

IN THE MATTER OF ARBITRATION BETWEEN

<u>AFSCME District Council 159</u>	*	AAA Case No.
	*	01-18-0000-7373
	*	
<u>Union</u>	*	Tahera Young-Dees
	*	Dismissal
	*	
AND	*	
	*	
<u>City of Philadelphia</u>	*	
	*	
	*	
	*	
<u>Employer</u>	*	

For the Union: Thomas Gribbin, Jr., Esq.

For the Employer: Kia Ghee, Assistant City Solicitor

OPINION AND AWARD

Dates of Hearing: November 7, 2018 and December 18, 2018

Date of Award: January 25, 2019

Arbitrator: Samantha E. Tower, Esq.

BACKGROUND

Tahera Young-Dees (Grievant) started working for the City of Philadelphia (City) in the Philadelphia Prison System (PPS) as a Correctional Officer in 2011. Grievant was subsequently promoted to Sergeant in PPS in 2016.

The City dismissed Grievant on November 30, 2017 for violating General Orders/Policies: 01, 02, 06, 34, and 1.C.11.1. (C3) AFSCME District Council 159 (Union) filed a grievance challenging Grievant's unjust discipline. (J2) A hearing on this matter was held on November 7, 2018 and December 18, 2018. The parties were given a full opportunity to present evidence and examine witnesses.

The following stipulations were entered into the record:

1. On January 31, 2011, Tahera Young-Deas was appointed as a Correctional Officer in the Philadelphia Department of Prisons.
2. On May 23, 2016, Young-Deas was promoted to Correctional Sergeant.
3. On August 30, 2017, Young-Deas was charged with violating General Orders/Policies 01, 02, 06, 34 and 1.C.11.1 as a result of an OPC Investigation regarding allegations of Staff Misconduct.
4. A formal disciplinary hearing was held on November 16, 2017 where the board sustained the violation of

General Orders/Policies 01, 02, 06, 34 and 1.C.11.1 and recommended dismissal.

5. On November 17, 2017, Young-Deas was suspended for 10 days [sic] with intent to dismiss.
6. On November 30, 2017, Young-Deas was dismissed.

In substantive part, the Notice of Dismissal issued on November 30, 2017 reads:

Violation of General Orders/Policies 01,02,06,34 and 1.C.11.1

In summary, on [REDACTED], Correctional Officer R [REDACTED] C [REDACTED] (PR# [REDACTED]) informed prison authorities of police contact she encountered involving an altercation between her and you. Officer C [REDACTED] stated that on [REDACTED], the two of you were supposed to meet up so that she could retrieve her things from you. You and Officer C [REDACTED] began a verbal exchange, which led to a physical altercation. After the physical altercation was over, Officer C [REDACTED] stated that you then busted her back car window and her front windshield with a pipe. Immediately after the incident, Officer C [REDACTED] stated that she filed a police report.

In your interview with the Office of Professional Compliance (OPC), you admitted to being involved in a physical altercation with Officer C [REDACTED], and stated that you did not report it to the police because you and Officer C [REDACTED] have been in a relationship for a number of years, and it was not "that deep." You also stated that you did not remember if you busted Officer C [REDACTED]'s car windows, and that no one in your party had a gun. However, Correctional Officer I [REDACTED] G [REDACTED] (PR# [REDACTED]) was present during the time of the incident, and in her interview with OPC, she stated that you did in fact bust out the car windows, and that a weapon was present during the course of the incident.

You denied having any police contact in your OPC investigation. However, a police report was retrieved with

your name as the complainant. The date on the police report was [REDACTED], two days after the incident.

Therefore, after a review of the record and due to the nature of the charges, you are hereby suspended for 30 Calendar Days and are to be dismissed from employment with the City of Philadelphia.

(C3)

The following Policies and Procedures are relevant:

Policy Number 1.C.26

Purpose

The purpose of this policy is to provide the guidelines and update the actions to be taken when any Philadelphia Prison System employee becomes the subject of a criminal investigation; has been served a protection from abuse (PFA) order or other type of restraining order; or, has been arrested, incarcerated, charged, and/or convicted of any misdemeanor or felony.

Policy

In keeping with the General Orders (refer to Policy and Procedure 1.C.11.2 General Orders), employees will refrain from engaging in unprofessional or illegal behavior both on and off duty that could in any manner reflect negatively on the PPS. Additionally, any employee arrested or involved in a police or other law enforcement agency investigation for any reason other than a routine traffic violation must immediately report the facts to the Shift Commander of the facility to which he/she is assigned or other appropriate PPS authorities. After initial notification of such law enforcement contact, PPS staff will follow the procedures detailed in this policy regarding further actions to be taken.

(Incorporated by reference in General Order 34 which is listed below).

General Orders:

01. It is essential that each employee has a working knowledge of and complies with the policies and procedures.
02. Lack of knowledge of any policy, procedure, rule of law shall not excuse or mitigate the failure to comply with, or the breach or violation of any rule, or several of them by an employee.

06. Employees are responsible for maintaining professional deportment at all times towards inmates, the public, fellow employees, and supervisors. Employees will refrain from engaging in unprofessional or illegal behavior both on and off duty that could in any manner reflect negatively on the PPS.

34. Any employee arrested or involved in police investigation for any reason other than routine traffic violation must immediately report the facts to the Shift Commander/appropriate Prison authorities, as per Police and Procedure 1.C.26 Staff Arrest/Law Enforcement Investigation.

(J4)

The City implements discipline in accordance with a Disciplinary Matrix which sets forth a range of discipline for violations of each General Order. The range of discipline set forth for a General Order 1 first offense is "employee warning record to 3 days suspension"; for a General Order 2 first offense is "employee warning record to 3 days suspension"; for a General Order 6 first offense is "5 days Suspension to Dismissal"; and for a General

Order 34 first offense is "15 days Suspension to Dismissal". (J4)

CO [REDACTED], Correctional Officer, testified that she has worked at PPS for five years and has known Grievant for four years. CO [REDACTED] and Grievant were in a romantic relationship for approximately three years which ended in January 2017. They remained in contact with regard to Grievant's young daughter, [REDACTED], after the relationship ended.

CO [REDACTED] said that she texted Grievant on [REDACTED], to ask about [REDACTED]'s doctor appointment and her birthday party which was scheduled for the following day. She said that she started arguing with Grievant and then eventually made a plan to meet Grievant to retrieve some of her important documents.¹

CO [REDACTED] testified that she saw three other people with Grievant when she arrived at the parking lot at the corner of Oxford and Rising Sun. CO [REDACTED] said that

¹ CO [REDACTED] said that Grievant had her personal documents (i.e., passport and social security card). According to CO [REDACTED], the two women made arrangements to meet so that she could retrieve the documents.

she recognized I [REDACTED] G [REDACTED] with Grievant. CO C [REDACTED] also works at PPS. She said that she saw one woman whom she did not know but who she later found out is named R [REDACTED] J [REDACTED] with a gun in her hand. CO C [REDACTED] testified that the gun was black and silver and J [REDACTED] held it in a ready position pointed down near her waist band.

CO C [REDACTED] said that while she exchanged words with J [REDACTED], who held the gun, Grievant hit her on her face. CO C [REDACTED] testified that she defended herself when Grievant hit her in her face and they began fighting until she slipped out of her shirt to get away from Grievant. She testified that she saw the gun pointed at her face during the fight and heard J [REDACTED] say that she wanted to hit her with the barrel of the gun. She said that when she was starting to leave the parking lot she heard a big bang and the back window of the car shattered. Grievant then tried to smash the front window of the car but the glass only cracked. CO C [REDACTED] said that the car was her girlfriend's Mitsubishi Gallant and that her girlfriend remained in the car the whole time.

CO C [REDACTED] said that she went to make a police report immediately after the incident. When asked if she

had threatened Grievant before the fight in the parking lot, CO C [REDACTED] said that she could not recall if she or Grievant had threatened each other before the incident. She explained that things were heated and "words were exchanged."

CO C [REDACTED] testified that she reported the vandalism to the police and told the police that there was a gun pointed at her during the incident. (C4, p. 44-45) On [REDACTED], CO C [REDACTED] reported the incident to her immediate supervisor who took her to Internal Affairs (IA). CO C [REDACTED] said that she understood that her report to the police and her interview with police would constitute police contact.

When asked about the damaged car on cross-examination, CO C [REDACTED] said that her girlfriend did not file an insurance claim for the damage to the car. Instead CO C [REDACTED]'s mother, Captain P [REDACTED], paid to repair the windows and then CO C [REDACTED] reimbursed her mother.

CO C [REDACTED] acknowledged that she did have contact with Grievant after the incident and explained that she talked to Grievant about the car. She also said that they

have had cordial contact since [REDACTED]. She said that she did not follow through with her police report and the police did not conduct any further investigation after her initial filing of the police report on the day of the incident.

Correctional Officer I [REDACTED] G [REDACTED] testified that she is friends with Grievant and hangs out with her socially. She was with Grievant on [REDACTED] and witnessed the physical altercation between Grievant and CO [REDACTED]. Before the incident, CO G [REDACTED] heard Grievant fighting with CO [REDACTED] on the phone. She did not hear them make a plan to meet and she did not hear anything about CO [REDACTED] retrieving documents. CO G [REDACTED] testified that she did not hear specific threats but heard CO [REDACTED] yelling and cursing.

CO G [REDACTED] said that she, Grievant and two other women were getting ready to go into a bar when CO [REDACTED] pulled into the parking area. CO G [REDACTED] said that she believed Grievant was surprised to see CO [REDACTED] that night. She did not believe the women had a plan to meet in the parking lot. CO G [REDACTED] was standing outside the car about 15 feet away when Grievant pulled into the parking

lot, jumped out of her car and started yelling. She testified that CO C [REDACTED] initiated the fight when she grabbed Grievant in a chokehold. CO G [REDACTED] and the others were yelling at CO C [REDACTED] to let Grievant go. CO G [REDACTED] said that she did not see Grievant hit CO C [REDACTED]. CO G [REDACTED] testified that CO C [REDACTED] finally let go of Grievant and got back in her car. CO G [REDACTED] said that she believed that the car came deliberately close to hitting her.

CO G [REDACTED] testified that Grievant "blacked out" and picked up a stick from the ground and hit the car CO C [REDACTED] was riding in with a stick. She described the stick as long and wooden. She explained that Grievant was not acting like herself emotionally. CO G [REDACTED] described Grievant as overwhelmed and enraged. CO G [REDACTED] kept screaming Grievant's name when she whacked the windows of the car but she said that Grievant did not respond. CO G [REDACTED] said that Grievant hit the back window once and then the front window once. She recalled that the windows were shattered but not busted out. She said that it was after 8 or 9 PM and it was dark but the area where the fight occurred was an open area where people could see the altercation.

CO G [REDACTED] testified that they did not go into the bar after the incident. She said that Grievant was crying but did not appear to have any injuries. They got back in Grievant's car and went to Grievant's house. CO G [REDACTED] said that she did not see anyone with a gun. She did not see anyone threaten CO C [REDACTED] with any weapon. When asked about her statement to Internal Affairs when she reported that someone had a weapon, CO G [REDACTED] said that she does not recall a weapon, she just recalls a stick.

CO G [REDACTED] testified that she took Grievant to the police station a day or two later to file charges against CO C [REDACTED]. The police told Grievant she had to wait because CO C [REDACTED] already came into the District. CO G [REDACTED] was never contacted by the police. CO G [REDACTED] did not report the fight but she gave a statement when she was called in as a witness by IA.

Commissioner Blanche Carney testified that she reviews all disciplinary records, evidence and charges. She gets the information from the Governing Board and then she makes the final disciplinary decision.

Commissioner Carney reviewed the file from the Governing Board as it related to Grievant and she made the final determination to dismiss Grievant. She explained that she made the decision to dismiss Grievant because the nature of the charges were egregious. The charges were sustained because of Grievant's contact with another officer and her failure to report police contact. She found the conduct particularly egregious because there was a physical altercation and destruction of property in a public environment with another correctional officer present.

Commissioner Carney testified that she determined that this was unprofessional conduct even though it was an off-duty incident. She said that this could have escalated to a loss of life situation because there was a weapon used to bust out the windows and injuries were sustained. Commissioner Carney testified that what started as a simple exchange of documents became a full blown situation with the Grievant enraged. She expects employees to be able to deescalate a situation and Grievant escalated the situation here. She said that there are people in custody for the same conduct exhibited by Grievant.

Commissioner Carney said that this kind of behavior reflects poorly on the City. She also said that Grievant's rank as a supervisor means that she is held to a higher standard. Grievant is expected to be a role model and to follow policy.

Commissioner Carney said that it is important for employees to report off-duty incidents so that PPS can separate staff or reassign staff to reduce the likelihood of a clash on-duty. Additionally, Commissioner Carney testified that employees are expected to conduct themselves with professional deportment off-duty.

Commissioner Carney explained that she determined that Grievant was not fit to be a Sergeant based on the physical altercation with a weapon present and with Grievant's rage-filled escalation of the incident. She said that it is one thing to engage in an altercation but to go back and destroy property by striking out the windows in the car is an escalation.

Commissioner Carney testified that Grievant was not forthcoming in her interviews with IA. It took Grievant three times to acknowledge that she went to the

Police District. Commissioner Carney could not recall the exact timing but could recall one other instance where an employee was terminated for off-duty conduct and for not reporting police contact to PPS.

On cross-examination, Commissioner Carney acknowledged that she did not have first-hand knowledge of the incident or the investigation. She reviewed the evaluation of the OPC. She believed that the meeting between CO C [REDACTED] and Grievant was arranged to exchange personal items. She did not know if anyone needed medical attention but recalled that CO C [REDACTED] reported two black eyes in the police report. Commissioner Carney also acknowledged that CO C [REDACTED]'s police report had the police officer's information and signature while the police report filed by Grievant did not. She thought that IA got Grievant's police report by requesting it and said that she did not find it odd that there is no signature on the document.

Commissioner Carney explained that the term "blacked out" is used in PPS to describe an inmate who is so unruly and uncontrollable that the officers can use a taser. Commissioner Carney did not recommend charges for

CO C [REDACTED] because she viewed her use of a headlock as self-defense to place Grievant under control and to gain compliance. Commissioner Carney said that Grievant was not the subject of a criminal investigation, she was not arrested or charged, nor, to the best of Commissioner Carney's knowledge, was Grievant subject to a Protection From Abuse (PFA).

Commissioner Carney testified that employees must comply with General Orders because they are civil servants and employees of PPS and represent the City. There are more than 5,000 people in custody, some for the same kinds of actions as those exhibited by Grievant, and PPS employees should be held to the same standard.

Sergeant Katina Green testified that all officers are trained in the General Orders in the training academy and then are made aware when there is a change to a General Order or policy. Sgt. Green said that she conducts fair and impartial investigations into staff misconduct for IA. In this case, IA was made aware of the incident on [REDACTED] [REDACTED], when CO C [REDACTED] reported the police contact to her supervisor and then to IA. Sgt. Green interviewed CO

C [REDACTED], CO G [REDACTED], and Grievant as part of her investigation.

Sgt. Green said that Grievant did not report police contact but amended her statement to IA two times on the same day to include information about talking to her friend who is a police officer. Grievant said that she did not file a police report and did not have a DC#. Sgt. Green said that a DC# is not part of the requirement to report police contact. Sgt. Green explained that she called her contact, Lieutenant F [REDACTED] in the police department and asked for anything related to the [REDACTED], [REDACTED] incident. She did not talk to Lt. F [REDACTED] about the [REDACTED] police report and she did not talk to the police officer who filled out the report. Sgt. Green said that she thought Grievant was not being truthful because Grievant initially said she did not file a report but then said maybe her sister did after Sgt. Green showed her the [REDACTED] police report.

Sgt. Green assessed the evidence and determined that Grievant was the aggressor and that she busted out the windows in the car. Sgt. Green said that she also determined that Grievant was untruthful about police

contact. Sgt. Green said that Grievant violated General Order 6 because she did not maintain professional deportment when she engaged in the fight and used a weapon to break the windows. The fact that it was off-duty conduct did not matter because employees are expected to maintain professional deportment at all times.

On cross-examination, Sgt. Green acknowledged that CO C [REDACTED] was not charged with violating any General Orders for her part in the fight. She also acknowledged that CO G [REDACTED] said that she heard CO C [REDACTED] make threats on the phone and that CO G [REDACTED] saw CO C [REDACTED] put Grievant in a headlock. Sgt. Green said that CO C [REDACTED] was completely justified in the actions she took on [REDACTED].

Sgt. Green testified that the police did not conduct an investigation after receiving CO C [REDACTED]'s police report and did not interview Grievant. She said that if the police did not conduct an investigation then Grievant could not be subject to an investigation.

Marco Gianetta, Deputy Warden, testified that he conducted the disciplinary hearing for Grievant on November

16, 2017. The Disciplinary Board considered the following factors: seriousness of charges, facts presented at the hearing, prior discipline, and the disciplinary matrix. Deputy Warden Gianetta said that the Board looked at Grievant's prior discipline after they had already found Grievant guilty of the charges at hand and then a level of discipline was determined.

Lieutenant W [REDACTED] J. S [REDACTED] testified that he generated an employee Written Warning on Grievant on September 30, 2016. (C6) He said that he has one week to get an investigation out after an incident occurs. He said that he has two weeks to issue discipline once a determination has been made to discipline an employee.

Ltn. S [REDACTED] testified that he initially met with Grievant to give her the 2016 discipline within the two week time frame but she requested a union representative. He made arrangements for a union representative to be present even though it is not required for a written warning. Ltn. S [REDACTED] said that he had a difficult time scheduling another time to give her the discipline because he had to work around his availability, Grievant's availability, as well as the union representative

Lieutenant Hurley. He said that his first attempt was before the 14-day time limit but he acknowledged that there is no notation on the discipline that reflects the timing of the first attempt. Lt. S [REDACTED] testified that to the best of his knowledge the only union representative for Grievant is Lt. Hurley.

Dana Johnson, Deputy Director for the Mayor's Office of Labor Relations, testified that she helps manage the grievance process at the Step 4 level. Ms. Johnson receives grievances and puts them into the database before creating a physical file to give to a staff member. Ms. Johnson testified that she did not receive a grievance related to Grievant prior discipline. She explained that she only gets grievances that rise to the Step 4 level.

Grievant testified that she and CO C [REDACTED] were in a romantic relationship and lived together for a few years. Grievant said that she permitted CO C [REDACTED] to remain in her daughter's life after their relationship ended but there was no formal custody agreement. She said that she never worked with or supervised CO C [REDACTED] after she was promoted.

Grievant testified that she never filed a formal police report with regard to the [REDACTED] incident. She said that she was not subject to a criminal investigation; served with a PA or RO; or charged with anything. She was not interviewed by the police and she never signed a written statement.

Grievant testified about the incident on [REDACTED] [REDACTED]. She said that CO C [REDACTED] called her about [REDACTED]'s birthday party. When Grievant told CO C [REDACTED] she was not invited to the party, CO C [REDACTED] got angry and they began to fight. There were several calls and texts throughout the day. Grievant said that they did not make arrangements to meet or discuss anything about documents. She stated that there was no reason for Grievant to have CO C [REDACTED]'s passport or social security card because they moved out of the house they had shared on the same day.

Grievant testified that CO C [REDACTED] made the threat during the day on [REDACTED], "When I see you it's going to be bad." Grievant was going out with her friends and was surprised to see CO C [REDACTED] pull up. Grievant said that CO C [REDACTED] initiated the fight by swinging at her and then putting her in a headlock. She

does not recall hitting the back of CO C [REDACTED]'s car. She said that no one had a gun.

Grievant testified that the fight occurred in an open area with a bus stop on each corner between 8 and 9 at night. She said that there were other people in the area. No one broke up the fight. CO C [REDACTED] just let Grievant go. Grievant did not know what CO C [REDACTED] did after the incident. Grievant testified that she got in her car, combed her hair and went inside [REDACTED] because there was "[n]othing wrong with me. It was no big deal to me. I did not feel like she was a threat." (T. Grievant) Grievant said that CO C [REDACTED] called her at 1 AM and told Grievant to give her \$600 for damage to her girlfriend's car or else there would be consequences.

Grievant said that she was never contacted by police. She explained that she went to a police station a day or two after the incident with her sister and CO G [REDACTED]. Grievant did not talk while she was at the police station. She did not make a statement or file a police report.

Grievant testified that she talked to her supervisors about the incident and when they asked if she had police contact she answered, "no." She also told IA that she had had no police contact. Grievant said her understanding of police contact was being arrested or interviewed by police.

Grievant said that she filed a grievance over her prior discipline and was told it was going to Major H [REDACTED]. The Union told her that the grievance was denied. She said that she did not know what happened after the grievance was denied.

Grievant testified that she has regular but not daily contact with CO C [REDACTED]. They do not see each other socially and CO C [REDACTED] has not seen [REDACTED].

On cross-examination, Grievant testified that she did not consider the incident on [REDACTED] to be an altercation or fight because they did not exchange blows. She said that she did not consider the incident to be "that deep." CO C [REDACTED] swung at her and put her in a headlock. Grievant said that it was a personal matter and not work-related.

Grievant explained that she never told anyone besides the Union that she had talked to her supervisors because she only answered the questions that were asked of her. Grievant said that IA knew about threatening emails from CO C [REDACTED] but they did not include them in the record. She acknowledged that she signed her IA statement without making corrections. (C4, p. 17-26)

Grievant testified that a stick can be a weapon if used properly. She said she did not have a stick in her car and did not recall where she grabbed a stick. She testified that she did not remember doing anything to the car so she would not take CO C [REDACTED] or CO G [REDACTED] at their word. She said that she gave her statements to IA and at the arbitration hearing to the best of her ability.

Grievant testified that she did not go in to the police station and file a police report. She did not see the police report before the arbitration hearing. She had a conversation with a friend who is a police officer who told her to go into the police station and find out if charged were filed. Grievant did not speak when she went into the police station. She said that her sister or her

friend may have given the police the information contained in the police report. (C4, p. 46-47) Grievant said that she did not have any injuries after the incident on [REDACTED]. Grievant testified that she took breaks during her statement to IA because she needed to talk to the Union.

Grievant testified that she was never asked to provide a written statement to IA. She said that she understood that prison policy requires full cooperation in an IA interview. She said that she cooperated fully and requested breaks during the interview. Grievant testified that she regrets her role in participating in the "back and forth" with CO C [REDACTED].

EMPLOYER POSITION

The City contends that there was just cause for Grievant's dismissal. It insists that the record shows that Grievant engaged in a physical altercation with a subordinate in front of another subordinate and witnesses on [REDACTED]. This altercation occurred in public where anyone could see the melee.

The City points out that Grievant's version of the incident is inconsistent and is not supported by corroborating evidence. The City stresses that Grievant made a statement that there was no altercation. Grievant testified that C [REDACTED] threatened her previously and extorted her for \$600.00 for car damage. The City insists that the Arbitrator should not find Grievant's testimony credible. Not only is there no corroborating evidence for this revisionist testimony, but also Grievant could not remember significant details of the incident like breaking the car windows. Additionally, it took Grievant three tries in her statement to Internal Affairs to acknowledge that she actually went into a police station.

The City questions Grievant's explanation of her visit to the police station. It alleges that it is absurd to think that Grievant would go into a police station and a friend would provide all of Grievant's information on her behalf. The City also questions Grievant's claims that she was forced to defend herself. It argues that there is no evidence to suggest this street brawl was anything other than an attack orchestrated by Grievant.

The City asserts that the only corroborating evidence supports CO C [REDACTED]'s version of the incident. CO G [REDACTED], Grievant's friend, testified that Grievant was aggressive and enraged. CO G [REDACTED] said that she kept calling to Grievant for her to stop but Grievant picked up a stick and broke the back window of the car CO C [REDACTED] was riding in. CO C [REDACTED] testified credibly and her testimony was consistent with her statement to IA and the police report.

The City contends that it conducted a thorough investigation prior to the issuance the discipline. Officer C [REDACTED] brought the matter to the attention of the City. The City asserts that CO C [REDACTED] came in to report the altercation right away but Grievant made no counter-statement at the time. Grievant did not come in until three (3) weeks later when she was summoned to come in. The City contends that Grievant would have come in earlier if she were the victim in the altercation.

The City disagrees with the Union's attempt to create the impression that the investigation was flawed because CO C [REDACTED]'s mother works in PPS. It insists that

there was nothing nefarious in this investigation and the resulting discipline.

The City insists that Grievant violated General Orders 6 and 34. It says that General Order 6 clearly covers on and off duty behavior. Deputy Warden Gianetta testified that he had never heard of such egregious behavior for a senior officer to be involved in a melee on the street. The penalty for a first violation of General Order 6 can lead to dismissal. Here, the City points out that the Disciplinary Board found her guilty of a violation of General Order 6 and then determined that due to her prior discipline, her violation of the General Orders would be considered a second violation. Ultimately, the Disciplinary Board determined that dismissal was an appropriate penalty.

Commissioner Carney agreed with the penalty. She testified that this was a supervising officer who was supposed to set an example. Instead, Grievant created chaos. When CO G [REDACTED] tried to call Grievant back she could not be reached. Grievant herself said that she "blacked out." Commissioner Carney explained that the term

"black out" is used to refer to an inmate who is so unruly and uncontrollable that the officers can tase them.

The City also argues that Grievant violated General Order 34 which incorporates Policy 1.C.26. The purpose of the policy is to provide guidelines and necessary actions when an officer receives an action against them. The City points out that the policy clearly states that any employee arrested or involved in a police or other law enforcement agency investigation for any reason other than a routine traffic violation must immediately report it. The policy is intended to apply to any person subject to police contact. The City insists that Grievant went into the police station thinking that she was the subject of a police investigation and she should have reported it as General Order 34 specifies.

The City requests that the grievance be denied.

UNION POSITION

The Union argues that Grievant was unjustly dismissed because of the unsubstantiated claims made by a jilted girlfriend and the unsubstantiated allegation that

Grievant had police contact. The Union insists that the City has not met its heavy burden of proving there was just cause for Grievant's dismissal. The Union stresses that Grievant was an exemplary employee for seven years before her dismissal and the prior discipline was not properly in her file because it was not issued within 14-days. (U1)

The Union points to the City policy 1.C.26 and contends that the City has not proven that Grievant violated the policy because it has not shown that there was any police investigation or police contact. There was no investigation done by police or if there was an investigation the police did not interview Grievant or other witnesses.

The Union asserts that the City has failed to show it had just cause to terminate Grievant for a violation of General Order 6. The City ignores the testimony of Grievant and the statement made by CO G [REDACTED]. The Union stresses that there is no evidence that this incident reflected negatively on the PPS in any way.

The Union makes a claim of disparate treatment because CO C [REDACTED] did not receive any discipline for her role in the altercation. CO G [REDACTED] told Sgt. Green that CO C [REDACTED] instigated the fight and held Grievant in a headlock. Sgt. Green and Commissioner Carney ignored that piece of evidence when they decided to discipline Grievant and not CO C [REDACTED].

The Union questions CO C [REDACTED]'s credibility. It says that CO C [REDACTED] was the only person to report the "melee." She also changed some of her answers on cross-examination. She said that Grievant's girlfriend held a gun pointed down and she recalled her conversation with Grievant after the incident which conflicts with her earlier testimony that she had had no contact. Additionally, CO C [REDACTED] reported the incident to police but then failed to pursue it further. The IA investigation shows that attempts were made to pursue the matter but CO C [REDACTED] did not participate. The Union argues that CO C [REDACTED]'s lack of participation in pursuing the matter further suggests that there was not a gun present.

The Union objects to the City's characterization of the police report generated when Grievant went to the

police station as police contact. It points out the differences between the police report when CO C [REDACTED] was interviewed and filed a police report and when Grievant went to the police station. When CO C [REDACTED] filed a police report it was fully filled out and was signed. (C4, p. 44-45) The police report the City alleges proves that Grievant had police contact is lacking information and is unsigned. (C4, p. 27-28) The City failed to put forth any witness who took the report. Commissioner Carney incorrectly testified that Sgt. Green spoke to the person who took the report, yet Sgt. Green testified that she got the report from a contact who printed it out. The Union insists that a police document that is unsigned or attested to by a police officer cannot be considered a report. Sgt. Green acknowledged that Grievant was not arrested, incarcerated or interviewed by the police.

CO G [REDACTED] testified that she believed that incidental police contact is not enough to violate General Order 34 or Policy 1.C.26. The Union argues that the City has failed to show that there was actually police contact. The Union insists that talking on the phone to a friend who is a police officer or having your sister talk to a police officer is not a police investigation and does not

constitute police contact. The City did not prove that there was a violation of General Order 34.

The Union stresses that Commissioner Carney had no first-hand knowledge or involvement in the investigation nor did she conduct her own independent investigation. Commissioner Carney admitted that the police report allegedly filed by Grievant was not signed. She testified that there were significant injuries to Grievant and CO C [REDACTED], but the evidence does not support that assessment. Commissioner Carney said that the presence of a gun was significant in her decision but the Union points out that no one else testified that there was a gun and even CO C [REDACTED] did not say that Grievant had the gun.

The Union argues that the City also failed to show a violation of General Order 6. It insists that the undisputed testimony is that Grievant did not engage in a physical altercation. There is no testimony that Grievant punched CO C [REDACTED]. The only testimony provided was that CO C [REDACTED] placed Grievant in a headlock and there might have been some hair pulling. The Union says that this off-duty conduct between ex-partners does not violate General Order 6. The City failed to show how this incident

negatively affected PPS. The Union contends there are countless disputes between officers with personal relationships that have not resulted in discipline. The Union stresses that the City's just cause argument for General Order 6 should fail based on disparate treatment.

The Union asks the Arbitrator to sustain the grievance and order the City to reinstate Grievant, make her whole for all lost wages and benefits and that all references to her discipline be expunged from her record to the maximum extent permitted by law.

FINDINGS

The stipulated issue to be decided is: Whether the City had Just Cause to terminate the Grievant? If not, what shall be the remedy?

A determination as to whether there was just cause for an employee's discipline must be made on a case-by-case basis, in light of the relevant facts and circumstances which pertain in a given case. The initial inquiry is whether the evidence establishes that the employee committed the misconduct with which he or she was

charged at the time the discipline was issued. If so, it is necessary to consider whether the employee had adequate notice of the work rules or policies she was disciplined for violating, whether the employer applied the discipline in a fair and even-handed manner and whether the penalty imposed was proportionate to the misconduct committed.

The Notice of Dismissal stated that Grievant violated General Orders/Policies: 01, 02, 06, 34 and 1.C.11.1.² The City determined that dismissal was the appropriate penalty for her violation of General Order 6 and General Order 34. Deputy Warden Gianetta testified that the Disciplinary Board recommended termination based on its finding that Grievant was guilty of the charges at hand and the prior discipline in her record. The Union argues that the prior discipline was improperly in her record and should not have been considered.

The Union raises an initial argument that Grievant's prior discipline was improperly in Grievant's file and thus improperly considered by the City when it made its determination to dismiss Grievant. It insists

² Policy 1.C.11.1 was not introduced into the record. There is no basis in the record to find whether it was violated.

that the discipline was given to Grievant past the 14-day contractual timeline. However, the evidence in this record does not establish that the Union filed a grievance over what it perceived to be a procedural defect in the 2016 discipline. Given the absence of evidence establishing that the prior discipline was grieved by the Union, I do not find that it was improperly in Grievant's record or improperly considered by the City when it made its determination to discipline Grievant in this instance.

On the present facts, I do not find a violation of General Order 34. The Union argues persuasively that Grievant's conversation with her friend who happens to be a police officer does not constitute police contact that must be reported under General Order 34. It also argues that the [REDACTED] police report should not be considered police contact because it lacks important information and it is not signed or attested to by a police officer.

General Order 34 states:

Any employee arrested or involved in police investigation for any reason other than routine traffic violation must immediately report the facts to the Shift Commander/appropriate Prison authorities, as per Policy and Procedure 1.C.26 Staff Arrest/Law Enforcement Investigation.

The evidence in this record does not support the City's contention that Grievant violated General Order 34 by not reporting her visit to the police station. Sgt. Green testified that Grievant was not arrested or interviewed in connection with a police investigation. Even assuming, without so deciding, that Grievant went into the police station to file a police report a day or two after the incident, the report was not completed or signed and there is no evidence that a police investigation ensued. Nor is there evidence in this record that she was the subject of a criminal investigation; was served with a PFA or other restraining order; or was arrested, incarcerated, charged, and/or convicted of any misdemeanor or felony. See, Policy 1.C.26.

The City argues that Grievant violated General Order 6 for her behavior on [REDACTED]. Although the City did not produce text messages or other evidence to support its contention that CO C [REDACTED] was meeting Grievant to retrieve documents, I do not find the lack of support for this contention to mitigate the penalty imposed for Grievant's violation of General Order 6. CO C [REDACTED] credibly testified that when she pulled into the parking lot and got out of the car she saw a member of Grievant's

party holding a gun. There is no evidence to support - and no claim made - that Grievant had a gun or threatened CO C [REDACTED] with a gun. However, CO C [REDACTED] testified that while she was exchanging words with J [REDACTED] about the gun, Grievant hit her on the side of her head and they started fighting. I find this version of how the physical altercation began credible. It is not reasonable to believe that CO C [REDACTED] would initiate a fight with Grievant after seeing a member of Grievant's party with a gun.

It is undisputed that CO C [REDACTED] retreated from the altercation. CO C [REDACTED] testified that she was defending herself and then got away by slipping out of her shirt and getting back in the car. Grievant and CO G [REDACTED] both testified that CO C [REDACTED] let Grievant go and got back in the car. It was after CO C [REDACTED]'s retreat that Grievant escalated the fight. Grievant testified that she did not recall picking up a stick or breaking the windows of the car. I do not find this testimony credible. CO C [REDACTED] testified that she heard a big bang and the back car window shattered. She then saw the front window crack. CO G [REDACTED] testified that Grievant "blacked out" and was overwhelmed and enraged when she picked up a stick and

whacked the windows of the car. CO G [REDACTED] said that she was screaming Grievant's name but Grievant did not respond. The evidence establishes that CO C [REDACTED] retreated from the altercation and then Grievant escalated things by using a stick as a weapon.³

The Union argues that this was an off-duty fight that was personal and not connected to work. It insists that other employees have engaged in similar off-duty conduct and were not disciplined. However, there is no evidence in this record of other employees who have engaged in off-duty fights and have not been disciplined. Here, it was off-duty conduct of a personal nature that occurred in a parking lot in full public view. Additionally, this altercation occurred in front of another PPS employee. The Union points out that there is no evidence that this incident negatively reflected on the City. While it is

³ The Union questions CO C [REDACTED]'s credibility because it says she changed her answers during the arbitration hearing about the gun and whether she had contact after the incident with Grievant. I do not agree with the Union's characterization of Grievant's testimony. Grievant testified in detail about the gun on direct and cross examination in response to specific questions she was asked by each attorney. She was also asked many times about contact with Grievant at various times and testified on cross-examination that she recalled talking to Grievant about the car after the incident in addition to the other contact they had since [REDACTED].

true that there is no evidence of negative publicity, the egregious nature of Grievant's escalation in public and in front of another employee is significant.

The City persuasively argues that Grievant is a supervisor who must set an example for other employees and follow policy. Supervisors are commonly held to a higher standard. Moreover, in Grievant's role, she may be alone with prisoners in inflammatory situations or supervising employees in inflammatory situations where it is reasonable for the City to expect that she is capable of deescalating a situation, rather than escalating a situation. Additionally, I find her refusal to accept responsibility troubling. Grievant insisted in her interview with IA and at the arbitration hearing that she did not recall picking up the stick and damaging the windows of the car. To the extent that Grievant may claim that this was just a personal matter and that she regrets engaging in the "back and forth" with CO O [REDACTED], that does not excuse the fact that she denied her significant escalation of the altercation when she was interviewed a few weeks after the incident and when she testified a year and a half later at the arbitration hearing. I find that this is misconduct which the City has a right to refuse to tolerate.

The Union argues that there is no just cause because of disparate treatment. CO C [REDACTED] participated in the altercation and, according to the Union, was the aggressor, but she received no discipline while Grievant was dismissed for her participation in the altercation. I am not persuaded by this argument. I do not find CO C [REDACTED] and Grievant to be similarly situated on the totality of the evidence. Nor do I find that the City's decision not to issue any discipline to CO C [REDACTED] based on the evidence which describes her participation in the incident warrants reversal of its determination that there was just cause for Grievant's dismissal. As discussed above, the evidence establishes that CO C [REDACTED] defended herself and then retreated from the altercation, while Grievant started the physical altercation and then escalated the fight with her use of a stick as a weapon. Not only did she initiate the physical altercation, she escalated the fight when she used a stick as a weapon, which she unpersuasively claims that she does not remember doing.

For the reasons expressed above, I find the City had just cause to discipline for violating both General

Order 1, for failure to comply with a policy, and General Order 6, for failing to maintain professional deportment and for engaging in unprofessional or illegal behavior off duty that could reflect negatively on the PPS. General Order 2 states that: "Lack of knowledge of any policy, procedure, rule or law shall not excuse or mitigate the failure to comply with, or the breach or violation of any rule, or several of them by an employee", but Grievant has made no claim that she lacked knowledge of General Order 6 or 34. The penalty for a first offense of General Order 6 is "5 days Suspension to Dismissal." Given the egregious nature of Grievant's actions, I find that the City had just cause to dismiss Grievant for this single offense, even without also considering her prior discipline.

For the reasons set forth above, I find that the City had just cause to terminate Grievant.

AWARD

The grievance is denied. The City had just cause to terminate Grievant.


Samantha E. Tower, Arbitrator
January 25, 2019