

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between :
 :
American Federation of State, County and :
Municipal Employees, District Council 47, :
Local 2187 :
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 ("Union") :
 :
 And :
 :
City of Philadelphia :
 :
 ("City") :
 :
 :
AAA Case No. 01-20-0015-3518 :

This case arose when the City terminated Greg Garner ("Grievant"). The Union seeks rescission of the Grievant's termination and appropriate back pay. The City maintains that the grievance is entirely without merit.

Throughout this proceeding, the Union was represented by John R. Bielski, Esquire. The City was represented by Brian Rhodes and Michael Sheehan, Esquires. Counsel for both parties filed extensive post-hearing briefs.

CONTRACT PROVISIONS

Grievance Procedure

* * *

Authority of Arbitrator

The Arbitrator will make findings and render a decision to resolve the disagreement. The Arbitrator shall not have jurisdiction to add to, modify, vary, change or remove any terms of this Agreement. The scale of wages established by this Agreement shall not be changed by any arbitration decision.

Separability and Savings

B. CIVIL SERVICE REGULATIONS, Intending to recognize the Civil Service Regulations as the most viable means for translating operational procedures for employees in a uniform manner both parties acknowledge that the Civil Service Regulations apply to all employees under this Agreement...Where there is a conflict as to whether language in the contract applies in the case of a particular grievance or whether language in the contract applies, the contract language shall be assumed to prevail until otherwise adjudicated...

* * *

Discipline and Discharge

A. Just Cause. It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for any employee in probationary status, is for just cause only.

* * *

C. Progressive Discipline. The City shall have the right to discipline or discharge any employee in the bargaining unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2187 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees.

* * *

37B. Sexual Harassment. The City recognizes no employee shall be subject to sexual harassment. Sexual harassment shall be deemed just cause for disciplinary action...

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SEXUAL HARASSMENT PREVENTION POLICY

Section II. Statement of Prohibition

The City of Philadelphia prohibits workplace sexual harassment based on sex, sexual orientation and gender identity by City employees and officials toward other employees, officials, applicants for City employment, and members of the public. Any employee who is found to have engaged in sexual harassment or retaliation, as defined by this policy shall be subject to remedial and/or disciplinary action, up to and including termination of employment.

Section III. Definition of Sexual Harassment

Sexual harassment is defined legally as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when:

- a. Submission to that conduct is made explicitly or implicitly a term or condition of employment; or
- b. Submission to or rejection of that conduct is used as a basis for employment decisions; or
- c. The conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

For purposes of this policy, unwelcome means unwanted. No employee should assume that any such conduct is welcome by others. Moreover, all individuals who come into contact with City employees should report inappropriate conduct as delineated in this policy regardless of whether it meets the strict legal definition of sexual harassment.

Section IV. Prohibited Conduct

The City of Philadelphia strictly prohibits all forms of harassment including sexual harassment, not only in the workplace, and in other work-related activities such as business trips, business-related meetings, social events, but in any interaction between co-workers.

The following categories provide examples of conduct that violates the City's Sexual Harassment Prevention Policy. These are not to be construed as an all-inclusive list of prohibited acts under the policy. Conduct need not fall within the legal definition of discrimination, harassment, or retaliation to be actionable under the policy.

A. Physical

Prohibited conduct includes but is not limited to:

- Intentional physical contact, such as touching, pinching, patting, groping, slapping, massaging, poking, touching clothing covering the immediate area of intimate body parts, grabbing or brushing up against someone, sniffing, blocking or impeding movement...

B. Verbal

Prohibited conduct includes but is not limited to:

- Making sexually oriented, demeaning or hostile remarks, slurs, jokes or comments about a person's sexuality or sexual experience;
- Sexual epithets, jokes, ridicule, insults, gossip or remarks about one's own or someone else's sex life, body, sexual deficiencies or prowess;

* * *

- Sexually suggestive, insulting or degrading comments, catcalls or music;
- Stereotyping or offensive comments that denigrate or insult someone because of their protected class.

* * *

G. Use of Technology

Depending on the circumstances, the City prohibits the use of technology, both City-owned and personal, to engage in conduct prohibited by this policy. The term "technology" includes but is not limited to computers, fax, e-mail, cell phones, instant messaging, social media, videos, or any other similar modes of transmission, including emerging or future transmission technology.

H. Retaliation

It is unlawful to take adverse action against someone who files a complaint of harassment or discrimination, or who cooperates in an investigation of such a complaint.

Retaliation is a violation of the City's policy and employees who engage in retaliatory conduct are subject to appropriate discipline up to and including discharge and may incur legal liability.

Examples of retaliation may include:

* * *

Intentionally pressuring, falsely denying, lying about, or covering up or attempting to cover up conduct such as that described in any item above.

I. Other Forms of Prohibited Conduct

Other conduct that has the purpose or effect of interfering with an employee's work performance or working conditions based on sex, sexual orientation or gender identity is prohibited. Examples may include:

Interfering in the investigation of a complaint;

Knowingly providing a false complaint or response to a complaint during the investigation.

* * *

Section VIII. Acknowledgment Form

Attachment A of this policy is the acknowledgment form which must be maintained in the Personnel File for each employee.

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CIVIL SERVICE REGULATIONS

Section 17. Dismissal, Demotion, Suspension and Appeals

Section 17.1 Dismissal, Demotion and Suspension

Any dismissal or demotion after the completion of the required probationary period of service, or suspension of any employee in the Civil Service shall be for just cause only.

* * *

FACTS

The City and Union are parties to a Collective Bargaining Agreement ("CBA"). This Contract includes the provisions set forth above. Among other things, the CBA provides that the City may discharge employees only for just cause.

The City has promulgated a Sexual Harassment Prevention Policy ("Policy"). This Policy, which includes the provisions set forth above, is applicable to all bargaining unit employees.

There are also Civil Service Regulations ("Regulations") that are applicable to all bargaining unit employees. These Regulations provide that any employee in the Civil Service shall be dismissed for just cause only.

The City operates a Department of Behavior Health ("Department"). Among those who work in this Department are Mental Health Services Coordinators ("Coordinators"), who are in the bargaining unit represented by the Union.

The Department operates a crisis line. This is a resource which fields and responds to callers with mental, emotional, and behavioral issues. Coordinators conduct risk assessment of citizens who call the crisis line to evaluate and determine what each call requires in terms of outside agencies support, emergency intervention, or referral to additional professionals for further evaluation or treatment.

When a person calls into the crisis line the first task of the Coordinator is to perform an evaluation of the caller's suicide risk and respond by resolving the crisis, referring the person to another entity or agency or, if necessary, reaching out to emergency services. Coordinators are required to complete a contact form for each call, which must be placed in a specific folder in the office for the floor supervisor's review. There is also an on-line system in which Coordinators enter information if they wish to send out the Mobile Crisis Team, which can be dispatched to meet with individuals who demonstrate a high level of need for intervention. If the Coordinator determines the caller has a low risk of suicide or self-harm there are several resources

available for referral, including to a mental health clinic or community behavior health.

In 2005, the Grievant began his employment with the City as a Recreation Leader with the Department of Recreation.¹ In 2008, the Grievant was hired by the Department as a Coordinator 1. Two years later, he was promoted to Coordinator 2. A Coordinators 2 is required to have completed a master's degree with major course work in psychology, sociology, mental health counseling or social work. The educational requirement includes courses on the ethical responsibilities of a therapist or psychologist.

As a Coordinator, the Grievant performed a variety of functions, including working on the crisis line. During his tenure as a Coordinator, the Grievant had never been disciplined prior to the matter at issue in this case. In his performance evaluations the Grievant was always rated at least satisfactory, and in his last performance evaluation he was rated superior.

The Grievant was trained in the policies, procedures, and regulations applicable to the Coordinator position. In particular, the Grievant received the Harassment Policy and signed an acknowledgment of same. The Grievant was therefore aware that the Policy specifically prohibits all forms of sexual harassment,

¹ Prior to beginning employment with the City, the Grievant received a BS degree in Therapeutic Recreation and a master's degree in Community Psychology.

and further prohibits an employee from retaliating against an individual who reports or makes a claim of sexual harassment.

On October 17, 2019 ("October 17")² the Grievant was working on the crisis line. Early that morning the Grievant answered a call from a female later identified as ■■■.³ The call list from the crisis line indicates that the call from UA came in at 7:42 a.m. and lasted 95 minutes and 49 seconds, ending at approximately 9:18 a.m.

During this call, the Grievant and ■■■ spoke on a variety of topics including her family, the fact that she was ■■■ and the mental and emotional problems she was experiencing. At the conclusion of their call, the Grievant told ■■■ that he had to take another call. ■■■ did not ask the Grievant to get back to her and the Grievant gave no indication to ■■■ that he was planning to do so.

After he hung up with ■■■ the Grievant was intending to call her back, but another call came in and he was unable to make the call. Thereafter, the Grievant did not dispatch the Mobile Team or any emergency responders to ■■■. He also did not inform his superior or any co-workers of ■■■'s call or place the required contact form for the call into the office folder.

² All dates are in 2019 unless otherwise specified

³ The identity of UA is well known to those involved in this case. The City, however, has used the UA as the identifying symbol for this person, apparently to protect her privacy, and I therefore will do likewise.

At 9:21 a.m. that same morning, the Grievant did use his personal phone to send a text message to ■■■.⁴ That text message stated as follows:

Omg this goes against every training I've ever taken. For some reason your story concerns me more than others. This is Gregory from the hotline. I had to take another call but still I'm thinking about you. I really hope your day gets better. But I wanted to give you my number just so you know you aren't alone. Please feel free to reach out.

That same day ■■■ responded back to the Grievant with a text stating "You're really a great person. Thank you".

Ten days later, on October 27, ■■■ initiated a series of text messages between her and the Grievant. During those messages, ■■■ said that she could use a friend and asked if they could meet to talk.⁵ ■■■ and the Grievant did meet at a coffee shop later that day, and at some point, they went and sat alone in the Grievant's car.

Based upon statements and testimony subsequently given by both ■■■ and the Grievant, the City and Union put forth sharply conflicting accounts of what occurred between them while they were together in the car. According to the City, the Grievant made unwelcome comments to ■■■ that were sexually suggestive, touched

⁴ This text message, and all others between the Grievant and UA that are referred to in this Opinion, were taken from the Grievant's personal cell phone, which the Grievant made available during the Department's investigation of this matter.

⁵ According to ■■■, the Grievant initially suggested that they meet at his home, but she declined and instead requested they meet at the coffee shop. The Grievant denies that he ever suggested that they meet at his home.

her face and lips, and after telling UA she had a hair on her chest, reached into her shirt and contacted the area between or around her breasts. According to the Union, the Grievant said nothing inappropriate to [REDACTED] and the only contact he made with UA was when, after [REDACTED] reached out to hug him, he noticed there was mucus on her mouth and when he brushed it away it fell on her jacket, and he then brushed it off her jacket.

The Grievant went to work later that afternoon. While he was still working, [REDACTED] initiated the following text message exchange:

[REDACTED]: Sitting at a park

GR: Go home. Please

[REDACTED]: I will

[REDACTED]: You give big brother advice or good friend and I appreciate that. Lol the fact that you even tried kinda bothers me though. I'm no little damsel in distress that you're just about to cop feels on. I'm sorry I just gotta get that shit out because yeah. Thanks for hearing me tho

GR: Wow I only tried to help. You had something on you. It wasn't a pleasure feel. At all. Sorry I did that. Good luck
[REDACTED]

UA: You could just let me know next time. I would still like to be friends I just don't want us to get into any weird spaces moving forward. And with no hard feelings.

GR: Cool

[REDACTED]: Don't get cold with me.

Later that same day, [REDACTED] initiated additional text messaging with the Grievant, during which [REDACTED] asked for advice concerning

family matters and the Grievant responded that he could not make those decisions for her.

Six days later, [REDACTED] again reached out to the Grievant via text message and asked how he was doing. The Grievant stated that he was "Great" and asked about her. [REDACTED] responded that she has "some high days, some low. But I'm trying to be okay." The Grievant encouraged [REDACTED] and informed her "it won't be easy at all."

On or about November 7, [REDACTED] called the crisis line, with this call being handled by [REDACTED] (" [REDACTED] UA told Hawkins that the Grievant had behaved inappropriately towards her. While [REDACTED] was on hold, [REDACTED] wrote [REDACTED]'s name on a Post-It and showed it to the Grievant.

After being made aware by Hawkins that [REDACTED] had called to complain about him, the Grievant reached out to [REDACTED] by text and the following exchange took place:

GR: I was just looking to see where I went wrong in our conversation. I only wanted to help you.

[REDACTED]: What're you talking about

GR: Someone just called and said that they were you and I touched you inappropriately and they just didn't want this to happen to anyone else. And now I'm gonna get in trouble and maybe lose my job.

GR: Was that really you [REDACTED]. I only sent my number because I was worried about you and I didn't like the way the call ended because I had to take another call. So I wanted you to still have access to talking to someone. I'm not gonna text you anymore. Again, I'm sorry.

██████████ also told the Grievant's supervisor, ██████████ ██████████ ('██████████'), about ██████████'s complaint. ██████████ spoke directly with ██████████ following which ██████████ informed the Department's Human Resources office about ██████████'s complaint. ██████████ ██████████ (██████████), from the Department's Human Resource office, was assigned to do an investigation.

On November 8, ██████████ interviewed the Grievant. This interview was conducted in the presence of the Grievant's Union Representative, as well as other individuals. During this interview, the Grievant gave his version of what had occurred between he and UA on October 27.

On November 11, ██████████ spoke to ██████████ to discuss the complaint she had made. ██████████ told ██████████ that she was frightened because she had received a text from the Grievant shortly after making the complaint. ██████████ then told ██████████ her version of the interactions she had had with the Grievant.

On November 15, a follow-up, in-person interview was conducted with ██████████, at which time she provided a written statement in which she recounted the initial conversation with the Grievant on the crisis line, his subsequent text to her on October 17, their in-person meeting on October 27, and the complaint she brought to the crisis line on November 7.

After being advised of the complaint made by ██████████, the Grievant submitted the contact form concerning his initial conversation

with [REDACTED] back on October 17. The Grievant had not previously submitted a record of this interaction and had not told anyone about his meeting with [REDACTED]

The City ultimately determined that the Grievant should be terminated for his interactions with [REDACTED]. A Notice of Dismissal was issued on November 9, 2020. It was specified therein that the Grievant's dismissal was based upon violation of the Harassment Policy.⁶

The Union, in response to the Grievant's termination, processed the instant grievance on his behalf. When the grievance could not be resolved, the Union moved it to arbitration. This Award now results.

POSITION OF THE CITY

The Grievant's discharge is for just cause. The City has satisfied all traditional elements of the just cause test.

More specifically, the City established that the Grievant was on notice of reasonable workplace rules, namely that he could not contact a Crisis Line caller via text on his personal cell phone and could not sexually harass her when they met in person. Further, the City has established that the Grievant was given actual notice of the Harassment Policy and knew he could not

⁶ [REDACTED] received a three-day suspension for her handling of UA's call on November 7. That matter is not part of the instant arbitration proceeding.

retaliate against a complainant or interfere in anyway with a sexual harassment investigation.

The investigation, which was conducted in a thorough, fair, and objective manner by the Department's Human Resources Unit, was detailed and involved interviews of all relevant parties as well as examination of all available evidence. That investigation produced substantial evidence that the Grievant did text [REDACTED] did harass her when they met in person, and did interfere with the investigation after [REDACTED] complained about him.

While progressive discipline was considered by the Department, each violation of the Policy and the Grievant's own failure to follow what he knew from his education and experience was egregious. The totality of the evidence therefore required the Grievant's dismissal for his repeated misconduct.

For these reasons, the grievance should be complexly denied and the discharge sustained.

POSITION OF THE UNION

Under the CBA the City may only impose discipline for just cause. Additionally, disciplinary actions "shall be progressive in nature where appropriate."

The City lacked just cause to terminate the Grievant because the record does not demonstrate that the City had substantial evidence that the Grievant engaged in sexual harassment towards

■ While the Grievant and ■ differ over what occurred during their meeting on October 27, a meeting that was initiated by UA texting the Grievant, the Arbitrator should credit the account of the Grievant.

Despite ■ claims that the Grievant behaved inappropriately on October 27, she texted him later that same day while he was at work and told him that he gave her "big brother or good friend" advice and that she "appreciated that". While ■ also then texted the Grievant that "Lol the fact that you even tried kinda bothers me tho. I'm no little damsel in distress that you're just about to cop feels on" the Grievant made clear in his response that he did not intend to do anything inappropriate, and ■ responded back that "I would still like to be friends". Indeed, six days later ■ reached out to the Grievant again via text message and a supportive response from the Grievant occurred.

The text messages simply do not support ■'s version of the facts. Despite her testimony that the Grievant "sexually assaulted" her, ■ repeatedly reached out to him after the alleged offense occurred and even indicated that she still wanted to be friends. In none of the text messages did she make the explosive allegation that she later leveled at the Grievant when she called the crisis line to complain about his purported conduct.

Consequently, the evidence does not support termination of the Grievant. While the Union and the Grievant recognize that a

charge of sexual harassment is a serious matter, a charge alone is insufficient to support discharge. The City must prove its case, and it here has not.

The position of the Union is further supported by the fact that the Grievant was a 15-year employee of the City and had no prior discipline in his personnel file at the time he was discharged. Indeed, his last performance evaluation gave the Grievant an overall rating of "superior" and his supervisor testified that the Grievant exhibited excellent traits at his job and commended him.

Finally, to the extent the City relies upon the Grievant's text messages to ■ after she made her complaint against him, the Grievant has expressed remorse for doing so and admitted that he was in the wrong. The Grievant further indicated that he enjoyed his job at the Department and wanted to return.

For all these reasons, the Arbitrator should sustain the grievance. As a remedy, the Arbitrator should reinstate the Grievant to his former position, and award him an appropriate back pay Award, if any.

OPINION

The City's decision to discharge the Grievant is based upon three primary areas of alleged misconduct involving his interactions with [REDACTED] who he had first interacted with in his position as Mental Health Services Coordinator when she called the City's crisis line seeking assistance. According to the City, the Grievant's actions with [REDACTED] were in violation of its Sexual Harassment Prevention Policy.

As a preliminary matter, the City is correct that this Harassment Policy was applicable to the interactions between the Grievant and [REDACTED] notwithstanding that [REDACTED] is a private citizen and not a City employee. While the focus of the Policy is on what takes place between City employees, the Policy is clear that it also applies to interactions between City employees and members of the public. Furthermore, there is no dispute the Grievant was aware of the Policy and knew he was obligated to comply with its provisions.

Turning to the specifics of the three acts of alleged misconduct by the Grievant, the first is that the City contends that on October 17, 2019 he improperly initiated, and thereafter continued, a texting relationship with UA outside the normal channels of communication and assistance that are to be used by Coordinators. The second is that the Grievant improperly met in-person with [REDACTED] and during that meeting he sexually harassed her.

The third is that, after being informed that ■ was making a complaint against him, the Grievant contacted her by text message to influence the resulting investigation. I will address each of these three allegations separately.

I am persuaded by the City that the Grievant's initiation of a texting relationship with ■ on his personal phone, and his continuation of that texting relationship for weeks thereafter without any direction from, or even knowledge of, his superiors was improper. While as the Union stresses there was no rule or order that explicitly prohibited this exact conduct, the City has established that the Grievant had reason to know, and in fact did know, that this was improper.

As emphasized by the City, individuals using the crisis line are generally at-risk individuals, and professional boundaries must therefore be maintained between Coordinators and the individuals they serve. There is inherently a power imbalance between Coordinators and callers, and their interaction is most certainly not like that of a lay person trying to help a friend or family member who is in mental distress.

Moreover, if the Grievant concluded that ■ needed additional support and resources beyond what he provided her in their initial phone call on the morning of October 17, he had available to him a variety of resources to which he could have referred ■. These included access to emergency services if he determined that ■ was

truly in crisis, or referral to professional services if there was not such an imminent need. There was no professional reason at all for the Grievant to develop an ongoing texting relationship with UA that went beyond conventional channels of contact and support, however well intended he might have been.

The Grievant was undoubtedly fully aware of the impropriety of this texting activity through his education and training. Indeed, the very first words he wrote to ■■■ in his very first text to her on the morning of October 17 was "Omg this goes against every training I have ever taken".

There is still further evidence indicating that the Grievant understood that his texting relationship with ■■■ was outside the boundaries of propriety for a Coordinator. In particular, he did not reveal anything about it to anyone else at the workplace, either superiors or co-workers. In addition, the Grievant did not, until after he was informed that ■■■ had made a complaint against him, complete and submit a contact form involving his initial contact with ■■■, which is required for normal interactions between Coordinators and callers. While the Grievant contends that it was not his practice to promptly submit those forms, given the extraordinary nature of what was occurring between himself and ■■■ the Grievant should have known it was particularly important to timely submit that form in this situation.

I reject any contention by the Union that the Grievant's relationship with ■ was justified by some type of past practice. There is no evidence that the Grievant or any other Coordinator had ever previously engaged in the type of ongoing private texting relationship with callers that the Grievant did with ■. While the Union emphasized that it was ■ who was initiating the texting on days after October 17, and that ■ indicated she needed a friend, it is not the job of Coordinators to be friends with callers. Rather, it is the job of Coordinators to work professionally with callers and, when necessary, direct them to the resources they need.

I now turn to the second primary reason for the Grievant's termination, in particular his decision to have an in-person meeting with ■ on October 27 and what he said and did at meeting. I am further persuaded by the City that it also had just cause to discipline the Grievant for these reasons.

Given the power imbalance between Counselors and callers, any unauthorized in-person meeting between them is fraught with inherent difficulties. This is a step of impropriety well beyond that of a private texting relationship. This is true even if the Counselor is motivated by nothing more than an attempt to help the caller with whom he/she is meeting in-person.

The Grievant had no good reason to believe it would be appropriate for him to meet with ■ in-person. While the Union

brought forth testimony that on occasion Kennedy had met in-person with a crisis line user, testimony established that he only did this in response to a directive or request and did not meet alone with those individuals. This is in sharp contrast to what the Grievant did, meeting alone with ■ without a directive or request of a supervisor or even the knowledge of anyone else.

Furthermore, while a direct meeting between the Grievant and ■ in a coffee shop was bad enough, the Grievant further compounded the inappropriateness of this meeting when he took ■ to his car where they sat alone, with the Grievant in the driver's seat and UA sitting next to him in the passenger seat. Although the Grievant contends that this occurred because the coffee shop was crowded and it began raining, the fact remains that he could have chosen to discontinue his meeting with ■ or find another public space, but instead chose to continue the private meeting with ■ in a situation that involved private physical proximity with her.

This leads me to the dispute over what occurred between the Grievant and ■ during their in-person meeting on October 27. As previously noted, on this there is sharp disagreement between ■ and the Grievant.

According to the Union, all that took place was the following: Initially, the Grievant and ■ spoke on a bench at the coffee shop. She was upset about an incident with her husband and conveyed the same feelings of despair that she had expressed during their

October 17 phone call. The Grievant attempted to give [REDACTED] constructive advice and provided her names of agencies which could provide her support. After they moved their conversation to his car, the Grievant continued to offer [REDACTED] counseling and advice. The only contact the Grievant made with [REDACTED] was when, after [REDACTED] reached out to hug him, he noticed there was mucus on her mouth, and he brushed it away. It then fell on her jacket, and he then brushed it off that jacket.

According to City, the following took place: After they went to the Grievant's car, the Grievant said "Girl you're thick, you're beautiful, you're sexy, which man wouldn't like you, you're fine" as he was trying to touch [REDACTED]'s leg with his hand. At some point the Grievant said there was something on [REDACTED]'s face and touched her lips and she responded by telling the Grievant that he could not touch her like that. The Grievant then told [REDACTED] that she had a hair on your chest, reached into her shirt, and contacted the area between or around her breasts. [REDACTED] responded by telling the Grievant he could not touch her in that manner, and he said he was trying to help because she had hair on or in her shirt.

Even accepting that [REDACTED] has embellished what the Grievant said and did while they sat in the Grievant's car,⁷ it is still

⁷The Union is correct that it might forever be impossible to know with exact certainty what happened on October 27 between the Grievant and [REDACTED]. Indeed, it is always a troubling situation when serious allegations are made by a sole complainant, without any corroborating witness being present. I do note, however, that in this instance it was the Grievant who put himself at risk of

clear that the Grievant then did, in violation of the Policy, inappropriately touch [REDACTED]. By his own admission, the Grievant touched [REDACTED]'s lips and further touched her chest area, notwithstanding that she did not ask him to do any of this. If the Grievant truly believed something needed to be removed from either place, all he needed to do was tell [REDACTED] that and she could have removed the item for herself.

Moreover, I credit [REDACTED]'s testimony that the Grievant did touch her on, or very close to, her breasts. In her text later that same day to the Grievant [REDACTED] wrote "I'm no little damsel in distress that you're just about to cop feels on." In his response, the Grievant said "it wasn't a pleasure feel". While the language used by [REDACTED] and the Grievant is not definitive, it indicates that the Grievant did in fact contact [REDACTED] on or around her breasts.

I recognize that the Union has accurately emphasized that in the very same text [REDACTED] accused the Grievant of inappropriately touching her she also said complimentary things about him. In particular, [REDACTED] wrote that "You give big brother advice or good friend and I appreciate that", and further told the Grievant that she wanted to remain friends with him. The Union is also correct in pointing out that thereafter [REDACTED] initiated additional texts between her and the Grievant, during which she made no complaints about him.

that occurring. He did so when he alone met in-person with [REDACTED] a meeting that included them sitting in the privacy of his car.

These inconsistencies do establish that ■ was conflicted in what she did and did not want emotionally from the Grievant. They do not, however, negate the essential point that the Grievant's physical touching of ■ while they sat alone in his car, however and wherever it occurred, was unwanted by her. Whatever other contradictions there have been in the ■'s accounts concerning what occurred on October 27 between her and the Grievant, she has never wavered about that. From the time of her text to the Grievant on the afternoon they met through her testimony at the arbitration hearing, ■ has consistently maintained that the Grievant's touching of her was unwanted.

Accordingly, I find that on October 27 the Grievant did violate the Harassment Policy. This brings me to the final reason the City terminated the Grievant, his alleged interference with the Department's investigation that followed UA's complaint against the Grievant.

On this matter there is no dispute on the facts. After the Grievant was on November 7 made aware that ■ had called the crisis line to make a complaint about him, he initiated the following inappropriate text exchange with her:

GR: I was just looking to see where I went wrong in our conversation. I only wanted to help you.

■ What're you talking about

GR: Someone just called and said that they were you and I touched you inappropriately and they just didn't want this to

happen to anyone else. And now I'm gonna get in trouble and maybe lose my job.

GR: Was that really you [REDACTED]. I only sent my number because I was worried about you and I didn't like the way the call ended because I had to take another call. So I wanted you to still have access to talking to someone. I'm not gonna text you anymore. Again, I'm sorry.

The Grievant's statement that "now I'm gonna get in trouble and maybe lose my job" can easily be viewed as an attempt by the Grievant to appeal to UA's sympathies and thereby influence what she said during the investigation that was sure to follow. This was clearly another violation of the Harassment Policy, as that Policy prohibits any retaliation or attempts to influence an investigation.⁸

Having been persuaded by the City that the Grievant did engage in misconduct for the three primary reasons it has relied upon to justify imposing discipline upon the Grievant, I now turn to the ultimate question before me. That is, of course, whether the City has met its burden of establishing that just cause existed to terminate the Grievant for these offenses.

After careful consideration, I conclude that the City has carried this burden. The penalty of termination was not disproportionate to the Grievant's combination of offenses. The

⁸ To his credit, the Grievant acknowledges that it was wrong for him to text [REDACTED] after he was aware of her complaint, and he has expressed remorse for doing so. It is also to the Union's credit that it does not contest that this was an improper act by the Grievant.

Grievant engaged in serious acts of misconduct involving UA, including multiple violations of the Harassment Policy.

I recognize that, as the Union stresses, the Grievant's prior good record as an employee, including 15 years of City service with no prior discipline, is an important consideration in this matter. That commendable record does not, however, change the facts of what occurred in October and November of 2019. It is also disconcerting that the Grievant shows only partial remorse for the totality of his misconduct. In these circumstances, it was not arbitrary that the City concluded that it would not permit the Grievant to return to his Coordinator position, and thereby ensure that what occurred with ■ is never again repeated.

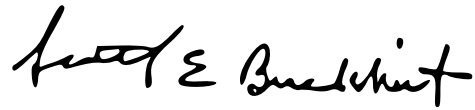
In a final analysis, the Grievant made an impressive appearance at the arbitration hearing and has an impressive record of service, absent this incident. While I do not doubt that the Grievant can find success in another employment relationship, the City had just cause to terminate the Grievant from his Coordinator position in this employment relationship,

Accordingly, notwithstanding the Union making every possible argument to the contrary, I must and will deny the grievance in its entirety.

AWARD

The grievance is denied.

Signed this 6th day of October, 2022.

A handwritten signature in black ink, appearing to read "Scott E. Buchheit". The signature is written in a cursive style with some loops and flourishes.

SCOTT E. BUCHHEIT, ARBITRATOR