

**American Arbitration Association
Arbitration Pursuant to Agreement of the Parties
Before Timothy J. Brown, Esquire**

In the matter of:

Fraternal Order of Police, Lodge 5

and

City of Philadelphia

:
:
:
:
:
:
:

**AAA Case No. 01-19-0002-2851
(Discharge of P/O Daniel
Farrelly)**

Decision and Award

Appearances:

On behalf of FOP, Lodge 5:

Richard G. Poulson, Esq.
Willig, Williams & Davidson
1845 Walnut Street, 24th Floor
Philadelphia, PA 19103

On behalf of City of Philadelphia:

Daniel R. Unterburger, Esq.
Assistant City Solicitor
City of Philadelphia
1515 Arch Street, 16th Floor
Philadelphia, PA 19102

Introduction

This arbitration arises pursuant to the collective bargaining agreement (the Agreement) between Fraternal Order of Police, Lodge 5 (the FOP or Union) and the City of Philadelphia (the City or the Employer). In its underlying grievance, the FOP challenges the City's discharge of Police Officer Daniel Farrelly (Grievant). The parties were unsuccessful in resolving the dispute through their grievance procedure and the Union thereafter filed a timely demand for arbitration. The parties selected the undersigned arbitrator through the processes of the American Arbitration

Association to conduct a hearing on the grievances and render a final and binding arbitration award. The matter was heard by the undersigned on July 14, July 22 and August 5, 2020 in Philadelphia, Pennsylvania.¹ The FOP and the City were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Grievant was present for the entire hearing and testified on his own behalf. Following the hearing the parties elected to submit written post-hearing briefs and reply briefs, upon the receipt of which by the AAA, the dispute was deemed submitted at the close of business October 21, 2020.

This decision is made following careful consideration of the entire record in the matter as well as my observations of the demeanor of all witnesses.

Issues

The parties stipulated that: (1) there are no procedural bars to the arbitration of this matter, (2) the matter is appropriately before the arbitrator, (3) the arbitrator has the authority to render a final and binding decision and award in the matter, and (4) the issues presented by the subject grievance may accurately be described as:

Did the City have just cause to terminate Police Officer Daniel Farrelly, and if not what shall be the remedy?

Facts

Grievant has seventeen years of service with the City as a police officer and has no discipline on his record. By service on August 19, 2019,² Grievant was notified of his

¹ The hearing was conducted under “hybrid” conditions due to the Covid 19 pandemic. Counsel for the FOP, Grievant, FOP’s witnesses, the arbitrator and observers/representatives of the Philadelphia Police Department were present at the offices of the AAA wearing masks and practicing social distancing pursuant to then-current state and local health guidelines. Counsel for the City, the City’s witnesses, representative/observers for the City, and the court reporter participated via the Zoom virtual platform.

² All dates herein are 2019 unless otherwise indicated.

dismissal effective August 15. In relevant part the Notice informed:

You are hereby notified that effective August 15, 2019, you are dismissed from your position with the City of Philadelphia as referred to above for the following reasons:

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

Internal Affairs initiated an internal investigation, IAD#19-1077.151, after receiving information alleging that employees of the Philadelphia Police Department were posting offensive and inappropriate materials and/or comments on social media, specifically on the Facebook social media site. As part of the investigation, an analysis was conducted of Facebook post and/or comments in the Plainview Project database.

The analysis displayed a course of conduct, where no fewer than seventeen (17) times, you posted, shared, and/or commented on video, photographs/pictures, and articles, using racial slurs, profanity, dehumanizing, defamatory, and/or discriminatory language, and/or language that condoned, glorified, or encouraged violence, and/or language that was insensitive and mocked individuals, due process, and the criminal justice system. As a member of the Philadelphia Police Department, you are expected to strive to maintain public trust and confidence, not only in your professional capacity but also in your personal and on-line activities. Your posts and comments in question are devoid of any professional expectations and standards.

NEGLECT OF DUTY, SECTION 5-§011-10 (Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors.)

Internal Affairs an internal investigation IAD#19-1077.151 determined that you posted materials, statements, or comments on Facebook that are in direct violation of Directive 6.10, Social Media and Networking. This investigation conducted an analysis of Facebook posts and/or comments collected in the Plainview Project database. Results indicated that you posted, shared, and/or commented on video, photographs/pictures, and articles, using racial slurs, profanity, dehumanizing, defamatory, and/or discriminatory language, and/or language that condoned, glorified, or encouraged violence, and/or language that was insensitive and mocked individuals, due process, and the criminal justice system. In many

instances, these posts and comments were directed at the same persons whom you have been sworn to serve. Directive 6.10 specifically states that while engaging in social media, “Employees are prohibited from using ethnic slurs, profanity, personal insults, material that is harassing, defamatory, fraudulent, or discriminatory, or other content or communications that would not be acceptable in a City workplace under City or Agency policy or practice.” The directive further states that “each member must strive to maintain public trust and confidence, not only in his or her professional capacity, but also in his or her personal and on-line activities. Moreover, as police personnel are necessarily held to a higher standard than the general public, the on-line activities of employees of the police department shall reflect such professional expectations and standards.”

The course of conduct you engaged in indicates you have little or no regard for your responsibility as a member of the Philadelphia Police Department. Therefore, you will be dismissed after being placed on a 30-day suspension.

On 7/19/2019 in the presence of Captain Daniel Angelucci #4, Internal Affairs Division, Captain Michael Hooven #28, Commanding Officer, 9th District, Lt Timothy Linnemann #199, Internal Affairs, Danielle Nitte, Esq., Attorney FOP, and John McGrody, FOP Lodge 5, you were given your Criminal Grievance Warnings and an opportunity to respond to the above allegations. You chose not to respond. You were placed on an immediate 30-day suspension, with intent to dismiss.

The “Plainview Project,” referenced in the Notice of Dismissal, is a database of Facebook posts made by current or former officers of various police departments in the United States and posted on the web in the spring of 2019. The Plainview Project Facebook posts associated with Grievant (who used the identifier “Daniel Mike”) and referenced in the Notice of Dismissal included the following:³

³ The related Internal Investigation Report include one additional post that was not attributable to Grievant.



Daniel Mike shared Mediatakeout's video.



February 17, 2016 · 🌐

And people think American cops are tough ????



2,793,185 Views

Mediatakeout added a new video: THIS Is What They Do To DRUG Dealers In UKRAINE!!

February 17, 2016 · ✨

👍 Like Page

Ukrainian Rebels Capture A DRUG DEALER . . . And Instead Of Taking Him To PRISON . . . They WHIPPED HIM LIKE A SLAVE!!! (Wow . . . They Don't PLAY Over There)

🔗 Share

👍 4



Vince Cione Think he'll deal drugs again ?

2y



Daniel Mike I think they killed him after , so no ! 👍 1

2y



"Say no to drugs" Was and still is great advice.

2y



Dude this is viscous

2y



Ian Hans Lichterman "Please be humans" - Guy taped up and whipped!

2y

Daniel Mike shared [redacted]'s video. June 8, 2016 · 🌐

Can't win !!! The same people who are screaming shoot him would be the same one protesting if they did !! Smh !!!



[redacted] added a new video. June 8, 2016 · 🌐

Ppl saying shoot him, but if they would have discharged their weapons ppl would be complaining about why did they have to shoot him....

They just did what they r trained to do

Dyckman around LA marina.

Share

👍 12

[redacted] So shooting the tires is not a option 1y

Daniel Mike No I 2 1y

[redacted] 🤔🔫 1y

[redacted] Love the shoot the tires comment. Response was epic "that's only in movies" 3 1y

Rich Seamen Bruhhhhh. Shoot him. . Shoot him. He put himself in danger by walking in the st. Shoot the tire... lmao. MOVIES... love it. 2 1y

[redacted] Throw a flash bang in the car. 1 1y

Daniel Mike Yeah , then after bang , he gets out of the car with a gun , and I'll shoot the gun out of his hands , then chase him up to the top of a tall building , tackle him through the window , then fall 10 stories and land on my feet ! When it's all over I'll use some corny line like " not today scumbag " or " you're the disease , I'm the cure " ! 1 1y

[redacted] I wasn't serious. Lol. 1y

Daniel Mike [redacted] I know 1 1y

[redacted] Shooting a tire is only going to slowly deflate the tire, and possible ricochet to others. Shoot to kill!!!! Plus 9mm's are not all that powerful. I think all police should carry .40 or .45 cal. 1y

Rich Seamen Shoot the radiator. .. now that will slow it down quick lol 1 1y

[redacted] Put a potato in the tail pipe. 1y

[redacted] Put a potato in his ass 1 1y

[redacted] Shoot the tires!!!! What a fucking IDIOT!!! 1y



Daniel Mike

June 6, 2015 · 🌐



Same problem in philly !



MYFOXDC.COM

Videos show illegal dirt bike riders taunting DC police

D.C. police are continuing their investigation into the death of local reporter C...

Share

3



Jimmy Arentzen Kick my car I'm getting you fuck that.....
Homicide investigation...chase em all

1

2y



[Redacted] Arrest them all, they give true off road enthusiast like me a bad name.

2y



Robert Smith Blame the police as usual. Nobody wants to talk about how the police don't chase them because of the safety of OTHERS.

2y



[Redacted] These scumbags are a offshoot from the Baltimore gang 12 o'clock boys... the Baltimore police are not allowed to chase them and they are animals causing property damage and committing crimes on their non registered bikes.. I see these scumbags in SW philly they have no regard for the law...

2y · Edited



Daniel Mike shared Survive the Streets: A Page for Cops's video.



December 26, 2015 · 🌐

Beautiful !!

No one cares about your stupid protest



677,756 Views

Survive the Streets: A Page for Cops added a new video.

December 25, 2015 · ✨

👍 Like Page

Well, that traffic disruption protest didn't pan out.

🔗 Share

👍 20



That's great 👍 1

2y



Look like a strike to me!!!! Lmao 👍 1

2y



Daniel Mike

June 10, 2016 · 🌐



Welcome to Philadelphia! Animals all over the place !

Share

8



[REDACTED] I'm surprised. Not 1

1y



[REDACTED] Black female, had to be a Trump supporter right? 1

1y



Daniel Mike shared [redacted]'s video.



February 24, 2016 · 🌐

BILLY'S DAD IS A FUDGE-PACKER



4,920,016 Views

[redacted] added a new video.

February 23, 2016 · 🌐

Follow

One of the best social guidance films from the 50s.

Share

2



[redacted] Too funny

2y



Daniel Mike shared Que Viva España's video.

December 1, 2015 · 🌐

...



2,425,246 Views

Que Viva España added a new video: Refugiados rechazan comida porque lleva la cruz de la Cruz Roja.

September 22, 2015 · 🌐

👍 Like Page

Refugees reject food because it carries the cross of the red cross. If they do not want to adapt, let them go back to their countries.

STOP ISLAM

Share if you are outraged that they want to impose their beliefs.

⚙ See original · Rate this translation

➦ Share

👍 6



Michael Anthony Maybe we should put big red Fucking crosses on our welfare cards too! Animals not welcome

👍 3

2y



Daniel Mike trump will erect cross fences !

👍 2

2y



Michael Anthony Fuck these terrorist. They absolutely ravaged Greece

👍 3

2y



Chris Joseph Good, let them starve to death. I hate every last one of them.

👍 1

2y · Edited



[redacted] Soon there will be a shortage on red spray paint and wooden stakes.

👍 1

2y



[redacted] Can't say we didn't try.

2y



Brian McBride Fuckem

👍 2

2y



Yo Stuff Send these ungrateful fucks back Fuck them!

👍 1

2y



Daniel Mike
March 2, 2014 · 🌐

...

Overbrook ! Remember when you were able to say you lived there proudly ? To the assholes who took over that neighborhood . your an absolute disgrace to the human race !!!! There was practically zero crime there when i was growing up there !

👍 85

23 Comments 1 Share

➦ Share



No one realizes how nice our neighborhood was! I agree with you Danny.

4y

👍 9

...



So sad 😞 I know the feeling embarrassing today to say that's where you are from because of the way it is now- oh well life goes on!

4y

👍 3



Still proud. Just sad to see the world changing:(

4y

👍 4



AGREE but There was crime on my block but mostly non violent and no where near as bad as it is now

4y



4y · Edited

👍 2



That's not Avondale is it

4y

👍 5



Yes it is

4y · Edited

👍 1



No truer words!!!!

4y

👍 1



me and my friends miss our Wyndale everyday!!

4y

👍 1



That is the craziest and saddest picture of the old hood.

4y

👍 4



that's just a sad picture. Doesn't look at all like OUR neighborhood

4y

👍 4



I do wish that people did not run away, so many other neighborhoods stayed strong. I would leave west Chester and would live there if it was the same as when I was younger.

4y

👍 3



Truth~~~~~ funny thing is up the hill house would prob be worth 5 times the amount of money they r today if the neighborhood stayed strong. Yuppies/hipsters love living close to center city with out living in it. Gentrification is at an all time high in the city

4y · Edited

👍 1



Make me sick when I think of it

4y

👍 2



Jay how old is that pic

4y



A year old.

4y



They should all be euthanized! They always complain they have nothing and it's all their fault! Fucking animals!

4y

👍 3



It sucks we all shoulda stayed instead of competing with the "jones" we would all have more money a few vacation homes and our neighborhood like south philly just saying

4y

👍 1



When they blew away Tom from loves everyone panicked and sold to who ever when people were getting mugged I told my mom the minute u get touched I'm gonna play eye for eye ! And we moved to pennwyne

4y

👍 1



Here's my house down 49th and Thompson. 4936 was maintained for over 60 years by my grandparents who were poor. Soon as the animals got it, well here's the fucking end result.

... See More



4y



I lived this twice. Born in North Philly, a beautiful neighborhood until 1968. By 1970 it was not safe to go outside, especially at night. Moved to Overbrook in '70 then in 1988 I saw a subtle change & by 1990 moved to Broomall & never looked back.

4y

👍 1



"they " destroy everything , i go past my old house and get sick

4y

Anthony Pfettscher shared **Civilians AGAINST Cop Block's** video. ***
April 13, 2016 · 🌐



3,179,673 Views

Civilians AGAINST Cop Block added a new video.
April 12, 2016 · 🌐

I'm so mad right now I'm shaking 🤔🤔
This video was taken at the James A. Cayce projects in East Nashville today. Metro-Nashville Officer Matthew Cammarn (who w...
[See More](#)

[Share](#)

4

██████████ Filthy hood rat animals. We would have gone back with a full platoon. 1y 1

██████████ They should just fence the projects off and let them kill each other.. Problem solved.. Don't dial 911 when you hav a problem, animals... 1y 5

██████████ They are animals!!!! No class no brains 1y 2

██████████ I can't even watch this, waste of life. 1y 2

██████████ These people are fucking idiots. The idiot filming is like I got this shit on tape. Yeah showing the other person trying to help to bad person. They all should get arrested. And I totally agree with you ██████████. Grow up people. 1y 2

██████████ Excuse my language. 🤔 1y 1

██████████ Daniel Mike #1 . Why is he in the projects ? #2 why is he in the projects by himself #3 why is fighting with this creeten in the projects by himself ??? Hopefully , the whole district was in those projects for a month after this and some harsh lessons were levied ?? 1y 2

██████████ complete animals! 1y 1

██████████ Freakin Liberal voting animals. Ship their jobless butts to the Middle East to fight ISIS!! 1y 1

██████████ Disgraceful 1y 1



Daniel Mike shared a video.
October 21, 2013 · 🌐



Unreal , this country is going to he'll !



The Video Junkyard
October 19, 2013 · 🌐 · 📷

👍 Like Page

LIKE The Video Junkyard for more videos!

11 Comments

🔄 Share



Foodstamp card? really. And thats why they have kids. Unreal. Animals
5y

👍 3



What a piece of shit
5y

👍 2



Wtf
5y



omg i cant believe what that woman just said. omg shes going to jail right? like WTF
5y

👍 1



Somebody please beat the rest of her teeth out of her fucking mouth
5y

👍 3



ill do it! which jail is she in?!

5y



Rachael Catalini What a fucking animal!
5y

👍 1



Daniel Mike What does she care ? Her and her animal sister will have 4 more that the taxpayers will pay for !!
5y

👍 2



I had to rewind her talking 3 times bc I wanted to make sure I heard her correctly 😞 I have no words for her!!! So sad 😞
5y



Dan, I am in complete agreement with you on this. only thing is it happened in 2009 . haha
5y



Daniel Mike shared Brigitte Gabriel's video.

March 26, 2016 · 🌐

...

Let them in !!!! They are peaceful people !



901,331 Views

Brigitte Gabriel added a new video: The Islamic State's Promise To The West

December 22, 2015 · 🌐

👍 Like Page

Why aren't we hearing these words from our enemies in the mainstream media?

As I learned while living in a bomb shelter for my teenage years: Take serious those...
See More

↪ Share

👍 3



Michael Anthony Very friendly. I think we could sit down and talk with them and not resort to violence to resolve this issue.....
(SAID NO REAL AMERICAN!!!!!!) Bring that shit and fight like real men not blowing yourselves up like cowards. Hopefully Trump handles this fucking shit correctly!

👍 1

2y



Daniel Mike shared WLBT 3 On Your Side's video.

April 8, 2016 · 🌐

To all the Bernie and Hillary supporters who agree with those two morons that the Police are the enemy ! These are the type of animals preying on your loved ones ! Careful what you wish for !



1,294,181 Views

WLBT 3 On Your Side added a new video.

April 7, 2015 · 🌐

👍 Like Page

EXCLUSIVE VIDEO: This video of some Jackson kids playing with guns was posted on Instagram and has community members on edge - they say it's a "disgrace to the ...
See More

➦ Share

👍👎 5



Daniel Leone Save your breath. Quality of living in the U.S. Is doomed

👍 1

1y



██████████ No more Stop and Frisk.

1y



██████████ These chumps need to be locked up. Anyone who votes for those two clowns has no brain

1y



██████████ Exactly

1y



██████████ I swear somebody should stand on a rooftop with a rifle and pluck off m***** like that

1y



██████████ I'm sure they're licensed, legalized gun owners going to the range for target practice. Let's not jump to hysterical conclusions. lol

👍 4

1y



██████████ Lol

1y



Daniel Mike shared Exposed's video.
March 16, 2016 · 🌐

...

Welcome these wonderful people to our country to go to school with your children !



944,333 Views

Exposed added a new video.
August 22, 2015 · 🌐

👍 Like Page

Lost for words

🔄 Share

👍👎 8



Disgusting #TeamTrump2016 🗳️ 2
2y



Michael Anthony The mothers are very hands on with these children. No honey let's reposition this sheep so you can get a better cut. Is the sheep symbolic for Americans? Go Donald Trump 🗳️ 1
2y



Sooooo far from the light. 🗳️ 1
2y



How is this normal? Or how could this be anything close to Godly behavior or approved? So confused- poor kids
2y



How many people are in that room? Laughing,taking pictures.
2y



F*****G Savages!!!!
2y



Nothing a few of these can't fix



2y



Daniel Mike

September 10, 2013 · 🌐



Even the reporters in Detroit are ghetto !!



YOUTUBE.COM

This Is Detroit And We Will Come Squat In Your House If You're Not Home: They Are Stealing Houses

 Share





Anthony Anzideo

October 11, 2014 · Philadelphia, PA · 🌐



Seems justified to me



M.STLTODAY.COM

Teen died from gunshot to right cheek, medical examiner says
: News



3

7 Comments 1 Share

Share



██████████ Hahaha "that wasn't his personality to have a gun" yet he was wearing an ankle bracelet for gun charges. 🤔🤔🤔 I can't with these morons 🤔🤔🤔

4y



1



Mario Booch He armed was with a sandwich and one that shoots bullets....F HIM!!!!

4y



1



██████████ It's unbelievable. We need an elected official to stand up and have the police back. And tell these people they r wrong.

4y



Daniel Mike Snore !!!! Who cares !

4y



1



██████████ Why is this even a story?

4y



Daniel Mike You know why !!!!!

4y



1



Chris Joseph I like the "why is there no epidemic of white cops shooting white kids". Ummm

4y



Anthony Pfettscher

March 16, 2016 · 🌐



I'm cracking up at that American college student that went to North Korea and tried to steal a poster. He is crying and pleading like a little baby girl because he was just sentenced to 15 years hard labor. Although my heart breaks for his family, it's an eye opener to how spoiled and coddled our youth of today are here in this weak PC country. Yet they act like animals and burn and step on our Flag that so many of our children died for defending our rights and our country. #SeeYouIn15Years #WakeUpAmerica #AskWhatYouCanDoForYOURcountry

Share

53

1 Share



Sparky Phil Lucky they didn't cut off his hands!

2y



Daniel Mike I loved seeing that story on the news today ! If we here in America doled out half the jail time that they gave that kid , this country would be in good shape !

1

2y



No Patricia. I know exactly how u feel 😬😬😬

2y



We were talking about that this morning... WTH... Of all the places to go he goes to North Korea? Get the hell out of here. AHOLE

1

2y



D F Pace Insightful point 1

2y



Yea he's gonna know all the Korean chain gang chantsfunny but dam that's some crazy snit

1

2y



Daniel Mike shared [redacted]'s video.



February 27 at 1:53pm · 🌐

The 10:35 pm Domestic call when you're suppose to get off in 10 min



4,127,477 Views

[redacted] added a new video.

August 21, 2015 · 🌐

Made this for my EMS peeps lol



5

1 Share

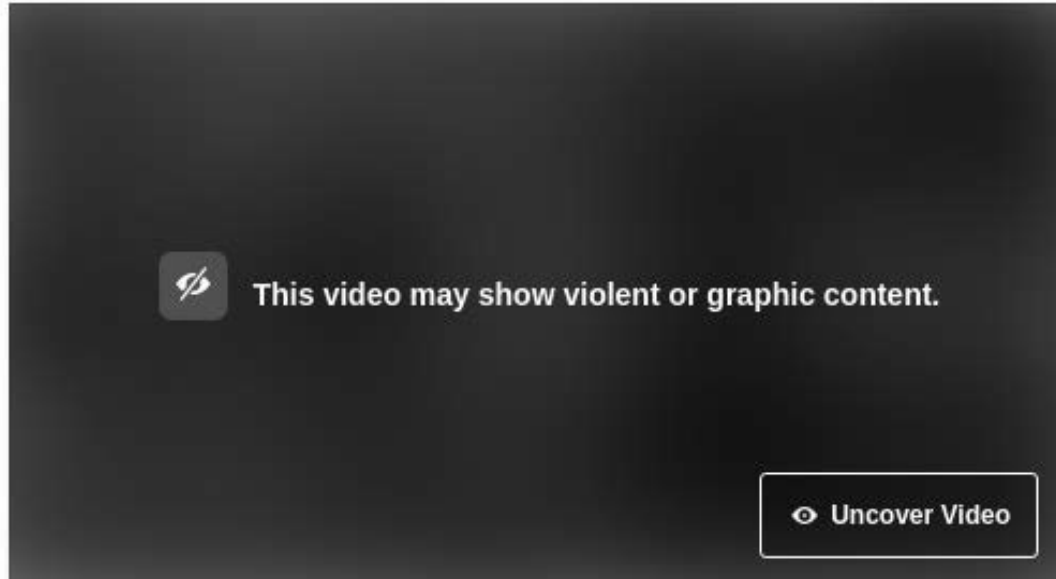


Daniel Mike shared The TRUTH's video.



March 30, 2016 · 🌐

Let theme in !!!! This could be your your mom, sister or daughter next !!!



1,588,067 Views

The TRUTH added a new video: Muslim torturing women in the name of their god...! Allahuakbar..

December 3, 2015 · 🌐

👍 Like Page

Muslim torturing women in the name of #their god...! Allahuakbar..

➦ Share

👍👍 5



████████ Kill these motherfuckers!!!!

1y



████████ Fuckin animals

1y



Steve Bas Peaceful huh

1y



████████ These People Are Savages!!

1y



Daniel Mike shared Steve Reichert's photo.

...

July 5, 2015 · 🌐

Beautiful, just beautiful!



Steve Reichert is with [REDACTED] and 2 others.

July 2, 2015 · ✨

👍 Like Page

Glad this fine gentleman got his hippie stomping merit badge!
www.Facebook.Com/stevereichertofficialpage

➦ Share

👍 21



Daniel Mike is with [REDACTED] and 2 others.

August 8, 2015 · 🌐

I always have time for my fans ! Mike Gerico and Alex Holly from Good day Philadelphia wanted their pictures taken with me !



➦ Share

👍 228

2 Shares

View 29 more comments



[REDACTED] Luv u Man! 👍👍😊👏👏👏 1

2y



[REDACTED] Where they at Vango?

2y



Daniel Mike Chris Joseph She dat chicken head from aroun da way . She Lil Ants baby mom . She not from Da block doe , she went ta Crenshaw !

2y



Chris Joseph Oh Dat freak jawn. I hollard at Dat shortda for a minute.

👍 1

2y

Daniel Mike

shared azcentral's video.

March 19, 2016 · 🌐

Trump , trump , trump !!! I can't wait until someone has had enough , and just plows through these idiots !



6,880,208 Views

azcentral

added a new video: Car driven through group of Trump protesters.

March 19, 2016 · 🌐

Like Page

Watch a vehicle get driven through a group of people protesting Donald Trump's Fountain Hills rally. You can clearly see a Maricopa County Sheriff's Deputy shrug.
<http://azc.cc/1Rakmdf>

Share

19

Jumping on someone's car is peaceful?

1

2y

Liberal fucks

2

2y

I love the girl in the background yelling "that's attempted murder". If that was me driving my tire would've been in her mouth!!!! IDIOTS

1

2y

Liberal PRICKS! !!!

1

2y

But it's all Trumps fault. These fucking low life liberal scumbags. That whore who yelled attempted murder needs a fat Italian sausage shoved in her mouth

2

2y

With lots of Marinara Lmfao

2y

That'll teach them leftist Vegans. Lol

1

2y

I'll make sure she chokes on it

2y

Lmfao the half Irish Italian murd cock?

2y

Half of it will choke that vegan liberal whore. I'll turn that bitch into a trump supporter when I'm done with her

1

2y

Lmfao

2y

2y

YOU HAVE THE RIGHT TO PROTEST



BUT IM LATE FOR WORK!!

2

2y

25



Daniel Mike shared Indian River County Sheriff's Office's video.



December 22, 2015 · 🌐



4,895,628 Views

Indian River County Sheriff's Office added a new video.

👍 Like Page

December 18, 2015 · 🌐

WARNING Graphic Video Attached

Indian River County Sheriff Deryl Loar released the attached dash cam video to the media this afternoon. Last night, Deputy...

See More

🔗 Share



██████████ The Media will never show this because it shows the Truth of what officers face everyday, a simple traffic stop turns into assault and attempted murder. Disgusting, not one ounce of respect for human life. Best Wishes for a speedy recovery Deputy Lester and Thank you to all Officers for putting your life on the line everyday!

👍 2

2y



██████████ This makes me sick

2y



██████████ then they wonder y they r treated like they are but that willl turn out to b a racist cop wat a fukn joke

2y



Michael Anthony That shit is crazy. Your solo on a dark road and god knows how far back up is. Great job officer. Only wish he'd a killed that fucking toad!

👍 1

2y

Daniel Mike shared a video.
February 17, 2014 · 🌐

Here is what you created , bleeding heart liberals !!! Police should be sweeping in here and administering swift punishment ! But it's a criminals world now , and most don't fear the law anymore ! God help this country !



Luimarco Daily
February 13, 2014 · 🌐 · 📷

👍 Like Page

Oakland Nightly !

👍 11

10 Comments

🔗 Share

██████████ Bunch of idiots that need to be destroyed
4y 2

Daniel Mike In philly , 20 cars would be called to that corner and most of those idiots would have been sent to the hospital for an extended stay !
4y 5

██████████ They have no respect at all
4y 1

██████████ Cops are out numberedyou send in the fucking military... Some places in Oakland or a fucking war zone
4y 1

██████████ I would sit on a roof top and just pop them off one by one lol
4y 1

██████████ Fight fire with fire!! Eventually the police will be back in charge of the streets. If the cops keep bumping the animals off, they may get suspended or fired, but they can only fire so many officers or suspend them.
4y

Daniel Mike You need to teach these assholes a lesson on who runs the streets like the not so old days ! Liberal judges don't punish anyone enough , and people who don't live in neighborhoods like this cry foul when cops are a little rough with these thugs ,But scream for justice when they are the victim ! Rizzo would never let this happen to his cops , or city !
4y 5

██████████ It honestly just needs to be bombed .. Get it over with and kill them all and start over !
4y

██████████ ANIMALS..... This country is doomed.
4y

Investigation

Following the posting of the Plainview Project, the City investigated 328 officers who were identified as having made Facebook posts included in the Project.

Sargent Brian Saba conducted the investigation relating to Grievant. Saba testified that he interviewed Grievant in connection to the investigation on June 11. Grievant was represented during the interview by Union counsel. Saba testified that he asked Grievant a predetermined set of questions. First, he showed Grievant 37 pages containing printouts of 25 Facebook posts believed to be associated with Grievant; asked Grievant to review the posts; asked Grievant to initial each page of the posts upon review; asked if they were from Grievant's Facebook account and asked if Grievant made the posts. Grievant acknowledged that the "Daniel Mike" account was his and admitted that they were his posts. Grievant stated he believed he made the posts while off duty, but could not recall. Grievant informed Saba that he had changed his account name from "Daniel Mike" to "Dan Falala" on June 7 or 8. When asked, Grievant stated he had not noticed any social media posts or comments attributed to Grievant that he did not make. Saba completed the interview by asking Grievant if he had anything else to add, to which Grievant answered: "No."

Saba testified that he did not have Grievant review the posts on the website, but rather showed him paper copies of the posts printed from the web. He also testified that he did not ask questions about each of the posts or otherwise inquire of Grievant what he may have recalled about the videos or his intentions when making, or his interpretations of, his posts. Nor did he ask about any other posts Grievant may have made. When asked on cross examination if he had the Department's Social Media Team look into Grievant's Facebook conduct, Saba answered he had not, and further explained that had Grievant denied making

the posts he would have used the Social Media Unit to authenticate the posts.

The investigation was narrow, Saba testified, it was limited to inquiring whether Grievant made the posts attributed to him. Saba testified that the Department referred the posts to an out-side law firm to determine if posts were protected by the First Amendment, but not to determine which, if any, of the posts violated City or Department policy. Although his report stated that “some of the Facebook posts/comments made by” Grievant violated the Department’s Social Media Policy, Saba testified, the final violation of policy question was not his to make. He forwarded the report to staff Inspector Deborah R. Francis.

Deputy Commissioner Robin Wimberly testified that she was part of the team that decided the discipline of Grievant. She testified that after the Plainview data was dropped onto the website, the Department established a task force to investigate the approximately 300 Philadelphia police officers associated with various of the posts on the website. The investigation was focused upon the Plainview website and whether or not the posts attributable to an officer were that officer’s posts. The investigation did not look into other posts Grievant may have made over the years. The investigation did not determine the criteria the Project used to select posts, or how many police officers the Project may have included. Nor did the investigation review the videos that Grievant posted. Nor did the investigation ask the officer why he made the posts or explore his mindset when making his posts. But, Wimberly testified, Grievant was given the opportunity to add anything he wanted to say at the end of his interview.

Wimberly was on the committee that determined to dismiss Grievant. Grievant’s case was not submitted to a PBI, but rather Grievant was disciplined through the Commissioner’s Direct Action. Grievant was dismissed for the reasons stated in his Notice of

Dismissal. The committee considered Grievant's Plainview Facebook posts individually as well as in their totality. Even one incident of Conduct Unbecoming may subject an officer to termination, Wimberly testified, and here, the committee concluded that Grievant engaged in a course of conduct that that included multiple incidents of such conduct. Grievant's conduct was egregious.

In his posts, Wimberly testified, and considering their context, Grievant used the word "animals" to refer to people of color; he promoted violence, expressed hatred of people because of their race, ethnicity, religion, gender preference (homophobia), he promoted misuse of police powers and violence against peaceful protestors. Grievant publically identified himself (he "self-identified") as a hater of many of the communities that make up the city of Philadelphia, including communities of color, ethnicity and religion. His posts contained many stereotypical racist remarks; such a referring to people as "animals" or characterizing a community as "ghetto." For example; in his post about the Overbrook section of the City, he refers to the current citizens of the community, most of whom are African American, as "animals." He also described the citizens of the community as "assholes;" another degradation of an entire community as well as a violation of the Social Media Policy profanity provision. In another post, he describes the people of the City as "animals." Again, a "racist" reference according to Wimberly. But even if not racist, a degradation of the people of the City. In his post of his picture (in his police uniform) with two TV personalities, Grievant took what seemed to be a positive interaction and used it to make derogatory comments - using Ebonics – toward an African American woman and portrayed her as someone beneath him due to her race. He posted a video that included a post from the originator of the video stating "STOP ISLAM," a sentiment that can undermine the

efforts the Department has made to connect with the Muslim communities in the City.

The Committee made its decision to discharge Grievant based upon the content of the hard copies of his Plainview posts shown to Grievant during his interview and Grievant's admission that the posts were his. The committee considered that Grievant had 17 years of service with no prior discipline. Wimberly acknowledged that Grievant had 17 years of satisfactory reviews and multiple positive comments in his reviews by his immediate supervisors. However, progressive discipline is not warranted where conduct is egregious, and here, Wimberly explained, Grievant engaged in a course of conduct, which included multiple violations of policy. Moreover, Wimberly claimed, and the conduct of Grievant at issue is not something that can be corrected through progressive discipline. Grievant's conduct was not isolated, but rather, occurred over a course of years. One cannot be "a part-time racist," Wimberly testified, and hate, such as the hate Grievant self-identified himself as having, cannot be managed when policing. People live who they are, Wimberly explained, and if one gets to the point, as did Grievant, where you want the whole world to know what is in your heart, that "is what it is;" that is who you are; and progressive discipline is not going to change that. A biased officer is not going to give the citizens of the city the service they deserve.

Grievant's conduct is inconsistent with the Department's efforts to build community trust; to be inclusive and to build bridges with the citizens of the City. Grievant's conduct can also have an impact upon other officers in the Department, for example, officers of color or Muslim officers. The Department cannot, in good faith, now partner Grievant with an officer of color or a Muslim police officer. Having "self-identified," Grievant has lost the trust of the community; poses a potential liability to the City should he engage as a police officer in civil

rights violations; and Grievant has lost his ability to testify in court relating to his arrests – a significant element of an officer’s job. In this later regard, Wimberly explained, in criminal matters, prosecutors will be required to disclose Grievant’s posts to defense counsel in cases involving members of the Muslim community, people of color, or members of the LGBTQ community, etc. and prosecutors cannot be expected to allow Grievant to testify under such circumstances. If you cannot testify in court, you should not be a cop, Wimberly testified.

The Employer presented **Dr. Q [REDACTED] A [REDACTED]**, an Associate Professor teaching courses relating to mediation, conflict resolution and conflict theory. He is also a Philadelphia Police Department Chaplain and a Muslim student advisor at [REDACTED]. He reviewed Grievant’s Plainview posts. Humanization, he explained, is recognition of the things that connect us; it recognizes that a person is worthy of respect, communication and empathy. When one dehumanizes another, these three human connections are broken and one can engage the other in any way one likes. One who dehumanizes can engage in verbal aggression, thereby communicating that the object of the aggression is something “less than” the aggressor. Studies have shown that it is a small step from verbal aggression to physical aggression, A [REDACTED] testified. When the verbal aggressor is a police officer, one already imbued by society with certain power, with power of the state, the subject of the verbal aggression is not going to feel safe and is not going to trust; verbal aggression does psychological harm. In his view, Grievant used dehumanizing language in his posts. He testified that Grievant would not benefit from implicit bias training as Grievant is overtly racist. One does not just one day wake up and engage in racist behavior. Such behavior builds up over time and it is likely that Grievant had developed his attitude toward others long before he began posting.

Grievant testified that he joined Facebook in 2011 or 2012 and used his phone to engage the app. He testified that he shared things in his “feed” and shared comments. His Facebook friends include family, friends and co-workers – including other police officers. According to Grievant, no one ever complained to him about anything he put on Facebook.

He admitted receiving, reading and signing the Department’s Directive on Social Media, but does not recall receiving training on the directive prior to 2019. In a nutshell, Grievant testified, the Directive says watch what you put on Facebook. He further testified that he was “always cognizant” about what he put on Facebook, “...always careful. Always careful.”

Grievant described the Plainview Project as a group looking into police officers’ private Facebook pages. He recalled that when the Plainview project first went public, it was a big deal in the City and that it was all over the Philadelphia papers, and being talked about in the Department by other officers, but the Department didn’t respond at all. Grievant testified as follows after being asked about when he first learned of the Plainview project and that some of his posts were included in the project:

A. I went right to my phone, and I looked it up. And I put my name and badge number into it. And I saw a bunch of my posts that were in the Plain View Project.

Q. Okay. And what was your initial reaction when you saw -- to the post themselves, when you went and you saw what was on the website?

A. To be absolutely honest with you, I looked through them. And I mean, I shrugged my shoulders. I really didn't think there was anything super -- nothing bad at all to tell you the truth.

Q. Okay. Were you a little relieved?

A. I was.

Q. Yeah. Did you wonder about what you might have posted or --

A. Yes. I posted thousands and thousands of posts through the years. And I never worried about one of them.

Grievant thereafter just continued to patrol as usual. Grievant testified that on June 6 or 7 he was called after he had completed his shift and told to report to his District and bring his service gun because he was being taken off the street. Grievant thought the call was a joke, but was told it was not.

Grievant recalled his interview by Sargent Saba. It lasted about 45 minutes. Grievant had a Union representative present. Saba gave Grievant hard (paper) copies of the same posts Grievant had seen when he checked the Plainview project website. He was asked to review the posts; which he did, and asked to initial each page to confirm that he had reviewed the page; which he did. Grievant testified that at the time of the interview he did not remember making all of the posts, but remembered making some of them. Saba did not go through the posts one by one and ask him questions. He confirmed that he initialed one post that was not his. At no time did Saba – or anyone else from the Department – ask him anything about the posts. He was not asked why he made the posts or what they were about.

Grievant testified he was thereafter placed on desk duty, as were the other officers named in the Plainview matter. He and the other officers were sent to training on social media posts and “...something called sensitivity training or something to that nature.” He testified that he thought the training would be the end of it and he would be placed back on the street. He did not expect to be disciplined, he testified, but on July 19 he was called in and was served with discharge papers.

Grievant testified that he has never been told which of his posts were violations of policy and which were protected by the First Amendment. He testified as to the following about each of the posts at issue:

Post of September 10, 2013

Grievant does not remember posting and testified he did not consider the word “ghetto” to be a racial slur.

Post of October 21, 2013

Grievant testified he does remember the video. He is not sure of the city involved, but remember it concerned a fire and two children being left alone in the house as the mother and her sister just walked away. Grievant testified the video made him angry as his youngest was two years old at the time. He recalled that during the interview of the sister on the video the sister said she hoped they found her pocket book with her access card. In his post, Grievant referred to the sister as an animal. Grievant testified that he did not consider the use of the word “animal” a racist remark. He confirmed that the two sisters in the video were African American.

Post of February 17, 2014

Grievant testified that he believed the video was; “of was a bunch of vehicles and motorcycles flying around a police officer. I believe gunshots were let off. Purses were being thrown at the police officer, and the officer just sat there. Did nothing.” He testified the video made him angry. Grievant stated that he never worked for Frank Rizzo when he was Police Commissioner or Mayor. He testified his comments were “tongue-in-cheek” and that he didn’t really mean his statement about “extended stay in the hospital” that such is not consistent with his experience as a police officer.

Post of March 2, 2014

Grievant testified that he grew up in the Overbrook section of the City and that during the period from 2011 to 2013, grandparents of a few friends of his were burglarized, a friend's store was robbed by gun-point a few times and his mother-in-law was burglarized. Grievant denied he was referencing African Americans and testified that his comment about "the assholes who took over the neighborhood" was a reference to criminals and not to every person in the neighborhood.

Post of October 11, 2014

Grievant testified that he does not remember making the post.

Post of June 6, 2015

Grievant testified that Philadelphia also has a problem with dirt bikes.

Post of July 5, 2015

Grievant testified that what he thought was beautiful was that the flag was saved. He confirmed that he understands that protesting is protected by the First Amendment. He further testified that he has worked protests and large gatherings and has never been disciplined for any inappropriate conduct at any such event.

Post of August 8, 2015

Grievant testified that he recalled getting his picture taken with the two media personalities and that as to the reference to "29 more comments," he

does not recall if the other comments not copied on the papers he reviewed were before or after his comments. In any event, he recalls there were a bunch of other police officers and friends going back and forth, playful banter and nonsense as he described it. He testified that his quote about, “she dat chickenhead from aroun da way...” was a quote from the movie *Boyz n The Hood*. Grievant testified that he does not recall if his comment was in reference to Alex Holly, the woman in the picture, or not. He admitted that “I guess it could be a little offensive,” and that perhaps Ms. Holly would be offended if she saw the post. He further testified that based upon what he has learned since, he would not post such again as he would never want anyone to be offended by one of his posts.

Post of December 1, 2015

Grievant testified that he believes the video that he shared showed refugees in a refugee camp who refused food aid from the Red Cross because of the crosses on the packages. He testified that he shared the video because; “I am concerned about, you know, people coming over here illegally, terrorists coming over to this country and doing harm to my family truthfully.

He further testified that his later comment that “Trump will erect cross fences” was “a joke,” that he didn’t mean it, it was “tongue-in-cheek.” When asked about the statement he shared along with the video that, in part, said; “STOP ISLAM” Grievant testified as follows:

video. It says: "Stop Islam." Do you have any recollection of --

A. No.

Q. -- what you considered that?

A. I, typically, don't read that. I just watch the video, share it. Maybe that's something I should have done. But --

Q. Okay.

A. Hindsight, I did not.

Post of December 22, 2015

Grievant testified that the video he posted showed a police officer being shot during a traffic stop.

Post of December 26, 2015

Grievant testified he does not recall sharing the video, and that from what he can see on the paper copy, he assumes it was a video of a car “going through protesters.”

Post of February 17, 2016

Grievant testified that he recalled the video he posted was of what he assumed were police officers whipping a drug dealer. He further testified that his implication in posting; “And people think American cops are tough????”, was that “we are not.”

Post of February 24, 2016

Grievant testified that he recalled the video he shared being a 1950's spoof on family life with a number of sexual remarks, and that he thought it was funny; that he does not think anyone would be offended by the video. He confirmed that he understood the term “fudge-packer” to be a street reference to a homosexual.

An aside...

During his testimony about his specific posts, Union counsel asked:

Q. Do you think that every Muslim is a terrorist?

A. No.

Q. And did you ever opine on Facebook about issues relating to terrorism?

A. Yes.

Q. And if any of those posts refer to Muslims or refer to Islam, are you talking about every Muslim?

A. No.

Q. Who are you talking about?

A. Terrorists.

Posts (2) of March 16, 2016

Grievant testified that he shared a video of kids being taught how to behead a lamb, and that “to the best of my...what I can remember is, they were screaming death to America, or something.” In making his comment “[w]elcome these wonderful people to our country to go to school with your children”, Grievant stated that he was concerned about terrorism.

The second post of the day, concerned an American student receiving a harsh sentence in North Korea for stealing a poster. Grievant testified that he did not remember the post.

Post of March 19, 2016

Grievant recalled that the video he posted was of protesters banging on the windows of a jeep and trying to pull the driver out of the vehicle and the jeep “took off through the protest line.” Grievant testified that he wrote; “Trump, Trump, Trump!!! I can’t wait until someone has had enough, and just plows through these idiots.” But, Grievant testified, he did not mean it literally.

Post of March 26, 2016

Grievant recalled the video he shared was an Isis video of males shooting

their guns in the air and yelling; “death to America.” He testified that he was not serious when he wrote “Let them in!!!! They are Peaceful people,” and that he was concerned about terrorist coming into the country.

Post of March 30, 2016

Grievant posted a video from “The Truth” of “Muslim torturing women in the name of their god...! Allahuakbar..” and wrote; “Let them in!!! This could be your mom, sister or daughter next!!!” On direct examination, he testified as follows:

A. I don't remember the actual country. But it was a -- a female was walking through the streets being punched, kicked and stones being thrown at her by hundreds of males.

Q. And so, when you're referring this could be your mom, sister or daughter next, what did you mean?

A. That if we didn't -- that people coming into this country, that stuff like this could happen to our family.

Post of April 8, 2016

Grievant testified that the video he posted showed four or five what looked like teenage kids in a car, each with a handgun and screaming; “We are coming to get you” or “We are going to get you.”

Post of April 13, 2016

Grievant testified that he does not recall what the video was. He testified that he was not advocating police violence; that if there is trouble in an area the Police Department will focus on the area.

Post of June 8, 2016

Grievant posted a video showing a vehicle ramming other cars and people in the area screaming “shoot him, shoot him.”

Post of June 10, 2016

When asked on direct if he remembered what he was posting about when he wrote; “Welcome to Philadelphia! Animals all over the place.” Grievant testified he did not know, he can’t recall/doesn’t remember the matter.

Post of February 27, 2017

Grievant recalled that the video he posted was of an actor punching the steering wheel saying, in effect, this is going to ruin things; referring to a receiving a domestic call when you have only ten minutes left in your shift.

When asked what he was talking about in his Grievant testified just; “who wants to stay late?”

Grievant testified that his postings had no effect on his policing. He admitted that as a police officer, once he effectuates an arrest, that is not the last time he sees the people he arrests; he has to see them when he testifies in court as to why he effectuated their arrest. Grievant confirmed that his credibility as an officer is important in both jury and bench trials. Grievant testified that he did review the Plainview Project website after he heard about the site and prior to his interview.⁴

Union Vice President John McGrody testified that the hurried investigations by the Department after the Plain View Project website became active was inconsistent with the due process rights of officers involved. He testified that he is not aware of any social media

⁴ The parties stipulated that the Plainview website was still active as of the date of Grievant’s testimony, August 5, 2020.

training provided officers prior to Plain View. He further testified that officers were provided Radical Islam Training and that there were some on the MOPEC board (of which he was a member at the time) that had concerns that the training was too broad and could be interpreted as anti-Islam.

McGrody testified that the job of a Philadelphia police officer is very stressful and cops talk and vent among themselves. Cops talk a lot. Venting sometimes comes in the form of “dark humor.” Venting relieves stress and things said privately between cops should not be taken as serious. The suicide rate is high among police officers and if they are not talking, it can be a problem. If officers had been properly train on social media, they would know not to assume that only their friends are viewing their posts.

Positions of the Parties

The parties offered thorough written analysis of the evidence and argument in support of their respective positons, all of which I have carefully and fully considered. Offered herein are only summaries of the written briefs of the parties.

Summary of the City’s Position

Grievant’s posts found on the Plain View Project website included instances of racism; inflammatory anti-immigrant sentiments; homophobia; Islamophobia; advocacy of police violence; advocacy of violence against individuals exercising their rights under the First Amendment; and generalized disgust directed towards communities served by the Philadelphia Police Department, particularly communities of color.

The City satisfied the requirements of just cause. Contrary to the Union’s attempts to muddy the waters and question the adequacy of the City’s investigation, an investigation

need not contain thousands of pages of interviews and transcripts to be thorough. Such is particularly the case where, as here, the target of the investigation admits to the acts being investigated, and does so in the presence of his attorney. The interview conducted of Grievant by Sargent Saba allowed Grievant whatever time he needed to review the copies of the posts presented him and Grievant admitted that he had had adequate time to review the posts. If Grievant believed it would have been beneficial to his interests to clarify his mindset or explain what was on the videos he posted or what he meant by his posts, as the Union claims now he should have had the opportunity to do, Grievant had the opportunity. During the interview, Grievant was given the opportunity to say whatever he wished, to explain himself or attempt to justify his conduct. But, Grievant chose not to take the opportunity.

Grievant knew of the rules and policies and the City was justified in concluding that Grievant had violated the policies at issue.

The investigation disclosed Grievant violated Section 1-§021-10, Conduct Unbecoming, of the bargained-for Disciplinary Code by engaging in a course of conduct that indicates he has little or no regard for his responsibility as a member of the Police Department. The bargained-for penalty for the first offense of the Section is a thirty-day suspension or dismissal. In this regard, the postings admitted to by Grievant (and those not subject to protection by the First Amendment) establish a course of conduct in contradictions to the standard of conduct to which Grievant is held as a member of the police department; “to strive to maintain public trust and confidence, not only in [a] professional capacity but also in ...personal and on-line activities. The Department was well within reason to conclude that given Grievant’s conduct, conduct widely disseminated,

to conclude that Grievant has failed to maintain the confidence and trust of the public he is required to police. Grievant's conduct also repeatedly violated Police Department Directive 6.10, a directive that establishes the boundaries of acceptable online behavior for police officers such as Grievant; a Directive that he admitted in his testimony that he read, understood and signed. Contrary to the argument of the Union, police officers do not need to be trained to not refer to African-Americans as animals or to abstain from agitating for police violence the violation of citizen Constitutional rights by police.

The Police Department's Disciplinary Code establishes core values of honor, service and integrity. Grievant agreed in his testimony that honor includes doing nothing that will tarnish your badge. Grievant agreed that service-with-honor means providing police service respectfully and recognizing the dignity of every person. Grievant agreed that integrity is the foundation for building relationships. But Grievant's posting conduct tarnished his badge, showed disrespect and degraded citizens of the City and did damage to the bridges, the community relationships, the department has been trying to build and strengthen.

Discharge was the appropriate remedy. Although Grievant had no prior discipline, Grievant engaged in a course of conduct that included multiple violations of the department's Code and Directive. Because of Grievant's conduct, it would be unreasonable for the department to believe that the public Grievant would be called to police, and other officers Grievant would be required to work with, could trust that Grievant will not be influenced by his self-disclosed racism and bigotry. As explained by Dr. A [REDACTED], Grievant's individual expressions of hatred and bigotry cannot be separated from his position as a police officer. The Department should not be required to continue to employ

Grievant in a position where he has state sanctioned power over members of the public who must put their faith and trust in him. Such would be an insult to the community.

Even acknowledging that Grievant had no prior discipline, lesser discipline is not appropriate where, as here, progressive discipline cannot correct Grievant. Even as recently as the hearing in this matter, Grievant showed no remorse for his conduct, shrugged his shoulders and testified that he didn't think his posts were that bad. Grievant's prior service does not mitigate the egregious nature of Grievant's expressions of hatred. Hate is hate and stands alone, Deputy Wimberly testified. Progressive discipline cannot correct Grievant's hate. As Wimberly testified; "we cannot re-raise people." Nor could progressive discipline establish trust in the community Grievant would have to police. Additionally, progressive discipline cannot reform Grievant in such a manner as to make him a credible witness should he be required to testify relating to arrests, nor cause his former colleagues in the department to forget that he hates people of their race, ethnicity or religion.

Through collective bargaining the Union and City agreed that Grievant's conduct should be punished by either a thirty-day suspension or dismissal. The Union offered examples of conduct by other officers that resulted in lesser discipline than discharge. But no example offered by the Union included the number of posts or egregiousness exhibited by Grievant.

Through a course of conduct over a period of years Grievant self-disclosed his racism and hatred of the people of many of the communities making up the City of Philadelphia. His disclosures through his posts amounted to egregious violations of the Disciplinary Code and Directive 6.10. Discipline of dismissal is appropriate considering the egregiousness of Grievant's conduct and the facts that Grievant's hatred cannot reasonably

be expected to be corrected by lesser discipline. The Union's grievance should be denied.

Summary of the Union's Position

The City discharged Grievant because of 17 private, aged, off-duty Facebook posts made between 2013 and 2018 and only after they were posted on the Plainview website in 2019, and notwithstanding that the Police Department provided no training to officers about social media activity until after the Plainview site became active. Moreover, the City has never, to this day, informed Grievant as to which of his posts violated Department policy and for what reasons, and has never informed Grievant as to which of his posts included on the Plainview website were considered by the City to be protected by the First Amendment. Rather than accept its own responsibility for never training officers and never placing officers on notice of what conduct was permitted, what conduct is protected by the First Amendment and what conduct is prohibited, the City reacted to the Plainview matter by blaming the officer with a seventeen-year, unblemished career in law enforcement. In doing so, the City jumped on the "cancel culture" bandwagon and failed to apply standards of just cause as required by its Bargaining Agreement with the Union.

Grievant used his Facebook account to keep in touch with friends, family and coworkers. He typically posted photographs of his family or vacations, and only occasionally shared his political and social opinions and commented on law enforcement related issue. He did not identify himself as a Philadelphia Police Officer and used a screen name, Daniel Mike, so as not to identify himself with his last name. Directive 6.10 relied upon by the City prohibits employees from using privately owned equipment for social media use while on duty. But, confusingly, the Directive also states that employees off-

duty using private equipment for social media use do not represent the City. Although the City did not think it was worthwhile to train its officers on its social media directive, throughout the years Grievant used social media, his work as a police officer was outstanding.

Notwithstanding that the Plainview Project was put together with an anti-law enforcement agenda, the project itself included a disclaimer that: “The posts and comments are open to various interpretations. We do not know what a poster meant when he or she typed them.” After the Plainview Project went live and Grievant learned he was included in the project, he reviewed the posts attributable to him and felt an initial sense of relief. Only after the Plainview Project was publicized did the Department decide to take action, and then the Department rushed to judgment to terminate Grievant after only a cursory investigation and after-the-fact training.

The City investigated only the posts on the Plainview Project, The City never asked Grievant about his other social media activity and never attempted to verify the accuracy and authenticity of the posts as represented on the Plainview Project website even though the Department was aware of the process for doing so. Nor did the Department so much as view the videos posted by Grievant. Instead, the Department had Sargent Saba merely show Grievant a black and white printout of the posts attributable to Grievant, ask Grievant to review the posts and initial each. Saba did not ask Grievant for any explanation or clarification about any of the posts, nor did he ask what was Grievant’s intent when he posted them. As Saba testified at the hearing; “We just needed to know whether he made the posts and whether it was his account.” That was the extent of the investigation. No one from the City thereafter ever asked Grievant any further questions about the posts. Saba

then wrote up and signed the investigation report concluding that some of Grievant's posts violated the Department's Directive. The posts were then reviewed by an outside law firm to determine whether they were constitutionally protected.

Only after the Plainview Project and some eight years after the social media Directive was issued did the City train the officers involved on social media; training that included an overview of the First Amendment and sensitivity training. Thereafter Grievant was informed that he was being suspended with intent to dismiss by way of Commissioner's Direct Action. At that time, and to this day, Grievant has never been told which of the posts formed the basis for his termination.

The City's actions failed to meet the standards of just cause. The Department failed to conduct a complete and fair investigation; the Department failed to determine whether Grievant was guilty of violating any work rule and obtaining substantial evidence of such. The Department failed to discipline Grievant consistently with other officers who engaged in similar conduct. And the Department failed to impose a penalty proportional to the employee's actual conduct in light of his excellent work record and other mitigating factors.

In addition to the rushed investigation, the City never provided Grievant the minimum essentials of due process; the opportunity to present his defense and to be informed as to which of his posts formed the basis for his discipline. As stated before, there was no training and as a result, no notice given Grievant as to what violated the Directive or what penalty would be imposed for failing to meet the employer's expectations. Grievant certainly never received notice that he could be terminated for sharing his posts with consenting family, friends and coworkers. Just cause does not permit the Employer to

go back in time and punish an employee for conduct the employee had no reason to understand was not permitted. The confusion as to the rules involved was even demonstrated at the hearing. Grievant didn't believe he violated the rules at all. Sargent Saba and Deputy Commissioner Wimberly testified that only some of the posts violated the rule, but even they disagreed as to which posts did so.

The City's rushed and pre-determined-outcome investigation was also flawed as it did not determine the accuracy of the Plainview Project data base. The City does not know which of the posts attributable to Grievant were manipulated and changed. Instead, the Department relied on an outside organization with an agenda. The City failed to independently verify the authenticity of the posts attributable to Grievant.

The City has the burden of establishing just cause for the discharge of Grievant by clear and convincing evidence; a standard appropriate where the City is attempting to conduct industrial capital punishment and alleging moral turpitude in the process.

The City's action against Grievant also violate the First Amendment. Public employees may speak freely on matters of public concern and, here, virtually all of Grievant's posts related to policing, law enforcement, and the criminal justice system. Other comments were merely of the news of the day. And all were intended only for a small group of friends and family and did not purport to speak for the City.

The City also failed its obligation to be consistent with its discipline. The evidence established that the City issued only a one-day suspension to an officer who made several offensive Facebook posts resulting in a citizen complaint. Several other Plainview officers charged with Conduct unbecoming and Neglect of Duty were given 30-day suspensions, including the officer discussed above who received a prior one-day suspension. Yet another

officer received only a 12-day suspension after posting a picture of himself in black-face even though he had received prior social media related discipline. Still other officers were subject to PBI hearings and were not disciplined although some of the posts attributable to them were similar, if not more egregious than those of Grievant.

Grievant is a seventeen-year officer with no discipline and a good work record. His aged posts had no effect on his ability to police throughout the years involved. The parties recognize that discipline should be corrective and Grievant should be given the chance as required by just cause to correct his conduct. The grievance should be sustained and Grievant reinstated.

Discussion

Introduction

An analysis of whether or not Grievant's discharge was for just cause under generally recognized standards in labor arbitration requires consideration of all of the circumstances in determining whether the issuance of discipline was "fair." Some of the several factors often considered by arbitrators when applying the just cause standard include whether or not: (1) the rule or policy being enforced is reasonable; (2) there was prior notice to the employee of the rule and the consequences of its violation; (3) the disciplinary investigation was adequately and fairly conducted and the employee was afforded an appropriate level of due process under the circumstances; (4) the employer was justified in concluding that the employee engaged in the conduct as charged; (5) the rule has been consistently and fairly enforced and (6) whether or not the discipline issued was appropriate given the relative gravity of the offense, the employee's disciplinary record and considerations of progressive discipline.

It is well recognized that in arbitrations of cases presenting questions of discipline or discharge for cause, it is the employer's burden to show that its discipline satisfies all of the requirements of just cause.

Summary of Findings

In the instant matter, considering the record as a whole, including all evidence and argument offered by the parties as well as my observation of the demeanor of all witnesses, I find that the Employer has met its burden of showing just cause for the termination of Grievant.

The Union argues that the City failed to satisfy the requirements of just cause relating to: (1) adequate notice of the rules involved and potential discipline for their violation; (2) the conduct a complete and fair investigation; (3) having substantial basis for determining whether Grievant was guilty of violating any work rule; (4) determining discipline consistently with other officers who engaged in similar conduct; and (5) failing to impose a penalty proportional to the employee's actual conduct in light of his excellent work record and other mitigating factors.

The Rules at Issue are Reasonable and Grievant Had Adequate Notice of the Rules and the Potential Consequences for their Violation

Grievant admitted in his testimony that prior to making his social media posts and comments at issue here, he had received, read and understood the core values described in the Disciplinary Code and that violations of the Code could result in discipline, including discharge. Similarly, he admitted that he had received, read and understood Social Media Directive cited in his Notice of Dismissal and that failure to follow directives could result in discipline. I find that as a seventeen-year member of the police force, Grievant was well aware of the importance of complying with the Department's Code of Conduct and Department Directives and I find that the

language of both the Code and Social Media Directive are straight forward. For example, there is no ambiguity in the notice contained in the “Policy” portion of Directive 6.10 (Section 4) that; “there is no reasonable expectation of privacy when engaged in social networking online.” Similarly, the prohibition of conduct described in Section 4, Subsection I, is straight forward, particularly that portion of the subsection prohibiting use of; “...ethnic slurs, profanity, personal insults, material that is harassing, defamatory, fraudulent, or discriminatory...” Grievant had notice that he was expected as a police officer to “strive to maintain public trust” and that as a police officer, his online activity was, “held to a higher standard than the general members of the public.”

I am also not persuaded that Grievant believed his Facebook activity was “private” and/or that his activity should be judged based upon there being private conversations. In addition to the notice of no expectation of privacy contained in the Directive, it is widely understood in our society that on-line social media is not the same as holding a private, in-person conversation in one’s home, or under circumstances where one can have a reasonable expectation that his or her statements will be held in confidence. Comments and posts on social media are much more akin to statements made “in the public square” than they are to statements in a private setting. I find that Grievant was aware of such. In this regard, in addition to attributing to him what is basic knowledge about social media known by the average citizen, Grievant received “likes” and comments from a significant number of individuals and at least one of his posts, his post of August 5, 2015, received 228 “likes.” Even assuming the unlikely event that every single person who saw his post responded with a “like,” Grievant was on notice that his posting activity was not private, and was available to, and at times being accessed by, a large number of people.⁵

⁵ I also find it relevant that Grievant knowingly posted and commented to other officers in the Department; thereby potentially having an impact upon the culture of the Department.

The Investigation Satisfied the Just Cause Standard

The parties have presented competing narratives as to the adequacy of the City's investigation. The Union generally argues that the contents of the Plainview website should have been only the start of the City's investigation; that the City should have considered the motivations of the group that put up the website, should have conducted its own analysis as to the authenticity of the postings on the site to determine if they had been altered, should have viewed all of the videos posted by Grievant, should have proactively inquired into Grievant's motivations and thought processes in making each and every of his posts and comments, should have investigated Grievant's other social media activity over the years at issue to give perspective and should have given Grievant the opportunity to explain his actions. The City, on the other hand, argues that it was presented with the Plainview postings; that they are what they are and that the relevant inquiry was limited to whether the posts were made from Grievant's Facebook account and whether the posts and comments attributed to Grievant on the Plainview site were in fact made by Grievant. Additionally, the City asserts that at his investigatory interview Grievant was given adequate opportunity to offer any explanation he wished to provide.

I find that the investigation satisfied the just cause standard. The City was not presented with an issue involving all of Grievant's social media conduct over a period of years. Nor do I find relevant the motivation of the organization or persons who created the Plainview website. Instead, the City was presented with specific posts allegedly made by Grievant. By narrowing its investigation to only those posts presented by the Plainview Project and not expanding the investigation to parts unknown, the City was being fair, was providing Grievant due process.

Grievant was presented with posts attributed to him. Grievant testified that he had reviewed the posts on line (and was relieved) prior to his interview and admitted that he had adequate time to review the posts during his interview. If the posts were not his or were manufactured or altered, he could have said so and would have been motivated to do so. Grievant admitted that the posts were his and that the Facebook account involved was his. I am not persuaded that the City should have made an independent effort to determine the authenticity of Grievant's posts under circumstances where, as here, Grievant admitted that he made the posts.⁶ Additionally, Grievant was given the opportunity – in the presence of legal counsel - to provide his reasons for making his posts or to clear up any ambiguity or clarification of meaning he felt he was necessary.

The City Had Adequate Reason to Conclude that Grievant Violated the Rules

I find that various of Grievant's posts, communications in the public square, included messages endorsing police violence and/or interfering with citizen First Amendment rights to protest; used profanity; insulted and degraded people and groups of people and reflected racist and/or discriminatory attitudes toward individuals and groups based upon racial, ethnic, national origin or religious considerations. In such regard, I find the following:

- A. Grievant's post of June 10, 2016, "Welcome to Philadelphia! Animals all over the place!" I do not credit Grievant's testimony that this post could have been about actual animals. One of the comments offers context, referencing a "Black Female."

Whether Grievant's comment was directed at a racial group or not, the comment was

⁶ In addition, it is widely – but not universally - held by arbitrators that an arbitration hearing of a matter itself can satisfy the just cause requirement for a full and fair investigation. In the instant matter, Grievant was given the opportunity to explain his conduct and gave detailed testimony about his Plainview-related posting activity and reasons therefore, arbitration hearing testimony that I have fully and carefully consider.

demeaning, was on its face dehumanizing of the people of Philadelphia and violated the Department's Directive.

- B. Post of February 24, 2016 and reference to "Fudge-Packer." Fudge-packer is a degrading homosexual reference, and as such violated the Directive.
- C. December 1, 2015 posting of a video concerning refugee aid. I find the sharing of a video with the narrative "STOP ISLAM" violated the Directive as it amounted to a promotion of discrimination based upon religion. Grievant's explanation on the witness stand that he was concerned about "people coming over here illegally, terrorists coming over to this country doing harm to my family truthfully," doesn't mitigate the boldfaced anti-religious text he shared, and reflects a troubling thought process whereby all members of the religion are equated with illegal immigrants and terrorists.⁷ Grievant again violated the Directive.
- D. Post of March 2, 2014 about the Overbrook section of the city. Grievant referred to those who took over the section as "assholes." Even if Grievant is credited when he denies he was referring to the people of color who now largely make up the residents of the community, Grievant's use of profanity violated the Department directive. Additionally, this early post of Grievant had some 85 "likes" and 23 comments, again placing Grievant on notice that his social media activity was widely available.
- E. Posting of October 21, 2013 concerning two children dying in a fire and a woman saying she hoped they found her purse with her access card. Grievant testified that he was angry at the video, but did not use the term "animal" as a racist remark. I find at

⁷ I did not credit Grievant's disclaimer - that he does not believe every Muslim is a terrorist and that any reference he may have made in his posts to Muslims were referring to terrorists – as such testimony was wholly the result of leading questions.

the very least Grievant intended the term to demean. Importantly, Grievant did not only post the video, his later comment came after other comments including: “food stamp card? Really. And that’s why they have kids. Unreal. Animals.” “What a piece of shit.” “somebody please beat the rest of her teeth out of her fucking mouth” And “What a fucking animal.” Grievant testified that the two sisters in the video were African American. Whether referencing race or not, Grievant’s statement; “What does she care? Her and her animal sister will have 4 more that the taxpayers will pay for!!” was abjectly dehumanizing and demeaning. Grievant’s comment violated the Directive.

- F. Post of March 26, 2016. Here, Grievant again associated immigrants with terrorists and thereby degraded individuals and communities because of their immigrant status and violated the Directive.
- G. Post of March 16, 2016 showing a group of Muslim children. Grievant testified the video he posted showed the children being taught how to behead a lamb while yelling death to America. He testified he was concerned about terrorism. Again, Grievant equates being Muslim with being a terrorist. His comments demean and degrade immigrants and Muslims in violation of the Directive.
- H. Post of March 30, 2016. Grievant posted a video of a women being kicked and stoned. The video narrative provides; “Muslim torturing women in the name of their god...!” and testified that his comment “Letting them in!!! this could be your mom, sister or daughter next!!!” was referring to people coming into the country, and that stuff like this could happen to our family. It is true that we do not literally stone women in this country. However, Grievant’s statement was broad and communicated

that Muslims should not be allowed to immigrate into this country because all Muslims are violent. Grievant's statement was anti-Muslim and demeaning of immigrants in violation of the Directive.

- I. Posting of July 5, 2015 Here Grievant posted a video captioned "Glad this fine gentleman got his hippie stomping merit badge" and four pictures of a middle-aged man stepping on a burning American flag, with the extinguished flag in his hand the man approaching a younger man, the middle-aged man punching the younger man in the face and the middle-aged man with his knee on the younger man fallen to the ground. I find Grievant's testimony that his "Beautiful, just beautify!" comment was about the flag being saved to be un-credible. Grievant's comment was about the "gentleman hippie stomping" and as such glorified and encouraged violence, violations of the Directive.
- J. Post of August 8, 2015. Picture of Grievant in his police uniform and two local television personalities. Notwithstanding Grievant's attempt to explain away his Ebonics as being a quote from a movie, I find that Grievant's comment is blatantly race-based.⁸ Grievant, did not choose to comment about the White man in his picture. There is no context that would explain Grievant's reference to a movie about a black neighborhood in LA. Instead, he chose to demean and belittle an African-American woman because of her race. I find Grievant violated the Directive by posting a picture of himself in uniform and by demeaning and denigrating a woman because of her race.

⁸ Given this self-admission of his view of an African American woman, I find it was not unreasonable for the City to conclude that Grievant's references to "animals" and "ghetto" in his other posts, when in the context of people of color, were at least in part motivated by his attitude toward race.

- K. Post of March 19, 2016. Grievant wrote he can't wait until someone has had enough and "just plows through these idiots." Grievant's statement encouraged violence against people exercising their constitutional right to protest and degraded those who protest. I do not credit his testimony that it was only a joke. There is nothing funny about Grievant's presentation and those who commented on Grievant's post did not respond to it as if it were a joke, but instead expressed vitriol and hatred. I find that Grievant's encouraging violence, encouraging suppression of the right to protest and degradation of protestors violated the Directive.
- L. Post of February 17, 2014. Grievant testified that his comments about the video he posted of an officer being circled by motorcycles and harassed by others in the area, were just tongue-in-cheek. Grievant introduced the post by writing:

Here is what you created, bleeding heart liberals!!! Police should be sweeping in here and administering swift punishment! But it's a criminal world now, and most don't fear the law anymore! God help this country!

In between that introduction and his next comment, another made the comment: "Bunch of idiots that need to be destroyed." Grievant continued the conversation by writing; "...In Philly, 20 cars would be called to that corner and most of these idiots would have been sent to the hospital for an extended stay!" Between that comment and his next comment, others comments included; "I would sit on a roof and just pop them off one by one lol" and "Fight fire with fire!! Eventually the police will be back in charge of the streets. If the cops keep bumping the animals off, they may get suspended or fired, but they can only fire so many officers or suspend them." Instead of distancing himself from the violent comments about taking back the streets or

communicating that violence by the police was not appropriate, Grievant instead *directed* the commenter as follows:

You need to teach these assholes a lesson on who runs the streets like the not so old days! Liberal judges don't punish anyone enough, and people who don't live in neighborhoods like this cry foul when cops are a little rough with these thugs, But scream for justice when they are the victim! Rizzo would never let this happen to his cops, or city!
(Emphasis added)

Again, Grievant violated the Directive by using profanity, by promoting violence by the police, and by mocking individuals as well as the criminal justice system.

Considering the breadth of Grievant's expressions of hatred and belittling of human beings, many of whom share characteristics of citizens of the City, and other repeated violations of the Directive, I find the City had substantial support for its determination that Grievant had engaged in multiple acts of conduct unbecoming an officer and violations of the Department's Social Media Directive. The City has satisfied the just cause standard in that regard.

Consistency of Discipline

The Union offered examples of other cases where officers engaged in conduct found to be in violation of the Social Media Directive and given lesser discipline, even in circumstances where the officer had received prior discipline relating to the Directive, and examples of officers engaging in social media conduct similar to selected examples of Grievant's conduct. However, I find that none of the other cases offered by the Union is a fair comparator to Grievant's. None of the other examples approach the breadth, over a sustained period of time amounting to years of Grievant's expressions of insult or disdain for immigrants, African Americans, Muslims,

homosexuals, protestors or Philadelphians, or Grievant's promotion of police violence and disdain for the criminal judicial system.

The Discipline of Discharge is Appropriate Considering the Gravity of the Conduct Found and Grievant's Performance and Disciplinary History

The Disciplinary Code for the offenses found provide for a thirty-day suspension or discharge. The Union asserts that because of Grievant's unblemished history of seventeen years of service as a police officer, and the procedural and other failings of the City, dismissal is too harsh a discipline for Grievant. In this regard, the Union asserts that the parties have made a joint commitment to the principle of progressive discipline and have an understanding that discipline is intended to be corrective in nature. The Union further asserts that Grievant, a long-term employee of the Department with an exceptional performance record, should be given the chance to correct his social media conduct, particularly given the absence of evidence that Grievant's prior social media conduct impacted his job performance.

All of us have said things we regret. All of us have biases; some we are aware of and some we are not fully aware of. We all regretfully at times can fall into mindsets which stereotype others. I am convinced that Grievant is not the monster the City has tried to make him out to be. To demonize Grievant is to engage in the same dehumanizing conduct of which he is accused. The heartbreak of this case is that in so many of the aspects of his job, over so many years, Grievant performed as required by his employer. But, Grievant made the statements he made on social media and not in private, and in that medium they are indelible. I agree with the Union's assertion that the City has done a poor job of training officers on the repercussions of using social media. It is, after all, in the City's interest to have its employees avoid reflecting badly upon the City in such a public forum. But, the fact that an officer may not know that posts

on social media are not ever really private or that they last forever, does not change the underlying principles of the Department's core values. They exist regardless of the medium an officer chooses to use. The issue presented here is not whether the City has trained officers in the nuances of social media use. The issue here are the words and sentiments Grievant chose to broadcast; statements that demeaned and degraded other human beings, reflected his broad-based biases and prejudices, and his misplaced support of violence. The posts and comments of Grievant having been placed upon the City's plate, the City is absolutely right to not ignore them.

Just Cause requires the use of progressive discipline and its corrective potential in all but egregious circumstances. However, even considering Grievant's long tenure and lack of prior discipline, considering the shocking nature of Grievant's conduct, I am persuaded that the decision to dismiss Grievant was well within the range of managerial judgment afforded by the just cause standard. The statements of Grievant made on social media which I have referenced above in my Discussion, repeatedly and in a broad manner, violated the City's important policies and justify Grievant's termination.

I am also persuaded by the City's argument that Grievant self-disclosed his hatred, biases and prejudices, and did so in such a manner and to such a broad extent, that it is unreasonable for the City to expect that discipline of a lesser degree than discharge will correct Grievant, or that a thirty-day or longer suspension will change the prejudices it has taken Grievant a life-time to develop. Even if, for purposes of analysis, some, but not all, of Grievant's statements are protected by the First Amendment, there is a difference between an utterance itself and the revelations of character evidenced by the utterance. While the former may be speech and arguably subject to protection, the latter is not speech at all. Here, Grievant's posts and

comments “pulled back the curtain” and reveled who he is. Once the curtain is pulled back, the view revealed into the character of Grievant remains. Just Cause does not require the City to ignore the view of Grievant’s character he so freely revealed.

Importantly, I am persuaded by the City’s arguments that should Grievant be reinstated, the City would have to restrict Grievant in terms of his placement with other officers due to considerations of race and religion. I am also persuaded by the City’s argument that Grievant would not be able to effectively perform the very important function of testifying in criminal matters where such matters involve persons identified with any of the groups targeted by Grievant’s social media posts. Under such circumstances, I find that Grievant’s long tenure and lack of prior discipline are not sufficient mitigation to render the City’s decision to discharge inappropriate under just cause.

Conclusion

Based upon the full record in this matter, I find the City has met its burden of establishing just cause for the dismissal of Grievant.

**American Arbitration Association
Arbitration Pursuant to Agreement of the Parties
Before Timothy J. Brown, Esquire**

In the matter of:

Fraternal Order of Police, Lodge 5

and

City of Philadelphia

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:
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**AAA Case No. 01-19-0002-2851
(Discharge of P/O Daniel
Farrelly)**

AWARD

The Employer has met its burden of showing just cause for the termination of Grievant,
The Union's grievance is DENIED.

DATED: December 18, 2020