

In the matter of arbitration between:

City of Philadelphia,	:	
	:	
("City")	:	OPINION
	:	
and	:	AND
	:	
Fraternal Order of Police	:	AWARD
	:	
("FOP")	:	
	:	
	:	
AAA Case Number 01-22-0001-7761	:	
	:	

The issue in this case whether the City had just cause to suspend Sergeant Patrick Love ("Grievant") for ten days and transfer him out of the Narcotics Field Unit ("NFU"). The City contends that just cause existed for both actions, while the FOP maintains that just cause did not exist for either action.

The arbitration hearing in this matter took place in Philadelphia. The FOP was represented by Joseph B. Salamon, Esquire. The City was represented by Joseph A. Scopelitis, Esquire. Counsel for both parties submitted post-hearing briefs.

FACTS

The Grievant joined the City Police Department ("Department") in 2002 and was promoted to Sergeant in 2010. In 2013, he transferred to the Narcotics Bureau. During his employment with the City, the Grievant has never received less than a satisfactory performance review and has had no disciplinary history prior to the events that form the basis for the instant grievance.

At the time events here at issue occurred, the Grievant was a Sergeant in the NFU, which is within the Narcotics Bureau, leading one of five squads in that Unit. [REDACTED] supervised another squad within the NFU which included, among others, [REDACTED].

On April 16, 2019,¹ [REDACTED] squad conducted an operation in South Philadelphia that resulted in the arrest of an Asian male and the seizure of that arrestee's black Porsche Cayenne SUV ("Porsche"). The Porsche was subsequently parked in the NFU parking lot.

On Friday, April 26, while off duty, the Grievant drove past [REDACTED] home. Noticing the Porsche in [REDACTED], the Grievant took a photograph of it. The Grievant sent that photograph to two group text threads – one consisting of subordinate members of his own squad [REDACTED] and one consisting of other supervisors at [REDACTED] – with the text [REDACTED] makes so much they can afford Porsche's!!! [REDACTED] needs to up it from 2 to 4 a day."

The next evening – Saturday April 27 – the Grievant again noticed the Porsche in [REDACTED] driveway, took more photos, and sent them to both group chats. The Grievant also sent a text that evening to the [REDACTED], reading in relevant part, "[t]hey only took [the Porsche]

¹ All dates hereinafter refer to 2019 unless otherwise noted.

off a [REDACTED]... I guess when all your cars don't have AC it makes sense to take that as a daily driver."

The Grievant worked the following day, Sunday, April 28. He saw the Porsche parked in the NFU lot, and noticed that its interior was unclean, and there was no property receipt displayed on the dashboard.² He also noticed that the property receipt and keys for the Porsche were not hanging in the NFU mailroom as they typically would be for seized vehicles.³

The next day, Monday, April 29, [REDACTED] [REDACTED] [REDACTED] [REDACTED] summoned the Grievant to his office. [REDACTED] the Porsche, which was a seized vehicle, and questioned the Grievant about his texts and observations throughout the weekend. [REDACTED] referred the incident to the Internal Affairs Bureau ("IAB"), which assigned the investigation to [REDACTED].

On May 14, [REDACTED] first interviewed the Grievant. The Grievant then told [REDACTED] that he did not know the Porsche was a seized vehicle until Monday, April 29, after speaking with [REDACTED]:⁵

² To prepare vehicles for impound, NFU personnel would typically clean the vehicle interior.

³ To simplify the tow process, NFU personnel would place the vehicle's property receipt on the dashboard and place the keys with another property receipt on the wall of the NFU mailroom.

⁴ [REDACTED] was subsequently promoted to the rank of Inspector. For clarity, however, he will be referred to herein with the rank he had at the time of the events of this case.

⁵ The quotes which follow are from the transcript of that interview, as are quotes from a subsequent interview on November 26.

Q. Please explain how you became aware of the vehicles being confiscated/seized by [REDACTED]?

A. I was told by [REDACTED] that I had to be interviewed regarding a Porsche, he gave me a memo indicating that he was giving me my 72 hours notice to be interviewed [REDACTED].

Q. When did he give you this memo?

A. Monday, April 29th, 2019

. . .

Q. Do you know when the vehicle was confiscated/seized?

A. No

. . .

Q. Did you know that the vehicle parked at [REDACTED]

A. No, I had no idea.

Q. Did anyone tell you?

A. No, not until I learned about the investigation being conducted by [REDACTED].

On June 3, the Grievant requested to be reinterviewed by IAB to provide additional details. His second interview with [REDACTED] occurred on November 26. The Grievant's responses in his second interview indicated that on April 27 he knew the Porsche was a confiscated vehicle, but that he wrongly assumed it was being used for legitimate purposes:

Q. What did you recall about the text messages between the supervisors?

A. It was a message where I sent with the car and the message was [REDACTED]

[REDACTED] on a date. The message was something like that. [REDACTED] said that he [REDACTED] was meeting a

source and then someone said I don't want to know about it and I know something like my [REDACTED]

. . .

I know one of my responses back and forth between me and [REDACTED]

. . .

Q. Why did you respond about an [REDACTED]

A. I knew that [REDACTED]

Q. Is there anything else you would like to add to your statement that I have not covered in my questions?

A. Yes, as soon as I remembered the text message thread I did make notifications to the FOP and my attorney. I then drafted the memorandum to you on 06-03-19. I also want to add that when I took the photographs I didn't think that there was any improprieties going on and that [REDACTED] and their investigation. Now knowing that [REDACTED] was arrested, if I had known that he was using the vehicle for personal use, I would have immediately reported it to my [REDACTED]

Also I would like to add that by [REDACTED] saying you worry about your squad and I will worry about mine, and the text banter going back and forth that I thought he knew what was going on with the vehicle and would take any necessary supervisory action. Knowing what I know now I should have reported it to my supervisor just in case something was inappropriate as opposed to relying on [REDACTED]

vehicle," but that he "believed it was being used for a legitimate reason due to the fact that [REDACTED]

[REDACTED] further testified that the panel unanimously agreed on the recommended discipline. [REDACTED] noted that under the Disciplinary Code ("Code"), the penalty range for first time offenders of 1-§009-10 (lying or attempting to deceive) is a ten-day suspension up to dismissal, and that the Code permits the PBI to propose transfer for all offenses. He further explained that considering the Grievant's satisfactory evaluations, and lack of a disciplinary record, the panel believed that the minimum recommended discipline was appropriate. The panel unanimously agreed, however, that the Grievant should be transferred out of the Narcotics Field Unit as requested by [REDACTED].

[REDACTED] testified at the arbitration hearing that trust is paramount in Narcotics as officers face situations where their integrity is critical, including instances where they are seizing substantial sums of money, vehicles, and large quantities of contraband. He also explained that a basic requirement of the job for Narcotics officers is the ability to competently testify in court regarding their investigations and that the Grievant's ability to do so would be compromised considering his lying violation.

POSITION OF CITY

Honesty, integrity, and trust are core values of the Department. These values are reflected in the Code and the CBA. The Grievant in this matter is a veteran of the Department who acknowledged he understood these responsibilities to be essential to serving as an officer. Yet, the evidence establishes that he departed from these most basic obligations as a police officer, engaged in conduct unbecoming an officer, and violated the Code.

The facts demonstrate that the Grievant violated the Code when he lied or attempted to deceive regarding a material fact during an IAB investigation. Indeed, the City's investigation revealed the Grievant refused to accept responsibility for his failure to timely notify his supervisors about officer misconduct, and instead chose to deny any knowledge of wrongdoing. He had multiple opportunities to explain his conduct, yet with each opportunity he told a different story, demonstrating he was not forthright and instead was attempting to misrepresent his culpability.

The City's investigation was comprehensive, and the discipline imposed fair. The City appropriately balanced the Grievant's full work history and satisfactory evaluations with the seriousness of his misconduct. Although dismissal was permissible under the Code, the City recognized that the Grievant did not have preexisting disciplinary issues, and therefore, imposed the minimum suspension for the sustained violation. However, having found the Grievant guilty of

lying – a violation that directly implicates his integrity and ability to competently testify in court – the City further recognized that transfer from a specialized unit was not only appropriate, but necessary to ensure its effectiveness. The instant grievance should thus be denied in its entirety.

The recovered text conversations revealed that the Grievant made light of the situation upon seeing the Porsche in [REDACTED], choosing to joke about it rather than reporting the behavior through the appropriate chain of command. Those messages also revealed that the Grievant knew that the vehicle he was photographing at the time had been confiscated by the NFU a few weeks prior. When asked about these events, the Grievant chose to deny any knowledge of wrongdoing on the part of [REDACTED]. The Grievant was not forthright with his responses and was attempting to misrepresent his potential culpability for his failure to take appropriate supervisory action.

The PBI correctly recognized that the Grievant gave contradictory statements in his two interviews. In his second interview, the Grievant gave a drastically different account from the first interview, in which he denied any knowledge that the Porsche was a confiscated/seized vehicle prior to being notified by [REDACTED]. The second time around, the Grievant acknowledged that he was aware that the vehicle was a confiscated vehicle but pushed the blame to [REDACTED] and attempted to absolve himself of any responsibility by claiming he

believed that [REDACTED] was aware of what was going on with the vehicle and would have taken any necessary action.

The Grievant was not treated disparately in his discipline. The Grievant was the *only* officer that personally observed the vehicle outside [REDACTED] home. Moreover, the Grievant sent text messages that directly referenced the vehicle's connection with an earlier narcotics investigation in South Philadelphia involving Asian male suspects, whereas no other sergeant sent a comparable message. Further, unlike the Grievant, the other sergeants with whom [REDACTED] spoke had consistent and reasonable explanations regarding their lack of knowledge.

Additionally, the Union's contention of disparate treatment completely ignores that, unlike the other supervisors referenced above, the Grievant requested to be interviewed a second time. During this second interview, he not only provided a drastically different account of the events, but one where he admitted knowing the vehicle had been confiscated/seized by [REDACTED] squad, but now claimed he thought it was being used for legitimate purposes.

In short, the Grievant violated the Code, and as such the City had just cause to suspend him for ten days and to transfer him from the NFU. The instant grievances should be denied in their entirety.

POSITION OF FOP

Due to the effect upon future employment of charges involving dishonesty, arbitrators frequently use a heightened standard of clear and convincing evidence when charges involve that kind of behavior and the CBA does not specifically state a standard of review. The appropriate standard of proof in this case is thus clear and convincing evidence, since the CBA does not specify the standard of review, and the City is accusing the Grievant of lying to internal investigators. Even if the Arbitrator applies a preponderance of the evidence standard, however, the City has still failed to meet its burden to prove that the Grievant "lied or attempted to deceive" investigators in violation of the Code.

The City's conclusion that the Grievant lied to IAB rests on a single text message, which it argues conflicts with the Grievant's statements from his first IAB interview, in which he said he was unaware that the Porsche was seized or confiscated until he was told on Monday, April 29. More specifically, the City incorrectly claims that because the Grievant correctly identified the location and race of the arrestee from whom the Porsche was taken in the text, he must have known that the Porsche was "seized" or "confiscated" when he sent that text.

There is no dispute that the Grievant sent the text as a joke. Indeed, [REDACTED] testified that he believed that the Grievant *knew* the Porsche was seized *and* joked about it. The City's belief, then, is

that the Grievant discovered an ongoing crime during the weekend of April 27, and instead of reporting it, chose to jokingly broadcast that crime to over a dozen co-workers. This is a bizarre theory that is utterly incongruous with the Grievant's conduct and prior history with the Department.

The Grievant credibly testified at the arbitration hearing that although he understood the Porsche was being used by NFU for a legitimate police purpose, he was truthful when he told IAB that he did not know it was "seized" or "confiscated" during the weekend of April 27. [REDACTED] permission to take the Porsche to meet a source, and [REDACTED] explained as much to the Grievant in the [REDACTED]. [REDACTED]. The Grievant thus knew, because of his conversation with [REDACTED], that the Porsche was being used to meet a source. This alone, however, does not establish that the Grievant knew that the Porsche was "seized" or "confiscated" prior to Monday, April 29.

The Grievant credibly explained that at the time this occurred, the terms "seized" or "confiscated" implied certain procedures, including (1) placing a property receipt on the vehicle's dashboard; (2) cleaning the interior of the vehicle prior to impoundment; (3) placing the vehicle's keys and property receipt in a public place in the NFU mailroom; and (4) entering a "seized" message into the vehicle database. The Grievant further explained that on Sunday, April 28, he noticed that these procedures had not been followed. Specifically, he saw that (1) there was no property receipt in the Porsche's dashboard;

(2) the Porsche's interior was unclean; and (3) there were no keys or property receipt for the Porsche in the NFU mailroom. Taking these facts together, the Grievant reasonably concluded on Sunday, April 28, that the Porsche was not a seized vehicle destined for impound. Furthermore, although the Grievant did not run the Porsche's license plate through the Police Department database, the record shows that the seized message was not entered into that database for the Porsche until the afternoon of April 30, which was *after* the Grievant's conversation with [REDACTED], during which he discovered that the Porsche was seized.

The Grievant also credibly explained that his reference to an "Asian" person from "south philly" in the April 27 text was the result of a correct guess based on other information available to him rather than actual knowledge. He was personally involved in a recent operation during which no vehicles were seized. The Grievant also knew from his experience in the Narcotics Bureau that the address of the second operation that took place the weekend of April 27 was in a Cambodian neighborhood. He did not *know* that a Porsche was in fact seized from an Asian person, but unfortunately for him, he correctly guessed not only the NFU operation from which the Porsche was taken, but also the race of the arrestee from whom it was taken.

By the City's theory, not only did the Grievant allegedly know that [REDACTED] was in serious violation of Department protocols – and indeed, the criminal law – but instead of notifying his supervisors,

he chose to joke about it for days to myriad coworkers. This egregious error would have been the Grievant's first foray into rule breaking in 17 years of otherwise excellent service. It is far more likely that the Grievant's version of events is true: He believed [REDACTED] that [REDACTED] had permission to have the Porsche; he did not know the Porsche was seized until he was told by [REDACTED]; and he made jokes with his colleagues and subordinates - as he often did - about [REDACTED] possession of a luxury vehicle. Unfortunately for the Grievant, he happened to correctly guess, in the context of a joke, the race and neighborhood of the arrestee from whom the Porsche was taken.

For these reasons, the City has failed to meet its heavy burden that it suspended and transferred the Grievant with just cause. The FOP respectfully requests that the grievance be sustained in its entirety, and that the Grievant be made whole in all respects.

OPINION

Because this is a case involving discipline, the burden rests with the City to prove that just cause existed for the discipline imposed upon the Grievant. The City's initial burden involves proving that the Grievant was guilty of violating the Department's Disciplinary Code through Conduct Unbecoming by lying or attempting to deceive regarding a material fact during the course of a department investigation. In particular, the City has the burden of proving it's claim that the Grievant falsely asserted in his first IAB interview on

May 14, 2019 that he did not know that a Porsche that he photographed weeks earlier, on April 26 and 27, in [REDACTED] driveway was a vehicle confiscated/seized by the Narcotics Field Unit.

In arguing that the City has failed to meet this burden, the FOP forcefully contends that at the time of his first IAB interview the Grievant did not have actual knowledge that the Porsche he photographed on April 26 and 27 was confiscated/seized. The FOP further asserts that there is a significant distinction between actual knowledge that the Porsche was a confiscated/seized vehicle and a reason to suspect the Porsche was confiscated/seized. I cannot, however, accept this reasoning for purposes of the instant case.

As persuasively argued by the City, in its totality the evidence establishes that the Grievant had good reason to understand when he took photographs of the Porsche parked in [REDACTED] driveway that it had been confiscated/seized by the NFU. The Grievant was aware of two recent operations by [REDACTED]. The Grievant also knew that the other operation took place in a Cambodian neighborhood in South Philadelphia and resulted in the arrest of three males. Additionally, the Grievant's first photo of the Porsche on Friday, April 26, which he texted to the [REDACTED], received a response "[t]hat's the one from the lot lol."

Indeed, the evidence establishes that the Grievant not only had reason to understand at the time of his first interview on May 14 that the Porsche was confiscated/seized, he did in fact understand that.

The Grievant texted on April 27 in the [REDACTED] that "[t]hey only took [the Porsche] off a [REDACTED]." Although the FOP maintains that this was only an unfortunate correct assumption on the Grievant's part, the City convincingly contends that in this text the Grievant expressly acknowledged that he believed the Porsche was a confiscated/seized vehicle. In addition, in his second interview with IAB, the Grievant no longer claimed that prior to April 29 he was unaware that the Porsche was a confiscated/seized vehicle, but rather asserted that he believed it was being used for a legitimate police reason.

Given all the above evidence, regardless of whether I apply a preponderance of the evidence or clear and convincing standard of proof, I am persuaded by the City that the Grievant did engage in Conduct Unbecoming during his first IAB interview. Most particularly, he did so when, in response to a question from [REDACTED] about whether prior to April 29 he was aware the Porsche was a confiscated/seized vehicle, he responded "No, I had no idea." This unequivocal denial of any knowledge whatsoever concerning the status of the Porsche was fairly viewed by the City as an untruthful response under the totality of circumstances, presumably made for the purpose of avoiding any possible liability for failing to act in response to the situation.

It quickly follows that the City has also carried its burden of establishing that just cause existed to discipline the Grievant for

this misconduct. What remains is for me to determine whether just cause existed for the level of discipline the City imposed, specifically, a ten-day suspension and transfer out of the Narcotics Bureau.

I find the ten-day suspension to be with just cause. Pursuant to the Code, appropriate penalties for a first-time violation of Conduct Unbecoming range from a minimum of a ten-day suspension to a maximum of dismissal. [REDACTED] credibly testified at the arbitration hearing that the panel for the Police Board of Inquiry unanimously agreed on the recommended minimum discipline after considering the Grievant's satisfactory evaluations, and lack of a disciplinary record. I concur with imposing this minimum penalty. Given the Grievant's highly commendable record prior to this incident, it is apparent that this incident of Conduct Unbecoming was for the Grievant an aberration.

I do, however, agree with the City that it had just cause to take further disciplinary action against the Grievant because of his Conduct Unbecoming, specifically transferring him out of the Narcotics Bureau. Notwithstanding that for the Grievant this incident was not representative of his otherwise sterling service with the Department in general and the Narcotics Field Unit in particular, the City has established that this removal action was appropriate to preserve the effectiveness of the Unit. As argued by the City, and testified to by its witnesses, trust is of paramount importance in the Narcotics Bureau, and if the Grievant had been retained in the NFU, his

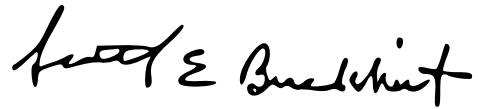
effectiveness in that Unit would have been diminished, including, but not limited to, his ability to testify effectively in criminal drug proceedings.

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

AWARD

The grievance is denied.

Signed this 15th day of June 2023.

A handwritten signature in black ink, reading "Scott E. Buchheit". The signature is written in a cursive style with a horizontal line underneath it.

SCOTT E. BUCHHEIT, ARBITRATOR