

American Arbitration Association
Case Number: 01-20-0000-5742

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In The Matter of the Arbitration

Between

AFSCME DISTRICT COUNCIL 47
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Grievance 2187-20-14
Larry Carter Discipline

-----X
BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the Employer

Erica Kane, Esq.

For the Union

William Campbell, Esq.
Willig Williams Davidson

Pursuant to the provisions of the collective bargaining agreement between THE CITY OF PHILADELPHIA (hereinafter, "the City") and AFSCME DISTRICT COUNCIL 47 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

A hearing was held by ZOOM, with consent of all parties, on September 10, 2020. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after oral closing arguments. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

Some quotation marks (""") may be used to denote parts of testimony or argument. While no court reporter or stenographer was present and no actual record was taken of the proceedings, the quotation marks denote portions of the notes taken by the Arbitrator during the course of the hearing and represent a close approximation of what was said by a witness or by counsel. Those notes and all attendant materials will be destroyed at the time this Opinion is disseminated.

The Issue:

Did the City have just cause to discipline Mr. Larry Carter?

If not, what shall be the remedy?

BACKGROUND

Mr. Larry Carter has worked for the Department of Behavioral Health since 1989. Dr. S [REDACTED] S [REDACTED] has been the [REDACTED] of the Department of Behavioral Health since February 2019. Ms. N [REDACTED] B [REDACTED] began working as an [REDACTED] for [REDACTED] at the Department of Behavioral Health on [REDACTED]. Her first day of work was the day of the meeting at issue. Ms. Y [REDACTED] C [REDACTED] was a [REDACTED] with the [REDACTED], as a professional, in December 2018, and became an [REDACTED] with the Department of Behavioral Health in December 2019. All were present on [REDACTED], towards the latter part of the day, when Dr. S [REDACTED], Ms. B [REDACTED], and Ms. C [REDACTED] held a meeting for the employees in the department. Mr. L [REDACTED] K [REDACTED] is recently retired, but he had worked in the department since 2001, most recently as a Mental Health Coordinator Supervisor. Ms. K [REDACTED] R [REDACTED] began working for the City, in the department, in June 2007, and is currently a Mental Health Emergency Services Coordinator 2. They were both also in attendance at the meeting.

Subsequent to the meeting, on [REDACTED], an employee warning was issued to Mr. Carter, stating, among other things:

This written warning is being issued due to specific violations of conduct unbecoming, disrespect and insubordination. During a unit staff meeting held on Monday, [REDACTED] [REDACTED] [REDACTED] you

repeatedly interrupted Dr. S [REDACTED] during his presentation and spoke to him in a manner that was both misplaced and displayed a blatant lack of mutual respect for a fellow colleague, as well as an executive staff member of DBHIDS. Despite Dr. S [REDACTED]'s repeated attempts to respectfully respond to your questions and assertions, and then redirect the focus of the meeting on the presentation, you escalated the exchange and then abruptly dismissed Dr. S [REDACTED]'s response and walked out of the conference room before the meeting was done.

(City Exhibit #1)

Dr. S [REDACTED] testified about the meeting and what transpired with Mr. Carter. "When he came into the meeting he was already...appeared visibly upset...meeting to discuss, HR brought in to address severe wellness concern the team raised over the months...Mr. Carter interrupted me several times...his tone and entire comporment was disrespectful, rude, unprofessional." Although he does not currently recall exactly what transpired, Dr. S [REDACTED] said he did "remember the tone...entire body language...the fact that he interrupted me several times...." When queried whether or if he asked Mr. Carter to stop acting in this manner, Dr. S [REDACTED] said "I did try not to respond to his behavior...more concerned with the larger group at that point."

Dr. S [REDACTED] acknowledged being aware of an FLSA settlement involving the employees of the department and the City, but denied that the meeting had anything to do with that settlement.

On cross examination, Dr. S [REDACTED] reiterated that the purpose of the meeting was to address team wellness. "This team worked well over the standard 37.5 hours per week, averaging about 80...team reported burn out...meeting in question was intended to bring HR into the picture to look at ways to address the concern." Dr. S [REDACTED] said that there were three members of HR at the meeting. He acknowledged that one of the solutions discussed was to restructure the shifts, and acknowledged that the employees did get paid for the hours they worked over 37.5, although not at the overtime rate, which was part of issue in the FLSA lawsuit. While insisting that "standby is not guaranteed," Dr. S [REDACTED] did acknowledge that if the shifts were rearranged, that extra time/money might not be available to the employees. Dr. S [REDACTED] did not recall whether or if any other members of the team asked him questions, other than Mr. Carter. When asked if previous meetings had been tense, Dr. S [REDACTED] said that some had been because "of the amount of hours they had to work...that came through consistently in previous meetings." He did not recall whether or if he or HR congratulated the employees on prevailing in the FLSA lawsuit. As to how he responded to Mr. Carter's alleged actions, Dr. S [REDACTED] said "I don't remember responding to him...I was focused on the rest of the meeting." He took issue with Mr. Carter's behavior as being not within the bounds of "generally acceptable standards of behavior...you would know if someone was insubordinate to

you. ...I don't know whether you'd call speaking over other people expressing opinion...in a meeting of professionals..." is acceptable. However, he did not feel his authority was undermined.

Ms. N [REDACTED] B [REDACTED] attended the meeting. It was her first day working in the department and in that position with [REDACTED]. She recalled that the purpose of the meeting concerned the wellness of the employees. "It was my first day and I was an observer...his conduct appeared to be very unprofessional....as Dr. S [REDACTED] was speaking he cut him off several times, told him he didn't know what he was talking about...very disruptive." Ms. B [REDACTED] contended that Mr. Carter also demanded that his colleagues tell him which one or ones were "so stressed out," and that he did so in a "very aggressive tone...no one engaged with him...and his abrupt departure...he stood up, gathering his things together...walked out of the room."

On cross examination, Ms. B [REDACTED] acknowledged that Mr. Carter and the other employees did not "feel" that the purpose of the meeting was to help them. "I remember other employees speaking, saying things unprofessional as well, but not in the same manner as Mr. Carter...everyone had a chance to speak their mind....not sure how many, but most people did take the chance to speak." Ms. B [REDACTED] did not know whether or if one of the department goals was to change shifts and operations so that it could save money. As to the warning notice, Ms.

B [REDACTED] did not recall whether she wrote it, but said that, if she did, it would have been "in concert with Ms. C [REDACTED]."

Ms. Y [REDACTED] C [REDACTED] recalled that the room was full during the meeting, with people around a table and people standing behind the table. "The discussion model was open" and Ms. C [REDACTED] said there was a presentation, although if an employee had something to say then he or she would just begin talking. "I actually left the room for a portion of the meeting...when I came back to the meeting the mod was very different from when I left...as far as Mr. Carter, I did observe him raising his voice...Mr. Carter became argumentative asking questions but every time Dr. S [REDACTED] tried to answer he would cut him off...I did see where Dr. S [REDACTED] said the purpose was to focus on wellness and Mr. Carter said nobody has issues with wellness...when Dr. S [REDACTED] pointed to the stickys on the wall...reading back through...Mr. Carter shouted nobody said that, if anybody said that raise your hand...Dr. S [REDACTED] tried to resume the meeting...Mr. Carter became combative... 'aw man, you don't know what you're talking about,' and gathered his things and left the room...not in 25 years have I ever seen anybody be this disrespectful. Dr. S [REDACTED] did ask for discipline."

Ms. C [REDACTED] said that she wrote the warning letter and signed it, as well as having Mr. Carter's supervisor sign. (City Exhibit #1). She determined that the "severity of it was so unusual...it wasn't that he

disagreed...several people disagreed...it was the manner that he disagreed...clearly and purely disrespectful and aggressive...personal.” As to why she issued a writeup rather than other discipline, Ms. C [REDACTED] said that she examined his employment history and saw no previous, similar conduct in the last two years upon which she would issue a progressive disciplinary action, but that she did not give Mr. Carter a verbal warning because of the severity of his actions.

Ms. C [REDACTED] said she was not aware of the FLSA issue prior to the meeting. Ms. C [REDACTED] also recalled that “Dr. S [REDACTED] brought pizza and soda...they selected the of the month...the young lady who shouted out later...she was given flowers.”

On cross examination, Ms. C [REDACTED] reiterated that Dr. S [REDACTED] had asked for disciplinary action to be taken and that she authored the warning; Mr. K [REDACTED] was not consulted at any time. Ms. C [REDACTED] explained that his signature is on the document because “he is the direct supervisor...supervisor of record is required to issue discipline...civil service.” Ms. C [REDACTED] said she was not present when it was issued because HR would not be present.

As to the meeting itself, Ms. C [REDACTED] was not aware of the purpose of the meeting prior to the meeting, itself. She said there was a slide show with “proposals of several shift types on the slides.” And, Ms. C [REDACTED] said that the “young lady who shouted out” was not issued any

discipline, noting the distinctions with Mr. Carter's "repetition, consistency, escalation...personally directed hostility, yelling at several coworkers, attacking Dr. S [REDACTED] personally...making a single statement versus being progressively disrespectful."

Ms. K [REDACTED] R [REDACTED] began working for the City in June 2007 at the Department and is currently a Mental Health Emergency Services Coordinator 2. In November 2019 she was working the 9:00 a.m. to 5:30 p.m. shift, but on [REDACTED] she had arranged to leave work early. As Ms. R [REDACTED] explained, the employees all worked a "regular" week and were obligated to work "standby" from the day they accepted employment in the Department. Standby had not been compensated at a standard overtime (OT) rate, and many of the employees ultimately sought legal counsel and brought an FLSA lawsuit against the City. Ms. R [REDACTED] said she was "informed at the end of October, beginning of November that we won the case...still going back and forth with how much money we will receive..." With regard to the meeting of [REDACTED] [REDACTED], with Dr. S [REDACTED] and HR, it "was to get rid of standby...three shifts...ways it could work...no more standby...everyone was anxious and worried...standby is supplemental to regular income...why they were doing it and how they would.... The meeting began with Dr. S [REDACTED] saying 'congratulations' to us for winning the case...I thought it was kind of strange that someone in upper

management was thanking us for suing the City...then, how we were going to change. Before we went into the meeting, everyone was kind of anxious...losing 25% of our income...could they give us a raise or what...everyone had a lot of questions going into the meeting...I don't remember specifically the questions I asked verbatim, but as a group, why was this happening, who asked for this...why they thought this needed to be done...so many people asking questions because so many people were concerned.... I was very vocal...and Larry as well as J [REDACTED] and B [REDACTED]. ...I think I was maybe slightly agitated and anxious...personally it's like 30% of my income...everyone was just fearful at this point.... The City is not very good about telling us what's going to happen until after it does." Ms. R [REDACTED] said that her voice was probably louder than normal, that she was not yelling, and that she did not recall that anyone had been yelling. As to Mr. Carter, "I think like everyone else...a little anxious and a little worried...as per usual we weren't getting answers, they just skated around the ideas. He didn't yell. He didn't scream. He was not disrespectful in my eyes. I've heard Larry when he was angry and this was not it. ...He was asking the questions we all asked...if it's not broken, why are they changing it. No one in management wanted to admit...except the consultant...who said 'yes, we are doing this because of money.'" Ms. R [REDACTED] also did not recall Dr. S [REDACTED] doing any sort of presentation, classifying the meeting as "being of like all our meetings

are...people talk over each other because they're trying to get their point across." She said the meetings were typically like this, a round table meeting. She did not recall Mr. Carter cutting off Dr. S [REDACTED]. As to Mr. Carter's leaving the meeting prior to the end, Ms. R [REDACTED] suspected that he did leave early because his shift had ended. "I think he just got up and walked out, that's what we typically do. He didn't do anything dramatic, just got up and walked out of the room like I did."

Ms. R [REDACTED] said that she had been recognized earlier, with flowers and a certificate, for "doing a good job." And, Ms. R [REDACTED] said she was not disciplined for her behavior during the meeting. "L [REDACTED] K [REDACTED] told me I was this close to being disciplined but ...they didn't because they gave me an award and thought it would be ridiculous."

On cross examination, Ms. R [REDACTED] acknowledged that the OT work had not yet been eliminated or changed, and that the pay had still not been worked out. She did not recall specific employees bringing up wellness concerns at the meeting. She did not recall hearing Mr. Carter tell Dr. S [REDACTED] he did not know what he was talking about. She did not recall any presentation and said that what made the meeting different was that Dr. S [REDACTED] brought "HR and he didn't do that before." She did not recall Mr. Carter "repeatedly interrupting" Dr. S [REDACTED] or cutting him off when he tried to speak. "We all kind of talk over each other...it wouldn't stand out...that's how we hold meetings...sometimes we talk

louder or raise your voice...when you think of Larry you think of calmness...he was slightly higher than his normal speaking voice and his normal speaking voice is low."

Mr. L [REDACTED] K [REDACTED] is retired but had worked for the City for thirty six (36) years, from 2016 on as a Mental Health Coordinator Supervisor; he was Mr. Carter's supervisor at the time of the discipline. Mr. K [REDACTED] discussed the schedules, the standby time worked by the employees, the lawsuit and the alleged settlement. He recalled being at the meeting on [REDACTED], and said that his recollection of the purpose of the meeting is "that we should no longer be having a standby rate...they needed to do a three shift schedule...purpose of that meeting was to talk about a possible three shift schedule...would mean it would save the City...money...and they had to change it...HR and the [REDACTED] ran the meeting...they were very evasive, asking the staff to be candid and let them know how they felt about changing the schedule...very frustrating to everyone...because they wouldn't say what they really wanted to do...really wasn't clear to the staff...a frustrating meeting that went nowhere."

Mr. K [REDACTED] said that "all the staff spoke up," and then rattled off many names. "The mood was...a mood of unsurety...frustration...for the most part, it was a heavy presence in the room...because HR and the [REDACTED] wasn't getting the answers they wanted to hear and the

staff wasn't getting the answers they wanted to hear." He recalled that the employees were frustrated and direct, that no one yelled, that the meeting was respectful, and that Mr. Carter acted no differently than any other employee in the room. As to how the interchange among people went at the meeting, reiterating that it was typical of all their round table - style meetings, "some would raise their hand or they would just interject...that was how meetings normally went...there were times people would just butt in and not wait...Larry was the same as everyone, direct, wanting to get the point across, direct tone...never yelling at Dr. S██████. ...He made a last point, his shift had ended, he needed to leave, he made a point, got up and walked out...but his shift was over...like a couple of other staff whose shift was over...just got up and left."

Mr. K██████ examined the warning notice, said he had seen it and said he had not written it, but that he had been ordered to sign it by his supervisor, saying "I normally follow directives of my supervisor...I was just signing it because I was the supervisor, but I did not agree to the write up, nor did my supervisor...the only thing that was true was that Larry walked out of the meeting...I don't think he was disrespectful at all. I don't think his conduct was unbecoming."

On cross examination, Mr. K██████ said he did not recall Mr. Carter telling Dr. S██████ that he did not know what he was doing. He

reiterated that he did not agree with the warning letter but signed it because his supervisor told him he had to. "I thought that was the procedure...we haven't had a lot of write ups in our unit. I'm supposed to sign it because I'm the supervisor, like I do other documents." At the meeting during which Mr. Carter was given the warning, "I made that statement at the meeting but I was told the meeting wasn't about agreeing or disagreeing but about presenting the write up to Larry Carter. ...I didn't write it...Really this is the first time I remember signing a write up...just following procedure from my supervisor." When asked if he simply signed because he was retiring and would not have to deal with any fall out from it, Mr. K [REDACTED] insisted "I don't operate that way."

Mr. Larry Carter testified on his own behalf. He work as an Emergency Services Coordinator covering the mental health lines, typically from 7:30 a.m. to 4:00 p.m., Monday through Friday, as well as working standby. According to Mr. Carter, the employees were unhappy with the City's paying less than time and one half for the standby hours, which are overtime, and there was a suit brought by employees against the City. As to the meeting on [REDACTED], while Mr. Carter said he did not know the purpose of the meeting, he suspected it had to do with scheduling standby shifts. Mr. Carter said that all of the day shift employees attended, along with Mr. K [REDACTED], other supervisory personnel, three or four people from HR and Dr. S [REDACTED]. "They brought

in some goodies, drinks and pizza. Dr. S█████████ congratulated us on winning our lawsuit against the city. The topic was changing ...shifts. ...We explained to management and our supervisors we were unhappy and why were they changing all of a sudden, when it was just fine ...no one was answering that question. I asked that question...they were just looking around the room. I specifically turned to Dr. S█████████ and said can you explain why we are changing this schedule after sixteen years. He said that's a good question, and left it. I turned to my manager, P█████████...can you explain...she actually said no, shaking her head.... The consultant, been there over twenty five years...and I asked him...he didn't answer me...he then said after the lawsuit the City was changing ho we work so we didn't get overtime." Mr. Carter noted that he was speaking in the same manner in which he was testifying, "I just wanted answers. I wasn't the only one asking the questions." Mr. Carter said he was not shouting, he was not interrupting, that everyone had an opportunity to talk, that he was not disrespectful. "There were mock-ups of how the schedule would work if they changed it and we said it won't work, it's not gonna work. ...Dr. S█████████ said he was changing the schedule because people complained about working. I asked if anyone there wanted to change the schedule, please raise your hand. No one raised their hand. We all want to make this money." Mr. Carter said that he left the meeting at 4:00 p.m., when his shift ended, but that the meeting was still in

progress. "I gathered my stuff and excused myself, said it was time for me to go, to the room." He said he did not make any hand gestures or say anything negative. Mr. Carter said he had no reason to suspect that Dr. S██████ felt disrespected.

On cross examination, Mr. Carter reiterated that Dr. S██████ congratulated them on winning the lawsuit. When questioned as to whether Ms. O██████ was lying because she said Dr. S██████ did not say that, Mr. Carter said "I don't know her recollection but he definitely came in and congratulated us. I couldn't tell you what she heard." Similarly, when asked if Ms. O██████ was lying because she said Mr. Carter demanded to know who complained about employee wellness, Mr. Carter said he did not ask about it that. Mr. Carter said he did not recall interrupting Dr. S██████, reiterating "we were all just talking around the table...I wasn't any louder than anyone else."

Mr. Carter was asked if he had admitted to the conduct with which he is charged during one of the grievance meetings. Mr. Carter said that he had not, that he "admitted to leaving at 4:00, but not that I was shouting and I never interrupted him." Additionally, Mr. Carter said he did not question Dr. S██████'s credentials.

RELEVANT PORTION OF THE CBA

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.

(Joint Exhibit #1)

POSITIONS OF THE PARTIES

The City:

The City maintains that it had just cause to discipline Mr. Carter. It first examines the credibility of the witnesses. The City points to the testimony of Dr. S [REDACTED], Ms. C [REDACTED] and Ms. B [REDACTED] and contrasts it with the testimony of the Union witnesses. "Ms. R [REDACTED], when asked about the FLSA action was very specific, but when pressed about this particular meeting, she didn't recall whether Mr. Carter made the comments...raised his voice...she was very vague...could not recall or denied hearing his saying directly to Dr. S [REDACTED] 'you don't know.' Dr. S [REDACTED] has no such motive...Ms. C [REDACTED] and Dr. S [REDACTED] were not even aware of the implications of the FLSA judgment."

Turning to Mr. Carter's testimony, the City is troubled by Mr. Carter's complete denial of any of the actions with which he is charged. "Mr. Carter denies all allegations against him...very specific in nature. Three employees testified as to his actions...with incredible specificity.... To find for the Union...essentially have to find all three...colluded in order to punish Mr. Carter for reasons that have not been raised." With regard to the testimony of Mr. K [REDACTED], the City takes even greater issue. First, the City cannot fathom why Mr. K [REDACTED] would sign a document that Mr. K [REDACTED] insisted was false. It is not persuaded by Mr. K [REDACTED]'s contention that he signed it because his supervisor told him to sign it. Moreover, the City points out that Mr. K [REDACTED] had recourse, after having signed it, if he was truly bothered by having been told to sign it.

"There are inconsistencies among the Union witnesses, about what was said...the volume at which Mr. Carter spoke...those who don't recall what happened at the meeting...and those who do. The meeting itself was not motivated by the FLSA judgment. It was specifically triggered by employee complaints about wellness.... This particular team was working very long and odd hours...that calls into question whether...the department needs to reevaluate how it assigns work."

The City insists that the discipline issued was "very lenient...he spoke over a supervisor, a director...he questioned his credentials and

credibility...." Therefore, the City asserts that written warning was issued for just cause, and the City demands that the grievance be denied.

The Union:

The Union avers that the burden of proof is on the City and that the City did not meet its burden to give Mr. Carter a written warning. "The evidence shows ...that the department had what everyone expected would be a tense meeting...wasn't really about wellness...reorganizing the department in a way to reduce overtime...taking away 25-30 percent of salary...a topic no one was going to take lightly." The Union points to the testimony of its witnesses and the fact that they all say every employee at the meeting was acting in more or less the same manner. "Carter, R [REDACTED], K [REDACTED] all credibly testified that numerous employees spoke up...a normal roundtable discussion...not like if Dr. S [REDACTED] was giving a lecture...not something where he commanded full attention." The Union highlights Mr. K [REDACTED]'s contention that the meeting was for the specific purpose of seeing "how the employees would take it...receive candid feedback...they did receive it and they didn't like what they heard." The Union notes that both Mr. K [REDACTED] and Ms. R [REDACTED] maintain that "at no point did Mr. Carter disrespect Dr. S [REDACTED], on a personal level...spoke to him directly at a time when the mood in the room was tense...asked a question and instead of receiving

an answer...silence." Additionally, the Union points out that Mr. Carter was not the only one who thought this or who felt this way. "Ms. R ██████ felt frustrated...Mr. K ██████ felt that this was a frustrating meeting."

As to the fact that Mr. Carter left the meeting prior to its ending, the Union compares that with other employees who also left early. In Mr. Carter's case, it was because his shift had ended. "He packed up his stuff, made one last comment, and left."

Additionally, the Union asserts that the way the discipline occurred is contrary to department policy and practice. "Dr. S ██████ requested the discipline...Ms. C ██████ admitted she wrote it..." With regard to the City's contention question of the Union's witnesses and whether they believed that the City's witnesses were lying, "we don't know...what is clear is..." that the Union's witnesses "testified as to what did not occur...credible testimony..."

Therefore, the Union argues that the discipline imposed is not supported by just cause. The Union that the written warning be removed from Mr. Carter's personnel file and from any other place it might be.

OPINION

After a complete review of all the evidence and testimony, I find that the City did not have just cause to discipline Mr. Carter. My reasoning follows.

This is a “he said/he said” case, as to both credibility of witness testimony and what occurred at the meeting, or what was perceived as having occurred. One very important point that is missing, when it comes to the issuance of any sort of disciplinary action, is notice. Was the putative grievant on notice, or given notice, that certain actions or certain behaviors might lead to discipline. If Dr. S [REDACTED], Ms. B [REDACTED] and Ms. C [REDACTED] were all at the meeting at which Mr. Carter allegedly acted inappropriately, and if all three witnessed the alleged inappropriate action, and if none of the three, at any time, said to Mr. Carter, something to the effect of “hey, your behavior is not appropriate and you will face disciplinary action if you do not change your tone, your attitude, your demeanor, your level of respect, your aggression,” then there is no way that Mr. Carter could have or would have known that his behavior was deemed inappropriate. This allegedly occurred during a meeting, at which many of the people were upset, and at which many of the people were speaking, often over each other. Even if Mr. Carter were louder, more aggressive or more disrespectful towards Dr. S [REDACTED], the fact that he might have been unaware of this, the fact that Ms. R [REDACTED] was unaware of it, the fact that Mr. K [REDACTED] was unaware of it, lends credence to the assertion that Mr. Carter might have been unaware of how his actions were being perceived. The fact that Dr. S [REDACTED] was the one who asked HR to take the lead and issue discipline, and not that HR

took the lead after having been present at the meeting, lends credence to the fact that there were probably a number of ways of viewing and perceiving the entire interaction. Dr. S [REDACTED] has not been part of this team for very long. The unrebutted testimony is that these meetings, now and prior to his joining the team, were roundtables, at which the participants did speak over each other, did interject without raising their hands, and did get loud. If that is to change under Dr. S [REDACTED]'s charge, then all participants need to be aware of this. Coupled with the fact that the work group seems to have been facing a possibly major change to the schedules and shifts, this entire incident has the feel of a misunderstanding and not of conduct unbecoming.

With regard to the testimony, the City highlighted the fact that Ms. R [REDACTED] was able to recall, with specificity, the FLSA issue, but was not able to recall, with any real specificity, Mr. Carter's actions and behavior during the meeting. According to the City, this is evasive. Rather, it seems to be that Ms. R [REDACTED] did not deem Mr. Carter's actions and behavior to be significant or out of the ordinary; in other words, they were nothing special and did not require special attention. Similarly, and although I do not agree that Mr. K [REDACTED] should have signed the warning if he disagreed, I do understand that under the CBA, the supervisor must sign. I also bear in mind that Mr. K [REDACTED]'s testimony regarding the infrequency of disciplinary action in this group makes it likely that he had not been

involved in discipline often. As to the testimony of Dr. S [REDACTED], Ms. C [REDACTED], and Ms. B [REDACTED], I find it to be credible, as well, but the fact is that their perceptions of the meeting and what transpired seems to be at odds with the perception of the others who attended. The burden is on the City to prove its case. As each side is as credible as the other, that burden has not been met. Again, if the meetings are to have a different tone and tenor, then the employees, including Mr. Carter, should be advised that things are going to change. The City did not have just cause to discipline Mr. Carter.

In view of the foregoing, I issue the following

AWARD

1. There was no just cause to issue a written warning to Mr. Carter.
2. The written warning shall be removed from Mr. Carter's personnel file and from any other place in which it might reside.
3. The Arbitrator shall retain jurisdiction for the implementation of this Award for one (1) year from its issuance.



Randi E. Lowitt
Arbitrator

Dated: September 21, 2020

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: September 21, 2020