand Rapids Civilian Appeals Court appealing the first decision of the Internal Affairs Unit (U-29).

It appears that these appeals and allegations prompted, Interim Police Chief, to resume the investigation to review several emails between Captain VanderKooi and the Immigration and Customs Enforcement (ICE). A second investigation occurred through the Internal Affairs Unit.

A secondary report was processed and completed (U-23). This
effort by the Internal Affairs Unit expanded the investigation greatly. It involved

By its report dated April 19, 2019, the Internal Affairs Unit

The Civilian Appeal Board (CAB) met on May 15, 2019. The meeting was called to order at 4:03 pm. The meeting adjourned at 7:21 pm. Prior to adjournment a motion was made to the Internal Affairs finding
The motion was supported and a role call vote taken, by a margin of 6 yes and 2 no’s, the motion passed.

Once the CAB decided to

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City Manager,
testified that he decided to

On August 22, 2019 the office of the City Manager through City Manager,

In reviewing the decision of the CAB in this case, I also reviewed the by-laws of the City of Grand Rapids Civilian Appeal Board. Under Article 1, Section 1.2 duties, the following language occurred “the Board shall act as a reviewing body for findings of fact made by the Grand Rapids Police Department with respect to complaints made by individuals who believe they’ve been mistreated by Police Officers...”. This indicates to me that the CAB is basically an appellate body reviewing investigations and conclusions reached by the Grand Rapids Police Department. If so, evidence is necessary to overturn an investigation and decision.

8 On that same date August 22, 2019, Chief of Police,
the Assistant Attorney for the City of Grand Rapids, was present at the Civilian Appeal Boards meeting of May 15, 2019 and testified extensively and credibly in this case. She explained

In conducting its appellate review, the CAB must base its decision upon evidence and not mere opinion. Further stated that to her knowledge the CAB Members received no training on ICE or related activities. According to the CAB was to employ a constitutional standard, which meant that there would have to be substantial evidence greater than a preponderance of the evidence to overturn the conclusions reached by the IAU report. In reviewing the CAB report (U-33 and U-36) I find that the CAB did not provide evidence justifying overturning the IAU exoneration conclusion. Most of the statements were speculative at best.

Finally, much ado was made about the use of the term “loco” in an email sent from the Grievant to Office of ICE, dated November 26, 2018. The subject was At least one of the members of the CAB

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9 Considering that the CAB met from 4:03 pm and adjourned at 7:21 pm, it left them less than three and a half hours to review all the documents and take action in this particular case (see U-33).
focused on the use of term “loco”. He did not however comment on the alleged “pattern of profiling”. The CAB’s apparent conclusion was that the word “loco” is a word of prejudice. This is not in accord with several reputed and established dictionaries. I note that according to the American Heritage Dictionary 4th Edition 2000, page 1027, it means “mad or insane”. According to the Oxford University Press Dictionary, page 1616, dated 1993, it means “insane or crazy”. Finally, according to the Merriam-Websters Dictionary, the term “loco” has been adopted as common English Vernacular, with a meaning of “mental ill disorder, crazy or frenzy” (10th Edition 1993).

These definitions describe the actions of at the hospital on November 21, 2018. According to Captain VanderKooi’s testimony, the Grievant, Captain VanderKooi also mentioned that

The word “loco” is thus used and recognized by established dictionaries as common English Vernacular, meaning “disordered or unstable”. As a result, it is hardly sufficient to conclude that because Captain VanderKooi used this term in one email that he should be found

As a result, having reviewed carefully all sixty-two exhibits submitted into evidence in this case, the two days of testimony and the expansive excellent briefs submitted by both counsel in this case, I do conclude that the Employer has not sustained
its burden of demonstrating just cause for discipline under Section 5 of Article 7 of the Collective Bargaining Agreement between the parties. In reaching this conclusion, I also conclude that it is not necessary to review the allegation by the Association that the Employer violated the Maintenance of Standards Clause 17 of the Collective Bargaining Agreement. The Command Officers Association also detailed nine different procedural irregularities, which would have rendered the investigatory process against Captain VanderKooi fundamentally unfair.

By concluding that there is insufficient evidence in this case to demonstrate just cause for discipline, I likewise find it is not necessary to examine the nine alleged irregularities in the investigating process. In reaching this conclusion, the parties should not interpret this action as meaning that none of these allegations do not have merit. In fact several appear to have merit. The fact is that if sustained, we would ultimately reach the same conclusion that the City of Grand Rapids did not have just cause to impose discipline upon the Grievant, Captain VanderKooi.

I also wish to thank all the parties to this dispute including the Grand Rapids Police Department, the GRPCOA, the City of Grand Rapids and its Labor Relations Department for the facilities necessary to conduct a fair and impartial hearing during which I took detailed notes. I further had the opportunity to conduct pre-hearing decisions on timeliness and arbitrability issue and render a twenty-two page decision and award. I thank all the parties involved for their professionalism and their courtesies.
VIII. AWARD

1. Based upon the complete record in this case as noted in this decision, I conclude that the City of Grand Rapids Employer has not sustained its burden of demonstrating just cause to discipline Captain Curt VanderKooi in this case in accord with Article 7, Section 5 of the CBA. As a result, the City of Grand Rapids is ordered to revoke and remove the

2. The City of Grand Rapids is ordered that Captain VanderKooi be made whole for any and all discipline is to be removed from his personnel file and any other record kept by the City of Grand Rapids.

3. The parties to this dispute, the City of Grand Rapids and the Grand Rapids Police Command Officers Association (GRPCOA) are to meet and discuss the implementation of this Award. Your Arbitrator will continue jurisdiction over this matter until the Award has been carried out.
Respectfully submitted,

Patrick A. McDonald

PMCD/cmf
Dated: December 23, 2020