

I therefore conclude that it is unlikely that Firefighter Stokes deliberately meant to make such a frivolous claim and that the City has failed to meet its burden of proving that he deliberately intended to deceive the IDHR which would have discovered the truth during its investigatory fact finding process which Firefighter Stokes was very familiar with given the prior 16 or so prior complaints he had filed against the City.<sup>10</sup>

When that is coupled with the City's failure to follow the procedural requirements of the just cause standard noted above, I conclude the City lacked just cause to terminate Firefighter Stokes for allegedly violating Section 2000.11, Section 2200.01(1), or Section 2200.01(8), even if the false statement in his Charge was not privileged under Illinois state law and that his discharge must be overturned.

There thus is no merit to the City's claim that termination is appropriate because Firefighter Stokes has a "history of substantial transgressions and a progressive discipline for those transgressions" which included filing a false report, and that a "firefighter with a history and reputation of making false statements" raises a question about his credibility in a possible Fire Department investigation when he may be called as a witness under oath.

For while that may be true if Firefighter Stokes lied in his Charge, it is not true when, as here, the City has failed to meet its burden of proving that he, in fact, did so.

To rectify the City's violation of the contractual just cause standard and in order to restore the status quo ante, the City shall expunge all references to Firefighter Stokes' termination from its records and it immediately shall offer to reinstate him to his former position

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<sup>10</sup> See Culinary Foods Inc. v. UFCW Local 100-A, 106 LA 801, 806 (Nathan, 1996) where Arbitrator Harvey Nathan ruled that an intent to deceive was needed to prove a charge of falsification.

and to make him whole by paying to him a sum of money, including all benefits and seniority, that he would have earned from the time of his termination to the time of the City's offer of reinstatement.<sup>11</sup> That sum is to be reduced by any monies he received during the time of his termination that he would not otherwise have received but for his termination, and minus any monies that he should have earned by way of mitigation.

Lastly, and in order to resolve any questions which may arise over the application or interpretation of the remedy, I shall retain my remedial jurisdiction indefinitely until all such issues are solved.

In light of the above, I issue the following

#### AWARD

1. The grievance is arbitrable.
2. The City lacked just cause to terminate grievant James H. Stokes, Jr., and his termination is hereby overturned.
3. The City immediately shall take the remedial action stated above which includes an offer of reinstatement to grievant James H. Stokes, Jr., and payment to him of a possible back pay award calculated in the manner described above.
4. In order to resolve any questions relating to the application or interpretation of the remedy, I shall retain remedial jurisdiction indefinitely until all such remedial issues are resolved.

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<sup>11</sup> The Union's request for interest is denied because it is not provided for in the agreement.

5. Pursuant to Article IX, Section C, 5, of the agreement, the parties are to equally share the fees and expenses of the arbitrator

Dated at Madison, Wisconsin, this 27<sup>th</sup> day of August, 2012.

Amedeo Greco /s/  
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Amedeo Greco, Arbitrator