

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

IN THE MATTER OF :
TOWN OF MADISON :
and : Case 2023-A-0049
AFSCME COUNCIL 4 LOCAL 1836 :

Hearing Date(s): January 20, 2023; January 26, 2023; and March 1, 2023
Hearing Location: State Board of Mediation and Arbitration
Date of Award: June 13, 2023

APPEARANCES:

Attorney Gabriel Jiran
Shipman & Goodwin LLP
One Constitution Plaza
Hartford, CT 06103
For Management

Attorney Stephen J. Fitzgerald
Garrison, Levin-Epstein, Fitzgerald &
Pirotti PC
405 Orange Street
New Haven, CT 06511
For Union

ARBITRATION AWARD

This arbitration arises from a dispute between the Town of Madison (“Employer” or “Town”) and AFSCME Council 4 Local 1836 (“Union”) regarding termination of the Grievant, Natasha Pucillo. Hearings were held on January 20, 2023¹; January 26; and March 1 at the Connecticut State Board of Mediation and Arbitration.

The parties jointly offered three exhibits which were marked as full exhibits and stipulated to the below Issues.

On behalf of the Employer, Attorney Jiran made an opening statement, offered five exhibits which were marked as full exhibits absent objection, and presented three witnesses who were questioned and cross-examined under oath: Attorney Giovanna Weller; Chief Jack Drumm; and Edward Dowling, Chair of the Board of Police Commissioners (“BOPC Chair”).

On behalf of the Union, Attorney Fitzgerald made an opening statement, offered one exhibit which was marked as a full exhibit after an objection was overruled, and presented one witness who was questioned and cross-examined under oath: Natasha Pucillo (“Grievant”).

On rebuttal, Employer called an additional witness, Captain Douglas Harkins, who was questioned and cross-examined under oath.

The parties waived oral closing arguments in favor of written briefs which were submitted simultaneously on April 26. Reply briefs were submitted simultaneously on May 10.

ISSUES

Did the Town of Madison have just cause to discipline the Grievant, Natasha Pucillo?
If not, what shall be the remedy consistent with the Collective Bargaining Agreement?

¹ All dates are 2023 unless otherwise indicated.

RELEVANT FACTS

1. The Employer and Union entered into a Collective Bargaining Agreement (“CBA”) for the period July 1, 2020 to June 30, 2025. Pursuant to CBA Article 14 Section 10 “[n]o employee shall be suspended, discharged, demoted or otherwise disciplined except for just cause.” (Exh. E-1 Tab 30)²
2. Grievant began working for the Town’s Police Department (“MPD”) as a patrol officer in August 2015, after thirteen combined years at two other municipal police departments. She worked the evening shift from 3:00pm to midnight. Grievant is both a coworker and friend of MPD Officer Foito and MPD Sargeant Lauria, who was Grievant’s immediate supervisor. (Exh. E-1 Rpt, E-1 Tab 49; Testimony of Grievant, Chief Drumm)
3. Officer Strickland began working for MPD as a patrol officer in December 2015, after twenty years at another municipal police department. (Exh. E-1 Rpt)
4. Both Grievant and Office Strickland use the Strava app to track their athletic activities. Grievant’s Strava account is private so that no one can view it. Officer Strickland’s Strava account is set as public for anyone to view. (Testimony of Grievant)
5. On June 5, 2021, Officer Strickland participated in a bike race that Captain Race also attended and posted photos and information about the race on his Facebook page. Officer Strickland was scheduled to work the midnight shift starting at 11:00pm on the night of the day of the bike race. He called in sick for that shift, which had to be covered by other officers who were ordered in. (E-1 Tabs 3, 4, 5, 6, 7, 18, 19)
6. Grievant is not Facebook friends with Officer Strickland and did not have access to his Facebook posts. Captain Race, Chief Drumm, and Officer Foito’s wife were Facebook friends with Officer Strickland. (Exh. U-A, E-1 Rpt; Testimony of Grievant, Chief Drumm)
7. Officer Foito’s wife sent Grievant a screenshot of Officer Strickland’s Facebook post about the bike race. When Grievant learned that Officer Strickland called in sick after the bike race, she looked at his public Strava account and then looked at the posted department schedule to identify days that Officer Strickland called in sick on days that he had a bike race or long training bike ride. (Testimony of Grievant)
8. Grievant believed that Officer Strickland’s use of sick leave was a topic of conversation and concern to fellow officers and that it resulted in officers getting called in or carried over to cover his shift and negatively affected the department and morale. (Testimony of Grievant)
9. Grievant notified Sargeant Lauria, her supervisor, that during the current three-month bid period, Officer Strickland called in sick three times on days when he had a bike race or long training ride. Sargeant Lauria asked Grievant to provide her with copies of the information so she could take it to her supervisor. (Testimony of Grievant)
10. Sargeant Lauria reported the findings to her superior. After an audit, Lieutenant Mulhern determined and communicated to Officer Strickland that although the optics of his activities as portrayed on social media in relation to his use of sick time is poor, there was no violation of department policy. (Exh. E-1 Rpt, E-1 Tabs 5, 7, 8, 9, 14)
11. Officer Strickland was upset about the accusations and, on June 15, 2021, posted comments on his Facebook page addressing the person(s) whose actions initiated the sick leave audit. He wrote that he was “under somewhat of a ‘gag-order’ but wanted to address this individual or individuals misfits!!!” This first post, which he described as a rant, ended with the statement that he was “willing to take an ‘L’; are you PUNK ASS????”

² Joint exhibits are identified as “J-#”; Union exhibits as “U-#; and Employer exhibits as “E-#”. Exhibit E-1 includes a 29-page report identified as “E-1 Rpt” and 88 tabbed documents identified as “E-1 Tab #”.

- #fukupissuesinurbakyrd.” The Weller report states that he had difficulty explaining the exact meaning behind it but that it meant he “would do what he needed to do to protect his family” which could be sitting and talking with the person or being disciplined. Later the same day, Officer Strickland made a second Facebook post which he also described as a rant. (Exh. E-1 Rpt; E-1 Tabs 15, 16).
12. On June 16, 2021, Chief Drumm initiated an Internal Affairs Investigation (“IA 21-02”) based on Officer Strickland’s complaint that he was being targeted relative to his sick time usage. Captain Race was assigned to conduct the investigation. (Exh. E-1 Tab 3, 64; Testimony of Chief Drumm)
 13. On June 16, 2021, Officer Foito told Grievant to be careful because Officer Strickland posted threatening posts about her on Facebook. Officer Foito told Grievant that the Facebook comments said that Officer Strickland was willing to get suspended, take a hit, and/or be fired to get retribution for the complaint leading to the sick leave audit. Grievant did not personally see the Facebook post and relied on Officer Foito’s representation of it. Information that Grievant received from Officer Foito and other MPD officers regarding alleged threats made Grievant nervous, uneasy, and concerned. (Exh. E-1; Testimony of Grievant)
 14. Officer Strickland removed the first two Facebook posts and made a third post thanking people for their support and ending with “Yes, I know who you are x3 [two emojis] #urbakyrd.” (Exh. E-1 Rpt; E-1 Tabs 17, 24)
 15. Grievant spoke to Sargeant Lauria about the alleged threat. Sargeant Lauria told Grievant that she spoke to Lieutenant Mulhern about the threat, that he was aware of and/or saw the posts, and that he made Officer Strickland remove the posts. This led Grievant to believe that MPD was investigating the situation. (Testimony of Grievant)
 16. As part of his investigation in IA 21-02, Captain Race interviewed Grievant on August 18, 2021. Grievant became upset and physically shook and expressed concern to Captain Race when she learned from him that MPD was not investigating the alleged threatening Facebook posts. Grievant decided to report the alleged threats to the Town’s Human Resource department (“HR”) which was outside of the police department. (Exh. E-1, E-1 Tab 3; Testimony of Grievant)
 17. Grievant told Sargeant Lauria that she was going to meet with HR and Sargeant Lauria said that she wanted to go with Grievant. On August 20, 2021, Grievant and Sargeant Lauria went to HR where they met with HR Manager Paula Carabetta. (Exh. E-1 Tabs 22, 23, 31; Testimony of Grievant)
 18. At the time of the meeting with HR, Grievant had not seen Officer Strickland’s first or second Facebook posts related to his response to the sick leave audit. She had seen the third post which ended with “Yes, I know who you are x3.” Grievant relied on the information she received from fellow officers as to the content of the posts that were identified to her as being threatening. (Testimony of Grievant, Attorney Weller)
 19. On August 20, 2021, Internal Affairs Investigation IA 21-05 was initiated to investigate Grievant and Sargeant Lauria’s HR complaint. Officer Strickland was placed on paid administrative leave from August 20, 2021 to November 15, 2021. (Exh. E-1 Rpt, E-1 Tabs 36, 42, 61, 63, Exh. U-A)
 20. On September 28, 2021, Captain Race interviewed Grievant as part of the investigation in IA 21-05. At that interview, Grievant first saw Officer Strickland’s first two Facebook posts and Ms. Carabetta’s notes of the August 20, 2021 HR meeting. During the recorded interview,

- Grievant told Captain Race that Ms. Carabetta's notes were not accurate. He stated that he understood that there were errors and that he wouldn't hold her accountable for it. Grievant also told Captain Race that the content of the Facebook posts shown to her was not what was relayed to her by fellow officers and that she was told something completely different. She questioned "why would someone make us believe that (the threat) if it didn't happen ... something's not right." (Exh. U-A; Testimony of Grievant)
21. On October 20, 2021, IA 21-02 concluded with Grievant receiving a written warning for Conduct Unbecoming an Officer for her "unauthorized investigation" into Officer Strickland's use of sick leave. Other officers who also "discussed, collected or forwarded information about Officer Strickland's sick time usage, personal activities, and/or social media posts" were not found to have violated department policy. (Exh. E-1 Rpt, E-1 Tabs 20, 37)
 22. On October 27, 2021, Grievant received a written warning for violating MPD Standards of Conduct for General Knowledge and Performance and Neglect of Duty for not conducting a search that she was legally entitled to conduct for the Clinton Police Department on December 21, 2020. (Exh. E-1 Tab 21, E-2; Testimony of Grievant)
 23. Other than the two above-mentioned written warnings, Grievant received no other discipline in her tenure with MPD. (Exh. E-1; Testimony of Grievant)
 24. On October 27, 2021, Captain Race concluded IA 21-05 with a finding that Officer Strickland's posts did not contain threats of violence and that Grievant's complaint was "baseless and unfounded." He stated that "[d]ue to the extreme and severe nature of the allegations raised by the complainants which are determined to be baseless and unfounded, with the possibility of a violation of civil rights of another officer, the recommendation is that a separate investigation be initiated into the conduct of the complainants and witnesses into this matter." (Exh. E-1 Rpt, Exh. E-1 Tabs 22, 38, 43, 58; Testimony of Grievant)
 25. The Town retained Attorney Giovanna Weller to investigate whether there were any civil rights violations against Officer Strickland and to investigate the conduct of Grievant, Sargeant Lauria, and Officer Foito. (Exh. E-1 Rpt, E-1 Tab 27; Testimony of Attorney Weller)
 26. On May 30, 2022, Weller issued a report ("Weller Report") presenting "the factual findings and conclusions of the independent investigation requested by [Chief Drumm] following the conclusion of Internal Affairs Investigation 21-05." Attorney Weller had no role in making and did not make any disciplinary recommendations following her investigation. (Exh. E-1; Testimony of Weller)
 27. The Weller Report concluded that Officer Strickland's civil rights and free speech rights were not violated; that Grievant, Sargeant Lauria, and Officer Foito did not create a hostile work environment as defined under Title VII of the Civil Rights Act of 1964; and that the three subjects of the investigation violated MPD Standards of Conduct related to respect, civility, conduct unbecoming an officer, and criticism and malicious gossip. (Exh. E-1 Rpt; Testimony of Attorney Weller)
 28. Grievant was placed on paid administrative leave on June 2, 2022, pending the outcome of a Loudermill hearing. (Exh. E-3)
 29. Authority to terminate MPD employment rests with the Town Board of Police Commissioners ("BOPC"). Chief Drumm recommended that the BOPC terminate Grievant based on "the severity of the result and investigation" because he has "concerns as to where

this would continue to be based on the interactions with the officers.” (Testimony of Chief Drumm, BOPC Chair Dowling)

30. On September 2, 2022, Grievant was terminated based on information in the Weller Report. (Exh. J-2; Testimony of BOPC Chair Dowling)
31. On September 13, 2022, Grievant filed a grievance alleging that the Town “retaliated, unjustly and without cause terminated” her employment in violation of CBA Article 15 and MPD Policies 3.6.6 (Administration of Discipline) and 3.6.10 (Termination Procedures) and that she was already disciplined in the form of a written warning. The Town and Union agreed to waive Steps 1 and 2 of the grievance procedure and proceed directly to arbitration. (Exh. J-3)
32. On November 16, 2022, Chief Drumm submitted a request to Connecticut’s Police Officer Standards and Training Council (“POSTC”) to cancel, revoke or suspend Grievant’s certification as a police officer on the basis that Grievant was terminated for “malfeasance or other serious misconduct calling into question such person’s fitness to serve as a police officer” and that certification cancellation is submitted due to “conduct that undermines public confidence and providing false statements.” (Exh. E-3; Testimony of Chief Drumm),

RELEVANT CONTRACT LANGUAGE

Article 14 Section 10: No employee shall be suspended, discharged, demoted or otherwise disciplined except for just cause.

EMPLOYER POSITION

The Employer argues that Grievant subjected a fellow police officer to severe harassment by complaining that the officer threatened to shoot and kill her with no basis for the allegation; that Grievant did not express remorse for her complaint or withdraw the allegation; and that Grievant was terminated for creating a hostile work environment for the fellow officer. The Employer further argues that it also fired two other officers involved in creating a hostile work environment because integrity and honesty is imperative in the job, the accusations were without evidence, and it cannot continue to employ officers who engage in that level of conduct. The Employer asks this panel to uphold the termination and deny the grievance.

UNION POSITION

The Union argues that commonly recognized guidelines for just cause as identified in Enterprise Wire are not met in this case. Specifically, the Union claims that Grievant was not warned of the consequences of her conduct which was not prohibited by any Employer rule; that her actions were justified and appropriately measured and should have been protected under antiretaliation policies; that Employer standards were applied in an inconsistent and arbitrary manner; and that any nominal rule violation does not relate to the seriousness of the discipline of termination.

DISCUSSION

The Weller Report exonerated Grievant of allegations that she violated Officer Strickland’s civil rights, which was the stated basis of the investigation. The Employer’s investigation did not prove that Grievant was guilty of violating Officer Strickland’s civil rights or free speech rights or creating a hostile work environment as defined under Title VII of the Civil Rights Act of 1964.

Grievant and Officer Strickland have experienced workplace disagreements and filed complaints against one another multiple times over the last five years – some of the complaints were deemed to have merit and others to be unfounded. The Weller Report opines that “[i]t is difficult to see a path forward for the relationship between and among [Grievant and Officer Foito] on the one hand, and Officer Strickland on the other.” Attorney Weller testified that it is fair to say that both Grievant and Officer Strickland could have done more to improve the relationship.

It is this future relationship that is of concern to Chief Drumm and BOPC Chair Dowling. Chief Drumm testified that he recommended termination of Grievant based on the Weller Report and his concerns for what might happen in the future. BOPC Chair Dowling testified that he was concerned that the relationship between Grievant and Officer Strickland was always going to be an issue in the future and that was part of the reason for her termination. Terminating an employee in anticipation that she might violate a rule or policy in the future puts discipline before the conduct and deprives the employee of a fair and objective investigation and proof of an offense.

The Employer argues that alleging that Officer Strickland would “shoot and kill” Grievant was extreme and intolerable. Chief Drumm testified that “they accused [Officer Strickland] of a capital crime” as an example of escalation and targeting the officer.

The evidence does not support a finding that Grievant alleged that Officer Strickland threatened to shoot and kill her. The only reference to “shoot and kill” is in Ms. Carabetta’s notes. Grievant’s recorded interview with Captain Race in September 2021 and her testimony in this hearing were consistent that she relayed the allegations told to her by other sworn officers; that she questioned what Officer Strickland meant by “taking an ‘L’” or “taking a hit” in getting retribution; that she didn’t see a positive outcome if he was willing to be disciplined, suspended, or fired as a consequence; and that Ms. Carabetta’s notes contained errors.

Grievant did not personally see Officer Strickland’s Facebook posts. She is not friends with him on Facebook and he deleted the posts within a few days. Grievant relied on the statements of her fellow sworn police officers, whose words and actions she is expected to trust and honor in the course of her role as a police officer. She was then criticized for making a complaint based on hearsay and speculation and was subjected to an investigation of her conduct and relationship with Officer Strickland over the previous five years.

Attorney Weller testified that it is okay for someone to make a complaint in the employment context based on what someone else told them and that antiretaliation protections continue even if a complaint is determined to be unfounded. Grievant was penalized for reporting an alleged threat in accordance with MPD Standards of Conduct.

BOPC Chair Dowling testified that the BOPC focused heavily on the Weller Report and deliberated on all three individuals in one session and then voted individually to terminate. He testified there was not one individual complaint that gave rise to Grievant’s termination but that they looked at all the circumstances and conclusions woven throughout the Weller Report.

BOPC Chair Dowling testified that Grievant’s complaint about Officer Strickland being in the station where she needed to return her equipment at the end of her shift when she believed that by MPD orders he should be out on patrol and her concerns about whether his cellphone paired with her cruiser while he was on administrative leave were examples of a pattern of her

targeting him. Grievant's concerns about Officer Strickland's behavior between June 16, 2021 (when she was told of alleged threats) and September 2021 (when MPD investigated the alleged threats after her complaint to HR) were not unreasonable given what she was told by a fellow officer who she trusted and given that MPD did not investigate the threat allegations when first raised. Attorney Weller testified that she found Grievant's fear to be genuine, even if impacted by the condition of their relationship at that time.

Some of the complaints mentioned in the Weller Report were previously addressed. For example, Grievant was given a written warning for her role in the audit of Officer Strickland's sick time usage. That, and other previously investigated and addressed incidents, were included in the Weller Report as background information. Terminating Grievant based on complaints previously addressed and resolved by MPD subjects her to double jeopardy.

Based on the above, this Panel finds that the Town has not met their burden of proving that they had just cause to discipline Grievant.

AWARD

The Town of Madison did not have just cause to discipline the Grievant, Natasha Pucillo. The Grievant shall be reinstated and made whole for any lost wages (less any customary deductions and any earnings received during the period of termination), benefits, and seniority consistent with this Award.



Janis C. Jerman, Chair and Neutral



Kenneth Baldyga, Management Member



Paul Wallace, Labor Member