

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

ARBITRATION AWARD

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In the Matter Of:	:	Case No. 2024-A-0003
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CITY OF NEW HAVEN	:	DATE OF AWARD: January 19, 2024
	:	
And	:	Hearing Dates: October 3 and
	:	November 27, 2023
	:	
CACP, LOCAL ELM CITY	:	
	:	38 Wolcott Hill Road
Grievant: Oscar Diaz	:	Wethersfield, CT 06109

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APPEARANCES: Floyd J. Dugas, Attorney at Law (For the City)  
Jeffrey L Ment, Attorney at Law (For the Grievant)

**I. ISSUE: (Agreed to by the Parties)**

Whether there was just cause to terminate the grievant, Oscar Diaz?

If not, what shall the remedy be?

**II. BACKGROUND:**

The Connecticut Alliance of City Police, Local Elm City (hereinafter referred to as the “Union”) filed a grievance on behalf of its member Oscar Diaz (hereinafter referred to as “Officer Diaz” or the “Grievant”). The Union claimed that the City of New Haven (hereinafter referred to as the “City”) did not have just cause when it terminated Officer Diaz. The grievance was filed for arbitration with the Connecticut State Board of Mediation and Arbitration.

Arbitration hearings were held on October 3 and November 27 at which both parties were provided an opportunity to present evidence, provide testimony and cross examine witnesses.

The parties filed Briefs as agreed by December 22 which were received by the Panel. The Panel held an Executive Session on January 9 via ZOOM.

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

### **III. STATEMENT OF FACTS:**

The horrific outcome to Randy Cox (hereinafter referred to as “Mr. Cox”) that occurred as a result of the events on June 19, 2022 is beyond tragic. As a result of the injuries which Mr. Cox suffered, the City settled his civil lawsuit for the sum of \$45 million.

Officer Diaz was on duty on June 19, 2022. He was working on overtime as a Transportation Conveyance Driver. On that day, it was reported that there was a man threatening a female with a handgun. New Haven Police officers responded and found Mr. Cox in possession of a handgun following a search. Mr. Cox was arrested and transported to a police substation by arresting officers. Officer Diaz was dispatched to transport Mr. Cox from the substation to the Detention Center.

Upon arrival at the substation, Officer Diaz adjusted Mr. Cox’s handcuffs and placed him in the transport van. Mr. Cox was, at most times, noncompliant and almost immediately began kicking the van door. Officer Diaz did not instruct Mr. Cox to hold on to the straps which were affixed to the van walls. The van was not equipped with seatbelts. After the van door was closed, Mr. Cox began yelling, kicking the van door and rolling on the floor.

Officer Diaz began driving to the Detention Center. A vehicle (the driver was never found nor apprehended) did not stop at a stop sign on a crossing street causing Officer Diaz to slam on his brakes to avoid a collision. At the time of the near collision, Officer Diaz was driving at 36 MPH in a 25 MPH zone. The forced stop by Officer Diaz caused

Mr. Cox to careen forward and hit the front of the interior of the transport van. The near collision occurred at approximately 8:36 pm.

Mr. Cox began yelling that he was hurt and that he had broken his neck, which turned out to be true. There was no means of communication between the van and the area where prisoners were held in the van. There was some attempted conversation between Officer Diaz and Mr. Cox. At approximately 8:41 pm Officer Diaz pulled over and opened the van door. Mr. Cox was lying on the floor clearly in pain. Officer Diaz told Mr. Cox that he would call an ambulance and it would meet them at the Detention Center. Officer Diaz returned to the van and Officer Diaz put out a call over the New Haven Police Department radio system to dispatch which could be heard by all officers. Officer Diaz said he believed the prisoner had been injured and Officer Diaz asked dispatch to call for an ambulance to meet the transport van at the Detention Center. Officer Diaz arrived at the Detention Center at approximately 8:45 pm.

Once Officer Diaz arrived at the Detention Center, he told Sergeant Betsy Segui (hereinafter referred to as "Sgt. Segui") what had occurred during the transport. Officer Diaz explained that Mr. Cox had stated he had fallen, couldn't move and claimed that his neck was broken. Officer Diaz then said aloud "If he really fell, I would not even move him. I would not even move him until the ambulance gets here, just in case."

Sgt. Segui and the other officers believed Mr. Cox was an "intoxicated person." The officers tried to have Mr. Cox reposition himself in the van to which he responded numerous times that he could not move. Mr. Cox was dragged out of the van and could not stand. Officers Diaz and Pressley attempted to have Mr. Cox stand. Mr. Cox fell to

the ground and Officers Diaz and Pressley held him upright in a seated position. One of the officers retrieved a wheelchair and placed Mr. Cox in it. Mr. Cox could not remain seated in the wheelchair and slid out of it. Officer Pressley “pinned” Mr. Cox to the back of the wheelchair, and he was wheeled into the processing center. Mr. Cox continued to slide out of the wheelchair and, Sgt. Segui, Officer Pressley and the Grievant placed Mr. Cox back in the wheelchair. Officer Pressley and Officer Rivera removed Mr. Cox from the wheelchair and dragged him into the holding cell. The ambulance personnel from American Medical Response (hereinafter referred to as “AMR”) arrived at the Detention Center approximately twenty-five (25) minutes after first called. AMR personnel did not believe Mr. Cox was injured and was merely intoxicated. They directed officers to place Mr. Cox on the AMR stretcher. The officers obeyed the directive of the AMR personnel.

An Internal Affairs Investigation was performed by Rosa Melendez of the New Haven Police Department. The Connecticut State Police conducted a criminal investigation. On November 22, 2022, Officer Diaz was charged with Reckless Endangerment in the Second Degree and Cruelty to Persons. These charges are still pending.

The Internal Affairs Investigation was put on hold during the State Police Investigation. The Internal Affairs Investigation was restarted once the State Police Investigation concluded. The Internal Affairs Investigation was completed on March 6, 2023. Police Chief Karl Jacobsen recommended termination of Officer Diaz’ employment. The Board of Police Commissioners voted to terminate Officer Diaz’ employment effective June 28, 2023. At the time of his termination of employment, Officer Diaz had approximately fifteen (15) years of service and had no prior discipline.

**III. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT and GENERAL ORDERS**

**ARTICLE 3 – Grievance Procedure**

**Section 1 Purpose**

The purpose of the grievance procedure shall be to settle employee grievances on as low an administrative level as is possible and practicable, so as to insure efficiency and employee morale.

**Section 2 Definition**

A grievance shall be considered to be a dispute between an employee and/or the Union and the City, and/or any of its agents, servants, employees, officials, boards or commissions concerning the interpretation and application of any of the provisions of this Agreement, including the discharge, suspension, demotion or other discipline of an employee.

Probationary employees shall not have recourse to the Grievance Procedure arbitration provision under Article 3.

**Section 3 Procedure**

Any employee may use this grievance procedure with or without Union assistance. In the event that an employee is aggrieved, he or she shall, prior to initiating a grievance at STEP ONE, discuss the subject of his or her aggrievement with the head of his or her division and a Union representative within fifteen (15) days after the event giving rise to the grievance, or within fifteen (15) days of when the employee would reasonably have had knowledge of the occurrence giving rise to the grievance. No such discussion shall be conducted in the absence of a Union representative. No grievance settlement made as a result of an individually processed grievance shall contravene the provisions of this Agreement.

**Step One:** If the Union and/or any employee claims to be aggrieved by the action or inaction of the City and/or of its agents, servants, employees, officials, boards or commissions, either must submit the grievance in writing to the Chief of Police or his or her designee within fifteen (15) days after when the Union and/or employee would reasonably have had knowledge of the occurrence giving rise to the grievance, or within fifteen (15) days after the discussion with the Division Head, referred to above, whichever is later. The Chief or his or her designee shall set up a meeting between the parties within ten (10) days and shall answer the grievance, in writing, within ten (10) days after receipt of said grievance, setting forth his or her decision.

**Step Two:** If the employee and/or the Union are not satisfied with the decision at Step One of the grievance procedure, either must submit the grievance to the Director of Labor Relations or his or her designee within

ten (10) days after receipt of the decision rendered by the Chief of Police or his designee. The Director of Labor Relations, or his or her designee, shall render his or her decision in writing within ten (10) days after he or she has met and discussed the grievance with the Union. The grievance hearing at Step Two must be held within thirty (30) days of receipt of the grievance by the Director of Labor Relations.

Step Three: If the decision of the Director of Labor Relations is not satisfactory to the Union or the employee, the Union may submit the matter to the Connecticut Board of Mediation and Arbitration or the American Arbitration Association with a copy the City may, up to a limit of five (5) cases per calendar year, remove any case filed to the Connecticut State Board of Mediation and Arbitration to the American Arbitration Association. The decision of the Arbitrator(s) shall be final and binding with respect to the employee, the Union, the City, its agents, servants, employees, officials, and its boards and commissions.

#### Section 4

The Union and the City, on behalf of themselves and their agents, servants, employees, officials, boards and commissions, hereby empower and confer upon the Connecticut Board of Mediation and Arbitration and the American Arbitration Association Arbitrator the following powers and authority:

(a) To interpret and apply the provisions of this Agreement.

(b) In grievances involving the discharge or other discipline of an employee, to conduct a de novo hearing, in accordance with the rules of said Board or Association for the purpose of determining whether said discharge or discipline was for just cause, as required by Article 4 hereof, and, in connection therewith, to uphold, rescind, reverse or modify the discharge or discipline of any employee by the City or any of its agents, servants, employees, boards or commissions. Grievances concerning the discharge or other discipline of an employee are hereby acknowledged to be disputes concerning the interpretation and application of the provisions of this Agreement, including but not limited to Article 4 hereof, and to that end the parties agree that in such matters, said Arbitrator(s) is specifically empowered to receive evidence of alleged misconduct by the employee involved, as well as any defense, denial, or other evidence controverting or concerning such allegation, or relating thereto, or in mitigation thereof for the purpose of interpreting and applying the provisions of this Agreement, including but not limited to, the provisions of Article 4 hereof.

(c) To award the grievant and/or the Union a remedy if it sustains the grievance.

(d) The Arbitrator(s) jurisdiction to make an award shall be limited by the submission and confined to the interpretation and/or

application of the provisions of this Agreement. The Arbitrator(s) shall not have the jurisdiction to make an award which has the effect of amending, altering, enlarging or ignoring the provisions of this Agreement in effect at the time of the occurrence of the grievance being arbitrated, nor shall the Arbitrator(s) have jurisdiction to determine that the parties have amended or supplemented this Agreement, unless such amendment and/or supplemental agreement has, in fact, been made.

(e) In addition to the above, by mutual agreement, the parties may elect to use the expedited arbitration procedures, in accordance with the rules and regulations of the Connecticut Board of Mediation and Arbitration, for any grievances involving disciplinary actions of less than a five (5) day suspension without pay and/or any grievances concerning the interpretation and application of routine contractual issues and provisions.

#### Section 5

If any of the decisions to be rendered by the City or its agents in Steps 1-3 above are not rendered within the time limitations specified herein, said grievance shall pass to the next step.

#### Section 6

Time extensions beyond those stipulated in this grievance procedure may be arrived at by the written mutual agreement of the parties concerned.

#### Section 7

Either party shall have the right to employ a public stenographer or use a mechanical recording device at any step in this procedure.

#### Section 8

If a grievance is not submitted and/or appealed within the prescribed time limits herein above, said grievance shall be deemed settled.

### **ARTICLE 4 - Discharge And Discipline**

#### Section 1

No permanent employee shall be discharged, suspended, demoted or disciplined in any other manner except for just cause.

#### Section 2

A grievance concerning the discharge or other discipline of an employee shall be deemed to be a dispute over the interpretation and application of this Article and the Arbitrator(s) is specifically authorized to determine whether the facts of such a case constitute just cause.



### Section 3

The Chief shall have the power to suspend, without pay, any employee, provided, however, that no such suspension shall be continued for a period of more than fifteen (15) days without affirmative action of the Board of Police Commissioners, which action shall not be taken until after a hearing upon charges preferred in writing.

### Section 4

Discipline other than that described in Section 3 shall be awarded only by the Board of Police Commissioners after notice to the employee, a hearing and finding of just cause. At all such hearings, all witnesses shall be sworn and the employee shall have the right to representation of his or her choice, provided that the employee shall be solely responsible for the cost of such representation, unless the services of the Union attorney are utilized. Such hearings shall be closed to the public, including the press, unless the employee requests a public hearing. The employee and the Union shall be notified in writing of the decision rendered by said Arbitrator(s).

Employees (exclusive of the Officer charged) who are required to attend such hearings as witnesses when off duty shall be compensated for such appearance by receiving straight time pay for all hours while in attendance at the hearing.

### Section 5

Whenever an Internal Affairs Investigation and/or a Civilian Complaint is made against a member or group of members of the Department relating to his or her or their conduct as an Officer, or the manner in which such Officer discharges his or her duties and such complaint results in a hearing or inquiry, said member shall be entitled to be represented by the Union attorney, a Union representative or an attorney of his or her own choosing at his or her own expense.

### Section 6

Any grievance brought in connection with the actions of the Chief and/or Board of Police Commissioners concerning the disciplining of a Police Officer shall be immediately instituted in writing within fifteen (15) days with the Director of Labor Relations at Step Two of Article 3, Grievance Procedure.

### Section 7

(A) All verbal and written warnings and reprimands shall be removed from the employee's personnel file, in accordance with existing State law, after a period of one (1) year if there has been no similar reoccurrences of the infraction and the employee has a good work record. (There shall be no right to grieve verbal warnings, written warnings or reprimands unless they are used as the basis for further discipline.)

(B) All other disciplinary actions (i.e., suspensions) shall be removed from the employee's personnel file, in accordance with existing State law, after a period of three (3) years if there has been no reoccurrences of the infraction and the employee has a good work record.

(C) After the removal of an employee's disciplinary record, as prescribed above, the Union agrees to withdraw such discipline from any grievance and/or arbitration proceedings.

(D) Whenever any disciplinary and/or adverse information is placed in an employee's personnel file, said employee shall be immediately informed of such.

### **ARTICLE 18 - Management Rights**

Except where the right of the Employer to direct the work force is specifically relinquished, modified, or abridged by the terms of this Agreement or the State of Connecticut Municipal Employee Relations Act, the City shall have and retain the exclusive right to exercise all functions of management including, but not limited to, directing the activities of the Department, determining the levels of service and methods of operation and the introduction of new equipment, the right to hire, layoff, transfer and promote, to discharge and otherwise discipline employees for just cause, to determine work schedules and assign work.

### **GENERAL ORDER 1.03, RULES OF CONDUCT**

#### **1.03.05 PRINCIPLE ONE – LAW ABIDING**

Police officers shall conduct themselves, whether on duty or when applicable, in accordance with the Constitution of the United States, the Constitution of the State of Connecticut, and all applicable laws, ordinances and rules enacted or established by legal authority.

#### **RATIONALE**

Police officers conduct their duties pursuant to a grant of limited authority from the community. Therefore, officers may only act in accordance with the powers granted to them.

#### **RULES**

1.4 Police officers whether on or off duty, shall not knowingly commit any criminal offense under any laws of the United States or any state or local jurisdiction in which the officer is present, except where permitted in the performance of duty under proper authority.

### **1.03.06 PRINCIPLE TWO – INTEGRITY**

Police officers shall refrain from any conduct in an official capacity that detracts from the public's faith in the integrity of the criminal justice system.

#### **RATIONALE**

Community cooperation with the police is a product of its trust that officers will act honestly and with impartiality. The police officer, as the public's initial contact with the criminal justice system, must act in a manner that instills such trust.

#### **RULES**

2.5 Police officers learning of conduct or observing conduct which is in violation of any law or policy of this Department shall take necessary action and report the incident to the officer's immediate supervisor, who shall forward the information to the Chief of Police or designee. If the misconduct is committed by the officer's immediate supervisor, the officer shall report the incident to the next higher level or supervision.

### **1.03.08 PRINCIPLE FOUR – TRUSTWORTHY**

Police officers shall not whether on or off duty, exhibit any conduct which discredits themselves, or the Department, or otherwise impairs their ability, or that of other officers, or the Department to provide law enforcement services to the community.

#### **RATIONALE**

A police officer's ability to perform his/her duties is dependent upon the respect and confidence communities have for the officer and law enforcement officers in general. Police officers must conduct themselves (in) a manner consistent with integrity and trustworthiness expected (of) them by the public.

### **1.03.09 PRINCIPLE FIVE – COURTESY AND RESPECT**

Police officers shall treat all members of the public with courtesy and respect.

#### **RATIONALE**

Police officers are the most visible form of the community they represent. Therefore, police officers must act in a courteous and professional manner when interacting with the public and each other.

## **RULES**

5.1 Police officers shall exercise reasonable courtesy in their dealings with the public, fellow officers, superiors and subordinates, and non-sworn members of the Department.

### **1.03.13 SECTION TWO – RULES OF CONDUCT**

Police officers shall not commit any act or action constituting “Conduct Unbecoming an Officer.” Conduct unbecoming a police officer shall include conduct which indicates that the officer is unable or unfit to continue as a member of the Department or tends to impair the operation of the Department or its other members. Although it is by no means an exhaustive list, violations of the following rules of conduct shall be considered conduct unbecoming a police officer.

### **RULES OF CONDUCT**

16. No employee of the Department shall commit any act contrary to good order and discipline or constituting neglect of duty.

### **GENERAL ORDER 5.02 PRISONER TRANSPORTATION**

#### **5.02.03 PROCEDURE**

#### **SPECIAL TRANSPORT SITUATIONS**

- Physically injured or ill persons
  - Prisoners requiring immediate medical treatment will be evaluated by medical/ambulance personnel called to the scene. If deemed necessary by medical personnel, the prisoner will be transported to the hospital by ambulance. An officer will follow the ambulance to the hospital and guard the prisoner as he/she is further evaluated. If the prisoner is to be admitted to the hospital, a supervisor will be called to decide the next course of action. At the time the prisoner is released from the hospital, he/she will then be transported to the detention facility.

#### **CRITICAL INCIDENT PROTOCOL**

- In the event of a critical incident (i.e. serious injury or death in the van, motor vehicle accident), the transporting officer will notify his/her immediate supervisor.

## **GENERAL ORDER 4.09, CELLULAR PHONES**

### **4.09.04 PROCEDURES**

- All employees issued a cell phone must agree to abide by all related policies, procedures, laws, and regulations, and be responsible for safeguarding the equipment and controlling its use.
- Employees shall use the cellular telephones for communication, information exchange, photographs in performance of duties, research activities related to the work of the NHPD, and other allowable purposes. The device may be used for incidental personal purposes provided that the use does not:
  - Directly or indirectly violated any NHPD and City of New Haven policies.

## **GENERAL ORDER 5.01 ARREST PROCEDURE**

### **5.01.04 PROCEDURES**

#### **POST-ARREST PROTECTION**

- Officers shall be aware that, following an arrest, they are legally responsible for the safety of the arrestee, any victims present, and all bystanders. Therefore, officers shall take all steps reasonably necessary to protect:
  - The arrestee from self-injury or injury by others.

## **GENERAL ORDER 1.01. DEPARTMENT MISSION AND VALUES**

### **1.01.04 VALUES**

Values are ethical statements of principle which bind us together as an organization. Values form the ethical basis for our decision making. As outlined in our mission statement, we subscribe to these values.

**Honor:** We will act with the utmost integrity and be both honest and truthful. We will perform our duties within the confines of the law and treat all those we encounter with Fairness, dignity and respect. We are proud of our badge and will hold ourselves to the highest standards of professional conduct.

**Excellence:** We will provide the highest level of service possible, exceed the community's expectations in every interaction and serve as a model

Department. We are passionate about our work and seek to continually improve our police services. We will adopt an innovative mindset that encourages creative, flexible and forward-thinking ideas to pursue the best solutions to all problems.

**Accountability:** We will work with and for the community we serve. Our relationship with the community is based on trust. We will maintain this trust with a commitment to uphold our values and not abuse our police power or authority. We will communicate with the public to explain what we do, why we do it and the results of our actions. We will use technology to disseminate information and facilitate dialogue.

**Respect:** We value the inherent worth and dignity of all individuals and will act with empathy and compassion regardless of the situation. We embrace diversity and will familiarize ourselves with the cultures, customs and beliefs represented throughout our communities to enhance our ability to communicate with, listen to, and relate to all individuals.

## V. DISCUSSION

Officer Diaz was charged with violating the General orders listed in the previous section. The violations were based upon the following which were delineated in the Internal Affairs Investigation. (City Ex. 1)

- He was arrested by the CSP for CGS 53-20(a)(2), Cruelty to Persons; and CGS 53a-64, Reckless Endangerment in the 2<sup>nd</sup> degree
- He failed to have medical personnel called to the scene to evaluate Cox
- He failed to notify his supervisor regarding Cox's injury during transport
- He failed to intervene while Cox was being dragged and recklessly handled by the officers and Sergeant Segui in Detention
- He became an active participant when he placed his hands on Cox to place him on the wheelchair in the Sallyport area and also when Cox slid down the wheelchair during intake
- He misused his department issued cellphone
- His actions placed the New Haven Police Department in an unfavorable light as it was highly publicized in the media and the news.

**General Order 1.03.05 – Law Abiding.** Officer Diaz was charged with violating this General Order. The Rule provides that an officer shall not “knowingly commit any criminal offense” of any law. As the case against Officer Diaz has not been concluded and he has plead “not guilty”, it is arguably premature to find a violation of this Rule. Additionally, the mere fact that Officer Diaz was arrested for violating the charged statutes, does not indicate that there was a finding of guilt.

**General Order 5.02 – Prisoner Transportation.** As a result of the near collision with the vehicle that sped through the intersection without stopping at the

posted stop sign, Mr. Cox required immediate medical treatment. Officer Diaz stopped the van and determined that Mr. Cox needed immediate medical treatment. He did not call for an ambulance to come to the scene but instead called for the ambulance to meet him at the Detention Center. Officer Diaz drove to the Detention Center and arrived approximately four (4) minutes later. Although it took AMR personnel approximately twenty-five (25) minutes after the initial call to arrive at the Detention Center, Officer Diaz' failure to have medical personnel meet him at the scene was a violation of this General Order.

It is unquestionable, that this situation represented a critical incident as described in this General Order. Once that determination had been made, the Order required Officer Diaz to notify his/her immediate supervisor. Sergeant Steven Spofford (hereinafter referred to as "Sgt. Spofford") was Officer Diaz' immediate supervisor on the night in question. The investigation determined that Officer Diaz put out a call over the Department radio system which could be heard by all officers. Sgt. Spofford received a suspension for failure to respond to the scene. Therefore, the City determined that Sgt. Spofford had been notified of the "critical incident". If not, Sgt. Spofford would never have been disciplined. As Officer Diaz had dispatch put out the notification to all officers, the City determined that notification had been made by Officer Diaz once they disciplined Sgt. Spofford for failure to respond.

**General Order 5.01 Arrest Procedure.** This General Order requires officers to "take all steps reasonably necessary to protect – The arrestee from self-injury or injury by others". The City in its Brief argues that if Officer Diaz had instructed Mr. Cox to hold on to the strap in the van, "it is possible that Mr. Cox would not have been launched into



the metal partition headfirst when the Grievant had to suddenly stop the van when another driver failed to grant the van the right of way.” It is at least equally likely that Mr. Cox would not have sustained his injuries if the transportation van was equipped with seatbelts, which in his handcuffed position, would have required him to be compliant.

Mr. Cox was never compliant once he was placed in the van. He went to the floor of the van of his own volition. He kicked the doors and walls of the interior of the van. Immediately prior to the near collision, Mr. Cox sat on the seat in the van. It was from that position that Mr. Cox went into the front of the van. While it was not a requirement for transportation vans to be equipped with seatbelts for prisoners, it is important to note that the City discontinued using transportation vans since Mr. Cox’s tragedy.

Officer Diaz described the collision to Sgt. Segui and told her “If he really fell, I would not even move him. I would not even move him until the ambulance gets here, just in case.”

Sgt. Segui was a superior officer who was in charge of the Detention Center. Once Mr. Cox arrived at the Detention Center, Sgt. Segui and the other officers assigned to the Detention Center were responsible for Mr. Cox. Having decided Mr. Cox was merely an intoxicated person, Sgt. Segui failed to heed Officer Diaz’ admonition and directed officers to move Mr. Cox from the van.

Officer Diaz could have left the Detention Center once he turned over custody of Mr. Cox. Instead, Officer Diaz twice assisted other officers with Mr. Cox. Once when Mr. Cox could not stand following his extrication from the van and second when Mr. Cox was sliding out of the wheelchair due to his injuries. While Officer Diaz should not have “put

his hands on” Mr. Cox once he had turned over custody to the Detention Center personnel, it could be viewed as an effort to prevent injury to Mr. Cox.

**General Order 4.09 Cellular Phones.** Officer Diaz texted and took a photo of the arrest ticket while driving. These are both violations of the law and represent a violation of this General Order. Additionally, after Officer Diaz’ cellphone was taken, it was discovered that the phone contained a few nude photographs which also represents a violation of this General Order. This was only a minor issue in an otherwise serious matter. There was little or no evidence presented on this last misuse of the cellphone.

Officer Diaz was also charged with violating several other General Orders listed in the prior section of this Award. Certainly, the incident involving Mr. Cox and his resultant injuries, together with his treatment by officers in the Detention Center “placed the New Haven Police Department in an unfavorable light as it was highly publicized in the media and the news.” Officer Diaz treated Mr. Cox with respect when he began Mr. Cox’s transportation in the van. Officer Diaz adjusted he handcuffs to be more comfortable. The City in its Brief argues that if Officer Diaz had stopped earlier after Mr. Cox hit his head on the front of the van his injuries might have been less severe and his life might be significantly different. There was no evidence presented in support of these types of claims by the City.

The City in its Brief also references the Police Accountability Act. This Panel is charged with determining whether there was just cause to terminate the Grievant. This is the Issue the parties agreed is appropriate for the Panel to determine. Section 1 of Article 4 of the collective bargaining agreement between the parties provides the “No

permanent employee shall be discharged . . . , except for just cause.” This is a contractually guaranteed right which the parties bargained for and to which they agreed. The arbitrators on this Panel get their authority from the collective bargaining agreement.

In its Brief, quoting from *Carrier Air Conditioning Company*, 1997 WL 177811 (Nichols, Jr., 1997), the City states: “Essentially, to prove just cause, an employer must ‘come forward and show that it had good and sufficient reasons for meting out discipline to the subject employee. In doing so, it is incumbent upon management to show that the given disciplinary action was commensurate with the nature of the offense.’” Further, the City argues that the decision to terminate the Grievant “should not be disturbed by this Panel as it was not arbitrary, capricious, or unreasonable, given the Grievant’s gross inaction and poor judgment that resulted in the permanent disability of a civilian.” A majority of the Panel finds that the Grievant’s did not engage in gross inaction and poor judgment “**that resulted in the permanent disability of a civilian.**” There was no evidence presented that this was true.

While approximately three minutes elapsed between the time of the near collision and the time Officer Diaz pulled over, it was very difficult for Officer Diaz to discern what Mr. Cox was saying in the back of the van. There was no communication mechanism between the cab and the back of the van. There was merely a small open area between the two which was on the level of the cab. Mr. Cox was on the floor of the van following his injury. It was clear from the audio and video that Officer Diaz could not really hear what Mr. Cox was saying.

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 held that in order for the just cause standard to have been met, the employer must have a reasonable ground for discipline which is also fair.

## **VI. AWARD**

Having found that the Grievant did not commit all of the violations with which he was charged, including the most serious ones charged, a majority of the Panel finds that the City of New Haven did not have just cause when it terminated Officer Oscar Diaz.

For the articulated reasons, a majority of the Panel finds that the City did have just cause to suspend Officer Diaz for fifteen (15) days. The Management Arbitrator finds that the City had just cause to terminate Officer Diaz.

Officer Diaz shall be reinstated with full back pay following the fifteen (15) day unpaid suspension less appropriate reduction for outside earnings. The Union's claim for attorneys' fees is denied.

BY THE ARBITRATION PANEL:

/s/ *Linda J. Yelmini*

Linda J. Yelmini (Public Arbitrator & Chairperson)

/s/ *Donald Sevas*

Donald Sevas (Labor Arbitrator)

/s/ *Richard A. Podurciel*

Richard A. Podurciel (Management Arbitrator)  
DISSENTING