

**AMERICAN ARBITRATION ASSOCIATION**

In the Matter of Arbitration Between:

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**AFSCME DISTRICT COUNCIL 47, LOCAL 2187**

"Union,"

-and-

**CITY OF PHILADELPHIA**

"Employer."

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**OPINION  
AND  
AWARD**

Case No. 01-21-0018-1586  
(Charlotte Hogan Suspension)

**Before  
Felice Busto  
Arbitrator**

**Appearances:**

**For the Union:**

Joseph Salamon, Esq.  
Willig Williams & Davidson, PC

**For the Employer:**

Esteban Rodriguez, Esq.  
Assistant City Solicitor  
City of Philadelphia

The City of Philadelphia (the “City” and “Employer”) and AFSCME District Council 47, Local 2187 (the “Union”) are parties to a collective bargaining agreement. Jt. Ex. 1. On April 29, 2021, the City issued a three day suspension to Charlotte Hogan (“the Grievant”). On July 8, 2021, the Union filed a grievance alleging that the City did not have just cause for the suspension. Jt. Ex. 2. The matter proceeded to arbitration pursuant the terms of the parties’ Agreement and the Voluntary Labor Rules of the American Arbitration Association. Jt. Ex. 3. Thereafter, I was designated to serve as arbitrator.

An arbitration hearing was held on February 21, 2023 at the offices of the American Arbitration Association in Philadelphia, PA. At the hearing, the parties were afforded a full opportunity to present testimony, evidence and argument in support of their respective positions. Testimony was provided by [REDACTED], retired former Director of Facilities Management and Grievant Charlotte Hogan, Administrative Technician. The record was closed upon receipt of closing arguments.

### **ISSUE**

At the hearing, the parties stipulated that the issue to be decided is whether the Grievant was disciplined and/or suspended for just cause? If not, what is the remedy?

### **RELEVANT CONTRACT PROVISIONS**

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#### **7. GRIEVANCE PROCEDURE AND CIVIL SERVICE APPEAL**

- A. **GRIEVANCE PROCEDURE**. A grievance shall be defined as a dispute or disagreement raised by a member of the bargaining unit against the department or City regarding the interpretation or application of the provisions of this Agreement.

Rejection of an employee during the probationary period shall not be subject to the just cause standard and the grievance procedure.

Either the Union or the employee may initiate and pursue grievance procedures on behalf of an employee or class of employees.

The Union may enter the grievance procedure at Step 3 or Step 4, whichever is appropriate, concerning any grievance arising out of the employer-employee relationship involving more than one employee in a Department where the grievance has general applicability to many employees, or involves employees in more than one Department.

Nothing in this grievance procedure shall preclude either party from attempting to settle any grievance informally, at any level, to promote orderly and cooperative relationships.

Such informal attempts to resolve grievances shall in no way affect or negate any of the restrictions pertaining to the timely processing of or responding to grievances, contained herein. In processing any grievance, the formal procedure may be terminated at any time and at any level by mutual agreement of the parties without prejudice on either side.

Any decision on a grievance which is not appealed to the next step of the procedure within the specified time limits stated below shall be considered settled on the basis of the City's last reply.

These time limits shall be extended to accommodate documented absences of the aggrieved due to illness or scheduled vacation. The time limits may be extended for other reasons by the mutual consent of the Union official and City official designated at that step of the grievance procedure.

Grievances shall be processed and resolved in accordance with the following procedure:

#### Step I

The member of the bargaining unit affected may directly, or through the Steward, discuss a grievance with the immediate supervisor. If the grievance is not informally resolved the grievant must within ten (10) days after the occurrence giving rise to the alleged violation or within ten (10) days after the employee knew or had reason to know of the event giving rise to the grievance, submit the grievance in writing on the

approved form to the immediate supervisor. The immediate supervisor shall provide a written reply within seven (7) days of submission. In the event of a failure to resolve or respond, the grievant or Union shall be responsible for processing the grievance to Step II at the end of the above time period.

### Step II

If the grievance is not resolved or no reply is given the grievant in Step I the grievant or Departmental Union Representative must refer the grievance, in writing, within seven (7) days of the Step I answer (or its due date) to the Division Head, the equivalent level of authority or his/her authorized representative for resolution. The Division Head shall provide a written reply within seven (7) days of submission. In the event of a failure to resolve or respond, the grievant or Union shall be responsible for processing the grievance to Step III at the end of the above time period.

### Step III

If the grievance is not resolved or no reply is given the grievant in Step II, the grievant or Departmental Union Representative must refer the grievance, in writing, within seven (7) days of the Step II answer (or its due date) to the Department Head or Commissioner. A meeting shall be held between the Department Head or Commissioner or his/her designee, the Personnel Director or his designee, the appropriate Union officials and the aggrieved. The Department Head shall provide a written reply within ten (10) days of the submission of a grievance.

### Step IV

If the grievance is not resolved or no reply is given the grievant it must be referred by the Union within ten (10) days of the Step III answer (or its due date) to the Personnel Director. A meeting shall be held between the Personnel Director or his/her designee, the appropriate Union officials and a representative of the Department within five (5) days of the presentation of the grievance at this step. The Personnel Director shall provide a written reply within ten (10) days of the date of the above meeting.

### Step V

If a grievance is not resolved within seventy (70) days of the initiation of Step I (excluding documented extensions) and after having been fully processed through Step IV, it may be referred within fifteen (15) days of the Step IV answer by either party to binding arbitration in accordance with the Voluntary Rules of Labor Arbitration of the American Arbitration Association. The parties shall first attempt to select an arbitrator by mutual agreement. In the event that a Review Panel is formed by the Union to consider decisions by the Union's Grievance Committee to withdraw grievances, then the Union shall have an additional fifteen (15) days beyond the normal time period in which to submit the grievance to arbitration. The City must be notified before the 15th day after the Step IV answer is issued that an appeal has been filed with the Review Panel. Should the Review Panel reverse the decision of the Union's Grievance Committee, then the grievance must be submitted to arbitration within thirty (30) days of the Step IV answer.

This clause shall become effective when formal notification is given the City by the Union at least thirty (30) days prior to activation of the Review Panel.

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### Authority of Arbitrator

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

### Effects of Decision

The decision of the arbitrator shall be final and binding upon the City, the Union and the employees covered by this Agreement.

### Retroactivity of Awards

Awards or settlements of grievances shall in no event be made retroactive beyond the date of the first occurrence of the

grievance as documented by its presentation at Step I of this procedure except if the grievance concerns an error in compensation, the proper rate shall be applied retroactively to the date the error occurred. All claims for back wages shall be limited to the amount agreed to by the City and the Union or ordered by an arbitrator, as the case may be, less any unemployment compensation from other full-time employment that the aggrieved employee may have received from any source during the period for which back pay is claimed.

Expenses

The expenses of the arbitration process and the arbitrator's fee shall be borne equally by the parties.

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16. **DISCIPLINE AND DISCHARGE**

- A. JUST CAUSE. It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for an employee in probationary status, is for just cause only.
- B. DISCIPLINARY ACTION HEARINGS. An employee subject to disciplinary action shall not be suspended without pay or discharged prior to completion of Step III of the Grievance Procedure unless in the judgment of the appointing authority or designee said employee poses a threat to himself/herself or other person or persons.
- C. PROGRESSIVE DISCIPLINE. The City shall have the right to discipline or discharge any employee in the bargaining unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2187 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees.
- D. EXPUNGEMENT OF REPRIMANDS. An employee who receives no written reprimands or any more severe discipline for a period of at least two (2) years shall have any prior-

received written reprimands expunged from his/her personnel file.

Jt. Ex. 1.

### **BACKGROUND**

The Facilities Management and Capital Projects Department (Facilities Management Department) of the City has three units: Building Maintenance, Custodial Services and a warehouse that stores equipment for the City's healthcare facilities. [REDACTED] [REDACTED] is the former Director of this Department.<sup>1</sup> The Department performs some of its work in-house but also uses vendors for construction projects, services, repairs, and other functions to service facilities, including health care facilities.

The Grievant has been employed by the City for 30 years in various capacities, including in Licensing/Inspections, the Health Department, IT and Procurement. Between 2018 and August 2021, the Grievant held the position of Administrative Technician in the Facilities Management Department. She reported to Director [REDACTED] and was one of five employees whom he supervised. The Grievant was responsible for processing invoices and responding to vendor inquiries regarding the status of payments.

[REDACTED] testified that in 2020, he became aware of an increased number of complaints from vendors who were not being paid. On July 23, 2020 [REDACTED] issued a memorandum to the Grievant regarding performance issues. In the memorandum he stated that he was setting up an Excel spreadsheet to track invoices and determine their status due to the increasing number of complaints he was receiving regarding unpaid invoices. The memorandum also stated that vendors were complaining to Health Fiscal and the Commissioner's Office. [REDACTED] also stated that he had requested the Grievant

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<sup>1</sup> [REDACTED] retired from this position in September 2021 after 35 years of employment with the City.

to conduct a weekly review of invoices received and to enter information in the spreadsheet; however, no information had been entered in the spreadsheet nor had a meeting taken place. C. Ex. 1.

Although the Grievant had previously received outstanding performance evaluations in 2018 and 2019, ██████ rated her “Satisfactory” in August 2020 with areas of improvement needed in quantity of work and dependability. ██████ attached a memorandum to the Grievant’s 2020 performance evaluation which stated:

In this past year, there has been a noticeable change in your work. Specifically, there has been an increase in complaints from vendors of unpaid invoices. These complaints are coming to me and have reached the Commissioner’s office and Health Fiscal Services. The consequences of unpaid invoices have affected our operations to the extent that we have been put on credit hold by vendors and have been unable to procure materials and supplies to carry out job responsibilities. I have met with you several times to discuss this. There is an improvement after our meetings in discussing a specific vendor, but other vendors continue to complain. I recently issued a memorandum asking to meet weekly to review a spreadsheet of outstanding invoices so I can assess the status of where we stand before I hear from a vendor. At our last meeting, we agreed that the spreadsheet was cumbersome and we would establish a shared drive folder that we can both review at will with all outstanding invoices. This is still being developed by Health IT.<sup>2</sup>

U. Ex. 1.

At the hearing, ██████ testified that despite the July 23, 2020 memorandum and August 2020 performance evaluation, the Grievant’s performance issues did not improve. ██████ testified that, in an effort to understand the problems, he established weekly Tuesday meetings with the Grievant. ██████ suggested that she prepare a spreadsheet for him of outstanding invoices and their status. Instead, the Grievant proposed setting

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<sup>2</sup> The Grievant submitted a rebuttal to the performance evaluation in which she stated that due to the complications of the COVID-19 pandemic “requisitions for PPE and additional supplies with urgency were deemed priority and that she became “overwhelmed” and reached out for help and requested overtime. C. Ex. 3.



up a joint email account that would permit [REDACTED] access to invoices and their status. Although [REDACTED] acquiesced to the Grievant's suggestion, the joint email account had hundreds of invoices in it and was not an effective means for [REDACTED] to have an overview of the status of outstanding invoices in the system. [REDACTED] testified that he had not been trained in the software and relied upon the Grievant to process vendor invoices in a timely manner.

[REDACTED] further testified that things got "out of hand" with vendors and the Grievant's job performance and on April 29, 2021 he issued her a Notification of a 3 Day Suspension. The Notification memorandum stated:

The number of vendors continuing to contact me and Health Fiscal about unpaid invoices from the Office of Facilities Management is unprecedented. In the past two years, we have been put on credit hold with vendors where they have refused to provide us with materials to do our work due to unpaid invoices. Most recently, the failure to pay a vendor [REDACTED] almost resulted in a City-wide ship-hold of services. ...The issues that stand out are failure to process payments in a timely manner or at all, failure to respond to repeated communications attempts and failure to follow up with vendors when told they would receive a follow up call on the status of unpaid invoices.

C. Ex. 1.

In an attachment to the memorandum, [REDACTED] provided a sampling of vendors with whom he had exchanged emails.<sup>3</sup> The memorandum stated further that the Grievant had ignored his requests that he made for updates on specific vendors and that "for my requests to be ignored is unprofessional, disrespectful and an act of insubordination. The continued patterns of grossly past due payments and lack of response to communications cannot continue." C. Ex. 1. [REDACTED] also requested a listing by May 12, 2021 of all

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<sup>3</sup> Several vendors complained about long delays in receiving payment, some of which had been submitted in 2019 and remained unpaid. Two additional vendors advised that the Department's account was being placed on a credit hold. They also complained about a lack of response to their emails from the Grievant. C. Ex. 1.

unpaid invoices and their status. Shortly after receiving the suspension the Grievant voluntarily transferred to another department. However, [REDACTED], as her prior supervisor, had input regarding her August 2021 performance evaluation in which she received an overall rating of Unacceptable. U. Ex. 1.

At the hearing the Grievant testified regarding the processing of invoices. She received invoices from vendors by mail or email. The Grievant testified that the process for the payment of invoices was as follows. The process differed for vendors with contracts that had approved specifications with the City and with new vendors. She created a requisition for new vendors. The Grievant created a purchase order for all vendors which she would check against the invoice. The purchase order would then be submitted to the Health Fiscal Office and ultimately paid by the City's Finance Department.

The Grievant testified that her workload increased substantially with the advent of the COVID-19 pandemic. She testified that she had to order more PPE and sanitizing products for the City's health facilities. This required her to find new vendors for certain products which added to her responsibilities for processing invoices. The Grievant testified that these were "mitigating circumstances" for any delays in processing invoices or responding to vendors. She testified that some delay in processing was attributable to invoices being "bounced back" by either Health Fiscal or the Finance Department. U. Ex. 2. The Grievant also testified that [REDACTED] "did not understand" the payment process and that his request for a spreadsheet would have created more work for her which is why she suggested creating the joint email account where he could view invoices in the system.

Further, the Grievant testified that there had been credit holds from vendors prior to her arrival to the Department in 2018. The Grievant also testified that she requested assistance and overtime from ██████ on several occasions. Although she did work some overtime, the Grievant testified that there were budgetary constraints and that overtime was often denied.

### **POSITIONS OF THE PARTIES**

The City argues that it had just cause to discipline the Grievant and issue a three day suspension. The City contends that the Grievant was aware of complaints from unpaid vendors to whom she did not respond. The City maintains that the Grievant also failed to communicate effectively with Supervisor ██████ regarding the issues and complaints with vendors.

The City emphasizes the efforts made by ██████ for over a year to improve the Grievant's performance of her duties. Despite meetings and memoranda to the Grievant, her performance did not improve and ██████ had no recourse but to issue discipline.

Although the Grievant offered several justifications for her performance, she was unable to provide support. For example, when ██████ asked for documentation to support her claim that her workload had increased during the Covid-19 pandemic, she failed to provide it. The City submits that the Grievant also attempted to blame the holdups in payment of invoices on other units of the City; however, the evidence established that she failed to issue the necessary requisitions and/or purchase orders in order to initiate payment from the Finance Department.

Finally, although the Grievant had not been disciplined in the past, the City argues that a three day suspension was a "restraint" given that she had engaged in poor behavior

for over one year, had not responded to [REDACTED] coaching, and caused consequences for the City such as credit holds on City-wide accounts.

The Union disagrees. The Union argues that the City has failed to establish just cause for the Grievant's discipline. The Grievant was solely responsible for making payments to vendors and had considerable expertise in this area. The Union contends that the Grievant credibly testified that she needed to make more purchases and search for new vendors during the COVID-19 pandemic when health facilities needed to purchase more PPE and sanitizing products. She testified that her workload increased substantially and that she became "overwhelmed."

Moreover, the Union submits that when the Grievant requested assistance from Supervisor [REDACTED], it was not provided. She also testified that she was only allowed limited overtime in order to expedite the processing of invoices. Further, the Union points out that when [REDACTED] became aware of issues with vendors, he only held a few meetings with the Grievant and when he requested that she prepare a spreadsheet so that he could understand more about outstanding invoices, he agreed to her suggestion to create a shared email address to access this information.

In addition, the Union argues that the City failed to follow its policy for progressive discipline. The Union contends that the Grievant was not on notice of the severity of the problem and that no verbal or written warnings were issued. The Union emphasizes that the Grievant was an exemplary employee with prior outstanding performance evaluations. The Union contends that the imposition of three day suspension was excessive under these circumstances and was not for just cause.

## DISCUSSION

I have carefully reviewed all of the evidence submitted including testimony, exhibits and arguments. The City has the burden to prove that it had just cause to discipline and issue a three day suspension to the Grievant.

The relevant facts are not in dispute. The Grievant was solely responsible for processing invoices and communicating with vendors in her position as Administrative Technician. Director ██████ oversaw three departments and five employees and relied upon the Grievant to process invoices in a timely manner, as well as respond to calls and emails from vendors regarding the status of payments.

The evidence established that in 2019-2020, the Grievant's job performance, which had previously been rated Outstanding deteriorated substantially. Many vendors were not getting their invoices processed or paid which resulted in several credit holds by companies whose invoices were outstanding. Complaints from vendors increased during 2021.

██████ testified that he initiated various efforts to improve communication and output from the Grievant which did not come to fruition. In his July 2020 memorandum and the Grievant's August 2020 performance evaluation, ██████ detailed the Grievant's deficiencies and areas that needed improvement. As things worsened in 2021, ██████ initiated weekly meetings with the Grievant and suggested that she prepare a spreadsheet for him with the status of unpaid invoices and a timetable for payment. The Grievant testified that she balked at this because it would only have made more work for her. Instead, she suggested setting up a joint email account that would enable ██████ to view invoices and their status in the pipeline. ██████ agreed to the Grievant's

suggestion and the joint email account was set up. However, this system did not provide ██████ with a snapshot of outstanding invoices because there were hundreds of invoices in the system and the shared drive “only represent[ed] what [the Grievant] enter[ed] and the activities completed.”<sup>4</sup> C. Ex. 1.

Nonetheless, the problems with delayed payments to vendors continued and ██████ received an increased number of complaints regarding delayed payments and the Grievant’s failure to respond to vendor phone calls and emails. ██████ testified that in July 2021 he felt he had no recourse but to discipline the Grievant and issue a three day suspension. The discipline was based on her failure to process invoices in a timely manner, failure to respond to vendors, and her failure to respond to his requests for updates on payments.

The Grievant did not dispute the underlying facts regarding vendor complaints but argued there were mitigating circumstances including the necessity of finding new vendors for PPE and sanitizing chemicals during the pandemic. I credit the Grievant that her workload increased during the pandemic. However, despite the Union’s position that she needed assistance or more overtime, the Grievant acknowledged that she asked ██████ for help only “a few times” and that she was permitted to work some overtime. When ██████ asked her to give him documentation regarding her workload she failed to do so. Simply put, the Grievant needed to be more proactive with her supervisor with respect to her workload. The emails attached to the Notice of Suspension contained numerous complaints from vendors of delayed payment but also revealed a pattern of the

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<sup>4</sup> In her rebuttal to the August 2020 performance evaluation the Grievant stated that there were 900 emails unread by ██████. However, it was the Grievant’s responsibility to process invoices and the shared drive did not contain invoices that were not entered. Nor was it incumbent on ██████, who oversaw three divisions in the Department, to research the status of pending invoices.

Grievant's failure to respond to their calls and emails. Although some delays were attributable to "bounce backs" the record demonstrates a pattern of poor performance by the Grievant over a lengthy period and does not support the conclusion that her poor performance was due to her workload during the pandemic. The issues with the Grievant's productivity began in 2019 prior to the onset of the pandemic in early 2020.

The evidence also established that the Grievant's lapses caused significant harm to the City in the form of credit holds and suppliers refusing to do business with the City.<sup>5</sup> During the pandemic, with many health facilities to supply, it was critical for the City to be able to keep these facilities safe and obtain the necessary services and materials in order to do so.

The Union argues that a suspension was unwarranted because the Grievant was not provided with a verbal or written warning prior to the suspension. This argument falls short, however, because the Grievant was on notice that she needed to improve her performance when she received the July 2020 memorandum and thereafter received a less than stellar performance evaluation in August 2020 which detailed that she needed to improve her productivity and responsiveness to vendors.

Moreover, the Grievant compounded her performance issues by repeatedly ignoring ██████ requests for explanations and updates. It was evident from the record and ██████ testimony that issuing the Grievant the suspension was a last resort. The April 29, 2021 memorandum setting forth the basis for the discipline detailed numerous instances when the Grievant ignored ██████ emails requesting specific updates after

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<sup>5</sup> For example, a May 31, 2021 email from ██████ stated that there were unpaid invoices from 2019 and 2020 from the Public Health Department. The vendor stated that it would not release materials to Public Health until the outstanding invoices were paid. C. Ex. 1.

vendors complained to him about unpaid invoices and/or the Grievant's failure to respond to them. In the memorandum ██████ characterized her lack of responsiveness to his emails and questions as "unprofessional" and bordering on "insubordination." ██████ testified that despite efforts to find out what the problems were, he had to seek out the Grievant in her office and that she did not consult with him on her own initiative. For the foregoing reasons, the City has established that the discipline of the Grievant was for just cause.

I now turn to the issue of the appropriate penalty. The Union argues that a three day suspension is not in accordance with progressive discipline given the Grievant's prior record. Although ██████ did not issue a verbal or written warning, his July 2020 memorandum and August 2020 performance evaluation and memorandum put the Grievant on notice that she was on thin ice with her performance and that she needed to show improvement. Moreover, he set up meetings with the Grievant in an effort to assist her in improving her performance.

Further, the Grievant's lack of communication with her supervisor and vendors and failure to process invoices in a timely manner had serious consequences, such as credit holds for the City during a time when it was even more dependent on suppliers in its health facilities. Under the totality of circumstance, the City has established that a three day suspension for the Grievant was for just cause. The grievance is therefore denied.



**AWARD**

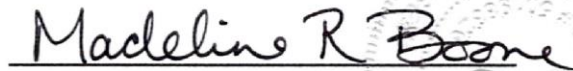
The City had just cause to discipline the Grievant, Charlotte Hogan and issue a three day suspension. The grievance is denied.

Dated: March 22, 2023  
Ocean Grove, New Jersey

  
Felice Busto

State of New Jersey     }  
County of Monmouth    } ss:

On this 22<sup>nd</sup> day of March, 2023, before me personally came and appeared Felice Busto 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.

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

