

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

**FRATERNAL ORDER OF POLICE,
LODGE #5**

and

CITY OF PHILADELPHIA

**AAA Case #01-19-0000-7383
(Gr: P/O Robert Kruse Discharge)**

Walt De Treux, Esq., Arbitrator

Hearing Date: 3/9/21

Decision Date: 4/9/21

Appearances: For the FOP – Richard G. Poulson, Esq., *WILLIG WILLIAMS DAVIDSON*
For the City – Erica Kane, Esq., *ASSISTANT CITY SOLICITOR*

Introduction and Statement of Relevant Facts

In August 2018, City of Philadelphia Police Officer Robert Kruse resided with his wife on the fourth floor of an apartment building in Newtown Square. One evening, their downstairs neighbor, J [REDACTED] K [REDACTED], confronted Officer Kruse and his wife in the fourth floor hallway and complained that he heard “a bunch of noise” from their apartment. He put his finger toward Mrs. Kruse’s face and told her to stop walking around the apartment in high heels. He also instructed them to get wall-to-wall carpeting. Subsequent to that incident, K [REDACTED] came uncomfortably close to Mrs. Kruse when she was walking her dog outside. He complained that he was still hearing her walking around in heels, then oddly remarked on her hair color.

On [REDACTED], Mrs. Kruse left for work and had to share an elevator with K [REDACTED]. He followed her into the parking garage, confronted her, and said, “I told you about those fucking high heels, I’m going to fix your ass good.” Frightened, Mrs. Kruse left the garage and

called the police. She also called her husband, who was working. Officer Kruse contacted the apartment building management office to report K■■■■'s conduct.

Officer Kruse and his wife went to a Phillies game that night. Recognizing that his wife was still upset about the incident, Officer Kruse decided to stop at K■■■■'s apartment when they returned home to tell K■■■■ that his actions were reported to the police and building management. When Officer Kruse knocked on K■■■■'s door, K■■■■ came out holding a metal trash can. Officer Kruse asked what the trash can was for, and K■■■■ responded, "Don't fucking worry about it." The officer told his neighbor that he reported his actions to police and the apartment complex management, and K■■■■ responded, "I don't fucking care."

K■■■■ began moving toward Officer Kruse with the trash can. Officer Kruse identified himself as a police officer. K■■■■ lunged at him and hit him in the chest with the trash can. The trash can fell to the side, and K■■■■ grabbed onto Officer Kruse. The officer grabbed back, and both men fell through an exit door and down a few steps. They exchanged "a few punches." Once Officer Kruse broke from K■■■■'s grasp, he went back to his apartment.

Mrs. Kruse called the police to report the incident. When the Newtown Square police officers arrived, Officer Kruse met them in the parking lot. An officer asked him if he had a gun, explaining that they had a report of gun shots and a home invasion. When the officers had the opportunity to sort through the incident, they told Officer Kruse that he might receive a summary citation.

Officer Kruse self-reported the incident to his supervisor, who referred it to Internal Affairs. The Newtown Square Police Department had reported the incident to the Philadelphia Police Department that same night, and an IA investigator responded. Days after the

confrontation, K [REDACTED] claimed to have a broken nose and fractured rib. As a result, Officer Kruse was arrested and charged with aggravated assault, simple assault, reckless endangerment, and harassment. On [REDACTED], after a preliminary hearing, the criminal case was held for court. The charges were withdrawn in September 2019.

On February 25, 2019, the Philadelphia Police Commissioner took direct action to dismiss Officer Kruse from employment for Conduct Unbecoming. Officer Kruse timely grieved his termination. The parties were unable to resolve the grievance through the contractual steps, and the matter was referred to arbitration. On March 19, 2021, a hearing was held via Zoom videoconference, during which the parties had a full and fair opportunity to present documentary and other evidence, examine and cross-examine witnesses, and offer argument in support of their respective positions. The parties closed their presentations with oral argument, and the matter was submitted to the Arbitrator for a decision.

Issue

The parties stipulated to the following issue,

Did the City of Philadelphia have just cause to discharge Officer Robert Kruse? If not, what shall be the remedy?

Analysis and Decision

The City terminated Grievant for conduct unbecoming under Department Disciplinary Code Section 1-§001-10 (Unspecified) and Section 1-§026-10 (Engaging in any action that constitutes a commission of a felony or a misdemeanor which carries a potential sentence of more than one (1) year...). Grievant faced a felony charge of aggravated assault, two misdemeanor charges of simple assault and recklessly endangering another person, and a summary offense of harassment. Those charges were eventually withdrawn. The City argued at hearing that it can independently find conduct unbecoming under Section 1-§026-10 even in the absence of a criminal conviction. The language of the Section supports that position, “Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.”

To independently find conduct unbecoming and to comply with the just cause standard for discipline, the City must conduct a fair and thorough investigation. In the present case, the Internal Affairs investigation falls well short of the independent and thorough investigation needed to support the Department’s decision to terminate Grievant.

The investigation consisted solely of a review of the Newtown Square Police Department reports of the incident. K [REDACTED] was not interviewed. The Newtown Square officers

were not interviewed. The apartment complex management was not interviewed. Grievant and his wife were not interviewed. The IA investigator simply read the police reports, and the City accepted as true the facts and allegations in those reports. The Department did not independently investigate the allegations. It read the assertions in the criminal complaint and credited them without question even though those assertions were never adjudicated in criminal court. In short, the Department fully accepted K■■■■'s version of the incident without subjecting his account to any scrutiny.

K■■■■'s story as told by the police reports raises questions as to its accuracy and his credibility. The Department's investigation did not corroborate his story or probe the veracity of his allegations. As noted on the incident report, the Newtown Square officers were dispatched to the apartment complex "for an assault, possible home invasion with shots fired." K■■■■, on whom the Department solely relies, reported a home invasion with shots fired. By all accounts, there was no home invasion, no shots fired, and no weapon involved.

K■■■■ had blood on his face and chest. Once he washed it off, the police described his injuries as "very minor." The next day, he arrived at the police station with "a fresh cut" on his lip. He also submitted an X-ray showing a fractured rib and claimed he lost consciousness during the altercation. Five days after the incident, he submitted a CAT scan taken that same morning showing a broken nose.

At the very least, K■■■■'s false police report on the nature of the incident and his expanding claims of injury in the days following the confrontation raise questions as to his credibility, questions the Department did not bother to explore.

Neither K [REDACTED] nor any Newtown Square officers testified at the arbitration hearing. The City once again seeks to rely solely on the Newtown Square police reports. The relevant sections of the reports include unreliable hearsay. They cannot be accepted as truth by the Department when it has not probed the veracity of the allegations that have not been adjudicated in any court proceeding.

In the end, the only first-hand account of the incident comes from Grievant. Grievant described a situation in which his wife was repeatedly harassed by a neighbor who believed noise in his apartment was due to Mrs. Kruse walking around in high heels. His behavior frightened Mrs. Kruse and led her to call the police. In an effort to shield his wife, Grievant went to K [REDACTED]'s apartment to tell him his actions had been reported to the police and building management. K [REDACTED] answered the door with a trash can in his hand. After cursing Grievant, K [REDACTED] pushed the trash can into him and grabbed him when the trash can fell away. The two men grappled and threw punches. When K [REDACTED] released Grievant, Grievant retreated to his apartment and had his wife call the police.

The FOP acknowledged that Grievant's better course of action was not to go to K [REDACTED]'s apartment. But it notes correctly that this mistake in judgment does not warrant termination of a 22-year veteran with a good service record. Grievant acted initially in defense of his wife, and after K [REDACTED] responded violently, in defense of himself. The City fell well short of its burden of proving that Grievant engaged in conduct unbecoming, and therefore, the discharge was not for just cause.

Recognizing the hurdles it faced in presenting a case without a cooperating witness and without a full investigation, the City argued that if Grievant is reinstated, any backpay award

should be limited to September 2019 when the criminal charges were withdrawn and Grievant was arguably entitled to reinstatement.

It is not clear from the record or the Disciplinary Code that the arrest alone would have made Grievant ineligible for continued employment. The FOP argues that he could have been placed on restricted duty pending the outcome of the criminal charges.

Had the Department conducted a full and fair investigation, it would have been better positioned to determine Grievant's status pending the criminal charges. If it had interviewed K [REDACTED], the Department would have been able to assess the veracity of his allegations, weighed the conflicting accounts of Grievant and K [REDACTED], and properly determined whether Grievant could remain employed in at least a restricted capacity pending the outcome of the criminal charges. Instead, the Commissioner took direct action to terminate Grievant once the charges were held for court and without any independent investigation of the allegations. In the absence of a thorough investigation and a fair assessment of the underlying conduct, I find no compelling reason to limit Grievant's make whole remedy.

For all these reasons, I find that the City did not have just cause to discharge Officer Robert Kruse.

Award and Remedy

The grievance is sustained. The City is directed to reverse Officer Robert Kruse's discharge and reinstate him to his former position without loss of seniority. The City is further directed to make Officer Kruse whole for any losses incurred as a result of his discharge, including but not limited to back pay and benefits from the date of his termination to the date of his reinstatement, less interim earnings.

The Arbitrator shall retain jurisdiction of the case for the sole purpose of resolving any dispute over the implementation of the remedy.

Walt De Treux

WALT De TREUX