

**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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**AAA Case No. 01-19-0002-2846  
(Discharge of P/O Christian  
Fenico)**

**Decision and Award**

**Appearances:**

**On behalf of FOP, Lodge 5:**

Richard G. Poulson, Esq.

Jessica Caggiano, Esq.

Willig, Williams & Davidson

1845 Walnut Street, 24<sup>th</sup> Floor

Philadelphia, PA 19103

**On behalf of City of Philadelphia:**

Benjamin Patchen, Esq.

Assistant City Solicitor

City of Philadelphia

1515 Arch Street, 16<sup>th</sup> Floor

Philadelphia, PA 19102

**Introduction**

This arbitration arises pursuant to a July 1, 2017 through June 30, 2020 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 Christian Fenico (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 November 16 and 17, 2020 via the Zoom virtual platform. 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 via Zoom for the entire hearing and testified on his own behalf. A transcript of the hearing was taken. Following the hearing the parties elected to submit written post-hearing briefs, upon the receipt of which by the AAA, the dispute was deemed submitted at the close of business January 29, 2021.

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 Christian Fenico, and if not what shall be the remedy?

### **Facts**

Grievant has fourteen years of service with the City as a police officer and has no

active discipline on his record.<sup>1</sup> By Notice of Dismissal dated August 15, 2019,<sup>2</sup> Grievant was notified of his dismissal. In relevant part the Notice provided:

You are hereby notified that effective 8/15/19, 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#19-1515, 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 five (5) 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. In addition, on April 5, 2013, you were formally counseled on an inappropriate post made on a social media site. 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 investigation #19-1515 determined that you posted materials, statements, or comments on Facebook that are in direct violation of Directive 6.10, Social Media and Networking. An analysis of Facebook posts and/or comments collected in the

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<sup>1</sup> The record contains evidence that Grievant received a counseling in or about 2013 to not disparage the Police Department on social media. The counseling has not been considered herein as discipline for purposes of progressive discipline, but has been considered for purposes of notice contained in the counseling.

<sup>2</sup> All dates herein are 2019 unless otherwise indicated.

Plainview Project database was conducted during this investigation. 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."

### **Injustice Watch**

On February 15, the Department was contact by a reporter from Injustice Watch who indicated she was working on an article with the New York Times regarding offensive social media posts by police officers in various cities, including posts by members of the Philadelphia Police Department. The reporter provided a number of quotes from posts and the names of seven members of the department (two sergeants and five officers) whose posts were subject to scrutiny by the reporter, one of whom was Grievant. The Department assigned investigation of the matter to Lieutenant JoAnne Garvey of the Internal Affairs Division (IAD). Garvey searched social media for posts by Grievant and found none. (Grievant used the name "Chris Joseph" on his Facebook account and Garvey searched for posts by "Christian Fenico".) Garvey interviewed Grievant, showed him the quotes provided by the reporter, asked if Grievant had made any of the posts and Grievant responded that he

had not.

### **The Plainview Project**

The “Plainview Project,” referenced in Grievant’s 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 late spring of 2019. The Plainview data base included posts from 300-plus members of the Philadelphia Police Department. The Plainview Project Facebook posts associated with Grievant (Chris Joseph) included some of the quotes presented to Grievant in his initial Injustice-Project-related IAD interview. Grievant’s Notice of Dismissal referenced five Facebook posts or comments as the basis of the discharge. Four were the focus of evidence offered during the arbitration hearing. The four posts/comments included the following:





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 🤔🤔🤔



1

4y



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



1

4y



██████████ 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 !



1

4y



██████████ Why is this even a story?

4y



Daniel Mike You know why !!!!!



1

4y



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

4y

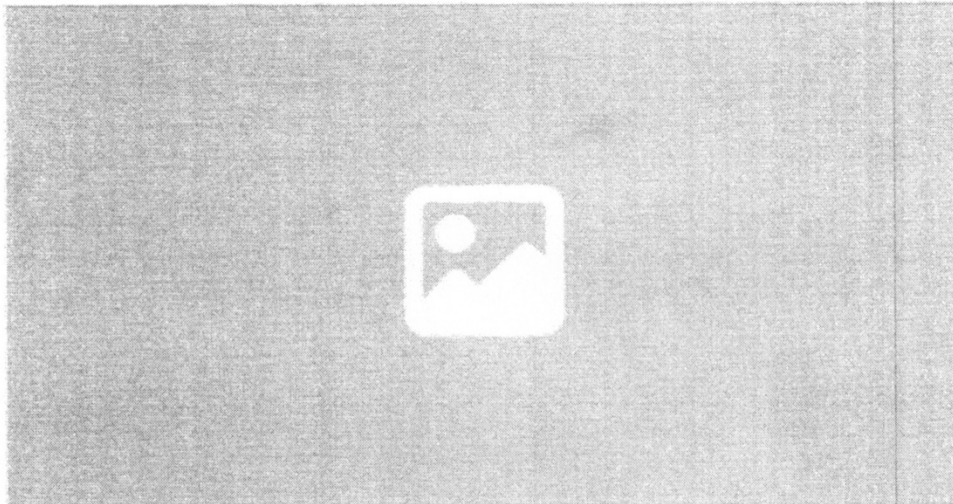


**Chris Joseph** commented on MrConservative.com.

November 20, 2013 · 🌐

...

Who cares, kid and mom are scumbags. Good job police



MRCONSERVATIVE.COM

**Police Brutality: Handcuffed Teen Boy's Face Smashed When Cops  
Taser Him // MrConservative.com**



1



Like



Comment



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



## **Investigation**

Following the posting of the Plainview Project, the Department's Deputy Commissioner Robin Wimberly and IAD Chief Inspector at the time (Chief Flacco) reviewed the posts identified as being made by Department employees. The posts reviewed by Wimberly and Flacco were paper copies. As a consequence of the paper-copy manner of presentation, the review did not include access to any videos or other materials referenced in the posts. As a result of the initial review by Wimberly and Flacco, 72 members of the Department were taken off of the street and placed on restricted duty because of their posts; including Grievant. The posts of the 72 officers were forwarded to a law firm for First Amendment-free speech review and preparations were made for the IAD interview of the officers. For purposes of the IAD interviews, the Department (including Wimberly and others) developed a list of standard questions to be asked each of the officers. In addition to introductory questions and reminders of non-disclosure obligations during the course of the IAD's investigation, each officer was shown paper copies of the posts identified by the Department as the officer's, told to take his or her time to review the posts and initial to each page of the copied posts and asked. The officers were asked; (a) to confirm if the posts were on their Facebook accounts; (b) if they made the posts; (c) if they made the posts while on duty; (d) if they had ever noticed any posts attributed to themselves or their accounts that they did not make; (e) if they had any other social media accounts and (f) if there was anything they would like to add to their statements that had not been covered by prior questions.

Grievant was subject of an IAD interview and confirmed that seven pages of

Facebook materials shown him during the interview were his, that it was his Facebook account, that he made the comments and posts attributed to him, that the copies of the posts shown him that day refreshed his memory as to making two of the posts he had stated during his March IAD interview that he had not made, and in reply to whether there was anything he would like to add, stated: “After the recent publicity regarding the Philadelphia Police officer Facebook account, I decided to deactivate my account and stop posting or commenting.”

Following the IAD interviews, because of what she believed was the egregiousness of some of the Facebook posts, Wimberly reported the results of the investigation relating to the social media activity of 24 officers to then-Police Commissioner Ross. Ross agreed that the 24 investigations should be the subject of review by the Department’s Executive Team consisting of the Department’s five Deputy Commissioners and Commissioner Ross. The Executive Team reviewed the IAD investigation results and posts of the 24 officers and based exclusively upon content of the hard copies of the posts presented them, determined whether and, what discipline should issue via Commissioner’s Direct Action. If an officer’s posts were considered detrimental to the department or detrimental to the officer’s ability to police, Wimberly testified, the officer was subject to discharge.

According to the testimony of Wimberly, in reviewing the posts of Grievant and determining that discharge was appropriate, the Executive Team did not consider any prior discipline the officer may have had or the officer’s work record; their decision was made based only upon the egregiousness of Grievant’s posts.

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 included multiple incidents of such conduct. Grievant’s conduct was egregious.

In regard to Grievant's posts, Wimberly testified, the Jamie Foxx post used profanity and incited violence. In regard to the post about a "Teen died from a gunshot to the right cheek...", Wimberly explained:

we interpreted that there is a clear bias that black kids commit crimes and deserve to be shot as opposed to, you know, no epidemic of white cops shooting white kids. Clearly to us, clearly, it was a bias in reference to, you know, the people in the community.

Wimberly testified she could not say whether or not the shooting involved was a justified shooting.

As for the post involving the handcuffed teen, Wimberly testified;

...as we discussed it with Officer Fenico supporting police brutality. Clearly shooting someone -- I mean tasing someone when they are handcuffed and no ability to break their fall, and for the most part no real -- he can't really hurt you in anyway if the person is handcuffed, and being okay with that is a sign that you agree with police brutality. Um, you know, good job by police, I don't -- we couldn't view it like that when someone's face was smashed at our hands who didn't have the ability to even protect themselves from a fall.

As for Grievant's; "Good, let them starve to death. I hate every last one of them" post, Wimberly testified:

We reviewed the comment as we have an officer who hates people who, you know, believe in the Islamic religion, and that is a very big problem, because, like I said before, you know, our City is made up of, you know, small communities and in every community we have, you know, different people with different, you know, religious backgrounds. To have an officer who blatantly puts it out there that he hates, you know, the Islamic religion or he hates the people who represent the Islamic religion is a very big problem for us for our Department and our community. ...we based our conclusion on that he was talking about the people, so the post is they reject the food, so you're talking about the people who rejected the food. Stop Islam, those are the people who are rejecting the food and he went on to

say he hates every last one of them, and that's a very broad statement for someone who has the ability to take the liberty of other people.

On cross, Wimberly was asked if Grievant was talking about refugees. Wimberly answered; he was talking about Muslims. "That was the interpretation of the Team;" "That he hated a group of people who were worshiped the Islamic religion." Wimberly testified that the Executive Team came up with one interpretation of the posts presented and determined the question of discipline from there.

The decision to terminate Grievant, Wimberly testified, was made because;

The Executive Team felt the need to dismiss Officer Fenico because of the hatred that he has shown in the particular post to a group of people because of their religious beliefs, because of his cavalier attitude regarding police brutality, and his signing off on violence, all being a very big problem in policing. When all of this is placed together, this is why the executive board decided that Officer Fenico should not be a Philadelphia Police Officer.

The City presented **Dr. Q** **A**, an Associate Professor teaching courses relating to mediation, conflict resolution and conflict theory as an expert witness relating to implicit bias and verbal aggression. He is also a Philadelphia Police Department Chaplain and a Muslim student advisor at . He was asked by the City's counsel, based upon his background and experience, how he read three of Grievant's Plainview posts.

In regard to the post about a teen shot in the cheek, **A** testified;

I think for context, which is -- it's not specified I need to make some -- ***I need to make some assumptions*** here based on what I'm looking at so that I can answer how I interpret this post. Looking at the people who have gathered, majority of them are black/African -- are black. I don't know if they are African Americans, but they seem to look typically as people who might be black. Go to the bottom of the quote there, the caption under the image says, teen died of gunshot to the right cheek medical examiner says. Although there is no race associated here, ***my assumption I'm going to have to make*** is that the teen referenced here is a black teen. I'm only spending some time just to build up to

where *I got to the assumption* I'm making or how *I'm interpreting Mr. Joseph's comment* – or the person identified as Mr. Joseph in this So if you're speaking about a black teen being shot in the cheek and the original post by the person who posted it first says, seems justified to me, and then at the bottom I think it said -- in looking at all of the quotes that came before it, and then --Who cares -- all right. I like the why is there no epidemic of white cops shooting white kids um, and I -- we have to read it so I'm reading that with a certain amount of sarcasm there, right, the, U-M-M, letters. If I'm pronouncing that, that's like hm or um, right, something along those lines. The fact that he put why is there no epidemic of white cops shooting white kids in quotation marks, right, so the gathering of people, the comments that came after the quotation marks, and the language after the comment suggesting he is being sarcastic to a certain extent. *So, I'm assuming here that* the reason why he said that there, you know, why is there no epidemic of white cops shooting white kids suggest that it's justified for white cops to shoot – or white officer to shoot black kids or officers to shoot black kids, because black kids tend to be more involved in crime. Black kids tend to be more aggressive. Black kids are the ones who need more policing, so the fact he made the comment that, you know, why is there no epidemic of white cops shooting white kids *would suggest* to me that he is saying that the reason there is no epidemic of that is because white kids don't need that level of policing, because it's black kids who are the ones have the guns or are getting shot in the cheek who are involved in more of the crime.

(Emphasis added to assist in my Discussion below)

A [REDACTED] offer the following when interpreting Grievant's post relating to the handcuffed teen:

*I guess* that's a picture or video, I'm not seeing it, but it says, police brutality is the heading, handcuffed teen boy face smashed when cops taser's him. *So, again*, without the image or without more context *I'm going to make some assumptions here*, that there was a handcuffed boy and his face -- a handcuffed teenage and his face was smashed when cops tasered him. *I don't know how his face was smashed* if he just fell, if something else fell on top of him, I don't have anymore information other than that. But what it would suggest is that, based on that headline, which I want to pause it for a minute right, because the language is very jarring, teen boy's face smashed. Just hold that there for a minute. When you think of something being smashed, it's not gentle image. It's not like something that is rubbing you gently on your hand. When something is being smashed, we've all --many of us have

experienced what smashing is like, so something being smashed, and then the comment or the response by Mr. Joseph is, who cares, so lack of empathy, lack of consideration for any harm that was done, lack of any humanity towards this individual, who cares kid and mom are scumbag's.

Finally, in regard to Grievant's "[g]ood, let the starve. I hate every last one of them" post,

A [REDACTED] offered:

Yes. This one -- this one is both clear, but it's -- *it's both clear and challenging at the same time*, right. The reason being is that in context of -- This was posted and it looks like a video shot -- a still shot of a video and the caption here says, refugees reject food because it carries the cross of the red cross. If they don't want to adapt, let them go back to their country. *This is a clear conversation around refugees*. Many of us are aware of the global refugee crisis especially with people from the southern parts of the Levant, southern parts of Syria and so forth and all of these different places. People that have had a lot of contact over the past five to ten years. We know there is a significant movement of refugees across the world. *I'm presuming* that this video is talking about the movement of refugees, and what I'm saying is that the refugees are the denying the food because it carries the cross and I'm going to -- because I'm also a member of the clergy here in Philadelphia, *I'm going to make some additional assumptions* based on language and based own context if that's okay. So my familiarity of the cross is that it's a Christian symbol. Although people from Muslim countries are not the only refugees in the world, looking at some of the images -- looking at some of the pictures there, head coverings, facial features are the stereotypes of some of the people inside of the image, and the fact that many of them made up refugee population and the fact that it's a different religion and some of the refugees have come out of some of these place are *making the assumption* that the reference to the cross in here is a religious difference that is now being attached to refugees and them getting food, right, or refugees and them choosing to eat or not. *So, I'm making some inferences based on context*. So based on that, let's say we accept that image of refugees who might be predominantly from Muslim countries, whether they are Muslim or not, I don't know. They might be predominantly from a Muslim country and they are rejecting food because it has a symbol of the red cross on it which originated as more of a Christian organization. *So we know that this is speaking specifically about refugees in general. It is not speaking about any particular group of refugees*. Then he says, Mr. Joseph says,

let them all starve in the context of what was said there, the refugees, right. Let them all starve to death. I hate every last one of them. *He's speaking about refugee's. There is no other -- there is no other reference based on this post.* There is no other reference based on this – that we are distinguishing between good refugees and bad refugees. There is a group of refugees who are supposedly refusing food supposedly because of the cross, right, *we are making that assumption at well*, and he is saying let them all starve that he hates them. It would suggest to me -- the proper word to use here would be Islamophobia, right. It would suggest to me that is an Islamophobic statement because he is lumping a group of people, saying that he hates them, and then wishing death on them. This is why this problematic for me.

After being directed by counsel to read the statement under the image, A [REDACTED] continued:

You know you read it and *I completely miss that piece*, right. Then it says, stop Islam. I can actually avoided all of those inferences if I just read further down. So it is clear here that the original poster is referring to Muslims. He is referring to people who practice a certain religion, and then it says they outraged that they want to impose their beliefs. It's clearly about the refugees, about Islam, and about a difference in belief structure, and he says in response to that, let them starve to death. The refugees who are Muslim based on the original post, I hate every one of them, the Muslims who are the refugees based on the original post. So, again, it's hatred and contempt directed towards a group of people based on nothing other then this image here that has been shown.

**Grievant testified**<sup>3</sup> that he began working as a Philadelphia police officer in 2003

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<sup>3</sup> The Union also offered the testimony of Grievant's immediate supervisor, Sergeant C [REDACTED] B [REDACTED], Sr. who has been on the SWAT team for 29 years. B [REDACTED] testified that he has been with and supervised Grievant on a daily basis since 2015 and never once heard Grievant speak disparagingly about anyone. He would have no problem with Grievant returning to his position. B [REDACTED] testified;

I was born in 1960. I remember the Civil Rights movement. I remember seeing Dr. King on. I remember seeing signs that said color and white only. I remember those days, and I've seen people that are racist, that are bigots, and he doesn't fit that description. He's silly. He worked for me and I wouldn't

and has been a SWAT member for approximately six years. He has no discipline other than a 2013 counseling to not bad-mouth the department on social media; conduct in which he has not since engaged. He has consistently received satisfactory performance reports and has received numerous awards and commendations. He used to have a Facebook account. His Facebook name was Chris Joseph. He had his Facebook account set on "private." He is sure that he received Directive 6.10 on social media and he acknowledged that as a police officer he is required to comply with Directives. He further testified that prior to the events at issue here, he has never received City or department training in social media use. He has received ongoing, weekly training as a SWAT member.

Grievant testified that when he was first interviewed by IAD in March and shown quotations, he did not recognize them as his, but that when he was shown the actual screen shots of his Facebook comments in July, it made more sense and he recognized them as his own. During the July interview, he was asked only if the postings and comments were his. He testified that he was given adequate time to review the posts. He was not asked to give any background or explanation relating to the four posts at issue here.

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tolerate that in my squad. I been to his home, so I say it was silly. If you knew him, that's what I mean by silly. It's silly. It should have never been said. Does it require some type of reprimand, absolutely. But to lose your livelihood over that, no, that's too much. It's was just silly to me. When you have that in you, you can't hide that. You can't cover that up, because your true nature always comes out. As much work as I have done with him, the things I've had to do to help him grow, some things he didn't like or some things he did, but accepted it and he grew from it,...My mother used to say, let my work speak for me, so as far as I'm concerned, his work has spoken for him. I know his character, I've been to his home, he is not a racist or a bigot. He is silly...



As for the four posts at issue, Grievant testified that the 2012 Jamie Foxx post was sarcastic and in response to the comedians Saturday Night Live show where Foxx was following the *Django Unchained* character he played in a Quentin Tarantino movie of an ex slave. It was not a racist response and he didn't mean that people should actually rush the stage; it was sarcasm. He figured Foxx was joking and he was joking back.

In regard to the November 2013 post about a teen smashing his face, Grievant testified that the headline was "click bate" and that he did open the link. The video showed, Grievant testified, that the police went up the force continuum appropriately. It was not a case of the suspect being handcuffed and unable to break his fall. Instead the suspect had only one cuff on and was fighting with the police, the police went up the continuum as required as the suspect continued to attack the police and continued to put the officers at risk. That is why he called the suspect a "scumbag." He was not honoring police brutality; there was no police brutality, Grievant testified.

As for the October 2014 post relating to a shooting in Saint Louis, Grievant testified that the posting involved an incident where a police officer returned fire at a suspect who shot at the officer. He recalled that in the article it said there was an epidemic of white cops shooting black kids and that someone commented; "Why is the no epidemic of white cops shooting white kids?" He saw the comment and posted that he liked the comment and added "Ummm." According to Grievant, the circumstance in Saint Louis involved a justified use of force by the police and he was commenting on the crime data and statistics in cities like Saint Louis and Philadelphia.

As for the final post at issue on December 1, 2015, Grievant testified that he saw the post after the mid-November terrorist Islamic Terrorists attacks in Paris and after his SWAT

unit had been reviewing the Paris videos and training on responding to such attacks on a daily basis. He was not responding to Muslims. He was not responding to refugees. He does not hate Muslims. He does not hate refugees. Grievant testified that he was not commenting on the people in the post's video; he did not watch the video. He was responding to the comment of Michael Anthony immediately above Grievant's comment: "Fuck these terrorists. They absolutely ravaged Greece." His response, Grievant asserted, should be considered within the context of the then-recent terrorist attacks in Paris.

Grievant agreed that it would be a problem for an officer to have expressed hatred for a group based upon religion or race, or to treat someone differently because of race or religion. He agreed that an established bias of an officer against a certain group would impact the officer's ability to testify and that testifying is an important part of an officer's job – although not as frequent for an officer in SWAT. Grievant acknowledged the core values of the department; Honor, Service and Integrity. He agreed that police department community relationships are absolutely important.

Grievant testified that as for his posts, he could have chosen his words better. But, he added, content and context matter, and that was not considered by the City.

### **Positions of the Parties**

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

### **Summary of the City's Position**

The City of Philadelphia had just cause to terminate Grievant because he engaged in a course of conduct showing that he has no regard for his responsibility as a police officer. Over a span of years, Grievant made four posts where he advocated and championed police brutality and violence, stated that he hated Muslim refugees and hoped they starved to death, suggested that a Black comedian should be attacked by a white audience, and sarcastically responded to an article of a police shooting of a Black teenager about there not being an epidemic of white cops shooting white kids. Mr. Fenico's posts demonstrate how little regard he has for the communities and individuals he swore to protect and serve. The City has satisfied each element of the just cause standard.

Grievant was aware of the Social Media Directive, was aware of the Disciplinary Code provision that "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 [Philadelphia] Police Department" is punishable by either a 30-day suspension or dismissal for a first violation. Grievant admitted he received a counseling relating to social media conduct in 2013 and a copy of the Social Media Directive 6.10. Grievant acknowledged the core values of the Department and understood that posting racial epithets and statements of hate of religious groups would violate the Directive 6.10. As the arbitrator has previously held in the *Farrelly* arbitration<sup>4</sup>, the work rules involved "are reasonably related to the orderly, efficient and safe administration of law enforcement and the performance properly expected of employees."

The City through the IAD conducted an investigation to determine if the misconduct occurred; the investigation was fair and objective; and the investigation resulted in substantial

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<sup>4</sup> Arbitration Decision I/M/O/ *FOP 5 & City of Philadelphia*, AAA Case No. 01-19-0002-2851 (Timothy J Brown, Arbitrator, December 18, 2020.)

evidence or proof in support of the finding of misconduct. Contrary to the argument of the Union, the investigation was not flawed. The IAD conducted a thorough, fair, unbiased and objective investigation into Grievant's misuse of social media and the investigation resulted in Grievant's unqualified admission of misconduct. As found by this arbitrator in the *Farrelly* arbitration, the investigation was adequate, Grievant was given ample opportunity to offer explanations during his two interviews and when he was served with the disciplinary charges. Yet, each time he was given such opportunity, Grievant chose silence.

Termination was proportionate to Grievant's egregious offense, even taking into account his employment record. The Disciplinary Code establishes a penalty of thirty days or dismissal for violations of Section 1-§021-10, which prohibits "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." Grievant's Facebook posts and comments showed that he had no regard for his responsibility as a member of the PPD. Contrary to Grievant's claim that his posts could have been corrected had he chosen "better verbiage," close examination of the posts demonstrate that there is a great deal wrong with them and "better verbiage" cannot hide the hatred he demonstrated and his unfitness for duty.

As for the post concerning Muslim refugees, the arbitrator should reject Grievant's claim that his hateful comment was directed toward terrorists. Any objective review of this post shows that Grievant was clearly referring to the Muslim refugees rejecting food in the picture. The text of the picture contains the words "STOP ISLAM" and shows Muslim refugees apparently rejecting food from the Red Cross. Grievant's comment on the post literally says "Good, let them starve to death. . ." The only reference to food in the post or comments is with respect to the Muslim refugees. There is no reference to terrorists at all and the fact that Grievant chose to use

the term “I hope they starve to death” can only be reasonably interpreted to apply to the group in the photo who had rejected food. Additionally, with the exception of Grievant, every other individual involved who reviewed the post (whether the IAD, Wimberly, the members of the executive team or Dr. A [REDACTED]) came to the same conclusion; that Grievant was referring to Muslim refugees. Additionally, if he had been referring to the post above his, as he now claims he was, there was absolutely no reason for his to begin the post with the word “good.” The use of “good” to begin his comment can only refer to the Muslim refugees in the video who were refusing food, and they were the only ones who could reasonably be associated with Grievant’s wish that “they starve to death.”

The attitude of Grievant as revealed by the investigation, prohibits him from doing his job. His comments reflect that he uses verbal aggression and believes that Black children tend to be involved in crime, while white children are not; and that therefore, the use of force—even deadly force—is justified against Black children. As Dr. A [REDACTED] testified, when officers such as Mr. Fenico believe that Black kids or Black people are the ones who need more policing, it will create an imbalance in how policing is done in their community.

Termination is appropriate as there is no progressive discipline that can cure Grievant’s proven inability to be a police officer. Progressive discipline cannot cure the bigotry underlying Grievant’s social media posts. The City has applied its rules, orders, and penalties fairly. Out of the 6,000 Philadelphia Police officers and over 300 police officers identified by the Plain View Project, the Union identified only four as comparators and two of those were the subjects of settlement agreements and are not appropriately considered by the arbitrator. With respect to the remaining two, although officer A [REDACTED] was one of the most egregious offenders involved in the Plain View Project and received only a 30-day suspension, as Wimberly testified, all but four of

her posts had First Amendment implications, and they were not as egregious as Grievant's. In fact, Grievant established himself as one of the worst offenders identified by the Plain View Project, with four extreme and offensive posts. Grievant distinguished himself even among the most egregious offenders, thereby positioning himself to receive the penalty at the upper range of the disciplinary matrix: termination. The Union provided no credible evidence that the Department unfairly applied the bargained-for Disciplinary Code. Grievant was treated fairly and was not discriminated against by the City. Grievant's bigotry and his refusal to acknowledge any problems with his posts, other than a poor choice of words, warrants termination.

### **Summary of the Union's Position**

Grievant is a highly commended and decorated SWAT officer who has worked for the City for 16 years. The evidence has established that the City failed on every front to meet its significant burden to prove that just cause required for his termination. Here, the City particularly has failed to show that: (1) it accorded Grievant industrial due process as it failed to provide Grievant prior notice of the rule and the consequences of its violation; (2) it fairly or consistently enforced its rule; (3) it completed a fair, thorough, and impartial investigation and failed to obtain substantial evidence of Grievant's guilt, failed to ascertain whether or not Grievant was guilty of violating any work rule; (4) indisputably failed to impose a penalty proportionate to Grievant's actual conduct in light of the nature of any offenses as compared with his outstanding work record and other mitigating factors.

The just cause requirement of due process encompasses proper notice of a work rule and its consequences, an appropriate and diligent investigation, the employee being given the opportunity to present his or her side of the story before a disciplinary penalty

is imposed. One of the “minimum essentials of due process . . . is that the accused have an opportunity, before sentence is carried out, to be heard in his own defense . . . It is the process not the result, which is at issue.” (Citation omitted.) Absent fair notice of the rules governing their conduct, employees cannot be expected to abide by the rules. It is unrealistic to expect an arbitrator to uphold a penalty for conduct an employee did not know was prohibited.

The City failed to enforce its rule relating to social media by, first, failing over a period of eight-years to train its officers on the permissible and impermissible use of social media. Instead, officers were left to their own “devices” and the deafening silence from the Department over such a lengthy period gave officers a false sense of security. In such a hands-off manner, the Department contributed to conduct of police officers. There is no just cause where an employer does not actively enforce work rules over a multi-year period and then discharges an employee for a “course of conduct” without warning or other opportunity for reform. The ambiguity of the City’s policy is evident in the fact that, even after such an extended period, when the Department attempted to react to the Plainview posts, the Department itself could not even discern, without the assistance of an outside law firm, what speech it could or could not punish officers for without violating the First Amendment. The Department cannot be permitted to completely escape its total failure to provide ample guidance to its employees.

The evidence at arbitration overwhelmingly demonstrated the arbitrariness and unjust nature of the penalty assessed Grievant, as compared to other officers engaging in substantially-similar conduct. The parties’ bargaining agreement requires that discipline be progressive and consistently applied. Here, Grievant was accused of two charges. Only the charge of Conduct Unbecoming permits the Department to terminate an officer for a first offense, and both sides

agree that this was a first disciplinary offense for Grievant. The evidence shows that the City has not terminated officers for first offenses similar to the conduct the City alleges of Grievant.

For example, the Department issued Officer K [REDACTED] A [REDACTED] a one-day suspension for a Neglect of Duty charge issued in connection with the Directive in November 2017, despite news coverage of her social media post. In the wake of the Plainview Project, Officer A [REDACTED] was also charged with Conduct Unbecoming and Neglect of Duty for four posts attributed to her by the database, and received a 30-day suspension for on “no less than four” occasions, posting content on social media in violation of the Directive. The Department also issued a 12-day suspension to Officer H [REDACTED] N [REDACTED] for posting a photograph of himself on social media in “Black face.” Officer N [REDACTED] had received prior discipline during his career with the Department, and also had some commendations in his personnel record.

The City failed to conduct a fair investigation. The investigatory starting point was that the posts attributable to Grievant required investigation. But, notwithstanding the Plainview Project’s own disclaimer – that the posts in the data base were subject to multiple interpretations - when Grievant was brought into an investigatory interview, the city did not investigate the intended interpretation of Grievant’s posts. In fact, the investigator was not even permitted to ask additional questions besides seven, pre-approved questions. This was not an investigation; it was a confirmation. The City didn’t ask Grievant about his intent because the City did not care. A post’s placement on the Plainview site, if not protected by the First Amendment, was going to result in discipline, end of story. The only question was how much discipline. Due process requires more, and the question of whether Grievant had anything to add, did not act to convert



the interview into a fair investigation. It is the City's burden to show that the speech violated its Directive. It is not appropriately the burden of the Grievant.

Nor should the convoluted interpretations of the posts by the Executive Team be relied upon. The executive team viewed the "Good I hate every last one of them" comment as a statement of hatred towards Muslims. The Executive Team apparently came to this conclusion because they believed that Officer Fenico was commenting about the people rejecting the food and that since the post had in its subtext "Stop Islam" the people were Muslims, and so since the people rejecting the food happened to be Muslim, Officer Fenico "hated" all Muslims. Critically, Officer A [REDACTED]'s comment on the same thread<sup>5</sup> was inexplicably found by the Executive Team to not be so egregious that she could no longer be a police officer. Deputy Commissioner Wimberley gave, frankly, inadequate testimony on the distinction she drew between the two posts. Officer A [REDACTED] was not terminated from employment, and instead received a 30-day suspension, even though she had been previously disciplined on the social media policy.

Grievant is entitled to progressive discipline because of his lengthy record of excellent service, the absence of any evidence of mal-intent on his part, as well as other mitigating factors. The fact that the City admittedly failed to consider these factors in meting out discipline in this case is a serious disregard to its contractual obligations, including just cause. In many ways, Union witness B [REDACTED] agreed with Deputy Commissioner Wimberley, that when a person has hate in them, they cannot hide it. However, as a person that knows Grievant's character, B [REDACTED] testified that that type of hate "is just not in him."

The City has failed to meet its burden of showing just cause for the termination of Grievant.

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<sup>5</sup> A [REDACTED] is identified as "[REDACTED]" on Facebook. Her comment reads: "Send these ungrateful fucks back...Fuck them!"

## **Discussion**

### **Introduction**

It is the City's burden to show that its decision to terminate Grievant satisfies all of the requirements of just cause. 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." 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 City has failed to meet its burden of showing just cause for the termination of Grievant, but has satisfied its burden of showing cause for a 30-day suspension of the officer.

Of the several factors often considered by arbitrators when applying the just cause standard, I find that the City has here failed to meet its burden of showing that: (1) its disciplinary investigation was adequate as to certain of the Facebook posts involved; (2) it was justified in concluding that the employee engaged in the conduct of expressing hatred of all Muslims and glorification of police brutality; (3) the rules involved have been consistently and fairly enforced and (4) that the discipline of discharge was appropriate given the relative gravity of the offenses shown, Grievant's disciplinary record and considerations of progressive discipline.

### **"Guesswork." Just Cause Requires More Elements of the Investigation of Grievant's Conduct Were Inadequate**

As in the *Farrelly* case, here the City again argues that it was presented with the Plainview postings; that the paper copies of the posts 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. However, I find that Grievant's posts present a significant degree of ambiguity and the City inappropriately relied upon assumptions and guesswork to come to a number of its conclusions relating Grievant's posts.

It is understandable that the City, having over 300 officers to investigate as a result of the Plain View Project, would attempt to systematize and standardize its related investigative process. But, notwithstanding the benefits of standardization to address a large number of cases, it is not always the case where "one-size-fits-all" when it comes to the fair and adequate investigation requirement of the Just Cause Standard. Just Cause requires that the City show that it conducted a fair and complete investigation *specific to Grievant* and that it was justified in its conclusion that Grievant engaged in conduct warranting discharge.

In the *Farrelly* case the officer/grievant was responsible for a significant number of comments or postings, many of which, notwithstanding their being viewed only in paper versions, did not require the City to make assumptions as to their meaning. In addition, such unambiguous messages of the officer gave context to his other posts that may have been less clear.<sup>6</sup> But in the instant matter, the City's investigation of Grievant disclosed paper copies of only four posts over the seven-year period addressed by the Plain View Project; paper copies that, to a significant degree, were ambiguous on their face.

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<sup>6</sup> Thus, only for example, where the officer included words such as "shit" and "assholes" in his posts or comments; or where the officer posted a series of still pictures showing a protestor being beaten and the commenting "beautiful, just beautiful;" or where the officer posted a still picture of himself in uniform with a black woman and belittled the women by writing "she dat chicken head from aroun da way ...;" or where the officer is responsible for posting a video with a written message "STOP ISLAM," the City was justified in concluded that no amount of explanation by the officer is going to change the profane nature of the words asshole or shit, or change the still pictures presented, or change the meaning of the words in the officer's comments.

Notwithstanding the City's decision to standardize its investigation method relating to Plain View, the City was not given a dispensation to engage in guesswork simply because it had employed a standardized investigation paradigm. There was nothing prohibiting the City from directing that further investigation be conducted where such was required by the circumstances. Just Cause requires a showing that the City was justified in concluding that the employee engaged in the conduct alleged. Such a requirement is not met by assumptions and guesses. It is the City's burden to show that the posting violated its rules and not the employee's burden to prove the negative.

In regard to the adequacy of the investigation, I find the following relating to Grievant's four posts at issue:

**The "Teen died from a gunshot to the right cheek..." Comment**

*"Black kids deserve to be shot."* Two City witnesses asserted that Grievant's "liking" another's "Why is there no epidemic of white cops shooting white kids?" in his post relating to the article "Teen died from a gunshot to the right cheek...", should be interpreted as Grievant saying; "Black kids deserve to be shot." Wimberly explained that the Administrative Team; "interpreted that there is a clear bias that black kids commit crimes and deserve to be shot..." However, in coming to such a conclusion, I find the Team had to have made assumptions, including: (a) that the teen involved was Black; (b) that the shot was fired by a police officer, and (c) that Grievant's "liking" a statement made in the context of either the article referenced in the post or by another commenter unambiguously reflects that Grievant believes black kids deserve to be shot. Similarly, in his interpretation of the post, City witness A [REDACTED] testified:

"I need to make some *assumptions* here";

*“Although there is no race associated here, my assumption I'm going to have to make”;*

*“I got to the assumption”;*

*“I'm interpreting Mr. Joseph's comment”;* and

*So, I'm assuming here that So, I'm assuming here that* the reason why he said that there, you know, why is there no epidemic of white cops shooting white kids suggest that it's justified for white cops to shoot – or white officer to shoot black kids or officers to shoot black kids, because black kids tend to be more involved in crime. Black kids tend to be more aggressive. Black kids are the ones who need more policing.”

The City offered no satisfactory explanation as to how Grievant’s liking of the statement, on its face and without making assumptions or guesses, supports the Executive Team’s conclusion that Grievant was expressing the message that **black kids deserve to be shot**. It is simply too far a leap. If the City wanted to understand better the context of Grievant’s “like” or to determine if the public could justifiably come to the conclusion that Grievant was expressing a belief that “black kids deserve to be shot,” the City could have gone to the website and determined whether or not the context of Grievant’s comment supported its assumptions. But the City determined to let the paper copy of the post stand on its own. I find the paper copy of this post, without more, standing alone, does not meet the City’s burden of establishing Grievant violated the City’s policy.

### **The Handcuffed Teen Post**

In its consideration of Grievant’s post relating to the article about a handcuffed teen, Wimberly again described a series of assumptions made by the Administrative Team to arrive at the conclusion that the posting violated policy, including; (a) that the headline announcing “Police Brutality” was an accurate conclusion as to what the video showed, (b) that both hands

of the teen were handcuffed, (c) that the teen was tasered when the teen “can’t really hurt you in any way”, and (d) because the teen was in handcuffs, the teen had “no ability to break [his] fall. None of the Executive Team’s assumptions are proven by the mere few words in the paper copy of the post. Again, the City chose to assume rather than view the post itself and its included video.

Grievant offered un-contradicted testimony, testimony I consequently credit, that the headline was “click bate” and that the video showed that the police went up the force continuum appropriately; that it was not a case of the suspect being handcuffed and unable to break his fall; that the suspect continued to attack the police and continued to put the officers at risk; and that there was no police brutality involved.<sup>7</sup>

Although I find Grievant’s calling the suspect a “scumbag,” and particularly calling the mother a “scumbag” for no explained good reason, to some degree violated the prohibition against disparagement, I do not find that the City met its burden of establishing that the post “honored police brutality.”

### **Good, Let Them Starve to Death. I Hate Every Last One of Them**

In regard to Grievant’s post; “Good, let them starve to death. I hate every last one of them,” again, the City made multiple assumptions in reaching its conclusion relating to the

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<sup>7</sup> I find Grievant’s explanations are admissible and that by initially failing to offer explanations of his Facebook posts and comments during the IAD interviews Grievant neither waived his right to offer explanations of his conduct at the arbitration hearing, or placed his credibility at issue. I find that in Grievant’s particular circumstance, where his posts were not all plainly violative of the City’s policies on their face, Grievant’s failure to offer the explanations he offered at the hearing should not be held found suspect simply because he did not offer them in response to the question during his second IAD interview of; “do you have anything to add?” As discussed above, the Executive Team came to a number of conclusions about Grievant’s posts based upon their assumptions. Grievant should not be held to a standard of clairvoyance at the time of his interview and be presumed to have known - before the fact - the assumptions and guesses the Executive Team would make and the eventual interpretation they would give the posts.

meaning of Grievant's words. In this regard, Wimberly's explanation of the Executive Team's thought process reflects the assumptions that: (a) Grievant was responding to the words below the video "STOP ISLAM;" (b) when he referenced "them," Grievant was "talking about the people who rejected the food; (c) that his reference to the people who rejected the food actually meant Muslims; and (d) that Grievant saying "he hates every last one of them," meant every last Muslim. The City's expert witness similarly spent significant time making assumptions and presumptions in his initial review of the post. Thus, in his initial testimony on the post, Dr. A [REDACTED] stated; "I am presuming," "I am going to make some additional assumptions," "making the assumption," "So, I'm making some inferences based on context," "we are making that assumption at well," to come to the conclusions that Grievant was speaking of refugees, that the refugees Grievant was speak of came from predominately Muslim countries, and so Grievant's comment "must be an Islamophobic statement." It is true that after being led by the City's counsel to the words "STOP ISLAM" in the eight lines of text under the video, the expert admitted, "I completely miss (sic) that piece," and came to the conclusion that Grievant's comment was an expression of, "...hatred and contempt directed towards a group of people based on nothing other than this image here that has been shown." Curiously, neither City witness mentioned the fact that Grievant's comment came directly after another's comment; "Fuck these terrorists, they absolutely ravaged Greece."

I find that on its face, Grievant's post evidences a number of facts as well as ambiguities, including: (a) the fact that Grievant did not post the words "STOP ISLAM;" (b) that any assumption that Grievant saw the words "STOP ISLAM" on the post when making his comment is weakened by Dr. A [REDACTED]'s initial failure to see the words in his analysis of the post; (c) the fact that Grievant's comment comes directly after another comment relating to terrorists; (d) the

fact that Grievant's posts begins with the word "Good;" and (e) the ambiguity of the meaning of the notation "Edited" appearing after Grievant's comment, a notation not appearing on any other comment. The post, on its face, is also ambiguous as to what Grievant was referencing in his comment. It is not clear if Grievant was referencing; (i) terrorists, (ii) refugees, (iii) Muslims, (iv) both refugees and Muslims, (v) both refugees and terrorists, (vi) both terrorists and Muslims, or (vii) all three; terrorists, refugees and Muslims. In the presence of such ambiguity, if, as here, the City is relying upon this comment as the primary reason for its decision to terminate the employee rather than issue progressive discipline as required by its bargaining agreement with the Union, it is the City's burden to clear up the ambiguity and establish by a preponderance of the evidence that the comment by Grievant should be interpreted to communicate that he hates all Muslims.

Based upon such considerations, although I find the evidence sufficient to support a conclusion that in his comment Grievant was disparaging and expressing hatred toward some group (terrorists, refugees, Muslims, both refugees and Muslims, both refugees and terrorists, both terrorists and Muslims, or all three; terrorists, refugees and Muslims), I am not persuaded that Grievant's post, on-its-face, can reasonably be subject to the singular interpretation relied upon by the City; as meaning Grievant hates all Muslims.

#### **Justification in Concluding that Grievant Violated the City's Policies as Charged.**

Based upon the above considerations, I find that the City was not justified in concluding that Grievant engaged in the most egregious of the conduct for which he was charged (expressing hatred of all Muslims and glorification of police brutality), but has met its burden of



showing justification for concluding that Grievant violated the Department's Directive 6.10 in a limited manner.

**Consistent Application of the Rules, Progressive Discipline and the Appropriate Level of Discipline Given the Relative Gravity of the Offenses Shown**

Considering the testimony of the Deputy Commissioner Wimberly as a whole, I find that the primarily reason Grievant was given termination rather than a 30-day suspension was because the Executive Team concluded that Grievant expressed hatred toward all Muslims in his December 2015 post. I have found that the City has failed to show such by Grievant. Additionally, I find that the City has failed to show that discharge is consistent with its application of the rule to other officers in similar circumstances. In this regard, I particularly reply upon the City's decision to assess Officer K [REDACTED] A [REDACTED] a 30-day suspension for her Plainview Project conduct. Officer A [REDACTED] (using the name "[REDACTED]") was found by the City to have made four problematic posts, including a post on the same thread of Grievant's "let them starve" comment stating; "Send these ungrateful fucks back...Fuck them!" The City offered no explanation as to how Grievant's post must have referred to Muslims but how A [REDACTED]'s did not; or how Officer A [REDACTED] actively wishing the involved group ill by posting "send these ungrateful fucks back...**Fuck them**" (emphasis added) is less an expression of hatred than Grievant's words. "Fuck them" is not an expression of love or endearment; it is an expression of loathing, repugnance and ill will born of deep contempt.

**Discipline Proportional to the Violations Found**

I find that Grievant violated the City's policies by suggesting it would have been appropriate for others to engage in violence toward Jamie Foxx; by referring to the mother of an

arrestee as a scumbag and by expressing a hope that people starve to death and hatred toward an ambiguously identified group of human beings.

Just Cause requires the use of progressive discipline and its corrective potential in all but egregious circumstances. I am not persuaded by the City's arguments that Grievant cannot correct his conduct and be a productive member of the Department. The parties' bargaining agreement requires that discipline be progressive and consistently applied. Grievant has no prior discipline and a long employment history of satisfactory service to the City. Considering the allegations established, Grievant's lack of prior discipline, his long employment history, and the City's treatment of another officer involved in similar conduct but additionally with a history of discipline, I find that the City has failed to show that termination of Grievant, as opposed to a 30-day suspension, is appropriate relative to the gravity of Grievant's offenses.

### **Conclusion**

Based upon the full record in this matter, I find the City has failed to meet its burden of establishing just cause for the dismissal of Grievant, but has shown just cause for a 30-day suspension of the officer.

I will order that Grievant be reinstated to his former position, that his discharge be rescinded and reduced to a 30-day suspension and that he be made whole for his lost wages, benefits and seniority resulting from his termination, less such losses associated with his suspension. I will retain jurisdiction over the matter for purposes of remedy only.

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

<b>Fraternal Order of Police, Lodge 5</b>	:	
	:	<b>AAA Case No. 01-19-0002-2846</b>
<b>and</b>	:	<b>(Discharge of P/O Christian</b>
	:	<b>Fenico)</b>
	:	
<b>City of Philadelphia</b>	:	

**AWARD**

The City has failed to meet its burden of establishing just cause for the dismissal of Grievant, P/O/ Christian Fenico, but has shown just cause for a 30-day suspension of the officer.

The City is ORDERED to:

- Rescind its Discharge of Grievant;
- Offer Grievant reinstatement to his former position;
- Reduce Grievant's discharge to a 30-day suspension;
- Make Grievant whole for his lost wages, benefits and seniority resulting from his termination, less such losses associated with his suspension.

The undersigned shall retain jurisdiction over the matter for purposes of remedy only.



DATED: February 26, 2021