

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

FRATERNAL ORDER OF POLICE, LODGE #5,

"Union,"

-and-

CITY OF PHILADELPHIA,

"Employer."

**OPINION
AND
AWARD**

AAA Case No. 01-18-0004-7294
(Lt. Marty A. Best [REDACTED] - Transfer)

**Before
Robert C. Gifford, Esq.
Arbitrator**

Appearances:

For the Union:

James Glowacki, Esq.
Willig Williams & Davidson

For the Employer:

Erica Kane, Asst. City Solicitor

FOP Lodge #5 and the City of Philadelphia are parties to a collective bargaining agreement ["Agreement"]. [Ex. J-1]. On November 9, 2018, Police Commissioner Richard J. Ross Jr. notified Lieutenant Marty Best that he was officially reprimanded and transferred from his assignment for failure to supervise his subordinates. The matter was grieved and subsequently submitted for binding arbitration. On February 1, 2019, AAA notified me that I was chosen to serve as arbitrator.

An arbitration hearing was held at AAA's offices in Philadelphia, Pennsylvania on June 25, 2019, at which time the parties were afforded the opportunity to argue orally, present witnesses and submit documentary evidence into the record. Testifying on behalf of the City was Detective Jeanette Smith and Inspector Derrick Wood. Testifying on behalf of the Union was the Grievant. The parties provided oral closing arguments. The parties' consented to my request for an extension of time to issue this Award.

STIPULATED ISSUE

The parties stipulated to the following issue:

Whether the City had just cause to transfer Lieutenant Best? If not, what shall be the appropriate remedy?

BACKGROUND

Lieutenant Marty Best ["Grievant"] has been employed by the City of Philadelphia Police Department since 1990. He was assigned to the Court Liaison Unit ["CLU"] in March 2016. The evidence does not suggest or show that the Grievant has been previously disciplined for conduct similar to that which formed the basis of his transfer from CLU.

On April 18, 2018, the Department filed charges against the Grievant for failure to properly supervise subordinates:

EEO investigation #17-0011 determined that you failed to properly supervise your subordinates at the Court Liaison Unit, Assured Trial Section. You failed to properly supervise Sergeant Q [REDACTED] by not addressing behavior that you admitted you recognized such as, resistance to the orders of superiors, undermining the authority of supervisors by misrepresenting your orders, unprofessional language in the workplace and in the presence of subordinates, failing to follow orders, quarreling with peers, failing to properly supervise subordinates, disrespectful language to superiors, etc. You were aware that Sergeant Q [REDACTED] misrepresented the unit's emergency/same day vacation policy to officers but you failed to address the matter and clarify the policy to officers. You stated that at one point you did attempt to initiate discipline against Sergeant Q [REDACTED] after she had been a problem for months, but your attempt was poorly executed, as you conducted informal interviews, did not speak to all members of the unit as you allowed a subordinate to direct with whom you spoke, and then misplaced some of your notes. Even though you expressed that you found allegations against Sergeant Q [REDACTED] to be egregious, you was no follow up with another memo or request for disciplinary action, nor

did you practice the progressive discipline that you advocated by documenting her infractions through counseling. The tension and hostility in the unit was relieved only when Sergeant Q [REDACTED] was detailed out of the unit. [Ex. C-3].

On November 1, 2018, a P.B.I. hearing was conducted where it was determined by a unanimous vote of the Board of Inquiry that the Grievant was guilty of the charges. [Ex. C-4]. On November 9, 2018, Police Commissioner Richard J. Ross Jr. issued the Grievant an Official Reprimand and notified him that he would be transferred from CLU:

EEO investigation #17-0011 determined that you failed to properly supervise your subordinates at the Court Liaison Unit, Assured Trial Section. You failed to properly supervise Sergeant G [REDACTED] by not addressing behavior that you admitted you recognized such as, resistance to the orders of superiors, undermining the authority of supervisors by misrepresenting your orders, unprofessional language in the workplace and in the presence of subordinates, failing to follow orders, quarreling with peers, failing to properly supervise subordinates, disrespectful language to superiors, etc. You were aware that Sergeant G [REDACTED] misrepresented the unit's emergency/same day vacation policy to officers but you failed to address the matter and clarify the policy to officers. You stated that at one point you did attempt to initiate discipline against Sergeant G [REDACTED] after she had been a problem for months, but your attempt was poorly executed, as you conducted informal interviews, did not speak to all members of the unit as you allowed a subordinate to direct with whom you spoke, and then misplaced some of your notes. Even though you expressed that you found allegations against Sergeant Q [REDACTED] to be egregious, there was no follow up with another memo or request for disciplinary action, nor did you practice the progressive discipline that you advocated by documenting her infractions through

counseling. The tension and hostility in the unit was relieved only when Sergeant Q [REDACTED] was detailed out of the unit.

**In addition to receiving a Reprimand for the above violation, you were transferred from your assignment in the Court Liaison Unit to the 14th District. [Ex. C-5].

The matter was grieved and subsequently submitted for binding arbitration. The testimony during the arbitration proceedings is summarized below.

Detective Jeanette Smith has been employed by the Department since 2002. Smith has been a Detective in the Internal Affairs Unit for the past 8½ years and has conducted over 100 investigations. Smith testified that she was assigned to investigate an EEO hostile work environment claim that Sergeant N [REDACTED] Q [REDACTED] filed against the Grievant and others. Smith indicated that Q [REDACTED] alleged that the Grievant, Sergeant A [REDACTED] J [REDACTED] and others were colluding against her. After conducting an investigation, Smith concluded that the allegations were unfounded. [Ex. C-1]. Smith concluded that it was Q [REDACTED] who was causing some of the problems in CLU and they were not being addressed by the Department. [Id.]. Smith indicated that her findings led to the charges against the Grievant for his failure to properly supervise his subordinates. [Ex. C-3]. Smith's testimony was substantially similar to the information contained in the charges and the IA investigation report.

Derrick Wood is the Inspector for the Department's Southwest Police Division. Wood has been employed by the Department for 21 years. Wood confirmed that the charges against the Grievant were based upon his failure to supervise his subordinates. Wood indicated that the Board of Inquiry unanimously agreed with the reprimand and transfer based upon the Grievant's own words. The Grievant's failure to discipline his subordinates factored into the final decision. The Board's decision was upheld by the Police Commissioner. [Ex. C-5].

The Grievant testified that the CLU tracks the whereabouts of officers while they are at court, performs staff studies and analyzes equipment costs. The Grievant testified that when he was initially assigned to the Court Liaison Unit in March 2016 that there were no morale issues. That changed in June 2016 when Sgt. J [REDACTED] was assigned to the unit. The Grievant indicated that J [REDACTED]'s assignment created tension between her and Sgt. Q [REDACTED] who believed that J [REDACTED] was there to replace her. In August 2016, the Grievant sat them down and advised them that they needed to communicate and get along with each other.

The Grievant testified that he had additional issues with Q [REDACTED]. By way of example, he issued her a counseling form in December 2016 for failing to notify her superiors of an incident in a timely manner. [See Ex. C-2]. He was also

prepared to give her a counseling memo in February/March 2017 because she permitted an officer to use excessive funeral leave. [See Ex. U-2]. The memo was never issued because G [REDACTED] requested that a union representative be present for their scheduled meeting in February. Their meeting was rescheduled for March 2nd but G [REDACTED] was unable to attend because she was out sick until March 6th. The Grievant testified that on March 7, 2017, he was instructed by his Commanding Officer, Captain F [REDACTED] L [REDACTED], not to reschedule the meeting due to the fact that G [REDACTED] had filed an EEO complaint. The Grievant testified that he prepared a request for formal disciplinary action, e-mailed it to his Commanding Officer. [See Ex. U-4].

The Grievant also testified that in February 2017 he conducted informal, off-the-record interviews with some, but not all, of the members of the CLU because of the wide-spread tension in the unit. The Grievant testified that he chose this method of interviewing them because he felt that the officers would remain relaxed during these discussions. The Grievant indicated that he has used this method in the past, it has been proven to be effective for him, and he has never been told that this method is improper.

The Grievant took notes of the interviews for himself and embodied them in a memorandum to the CLU's Commanding Officer dated February 22, 2017. [Ex. U-3]. The Grievant indicated that he lost some of his notes. He also

acknowledged that he did not inform the officers that he would be memorializing their conversations.

The Grievant concluded based upon his interviews that Q [REDACTED] was the root of the tension, a fact that he admittedly was unaware of prior to the interviews. He wrote the following in his memorandum:

After conducting these interviews, it is apparent to me that Sgt. Q [REDACTED] is domineering and controlling, shows poor judgment, doesn't get along with any of her peers, shows favoritism, and has abused her position as a first line supervisor. I have also discovered that Sgt. Q [REDACTED] has been undermining me in front of other officers on a consistent basis. I will be submitting a request for formal disciplinary actions. [d.].

The Grievant testified that formal action was never taken due against Q [REDACTED] due to her EEO complaint. Q [REDACTED] was subsequently detailed out of CLU. The Grievant indicated that her departure relieved the hostility within the unit.

The Grievant testified to some of the circumstances that formed the basis for his official reprimand and transfer. The Grievant indicated that he overheard Q [REDACTED] misrepresenting the unit's emergency/same day vacation policy to unit officers. Q [REDACTED] told him that it was simply a misunderstanding. The next day, the Grievant had Q [REDACTED] re-read the policy, posted it for everyone to read, and then he spoke about the policy to members of the unit. The Grievant testified that he

did not initiate formal discipline once Q [REDACTED] clarified the policy. The Grievant testified that he then received an unsigned, undated counseling form from Captain G [REDACTED] based upon the EEO investigation that served as the basis for his official reprimand and transfer. [Ex. U-6]. He was later notified that this informal offer was rescinded and, instead, the Department would seek formal disciplinary action against him. The Grievant indicated that he was never given a reason why the offer of a counseling form was rescinded.

On June 1, 2017, the Grievant provided Q [REDACTED] with a rating of "satisfactory" in her annual evaluation. The Grievant wrote the following comments in the evaluation:

N [REDACTED], during the time that we've worked together, you have performed your individually assigned tasks in a competent and satisfactory manner with minimum supervision. However, your inability to work alongside Sgt. A [REDACTED] J [REDACTED] (which I have verbally discussed with both of you in mid August 2016), unfair supervisory practices (i.e. Courtroom Assignments) which we have spoken about in December 2016, and your failure to adhere to department policies (i.e. Reporting of Off Duty Incidents and improper DAR entries). In the future, I want you to work as a team member with you peers, closely follow the PPD policies, build trust, and supervise all of your subordinates in a fair and impartial manner. I believe you're very capable of making these necessary adjustments and I wish you good health and best wishes in the next rating period. [Ex. U-7].

The Grievant testified that G [REDACTED]'s performance evaluation was the appropriate place to list his expectations. The Grievant indicated that it is his philosophy to avoid the constant discipline of his officers because such a practice has a negative impact on morale.

The Grievant receiving a rating of "satisfactory" in his annual performance reports from June 1, 2017 and July 9, 2018. [Ex. U-1]. In each report, the Grievant was commended for the manner in which he addressed morale. The Grievant testified that he would like to return to the CLU because he can save the taxpayers millions of dollars by improving and updating the unit's monitoring system.

The parties offered the following arguments in support of their respective positions.

SUMMARY OF THE ARGUMENTS

The City's Position

The City has established that it had just cause to transfer the Grievant. The internal affairs investigation revealed that the Grievant failed to take appropriate disciplinary action against Q[REDACTED]. The Board of Inquiry was unanimous in its decision that the Grievant failed to adequately supervise his subordinates. The evidence shows that the Grievant was unaware of the underlying problems within his unit until he completed the interviews with some of the members in the unit. The Grievant conducted a sloppy investigation in that he failed to notify the officers that he was taking notes of their interviews. He also lost some of the notes. In the end, the Grievant failed to fully acknowledge Q[REDACTED]'s actions in undermining his authority and the effects this had on the CLU. Notably, the unit became a less hostile environment once Q[REDACTED] was detailed out of CLU. Based upon the above and the entire record, the Department had just cause to transfer the Grievant from CLU and, therefore, the grievance must be denied.

The Union's Position

The City did not have just cause to transfer the Grievant. The Grievant is an effective supervisor whose supervisory approach was never challenged up until the instant matter. In fact, the Grievant was praised for his effective management of personnel in his annual performance reports in June 2017 and July 2018. The Grievant managed Q [REDACTED] through methods that were proven to be effective for him in the past. He adhered to his philosophy of steering away from constant discipline. The Union emphasizes that the Grievant was never given a reason why the counseling form that G [REDACTED] handed him was taken off the table. Based upon the foregoing, the Grievant's work history, and the entire record, the City did not have just cause to transfer him and he should be transferred back to the Court Liaison Unit.

DISCUSSION

I have carefully considered the arguments and evidence submitted into the record. It is the City's burden to prove that it had just cause for transferring the Grievant.

The evidence shows that the Grievant is a longstanding employee with no prior discipline related to his ability to supervise subordinates. In fact, he was previously commended for addressing the morale within the CLU. But the evidence also shows that the Grievant permitted Q■■■■'s insubordinate behavior and her actions towards other officers in the CLU to fester to the point that it affected the entire unit. The Grievant's methods for addressing Q■■■■'s issues were proven to be ineffective. In light of the facts and circumstances discussed above, and the entire record, I conclude that the evidence supports the City's position that it had just cause to transfer the Grievant from the CLU. I also find there is insufficient evidence to conclude that the City's decision was arbitrary or capricious, or that the reasons for its decision to transfer the Grievant were unsupported by the evidence. Additionally, there is nothing in the record that suggests or shows that the Department was required to provide the Grievant with an explanation for rescinding the unsigned, undated Counseling Form that was never officially issued.

Accordingly, based upon the above and the entire record, I conclude that the City had just cause to transfer the Grievant. The grievance, therefore, is denied.

AWARD

The grievance is denied.

Dated: September 3, 2019



Robert C. Gifford