

STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

ARBITRATION AWARD

In the Matter Of:	:	Case No. 2023-A-0139
CITY OF WATERBURY	:	DATE OF AWARD: April 5, 2024
And	:	Hearing Dates: June 15, August 17,
WATERBURY POLICE UNION,	:	22, 24 and November 28, 2023
BRASS CITY LOCAL, CACP	:	38 Wolcott Hill Road
Grievant: James Hinkle	:	Wethersfield, Ct 06109

APPEARANCES: Thomas Parisot, Attorney at Law (For the City)
Marshall T. Segar, Attorney at Law (For the Union)

I. ISSUE: (Agreed to by the Parties)

Did the employer have just cause to terminate the employment of James Hinkle?

If not, what shall the remedy be?

II. STIPULATIONS OF FACT:

1. The City is an Employer under the Municipal Employees Relation Act (MERA) (CGS §7-467 et seq).
2. The Union is an Employee Organization under MERA.
3. The City and the Union are parties to a valid collective bargaining agreement (CBA).

4. The CBA in effect at the time of termination (7/1/17 – 6/30/22) has been replaced with a successor agreement, but for the purposes of this proceeding the 7/1/17 – 6/30/22 CBA is controlling.
5. Officer James Hinkle was hired as a police officer for the City on 5/29/2015.
6. Officer James Hinkle was terminated from the police department on 1/9/2023.
7. The Union filed a grievance regarding Officer Hinkle's termination and that grievance was processed in compliance with the CBA and has been docketed before the State Board of Mediation and Arbitration.

III. PROCEDURAL BACKGROUND:

The grievance was filed for arbitration and hearings were held on June 15, August 17, 22, 24 and November 28, 2023. At that hearings both parties were provided an opportunity to present evidence, provide testimony and cross examine witnesses.

The parties agreed to file Briefs by January 30 and Reply Briefs by February 13 which dates were extended by mutual agreement to February 13 and February 27 respectively. The Panel received the parties' Briefs and Reply Briefs by the extended due dates. The Panel did not receive transcripts until approximately March 11. The Panel held an Executive Session on March 22 via ZOOM.

The parties have complied with the grievance and arbitration provisions of the CBA. This grievance is properly before the Connecticut State Board of Mediation and Arbitration.

IV. STATEMENT OF FACTS:

On December 13, 2022, Officer James Hinkle (hereinafter “Officer Hinkle” or the “Grievant”) was on patrol in the City. He saw that the traffic lights were not functioning in a major intersection in the City. He parked his patrol vehicle and went to the middle of the intersection and began directing traffic. It was a four-way intersection and Officer Hinkle had on a bright yellow reflective vest. Drivers followed Officer Hinkle’s hand signals while he directed traffic for approximately thirty (30) minutes. A vehicle driven by Dana Matsuzaka (hereinafter “Ms. Matsuzaka”) entered the intersection and failed to stop despite Officer Hinkle’s raised hand signal.

While Officer Hinkle first believed that Ms. Matsuzaka’s car hit him, his body worn camera (hereinafter “BWC”) revealed that Officer Hinkle hit Ms. Matsuzaka’s driver side mirror with his hand. Officer Hinkle ran after Ms. Matsuzaka’s car and yelled at her to pull into a parking lot which was several yards from the intersection.

Officer Hinkle yelled at Ms. Matsuzaka repeatedly claiming that she almost ran him over. Ms. Matsuzaka repeatedly apologized. Officer Hinkle called for backup and Officers Varrone and DeFilippis as well as Sergeant Prescott arrived at the parking lot. Officer Hinkle repeatedly indicated to the other officers that “she tried to run me over” or words to that effect.

When Sergeant Prescott arrived, he told Officer Hinkle to calm down. There are separate discussions between Officer Hinkle and each of the other officers (including Sergeant Prescott). None of those discussions were recorded on audio on any BWC. Officer Hinkle issued Ms. Matsuzaka a summons for Reckless Driving and Failure to Obey

the Signal of an Officer. Officers Hinkle and DeFilippis informed Ms. Matsuzaka that the summons would result in some amount of fine and no jail time. Some portion of that interaction was recorded on Officer DeFilippis' BWC.

Sergeant Prescott retrieved the summons from Ms. Matsuzaka that Officer Hinkle had issued which he admitted he destroyed later that evening. Sergeant Prescott issued Ms. Matsuzaka an infraction for Failure to Obey an Officer's Signal and informed her that he would be conducting an investigation into the incident. The infraction issued by Sergeant Prescott was later "quashed".

Officer Hinkle went to the Hospital and was diagnosed as having a contusion to his left hand and told to treat with ice for the two days following the date of the incident.

V. **PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 1)**

ARTICLE I

RECOGNITION

¶19 Section 3. The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without discrimination because of age, sex, marital status, race, color, creed, national origin, ethnicity, religion, sexual orientation, political affiliation or union membership.

ARTICLE XVI

GRIEVANCE PROCEDURE

¶229 Section 6. No employee shall be disciplined except for just cause. .

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POLICE DUTY MANUAL

CHAPTER 103 – CODE OF CONDUCT

ARTICLE 3 – PERFORMANCE OF DUTIES

- **Section 3.14 – RESPECT:** Members shall extend at all times proper courtesy and respect toward all members and civilian employees of the Department and toward other civilians.
- **Section 3.9 – TRUTHFULNESS:** Members shall speak the truth at all times and under all circumstances, legitimate investigative techniques notwithstanding. In cases where officers are not allowed by Department Guidelines to divulge facts within their knowledge, they shall decline to speak on the subject.

Members will always be honest and forthright in their answers and shall not omit information with intent to mislead or undermine an investigation.

Article 4 – STANDARDS OF CONDUCT

- **Section 4.1 – CONDUCT UNBECOMING AN OFFICER:**

Members shall conduct themselves at all times, both on and off duty, in a manner that reflects most favorably on the Department. The following shall constitute Conduct Unbecoming an Officer:

- Any violation of the published orders, directives, memoranda, or any lawful order
- Any act which tends to undermine the good order, efficiency, and discipline of the Department
- Any act which reflects discredit upon the Department or any member thereof even though such conduct is not specifically set forth in these guidelines.

Such conduct shall be cause for disciplinary action if found to occur either willfully or recklessly or through negligence, incompetence, or cowardice.

- **Section 4.13 – FEIGNED ILLNESS:** No member shall feign illness or injury, falsely report or cause to report themselves ill or injured. No member shall deceive or attempt to deceive any official of the Department or City as to the condition of one's health or fitness for duty.

Members will always be honest and forthright in their answers and shall not omit information with intent to mislead or undermine an investigation.

- **Section 4.17 – FALSIFYING RECORDS:** No member shall knowingly, willingly, or negligently enter or cause to be entered any inaccurate, false, or improper information upon any official report or record.
- **Section 4.35 – INSUBORDINATION:** No member shall willfully disobey any order that is lawfully issued by a superior officer or commit any act that is disrespectful, mutinous, or insolent. Members shall not use abusive language or a disrespectful tone of voice when addressing a superior officer.

Chapter 406 – PATROL CAMERAS

Article 1 – Administration and Procedures

- **Section 1.1 – Body Worn Camera (BWC):** Members of the Department should not have his/her BWC consistently activated during their tour of duty. BWCs shall be worn according to this policy.
 1. Police officers shall wear his/her BWC in a manner that such camera is on the outermost garment, without any obstructions, and shall position the BWC above the midline of his/her torso when in use.
 2. Police officers shall activate his/her BWC at the inception of the interaction with the public in a law enforcement capacity. A. For purposes of this policy, “interacting with the public in a law enforcement capacity” means that a police officer is in personal contact with one or more members of the public, the purpose of which is to conduct a self-initiated investigation into or to respond to a third-party complaint involving, the possible commission of any offense, violation or infraction. B. In addition, police officers shall record the following:
 - Motor Vehicle Stops;
 - Motorist’s assists;
 - Taking of field statements from suspects, witnesses, and victims;
 - Conducting filed interviews with suspects, witnesses, and victims.

VI. DISCUSSION

Not unlike most other collective bargaining agreements, this collective bargaining agreement does not define “just cause”. Just cause is typically defined as: “A reason that is legally acceptable or sufficient” and whether the employer was guided by reasonableness and fairness. In its simplest form, there must be satisfactory proof that the employee engaged in the act upon which the discipline is based. “Just cause” is one which is not for any arbitrary, capricious, or illegal reasons and which is one based on facts. For example, if the proof is insufficient that the employee committed a violation, discipline cannot stand. If the evidence is sufficient to demonstrate that the employee is “guilty” of the conduct alleged, then the next question, generally speaking, relates to whether the penalty is for just cause. The Connecticut Supreme Court has generally articulated and adopted the standard that the employer must have a reasonable ground for discipline which is also fair.

The Panel first considered whether the Grievant violated the Rules of Conduct for which he was charged.

Section 3.14 – RESPECT: The Panel unanimously finds that the Grievant violated this Rule. Even a cursory review of the BWC of the Grievant and the other officers demonstrates that Officer Hinkle was not courteous nor respectful of Ms. Matsuzaka. He yelled at her, used foul language and was generally intimidating. Although at the time of the incident Officer Hinkle may have believed that Ms. Matsuzaka hit him with her car and he was understandably upset, his reaction was excessive and was both discourteous and disrespectful.

Section 3.9 – TRUTHFULNESS: The Panel unanimously finds that the Grievant did not violate this Rule. The Grievant initially believed that Ms. Matsuzaka hit him with her car. He repeatedly told other officers that Ms. Matsuzaka “tried to run me over”. Officer Hinkle was clearly upset and Sergeant Prescott told him to calm down indicating that his level of distress was readily apparent. Even Ms. Matsuzaka acknowledged that he was likely scared. Once Officer Hinkle reviewed his BWC, he realized that he hit the mirror of Ms. Matsuzaka’s car. His reasonable belief at the time that Ms. Matsuzaka hit him does not equal a lack of honesty.

Section 4.1 – CONDUCT UNBECOMING AN OFFICER: The Panel unanimously finds that the Grievant violated this Rule. Officer Hinkle’s interactions with Ms. Matsuzaka did not reflect favorably on the Department. His yelling obscenities and his interactions with Ms. Matsuzaka were inappropriate and was conduct unbecoming an officer.

Section 4.13 – FEIGNED ILLNESS: The Panel unanimously finds that the Grievant did not violate this Rule. The Grievant’s hand was injured and it was treated at the Hospital. The medical report filled out by Hospital personnel verified that Officer Hinkle sustained a contusion to his hand. Therefore, no illness or injury was feigned.

Section 4.17 – FALSIFYING RECORDS: The Panel unanimously finds that the Grievant did not violate this Rule. Once the Grievant reviewed the BWC, he realized that he hit Ms. Matsuzaka’s car and not that she hit him with her car. His written report indicates this fact. The medical information he reported to Hospital personnel was done before he reviewed the BWC and what he honestly believed at the time.

Section 4.35 – INSUBORDINATION: Sergeant Prescott indicated that Ms. Matsuzaka told him that that Officer Hinkle hit her vehicle. In Sergeant Prescott's Administrative Statement, he thereafter told Officer Hinkle that the investigation was now Sergeant Prescott's. Officer Hinkle testified that Sergeant Prescott told him that he would be taking over the investigation after Officer Hinkle gave the summons to Ms. Matsuzaka. Both Sergeant Prescott and Officer Hinkle had muted their BWCs so there is no record of their conversation. Following their conversations, Officer Hinkle went over to Officer Varrone and asked Officer Varrone to write a summons for Ms. Matsuzaka. Officer Hinkle then signed and presented the summons to Ms. Matsuzaka.

Insubordination is defined as:

A willful disregard of a supervisor's instructions, especially behavior that gives the City cause to terminate a worker's employment.

An act of disobedience to proper authority; especially a refusal to obey an order that a superior officer is authorized to give. *Black's Law Dictionary*

Generally, there are three elements which must be proven in order for a claim of insubordination to be satisfied:

1. There is a clear reasonable and lawful order;
2. The order is given by a person in authority; and
3. The order is intentionally disobeyed by the employee.

The Panel unanimously finds that Officer Hinkle was not insubordinate when he issued the summons to Ms. Matsuzaka.

Chapter 406 – PATROL CAMERAS

Officer Hinkle generally had his BWC activated for most of his interactions with Ms. Matsuzaka however there are times when it is not on. Therefore, the Panel finds that he violated the BWC Policy. The Panel would note that Officer Hinkle was not the only police officer who did not comply with the BWC Policy on the day of the incident. Specifically, Sergeant Prescott admitted he should have activated his BWC to capture his claimed instruction/order to Officer Hinkle that he was taking over the investigation. The information regarding when that instruction/order occurred could have resolved the claim of Insubordination.

Many arbitrators utilize the Seven Elements of Just Cause first outlined by Arbitrator Carol Daugherty in *Enterprise Wire Co.*, 46 LA 359 (1966). Both the City and the Union utilized the Daugherty elements in their Briefs. While the Panel is not constrained by the Daugherty test, the principal elements will be addressed here.

Daugherty Elements of Just Cause

1. **Was the Worker Given Advance Warning of the Probable Consequences of his Conduct?** In making a determination whether or not this test has been satisfied, the Panel considered the collective bargaining agreement, the Police Duty Manual and Officer Hinkle's disciplinary record. Officer Hinkle knew or should have known that yelling and swearing at Ms. Matsuzaka was inappropriate and against the Rules of the Waterbury Police Department. This is clear from Officer Hinkle's offer to apologize to Ms. Matsuzaka.

2. **Was the Controlling Rule, Order or Standard Reasonably Related to Efficient and Safe Operations?** It is axiomatic that police officers should obey the

laws that they are charged with enforcing. The citizenry deserves a police force whose officers act in a professional manner in order to garner its respect and trust.

3. **Was the Alleged violation of the Rule or Order fully investigated Before Discipline?** A full investigation was conducted by the City. The statements of the officers were reviewed, as were the BWCs. The Investigator interviewed all of the involved parties.

4. **Was the investigation fair and objective?** No valid claim was made that the investigation was unfair or biased.

5. **Did the investigation uncover substantial proof of guilt ?** Yes for some of the charged offenses, but not all.

6. **Was the employer's treatment even-handed and non-discriminatory?** The Union presented information on prior claims that the Grievant had filed against the City. The Union had filed charges under MERA and Workers' Compensation regarding the assignment of Officer Hinkle in an unarmed capacity with direct public conduct. After six (6) weeks, Officer Hinkle was removed from the assignment and the charges were withdrawn. Apparently, there is also a pending charge before the SBLR regarding the nonpayment of wages and benefits by the City to Officer Hinkle.

Further, the Union claims that the summons issued by Officer Hinkle and the one issued by Sergeant Prescott were improperly destroyed and no record of either was retained. The Union claims this is additional evidence of animus by the City, the Police Department and/or Chief Spagnola against the Grievant.

Officer Hinkle served two tours in Iraq and stated at the hearing that he had flashbacks to that time. The City claimed that it was unaware that Officer Hinkle was being treated at the Veteran's Administration for certain mental health conditions related to his service in the military. While Officer Hinkle may not have claimed a disability, management of the Waterbury Police Department was aware that Officer Hinkle was undergoing treatment. There was no consideration by the City of the possible impact of Officer Hinkle's mental health condition on his interactions with Ms. Matsuzaka.

Other than this incident, Officer Hinkle had an unblemished record of service with the Waterbury Police Department

7. Was the disciplinary action reasonable related to the worker's record and the gravity of the offense? Officer Hinkle's interaction with Ms. Matsuzaka was wholly inappropriate. While he may have honestly believed that she "tried to run" him over and that her car hit him, neither was true.

VII. AWARD

For the reasons set forth herein, a majority of the Panel finds that the City of Waterbury did not have just cause when it terminated Officer Hinkle. However, the Panel is concerned about Officer Hinkle's ability to continue to work as a police officer, especially for the City of Waterbury. Additionally, Officer Hinkle clearly indicated in his sworn testimony that he did not want to return as an employee of the City of Waterbury.

A majority of the Panel finds that the City did have just cause to suspend Officer Hinkle one hundred and twenty (120) days. The Management Arbitrator finds that the City had just cause to terminate Officer Hinkle.

Officer Hinkle shall be reinstated contingent on the following:

1. Officer Hinkle shall be evaluated by a psychiatrist of the City's choice to determine if he is fit for duty as a police officer. If the psychiatrist determines that Officer Hinkle is not fit for duty as a police officer, he shall resign effective as of the date of his termination. If the psychiatrist determines that Officer Hinkle is fit for duty as a police officer, Officer Hinkle's termination shall be reduced to a one hundred and twenty (120) day suspension. In such event, Officer Hinkle shall be reinstated with full back pay following the one hundred and twenty (120) day unpaid suspension less appropriate reduction for outside earnings.

2. If reinstated, Officer Hinkle shall attend EAP provided by the City. He must comply with all of the recommendations of EAP. Officer Hinkle is required to provide a fully executed release to the EAP that all information regarding his compliance and progress with the Program shall be provided to the City. In the event Officer Hinkle fails to provide the release and/or fails to comply with the recommendations of EAP, he shall be immediately terminated without the right to appeal the decision to Arbitration.

3. In the event Officer Hinkle has another similar interaction with the public, he shall be subject to discipline up to and including discharge. Any such discipline shall only be appealable up to Step Three of the Grievance Procedure and not subject to Arbitration.

BY THE ARBITRATION PANEL:

/s/ Linda J. Yelmini

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ Michael C. Culhane, Sr.

Michael C. Culhane, Sr. (Management Arbitrator)
Dissenting

/s/ Donald Sevas

Donald Sevas (Labor Arbitrator)