

The Philadelphia Police Department (“PPD” or “Department”) maintains a Code of Conduct (“Code”). Article I of that Code (“Conduct Unbecoming”) prohibits the following acts:

1-§026-10: Engaging in any action that constitutes the commission of a felony or misdemeanor which carries a potential sentence of more than (1) year . . . neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.

1-§021-10: Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.

In 2021 the City made certain unilateral changes to the Code. The Union responded by filing an unfair labor practice charge. This ULP was settled on November 28, 2023 when the parties agreed to use the 2014 Code until the next round of bargaining. The 2014 Code included the above Article I paragraphs concerning Conduct Unbecoming.

The domestic dispute that led to the Grievant’s termination occurred on the night of October 29 - 30, 2021 (“October 30”). It involved the Grievant and [redacted]. The Grievant and [redacted] then had a relationship [redacted].

On the night of October 30, the Grievant drove home from a family party [redacted] had not attended the party and was [redacted] ip she was taking [redacted].

Although both the Grievant and [redacted] agree that on this night they had a verbal argument that turned physical, they sharply disagree about the specifics of this incident, particularly insofar as it concerns the physical aspect of it. According to [redacted] the Grievant was the aggressor, and despite her trying to remove herself from the situation the Grievant struck, choked and pushed her. According to the Grievant, [redacted] was the aggressor, most notably striking him with a candlestick in the back of the head while he was trying to leave their home, and he only made physical contact with her to defend himself from her assaults.

The Grievant maintains that as the situation with [redacted] worsened, he decided to call for an Uber to go to [redacted] for the night, but he could not do so because he could not find his phone. The Grievant believed it necessary to call for the Uber, rather than driving for himself as he did when he came home from the party earlier that evening, because he had by then concluded that the alcohol he had consumed earlier that night had by now made him too intoxicated to drive. As to his missing phone, the Grievant believed that [redacted] had taken it.¹

Amid this incident, [redacted] twice called 911. Officer Ryan Powell ("Powell") responded. He found [redacted] to be crying and making accusations against the Grievant. Powell noted that both [redacted] and the Grievant showed signs of a physical confrontation. According to Powell, this included blood and scratches on the Grievant's face and scratches on the [redacted].

¹ This proved not to be so, as the Grievant found his phone in his car the next day.

The Grievant was sent to the hospital for treatment of his injuries. He was also arrested and sent to jail, as [redacted] said she wanted to press charges against him. Later that same night, the Grievant was released from jail.

The Grievant declined any medical treatment and was not arrested. Later that night she went to Southwest Detectives, where she gave a statement to Detective Holman. Thereafter, she made her early morning flight to attend to the family matter.

On November 4, 2021, without convening any Police Board of Inquiry (“PBI”) to make recommendations,² the City gave the Grievant a “Gniotek warning.”³ Also on that day, the Commissioner took “direct action” and issued to the Grievant a 30-day suspension with an intent to dismiss.

The criminal charges against the Grievant were soon dismissed after his arrest, and his record subsequently expunged concerning the incident of October 30. According to [redacted], she had declined to provide testimony in support of the charges because she thought this would make her feel better.

At the arbitration hearing, however, [redacted] was among those who testified on behalf of the City, explaining that due to the passage of time and therapy she was now prepared to testify about the events of October 30. The Grievant was among those who testified at the hearing on behalf of the Union.

² In most circumstances, when the Department is contemplating charges against a member it places the matter before a PBI, which is a three-person panel composed of PPD superiors and one peer, to make a recommendation on the proper disciplinary consequences for the individual. The Police Commissioner is provided this recommendation and will either accept the recommendation or choose an alternative punishment.

³ This is a formal procedure in which the Department announces charges and provides the employee the chance to address the charges.

POSITION OF THE CITY

Favorite's credible testimony established the following concerning what happened the night of October 30: The Grievant was intoxicated when he returned home. An argument began when [REDACTED] asked the Grievant to take out the trash, and this argument turned darker when he accused [REDACTED] of having his cellphone. The Grievant walked through every room in the house, breaking and throwing things, while searching for his phone. He eventually made it into the room where [REDACTED] was located and flipped over the mattress in the bedroom and threw the clothing she was folding. Grievant then pushed [REDACTED] and the two began to struggle. During the struggle, [REDACTED] grabbed a candlestick to defend herself. The Grievant took the candlestick, grabbed [REDACTED] by the face and threw her to the ground where he began choking her from behind. [REDACTED] then ran downstairs and called 911. While waiting downstairs for the police to arrive, the Grievant once again choked [REDACTED], but this time from the front. [REDACTED] clawed at his face to get away. Once free from the Grievant's grip, the Grievant pushed [REDACTED] outside. [REDACTED] called 911 a second time and informed the operator her boyfriend was trying to break her neck.

Testimony given at the arbitration hearing by responding Officer Powell confirmed [REDACTED] testimony about what happened on October 30. When he arrived at the scene Powell heard someone crying inside and could hear a [REDACTED] voice saying, "help me." When he opened the door, [REDACTED] ran outside crying, saying, "help me, he was attacking

me.” When Powell entered the house, he observed the Grievant standing in the living room and scratches on the face of [REDACTED], who was complaining of neck pain.

The Arbitrator should credit [REDACTED] version of events over that given by the Grievant. At the hearing, the Grievant’s testimony was self-serving and full of contradictions. He used his testimony not to take accountability for his actions or express regret, but to portray himself as a victim of a toxic relationship who was trapped in a bad situation because of [REDACTED] actions. In sharp contrast, [REDACTED] testimony was consistent throughout all proceedings. Her interview with the Southwest Detectives on the night of the arrest, her testimony during this hearing, and even her statements made on the video she took on her phone during the incident with the Grievant all tell the same story, that of a woman who was assaulted and choked by the Grievant. Not only was she credible, but she is also a licensed attorney with a professional obligation to tell the truth, and acutely aware of the importance and repercussions of lying under oath. There is no reason to discredit her version of events over the self-serving version presented by the Grievant, who is trying to get his job back.

Given the Grievant’s actions on October 30, and the events that followed, the City has met its burden of proof in establishing just cause for his thirty-day suspension with intent to dismiss and dismissal. In this regard, the City has established all seven tests typically applied when determining if just cause for a disciplinary action is present.

More specifically, the Grievant knew that as an employee of the PPD he was subject to the PPD Disciplinary Code. That Code relates directly to the orderly, efficient, and safe administration of the Department and the performance properly expected of

every Department employee. The Department conducted a fair and objective investigation concerning what occurred on October 30. It applied its rules, directives and penalties fairly and without discrimination when determining that termination was appropriate for the Grievant's actions.

If the Arbitrator nonetheless determines that the city did not have just cause to dismiss Grievant, the Arbitrator's award must be tolled for the period the criminal investigation was pending, as other arbitrators have done numerous times previously. Finally, should the Arbitrator conclude the city did not have just cause to dismiss the Grievant, he still should find that the City had just caused to issue the Grievant a 30-day suspension as the minimum penalty under the Code.

POSITION OF THE UNION

The Grievant's credible testimony established the following concerning what happened the night of October 30: Although he returned home from the [redacted] with an intent to provide [redacted] with emotional support [redacted] the following morning, before either one could settle down for bed the two engaged in a verbal argument. [redacted] became irate about the Grievant arriving home late from the party. Instead of continuing the argument, the Grievant tried to walk away from the situation, but things only intensified. [redacted] began making derogatory remarks about the [redacted]. Upon hearing this, the Grievant confessed that he wanted to break up with her, as he had reached his breaking point, but this did not stop [redacted] from berating him and [redacted]. As it was late and the Grievant wanted to go to bed, he

decided the best thing he could do was to leave the house. The Grievant decided to take an Uber back to home since he felt too intoxicated to drive again, but he could not find his phone. The Grievant then began searching for it, sifting through a pile of folded clothes she had laid out for her trip in their shared bedroom.

She treated this quick shuffling of clothes as a threat and pushed the Grievant twice. Instead of engaging in a fight, the Grievant decided to turn around and headed for the bedroom door. She immediately grabbed a candlestick and hit him on the back of his head as he was walking away. After he was hit, the Grievant tried to retrieve the candlestick from her while she proceeded to kick him. She scratched, kicked, and bit the Grievant's hands as he fumbled for the candlestick. Finally, the Grievant was able to knock the weapon from her hands, and he tried to prevent another attack by pushing her away from his body. However, when the Grievant pushed her away, she bit hard on his hand. Acting on his reflexes, he tensed his hand and tried to pry his hand from her mouth. Once the Grievant's hand was finally free, he pushed her again to the bed to ensure no more future attacks. Overwhelmed by the incident, the Grievant began inspecting his body for injuries while she slipped downstairs without his noticing. The Grievant knew that he had to leave the house and headed back downstairs to leave through the front door, and then saw her sitting by the front door on the couch. To prevent more fighting, the Grievant gathered his things to leave in the kitchen, but he could not use the backdoor to leave the house since it was locked and he did not have access to the key, so the front door was the only viable exit. As he collected all his belongings, however, the Grievant realized he still did not have his phone, and again pleaded with

to help him find it. Instead of helping the Grievant out of the home faster, [redacted] used her cell phone to record the Grievant from the living room couch as he looked for his phone and continued pleading for help to find his phone. The Grievant attempted to grab [redacted]'s phone to call his own phone and [redacted] became more enraged and began to shove the Grievant. Both the Grievant and [redacted] then shoved each other seeking control of her phone, and [redacted] started screaming, both inside and outside of the home. The Grievant relinquished control of the phone, never attempted any calls, and backed away from [redacted]. [redacted] went back inside the house and closed the door on the Grievant. The police then arrived.

Testimony given at the arbitration hearing by responding Officer Powell confirmed the Grievant's testimony about what happened on October 30. Powell saw the Grievant's blood-streaked appearance, and pictures later taken by the Grievant's father further established that he had multiple signs of injury caused by [redacted]. In sharp contrast, no pictures were ever produced to establish that [redacted] also had visible signs of injury.

The Arbitrator should credit the Grievant's version of events over that given by [redacted]. The Grievant credibly testified regarding how he sustained his injuries, and the nature of those injuries, as established through photographic evidence, are consistent with his account [redacted]. [redacted] account of the altercation is inconsistent with the un rebutted evidence concerning the Grievant's injuries. To take just one stark example, the photographic evidence makes clear that when [redacted] struck the Grievant with the candlestick, he was facing away from her, not toward her. It is clear from the photographs that his injury resulting from that attack were on the back of his head. The City offered

no explanation for how he could have sustained such an injury, based upon account. Furthermore, the Grievant's criminal charges, including the arrest upon which his discharge was based, were quickly withdrawn and expunged from his record.

Given the lack of credible proof that the Grievant engaged in misconduct on October 30, and how the City mishandled the situation thereafter, the City has not met its burden of establishing just cause for the Grievant's thirty-day suspension with intent to dismiss and his dismissal. The City has not proven all seven tests typically applied when determining if just cause for a disciplinary action is present.

More specifically, the City failed to provide notice that the Grievant's conduct might lead to discipline or discharge, as the disciplinary Code does not apply to the Grievant as a civilian employee. The City also never conducted a fair and objective investigation to establish whether the Grievant committed any wrongdoing. It further failed to establish that the Grievant violated any disciplinary rule. Finally, even if the Grievant did make some poor decisions on October 30, his stellar work performance and other mitigating factor compel a penalty of less than termination.

For all these reasons, the Arbitrator should sustain the grievance in full. As a remedy, he should direct that the City expeditiously reinstate the Grievant and make her whole for all financial losses. The Arbitrator should further retain jurisdiction regarding any disputes arising out of the implementation of the remedy.

OPINION

I initially agree with the City that 2014 PPD Disciplinary Code was applicable to the Grievant's conduct on October 29-30, 2021, the date of the incident now at the heart of this case. Although the Union is correct that until recently there was a ULP pending about certain unilateral changes made by the City to the Code in 2021, those changes had no impact upon the portion of the Code involved in this case, that involving Unbecoming Conduct.

I further agree with the City that the Grievant had adequate notice that on October 30 he was covered by those portions of the Code. While the Union stresses that the Grievant worked in the PPD as a civilian employee, the evidence is clear that the City has long considered non-uniform employees working in the Department to be covered by the Code, and that the Grievant himself understood that he was covered by the Code. Although the Union is correct that some sections of the Code are clearly not applicable to civilian employees, this does not negate the applicability of the sections of the Code that clearly do have applicability, including Conduct Unbecoming. The actions of all those who work in the Department, whether uniformed or non-uniformed, reflect upon the Department as a whole. Furthermore, the Grievant had no reasonable basis to

conclude in October 2021 that he was relieved from all obligations under the Code, including those provisions at issue in this case.

My focus now turns to what occurred on the night of October 30 between the Grievant and [REDACTED] with whom he was sharing a residence. On that night the Grievant came home to [REDACTED] from a family party and, while intoxicated, engaged in a verbal argument with [REDACTED] that turned physical. Beyond this, what occurred, and who was the aggressor in the physical portion of the confrontation, is a matter of sharp dispute. As set forth in detail in the above "Positions" portion of this Decision, both [REDACTED] and the Grievant claim the other person was the aggressor and that all physical acts that they engaged in against the other were acts of self-defense. As no one else was present when this confrontation occurred, this is therefore a classic "he said-she said" domestic dispute situation.

Having considered the evidence before me, including the testimony of both [REDACTED] and the Grievant, I reject the Grievant's contention that he is without blame for the physical portion of what occurred on the night of October 30. I base this conclusion primarily on the compelling testimony given by [REDACTED] at the arbitration hearing about the Grievant's aggression, and the testimony given by Officer Powell, who responded to [REDACTED] 911 call that night, about what he heard and saw when he arrived at the scene, which included pleas from [REDACTED].

for help and scratches on her face. I have also given some consideration to a recording made on her cell phone during portions of the confrontation, during which is heard asking the Grievant to leave her alone and saying he tried to choke her.

The totality of this evidence does not lead me to conclude that the Grievant was acting solely in self-defense. Rather, it leads me to conclude that the Grievant had unnecessarily aggressive physical contact with on multiple occasions, including his aggressive attempt to grab the cell phone she was holding while videoing him, and that this caused to truly believe that her personal safety was at risk. The Grievant had opportunities to diffuse the situation more than once that night, and he failed to take advantage of those opportunities.

It does not follow from this finding that I believe that is blameless for what occurred on the night of October 30. Indeed, there are reasons to believe that was a participant, not an innocent victim, in this altercation. These reasons include, but are not limited to, the fact that the Grievant sustained physical injuries, most notably a wound on the back of his head. My role here is not, however, to pass judgement on conduct on October 30, but rather to pass judgement on the Grievant's conduct under the circumstances he faced, regardless of whatever blame herself might also have for the situation.

The question therefore becomes whether the City had just cause to suspend and then dismiss the Grievant for his culpability for the events of October 30. As previously noted, in support of these disciplinary actions the City has relied upon the prohibitions contained in the below two provisions in Article I (Conduct Unbecoming) of the Code:

1-§026-10: Engaging in any action that constitutes the commission of a felony or misdemeanor which carries a potential sentence of more than (1) year . . . neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.

1-§021-10: Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.

I find that the City did have just cause on November 4, 2021 to suspend the Grievant with intent to dismiss, As of that date, the Grievant had been arrested and charged with a simple assault and recklessly endangering another, and the penalty for conviction for either carries a penalty of up to two years in prison, These are exactly the circumstances set forth in 1-§026-10 for activation of this paragraph. Nor can I find that this paragraph is unreasonable on its face or inconsistent with just cause principles, as the PPD has a strong interest in not having in its employment individuals who tarnish its reputation by engaging in misconduct that rises to the level of such criminal penalties if proven to be true.

Although the Union correctly stresses that the criminal charges against the Grievant were quickly dropped, the City is also correct that in Section 1-§026-10 it is

explicitly stated that "...neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action..." It is the conduct at issue, not the existence of the criminal charges themselves, that ultimately determine if just cause exists for discipline. Moreover, in this instance the criminal charges against the Grievant were apparently dropped because [redacted] had decided not to give any testimony in support of them, and without testimony by [redacted] there was no criminal case against the Grievant. The dropping of the criminal charges was therefore not an exoneration of the Grievant's conduct on October 30.

Furthermore, the Grievant was also dismissed for a second charge of Conduct Unbecoming, specifically 1-§021-10. This provision prohibits "any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department." The City had just cause to discipline the Grievant under this provision, given his intoxicated, aggressive participation in a domestic argument turned physical for which he was not blameless. The nexus between the Grievant's off-duty misconduct on October 30 and his work with the PPD is magnified given the undisputed evidence that the PPD is frequently called into situations involving allegations of domestic violence, and that these incidents are among the type that put the lives of the responding Officers most at risk. Given this nexus, the Grievant's behavior on October 30 did indicate that on this night he had little regard for his responsibility as a member of the Department.

I reject the Union's contention that the grievance must be sustained for due process reasons. It was not under the circumstances present in this case an abuse of

discretion for the Department to decide to proceed with direct action by the Commissioner to remove the Grievant from service rather than placing the matter before a Board of Inquiry. Indeed, the City has established that its handling of the situation involving the Grievant, including the manner of the investigation it conducted, was consistent with its handling of all such situations involving pending criminal charges resulting from claims of domestic violence. The Grievant was not in any way treated disparately.

The question before me now turns to whether just cause existed for the City to convert the Grievant's suspension with intent to dismiss to a termination effective November 29, 2021. This is indeed a critical question, as the Union correctly characterizes the penalty of discharge as the workplace equivalent of "capital punishment."

After careful consideration, I am persuaded by the City that it did have just cause to take this action. Pursuant to the Disciplinary Code, the specified penalty for a first offense of either of the Conduct Unbecoming sections upon which the City has relied in terminating the Grievant is a 30-day suspension or dismissal. Under the circumstances of this case, it is the latter of these two options that is justified.

The most important reason for my determination in this regard is the serious nature of the Grievant's actions on October 30. As testified to by _____, the Grievant's misconduct was far more than a disagreement that turned into a scuffle between them.

_____ testified that the Grievant choked her on two separate occasions to the point that she could not breathe, shoved and/or restrained her repeatedly, blocked her from

leaving their home, and threatened with a cocked fist to punch her in the face if she did not give him his cell phone, which the Grievant mistakenly believed she had taken from him.

In addition, while I recognize that pursuant to the Grievant's version of events he did nothing wrong on October 30, I still find his lack of remorse for what occurred that night to be troubling. At the arbitration hearing the Union argued persuasively that the Grievant should be given an opportunity to testify as to whether he would do anything different on October 30 if he had to do it over again, because remorse is sometimes considered by arbitrators to be a mitigating factor. The Grievant did not, however, take advantage of that opportunity. He expressed no misgivings at all for his part in what occurred with saying only that he regretted that after the party he went back to the house he shared with Favorite.

I am not unmindful that the Grievant had a good work record during the approximately four years he worked for the City, and that he presented himself well at the arbitration hearing. I also recognize that, even according to herself, the Grievant's behavior on October 30 was an aberration that was not reflective of his normal behavior, but rather caused by his intoxication that night. Nonetheless, under the totality of circumstances present, I cannot find that imposition of a penalty limited to a 30-day suspension is appropriate.

In the final analysis, my primary focus in deciding this case is clear. It is not the documents contained in the PPD's Internal Investigation Report. It is not the contents of the recordings of the two 911 calls made during the confrontation with the


Grievant, which the City played at the arbitration hearing. Rather, it is the testimony given at the arbitration hearing by the only two people who have direct, first-hand knowledge of what occurred that night ; and the Grievant. Simply stated, I found the testimony of . to be in its totality more credible than that of the Grievant concerning what he did and did not do that night.

Accordingly, notwithstanding the Union making every possible argument to the contrary, I must and will deny the grievance in its entirety.

AWARD

The grievance is denied.

Signed this 28th day of May 2024.



SCOTT E. BUCHHEIT, ARBITRATOR