

AMERICAN ARBITRATION ASSOCIATION

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In the Matter of the Arbitration :
 :
 between : AAA Case No.
 : 01-19-0004-2311
 :
 CITY OF PHILADELPHIA, : Opinion & Award
 :
 “City” : Re: Corporal Tanya Grandizio -
 : Suspension & Transfer
 - and - :
 : Hearings: October 6-7, 2021
 FRATERNAL ORDER OF POLICE, LODGE NO. 5, :
 :
 “Union” :
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APPEARANCES

For the City

CITY OF PHILADELPHIA LAW DEPARTMENT
Brian Rhodes, Esq., Senior Attorney – City Solicitor’s Office Labor &
Employment Unit
Daniel R. Unterburger, Esq., Assistant City Solicitor

For the Union

WILLIG, WILLIAMS & DAVIDSON
Jessica C. Caggiano, Esq.

BEFORE: David J. Reilly, Esq., Arbitrator

BACKGROUND

The City suspended Corporal Tanya Grandizio for thirty days and transferred her from the Department's Police Academy to its 14th District.¹ It took these actions in response to several Facebook posts that she had made in 2015-2016, which it learned of in 2019 through the Plain View Project. The Department determined that these posts violated its Social Media Policy, Directive 6.10, and, in turn, constituted violations of its Disciplinary Code: (1) Article I - Conduct Unbecoming, Section 1-§021-10; and (2) Article V – Neglect of Duty, Section 5-§011-10. More specifically, it concluded that the posts displayed a course of conduct involving the use of dehumanizing, defamatory and/or discriminatory language that was insensitive to and mocked a religious group.

The Union contends the City lacked just cause to suspend or transfer Grandizio. It asks that her suspension and transfer be reversed and the City be directed to reinstate her to the Academy and make her whole for all pay and benefits lost as a consequence of those actions.

The relevant facts of this case, which are largely undisputed, may be set forth succinctly.

Grandizio's Employment History

At the time of the suspension and transfer, Grandizio had been a member of the Department for approximately twenty-four years. (Tr. II-77)² She was promoted to and has held the rank of Corporal since 2009. (Tr. II-78.) Throughout her tenure with the

¹ Grandizio's transfer was effective October 18, 2019, and she received written notice of her suspension and transfer on or about November 29, 2019. (Joint Exhibits 2 & 6; Union Exhibits 15-16.)

² References to the transcript of the October 6 and 7, 2021 hearings in this case will be designated as "Tr." followed by the applicable volume and page number. The October 6, 2021 and October 7, 2021 transcripts will be identified as volumes I and II, respectively.

Department, she has received annual evaluations from her superior officers rating her performance as satisfactory, which also included comments reflecting positively on her service. (Joint Exhibit 10.)

In April 2012, Grandizio applied for and received a transfer to the Department's Police Academy. (Tr. II-78.) For all but her last year there, she functioned as an instructor for the EVOC unit. (Tr. II-80.) In that role, she taught emergency driving techniques to tenured personnel, as opposed to recruits. (Tr. I-129.) She instructed recruits only in instances of a staffing shortage. When she did so, the training involved teaching the Motor Vehicle Code or accompanying recruits on ride arounds. (Tr. II-79-81.)

A year prior to her transfer, Grandizio was re-assigned to the Academy's operations room. (Tr. II-80-81.) In that capacity, she supervised one civilian employee and one police officer and oversaw the day-to-day clerical operations of the Academy. (Tr. II-81, 92.) In addition, she occasionally provided driving instruction when there was a shortage of instructors. (Tr. II-81.)

She has no record of active prior discipline. Her only discipline, which predates the instant matter by more than fifteen years, concerned a missed court appearance and a two-day suspension for an automobile accident. (Tr. II-83-84.)

Department Directive 6.10

In 2011, the Department adopted Directive 6.10, which details its policy regarding the use of social media and social networking by both police officers and civilian personnel. (Joint Exhibit 7.) As background, the Directive states: “[I]t must be formally and universally recognized that the personal use of social media has the potential to

impact the [D]epartment as a whole, as well as individual members serving in their official capacity. As such, this policy provides information of a precautionary nature as well as prohibitions on the use of social media by [D]epartment personnel.” (Joint Exhibit 7.)

It also references:

As members of the Philadelphia Police Department, employees are embodiments of its mission. It is, thus, essential that each member accept his or her role as an ambassador of the [D]epartment. In doing so, each member must strive to maintain public trust and confidence, not only in his or her professional capacity, but also in his or her personal and on-line activities. Moreover, as police personnel are necessarily held to a higher standard than general members of the public, the on-line activities of employees of the police department shall reflect such professional expectations and standards.

(Joint Exhibit 7.)

In regard to policy, the Directive specifies that “all existing laws, rules, regulations and directives that govern on- and off-duty conduct are applicable to conduct associated with social media and networking.” (Joint Exhibit 7.) In addition to proscribing posting while on duty and using City or Department property to post, whether on or off duty, it prohibits:

[U]sing ethnic slurs, profanity, personal insults, material that is harassing, defamatory, fraudulent or discriminatory, or other content or communications that would not be acceptable in a City workplace under City or agency policy or practice.

[D]isplaying sexually explicit images, cartoons, jokes, messages or other material that would be considered in violation of City Policy Preventing Sexual Harassment in City Government.

(Joint Exhibit 7.)

The Directive also instructs:

There is no reasonable expectation of privacy when engaging in social networking on-line. As such, the content of social networking websites may be obtained for use in criminal trials, civil proceedings, and departmental investigations.

(Joint Exhibit 7.)

In her testimony, Grandizio related that when adopted, the Department distributed Directive 6.10 to all officers during roll call. She recalled that in doing so, the Directive was read aloud to the officers present, which required approximately ten – fifteen minutes. After which, she confirmed signing an acknowledgement of having received this training. (Tr. II-88.)

Subsequently, in 2019, she averred, the Department provided her with a full day of training on the Directive. (Tr. II-89.)³

Plain View Project

The Plain View Project refers to a database established by a private organization and made public in June 2019, which contains Facebook posts made by current and former police officers of various police departments in the United States, including the Philadelphia Police Department.⁴ (Tr. I-94.) The Plain View Project's website includes a disclaimer that states:

The Facebook posts and comments in this database concern a variety of topics and express a variety of viewpoints, many of them controversial. These posts were selected because the viewpoints expressed could be relevant to important public issues, such as police practices, public safety, and the fair administration of the law. The posts and comments are open to various interpretations. We do not know what a poster meant when he or she

³ In a prior arbitration between the City and the Union, Inspector Fran Healy testified that this training was conducted in Summer 2019 after the publication of the Plain View Project's database of social media posts. The training, he averred, included a review of Directive 6.10 and explained the scope of First Amendment protected speech. (Joint Exhibit 12.)

⁴ Deputy Commissioner Robin Wimberly testified that the Department was █████ contacted regarding the Plain View Project in or about March 2019. This communication, she said, concerned six officers. (Tr. I-94.) According to Wimberly, the Department does not have a practice of monitoring the social media activity of its officers. (Tr. I-95.)

typed them; we only know that when we saw them, they concerned us. We have shared these posts because we believe they should start a conversation, not because we believe they should end one.

The posts and comments included in the database comprise portions of a user's public Facebook activity, and are therefore not intended to present a complete representation of each person's Facebook presence, or each person's view on any given subject. Inclusion of a particular post or comment in this database is not intended to suggest that the particular poster or commenter shares any particular belief or viewpoint with any other posters or commenters in the database. Links to the original page from which each post was obtained are provided so you can see the context of the post if you wish.

(Union Exhibit 3.)

Internal Affairs Investigation

Sergeant Brian Saba, an investigator assigned to the Department's Internal Affairs Division ("IAD"), testified that the release of the Plain View Project's database resulted in IAD investigating approximately 325 police officers for Facebook posts that possibly violated Department Directive 6.10. Of this total, he reported being assigned to investigate approximately seventy officers, including Grandizio. (Tr. I-50, 52.)

In doing so, he recounted interviewing Grandizio on June 25, 2019, regarding all fourteen of her Facebook posts appearing in the Plain View Project's database. Grandizio, he related, reviewed and confirmed that she had posted each one to her Facebook account. (Tr. I-52-53, 62-63; Joint Exhibits 5 & 9.)

Saba's questioning of Grandizio did not explore the reason or motivation for any of her posts. He acknowledged, however, inquiring at the conclusion of the interview whether she had anything to add as to the subject addressed. (Tr. I-82-83.)

On cross-examination, Saba averred that his investigation did not include a review of any of the articles or other documents for which Grandizio included links in her

Facebook posts. (Tr. I-75-76.) Nor did he check any of Grandizio's social media activity outside of the posts included in the Plain View Project database. (Tr. I-78.)

Saba confirmed that his investigation concluded with a finding that some of Grandizio's Facebook posts/comments violated the Department's Social Media Policy in that "they contained posts/comments that expressed discriminating or harassing behavior based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity or other content or communication that would not be acceptable in a City workplace under City or agency policy or practice." (Joint Exhibit 5.)⁵

Grandizio's Suspension and Transfer

Deputy Commissioner Robin Wimberly, whose responsibilities include overseeing IAD, testified that the release of the Plain View Project database provoked a public outcry as to many of the posts attributed to the Department's officers. (Tr. I-99.) In addition, she averred, the matter produced substantial negative media coverage of the Department and adversely affected morale among officers. (Tr. I-101.)

In response, she recounted attending community meetings with then Commissioner Richard Ross to hear and address the public's concerns. (Tr. I-99.)⁶

⁵ Saba testified that IAD Staff Inspector Deborah Francis made this finding. (Tr. I-63.) He also averred that in conjunction with his investigation, the Department removed Grandizio from Street Duty and reclaimed her on-duty service weapon. (Tr. I-64; Joint Exhibit 5.)

⁶ Deputy Commissioner Christine Coulter, who succeeded Commissioner Ross, serving as Acting Commissioner from August 2019 – February 2020, testified that she too attended community meetings in response to the release of the Plain View Project's database. These meetings, she said, focused on reassuring community leaders and members of the public that they could count on the Department's officers to protect and interact with them without bias. (Tr. I-225-227.) She also reported that the Department established healing circles to address the reaction and concerns that the Department's officers had to posts from fellow officers included in the Plain View Project database. (Tr. I-227-229.) In lieu of testimony, the parties stipulated that Dr. Ahmet Tekelioglu, if called to testify, would have averred that in meetings with then Commissioner Ross and Deputy Commissioner Coulter, he expressed concerns that Grandizio's posts had a significant negative impact on the Muslim community. (Tr. II-20-21.) Dr.

Addressing the IAD investigations of the 325 officers identified in connection with the Plain View Project, she related that all substantiated violations of the Department's Social Media Policy, Directive 6.10, were referred to an outside law firm, which assessed whether the offending post constituted constitutionally protected speech. Any posts found protected, she said, were disregarded for disciplinary purposes. (Tr. I-119-120, 235-236.)

Of the remainder, she averred, the "most egregious" cases were referred to then acting Commissioner Christine Coulter and her executive team for review. (Tr. I-108.)⁷ Included among these, she said, were six of Grandizio's Facebook posts. (City Exhibit 1.)

These posts, which Grandizio made between September 2015 and September 2016, consist of the following:

1. **September 22, 2015.** The post shares an article from conservativepost.com with the headline: "Muslims hate pork, beer, dogs, bikinis, Jesus and freedom of speech. My question is, . . ." ⁸
2. **November 27, 2015.** The post begins with the statement, "I copied this from someone else and every word is true Can a Muslim be a good American? It then continues with a purported reply from a person who worked in Saudi Arabia for 20 years, stating that the answer is "no" from various perspectives, including theologically, religiously, scripturally, geographically, socially, politically, domestically, intellectually, philosophically and spiritually.
3. **November 30, 2015.** The post includes a chart titled "Can You Connect the Dots?" presenting information regarding six terrorist attacks in four columns labeled: Location; Terrorist's Religion; Gun Free Zone?; and Casualties.

Tekelioglu is a faculty member at George Mason and Temple Universities and serves as Education and Outreach Director for CAIR-Philadelphia.

⁷ In addition to Wimberly, the executive team included Deputy Commissioners Myron Patterson, Joseph Sullivan, and Dennis Woodson. (Tr. I-108.)

⁸ The full headline is not visible in Grandizios' post, as a portion is cut off after the words, "My question is." (City Exhibit 1.)

4. **March 12, 2016.** The post includes photographs depicting four individuals who appear to be religious leaders, which are identified as Judaism, Christianity, Hinduism and Islam. The caption under the first three reads: “Leave Us Alone We Leave You Alone,” whereas the caption under the photograph identified as Islam states: “Leave Us Alone We’ll Kill You Anyway.”
5. **June 14, 2016.** The post contains the same chart that appeared in Grandizio’s November 30, 2015 post and also includes comments that she exchanged with another poster who questioned, what did the Christians do to Grandizio’s ancestors, to which Grandizio replied, in part, “I can’t and won’t speak to what Christianity did to my ancestors. I wasn’t there. . . . What I do see is how Islam has been perverted and not many followers of Islam are trying to fix it.”
6. **September 21, 2016.** The post shares an article from conservativetribune.com, which reads: “Here’s The Disgusting Thing Muslims Did to Male Slaves Be Warned, This is Graphic,” and includes an artists’ rendering. In sharing the article, Grandizio commented, “And this is going on right now.”

(City Exhibit 1.)

According to Wimberly, Coulter and the executive team determined that these posts by Grandizio constituted egregious violations of Directive 6.10, because of the manner in which they targeted the Muslim community. (Tr. I-109.) In particular, she explained, the posts exhibited an anti-Muslim bias, by citing offensive stereotypes and suggesting all Muslims are prone to violence and seek to destroy the country by terrorist acts. (Tr. I-111-115.)⁹

For these offenses, she said, they determined that a thirty-day suspension and transfer was warranted, rather than the maximum applicable penalty under the Department’s Disciplinary Code, which was dismissal. (Tr. I-109.)

In her testimony, Christine Coulter, who returned to her role as a Deputy Commissioner in February 2020, confirmed reviewing each of Grandizio’s six posts. She

⁹ Wimberly testified that she did not obtain the full text or original version of any of the articles or other documents that Grandizio shared in her posts. (Tr. I-142-143, 157-158.)

related that they reflected an attack on Muslims, by expressions of anti-Muslim bias that included describing Muslims as anti-American, violent and murderous and stating their religion had been perverted. (Tr. I-236-241.) The posts, she said, violated the Department's Social Media Policy, and reflected an extremely disturbing pattern of anti-Muslim content. (Tr. I-236-237, 243-244.)¹⁰

Taking into consideration the input from her executive team as Acting Commissioner, she averred deciding to discipline Grandizio for these posts by a Commissioner's Direct Action, as opposed to proceeding through a Police Board of Inquiry. (Tr. I-245.) The specific discipline imposed consisted of a thirty-day suspension and a transfer from the Department's Police Academy to the 14th District. (Joint Exhibit 6.)¹¹ Explaining the transfer decision, she expressed having significant concerns as to the detrimental impact that Grandizio could have on persons attending the Academy if she shared the views reflected in her posts. Such effect, she said, was exacerbated by Grandizio holding the respected role of a trainer. (Tr. I-245-246.)

¹⁰ Dr. Quaiser Abdullah, a Department Chaplain and Temple University professor, also testified for the City, addressing the impact of Grandizio's posts on the public trust. He related that the posts highlighted Muslim stereotypes and served to marginalize and "otherize" Muslims. Doing so, he said, makes it easier for persons to treat Muslims in negative or harmful ways. (Tr. II-45.) He stated further that the posts serve as false warning that Muslims are associated with scary negative behavior. (Tr. II-52-53.) According to Abdullah, Grandizio's status as a member of the Department caused her labeling of Muslims as dangerous to carry greater weight with the public. (Tr. II-54-55.) Finally, he averred that the impact of her posts was elevated by her status as a ranking officer and an Academy trainer. (Tr. II-62-64.)

¹¹ Coulter signed the Commissioner's Direct Action reflecting this discipline on October 16, 2019 and Grandizio's transfer became effective on October 18, 2019. (Joint Exhibit 6.) Grandizio, however, did not receive written notice of this action until on or about November 29, 2019, although on August 2, 2019, she did receive a Form 75-18 identifying the charges that had been filed against her relative to her Facebook posts. (Tr. II-97-98, 101; Joint Exhibit 6; Union Exhibits 15-16.) Union Vice President John McGrody testified that upon learning Grandizio had not been informed of her October 18, 2020 transfer until the conclusion of her shift on October 17, 2019, without having been issued any formal notice of discipline, he advised Deputy Commissioner Dennis Wilson of the situation by email, dated November 27, 2019. (Tr. II-177-180; Union Exhibit 14.) He explained that as a general practice with transfers, the affected officer is given advance notice and afforded an opportunity to collect his/her personal belongings from his/her current post. Further, he stated that the governing collective bargaining agreement specifies that the affected officer's commanding officer shall give personal notice of the transfer. (Tr. II-180.)

Grandizio's Testimony Regarding Her Facebook Posts

In testifying, Grandizio addressed each of the six Facebook posts on which the Department based the contested discipline. She stated, in particular:

(1) **September 22, 2015** – (a) she was unaware of the full content of the article shared and did not consider the portion included to be a discriminatory statement against Muslims; and (b) she shared the article solely because of a desire to learn the details of the specific question referenced below the headline. (Tr. II-104-105.)

(2) **November 27, 2015** – (a) she did not create the posted material, but copied it from another site; (b) she shared it because “it was something that we could all see and talk about;” and (c) she does not agree with the statement that Muslims cannot be good Americans. (Tr. II-109-110.)

(3) **November 30, 2015** – (a) she posted this chart titled “Can You Connect The Dots?” due to a terrorist attack that had occurred at that time in a gun free zone; and (b) her concern “[was] not just Muslims but people that want to do bad will take advantage of Americans in gun-free zones.” (Tr. II-111-112.)

(4) **March 14, 2016** – (a) she copied the shared material from another source; and (b) she made this post because she “[felt] like every religion, they’ve all had their dark periods and they all need reformation. Judaism, Christianity, they both had their reformation and now they’re peaceful. And it’s the same with Islam.” (Tr. II-113-114.)

(5) **June 14, 2016** – (a) she shared the “Can You Connect the Dots?” chart a second time to provide “a fuller, a more complete picture;” (b) her comments in this re-post reflect an exchange with a former neighbor, who commented in response to her original post; and (c) her statement that “Islam has been perverted and not many

followers of Islam are trying to fix it” reflects how she feels. (Tr. II-114-115.)

(6) **September 21, 2016** – (a) she shared the posted article because she “found it to be an interesting article” and “[s]omeone else may want to read it;” and (b) her comment “and this this going on right now” concerned modern day slavery, as she could not attest to the acts of castration depicted in the artist rendering that accompanied the article. (Tr. II-116-117.)

Grandizio stated further that she continues to post her views on Facebook. When asked whether she would take back any of the posts that resulted in the contested discipline, she replied, “No. I mean, I posted it. I posted it.” (Tr. II-117.) She also averred having done nothing wrong and denied being bigoted or harboring any animosity towards Muslims. (Tr. II-105, 118.)

She also expressed lacking clarity as to what constitutes constitutionally protected speech for purposes of the Department’s Social Media Policy. She related being under the impression that if a post would hurt someone’s feelings, it violates the Policy. (Tr. II-118.)

On cross-examination, she acknowledged never having sought clarification or an explanation of the Social Media Policy and understands Section 4(A) of the policy, which states “all existing laws, rules, regulations and directives that govern on- and off-duty conduct are applicable to conduct associated with social media and networking.” (Tr. II-133.)

Procedural History

The Union filed grievances contesting Grandizio’s transfer and suspension, dated October 18, 2019 and December 3, 2019, respectively. (Joint Exhibit 3.) When the

parties were unable to resolve the matter at the lower stages of the grievance procedure, the Union demanded arbitration. (Joint Exhibit 4.) Pursuant to the procedures of their collective bargaining agreement (the “Agreement”), the parties selected me to hear and decide this case. (Joint Exhibit 1.)

I held a hearing in this matter commencing on October 6, 2021, and continuing on October 7, 2021. With the parties’ consent, the hearing was conducted by videoconference. At the hearing, the parties each had full opportunity to present evidence and argument in support of their respective positions. They did so. Upon the conclusion of the October 7, 2021 hearing day, the parties elected to submit post-hearing briefs. With the receipt of those briefs on January 3, 2022, I declared the hearing record closed as of that date.

DISCUSSION AND FINDINGS

The Issue:

The parties have stipulated that the issues to be decided are as follows:

1. Did the City have just cause to transfer and suspend Corporal Tanya Grandizio for thirty days, effective October 18, 2019 and on or about November 29, 2019, respectively?
2. If not, what shall be the remedy?

Positions of the Parties

Both parties filed extensive post-hearing briefs. Their respective positions are summarized below.

City’s Position. The City contends that its suspension and transfer of Grandizio was for just cause. It maintains that the evidence conclusively demonstrates that she violated Department Disciplinary Code Sections 1-§021-10 and 5-§011-10, by her

repeated Islamophobic Facebook posts, which contravened the Department's Social Media Policy set forth in Directive 6.10.

The record, it argues, confirms that she engaged in a course of conduct demonstrating no regard for her responsibilities as a member of the Department. In particular, it stresses, the indisputable evidence shows that over two calendar years, Grandizio publicly made a series of inflammatory Facebook posts that vilified Muslims. By doing so, it avers, she exhibited disrespect for and bias against the communities and individuals as to whom she had sworn to protect and serve, which represents her primary responsibility as a member of the Department.

It maintains that application of the recognized seven-factors of just cause compels a finding that it acted properly and consistent with the governing collective bargaining agreement in imposing the contested discipline. *See American Fed'n of State County & Municipal Employees, District Council 88 v. City of Reading*, 130 Pa. Cmwlth. 575, 582 n.3 (1990).

In this regard, it asserts that Grandizio was on notice of her obligations under the Department's Social Media Policy. It stresses that in her testimony, she freely admitted to being aware of and understanding the terms of the Policy, as well as the applicable penalty for violating its terms and acting in manner that is unbecoming of her position as a uniformed member of the Department.

Next, it reasons that the Department's Disciplinary Code and Social Media Policy relate directly to the orderly, efficient and safe administration of law enforcement and set forth acceptable standards of conduct in plain terms that were understood by Grandizio. It amplifies that the Disciplinary Code serves to instill and support the Department's core

values of honor, service and integrity. The Code, it notes, defines “service with honor” as “providing police service respectfully and recognizing the dignity of every person;” whereas “integrity” is “the bedrock of policing and the foundation for building a successful relationship with our partners,” which are the citizens of Philadelphia, including the members of its Muslim communities. (Joint Exhibit 1 at 152.) In sum, it avers, the rules at issue here bear directly on the Department’s mission and identify the performance it properly expects of its officers.

It continues that the third, fourth and fifth factors of just cause concern whether the charged misconduct has been substantiated through the conducting of a fair and objective investigation. Citing Saba’s testimony, it asserts this requirement has been satisfied. In particular, it points out that Saba’s interview of Grandizio confirmed that she made each of the Facebook posts at issue and afforded her an opportunity to provide context for her posts. Further, it notes, there is no evidence of bias by Saba or a failure to review any documents or interview any witnesses.

Turning to the assessment of penalty, it submits that Grandizio’s suspension and transfer were proportionate to her offense, notwithstanding her lack of active discipline. Her offending posts, it argues, represent an egregious disregard for her responsibility as a member of the Department. Moreover, it states, the discipline imposed is consistent with the penalty prescribed by the Disciplinary Code for her misconduct, which evidenced a disregard for her responsibility as a police officer. It also notes that she has never expressed any remorse or regret for this behavior, but instead continues to defend the propriety of her posts. Further, it stresses, transferring Grandizio away from the Academy was consistent with the governing collective bargaining agreement and

necessitated by the outsized influence that she had as to those with whom she interacted with as a trainer.

Finally, it maintains that the Department has applied its rules and Disciplinary Code fairly and without discrimination in regard to the contested discipline. It notes that Grandizio received the lighter of the two penalties prescribed by Code, as set forth in the governing collective bargaining agreement, for her “course of conduct” offense (i.e., thirty-day suspension or dismissal). (Joint Exhibit 1.)

The Union’s claims of disparate treatment, it asserts, are unavailing. The comparators identified, it explains, are not similarly situated to Grandizio, and therefore, must be disregarded as inapposite.

Accordingly, for all these reasons, the City asks that Grandizio’s suspension and transfer be sustained and the grievance be denied.

Union’s Position. The Union, on the other hand, argues that the City lacked just cause to suspend and/or transfer Grandizio based upon her identified Facebook posts. It contends that the City has failed to meet its burden of proof in this regard.

Citing *Enterprise Wire Co.*, 46 L.A. 359 (1966), it asserts that just cause should be determined by the “seven tests” identified by Arbitrator Carroll Daugherty in deciding that case. Under that standard, it states, a violation of any of these tests precludes a finding of just cause or, at least, casts serious doubt as to whether it has been demonstrated.

It asserts that such is the case here. The evidence, it avers, demonstrates that several of Daugherty’s seven tests have been violated. In particular, it cites: (1) the Department failed to provide adequate notice of the relevant rule and the consequences of

its violation; (2) the Department neglected to conduct a fair and objective investigation in order to substantiate that Grandizio had violated the cited work rule; (3) the Department did not discipline Grandizio consistent with that imposed upon other officers for engaging in substantially similar conduct; (4) the discipline Grandizio received was not reasonable when weighing the gravity of her actual conduct and considering her overall work record; and (5) the Department denied Grandizio industrial due process by effecting her transfer before notifying her of the discipline.

As to the matter of notice, it contends that the City failed to properly inform Grandizio that a violation of the of the Department's Social Media policy would result in severe discipline, and thereby, deprived her of due process. It reasons that employees cannot be expected to abide by a rule that has not been effectively communicated to them. Just cause, it states, requires that the employee receive clear notice of both the employer's expectation and the range of penalties for non-compliance. *Customized Transp. Inc.*, 102 L.A. 1179 (Stallworth 1994).

The failure of notice here, it argues, arises from several factors. These include: (1) the Department's lack of active enforcement of its Policy through monitoring of its officers' social media accounts and advising them of what constitutes appropriate activity; (2) the absence of guidance regarding the scope of First Amendment protected speech; and (3) the lack of any formal training regarding the Policy until 2019.

Turning to the investigation of Grandizio's Facebook posts, it maintains the Department's efforts were not fair, thorough and impartial and failed to substantiate she violated the Policy. Saba's testimony, it posits, demonstrates that he acted solely to confirm that Grandizio made the posts included in the Plain View Project database. He

did not confirm which posts violated the Policy, nor inquire as to Grandizio's intent in sharing the content included in her posts.

This defect, it argues, cannot be excused by the fact that Grandizio had an opportunity to volunteer information regarding the intent of her posts when interviewed by Saba. Doing so, it reasons, would allow the City to improperly shift onto Grandizio its burden of demonstrating that her posts violated the Policy.

Having failed to affirmatively pursue this information through a fair and thorough investigation, it submits, the City relied instead upon assumptions and guesswork to conclude the posts at issue violated the Policy. As such, it concludes, the City is precluded from meeting its burden of proof.

Reviewing the six posts at issue here, it highlights the City's failure to prove that any of them violated the Policy. In particular, it points out:

(1) **September 22, 2015:** (a) the Department neglected to review the entire meme, which was partially obscured in the post, or the underlying article; and (b) Grandizio did not read the article, but was merely curious regarding the question posed by which a person reportedly risked his/her career;

(2) **November 27, 2015:** (a) the Department did not determine whether Grandizio authored or copied the content of the post; (b) Grandizio shared the content to start a conversation about the issue; (c) the post mirrors the message of the Department's 2008 MPOETC training regarding "Radical Islam," and thus represents an expression reflective of that training and not bias;

(3) **November 30, 2015 and June 14, 2016:** (a) Grandizio's purpose in sharing this meme related to her belief that gun free zones do not support public safety; (b) no

evidence was presented showing the meme was factually inaccurate; (c) Wimberly's statement that protected speech includes comments on specific criminal acts encompasses this post; and (d) Wimberly admitted that Grandizio was not disciplined for the comments accompanying this post, as they constituted protected speech;

(4) **March 14, 2016:** (a) The sentiment of the post is consistent with the content of the Department's 2008 "Radical Islam" training, which cites the "misconception" that Islam is a peaceful religion; and (b) Grandizio explained she shared this meme because of her belief that every religion has had their "dark periods," and needed reformation;

(5) **September 21, 2016:** (a) the Department concluded that meme stereotyped Muslims and portrayed them as barbaric without reviewing the content of the underlying article; (b) Grandizio's comment, "And this is going on right now!" contains no profanity or other inappropriate content; and (c) she shared the article because she found it interesting.

In sum, it maintains, if a full examination had been performed of the shared content in Grandizio's posts, the Department would have found no violation of the Policy.

Moving on to the issue of consistent and evenhanded application of the Policy, it avers that the record here substantiates the contrary occurred. The evidence presented, it argues, demonstrates the arbitrary and unjust nature of the discipline Grandizio received, as compared to the more lenient penalties that the Department imposed upon other officers who engaged in substantially similar conduct.

In support, it cites the Department's treatment of: (1) Officer [REDACTED] (one-day suspension for first violation of Policy; and 30-day suspension for her second

violation based on four posts identified by the Plain View Project); (2) Officer [REDACTED] [REDACTED] (twelve-day suspension for posting a photograph of himself in “blackface”); (3) Officer [REDACTED] (no discipline for posts identified by Plain View Project despite IAD having sustained a violation of the Policy); (4) Detective [REDACTED] (reprimand for four posts identified by the Plain View Project, which were found to have violated the Policy; no charge of Conduct Unbecoming); (5) Officer [REDACTED] (two-day suspension for posts identified by Plain View Project, which were determined to be violations of the Policy).

In addition, it points out that eight officers, who were given the benefit of a PBI hearing relative to charges stemming from posts identified by the Plain View Project, received no discipline, as they were found not guilty.

It stresses that a comparison of these cases with the facts here demonstrates the Department’s inconsistent and unfair treatment of Grandizio. This conclusion, it avers, follows from both the number and content of the posts involved.

Next, in contesting the reasonableness of the discipline Grandizio received, it argues that consideration of the charged offense and her tenure and record of satisfactory service permit, at most, a lesser penalty and compel rescission of the transfer. Principles of progressive discipline, it states, dictate as much. It notes in this regard: (1) Grandizio has no record of significant discipline for any reason and none related to the Social Media Policy; and (2) the record is devoid of any evidence of negligence or malicious intent on Grandizio’s part, which is needed to justify the severe penalty imposed here.

Further, focusing on the disciplinary transfer, it maintains that it was inappropriate and disproportionate for an added reason. Namely, the evidence, it asserts,

shows the transfer was not effectuated to address a legitimate concern, but rather to impose additional punishment on Grandizio. The Department's purported concern regarding the effect that Grandizio's continued role at the Academy could have on recruits and incumbent personnel, it contends, represents speculation. It stresses that during her tenure there, no one ever complained of her making inappropriate statements or discriminating based upon religion. Moreover, it points out, this same concern is present whether Grandizio works in the Academy or in a District.

Finally, in regard to due process, it avers the Department violated that fundamental principle by effecting Grandizio's transfer before issuing her a notice of discipline. The Department's failure in this regard, it states, cannot be excused as inconsequential or obviated by the prior issuance of disciplinary charges. It explains that process matters and notice of charges is no substitute for notice of discipline. It concludes that discipline without notice or explanation must be found to lack just cause.

Accordingly, for all of these reasons, it submits that the City has failed to substantiate that it had just cause to impose the contested discipline. As such, it requests that the grievance be granted and the requested relief awarded. Alternatively, it avers that if it should somehow be found that the City had just cause to take any disciplinary action against Grandizio based upon her posts, it must be significantly less than that imposed.

Opinion

There can be no dispute that the City's Police Department has a legitimate interest in setting standards governing the off-duty conduct of its officers. Indeed, its obligation to maintain the public's trust so as to effectively fulfill its mission commands as much. In setting such expectations, it may properly hold its officers as members of law

enforcement to a higher standard than applies to the general public consistent with its core values of honor, service and integrity.

For this reason, conduct that undermines public confidence in the individual officer or the Department in general is an appropriate subject to be addressed. Plainly, the scope of such conduct extends to social media use. The need is obvious. Social media posts have the potential to reach a very wide audience, and, as such, when improper, their negative impact can be far ranging and severe. Such effect was evident from the release of the Plain View Project's database of posts from members of law enforcement, including the Department's officers.

Consequently, I am satisfied that the Department's Directive 6.10 defining the permissible use of social media and networking by its officers, while allowing for First Amendment protected speech, is reasonably related to the orderly, efficient and safe administration of its law enforcement mission. To that end, it proscribes, among other matters:

using ethnic slurs, profanity, personal insults, material that is harassing, defamatory, fraudulent or discriminatory, or other content or communications that would not be acceptable in a City workplace under City or agency policy or practice.

(Joint Exhibit 7.)

An officer who breaches the standards set by this Directive can and should expect that discipline will follow.

The City, of course, bears the burden of proof, where, as here, it charges an officer with disregarding such responsibilities. In particular, it must establish through the weight of the credible evidence that Grandizio is guilty of the charged offenses. It must also demonstrate that the level of discipline imposed is appropriate.

The Union, on other hand, bears no parallel burden. It need not disprove the charges against Grandizio. Indeed, she is entitled to the presumption of innocence.

After a careful and thorough review of the record and the parties' respective arguments, I am convinced that the City has failed to meet its burden. More specifically, although I am persuaded that Grandizio committed the charged violations of the Social Media Policy, I do not find on the record here that the City had just cause for the level of discipline imposed upon her. My reasons for this conclusion follow.

The suspension and transfer at issue here arise from six posts that Grandizio made to her Facebook account during 2015-2016, which reportedly violated Directive 6.10 and, in turn, triggered the cited charges under the Department Disciplinary Code – (1) Section 1-§021-10 - Conduct Unbecoming; and (2) Section 5-§011-10 – Neglect of Duty.¹² As I understand, the Neglect of Duty charge rests upon the charged violations of Directive 6.10; while the purportedly egregious nature of Grandizio's posts provides the basis for the more serious Conduct Unbecoming charge.¹³

Addressing the issue of whether Grandizio's posts violated the Department's Social Media Policy, I am persuaded from my review of the record that the answer is yes.

By its terms, the Policy proscribes making posts or sharing content on social media that contains material that is discriminatory or harassing or would not be acceptable in a City workplace under established policy or practice. This restriction thus precludes social media activity that demeans, intimidates or ridicules persons based on

¹² The Disciplinary Code describes Conduct Unbecoming for purposes of Section 1-§021-10 as: "any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department;" whereas it identifies Neglect of Duty under Section 5-§011-10 as: "failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors." (Joint Exhibit 1.)

¹³ The prescribed discipline for a first offense of Conduct Unbecoming per Section 1-§021-10 is a 30-day suspension or dismissal. In contrast, a first offense of Neglect of Duty per Section 5-§011-10 carries potential discipline ranging from reprimand to a 5-day suspension. (Joint Exhibit 1.)

any classification protected by applicable anti-discrimination statutes, which includes religion.

In examining Grandizio's six posts at issue, I find that each one, on its face, falls into this category of prohibited content under the policy. Stated otherwise, each serves to demean or ridicule Muslims as a group by means of offensive stereotypes and/or portraying them as terrorists or persons committed to violence.

More specifically, in reaching this conclusion, I note the following as to Grandizio's posts:

September 22, 2015. This post, by which Grandizio shared an article with a meme stating "Muslims hate pork, beer, dogs, bikinis, Jesus and freedom of speech," portrays Muslims in an obvious negative light. It does so by describing aspects of Islamic faith in manner that suggests Muslims are anti-American.

This offensive message, I am persuaded, should have been clear to Grandizio. Yet, in posting this meme to her account, she did not include any comment taking issue with or disavowing its content. Instead, without such qualification, it is fair to conclude that her public post conveys an endorsement or support of the shared material.

I am unconvinced by Grandizio's claim that she posted this meme simply to learn the specific question referenced in the sub-heading, which reads: "Member of School Board Asks Muslims 1 Simple Question . . . She Risks her Career." This information is likely included in the article, as the portion of the headline contained in her post states "My question is" As such, she had no need to post the article in order to obtain that information. In any event, nothing in Grandizio's post supports her assertion. She did

not include a comment asking readers to share that question with her or give any other indication that was her reason for posting this meme.

November 27, 2015. This post, by which Grandizio shared content authored by a third party, poses the question, “Can a Muslim be a good American?” and then responds with a diatribe, asserting the answer is “no,” from a multitude of perspectives, including theologically, religiously, scripturally, geographically, socially, politically, domestically, intellectually, philosophically and spiritually. This naked attack on all Muslims, which contests their ability to be “good Americans” based upon their religious beliefs, is a clear-cut example of anti-Muslim rhetoric that runs afoul of the Social Media Policy’s prohibitions. I am satisfied that this fact was known or should have been known to Grandizio.

Grandizio’s testimony disavowing the assertion that Muslims cannot be good Americans does not alter my conclusion that this post violated the Department’s Social Media Policy. Nor does her claim that she posted this material to promote a discussion. Her post does not include any such representations or any other statement expressing her disagreement with the posted content. Indeed, other than sharing the offensive third-party content, her post is silent. As such, on its face, it effectively lends her support to the representation that Muslims cannot be good Americans, and thus, represents an obvious violation of the Policy.

I am also unpersuaded by the Union’s argument that the message of this post mirrors that communicated by the Department in the 2008 training it provided to all officers regarding “Radical Islam.” In contrast to this post, the 2008 training did not express that Muslims cannot be good Americans. Instead, as the power point used in

conducting that training reflects, it focused on educating officers as to the potential for Islam to be used in radicalizing individuals. This distinction is clear from the Venn diagram on the second page of the training materials, which shows Shiite Extremists and Jihadists as small subsets among the universe of Muslims. (Union Exhibit 4 at 2.)

November 30, 2015 and June 14, 2016. In both of these posts, Grandizio shared a chart prepared by a third party titled “Can You Connect the Dots?” which lists six terrorist attacks and identifies each as having been committed by a Muslim in a gun free zone. The message conveyed by this chart in terms of “the dots” to be connected is clear. It does not require any conjecture or assumptions. By selectively listing only certain terrorist attacks, where the perpetrator was reportedly Muslim, the chart presents a distorted picture, which suggests Muslims are responsible for all recent terrorism worldwide. In doing so, it demeans all Muslims, by branding them as potential terrorists. Therefore, in view of the anti-Muslim sentiment conveyed by the content of these posts, I am convinced that they constitute a violation of the Department’s Social Media Policy.¹⁴

In reaching that conclusion, I find unavailing Grandizio’s assertion that she posted this chart to communicate her concern that gun free zones are being exploited by persons, regardless of religion, who “want to do bad.” Nothing in her post communicates such a purpose. Indeed, beyond presenting the chart, her post does not contain any other content. As such, her claim strikes me as a convenient post-hoc attempt to distance herself from the anti-Muslim content of the post.

¹⁴ The re-posting of this chart on June 14, 2016 was apparently triggered by an exchange of comments between Grandizio and another individual in response to her initial posting on November 30, 2015. Inasmuch as Deputy Commissioner Coulter indicated that these comments by Grandizio were likely First Amendment protected speech, I have not given them any consideration in determining whether the posting violated the Social Media Policy. Instead, I have limited my consideration to the content of the chart that appears in both of these posts.

In any event, having failed to redact or at least disavow the offensive elements of the posted chart, Grandizio must bear responsibility, as its disparagement of Muslims should have been obvious to her.

March 14, 2016. The anti-Muslim sentiment conveyed by the meme that Grandizio shared in this post is clear and direct. It does so by presenting four photographs depicting religious officials of Judaism, Christianity, Hinduism and Islam, the first three of which are captioned, “Leave us alone we leave you alone;” while the picture of the Islamic religious official is captioned, “Leave us alone we’ll kill you any way.” As such, the undeniable message of this meme is that all Muslims are killers and will act without provocation. Therefore, it necessarily follows that the posting of this meme violated the Social Media Policy.

Grandizio’s proffered explanation for this posting does not support a different conclusion. Contrary to her claim, nothing in her post suggests that she presented this meme to convey that all religions have had “their dark periods.” and as occurred previously with Judaism and Christianity, Islam needs reformation. Indeed, as with her prior posts, here again, her post is silent, but for presenting the offending meme. Having failed to offer any such context or explanation for her post, it follows that she knew or should have known that the meme standing alone served to demean and ridicule Muslims.¹⁵

September 21, 2016. By this post, Grandizio shared an article that included an artist rendering and a caption reading, “Here’s The Disgusting Thing Muslims Did To Male Slaves . . . Be Warned. This Is Graphic.” In doing so, she also commented “And

¹⁵ For the same reasons noted above, I find that here too, the Union’s reference to the Department’s 2008 Radical Islam training offers no defense for this violation of the Social Media Policy by Grandizio.

this is going on right now!” I am satisfied that on its face, this post demeans Muslims by indicating that are currently engaging in the violent acts depicted in the drawing. As such, it represents a violation of the Social Media Policy.

I find unpersuasive Grandizio’s assertion that her comment, “this is going on right now,” concerned modern day slavery and not the depicted acts of violence. This claim simply does not make logical sense. The caption plainly reflects that the article focused on “the disgusting thing Muslims did to Male slaves,” and not slavery in general. Therefore, by commenting, “this is going on right now,” it logically follows that Grandizio was referring to the subject of the article and not modern day slavery. Plainly then, she knew or should have known that her post ran afoul of the Department’s Social Media Policy.

In finding that the Department has substantiated that Grandizio’s six posts violated the Directive 6.10, I reject the Union’s due process challenge by which it asserts the City failed to conduct a fair and thorough investigation. Contrary to the Union’s contention, I am not persuaded that in Grandizio’s case, the City had an obligation to examine the source material referenced in each post and inquire as to her intent in making these posts.

Such further examination may have made for a more thorough investigation, but it was not required to substantiate the violation. For the reasons I have explained, each post, on its face, violates the prohibition of Directive 6.10. Therefore, the posts along with confirmation that Grandizio had posted each, which the Department’s investigation established, was sufficient to prove her misconduct.

Likewise, contrary to the Union's claim, I am satisfied that Grandizio had sufficient notice of the Social Media Policy's prohibitions in regard to her offending posts. The Union's argument regarding the need for training as to the Policy's application to the nuanced matter of First Amendment protected speech, while legitimate, has no application here.

Nothing in Grandizio's offending posts suggests that they represent constitutionally protected speech. Nor do I understand the Union to seriously contend otherwise. Instead, I am convinced that her posts fall squarely within the Policy's prohibition against posting material that is discriminatory or harassing or would not be acceptable in a City workplace under established policy or practice. This restriction is clear from a simple reading of the Policy, and as such, should have been known to Grandizio.¹⁶

Having found that the City proved that Grandizio violated the Department's Social Media Policy, Directive 6.10, by the six identified posts that she made to her Facebook account during 2015-2016, there remains the issue of whether the level of discipline imposed was an appropriate response. I conclude that it was not.

In beginning this analysis, I note that the basic tenets of just cause mandate that the penalty must be proportionate to the offense committed.

¹⁶ I am also unpersuaded by the Union's claim that the Department's failure to actively enforce Directive 6.10 by monitoring its officers' social media activity for violations unfairly deprived officers, such as Grandizio, from receiving notice of the Department's view of appropriate social media activity. I find no basis to impose such an obligation on the Department. Stated otherwise, I am satisfied that notwithstanding the absence of such a monitoring process, the Department retained the authority to enforce the Policy upon learning of violations from complaints or otherwise. Further, I am satisfied that imposition of the contested discipline three to four years after the dates of Grandizio's offending posts does not raise due process concerns. On the record here, there is no dispute that the Department first learned of Grandizio's posts in June 2019 with the release of the Plain View Project's database. Thereafter, it promptly investigated and adjudicated the matter, imposing the contested discipline in October and November 2019. There may well be situations where the time elapsed from the offense to the imposition of discipline represents a fatal due process flaw. I am convinced, however, that such is not the situation here.

Under the Department's Disciplinary Code, which has been negotiated and incorporated into the Agreement, the thirty-day suspension that Grandizio received was within the permissible range of discipline for a first offense on the charge of Conduct Unbecoming, Section 1-§021-10; namely, a thirty-day suspension or discharge. Further, in assessing her offenses as to both their quantity and gravity, I do not find a thirty-day suspension to be an excessive disciplinary response.

Her misconduct was no minor matter. It occurred repetitively over two years. In addition, by her offending posts demeaning and ridiculing Muslims, she breached the public trust and thereby cast doubt on her ability to perform her duties without bias and consistent the Department's core values of honor, service and integrity. Plainly, it called for substantial discipline.

Proportionality, however, is not determined in a vacuum. Instead, the just cause standard obligates the Department in meting out discipline to do so even-handedly absent reasonable justification to distinguish between employees guilty of the same or similar offense. Stated otherwise, notwithstanding convincing proof of both the offending conduct and the proportionality of the discipline imposed, just cause must be found lacking when there is credible evidence of unjustifiable disparate treatment.

Applying this standard to the evidence presented here, I find the Department has not been consistent in the level of discipline imposed for violations of its Social Media Policy. This fact is evident from a comparison of Grandizio's thirty-day suspension to the discipline other officers received for similar or more egregious violations of the Policy.

In particular, the treatment of two other officers stands out. They are [REDACTED]

[REDACTED]¹⁷

In 2017, [REDACTED] received a one-day suspension for her violations of the Social Media Policy, which included 40 offending posts laced with profanity and offensive content that maligned the City's mayor and responded to other posters with racially harassing and threatening remarks. (Union Exhibit 5.)

More recently, in 2019, [REDACTED] received a two-day suspension for nine or more posts, which were identified by the Plain View Project and determined to violate the Social Media Policy. These posts included a wide variety of offensive content that was demeaning or harassing based on race, sex, religion, ethnicity and national origin. (Union Exhibits 13-14.)

The lesser penalties that [REDACTED] and [REDACTED] received for violating the Social Media Policy, despite posts that were possibly more egregious than those made by Grandizio, may stem from their having not been charged with Conduct Unbecoming, but only Neglect of Duty. Nonetheless, this charging distinction cannot explain away the substantially more lenient discipline that they received for comparable violations.

I recognize, of course, that the more lenient treatment that [REDACTED] and [REDACTED] received may be more of an exception.¹⁸ However, I cannot ignore such lesser discipline

¹⁷ In support of its disparate treatment claim, the Union identified the Department's response to Social Media Policy violations committed by several other officers. However, on review, I find that they are not appropriate comparators or there is insufficient evidence to conclude there was disparate treatment.

¹⁸ I note in this regard that [REDACTED] for her offending posts identified in 2019 by Plain View Project was charged with both Conduct Unbecoming and Neglect of Duty, for which she received a 30-day suspension, albeit for a repeat offense. In addition, the arbitration awards concerning Officers [REDACTED] and [REDACTED], which I received with the parties' post-hearing submissions, reflect two instances in which offending posts identified by the Plain View Project resulted in the officer's discharge. Arbitrator Timothy Brown sustained [REDACTED] discharge based on approximately 20 posts shown to violate the Social Media Policy, stating that the shocking nature of the posts provided just cause for such level of discipline. In [REDACTED] case, Arbitrator Brown reduced his discharge to a 30-day suspension, finding that the evidence

in assessing whether the City had just cause to suspend Grandizio for thirty days. Indeed, it causes to me to conclude that just cause exists only for a suspension of a shorter duration. I determine that period should be fifteen days.¹⁹

Finally, there remains the matter of Grandizio's disciplinary transfer from the Academy to the 14th District. Inasmuch as the transfer constitutes part of Grandizio's discipline for her Social Media Policy violations, it too must be supported by just cause. On review, I am satisfied that the City has met this burden.

For the reasons that I have detailed above, the evidence presented substantiates that Grandizio's posts violated the Social Media Policy in that they demean and ridicule Muslims. In light of this demonstrated propensity to share such offensive views via her social media account, I am persuaded that Department had a legitimate concern with Grandizio's continued posting to the Academy; namely, the undue risk that she might share such views in interacting with recruits and tenured officers attending training there.

The fact that there had been no complaints to date of such improper conduct does not rebut the Department's concern. Further, her capacity as trainer at the Academy lends support for the Department's assertion that she could exercise far more influence in that role than in the assignment to which she was transferred as an operations room supervisor at the 14th District.

substantiated that [REDACTED] by his posts had disparaged and demeaned certain groups, but was not shown to have engaged in the most egregious conduct charged.

¹⁹ In reducing the duration of Grandizio's suspension, I am mindful of her testimony expressing no regret for any of her offending posts, a fact I find very troubling. As such, it is important for Grandizio to recognize that this modification of her discipline does not in any way excuse or minimize the gravity of her very serious misconduct. Instead, she should understand the need to reform her conduct, as well as the consequences of any further violations of the Social Media Policy, which, depending on the circumstances, could include her discharge.

In sum, I am persuaded that Grandizio's transfer out of the Academy represents a proportionate response to her established misconduct. As such, it meets the just cause standard.²⁰


Accordingly, for all of these reasons, the Union's grievance is granted in part and denied in part. The Department shall reduce the contested suspension from thirty to fifteen days and make Grandizio whole for all pay and benefits lost as consequence of the additional fifteen days for which she was suspended. It shall adjust Grandizio's personnel record consistent with applicable law to reflect this reduction in her suspension. Grandizio's disciplinary transfer out of the Academy is sustained.

²⁰ In reaching this result, I have considered the legitimate due process concern that Union raises as to the Department having administratively effected Grandizio's transfer out of the Academy without first issuing her a notice of discipline. By proceeding in this manner, the Department acted contrary to a key purpose of discipline, which involves informing the affected employee of the transgression triggering the discipline and the need to reform his/her offending behavior. However, under the circumstances here, I am not persuaded the Department's failure rises to the level that warrants reversing Grandizio's disciplinary transfer on due process grounds. In so finding, I am influenced by the Department having promptly remedied this notice deficiency once apprised of it by Union, as well as the absence of any prejudice to Grandizio or the Union's ability to contest her transfer.

AWARD

1. The grievance is granted, in part, and denied, in part.
2. The City had just cause to discipline Tanya Grandizio for her violations of the Department's Social Media Policy by the offending posts she made to her social media account during 2015-2016, but the penalty of a thirty-day suspension was excessive. The suspension shall be reduced to a fifteen-day unpaid suspension. Her disciplinary transfer out of the Academy is sustained as supported by just cause.
3. The City will make Tanya Grandizio whole for all pay and benefits lost as a consequence of the additional fifteen days for which he was suspended, effective in or about November 2019. I will retain jurisdiction of this matter to resolve any dispute as to the implementation of this award, including the monies to be paid to or on her behalf in providing this make whole relief.
4. Tanya Grandizio's personnel record shall be revised consistent with applicable law to reflect this adjustment in the duration of the contested suspension.

February 2, 2022




David J. Reilly, Esq.
Arbitrator

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

I, DAVID J. REILLY, ESQ., do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

February 2, 2022



David J. Reilly, Esq.
Arbitrator