

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

AFSCME DISTRICT COUNCIL 47,

the “Union”

- and -

CITY OF PHILADELPHIA,

the “Employer”

OPINION AND AWARD

AAA Case No. 01-21-0004-0411
(Grievance No. 2186-21-02
Joseph Treegoob)

**Before
Joyce M. Klein
Arbitrator**

Appearances:

For the Union:

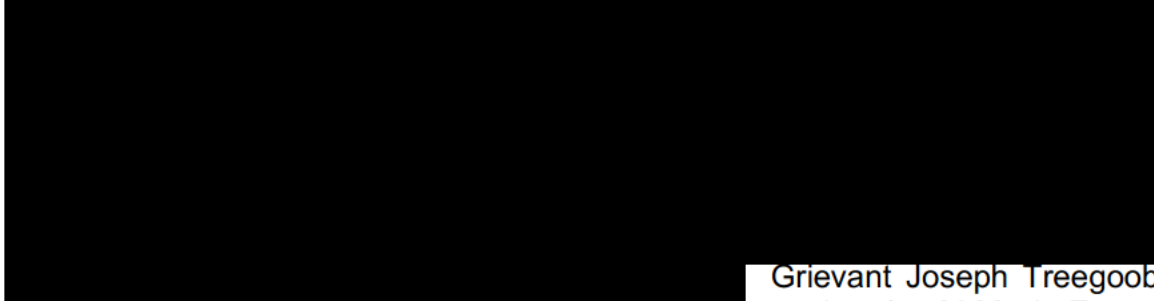
Jordan Konell, Esq.
Lauren M. Hoye, Esq.
Willig, Williams & Davidson

For the Employer:

Sharon Ulak, Esq.
City of Philadelphia Law Department

On January 27, 2021, AFSCME District Council 47 (the “Union”) filed a grievance against City of Philadelphia (the “City” or “Employer”) alleging that the City violated the collective bargaining agreement when it suspended Joseph Treegoob (“Grievant”) for five days without just cause. The Union submitted the dispute to arbitration pursuant to the terms of the parties’ Agreement and the rules of the American Arbitration Association. Pursuant to these rules and procedures, I was selected as arbitrator.

Arbitration hearings were conducted on September 23 and November 4, 2022 at the offices of Willig, Williams and Davidson, Philadelphia, PA. At the hearings, the parties argued orally, examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from



Grievant Joseph Treegoob (Grievant). Closing oral arguments were held on November 15, 2022 via Zoom, and the transcript of both hearing dates was received on November 22, 2022. Thereafter, the record was closed.

ISSUE

The parties agreed on the following statement of the issue to be decided:

Did the City of Philadelphia have just cause to suspend Grievant Joseph Treegoob for five (5) days? If not, what shall be the remedy?

RELEVANT CITY POLICIES

City of Philadelphia's Sexual Harassment Prevention Policy

INTRODUCTION

This document explains the City of Philadelphia's policy prohibiting discrimination based on sex, gender identity, and sexual orientation; sexual harassment; and retaliation of employees and applicants. If you have experienced or witnessed inappropriate conduct, or prohibited conduct as defined by this policy, please utilize the procedures for making complaints outlined in Section V. The City will take appropriate action to investigate, resolve and prevent discrimination, sexual harassment, and retaliation, and to protect the rights of anyone who files a complaint.

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VII. RESPONSIBILITIES AND DUTIES OF MANAGERS AND SUPERVISORS

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B. STANDARD OF CONDUCT

Supervisors shall be held to a higher standard of conduct and shall be subject to a higher level of discipline when engaging in sexual harassment.

**EXECUTIVE ORDER NO. 02-18
SEXUAL HARASSMENT PREVENTION IN CITY GOVERNMENT**

PROHIBITION OF SEXUAL HARASSMENT

1. The City fosters an inclusive and safe workplace environment. All workplace sexual harassment by City employees, officials, contractors, vendors, Mayoral appointees to Boards and Commission, volunteers, and interns toward other employees and officials, applicants for City employment, contractors, vendors, and members of the public is prohibited.

* * * *

3. Sexual harassment in the workplace or involving individuals who work together violates federal law and is prohibited by this Order. Sexual harassment is defined as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, non-verbal, or physical conduct of a sexual nature.

4. Whether such conduct is deemed to be unlawful or not, unwelcome and offensive conduct in the workplace toward anyone is prohibited by this Order.

* * * *

6. Executives, cabinet members, managers, and supervisors are expected to actively work to create and maintain diverse, inclusive workspaces free from sexual harassment, intimidation, or discrimination. Therefore, executives, managers, and supervisors must be fully familiar with this Order and with the accompanying City of Philadelphia's

Sexual Harassment Prevention Policy. Any failure to uphold the goals or follow the directives outlined herein or in the Policy will be met with discipline.

* * * *

BACKGROUND

Grievant Joseph Treegoob has worked for the City of Philadelphia since 2008 and has been a supervisor within the Community Services Management Team of Behavioral Health and Intellectual Disability since 2012. On January 25, 2021, Grievant was promoted to Health Program Manager. Prior to the discipline at issue here, Grievant has no disciplinary history or complaints on his record over the course of his career with the City.

The City of Philadelphia has mandatory sexual harassment training for managers every four years. Additionally, all employees including Grievant, receive a copy of the policy and sign a document agreeing to comply with its terms and acknowledging that they received the policy. Grievant has attended every required sexual harassment training since being hired and promoted to manager. The Sexual Harassment Prevention Policy was updated in 2018 to allow for a broader interpretation. The City of Philadelphia Sexual Harassment Prevention Policy defines sexual harassment as “non-welcome, unwanted conduct that has the effect of interfering with how the employee is able to perform their job.”

On October 2, 2019, [REDACTED], a Public Health Program Analyst who was supervised by Grievant, filed a complaint charging Grievant with sexual harassment. [REDACTED] was assigned to investigate the complaint. She interviewed [REDACTED] and Grievant. That investigation was finalized and the report sent to Human Resources on April 1, 2020.

[REDACTED] complaint dates back to non-specific incidences with Grievant beginning in [REDACTED]. The allegations in [REDACTED] are not dated or events specified, the interactions with Grievant were generally described by [REDACTED] as intentionally intimidating and controlling as well as a continuous and inappropriate use of words such as “sexy” and “hot” to describe her. She noted in her complaint that each interaction felt more hostile the more she tried to stand up for herself. No other witnesses recalled that Grievant used the terms “hot” or “sexy” to refer to Jefferies. These allegations were not substantiated.

In addition, [REDACTED] detailed specific allegations beginning in the winter of [REDACTED]. At some point during the winter of [REDACTED] an employee complained to then

unit manager ██████████ that ██████████ was wearing a “catsuit” to work. ██████████ viewed ██████████ attire that day and found it unobjectionable. Following protocol, ██████████ forwarded the report to Grievant, who was not in the office that day, and asked him to talk to Jefferies about her attire.

According to ██████████ Grievant did speak with her and told her, “[a]s long as I am your supervisor and say you look good, then you are fine. The only person that you need to be concerned with is me.” ██████████ testified that Grievant’s tone and word choice made her feel uncomfortable and “horrible.” ██████████ felt that Grievant’s manner during that conversation was controlling and domineering.

Grievant denied using those words. He spoke to ██████████ about the outfit at ██████████ behest, even though he had not seen it, but noted that ██████████ saw the outfit and informed him it was nothing inappropriate. Grievant explained that he sought to explain to ██████████ that she did not need to worry what other people think or say about her attire, that it was not inappropriate and, as her manager, it is his duty to ensure everyone is appropriated dressed and he would let her know if her attire was inappropriate.

The investigative report reflects that Grievant acknowledged making the comment, “as long as I say you look okay, then you’re fine.” Grievant explained that he meant it as a factual statement. Then ██████████ testified that she believes that Grievant meant to reassure ██████████ of her professionalism.

In ██████████ an email was sent out from ██████████ concerning the sexual harassment policy and reinforcing the zero tolerance the City has for this behavior. After printing out the updated sexual harassment policy, ██████████ went across the street for a smoke break. ██████████ testified that Grievant walked up to her outside and said, “Listen. Like, I know the stuff that I’ve been saying to you could be deemed sexual harassment, but I’m going to stop, you know, because it’s not cool. You are not into that anyway, so like but it’s the truth. You’re a good looking woman, but I’m going to stop.” ██████████ testified that she responded by saying, “Then, you should” and walked away from him.

Grievant testified that he remembered the day. However, in response to the quote provided by ██████████ he testified asserting strenuously there was no way he would say that quote: “Absolutely unequivocally no, I never said that to her, and it sounds absurd to me that that could possibly be said to anybody.” There were no witnesses to this interaction, and no other individuals testified about this event.

On Friday, ██████████, ██████████ emailed Grievant at 7:47 a.m. asking to take a vacation day on short notice because she was “exhausted.” According to Jefferies this was the protocol for a last minute absence. Grievant was out that

day and missed the text until late that evening. Because he did not want her to be concerned Grievant replied as soon as he noticed the text, at 12:07 a.m. on Saturday, June 22. His text stated, "Ok remind me to sign your amended timesheet :) have a nice weekend. Did you see the drama with ConnectACare today by any chance?" Grievant explained that he replied when he noticed the text because he didn't want ██████ to be concerned about her leave time over the weekend. On Saturday morning, ██████ texted him and asked if he could talk so they could discuss the situation with ConnectACare. According to ██████ when she spoke with Grievant he said "Oh, I was drinking, you know. I must've been drunk. I was thinking about you. Sorry to text you..." and then he hung up. According to ██████ he then texted an apology for texting so late and said he'd talk to her on Monday.¹ ██████ testified that she was "freaked out" by the incident.

Grievant initially did not recall the texting incident, but subsequently found the text messages on his mobile phone. He indicated that he was out that evening and did not realize how late it was. Grievant denied telling ██████ that he was drunk and was thinking of her.

In July 2019, ██████ came to work in a blonde wig. ██████ testified that when Grievant saw her in this wig, he said, "Oh, we have a new employee here today. What shall we call her? I'll call her Jessica Rabbit." According to ██████ she responded, "You will not call me Jessica Rabbit. You will call me Lillie ██████" She continued to explain that because she did not match Jessica Rabbit at all in any way (different hair color and style, clothes, etc.) that he was creating a hyper- sexualizing comment about her, and she was offended.

When Grievant testified about this event in the arbitration hearing, he acknowledged remembering the day as well as commenting on her appearance. He testified saying he jokingly asked, "Oh, have you seen ██████ today? Where is ██████ but nothing more.

██████-██████ testified that Grievant told her that he remembered her change in hair that day, but that he does not have a full recollection of what he said. She testified that he reported that he may have commented on the change, but he was confident that he never used any degrading or demeaning language, and that it was intended as a compliment.² ██████ testified that in her HR investigation that she did not look into the events of this day. She also testified that throughout the entire investigation none of the individuals she interviewed confirmed ever hearing any statements from Grievant using phrases like "you look sexy as hell" or "hot." This allegation was not a basis for Grievant's discipline.

¹ That text is not included in the record.

² ██████-██████ testified that in another interview with ██████, stated that she felt uncomfortable as a result of a comment that Grievant made regarding her change in hair styling. ██████ clarified that the comment had racially insensitive insinuations. ██████ did not file a complaint and that comment is not included as a basis for Grievant's discipline.

On [REDACTED], the former [REDACTED] of Philadelphia, [REDACTED], resigned as a result of a scandal involving an affair. [REDACTED] was discussing [REDACTED] resignation with a friend on the phone on the sidewalk in front of the building. She was upset and surprised by this news. Grievant came out of the building and saw her face, and asked if she was ok. She told Grievant about [REDACTED] and that he responded by sharing his own experience. According to [REDACTED] Grievant said "oh, that's nothing new, you know. With these kind of jobs, that kind of stuff happens all the time. Hell, I cheated on my wife, [REDACTED] You know, the girl, she started working down here and I had to get rid of her because she was getting too close and too connected and attached to me and I felt like she was gonna tell so I had to stop seeing her." [REDACTED] testified that after the shock of hearing this, she tried to leave, but Grievant followed her to the elevator. [REDACTED] noted that the entire conversation was undesired and made her uncomfortable.

Grievant recalled the conversation. He said that he was on a smoke break and [REDACTED] approached him and told him about [REDACTED] resignation. Grievant mentioned that many years ago at a previous job, before he was married, he had been involved in a relationship with a co-worker and he told [REDACTED] that the relationship didn't end well and he learned not to mix work and personal relationships. Grievant described it as a normal conversation between two co-workers and said that [REDACTED] did not seem uncomfortable. [REDACTED] recalled that in the departmental hearing, Grievant acknowledged discussing an affair or a relationship with a co-worker that had occurred twenty years ago. According to [REDACTED] it was inappropriate for Grievant to discuss a relationship with a subordinate.

On [REDACTED], there was a luncheon for members of the Division who were graduating from a leadership program. Some employees dressed up for the celebration while others did not. [REDACTED] came to work in a new dress.

[REDACTED] were present when Grievant saw [REDACTED] and commented about her appearance. [REDACTED] testified that her attire was "nothing out of the ordinary basically" for her and that people "wanted to look nice" for the occasion, but it "was common for [her] to look the way [she] looked that day." According to [REDACTED] Grievant approached her and said, "wow, what's the special occasion? You look hot as hell." [REDACTED] then joked, "I wore a dress too and you're not saying I look nice." According to Jefferies, Grievant responded saying, "Well, look at her. She looks really good. You know, you don't look as good as her. She looks really good." Another woman then reportedly exited her cubicle and said, "Hey, why are you talking to them like that?" Then, [REDACTED] reported that she left to go to the event immediately after with the other two women. She stated that this interaction made her feel embarrassed, humiliated, and disrespected.

Bynum reported to ██████ that Grievant commented to ██████ “wow, you look nice” and that ██████ felt uncomfortable to the point of feeling the need to intervene. ██████ noted that ██████ testimony corroborated that ██████ demeanor and behavior had changed after receiving the statement. ██████ learned from ██████ that ██████ had gone to him to express her concerns surrounding Grievant. ██████ told ██████ that ██████ had mentioned to him that the interaction seemed more focused on the way the clothes appeared on her body as opposed to the clothes themselves—implying a far more objectifying tone.

During the arbitration hearing, ██████ testified that she made a joke about how she also has a dress on and how that is not typical for her, so she deserved a compliment as well. She testified that after her joke everyone laughed and that was the end of the interaction. No one talked about it after that, and it felt like a normal rest of the day. She continued to say that there was nothing different about the manner in which Grievant commented on ██████ appearance that day. She noted that it was a compliment, but that it felt like a typical compliment. She also acknowledged that ██████ did look very nice and was rather dressed up for her typical attire. ██████, who was interviewed by ██████, but did not testify at the hearing recalled the incident and remembered that Grievant told ██████ “you look really nice today, what is the occasion”? ██████ told ██████ about the incident relaying that Grievant said something like “that is a nice dress” and then ██████ mentioned that she was wearing a dress too. According to ██████ ██████ told him the incident made her uncomfortable.

According to Grievant, he told ██████ “█████ you look nice today.” Grievant explained that the work environment was generally casual, but that day she was dressed differently than normal, so he acknowledged it. Grievant acknowledged that after that ██████ made a joke that she was wearing a dress today and looked nice insinuating that she should have received a compliment as well. He noted that everyone laughed at ██████ joke, and then they all went to the celebration.

█████ and Grievant testified about a funeral around early to mid-█████ ██████ testified that she took an Uber with Grievant to attend a funeral for a member of ██████ family. ██████ also testified that she was the individual to hail the Uber. ██████ saw them arrive together and observed that they seemed to share a cordial, professional working relationship. She noted that they came to the funeral together at the request of ██████ Grievant testified that Jefferies was walking out to the street and asked him if he was going to the funeral. He responded yes, but he had not figured out how he was going to get there. He testified that she suggested they should take an Uber together, and they did.

Throughout his tenure as ██████ supervisor, Grievant held closed-door meetings with his subordinates. In those meetings, he would close the door and

ask his subordinate to join him on his side of the desk and share his screen as they reviewed material.

██████████ testified that she would come in, he would close the door, they would work, he would ask her to come around and share a screen. ██████████ testified that as they would be situated next to each other, he would comment on her appearance and how she smelled pleasant. The proximity to each other and these comments especially with the door closed made her uncomfortable, so she reported it to ██████████ ██████████ talked to Grievant about the conduct of these meetings and suggested alternate practices to respect the boundaries of his subordinates. ██████████ testified that after that, if ██████████ was not around, Grievant would ask her to close the door and he ignored her objections to doing so.

██████████ reported to ██████████ that she felt uncomfortable when she was in one-on-one meetings with Grievant. Specifically, the manner in which he would require her to sit directly next to him to view the computer made her uncomfortable. ██████████ explained that having a closed-door meeting is not a violation of the Sexual Harassment Prevention Policy, but in the context of ██████████ comfort level with such meetings, including the requirement to sit next to Grievant, while the door is closed, is an important factor.

Grievant acknowledged that he did have meetings with the door closed because the office tended to get loud and the door closed allowed individuals within the meeting to hear each other. He conducted meetings like this with all his employees. Grievant denied commenting on how ██████████ smelled, elaborating that he has been a smoker for 25 years and can barely smell anything after smoking for so long. ██████████ testified that when she questioned Grievant about having closed-door meetings with female subordinates Grievant described the format of the meeting similar to ██████████

According to ██████████, intent is not a factor within the new Sexual Harassment Prevention Policy as the policy is designed to protect the professionalism and comfort-level of the reacting individual. The Sexual Harassment Prevention Policy demands a higher standard of conduct for supervisors and leadership staff and that these individuals are subject to a higher level of discipline when engaging in misconduct under the Sexual Harassment Prevention Policy.

Grievant received a Recommendation for Disciplinary Action on August 11, 2020 for a five-day suspension based on the severity and ongoing nature of the violations of the Sexual Harassment Prevention Policy. That Recommendation included the incident regarding the allegation that Grievant said “as long as I am your supervisor and say you look good, then you are fine...;” as well as allegation that Grievant admitted to ██████████ “that he had made inappropriate comments and

would stop;" allegations concerning his comments about an affair with a coworker; comments regarding the 12:07 a.m. text message; closed door meetings in his office where Jefferies was required to sit directly next to Grievant and "lewd overtures" witnessed by others on [REDACTED].

After a [REDACTED] Departmental Hearing, which affirmed the recommended five day suspension, Grievant received in-person Sexual Harassment Prevention Policy (SHPP) training for Supervisors and Managers and EEO training and served an unpaid five day suspension in February of 2021. This proceeding ensued.

DISCUSSION

I have carefully reviewed and considered the arguments and evidence presented by the City and the Union in support of their respective positions. The City has the burden to prove that it had just cause to issue a five day suspension to Grievant.

The City asserts that it had proper cause to issue Grievant a five-day suspension for multiple breaches of the Sexual Harassment Prevention Policy specifically towards Lillie Jefferies from 2016 to 2019.

The City maintains that the Sexual Harassment Prevention Policy is intentionally vague in order to act as a preventative measure reducing feelings of general discomfort and disrespect in the workplace. This policy was created in response to an audit revealing the City was falling short in its sexual harassment training, and feedback noting there was a need to stop harassment before it became unlawful behavior. The City emphasizes that the Policy focuses on the impact rather than the intent of one's actions and asserts that Grievant's claim that he intended no harm, does not matter under the Sexual Harassment Prevention Policy. The City relies primarily on Jefferies' claim that she did not welcome his supposed compliments or his conduct. The City asserts that testimony from [REDACTED] support [REDACTED] claim of discomfort arising from Grievant's comments and conduct.

Citing its Sexual Harassment Prevention Policy, which does not have a good intentions exception, the City emphasizes the unwelcome nature of Grievant's compliments and conduct. Noting that Grievant never made complimentary comments to men about their appearance, the City asserts that this is prohibited and inappropriate behavior, particularly from a supervisor who is responsible for the culture of his unit.

The City explains that Grievant, as a supervisor, is held to a higher standard and is responsible for the culture of his unit as outlined in the Section 7 of the Sexual Harassment and Prevention Policy. The City maintains that a five day

suspension is similar to the level of discipline other employees have received for similar violations of the Sexual Harassment and Prevention Policy. The City maintains that Grievant was suspended based upon the conduct he acknowledged, not for allegations that were not substantiated. At his departmental hearing he admitted to telling ██████ about having a relationship with a former colleague and admitted to doing this while they were on a smoke break outside. He admitted to telling her that as long as he approved of what she wore to work that was appropriate and these are the types of admissions that led the City to conclude that his five day suspension was appropriate.

Challenging Grievant's credibility, the City cites contradictions between his first interview at the ERU where he denied making statements that he later acknowledged. Citing Grievant's testimony that he was confused and unsure during his ERU interview, the City would find it incredible that he can remember details for the first time almost three years later. The City points out that Grievant acknowledged that he told ██████ that he had been out when he texted her after midnight; acknowledged making a comment about her appearance when she wore a new wig and making a comment or a joke such as "where's ██████". The City suggests that these statements conflict with his denials during the ERU investigation and again at the departmental hearing.

The City would find ██████ to be a credible witness and emphasizes that Grievant's discipline was based only upon the conduct that was substantiated. For example, the City points out that Grievant acknowledged telling ██████ about his relationship with a former colleague while they were on a smoke break. The City also notes that Grievant acknowledged telling ██████ that as long as he approved of what she wore to work, she didn't need to worry. The City points to Grievant's testimony for the first time at hearing that he noted her new wig and made a comment or joke asking "where's ██████"³ The City notes that Grievant had previously denied making such a comment.

The City emphasizes ██████ consistent testimony that Grievant made her feel uncomfortable from the first day that she met him and his requirement that she sit on the same side of the desk and his frequent comments about her appearance and her smell increased her discomfort. The City cites the complaint that ██████ made to ██████, another supervisor, and Grievant's colleague about Grievant's conduct. The City also cites ██████ verification that she heard Jefferies ask Grievant to leave her alone and that she was going to walk away. Addressing the "catsuit" incident, the City cites Grievant's admission that he told Jefferies as long as he says she looks good, then she is fine.

Addressing Grievant's text message to ██████ after midnight regarding a work matter, the City points to his initial denial in the ERU interview until he saw a

³ This allegation was not included in the Notice of Discipline.

copy of the text message. The City suggests that given Grievant's explanation that he didn't want [REDACTED] to have to stress over about her leave over the weekend, he could have waited until the morning to send it given that was already midnight on Friday. Despite repeated denials that he told [REDACTED] that he was out drinking and must have been thinking of her, the City emphasizes his admission at hearing that he had been out and that he may have told her so. The City suggests that this testimony aligns more closely with Jefferies' consistent testimony and complaints of unwelcome behavior.

Turning to the discussion of Commissioner [REDACTED] resignation during a smoke break, the City notes that Grievant initially denied having this conversation with [REDACTED] but acknowledged the conversation during the Departmental Hearing, including his discussion about having a relationship with a former colleague. Noting Grievant's testimony that this conversation came up in the context of how people should not get involved in workplace relationships, the City points out this conversation was only with [REDACTED] rather than in a department-wide meeting, or in response to a departmental incident. The City emphasizes that context matters and in this context it was not appropriate for him to have this conversation or to volunteer this information with a subordinate employee.

Addressing the [REDACTED] incident where [REDACTED] wore a nice dress and said Grievant gave her an extraordinary compliment that attracted the attention of [REDACTED] colleagues including [REDACTED] who said I'm wearing a dress and you haven't said anything about me, the City suggests that this reaction by [REDACTED] co-workers supports its conclusion that Grievant's conduct was inappropriate.

The City also cites [REDACTED] testimony that Grievant made a probationary employee uncomfortable and resulted in [REDACTED] giving him instructions on how he was to conduct his one-on-one meetings with his subordinate staff which included advising him to stop closing the door, limiting his meeting times and stop having staff sitting on the same side as him in front of his computer. The City also points to [REDACTED] testimony that Grievant made a comment to her about her hair looking more professional when it was straightened and not in braids can be offensive to black women though [REDACTED] did not file a complaint.

The City cites the thoroughness of its investigation and points out that [REDACTED] interviewed [REDACTED] and Grievant as well as five independent witnesses including [REDACTED], [REDACTED] and [REDACTED] who verified that they heard and observed the conduct that [REDACTED] was complaining of. The City emphasizes that [REDACTED] reviewed documentation including the text messages that Grievant sent [REDACTED] and based upon the interviews and documentation, including Grievant's conduct and admissions, that he had violated the Sexual Harassment Prevention Policy and the five day suspension was similar to the type

of suspensions that employees in positions similar to Grievant have received for similar violations.

Addressing [REDACTED] allegations that Grievant made comments about her looking sexy and looking hot, the City suggests that his denials do not ring true given that he has not been completely truthful or honest throughout this investigation. Even if these comments are not substantiated other similar conduct by Grievant has been acknowledged and verified by independent witnesses and, the City contends justifies the finding that he violated the policy and that Grievant's conduct warrants a five day suspension. The City reiterates that as a supervisor, Grievant is held to a higher standard. The City emphasizes that Grievant needs to understand the impact of his behavior so that he will not continue to do it in the future. Accordingly, the City maintains that it had just cause to suspend Grievant for five days.

The Union argues that the City has not met its burden to show that Grievant violated the City's policies in his interactions with Jefferies emphasizing that the only events that are relevant are those that form the basis for the Recommendation for Disciplinary Action. Noting that [REDACTED], who completed the Recommendation for Disciplinary Action did not testify, the Union points out that Grievant was charged with subjecting [REDACTED] and no one else, to unwanted verbal and non-verbal conduct.

Turning to the first comment, in the winter of [REDACTED] when Grievant discussed an outfit that [REDACTED] wore and reminded her of the office dress code, the Union points out that this is a supervisory responsibility. There is no corroboration that Grievant said that the person that you need to be concerned with is me or that he reiterated that statement, according to the Union.

Turning to the allegation that in 2018 Grievant admitted to [REDACTED] that he violated the sexual harassment policy and he would stop, the Union argues strenuously that this was not corroborated by any witness. The Union suggests that it is not credible or likely that the Grievant approached [REDACTED] and told her that he knew he was violating the City's policy and that he was sexually harassing her but would stop. In addition to Grievant's credibility, the Union urges consideration of the way that people interact on a daily basis when evaluating this allegation.

Addressing the allegation that in August of [REDACTED] Grievant made comments about an affair he had, the Union points to Grievant's testimony that there was no affair and that he was talking about the inappropriateness of workplace relationships.

Turning to the text exchange in June of [REDACTED] in which Grievant initiated a text conversation then called Grievant the next day, the Union notes that Grievant

has admitted that he did text late at night, but that is all. The Union points out that the notice of suspension does not reflect either that he was drunk or that he was thinking about [REDACTED] has been corroborated. As Grievant testified, he apologized to [REDACTED] for texting so late simply because he thought he may have disturbed her because of the late hour.

The Union also asserts that there is no corroboration for the Grievant's comments during one-on-one meetings where [REDACTED] alleged that he would sit next to her with the door closed and comment on how [REDACTED] looked and smelled.

Lastly, the Union contrasts [REDACTED] version of the event on November 25, [REDACTED] where the notice of suspension says that Grievant made lewd overtures but [REDACTED] testified that this interaction was jovial and everyone was laughing. The Union cites [REDACTED] testimony that she did not sense any issue with Grievant's behavior or [REDACTED] reaction. The Union points out that there is no corroboration for any lewd overtures and suggested that [REDACTED] who was present for that interaction, would have remembered if Grievant told [REDACTED] that she looked "sexy as hell" or "extra hot today." Citing the Notice of Discipline, which provides that coworkers attempted to intervene, the Union again points to [REDACTED] testimony that everyone was talking and there was no issue. The Union emphasizes that [REDACTED] testified that she made a joke, but she did not testify that she did so to break the tension or intervene.

Turning to [REDACTED]'s interviews, the Union asserts that the statements relied upon do not verify [REDACTED] allegations. For example, the Union cites [REDACTED] testimony where she did not recall instances in which Grievant complimented [REDACTED] and she characterized the [REDACTED] interaction as a friendly one. The Union emphasizes [REDACTED] testimony that she didn't suspect that [REDACTED] was upset and that she recalled only one workplace disagreement, which she thought was about work rather than inappropriate conduct. The Union notes that [REDACTED] spoke favorably of her relationship with Grievant who was her [REDACTED] rvisor, and she no longer works for the City, so she is a neutral credible witness.

Turning to [REDACTED] testimony, the Union notes that she heard about the [REDACTED] interaction after [REDACTED] filed her report despite what the EEO Report suggests. The Union notes that [REDACTED] denied learning of the text messages between Jefferies and Grievant. [REDACTED] who is retired, spoke highly of Grievant's work as well as his good working relationships with a predominantly female staff.

The Union questions the fairness and credibility of the City's investigation and discipline. Specifically, the Union questions the mention in the EEO investigation of Grievant's comments regarding [REDACTED] hairstyle. The Union notes other inconsistencies in the City's investigation including the exclusion of

allegations of retaliation that ██████ made before the City's investigatory report was finalized and its repeated focus only Grievant's statements as most important. The Union emphasizes that the City's ability to keep its workplaces free from sexual harassment must hinge on thorough investigations and verified facts. The Union argues that impact and intent cannot be relied upon at the expense of the facts. In other words, ██████ allegations cannot be taken at face value without any verification or corroboration and in order to find a hostile work environment, the Union contends that there must be both objective and subjective offensive conduct. The Union maintains that the City relied upon ██████ account as fact without objective analysis.

According to the Union the facts that have been verified are Grievant's conversation with ██████ in winter of ██████ at ██████ request to remind ██████ of the office dress code; the August ██████ conversation where Grievant told ██████ that he felt workplace relationships were inappropriate; Grievant's June ██████ text to ██████ and his apology for texting so late; and Grievant's comment to ██████ in September ██████ telling her that she looked nice to which ██████ replied, "don't I look good too." The Union maintains that these are the corroborated facts of this case. The Union suggests that ██████ description of Grievant is inconsistent with the descriptions of other witnesses, including ██████ and ██████

Addressing the level of discipline, the Union points out that it should be rehabilitative and asserts that a five day suspension is egregious, excessive and punitive. Asserting that no discipline is warranted, the Union maintains that Grievant's name should be cleared.

Reiterating that the City has the burden to show that Grievant violated the its policy and that there was just cause for a five day unpaid suspension, the Union contends that the City has not met this burden. The Union asks that the grievance be sustained and seeks a make whole remedy including but not limited to clearing Grievant's name.

The City's Sexual Harassment Prevention Policy defines sexual harassment as any "unwelcome verbal or physical conduct of a sexual nature when... the conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment." The policy defines prohibited conduct to include verbal unwanted conduct, including "making sexually oriented, demeaning or hostile remarks, slurs, jokes or comments about a person's sexuality or sexual experience; Sexually suggestive, insulting, or degrading comments, catcall or music; stereotyping or offensive comments that denigrate or insult someone because of their protected class." Nonverbal unwanted conduct includes "making sexually oriented gestures directed at or made in the presence of any employee including but not limited to; leering, whistling, sexual gestures were looking someone up and down."

The City's policy expressly holds supervisors to a higher standard. The City issued an Executive Order 02-18 on July 18, 2018 defining sexual harassment in the workplace as "unwelcome sexual advances, unwelcome requests for sexual favors and other unwelcome verbal, non-verbal or physical conduct of a sexual nature." With this in mind, I evaluate whether the City had just cause to suspend Grievant for five days for violating the City's Policy.

██████████ complained about several incidents that made her uncomfortable including generalized comments and conduct, including statements such as "you look hot" or "sexy" that she described but that was not substantiated by the City. These incidents include their attendance at a funeral and an alleged comment when ██████████ came to work in a blonde wig that were not included as cause for discipline.

The incidents that were substantiated by the City as the basis for his discipline include Grievant's discussion about Jefferies attire after someone complained to ██████████ Grievant's alleged admission that he had engaged in verbal sexual harassment towards ██████████ Grievant's alleged admission that he made inappropriate comments about an affair or relationship with a coworker to ██████████ Grievant's alleged inappropriate comments about ██████████ after a midnight text; Grievant's requiring ██████████ to sit directly next to him with the door closed while viewing his computer; and the September 25, ██████████ incident where Grievant complimented ██████████ about her dress with several witnesses.

Turning first to the incident where ██████████ asked Grievant to talk to ██████████ about her attire, someone complained to ██████████ that ██████████ wore a "catsuit" to work. ██████████ saw ██████████ attire and found nothing wrong with it, but asked Grievant, as Jefferies supervisor, to talk with her about the dress code. Grievant, who was not at work on the day that ██████████ wore the attire that led to the dress code discussion, did speak to ██████████. According to ██████████ he sought to reassure ██████████ that she dressed professionally. ██████████ interpreted the conversation differently, recalling that Grievant said "[a]s long as I am your supervisor and say you look good, then you are fine. The only person that you need to be concerned with is me." During the investigation, Grievant acknowledged making the comment, "as long as I say you look okay, then you're fine." Grievant explained that he sought to explain to ██████████ that she did not need to worry what other people think or say about her attire, that it was not inappropriate and, as her manager, it is his duty to ensure everyone is appropriately dressed and he would let her know if her attire was inappropriate.

This is a situation where Grievant could have chosen his words more carefully and ██████████ perhaps because she was already sensitive to comments she found demeaning, perceived Grievant to be domineering and controlling. By itself, this interaction is an example of a supervisor performing his job, even if

clumsily, at the behest of his own supervisor, and does not violate the City's Sexual Harassment and Prevention Policy.

The City found that after the [REDACTED] email regarding sexual harassment was sent to all staff, Grievant's alleged statement to Jefferies that he had made inappropriate comments to her that would violate the Sexual Harassment and Prevention Policy and that he would stop doing so was substantiated. This alleged conversation occurred between [REDACTED] and Grievant with no one else present. The City found this conversation to be substantiated based solely on [REDACTED] statement. While I do not question [REDACTED] memory or credibility in general, I find it unlikely that anyone, but particularly a supervisor such as Grievant, would plainly acknowledge engaging in sexual harassment. I find this particularly unlikely since Grievant's conduct that technically violates the Sexual Harassment and Prevention Policy is predominantly unwitting and lacking in intent to harass [REDACTED] or otherwise create a hostile work environment. Accordingly, I find that the City has not established that Grievant told [REDACTED] that he had made inappropriate comments that would violate its policy.

The City also found Grievant's comments during a conversation that he and [REDACTED] had on August 21, [REDACTED] regarding the resignation of former Police Commissioner [REDACTED], after a scandal concerning an affair to be a violation of its Sexual Harassment and Prevention Policy. Both [REDACTED] and Grievant were outside of the building on a smoke break when [REDACTED] told Grievant about [REDACTED]. [REDACTED] recalled that Grievant commented, "oh, that's nothing new, you know. With these kind of jobs, that kind of stuff happens all the time. Hell, I cheated on my wife, [REDACTED]. You know, the girl, she started working down here and I had to get rid of her because she was getting too close and too connected and attached to me and I felt like she was gonna tell so I had to stop seeing her."

According to Grievant, he mentioned that many years ago at a previous job, before he was married, he had been involved in a relationship with a co-worker and he told [REDACTED] that the relationship didn't end well and he learned not to mix work and personal relationships. Grievant described it as a normal conversation between two co-workers and said that [REDACTED] did not seem uncomfortable while [REDACTED] found the conversation made her uncomfortable and said she tried to leave the conversation but Grievant followed her to the elevator. [REDACTED] recalled that in the Departmental Hearing, Grievant acknowledged discussing an affair or a relationship with a co-worker that had occurred twenty years ago.

In this instance, there is little doubt that [REDACTED] and Grievant had a conversation where Grievant discussed the pitfalls of having a relationship with a co-worker and [REDACTED] misinterpreted and/or misremembered his comments to refer to a relationship that he had while already married. In this instance, I credit Grievant's testimony that he was referring to a long ago relationship in a prior job before he was married. However, these comments about a prior relationship were

not in the context of a Division meeting or other group meeting where the message might be cautionary, but were made one on one on a smoke break. As such, these comments were inappropriate and had the potential to make any subordinate uncomfortable. This discussion included “unwelcome verbal ... conduct of a sexual nature when... the conduct has the ... effect of interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.” This incident is not in keeping with a supervisor’s role pursuant to the City’s Sexual Harassment and Prevention Policy and as such violated the Policy.

The incident concerning the [REDACTED] text from Grievant on [REDACTED] responding to [REDACTED] text from the previous morning concerns their phone conversation on June 22 rather than the content of the text messages. While Grievant meant well when he sought to make sure that [REDACTED] was aware that there was no problem with her vacation request, it was poor judgment and inappropriate to text a subordinate at midnight, but that did not violate the Sexual Harassment and Prevention Policy. However, on Saturday morning, Grievant and Jefferies spoke because she asked if they could talk to discuss a work matter that Grievant mentioned in his midnight text. When they spoke, according to [REDACTED] Grievant said “Oh, I was drinking, you know. I must’ve been drunk. I was thinking about you. Sorry to text you...” and then he hung up. According to [REDACTED] he then texted an apology for texting so late and said he’d talk to her on Monday. Although the other text messages are included in the record, [REDACTED] did not provide a text with Grievant apologizing for texting late. Grievant acknowledged that he was out that evening and did not realize how late it was, but denied telling [REDACTED] that he was drunk or that he was thinking of her. The City’s Recommendations for Disciplinary Action found that the comment “I must’ve been thinking of you” was substantiated.

The text messages provided by [REDACTED] establish that Grievant inappropriately texted her around [REDACTED] on [REDACTED], and that [REDACTED] not Grievant, initiated their phone contact the next morning. [REDACTED] was understandably uncomfortable with Grievant sending her a text so late, but not so uncomfortable that she initiated a phone conversation the next morning. While Grievant does not recall making such a statement, it is likely that he did say something to the effect that he was thinking of [REDACTED] and that statement may have been made in the context of the work matter he included in the text. Whether or not that is the case, [REDACTED] interpreted the comment as an unwelcome comment of a sexual nature, though there is insufficient evidence that Grievant meant the comment in other than a professional context. Given Jefferies view of the conversation, it could contribute to a hostile work environment, but their conversation, on its own, is insufficient to create a hostile work environment.

It is undisputed that Grievant required [REDACTED] and other subordinates, to sit directly next to him in one on one meetings with the door closed while viewing his computer. According to [REDACTED] while they were sitting next to each other

near viewing the same computer screen, Grievant commented on her appearance and that she smelt pleasant. The proximity to each other together with these comments and with the door closed made her uncomfortable.

Grievant explained that the office tended to get loud and the door closed allowed individuals within the meeting to hear each other. Grievant denied commenting on how [REDACTED] smelled, mentioning that he has been a smoker for 25 years and can barely smell anything after smoking for so long. After [REDACTED] complained to [REDACTED] she discussed the conduct of these meetings with Grievant and suggested alternate practices to respect the boundaries of his subordinates.

Whether or not, Grievant made comments to [REDACTED] about how she smelled, closed door meetings where they sat directly next to each other made [REDACTED] and at least one other employee uncomfortable and [REDACTED] told Grievant to stop holding these closed door meetings and suggested alternatives.

Lastly, on [REDACTED], [REDACTED] came to work in a new dress because there was luncheon for members of the Division who were graduating from a leadership program. Others, including [REDACTED] dressed up more than usual in anticipation of the luncheon. According to [REDACTED] when Grievant saw her, he said, "wow, what's the special occasion? You look hot as hell." [REDACTED] testified that this comment made her feel embarrassed, humiliated, and disrespected.

According to Grievant, he told [REDACTED] "Lillie, you look nice today." Grievant explained that the work environment was generally casual, but that day she was dressed differently than normal, so he acknowledged it.

[REDACTED] who observed this exchange, testified that there was nothing different about the manner in which Grievant commented on [REDACTED] appearance that day. She noted that it was Grievant gave her a compliment, but that it felt like a typical compliment. She also acknowledged that [REDACTED] did look very nice and was rather dressed up for her typical attire.

[REDACTED] testified that she made a joke about how she also has a dress on and how that is not typical for her, so she deserved a compliment as well. Both Grievant and [REDACTED] testified consistently about [REDACTED] joke. According to [REDACTED] everyone laughed at the joke and that was the end of the interaction. When [REDACTED] was interviewed by [REDACTED] she recalled that Grievant told [REDACTED] "wow, you look nice" and that [REDACTED] then made the joke because she felt she needed to intervene.⁴

⁴ During the ERU investigation [REDACTED] corroborated that Grievant said "you look really nice today, what's the occasion?" [REDACTED] and [REDACTED] both told [REDACTED] that [REDACTED] seemed more nervous and quiet after this incident.

According to Grievant, he told ██████ "█████ you look nice today." Grievant explained that the work environment was generally casual, but that day she was dressed differently than normal, so he acknowledged it. Grievant acknowledged that after that ██████ made a joke that she was wearing a dress today and looked nice insinuating that she should have received a compliment as well. He noted that everyone laughed at ██████ joke, and then they all went to the celebration.

This incident had several witnesses, all of whom recall that Grievant complimented ██████ on her attire, but only ██████ recalled that the compliment had a sexualized tone to it. While ██████ recalled that Grievant said she looked "hot as hell", ██████ and ██████ both recalled that Grievant was very complimentary but stated that she looked "nice" or "really nice." I find that Grievant's compliment to ██████ was well intentioned and the weight of the evidence supports that he simply told her she looked nice without telling ██████ that she looked "hot as hell."

The City's Executive Order defines sexual harassment "as unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, non-verbal, or physical conduct of a sexual nature." This definition requires both that the conduct, whether verbal or non-verbal be both "unwelcome" and "of a sexual nature." It is not disputed that ██████ found Grievant's conduct to be unwelcome. However, ██████ found Grievant's conduct that was not, by itself, of a sexual nature to be unwelcome. Rather Grievant's conduct must be evaluated to determine both whether it was unwelcome and whether it was of a sexual nature.

For example, Grievant texted ██████ at ██████ on ██████. Texting at that hour, though inappropriate, did not concern sexual content. In fact, the only portion of that exchange that might be found to be sexual in nature is Grievant's comment that he was thinking of ██████ Rather Grievant's conduct must be evaluated to determine both whether it was unwelcome and whether it was of a sexual nature.

Similarly, Grievant's comments to ██████ concerning her attire were those of a supervisor trying, though perhaps ineptly, to tell a subordinate, that it is his responsibility to ensure everyone is appropriately dressed and he would let her know if her attire was inappropriate. While ██████ plainly misinterpreted Grievant's comment that "as long as I say you look okay, then you're fine," as demeaning, the record does not support a finding that this comment violated the City's Sexual Harassment Prevention policy.

Although ██████ was noticeably disturbed by Grievant's compliment to her attire on ██████, Grievant, ██████ and ██████ all either told ██████ or testified that Grievant simply complimented ██████ by telling her that

she looked nice. [REDACTED] who no longer works for the City, has no reason to be anything but candid. The record does not support a finding that Grievant made a comment that was sexual in nature before the Division luncheon.

Turning to the comments that Grievant made to [REDACTED] after [REDACTED] resigned, Grievant has acknowledged that he discussed the pitfalls of having a relationship with a colleague or co-worker, based upon his experiences at a previous job. Unlike the instances discussed above, this conversation was both sexual in nature, even if Grievant was not seeking to harass, intimidate or make [REDACTED] uncomfortable. This conversation was inappropriate given the context of a private conversation, sexual in nature and unwelcome by [REDACTED]. Accordingly, this conversation violated the City's Sexual Harassment Prevention Policy.

Grievant also violated the City's Sexual Harassment Prevention Policy, even if unintentionally with his one on one meetings behind a closed door where he insisted that [REDACTED] sit directly next to him so they could view the computer together. I do not make a finding that Grievant mentioned how she smelled to [REDACTED]. I do find that given [REDACTED] discomfort and McMillan's need to discuss these meetings with Grievant, that his conduct in requiring subordinates to sit directly next to him can be found, in this situation to be unwelcome conduct of a sexual nature in violation of the City's Sexual Harassment Prevention Policy. I find further, that as a supervisor, Grievant is held to a higher standard and should have been aware that such a meeting had the potential to make [REDACTED] and other subordinates uncomfortable.


In sum, I find that the City established that Grievant violated the Sexual Harassment and Prevention Policy by discussion his previous relationship with a colleague with [REDACTED] and by requiring her to attend closed door meetings with him and to sit directly adjacent to him. The remaining charges do not fall within the City's definition of sexual harassment and are dismissed.

Turning to the issue of penalty, given the modification of the charges, a five day suspension is excessive and the penalty is reduced to a one day suspension. The training already provided to Grievant together with the one day suspension should be sufficient to educate Grievant and to correct his conduct going forward.

AWARD

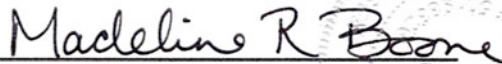
The Grievance is sustained to the extent that the City of Philadelphia did not have just cause to suspend Grievant Joseph Treegoob for five days. The penalty is modified to a one day suspension and Grievant Joseph Treegoob is entitled to four days of back pay at the pay rate then in effect and his records shall be modified to reflect the terms of this Award.

Dated: December 22, 2022
Ocean Grove, New Jersey


Joyce M. Klein

State of New Jersey }
County of Monmouth }ss:

On this 22nd day of December, 2022 before me personally came and appeared Joyce M. Klein to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.



Madeline R Boone
NOTARY PUBLIC
State of New Jersey
ID # 50198320
My Commission Expires 6/23/2027

