

AMERICAN ARBITRATION ASSOCIATION (“AAA”)

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In the Matter of the Arbitration between:

**FRATERNAL ORDER OF POLICE,
LODGE #5 (“Union”),**

-and-

CITY OF PHILADELPHIA (“City” or “Employer”)

Grievant: P/O Shavon I. Ghee (269448).

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OPINION and AWARD

AAA Case No. 01-18-0003-5724

BEFORE: Robert A. Grey, Esq., Arbitrator

HEARING DATE: March 19, 2019, at American Arbitration Association, 230 South
Broad Street, Philadelphia, PA 19102

APPEARANCES:

FOR THE UNION:

Willig, Williams & Davidson
By: Richard G. Poulson, Esq., Partner

FOR THE CITY:

City of Philadelphia Law Department, Labor and Employment Unit
By: Daniel R. Unterburger, Esq., Assistant City Solicitor

INTRODUCTION

The Philadelphia Police Department (“PPD”) dismissed Grievant for Conduct Unbecoming, in that it charges Grievant was aware of suspected physical child abuse of her son but failed to take action; and it charges that Grievant lied to Internal Affairs (“IA” or “IAD”) during the investigation thereof. The Union seeks that the discipline be rescinded and Grievant be restored to her former employment. The City seeks denial of the grievance in all respects.

STIPULATED ISSUES

The parties submitted the following stipulated issues:

Was Grievant, Shavon I. Ghee, disciplined for just cause?

If not, what shall be the remedy?

BACKGROUND

Pursuant to the parties' Collective Bargaining Agreement ("CBA"), the hearing of this grievance was held on March 19, 2019. Both parties appeared by counsel and were afforded full, fair and ample opportunity to present and challenge evidence, examine and cross-examine witnesses, and argue their positions. Both parties did so. Neither party questioned the arbitrability or fairness of the proceedings. The proceedings were transcribed by a court reporter, and an official transcript was produced. The parties gave oral closing statements at the conclusion of the hearing. There were no post-hearing submissions. The record was closed upon receipt of the transcript.

This Opinion and Award is based upon detailed and thorough review and analysis of the entire record. All party positions have been considered in rendering this Opinion and Award, whether or not specifically addressed herein.

RELEVANT FACTS

The following salient facts are not materially in dispute, unless noted otherwise. They are presented in chronological order where practicable.

Grievant was appointed to the Department as a Police Officer on November 17, 2008. In late 2009 or early 2010, while at work Grievant met PPD Police Officer

N [REDACTED] G [REDACTED], Jr. (“father”, “spouse”, “P/O N [REDACTED] G [REDACTED], Jr.”, or “Boo”), who was appointed [REDACTED] and retired [REDACTED]. They married in [REDACTED], and separated in [REDACTED]. Their divorce became final in [REDACTED]. At all relevant times, they were separated, living in separate residences a few minutes driving time away from each other.

They had three (3) children together: Child 2 (male); N [REDACTED]¹ (male); and Child 4 (female).² At all relevant times, Child 2 was six (6) years of age, N [REDACTED] was five (5) years of age, and Child 4 was two (2) years of age (exclusive of birthdays). While separated the parents had an informal and unofficial child custody arrangement. Each parent had physical custody of the children approximately half the time. When the children stayed with the father, Grievant met the father and children in the morning at Child 2’s school bus stop. The father would put N [REDACTED] in the car seat in the back of Grievant’s car, and Grievant would drive N [REDACTED] to pre-k. At pre-k, Grievant would get N [REDACTED] out of his car seat, bring him into pre-k, kiss him goodbye, and leave.

On [REDACTED] N [REDACTED]’ [REDACTED] reported suspected physical child abuse of him to the Pennsylvania Department of Human Services Child Abuse Hotline, commonly known as “Child Line”.

¹ The record contains various spellings of this child’s name. “N [REDACTED]” appears to be the correct spelling, and will be used by the arbitrator. Other spellings in the record remain unaltered, as they appear in the transcript and exhibits.

² Child 1, a female child of Grievant’s from a prior relationship, is not materially involved in this matter.

On [REDACTED] Philadelphia Department of Human Services (“DHS”) personnel proceeded to N [REDACTED], [REDACTED] to follow-up on the Child Line report. They assessed that return of N [REDACTED] to his father’s residence would be unsafe for him. They obtained a protective custody order, and transported him to St. Christopher’s Hospital for Children. N [REDACTED] was treated there, with a diagnosis of child abuse. Children 2 and 4 were also examined at St. Christopher’s Hospital on [REDACTED], with negative results for suspected child abuse of them. DHS placed N [REDACTED] with his [REDACTED] (i.e., [REDACTED]) under a Safety Plan. Children 2 and 4 were released from St. Christopher’s Hospital into Grievant’s custody.

Also on [REDACTED] DHS notified PPD Special Victims Unit (“SVU”) of the Child Line report. When SVU learned that the report involved a member of PPD, i.e., P/O N [REDACTED] G [REDACTED], Jr., SVU notified IAD. IAD commenced an investigation (carried under IAD # [REDACTED]), immediately responding to St. Christopher’s Hospital. At the hospital IAD conducted interviews of DHS staff, medical staff, [REDACTED] and N [REDACTED]. DHS and IAD took photographs of N [REDACTED]’ injuries. IAD placed P/O N [REDACTED] G [REDACTED], Jr. on restricted duty status.

On [REDACTED] the Family Court of Philadelphia County, Juvenile Division, issued a “Recommendation for Shelter Care” Order (a/k/a “72 Hour Shelter Care Hearing Order” a/k/a “72 Hour Hearing Order”). The court found sufficient evidence that return of N [REDACTED] to his father’s home was not in the best interests of the child. The court transferred temporary legal custody of N [REDACTED] to DHS. DHS placed N [REDACTED] with his [REDACTED] pending the ongoing investigation. The court

gave Grievant liberal visitation supervised by the [REDACTED]. The court gave the father supervised visitation at DHS, “line of sight and sound”. On [REDACTED] the court returned N [REDACTED] to Grievant’s primary custody.

On [REDACTED] Philadelphia Children’s Alliance (“PCA”) forensically interviewed N [REDACTED] and Child 2, separately. These PCA interviews are discussed below. Based on Child 2’s statements during his interview, both the father *and* Grievant were considered subjects of criminal investigation for child abuse. IAD placed Grievant on restricted duty status.

On [REDACTED] DHS issued a Child Protective Services Investigation Report (“CY-48”), finding allegation of physical abuse by the father against N [REDACTED] “Indicated” (subsequently updated to “Founded”; see below). The CY-48 also found “Indicated” the allegation that Grievant was aware of N [REDACTED]’ physical abuse by the father and failed to take protective action. As explained by DHS in its [REDACTED] letter to Grievant, “Indicated” meant DHS determined that its investigation produced substantial evidence of child abuse according to the Child Protective Services Law and Regulations of the Commonwealth of Pennsylvania. The letter included information about how to appeal the findings. The letter was signed by DHS Investigator [REDACTED], and his supervisor. IAD promptly forwarded its investigative findings to the District Attorney’s Office (“DAO”). The “Indicated” finding of child abuse against Grievant was subsequently expunged on Grievant’s appeal (see below).

On [REDACTED] the DAO issued a memo to IAD declining to pursue criminal charges against Grievant.

On February 14, 2018 IAD obtained and executed a search warrant at the father's residence. IAD photographed the residence. No evidence was seized or observed in plain view.

On February 26, 2018 IAD interviewed Grievant at IA with Union representation present. Grievant's answers during this interview are the basis for the Department's disciplinary charge of Conduct Unbecoming, Code 1-§009-10.

On [REDACTED] PCA conducted a second forensic interview of N [REDACTED]. This PCA interview will be discussed below.

On [REDACTED] the DAO issued a criminal complaint against the father for Felony Aggravated Assault, Endangering the Welfare of a Child, REAP, Simple Assault, and Possessing Instruments of Crime. The DAO approved an arrest warrant for the father, prepared by IAD.

On [REDACTED] the father retired from PPD, effective the same day.

On [REDACTED] the father surrendered to IAD with legal counsel present. He was served with disciplinary charges and advised of his right to counsel at a Police Board of Inquiry ("PBI"). He was arrested on the warrant, Mirandized, and gave no statement.

On April 9, 2018 Lt. McShea³ issued the IAD Internal Investigation report of this matter. The report was reviewed and approved through channels on April 10 and

³ Lt. McShea was promoted to the rank of Captain on December 3, 2018. During this investigation she was a Lieutenant. For consistency with documentary evidence, her rank in effect during the investigation will be used in this Opinion.

11, 2018.

On or about [REDACTED] N [REDACTED] drowned in a swimming pool while with friends and family at a hotel in New Jersey, while under Grievant's supervision. By letter dated [REDACTED] the New Jersey Department of Children and Families, Division of Child Protection and Permanency, stated that it had investigated the incident and determined that an allegation of neglect in relation thereto was "Not Established".

On May 31, 2018 Grievant was served with these disciplinary charges and advised of her right to counsel at a PBI. She pleaded Not Guilty and requested a PBI hearing.

On July 18, 2018 the PBI hearing was held. The witnesses were Lt. McShea of IAD, DHS Investigator [REDACTED], and Grievant. The PBI unanimously found Grievant guilty of both charges, and unanimously recommended the penalty of dismissal for each charge. On July 23, 2018 the Police Commissioner approved the findings of the PBI.

On July 27, 2018 Lt. McShea issued the IAD White Paper on this matter. Also on July 27, IAD gave Grievant Non-Criminal Gniotek Warnings. Grievant gave no statement, and was suspended for 30 days with Intent to Dismiss.

On July 31, 2018 the Union filed the instant grievance.

On August 14, 2018 Grievant was served with Notice of Intention to Dismiss.

On August 24, 2018 Grievant was served with Notice of Dismissal.

On [REDACTED] the Commonwealth of Pennsylvania, Department of Human Services, Bureau of Hearings and Appeals, issued an Order adopting in its entirety the

same agency's [REDACTED] Administrative Law Judge's Recommendation that Grievant's appeal be sustained. The Order included that DHS expunge the "Indicated" report of child abuse pertaining to Grievant. Neither PPD nor DHS Investigator [REDACTED] were aware of this Order, nor Recommendation, until the day of this grievance arbitration hearing.

On [REDACTED] N [REDACTED] G [REDACTED], Jr. pleaded guilty in the Municipal Court of Philadelphia to Simple Assault [on N [REDACTED]], and Possessing Instrument of Crime with Intent.

On September 21, 2018 the Union filed with AAA a Demand for Arbitration of Grievant's dismissal, leading to the instant proceeding.

The Notice of Dismissal served on Grievant states, *verbatim*:

You are hereby notified that effective 8/23/18 you are dismissed from your position with the City of Philadelphia as referred to above for the following reasons:

CONDUCT UNBECOMING, SECTION 1-§001-10 (Unspecified.)

Internal Affairs investigation # [REDACTED] sustained an allegation of abuse of a minor against you. Although there was no evidence in this investigation that you personally physically abused your son N [REDACTED], the Department' of Human Services (DHS) arrived at a finding of "Indicated" in their child abuse investigation for both you and N [REDACTED]' father, N [REDACTED] G [REDACTED], Jr., indicating responsibility on your part. The investigation demonstrates, based on the Philadelphia Children's Alliance (PCA) forensic interviews, that you witnessed at least one (1) incident of physical abuse, and were also made aware of other incidents of physical abuse. You failed to take action, despite being aware of suspected abuse, thereby endangering your son, N [REDACTED].

CONDUCT UNBECOMING, SECTION 1-§009-10 (Lying or attempting to deceive regarding a material fact during the course of any Departmental investigation.)

This same Internal Affairs investigation sustained a department violation that you lied in your statement to the assigned. You denied that you had any knowledge that N█████ G█████, Jr. was abusing N█████. ██████ and N█████ both disclosed to the PCA that you knew about the beatings N█████ received, and that N█████ had expressed to you that he did not wish to go to N█████ G█████ Jr.'s house. In a second interview, N█████ also disclosed that you witnessed an incident wherein N█████ G█████ Jr. placed N█████ into a sink full of water and said to him. "Boo, stop." Furthermore, it seems improbable that you did not notice a significant scratch to N█████'s cheek on ██████. You stated that you walk N█████ into daycare each day and kiss him goodbye. The mark on N█████' face was significant and clearly visible.

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

On 7/27/18 in the presence of Captain Scott Drissel #99, Internal Affairs Division, Captain Frank Palumbo #112, 14th District, Sergeant James Bolognone #311, Internal Affairs Division. Sergeant Christina Mellett #276, 141 District, Danielle Nitti, Esq., Attorney, Fraternal Order of Police and Steven Weiler, Representative, Fraternal Order of Police, you were given your Non-Criminal Grievance Warnings and an opportunity to respond to the above allegations. You chose not to respond. You were placed on an immediate 30-day suspension, with the intent to dismiss.

Joint Exhibit 5.

POSITIONS OF THE PARTIES

The positions of the parties are from their respective opening and closing statements, nearly *verbatim*, from the transcript. They are set forth in *italics*, single spaced, to denote they are the words of the parties, not the arbitrator.

City Position

"Honor", "Service", and "Integrity" are on the police uniform patch that every Philadelphia officer wears. These are the most important principles that guide the conduct of Philadelphia police officers both on and off duty, and they are embedded in the Disciplinary Code. Integrity is the bedrock of policing and the foundation for building a successful relationship with partners. Integrity builds trust between the community and the police.

Grievant was dismissed after being charged by IAD with two separate Conduct Unbecoming offenses under the Code: Unspecified, carrying a penalty of reprimand to dismissal, and Lying or attempting to deceive during the course of departmental investigation, carrying a penalty of ten days to dismissal. A PBI sustained both charges and recommended dismissal on each charge.

The Unspecified offense, alone, fundamentally undermines Grievant's integrity and her ability to serve effectively as a Philadelphia Police Officer. The Internal Affairs investigation sustained an allegation of abuse of a minor against her. Although there was no evidence in this investigation that Grievant personally physically abused her son, N [REDACTED], the Department of Human Services ("DHS"), arrived at a finding of "Indicated" for child abuse of N [REDACTED] by both Grievant and his father.

Grievant engaged in conduct that fundamentally showed, in all essence, she was unable to serve as an effective human being, let alone someone who the City of Philadelphia and the City of Philadelphia taxpayers put their trust in in emergent situations. Her integrity was undermined to the extent where she could no longer serve as a Philadelphia police officer. Nothing has changed since the PBI hearing. Grievant had notice and a full evidentiary PBI hearing. The PBI was unanimous and the Police Commissioner signed-off on Grievant's dismissal. The PBI would have recommended dismissal even for a stellar officer with seven commendations. The penalty of dismissal is proportionate. The Department had just cause to dismiss Grievant. She fundamentally undermined her integrity to the point where she could no longer serve as a police officer. She was no longer competent to hold the public's trust. She was involved to the extent that she did not report the abuse and she did nothing to stop it. That's what she did.

DHS received a phone call on the hotline reporting suspected child abuse at the daycare of Grievant's son. DHS responded, saw obvious physical indications of abuse and took him to the emergency room. The attending nurse practitioner found evidence of abuse, and N [REDACTED] was placed, via DHS, in a neutral location. He was removed from Grievant's custody and was placed in DHS custody. Not long after that, DHS ten-year-veteran investigator G [REDACTED] took over the investigation.

Mr. [REDACTED] decided that a finding of "Indicated" was appropriate for Grievant. He found that Grievant was not only aware that their son was being abused by her husband, N [REDACTED] G [REDACTED], Jr., but that Grievant did nothing to prevent it. That's her failing as a private citizen. Her failing as a police officer is failing to report abuse. Under Pennsylvania statute, Grievant is a mandated reporter of suspected child abuse. There is no exception for suspected child abuse of a family member. As Grievant testified at the PBI hearing, in her capacity as a police officer, she had occasion as a mandated reporter to report child abuse to DHS. She has no explanation for why she failed to report the abuse of her own son.

"I don't know what happened." seems to be the thread running throughout Grievant's

relationship with her son N■■■■ throughout his short life. He came back from his father's house covered in old bruises, injuries. I don't know what happened. He drowned in a swimming pool while Grievant was sitting next to him. I don't know what happened. Doesn't matter whether it's at the pool, at the house, or on the job, Grievant didn't know what happened and that's the issue here.

The photographs in evidence show N■■■■'s back covered in things that can only be described as belt marks old and new. He's five years old. Grievant is bathing this child. Grievant is changing this child's clothes, and for her not to do anything about the abuse this child is suffering is egregious.

Obviously, what happened to N■■■■ is an absolute tragedy, but it was a preventable tragedy. There were steps that could have been taken by Grievant to make sure N■■■■ didn't continue to be subject to abuse, but she didn't seem to care about these injuries, these bruises three days in a row. She walks N■■■■ into the daycare, kisses him on the cheek with frankly a bizarre semicircular scar on his cheek, three days. DHS is called by ■■■■ because they've been tracking the injuries on the boy's body. They call on the ■■■■. DHS responds on the ■■■■. Three days that injury is apparent. And she'll sit here and tell you N■■■■, Jr. buckled him into his car seat so I didn't see it, three days.

When DHS is called, Grievant doesn't really seem to have too much skin in the game until they're at the hospital and IAD comes. And suddenly, her job is on the line and her interest is peaked. And we see the same thread again with the pool. The child is dead and Grievant hires a law firm to sue the hotel to profit off her son's death.

N■■■■'s videotaped PCA interview in evidence showed he was an articulate five-year-old boy. He said he was abused, my mother witnessed it, my mother saw it, my mother told Boo to stop. Though the Union oddly tries to paint N■■■■ as a liar, N■■■■ spoke frankly and matter-of-factly. He did the same with IAD, and the DHS investigators. It beggars belief that N■■■■ wasn't as honest with his mother as with them. There isn't any question that Grievant knew exactly what was going on; she just didn't care.

Beyond her failings as a parent, her failings as a police officer are really what's relevant. If she is incapable of looking after her own children, if she is incapable of performing one of her fundamental duties as a police officer, as a mandated reporter and she's failing in that regard as a parent, again, how can we place her in a position of public trust?

Grievant can't be trusted to monitor her own child, look out for the welfare of her own child, and yet she sits here asking you to give her her job back as a Philadelphia police officer. She sits here and asks you to place her in a position of public trust when she's proven time and time again that she's not even capable of handling private trust, the trust of her children.

There was just cause for terminating Shavon Ghee. The unanimous PBI decision should be upheld to prevent Shavon Ghee from assuming a position of public trust again in the future.

Union Position

The City fired Officer Ghee because they think that she abused her son or she knew her son was being abused and didn't do anything to stop it. That's the issue. Grievant is a mom of three other kids; Child 1, Child 2 and Child 4. She's a good police officer, good mom. The child whose welfare was at the center of this discipline case tragically is no longer living. N■■ passed last year. This is a terribly sad case.

The City bears the burden of proof in this matter. And given the serious allegations, it's a heavy burden that the City bears, not the Union.

The City fired Officer Ghee because of things they think she did, not because of anything that they know she did or anything that they know she didn't do. And so, they chose to fire her. And ultimately, they chose to dump it to the arbitration process, and let an arbitrator figure it out. And that's why we're here.

The rotten subject matter of this case would be tragic if N■■ hadn't passed away. But just because it's a sad case doesn't mean that Grievant did anything warranting any discipline whatsoever. And in fact, if we decide the case on the evidence consistent with the mutual agreements that the parties have made to each other in collective bargaining, which is what we're required to do, it's very clear. There's no evidence for discipline here whatsoever.

It's the City's burden to prove that they had just cause to terminate a ten-year police officer with a good performance evaluation, a good performance record. They have to prove that she did something wrong and they have to prove termination was the only possible outcome. The City called it an egregious act, such an egregious act, what they think she did, that it's going to carry a stain that you can't wash off. And if you're going to make an allegation that is that serious, you better nail it. It's a high, heavy burden of proof for the City. That's their burden, it's not ours. And the problem is here, the City can't meet that burden based on the evidence.

Witnesses talked about their investigations and what they thought happened or what might have happened, but they can't meet that burden.

Starting with DHS Investigator ■■■, who cares so deeply about this case, so invested, so thoroughly investigated that he showed up here today thinking that Grievant had been found guilty of abusing her son and he didn't even know that she had appealed and had won and that her record had been expunged. He didn't know that until this hearing. He didn't know. But the greatest investigator in the world testified about his findings. And he was asked a

question by the City's lawyer: At any point in your investigation did you have any doubt that Grievant knew that N■■■■ was being abused, and he said, No. Well, why investigate? You're supposed to enter this with an open mind, gather facts, make recommendations based on facts. He didn't do that. He entered into this with a closed mind, how could she not have known, anything anybody would have said at that point in this investigation would have taken him off his conclusion upfront that she was guilty.

Now, are there enough things, enough statements that might be made in interviews, especially with a child, that once your mind is set on an outcome that you can use to justify that? Of course. Were there statements that young N■■■■ made during either the first interview or, certainly, during the second interview that Mr. ■■■■ could use to support his view of the case, which is that Grievant was guilty from the get-go, yes, there were. The problem is there are other statements as well.

We're talking about a five-year-old child, and a five-year-old child that's been through hell. There's no dispute here that N■■■■ was abused. And here he is in a strange place talking about it. And Mr. ■■■■ testified honestly that kids aren't going to get it right, sometimes they're going to lie. More often than not they're not going to answer correctly. They're not going to have a sense of what was going on. The evidence on the record before you from the City's witness is such that kids aren't always accurate in these interviews. And in fact, why is there a second forensic interview? There was a second forensic interview because, apparently, a child as young as N■■■■ is so unreliable as a witness that things as small as whether a parent drove them to the interview or whether they had recent contact with the parent could unduly influence what they say.

The problem is, of course, with respect to the first forensic interview, Mr. ■■■■ got it wrong, he didn't know that Ms. Ghee didn't take N■■■■ to the interview that day, but his father did. Well, lots of things that he got wrong in his investigation. It's a shame.

But we know from the evidence on the record that there are reasons to be very skeptical of statements a young child is going to make in a situation like that. We know from what we watched that N■■■■ gave some answers during his interview that are not consistent with Mr. ■■■■'s conclusions. And we did have a back and forth during the testimony about what happened in the sink, what parts of your body were put in the sink, what parts of your body were put in the toilet. It's a horrible thing to ask questions about.

And the investigator spent a fair amount of time, I think, looking for an answer. My head, he put my head in the toilet, N■■■■ never said that. He gave him plenty of opportunity. He never said it. Does it mean that didn't happen? No, not necessarily, but it means you really can't rely on what he has to say. The video is the best evidence in this case. It's inherently unreliable based on what the City's witness said.

The other thing N■■■■ said at the beginning of that interview which was interesting, he

was asked about his friends. Do you have friends? Yeah, some of my friends are bad, they scratch me. That's what he said. He was also asked about what happened when you didn't watch sports, what did your dad do. We know what the investigator wanted that answer to be. He said nothing. The child said nothing.

Again, the Union is not attempting to prove or disprove whether the child was abused by the father. We all agree that he was. The problem is, we've got testimony from the child on that issue that's not credible, it's not consistent. And now, we're going to rely on one statement that this child made, one statement that this child made, that mom saw abuse and said Boo, stop. The whole case rests on that.

The City relies on that one statement to ruin this Officer's life, take away her career on that one statement by that child. It's not credible. That's not enough, especially when the City has a heavy burden, and they don't like it. They think they know what happened there. They don't want her working there. And they fired her and they're sticking it on the arbitrator. And they're sticking it on the Union to get a little justice. And that's fine, but that's really what's going on.

The other investigator who testified in this case was IAD Captain McShea. She was pretty good about getting to the point. And she said really there were three things she relied on in reaching her conclusion: 1: what Child 2 said in his interviews; 2: the second PCA interview; and 3: what Grievant said in her IA interview. That's all the evidence the Department has to support its conclusion that Grievant abused her child. Captain McShea also said she relied on Mr. [REDACTED] a lot. She was guided a lot by G [REDACTED] in the investigation. This is the same G [REDACTED] who had no doubt from the get-go that Grievant was guilty.

So, we've got these three legs of the stool that the police department relied on concluding that Grievant engaged in misconduct by abusing her child. One is Child 2. There's no evidence on the record what Child 2 said, his allegations, nothing to support those allegations. Gone. Second is the PCA interview already discussed. If that's the only thing the City's going to rely on, they've got a big problem. And then the third thing were Grievant's statements during the IA interview. Review the IA interview evidence. We reviewed some of it during Captain McShea's testimony.

Grievant's position from the get-go has been consistent, that there were occasions where she did realize, a scuff here, a bruise there. And she chalked it up to she's got two young boys that play rough. There are a couple of occasions where when they came home from dad's house, she said, hey, what happened, and he gave her a credible excuse. Someone from whom she had no reason to suspect gave her an excuse and she believed it, that she didn't know that he was being abused and that's why she didn't do anything. She said that from minute one.

And by [REDACTED], she said, Yeah, at this point now, knowing what I know

and going through the process, yes, he was being abused, holy moly. But she didn't know it at the time. And she's not being punished from what she knew in [REDACTED]. She was fired because she let her son be abused. That's why they fired her. She didn't know.

Now, is Officer Ghee a credible witness? Really, the question is, has the City proven, can the City prove that Officer Ghee is not a credible witness.

A couple of things that came up during Captain McShea's testimony and during Grievant's testimony, direct and cross-examination that bolstered Grievant's credibility. Captain McShea testified about questions, Hey, are you afraid of N [REDACTED], did N [REDACTED] ever hit you, did he ever hit the kids. Captain McShea said she was kind of trying to give Officer Ghee an out, maybe an opportunity to say, I was afraid, and that's why I didn't report anything.

If you had done something wrong, six months after the fact, and the District Attorney is looking around, and your job's on the line, and you're called in, if you had done something wrong and you're looking to cover it up and you're looking to lie, and the captain in Internal Affairs gives you that softball question, a liar is going to say you know what, you're right, I was afraid, I was battered and I was too afraid to do anything about it, I'm the victim -- you know, we're all victims here. And she didn't do it. She said, No, that wasn't the case. That's an honest answer. An easy out would have been to say, Yeah, you're right. She didn't say that. She took the hard way and she told the truth, and that informs all of her other answers.

Grievant did it again on cross-examination. Counsel for the City pointed out that Grievant had a flexible custody arrangement with N [REDACTED], and Grievant talked about that. She loved this man at one point. She had three children with N [REDACTED]. He was a good parent. He was attentive. She didn't have to chase him for money. She didn't have to chase him to take care of his kids. He was involved in their lives. They had a flexible custody arrangement. And she was asked a question, You could have taken N [REDACTED] away from N [REDACTED] at any time, couldn't you? You didn't have to let him go. You could have taken him out of there at any time. And Grievant said, You're right. Why didn't she? Because she didn't suspect that he was being abused by his father. That's a significant fact in this case. It bolsters Grievant's credibility, coming out on cross.

There were some smaller issues to address with respect to credibility emphasized by the City. None of them pointed out that Grievant could have, should have noticed these bruises three consecutive days that N [REDACTED] was in her custody, if that's what the record says. And in fact, Grievant's testimony was she didn't recall whether between the [REDACTED] and the [REDACTED] N [REDACTED] was with her every night or with N [REDACTED]. They had a very flexible arrangement. There's nothing on the record to support that Grievant was with N [REDACTED] consistently between the three days between the [REDACTED] to [REDACTED]. Again, we'd like to decide this on evidence.

With respect to the PBI evidence, there will be a case where the PBI or all three officers in the PBI said no discipline is warranted. And we'll put the evidence on and we'll say the Commissioner disregarded it. PBIs are not binding. They're recommendations to the Commissioner. The Commissioner didn't overrule this PBI's recommendation, but that just makes it another discipline case.

It is interesting that the Commissioner wasn't at this hearing, in a case where the Department knows that they don't like what happened. They have their suspicions about what's going on and they maybe feel like they don't have the evidence. Maybe the Commissioner doesn't want to testify in a case like this and get blamed for it. But he's not here.

Grievant testified about how she's changed as a parent since everything that happened. That is testimony from a parent who loves her kids. And she talked about the fact that she was in a marriage with N [REDACTED] and she had no reason to suspect that he would do this. Who suspects that their spouse is going to do the most monstrous of things? We see it on the lower end of infidelity where spouses have blinders on to more serious things like physical abuse. It just wasn't on Grievant's radar. It's sad and unfortunate, but it doesn't rise to the level of discipline.

In her testimony Grievant referred to N [REDACTED] in the present tense more than in the past tense. She loved her son. And what happened was very, very sad. And that has nothing to do with the evidence in this case. The evidence in this case is pretty clear.

The only conclusion is that the City cannot establish just cause to support any discipline at all, let alone the penalty of termination. The Union asks that the arbitrator sustain the grievance, rescind the discipline, and restore Officer Ghee to her former employment so she can get on with her life and continue to serve the citizens of her City.

DISCUSSION AND OPINION

Conduct Unbecoming, Section 1-§001-10 (Unspecified)

There is no dispute that under Pennsylvania law, Grievant, as a PPD police officer, was a trained and mandated reporter of suspected child abuse. Grievant admitted that she knew she was a mandated reporter. There are no applicable exceptions for off-duty, and/or own-family, suspected child abuse.

The record establishes that prior to DHS' involvement Grievant could have, and

should have, suspected that her five (5) year old son N [REDACTED] was being abused, and she should have reported it. She failed to do so. When Grievant first observed marks/bruises on N [REDACTED], she did ask her spouse – also a PPD police officer, and N [REDACTED], about them. She relied upon their respective answers/explanations. Grievant’s spouse wore the same PPD patch with the same motto as did Grievant. The record shows that, initially, it was not unreasonable for Grievant to rely on their answers/explanations.

However, as Grievant acknowledged, she saw new marks/bruises continue to appear on N [REDACTED], over time. Grievant admitted seeing that N [REDACTED] had marks/bruises in various stages of healing. The record shows that prior to DHS’ involvement Grievant could have, and should have, realized that her spouse’s answers/explanations were not consistent with N [REDACTED]’ marks/bruises. Her reliance on her spouse’s answers/explanations became unreasonable. It became incumbent upon Grievant, as a trained and mandated reporter of suspected child abuse, to act. Instead, Grievant failed to take any further action, and she never reported any suspected child abuse of N [REDACTED].

Thus, the City met its burden to prove that Grievant, by omission, engaged in Conduct Unbecoming, Section 1-§001-10 (Unspecified).

Conduct Unbecoming, Section 1-§009-10 (Lying or attempting to deceive regarding a material fact during the course of any Departmental investigation)

The Notice of Dismissal states that the source of IAD’s determination that Grievant lied to IAD are the statements of N [REDACTED] and Child 2 in their PCA

interviews, and the scratch on N [REDACTED]' cheek on [REDACTED]. The PCA interviews will be discussed first, followed by the cheek scratch.

The Union raised a continuing hearsay objection to the truth of matters asserted in the PCA interviews, as neither declarant was subject to cross-examination. The City argues that N [REDACTED]' videotaped PCA interview statements are credible, because (paraphrasing): “N [REDACTED]' videotaped PCA interview in evidence shows that he was articulate, frank, and matter-of-fact when he said he was abused, my mother witnessed it, my mother saw it, my mother told Boo to stop.” The arbitrator has thoroughly and carefully studied the record, and in particular the PCA interview video and related documents, to determine the reliability and weight thereof.

In N [REDACTED]' first PCA interview, which took place on [REDACTED], “N [REDACTED] did not disclose physical abuse. When asked why N [REDACTED] went to the hospital, he denied knowing why.” City Exhibit 8, IAD 130-134, at 134 [PCA “Interview Impressions”]. On [REDACTED] PCA also interviewed N [REDACTED]' brother, Child 2, separately. Child 2 gave inconsistent answers on material matters. This is evident in the official PCA interview notes:

Child 2 did not disclose physical abuse to himself.

When asked about N [REDACTED] going to the hospital, Child 2 said that N [REDACTED] was at the hospital “probably” because he has “stuff/scratches” on his body. Child 2 said that he saw someone make scratches on N [REDACTED]; however, he denied knowing who made the scratches on N [REDACTED]. Child 2 then said that a “girl;” who Child 2 said is “black” and “brown,” whose name he did not [sic] know put the scratches on N [REDACTED] at school. Child 2 then denied seeing the girl put scratches on N [REDACTED].

...

Child 2 denied that he told his mom what [father] did to N [REDACTED]. Child 2

said that N [REDACTED] told mom what [father] did and that N [REDACTED] wanted to stay with mom; which Child 2 said that N [REDACTED] able to do.

When asked what happened when N [REDACTED] put his shirt on backwards, Child 2 said that N [REDACTED] got in trouble by [father]; however, Child 2 denied knowing what happened when N [REDACTED] got in trouble that time. Child 2 denied seeing N [REDACTED] having his head put in water.

City Exhibit 8, IAD 135-136, at 136 [PCA “Interview Impressions”].

Although Child 2 did not disclose physical abuse to himself, N [REDACTED] stated during his second PCA interview that their father hit Child 2 with a belt on Child 2’s hand, feet and nose for taking food from the kitchen during the night (19:28 - 20:48).⁴; City Exhibit 8, IAD 173-178, at 177 [PCA “Interview Impressions”].

N [REDACTED]’ second PCA interview took place on [REDACTED]. He gave inconsistent answers on material matters. For example, at 10:37 N [REDACTED] initially told the PCA interviewer that his father beat him for not watching sports on TV. But less than four (4) minutes later in the same interview (14:19), when asked what his father did when N [REDACTED] did not want to watch sports on TV, N [REDACTED] answered firmly: “Nothing.”

It is undisputed that during his first PCA interview, N [REDACTED] did not disclose any physical abuse. However, at 44:33 and 44:44 of the second PCA interview, N [REDACTED] twice disagreed with the PCA interviewer, stating that he *did* say during the *first* PCA interview that his father beat him.

At 11:10 N [REDACTED] said his father put N [REDACTED]’ “whole self in the sink”.

⁴ Times refer to the video player time counter in City Exhibit 5, not the time of day of the interview.

Investigator ■ took N ■' use of the word "dunk" during the interview to mean that N ■' "head [was] forced into the water." However, when specifically asked, N ■ said his head was *not* in the sink (41:39), and his face was *not* in the sink (41:45). This is the one (1) incident that N ■ said Grievant witnessed (15:30). It is the incident during which Grievant allegedly said "Boo stop." (15:43).

Although N ■ stated during the second PCA interview that he was five (5) years old (3:30), later, when asked how old he was when his father hit him, N ■ answered "18." (17:10). He did not appear to be joking. The official PCA interview notes reflect other inconsistencies:

N ■ said [father] put him in the sink in the water and "he puts my whole self in the sink." N ■ said mom Shavon and [Child 2] saw [father] put N ■ in the sink and mom said, "Boo, stop." N ■ said after [father] put him in the sink, [father] "throwed" N ■ and then he was bleeding on his hand because he hit his hand on the silver floor.

N ■ said [father] "flushed me down the toilet one day." He said, "he put me in the toilet and he flushed me."

At Boo's house in the basement N ■ said he saw [father] hitting his brother [Child 2] because [Child 2] was stealing food in the kitchen in the middle of the night. [Father] was hitting [Child 2] in the living room with a belt on his hand, feet, and nose.

N ■ said he sees [father] every Friday. When asked what he thinks about going back to live with [father], N ■ said, "Cool, he loves me now," which N ■ said [father] told him.

City Exhibit 8, IAD 173-178, at 177 [PCA "Interview Impressions"].

The PCA interview statements of N ■, and of his brother, Child 2, contain material internal inconsistencies, and material inconsistencies with each other.

Additionally, Investigator ■ testified on cross-examination that he has conducted

PENALTY

The City contends it had just cause for dismissal as the appropriate penalty for either of the two (2) charges. The Union contends that the City had no just cause for any discipline, let alone dismissal.

As concluded above, Grievant is culpable of Conduct Unbecoming, Unspecified, 1-§001-10, but not 1-§009-10. The Disciplinary Code sets forth the collectively bargained penalty range for a first violation of 1-§001-10: Reprimand to Dismissal.

The record establishes that Grievant's proven misconduct in this matter was serious, warranting a substantial penalty. The mitigating factors in the record militate against the imposition of dismissal.

Though not excuses, it is significant in terms of mitigation that Grievant's culpable conduct was by omission, not commission; it was while off-duty, not on-duty; it involved reliance upon her spouse, whom she trusted, who was also a PPD police officer at the time; and it involved one of their children, not the public. As noted above, Grievant's reliance on her PPD police officer spouse was, initially, not unreasonable.

There was never any allegation that Grievant committed any act of abuse on N [REDACTED], and the DAO declined to pursue any criminal charges against Grievant. Grievant testified credibly on direct examination that she has learned from this incident.

Grievant has 10 years of unblemished service as a police officer prior to this incident. On cross-examination she gave credible, un rebutted testimony that during her

PPD career she only had one (1) occasion to call DHS in her role as police officer for suspected child abuse.

The Employee Assessment of Grievant, prepared specifically for her PBI, was, in the words of PBI Capt. Stanford's testimony, "*matter-of-fact*", "*very blunt and to the point*." It did not contain the highlighting of Grievant's good qualities that he typically sees in Employee Assessments prepared for PBI hearings. The Supervisor's Evaluation section of the Employee Assessment prepared for the PBI states, *verbatim*:

According to Sgt. L [REDACTED] M [REDACTED] #422, prior to officer being detailed out of the 14th District to Tow Squad ON 11/11/17, Sgt M [REDACTED] indicated while under his supervision Officer Ghee #3325 has performed her duties in a satisfactory manner. She demonstrates a quiet contempt for supervision. Her work ethic leaves much to be desired. City Exhibit 11 [5/21/18].

In sharp contrast, the Union put into evidence several years of Grievant's annual Performance Reports. *None* of these annual Performance Reports indicate *any* contempt of supervision, or *any* difficulties with supervision or supervisor(s), or *any* problems with her work ethic, whatsoever.

Notably, *none* of these annual Performance Reports show that Grievant *ever* received an "Unsatisfactory" rating on *any* individual criteria, or *any* annual Overall Rating.⁵ Furthermore, the narrative Comments sections of Grievant's annual Performance Reports are explicitly *positive*. For example, *verbatim*:

Since under my supervision, you have performed your police duties in an excellent manner. . . . You demonstrate a positive attitude towards your supervisor and co-workers. You are an asset to the Philadelphia Police

⁵ "Satisfactory" and "Unsatisfactory" are the only choices on the Performance Report forms, for individual criteria, and for Overall Rating.

Department and I strongly encourage you to study for future promotional exams and reach towards higher goals in the police department. Union Exhibit 2 [4/10/13].

As a newly promoted Sergeant, I have only had the opportunity to observe P/O Ghee for approximately 2 months. Officer Ghee takes initiative to back-up other officers whenever there is a need. She never complains about her assignments and works as an ORA when needed. Furthermore, Officer Ghee helps her fellow officers who are less proficient with computers and the city's email system, and as a result Officer Ghee is helping me receive the paperwork I need from those officers in a timely manner. Officer Ghee is a pleasure to work with and an asset to the squad. I would like to see Officer Ghee's quality investigations within her PSA remain consistent throughout the department's transition to the electronic 75-48a system. Union Exhibit 2 [3/26/14].

Officer S. Ghee #3325 is a great asset to my squad. She is also resourceful, in that, she is assigned to work the street but when needed works as an ORA. She is one of the leaders in my squad in quality pedestrian and vehicle investigations, as well as arrests. P/O Ghee is a veteran officer that can be relied upon to help guide the newer members of the squad and I look forward to her speedy return to the squad. Union Exhibit 2 [5/7/15].

Officer S. Ghee #3325 is a great asset to my squad. She is one of the leaders in my squad in quality pedestrian and vehicle investigations, as well as arrests. P/O Ghee displays a positive attitude and is eager to complete any task that she is given. I have personally observed P/O Ghee interacting with the members of the community in a professional manner and I thank her for a job well done. Union Exhibit 2 [6/1/16].

PBI Captain Stanford testified that Grievant's PBI panel was not "privy" to these annual Performance Reports. It is undisputed that the PBI board did not consider them.

Thus, the record does not support the conclusion that Grievant can no longer perform the duties of a Philadelphia police officer.

Consequently, in view of all the facts and circumstances of this record, the arbitrator concludes that the City had just cause to discipline Grievant, but not to dismiss her. The arbitrator finds that the appropriate penalty is a time-served

suspension, without pay.

Based upon all of the foregoing, the following Award is issued:

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AWARD

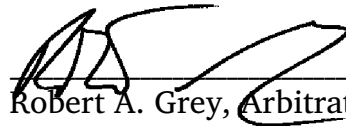
The grievance is denied in part and sustained in part.

The City had just cause to discipline Grievant, Shavon I. Ghee, but not to dismiss her. The City shall immediately reinstate Grievant and convert her dismissal to a time-served suspension, without pay.

Grievant's reinstatement is subject to CBA Article XXI, Section L (*i.e.*, conditions of employment).

The Arbitrator retains jurisdiction to resolve any disputes that may arise from the implementation of this Award.

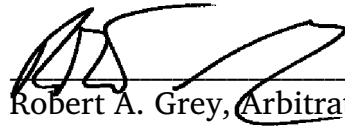
Dated: June 23, 2019


Robert A. Grey, Arbitrator

AFFIRMATION

I hereby affirm that I executed this instrument as my Opinion and Award.

Dated: June 23, 2019


Robert A. Grey, Arbitrator