

**American Arbitration Association  
Arbitration Pursuant to Agreement of the Parties  
Before Timothy J. Brown, Esquire**

**In the matter of:**

**Fraternal Order of Police, Lodge 5**

**and**

**City of Philadelphia**

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**AAA Case No. 01-20-0007-3523  
(Discharge of P/O Casey D. Morse)**

**Decision and Award**

**Appearances:**

**On behalf of FOP, Lodge 5:**

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**On behalf of City of Philadelphia:**

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**Introduction**

This arbitration arises pursuant to the collective bargaining agreement (the Agreement) between Fraternal Order of Police, Lodge 5 (the FOP or Union) and the City of Philadelphia (the City or the Employer). In its underlying grievance, the FOP challenges the City's discharge of Police Officer Casey D. Morse (Grievant). The parties were unsuccessful in resolving the dispute through their grievance procedure and the

Union thereafter filed a timely demand for arbitration. The parties selected the undersigned arbitrator through the processes of the American Arbitration Association to conduct a hearing on the grievance and render a final and binding arbitration award. The matter was heard by the undersigned on August 6, 2021 via the Zoom virtual platform. The FOP and the City were afforded the opportunity for argument, examination and cross-examination of witnesses and the introduction of relevant exhibits. Witnesses were sequestered. Grievant was present for the entire hearing and testified on his own behalf. Following the hearing the parties elected to submit oral post-hearing argument, upon the receipt of which by the undersigned, the dispute was deemed submitted at the close of business August 6, 2021.

This decision is made following careful consideration of the entire record in the matter as well as my observations of the demeanor of all witnesses.

### **Issues**

The parties stipulated that: (1) there are no procedural bars to the arbitration of this matter, (2) the matter is appropriately before the arbitrator, (3) the arbitrator has the authority to render a final and binding decision and award in the matter, and (4) the issues presented by the subject grievance may accurately be described as:

Did the City have just cause to terminate Police Officer Casey D. Morse, and if not what shall be the remedy?

### **Facts**

Grievant began working for the Philadelphia Police Department as a Police Officer in December 2014. On June 16, 2020<sup>1</sup> Grievant was given a Criminal Gniotek

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<sup>1</sup> All dates herein are 2020 unless otherwise indicated.

Warning related to the termination at issue herein, and given the opportunity to respond in the presence of his counsel to Internal Affairs charges against him resulting from an investigation into the officer's alleged interactions with a former girlfriend. Grievant respectfully declined responding to any questions on advice of counsel. That same day, Grievant was given written notice that he was being suspended for thirty days with intent to dismiss. The Grievant Warning presented the following narrative:

On Sunday, [REDACTED] Captain Bartlett #21, Internal Affairs Division, was notified by Captain Akil #8, 22<sup>nd</sup> District, concerning a domestic incident involving an off-duty Philadelphia Police Officer.

On Saturday, [REDACTED] while off duty, you were involved in a domestic incident inside the [REDACTED] Yeadon, Pennsylvania. Complainant E [REDACTED] G [REDACTED], who stated she was your ex-girlfriend, reported that earlier that day, you showed up at her son's basketball game in Yeadon, Pennsylvania. E [REDACTED] G [REDACTED] alleged that you struck the father of her son, T [REDACTED] A [REDACTED], in the face during a dispute. Yeadon Police responded to this incident and took a police report. Subsequently, a Protection from Abuse (PFA) order # [REDACTED] was obtained by E [REDACTED] G [REDACTED] against you.

On Wednesday, [REDACTED] you violated the PFA order. E [REDACTED] G [REDACTED] stated that she received a threatening text message from you. On Friday, [REDACTED], you were arrested via arrest warrant by the Upper Darby Police Department. You were charged with contempt for violation of order or agreement (open misdemeanor), warrant # [REDACTED], docket # [REDACTED] and terroristic threats (M1) and harassment (M3), warrant # [REDACTED], docket # [REDACTED]. This course of conduct violates Philadelphia Police Department Disciplinary Code and indicates that you have shown little or no regard for your responsibilities as a member of the Philadelphia Police Department.

Based on the investigation conducted, with the information revealed, the Police Commissioner deemed that you be dismissed. At this time, you have the opportunity to offer a response and explain why you should not be terminated; however, as this is a criminal matter, you have the following legal rights:

**Lieutenant Cynthia Frye** of the Police Department's Internal Affairs Unit testified that on February 10, she was assigned an investigation relating to Grievant. The decision to investigate followed notice to Internal Affairs from Grievant's 22<sup>nd</sup> District Captain that Grievant had been involved in a [REDACTED] domestic matter. Frye testified

that her investigation eventually disclosed records of the Yeadon Borough, Pennsylvania Police Department (YBPD) and Delaware County Court of Common Pleas documenting that: (1) On [REDACTED] the YBPD responded to a dispute at the [REDACTED] [REDACTED] in Yeadon and received a report from Grievant's former girlfriend E [REDACTED] G [REDACTED], that Grievant had slapped the face of T [REDACTED] A [REDACTED], the father of G [REDACTED]'s eight-year-old son; (2) On [REDACTED] the YBPD issued Grievant a citation for harassment; (3) That same day, G [REDACTED] applied for, and was granted a temporary Protection from Abuse Order (PFA) against Grievant by the Delaware County Court of Common Pleas; (4) On [REDACTED], the Court of Common Pleas upheld the PFA and provided the parties a further court date of [REDACTED]; a date postponed due to Covid to [REDACTED]; (5) on [REDACTED] G [REDACTED] and Grievant appeared in court and the PFA was upheld further and a new court date of [REDACTED] was established by the court; (6) on [REDACTED] G [REDACTED] contacted the Upper Darby Pennsylvania Police Department (UDPD) and reported that Grievant had violated the PFA by threatening to kill G [REDACTED] in a text; and (7) on [REDACTED] Grievant was arrested by the UDPD and charged with (a) contempt for violation of order or agreement, an open misdemeanor, (b) terroristic threats, a M1 misdemeanor and (c) harassment, a M3 misdemeanor.

In addition to her review of records of the involved police departments and the county court, Frye interviewed E [REDACTED] G [REDACTED] and T [REDACTED] A [REDACTED]<sup>2</sup> (the father of G [REDACTED]'s son). During her interview, and again on the witness stand at the arbitration hearing, G [REDACTED] **testified** that she had a personal relationship with Grievant on and off for about a year and that she finally ended the relationship in December 2019. According to G [REDACTED],

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<sup>2</sup> A [REDACTED] did not appear at the arbitration hearing.

on [REDACTED] she was at the [REDACTED] school for her son's basketball game and while there the father of her son, T [REDACTED] A [REDACTED], was hit in the head by someone. G [REDACTED] was told at the time by her eight-year-old son that Grievant had hit his father. At the arbitration, G [REDACTED] testified that the basketball game was stopped and the Yeadon police (YPD) were call; the police took statements. G [REDACTED] informed the police and again stated at the arbitration hearing that she did not see Grievant strike A [REDACTED].<sup>3</sup> After the police searched the gym, and did not locate Grievant, the police left the school and the basketball game resumed. Grievant testified that she observed Grievant soon thereafter walk into the gym, point to G [REDACTED], and make a motion with his hands as if he was hitting his face and then walked up into the bleachers. That day G [REDACTED] filed for and receive the Grievant-related PFA.

G [REDACTED] testified that after the PFA became effective, she contacted the UDPD on a number of occasions (although not on all such occasions) relating to what she believed was conduct of Grievant. These included the "keying" of her car on [REDACTED] the placing of her house key in her mailbox in a zip lock bag with a date of the first time they were intimate; and the cutting of her cable-service cable. G [REDACTED] also testified that during the course of their on-again / off-again relationship in 2019, Grievant engaged in what she felt was creepy behavior by sending her texts that included personal information of

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<sup>3</sup> At the arbitration, when responding to a question from counsel of what happened on [REDACTED] G [REDACTED] initially testified that Grievant hit A [REDACTED] at her son's basketball game. On cross examination, she confirmed that on the day of the incident she informed the YPD that she had not directly witnessed the hitting, and on the stand admitted that she did not see Grievant hit A [REDACTED]. G [REDACTED] explained that immediately after the incident, when she asked her eight-year old son what happened, her son said Grievant had hit his dad. In such circumstances, where a parent is presenting the content of her eight-year old's near-contemporaneous, excited utterance as the truth, I do not find G [REDACTED]'s arbitration-summary-narrative to establish a lack of credibility on her part.

G [REDACTED] such as her credit report, her social security number, driver's license number and other vehicle information.

Fry testified that as part of her investigation she also reviewed Department records that revealed Grievant had run Mobile Data Terminal (MDT) inquiries relating to G [REDACTED] some nine times using the Pennsylvania Bureau of Motors Vehicles (BMV) or the Philadelphia Crime Information Center (PCIC) systems. Fry's investigation revealed that at no time of such runs was Grievant assigned a job involving Grievant or her vehicle.

G [REDACTED] testified that the scheduled [REDACTED] court date was postponed for Covid-related reasons and rescheduled to [REDACTED]. Both Grievant and she attended the court hearing, and the PFA was extended with a further court date of [REDACTED] ordered. The Court's Order includes the directive that Grievant; "shall not abuse, harass, stalk, threaten, or attempt to threaten to use physical force against [G [REDACTED]] in any place where they might be found," and; "shall not contact Plaintiff, or any person protected by this order, by telephone or by any means, including through third persons." The court's [REDACTED] PFA was filed at 1:55 pm.

At 7:19 pm on [REDACTED], G [REDACTED] received an i-message<sup>4</sup> from Grievant's telephone number stating:

*"You play with my job. I'm going to kill you bitch."*

Upon receipt of the text, G [REDACTED] made a complaint to the UDPD who came to her home, reviewed the text and thereafter issued a warrant for the arrest of Grievant. As a

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<sup>4</sup> "i-message" is communication between Apple products over the internet and does not use traditional cell phone cellular data connections. An i-message will use data from a cell phone data plan if the phone is not connected to Wi-Fi. If the phone is connected to Wi-Fi, no cell phone plan data is used. At all times relevant herein, both Grievant and G [REDACTED] had Apple i-phones.

consequence, a criminal Complaint was issued against Grievant alleging; terroristic threats, harassment and contempt for violation of an order or agreement.

The Internal Affairs Unit concluded that Grievant had violated the Delaware County Court's PFA on [REDACTED] and had misused City equipment and information in running MDT inquiries on G [REDACTED], and forwarded the matter to the office of the Police Commissioner. The Department's Deputy Commissioner reviewed the matter, determined to dismiss Grievant and issued a July 3 Notice of Intention to Dismiss Grievant indicating Grievant would be dismissed effective July 13 and providing the following reasons for the decision:

**CONDUCT UNBECOMING; SECTION 1-S026-10:** Engaging in any action that constitutes the commission of a felony misdemeanor which carries a potential sentence of more than (1) year. Engaging in any action that constitutes an intentional violation of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses). Also included any action that constitutes the commission of an equivalent offense in another jurisdiction, state or territory. Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matter.)

On Friday [REDACTED], you were arrested via arrest warrant by the Upper Darby Police Department. You were charged with contempt for violation of order or agreement (open misdemeanor), warrant #..., docket... and terroristic threats (M1) and harassment (M3),... This resulted from an incident that occurred on Wednesday, [REDACTED], at [REDACTED] Upper Darby, Pennsylvania, 19082 in which complainant E [REDACTED] G [REDACTED] stated that you violated a protection order she obtained against you when she received a threatening text message from you. The incident was recorded and investigated under Upper Darby Police Department Incident #...

Your actions show that you have little or no regard for your responsibility as a member of the Philadelphia Police Department.

**Grievant testified** that he has a history of good performance with the Department. He testified that the [REDACTED] incident at the [REDACTED] involved only a verbal dispute he had with the father of G [REDACTED]'s child. He testified that he lives in Yeadon, played in the basketball league and often goes to the games at the school. He asserted that he did not assault anyone on [REDACTED]

Grievant testified that once the PFA was issued, he abided by the Order. On [REDACTED], due to the issuance of the PFA, he was pulled off of street patrol by his captain and put on restricted, desk duty with no opportunity for overtime.

As for the [REDACTED] text to G [REDACTED], Grievant testified that he did not send the text. He confirmed the phone number that appears on the copy of the text produced by G [REDACTED] is his number. However, he did not send it and, he asserted, G [REDACTED] did in an effort to hurt Grievant. Grievant testified that the text was a product of G [REDACTED] "SMS spoofing;" a technique by which someone can change the origin-number of a text and make it look like it came from a different number.

Grievant testified that on [REDACTED] he received a call from the Upper Darby Police notifying him that he was the subject of an arrest warrant. He informed the police he had his daughter that day and would turn himself in on [REDACTED]; which he did. He testified that he went to court in Upper Darby on the matter and that during the process he shared his cell phone bill showing the dates and times of his cell calls, text messages and data usage; a document that shows no record of a 7:19 pm text from Grievant to G [REDACTED] on [REDACTED]. Grievant further testified that during the investigation by the Philadelphia Police Department IA Unit, he did not give the Investigator his phone records to confirm that he was not the one who sent the [REDACTED] text. As reflected in documents submitted into the



arbitration record, Grievant testified that the Delaware County criminal charges were eventually dismissed on [REDACTED] and the PFA was vacated in October.

On cross, Grievant admitted that in regard to his SMS spoofing claim, there is a difference between SMS texting and i-messaging. Again, he testified, G [REDACTED] fabricated the [REDACTED] message; he did not send the message, and that, in fact, G [REDACTED] has previously been charged with fraud. He acknowledged that Section 1-S026-10 does not require a criminal conviction and that Departmental discipline is a different standard than criminal charges.

### **Positions of the Parties**

#### **The City**

Grievant sent the [REDACTED] text. The timing of the text supports such a conclusion as it was received by G [REDACTED] soon after the Court continued the effectiveness of the PFA; an order that would keep Grievant on desk duty and not eligible for overtime. Grievant's defense is that G [REDACTED] is lying about everything; about numerous incidents of Grievant's problematic conduct during their relationship, about her reasons for ending the relationship, about the fear caused her by Grievant's conduct, about safety precautions she had to take after she tried to break off her relationship with Grievant, about what occurred on [REDACTED] and about her receiving the [REDACTED] text. Grievant continues to abuse G [REDACTED] by attempting to bring up six-year old criminal charges. G [REDACTED] is not an employee of the City and yet was brave enough to testify in this matter after the trauma of receiving a terroristic threat from Grievant; from Grievant whose position as a police officer makes the threat even worse. She is credible.

Grievant's making terroristic threats is classified as a misdemeanor M-1. Departmental policy provides for discipline of 30-days to dismissal. Grievant was additionally in contempt of the Court's PFA and engaged in the M-3 misdemeanor of harassment.

The City has shown just cause for the dismissal of Grievant.

### **The Union**

The case here is narrow. Grievant was not discharged for running searches of G■■■■'s information and was not discharged for alleged conduct during the course of, and after, his relationship with G■■■■. The City terminated Grievant for his alleged conduct of sending a single text message on ■■■■■. The City did not conduct an investigation of its own as to that conduct. Instead, the City inappropriately and simply relied upon the efforts and conclusions of the Upper Darby Police Department. Importantly, Grievant was not convicted of any of the criminal violations alleged against him.

As to the narrow issue of who is telling the truth about the origin of the ■■■■■ text, Grievant should be credited. In this regard, G■■■■ was not truthful. Thus; (1) she testified at the arbitration that Grievant punched A■■■■ in the face on ■■■■■ yet on the day of the incident told the Yeadon police that she did not directly witness who punched A■■■■; (2) G■■■■ was previously subject of a criminal complaint for fraud, and (3) she testified as to various events during the effective period of the PFA that she attributed to Grievant, but wholly inconsistently did not report all such events to the UDPD.

The City did not conduct a fair investigation and has not satisfied the due process requirement of just cause. Not only did the City entirely rely upon another police department's investigation to conclude that Grievant sent the [REDACTED] text, the City never took the time to review Grievant's cell phone records; records that show that the phone was not used to text or use data on [REDACTED] at 7:19 pm, the date and time of G [REDACTED]'s text at issue. Considering the principles of fairness incorporated in just cause, termination is a much too harsh punishment for Grievant under such circumstances. Grievant should be reinstated and made whole.

### **Discussion**

An analysis of whether or not Grievant's discharge was for just cause under generally recognized standards in labor arbitration requires consideration of all of the circumstances in determining whether the issuance of discipline was "fair." Of the several factors often considered by arbitrators when applying the just cause standard the Union argues that the City has failed to meet its burden of showing that : (1) the disciplinary investigation was adequately and fairly conducted and provided Grievant due process; (2) the City was justified in concluding that the employee engaged in the conduct as charged; and (3) that the discipline issued was appropriate given the relative gravity of the offense, the employee's disciplinary record and considerations of progressive discipline.

It is well recognized that in arbitrations of cases presenting questions of discipline or discharge for cause, it is the employer's burden to show that its discipline satisfies all of the requirements of just cause.

In the instant matter, considering the record as a whole, including all evidence and argument offered by the parties as well as my observation of the demeanor of all witnesses, I find that the City has met its burden of showing just cause for the termination of Grievant.

Primarily relied upon to support such a finding is my conclusion that the record establishes that Grievant sent the [REDACTED] i-message to G [REDACTED]. In so finding, it is important to note that the standard of proof in arbitration is not the beyond-a-reasonable-doubt standard that applies for criminal conviction. Instead, I have applied a standard that requires that I be convinced under the circumstances that Grievant sent the text; a standard that I find is satisfied herein. In reaching this conclusion, I rely upon my finding that the copy of the message/text identifies Grievant's phone number as the origin of the message; the text occurred soon after Grievant learned that the PFA would continue to impact his job; both Grievant and G [REDACTED] use Apple I-Phones; Grievant's phone records show only cell data used and do not show Grievant's activity over the internet – the medium used for i-messaging; and I credit G [REDACTED] over Grievant. In regard to credibility, I found G [REDACTED] to be a straight forward and candid witness who evidenced no pleasure in testifying against Grievant; I found the details G [REDACTED] offered on the witness stand to be patently more believable than those offered by Grievant (for example his claim as to why he happened to be at an elementary school for an 8-year olds' basketball game); and Grievant had significant motivation to apply an overly forgiving notion of the truth.

As to the other considerations of just cause, I am persuaded that the City has satisfied its burden. The investigation was complete under the circumstances and Grievant was given the opportunity to tell his side of the story. Grievant was not an

ordinary citizen threatening to do G [REDACTED] harm, he was a member of the Philadelphia Police Department. The violations of Department policy in which Grievant engaged were significant – particularly the terroristic threat to kill G [REDACTED] - and showed an abject lack of regard for the formidable impact an officer’s inappropriate display of authority can have upon the emotional well-being of others. Considering Grievant’s relatively short tenure of employment with the City and the significant and concerning nature of his misconduct, I find that the decision to dismiss Grievant was a legitimate exercise of managerial discretion well within the parameters of fairness contemplated by the standard of just cause.

### **Conclusion**

Based upon the full record in this matter, I find the City has met its burden of establishing just cause for the dismissal of Grievant.

**American Arbitration Association  
Arbitration Pursuant to Agreement of the Parties  
Before Timothy J. Brown, Esquire**

**In the matter of:**

**Fraternal Order of Police, Lodge 5**

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**AAA Case No. 01-20-0007-3523  
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**AWARD**

The Employer has met its burden of showing just cause for the termination of Grievant, The Union's grievance is DENIED.

DATED: August 26, 2021



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