

American Arbitration Association
Case Number: 01-20-0014-8551

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In the Matter of the Arbitration

Between

AFSCME DISTRICT COUNCIL 47
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Grievance: Shaketa Armstead, Suspension
Jose Santana, Suspension

-----X
BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the City

Cara Leheny, Esq.

For the Union

William Campbell, Esq.

Willig Williams Davidson

Pursuant to the provisions of the collective bargaining agreement between THE CITY OF PHILADELPHIA (hereinafter, "the City") and AFSCME DISTRICT COUNCIL 47 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

A hearing was held by ZOOM, with consent of all parties, on April 7, 2021. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after oral closing arguments. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

Some quotation marks (""") may be used to denote parts of testimony or argument. Although a court reporter was present, no transcript was provided. The quotation marks denote portions of the notes taken by the Arbitrator during the course of the hearing and represent a close approximation of what was said by a witness or by counsel. Those notes and all attendant materials will be destroyed at the time this Opinion is disseminated.

The Issue:

Whether the three (3) day suspension for Ms. Shaketa Armstead and whether the three (3) day suspension for Mr. Jose Santana were for just cause?

If not, what shall be the remedy?

BACKGROUND

The parties stipulated to a number of facts.

BEFORE THE AMERICAN
ARBITRATION ASSOCIATION AFSMCE
District Council 33, Local
427,
v.
CITY OF PHILADELPHIA
(STREETS)

Case No. 01 20 0014 8551

Grievants: Shaketa Armstead & Jose Santana
Arbitrator: Randi Elyse Lowitt

JOINT STIPULATIONS

1. The City of Philadelphia and AFSCME District Council 33, Local 427 (the “Local” or “Union”) are parties to a series of memorandum of understanding that, together, form the parties collective bargaining agreement (“CBA”).
2. The parties’ CBA includes a grievance and arbitration section that requires just cause for discipline.
3. Grievants Shaketa Armstead and Jose Santana are Laborers in the City Streets Department’s Sanitation Division.
4. Santana was hired as a Laborer on June 1, 2015. At the time of the incident leading to the incident suspension, Santana had a history of satisfactory job performance evaluations.
5. Armstead was hired as a Laborer on April 1, 2019, and, at the time of the incident leading to the instant suspension, she had not received an annual performance evaluation.
6. Before the suspension at issue, neither employee had received any discipline.
7. On [REDACTED], both grievants were assigned to a pilot street sweeping route in the Kensington section of Philadelphia.
8. W [REDACTED] G [REDACTED], Street Crew Chief II, recommended a three (3) day suspension for both grievants for violation of the media policy banning employees from conversing with the news media.
9. The grievants appealed through the internal department process, but the decision was upheld by Deputy Commissioner Keith Warren.
10. Department practice is that the Streets Commissioner does not hear suspensions of less than five (5) days; grievants requested an exception, and the Commissioner declined to hear the appeal.
11. The grievants were suspended from November 19, 2019 through November 21, 2019.

12. On November 19, 2019, the Local filed grievances on behalf of both Armstead and Santana contending that the suspensions were without just cause because the two employees allegedly were “never orientated about a media policy.” The Local requested that the suspensions be rescinded and the grievants made whole.

13. On August 19, 2020, the grievances were denied at Step IV, and, on September 11, 2020, the Locals filed demands for arbitration.

14. On March 10, 2021, the separate arbitrations were consolidated by agreement under AAA No. 01-20-0014-8551

On or about [REDACTED], Ms. Armstead and Mr. Santana were approached by a reporter from WHY?; both were interviewed and Ms. Armstead posed for a photograph. The interview was published on [REDACTED]. (Joint Exhibit #5). Neither Ms. Armstead nor Mr. Santana had asked for nor been given permission to give the interview, which was given on worktime and in violation of the City’s media policy. (City Exhibit #1). The City averred that the three (3) day suspension was issued because Mr. Santana and Ms. Armstead were insubordinate in their disregard of the media policy. Further the City insisted that the suspension was, therefore, appropriate, in light of Streets Order 100, the purported schedule of offenses and discipline to be imposed, dating from September 1970. (City Exhibit #3). The City suspended both Ms. Armstead and Mr. Santana for three days, which suspensions were grieved through the process, not resolved, and ultimately processed through to arbitration. (Joint Exhibit #s 2a, 2b, 3a, 3b, 6a, 6b).

Mr. F [REDACTED] S [REDACTED] has been the Sanitation Operations Assistant Administrator for seven (7) years and has worked in the Department for

twenty-two (22) years. He oversees approximately 200 employees. One of his areas of responsibility was the pilot program, which had approximately eighty (80) employees. Mr. S████ explained that he is in touch with his supervisory personnel each day and, in addition, that most if not all, of the employees in the division have the ability to reach him at any time via cell phone.

Mr. S████ related that there is a policy regarding speaking to media while on duty, that he first learned about it when he was being oriented to the laborer position over twenty (20) years ago, and that the substance of it has remained the same: do not speak to the public or the media, report to a supervisor, and, again, do not speak to the public or the media. The policy specifically notes that the Public Relations and Public Affairs Departments are to speak to the media so that the City speaks as if in one voice.

Mr. S████ discussed the role that the Laborers have in keeping the City clean. (City Exhibit #2). He noted that Laborers report to their Crew Chiefs. Recalling that "Philadelphia had been dubbed as one of the dirtiest large cities in America," the City rolled out the pilot street cleaning program as one way to address this problem. While a prior street cleaning program had been in effect until 2008, during the recession "it went away," but there was a "major uproar about the City not providing street cleaning and the Mayor ran on bringing it back." Of the many areas to

be cleaned, each had one or two crews, comprised of six (6) Laborers, one (1) broom driver and a crew chief. The pilot program specifically made possible that the residents did not have to move their cars for street cleaning. Each crew begins each day at a specific location, three (3) Laborers on each side of the street carrying large leafblower-like backpacks, blowing everything from the side of the street and under the cars to the center of the street where the broom driver would then sweep it up. The crew chief monitors the work and scouts ahead of the crew for potential issues. In advance of the roll out of the pilot, there had been a "great deal of interest from the media...didn't know which direction it would go." As to instructions given to employees, Mr. S█████ recalled that "I, myself, held meetings with employees and instructed them not to speak to the media and reiterated through subordinate managers to tell the employees not to speak to the media." Mr. S█████ insisted that these instructions would have been given to Ms. Armstead and Mr. Santana, as well.

Ms. Armstead and Mr. Santana worked on one of the crews assigned to the Kensington area. Mr. W█████ G█████ was the supervisor, a position over the crew chief. On ██████████, Mr. S█████ "got a report that someone spoke with the media. I called W█████ and he said it was Armstead and Santana." Ultimately Mr. G█████ recommended that they each be suspended for three (3) days. They appealed. Mr. S█████, two

Union Representatives and the two Grievants were present at the appeal. Mr. S█████ "heard their side of the story. They felt comfortable giving the interview because the Union Business Agent was there." Mr. S█████ said that, although he did not recall hearing it, they might have said that they were unaware of the media policy. Mr. S█████ upheld Mr. G█████'s determination. Mr. S█████ also maintained that, other than Mr. Santana and Ms. Armstead, no other employee gave in interview to the media.

On cross examination, Mr. S█████ reiterated that the pilot began in April 2019, in six (6) neighborhoods. He reiterated that he had meetings with the employees in late March, answering questions about the pilot program, contending that Mr. Santana should have been at the meetings, but acknowledging that Ms. Armstead was not hired until April 1, 2019. Mr. S█████ reiterated that he did not know how he learned that the interview took place, but that he was made aware of it.

Mr. Clinton Gibson has been with the Department for almost ten (10) years, and has been the Senior Department HR Associate for approximately one year. At the time of the incident, he worked with the Sanitation Division as the HR Generalist, covering hiring and discipline.

With regard to hiring, Mr. Gibson related that he holds a two (2) part orientation for new employees, one of which is heavily oriented to filling out paperwork and one, "especially for Laborers, with rules and regulations, speakers from the Union, Sanitation Administration...a large

amount of information of the job, rules and regulations, expectations....” Mr. Gibson maintained that he did “go over the media policy and the social media policy...verbally...it was maybe a paragraph in which we said don't talk to the media and if asked, refer them to your supervisor and that was it.” While he does not specifically recall giving the talk to Ms. Armstead or Mr. Santana, Mr. Gibson “did every class seven (7) years straight.” Mr. Gibson said that the Union Representatives would not have been present during this part of the orientation.

Mr. Gibson was asked about the Streets Order 100, from 1970, and contended that “I think some of it is out of date...asks for a mimeo or xerox, not necessarily done that way....” He said the “appeals process is almost the same...some parts people can have more appeal rights now than then.” When asked about insubordination, the charge preferred against Ms. Armstead and Mr. Santana, Mr. Gibson said it was accurate in that it described insubordination generally, but that insubordination could also be abusive acts or language.

Mr. Gibson described the appeals process, taking note that, if the disciplinary action recommended is less than five (5) days, then the Commissioner ultimately has latitude not to hear the appeal after the fourth level, even if asked to do so. As to the third and fourth level appeals, Mr. Gibson said they “usually are the same day, within hours, because everybody will be there...switching one person, the Grievant, is

easier to schedule that way." The third and fourth levels, in this instance, both involved him and upper level Union officials. Mr. Gibson thinks that both Ms. Armstead and Mr. Santana said they were not aware of the media policy, and/or that they were authorized to speak by a Union official, Mr. O [REDACTED] S [REDACTED].

On cross-examination, Mr. Gibson reviewed the orientation process again. He stated that insubordination is "when you are given a directive or a rule and you fail to follow it." He acknowledged that insubordination can also be ignoring a directive. Mr. Gibson acknowledged that the media policy does not mention that failure to follow it could lead to discipline. Mr. Gibson said he was unaware of any other person who was disciplined for an alleged violation of the policy, subsequent to Mr. Santana and Ms. Armstead.

Mr. Keith Warren has been the Deputy Commissioner of Streets for Sanitation Operations for over five (5) years. Mr. Warren has been with Sanitation for years, having "held every position on the ladder." Mr. Warren was asked about the media policy. When asked if it applied to him, also, he contended that "it applies to every member...including the Commissioner." Mr. Warren also said that he participates in orientation. "I give a speech about expectations...making four points every single orientation for seventeen years...attendance, safety, productivity, don't engage the public...always the four points I go over." He always has

them written on a board. Mr. Warren also said that the Union Representatives are typically not present when he speaks. As to what he is trying to convey to the employees, Mr. Warren said "...public input, a lot of people have a lot of gripes...they can't walk up to the office without getting past the receptionist and the assistant and find the person you want to make a complaint to...and people are reluctant to approach police and fire...but...trashmen...we come to your house every week, one to two times a week like clockwork...and we hear about every problem since you're in a truck that says City of Philadelphia.... You be very polite, direct them to the supervisor, give the phone number of the District. You will encounter the public...please direct those people to the foreman or supervisor who is paid to answer questions. Questions may be in the form of a citizen who says they're calling the media and the media might ask and I say 'please don't engage the public or media.'"

While Mr. Warren does not recall how he heard that the Grievants had spoken to the media. He does recall participating in the appeals process. "I remember it being discussed, they felt they had permission...the hearing ended abruptly, and I upheld the supervisor's recommendation." Mr. Warren thought that the Grievants said they had permission from the Union, but did not specifically recall. As to why the hearing ended abruptly, "Mr. S██████ was annoyed I wasn't trying to consider his side of the argument. I was trying to consider what was being

offered but it was a challenge to get through. Mr. S [REDACTED] was very upset and felt these people were being singled out, they didn't know, being picked on because of the topic of the interview, if not that we wouldn't care." However, Mr. Warren pointed out that the content of what was said is irrelevant, it is the lack of permission that is relevant. Although the Union and the Grievants asked the Commissioner to review the discipline, he declined to do so. Mr. Warren said that he upheld the discipline because "this is a clearcut case of insubordination. The few arguments as to why it shouldn't be (insubordination) weren't swaying me and then the hearing dissolved rapidly." Mr. Warren insisted that he had nothing personal against Mr. S [REDACTED], and that the Grievants "felt they had permission to give an interview on City time and I wanted to talk about why you did it on the clock and they wanted to talk about authorization," which was not from the crew chief or the supervisor. As to Mr. S [REDACTED]'s interview, "he didn't have authority to take someone on City time and stop their work without permission of management...."

On cross examination, Mr. Warren reiterated that he spent one day at the orientation, of which one hour was the approximate length of his talk, of which one part of that hour was about not engaging the public, and which does not include any handouts but only verbal discussion. Mr. Warren reiterated that the appeal ended because "the discourse wasn't maintained in a professional level...Mr. S [REDACTED] was not happy with the

direction I was thinking...he got up and left the room in the middle of us trying to negotiate the case."

Mr. O [REDACTED] S [REDACTED] worked for the Department for twenty (20) years before he became a full time Union employee. At the time of the incident, he was a Business Agent. He has, in the past, "occasionally" engaged with the media. He did speak to the WHY? reporter for the [REDACTED] article. "They contacted me about some issues they wanted to discuss with the leaf blowers and other things...the blowers to clean the streets...started talking about the blowers and a lot of environmental groups had concerns...fumes...and concerns of our people working out there, working in Kensington District...employee safety, picking up needles and all kinds of exposure...proper uniforms, face shields, goggles, things of that nature.... Met him below where the train lets you off in Kensington...I went by myself. ...I felt like it was unsafe for our employees. Number 1...being poked with needles...high volume of drugs and crime...emphasized I thought the City wasn't covering the employees with proper equipment to do their job...." Neither Mr. Santana nor Ms. Armstead was present during the course of Mr. S [REDACTED]'s interview. Mr. S [REDACTED] said he did not tell the reporter about either Ms. Armstead or Mr. S [REDACTED]. Mr. S [REDACTED] does not even recall ever specifically meeting either Grievant prior to the suspensions being issued; he had "never said more than two words to either until the day of the hearing."

Mr. S [REDACTED] believed that the Grievants were “being unfairly treated, punished like retaliation because the City didn’t like what was in the article. ...The Department tried to make it about us and them and it wasn’t about that. ...I was there to defend a crew I felt was being improperly charged...” Mr. S [REDACTED] also argued that neither Grievant was on notice of the rule.

Mr. S [REDACTED] said that he has gone to orientations for years, as a Union Business Agent and as Vice President. Mr. S [REDACTED] does not ever recall hearing a discussion of the media policy. “I have never seen or witnessed anybody ever go over the policy.” As to violations of the policy, Mr. S [REDACTED] said that he has seen people disciplined for violating the social media policy, but not the media policy.

On cross examination, Mr. S [REDACTED] reiterated that he met with the reporter near the SEPTA stop in Kensington, that he was not present when the reporter spoke with either Mr. Santana or Ms. Armstead, and that he had not directed the reporter to either. Mr. S [REDACTED] insisted that insubordination was not the correct charge, saying that “insubordination is a failure to follow a direct order...they didn’t have a direct order...also the supervisor must inform the employee they are being insubordinate and then go forward...” Mr. S [REDACTED] also contended that the Department did not follow the appropriate hierarchy when imposing the discipline.

Ms. Shaketa Armstead testified on her own behalf. Ms. Armstead did recall the orientation, did recall that rules and regulations were reviewed, did recall doing paperwork, and did recall Mr. Warren and Mr. Gibson speaking. She recalled a sexual harassment and workplace violence workshop, discussions about PFCU and other city programs. She does not recall discussion about any media policy. "I specifically remember social media...social media was a big thing...but media, no."

Ms. Armstead was assigned to the pilot program, to the Kensington area. Her job was to "blow the curb...it's a backpack, huge, nozzle with a hose coming out...hold the trigger...blow from the property, curb to street, under the cars, so the sweeper can get stuff off the streets...feces, needles, drug paraphernalia...just about everything." With regard to the needles, Ms. Armstead said that, generally, when they see one, they notify anyone else in close proximity so that it "doesn't blow up" and puncture them. Ms. Armstead said that the Department issued them, "besides gloves, one set of goggles."

Ms. Armstead recalled speaking with the WHYI reporter. "We just got finished ...waiting for the broom. ...I felt he asked a personal question, he asked me about safety for myself...nobody around me...crew chief in his car...Santana across the street.... He asked me do I feel safe working in the neighborhood doing what I do. I told him I don't feel safe in the neighborhood but we doing what we can to be safe." Ms. Armstead said

that, when the reporter approached her, "he said he just had a conversation with O [REDACTED]. ...I thought it was a personal question was how I felt...I didn't say anything against the City or anything wrong." Ms. Armstead said that Mr. S [REDACTED] had not told her to speak with the reporter. And, she reiterated that she was unaware of any media policy.

On cross examination, Ms. Armstead reiterated that she recalled Mr. Warren speaking but did not recall anything about the media policy and did not recall seeing his four points on a board. Specifically, when asked if Mr. Warren spoke about not engaging the public, Ms. Armstead said "I don't recall him talking about that...he may have but I recall everything else but that right there I don't remember." She also does not recall whether or if Mr. Gibson told them to not speak with media. Ms. Armstead acknowledged that the reporter did identify himself as a reporter, but again insisted that, because she believed the question was personal, she did not have a problem answering. However, Ms. Armstead said she would have answered if the question had to do with the City, as well.

Mr. Jose Santana testified on his own behalf. When asked about the media policy, Mr. Santana insisted "I know we didn't cover that...social media, I remember that...regular media, I don't remember." He does not recall ever having been provided a copy of it. He does not remember ever being verbally told about it. As to the reporter, "when they came up to me, I thought it was a personal question. If I would've

knew before then I wouldn't've said nothing...told them to go to a supervisor." Mr. Santana reiterated that he did not recall ever being told about not speaking with the media, either by a crew chief or a higher level supervisor. At his orientation, he recalled discussions about "sexual harassment, work violence, I can't recall...."

Mr. Santana reviewed the work he does, blowing trash and other residue into the street, from the curb and under the cars. As for the reporter, "a person came up to me and asked me a question, had a microphone, said O█████'s name. I thought it as ok, that's what I thought. He said O█████ S█████. I said, he knows O█████. I'm thinking it's ok to say something. I didn't say nothing bad about the City. ...the glasses, gloves, the uniform. ...I said the needles, feces, if a needle comes with pressure of a blower, it's gonna stick you. ...He asked me a personal question. I didn't know he was a reporter...it's messed up down there. That's it." As to the mention of Mr. S█████'s name, "...in my head, I never seen O█████'s face...when he said that name...I thought since he knew him...he didn't ask nothing bad about the City...."

On cross examination, Mr. Santana reiterated that he was aware of the social media policy, but not any media policy. Mr. Santana reiterated that the person who approached him had a microphone, "...he pulled it out after I was already talking to him...he didn't tell me he was a reporter, just started talking...he came up saying O█████ S█████, then I see the

paper with him in it and I think I didn't do anything wrong...I thought it was a regular personal question, I didn't think anything of it." Mr. Santana did not see the reporter when the reporter was speaking with Ms. Armstead. He did not see anyone take a photo of Ms. Armstead. When Mr. Santana was finished talking with him, the reporter "just left." Mr. Santana contended that he believed the person who spoke to him was "a regular person...he asked how I felt about working with all the trash and I said in the beginning I didn't want to do it but now it's regular." Mr. Santana insisted that he had never been told, by anybody, about the media policy."

POSITIONS OF THE PARTIES

The City:

The City maintains that it had just cause to suspend both Ms. Armstead and Mr. Santana. It examined the seven factors that may lead to a determination of just cause and found that each had been met.

As to the first factor, "whether the rule is reasonable," the City insists that a rule saying, in essence, do not speak to the media or the public without permission from a supervisor," a rule that applies only to doing so while actually on duty and on the clock for the City, certainly makes sense. "People are hired to do a job...paid by tax dollars to do that job. ...Laborers are not hired to speak on behalf of the City to the press or to the public." The City notes that it is problematic when a City employee, on City time, takes time to speak about their job duties, since their statements can be perceived as being City policy. Therefore, the rule is reasonable.

The next factor is notice. As an initial matter, the City asserts that, even if the Grievants insist they did not have notice of the rule, "it is simply common sense. They are paid to do a job, the work of a laborer, to be part of a pilot program, not to have conversations with reporters or the public. Whether they thought the question was personal or not...and to pose for photos.... The reporter got their names, correct spellings, quotes and a photo. This is not just the causal approach described by the

Grievants.” The City points out that each Grievant initially asserted that they were never told of the rule, but when pressed ultimately acknowledged that they did not remember, “which is a convenient thing to say.” It turned to the testimony of Mr. S█████, Mr. Gibson and Deputy Warren. Mr. S█████, who has been in his current position since 2013, “said he talked to his team, which included Mr. Santana and not Ms. Armstead, precisely because this program would engender a lot of attention...told the managers to make sure...” Mr. Gibson, who has been doing orientations for quite some time, “said he spoke about this rule with new hires.... To his credit, he didn't say he spends a lot of time...not a big song and dance...relatively brief statement. Honestly, it doesn't require a great deal of song and dance...don't talk to the press or the public without supervisory permission. And, the Union is not present when Mr. Gibson does this part.” As to Deputy Warren, “he related the forty-five (45) minute to one hour presentation he gives about his four (4) main points...with an easel board...which he writes out with bullet points. We heard him do some of it...as his examples...and it is clear this happens. He spends ten (10) to fifteen (15) minutes talking about it.” The City maintains that the Grievants conveniently are unable to recall this, and that lack of recollection is not credible.

The City reminds the Arbitrator that there was a great deal of media and public interest in the pilot program, encompassing at least eighty (80)

employees, and yet “no one else gave an unauthorized interview. Somehow seventy-eight (78) other people knew not to talk to the media or the press. These two are the only ones who were never told, never heard, never got word. The shifting sands of this story go to the lack of credibility.”

Turning to the investigation and whether it was sufficient, the City acknowledges that “admittedly there was not much of an investigation,” but insists that is because, when the supervisors learned of the interview and reported it, and when it was checked into, there had been an interview and it was published. “They gave it...they admitted they answered the questions...what more need be proven.” Additionally, while the recommendation for the suspension was given on October 11, the final determination to give the three (3) day suspension to each Grievant was not made until November, when the notice to suspend was issued.

The City states that there is no evidence of disparate treatment. As to whether the discipline issued was appropriate, the City vigorously disagrees with the Union's insistence that this is not insubordination. “That is not true...insubordination is the failure to follow a direct order or directive...in this case...and not the narrow, narrow category the Union insists on where, every time we give out a policy we would have to remind people every moment of every day...and remind them...and remind

them...that's just not practical and not how it is done." The City points to the schedule in the contract, calling for a three (3) day suspension, which schedule has been in effect for over forty (40) years, and insists that the Grievants received the same discipline that any other employee would receive.

As to the Union's contention that the Grievants did not know the rule, the City simply does not find that to be credible. As to the Union's argument that there should be some sort of exception because the discussion was about "work conditions...the content does not matter here, it's not the content ...it is not about whether the area is challenging or the Union is unhappy with the equipment. It is whether they knew of the policy. The evidence shows they did and they violated it." As the City noted, "we are a public entity, we are not permitted to take viewpoints into account when making decisions...supposed to be completely neutral...subject matter simply does not matter. The rule is you do not give interviews without authority from a supervisor." After finding that the Grievants did give an interview without permission, the City insists that the Grievants were appropriately disciplined.

Therefore, the City demands that the grievances be denied.

The Union:

The Union avers that the burden of proof is on the City and that the City has not met its burden of proving just cause for the discipline imposed. While the Union acknowledges that “there is no first amendment right to talk to reporters while on the clock...when the subject matter is working conditions and particularly health and safety, there is a chilling effect of...immediately jumping to suspend...it is just not called for.”

The Union also focused on the traditional elements for disciplinary action to be for just cause. Initially, the Union insists that “there is a glaring lack of notice. Ms. Armstead was a new employee at the time and other than maybe a short instruction by Mr. Gibson...that was about all she had....not enough. ...The policy, even when written, doesn’t say you can be disciplined for violating it. ...There is no specific notice for violating the policy. ...F█████ S█████’s testimony also shows a gap between the higher level management who maybe wanted the policy distributed...and the rank and file employees to filter down to. There is no evidence that Mr. Santana was ever presented with the media policy, nor was Ms. Armstead.” The Union also highlights the fact that, days after this occurrence, the City sent out the policy, “evidence right there that the rank and file was not on notice.”

As for the investigative step, the Union finds it to be completely lacking. "The City produced almost no evidence of what was done before the three (3) day suspension was issued. It is unclear even after all the testimony as to how the Department knew the interviews happened. The article was released on [REDACTED], the interviews were on [REDACTED]. Even the inkling that the interview occurred and the City, without talking to them, would suspend the Grievants, bypasses normal procedures."

The Union focused on the rationale for the suspension, insubordination, and is not persuaded that what the Grievants did was insubordination. "Simply violating a work rule is not insubordination. If that were the case, every time an employee violated a work rule, there would be discipline."

Finally, the Union avers that the City is disingenuous when it says that the content of the interview is not what mattered, that it was the mere fact of the interview being given. "Content is always important, always a factor. It is not credible to believe that the powers that be did not care."

Therefore, the Union demands that the grievances be sustained and that Ms. Armstead and Mr. Santana be made whole.

OPINION

After a complete review of all the evidence and testimony, I find that the City did have just cause to suspend Mr. Santana and Ms. Armstead. My reasoning follows.

This case is not a first amendment case. This case is not about whether the area, Kensington, is particularly dirty or whether there are feces everywhere, whether the area is particularly riddled with drug paraphernalia and used needles, or whether the area is particularly inhabited by homeless. This case is about whether there was a rule, whether the rule was imparted to the Grievants, and whether the Grievants violated the rule. I find that there was a rule, that the rule was imparted to the Grievants, and that the Grievants did violate the rule.

I am not persuaded by either Grievant insisting that they thought the question being asked by the reporter, who neither Grievant was willing to initially acknowledge was a reporter, was a "personal" question. Somehow, if it had been, they believed that they would have been okay answering it. Conversely, and following the logical progression, they imply that IF it had not been personal, IF it had been about City business, THEN they would not have been permitted to answer, although Ms. Armstead ultimately determined that she could answer that question as well. Either way, the simple, logical progression, also shows that the Grievants were aware that they were not supposed to speak to reporters or the public

while on City time doing City work. And, the fact that this person had a microphone, which both Ms. Armstead and Mr. Santana acknowledged, is further evidence that this was not a simple conversation. Coupled with the fact that the reporter did have the Grievants names spelled correctly and did have a photo of Ms. Armstead in her work gear, it is not credible that the Grievants did not know the person was a reporter. I find it credible that Mr. Gibson and Deputy Warren both trained both Grievants about this simple rule. I find it credible that the training time might have been short; there is no reason to belabor it, the rule is simple. I find it credible that Mr. S█████ reiterated this same information just prior to the pilot program being instituted, and that Mr. Santana would have heard this. I find it credible that Ms. Armstead, a new employee, would have and should have recalled learning this rule days prior to speaking to the reporter. I find it incredible, that is, not believable, that both Grievants recall almost every other specific of the training except for this one. And, quite simply, the fact that a stranger approached both Grievants, mentioned Mr. S█████'s name, and that each felt it was acceptable to speak with that stranger, who, they add, pulled out a microphone, simply stretches credulity. Mr. S█████ is not the supervisor of either Grievant; the Grievants do not work for Mr. S█████ and he could not have given permission for either to do what they were prohibited to do by their Employer, the City. Mr. S█████ did not do so. I find Mr. S█████ credible

when he testified that he did not tell the reporter to speak with either Grievant. This was a reporter, who used reporter tools to get his story, and both Grievants violated a clear rule. That is clear and classic insubordination. There was just cause to discipline.

In view of the foregoing, I issue the following

AWARD

1. The grievance filed by Ms. Shaketa Armstead grieving her three (3) day suspension is denied.
2. The grievance filed by Mr. Jose Santana grieving his three (3) day suspension is denied.



Randi E. Lowitt
Arbitrator

Dated: April 21, 2021

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: April 21, 2021