

CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION

TOWN OF WETHERSFIELD

CASE NO.2 021-A-0165

AND

IBPO, LOCAL 391

**HEARING VIA ZOOM
JANUARY 26, 2022**

ADVOCATES

Kenneth R. Plumb, Esq., for the Town

Thomas Hatfield, Esq., for the Union

PANEL

Mark E. Sullivan, Alternate Public Member and Chair

Kenneth Baldyga, Alternate Management Member

Peter Carozza, Permanent Labor Member

ISSUE

Did the Town of Wethersfield have just cause under the collective bargaining agreement between the Town and IBPO, Local 391, dates July 1, 2019 – June 30, 2023 to issue the Grievant, Sergeant Jennie Rivera, on November 13, 2020 discipline consisting of : (1) a four (4) week suspension without pay; (2) a one (1) year reassignment to the midnight shift, i.e., 2330-0730, and (3) a prohibition of exercising shift swaps with her husband, Sergeant Oscar Rivera. If not, what shall the remedy be?

BACKGROUND

The collective bargaining agreement (CBA) between the Town of Wethersfield (Town) and the International Brotherhood of Police Officers, Local 391 (Union) runs from July 1, 2019, until June 30, 2023.

A May 4, 2020, anonymous complaint addressed to the Mayor as well as a Town Manager Evans (Evans), charged Sergeant Jenny Rivera (Grievant) of stealing and falsely reporting her time and implicated Wethersfield Police Chief James Cetran (Cetran) for covering up the misdeeds of the Grievant.

When consulted by Evans, Cetran said normal procedure would be to have a senior member of the PD to establish if there was any validity to the charge and if so, then institute a full Internal Affairs investigation.

On May 5, 2020, Wethersfield Lt. Mitney was assigned by Cetran to conduct a review of the Grievant's time records between April 4 and 26th. The Lt. concluded in his May 15, 2020, report there were discrepancies between the timesheets and time the Grievant was actually at work. Because of Cetran's concern about

potential bias on the part of Lt. Mitney he then assigned Lt. Connolly to check the finding. The results of the examinations were identical.

Again, Evans and Cetran met to discuss what the two reviews had uncovered and agreed an outside investigator was required. An Internal Affairs investigations was not considered appropriate and thus Attorney Palermino was hired for the assignment in early July 2020.

In his August 7, 2020, report, Palermino concluded there were discrepancies and that the Grievant had violated policies, procedures, and the general orders of the police department.

City Manager Evans and Chief Cetran met again, this time to discuss disciplining the Grievant. According to the testimony of Evans, Cetran stated clearly that the discipline was the responsibility of the City Manager and that any grievance filed over this matter should go only to the City Manager.

On August 27, 2020, Evans notified the Grievant as well as the Union that a pre-disciplinary meeting was scheduled for September 3, 2020. The Union shared information during and following the meeting in support of the Grievant.

Evans notified the Grievant on November 13, 2020, of the discipline being imposed. The Grievant filed a grievance with Cetran on November 18, 2020, avoiding Evans entirely.

Without Evans involvement, Cetran's response was to accept the discipline proposed by the Grievant and then memorializing it in Personal Order 20-153.

In a direct communication with the Grievant and the Union from Evans dated November 23, 2020, he instructed them to ignore Cetran's Personal Order 20-153 and directed to impose the original discipline.

The Grievant then filed a grievance with Acting Chief Crabtree on the reimposition of Evan's discipline. Acting Chief Crabtree did not act on the grievance so the Grievant refiled with Evans on December 1, 2020. The grievance was denied by Town Manager Evans.

APPLICABLE CONTRACT PROVISIONS

ARTICLE 11
TOWN RIGHTS

- 2.0 Unless expressly and specifically limited, modified, abridged, or relinquished by a specific provision of this Agreement, and whether exercised or not, the rights, powers and authority heretofore held by the Town and any of its Departments, Agencies, Commissions, or Boards pursuant to any Chapter, general or specific statute, ordinance, regulation or other lawful provision, over the complete operations, practices, procedures and regulations with respect to members of the Police Division, shall remain vested and exclusively in the Town of Wethersfield, including, but not limited to the following: determine the standards of services to be offered by the Police Division; determine the standards of selection for employment; direct its employees, take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; issue reasonable rules and regulations; maintain the efficiency of governmental operations; determine the methods, means and personnel by which the Town's operations are to be conducted; determine the content of job classifications; exercise complete control and discretion over its organization and the technology of performing its work; and fulfill all of its legal responsibilities. All of the above rights, responsibilities and prerogatives may not be subject to any grievances or arbitration proceeding except as specifically provided for in this Agreement.

ARTICLE XX
GRIEVANCE PROCEDURE

Section 20.0

20.0 A grievance is a dispute which may arise between the parties concerning the application, meaning or interpretation of this Agreement, unless specifically excluded by this Agreement and shall be settled in the following manner:

All grievances shall be in writing, setting forth the specific section of the Agreement alleged to have been violated, and the specific relief sought, and must be filed with the Chief of Police within ten (10) calendar days of the act or omission complained of or the employee's knowledge of its occurrence.

1. After receipt of the written grievance the Chief of Police may in his discretion also call a conference if he determines it appropriate but shall within ten (1) working days submit his answer, in writing to the grievant and the Union President.
2. In the event that a satisfactory adjustment of the grievance is not accomplished at step one, within ten (10) calendar days of the receipt of the written answer of the Chief of Police, the grievant may appeal the grievance to the Town Manager. The written decision of the Town Manager shall be given to the grievant, and the union President within fifteen (15) days of receipt by the Town Manager.
3. In the event that the grievance is not satisfactorily accomplished at Step Two as a result of the written answer of the Town Manager, within ten (10) calendar days after receipt of the decision, the Union shall notify the Town Manager in writing that it intends to submit the grievance to Arbitration; and shall simultaneously file notice of appeal with the Connecticut Board of Mediation and Arbitration under the Rules and Regulation of the Connecticut Board of Mediation and Arbitration in effect at the time of said filing. The decision of such shall be final and binding upon both parties, except that said decision shall not alter nor amend this Agreement in any manner. The Town and the Union may mutually agree to utilize the American Arbitration Association to resolve any particular grievance instead of the Connecticut Board of Mediation and Arbitration with both parties splitting evenly the costs of the arbitrator's services and the proceedings. However, the Parties agree that grievances involving

termination of an employee shall be submitted to the American Arbitration Association in accordance with its rules and procedures and with the Union and the Town splitting evenly the costs of the arbitration services and the proceedings.

Section 20.4

20.4 Grievances involving discharge, suspension, and demotion, following disposition by the Chief of Police shall be processed beginning at the second step.

**ARTICLE XXIV
DISCIPLINE**

Section 24.0

24.0 All discipline shall be for just cause.

TOWN'S POSITION

The Town framed their argument through the seven tests of Just Cause, securing the position that they had satisfied each completely.

Reasonable Rule or Work Order.... "The rules and policies are certainly reasonable and indeed necessary for the effective operation of a paramilitary organization like a municipal Police Department."

Notice...." The Grievant was aware of the requirement to accurately report her time as well as the meal period..."

Sufficient and Fair Investigation...." The Grievant received a fair and thorough investigation initially including not only one, but two lieutenants, from the WPD as well as an outside investigator."

Proof... "The Grievant admits to violating the meal Policy as well as the chain of command policy..."

Equal Treatment... "The deliberate misreporting of time and violation of known WPD policies are serious offences which warrant serious consequences. The Town recognizes that the Grievant is a long-term employee with relatively good performance evaluations..."

Appropriate Discipline...."... given the egregiousness of her conduct, the fact that she is receiving discipline short of termination, constitutes the issuance of progressive discipline as she is being given the opportunity to maintain her employment and corrected deficiencies over the remainder of her career."

UNION'S POSITION

The Union also examined the issues through the lens of Just Cause and found that none could be answered in the affirmative.

1. The Union asked if the Grievant was "... forewarned that by taking her 30 minute meal break at the end of her shift she would be subject to discipline...?" "More simply stated, because of the way Wethersfield Police Department loosely regulated an employee's ability to modify their work schedules combined with Sergeant Rivera's longtime understanding of how the time policies were implemented at the WPD, as well as the fact that Sergeant Rivera worked all the hours she submitted to the town for payment, Sgt. River could never have objectively imagined she would ever be subject to such harsh discipline." (Union Brief, pg. 13)

2. The Union poses the second question "Are the town's policies, as have been applied to Sergeant Rivera, reasonably related to the efficiency and performance the town might expect from a police officer?" (Union Brief, Pg.14)
It is the Union's contention that a requirement of successful police work involves flexibility while at the same time working the hours needed to complete the work and cites the language in the CBA on meals "... an employee shall be granted: (a) a 30 minute meal period AS near as practicable to normal eating hours..." (CBA, pg. 11) In the case of the Grievant the demand to adhere to the schedule becomes a demonstration of inflexibility where "... the efficiency and performance of officers with respect to carrying out police work for the benefit of the public would be greatly harmed." (Union Brief, pg. 17)

3. Did the Town make a good faith investigative effort before issuing discipline?

“...it should be remembered that Town Manager Evans testified that if permission to work from home had not been given to Sergeant Rivera by Chief Citron, Sergeant Rivera would have been terminated.” (Union Brief, pg. 17)

The Grievant, after the Town had agreed to review additional information prior to discipline being administered, developed a point by point discussion of the stealing time charges against her. In the arbitration hearing Town Manager Evans testified that he did not review that material before determining the discipline he would impose.

The Union also saw Attorney Palermino’s report as incomplete by not identifying days she arrived early or stayed late. “The town thus ignored evidence that the conclusions in attorney Palermino’s report were wrong, and despite information delivered to the town showing the mistakes the town continued to keep parroting that Sergeant Rivera had been “working from home without proper authorization from your supervisors on approximately 16 occasions for a total of 37.5 hours; [and] Misreporting time when working at the WPD on approximately 33 occasions totaling 7.03 hours.” (Union Brief, pg. 18)

4. Was the investigation fair and objective?

The Union characterizes the Palermino investigation and report as “... neither thorough nor was it unbiased...” For example, “...Palermino testified that he did not take into account time Sergeant Rivera noted she was working on her timesheets but did not submit such time for payment.” (Union Brief, pg. 21) Attorney Palermino also had difficulty explaining how he used the FOB information and why there was a difference in time between several stations which he said were synchronized.

In his report Palermino states that many WPD personnel were either working from home or keeping their hours on site to a minimum with knowledge and permission of commanders and or the Chief. Yet when the Grievant made a similar observation during her interview he characterized her statements as a "severe black eye to the WPD." (Union Brief, g. 23)

5. Was substantial evidence of the Grievant working from home and misreporting time unearthed? The Union reminded the Panel that Attorney Palermino did conclude that the Grievant had the permission of the Chief to work from home which was corroborated by the Town Manager's testimony that without the Chief's permission the Grievant would have been terminated.

6. Were the PD employees dealt with equally and without discrimination? To show there was unequal treatment the Union cited Attorney Palermino's report where he wrote "Many WPD personnel were either working from home or keeping their hours on site to a minimum with knowledge and permission of commanders and or the chief." (Union Brief, pg. 26) Evidently others had received permission from the Chief to work from home but only the Grievant was required to also receive permission of her immediate supervisor.

7. Was the discipline appropriate considering the offence and the Grievant's past record with the Department?

The Union argues that when compared to another employee who had a similar charge at the same time, the Grievant's number of days off without pay was 10X larger.

DISCUSSION

The Town of Wethersfield has grown dramatically over the last quarter century transformed from a sleepy bedroom community of Hartford to a highly developed center of commerce with an impressive commuter population passing through each day. The Panel is confident that growing pains have been felt in varying degrees across the community probably none more so than in the Town's administrative offices but most especially the police department.

Whereas in the past a "cult of personality" on the part of the Chief would be enough to hold a department together we have an excellent example in Wethersfield of the need for substantial change both in the style of leadership and how it is exercised. With a new chief on the horizon, much of this can be addressed in the fresh administration.

To compound the issue, we have a seriously flawed investigation generated by an anonymous letter, led by a now discredited former Chief, two WPD Lts. appointed by that Chief to investigate the charges, the second added to the brew because the Chief questioned the impartiality of the first, and an outside attorney who seemingly only valued investigative results which supported his original hypothesis. The Grievant developed a point-by-point discussion of the stealing time charges which the Town agreed to examine, but the Town Manager testified that he did not review the material before determining the discipline imposed. This severely damages the Town's contention that they did a fair and thorough investigation.

We have a 17-year veteran of the WPD with a personal jacket containing a one suspension because of a late report in the very early stages of her career which has also included promotions, and recognition for a job well done but no further discipline. With that type of record of job performance why would an employee ignore the chain of command effectively end running both her immediate supervisor and the Town Manager by appealing directly to the Chief?

There are numerous benefits to following the chain of command, not the least of which is a continuity of how policies are implemented across the department, instead of what this case revealed, an inconsistent application of policy as well as procedure and a total breakdown in the chain of command across the department. Although we will never know what prompted the Grievant to ignore the chain of command, we do know that it was encouraged by inaction of the Chief with the outcome more chaos and confusion in the operation of the WPD.

The Grievant chose to cut her immediate supervisor out of the loop as she sought special scheduling treatment during the pandemic by directly approaching the Chief. The Chief, instead of redirecting her request back to her supervisor approved the request thus undercutting the chain of command and reinforcing her unacceptable behavior. The actions of both parties are appalling and caused havoc within the WPD.

The Grievant then committed a second violation of the chain of command by choosing to ignore the authority and role of the Town Manager to impose discipline by going directly to the Chief with her grievance. This second violation was a selfish attempt to diminish her liability and minimize her losses.

As a paramilitary organization it is imperative that the Chief set the tone for how the department will be managed and what is and is not acceptable behavior. In a smaller department it may well be possible to continue to operate successfully as a professional organization without paying strict attention to the chain of command, but those days are long over in Wethersfield. The then Chief, a 40 + year employee, with knowledge and forethought chose to encourage employees to ignore the chain of command through direct contact with him on many issues, including special work schedules. The case before us is the result of mismanagement and ignoring the chain of command.

This does not excuse the actions of the Grievant but places them more clearly within the operational context of the WPD, then a dysfunctional organization led by a Chief lacking veracity.

The Panel recognizes the seriousness of the Grievant's actions but is also mindful of the importance of upholding just cause. The discipline imposed was extraordinary in scope and not in balance when compared to the penalty others experienced for a very similar violation. At the same time the multiple violations of the chain of command must be addressed in this award.

AWARD

The grievance is upheld and the suspension of the Grievant without pay is reduced to a total of fifteen (15) days and she will be made whole for the remaining five (5) days.

STATE OF CONNECTICUT
BOARD OF MEDIATION AND ARBITRATION



Mark E Sullivan, Alternate Public Member

May 16, 2022

Date

/S/ Dissent

Kenneth Baldyga, Alternate Management Member

May 16, 2022

Date

/S/

Peter Carozza, Permanent Labor Member

May 16, 2022

Date