

**AMERICAN ARBITRATION ASSOCIATION**

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In the Matter of the Arbitration Between

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

**OPINION & AWARD**

**AAA No. 01-18-0003-5722  
(Sgt. Deborah Sanders-Wilson)**

-- and --

**CITY OF PHILADELPHIA**

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**ARBITRATOR:** James M. Darby, Esq.

**APPEARANCES:** For the FOP:  
Jessica C. Caggiano, Esq.  
Willig Williams & Davidson

For the City:  
Erica E. Kane, Esq.  
Assistant City Solicitor

This case arose on June 27, 2018, when the City of Philadelphia (“the City”) Police Department (“the Department”) transferred Sergeant Deborah Sanders-Wilson (“the Grievant”) for neglect of duty. Specifically, the Department determined that the Grievant did not have sufficient reasonable suspicion to detain a citizen on [REDACTED]. On July 12, 2018, the Fraternal Order of Police, Lodge #5 (“the Union”) filed a grievance alleging that the City’s discipline

action lacked just cause, which was denied by the City. On September 21, 2018, the Union filed a Demand for Arbitration. (Joint Exhibit 2.)

By letter dated November 19, 2018, from the American Arbitration Association (“AAA”), the undersigned was notified of his selection as Arbitrator of this dispute. A hearing was held on May 10, 2019, at the AAA offices in Philadelphia, Pennsylvania, where the parties were afforded a full opportunity to present testimony, exhibits and arguments in support of their positions. The parties presented closing arguments in lieu of filing post-hearing briefs, and the record was closed. After fully considering all of the evidence and arguments presented, the matter is now ready for final disposition.

### **QUESTIONS TO BE RESOLVED**

At the hearing, the parties stipulated to the following issue to be resolved by the Arbitrator:

Did the City have just cause to transfer the Grievant, Deborah Sanders-Wilson? If not, what shall the remedy be?

### **FACTS**

The Department hired the Grievant as a police officer in 1995. She was promoted to the rank of sergeant in October 2010. An Internal Affairs Bureau (“IAB”) investigation determined that on [REDACTED], police responded to a home at [REDACTED] after receiving an unverified report of a “person with a gun.” When officers arrived at the home they knocked on the door but

received no response. A neighbor saw the officers and told them he knew the owner of the home – J ██████ B ██████ -- and that he could contact her if the officers wanted to speak with her. The neighbor contacted B ██████ who arrived at the home shortly thereafter. (City Exhibit 4.)

Upon B ██████' arrival the officers explained to her why they were at her residence. B ██████ then opened her door, searched the home by herself and returned to tell the officers there was no one in the home. B ██████ then secured her property and started to leave the premises. By that time the Grievant had arrived at the residence. The Grievant engaged B ██████ in a conversation in an effort to obtain her consent for the officers to enter her property. She would not permit the officers in her home. B ██████ walked away from the Grievant and the Grievant grabbed her arm. The Grievant obtained B ██████' ID and instructed officers to conduct a pedestrian investigation. (*Id.*)

B ██████ filed a complaint with the Department alleging that upon telling the Grievant the officers could not enter her residence, the Grievant “gripped” her like she was going to arrest her (Union Exhibit 2). Investigators made numerous attempts to interview B ██████ but she would not return calls or cooperate with the investigation (City Exhibit 4). On November 21, 2017, the Department charged the Grievant with violating Article I (Conduct Unbecoming), Section 1-§017-10 (Inappropriate language conduct, or gestures to the public while on duty) and Article V (Neglect of Duty), Section 5-§011-10 (Failure to comply with orders). On January 17, 2018, the Police Board of Inquiry (“PBI”)

found the Grievant not guilty of Conduct Unbecoming. However, it found her guilty of Neglect of Duty for violating the Bailey Agreement (which prohibits stops for anonymous information) and recommended the Grievant be issued a reprimand. (Joint Exhibit 1.)

On June 27, 2018, Police Commissioner Richard J. Ross Jr. determined that the Grievant's actions violated both Directive 12.8, Vehicle or Pedestrian Investigations, and the Bailey Agreement. He issued the Grievant an Official Reprimand,<sup>1</sup> and also ordered that she be transferred from the 1<sup>st</sup> District to the 22<sup>nd</sup> District. (*Id.*)

Captain Christine McShea testified she conducted the IAB investigation and interviewed all the involved officers and the Grievant. According to the Grievant's interview transcript, she told McShea she received a report that there was "a person with a weapon, someone being held inside the property." The Grievant recalled doing a "call back" of the anonymous 911 call and spoke to a young man who she believed was a neighbor and who told her he was going to ask the owner to go to the property. When the Grievant arrived B [REDACTED] was "yelling and cursing" and complaining about the police always being at her house. The Grievant did not see B [REDACTED] enter the house with a key, so she was not satisfied there was no one else actually in the house. (City Exhibit 3.)

The Grievant also told McShea during the interview that she wanted to make sure the Department had B [REDACTED]' contact information in the event they

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<sup>1</sup> The grievance does not challenge the reprimand, only the transfer (Joint Exhibit 2).

later discovered any problems. B [REDACTED] kept walking away and refused to provide any information. McShea cited to the Grievant's interview response to further explain why she claimed she detained B [REDACTED] in the absence of any verified "flash information":<sup>2</sup>

I felt based on the totality of the situation, she was verbally combative as soon as she got to the location. She was uncooperative, and in my opinion, the investigation was not complete. We were there to make sure there was no one on location with a weapon or in need of assistance inside the house. However, she had her own opinion about police and was complaining about the police coming to her house. So at that point, I did feel as though I could detain her at the location to continue the investigation.

(City Exhibit 2, p. 5.)

McShea produced a copy of Directive 12.8-8. At Section 7 B. 1. of the Directive it states as follows:

According to the Supreme Court, anonymous reports of crimes broadcasted by Police Radio, including illegal gun assignments DO NOT, by themselves, amount to reasonable suspicion to detain and frisk an individual.

City Exhibit 1.) According to McShea, this Directive prohibits officers from detaining a citizen based on an anonymous tip. At Section 7 B. 2. a. the Directive goes on to state as follows:

This does not mean an officer may never initiate a Terry stop as a result of an anonymous 9-1-1 call. A Terry stop may be initiated upon the anonymous call provided the tip can be sufficiently corroborated by independent police work and observations that would give rise to a reasonable belief that the tip was correct (i.e., independent reasonable suspicion). Upon arrival on location, officers will use their knowledge and experience in an effort to establish reasonable suspicion to stop an individual.

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<sup>2</sup> A "flash" is a description of a suspect.

(Id.)

On cross-examination, McShea averred that she took B [REDACTED]' complaint over the phone, at which time B [REDACTED] represented that "she was grabbed by the arm and pushed and her house was searched for no reason." McShea acknowledged that B [REDACTED]' home was never searched by the police. She also testified that at least one officer went to a lieutenant after the incident to complain about the Grievant's impermissible detention of B [REDACTED]. McShea reiterated on redirect that during her investigation she reviewed the dispatch records, spoke to all of the involved officers and concluded that the Grievant's actions constituted a detention based on unverified information.

Sgt. James Wagner testified he is in the Labor Relations Unit and handled the instant grievance at the 1st Step for the Department. He stated that the Grievant had an opportunity to obtain more information from the 911 caller during the call back, but failed to do so. Additionally, he averred that the Grievant's transfer was imposed after the PBI hearing at the Commissioner's level, because she supervised the officers who had complained about her actions on [REDACTED], and since her actions compromised the "public's trust" within that community. On cross-examination, Sgt. Wagner averred that he was unaware of any claims of a "hostile environment" within the Grievant's ranks. He also testified that the Grievant was permitted to supervise in her district between the date of the PBI decision in January 2018 until the transfer discipline was issued on June 27, 2018.

The Grievant testified that at the time of this incident she was assigned to the 1st District in South Philadelphia. Her transfer on June 27, 2018 was to the area surrounding Temple University. She stated further that she could not recall the precise words of the [REDACTED] call, but it was essentially that “there was a person with a weapon and a person being held.” The Grievant explained the “RADQ” report describing the radio call that was dispatched that day. It is described as “Priority 1 (PERSON WITH A GUN)” and under the “Remarks” section states “18YR OLD FEM INSIDE .... NO FLASH... NO COMPL ... NON-VERIFIED” (Union Exhibit 3).

Additionally, the Grievant described how the officers were just “milling around” when she arrived at the residence at which time she made a call back to the 911 caller. She stated “I felt like I verified the tip after the caller told her “there was a female in the house with a gun” who was posting pictures on social media. The Grievant averred that she was concerned someone might be in the house who needed help. At that point B [REDACTED] appeared, was irate, pushed an officer aside and was yelling: “That’s my house.” The Grievant stated that B [REDACTED] did not use a key to enter the home, so there was no evidence that she was the owner. B [REDACTED] refused to let the officers in the home and would not provide any ID or property information.

According to the Grievant, the officers never should have allowed B [REDACTED] in the house without their walking through it first. B [REDACTED] was uncooperative and then told the Grievant it was her mother’s house. The Grievant testified

B [REDACTED] started running away at which time the Grievant “trotted” after her asking her to stop because the Grievant felt she needed more information. B [REDACTED] “cursed back at us” and the Grievant “grabbed [B [REDACTED]] jacket and asked her for ID.” She detained B [REDACTED] for approximately 45 seconds, and did not frisk or harm her. The Grievant stated she believed she had sufficient probable cause to detain B [REDACTED] and was trained “to get good information.”

The Grievant testified further that she “verified” the tip by making the call back to the 911 caller. B [REDACTED] was irate for no reason and the Grievant wanted to find out if there was a gun on the premises. She added: “That was the call.” The Grievant averred that her transfer to the 22<sup>nd</sup> District placed a hold on her other transfer requests.

On cross-examination, the Grievant denied that she had previously conceded the 911 call was unverified. She also could not remember asking the caller for his name on the call back. The Grievant stated that she “got the impression” from the caller that he was familiar with B [REDACTED] or one of her family members. She also explained that she did not violate the Pedestrian Investigation Directive because she made the call back and did not rely on the anonymous tip alone. The Grievant stated that no one had reported that someone was in the house being held against their will. However, when she saw B [REDACTED] for the first time she appeared older than 18 years old. Therefore, the Grievant “assumed the 18 year old was still in the house.”



## **DISCUSSION**

The parties' positions can be briefly summarized.

**The City** argues that the Grievant's reprimand and transfer are supported by just cause. IAB performed a very thorough investigation despite the fact that the information in B██████' complaint was not completely accurate and she was not cooperative with the investigation. The City also insists that the Grievant's call back did not constitute a "verification" of the initial call, inasmuch as the person's name was never obtained, nor any more specific information about the alleged social media post.

The City also asserts the Police Commissioner had the authority to transfer the Grievant here, because of the possible negative interaction that could arise from her subordinates who complained about her, and because her interactions with the community could be "tainted." There is no need for the City to show any actual negative contacts, and her performance evaluations show a "pattern of negative relationships with co-workers." The City emphasizes that the Grievant unlawfully detained B██████ based solely on "vague" information.

**The Union** contends that there was no just cause for the Grievant's transfer. It maintains that Section 7. B. 1. does not apply here because of the subsequent language of Section 7 B. 2. a. (which permits officers to initiate a Terry stop where the officer's own investigation provides verification of an anonymous tip). Here, the Grievant used her knowledge and experience, made a call back, had a discussion with B██████ and concluded it was important to

detain her to obtain her ID. The Union also highlights that we now know B [REDACTED], subsequent complaint to the Department was false and she did not cooperate with the investigation. Additionally, the Grievant was at all times transparent about her actions in detaining B [REDACTED].

Further, the Union submits that the alleged “negative interactions” with subordinates are not supported by the evidence. The Department permitted the Grievant to continue to supervise for months after the IAB investigation was closed and the PBI hearing was held. The Union argues that there is no evidence of any hostile environment stemming from the Grievant’s supervision or that any subordinates were directed not to deal with the Grievant. For these reasons, the transfer must be set aside.

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The Grievant was disciplined for violating Directive 12.8-8, Section 7 B. 1.<sup>3</sup>

This Directive pertains to “Pedestrian Investigations” and states as follows:

According to the Supreme Court, anonymous reports of crimes broadcasted by Police Radio, including illegal gun assignments DO NOT, by themselves, amount to reasonable suspicion to detain and frisk an individual.

The probative evidence establishes that the Grievant detained B [REDACTED], albeit for less than a minute. Her explanations for doing so have at all times

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<sup>3</sup> The June 27, 2017, discipline letter also states that the Grievant’s actions violated the Bailey Agreement “which prohibits stops for anonymous information.” This Agreement was never referred to by counsel at the hearing, nor was there any attempt by counsel to demonstrate how the Grievant did or did not violate this cited authority.

been transparent, consistent and clear. She wanted to obtain B [REDACTED]' personal information in case there were further developments regarding the anonymous 911 call. The Grievant was concerned about: 1) B [REDACTED]' harsh reaction towards the officers; 2) the fact it was unclear whether B [REDACTED] was the owner of the residence; and 3) B [REDACTED]' self-report that no one was in the home.

The evidence also shows IAB conducted a thorough investigation, interviewed everyone involved (except B [REDACTED]) and based on the Grievant's own description of the event concluded that she was in violation of Section 7 B. 1. of Directive 12.8-8 by detaining B [REDACTED] under these circumstances. The PBI agreed. Indeed, the information the Grievant had in her possession was vague, and she did not know the identity of the person who made the 911 call.

The Department is entitled to some latitude regarding its interpretation of its own rules and directives. Absent evidence that the Directive on its face is unreasonable, arbitrary or being enforced unfairly, the Department's conclusions regarding whether the information received by the Grievant was verified or whether her actions constituted an impermissible detention, are entitled to significant weight.

However, there must be sufficient evidence demonstrating the rule at issue is clear and that the Grievant violated the same. The Union has presented persuasive arguments to the contrary. Section 7 B. 1. expressly provides that "anonymous reports of crimes ... DO NOT, by themselves, amount to reasonable suspicion to detain **and** frisk [in the conjunctive] an individual." It is undisputed

the Grievant never frisked B [REDACTED]. Can an anonymous tip alone provide reasonable suspicion to simply detain a pedestrian, but not frisk them? McShea claimed it cannot, but the City does not address this incongruity.<sup>4</sup>

Second, there is a clarification to Section 7 B. 1. found at Section 7 B. 2.

a. This provision states that

[t]his does not mean an officer may never initiate a Terry stop as a result of an anonymous 9-1-1 call. A Terry stop may be initiated upon the anonymous call provided the tip can be sufficiently corroborated by independent police work and observations that would give rise to a reasonable belief that the tip was correct (i.e., independent reasonable suspicion). Upon arrival on location, officers will use their knowledge and experience in an effort to establish reasonable suspicion to stop an individual.

The Grievant's reason for detaining B [REDACTED] appears to fit within the rubric of this language. Thus, the Union argues that she used her knowledge, experience and observations to evaluate the total circumstances (including her call back to the anonymous caller) to form a reasonable belief that there was someone with a gun in the house. Even with that information, she did not insist on searching the house or B [REDACTED]' person. Rather, she detained her for only 45 seconds to obtain her identification. Neither the IAB report, the PBI, nor the Commissioner addressed the applicability of Section 7. B. 2. a. to the facts of this case. Given this ambiguity, I cannot conclude the evidence is sufficient to conclude the Grievant was on notice she could be disciplined for her actions or

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<sup>4</sup> The undersigned asked Cptn. McShea whether under these same circumstances the Grievant could have detained B [REDACTED] from walking away if the anonymous tip had been that there was a person with a gun in the home holding children hostage. She responded that based on the tip involving a hostage situation the Grievant could have detained B [REDACTED]. However, the tip in this hypothetical is no more "verified" than the one received by the Grievant in this case.

that she violated the express language of Section 7 B. 1. This is reason enough to rescind the transfer discipline.<sup>5</sup>

Furthermore, the record is devoid of sufficient probative evidence that the Grievant could no longer supervise effectively in the 1<sup>st</sup> District. She was not charged by the Department with any such deficiencies. While the IAB Report indicates the Grievant's subordinates believed her actions towards B [REDACTED] were inappropriate and too aggressive, the PBI rejected the charge that the Grievant had engaged in inappropriate conduct, language or gestures with B [REDACTED].

Nor is there any allegation the Grievant created a hostile work environment for her subordinates, and the contention there was a "taint" left by the Grievant's actions in the community is based purely on anecdotal second-hand testimony. To the contrary, the Grievant continued to supervise and work in the district without incident for months after this event before she was transferred on June 27, 2018.<sup>6</sup>

Accordingly, based on the foregoing, the grievance is sustained. The City did not have just cause to transfer the Grievant for her actions on [REDACTED]. The transfer shall be removed from her discipline file and the Grievant shall be

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<sup>5</sup> Again, the grievance does not challenge the reprimand issued to the Grievant and the parties stipulated solely to the issue of whether there was just cause for the transfer.

<sup>6</sup> The Grievant's performance reports do not justify the transfer. She has always received satisfactory ratings in the "Relationship with People" performance factor (Joint Exhibit 1). Moreover, the June 8, 2017, report states that "... what was disturbing to me was the relationship that you have **had in the past** with some of your peer supervisors and your subordinates, I have noticed **great improvement** with both ..." *Id.* (Emphasis added).

provided the option of returning to her former District and shift. She shall also as of this date be permitted to apply for any other transfer opportunities.

Consistent with the foregoing discussion and findings, the Arbitrator renders the following

**AWARD**

The grievance is sustained.

The City did not have just cause to transfer the Grievant, Sgt. Deborah Sanders-Wilson for her actions on [REDACTED]. The transfer shall be removed from her discipline file and the Grievant shall be provided the option of returning to her former District and shift. She shall also as of this date be permitted to apply for any other transfer opportunities.

A handwritten signature in black ink, appearing to read 'James M. Darby', written over a horizontal line.

JAMES M. DARBY  
Arbitrator  
Lancaster, Pennsylvania  
March 10, 2021