

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between

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FRATERNAL ORDER OF POLICE :  
LODGE #5 :  
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 "Union"/"FOP" :  
 :  
 and :  
 : OPINION  
CITY OF PHILADELPHIA : AND  
 : AWARD  
 "City" :  
 :  
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 Case No. 01-20-0007-3518 :  
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This case arose when the City issued a 20-day suspension to Police Officer Milford Celce Jr. ("Grievant"). The FOP seeks rescission of all discipline imposed upon the Grievant. The City maintains the grievance is entirely without merit.

Throughout this proceeding, Jessica Caggiano, Esquire represented the FOP. The City was represented by Kia Ghee, Deputy City Solicitor.

## FACTS

The City operates the Philadelphia Police Department ("Department"). The FOP represents Police Officers ("Officers") who work in the Department.

The Grievant has been an Officer within the Department for more than a dozen years. Throughout his tenure, he has received a number of commendations, but has also received some discipline.

The Grievant lives at a house on [REDACTED] Avenue in Philadelphia. According to the Grievant, at the time of events now at issue his brother and sister also lived at that residence.

Also living at the Grievant's [REDACTED] Avenue home were two dogs. One was a German Shephard named "Samantha", the other a Pitbull named "Max". According to the Grievant, he had taken possession of Max approximately one month prior to the events now at issue, finding him abandoned in the neighborhood.

On [REDACTED], a neighbor of the Grievant, D [REDACTED] B [REDACTED] ("B [REDACTED]"), called 911 to report she had found a dog. Because B [REDACTED] believed that this dog, who was later identified as Max, was emaciated, smelled like urine, and had cuts and bruises on its body, she took Max to her home and also called the Animal Care & Control Team ("ACCT")<sup>1</sup>.

An Officer did respond to B [REDACTED]'s 911 call. B [REDACTED] informed the responding Officer that she had observed Max jump from the second-

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<sup>1</sup> The ACCT handles non-criminal situations involving dogs in Philadelphia.

floor window of the [REDACTED] Avenue home at which the Grievant resided. B [REDACTED] further informed the Officer that she would keep Max in her possession until ACCT arrived.

Soon thereafter, ACCT personnel did arrive at B [REDACTED]'s residence. The intake form later completed by ACCT personnel described Max as thin, bones showing, pressure sores and stinking of rancid urine. ACCT took custody of Max, and subsequently referred the case to the Pennsylvania Society for the Prevention of Cruelty to Animals ("SPCA"). SPCA then assigned the situation concerning Max to its Humane Law Enforcement Unit, and Corporal D [REDACTED] S [REDACTED] ("S [REDACTED]") was assigned to investigate.

On [REDACTED], the Grievant went to the SPCA and attempted to retrieve Max. S [REDACTED] and N [REDACTED] M [REDACTED] ("M [REDACTED]"), Director of Humane Law Enforcement, then spoke with the Grievant. No written record was made of this conversation. On [REDACTED] [REDACTED], M [REDACTED] and S [REDACTED] again spoke with the Grievant. Once again, there was no transcript of recording made of what was said.

B [REDACTED], who did not know the Grievant but did know that he was an Officer, filed a citizen's complaint with the Department alleging that he had mistreated Max. This complaint was referred to the Internal Affairs Department ("IAD") for investigation. Sgt. Gwen Bartlett ("Bartlett") was given responsibility for conducting the IAD investigation. As part of her investigation, Bartlett conducted formal interviews with a number of individuals,

including S ■■■, M ■■■ and the Grievant. The interviews conducted by Bartlett were transcribed.

In addition to conducting interviews, Bartlett sought information from other sources. This included checks of the Grievant's transmissions from ■■■ to ■■■, checks of his daily attendance reports from ■■■ through ■■■ and checks of ACCT intake records during the relevant time period.

Bartlett's investigation was not completed within the 75-day limit for citizen complaints against Police, as set forth in Executive Order 7-11. According to Bartlett, the investigation was delayed due to SPCA personnel scheduling conflicts and the naming of potential witnesses after the Grievant's interview.

On or about May 25, 2018, Bartlett issued her report ("Bartlett Report"). In her Report, Bartlett set forth the history of this matter, summaries and transcripts of her interviews, and documents she had considered. In her conclusion, Bartlett found that the allegation of "Cruelty to Animals" that had been made by B ■■■ was Not Sustained. Nonetheless, Bartlett further found that her investigation had sustained against the Grievant the finding of a Disciplinary Code Violation of Lying (1-Section 009-10). Bartlett had concluded that during her interview with the Grievant on January 29, 2018, he had lied three times. Concerning these matters, Bartlett wrote in her Report as follows:

On page #4, line #3 of P/O Celce's interview, he maintains that on the evening of [REDACTED], he received a radio call for a loose dog. He took the dog to the ACCT after-hours location on Hunting Park Avenue. It was while he was dropping off this dog, he informed some employees that his dog, Max, was missing. P/O Celce stated that one of the employees told him that he believed Max was at the Erie Avenue location.

The assigned reviewed P/O Celce's 75-158, Patrol Activity Logs, and DAR's for [REDACTED], [REDACTED], and [REDACTED].

[REDACTED], 6PM X 2AM, (Crime Plan) [REDACTED], no entries for an animal incident or the ACCT on Hunting Park Avenue recorded on the 75-158, Patrol Activity Log.

[REDACTED], 8PM X 4AM, [REDACTED], no entries for an animal incident or the ACCT on Hunting Park Avenue recorded on the 75-158, Patrol Activity Log.

A check of P/O Celce's MDT Transmissions from [REDACTED] [REDACTED] reveal no transmissions regarding an animal incident and/or transportation to ACCT.

On 04/02/18, the assigned conferred with T [REDACTED] S [REDACTED], Animal Care & Control Team. At the request of the assigned, S [REDACTED] checked intake logs from [REDACTED]. There was no record of P/O Celce dropping off a dog at the ACCT after-hours location, 111 W. Hunting Park Avenue.

On page #3, line #11 of P/O Celce's interview, he maintains that he last saw Max on Friday, [REDACTED], the day before he was recovered by ACCT officers. When the assigned asked P/O Celce what Max's condition was when he last saw him, he stated "He was okay. He was well. He was a normal pit bull size, not fat but not skinny.

On page #5, line #19 of P/O Celce's interview, the assigned showed P/O Celce photos taken of Max on Saturday, [REDACTED] and Monday, [REDACTED]. P/O Celce was asked to describe Max's appearance in the photos. P/O Celce describes Max as "small and skinny." The assigned questioned P/O Celce as to why Max looked so thin. P/O Celce conceded that Max was not eating and was sick. This statement directly conflicts with P/O Celce's earlier assertion that Max was well and a normal sized pit bull on [REDACTED].

On page #5, line #2 of P/O Celce's interview, the assigned asked P/O Celce if when he was being interviewed by PSPCA

personnel, did he initially deny that the photo used on his Facebook page was Max. P/O Celce stated "no." P/O Celce asserts that he stated that the dog in the photo was Max and he was trying to explain that Max was found with two other dogs that looked similar to him.

On 10/05/17, the assigned took signed statements from two sworn Pennsylvania Humane Society Police Officers, N [REDACTED] M [REDACTED] and D [REDACTED] S [REDACTED]. During their interviews, both officers stated that P/O Celce initially denied that the image posted on his Facebook page was Max. M [REDACTED] added that only after being confronted with the identical markings, did P/O Celce admit that the dog in the photo was Max.

A copy of this investigation will be forwarded to the Commanding Officer, Police Board of Inquiry, for action.

On or about February 28, 2020, the City issued a Notice of Discipline to the Grievant, in which he was notified that he was to be suspended for 20 days for Conduct Unbecoming. It was specified in this Notice that "IAD investigated a Cruelty to Animals allegation against you. In your statements during this investigation, you were found to have lied on numerous occasions in your responses to questioning by Internal Affairs."

The instant grievance was submitted in response to the City's discipline of the Grievant. When this grievance could not be resolved, the FOP moved it to arbitration. Following the hearing, Counsel for both sides made extensive post-hearing arguments. This Award now results.

POSITION OF THE CITY

The evidence establishes that the Grievant is guilty of the charge of Conduct Unbecoming, in that he did lie or attempted to deceive regarding material facts during the course of Bartlett's IAD investigation. The evidence further establishes that a 20-day suspension was an appropriate penalty for this offense.

More specifically, the evidence is clear that Bartlett correctly found the Grievant had lied to her on three separate occasions during her investigation. First, while the Grievant maintained that on the evening of [REDACTED] he received a radio call for a loose dog, and that is how he eventually ended up at the ACCT, the evidence is clear that the Grievant received no such call and did not go to the ACCT with a loose dog. Second, while during his interview with Bartlett the Grievant first said that when he last saw Max "He was okay. He was well. He was a normal pit bull size, not fat but not skinny," once Bartlett showed the Grievant photographs of Max the Grievant acknowledged that Max was "small and skinny" because he was not eating and was sick. These statements are in direct contradiction with each other. Third, when Bartlett asked the Grievant whether he had initially denied to SPCA personnel that the photo used on his Facebook page was Max, the Grievant's response was in the negative. The evidence establishes, however, that the Grievant did initially say to S [REDACTED] and M [REDACTED] that the picture was not Max, but the dog of a friend.

The Grievant further acknowledged that he had been untruthful to them because he did not want to expose his brother or sister, who were the ones responsible for Max while he was away, to any trouble.

The Grievant was also untruthful about other matters. For example, the Grievant claimed to SPCA personnel that he was "on vacation", and for that reason his siblings were responsible for Max during the time he became depleted and skinny. Records reveal, however, that the Grievant was not on vacation at all during this period of time.

The City committed no procedural errors of significance in this matter. It is apparent that Bartlett did a thorough and unbiased investigation. Furthermore, while the investigation was not completed within the 75 days limit set forth in Executive Order No. 7-11, Bartlett reasonably explained why this was not possible under the circumstances. It is also improbable that any delay in completing the investigation or imposing discipline was prejudicial to the Grievant, as the matters at issue are ones where the Grievant clearly would have recalled whether or not he said or did what was involved, regardless of the passage of time.

The discipline of 20 days is appropriate for the Grievant's offenses. While the FOP contends that the Grievant has an excellent record, it is not without prior discipline. Indeed, the Grievant had received suspensions, which are still appropriate for



consideration because they are within the period of reckoning for the offenses involved.

The City is not contending that the Grievant is a bad person or a bad Officer. Rather, the City contends that the Grievant made bad decisions during the events here at issue. Indeed, the Grievant could have been terminated for his dishonesty, as the City considers such matters to be extremely serious. A 20-day suspension, the mid-range of possible discipline for the Grievant's serious offenses, was entirely appropriate.

Finally, while the Grievant and FOP contend that M [REDACTED] and/or S [REDACTED] displayed prejudice against the Grievant because he is an Officer, this is clearly incorrect. S [REDACTED] and M [REDACTED] testified that they had no such prejudice, and S [REDACTED] even explained how Police Officers are among her family and friends.

For all these reasons, the grievance must be completely denied.

#### POSITION OF THE FOP

The City's handling of this matter was filled with unnecessary and unacceptable delays. Despite the fact that Executive Order No. 7-11 specifies that there is a 75-day limit on handling citizen complaints against Officers, in this instance the Department did not come close to complying with that limitation. The events at issue happened in August 2017, yet the Grievant himself was not

interviewed until January 29, 2018. Thereafter, he was not formally charged until July 2018 and the PBI was not held until February 2019. Given these long and unnecessary delays, it is completely understandable that the memories of some persons who were part of the investigation or decision-making process could have become inaccurate.

Furthermore, the City has expanded the charges against the Grievant to include more allegations than were contained in Bartlett's Report. More specifically, Bartlett was very clear in her Report that there were only three matters about which the Grievant allegedly was not truthful. It would be entirely inappropriate to consider any other claims of dishonesty involving the Grievant.

Concerning the original three allegations, the City has been unable to meet its burden of establishing that the Grievant was untruthful concerning any of them. Indeed, the Grievant has provided credible and understandable explanations concerning all three matters.

First, while the City maintains that the absence of records showing that the Grievant found a loose dog and brought it to the ACCT demonstrates that this did not occur, that argument is baseless. It is entirely possible that the Grievant's partner simply did not include any information about finding the loose dog

and the ACCT personnel neglected to record any information about the Grievant bringing a loose dog to it.

Second, the Grievant was not untruthful to Bartlett when talking about the condition of Max. Rather, the Grievant reasonably gave his impression of the pictures shown to him by Bartlett, as well as his understanding of Max's condition when he last saw him before he escaped from his residence while under the care of his siblings.

Third, the Grievant never told S [REDACTED] and W [REDACTED] that the photo on his Facebook page was a dog other than Max. Rather, the Grievant was attempting to explain to them that when he came upon Max there were other dogs involved in the situation. There was nothing untruthful about what he told the SPCA personnel.

Indeed, not only is the Grievant a truthful individual, but he would have no reason whatsoever to make false statements to Bartlett when being interviewed by her. The charges of criminal animal cruelty against the Grievant have been dismissed, and the matters about which he is alleged to have not been truthful to Bartlett were of no particular importance to her investigation.

It was S [REDACTED] and M [REDACTED], not the Grievant, who were incredible in this matter. As testified to by the Grievant, both S [REDACTED] and M [REDACTED] expressed bias against him because he was a Police Officer. For example, while M [REDACTED] had originally agreed to give Max back to the Grievant for his keeping, once she learned that the Grievant

was an Officer she told the Grievant that she would rather go against him than release Max back to him. M [REDACTED] also threatened the Grievant by stating that if he did not agree to surrender Max she would go to court, and because he was an Officer he would not want to have his pictures in the news. Perhaps M [REDACTED] and S [REDACTED] were also perturbed because the Grievant was unwilling to give up full information about his brother and sister, or one of his friends who also had a pit bull, because he did not want them to get into any trouble.

Because of the severe impact the discipline here at issue has had on the Grievant, the burden of proof must necessarily be a high one, at least a "clear and convincing" standard. As testified to by the Grievant, not only was his 20-day suspension a severe economic penalty in the short run, it also has serious implications for his future as an Officer. Despite being a highly decorated and excellent Officer in a tactical unit, a charge of dishonesty against the Grievant could stunt his promotional ability and could also impact his effectiveness as an Officer, if and when he is ever called to testify in a criminal trial.

For all these reasons, the Arbitrator must find that the City has not carried its burden of proof, and fully sustain the grievance. As a remedy, all discipline must be removed from the Grievant's record and he must be made whole for all financial losses that resulted from his 20-day suspension.

OPINION

I am persuaded by the City that it had just cause to discipline the Grievant for Conduct Unbecoming. More specifically, I find that on multiple occasions the Grievant did lack candor when being interviewed by Sgt. Bartlett on January 29, 2018 as part of her IAD investigation.

First, while the Grievant told Bartlett that on the evening of [REDACTED] he received a radio call for a loose dog, and that he took that dog to an ACCT after-hours location on Hunting Park Avenue<sup>2</sup>, Bartlett's subsequent investigation of his claim did not reveal any evidence whatsoever to support this account. In particular, Bartlett's review of the Grievant's Patrol Activity Logs, DARS and MDT transmissions for that night did not reveal any references to an animal incident. Furthermore, Bartlett asked ACCT personnel to check their intake logs, from [REDACTED] to [REDACTED] [REDACTED], and was told there was no record of the Grievant dropping off a dog.

While the Union contends that all of the above could have been oversights and/or omissions in record keeping, I find this defense of the Grievant to be unsatisfactory. While it is true that the absence of a reference to the Grievant responding to a loose dog call and/or subsequently dropping that dog off at ACCT

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<sup>2</sup> According to the Grievant, as a result of going to ACCT for this reason he discovered that ACCT was holding his dog Max.

could have been an oversight or omission, I consider it highly unlikely that all of such oversights or omissions here occurred at once. The far more likely scenario is that the loose-dog-to-ACCT scenario did not occur as the Grievant told Bartlett.

Second, the City has forcefully established that the Grievant was not candid and consistent when being interviewed by Bartlett concerning the condition of Max. The transcript of this interview reveals that the Grievant first told Bartlett that when he last saw Max on or about Friday, [REDACTED] he was well and a normal size pit bull, but later (after Bartlett showed the Grievant pictures of Max taken on or about [REDACTED]) the Grievant acknowledged that Max was sickly and skinny, and that he was not eating. As forcefully argued by the City, these are indeed two inconsistent portrayals of Max made by the Grievant.

I now turn to the third leg of the stool upon which the Grievant's discipline rested, in particular the allegation that the Grievant was not truthful when he denied to Bartlett that he had originally told SPCA Officers S [REDACTED] and M [REDACTED] that a dog on a Facebook post made when Max was lost was not Max, only to later admit to S [REDACTED] and M [REDACTED] that the dog in the picture was Max. Bartlett concluded that the Grievant had been dishonest to her about what he had told the SPCA officers about the dog on the Facebook post because she had also concluded that S [REDACTED] and M [REDACTED]

had accurately reported to her what the Grievant had told them about this Facebook dog.

I do not doubt that both S [REDACTED] and M [REDACTED] testified at this arbitration hearing to the best of their knowledge and belief about this matter. Nonetheless, I agree with the FOP that their account of what the Grievant said about the dog in the Facebook post, standing alone, is an insufficient basis to conclude that the Grievant was untruthful about this matter when interviewed by Bartlett. For his part, the Grievant testified that he told the SPCA Officers that the dog in the Facebook post was Max, but that he did make mention of other dogs that were present when he found Max and the picture was taken. Importantly, there is no documentary evidence to resolve this conflict over what the Grievant did or did not tell the SPCA Officers about the dog in the Facebook post. Unlike the interviews Bartlett conducted as part of her IAD investigation, the dialogue S [REDACTED] and M [REDACTED] had with the Grievant was neither transcribed nor recorded. Given the absence of any such evidence, there is a reasonable possibility of a misunderstanding about what exactly the Grievant said.

Having established that there was merit to the first two reasons that were the basis for the Grievant's discipline, but not the third, it is appropriate that I now turn to the question of whether just cause existed for the City to impose a 20-day suspension upon the Grievant for the two incidents about which I

have found merits<sup>3</sup>. After careful consideration of all relevant matters, I conclude that just cause did exist for a suspension of the Grievant limited to ten (10) days.

In deciding that the Grievant's original twenty (20) day suspension must be reduced, I am not unmindful of the importance the City in general, and the Department in particular, justifiably places on honesty. I am also not unmindful that the Grievant had some prior discipline, and that a twenty-day suspension falls within the range of penalties called for in the Guidelines for such situations. Nonetheless, the FOP is correct that there are important additional considerations that in this particular case require a reduction of the penalty imposed.

As to those additional considerations, I start of course with the fact that I have found that the City has insufficient evidence to establish one of the specific incidents that served as the basis of the original 20-day suspension. In addition, the FOP has convincingly contended that I cannot simply ignore the fact that the handling of the citizen's complaint that ultimately led to the Grievant's suspension took far, far longer than the 75-day limitation set forth in Executive Order 7-11.

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<sup>3</sup> Although the City cites other matters for which it now believes the Grievant was being dishonest, Bartlett was very clear in her Report that the reasons she had concluded that the Grievant had committed a Code violation by lying was limited to the above three incidents. The FOP is correct that discipline must rise or fall based upon the reasons relied upon at the time it is imposed.



There is still another factor involved in this case that has led me to conclude that the Grievant's 20-day suspension, which is of course a severe disciplinary penalty, is excessive. While all incidents involving lack of candor are significant no matter what their root causes, it is still notable that the matters upon which the Grievant lacked candor in this instance were not central to the purpose of Bartlett's investigation. That investigation was initiated in response to B [REDACTED]'s citizen complaint that the Grievant had engaged in cruelty to an animal, specifically his dog Max, a charge Bartlett ultimately determined was Not Sustained. As argued by the FOP, how the Grievant came to learn that Max was with the ACCT, and his opinions as to Max's condition, were not particularly important considerations for Bartlett when determining whether the Grievant had acted cruelly to Max.

Finally, I am mindful that there are potentially other non-disciplinary negative consequences to the Grievant resulting from his established lack of candor in this matter. In this regard, it has been represented that a Conduct Unbecoming Charge, no matter the length of suspension resulting from it, could have an adverse impact on the career path of the Officer involved. That is a significant consideration for an Officer like the Grievant, who has in many ways demonstrated himself to be a good Officer during his career. In short, the Grievant will suffer enough adverse

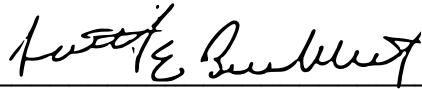
consequences as a result of this incident, even with the length of his suspension being reduced to ten days.

Accordingly, notwithstanding the City making every possible argument that the grievance should be fully denied and the FOP making every possible argument that the grievance should be fully sustained, I have concluded for all of the above reasons that the proper outcome of this case is that the grievance be denied in part and sustained in part. That is therefore the Award I must and will issue.

AWARD

The grievance is denied in part and sustained in part. Just cause existed for the Grievant to receive a suspension limited to ten (10) days. As a remedy for the sustained portion of the grievance, the City shall make the Grievant whole for all wages and benefits he lost as a result of his suspension exceeding ten days.

Signed this 31st day of March 2021.



SCOTT E. BUCHHEIT, ARBITRATOR