

In the Matter of Arbitration Between:

CITY OF PHILADELPHIA

“Public Employer,”

- and -

FRATERNAL ORDER OF POLICE,
LODGE NO. 5

“Union.”

OPINION
AND
AWARD

American Arbitration Association
Case No. 01-19-0002-3153
(P/O Angel Lopez - Discharge)

Before
James W. Mastriani
Arbitrator

Appearances:

For the City:

Frank E. Wehr, II, Esq.
Divisional Deputy City Solicitor

For the FOP:

Thomas M. Gribbin, Esq.
Willig, Williams & Davidson

On May 2, 2019, the Fraternal Order of Police, Lodge No. 5 [the “FOP” or “Union”] filed a grievance with the City of Philadelphia Police Department [the “City” or “Department”] alleging that the City did not have just cause to terminate the employment of Police Officer Angel Lopez [the “Grievant”]. The City denied the grievance and the unresolved dispute was submitted to arbitration by the Union in accordance with terms of the parties’ collective negotiations agreement [the “Agreement”] and the Voluntary Labor Arbitration Rules of the American Arbitration Association. Thereafter, I was designated to serve as arbitrator.

Arbitration hearings were held on July 25, September 14 and November 7, 2022. At the hearings, the City and the Union argued orally, examined and crossexamined witnesses and submitted documentary evidence into the record. Extensive testimony was received.

Witnesses included [REDACTED] -

Complainant, [REDACTED] – Deputy Chief of Police, Captain [REDACTED], Internal Affairs Division, Angel Lopez – Grievant, [REDACTED] – Translator,¹ [REDACTED] – [REDACTED] of Complainant, [REDACTED], [REDACTED] of Complainant and [REDACTED] of the Grievant, and [REDACTED] – [REDACTED] of Complainant . The record was completed after receipt of oral arguments from the City and the FOP at the conclusion of the hearings.

¹ [REDACTED]’s testimony was limited to her qualifications to serve as translator for [REDACTED].

ISSUE

At the hearing, the parties agreed to frame the issue to be heard and decided as follows:

Did the City of Philadelphia Police Department have just cause to terminate P/O Angel Lopez? If not, what shall be the remedy?

CITED CONTRACTUAL PROVISIONS

ARTICLE XX – DISCIPLINE AND DISCHARGE

A. General

No employee shall be disciplined or discharged except as is consistent with the Home Rule Chart and the Regulations of the Civil Service Commission.

B. Police Board of Inquiry (PBI)

Employees appearing before the Police Board of Inquiry shall be given:

1. five days' notice of the scheduled hearing;
2. a copy of the notice of the hearing; and,
3. the right to a representative who shall be permitted to review the charges prior to the hearing.

C. Announcements of Disciplinary Actions

Announcements of disciplinary actions at roll calls shall be made without naming the employee receiving the discipline. This clause shall not apply in announcements of disciplinary actions in response to publicized incidents.

J. Disciplinary Code

1. The Disciplinary Code (Attachment [M]) shall be effective immediately for all infractions that are charged by the Department on or after the date that this Award

is issued, regardless of when the underlying conduct occurred.

2. The 2010 Discipline Code shall remain in full force and effect for any infractions that were charged by the Department before the issuance of this Award and neither the Union nor any member of the bargaining unit shall have the right to challenge any discipline issued under the 2010 Award as being invalid on the basis of the proposed decision and order.

BACKGROUND

The Grievant in this proceeding is Angel Lopez. He was hired as a Police Officer by the City of Philadelphia on June 19, 2017 and was employed in the Police-18th District until he was dismissed from employment effective May 30, 2019. His termination was grieved by FOP Lodge #5 who seeks his reinstatement and that he be made whole in all respects.

The events that caused the City to terminate the Grievant occurred early in the morning on [REDACTED] in Brooklyn, New York. Many of the central facts and circumstances surrounding those events are in sharp dispute and were the subject of extensive conflicting testimony. Witnesses with direct evidence of the events include [REDACTED], the Complainant who filed a Domestic Incident report resulting in a criminal complaint against the Grievant based on the [REDACTED] events which occurred at the residence of his [REDACTED], where he also resided. His version of the events is set forth in his written statement in a police report which led to criminal charges and formed the main basis for the City's decision to terminate Grievant Lopez. Because the events and the investigation into the complaint was in an outside jurisdiction, the City did not conduct an

PL 110/120.00(1) – Attempted Assault in the Third Degree
PL 120.15 – Menacing in the Third Degree
PL 240.26(1) – Harassment in the Second Degree

The White Paper noted that the [REDACTED] police report concerning the [REDACTED] events was written based on the claims made by [REDACTED] on [REDACTED].

The Notice of Dismissal sustained three separate charges as set forth below (Jt.

Ex. #5):

Notice of Dismissal

Effective ten days from service of this notice, it is our intention to dismiss you from your position with the City of Philadelphia as referred to above. My reasons for intending to take such actions are:

CONDUCT UNBECOMING, Section 1-§011-10: (Abuse of Authority)

On Thursday, [REDACTED], you were working the 12:00 AM to 8:15 AM tour of duty. According to the Daily Attendance Report, you attended a Divisional Booking Center (DBC) training during this tour of duty. A training record completed by the Booking Center Headquarters, Records and Identification Unit, revealed that you attended training at Police Headquarters, 750 Race Street, on Thursday, [REDACTED]. A check with the Booking Center Headquarters revealed that the DBC training is a four (4) hour block of training, ending at 4:00 AM. After training is over, officers in attendance are advised to return to their respective district for assignment. There is no indication that you returned to the 18th District for reassignment after the DBC training on this date. Instead, while still wearing your Philadelphia Police Department uniform, or a portion thereof, you travelled outside the City of Philadelphia and Commonwealth of Pennsylvania when you proceeded to [REDACTED] Brooklyn, New York, where at approximately 5:30 AM, you and [REDACTED], entered this apartment, the residence of [REDACTED] who is [REDACTED] of [REDACTED], to speak with [REDACTED] about a dog. [REDACTED] reported that you entered his bedroom and stated, “where is the dog, I want the dog,” as you pushed him several times. You also grabbed [REDACTED]’ belt and told him, “If you hit me I am going to arrest you for assaulting a police officer.” You punched [REDACTED] in the face with your closed fist and picked up [REDACTED]’ dog, telling him that you

were leaving and did not want any trouble. [REDACTED] stated [REDACTED] entered the bedroom and both of you held him down as you placed your arm around his neck and applied pressure. [REDACTED] took the dog from you and you and [REDACTED] then left the apartment.

CONDUCT UNBECOMING, Section 1-§026-10: (Engaging in any action that constitutes the commission of a felony or a misdemeanor which carries a potential sentence of more than (1) year. Engaging in any action that constitutes an intentional violation of Chapter 39 of the Crimes Code (relating to Theft and Related Offenses). Also includes any action that constitutes the commission of an equivalent offense in another jurisdiction, state or territory. Neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters).

On Thursday, [REDACTED], [REDACTED], approximately 5:30 AM, you and [REDACTED] entered the apartment of [REDACTED], [REDACTED] Brooklyn, New York. [REDACTED] is the brother of [REDACTED]. You were in full or partial Philadelphia Police Department uniform, including weapon, handcuffs and badge displayed when you entered the bedroom of this apartment and stated, "where is the dog. I want the dog," as you pushed [REDACTED] several times. You also grabbed [REDACTED]' belt and told him, "If you hit me I am going to arrest you for assaulting a police officer." You punched [REDACTED] in the face with your closed fist and picked up [REDACTED]' dog, telling him that you were leaving and did not want any trouble. [REDACTED] stated [REDACTED] entered the bedroom and the both of you held him down as you placed your arm around his neck and applied pressure. [REDACTED] took the dog from you and you and [REDACTED] then left the apartment.

NEGLECT OF DUTY, Section 5-§009-10: (Absence without leave for less than one working day)

On Thursday, [REDACTED], [REDACTED], you were working the 12:00 AM to 8:15 AM tour of duty. According to the Daily Attendance Report, you attended a Divisional Booking Center (DBC) training during this tour of duty. A training record completed by the Booking Center Headquarters, Records and Identification Unit, revealed that you attended training at Police Headquarters, 750 Race Street, on Thursday, [REDACTED], [REDACTED]. A check with the Booking Center Headquarters revealed that the DBC training is a four (4) hour block of training, ending at 4:00 AM. After training is over, officers in attendance are advised to return to their respective district for assignment. There is no indication that you returned to the 18th District for reassignment after the DBC training on this date.

Based on Ganiotek Warnings and White Paper, Lt. Matthew James² was assigned to conduct an Internal Investigation. The investigation was later turned over to Sgt. Stephen Hancock. The investigation resulted in a Report (C. Ex. #7) on April 22, 2022, sustaining the charges set forth in the Notice of Dismissal and noted that the Grievant was dismissed effective May 30, 2019. At hearing, City testimony reflected that the lengthy lapse of time was primarily caused by the City's investigation of others who had not reported back to District after completing training.

The issue that created the dispute centered on the ownership and possession of a dog. ██████ testified he purchased the dog, a puppy, to be a companion to the dog he already owned. He offered a document representing it was a receipt for a Craigslist purchase in the amount of \$600 paid to the puppy's owner dated April 7, 2019. (C. Ex. #2). The document was received into evidence over the authenticity objection of the FOP. According to ██████, he was close to ██████, ██████, at the time and approximately two weeks after purchase they agreed to be co-owners. According to ██████, ██████ paid him \$400.

He said ██████ was "in and out of the apartment," and occasionally took the dog to Angel Lopez's house in Philadelphia. He testified, for several reasons, this arrangement was "terrible" so he gave ██████ back the \$400. He said this upset her because she desired to own the dog. This disagreement over ownership was the source of tension that led to the events of ██████, ██████.

² At the time of hearing, Lt. James had been promoted to Captain.

██████████ testified that he resides in the ██████████ apartment with ██████████, ██████████, ██████████ and sometimes also with an ██████████ ██████████. He knew Angel Lopez as ██████████ ██████████ and testified he had seen him at the apartment “four or five times.” He referred to him as an acquaintance and not a friend. He said he was very close to ██████████ in the past but not at the time of the ██████████ ██████████ ██████████ incident due to “petty little fights” over the second dog. He testified he was not close to ██████████ ██████████ with whom he had arguments with at home. He said there was an agreement with ██████████ to co-own the dog he bought on April 7, 2019 but soon thereafter wanted to rescind the co-ownership at the time due to ██████████’s handling of the dog and her desire to Angel Lopez’s house on ██████████ ██████████ ██████████. He testified he gave ██████████ her \$400 back and described her as being upset.

According to ██████████, he took the dog to his room on ██████████ ██████████, ██████████, closed his door and went to sleep around 10 p.m. After 5:00 a.m. on ██████████ ██████████ ██████████, he testified that Angel Lopez banged on his door, came in and demanded that he turn the dog over to him. He observed Lopez dressed as a police officer and saw his badge, a firearm and utility belt. He testified Lopez said he was there to take the dog and got “in his face.” ██████████ ██████████ ██████████ was present. He testified he rose from the bed in fear while clenching his fist in anticipation that the encounter would become physical. ██████████ ██████████ testified that Angel Lopez struck him in the face with his fist but he did not retaliate because Lopez threatened him by saying he was a cop and striking him would result in his arrest. He said Angel Lopez came from behind and put him in a chokehold and he gasped for air while falling unconscious to the floor. He had held onto the dog when ██████████ ██████████, ██████████ ██████████, came in to his room.

According to [REDACTED] [REDACTED], as Angel Lopez held him [REDACTED] squeezed the dog away from him causing the dog to shriek. He testified seeing Angel Lopez leave the room with a “macho man grin” and because he was “suffering” he was unable to chase him and he called the police. He said he showed red marks on his face to the police and was told to take a picture.³ (C. Ex. #3). He filled out a Domestic Incident Report (C. Ex. #4) for the police but said he could not fit every detail of the events into the box it provided. This prevented him from mentioning that he had been punched by Angel Lopez or was rendered unconscious. He said he put in “what I felt was important.” He testified he never got the dog back and that “she can keep” the dog because of their love for each other.

Upon questioning by Union counsel, he acknowledged [REDACTED] sought and received a protection from abuse order (PFA) based on conduct towards her in 2018 which lasted for six months or a year but was no longer in effect on [REDACTED] [REDACTED],

[REDACTED]. He recalled that after being struck by Lopez he passed out and was unconscious for five seconds. He acknowledged he did not mention being punched or being unconscious in his Domestic Incident Report nor seeking medical treatment. He denied that he asked sibling [REDACTED] [REDACTED] or [REDACTED] [REDACTED] to lie to police that Angel Lopez had ripped his shirt or to tell the police they saw Angel Lopez assault him. He acknowledged that [REDACTED] [REDACTED], [REDACTED] [REDACTED], had called the police on him “3 or 4 times” in the past and that she also obtained a PFA against him. He acknowledged that he had punched a hole in his bedroom wall out of frustration in the past.

³ The pictures reflect that they were taken at 7:43 a.m.

Angel Lopez acknowledged that he was in partial uniform when he arrived at the [REDACTED] residence but denied having his pistol or belt which he had left in his apartment before he left for Brooklyn. He explained that he had visited the apartment on many occasions, that he had stayed overnight there in the past and it was not unusual for him to appear there in partial uniform. He testified that he went into the apartment on [REDACTED] [REDACTED], [REDACTED] to pick up [REDACTED] at her request and that [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED] [REDACTED] and [REDACTED] [REDACTED] were all present at the time. He described that upon arrival there was a “family dispute” and commotion. He testified that the [REDACTED] was frantic. He explained that she attempted to get the dog away from [REDACTED] [REDACTED] and hit him before gaining possession. He testified he became aware that the [REDACTED] had passed out and an ambulance was called the evening before. He testified that on [REDACTED] [REDACTED], [REDACTED] he came to pick [REDACTED] up and take her back to his house and during his travel to Brooklyn he had no intention to remove the dog from the apartment. According to Lopez, he had left his pistol in Philadelphia and left his pistol and taken off his “rig” but was in his shirt, pants and boots. He said [REDACTED] was crying when he arrived. He testified he and [REDACTED] [REDACTED] went into [REDACTED]’s room and observed [REDACTED] [REDACTED] holding the dog by the throat. The [REDACTED] came in seconds later, retrieved the dog and gave it to [REDACTED]. After learning that [REDACTED] [REDACTED] told [REDACTED] that [REDACTED] [REDACTED] was going to call the police, Angel Lopez called his supervisor and briefed him on what happened and he filled out a domestic incident report. The content of his call was summarized by his superior in an Off-Duty Incident

Summary stated:

P/O LOPEZ NOTIFIED ME AT APPROX 10:50PM 04-25-19 THAT HE WAS INVOLVED IN AN INCIDENT ON [REDACTED] AT 5:30AM IN BROOKLYN NY. HE STATED TO ME THAT HE HAD GONE TO PICK UP [REDACTED], [REDACTED]. WHEN HE ARRIVED AT THE LOCATION THE [REDACTED] AND HER [REDACTED], [REDACTED], WAS ARGUING OVER A DOG. P/O LOPEZ SAID [REDACTED] HAD SOLD THE DOG TO HIS [REDACTED] AND WAS NOW TRYING TO TAKE BACK. P/O LOPEZ SAID OTHER FAMILY MEMBERS THAT LIVE AT LOCATION, [REDACTED] [REDACTED] AND [REDACTED] [REDACTED], ENTERED THE ROOM WHEN HEARING THE NOISE. HE WAS TRYING TO DIFFUSE THE SITUATION WHEN THE [REDACTED] JUMPED ON HIS [REDACTED]. HE SAID THE MOTHER, [REDACTED] [REDACTED] WAS PULLING AT HER SON, [REDACTED] [REDACTED], TRYING TO GET HIM UNDER CONTROL. P/O LOPEZ SAID HIM AND THE [REDACTED] LEFT THE LOCATION, APPROXIMATELY A HOUR LATER THEY GOT A CALL FROM [REDACTED] [REDACTED] STATING THAT [REDACTED] HAD THE POLICE AND WAS MAKING A REPORT. P/O LOPEZ NOTIFIED HIS DEPARTMENT OF INCIDENT. P/O LOPEZ INFORMED ME HE HAS AN APPOINTMENT TOMORROW 04-2619 AT 2PM AT THE 83RD PRECINCT, BROOKLYN NY. I, CPL. CURRY, CALLED AND SPOKE TO A SGT. COLON AT THE 83RD PRECINCT TO OBTAIN INCIDENT NUMBERS AND WAS INFORMED A REPORT HAD BEEN TAKEN AT 5:30 AM AT THE LOCATION IN REFERENCE TO A ROBBERY AND ASSAULT BY P/O LOPEZ #4528. CAPT. GILLESPIE #45 WAS NOTIFIED.

Angel Lopez denied ever threatening [REDACTED] [REDACTED], nor saying "I'm a police officer and if you hit me I'll punch you in the face."

[REDACTED] [REDACTED] testified she was friendly with Angel Lopez who had dated [REDACTED] [REDACTED] for three years. She lives in a Brooklyn, New York apartment with four children, [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED] and an [REDACTED] [REDACTED] [REDACTED] [REDACTED]. She described [REDACTED] [REDACTED] as non-communicative, violent and aggressive towards her. This resulted in at least one PFA order against him.

She testified that the issues that arose early in the morning on [REDACTED] began to surface around 8:00 p.m. on [REDACTED]. According to [REDACTED], [REDACTED], [REDACTED] grabbed the dog saying it was his and took the dog to his room. In the presence of [REDACTED] and [REDACTED] she gave [REDACTED] \$400 towards the \$700 that [REDACTED] needed to purchase the dog back. She said there was no dispute about the money. Because of the tension of these events she had a panic attack and fainted. An ambulance was called and she revived until 10:00 p.m. when she went to sleep. She testified she did not ask [REDACTED] to call Angel

Lopez. Around 5:00 a.m. the next morning, she heard an argument ensue among [REDACTED], [REDACTED] and [REDACTED] in [REDACTED] room. She saw [REDACTED] pick up the dog in front of [REDACTED]. [REDACTED] was present and Angel Lopez was standing in the room by a closet. She went to grab the dog and said it made a noise as if it were injured. She testified no one was physical with [REDACTED] except for her own action to “grab his balls” to succeed in an effort to retrieve the dog from [REDACTED]

She then gave it to [REDACTED]. She saw [REDACTED] rip his shirt and call the police. She said Angel Lopez did not rip [REDACTED] shirt nor did she see Lopez strike him. She did not observe any injury to [REDACTED]. When police arrived they directed her and [REDACTED] to go to a room while the police spoke with [REDACTED]. She testified that [REDACTED] is not truthful and it is important for her to tell the truth even if it involves one of your children.

Upon questioning by City counsel, she testified she understood what perjury meant. She acknowledged that although she obtained a PFA, there were no PFAs against [REDACTED] at the time but that one existed some years ago. She confirmed to providing [REDACTED]

with \$400 to add to her own \$300 to equal \$700 to be paid to [REDACTED] [REDACTED] for the dog. She observed [REDACTED] [REDACTED] throw the money on a table. This was on [REDACTED], the night before Angel Lopez was present. She testified she heard an argument in the apartment in [REDACTED] [REDACTED] room at 5:00 a.m. on [REDACTED]. She entered the room and saw [REDACTED] Santos Angel Lopez, [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. She was unaware that Angel Lopez was coming to the apartment and was surprised to see him. She did not hear Angel Lopez say “you can’t hit me, I’m a cop.” She said she was unaware that [REDACTED] [REDACTED] had given testimony in the prior arbitration pre-hearing because “he doesn’t talk to her.” She acknowledged she wants to see Angel Lopez get his job back because of this “injustice.” She acknowledged that despite [REDACTED] [REDACTED] living in her home, she did not fear him. On redirect examination she confirmed she did not see Angel Lopez threaten or hit [REDACTED] [REDACTED] and saw no marks on his face as depicted in City Exhibit #3.

[REDACTED] [REDACTED] is a younger brother of [REDACTED]. He described [REDACTED] as a “father figure” but recalled obtaining a PFA order against him in October 2018. He observed [REDACTED] [REDACTED] receiving cash for the dog from [REDACTED] [REDACTED] but recalled it was \$750 because he personally counted it. He testified to observing events described by [REDACTED] [REDACTED] that occurred during the evening of [REDACTED]. He testified [REDACTED] [REDACTED] said it was his dog and he took it from [REDACTED] [REDACTED]. He testified he saw [REDACTED] [REDACTED] pass out during arguments over the dog on [REDACTED] and he called for an ambulance. He said [REDACTED] [REDACTED] was not present after [REDACTED] [REDACTED] passed out but that he came back that evening and locked himself in his room.

Early on [REDACTED], [REDACTED] [REDACTED] said he heard noises and saw Angel Lopez and [REDACTED] [REDACTED] in [REDACTED] [REDACTED] room say “get out of my room.” He testified Angel Lopez was near the bedroom door behind him. He did not recall what Angel Lopez was wearing but was aware he was a cop. He observed [REDACTED] [REDACTED] with one hand on the dog while pushing “us” away. He heard the dog cry. He saw [REDACTED] [REDACTED] hitting [REDACTED] [REDACTED] “in his balls.” [REDACTED] [REDACTED] gave the dog to [REDACTED] [REDACTED] who then ran out of the room with the dog followed by Lopez. He testified he did not see Angel Lopez hit [REDACTED] [REDACTED] nor see him pass out on the floor. He felt that Angel Lopez and [REDACTED] [REDACTED] had an “ok” relationship. He heard [REDACTED] [REDACTED] say he would call the police and he saw him rip his shirt in anger. According to [REDACTED] [REDACTED], [REDACTED] [REDACTED] asked him to lie to police about the events he had witnessed and in particular, that Lopez had ripped his shirt and punched him.

Upon questioning by City counsel, he testified he is 22 years old, that he did not talk to anyone about his testimony. He confirmed seeing [REDACTED] [REDACTED] receive the \$750 on the evening prior to the [REDACTED] incident. On [REDACTED], he saw Angel Lopez and [REDACTED] [REDACTED] in [REDACTED] [REDACTED] room at the time he entered and [REDACTED] [REDACTED] said to him “get the fuck out of my room.” He observed [REDACTED] [REDACTED] enter the room. He testified he did not see Angel Lopez hit or choke [REDACTED] [REDACTED] but saw [REDACTED] [REDACTED] rip his shirt and tell him to lie to the police that Angel Lopez did it. [REDACTED] [REDACTED] testified he told police that [REDACTED] [REDACTED] told him to lie. He acknowledged that he liked Angel Lopez.

██████████ testified she has had tension with ██████████ ██████████. She recalled an incident in October 2018 when after being hit by him, she called the cops. That resulted in a PFA against him. ██████████ ██████████ ██████████ Angel Lopez in April 2018. She said she wanted the dog because Angel Lopez never owned one. She testified ██████████ ██████████ said he was going to sell the dog so she gave him \$750 which ██████████ ██████████ witnessed. She testified there had been no agreement on co-raising the dog because ██████████ ██████████ imposed unacceptable requirements on the arrangement. On ██████████ at about 8:00 p.m., ██████████ ██████████ took the dog and threw the money given him on the table. She testified telling ██████████ ██████████ that she was going to take the dog to Philadelphia and told Angel Lopez to come over to the Brooklyn apartment. She saw ██████████ ██████████ pass out on ██████████ and she and ██████████ ██████████ called for an ambulance. She saw ██████████ ██████████ leave and then come back and lock himself in his room about 3:00 a.m. She called Angel Lopez to pick her up and she packed her bag. When Angel Lopez arrived she said he was wearing a blue shirt and pants but was without his service weapon or his belt/rig. She went into ██████████ ██████████ room and they argued about the dog. She saw ██████████ ██████████ and Angel Lopez come in. ██████████ ██████████ followed shortly thereafter. She saw ██████████ ██████████ try to get the dog while ██████████ ██████████ held the dog by the neck. She heard ██████████ ██████████ say “get out of my room” and ██████████ ██████████ grabbed the dog after hitting ██████████ ██████████ “private parts.” She heard no threats made by Angel Lopez to ██████████ ██████████. She said she was not criminally charged.

On cross-examination, she testified the door to ██████████ ██████████ room was not locked. She testified ██████████ ██████████ tried to get the dog and not her and ██████████ ██████████ succeeded after grabbing ██████████ ██████████ balls. She said neither Angel Lopez nor ██████████ ██████████ touched ██████████ ██████████ and she heard ██████████ ██████████ threaten to punch Angel Lopez who responded he

would call the cops. She acknowledged that she and Angel Lopez split rent and utilities and that she paid more than half.

Testimony was offered by City witnesses. Deputy Chief Robin Wimberly offered testimony on City policy in regard to when criminal charges are filed by an outside jurisdiction. Captain Matthew James testified to the City's internal process which led to the Notice of Dismissal and his assignment to conduct an Internal Affairs investigation. He had commenced the investigation but it was reassigned after he was reassigned. There are no factual disputes over the details of their testimony.

Although the vast majority of record evidence was devoted to witnesses testifying to the events in Brooklyn on [REDACTED] and [REDACTED], [REDACTED] that resulted in two Conduct Unbecoming charges, there is a third charge, Neglect of Duty that relates solely to Grievant Lopez's failure to return to District #18 for reassignment after he concluded DBC training at 4:00 a.m. on April 24, 2019. The facts concerning his failure to return are not in dispute and testimony during the IAD investigation was received by several witnesses. The dispute over this element of the Dismissal center mainly on notification, department practice and whether Grievant Lopez was obligated to return to his District after completion of training.

The parties argued orally at conclusion of hearing. Their arguments center mainly on the credibility of the witnesses and procedural issues. Their arguments will be concisely summarized, although any not identified below have been fully considered.

City of Philadelphia

The City contends that the testimony of [REDACTED] [REDACTED] was more believable than Grievant Lopez and the supporting witnesses and therefore must be credited. In particular, the City points to Grievant Lopez’s testimony that he had no plan to come to Brooklyn or to pick up the dog but ended up leaving the apartment with [REDACTED] and the dog.⁴ It also points out that Grievant Lopez did not immediately leave the apartment after being there only to pick up [REDACTED] but yet did not end up taking her back because she drove back in her own vehicle. As to individual events, it contends that in respect to the ripping of the shirt, the striking of [REDACTED] [REDACTED], the threatening of [REDACTED] [REDACTED], the City submits that the testimony of [REDACTED] [REDACTED] was sincere and without motive to lie while the testimony of Grievant Lopez and supporting witnesses were “pristinely coordinated” and must be rejected. The City also emphasizes that Grievant Lopez was proven to have been AWOL by not reporting back to District after completion of training. I rejects any FOP claim that the investigation was flawed because it was compelled to defer to an out of jurisdiction criminal investigation and, on the issue of failing to return to duty, its investigation was delayed due to the need to complete its investigation into other police officers who engaged in similar behavior.

⁴ The City points to a video showing the two leaving the apartment with the dog in a hallway on their way out. (C. Ex. #6). Neither of the two dispute that they left with the dog.

FOP Lodge 5

The FOP contends that the City has not met its burden to establish just cause for its termination of the Grievant. It emphasizes that the City's presentation at hearing relies mainly upon one witness, Complainant [REDACTED] [REDACTED] who, in its view, was unable to substantiate his allegations against the Grievant which led to the Grievant's dismissal. The FOP notes that although [REDACTED] [REDACTED] filed a complaint with the New York Police Department which resulted in criminal charges against the Grievant, the charges were based solely on unsubstantiated allegations of the Complainant and were dropped in their entirety by Kings Criminal Court thereby clearing the Grievant of any criminal wrongdoing. The FOP further submits that the City's investigation into the allegations of [REDACTED] [REDACTED] was flawed and based solely on the allegations of [REDACTED] [REDACTED] without the City having conducted any investigation of its own into the validity of the charges. It also submits that Complainant [REDACTED] [REDACTED] was not interviewed by the City before or after the Notice of Dismissal or during the City's Internal Investigation (I.A.D. 191062) which issued three years after the incident and its termination of Angel Lopez. It further submits that the Investigative Report made findings based solely on "paperwork" including charges mentioned in the criminal complaint which were dismissed in their entirety without any confirmation of the truth of the allegations. The FOP faults the IAD for its investigation which did not interview [REDACTED] [REDACTED] or any other witness to the events.

Citing to testimony at hearing, the FOP contends that Complainant [REDACTED] was not a credible witness. It asserts that he changed his "story" and that the allegations he made against Grievant Lopez were directly contradicted on virtually all key points by [REDACTED]

██████████, ██████████, ██████████ and ██████████, ██████████, ██████████, all of whom presented eyewitness testimony supporting the Grievant's version of the events.

DISCUSSION

I have thoroughly reviewed and carefully considered the evidence and arguments submitted into the record 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 discharge the Grievant.

In this matter, the City must establish the adequacy of its charges against Angel Lopez which caused it to dismiss him from employment. Such burden does not rest on the Union to prove the negative that he is not guilty of having committed any offense with which he was charged. A primary obligation of the City under the "just cause" standard set forth in the parties' Agreement is to establish the validity of the allegations. It is acknowledged that the burden may shift from one to the other based on credible record evidence.

First, the record reflects that the City's findings on Conduct Unbecoming both in the Gniotek White Paper, the Notice of Dismissal and in the IAD Report were heavily based on the allegations of ██████████ ██████████ which appear in a NYC police report and in criminal charges. They accept the allegations of ██████████ ██████████ as factually based and valid. These findings include, but are not limited to, the finding that "you punched ██████████ ██████████ in the face with your closed fist and picked up ██████████ ██████████ dog..." and "both of you (Angel Lopez and ██████████ ██████████) held him down as you placed your arm around his neck and applied pressure..." The criminal charges including "Robbery" in the Second and Third Degree,

“Grand Larceny in the Third Degree,” “Attempted Assault, Menacing and Harassment” in the Second and Third Degree were based on allegations and not on any process which evaluated the merits of the claims made by [REDACTED] [REDACTED]. The City’s action to dismiss/terminate the Grievant Lopez came without interview or investigation into the truthfulness of the allegations against him. Grievant Lopez, while under criminal charges at the time, declined to respond within the thirty days prior to the Notice of Dismissal which was his lawful right while the criminal charges were pending. No party argues to that the charges are such that, if proven, would constitute a strong basis to terminate a police officer.

I do not view the above circumstances as precluding termination. The City’s Police Board of Inquiry states “neither a criminal conviction nor the pendency of criminal charges is necessary for disciplinary action in such matters.” Testimony from Department superiors reflects that the City is not under an obligation to maintain employment of a police officer who, based on serious allegations and pending criminal charges, simply cannot function in a law enforcement capacity.

There can be no quarrel with not maintaining the active employment of a police officer under these circumstances, especially where an investigation is being conducted by an outside jurisdiction over which the City has no control. However, this case does not rest on procedural issues. Instead, the merits of this case, rather than resting on application of City policy, turns on whether the City has met its burden to provide sufficient credible evidence supporting termination. In evaluating whether this burden has been met, I do not find the dismissal of the criminal charges against the Grievant by the Kings Criminal Court on August 18, 2020, standing alone, undermines the City’s ability to discharge a police officer in the event it is able to support that the disciplinary action it has taken is supported

by a preponderance of the credible evidence. However, based on this record, and for the reasons below, I have concluded that this burden has not been met.

The testimony at hearing is in conflict on virtually every key point. The City suggests that the testimony of Lopez, [REDACTED], [REDACTED], and [REDACTED] were neatly in alignment but not credible. As such, it seeks full credit be given to the testimony of [REDACTED] which, as it argues, would provide a proper basis to terminate because the charges are those which, if proven, would be a strong basis for termination.

It is true that the four witnesses contradicting [REDACTED] all have an interest in aligning with the denials of Angel Lopez. Grievant Lopez wants his job back and [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are friendly with him and have prior conflict with [REDACTED] resulting in protective orders being issued against him. Similarly, I find the Complainant to also have an interest and motive. The record reflects he had a strong interest in maintaining possession of the dog, that he had serious prior conflict with [REDACTED] and [REDACTED] resulting in his receipt of protective orders against each. He also acknowledges that he has engaged in aggressive behavior. He candidly acknowledged that he punched a hole in his bedroom wall as an alternative to taking his frustration out in other ways.

The potential for bias will be fully considered when weighing all witness testimony.

As indicated, I cannot conclude, based on careful review of the testimony, that the Complainant's testimony, while provided in a sincere manner, is sufficient to support the

City's decision to terminate Grievant Lopez. Although there are numerous key elements of the events in dispute, I focus on those integral to the City's meeting of its burden.

I have viewed the video and find it falls short of showing that Grievant Lopez was in full police gear and equipment when he left the apartment. It confirms they left the apartment with the dog but that is not in dispute. While Complainant testified to the contrary, I do not find his testimony can be credited, especially in light of contrary testimony adduced at hearing on behalf of Grievant Lopez that he did not show a firearm. I have also considered the testimony that Grievant Lopez was not a stranger to the apartment, that all concerned were aware he was a police officer and that it would not be unusual for him to appear there in partial uniform.

The City has relied on Complainant's allegation that Grievant Lopez punched him in the face. Grievant Lopez denied this and all eyewitnesses did not observe this and testified to the contrary. Even assuming that there was a brief period of time when Grievant Lopez could have committed this assault, this alleged event, as well as Complainant being rendered unconscious, is noticeably absent from Complainant's statement of allegations in his Domestic Incident Report filed with the NYC police department. His explanation for this, that he could not fit these claims in the limited box provided and that he put in only what he felt to be most important, is not persuasive given his specific mention of being pushed and being held down without mention of being punched or losing consciousness.

I do not find the photograph (C. Ex. #3) showing a red mark on Complainant's cheek and over his eye can be given sufficient weight so as to infer that he was punched by Angel Lopez. While the photo clearly shows these marks, the photo was taken over two hours of the incident, not corroborated by any witness as caused by a punch to the face and was not noticeably absent from any reference in Complainant's filing with the NYC police department.

While the claims to ownership of the dog gave rise to criminal charges of robbery, the record is unclear as to ownership and no inquiry was made by the reviewing agency as to ownership. I cannot sustain the City's argument that there is sufficient evidence showing Complainant's ownership of the dog and "kidnapping." Sufficient doubts on this issue exist given consistent testimony from

██████████, ██████████ and ██████████ that money was provided from ██████████ to ██████████ to purchase the dog ownership back to ██████████ and that the money was counted and given to Complainant. In any event, ownership is not a dispositive issue but reflects uncertainty as to the respective motives of all involved in the overall events.

The testimony of Grievant Lopez, ██████████, ██████████ and ██████████, even if colored by interest, all cast uncertainty on the City's finding Grievant Lopez "picked up ██████████ dog" as he left the apartment. This finding directly conflicts with the testimony that it was ██████████ who grabbed the dog after hitting Complainant on his private parts and handing it to ██████████ who left the apartment with the dog. This

version had support in eyewitness testimony from [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. It is noted that the City did not have this testimony when reviewing the evidence it then had in its Notice of Dismissal and IAD Report because it substantially relied on the allegations of Complainant and the allegations in criminal charges without any proceeding or investigation to determine their validity.

I further find that the City's suggestion that the witnesses were "pristinely consistent," so as to cast doubt on their truthfulness is inconsistent with the character for honesty displayed at hearing. Their testimony was broad, detailed and subject to expert cross-examination without any of them wavering in the content their testimony.

I next turn to the departmental charge that the Grievant was engaged in "Neglect of Duty – Absence without leave for less than one working day." Grievant Lopez's shift was a 12:00 a.m. – 8:15 a.m. tour of duty. His training was in a four hour block ending at 4:00 a.m. He did not return to duty to the 18th District for reassignment thereafter. While the City clearly has the managerial right to require an officer to work a full shift, the record on this point does not reflect the existence of a clear, formal policy directive or, absent such directive or rule, the existence of any order of any kind that notified the Grievant or informed him that he was required to return to District for reassignment. Instead, the record reflects that officers are, in general, only "advised to return" (C. Ex. #8), (Jt. Ex. #5) or should assume this responsibility without any policy or verbal order indicating that such return is mandatory or required. City testimony acknowledged no such directive in its existing policy. Several police officer witnesses

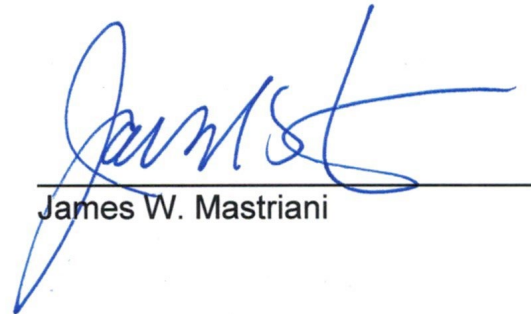
during the IAD hearing confirmed that officers are not told to report back to their districts nor, in this case, what to do to complete their scheduled tour of duty. While it is reasonable for an officer to call a superior to learn what to do next, there is no evidence that officers are provided any guidelines or mandate as to what to do if time remains during a shift after the completion of training. Absent a clear directive on this, I do not find that there was a just cause basis for any disciplinary action to be taken against Grievant Lopez for his failure to return after completion of training.

Accordingly, and based upon all of the above, I conclude that the City has not met its burden to establish it had just cause to dismiss/terminate Angel Lopez from employment as police officer. He shall be reinstated within a reasonable time, comply with all training requirements for reinstatement, be made whole with back pay and benefits from date of termination to date of his reinstatement. Offsets shall include unemployment compensation, interim earnings and receipt of monies of any kind from any government program by virtue of the unemployment caused by his dismissal. I retain jurisdiction for the sole purpose of resolving any disputes over remedy.

AWARD

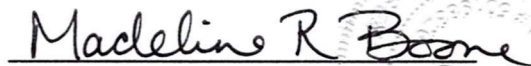
The City did not have just cause to dismiss/terminate Angel Lopez from employment as police officer. He shall be reinstated within a reasonable time, comply with all training requirements for reinstatement, be made whole with back pay and benefits from date of termination to date of his reinstatement. Offsets shall include unemployment compensation, interim earnings and receipt of monies of any kind from any government program by virtue of the unemployment caused by his dismissal. I retain jurisdiction for the sole purpose of resolving any disputes over remedy.

Dated: January 20, 2023
Lincroft, New Jersey


James W. Mastriani

State of New Jersey } County of
Monmouth }ss:

On this 20th day of January, 2023, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


Madeline R Boone

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

