[redacted]

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St. Louis County
Attorneys
100 North 5th Ave W #202
Duluth, MN 55802-1287

St. Louis County Civil Service Commission
100 North 5th Ave W
Duluth, MN 55802

St. Louis County
Public Works Department
Richard H. Hansen Transportation & Public Works Complex
4787 Midway Rd
Duluth, MN 55811

Re: Discharge Hearing of [redacted] [Court File No.: [redacted]]

You recently upheld the termination of [redacted] after 18 years of honorable service with St. Louis County for alleged off-duty misconduct. His crime – drinking in his private shack, approximately one-half mile from the nearest vehicle. The DWI was dismissed "in the interests of justice" but the 'implied consent' charge remained. The charges were clearly deficient. Nonetheless, without truly considering the totality of the circumstances, St. Louis County fired him. The Civil Service Commission, acting also as the VPA, made grave errors in its decision to uphold the termination. Those reasons are explained in detail herein.

Definition of Implied Consent

As defined by Wikipedia, "Implied consent is consent which is not expressly granted by a person, but rather inferred from a person's actions and the facts and circumstances of a particular situation (or in some cases, by a person's silence or inaction) [Underlining added]. The term is most commonly encountered in the context of United States drunk driving laws." Wikipedia addresses it in the context of driving, "… a licensed driver has given his implied consent to a field sobriety test and/or a Breathalyzer or similar manner of determining blood alcohol concentration.

The only facts are that [redacted] was drinking while in the privacy of his own home. There is not one iota of evidence on the record to the contrary. This is not misconduct, but a person taking responsibility for not driving after drinking.

These laws continue to be challenged in the courts as violations of the Fourth Amendment (as a reasonable search and seizure) and Fifth Amendment (as not violative of the right against self-incrimination). In 2013, in Missouri v. McNeely, the U.S. Supreme Court wrote that the compelled

physical intrusion beneath [the driver's] skin and into his veins to obtain a sample of his blood for use as evidence in a criminal investigation [is] an invasion of bodily integrity [that] implicates an individual's "most personal and deep-rooted expectations of privacy." Yet, in Minnesota, if you hold a driver's license, they state that acknowledges consent.

Noting that "[s]earch warrants are ordinarily required for searches of dwellings," we reasoned that "absent an emergency, no less could be required where intrusions into the human body are concerned," even when the search was conducted following a lawful arrest. Missouri v. McNeely, 133 S. Ct. 1552, 1558, 185 L. Ed. 2d 696 (2013).

The Veterans Preference Act and Just Cause

As a veteran, [redacted] sought protection from termination under the Veterans Preference Act, but lost that claim based on the allegation of misconduct, considered a substantive requirement of the Act. In addition to the misconduct (refusing sobriety test), St. Louis County also argued the suspension of his Commercial Driver's License (CDL) meant that he no longer possessed the minimum qualifications for his job classification. Source: Discharge Hearing Transcript, p. 11. Later in the hearing the employer representative said that "The operation of CDL equipment by our supervisors is an infrequent situation, but it's very important when you need them to do that work." Ibid, p.19. The reasons cited were for training purposes (which could be done by explaining without driving and were), snowplowing in emergency situations (In this particular case, never. There certainly were other options.), and in case of wildcat walkouts or strikes (when did this last happen?). By all accounts, it would have appeared St. Louis County could have accommodated the supervisor, with negligible effects, if any, and didn't, nor did the Civil Service Commission require any.

[redacted] never used his CDL in his two plus years as supervisor, so how can it be the minimum qualification for the job? By rule, the minimum qualification is a duty absolutely critical to the position, not one that rarely, if ever, gets used. The loss of the CDL was also argued as 'just cause' under Leininger vs. City of Bloomington, a Minnesota Supreme Court case from 1980. [redacted], Assistant County Attorney, argued this case established the just cause standard consistently cited and used in cases involving the Veterans Preference Act (Minn. Stat. 197.46). Ironically, later in the deposition, [redacted], referring to the Veterans Preference Act (VPA), said "You've either got incompetency or misconduct, i.e., just cause, or you don't." The VPA is only restricted in cases of misconduct or incompetency. It doesn't say alleged misconduct and incompetency. In fact, everyone stated that [redacted] was quite competent in his position. Likewise, misconduct is not defined as losing your CDL. The county argued that 'just cause' equated to misconduct or incompetence, but never argued there was any misconduct or incompetence. The whole case hinged on the absence of a CDL and nothing more. If the words are interchangeably used, supposedly holding the same legal meaning, it seems 'just cause' would spring out of misconduct and/or incompetence, not the opposite. [redacted] continued, "I guess theoretically you could have really good just cause, or barely, or over the top just cause, but the standard that is required is the just cause standard." This is an absurd statement, as a policy should clearly dictate what justifies 'just cause', and that policy should be properly formed, written, approved, and shared. The Merriam Dictionary defines a theory as "an idea that is suggested or presented as possibly true but that is not known or proven to be true." Shouldn't the termination of a valued, experienced employee rest on more than an unproven theory?

In [redacted] statement, he was essentially implying that any reason, theoretically, depending on one's definition of what constitutes just cause, is all that is needed. If fails to account for the context needed for just cause.

The county's claim of just cause equating to incompetence is made moot by the Employee Performance Appraisal rating [redacted] performance on October 29, 2014 as competent for all categories by [redacted]. The department head's concurrence for the appraisal followed on October 30, 2014. It is important to take notice that this is more than five months after the alleged claim upon which St. Louis lays its' claim for just cause.

The Substantial Evidence Requirement

Case law covering "substantial evidence" makes it clear that "the cause or reason for dismissal must relate to the manner in which the employee performs his duties, and the evidence showing the existence of reasons for dismissal must be substantial." Source: *Hagen v. Civil Service Board,* 164 N.W.2d 629, 632 (Minn. 1969).

Substantial evidence is defined as "1. [s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. [m]ore than a scintialla of evidence; 3. [m]ore than some evidence; 4. [m]ore than any evidence; and 5. [e]vidence considered in its entirety." *Cable Commc'ns Bd. V. Nor-West Cable Commc'ns P'ship,* 356 N.W.2d 658, 668 (Minn. 1984)

An unwritten policy, a sketchy history of similar discipline, and a desperate attempt to justify termination because of a job qualification (CDL) that isn't ever used, is a far cry from substantial evidence. How could any party rule in favor of termination based on the weak argument of the county? Is this the way we treat our honorably discharged veterans? For that matter, how could anyone be considered rightfully terminated given the circumstances?

The totality of the circumstances does not justify termination, particularly when the implied consent doctrine of Minnesota violates the Fourth Amendment, creating a significant imbalance between government and individual interests.

The Just Cause Argument

In a draft of the "Findings of Fact, Conclusions, and Order" the meaning of just cause, in the context argued meant, "Which specially relates to and affects the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public." How is the loss of an unused CDL, improperly listed as a minimum qualification, affecting the rights and interests of the public? The interest of the public would have considered the 18 years of unblemished service to the county, the extensive training he had inside and outside of work, and [redacted] familiarity with the job, its area, and its employees. It would have considered his years of honorable service to our country, in the armed services and as a member of the volunteer fire department. When the county jumps to dismissal, disregarding all of these facts, how is it in the public's best interest?

"The case must touch the qualifications of the officer or his performance of its duties, showing that he is not a fit or proper person to hold the office…" [This is important, because although they argued it touches the listed qualifications of the job, they didn't adequately provide evidence that it is a meaningful qualification. He never used it in over two years, how is that meaningful? It clearly would

not have affected the performance of duties, so the two arguments fail.] "…In the absence of any statutory specification the sufficiency of the cause should be determined with reference to the character of the office, and the qualifications necessary to fill it." [The argument that a CDL is required is nonsensical, and has no bearing on the ability of a supervisor to perform the required duties in full.]

The "just cause" argument based on an unused and unneeded job classification fails the true meaning of just cause. It might be listed as the minimum qualification, but it certainly doesn't add up to just cause for termination. For an actual driver, who uses the license regularly, yes, but not for a supervisor who in more than two years had never used it. His job would have been unaffected.

A teamster, convicted of a DUI, resigned in lieu of termination, yet was rehired at a later time. Source: Discharge Hearing Transcript, p. 20. Although the DUI was the basis for the termination, the county didn't draw attention to misconduct or incompetency, but only the loss of the CDL. However, earlier in the hearing, they claimed John was ineligible under the Veteran's Preference Act because of his failure to submit to testing which they claimed as misconduct. In this case they have reverted back to misconduct, an argument not used on behalf of those allowed to keep their positions as long as they held their CDL. After the charges were later dismissed as baseless, the CDL revocation for [redacted] remained in place. The CDL charge was premised on the idea that there was drinking and driving, but no evidence existed to prove the same. This would constitute the 'extenuating circumstances' ignored by the county in making its determination to discharge. The question that remains is if misconduct was not proven, why were [redacted] Veterans Preference rights not honored? If implied consent was a byproduct of a faulty charge, why wouldn't the county consider the totality of the situation and the unique, extenuating circumstances?

Another supervisor, charged with a DWI in 2014 while driving an off-road vehicle (Minn. Stat. 84.91.1 (c)), kept his job after accepting a plea agreement that saved his CDL. He accepted a plea in return for keeping his CDL, but the big difference is that he was legally drunk and caught in the process of driving a vehicle. In this case, [redacted] was not in a vehicle, but in the privacy of his own cabin. Whether or not he was drunk is immaterial, unless there is evidence he had been drinking and driving. There wasn't any such evidence, and under the circumstances, who wouldn't decline a Breathalyzer? It's clear the county isn't dismissing by misconduct, which they argued equated to just cause, but by the mere holding of a CDL, whether used or not. In their opinion, it isn't the importance of the CDL, relative to their position, but whether this requirement is met. While the county calls it fair and equal treatment, it fails to take into account the actual differences in each case. The mere charge, whether or not it holds up in court, is immaterial to them. Once all charges but the implied consent charge were dropped (which by accounts is unfounded as well), the county should have reinstated [redacted]. If the basis for the charges are unfounded, all ensuing charges should also be dismissed. There is no law against having adult beverages in the convenience of your own home. The legislators, as in many portions of law, have made a significant error in not fixing this issue.

The county argued that "incompetency or misconduct means just cause" according to decision from *AFSCME Council 96 v. Arrowhead Regional Corrections Bd.,* 356 N.W.2d 295, 297 (Minn. 1984). The decision stated "this court has held repeatedly that the 'just cause' standard for which an employee can be discharged under PELRA and the 'incompetency or misconduct' standard for discharge under the Veteran's Preference Act are equivalent." This argument fails to say that a veteran retains rights under

the VPA in the absence of proven misconduct or incompetency. Whether or not, he or she is later removed in later proceedings for 'just cause' is a separate matter.

In law, **misconduct** is wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate [stubborn or very difficult to change] indifference to the consequences of one's acts. Source: Wikipedia.

[redacted] had no reason to surrender to an alcohol test when his only place of consumption was in his shack, one-half mile from his residence. There was no evidence the refusal was premeditated or intentional or obstinate – in fact, he took a test. Implied Consent laws are arguably unconstitutional as it conflicts with the guarantees of the Fourth Amendment. A search warrant could easily have been requested before or after arrival, yet the demand was made without one for the convenience of the police. The Fourth Amendment, when constructed, was intended to protect the citizens from unlawful searches, not forcibly make them consent as the Minnesota legislators and judicial system has enabled. A rational review of the conflicting positions, and the ultimate authority resting on Federal Law, one would expect this doctrine to be shot down as unconstitutional when it reaches the highest court. It hasn't happened yet, but might soon in the *Bernard v. Minnesota* case.

Relative to the supervisor who plead to a lesser charge for drinking and driving, how is [redacted] case worse[redacted] was in his own place, not in his car, while drinking. The other was clearly charged with drinking and driving. [redacted] charges were dismissed, while the others' were not. One was proven misconduct, aka 'just cause', while John's was alleged, and then dismissed. The only item the county had against [redacted] was that his implied consent charge stayed despite the dismissal of all other charges. Even then, the special circumstances demand a common sense response. In this case, firing was unwarranted and it seems no action should have been taken. The police, in this matter, should have performed a safety check and nothing more. The case was based on the word of eight year old, as retold by the mother (hearsay originating from a child). The county wasted a good deal of taxpayer money in a witch hunt that ultimately was dismissed. The worst thing is that they cost an honest citizen his livelihood. Where is the discipline for their shoddy practices? Adding further doubt to fair and equitable treatment, the other supervisor had also been charged with hunting with a firearm while under the influence of alcohol (Minn. Stat. 97B.065.1 (a) 1.

[redacted] also had a work permit for driving a regular vehicle and could have used that vehicle to see oversee any work that was outside of the office.

Minimum Qualifications

All minimum/required qualifications must have a clear connection to the position duties. This is missing in this case with the claim that a CDL comprises a minimum qualification.

"A statement to the minimum level of competence the individual must have for a job" Gibson and Prien, 1977, p. 447.

[redacted] had 18 years of CDL and transportation experience that demonstrated a knowledge of the transportation function(s) of the position to be filled.

Job Duty Comparison to Other Counties

The CDL requirement for the same position (highway maintenance supervisor) found across the state:

- In Crow Wing County (including Brainerd) -- "May participate in work supervised as required, appropriate and/or necessary." [Emphasis added. Key words, 'May', 'as required, appropriate and/or necessary." In more than two years it was never needed in John's case and in an emergency, aren't temporary CDL drivers available? Isn't it better to use drivers doing the job everyday rather than someone who may drive once every five years?]
- In Koochiching County (including International Falls) – No CDL requirement
- Ramsey County – No CDL requirement

No Written Policy Exists

Under cross-examination, [redacted], Public Works Director, was asked to describe the policy and what constitutes an offense and triggers the policy? [redacted] answered, "So essentially if there's a revocation or loss of CDL as a result of an alcohol or drug-related incident we pursue termination." When asked if it was a conviction or offense, he responded, "At this point I guess we look at it as the loss of the license itself, and the status doesn't necessarily enter into the decision, the legal status." Asked, "Is that policy written anywhere?" [redacted] said, "No." Source: Discharge Hearing Transcript, p. 31.

In the eyes of the county, if you lose your CDL, even on a bogus charge, they will fire you. If the legal status has no relevance, what good is a policy based solely on subjective measures? And, does a verbal policy, wherein only one other supervisor was mentioned, even a policy of any kind? Can two cases, with different circumstances, fall nicely into one unwritten, verbal policy? If all that matters is a CDL, is it that difficult to create an official policy for all employees?

The mere allegation of an offense leading to the suspension of a CDL is enough in their eyes. What happened to due process? And when they admit there is no written policy, a red flag is apparent. Carlton County failed to hold any person accountable for borrowing/stealing county equipment for personal use, because an outside county (Aitkin) investigated and said that no policy meant no foul. Different counties, different rules?

Extenuating Circumstances

On appeal, [redacted], Chair, of the St. Louis County Civil Service Commission, upheld the original hearing. The decision included, "There are no extenuating circumstances that would warrant action other than discharge." Unfortunately, and like many cases, [redacted] had to appeal back to the very board that already ruled against him. It is rare, even questionable as to if it ever happens, that a judge, board, or panel, reverses its ruling. It seems they get entrenched in defending their initial position, no matter how erroneous.

Another unfortunate situation is that the Civil Service Commission holds a dual role and also serves as the Veterans Preference Panel. An independent panel, separate, and distinct from the Civil Service Commission, is the only way of separating issues and offering a more directed decision.

Conflict of Interest is Troubling

The person initiating the complaint, [redacted], Division Five Superintendent, which led to the dismissal was also the union representative tasked with defending him.

The Civil Service Commission, acting in a dual role as the Veteran's Preference Panel, reviewed and passed the job classification with the minimum requirement of a CDL. The members, dependent on St. Louis County for reappointment, hardly seem the unbiased, separate panel required in such a case. A veteran's panel generally gives the benefit of the doubt to the veteran while advocating strongly for one more chance. With little basis, two out of the three serving on the commission, quickly ruled in favor of his dismissal.

History of Honorable Service Ignored

This was a Veteran who served almost eight years active duty in the army, went into the army guard, got out for a bit and then rejoined. He moved on to the air guard, achieving the rank of senior master sergeant. He was one of only two people in the state to get a promotion to E8, also known as an exceptional performance promotion. He also served on the Fire Department for 20 years. While at the county, he had no bad performance reviews, no reprimands, no verbal warnings, nor any other adverse or negative actions.

Additionally, he was chairman of the equipment committee, vice president of the association, and on the health committee.

Did the Civil Service Commission have the Authority to Rule on a Verbal Policy?

Section 4a, of the St. Louis County Civil Service Act gives to the civil service commission of that county authority to make rules covering "vacations, leave of absence and sick leave, the order of lay-off in case of a curtailment in the number of employees in any class in any department, and any other conditions affecting the employment of persons within the classified service," which, when approved by the county commissioners, have the force and effect of law. (Italics supplied.)

The St. Louis County Civil Service Act, c. 423, § 22, provides that an employee may not be removed or suspended from service except for "just cause."

It should be recognized that a civil service commission exercises purely statutory power and must find within the statutes the authority to exercise the power it claims. 15 Am. Jur. (2d) Civil Service, § 8. A commission can exercise only such authority as is legally conferred by express provisions of law or such as, by fair implication and intendment, is incident to and included in the authority expressly conferred for the purpose of carrying out and accomplishing the objectives for which the commission was created. Any reasonable doubt as to the existence of any particular power in the commission should be resolved against the exercise of such authority. 81 C.J.S. States § 66d; 1 Am. Jur.(2d) Administrative Law, § 70; 1 Davis, Administrative Law Treatise, c. 2.

[There is no 'fair implication and intendment' by upholding what, at best, is a foggy verbal policy instituted by unknown supervisors, and used in only three stated cases, all significantly different – except for the loss of a CDL. Is it 'fair' that another supervisor, clearly demonstrating misconduct, keeps his job because he has a CDL? If 'just cause' is the same as 'misconduct' as argued by the county, why isn't misconduct used as an argument for his termination? This is merely an ambiguous policy, created by some out of thin air, with contradictory arguments determining employment.]

NOTES

[1] The following is a comparison of the provisions of the two acts:

The St. Louis County Civil Service Act, L.1941, c. 423, § 4a, provides that it shall be the duty of the county civil service commission "[a]fter public hearing to adopt such rules and regulations for the administration of this act, such classification and compensation plans for the classified service, together with rules for their administration, and amendments thereof as may be recommended by the civil service director after a thorough survey of personnel organization included in such plan or plans, and suitable regulations covering vacations, leave of absence and sick leave, the order of layoff in case of a curtailment in the number of employees in any class in any department, and any other conditions affecting the employment of persons within the classified service, which, **when approved by the board of county commissioners**, shall have the force and effect of law and be binding upon all county officers, boards and commissions." [This policy clearly did not have the approval of the board of county commissioners and until now, wasn't even known as a verbal policy.]

The State Civil Service Act, L.1939, c. 441, § 5(2)b, Minn. St. 43.05, subd. 2(2), provides that it shall be the duty of the director "[t]o prepare and recommend to the board rules and regulations for the purpose of carrying out the provisions of this chapter; these rules shall provide, among other things, for current records of efficiency, and standards of performance, for all officers and employees subject to the provisions of this chapter; the manner of completing appointments and promotions; rejection of eligible candidates; competitive examinations; creation of eligible lists, with successful candidates ranked according to their ratings in the examinations; leaves of absence with and without pay; transfers, reinstatements, layoffs, vacations, and hours of work; public notice of examinations; procedure for changes in rates of pay; compulsory retirement at fixed ages; and other conditions of employment." [The Highway Maintenance was allowed to create a verbal policy for termination, bypassing the legitimate process of seeking approval. The director has failed to recognize this deficiency and make the necessary correction.]

383C.042 POWERS OF DIRECTOR.

The civil service director may reject an application of any person for admission to a test or refuse to test any applicant, or to certify the name of an eligible for employment who is found to lack any of the established qualification requirements for the position applied for or tested on, or who is physically unfit to effectively perform the duties of the position, or who is addicted to the use of drugs or the habitual use of intoxicating liquors to excess, or who has been guilty of any crime or infamous or notoriously disgraceful conduct, or who has been dismissed from the public service for delinquency, or who has made a false statement of any material fact or practiced or attempted to practice deception or fraud in the application or in the test, or in securing eligibility or appointment. Any such person may appeal to the county civil service commission from the action of the civil service director in accordance with the rules established hereunder. [The teamster who voluntarily resigned after losing his CDL and was later rehired, may have been denied for being guilty of a crime. One can infer that if you can deny an application due to a crime, you could discipline/terminate for the same. However, the Highway Maintenance Department kept a different supervisor with more than one crime, and then, inexplicably moves to remove Mr. Zobel on an implied consent violation – and loss of CDL. It defies logic and good reason.]

383C.037 CLASSIFICATION PLAN.

The civil service director shall, as soon as practicable after sections 383C.03 to 383C.059 take effect and after consultation with appointing authorities and principal supervising officials, recommend to the

county civil service commission a classification plan, together with proposed rules for its administration. Such classification plan shall show each class of positions in the classified service, and when approved by the county civil service commission, **shall be made public, together with the rules for its administration**. Each such class shall include such positions requiring duties which are substantially similar in respect to duties and responsibilities and shall be designated by titles indicative of the duties; and that the same schedule of compensation can be made to apply with equity under like working conditions. The class titles shall be used in personnel, budget and financial records and communications. As far as practicable the natural or probable line of promotion to and from the class of positions shall be designated or indicated.

[The rules for its administration, specifically in regards to failure to meet the 'minimum' qualifications of the position as a reason for discharge, is noticeably absent from all arguments. And why would the minimum qualifications for both drivers and supervisors have the same requirement for a CDL, when one uses it and the other doesn't? In this case, the Highway Department is enforcing an unwritten, rarely used informal policy that should have been presented to the St. Louis County Service Commission (Minn. Stat. 383C.037) for consideration. After approval, the policy then would seem enforceable, if and only if, it did not conflict with Minnesota Statutes. The policy itself, whether formal or informal, is not for the Highway Department itself to create and implement, but to pass on to the Commission for approval or rejection. The Commission, needing specific legislative authority, in this matter, finds itself subject to the provisions of 'just cause.' Accordingly, **it can only discharge "for cause which will promote the efficiency of the service." Minn. Stat. 383C.051**

Minn. Stat. 383C.051 (2014) DISCIPLINE LISTED IN THIS SECTION REQUIRES CAUSE

No person in the classified service who shall have been permanently appointed or inducted into the classified service under provisions of sections 383C.03 to 383C.059 shall be removed, suspended, demoted **or discharged except for cause which will promote the efficiency of the service** and not for political or religious reasons and only upon the written accusation of the appointing power or any citizen or taxpayer.

The St. Louis County Civil Service Commission makes a distinctive separation from the guiding statute by stating, "The continued employment of every employee shall depend upon the quality of their work and the delivery of efficient service. Any employee may be suspended or discharged for cause."

The St. Louis County Civil Service Commission has clearly deviated from Minnesota Statutes when suggesting separately that employees 'may be suspended or discharged for cause' as distinct from 'cause which will promote the efficiency of the service'. They are not two separate matters as the commission suggests, but one and the same. This is critical as Mr. Zobel's removal did not promote the efficiency of the service.

This discharge had no reasonable basis of 'cause' as it did not promote the efficiency of the service. Instead, it removed an invaluable, honorable, and competent supervisor who had 18 years of county employment. The legislature has granted the St. Louis County Civil Service Commission the right to adopt rules and regulations on 'other conditions of employment," but only after it has been approved by the board of St. Louis County Commissioners. The CDL requirement, while for some classifications, promotes the efficiency of the service, it isn't proven so for supervisors. And any claims of harm caused

by the loss of integrity is moot – Mr. Zobel was not driving at any time after having drinks, and moreover was at home at the time. This shows that he was acting responsible.

St. Louis County argued that "incompetency or misconduct means the same as just cause" according to the ruling from *AFSCME Council 96 v. Arrowhead Regional Corrections Bd.,* 356 N.W.2d 295, 297 (Minn. 1984). **As Minn. Stat. 383C.051 was last written in 2014 that trumps any court rulings prior to that time. The simple meaning, without any further rulings from the court, is that "No person…shall be …discharged except for cause which will promote the efficiency of the service." With the county's definition of 'just cause' now dismantled, it seems the discharge was illegal.**

St. Louis County Civil Service Commissioners Rule in Favor of County

Mr. [redacted] stated, "He seems like he's a hard-working, good man, but it sounds like there was a mistake made, and we can't discount the fact that he should have been aware of what the consequences were. And hearing the responsibility he had in his position I feel that he came short of that, and I really think that the just cause was there."

[One mistake? Drinking in your own home on your own time and refusing a Breathalyzer because you feel nothing you were doing was illegal. And what just cause?]

Ms. [redacted] said, "…it is clear that the CDL is a minimum qualification of the position…they [County] did cite other cases with some similar circumstances, and in those cases they have gone forward with discharge." [All quite different]

Mr. [redacted] stated, "[redacted] has not been convicted of a crime. He was convicted of an administrative crime, which is a refusal to take a DUI or DWI test…**I think the position of the county in seeking termination…is too Draconian…there is no written policy as to zero tolerance for these infractions, and for those reasons I would recommend that there be a less stringent penalty…"**

Voting for discharge were [redacted] and [redacted] and against, [redacted].

Appeal

[redacted] attorney , in his argument on appeal, included "[T]he task of the [Panel] is twofold: first, to determine whether the employer acted reasonably; second, to determine whether extenuating circumstances exist justifying a modification in the disciplinary sanction." *Schrader,* 394 N.W.2d at 801-802.

Summary of Issues

This case is centered on the Implied Consent Doctrine that, by all measures, violates the Fourth Amendment and demands a ruling as unconstitutional. Even if one entertains the doctrine, there is no evidence of driving and drinking at all, and it wouldn't apply.

'Just cause' as written in Minn. Stat. 383C.051 applies and not the argument of St. Louis County who rests on the 1984 ruling in *AFSCME Council 96 v. Arrowhead Regional Corrections Bd.,* 356 N.W.2d 295, 297. Just cause, properly applied in this case, does not exist.

The policy created out of thin air by St. Louis County officials does not meet the standards necessary for terminating an employee. They effectively reduced the concept of "misconduct" to nothing more than

the loss of a CDL, while refusing to acknowledge a supervisor, not having used it in two years, hurt the county in any way. See Minn. Stat. 383C.051.

The fact is that the Highway Maintenance Department, St. Louis County Officials, the police, and the St. Louis County Civil Service Commission got it wrong. This was merely an initial bad decision that was seized as an opportunity by some and forced through a system failing to fulfill their professional and legal duties.

Only one person, Commissioner [redacted], stating in part "…I think the position of the county in seeking termination…is too Draconian…there is no written policy as to zero tolerance for these infractions, and for those reasons I would recommend that there be a less stringent penalty…" understood that penalty sought was unfair and unjust given the circumstances.

This case is a black eye to all involved and a clear display of disproportionate power provided only through an unconstitutional law. This is why the Fourth Amendment was created and why Implied Consent Laws will ultimately be ruled unconstitutional.

The Civil Service Commission failed its duty to recognize the deficiencies of the arguments made by St. Louis County, seemingly relying on a case from 1984 that no longer applies. The right and legal thing would be reinstate [redacted] to his previous position with full back pay, while taking measures to see that a travesty like this never happens again. A deficient termination such as this opens the county up to a legitimate wrongful termination suit.

Please review your actions and take the necessary corrective actions. I would appreciate your comments.