

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

In the Matter of	: CASE NO. 2023-A-0068
	: HEARING DATE: JULY 5, 2023
TOWN OF WATERTOWN	:
	: DATE OF AWARD: January 19, 2024
AND	:
	: Location of Hearing: State Board of
WATERTOWN POLICE UNION	: Mediation and Arbitration
FOP LOCAL 038	: 38 Wolcott Hill Road
	: Wethersfield, CT 06109
	: (REMOTE ZOOM)

APPEARANCES:

Joseph Summa, Esquire, Esquire
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228 Meadow Street, Suite 303
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2234 Silas Deane Highway, Suite 2
Rocky Hill, CT 06067

For Employer

For Union

Gerald T. Weiner, Esquire – Chairman
Michael C. Culhane, Sr.– Employer Panel Member
Peter Carozza – Labor Panel Member

ISSUE

Was the written warning given to David Marinaro on August 29, 2022 for just cause?

If not, what shall be the remedy?

FACTS

This proceeding is before the SBMA Panel for arbitration as a result of a grievance (Jt. Ex. 3) filed by the Watertown Police Union, FOP, Local 038 (“Union”) against the Town of Watertown (“Town”). The grievance contends that on or about August 29, 2022, the Town issued a written warning against Officer Michael Marinaro (“Marinaro”) without just cause in violation of Article XIII, Section 1 of the Collective Bargaining Agreement (“CBA”).

A remote hearing via zoom was held by the Panel on July 5, 2023. Both parties appeared, were represented by counsel, presented documentary and testimonial evidence, examined and cross-examined witnesses, and made argument in support of their respective positions.

MyHoopty Towing Company (“MyHoopty”) is one of three towing companies in the Town. At one time MyHoopty was on the preferred towing list for the Town but was removed several times because of civilian complaints. Myhoopty and its owner, Michael Festa (“Festa”) have a lawsuit pending against the Town for harassment and discriminatory treatment as well as other claims.

On February 21, 2022, a dispute involving a car owner at MyHoopty place of business occurred. Marinaro was dispatched to address the issues. The situation was resolved by Marinaro and other officers. On February 25, 2022, Festa filed a civilian complaint against Marinaro alleging mistreatment, bias, intimidation, and inappropriate threatening behavior during the February 21 incident.. The Department initiated an internal investigation into the complaint filed by Festa.

On March 25, 2022 Marinaro claims to have randomly pulled up behind Festa who was driving a MyHoopty tow truck. Festa was towing a car and stopped on Buckingham Street in Watertown.

The Festa tow truck was not speeding or doing anything improper. The vehicle being towed had an expired license plate that was discovered by Marinaro after he did a check on the plate. Marinaro did not run a check of the plate on the tow truck itself.

Marinaro followed the tow truck for a half mile or so and pulled it over. Marinaro took Festa's license and insurance information, returned to his cruiser and contacted his supervisor, Sargeant Skowronski, to advise of the situation. Due to the pending complaint filed by Festa against Marinaro, the Sergeant directed Marinaro to return to headquarters and the matter was turned over to Officer Curto who arrived as backup. Curto was directed by Skowronski to issue a written warning to Festa and had him put his dealer plate on the towed car as required by law.

On March 28, 2022 Festa filed a second complaint against Marinaro alleging gross misconduct and malfeasance by Marinaro for the March 25 incident. Festa later amended his complaint to allege a violation of Watertown Police Department Policy 1.9 that states in essence there shall be no retaliation in any way for any member of the agency directed at any individual who makes a complaint. A second internal investigation was started regarding this new complaint against Marinaro filed by Festa.

The first complaint, after investigation, was declared unfounded. The second complaint concerning the March 25 tow truck pullover resulted in a written warning to Marinaro for conduct unbecoming. The Union filed a grievance with regard to this written warning discipline.

TOWN POSITION

The Town argues that the standards for just cause was clearly met and the Town contends that Marinaro violated at least two departmental policies, rules or regulations.

- A. The Watertown Police Department Policy 1.9, Section 1 forbids any retaliation against an individual who makes a complaint. Marinaro, according to the Town, violated this Section.
- B. Marinaro violated Rule/Regulation #41 – unbecoming conduct which refers to the improper and unacceptable behavior of an officer or employee of the Town’s Police Department. Employees shall not conduct themselves at any time in a manner that would be detrimental to the Department’s image as the law enforcement agency. An act of conduct unbecoming includes conduct, whether specifically prohibited or not, which tends to discredit the integrity, or which tends to bring disrepute to the individual, the Department or its employees.

The Town further argues that the rules are reasonably related to business efficiency and performance standards that an employer might expect from an employee; a thorough investigation was done before any decision was made on discipline (Jt. Ex. 10); a fair and objective investigation was conducted; substantial

evidence of employee's guilt was obtained; rules were applied fairly and without discrimination; and the discipline was reasonably related to the seriousness of the employee's offense and past record.

UNION POSITION

The Union asserts that Marinaro called his supervisor once he identified Festa as the operator of the tow truck because of the complaint filed by Festa on February 22, 2022 about a February 21, 2022 interaction. The Union disagrees with Chief Bernegger's finding that Marinaro's decision to pull over the MyHoopty tow truck while he was the subject of a complaint filed by the owner at MyHoopty appeared to be retaliatory in nature and a violation of Rules/Regulations re unbecoming conduct.

The Union further disagrees with the Chief's conclusion that Marinaro acted with retaliatory intent due to the lack of tickets issued by the Police Department in violation of Section 14-12(a) of the Connecticut General Statutes which provides that no motor vehicle can be operated, towed, or parked on any highway unless registered with the Commissioner. The Union argues that this conclusion by the Chief was invalid unless the Chief knew how often the issue arises. Until the Chief can show that tow trucks violate Section 14-12(a) constantly and tickets are never issued, then this point has no merit (Union Brief, pg. 4), according to the Union

The Union argues that the use of the word "optics" and the language "Marinaro's conduct appears to be retaliatory" supports the Town's intent to position itself as favorably as possible for the litigation brought by Festa (emphasis added). The Union also contends the Town's rules and regulations do not

adequately convey what actions officers can take when interacting with individuals who file complaints and lawsuits against the Town. The Union goes on to argue that this would be impossible as those Rules/Regulations would send an unacceptable message to the public. The Union argues that officers are left to guess when the “optics” are bad, because if they guess wrong, then they receive discipline.

RELEVANT CONTRACT LANGUAGE

ARTICLE XXII-Management Rights

Except as otherwise limited by an expressed provision of this Agreement, the Town reserves and retains, whether exercised or not, all the lawful and customary rights, powers, and prerogatives of public management. Such rights include but are not limited to establishing standards of productivity and performance of its employees; determining the mission of an agency and the methods and means necessary to fulfill that mission, the determination of the content of job classification; the appointment, promotion, assignment, direction, and transfer of personnel; the suspension, demotion, discharge, or any other appropriate action against its employees; the relief from duty of its employees because of lack of work or for other legitimate reasons; the establishment of reasonable work rules, and the taking of all necessary actions to carry out its mission in emergencies. If in the sole discretion of the Town Manager it is determined that extreme civil emergency situations exist, including, but not limited to riot, civil disorders, tornado conditions, floods or similar catastrophes, provisions of this agreement may be suspended by the Town Manager during the time of a declared emergency, provided that wage rates and monetary fringe benefits shall not be suspended. In the event of an emergency, the Town Manager shall advise the President and Steward of the Watertown Police Union/FRATERNAL ORDER OF POLICE, LODGE 038, and as soon as is practical, shall forward written notice to said individuals.

ARTICLE XIII – Disciplinary Procedure

SECTION 1. No employee covered by this Agreement shall be discharged or disciplined except for just cause, and the Town shall be required to prove that just cause existed in those instances.

DISCUSSION

The incident which is the subject of the grievance occurred 25 days after Marinaro was notified that Festa filed a civilian complaint against him and the complaint was the subject of an Internal Affairs investigation.

Marinaro decided to stop the MyHoopty tow truck which had the company's signage on it and was towing a small 2011 Hyundai Sonata. The tow truck was stopped at a traffic light and had not been speeding or engaged in any illegal or improper conduct. The Hyundai had a license plate. Marinaro stated he did not run a license check of the tow truck but did run a check on the license plate of the vehicle being towed (Hyundai) and it came up being expired.

Marinaro testified that he did not realize the tow truck was a MyHoopty truck or that Festa was driving until he stopped the vehicle and approached seeking to see the registration and insurance information from the driver. Marinaro did testify that he was aware that the truck could have been a MyHoopty vehicle as there were only three tow truck companies in Watertown. The Panel concludes that Marinaro was indeed aware that the vehicle was a MyHoopty vehicle at the time he decided to pull the vehicle over for an investigative check.

Moreover, the Panel further concludes that Marinaro's conduct justifiably resulted in discipline since Marinaro had never before pulled over a tow truck during his entire career with the Watertown Police Department for this type of violation and that no Watertown Police Officer in history ever stopped a tow truck for similar violations.

The Town reasonably concluded that Marinaro violated Regulation #41, unbecoming conduct and the discipline of a written warning was with just cause. The Chief appropriately considered Marinaro's prior good officer clean record and issued discipline for this less serious violation. The Panel is persuaded that the Town proved it had just cause to issue the discipline in this matter

After a review of the documentary and testimonial evidence and by a preponderance of the evidence, the written warning issued to Marinaro was for just cause.

DECISION

The grievance is denied.

/s/ Gerald T. Weiner
Gerald T. Weiner
Chairperson

/s/ Michael C. Culhane, Sr
Michael C. Culhane, Sr.
Employer Panel Member

/s/ Peter Carozza DISSENTS
Peter Carozza
Labor Panel Member