

In the Arbitration Between

AFSCME District Council 47,

-Union-

and

**AAA Case No. 01-19-0001-9905
Reginald Lloyd – Five-Day Suspension**

CITY OF PHILADELPHIA

Opinion & Award
(December 9, 2019)

-Employer-

Hearing Date:

November 13, 2019

Arbitrator:

Henry R. Protas, Esq.

Appearances:

For the Union – Lauren M. Hoye, Esq., Willig, Williams & Davidson

For the Employer – Tiffany R. Allen, Assistant City Solicitor, City of Philadelphia

OPINION OF ARBITRATOR

Procedural Background

The City of Philadelphia (the City) and AFSCME District Council 47, Local 2186 (the Union) are parties to a collective bargaining agreement with a term of July 1, 2017 through June 30, 2020 (the Agreement). The Agreement is comprised of provisions of a collective bargaining

agreement dated July 1, 1992¹ that have been extended, as well as newer provisions incorporated through side letters or memorandums of agreement. The Agreement recognizes the Union as the exclusive collective bargaining representative of a unit of City supervisors. The Agreement includes a grievance-arbitration procedure (Section 7) providing for final and binding arbitration under the auspices of the American Arbitration Association. This arbitration was conducted pursuant to the terms of the parties' Agreement.

The instant matter arises from a grievance filed by the Union on February 14, 2017 at Step III of the grievance procedure. The grievance alleges that the City violated Section 16. A. of the Agreement by disciplining Reginald Lloyd (the Grievant) without just cause. As a remedy, the grievance seeks to have the Grievant and the Union made whole.²

The Employer subsequently denied the grievance. As the issues in dispute could not be resolved under the terms of the contractual grievance-arbitration procedure, the underlying grievance was referred to the American Arbitration Association for selection of an arbitrator. By letter dated July 15, 2019, the undersigned was appointed the arbitrator in this matter.

Pursuant to a Notice of Hearing, which issued on July 26, 2019, an evidentiary hearing on the Union's grievance was conducted on November 13, 2019 in a conference room at the law offices of Willig, Williams & Davidson located at 1845 Walnut Street, 24th Floor, Philadelphia, PA, 19103. Both parties were represented at the hearing, were afforded the opportunity to examine

¹ See relevant portions of the 1992 collective bargaining agreement received into evidence as Joint Exhibit 1. The Parties agree that the current Agreement provisions entered into evidence were applicable at all relevant times. Joint Exhibits will be referred to herein as JX followed by the exhibit number. City Exhibits will be referred to as C followed by the exhibit number, while Union exhibits will be referred to as U followed by the exhibit number.

² See JX-2.

and cross-examine witnesses, and to introduce relevant exhibits. The parties provided me with oral closing statements in lieu of post-hearing briefs.

Issues

Did the City have just cause within the meaning of Section 16. A. of the Agreement to discipline Reginald Lloyd? If it did have just cause to impose some level of discipline, did it have just cause to suspend the Grievant for five days without pay? Did the City abide by the procedural requirements of the Agreement in imposing the suspension?

Relevant Portions of the Job Description of Water Conveyance Supervisors

General Definition

This is water distribution or waste and storm water collection systems repair, operations and maintenance work at the secondary supervisory level planning, assigning, recording, and monitoring performance through subordinate crew chiefs, the work of several field crews engaged in major maintenance and repair work for an assigned water or wastewater district or specialized city-wide function. A significant aspect of the work involves dealing with contractors, industry and utility representatives and the general public in order to work out solutions to problems encountered during the course of the work. Incumbents have final responsibility for the repair and maintenance of the water distribution system or the waste and storm water collection in their assigned area. ... An employee in this class is required to use the latest technological tools provided to access computer applications for information pertaining to the work and to document work activities.

...

Both Specialties

Establishes work standards and reviews work performance to ensure proper productivity using all means available including the work order management system; plans work assignments to accommodate several variations in work load, special projects, ongoing programs and emergency priorities; assigns crews to accomplish work; keeps records of work complete, in progress and projected for later scheduling; ...

...

(C-9)

Relevant Agreement Provisions from the 1992 Agreement

5. MANAGEMENT RIGHTS

...

Matters of inherent managerial policy are reserved exclusively to the City. These include but shall not be limited to such areas of discretion or policy as the functions and programs of the City, standards of service, its overall budget, utilization of technology, the organizational structure, and selection and direction of personnel.

...

7. GRIEVANCE PROCEDURE AND CIVIL SERVICE APPEAL

...

Step III

If the grievance is not resolved or no reply is given the grievant in Step II, the grievant or Departmental Union Representative must refer the grievance, in writing, within seven (7) days of the Step II answer (or its due date) to the Department Head or Commissioner. A meeting shall be held between the Department Head or Commissioner or his/her designee, the Personnel Director or his designee, the appropriate Union officials and the aggrieved. The Department Head shall provide a written reply within ten (10) days of the submission of the grievance.

...

16. DISCIPLINE AND DISCHARGE

A. JUST CAUSE. It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for an employee in probationary status, is for just cause only.

B. DISCIPLINARY ACTION HEARINGS. An employee subject to disciplinary action shall not be suspended without pay or discharged prior to completion of Step III of the Grievance Procedure unless in the judgment of the appointing authority or designee said employee poses a threat to himself/herself or other person or persons.

C. PROGRESSIVE DISCIPLINE. The City shall have the right to discipline or discharge any employee in the meet and discuss unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2186 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees.

...

(JX-1)

Relevant Provisions from the August 29, 1994 Memorandum of Agreement

The City and the Union agree to the following as a guide to the interpretation and application of the consolidated memorandum of agreement:

...

Paragraph 16. DISCIPLINE AND DISCHARGE

This clause provides for a hearing by the Appointing Authority or designee prior to imposition of discipline that results in discipline or discharge. This clause does not require a delay in imposing such discipline after such hearing pending the filing and handling of a formal grievance. Further, this clause does not apply in the cases where an employee presents a threat to himself/herself or

other person or persons. In agencies with a discipline procedure that includes a disciplinary panel, the employee or the union may waive the Step III hearing in favor of the established departmental process.

...
(C-10)

Relevant Provisions from the City’s Handbook

2.1 Standards of Conduct

All employees of the Philadelphia Water Department are required to comply with reasonable standards of conduct. Employees are expected to be proficient in the duties of their job classifications, perform them in an industrious manner, and refrain from engaging in any acts or behaviors which would tend to undermine public confidence in the efficiency of municipal operations. As a general rule, common sense is a good guide to proper standards of conduct.

Obvious examples of improper conduct are:

- ...
- Insubordination

...
(C-8)

Relevant Provisions from the Appendix to the City’s Handbook

Standard Guide to Disciplinary Action

Infraction	Range of Penalties				Reckoning Period
	First Infraction	Second Infraction	Third Infraction		
H. Refusal to obey a proper order, or disrespectful, insulting, or abusive behavior	5-day suspension	10-day suspension	Dismissal	No limit	

...
(C-7)

Facts

Background

The Grievant, Reginald Lloyd has been employed by the Philadelphia Water Department for almost 40 years. He was hired as a laborer or helper and was subsequently promoted to the position of repairman and then crew chief. About fourteen years ago he was promoted to the

position of Water Conveyance Supervisor within the Water Department's Water Distribution Unit. Upon his most recent promotion, he joined a bargaining unit represented by the Union. In the past, he has served the Union as both a delegate and a shop steward.

Unit Manager, A [REDACTED] F [REDACTED] has supervised the Water Distribution Unit of the Water Department since 2012. He directly supervises three Assistant Superintendents and an Office Manager. At all relevant times, one of the Assistant Superintendents has been C [REDACTED] L [REDACTED]. I [REDACTED] supervises six Water Conveyance Supervisors, who are each assigned to one of the six geographic districts into which the City's water distribution system has been administratively divided as well as one Water Conveyance Supervisor, who is assigned to Safety and Training. (C-1) A [REDACTED] F [REDACTED] C [REDACTED] L [REDACTED] and the Water Conveyance Supervisors assigned to the Districts have their offices at the same location.

Throughout his tenure as a Water Conveyance Supervisor, the Grievant has transferred back and forth between Safety and Training and working in a specific District. In total, he has worked in Safety and Training for about seven to ten years. In about August 2016, he moved from Safety and Training to become the Water Conveyance Supervisor for District Two, where he remained at all times relevant herein.³

The Water Distribution Unit is responsible for providing water service to the public. The Unit works on the water mains and pipes that deliver water to consumers located throughout the City. The hands-on work is performed by crews of Water Department employees who report to Crew Chiefs. Each Water Conveyance Supervisor assigned to a District has at least one or two Crew Chiefs that report to him.

³ By the date of the instant proceeding, Reginald Lloyd was again working in Safety and Training.

Each morning the District Water Conveyance Supervisors travel to the meeting point for their respective Districts and get their crews started on what they will be doing that day.⁴ They are in contact with the Assistant Superintendent either by cell phone or radio. They give assignments to the Crew Chiefs that have either been given to them by the Assistant Superintendent, who receives reports of emergency work, or that they personally identify by looking at a computer program known as City Works.

City Works is a database that provides the current status of all work within the Districts. It has been in use since 2012. The Water Conveyance Supervisors have access to this database through laptop computers they have with them in their vehicles as well as back at the office.

Water Conveyance Supervisors can visit jobsites, but do not typically remain there throughout a job. Within each District there can be multiple job sites and multiple crews which makes their constant presence impossible. Moreover, Water Conveyance Supervisors have responsibilities back at the office. According to C [REDACTED] L [REDACTED] they are never present when a job is finished. Although the Water Conveyance Supervisors are said to be responsible for all the jobs in their respective Districts, they have to rely on communication with their Crew Chiefs to monitor how the work is going.

Part of this communication process involves Crew Chiefs filling out and submitting to their respective Water Conveyance Supervisors documents referred to as job sheets. These sheets let each Water Conveyance Supervisor know the current status of the jobs that Crew Chiefs in their District are overseeing. The Water Conveyance Supervisor in turn is usually the person that enters the information into the City Works database.

⁴ The meeting point for District Two is the Southeast Treatment Plant.

The City emphasizes the importance of the City Works database not just in the Water Department's operations, but also in how its operations interface with other activities in Philadelphia. Within the Department, Customer Service needs to know from City Works the progress of work in order to respond to customer inquiries. Interested parties directly or indirectly accessing this information through City Works from outside the Department include the Streets Department, the Fire Department and various utilities.⁵

Ideally job sheets are to be turned into the Water Conveyance Supervisor on a daily basis and promptly entered into City Works by the Water Conveyance Supervisor. To help accomplish this goal, Assistant Superintendent C [REDACTED] L [REDACTED], on [REDACTED], sent an email to the Water Conveyance Supervisors, including Reginald Lloyd, telling them that effective immediately they were to ensure that the Crew Chiefs complete their job sheets on a daily basis and that they enter the information into City Works by the next day. The email added that in the event a Crew Chief was going to be absent from work, the Water Conveyance Supervisor should collect the Crew Chief's job sheets in order avoid delay in having the sheets completed. (C-2) C [REDACTED] L [REDACTED] conceded that nothing in his email dealt with the absence of Water Conveyance Supervisors as opposed to the Crew Chiefs.⁶

Information taken from the job sheets and entered into City Works includes the actual date a job started and the actual date it finished, the date the actual finish date was entered into City

⁵ The Streets Department needs to know from City Works that the Water Distribution Unit's work is finished when it has dug up a street. Only then can the Streets Department follow up and make final repairs to the roadway.

⁶ C [REDACTED] L [REDACTED] also acknowledged that, notwithstanding his efforts, the information contained on job sheets is still not necessarily entered into City Works consistent with his preferred timeline. A printout from City Works confirms that after his email was issued it was not at all unusual to have a substantial delay between the actual date a job was finished and the date it was recorded in City Works. (C-4)

Works found under the heading “date modified” and the identity of the individual who logged into City Works to enter the date the job was actually finished.

There is no documentation concerning the Water Distribution Unit’s policy or practice detailing how the duties of an absent Water Conveyance Supervisor concerning City Works are to be handled. In the absence of such evidence, C [REDACTED] L [REDACTED] explained what his practice has been. According to L [REDACTED], when a Water Conveyance Supervisor is out sick or on vacation for less than three days, either L [REDACTED] or one of the other Water Conveyance Supervisors will stay in touch with the absent Water Conveyance Supervisor’s Crew Chiefs. However, when the absent Water Conveyance Supervisor returns to work, it is his responsibility to enter into City Works the information from the job sheets for the days he was absent. It is only if the Water Conveyance Supervisor is absent for three or more consecutive days that the absent Water Conveyance Supervisor is not responsible for entering job sheet information into City Works for the days that others covered for him. In that case, C [REDACTED] L [REDACTED] performs the job.⁷ According to C [REDACTED] L [REDACTED], it takes about fifteen minutes to enter the information from the job sheets into City Works.

Shop Steward, G [REDACTED] D [REDACTED] testified that the practice had been different under C [REDACTED] L [REDACTED]’s predecessor, J [REDACTED] S [REDACTED]. According to D [REDACTED], S [REDACTED] entered the information from job sheets into City Works in the event a Water Conveyance Supervisor was absent, regardless of the length of the absence. A [REDACTED] F [REDACTED], to the contrary, testified that S [REDACTED] was the originator of the policy that the Assistant Superintendent would only enter information from job sheets if the Water Conveyance Supervisor was absent three or more consecutive days.

⁷ The exception to this practice involves District Four’s Water Conveyance Supervisor, G [REDACTED] D [REDACTED], who according to C [REDACTED] L [REDACTED], prefers to do the work himself.

The Grievant, Reginald Lloyd contended that C [REDACTED] L [REDACTED]'s practice was not at all clear to him. He claimed that regardless of the length of an absence some Water Conveyance Supervisors entered the information from job sheets into City Works for days they were absent, while others simply instructed their Crew Chiefs to give the job sheets directly to C [REDACTED] L [REDACTED] for him to enter the information. Lloyd claimed that, after most recently returning to work in a District, he had instructed his Crew Chiefs that in his absence, regardless of duration, they should give the job sheets to C [REDACTED] L [REDACTED] so he could enter the information into City Works.

The City challenged this claim by placing into evidence attendance records and a printout from City Works. These records indicate the following: Reginald Lloyd took annual leave on October 7, 2016, a job was finished on that date and although he was absent on the 7th he entered the job sheet information into City Works on November 1, 2016. (C-3, C-4, line 12) On October 28, 2016, he was absent from work due to an illness, on the same date a crew in his District finished a job and, although he was not present the 28th, he entered the information into City Works on December 1, 2016. (C-3, C-4, line 13) On October 24, 2016, he was absent from work due to illness, on the same date a crew finished a job and, although he was not present on the 24th, he entered the information into City Works on December 28, 2016. (C-3, C-4, line 19) He was again out on sick leave on October 25, 2016, on the same date a crew finished a job and, although he was not present on the 25th, he entered the information into City Works on November 30, 2016. (C-3, C-4, line 20) Finally, he also did not work on December 6, 2016, on the same date crews finished five jobs and, although he was not present on the 6th, he entered the information into City Works on December 6, 7, 8 and 10, 2016 (C-4, lines 52, 53, 59-61, C-5)

Reginald Lloyd responded that if he did do what the records suggest, he did not do so knowingly. He speculated that a Crew Chief that had been absent might have given him a large

number of job sheets to input and that he might have simply not realized that some of the sheets were from dates that he did not work.

While there is no evidence that Reginald Lloyd was involved, both the City and the Union agree that by the fall of 2016 the City was aware that at least some bargaining unit employees were concerned that they were being told to enter into City Works information from job sheets for days they were not at work. A [REDACTED] F [REDACTED] testified that either individual Water Conveyance Supervisors, their shop steward or Union Vice-President/Business Agent, Dennis Gibson made him aware of the issue. According to F [REDACTED], he responded that the job description of a Water Conveyance Supervisor established that the Water Conveyance Supervisors were obligated to input the information, regardless of whether they were at work on the day the work covered by a job sheet was performed.

Shop Steward, G [REDACTED] D [REDACTED] had a slightly different recollection of the controversy. He testified that since some Water Conveyance Supervisors entered job sheet information into City Works for days they were absent, while others did not, there was a great deal of confusion concerning exactly what the Water Conveyance Supervisors were obligated to do. He claimed that the Union simply wanted clarification from the City whether it considered the Water Conveyance Supervisors responsible for work performed on days they were not present and requested the City to put its policy concerning the Water Conveyance Supervisors obligations in writing.

The Incident Leading to Discipline

Reginald Lloyd was absent from work due to illness on Thursday, [REDACTED] and Friday, [REDACTED]. (U-1) He was not scheduled to work over the weekend of [REDACTED]

██████████ and ██████████ or on the day the ██████████ holiday was celebrated, Monday, ██████████ ██████████.

On ██████████ the Grievant was in C ██████████ I ██████████'s office when I ██████████ asked him to enter into City Works the information from the job sheets for the two days that he had been absent.⁸ Lloyd responded that he could not or would not do it because he had not been present on the days that the work had been performed. He contended that he was not responsible for people on days that he was not at work. He further explained that he believed that if there was a lawsuit he would be in jeopardy if the records showed that he had entered information about events that occurred when he was not at work. I ██████████ told him it was a simple task and that he should do what he was told. When Lloyd continued to refuse to perform the task, I ██████████ went into A ██████████ F ██████████'s office and reported the situation to him. F ██████████ told I ██████████ to go back to Lloyd, emphasize the importance of following orders and give him another chance to comply. I ██████████ testified that he requested that Lloyd perform the work multiple times, but each request was met with the same response. I ██████████ returned to F ██████████'s office and reported to F ██████████ that Lloyd was still refusing to do what he was told. At this point, F ██████████ got personally involved. He entered I ██████████'s office and again told Lloyd to perform the job I ██████████ had assigned him. When Lloyd again refused, F ██████████ told him that if he was not going to do the work he was assigned, he was not going to keep him on the clock for the rest of the day. Lloyd went to his office, where F ██████████ had another conversation with him. At this point, Lloyd had been joined by Shop Steward, G ██████████ D ██████████. F ██████████ testified that he told Lloyd his best option was to perform the work and that if he did not, F ██████████ would have to take "the next step."

⁸ He referred to it as "closing out the jobs".

G ■ D ■'s participation in these events is somewhat unclear. C ■ L ■ testified that D ■ advised Lloyd not to do the work, while F ■ made no mention of whether D ■ gave Lloyd any advice. On the other hand, C ■ D ■ and Reginald Lloyd unequivocally testified that D ■ advised Lloyd to complete the assignment and that the Union would grieve the issue later.

The Disciplinary Process

Shortly after Reginald Lloyd was sent home, the City provided him with notice that there would be a hearing on January 5, 2017, at which time facts would be presented that would serve as a basis for a recommendation by A ■ F ■ concerning what, if any, discipline should be issued to the Grievant as a result of his conduct on ■. The notice informed Lloyd that he was entitled to Union representation.

The hearing took place, as scheduled, on January 5, 2017. A ■ F ■ appeared as the designee of the Water Department Commissioner. C ■ L ■, Reginald Lloyd and shop stewards G ■ D ■ and N. C ■ were also present. In support of his position, Reginald Lloyd argued that he should not have been required to input information from job sheets covering days that he was absent because he was not present when the work was performed. He also argued that the City had no written policy that established that he was required to do so.⁹ The City responded that it is a routine function of Water Conveyance Supervisors, as well as the Assistant

⁹ Reginald Lloyd also composed two written statements setting forth his justification for refusing to input the information on ■. He testified that one statement was written before the January 5, 2017 hearing and the second was written afterward. He was not sure, however, when he gave the first statement to the City and he did not know whether he ever gave the second statement to the City. (U-3) There is some question in my mind whether even the first statement was written before the January 5, 2017 hearing as it references a five-day suspension, which at least to my understanding, was not recommended until after the hearing.

Superintendent and the Unit manager, to rely on reports from Crew Chiefs to sign off on paperwork concerning work they did not personally observe.

On January 27, 2017, A [REDACTED] F [REDACTED] forwarded a written recommendation to his superiors that the Grievant should be suspended for five days. (J-2) His superiors in turn forwarded the recommendation to the Office of Labor Relations for review and approval. F [REDACTED] testified that in recommending a five-day suspension he relied on the Standard Guide to Disciplinary Action, which is found in the Appendix of the employee Handbook. This document provides for a five-day suspension on the first occurrence of a refusal to obey a proper order.¹⁰ (C-7)

On February 8, 2017, the City issued a written notice to Reginald Lloyd that he was suspended without pay for five days running from February 14, 2017 through February 20, 2017. (JX-2) Lloyd served his suspension on the aforementioned dates. On February 14, 2017, the Union filed a grievance at Step III of the grievance procedure protesting the discipline. (JX-2) A Step III grievance hearing was conducted sometime after March 24, 2017. (JX-2) The parties subsequently followed the remaining steps of the grievance procedure without resolving their dispute. (JX-2)

The Parties' Positions

The City's Position

The City contends that by refusing to perform an assignment Reginald Lloyd engaged in insubordination and that it, therefore, had just cause to impose a five-day suspension. It claims the

¹⁰ F [REDACTED] did know whether the Standard Guide to Disciplinary Action had been collectively bargained.

F [REDACTED] testified on cross-examination that he also considered the contents of the Grievant's personnel file. This file would have revealed that Lloyd had been employed for 39 years and had no significant history of prior discipline. The Union also offered into evidence performance reports for some, but not all, of Lloyd's years of employment. Except for the report covering the discipline at issue herein, none of the offered reports contained any rating lower than satisfactory. (U-2)

Water Conveyance Supervisor job description as well as the practice within the work unit establishes that when C [REDACTED] I [REDACTED] ordered Reginald Lloyd to input information into City Works from job sheets performed on days that he was absent he was merely directing him to do his job. According to the City, he refused to perform his job even though he was given multiple opportunities to comply. The City emphasizes the importance of the task he refused to perform by noting that others rely on obtaining timely and accurate information from City Works. The City rejects the notion that complying with the assignment would have put Lloyd in legal jeopardy. It notes that he routinely entered into City Works job sheet information for days when he was not absent even though he would not have personally observed the work in question. Moreover, although there has been litigation concerning some of this work, no one has ever attempted to hold him legally responsible. The City contends that by suspending the Grievant for five days it was simply enforcing the level of discipline explicitly set forth in its Standard Guide to Disciplinary Action for an employee's first violation of its rule prohibiting insubordination. (C-7) Finally, it claims that it followed the Agreement's procedural requirements concerning when the suspension was served. It argues that it conducted a hearing prior to the imposition of the suspension and, therefore, pursuant to the August 29, 1994 Memorandum of Agreement, was not required to delay the imposition of discipline until after the filing or processing of a grievance. (C-10)

The Union's Position

The Union argues that due to the absence of written instructions concerning the issue and the City's alleged inconsistency in requiring Water Conveyance Supervisors to enter into City Works job sheet information for days they were absent, there was a great deal of confusion concerning whether it was an established job duty. It contends that that the Grievant had a good faith concern that if he entered information into City Works for days that he was absent, he

potentially would be placing himself in legal jeopardy. It stresses that although he expressed his concerns at the time, the City made no offer to compromise on the issue. The Union emphasizes that the Grievant was not disrespectful to his superiors in taking his stand and that he had a good performance record over 39 years of employment with no history of significant discipline. Although it acknowledges the existence of the Standard Guide to Disciplinary Action it points to the fact that it was not shown that the document was collectively bargained with the Union. Finally, it argues that the imposition of the suspension was procedurally deficient. It relies on Section 16. B. of the Agreement which states that an employee subject to suspension without pay shall not be suspended prior to the completion of Step III of the grievance procedure. Here, the Grievant's suspension started on February 14, 2017 even though Step III of the grievance procedure had not been completed. After the Deputy Director of the Mayor's Office of Labor Relations, Dana Johnson testified that Section 16. B. of the Agreement was clarified by the August 29, 1994 Memorandum of Agreement and permitted the timing of the suspension in this instance, the Union challenged her conclusion, noting that she was not employed by the City at the time the Memorandum of Agreement was negotiated.

Analysis and Discussion

The City established that the duties of its Water Distribution Supervisors include entering information from job sheets into City Works. The job description for the position states, "An employee in this class is required to use the latest technological tools provided to access computer applications for information pertaining to the work and to document work activities." The job description states further that a Water Conveyance Supervisor "keeps records of work complete". (C-9) The City also established that completion of this task is important for it to efficiently provide services to the citizenry.

The Union, nevertheless, has shown that it is not nearly as clear concerning who performs this task when the Water Conveyance Supervisor is not present on the day that the underlying work is performed. There are no documents to provide guidance for this situation and notwithstanding C [REDACTED] L [REDACTED]'s stated policy, the evidence suggests his policy is not strictly adhered to either as to when the information is entered or in certain respects as to who enters it.¹¹ According to the Grievant, this led to confusion as to whether the task was his to perform when he was absent on the day the work was performed.

There is no question that on [REDACTED] Reginald Lloyd knew how to enter the information into City Works. He had received training in using City Works and he acknowledges that he routinely entered the information when the job sheets related to work performed on days that he was present. It was not that he could not do the assigned task. He chose not to. His refusal to do what he was told was based on his asserted belief that he would be vouching for work that was performed when he was absent and that he would thereby be placing himself in legal jeopardy.¹²

The City has a very different view of the assignment. Even when Water Conveyance Supervisors are present at work, they enter information from job sheets that they do not personally observe. Moreover, while work the Grievant has documented in City Works has been the subject of litigation, there has never been an attempt to hold him legally responsible. The City disputes the notion that the Grievant could possibly face personal liability simply from performing the

¹¹ C [REDACTED] L [REDACTED] acknowledged that even when G [REDACTED] D [REDACTED] is absent for three or more days, he will wait for D [REDACTED] to return to work so that he can personally perform the task.

¹² It could be argued that Grievant's concerns find some support from his job description which states that the Water Conveyance Supervisors, "...have final responsibility for the repair and maintenance of the water distribution system or the waste and storm water collection system in their assigned area." (C-9)

administrative task of entering into a computer database information he obtains from other documents.

Notwithstanding the disagreement between the City and the Grievant, I do not believe it is within my role as Arbitrator to offer an opinion as to whether it was or is appropriate for the City to require its Water Conveyance Supervisors to enter into City Works job sheet information for days they are absent. This is based on my conclusion that the merits of the grievance under consideration do not turn on a resolution of the issue. The same can be said as to whether there was confusion among Water Conveyance Supervisors concerning the circumstances when C [REDACTED] I [REDACTED] would enter the information for them.

I base my conclusion on the following:

It is a well-established principle that employees (1) must obey management's orders and carry out their job assignments, even if such assignments are believed to violate the agreement; and (2) and then turn to the grievance procedure for relief.

Elkouri and Elkouri, *How Arbitration Works* (6th Ed.) p. 1023.

The issue as to whether the City had just cause to discipline Reginald Lloyd is simply whether on [REDACTED] he, in defiance of his supervisor, failed to carry out a job assignment. The evidence is clear that he did just that. There was no confusion on that occasion as to what he had been directed to do. He chose not to comply with a direct order from someone he was obligated to obey. Contrary to what has been suggested, C [REDACTED] I [REDACTED] at the time, had no obligation to offer a compromise. Any challenge concerning who should have been assigned this task or who should perform it in the future would be properly raised after the Grievant completed the assigned task. Refusing to perform the assignment was not a defensible option.¹³

¹³ The assignment did not pose a safety or health risk to the Grievant. Elkouri and Elkouri, *How Arbitration Works* (6th Ed.) p.

The City's burden of proving just cause for discipline includes proof that that the level of discipline was appropriate. St. Antoine, *Common Law of the Workplace* (BNA 2nd Ed. 2005), p. 190. The City in this case applied the five-day suspension that the Appendix to its Handbook suggests is appropriate for an initial occurrence of a refusal to obey a proper order. (C-7) As it was not established that that the Handbook was the product of collective bargaining, the Union made the well-founded point that it is not binding on the Union. Nevertheless, the Handbook can serve as an aid in interpreting inconclusive contractual language such as "just cause". Elkouri and Elkouri, *How Arbitration Works* (6th Ed.) p. 465.

In addition to considering the Handbook, A [REDACTED] F [REDACTED] reviewed Reginald Lloyd's entire personnel file before recommending the five-day suspension that was ultimately imposed. In view of the fact that at the time the Grievant had been employed 39 years with a good performance record and no significant past discipline, the Union argues that a review of that file should have resulted in less than a five-day suspension. I disagree.

While the Grievant's long history of commendable service to the City is a factor in his favor, it can also be said that after so many years of service he would not have been so naïve as to not understand what constitutes proper employee conduct. He was a former Union shop steward and delegate. He acknowledged that he was generally familiar with the Handbook which prohibits the sort of misconduct that he engaged in. Even if that was not enough to put him on notice that he was engaging in misconduct for which he would be disciplined, by his own account, in the midst of the incident, shop steward G [REDACTED] D [REDACTED] advised him to do as he was told and file a grievance later. Despite this good advice and having been given multiple opportunities by C [REDACTED] L [REDACTED] and A [REDACTED] F [REDACTED] to perform the assignment, Reginald Lloyd persisted in defying his supervisors.

There is no evidence that the penalty suggested in the Appendix to the Handbook has been inconsistently enforced or that it was arbitrarily applied to the Grievant. In short, the City had just cause to impose it in this instance.

There is still the matter of whether the City followed the procedural requirements of the Agreement before suspending the Grievant. Section 16. B. of the Agreement prohibits the suspension of an employee prior to the completion of Step III of the grievance procedure. (JX-1) Paragraph 16 of the August 29, 1994 Memorandum Agreement that was incorporated into the current Agreement provides for a hearing by the designee of the Appointing Authority prior to the imposition of a suspension and adds that once the hearing is held there need not be a delay in imposing the suspension pending the filing and processing of a formal grievance. (C-10)

The designee of the Appointing Authority, A [REDACTED] F [REDACTED] held a hearing on January 5, 2017. Reginald Lloyd served his suspension from February 14, 2017 to February 20, 2017. A grievance was not filed until February 14, 2017 and the Step III hearing was not held until sometime after March 24, 2017. Under these facts, the imposition of the Grievant's suspension was untimely under Section 16. B. of the Agreement language incorporated from the 1992 collective bargaining agreement, but timely under Paragraph 16 of the August 29, 1994 Memorandum of Agreement.

Faced with this contradictory language, I credit the testimony of the Deputy Director of the Mayor's Office of Labor Relations, Dana Johnson that Paragraph 16 of the August 29, 1994 Memorandum of Agreement was intended to clarify or in effect amend Section 16. B. of the Agreement. Without this clarification, it could be argued that Section 16. B. would permit an employee who had received a notice of suspension to simply fail to file a grievance, never complete Step III of the grievance procedure and thereby avoid ever having to serve the

suspension. It appears to me that Paragraph 16 of the August 29, 1994 Memorandum of Agreement was the Parties' solution to avoid this nonsensical result and was intended to be controlling. As the City complied with this provision, the Grievant's suspension was not procedurally defective.

Consistent with the foregoing Opinion, I render the following:

AWARD

The grievance is hereby DENIED.



Henry R. Protas
Arbitrator
Merion Station, Pennsylvania
December 9, 2019