

**AMERICAN ARBITRATION ASSOCIATION**

In the Matter of Arbitration Between the

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**FOP LODGE 5,**

"Union,"

-and-

**CITY OF PHILADELPHIA,**

"Employer."

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**OPINION  
AND  
AWARD**

AAA Case No. 01-22-0005-0062  
(P/O Eddie Garro-Garcia – Discharge)

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

**Appearances:**

**For the Union:**

Thomas M. Gribbin, Esq.  
Willig Williams & Davidson

**For the Employer:**

Sharon Ulak, Deputy City Solicitor  
City of Philadelphia Law Department

FOP Lodge 5 and the City of Philadelphia are parties to a collective bargaining agreement ["Agreement"]. [Ex. J-1]. On September 8, 2022, the Union filed a grievance alleging that the City violated the Agreement by terminating the employment of Police Officer Eddie Garro-Garcia ["Grievant"] without just cause. [Ex. J-3]. After the City denied the grievance, the Union submitted the unresolved grievance for binding arbitration on November 29, 2022. On March 23, 2023, AAA notified me that I was chosen to serve as arbitrator.

On September 21, 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 Lieutenant Stephen Haraszkievicz, Sergeant Zachary Koenig, and First Deputy Commissioner John Stanford.<sup>1</sup> Testifying on behalf of the Union was Grievant Garro-Garcia.<sup>2</sup> The parties provided oral closing arguments. A transcript of the proceedings was received on October 10, 2023, whereupon the record was declared closed.

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<sup>1</sup> Lt. Haraszkievicz's testimony is located from T:20-37; Sgt. Koenig's is located from T:37-55; First Deputy Commissioner Stanford's is located from T:55-85.

<sup>2</sup> The Grievant's testimony is located from T:86-120.

## **ISSUE**

The parties stipulated to the following issue:

Whether the City had [just cause] to discharge the Grievant?  
If not, what shall be the appropriate remedy? [T:6, line 24 to  
T:7, line 2].

## **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.

## BACKGROUND

Prior to his dismissal, Grievant Eddie Garro-Garcia had been employed by the City Police Department as a Police Officer since September 23, 2019, with no prior discipline. The Grievant was assigned to the 22<sup>nd</sup> District.

The basis for the Grievant's discharge is an incident that occurred on [REDACTED] [REDACTED]. That day, the Grievant was assigned to investigate a radio call that a female had a male's guns and drugs inside of her apartment. Later that day, Lieutenant Stephen Haraszkiwicz was assigned to investigate a claim from the female's mother that the Grievant asked the female, who was identified as [REDACTED] [REDACTED] for oral sex while he was inside of her apartment. Haraszkiwicz spoke to [REDACTED] at her apartment. His body-worn camera recorded their interaction. [Ex. C-4]. Based upon the information Haraszkiwicz received from [REDACTED] the incident was referred to the Internal Affairs Division.

Sergeant Zachary Koenig conducted the internal affairs investigation into the matter. As part of his investigation, IAD interviewed [REDACTED] [REDACTED] landlord [REDACTED], Haraszkiwicz, and the Grievant.<sup>3</sup> Koenig's investigation also included but was not limited to a review of Haraszkiwicz's body-worn

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<sup>3</sup> See Ex. C-1, CITY0000014-28.



camera.<sup>4</sup> IAD attempted to contact [REDACTED] mother who failed to respond to two (2) voicemails.

On [REDACTED], IAD interviewed [REDACTED]. The following is a written summary of the interview:

[REDACTED] stated, she had recently broken up with her boyfriend, [REDACTED] who had been harassing her, Nidaja Dawkins stated her landlord ([REDACTED]) contacted her on 7-28-21, and said he received a phone call from her ex-boyfriend ([REDACTED]) stating that he was going to break into the building to get his guns and drugs from [REDACTED] apartment. [REDACTED] stated shortly after speaking to [REDACTED] a police officer was ringing her doorbell. [REDACTED] stated the officer said someone had called and reported that she had guns and drugs inside the house so she let the officer in the building so she could talk to him and let him look around. [REDACTED] described the officer as taller than 5'8" with a colorful tattoo on his left forearm and wearing a blue shirt. [REDACTED] stated once inside her apartment the officer looked around all the rooms. [REDACTED] stated the officer asked for her and her ex-boyfriend's information including her phone number. [REDACTED] stated that during their conversation the officer told her he would write a report and told her he could go to Filbert Street for a restraining order. [REDACTED] stated the officer then started asking her personal questions. [REDACTED] stated the officer asked her if she was single now, if she had ever been with a "white guy", and told her, "You're very attractive. You have nice lips." [REDACTED] stated the officer then asked if he could use her bathroom and when she showed him where the bathroom was he asked, "Do you want to come show me what your lips do?" [REDACTED] stated she asked the officer what he meant by that and the officer said, "Never mind, never mind" and asked her if she was going to report him. [REDACTED] stated she believed the officer

<sup>4</sup> The body-worn camera video was admitted into evidence over the Union's objection as Exhibit C-4.

was asking her to give him oral sex. [REDACTED] stated she felt very uncomfortable and was trying to get out of the conversation so she asked the officer if he had all the information he needed and he said yes. [REDACTED] stated the officer said he was going to leave, but before he left he asked, "Can I have a hug?" [REDACTED] stated she told him no and the officer said, "Okay, I have your number," and left.

[REDACTED] stated after the officer left, she called her mother and told her what happened. [REDACTED] stated she started crying and her mother called the police district, which is what led [REDACTED] to make a report. [REDACTED] stated while on the phone with her mother, her doorbell rang and she saw on the video screen it was the same officer, but she did not answer the door. [REDACTED] stated she used her cell phone to take a picture of the officer when he came back the second time. [REDACTED] stated the officer did not touch her nor did he have any physical contact with her. [REDACTED] stated she has never interacted with Officer Garro-Garcia prior to this incident and was informed to contact internal affairs if Officer Garro-Garcia attempts to contact her. [REDACTED] provided contact information for her landlord and Argo Property Group.

[Ex. C-1, CITY000005-6].

Haraszkiwicz was also interviewed on [REDACTED]. A summary of the interview provides:

Lt. Haraszkiwicz is trained and equipped with a Body Worn Camera. Lt. Haraszkiwicz's Body Worn Camera video coincides with [REDACTED]'s statement and provided no further evidentiary value to this investigation. A copy of Lt. Haraszkiwicz's Body Worn Camera video is included with this investigation.

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Lt. Haraszkiwicz stated [REDACTED] did not allege being physically assaulted by Officer Garro-Garcia, report any physical contact with Officer Garro-Garcia, report any threats made by Officer Garro-Garcia, nor did she report any injuries. Lt. Haraszkiwicz stated [REDACTED] stated there were no other officers on location during this incident. Lt. Haraszkiwicz stated he prepared a 75-48 documenting his encounter with [REDACTED] and that his Body Worn Camera was active. Lt. Haraszkiwicz also stated he queried the Axon Body Worn Camera Device Audit Trail for Officer Garro-Garcia's camera and it showed that Officer Garro-Garcia did not activate his camera while on location....

[Ex. C-1, CITY000007-8].

On [REDACTED] the Grievant completed a "Complaint or Incident Report" known as a "75-48". [Ex. C-1, CITY0000041]. The Grievant wrote:

[Radio Call – Investigate Premises]  
Police respond to [above location] for [an investigate person].  
Upon arrival no [complainant] on [location].  
No answer at the door, Police survey the area with [negative] results.

[/d.].

The Grievant's report does not make any mention of his interaction with [REDACTED].

On August 31, 2021, Koenig interviewed the Grievant. Koenig wrote the following summary:

**Officer Eddie Garro-Garcia #4033, Payroll #298854, 22<sup>nd</sup> District**, was interviewed at Internal Affairs Headquarters on 8-31-21, by Sgt. Zachary Koenig, and relayed the following in summary:

Officer Garro-Garcia is trained and equipped with a Body Worn Camera; however, it was not activated during this incident.

Officer Garro-Garcia stated he was working the 8AM X 4PM tour of duty, solo as RPC [REDACTED]. Officer Garro-Garcia stated he responded to a radio call for an investigate person, a male complainant stating a female had his guns and drugs, at [REDACTED]. Officer Garro-Garcia stated upon arrival, a female by the name of [REDACTED] waved him into her apartment and asked why the police were there. Officer Garro-Garcia stated he told her there was a male stating she had his guns and drugs. Officer Garro-Garcia stated [REDACTED] stated it was probably her ex-boyfriend because he was mad they recently broke up. Officer Garro-Garcia stated [REDACTED] gave him consent to come inside her apartment and look around, so he surveyed the apartment for guns and drugs. Officer Garro-Garcia stated he told [REDACTED] since there was no complainant he could not write a report. Officer Garro-Garcia stated he was assuming the complainant was her ex-boyfriend, who was not on location, since [REDACTED] stated she did not call 911. Officer Garro-Garcia stated [REDACTED] stated that she wanted to get a protection of abuse (PFA) order against ex-boyfriend. Officer Garro-Garcia stated while getting [REDACTED] and her ex-boyfriend's information, [REDACTED] could not provide an exact address for her ex-boyfriend so Officer Garro-Garcia told her the PFA would not work out since it would not be served. Officer Garro-Garcia stated he told [REDACTED] that he would bring her back a card with information on obtaining a PFA.

Officer Garro-Garcia stated he and [REDACTED] then started flirting with each other. Officer Garro-Garcia stated he asked [REDACTED] if she was single and [REDACTED] laughed and said yes. Officer Garro-Garcia stated he told [REDACTED] that she was attractive and she laughed and said thanks. Officer Garro-Garcia stated he asked [REDACTED] if she had ever "been with a white guy" and she said

no. Officer Garro-Garcia stated he asked [REDACTED] if she works and that [REDACTED] said she cooks for an Instagram page. Officer Garro-Garcia stated he then asked, "Maybe you can cook for me one day?" and she replied, "You would have to take me on a date first." Officer Garro-Garcia stated [REDACTED] asked him what he liked to eat and he told her he liked Spanish food. Officer Garro-Garcia stated he asked if [REDACTED] had a bathroom and she signaled to him where two bathrooms were. Officer Garro-Garcia stated he asked [REDACTED] if she could lead him to the bathroom so he could see where it was. Officer Garro-Garcia stated [REDACTED] stated, "No, the fuck." Officer Garro-Garcia stated he told her he would just leave then. Officer Garro-Garcia stated he left without using the bathroom and came back with a PFA service card, but was unable to get back into the building so he slid the card under the door.

Officer Garro-Garcia stated he did say to [REDACTED], "You're attractive, you have nice lips." Officer Garro-Garcia stated he did not ask [REDACTED], "Do you want to come show me what your lips do?" Officer Garro-Garcia stated he did ask [REDACTED] if she was going to make a complaint because [REDACTED] got mad after he asked to use her bathroom. Officer Garro-Garcia stated he did ask [REDACTED] for a hug before leaving because he wanted to "Clear the air" because [REDACTED] seemed upset about him asking to use the bathroom. Officer Garro-Garcia stated he prepared a 75-48 in reference to the initial job he responded to with a male complainant, who was no longer on location, so Officer Garro-Garcia made it investigate premises. Officer Garro-Garcia stated there were no other officers on location during this incident. Officer Garro-Garcia stated he is trained and was equipped with a Body Worn Camera, but did not activate it during this incident because he was looking for a male complainant, which he never located. Officer Garro-Garcia stated in retrospect, he should have activated his camera when he made contact with [REDACTED]. Officer Garro-Garcia stated, "I also realize that I should not have flirted with the female, it was very clumsy, I misread her, I can understand that she became upset."

[Ex. C-1, CITY000008-9].

Koenig compiled an internal investigation report that was reviewed and approved by his chain of command, including Acting Chief Inspector John Stanford, on November 1, 2021. The report included the conclusions drawn by IAD Inspector George J. Kappe. Kappe concluded that the following charges were sustained: Unprofessional Conduct: Derogatory/Offensive Communications, Falsification: Official Documents, and Departmental Violation: Failure to Activate Body Worn Camera. [Ex. C-1, CITY0000010-11]. Kappe forwarded the report to the Commanding Officer, Police Board of Inquiry.

On April 13, 2022, a PBI hearing was held. After the hearing concluded, the Board members and the Department Advocate unanimously recommended that the charges against the Grievant be sustained and the imposition of a cumulative penalty of 45 days: 20 days for Conduct Unbecoming – Section 1-§001-10 (Unspecified), 20 days for Conduct Unbecoming – Section 1-§010-10 (Knowingly and willfully making a false entry in any department record or report), and five (5) days for Neglect of Duty – Section 5-§011-10 (Failure to comply with any Police Commissioner's orders, directives, memorandums, regulations, or any oral or written orders of superiors). [Ex. J-5]. In rendering the recommendation, Board President Captain Krista Dahl-Campbell considered the fact the Grievant admitted his conduct was inappropriate. Dahl-Campbell explained:



I believe the offenses committed were very serious. This type of behavior corrodes the public's trust in officers. I recommend 20 days loss as the penalty for charges 1-§001-10 and 1-§010-10 and because it is on the higher level and show the seriousness of the infraction. I did not choose dismissal because I believe given this is the first discipline this officer is receiving he can learn from this big mistake. My hope is he will have a spotless record moving forward and be an example to other young officers. The final charge of 5-§011-10 I recommend 5 days because this officer knowingly turned off his camera and there was no reason to do that. I believe the maximum penalty is appropriate for that. [i.d.].

Dahl-Campbell also indicated that she took into consideration the Grievant's lack of discipline in his personnel record. As for Board Member Lieutenant Ezekiel Williams, he wrote:

The officer admitted guilt to the three charges. Based on the video evidence on the incident and interviews the officer's conduct was in violation of departmental policies. The preponderance of the evidence was in line with the facts of the case. [i.d.].

As for Civilian Board Member Jeff Hussein, he wrote:

I think 45 days to Dismissal is reasonable because this is a young officer that had intentionally turned off his BWC, falsified a report, and made sexual remarks to a woman dealing with a domestic situation. The young officer has been trained on BWC since "day one" of the academy so he knows better, especially while responded to a call alone falsifying a report that early in your career is not a good sign for his career or judgement either speaking to a woman like that is

inappropriate in itself, then to lie in a report and turn off that BWC makes it that much worse. [Id.].

On September 8, 2022, the Grievant was provided with Non-Criminal Griotek Warnings and notified he would be suspended for a period of 30 days with the intent to dismiss. [Ex. J-5]. On the advice of counsel, the Grievant chose not to provide a statement. [Id.].

On September 29, 2022, the Grievant was served with a Notice of Intention to Dismiss for Conduct Unbecoming – Section 1-§001-10 (Unspecified), Conduct Unbecoming – Section 1-§010-10 (Knowingly and willfully making a false entry in any department record or report), and Neglect of Duty – Section 5-§011-10 (Failure to comply with any Police Commissioner's orders, directives, memorandums, regulations, or any oral or written orders of superiors). [Ex. J-2].

On July 20, 2022, a Deputy Commissioner recommended dismissal for violations of Section 1-§001-10 and Section 1-§001-10, and a five (5) day suspension for Section 5-§011-10. [Id.]. On July 22, 2022, Commissioner Danielle Outlaw imposed the penalty of dismissal for violations of Section 1-§001-10 and Section 1-§001-10, and a five (5) day suspension for Section 5-§011-10. [Id.]. Neither the recommendation of the Deputy Commissioner nor the decision of the Commissioner includes the basis for modifying the PBI's recommendations. [Id.].



On October 18, 2022, the Grievant was served with a Notice of Dismissal effective as of October 10, 2022. [Id.]. On September 8, 2022, the Union filed a grievance alleging that the City violated the Agreement by terminating the employment of the Grievant without just cause. [Ex. J-3]. On November 29, 2022, the Union submitted the unresolved grievance for binding arbitration. [Ex. J-4].

Lieutenant Haraszkiwicz's testimony during the arbitration proceedings was substantially similar to the information he provided during his IAD interview on July 28, 2021. Haraszkiwicz's account of his interaction with [REDACTED] was also substantially similar to the video footage from his body-worn camera. Koenig's testimony during the arbitration proceedings was consistent with the contents of his internal affairs report.

The City was unable to present [REDACTED] as a witness during the arbitration proceedings given that she passed away subsequent to Koenig's investigation.

The City did not produce Commissioner Outlaw as a witness. Instead, the City presented testimony from First Deputy Commissioner John Stanford who previously served as Acting Chief Inspector at Internal Affairs.<sup>5</sup> Stanford confirmed that he concurred with the findings and conclusions provided in the IAD report, but based upon his review of the file he believed dismissal was appropriate under

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<sup>5</sup> Stanford testified the Commissioner delegated him to testify in this matter.

the circumstances. Stanford acknowledged he does not have first-hand knowledge of the incident, never spoke to [REDACTED] or the Grievant, and was not involved in the decision to discharge the Grievant.

The Grievant's testimony was generally consistent with Koenig's summary of his interview on August 31, 2021. The Grievant denied soliciting oral sex from [REDACTED]

[Grievant, On Direct]

Q. [By Union Counsel Gribbin] Do you recall making any statements which could be interpreted as soliciting oral sex from her?

A. No, sir.

Q. Okay. Did you invite her - - did you make any statements about what her lips could do and invite her into the bathroom?

A. No, sir.

Q. Okay. Did you ultimately use the bathroom?

A. No, sir.

Q. Why not?

A. Because I didn't feel comfortable inside the bathroom, because I didn't know who could be in the bathroom.

Q. Okay. What do you mean by that?

A. I didn't know if anyone could have been in the bathroom - - possible maybe even the male complainant could have

been in there. Who knows? I'm not sure who could have been in the bathroom, so I just avoided that.

[T:98, line 7 to T:99, line 5].

The Grievant testified he asked [REDACTED] for a hug as he was leaving the premises:

[Grievant, On Direct]

Q. [By Union Counsel Gribbin] Okay. And thereafter, you decided to leave?

A. Yes.

Q. Okay. Did you ask her for a hug?

A. Yes, I did.

Q. Okay. What was Ms. [REDACTED] response?

A. She said no, and that's when I noticed she was like -- the body language, closed arms, crossed arms and everything. So I could tell she wasn't comfortable anymore at that point.

Q. Okay. At that point, did you have any further contact her with her?

A. No. Definitely not.

Q. Ask her any further questions?

A. No.

Q. Did you physically touch Ms. [REDACTED] in any way?

A. No.

[T:99, lines 6-23].

The Grievant also admitted that he should have included his interaction with [REDACTED] in his incident report. The Grievant admitted that he made a "dumb mistake". [T:101, lines 21-22]. The Grievant indicated he admitted to making a false report because "[i]t could have been written better...[i]t wasn't clear enough." [T:103, lines 11-12]. The Grievant also acknowledged he should not have shut off his body-worn camera before entering [REDACTED] apartment. The Grievant expressed remorse for his actions:

[The Grievant, On Direct]

Q. [By Union Counsel Gribbin] Okay. Do you believe that - - do you believe that you've realized the error of your ways here?

A. Most definitely. I will never do anything like this if I'm ever given the opportunity to work as a Philadelphia Police Officer ever again.

I'm truly sorry, once again, like I said, to her, her family, everyone here.

I made some mistakes, but I'm willing to, you know, make changes and be a better person. I'm not going to do that ever again. Never.

[T:103, line 18 to T:104, line 4].

The Grievant agreed with City Counsel that he entered [REDACTED] apartment with full police powers and she was not in any trouble with the law. The Grievant admitted he asked her if she was going to report him because he

realized he did something wrong after he asked her to escort him to the bathroom and she said, "No, the fuck". [See Ex. C-1, CITY 0000026].

The parties made the following arguments in support of their respective positions.

## SUMMARY OF THE ARGUMENTS

### The City's Position

The City contends that it had just cause to terminate the Grievant when he "acted without anything that could possibly resemble integrity and honesty when he responded to Ms. [REDACTED] apartment on [REDACTED]." [T:121, lines 21-25]. The evidence shows that rather than investigating the report of a male complainant with guns and drugs and searching the premises, the Grievant shut off his body worn camera and, at best, flirted with [REDACTED] who was in fear for her life. The Grievant described their interaction as a "mutual flirtation", but this could not have been the case under the circumstances:

[REDACTED] was in a vulnerable position at the time that [the Grievant] was in her home. He had the power to arrest her. He had a weapon. He had handcuffs. She could have potentially been in trouble. She didn't really know what was going to happen in that call - - when he arrived inside her apartment. He had a position of power. [T:123, line 19 to T:124, line 2].

The City points out it is undisputed that the Grievant complimented [REDACTED] appearance, asked if she was single, ever dated white men, and stated that she had nice lips. Although the Grievant denies that he propositioned her for oral sex in her bathroom, [REDACTED] reported otherwise. Given the facts and circumstances presented, the Grievant's denial and his claim that [REDACTED]

suddenly got mad for no reason when he asked to use her bathroom lacks credibility.

The City submits the Grievant's inappropriate behavior continued when he asked for and was denied a hug. At this point, the Grievant knows he is in trouble and asks [REDACTED] if she is going to report him. He then proceeds to file a false narrative of the incident to cover his tracks. As First Deputy Commissioner Stanford testified, the Grievant's actions breached the public trust and warrant his dismissal.

Lastly, with respect to the PBI's recommendation to suspend the Grievant for 45 days, the City points out it "is just a recommendation". [T:128, line 17]. The City emphasizes "[t]he Commissioner has the ultimate authority to decide and render the appropriate discipline in these situations...[and]...has the authority to decide that dismissal is appropriate." [Id. at lines 18-22].

For these reasons, and the entire record, the City had just cause to dismiss the Grievant, and the grievance must be denied.

### The Union's Position

The Union contends the City has not met its heavy burden to prove it had just cause to terminate the Grievant's employment. The Union emphasizes the City dismissed the Grievant, who has no prior discipline, for a single act. The Union does not challenge the City's right to discipline the Grievant for his conduct, it simply maintains the penalty of dismissal was excessive under the circumstances. The Union points out that the charges at issue all include penalty ranges and do not require dismissal in the first instance. The Union emphasizes the following in its opposition to dismissal. First, there is no first-hand knowledge to support the City's position. The Union contends "[t]he complainant's allegations must be subject to cross-examination, in order for the fact finder to determine the credibility of the complainant and the veracity of her statements." [T:134, lines 6-9]. Second, "the City also failed to call as a witness anyone who was responsible for making a decision on the charges brought in this case or anyone who made a decision on the level of discipline to be imposed." [T:134, line 21 to T:135, line 1]. The Union stresses that the record includes the basis for the decision of each member of the PBI to recommend a suspension of 45 days, but it does not include Commissioner Outlaw's reasoning behind her decision for rejecting the recommendation. The Union points out the City also chose not to present any member of the PBI to testify. Lastly, the Grievant has been "forthright in admitting to his misconduct in



his interview and before the PBI" as well as in his testimony during the arbitration proceedings. [T:138, lines 4-7]. Moreover, he expressed remorse for his actions.

For these reasons, and based upon the entire record, the Union "respectfully requests that [the Arbitrator] sustain this grievance in part, reduce Officer Garro-Garcia's discharge to a suspension, order the City to reinstate him, order he be made whole for all lost wages and benefits, including but not limited to lost overtime from his last day of work, August 31, 2022, through the date of his reinstatement, less what we contend is the most appropriate penalty of a 45-day suspension for his admitted misconduct." [Id. at lines 15-24].

## DISCUSSION

I have carefully considered the arguments and evidence submitted into the record. 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:

**CONDUCT UNBECOMING, SECTION 1-§001-10 (Unspecified)**

**CONDUCT UNBECOMING, SECTION 1-§010-10 (Knowingly and willfully making a false entry in any department record or report)**

**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.)**

In this matter, whether discipline was warranted is undisputed as the Union concedes and the Grievant admits his report lacked detail concerning his interaction with [REDACTED] his conduct with [REDACTED] was inappropriate, and his body-worn camera was not activated while he spoke with [REDACTED]. The essence of the dispute is whether there was just cause for the penalty of termination.

I have independently reviewed the evidence in this matter, including the body-worn camera video of the incident. Due to the passing of Ms. [REDACTED] the City lacks an eyewitness who could offer direct testimony as to the interactions between the Grievant and the now-deceased. Although there is video footage

from Haraszkiwicz's body-worn camera that captured [REDACTED] recount, this alone is insufficient to serve as the basis for the Grievant's dismissal because neither [REDACTED] nor the video can be subject to cross-examination.<sup>6</sup> The record also does not include testimony from Commissioner Outlaw who was the ultimate decision-maker in this termination. First Deputy Commissioner John Stanford testified, but he was not involved in the decision to dismiss the Grievant and had no first-hand knowledge of the incident. Under these circumstances, Stanford's testimony, while offered in good faith, cannot substitute for Outlaw's.

The Grievant has admitted his wrongdoing since the inception of the investigation. He has also expressed remorse for his conduct throughout the process. Although he admitted his conduct was inappropriate and he commented on [REDACTED] "nice lips", he denied asking her for oral sex. As shown through the video and the internal affairs interview during the internal investigation, [REDACTED] never alleged that the Grievant expressly asked for oral sex. Rather, it was something she inferred from his comments. I cannot reach the conclusion that the Grievant engaged in this conduct based on [REDACTED] opinion of what she believed the Grievant was suggesting in the absence of her testimony. Without more and given the burden to prove this allegation rests with the City, this claim cannot be credited on this record.

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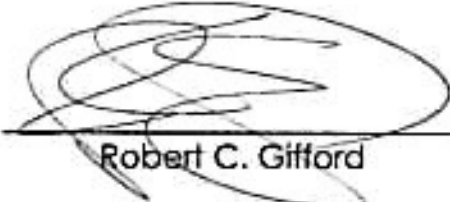
<sup>6</sup> With respect to Haraszkiwicz's testimony, he could only testify to what [REDACTED] relayed to him on [REDACTED].

The members of the PBI recommended a 45-day unpaid suspension for the Grievant's conduct. Their rationale was included in their recommendation. In light of the discussion above, and the absence of direct evidence as to why the recommendation was authorized, I am persuaded that the PBI's recommendation for the level of penalty was reasonable, not inconsistent with the record, and entitled to significant weight. This is not a case where the recommendation was binding, but rather, in the absence of direct testimony as to why a more severe level of discipline was imposed, I am compelled to modify the penalty of dismissal to a 45-day suspension without pay. Accordingly, based upon the foregoing and the entire record, the City did not have just cause to dismiss the Grievant. The Grievant's dismissal shall be reduced to a 45-day suspension without pay and he shall be reinstated within a reasonable period of time and made whole in all other respects.

**AWARD**

The City had just cause to discipline the Grievant but not to terminate him. The penalty shall be modified to a 45-day suspension without pay and he shall be reinstated within a reasonable period of time and made whole in all other respects.

Dated: November 13, 2023



Robert C. Gifford

