

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

ARBITRATION AWARD

In the Matter Of:	:	Case No. 2021-A-0085
	:	
CITY OF BRIDGEPORT	:	DATE OF AWARD: January 26, 2023
	:	
And	:	Hearing Date: November 2, 2022
	:	
BRIDGEPORT POLICE UNION,	:	
LOCAL 1159, COUNCIL 4	:	
AFSCME, AFL-CIO	:	
	:	
Grievant: Adam Szeps	:	

APPEARANCES: Robert J. Murray, Attorney at Law (For the City)
Lorin Dafoe, Attorney at Law (For the Union)

I. ISSUE: (Agreed to by the Parties)

Whether the City of Bridgeport had just cause on September 18, 2020 to suspend Officer Adam Szeps for ten (10) days without pay?

And if not, what shall the remedy be?

II. BACKGROUND:

The American Federation of State, County and Municipal Employees, Council 4, Local 1159 (hereinafter referred to as the "Union") filed a grievance on behalf of its member Officer Adam Szeps (hereinafter referred to as "Officer Szeps" or the "Grievant"). The Union claimed that the City of Bridgeport (hereinafter referred to as the "City")

suspended Officer Szeps for ten (10) days without just cause in violation of the Collective Bargaining Agreement (hereinafter referred to as the “CBA”).

The grievance was denied during the prior steps of the grievance procedure. On November 2, 2022 an arbitration hearing was held at which both parties were provided an opportunity to present evidence, provide testimony and cross examine witnesses.

The parties agreed to filed briefs by December 2. The date was extended to December 12 at the request of the Union. The Panel then received the parties’ briefs by the extended due date. The Panel held an Executive Session on January 4, 2023 via ZOOM.

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

III. STATEMENT OF FACTS:

Officer Szeps is a Patrol Officer with the City and had been employed for approximately six (6) years at the time of the incident.

On March 8, 2020, Officer Szeps was working at the front desk at the Bridgeport Police Department (hereinafter referred to as the “Department” or “BPD”) on the second shift. The City provided a video recording of the events in the lobby of the BPD which was introduced into evidence.

At approximately 9:21 pm Erick Rivera (hereinafter referred to as “Mr. Rivera”) entered the lobby of the BPD. Mr. Rivera had been arrested earlier that day and returned

to the BPD to retrieve his wallet which he believed was there. Officer Szeps told Mr. Rivera to call Booking and Mr. Rivera received no answer. Officer Szeps then called Booking and was told that Mr. Rivera had no wallet when he was arrested. Mr. Rivera was informed of this fact.

Mr. Rivera left and returned with his mother. Both stated that Mr. Rivera had his wallet when he was arrested. Officer Szeps again informed Mr. Rivera that his wallet was not at the BPD. Mr. Rivera was upset and agitated.

Officer Szeps told Mr. Rivera to leave BPD which he did not. Officer Szeps came out from behind the enclosed area of the front desk and entered the lobby area. Officer Szeps told Mr. Rivera that he was being arrested for trespass in a public building. Once Mr. Rivera questioned why he was being arrested, Officer Szeps threw him to the ground, put his fist on Mr. Rivera's face and shoulder to subdue him and then handcuffed him. Officer Szeps unholstered his taser but did not discharge it. Officer Szeps then arrested Mr. Rivera.

Officer Joseph Pires (hereinafter referred to as "Officer Pires") was also working on the front desk of the BPD on March 8, 2020. Officer Pires became aware of the commotion in the lobby and he entered the area. Officer Pires' statement indicates that he was involved in subduing Mr. Rivera. He did not testify. Officer Szeps' statement (Jt. Ex. 5) states that only he was involved in subduing Mr. Rivera which is consistent with his sworn testimony at the hearing. From Officer Szeps' statement it appears that Officer Pires' only involvement was telling Mr. Rivera's mother to leave the BPD which she did, eventually. This is consistent with the video tape.

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

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.

Section 11.7 – If an officer is disciplined under Sections 2 or 3 and the employee and Union both feel that the action was without just cause, the Union may, no later than ten (10) days after receipt by the Union of the written decision, submit said dispute to arbitration before the Connecticut Board of Mediation and Arbitration for Discipline other than (sic) terminations or the American Arbitration Association for involving termination [Discipline] (?). The arbitrator shall hear the dispute and render a decision that shall be final and binding on all parties. The arbitrator shall have the power to uphold the action of the City or to rescind or modify such action, and such power shall include, but shall not be limited to the right to reinstate a suspended or discharged employee with full back pay. The City shall pay all costs of the arbitrator and the American Arbitration Association.

GENERAL ORDERS

1.01 III B Law Enforcement Function (Code of Ethics)

1. There is little disagreement among law enforcement administrators that upholding professional ethics is the most critical issue facing our profession. From recruiting and selection, through promotions and assignments, to training and field activities, no other factor weaves such a powerful web G.O. 1.01 – 3 through every aspect of policing. The conduct and behavior of police officers should emphasize the Department's core values and principles, to the extent that they meet or exceed the public's expectations, in the delivery of professional law enforcement services.

2. All employees of the Bridgeport Police Department are required to abide and uphold the highest standards of ethical conduct for law enforcement agencies, and shall share equally in a commitment to its mission, goals and objectives. Thus, all sworn officers shall abide by, and are bound by, the spirit and intent of all adopted codes of conduct. These standards of ethical conduct shall serve as the guide for the conduct for officers, employees, and citizen volunteers of the Department. Therefore, all officers of the Bridgeport Police Department shall abide by the International Association

of Chiefs of Police Law Enforcement Code and Canon of Ethics, a copy of which appears as Appendix B.

1.3 Courtesy

Conduct Toward the Public

- Officers shall interact with the public in a civil and professional manner that conveys a service orientation to foster public trust and cooperation and adheres to the concepts associated with procedural justice.
- Officers shall treat individuals with courtesy, respect, and dignity.
- Officers shall not employ an officious or overbearing attitude or use language that might belittle, ridicule, or intimidate individuals.
- Officers shall perform their duties equitably in both the enforcement of laws and the delivery of law enforcement services within the community and shall strive to maintain public trust by conducting all law enforcement business in an unbiased, fair, and impartial manner.

2.1 Accountability

Officers are directly accountable for their actions, through the chain of command, to this department's chief executive officer.

2.8 Unbecoming Conduct

Officers shall not conduct themselves in a manner, on or off duty, that

- Casts doubt on their integrity, honesty, moral judgment, or character;
- Brings discredit to this department; or
- Impairs the agency's efficient and effective operation.

2.21 Use of Force

IV A. General

3. When feasible based on the circumstances, officers will use disengagements; area containment; surveillance; waiting on a subject; summoning reinforcements; and/or calling in specialized units, in order to reduce the need for force and thereby increase officer, suspect and civilian safety.

4. Officers shall allow individuals time to submit to arrest before force is used, wherever possible.

IV F. Use of Non-deadly Force

Officers shall only use weapons and control techniques that are issued and/or approved for use by the Department. The use of Non-deadly force shall be limited to defensive and control purposes. Officers shall use only the reasonable amount of force necessary to overcome resistance or accomplish the police task. The use of Non-deadly force shall conform to applicable Department Standards of Conduct, policies, procedures, and training. Officers shall not carry any Non-deadly weapons, or employ any Non-deadly techniques, prior to successfully completing the relevant Department-approved training for each weapon or technique.

5.4 Body Worn Camera 5.24 IV B

B. OPERATIONAL USE

2. The assigned officer shall wear the body-worn camera at all times.

2.09 Uniform Standards and Dress Code III

B7 – The base shirts worn under uniform shirt carriers are not authorized for wear as a standalone shirt or under a jacket or vest. All Base shirt (Armor Skin/Rapid Response) shall be embroidered with badge and name strip.

B1a – Badges shall be displayed on the outmost garment over the left breast

L. – Name Swatches: The name swatch is worn with the Class B uniform. It is 1” tall and extends the length of the right shirt or vest carrier pocket. The name swatch will match the appropriate navy blue or white shirt. The name will be sewn in 3/8” plain block font and will display the officer’s first initial and last name. Police Officers will wear silver lettering and all other ranks will wear merit gold lettering.

V. DISCUSSION

As stated in the Statement of Facts, the City produced a video recording of the incident which occurred in the lobby of the BPD on the evening of March 8, 2020 involving Officer Szeps and Mr. Rivera. The Union argues that the video recording does not accurately reflect what occurred in the lobby between Officer Szeps and Mr. Rivera. However, in its brief, the Union relies substantially on the images depicted in it. On the one hand, the Union argues the video recording does not tell the whole story. On the other hand, the Union argues that the video recording shows that Officer Szeps' demeanor was at all times calm, and Mr. Rivera was in almost all instances actively resisting arrest once Officer Szeps told him to leave the building. The Panel relied on the video recording in determining its award in this case finding that it represented an accurate depiction of the events that occurred in the lobby of the BPD on the evening of March 8, 2020.

The parties also introduced various statements of individuals that were made at the time including statements of the officers who arrested Mr. Rivera earlier the evening prior to the incident involving Officer Szeps. The investigation report (PC-1 and PC-2) were introduced as Joint Exhibits 2 and 3 which were completed by Sergeant Donald Bensey (hereinafter referred to as "Sgt. Bensey") Sgt. Bensey was subsequently terminated by the City for drug use. As Officer Szeps testified that he did not believe that Sgt. Bensey was under the influence of drugs at the time he completed the PC-1 and PC-2 and there was no evidence presented to the contrary, the Panel accepts that Sgt. Bensey's PC-1 and PC-2 as acceptable and accurate. The Incident reports of Officers Szeps and Pires. (Jt. Exs. 5 and 6) were also introduced.

Acting Chief Rebeca Garcia (hereinafter referred to as “Chief Garcia”) participated in the Loudermill hearing and imposed the ten (10) day suspension on Officer Szeps. Chief Garcia also testified at the hearing. In addition, she required Officer Szeps to attend four (4) hours of retraining in Police and the Public. Officer Szeps also testified at the hearing. The Panel fully considered the testimony of both Chief Garcia and Officer Szeps in arriving at its decision.

There was some discussion by both the City and the Union regarding the failure of Officer Szeps to react to the fact that both Mr. Rivera and his mother set off the metal detector. The video depicts that the physical arrangement of the lobby of the BPD was such that anyone entering could easily avoid the metal detector and thereby never “set it off”. Officer Szeps should have reacted to the fact that Mr. Rivera and his mother activated the metal detector. The Panel did not take this into account in rendering its decision in this case due to the physical arrangement of the lobby. The BPD might want to consider the physical arrangement of the lobby vis-à-vis the metal detector to ensure greater safety for the personnel in the building.

Officer Szeps was charged with violating several General Orders. The first violation is for the Code of Ethics. The statement of the Code of Ethics outlines that officers must follow all of the General Orders 1.01 – 3 and if an officer violates one of the General Orders then he/she is found to have violated the Code of Ethics. As outlined below, the Panel has found that Officer Szeps has violated some of the General Orders for which he was charged, he has, therefore, violated the Code of Ethics.

1.3 Courtesy Almost from the outset of his interaction with Mr. Rivera, Officer Szeps did not appear to be acting in a “manner that conveys a service orientation”. His interaction with Mr. Rivera became even less courteous when Booking informed Officer Szeps that Mr. Rivera had been difficult earlier in the evening.

2.1 Accountability It is axiomatic that, in general, everyone is accountable for their actions.

2.8 Unbecoming Conduct Officer Szeps escalated the situation with Mr. Rivera well beyond what was necessary. Mr. Rivera was upset and believed his wallet had been stolen. Officer Szeps believed Mr. Rivera was mistaken and that the BPD did not have his wallet. Officer Szeps was most likely correct. However, this did not excuse the manner in which Officer Szeps chose to interact with an upset member of the public.

2.21 Use of Force and Use of Non-deadly Force Officer Szeps unholstered his taser but did not use it. The City charged him with utilizing a method to subdue Mr. Rivera which was not taught by the Police Academy and not authorized by the BPD. As the majority of the Panel found that Officer Szeps did not deescalate the situation when he should have, the amount of force utilized in any event was excessive.

5.4 Body Work Camera Officer Szeps admitted that he did not wear his body camera on March 8, 2020.

2.09 Uniform Standards and Dress Code III No real evidence was presented on this issue. The Panel does not sustain this charge.

Not unlike most other collective bargaining agreements, this collective bargaining agreement does not define “just cause”. Quoting from a prior arbitration award: (City of Bridgeport and AFSCME Council 4, Local 1159, Case No. 2020-A-0208) “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 Union in its brief utilizes the Black’s Law Dictionary definition of “just cause” of: “A cause outside legal cause, which must be based on reasonable grounds [and] there must be a fair and honest cause or reason regulated by good faith. Fair, adequate, reasonable cause. Legitimate cause.” Black’s Law Dictionary, 775 (5th ed. 1979). Black’s Law Dictionary has since combined “just cause” with “good cause” having found that courts have generally determine that the terms are synonymous. The 2016 edition of Black’s Law Dictionary no longer defines “just cause”. However, in any event, the employer must have a reasonable ground for discipline which is also fair. The Connecticut Supreme Court has articulated and adopted this standard.

In determining whether 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 Union argues for the adoption of the traditional application of the *Daugherty* test in its brief.

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. The Union addressed the *Daugherty* test in its brief. The *Daugherty* elements are listed below with the Panel's brief response to the questions presented.

Daugherty Elements of Just Cause

1. Was the Worker Given Advance Warning of the Probable Consequences of his Conduct?

Officer Szeps had six (6) years of service on the BPD at the time of the incident. He knew or should have known that the Department required that its officers treat members of the public in a civil and professional manner while performing their duties. Officer Szeps failed to do so and knew or should have known there were consequences for his failure.

2. Was the Controlling Rule, Order or Standard Reasonably Related to Efficient and Safe Operations?

The General Orders which Officer Szeps is charged with having violated are all reasonably related to the efficient and safe operation of the BPD.

3. Was the Alleged violation of the Rule or Order fully investigated Before Discipline?

The Panel finds that the incident which occurred on March 8, 2020 was fully investigation prior to the imposition of disciplinary action.

4. Was the investigation fair and objective?

No claim was clearly articulated that the investigated that the investigation was not fair or objective.

5. Did the investigation uncover substantial proof of guilt?

Yes.

6. Was the employer's treatment even-handed and non-discriminatory?

Yes.

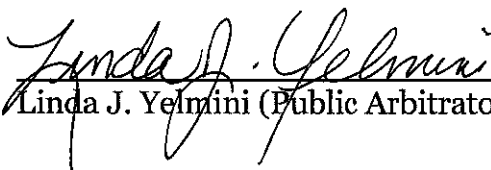
7. Was the disciplinary action reasonable related to the worker's record and the gravity of the offense?

Yes.

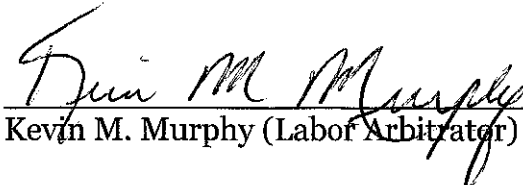
VI. AWARD

For the reasons set forth herein, the Panel unanimously finds that the City of Bridgeport did not violate the Collective Bargaining Agreement when it suspended the Grievant, Officer Adam Szeps for ten (10) days. The Panel recognizes that Officer Szeps attended four (4) hours of retraining in how to interact with the public. However, the Panel unanimously recommends that the BPD find a much more extensive training program to assist Officer Szeps with his interactions with the public and require him to attend such training.

BY THE ARBITRATION PANEL:


Linda J. Yelmini (Public Arbitrator & Chairperson) 1/10/2023


Richard Podurgiel (Management Arbitrator)


Kevin M. Murphy (Labor Arbitrator)