

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

ARBITRATION AWARD

In the Matter of:	:	Case No. 2020-A-0164
	:	
City of Bridgeport	:	Date of Award: July 11, 2022
	:	
And	:	Hearing Date: June 1, 2022
	:	
Bridgeport Police Union Local 1159, AFSCME, Council 4, AFL-CIO	:	
	:	
Ronald Mercado, Grievant	:	38 Wolcott Hill Road Wethersfield, CT 06109

APPEARANCES: Robert Murray, Attorney at Law (For the City)
 Kelly Rommel, Attorney at Law (For the Union)

I. ISSUE: (Agreed to by the Parties)

Whether the City of Bridgeport had just cause on April 3, 2020 to suspend Ronald Mercado for five days? If not, what shall the remedy be?

II. PROCEDURAL BACKGROUND:

The Bridgeport Police Union, Local 1159, AFSCME, Council 4, AFL-CIO (hereinafter referred to as the "Union") filed a grievance asserting that the City of Bridgeport (hereinafter referred to as the "City") did not have just cause when it suspended then Lt. Ronald Mercado (hereinafter referred to as "Lt. Mercado" or the "Grievant") for five (5) days.

The grievance was not resolved during the grievance procedure and was appealed to arbitration. An arbitration hearing was held in person on June 1, 2022. Both parties

were provided an opportunity to offer testimony and cross-examine witnesses. The City and the Union both presented oral arguments in support of their respective positions at the close of the hearing. The Panel held an Executive Session on June 3, 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:

The City of Bridgeport had instituted body camera policy on May 15, 2018 (City Ex. 2) at which point police officers began training in their use. The training period was completed on February 15, 2019. The Chief of Police announced that all officers would be accountable for the provisions of the Body Camera Policy on that date. (Union Ex. 2).

At the time of the hearing, the Grievant was a twenty-one (21) year veteran of the Bridgeport Police Department. On November 19, 2018, the Grievant was the Shift Commander on the second shift. Officers under the Grievant's command became engaged in a vehicle pursuit which proceeded from Bridgeport to New Haven. Sergeant Ronald Jersey (hereinafter referred to as "Sgt. Jersey") was involved in the pursuit and was the lead officer. Lt. Mercado was monitoring the pursuit back at the station. Sgt. Jersey was wearing a body camera at the time of the incident while the Grievant was not (both were appropriate under the policy).

At some point a Lieutenant Dickerson called off the pursuit. Lieutenant Dickerson had no role in the pursuit and was not the Grievant's nor Sgt. Jersey's supervisor. After

the pursuit was called off, Sgt. Jersey and the Grievant spoke by phone. The conversation was recorded on Sgt. Jersey's body camera.

Captain Steven Lougal reviewed the body camera video on November 27, 2018. During the conversation between the Grievant and Sgt. Jersey, Sgt. Jersey inquired who was the "Faggot/Fairy" who had called off the pursuit. While the reference to Lt. Dickerson was not specific to him, it was to the individual who had called off the pursuit as Sgt. Jersey did not know who had called off the pursuit at the time. There is no dispute that both the terms "faggot" and "fairy" are offensive and violative of the Department's rules prohibiting the use of racial, ethnic and sexist slurs as outlined in rule 2.7.8.

IV. PERTINENT LANGUAGE FROM THE COLLECTIVE BARGAINING AGREEMENT (Jt. Ex. 1) and RULES AND REGULATIONS (Jt. Ex. 3 and City Ex. 3)

ARTICLE 11

DISCIPLINARY ACTION

SECTION 11.1 – No permanent employee shall be removed, dismissed, discharged, suspended, fined, reduced in rank, or otherwise disciplined except for just cause.

RULES AND REGULATIONS

1.3.4 Knowledge of Rules and Regulations

1. Members of the Department shall familiarize themselves with these rules and regulations and each member shall confirm to and abide by the same.

2. These rules are a basis for action and are not meant to be all-inclusive. No member of the Department will be excused from action in accordance with the sound judgment merely because a situation is not covered by a rule.

1.3.5 Violation of Rules

Officers shall not commit any acts that constitute a violation of the rules, regulations, directives or other orders of the Department whether or not stated in this manual, Rules, regulations, directives, or other orders shall be posted at Area Commands, in bureaus and divisions, as well as other departmental areas that are deemed appropriate.

1.3.6 Conformance to Rules/Regulations

All members of the Department shall be subject to and shall obey all rules and regulations, orders, instructions or requirements, whether mentioned in regard to a specific assignment or rank, or in the General Regulations, or emanating from a competent authority from time to time, insofar as may be applicable.

1.3.12 Incompetence

An officer shall maintain competency to perform his duty and to assume responsibility of his position. Incompetence may be deemed by demonstrating the following but is not limited to:

- 1) A lack of knowledge of the application of laws that are required to be enforced.
- 2) 2) An unwillingness or inability to perform assigned tasks.
- 3) 3) A failure to conform with work standards established for the officer's rank, grade or position.

2.7.8 Racial, Ethnic, or Sexist Slurs and or Graffiti

Any BPD employee who violates this policy shall be subject to disciplinary action up to and including potential termination of employment. Any supervisor aware of any conduct or alleged conduct prohibited by this policy who fails to take appropriate action in accordance with this policy shall be subject to disciplinary action up to and including potential termination of employment.

Slur – Any verbal or written words, statements, symbols, gestures, or references that are derogatory of a gender or of a racial or ethnic group, or of a member of such a gender or group, or that contribute to an environment of hate, violence, or hostility. The term “slur” includes all alleged jokes or statements suggesting that a group is criminal, unintelligent, or has habits or attributes generally held in low regard.

1.1.16 Oath of Office Bridgeport Police Department

I hereby accept the office of Police Officer for the Bridgeport Police Department, and agree to obey and be bound by such rules and regulations as are or may be from time to time, laid down for government of the Police Department of the City of Bridgeport.

1.2.21 Supervisor Accountability

All supervisory personnel shall be held accountable for the performance of employees under their immediate control.

1.3.16 Insubordination

Officers shall promptly obey any lawful orders of a superior officer. This will include orders relayed from a superior officer through an officer of the same or lesser rank.

1.3.3.5 Supervising Officer

A supervising officer is one who, through rank or appointment, is responsible for the action of one or more subordinates. Supervising officers personally observe the work and actions of subordinates for whom they are responsible and react accordingly to the needs of commendation, training or correction.

V. DISCUSSION

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. If the evidence is sufficient to demonstrate that the employee is “guilty” of the conduct alleged, then the next question, the Panel must consider is whether the penalty is for just cause.

There is no real dispute about what occurred during the conversation between the Grievant and Sgt. Jersey on November 19, 2018. Clearly angry having been called off the pursuit, Sgt. Jersey used Racial, Ethnic or Sexist Slurs in violation of Policy 2.7.8. His outburst was made to the Grievant and recorded on Sgt. Jersey’s body camera. The City imposed a three (3) day suspension on Sgt. Jersey which was later reduced by agreement to a two (2) day suspension (City Ex. 6) for Sgt. Jersey’s offenses.

The Union offered a number of arguments in support of its claim that the Grievant should not receive any discipline. Some of the arguments are noted below.

Body Camera Policy. The Union argued that as the officers were being trained on the usage of body cameras no discipline should be imposed. While the body cameras were introduced on May 15, 2018, (City Ex. 2), the training period did not conclude until February 15, 2019 (Union Ex. 2). The incident occurred on November 19, 2018, well before the end of the training period. Therefore, the Union argues that the Grievant and

presumably Sgt. Jersey should not be accountable for the language which was recorded on the body camera.

The language used by Sgt. Jersey was a violation of Policy 2.7.8 whether or not it was recorded on the body camera. The body camera policy had nothing to do with the violation of Policy 2.7.8. The Panel did not have to reach the question of whether a person could be disciplined during the training period for a violation of the body camera policy as the Grievant was not disciplined for violating the body camera policy.

Private Conversation. The Union also argued that this was a private conversation between Sgt. Jersey and the Grievant. Therefore, pursuant to paragraph 1 of subsection C of General Order 5.24 (City Ex. 2) Sgt. Jersey was permitted to turn off his body camera to engage in a private conversation. This provision of the General Order was not designed to permit officers to violate the Policy of the Department prohibiting the use of racial, ethnic or sexist slurs. The Panel did not credit this Union argument because here again the Grievant was not disciplined for violating the body camera policy.

Disparate Treatment. Sgt. Jersey who actually said the words that violated Policy 2.7.8 received a three (3) day suspension which was reduced to a two (2) day suspension by agreement, while the Grievant received a five (5) day suspension. This was considered by the Panel in determining the penalty in this case. The Panel also considered the fact that the Grievant was in a supervisory role at the time of the incident. The Grievant stated that he did not remember hearing the offending words of Sgt. Jersey but did acknowledge they were said once he reviewed the body camera recording.

Procedural Issues. According to the Grievant, former Chief Perez also told the Grievant that the incident was “all over” and he was surprised that he was scheduled for a Loudermill hearing.

Lt. Mercado received a Loudermill notice dated October 3, 2019 in which he was notified of a number of charges of misconduct based upon an investigation conducted by Captain Steven Lougal (Jt. Ex. 3). Lt. Mercado testified credibly that former Chief Armando Perez stated during the Loudermill hearing (conducted on October 21, 2019) and at other times, that former Chief Perez had no problem with the pursuit.

Lt. Mercado received this five (5) day suspension for all of the infractions listed in the investigation and the Loudermill notice which included the pursuit. The suspension letter dated April 3, 2020 also listed all of the infractions, including the pursuit.

The City’s advocate was seriously hampered in presenting this case on behalf of the City and did a remarkable job without the assistance of any witnesses. Former Chief Perez had plead guilty to conspiracy to commit fraud and other charges on an unrelated matter and had been sentenced to one year and one day in federal prison. He was released early from prison in January of 2022. Captain Stephen Lougal who had conducted the investigation was out on sick leave at the time of the hearing and is going to retire. The City’s former Director of Labor Relations is no longer employed by the City.

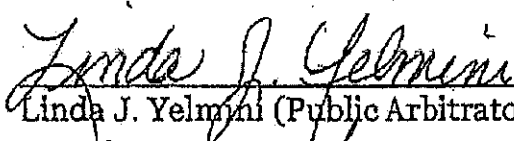
During his closing argument, the City’s advocate informed the Panel that the City recommended the loss of two (2) holidays as the appropriate level of discipline for the failure to report the use of Racial, Ethnic or Sexist Slurs and not the imposition of a five (5) day suspension.

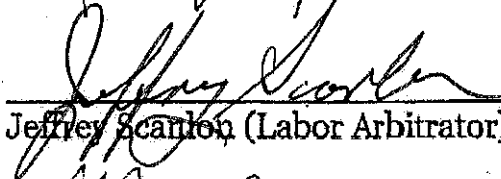
The Panel only considered the charge of the Grievant's failure to report the use of Racial, Ethnic or Sexist Slurs by Sgt. Jersey in its consideration of the appropriate discipline.

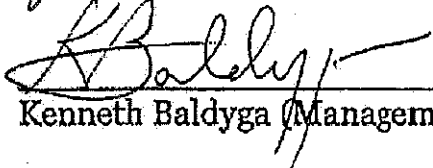
VI. AWARD

For the reasons set forth herein, the Panel finds that the City did not have just cause to impose a five (5) day suspension on the Grievant for failure to report the use of Racial, Ethnic or Sexist Slurs by Sgt. Jersey. The discipline is hereby reduced to the loss of one (1) holiday and the Grievant shall be made whole for the five (5) day suspension.

BY THE ARBITRATION PANEL:

 6/24/2022
Linda J. Yelmini (Public Arbitrator & Chairperson)

 6/30/2022
Jeffrey Scanlon (Labor Arbitrator)

 6/29/2020
Kenneth Baldyga (Management Arbitrator)