**AMERICAN ARBITRATION ASSOCIATION**

In the Matter of Arbitration Between:

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**AFSCME DISTRICT COUNCIL 47**

"Union,"

-and-

**OPINION AND AWARD**

**CITY OF PHILADELPHIA**

"Employer."

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Case No. 01-24-0000-5442
(Gerald Sobecki Discharge)

**Before**
**Felice Busto**
**Arbitrator**

**Appearances:**

**For the Union:** Jordan Konell, Esq.
Willig Williams & Davidson

**For the Employer:** Samuel Ritterman, Esq.
Ahmad Zaffarese, LLC

The City of Philadelphia (the "City" and "Employer") and AFSCME District Council 47 (the "Union") are parties to a collective bargaining agreement. Jt. Ex. 1. On August 21, 2023 the Union filed a grievance alleging that the City violated the parties' Agreement when it issue a Suspension with a Notice to Discharge Gerald Sobecki ("the Grievant") without just cause. Jt. Ex. 2. The City denied the grievance at Step 4 on January 16, 2024. Jt. Ex. 4. The matter proceeded to arbitration pursuant the terms of the parties' Agreement and the Voluntary Labor Rules of the American Arbitration Association. Jt. Ex. 3. Thereafter, I was designated to serve as arbitrator.

By agreement of the parties arbitration hearings were held by videoconference on June 18 and July 23, 2024. At the hearings, the parties were afforded a full opportunity to present testimony, evidence and argument in support of their respective positions. Testimony was provided by Ralph DiPietro, Deputy Commissioner Strategic Initiatives, Department of Quality of Life; G[redacted] J[redacted], Construction Compliance Inspector, Licensing and Inspections Department; C[redacted] E[redacted], Licensing and Inspections; Commissioner John Stanford; Chief Leslie Marant; Melvin Carrasquillo, Associate Director for Public Safety, Office of the Mayor; J[redacted] S[redacted], Training Manager, Department of Quality of Life; J[redacted] H[redacted], General Contractor; Gabriel Li Secretary-Treasurer and Gerald Sobecki, the Grievant. The proceedings were transcribed and a certified transcript was prepared[1]. The record was closed upon the submission of the parties' briefs on September 18, 2024.

[1] Citations to the transcripts of hearings on June 18 and July 23, 2024 will be denominated as TI. page and TII. page. Joint exhibits will be denominated as Jt. ___, City Exhibits as C. ___ and Union Exhibits as U.___

## ISSUE

At the hearing, the parties stipulated that the issue to be decided is whether the City had just cause to discipline and discharge Gerald Sobecki and, if not, what is the remedy?

## RELEVANT CONTRACT PROVISIONS

***1992-1996 Master Bargaining Agreement***

Article 16 DISCIPLINE AND DISCHARGE

**A. JUST CAUSE.** It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for an employee in probationary status, is for just cause only.

*** * ***

C. **PROGRESSIVE DISCIPLINE.** The City shall have the right to discipline or discharge any employee in the bargaining unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2187 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees.

*** * ***

***2021-2024 Memorandum of Agreement***

24. Grievance Procedure

At the Step IV grievance meeting, both parties will be expected to present any and all evidence and/or claims and defenses that they intend to rely upon if the grievance advances to Step VI arbitration.

Jt. Ex. 1.

## RELEVANT EMPLOYER POLICIES

L&I Employee Code of Ethics

"I will treat all persons courteously, equally and fairly."

C. Ex. 9.

Mayor's Statement of Policy

As the Mayor of Philadelphia, and the Chief Executive Officer of the City, pursuant to the powers granted to me under the Philadelphia Home Rule Charter, I hereby reaffirm that it is the policy of the City that harassment, intimidation, retaliation or abuse of City employees or applicants for City employment because of race, ethnicity, color, sex, sexual orientation, gender, identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status as defined in federal, state or local laws, is prohibited.

As mayor, I also hereby reaffirm that harassment of the public, by City employees because of the above mentioned reasons, is also prohibited. Harassment increases hostilities, creates an offensive working environment, adversely affects productive working relationships, increases costs to the City and its citizens, obstructs the City's vision of diversity and quality of life, and tarnishes the public service image of City government.

**The City managers and its employees should treat other employees and the public with respect, dignity, and in a manner that is not offensive.**

The policy prohibiting harassment is to be enforced by all supervisory personnel. Managers and supervisors are required to investigate and take appropriate corrective action when harassment has occurred.

C. Ex. 11.

Department of Licenses & Inspections: Workplace Violence Policy

Employees: Are responsible for maintaining a safe workplace. Employees who are subject of, witness to, or become aware of a threat or act of violence in the workplace should immediately notify an appropriate supervisor. The employees reporting such behavior should be discreet and respectful in order to protect individual privacy and dignity, but should act swiftly.

C. Ex. 12.

Department of Licenses & Inspections: Ethics and Integrity Policy

All employees of the Department of Licenses and Inspections are held to a high standard and are required to comply with all rules, regulations, policies and procedures of the department and shall not engage in any conduct that negatively affects morale, public confidence in the operation of government, public respect for municipal employees or governmental efficiency.

C. Ex. 13.

## BACKGROUND

The City's Department of Licensing and Inspections ("L&I") is a regulatory agency responsible for building and construction safety. Inspectors are responsible for enforcing the building code, issuing stop work orders and performing other compliance work. Inspectors work with general contractors and the public in performing their daily responsibilities.

The Grievant has been employed as an inspector since 2017. The incident that precipitated the Grievant's discharge occurred on July [redacted], 2023. The Grievant visited a residence at [redacted] Street to monitor whether the owner had complied with a "stop work" order by taking a photo. The events which took place between the Grievant and the homeowner's son, who was sitting on the steps of the residence when the Grievant arrived, were captured by a doorbell camera. C. Ex. 1. In the video the Grievant walks along the sidewalk, passes the seated resident and proceeds to start to take a photo. The resident asks why he is taking a picture and leaves the steps and approaches the Grievant. They are off camera but the audio contains noise and the following:

> Resident: You're not going to take a picture of my house.
>
> (Unintelligible)
>
> The Grievant: Did you just assault me, sir?
>
> Resident: I just slapped that phone out of your hand. Yeah, I don't know who you are. You come up here taking pictures and shit. Straight up.
>
> The Grievant (off camera): Get the fuck out of here nigger. You going to jail. (video then shows resident returning to steps).

C. Ex. 1; TI. 45. The resident then exclaims to the Grievant "you calling me the N word?" and walks next to the Grievant on the sidewalk while the Grievant looks down at his phone.

After this incident, the homeowner filed a Complaint with the City and provided the doorbell video. The City's Integrity Officer, Ann Pasqariello, forwarded the video to Deputy Commissioner Strategic Initiatives, Department of Quality of Life, Ralph DiPietro. Charges against the Grievant ensued and DiPietro recommended that the Grievant's employment be terminated.

On August 10, 2023 an administrative hearing was held. Melvin Carrasquillo, Deputy Commission for L&I, Kirk McClarren, Administrative Services Director for L&I and R[redacted] B[redacted], Supervisor, North Construction, David Wilson, President Local 2187, Gabriel Li, Secretary-Treasurer Local 2187 and the Grievant were present. The video was shown and the Grievant identified himself on the video. C. Ex. 2. The Grievant was asked and answered questions but stated that he did not recall making the racial slur. After the administrative hearing the three Commissioners voted to uphold the Grievant's termination.

On August 16, 2023, L&I issued a 30-day suspension to the Grievant with Intent to Dismiss. On August 21, 2023 the Union filed a grievance challenging the discipline/termination. Jt. Ex. 2. On September 1, 2023, DiPietro issued a Notice of Termination effective September 15, 2023. C. Ex. 5. The Notice stated:

> …on July [redacted]th, the Department received a complaint submitted by the property owner, M[redacted] B[redacted], regarding our conduct while visiting the property on the subject date.
>
> Ms. B[redacted] stated that her son was sitting outside the house and witnessed you walk up and begin taking photo without identifying himself.

> Her son asked "[w]hat are you doing taking a picture of my house?" to which you responded "Yep." An argument occurred and you used several profanities while speaking to Ms. B[redacted]'s son, specifically the N word. A video was submitted with the complaint. After the Department investigated the incident it was confirmed that you were the inspector involved. The video clearly confirms that you called Ms. B[redacted]'s son the N word.

C. Ex. 5.

At the hearing, DiPietro testified that inspectors carry a badge, city ID and wear a black shirt with a small L&I logo which is on the upper left side. He testified that the Grievant failed to identify himself to the person on the steps of the residence, acknowledge him, and ask for permission to take a photograph per L&I protocol:

> A. Typically, you know, one of the things inspectors are taught, de-escalation techniques and generally being transparent with the public and to –introduce themselves and ask for permission. At least, at the very—at the very least, acknowledge that this individual is there and there's some connection or potential connection to the property.
>
> Q. And what is the reason why an inspector should do that?
>
> A. Well, typically the burden is on us to identify ourselves when we're conducting inspections. It's required even, even in the Philadelphia Code, and so—it also helps the inspectors gauge the potential interaction. This is just some neighbor sitting out there. Hi, how are you? If you don't mind may I take a few photos of the property, you know, that's all well and good. If it is the actual owner or the –candidate, or someone that the inspectors had some interaction with before, it's a good way to sort of break that ice and let them know that we're not there to be confrontational. We're simply acknowledging that they have a right to their home and we have a job to do.

TI. 48-49.

DiPietro testified that the Grievant's use of a racial slur was unprofessional and that his conduct violated the L&I Code of Ethics, the Mayor's Statement of Policy, the L&I Workplace Violence Policy and the City's Ethics and Integrity Policy. See C. Exs. 9, 11 12 & 13. DiPietro further testified that the Grievant had failed to "take the temperature

down" and de-escalate the confrontation and that if the Grievant felt threatened it was incumbent on him to disengage with the resident and leave. DiPietro testified that the Grievant's termination was based solely on his conduct on July [redacted], 2023; however, he acknowledged that when he made the recommendation for discharge, he was aware that several supervisors had counselled the Grievant over the years for inappropriate and unprofessional behavior toward contractors and co-workers.

J[redacted] S[redacted], L& I Training Manager, testified regarding his role as the Grievant's co-supervisor at the South District and Central West District offices. He testified that several unprofessional incidents had occurred between the Grievant and general contractors, residents and employees in the L&I Department during 020-2021. He testified that he counselled the Grievant on numerous occasions about the importance of professionalism and avoiding loud and profane behavior. *See* C. Exs. 17, 18, & 20.[2]

On April 21, 2021, S[redacted] wrote a memo to his file stating that:

> [t]he complaints keep coming in from contractors all with the same tone. Lack of professionalism, poor speaking skills, and in some cases degrading women. Yelling cursing and screaming…His numerous tantrums, outbursts, and screaming matches on the phone have brought numerous complaints by his own peers not just to me, but to Supervisor J[redacted]. …It is not a healthy environment for the other staff members to work in….

C. Ex. 21.

[2] J[redacted] H[redacted], a general contractor and C[redacted] E[redacted], an L&I employee, also testified regarding their encounters with the Grievant.

As a result of the Grievant's poor communication skills, S[redacted] issued him an "Improvement Needed" in the Relationship with People category on his annual evaluation in September 2020.[3] C. Ex. 8. In December 2021, Supervisor B[redacted] W[redacted] rated the Grievant's conduct in this category as "Unacceptable." C. Ex. 7. In September 2022, after the Grievant had been transferred to the Central North District, he received a rating of "Satisfactory" in the category of Relationship with People. U. Ex. 1.

G[redacted] J[redacted], L& I Construction Compliance Inspector and the Grievant's co-supervisor, testified about efforts he had made to counsel the Grievant on at least six occasions when he overheard him being loud and verbally abusive on the telephone. He testified that both he and S[redacted] mentored and coached the Grievant regarding the importance of professionalism. He testified that the Grievant was transferred twice (from the Central South District to the Central West District) and later in April 2021 (from the Central West District to the Central North District.) due to his unprofessional conduct.

Melvin Carrasquillo, Deputy Commissioner at the April 22, 2023 administrative hearing, also testified that the Grievant narrated portions of the video but did not recall why he used the N word toward the resident. He testified that the N word "flew out too easily" from the Grievant and that the Department's integrity and values toward the public was severely compromised by the Grievant's conduct on July [redacted], 2023.

The Grievant testified that he had a "spotless" and "pristine" work record. He testified that he did not recall being counselled by supervisor S[redacted] on multiple occasions and that his relationship with S[redacted] was "hot and cold." With respect to prior

[3] This category is defined as the employee's "[a]bility to get along with others; effectiveness in dealing with the public, other employees, patients or inmates." C. Ex. 8.

confrontations with contractors, residents and employees he testified that he did not recall the specifics of the incidents. He further testified that he believed his December 2021 evaluation (with an Unacceptable rating in Relationship with People) from supervisor B[redacted] W[redacted] was "[b]ecause he was told to do it by his supervisor." TI. 46.

The Grievant testified that he did not identify himself as a city inspector on July [redacted], 2023 because there were often groups of individuals hanging out on street corners and stoops while he is trying to do his job. The Grievant testified that his use of the N word was inappropriate but that he was in a "fight or flight" mode after the resident physically assaulted him off camera by pushing him into a parked vehicle. He testified that he did not report the incident to the City or the police because he had too many inspections left to complete that day and that the paperwork was time consuming. The Grievant testified that he was ashamed of his conduct.

Gerald Li, Secretary-Treasurer of Local 2187 testified regarding the Grievant's lack of prior discipline. He also testified that the Union had advocated that inspectors receive training in conflict resolution and de-escalation.

## POSITIONS OF THE PARTIES

The City argues that it had just cause to discipline and discharge the Grievant based upon his misconduct with a member of the public on July [redacted], 2023. The City contends that the Grievant's behavior during the entire encounter with the resident was racist, rude and unprofessional. The Grievant failed to identify himself to the resident as an L&I Inspector or advise him that he was there to take a photo. The City emphasizes that the sight of an African American man sitting on the steps of a private residence was

not enough for him to realize that the man lived there. Instead, the Grievant proceeded to call the man the N word after the man had returned to sit on his steps.

The City submits that the use of the N word is never appropriate and contends that the ease in which he uttered it illustrated his attitude. Later in the encounter, the Grievant's threat to send the man to jail was another racist action. The City asserts that it is fortunate that the resident's video camera captured the entire incident and notes that the Grievant identified himself on the video and acknowledged his use of the racial slur.

The City also contends that the Grievant violated several policies by exhibiting excessive rudeness and overt racism toward a member of the public. The Mayor's Statement of Policy provides that harassment of the public for numerous reasons including race is prohibited. This policy also affirmatively requires City managers and employees to treat other employees and the public with respect, dignity and in a manner that is not offensive. The Grievant also violated the L&I Code of Ethics that states "I will treat all persons courteously, equally and fairly." The Grievant also violated the L&I Ethics and Integrity Policy which requires its employees to "not engage in any conduct that negatively affects morale, public confidence in the operation of government, public respect for municipal employees or governmental efficiency."

The City also maintains that the Grievant's claim that the resident assaulted him is not an excuse or a mitigating factor. The City emphasizes that it was the Grievant's unprofessional behavior that provoked the man to approach him because he inexplicably took photos of his mother's house without explaining who he was or explaining why he was taking the photos. The City also submits that the so-called assault was no more than the man knocking the offending phone camera out of the Grievant's hand. The City

asserts that the Grievant's voice on the video contradicts his claim that he was "scared to death" at the moment he uttered the N word. To the contrary, the video demonstrated that the Grievant had already recovered and inspected his phone to see the photo he took prior to hurling this insult to the resident. The City also emphasizes that the Grievant made no claim of injury and failed to report the incident contrary to City policy that required him to do so.

Further, the City argues that the evidence at the hearing rebutted the Union's claim that the incident was a unique mistake and that the Grievant was otherwise a model inspector. The Union's argument opened the door to the Grievant's past record which contained several unprofessional incidents with supervisors and contractors during which he used offensive and aggressive language.

The City submits that the Union's position that the Grievant was not provided with notice before this incident lacks merit. Through the Grievant's performance evaluation in 2020 that rated his relationship with people as "Improvement Needed," he was on notice that he needed to demonstrate professional actions with coworkers and the public. In December 2021, the Grievant received an Unacceptable rating in this category and the evaluation stated that "[w]ork needed on office and field behavior when interacting with coworkers and the public in a professional manner." Supervisor S[redacted] also testified to several instances of coaching the Grievant with respect to sexism, profanity and inappropriate conduct. The City also observes that there was overwhelming evidence that training had not and would not change the Grievant's behaviors.

The City maintains that its decision to terminate the Grievant's employment was consistent with principles of just cause. The Grievant's use of racist language

contravened the City's anti-harassment policies and tarnished the public service image of the City government. The City emphasizes that the public must be able to trust the decisions of the Agency and be free from employees who exhibit discriminatory bias and prejudice. The City also distinguishes a recent arbitration award that it anticipates the Union will rely upon. In Fraternal Order of Police, Lodge #5 v. City of Philadelphia, (Symonette 2023) *("Symonette Award*") (attached as Exhibit A to City and Union briefs),

an arbitrator reduced the discharge of a police officer to a 30 day suspension when, after being cut off by a driver, he was overheard by a dispatcher on the police radio saying "fucking N-er."

The Union disagrees. The Union argues that the City failed to meet its burden of proof to establish the discipline and discharge of a dedicated employee with an impeccable work record was for just cause. The Union contends that the Grievant's alleged behavior on July [redacted], 2023 was not enough to support the City's decision to discharge him.

The Union contends that the video evidence provided by the homeowner should be given little weight by the arbitrator because the City failed to authenticate it. The Union asserts that video evidence cannot be "self-authenticating" and that extrinsic evidence is necessary. (citations omitted). The City made no effort to present the video's chain of custody and the only witness who provided first hand testimony as to what occurred was the Grievant.

The Union challenges the City's reliance on the Grievant's alleged pre-termination wrongdoing as a violation of due process. The Union observes that the termination notice related solely to the July [redacted], 2023 incident and lacked any mention of other conduct. The

Union submits that the City now relies on prior acts of the Grievant to bolster its case for the appropriateness of the penalty that it issued to the Grievant. The Union also emphasizes that the Grievant was not disciplined for any of the prior conduct and that it is irrelevant to the discipline and penalty at issue here. The Union also points out that had the Grievant been disciplined for conduct in years 2020 and 2021 under the Agreement, these matters would have been expunged in his record and would have been inadmissible in this proceeding. Thus, the Union maintains that the City's decision to present a series of pre-discharge misconduct violated the Grievant's industrial due process and renders the discharge lacking in just cause.

In addition, the Union argues that the City failed to complete a thorough and fair investigation as required by just cause. The City improperly relied on the video and failed to identify whether it interviewed the owner or her son in connection with the incident. Although Commissioner DiPietro's notes stated that she spoke to the owner or the son, there were no notes of these communications and the City's shoddy investigation did not provide the Grievant with industrial due process.

With respect to the appropriate penalty, the Union emphasizes that the Grievant had an impeccable work record and was a knowledgeable and competent inspector. The City failed to apply principles of progressive discipline to an employee who had no disciplinary record prior to July [redacted], 2023. The City failed to consider the quality of the Grievant's service and work ethic and the fact that he had been rated superior in his two most recent performance evaluations. Although the Union agrees that there is no place for racism or racial slurs like the N word especially in the interactions between public servants and civilians, the Union observes that arbitrators have found that termination for

such language is not necessarily a proportionate disciplinary response. *See Symonette Award*, *supra.*

The Union maintains that there are mitigating factors that support a punishment less than discharge. When the Grievant approached the property in order to take a photograph he was violently confronted by a member of the public. The Union emphasizes that the Grievant had no way of knowing that the individual who attacked him was related to the property because in that neighborhood people often sit on stoops regardless of whether they are related to the property. The Union contends that the Grievant showed remorse for the consequences of his actions and that he was ashamed of his conduct. Should the arbitrator find that some penalty is appropriate, the Union submits that a penalty less than termination would suffice.

## DISCUSSION

I have carefully reviewed all of the evidence submitted including testimony, exhibits and arguments. The City has the burden to prove that it had just cause to discipline and terminate the Grievant's employment.

I first address the due process issues that the Union has raised. With respect to the doorbell video of the Grievant's conduct on July [redacted], 2023, there was a sufficient evidentiary foundation for admissibility and reliability.[4] The video was provided to the City by the homeowner and City's integrity officer interviewed the homeowner and/or her son. The Grievant, with his union representatives, viewed the video at the administrative hearing. At this hearing the Grievant testified that it was his voice and that "the recording

[4] The video was admitted at the hearing after the Union's objections regarding its authentication were overruled. TI 32-40.

is clear." TII. 62. Although at the administrative hearing the Grievant stated that he did not recall making the racial slur he admitted making it after watching the video at this hearing. There is nothing in the Grievant's testimony to suggest that the video is unreliable or inaccurate; to the contrary, the Grievant testified that he was ashamed and embarrassed by his conduct. Thus, I have concluded that the Union's arguments regarding authentication are without merit and that the video and audio are reliable to substantiate the Grievant's misconduct.

Second, the Union argues that the City failed to provide the Grievant with notice that his conduct would lead to discipline and/or discharge. This argument lacks merit because the the Mayor's Statement of Policy, the L&I Workplace Violence Policy, the L&I Code of Ethics and the L&I Ethics and Integrity Policy make clear that the Grievant knew he was expected to conduct himself professionally with contractors and residents with whom he interacted on a daily basis. There was also ample evidence that the Grievant knew he was engaging in unprofessional behavior and underperforming in his interpersonal dealings from the mentoring, coaching and counselling that he received in 2021 and 2022 from supervisors S[redacted] and J[redacted].[5] Indeed, a September 29, 2020 email to the Grievant emphasized that:

> "your condescending tone, profanity and statements made to the contractor put him at odds with his client. Because of this we spoke and I reminded you AGAIN that how you treat people in the public is not just a representation of yourself, but also the Department and entire City of Philadelphia. We cannot continue to keep having these conversations on how we are to conduct our professionalism, and attitude to the people we serve-no matter how unjust things get.

[5] The Union emphasizes that the Grievant was not disciplined for several incidents that were documented in his file and had he been disciplined they would have been expunged after two years. However, the Grievant had received letters and emails from supervisors documenting complaints from contractors and residents. *See* C. Exs. 10 & 20.

C. Ex. 20.

The Grievant was also on notice through his 2020 performance evaluation when he was informed that his "Relationship with People" needed improvement and was deemed Unacceptable in his 2021 evaluation.

Further, the Union argues that the City's reliance on several unprofessional incidents in 2020 and 2021 renders the discipline without just cause. The City did not rely upon the Grievant's pattern of unprofessional and inappropriate behavior in the September 1, 2023 Notice of Termination. Although the Grievant's termination was based on the July [redacted], 2023 incident, these prior incidents were relevant to the issue of notice to the Grievant and to the issue of the appropriate penalty. They were also relevant, as the City argues, to rebut the Union's claim that the Grievant was a stellar employee and that the July [redacted], 2023 incident was unique. As a result, the testimony and documentary evidence regarding complaints and counseling by supervisors over unprofessional encounters with supervisors, contractors, homeowners and co-workers did not violate the due process principles of just cause.

I now turn to the merits. The Grievant admitted using the N word as depicted on the video. There is no question that the Grievant's hurling of the N word to an African American resident who was minding his own business on the steps of his home, was egregious misconduct. His use of a racial slur was also compounded by his utter disregard of the man from the moment he arrived at the property when he ignored him, failed to identify himself, ask permission to take a photo and refused to answer the man's legitimate question of "you're not going to take a picture of my house." C. Ex. 1; TI. 49.

That statement by the homeowner should have resolved the Grievant's doubts that he resided there.

Instead of doing the minimum of identifying himself and asking permission to take a photo the Grievant continued to defend his rudeness even after the man asks why he is taking a photo:

> Q. When he said to you, you're taking a picture—he says, you take a picture of my house. Remember that on the recording?
>
> A. My mama's house.
>
> Q. That tells you maybe he isn't just a trespasser, right?
>
> A. Sir, I'm there to do my job. I'm not necessarily paying first priority attention to what somebody on the street is saying to me while I'm doing my job.
>
> Q. Mr. Sobecki, he's not on the street. He's on the steps of a property, correct?
>
> A. That's on the street to me.

TII. 72. The Grievant maintained that "I'm there to take a picture, I'm not there to give notice of anything." TII. 79.

The Grievant was unable to admit that he should have changed course even after the man told him it was his residence but insisted that because groups of kids hung out on corners and steps that he was justified in his rude and unprofessional conduct. The Grievant's rudeness and unprofessional conduct violated the basis courtesies that inspectors are expected to show the public.

Moreover, the Grievant utterly failed to de-escalate the situation but acted in a way to escalate it by blowing by the resident and proceeding to take a photo. Off-camera the audio, which is inaudible at times, reveals that the Grievant and resident argued briefly before the resident knocked the Grievant's phone out of his hand. The Grievant then

asks "Did you just assault me, sir? and the resident responds "I just slapped that phone out of your hand. Now, I don't know who you are coming out here taking pictures…" (this is audio and not shown on the video). The video then shows the resident returning to the steps at which point the Grievant (off camera) shouts "Get the fuck out of here nigger. You going to jail." At this point the Grievant has already taken the photo and easily could have left the premises without further confrontation. Indeed, the Grievant acknowledged at the hearing that moments before he used the N word the resident was walking away from him. TII. 65. Once again, instead of de-escalation the Grievant upped the ante and used the N word toward the resident because he was angry he had knocked the phone out of his hand. "He could have simply broke off and walked away. And should have, in fact." TI. 53 (DiPietro testimony).

The Grievant also shifted the blame onto the resident by arguing he was physically assaulted and that he was "scared for [my] life." TII. 28. Yet, he acknowledged that when he uttered N word when the man had his hand on the steps, was at least 10 feet away from him, and that he was not in fear of his life. TII. 66. The video confirmed that he issued the racial slur *after* the resident had turned back to the front steps of the house. As he walks away, the Grievant is checking his phone to confirm he got the photo and does not appear to be in any distress.

Moreover, the Grievant did not report the assault or incident as he was required to do by departmental policy. His explanation that he failed to report an assault because he had too much work left to do and that it would require four hours of paperwork lacked the ring of truth. Had the Grievant been physically assaulted it is inexplicable that he did not call the police as he had in other confrontational situations. The more likely conclusion,

under a preponderance or clear and convincing standard, is that the Grievant did not want to expose his own conduct and that he was not physically assaulted by the resident but claimed he was in order to excuse his verbal assault. Even assuming that he was physically threatened, it was incumbent on him to call the police and retreat from any further confrontation.

The Union also argues that the discipline lacked just cause because the Grievant did not receive training on de-escalation techniques. This argument must fail because the Grievant acknowledged that he understood he was to treat the public with dignity and respect and had been told numerous times by supervisors that he needed to do so. He also acknowledged that, as Commissioner DiPietro testified, his easy use of the N word isn't the "type of thing you can train out of people." TI. 71. The Grievant was unable to provide any plausible reason to explain his conduct despite being asked numerous times at the administrative hearing and in this proceeding.

I now turn to the issue of the appropriate penalty. The Union argues that the City failed to use progressive discipline. However, the Agreement's progressive discipline provision provides that the City will use progressive discipline "where appropriate." Some types of misconduct are so egregious that discharge is warranted on the first occurrence. It is also significant that the Grievant's supervisors repeatedly counseled the Grievant regarding his unprofessional behavior to no avail.

Moreover, the Grievant's conduct on July [redacted], 2023 and use of a racial slur tarnished the reputation of the City. It also undermined the Grievant's relationships with co-workers, many of whom are of diverse ethnic backgrounds. The City's decision to terminate the Grievant's employment was also consistent with the provision in the

Agreement stating that progressive "discipline should be directed toward maintaining or improving the City's services." Jt. Ex.1.

Finally, I cannot conclude on this record that there are mitigating factors to warrant a lesser penalty. Although the Grievant was a knowledgeable and highly competent inspector, communication skills and professionalism are a critical requirement of his position. The Grievant was on notice through his evaluations and meetings with his supervisors that he was skating on thin ice with his highly inappropriate and unprofessional conduct that was the subject of numerous complaints from co-workers, contractors and residents sometimes "multiple times a day." TI. 209. This resulted in the Grievant being transferred twice to different districts to provide him with a "change of scenery." He was also expressly warned through his performance evaluations that he needed to improve in his relationships with people. Even though improvement was noted in interactions with co-workers and the public in the Grievant's September 2022 performance evaluation, the totality of evidence does not support the conclusion that the penalty of termination for his actions on July [redacted], 2023 was excessive or disproportionate given the seriousness of the offense.[6]

For the foregoing reasons, the City has established that it had just cause to discipline and terminate the Grievant's employment.

[6] The Grievant's conduct is not analogous to the use of the same racial slur by a police officer in the *Symonette Award.* Although the officer's comment was offensive, it was not, as the arbitrator noted in converting the termination to a 30 day suspension, directed to a member of the public.

## AWARD

The City had just cause to discipline and discharge the Grievant, Gerald Sobecki.

Therefore, the grievance is denied.

Dated: October 1, 2024
Ocean Grove, New Jersey

Felice Busto

State of New Jersey }
County of Monmouth } ss:

On this 1st day of October, 2024, before me personally came and appeared Felice Busto to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Madeline R Boone

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