

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

**ARBITRATION AWARD**

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In the Matter of:	:	Case No. 2021-A-0345
Town of Manchester	:	Date of Award: March 25, 2022
And	:	
Manchester Police Officers Association	:	
Maria Garay, Grievant	:	Hearing Date: November 1, 2021

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APPEARANCES: Christopher E. Engler, Attorney at Law  
(For the Town)  
David S. Taylor and Stephen F. McEleney, Attorneys at Law  
(For the Union)

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

Did the Town of Manchester have Just Cause to discipline Officer Maria Garay with a one-day suspension? If not, what shall the remedy be?

**II. PROCEDURAL BACKGROUND:**

The Manchester Police Officers Association (hereinafter referred to as the "Union") filed a grievance asserting that the Town of Manchester (hereinafter referred to as the "Town") did not have just cause when it suspended Officer Maria Garay (hereinafter referred to as "Officer Garay" or the "Grievant") for one (1) day.

The grievance was not resolved and was appealed to arbitration. An arbitration hearing was held at the Board of Mediation and Arbitration in Wethersfield, Connecticut

on November 1, 2021. Both parties were provided an opportunity to offer testimony and cross-examine witnesses.

The Town and the Union both filed post hearing briefs on December 15, 2021 and reply briefs on January 7, 2022. The Panel held an Executive Session on January 19, 2022.

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:**

Officer Garay has been employed for nineteen (19) years as a patrol officer with the Town. During that time, she had been a field training officer for ten (10) years. Additionally, she had been assigned to the domestic violence unit of the Department.

On February 26, 2021, Officer Garay and Officer Labonte responded to a possible domestic violence call at Hawthorne Suites in Manchester. It took the officers approximately four (4) minutes to determine the room that was the source of the possible incident. Officer Garay knocked on the door of the room that had been identified as having been the source of the complaint. Mr. Dwight Newton Batchelor answered the door. The Grievant identified herself as a police officer and said she was responding to a complaint. Officer Garay told Mr. Batchelor she needed to speak with his other half, Ms. Victoria Leon.

Mr. Batchelor did not willingly allow Officer Garay into the room despite her requests to ensure that Ms. Leon and the children were safe. Sergeant David Roy arrived

at the room shortly thereafter. Sgt. Roy and Officer Garay entered the room. Mr. Batchelor was yelling and playing music loudly. Officer Garay asked Mr. Batchelor to turn the music down and requested that he calm down. Mr. Batchelor failed to comply with the requests of either Officer Garay or Sgt. Roy. Mr. Batchelor was handcuffed, walked outside, and placed in the cruiser.

Officer Garay spoke with the two (2) women that had placed the call to the police. One of the women reported that she heard Mr. Batchelor yelling, heard a slap and then heard the children scream. Officer Garay returned to the station and wrote a report.

Ms. Leon left three (3) voicemails at the Department complaining about Mr. Batchelor's arrest. Ms. Leon also posted about the arrest on social media. Chief William Darby ordered an investigation and assigned the matter to Lieutenant Jonathan Laughlin of the Internal Affairs Division.

IV. PERTINENT LANGUAGE FROM THE GENERAL ORDERS and  
STATUTORY PROVISIONS

GENERAL ORDER

CHAPTER 26 Disciplinary Procedure

Section 1 Code of Conduct

D. Code of Conduct

3. No person employed by the Manchester Police Department shall be punished unless the allegation is based upon a finding of "just cause."

6. Code of Conduct

a. Conduct Unbecoming an Employee. Any violation of the Rules and Regulations, General Orders, Special Orders, Memorandums, any lawful order, or any act detrimental to the police services shall constitute this offense.

c. Neglect or inattention to duty.

i. Failing to submit required reports or failing to submit such reports or records in the proper form or content, and/or failing to make necessary corrections when deficiencies have been brought to light by a superior.

**STATUTORY DEFINITIONS**

**Sec. 53a-167a. Interfering with an officer:** Class A misdemeanor or class D felony. (a) A person is guilty of interfering with an officer when such person obstructs, resists, hinders or endangers any peace officer, special policeman appointed under section 29-18b or firefighter in the performance of such peace officer's, special policeman's or firefighter's duties.

(b) Interfering with an officer is a class A misdemeanor, except that, if such violation causes the death or serious physical injury of another person, such person shall be guilty of a class D felony.

**Sec. 53a-181. Breach of the peace in the second degree: Class B misdemeanor.** (a) A person is guilty of breach of the peace in the second degree when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior in a public place; or (2) assaults or strikes another; or (3) threatens to commit any crime against another person or such other person's property; or (4) publicly exhibits, distributes, posts up or advertises any offensive, indecent or abusive matter

concerning any person; or (5) in a public place, uses abusive or obscene language or makes an obscene gesture; or (6) creates a public and hazardous or physically offensive condition by any act which such person is not licensed or privileged to do. For purposes of this section, "public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(b) Breach of the peace in the second degree is a class B misdemeanor.

**Sec. 53a-182. Disorderly Conduct: Class C misdemeanor**

a) A person is guilty of disorderly conduct when, with intent to cause inconvenience, annoyance or alarm, or recklessly creating a risk thereof, such person: (1) Engages in fighting or in violent, tumultuous or threatening behavior; or (2) by offensive or disorderly conduct, annoys or interferes with another person; or (3) makes unreasonable noise; or (4) without lawful authority, disturbs any lawful assembly or meeting of persons; or (5) obstructs vehicular or pedestrian traffic; or (6) congregates with other persons in a public place and refuses to comply with a reasonable official request or order to disperse; or (7) commits simple trespass, as provided in section 53a-110a, and observes, in other than a casual or cursory manner, another person (A) without the knowledge or consent of such other person, (B) while such other person is inside a dwelling, as defined in section 53a-100, and not in plain view, and (C) under circumstances where such other person has a reasonable expectation of privacy.

(b) Disorderly conduct is a class C misdemeanor.

**V. DISCUSSION**

As in most disciplinary matters, the Panel must decide whether the Town had just cause to discipline the Grievant. 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. If the proof is insufficient that the employee committed a violation, discipline cannot stand.

In determining whether or not just cause exists, many arbitrators utilize the Seven Elements of Just Cause first outlined by Arbitrator Carol Daugherty in *Enterprise Wire Co.*, 46 LA 359 (1966). Under a traditional view, if any of the questions proffered under the *Daugherty* test is answered in the negative, then just cause does not exist. Today, this formulaic analysis of the Test has been rejected by many arbitrators.

The Panel is not constrained by the *Daugherty* test and rejects its formulaic application. However, that does not negate the *Daugherty* test as it can be helpful in determining whether just cause exists. Both the Town and the Union addressed the *Daugherty* test in their briefs. However, the violations of the General Orders the Grievant was charged with will be dealt with below without specifically referring to the elements of the *Daugherty* test.

Officer Garay was charged with three offenses in the Internal Affairs investigation.

1. Conduct Unbecoming an Employee  
by telling Mr. Batchelor that if he cooperated, he would not be charged with interfering, yet charging him anyway.
2. Neglect or Inattention to Duty
  - a. Charging Mr. Batchelor with Breach of the Peace vs. Disorderly Conduct.
  - b. Charging Mr. Batchelor with slapping an individual without identifying the victim of the slap.
3. Failing to submit required reports . . . in the proper form or content, and/or failing to make necessary corrections when deficiencies have been brought to light by a superior.

Submitted a report with multiple discrepancies

**Conduct Unbecoming Charge.** The Manchester Police Department has no General Order, Rule or Regulation indicating that an officer cannot offer to reduce or decline to charge an individual with certain offenses in return for their cooperation. In fact, Lt. Laughlin admitted that he had offered to drop charges against a suspect in the past. There was some questioning during cross examination of Lt. Laughlin regarding his understanding of a US Supreme Court case which allegedly held that police are allowed to lie to suspects. The Town correctly argues that that case [Frazier v. Cupp, 394 U.S. 731 (1969)] is not applicable here. What is important here is Officer Garay was disciplined for conduct that Lt. Laughlin admitted having engaged in himself with no consequences and for which there is no rule prohibiting.

**Neglect or Inattention to Duty.** There was a significant debate between Officer Garay and Sgt. Roy at the scene regarding the appropriate statute(s) Mr. Batchelor should be charged with violating. Sgt. Roy initially charged Mr. Bachelor with Breach of Peace. Officer Garay and Sgt. Roy discussed whether a charge of Disorderly Conduct might be more appropriate. Officer Garay deferred to Sgt Roy. Officer Garay also felt that Mr. Bachelor was one hundred percent (100%) going to be charged with Interfering.

Lt. Laughlin found in the IA that appropriate charge was Disorderly Conduct and not Breach of Peace. This appears to be because the behaviors exhibited by Mr. Bachelor did not occur in a public place. Lt. Laughlin did agree that Mr. Bachelor should have been charged with Interfering but disagreed with Officer Garay offering to drop the charges.

(Town Ex. 1)

The Town in its brief argues that “it is improper for an officer to negotiate with an individual about their charges”. If it was improper for Officer Garay, it was likewise improper for Lt. Laughlin. Further, the Town argues, it is “unethical and improper for an officer to promise to withdraw a charge when she has no intention of actually doing so.” No one can dispute that Mr. Batchelor was clearly agitated – he was yelling and was “interfering”. Officer Garay testified credibly that she told Mr. Batchelor that she would drop the charge of interfering in an attempt to calm him down; something which was in both Officer Garay’s and Mr. Bachelor’s interest.

**Failing to submit required reports . . . in the proper form or content, and/or failing to make necessary corrections when deficiencies have been brought to light by a superior.** Officer Garay candidly admitted during her interview that there were mistakes in her report. She completed it quickly at the end of her shift without reviewing her body camera footage. Once these “deficiencies” were brought to light by Lt. Laughlin, she would have corrected them had she been given an opportunity to have done so. Therefore, there was not a violation of this General Order.

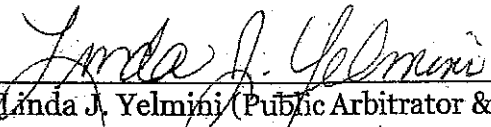
The Panel members would like to specifically note that they carefully reviewed the recordings the Town provided. It was especially helpful to have the Body Camera footage of Officer Garay when it deliberated its decision in this matter. At all times, her conduct was found to be professional and her demeanor calm.

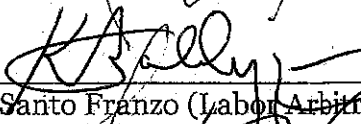


**VI. AWARD**

For the reasons set forth herein, the Panel unanimously finds that the Town did not have just cause to discipline the Grievant. The one (1) day suspension shall be removed from the Grievant's personnel file and she shall be made whole.

BY THE ARBITRATION PANEL:

  
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Linda J. Yelmini (Public Arbitrator & Chairperson)

  
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Santo Franzo (Labor Arbitrator)

  
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Kenneth Baldyga (Management Arbitrator)