

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

FOP LODGE 5,

"Union,"

-and-

CITY OF PHILADELPHIA,

"Employer."

**OPINION
AND
AWARD**

AAA Case No. 01-19-0002-3423
(Sgt. Joseph E. Przepiorka (202311) – Discharge)

**Before
Robert C. Gifford, Esq.
Arbitrator**

Appearances:

For the Union:

Jessica C. Caggiano, Esq.
Willig Williams & Davidson

For the Employer:

Karli Lubin Talmo, Esq.
Ballard Spahr

FOP Lodge 5 and the City of Philadelphia are parties to a collective bargaining agreement ["Agreement"]. [Ex. J-1]. On July 25, 2019, the Union filed a grievance alleging that the City violated the Agreement by terminating the employment of Sergeant Joseph Przepiorka ["Grievant"] without just cause. [Ex. J-3]. On July 26, 2019, the Union submitted the unresolved grievance for binding arbitration. [Ex. J-4]. On September 19, 2019, Monica Marchetti-Brock, the City's Director of Labor Relations, notified AAA of the City's position that the grievance was not arbitrable since the Grievant retired before any discipline was imposed. [Ex. J-4]. On September 25, 2019, AAA notified me that I was chosen to serve as arbitrator.

On August 3 and 24, 2023, arbitration proceedings were held at AAA's Philadelphia offices at which time the parties were afforded the opportunity to argue orally, present witnesses and submit documentary evidence into the record. A stenographic recording of the proceedings was taken. Testifying on behalf of the City were Deputy Commissioner Robin Wimberly, and [REDACTED] [REDACTED].¹ Testifying on behalf of the Union were [REDACTED] and Grievant Przepiorka.² The parties also agreed to include the testimony of Staff Inspector Francis Healy from the *Farrelly* arbitration, DC Wimberly's testimony from the *Young* arbitration, FOP Vice-President John

¹ DC Wimberly's testimony is located from T1:34-131. [REDACTED] is located from T1:133-156.

² [REDACTED]'s is located from T1:157-183. Grievant Przepiorka's testimony is located from T2:5-65.

McGrody's testimony from the *Young* arbitration, [REDACTED] testimony from the *Cruz* arbitration, and stipulated testimony of Sergeant Brian Saba. [See Exs. J-9, J-14, J-15, J-16 & J-13]. The parties provided post-hearing briefs to AAA on or before November 7, 2023, whereupon the record was declared closed.

ISSUE

The parties stipulated to the issue to be heard and decided:

Whether the City had just cause to discharge the Grievant? If not, what shall be the appropriate remedy?

[T:5].

CITED CONTRACT PROVISIONS

ARTICLE XX. DISCIPLINE AND DISCHARGE

A. General

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

ARTICLE XXI. GRIEVANCE AND ARBITRATION PROCEDURE

A. Definition

1. Grievances as defined herein shall be limited to contract violations, disciplinary suspensions, demotions, and discharges.

* * *

B. Step 1

* * *

1. The Grievant/FOP must, within thirty (30) days of the occurrence giving rise to the grievance, or within thirty (30) days after the Grievant/FOP is notified of the suspension or discharge, submit the grievance in writing.

* * *

I. Authority of Arbitrator

The arbitrator selected shall have no authority to add to or subtract from or in any way alter the terms of this contract, Act 111 arbitration awards or the scale of wages set forth therein.

BACKGROUND

Grievant Joseph Przepiorka had been employed by the City of Philadelphia Police Department ["PPD"] for approximately 30 years. Throughout his career, the Grievant has received satisfactory ratings and numerous commendations. [Exs. J-11 & J-12]. Prior to his separation of employment, the Grievant served in the rank of Sergeant and was assigned to the Marine Unit.

Department Directive 6.10 is entitled "Social Media and Networking".³ The Directive indicates that "employees are embodiments of [the PPD's] mission" and, therefore, "[i]t is...essential that each member accept his or her role as an ambassador of the department." [Ex. J-6, p. 1]. The Directive provides that "each member must strive to maintain public trust and confidence, not only in his or her professional capacity, but also in his or her personal and on-line activities." [i.d.]. The Directive emphasizes that "police personnel are necessarily held to a higher standard than general members of the public, the on-line activities of employees of the police department shall reflect such professional expectations and standards." [i.d. at 1-2]. The Directive provides that "[e]mployees are prohibited from using ethnic slurs, profanity, personal insults; material that is harassing, defamatory, fraudulent, or discriminatory, or other content or communications

³ Staff Inspector Francis Healy was involved in the drafting of the Directive. Healy provided testimony concerning the Directive in *Farrelly*, AAA Case No. 01-19-0002-2851. Healy's testimony in *Farrelly* was admitted into evidence as part of this record. [Ex. J-9].

that would not be acceptable in a City workplace under City or agency policy or practice.” [Id. at 3]. Employees are also “prohibited from displaying sexually explicit images, cartoons, jokes, messages or other material that would be considered in violation of the City Police Preventing Sexual Harassment in City Government.” [Id.].

In June 2019, the Plain View Project [“PVP”] published a database of publicly available social media posts made by police officers that, according to the PVP, “could undermine public trust and confidence in our police”. <https://www.plainviewproject.org/> The published database included social media posts and comments made by police officers including those employed by the PPD. The PVP posted disclaimers on its website, including the following:

1. Multiple Meanings

The Facebook posts and comments in this database concern a variety of topics and express a variety of viewpoints, many of them controversial. These posts were selected because the viewpoints expressed could be relevant to important public issues, such as police practices, public safety, and the fair administration of the law. The posts and comments are open to various interpretations. We do not know what a poster meant when he or she typed them; we only know that when we saw them, they concerned us. We have shared these posts because we believe they should start a conversation, not because we believe they should end one.

The posts and comments included in the database comprise portions of a user’s public Facebook activity, and are therefore not intended to present a complete representation of each person’s Facebook presence, or each person’s views on any

given subject. Inclusion of a particular post or comment in this database is not intended to suggest that the particular poster or commenter shares any particular belief or viewpoint with any other posters or commentators in the database. Links to the original page from which each post was obtained are provided so you can see the context of the post if you wish. [Ex. J-7].

On June 10, 2019, Sergeant Brian Saba from the Internal Affairs Division was assigned to investigate allegations that the Grievant was responsible for making some of the social media posts. Saba interviewed the Grievant on June 14, 2019. Later that day, Saba wrote a memorandum that was reviewed and approved by IAD Captain Daniel Angelucci.⁴ IAD Staff Inspector Deborah R. Francis sustained charges against the Grievant and provided the conclusion drawn from the IAD report:

ALLEGATION

On Tuesday, 6-4-19, a confidential Internal Investigation was created as a result of information reported on www.theplainviewproject.org and www.injusticewatch.org websites, in reference to social media posts made by current and former members of the Philadelphia Police Department. IAD #19-1077.44 was issued.

A check of the department database indicated that Sgt. Joseph Przepiorka #8847, Payroll #202311, Marine Unit, was appointed to the Philadelphia Police Department on 4-17-89, and assigned to the Marine Unit on 12-3-18.

⁴ The statement of the Grievant's internal affairs interview held on 6/14/19 is consistent with the summary contained in the IAD report. [See Ex. J-5].

On 6-10-19, Sergeant Brian Saba #8791, Internal Affairs Division, was assigned this investigation.

INVESTIGATIVE ANALYSIS

Upon review of the posts and comments provided in the Plain View Project database, it was alleged that Sgt. Joseph Przepiorka was using a Facebook account with the user name of "Joseph Przepiorka." The Facebook account with the user name "Joseph Przepiorka" contained ninety four (94) total posts and/or comments that were contained on the website.

Sgt. Joseph Przepiorka #8847, Payroll #202311, Marine Unit, was interviewed at Internal Affairs Headquarters on 6-14-19 and related the following:

Sgt. Joseph Przepiorka was shown and reviewed all one hundred and twenty five (125) pages containing ninety four (94) posts and/or comments under Facebook user name "Joseph Przepiorka." Sgt. Przepiorka stated that the Facebook account with the user name "Joseph Przepiorka" was his account. Sgt. Przepiorka added that he did make all of the ninety four (94) posts and/or comments that he reviewed.

Sgt. Przepiorka stated that he does not believe that he made any of the posts or comments while on-duty. Sgt. Przepiorka added that he has never seen a post or comment attributed to him that he did not make.

Sgt. Przepiorka stated that he does have an Instagram account with the user name "Joseph Przepiorka."

Some of the Facebook posts/comments made by Sgt. Przepiorka violated the Philadelphia Police Department's Social Media Policy in that they contained posts/comments that expressed discriminating or harassing behavior based on race, color, gender, religion, national origin, age, ancestry, sexual orientation, disability, or gender identity, or other content or communications that would not be acceptable in a City workplace under City or agency policy or practice.

The Facebook posts/comments that were contained in the Plain View Project database that were attributed to Sgt. Przepiorka are included in the documents section of this report.

CONCLUSION

During the course of this investigation it was determined that a **Departmental Violation: PPD Directives Violations-PPD 6.10: Social Media and Networking** was **SUSTAINED** against **Sgt. Joseph Przepiorka #8847, Payroll #202311, Marine Unit.**

Sgt. Przepiorka stated that the Facebook account listed under "Joseph Przepiorka", is his Facebook account. Sgt. Przepiorka added that he did make the ninety four (94) posts/comments that were found in the Plain View Project database, but he did not believe he was on duty when he made the posts.

Philadelphia Police Department Directive 6.10 states, "It is the policy of the Philadelphia Police Department that all existing laws, rules, regulations, and directives that govern on- and off-duty conduct are applicable to conduct associated with social media and networking." It further states, "Employees are prohibited from using ethnic slurs, profanity, personal insults; material that is harassing, defamatory, fraudulent, or discriminatory, or other content or communications that would not be acceptable in a City workplace under City or agency policy or practice."

A copy of this investigation will be forwarded to the Commanding Officer, Police Board of Inquiry, for action.

[Ex. J-5].

On July 18, 2019, Commissioner Richard Ross took Direct Action to dismiss the Grievant. [Ex. J-2]. On July 25, 2019, the Grievant was provided with Non-Criminal Grievant Warnings and notified he would be suspended for a period of 30 days with the intent to dismiss. [Id.]. The Grievant was charged with neglect of duty and conduct unbecoming. The specifications provide:

Neglect of Duty – Section 5-§011-10

Failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors.

Internal Affairs investigation #19-1077.44 determined that you posted material, statements, or comments on Facebook that are in direct violation of Directive 6.10, Social Media and Networking. An analysis of Facebook posts and/or comments collected in the Plainview Project database was conducted. Results indicated that you posted, shared, and/or commented on video, photographs/pictures, and articles, using racial slurs, profanity; dehumanizing, defamatory, and/or discriminatory language; and/or language that condoned, glorified, or encouraged violence; and/or language that was insensitive and mocked individuals, due process, and the criminal justice system. In many instances, these posts and comments were directed at the same persons whom you have been sworn to serve. Directive 6.10 specifically states that while engaging in social media, "Employees are prohibited from using ethnic slurs, profanity, personal insults; material that is harassing, defamatory, fraudulent, or discriminatory, or other content or communications that would not be acceptable in a City workplace under City or agency policy or practice." The Directive further states that "each member must strive to maintain public trust and confidence, not only in his or her professional capacity, but also in his or her personal and on-line activities. Moreover, as police personnel are necessarily held to a higher standard than general members of the public, the on-line activities of employees of the police department shall reflect such professional expectations and standards."

Conduct Unbecoming – Section 1-§021-10

Any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department.

Internal Affairs initiated an investigation IAD#19-1077.44, after receiving information alleging that employees of the Philadelphia Police Department were posting offensive and inappropriate materials and/or comments to social media, specifically on the Facebook social media site. An analysis was

conducted of Facebook posts and/or comments collected in the Plainview Project database. The analysis displayed a course of conduct, where no fewer than forty-one (41) times, you posted, shared, and/or commented on video, photographs/pictures, and articles, using racial slurs, profanity, dehumanizing, defamatory, and/or discriminatory language, and/or language that condoned, glorified, or encouraged violence, and/or language that was insensitive and mocked individuals, due process, and the criminal justice system. As a member of the Philadelphia Police Department, you are expected to strive to maintain public trust and confidence, not only in your professional capacity but also in your personal and on-line activities. Your posts and comments in question are devoid of any professional expectations and standards.

[Ex. J-2].

The penalty for a first offense of Section 5-§011-10 ranges from a reprimand to a 5-day suspension. The penalty for a first offense of Section 1-§021-10 is a 30-day suspension or dismissal.

The Grievant filed for his service pension before he was formally terminated by the City.

On July 25, 2019, the Union filed a grievance alleging that the City violated the Agreement by terminating the employment of Sergeant Joseph Przepiorka ["Grievant"] without just cause. [Ex. J-3]. On July 26, 2019, the Union submitted the unresolved grievance for binding arbitration. [Ex. J-4]. On September 25, 2019, AAA notified me that I was chosen to serve as arbitrator.

DC Wimberly testified that she was part an executive team consisting of herself and Deputy Commissioners Patterson, Sullivan, Wilson and Coulter. DC Wimberly indicated that the team was tasked with reviewing the PVP cases that were considered by herself and Chief Flacco to be the most egregious to determine the level of discipline that should be imposed. DC Wimberly testified that the Grievant was one of the officers whose posts/comments warranted the team's review. DC Wimberly stated that each team member reviewed the investigations on their own and then met together to discuss them. DC Wimberly indicated the Grievant's case was included in approximately 20 cases that a majority of the team considered to be the most egregious that were taken directly up to Commissioner Ross for Direct Action while the other ones went through the regular PBI process. DC Wimberly explained that the team viewed the posts for each officer that were screenshotted by the PVP but was unable to go to each Facebook page or click on any links or videos that may have been within any of the posts. DC Wimberly testified that the team did not consider an officer's performance record, prior discipline, or accommodations. DC Wimberly indicated that the team did not consider an officer's length of service or compare the posts of one officer to another's. DC Wimberly testified that the Grievant's rank did not factor in the level of discipline. Rather, it was the egregiousness of each post that was given most consideration. DC Wimberly also testified that the quantity of an officer's posts did not factor into the team's decision to impose discipline.

DC Wimberly reviewed the Grievant's posts/comments that served as the basis for his dismissal. [See Ex. J-6]. DC Wimberly indicated that they advocated vigilantism and/or violence, were biased towards Muslims and/or the Islamic faith, inhumane, racially charged, homophobic, disrespectful, and discriminatory. DC Wimberly explained her concerns about having the Grievant return to work for the PPD:

[DC Wimberly, On Direct]

- A. ...it's very difficult to imagine having police officers who have self-identified because consequently we didn't know how any of these officers who were involved in the Plainview Project actually really felt on their own time when they were posting to know this is what is going on in their heart and mind, and it's very difficult.

[T1:49, line 24 through T1:50, line 8].

██████████ has been the PPD's ██████████ since April 2022. ██████████ testified that in her role as Chief DEI Officer that she seeks "to create the most beneficial employee experience for all of our employees." [Cruz, T:34, lines 5-6]. She indicated that "[i]t's not just a matter of diversity and representations, but also for intentional equitable inclusion." [Id. at lines 11-13]. ██████████ stated that she is also "responsible for rebuilding community trust with the Department." [Id. at T:35, lines 7-8].

██████████ testified that she has attended a couple of community events after some "well-publicized incidents of alleged racism, based on misconduct or inappropriate words used by members of the Police Department." [*Id.* at T:40, lines 17-19]. ██████████ indicated that there is a lack of trust within the community and "express concerns about the willingness to work with the Department, despite everyone's concern about police reform, public safety." [*Id.* at T:41, lines 9-11]. ██████████ stated that when the community becomes aware of issues of racism within the Department "[t]here has been a tendency by the members of the public to express concerns and then impute that behavior, the behavior of one person, to the Department...[a]nd then a desire to hold the Department's feet to the fire." [*Id.* at T:43, line 23 to T:44, line 3]. ██████████ indicated that a swift response from the Department "seem[s] to temper some of the concerns." [*Id.* at T:45, lines 17-18].

██████████ reviewed the Grievant's posts, and her concerns were consistent with DC Wimberly's.

██████████ testified as a character witness on behalf of the Grievant. ██████████ retired from the Department as a Sergeant in June of 2009 after 25 years of service. ██████████ currently works for a federal agency. ██████████ testified the Grievant worked under his command ██████████ for approximately 10 years. ██████████ indicated that he was not aware of any complaints of discrimination of

any type filed against the Grievant. [REDACTED] testified that he reviewed the posts/comments made by the Grievant, but there was nothing with them that would change his opinion of him. [REDACTED] considers the Grievant to be his friend, but this was not the reason he agreed to testify:

Again, I would not put my reputation on the line by coming here even though he's a friend. I can honestly say based on what we see here and the person that he is, he's done more for the community that he's accused of disparaging in these remarks than many of his accusers have.

By risking his life out there and doing the job every day, those are things that I have witnessed and been part of. I think they're critical things to note here. * * *

[T1:182, line 11 to T1:183, line 2].

The Grievant testified that he has never been disciplined or received an unsatisfactory review over his 30-year career. The Grievant testified that he has never treated or been accused or treating anyone differently because of any protected classification. The Grievant indicated that he has never been advised by anyone in the Department that a fellow officer or one of his subordinates had a problem with him.

The Grievant confirmed he received a copy of the Social Media Directive 6.10 but has never had an occasion to counsel or reprimand any of the officers he supervised concerning their use of social media.

The Grievant testified that he joined Facebook in 2009. The Grievant indicated he was not aware of his Facebook settings at the time he made his posts/comments. The Grievant testified that between 2015 and 2018 he never received a complaint or was counseled about his social media use. The Grievant indicated he initially identified himself as a police officer on Facebook but eventually removed his occupation. The Grievant could not recall when he removed his occupation.

The Grievant recalled being interviewed by Saba. The Grievant indicated that he was shown his Facebook posts/comments but was never asked to explain them.

The Grievant testified he is not biased towards anyone, "I worked 30 years in the Police Department...I've never had any issues, never had a complaint from anybody." [T2:41, lines 9-11]. The Grievant indicated he does not hate Muslims but he expressed concerns about radical Muslims. The Grievant stated he has concern for the "[s]afety of the City, citizens in our country." [*Id.* at lines 23-24].

The Grievant reviewed the comments/posts for which he was dismissed. [See Ex. J-6]. The Grievant stated that his comments/posts about Muslims were directed towards radicals or Islamic terrorists rather than the entire Muslim population. The Grievant testified he does not support extrajudicial violence. He

indicated that some of his posts were meant to be humorous. The Grievant testified that police officers can have a dark sense of humor given the nature of their work and sometimes need to "lighten the mood or deal with stress or vent." [T2:48, lines 5-6]. The Grievant denied his use of the term "Bubba" in one post was a reference to a Black male, but rather one that his family and friends used to refer "a big dude, a large scary guy" that would "keep us in a straight line" when he was a teenager. [T2:49, line 19 and line 15]. The Grievant stated he regrets some of the posts and would take them back if he could. The Grievant testified, "I'm sure I should have been a little more sensitive and used a little bit more discretion, but that wasn't my goal [to hurt anyone's feelings]." [T2:56, line 23 to T2:57, line 2].

The Grievant acknowledged his comments/posts warrant discipline but not his dismissal. The Grievant indicated he changed his Facebook privacy settings, and no longer posts anything that could be considered as controversial. The Grievant stated he would like to return to work.

The Grievant testified he filed for his service pension because "I really had no choice." [T2:59, line 19]. The Grievant indicated that up until this matter he did not have any plans on retiring.

SUMMARY OF THE ARGUMENTS

The City's Position

The City contends it had just cause to terminate the Grievant:

The record establishes that Mr. Przepiorka authored publicly-available, inflammatory Facebook posts and comments calling for and glorifying extrajudicial police violence and which portrayed racist and Islamophobic beliefs—conduct clearly violative of PPD Directives. Indeed, of all of the Plainview Project investigations, Mr. Przepiorka was the *most* prolific poster, with several of the most egregious posts brought to the Department's attention. Mr. Przepiorka engaged in a course of conduct demonstrating little or no regard for his responsibility as a member of the Police Department, thereby violating Section 1-§021-10 of the contractual Disciplinary Code, which carries a penalty of 30 days' suspension or dismissal for the first offense. As demonstrated herein, the City justifiably terminated Grievant's employment under its applicable policies. As such, the grievance should be denied.

[City Brief, p. 7].

The City contends that it has satisfied the seven (7) traditional factors of just cause:

The seven factors of just cause are whether (1) there was notice of the possible or probable disciplinary consequences of the conduct; (2) the work rule or managerial order is reasonably related to the orderly, efficient and safe operation of the employer's business and the performance properly expected of the employee; (3) the employer conducted an investigation to determine if the misconduct occurred; (4) the

investigation was fair and objective; (5) whether substantial evidence or proof supported the finding of misconduct; (6) the employer applies its rules, orders, and penalties fairly and without discrimination to all employees; and (7) the discipline is proportionate to the offense and employee's record. American Fed'n of State, Cty. & Mun. Employees, Dist. Council 88, AFL-CIO v. City of Reading, 130 Pa. Cmwlth. 575, 582, n. 3 (1990).

[*Id.* at 6-7].

With respect to the first factor, the City indicates that the Grievant was aware of and received training on the Department's Social Media Directive and is subject to the disciplinary scheme that is part of the parties' Agreement. The City maintains the fact that no other officer prior to the PVP was dismissed for a Social Media Directive policy is irrelevant. As to the second factor, the City submits "the work rules at issue here reasonably relate to the orderly, efficient, and safe administration of law enforcement and the performance properly expected of employees like Mr. Przepiorka." [*Id.* at 9-10]. Turning to the third through fifth factors, the City maintains that the Department conducted "a thorough, fair, and objective investigation into Mr. Przepiorka's misconduct, giving him a full opportunity to explain, rationalize, or otherwise defend the misconduct he admitted." [*Id.* at 10-11]. The City emphasizes that the Union presented no evidence of bias.

In addressing the sixth factor, the City contends that "[t]ermination was the penalty proportionate to Mr. Przepiorka's egregious offense, even taking into

account his lengthy employment record." [*Id.* at 11]. The City emphasizes that a violation of Section 1-§021-10 of the Disciplinary Code requires a penalty of 30 days or dismissal. The City provides the following support for its position:

Mr. Przepiorka's course of conduct showed he had no regard for his responsibility as a member of the Philadelphia Police Department, a disregard Mr. Przepiorka exhibited again and again over the course of years. Such deep-seated bigotry cannot be corrected through workplace discipline. Nor should an employer, even one bound by a collective bargaining agreement, be forced to retain an employee so diametrically opposed to that employer's mission.

[*Id.* at 11-12].

The City stresses that the Grievant's lack of prior discipline does not excuse his conduct.

Lastly, with respect to the seventh factor, the City contends that it "applied its rules, directives, and the bargained-for Disciplinary Code fairly and without discrimination to Mr. Przepiorka, in both issuing disciplinary charges and in administering the penalty associated with the charges." [*Id.* at 17]. The City maintains the Grievant's course of conduct goes well beyond the Union's comparators:

The Union makes a misguided attempt to identify what it contends are comparators but fails to recognize critical distinctions between Mr. Przepiorka and other employees

disciplined for misusing social media. The Union's purported comparators do not share enough similarities with Mr. Przepiorka to make meaningful comparators. [Footnote omitted].

The Union's purported comparator evidence is entirely inapposite. Officer Hung Nguyen received a twelve-day suspension for a single social media post under a different section of the Disciplinary Code. See Union Ex. 2. Officer Kristine Amato received a one-day suspension outside the context of the Plain View Project investigations for Facebook comments containing offensive language. See Union Ex. 1. She then received a 30-day suspension as a result of the Plain View Project investigation, but for *four* unprotected posts, whereas Mr. Przepiorka had *forty-one* unprotected posts, which the Department deemed particularly egregious. See Union Ex. 2. Moreover, while Officer Amato's posts were unquestionably inappropriate and offensive, they do not contain the same undertone of hatred seen in Mr. Przepiorka's posts, which span the course of several years, and, indeed, call for the extermination of Muslim people. Id. Similarly, Officer Green received a 30-day suspension for 10 unprotected posts, which are unquestionably inappropriate and offensive, but do not display the same biases toward communities the PPD serves that Mr. Przepiorka's posts display. See Union Ex. 7, 8. Police Officer Sean Dandridge was not charged with the "course of conduct" offense under which Mr. Przepiorka was dismissed; thus his discipline is wholly inapposite. See Union Ex. 9.

The remainder of the Union's purported comparators are employees who had penalties assessed by a Police Board of Inquiry panel and were therefore not subject to Commissioner's Direct Action. See Union Ex. 18. Mr. Przepiorka did not proceed through the Police Board of Inquiry because the Department identified Mr. Przepiorka as one of several employees who had engaged in the most egregious misconduct. Tr. Day 1, 79:12-80:12. Accordingly, after review, the Executive Team recommended dismissal through Commissioner's Direct Action. Id. See also Joint Ex. 2.

In fact, Mr. Przepiorka's conduct and discipline more closely aligns with that former police officer Daniel Farrelly. The Department discharged Mr. Farrelly pursuant to a Commissioner's Direct Action for Conduct Unbecoming and Neglect of Duty based on seventeen unprotected posts that came to the Department's attention by way of the Plain View Project. Like Mr. Przepiorka's posts, Mr. Farrelly's posts and comments included, *inter alia*, instances of Islamaphobia, advocacy of police violence, and generalized disgust toward communities served by the Philadelphia Police Department. In upholding the dismissal, Arbitrator Brown recognized:

even considering Grievant's long tenure and lack of prior discipline, considering the shocking nature of Grievant's conduct, I am persuaded that the decision to dismiss Grievant was well within the range of managerial judgment afforded by the just cause standard.

...

I am also persuaded by the City's argument that Grievant self-disclosed his hatred, biases and prejudices, and did so in such a manner and to such a broad extent, that it is unreasonable for the City to expect that discipline of a lesser degree than discharge will correct Grievant, or that a thirty-day or longer suspension will change the prejudices it has taken Grievant a life-time to develop.

Fraternal Order of Police, Lodge 5 and City of Philadelphia (Farrelly), AAA Case No. 01-19-0002-2851 (Arbitrator Brown, T) (attached). Mr. Przepiorka's conduct – in particular the number (which far exceeds the number of posts by Mr. Farrelly) and egregiousness of his posts and comments – is most similar to that of Mr. Farrelly, and the Department treated them consistently. Here too, it is unreasonable for the Department to expect that a lesser degree of discipline could correct the deep-seated hatred Mr. Przepiorka publicly broadcasted on his Facebook page over the span of several years. [Footnote omitted].

It is an axiom of workplace discipline that more severe discipline attaches to more severe infractions. Mr. Przepiorka established himself as one of the more egregious offenders – if not the *most* egregious – identified by the Plain View Project and, accordingly, found himself among the employees reviewed for discipline by the Police Department's Executive Team. By distinguishing himself as one of the most egregious offenders, Mr. Przepiorka positioned himself for “course of conduct” disciplinary charges that carried the stiffest available penalties: thirty days' suspension or dismissal.

[City Brief, pp. 17-19].

For these reasons, and the entire record, the City contends it had just cause to terminate the Grievant's employment and requests that the Union's grievance be denied.

The Union's Position

Citing the seven (7) traditional factors of just cause, the Union contends that the City has not met its burden to prove that it had just cause to terminate the Grievant's employment:

Here, several aspects of the Daugherty test have been violated: (1) The Department failed to put Sgt. Przepiorka on notice that he might be terminated for his Facebook posts under the Directive and failed to provide him with sufficient training on its expectations; (2) the Department failed to complete a fair, thorough, and impartial investigation and failed to ascertain, before disciplining him, whether Sgt. Przepiorka was guilty of violating any work rule by obtaining sufficient evidence of his guilt; (3) the Department failed to discipline Sgt. Przepiorka consistent with other officers who engaged in substantially-similar conduct; and, (4) the Department failed to impose a penalty proportionate to Sgt. Przepiorka's actual conduct considering his excellent work record and other mitigating factors.

Several other arbitrators have agreed that just cause for discharge was lacking in nearly identical cases involving officers discharged in the wake of the Plainview Project. Thus far, eight discharge cases have been arbitrated and seven of the eight officers discharged by the PPD have been reinstated with mitigated discipline, in large and relevant part due to the PPD's indisputable failure to dole out discipline fairly and proportionally. See , supra, Melvin, Cruz, Young; City of Philadelphia v. FOP Lodge 5 (Fenico, Discharge) (Brown, 2021) (attached as Appendix F); City of Philadelphia v. FOP Lodge 5 (McCammit, Discharge) (Brown, 2022) (attached as Appendix G), City of Philadelphia v. FOP Lodge 5 (Palma, Discharge) (Reilly, 2022) (attached as Appendix H); and, City of Philadelphia v. FOP Lodge 5 (Milligan) (Leonard, 2023) (attached as Appendix I).

[*Id.* at 18-19].

The Union contends that the City violated the Grievant's due process rights by failing to provide him with clear notice "that such conduct was unacceptable because it did not adequately train him about off-duty social media use or otherwise provide training on its Directive until after the fact." [*Id.* at 20]. The Union emphasizes that it was not until the summer of 2019 that the City provided training on the Directive. Moreover, there was a lack of notice of the severe consequences for Directive violations. The Union stresses that the City terminated the Grievant, a 30-year veteran of the Department, rather than providing him with any opportunity either through retraining or counseling to correct conduct that took place several years before the investigation occurred.

The Union submits that the City failed to conduct a fair investigation before it concluded that the Grievant was guilty of violating the work rules and imposed discipline in this matter. The Union indicates that the investigation simply consisted of a single, 15-minute investigatory interview with the Grievant. The Union points out that "the Department never asked Sgt. Przepiorka for any form of clarification or for any explanation regarding his social media activity." [*Id.* at 23]. Moreover, the Grievant "was unaware which of the posts attributed to him by the PVP the Department discharged him for until after the decision was made to terminate him." [*Id.*].

To the extent that the City will argue that the Grievant could have clarified his posts during or after the investigatory interview, the Union emphasizes that it is the City's burden to prove a work rule violation. The Union points out that this argument was previously rejected by Arbitrator Brown in *City of Philadelphia v. FOP Lodge 5 (Fenico)* (Brown, 2021). Arbitrator Brown wrote, "I find that Grievant's posts present a significant degree of ambiguity and the City inappropriately relied upon assumptions and guesswork to come to a number of its conclusions relating [sic] Grievant's posts." [i.d.]. The Union addresses the 41 posts for which the Grievant was terminated:

As will be explained in more detail below, the City's assumptions about several of Sgt. Przepiorka's posts should likewise be disregarded by this Arbitrator. More specifically, the Arbitrator should not permit the City to shift its burden of proof onto the grievant by placing an affirmative obligation on him to explain the meaning of his speech in his 94 posts in an investigatory interview, at a time when the City had not yet made any conclusions that Sgt. Przepiorka violated any Department policies whatsoever. See Ex. J-13 at ¶¶43-45. The Department's failure to conduct even a rudimentary investigation into what Sgt. Przepiorka meant, the underlying content he commented upon, and why he shared and commented upon the at-issue content renders the City unable to meet its burden. See Ex. J-13 at ¶¶12-13, 33-34. Accordingly, to the extent that Sgt. Przepiorka's posts (or his sharing of content) had ambiguous meanings, the City cannot meet its burden of establishing a violation of the Directive.

Consistent with this, the City cannot meet its burden of establishing a violation of the Directive where the Sergeant shared articles and related content that was not, in and of itself, established to be untrue or otherwise violative of the letter of the policy by relying on an ostensible pattern or "theme" of commenting on certain topics where such sharing

paints a group in a negative light. See Day 1, Tr. 110-11. Indeed, there is nothing in Directive 6.10 that specifies that officers may not share content, particularly content that may otherwise accurately report on news locally or abroad and be disciplined for an alleged pattern that shows a tendency towards discrimination or paints a group in a negative light. Sgt. Przepiorka was unaware that he could be disciplined for such conduct. See Day 2, Tr. at 53. For example, in post 68, Sgt. Przepiorka shared an article about Poland's stance on immigration with regard to Muslim migrants. Ex. J-6 at 68. The Department did not review the article and had no evidence that it was false or otherwise contained content in violation of Directive 6.10. Day 1, Tr. 110. For all the Department knew, the content of the article may have accurately reported how Poland was handling immigration issues. See, e.g., Day 2, Tr. 51-52 (explaining Ex. J-6 at 71 is accurate). Sgt. Przepiorka merely shared the article, without commenting.

Nevertheless, the Department contended that the mere share of the content violates its policy because the sharing of the content, coupled with other content posted, tends to portray Muslims in a negative light. See, e.g., id. at 110-11. This is not the standard articulated in Directive 6.10, and even if Directive 6.10 could be read so broadly, such a policy would not be reasonable. It is not reasonable to punish an officer for sharing otherwise potentially accurate content that offends the Department's notion of what is or is not appropriate immigration policy in another country. See also, Day 2, Tr. 50-51 (Sgt. Przepiorka explained he was not aware that sharing an article could lead to discipline or that for Ex. J-6 at 68, specifically, that he could be disciplined).

Even assuming one could infer that Sgt. Przepiorka shared the content because he was supportive of the underlying conduct reported, it still does not violate the letter of Directive 6.10. The Department's failure to support discipline for all of the posts that fit into this category is underscored by the fact that the so-called pattern is derived from the Department's review of the Plainview Project database. The PVP, as is made clear by its disclaimer, hand-selected, subject to its own criteria, which posts it would put on the PVP Database as attributable to an officer. To the extent there is a "pattern" that the City relied upon here, it is one that is based off of cherry-picked social media activity that represents about

1% of total social media activity for the Sergeant over the at-issue timer period. See Day 1, Tr. 110-12. Because the Department failed to do its own, thorough investigation, it also cannot rely upon a so-called pattern derived from review of the PVP Database.

For all of these reasons, the City failed to meet its burden of proof for a number of the 41 posts it identified as violative of Directive 6.10. See e.g., Ex. J-6 at 21 (sharing of video, as opposed to comments thereafter), 36 (sharing of meme purporting to report on terrorist attacks), 56 (sharing of video, as opposed to comment thereafter), 68 (sharing of article without additional comment), 71 (sharing meme purporting to identify terrorist attacks by religion without additional comment), 87 (mere sharing of video), 93 (sharing of article and comment about "raid near radical mosque..."), 113 (sharing of meme purporting to identify terrorist attacks), 114 (sharing of article and comment).

Even assuming the Arbitrator does not agree with the above, with regard to the at-issue posts identified by the City, a significant amount were alleged to express anti-Muslim sentiment. See e.g., Ex. J-6 at 5, 18, 19, 21, 36, 42. Instead, much of Sgt. Przepiorka's commentary was a reaction to the offensive and often violent content being reported on or referenced in an article or as an on-going current event. See e.g., Ex. J-6 at 36 (referencing terrorist attacks), 71 (referencing terrorist attacks), 93 (referencing a "raid near radical mosque..."), 102 (referencing 9/11), 113 (referencing terrorist attacks), 114 (sharing article relating to officer's shooting at the hands of a radicalized Muslim). Sgt. Przepiorka made clear his focus was on violent criminals or terrorists and made clear he does not believe that only Muslims commit acts of terrorism. See Day 2, Tr. 53.

Many of these posts, when properly contextualized as referring to radicals with violent ambitions or security concerns regarding immigration policy, are also consistent with the mandatory, 2008 MPO training on Radical Islam that the PPD provided to Sgt. Przepiorka. The PowerPoint for the training explicitly teaches that Islam is a complete way of life that cannot exist with a pure democracy, unrestrained capitalism, or other forms of government. See Ex. U-17 at 3. Sgt. Przepiorka has been disciplined, with regard to certain posts, for

expressing his concerns over a violent subset of radical Muslims and/or concerns that such individuals will take advantage of the immigration process in order to achieve their objectives, yet the PPD's mandatory training broadly characterized Islam as a violent religion. See Ex. U-17 at 2 (noting the "common misconception" that Islam is the religion of peace). Sgt. Przepiorka received no other mandatory training about a particular religion. See Day 1, Tr. 105. For these reasons as well, taken in context, there is no just cause for a finding that these comments by Sgt. Przepiorka violated the Directive.

In other posts, the PPD erred in finding posts and comments violated its Directive because it made assumptions that the grievant was supportive of violence and took his comments out of context and/or misattributed a racial component to his comments. For example, in one post (Ex. J-6 at 1), Sgt. Przepiorka merely shared a video depicting violence against a teacher and remarked that he would have defended himself in a specific manner, if he were a teacher. Without more information – information the Department did not attempt to gather – there is insufficient proof that this commentary violates the Directive. Similarly, the Department assumed the reference to "Bubba" in Ex. J-6 at 9 and the reference to "thug" in Jt-6 at 56 were racial comments because the Department assumed both words referred to black men specifically. See Day 1, Tr. 46, 59. These assumptions take otherwise innocuous comments about criminals and/or criminal behavior and turn both into racially-charged statements without any evidence whatsoever. In contrast, Sgt. Przepiorka testified that is not what "Bubba" or "thug" means to him. Day 2, Tr. 45 (testifying thug is a reference to a "criminal."), Tr. 48-49 (testifying that he did not understand "Bubba" to be a black man). Similarly, the Department's conclusion that the mere sharing of the photograph at Ex. J-6 at 11, is supportive of violence is unsupported by any record evidence. See Day 2, Tr. 49-50 (testifying it was not his intention to promote violence by sharing the photograph).

For these reasons, as well, there was no just cause for discipline for a number of the 41 posts identified.

[Union Brief, pp. 24-28].

Shifting the focus directly on the penalty of dismissal, the Union indicates that the Agreement and Department Directive 8.6 require fair and consistent penalties. The Union argues that even if a penalty is warranted in this matter that dismissal is unjust:

The evidence at arbitration overwhelmingly demonstrated the arbitrariness and unjust nature of the penalty assessed to Sgt. Przepiorka, as compared to other officers engaging in substantially similar conduct.

Sgt. Przepiorka's discipline was unfairly harsh in comparison to other officers involved in the PVP, as well as other non-PVP social media-related disciplinary matters. Four officers implicated in the PVP—Amato, Cain, Green, and Cpl. Grandizio—all received Conduct Unbecoming charges for their PVP posts, just like Sgt. Przepiorka. Yet, all four officers received 30-day suspensions (and a disciplinary transfer, in Cpl. Grandizio's case) instead of discharge. See Ex. U-2 through U-8. A fair review of the posts at issue for each of these other four officers show they are arguably more egregious, or at least comparable to, those made by Sgt. Przepiorka. See Ex. U-2, U-4, U-6, U-8.

For example, Officer Cain commented on a Fox news report: "What did they think would've happened when they released a bunch of sword swallowing, Goat F'ing ragheads that already attacked Americans?..." Ex. U-6 at 1. Other comments and posts by Officer Cain arguably relate to Muslims and/or contain profanity and reference to violence. See Ex. U-6. Officer Green's 10 actionable posts allegedly violated the Directive by supporting violence, in the same manner the City contended several of Przepiorka's posts did. See Ex. U-7, U-8. Officer Green's 30-day suspension was further mitigated by a labor arbitrator, who found that the City had established just cause for only a 5-day suspension. See City of Philadelphia and FOP Lodge 5 (Green, Suspension) (Brown, 2022) (attached as Appendix K).

By way of further example, Officer Amato was also charged with Conduct Unbecoming and Neglect of Duty for four posts attributed to her by the PVP database. See Ex. U-2 (posting under the username "Yo Stuff"). One of the comments for which she received discipline was a December 1, 2015 comment, apparently in reference to Muslim refugees, stating "[s]end these ungrateful fucks back. Fuck them." See Ex. U-2 at 8. Officer Amato nevertheless received a 30-day suspension. See Ex. U-2 at 1. She was not terminated despite the fact that she, unlike Sgt. Przepiorka, had previously been disciplined for violating the Directive. See Ex. U-1.

Similarly, Cpl. Grandizio's actionable posts also reference Islam. See Ex. U-3, U-4. In fact, some of Cpl. Grandizio's posts are identical to or nearly identical to those shared by Sgt. Przepiorka. See, e.g., Ex. U-4 at 3-5 compare Ex. J-6 at 36, 71, 113. While the Department issued her a 30-day suspension and a disciplinary transfer for her PVP posts, her discipline was mitigated to a 15-day suspension because "...the Department has not been consistent in the level of discipline imposed for violations of its Social Media Policy." See City of Philadelphia and FOP Lodge 5 (Grandizio, Suspension & Transfer) (Reilly, 2022) at 30 (attached as Appendix L). In so deciding, the arbitrator specifically pointed to, among others, Officer Amato's one-day suspension in 2017 for her violations of the social media policy "which included 40 offending posts laced with profanity and offensive content that maligned the City's mayor and responded to other posters with racially harassing and threatening remarks." Id. at 31.

The PPD was unable to offer any cogent explanation for why Sgt. Przepiorka was deemed irremediable, while Amato, Grandizio, Green, and Cain were given an opportunity to correct their behavior. Day 1, Tr.120-22 (Dep. Wimberley testifying her responses as to Sgt. Przepiorka on this point were the same as her testimony in Sgt. Melvin's case); see also, Ex. J-14 at 148-61 (giving the same or similar explanation for different treatment of discharged officer Young in the Young case as compared to Amato, Grandizio, Green and Cain).

Numerous other officers identified by the PVP received even less discipline. Lt. Sean Dandridge received only a 1-day suspension for four PVP posts in which he appears to mockingly use ebonics with references to "ghettoism" and "Ghettology,"

among other comments. Ex. U-9. By way of further example, Officer Kenneth Gorski received no discipline for his Plainview Project posts, although a violation of the Social Media Directive was sustained by the PPD. See Ex. U-11. Detective Raphael McGough violated the Social Media policy in 2014, and received discipline at that time, and was also charged with violating it again for four posts captured by the PVP. See Ex. U-15 at 12 (identifying the four specific posts that formed the basis for discipline). However, unlike Sgt. Przepiorka, and despite having previously violated the Directive, he was not charged with Conduct Unbecoming and he received only a reprimand. Id.

By way of further example, Michael Crowe was another officer flagged by the Plainview Project and he received a two-day suspension. See Ex. U-12, U-13, U-14. His posts included, among others, pictures of the confederate flag and one in which a picture of a man dressed in middle-eastern garb is pictured with the words: "My wife called me a pedophile. That's a big word for a 9 year old." Ex. U-14 at 12. At least eight other PPD employees received written reprimands in lieu of more severe punishment for their posts from the PVP database. See Ex. U-19, U-20. In addition, unlike Sgt. Przepiorka, eight officers were given the benefit of a PBI hearing with respect to their own PVP disciplinary charges, and none received any discipline. Ex. U-18; Ex. J-15 at 137-49 (T. of McGrody describing PBI process for PVP and explaining Ex. U-18). Even apart from PVP-specific discipline, the Department also issued a 12-day suspension to Officer Hung Nguyen for posting a photograph of himself on social media in blackface. Ex. U-10.

The Department's conduct with respect to giving many of the other officers lesser discipline and a meaningful opportunity to correct their behavior before imposing severe discipline is consistent with the Contract and its policies. The problem lies not with the choice to give them progressive discipline, rather, the Department's inconsistent treatment of Sgt. Przepiorka, who had no prior discipline on the Directive and made posts that were arguably less inflammatory or comparable to the above, and yet received industrial capital punishment as a penalty.

It is anticipated that the City will rely upon the Farrelly Award, supra, as though reinstatement of Sgt. Przepiorka

would somehow be inconsistent with that decision. In contrast, a decision sustaining the Lodge's grievance here would be fully consistent with Farrelly, as well as those issued on the merits in Fenico, McCammitt, Palma, Young, Milligan, Cruz, and Melvin, *supra*. In Farrelly, the arbitrator's decision largely turned on Arbitrator Brown's finding that Farrelly's character was reflected in his posts. *Id.* at 61-62.

In contrast, the Fenico, McCammitt, Young, Milligan, Melvin, Cruz, and Palma decisions all resulted in decisions to mitigate discharges to 30-day suspensions. A fair look at these cases supports a finding that Sgt. Przepiorka's conduct was more akin to these grievants, at a minimum, and to those officers described above who received only 30-day suspensions or less. All of these officers posted on the same topics and in the same manner as the grievant. *See, e.g.*, McCammitt at 6-16 (posts involving alleged anti-Muslim sentiment, among others); Fenico at 5-8 (posts involving alleged anti-Muslim sentiment, among others); Young at 34-49 (posts involving alleged anti-Muslim sentiment); Palma at 8-9 (posts ostensibly supporting violence, among others); Milligan at 4-5 (posts ostensibly supporting violence, among others).

While it is anticipated that the City will argue Sgt. Przepiorka had more at-issue posts than the officers who were reinstated, that is not a legitimate basis upon which to differentiate among the officers for purposes of discipline. This is particularly true where the PPD admittedly did not consider the amount or quantity of the posts in deciding who would be discharged and who would not. Day 1, Tr. 116. Nor was that the deciding factor in the aforementioned cases that ordered reinstatement with a mitigated penalty; the arbitrators in those cases reinstated in large and relevant part because of the City's failure to dole out discipline fairly and consistently and related concerns about the failure to consider these officers' lengthy and largely unblemished work records. *See, e.g.*, Milligan at 13-14; Palma at 23-24; Young at 41-42; McCammitt at 32-33; Fenico at 33-34; Melvin at 48-50; Cruz at 42-44. Similarly, and while it is anticipated the City will make much of Sgt. Przepiorka's rank, that also was not a determinative factor for the Executive Team. Day 1, Tr. 115. Moreover, several ranked officers, discussed *supra*, received less discipline than Sgt. Przepiorka for their PVP posts in the first instance.

[Union Brief, pp. 29-34].

Lastly, the Union points out that the City did not consider the quality and length of the Grievant's service with the PPD. The Union submits that the Grievant "was entitled to progressive discipline because of his lengthy record of excellent service, the absence of any evidence of bad intent on his part, and other mitigating factors." [*Id.* at 34]. The Union emphasizes that the City "failed to produce any evidence showing Sgt. Przepiorka was ever even accused of treating someone differently because of their religion (or other protected category), let alone proof that he actually engaged in such behavior." [*Id.* at 36]. The Union emphasizes the Grievant expressed sincere remorse for his actions and indicated he would take back several of his posts.

For these reasons, and based upon the entire record, the Union requests that the grievance be sustained. As a remedy, the Union requests that the Grievant be reinstated expeditiously to the Marine Unit, made whole for lost wages, lost overtime opportunities, and anything else the Arbitrator deems proper. The Union also requests that the Arbitrator retain jurisdiction over the implementation of the remedy.

DISCUSSION

I have carefully considered all of the arguments and evidence submitted into this extensive record. The issue is whether the City had just cause to discharge the Grievant.⁵ The City has the burden to prove that it had just cause to terminate the Grievant's employment. The Grievant is charged with conduct unbecoming a police officer and neglect of duty in connection with social media posts attributed to him by the Plainview Project. Section 1-§021-10 of the Disciplinary Code refers to "conduct unbecoming" as "any incident, conduct, or course of conduct which indicates that an employee has little or no regard for his/her responsibility as a member of the Police Department." [Ex. J-1]. The penalty for a first offense is a 30-day suspension or dismissal. [Id.]. Section 5-§011-10 of the Disciplinary Code defines "neglect of duty" as "failure to comply with any Police Commissioner's orders, directives, memorandums, or regulations; or any oral or written orders of superiors." [Ex. J-1]. The penalty for a first offense ranges from a reprimand to a 5-day suspension. [Id.].

⁵ The Grievant retired before he was dismissed from his position. The Union addressed an issue of arbitrability that was not expressly addressed by the City in its brief. This issue was previously addressed in *Young, McCamitt, Cruz and Melvin*. Even if the City had addressed the issue in its brief, the outcome would have been the same in that the grievance has been ruled to be arbitrable.

With respect to the alleged violations of the Social Media Directive, Arbitrator Reilly eloquently addressed in the Union's grievance involving the discharge of Corporal Thomas Young, how Department's Directive 6.10 was reasonably related to the orderly, efficient and safe administration of its law enforcement mission:

There can be no dispute that the City's Police Department has a legitimate interest in setting standards governing the off-duty conduct of its officers. Indeed, its obligation to maintain the public's trust in effectively fulfilling its mission commands as much. In setting such expectations, it may properly hold its officers as members of law enforcement to a higher standard than applied to the general public, consistent with its core values of honor, service and integrity. [Citation omitted].

For this reason, conduct that undermines public confidence in an individual officer or the Department in general is an appropriate subject to be addressed. Plainly, the scope of such conduct extends to social media use. The need is obvious. Social media posts have the potential to reach a very wide audience, and, as such, when improper, their negative impact can be far ranging and severe. Such effect was evident from the release of the Plain View Project's database of posts from members of law enforcement, including 325 of the Department's officers.

Consequently, I am satisfied that the Department's Directive 6.10 is reasonably related to the orderly, efficient and safe administration of its law enforcement mission. To that end, the Policy proscribes, among other matters:

using ethnic slurs, profanity, personal insults; material that is harassing, defamatory, fraudulent, or discriminatory, or other content or communications that would not be acceptable in a City workplace under City or agency policy or practice.

[Citation omitted].

An officer who breaches the standards set by this Directive can and should expect that discipline will follow.

[*Young* at pp. 31-32].

As I did in *Cruz and Melvin*, I have given due consideration to Arbitrator Reilly's analysis above and conclude that it applies equally to the grievance concerning Grievant Przepiorka.

The focus of my analysis is now drawn to the sixth and seventh factors of the just cause analysis: whether the employer applied its rules, orders, and penalties fairly and without discrimination to all employees; and whether the discipline is proportionate to the offense and employee's record. The evidence shows that the Grievant used profanity in some of his Facebook posts and comments which is a violation of the Directive. I am also persuaded that several of the Grievant's posts and comments, even if subject to ambiguity and were not intended to be taken at face value, can reasonably be viewed as demeaning and disparaging towards individuals within protected classes or advocating for extrajudicial violence. The Grievant's Facebook posts and comments are unacceptable and serve as a legitimate basis for the City's decision to discipline the Grievant. For these reasons, I conclude that the City had just cause to discipline the Grievant. However, as I pointed out in *Cruz and Melvin*, the parties' Agreement and the concept of just cause require that discipline be progressive

and corrective, rather than punitive, in nature. There is undisputed evidence that shows the City did not consider the Grievant's work history prior to making its decision to discharge him. The Grievant had been employed by the PPD for 30 years and received satisfactory ratings and numerous commendations throughout his career. There is nothing in the record to suggest or show that the Grievant failed to perform his duties to the detriment of any Philadelphia resident. I also considered that fact that the City did not make any comparisons of the Grievant's misconduct to prior incidents in which officers violated the Directive. It also did not draw any comparison to the discipline imposed upon other officers implicated in the PVP. I also took into consideration the Grievant's expression of remorse.


I have independently reviewed the evidence in this matter. I have also considered the penalties that the City imposed in other PVP cases including but not limited to the discipline that was addressed by me in *Cruz* and *Melvin*, and by other arbitrators in *Farrelly*, *Fenico*, *McCammitt*, *Young*, *Milligan*, and *Palma*. I have also factored in the Grievant's work history. Taking everything into consideration, and without condoning the Grievant's actions, I am not persuaded that the penalty of dismissal has been shown to be required in the Grievant's first instance of violating the Directive or that he is incapable of being rehabilitated. Instead, I conclude that the evidence supports the lesser, corrective form of discipline that is prescribed in Section 1-§021-10. For these

reasons, and the entire record, I conclude that the City had just cause to discipline, but not terminate the Grievant. The Grievant's termination shall be reduced to a 30-day suspension without pay and he shall receive retraining as deemed appropriate by the City. The Grievant shall be reinstated to his position as a police officer and made whole in all other respects.

AWARD

The City had just cause to discipline but not to dismiss the Grievant. The Grievant's termination shall be reduced to a 30-day day suspension without pay and he shall receive retraining as deemed appropriate by the City. The Grievant shall be reinstated to his position as a police officer and made whole in all other respects.

Dated: November 27, 2023



Robert C. Gifford