

IN THE MATTER OF THE ARBITRATION BETWEEN:

AFSCME DISTRICT COUNCIL 47, LOCAL 2186,)	
)	ARTHUR MCQUOID
and)	
)	15-day Suspension
CITY OF PHILADELPHIA.)	AAA #01-24-0000-2337

APPEARANCES

For AFSCME District 47:	Jordan Konnell, Esq. Willig Williams & Davidson
For City of Philadelphia:	Elliott I. Griffin, Esq. Ballard Spahr, LLP
Arbitrator:	Deborah L. Murray-Sheppard
Date of Hearing:	April 22, 2024
Date of Decision:	May 30, 2024

BACKGROUND

AFSCME District Council 47 (“Union”) represents, by and through its Local 2186, a bargaining unit of City of Philadelphia (“City”) first-line supervisory employees. The Grievant, Arthur McQuoid, holds a bargaining unit position within the City’s Department of Parks and Recreation, which is represented by the Union.

The Union and the City are parties to a Consolidated Memorandum of Agreement which has a term of 1992 through 1996, which was last updated by Memorandum for the period of July 1, 2021, through June 30, 2024. *Jt. Exhibit.*

On or about August 4, 2023, the Philadelphia Parks and Recreation (“PPR”) Human Resources Manager, Misty E. Caleb, issued a Memorandum with states:

A report was received by Programs management that on [REDACTED], you were involved in an altercation with children at your assigned recreation center, [REDACTED] Playground. Upon notification of this incident to senior leadership and Human Resources, you were temporarily reassigned to [REDACTED] pending an investigation.

A video of the incident was obtained and viewed by Human Resources. The video substantiated the report and specifically showed you locking multiple children in the bathroom and pushing one child up against the wall twice. Your actions are a direct violation of the City’s workplace violence policy and in direct conflict with your duties as a mandated reporter. As a result, the department intends to issue a 20-day unpaid suspension. This incident was also reported to the Department of Human Services where an investigation is still pending.

Prior to the discipline being issued, you have the right to a disciplinary hearing. The disciplinary hearing will be scheduled at the earliest opportunity, and you will be notified of the scheduled day/time in advance. You have the right to have union representation present at the scheduled hearing. It is your responsibility to make sure your union representation is in attendance. Should you wish to waive your right to a hearing, you and your union representative can complete the attached waiver. *Employer Exhibit 4.*¹

¹ The copy of Employer Exhibit 4 is not signed by Mr. McQuoid.

Thereafter, Ms. Caleb conducted a disciplinary hearing which concluded on August 31, 2023.

The Union filed a grievance on Mr. McQuoid's behalf on September 11, 2023. The grievance requested the City "make the Union, grievant, and it's [sic] entities whole in all respects." The grievance also notes "... the disciplinary hearing decision was deemed unacceptable by member and Union Local 2186. Filing at Step III." The grievance was denied at Step III by the department head and the Union requested it be advanced to Step IV. *Joint Exhibit 3*.

Following the Step 3 hearing², Ms. Caleb issued a 15-day suspension to the Grievant, to be served October 2 through October 20, 2023 (excluding Saturdays and Sundays), for "violating §2B of the City's Workplace Violence Police and for displaying conduct unbecoming of a City employee."³ Specifically the Notice of Suspension finds:

The department finds that Mr. McQuoid did lock multiple children in the bathroom and initiated a physical encounter with a minor child which violated the City's workplace violence policy and displayed conduct unbecoming of a City employee. Additionally, the department contends that Mr. McQuoid's actions did not indicate fear as was stated during the disciplinary hearing. At no point were the authorities contacted, nor was contact made to his next level supervisor regarding the issue. As pointed out by Mr. McQuoid during the hearing, the children did appear to be mischievous and can be seen throwing some type of candy or small food item in Mr. McQuoid's direction, however at no time did any of the children initiate physical contact with Mr. McQuoid.

As result and taking into consideration Mr. McQuoid's prior work performance, the department has reduced the intended discipline form [sic] an unpaid 20-day suspension to an unpaid 15-day suspension. Mr. McQuoid

² Consistent with Article 16-B of the parties' negotiated agreement which provides that an employee shall not be suspended without pay prior to completion of Step III of the Grievance Procedure.

³ Joint Exhibit 2. The timing of the reduction of the proposed discipline from a 20-day unpaid suspension to a 15-day suspension is unclear from the record. Although the Notice of Suspension (Joint Exhibit 2) is dated September 23, 2023, the grievance filed by the Union (Joint Exhibit 3) is dated September 11, 2023. It challenges a 15-day unpaid suspension issued to Mr. McQuoid.

will be required to take related appropriate training as determined by the department. *Joint Exhibit 2.*

Having failed to resolve the grievance through the negotiated steps of the grievance process, it was presented to this arbitrator (who was mutually selected by the parties) on April 22, 2023. The parties were afforded the opportunity during the hearing to present documentary evidence and to examine and cross-examine witnesses. Witnesses called by the City included: Mindy Caleb, former PPR Human Resources Manager⁴; and Marissa Washington, PPR Deputy Commissioner. The Union called the Grievant and Brett Bessler, AFSCME District Council 47, Local 2186 Vice President and Business Manager. Three Joint Exhibits, eleven Employer Exhibits, and two Union exhibits were admitted into the record.⁵

Counsel for the City and the Union provided oral closing arguments on April 22, 2024. Thereafter, the City provided an electronic copy of the video entered into the record as Employer Exhibit 2 to this arbitrator.⁶ The decision reached herein results from consideration of the record created by the parties.

ISSUE

DID THE CITY OF PHILADELPHIA HAVE CAUSE TO ISSUE A 15-DAY SUSPENSION TO THE GRIEVANT, ARTHUR MCQUOID? IF NOT, WHAT SHALL BE THE APPROPRIATE REMEDY?⁷

⁴ Ms. Caleb testified she left City employment in March 2024.

⁵ It is noted that the Union objected to the admission of Employer Exhibit 5, the statements that PPR [REDACTED] collected concerning the incident, contesting the statements are hearsay and that the City admits that there were no PPR witnesses to the incident on [REDACTED], except the Grievant.

⁶ The video was viewed during the April 22, 2023, hearing.

⁷ The parties stipulated to the issue statement.

APPLICABLE CONTRACTUAL and POLICY PROVISIONS

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.
- B. **DISCIPLINARY HEARINGS.** An employee subject to disciplinary action shall not be suspended without pay or discharged prior to completion of Step III of the Grievance Procedure unless in the judgment of the appointing authority or designee said employee poses a threat to himself/herself or other person or persons.
- C. **PROGRESSIVE DISCIPLINE.** The City shall have the right to discipline or discharge any employee in the meet and discuss unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2816 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees...⁸

CITY OF PHILADELPHIA WORKPLACE VIOLENCE POLICY *(in relevant part)*

Section II - Policy⁹

A. Statement of Commitment

The City of Philadelphia is committed to providing a safe workplace free from violence and threats of violence. The workplace includes any place where City business is conducted, including City buildings and property, City vehicles, private vehicles while used on City business, other assigned work locations and off-site training.

The City will not tolerate violent behavior or threats in the workplace. Any violent behavior related to the employee's work or work relationships, on or off City property or City workplaces, is prohibited. Violations of this policy will be investigated, and if substantiated, the City will take disciplinary action in accordance with established procedures.

B. Violent Behavior

Employees should not be subjected to physical, written or verbal conduct that is violent in nature related to the employee's work or work relationships. In addition, no employee is permitted to engage in

⁸ Joint Exhibit 1.

⁹ Employer Exhibit 3.

violence or threaten violence to another employee, supervisor, manager, union representative, customer, resident or any other person.

Violent behavior includes physical violence and/or threats of physical violence that would lead a reasonable person to fear for his/her own safety. Violence may be either verbal, written or physical.

Behavior prohibited by this policy includes but is not limited to:

1. **Verbal/Written Violence** is displayed by verbal/written abuse or harassment involving unwanted language or gestures that threatens harm to someone.
2. **Physical Violence** is unwelcome contact between two parties. This also includes sexual assaults and property damage as well as the following:
 - a. Destructive or sabotaging actions against City property or employee property
 - b. Possession of imitation weapons on City property or City workplace.

C. Reporting

Every employee has the responsibility to immediately report to his or her supervisor or department safety representative any violations of this policy. This includes employees who are aware of violence or threats of violence that may create a risk of harm to the employees or others in the workplace by a City employee, or any other person, whether occurring in or away from the workplace. All reports will be promptly and thoroughly investigated. The City will not tolerate any type of retaliation against an employee who reports workplace violence or the threat of violence. All reports or threats of workplace violence shall be documented using the Workplace Violence Incident Report Form. The report should include a summary of actions taken.

...

Section IV Definitions ...

- G. Threat: an expression of intent to inflict pain or injury on a person or damage to any object. Threats may be explicit (such as, "I'll get even with you later" or "I'll kill you if you report me") or implied (such as "bad things are going to happen to him" or "that propane tank on the back of his truck could sure blow up easily"). Threats also include stalking. Conflicts and disagreements are expected to occur in the workplace and do not by themselves represent a threat of violence.

FACTS¹⁰

The Grievant, Mr. McQuoid, is and has been employed by the Philadelphia Department of Parks and Recreation full-time since 1993. He has served as a Recreation Leader II since 1997. He has an unblemished employment record with no prior discipline during his more than thirty years of employment by the City.

At the time of the incident, Mr. McQuoid was responsible for staffing, programming (summer and after school) and oversight (facility, administrative and maintenance) of the [REDACTED], where his office is located.

Mr. McQuoid was also primarily responsible for the operation and management of the community pool and adjacent playground at [REDACTED]. The pool is open for approximately three months each summer.¹¹ Mr. McQuoid hires all of the staff before the pool season starts including lifeguards and security staff who monitor the facility 24 hours a day, 7 days a week during the summer season. Mr. McQuoid characterized summers at the pool, particularly on hot days, as “hectic and sometimes chaotic”, noting that at times the pool is closed to admission because it has reached capacity. “Open Swim” at the [REDACTED] is from 1:00 – 4:00 p.m. daily, during which children can swim without their parents. He testified, without refute, that this period is the “craziest and most dangerous part of the day” because there are so many people at the pool. He has requested each year before the start of the summer season that the Philadelphia Police provide a presence between 1:00 and 4:00 p.m. at the pool, but coverage is spotty. It is undisputed that there were no police present at the [REDACTED] on the afternoon of [REDACTED]

On that afternoon, [REDACTED], Mr. McQuoid arrived for work at approximately 1:00

¹⁰ The facts as set forth herein are derived from the record created by the parties.

¹¹ Mr. McQuoid testified there is no other programming at Jacobs (except the pool) during the summer.

p.m.¹² He testified the pool was crowded that day and that he was on the pool deck helping the guards, as he usually was on typical summer afternoons. From the pool, he could see a group of youths (estimated to be approximately middle school aged) on the adjacent playground who were throwing things, yelling, and cursing. He was concerned because there were also young children and families at the playground and the youths were being disruptive. He approached the group of youths (who he did not know or recognize as having been at either the [REDACTED] or the [REDACTED] in the past) and reminded them of the rules which required that they be respectful of the facility and others using it. He testified the youths mumbled responses which he recalled as “go away” and “whatever.” Mr. McQuoid then returned to his duties on the pool deck.¹³

About a half hour later, Mr. McQuoid again interacted with this group of youths. He had gone to the building which houses the women’s bathroom and the staff room/storage area to get a replacement whistle for his Head Lifeguard. When he went into the staff room/storage area, the youths came to door to ask if he had a ladder that they could use to access the roof of the building saying they had lost something that was now on the roof. Mr. McQuoid responded that he did not have a ladder, at which point he testified that youths began to hassle him, asking if he was homeless and lived at the pool. He explained he was the Pool Supervisor and that he needed to get back to work. When he turned his back to retrieve a new whistle, the youths started throwing sunflower seeds at him (from outside the door of the staff room/storage area). They also began yelling and cursing at him, calling him “old”, “fat” and “bald” and using expletives (“F*^# you!”) presumably

¹² Mr. McQuoid testified, without refute, that he was off on approved leave on the morning of July [REDACTED]

¹³ These facts are drawn from Mr. McQuoid’s testimony and were not refuted by the City. They are not included in the video provided as Employer Exhibit 2.

because he was not able to help them get whatever it was they wanted off the roof of the building.¹⁴ Mr. McQuoid locked the door to the staff/storage room and returned to the pool deck with the whistle for the lifeguard.

At some point shortly after 3:00 p.m., the Grievant looked toward the building and sees the same group of youths leaning a piece of wood against the side of the building on the street side.¹⁵ He saw one of the youths (a boy in a white baseball cap) attempting to climb the board toward the roof.¹⁶ Mr. McQuoid yelled at the boy to get down, at which point the boy jumped off the board.¹⁷ Three boys (including the boy in the cap) and two girls walked around toward the bathroom side of the building.¹⁸ Mr. McQuoid immediately left the pool and went to the street side of the building to find out what is going on.

When he arrived there are two boys on the street side of the building (one wearing a blue shirt and one wearing a gray shirt) who the Grievant characterized as being responsible enough to stay to talk to him. He asked the two boys what they are doing. The Grievant and the two boys walked around the corner of the building, toward the women's bathroom.¹⁹ The Grievant pointed to the two pieces of wood on the ground and asked the boys why they are there and from where they got them.²⁰ At some point, the boys told him they came from the adjacent [REDACTED]

¹⁴ The video provided as Employer Exhibit 2 does not reveal what, if anything, the youths were trying to retrieve from the building's roof.

¹⁵ Employer Exhibit 2 at approximately 9:00 on the video timer. The youths left the shorter piece of the two pieces of wood on the ground on the bathroom side of the building, i.e., the side which is directly in the camera sight line.


¹⁶ Employer Exhibit 2, 9:30 timer mark.

¹⁷ Employer Exhibit 2, 9:56 timer mark.

¹⁸ Employer Exhibit 2, 10:20 timer mark. The video shows the two girls leave the building by way of the sidewalk, while three boys go into the women's bathroom (10:28). These movements all occur outside of the Grievant's sight line. Contemporaneously, two boys remove the board from the street-side of the building and drop it in the grass outside the women's bathroom door.

¹⁹ Employer Exhibit 2, 10:48 timer mark.

²⁰ Employer Exhibit 2, 10:58 timer mark.



The video then shows the other boys peeking out of the open women's bathroom door. Mr. McQuoid leaves the first two boys and heads to the bathroom. He testified he again heard cursing directed at him by the boys in the bathroom, although he did not know how many were in the bathroom. He walked over to the bathroom door, just crossed the threshold, and signaled to the three boys at the door to back up into the bathroom. He then pulled the door closed.²¹

Mr. McQuoid returned his attention to the two boys and the two pieces of wood. He signaled to the boys to take the wood back to where they found it and they each picked up a piece of wood and carried it off camera.²²

At approximately 11:42 of the video, the bathroom door opened, and Mr. McQuoid turned around to see the three boys in the doorway. There is no sign that the boys struggled to open the door from the inside or that Mr. McQuoid had to unlock the door to allow the boys to exit. As they are leaving the bathroom, two boys stepped to the right of the open door and one boy (wearing a white baseball cap) stepped to the left of the door. Mr. McQuoid stopped the boys and is standing in front of the boy with the baseball cap, with one arm pointed toward the boy and the other arm (his left) extended upward. Mr. McQuoid can be seen speaking directly to the boy in the baseball cap while the other two boys look on.²³ At approximately 11:55, Mr. McQuoid signaled to the two boys on the right of the door to walk away. They start to walk away but then turn around and come back, while Mr. McQuoid continued to speak to the boy in the baseball cap. He appears to have the fingers of his right hand on the boy's chest, but he does not appear to be restraining the boy. As the two other boys from the bathroom begin to walk back toward Mr. McQuoid, the boy

²¹ Employer Exhibit 2, 11:10 timer mark.

²² Employer Exhibit 2, 11:29 timer mark.

²³ Employer Exhibit 2, 11:48 timer mark.

in the baseball cap clenches his right hand and takes a swing at Mr. McQuoid as he attempted to get away by running toward the street side of the building.²⁴ Mr. McQuoid grabbed the boy by the front of his shirt, put his left hand on the boy's shoulder and moves him back toward the building, so that the boy's back is again against the building, and he is facing Mr. McQuoid.²⁵ The boy struggles and Mr. McQuoid restrains the boy's right hand as it appears that he is trying to strike the Grievant.²⁶ Mr. McQuoid continued to speak directly to the boy and appears to be trying to calm him down, using only his right hand to hold the boy's left upper arm. The other two boys look on and show no visible signs of distress. The boy in the baseball cap grabs the front of his shirt²⁷ and appears to indicate that he is unhappy that Mr. McQuoid grabbed and stretched his shirt.

At this point, one of the girls returned with a cell phone in hand and appears to be taping the incident. Mr. McQuoid then released the boy with the baseball cap and signals to the three boys and the girl to leave.²⁸ Only the boy in the baseball cap walked toward the street (and the back of the building); the girl backs up (with the phone still raised); one of the other two boys left on the sidewalk and the second boy headed out across the grass.

At 12:23 of the video, two young men entered the camera area and began speaking with Mr. McQuoid,²⁹ who gestures toward the roof of the building. When three of the youths try to intercede in the conversation, Mr. McQuoid again signaled to them to head out.³⁰ As he is talking

²⁴ Employer Exhibit 2, 11:58 timer mark.

²⁵ Employer Exhibit 2, 12:01 timer mark.

²⁶ Employer Exhibit 2, 12:09 timer mark.

²⁷ Employer Exhibit 2, 12:12 timer mark.

²⁸ Employer Exhibit 2, 12:19 timer mark.

²⁹ Employer Exhibit 2, 12:33 timer mark.

³⁰ Employer Exhibit 2, 12:37 timer mark.

to the two young men, a person in a lifeguard shirt, red shorts and a hat appeared around the street side of the building. The lifeguard looked around and then disappeared again behind the building.³¹ At 13:05 of the video, Mr. McQuoid and the two young men (one of whom is holding a basketball) shake hands and walk off camera.

At 13:18, the boy in the baseball cap can again been seen heading around the street side of the building, followed by three other boys from the original group. He appears to be looking for something in the grass, which he picks up near the fence and all four boys exit toward the camera.³²

At 13:52, a female staff member walks around the building and toward the sidewalk. At 14:54, she returns to the camera frame walking on the sidewalk and talking to the Grievant. They both head back toward the pool. The Grievant is not seen again on the video.

The youths, however, return a 27:19. One of the boys again pushes open the bathroom door (which is now closed) with some effort. The youths mill around the building for the next five minutes, attempting to open the staff/storage room, rocking the trash can, going around behind the building, and again trying to enter the women's bathroom, but they are interrupted by a mother and child entering the bathroom.³³

Mr. McQuoid testified he returned to his duties at the pool at approximately 3:30 and left for home at 4:30. He did not call the police at the time of or after the incident and did not contact his supervisor or write up an incident report to document the incident. He testified that he has often had to deal with mischievous youths during his tenure and did not consider this to be an incident in which the health and safety of anyone was in danger after he thwarted the youths' efforts to get on the roof.

³¹ Employer Exhibit 2, 12:50 timer mark.

³² Employer Exhibit 2, 13:45 timer mark.

³³ Employer Exhibit 2, 33:25 timer mark.

At approximately 5:30 p.m., the Grievant's supervisor, PPR District 2 Manager Beth Perkowski, called the Grievant at home. He answered her questions.

Mr. McQuoid returned to work on [REDACTED] reporting to [REDACTED] [REDACTED] in the morning and then to [REDACTED] around 11:00 a.m. to set up for the day. He worked a full day on [REDACTED]

On or about [REDACTED] morning, [REDACTED], PPR Human Resources Manager Caleb received an email from the PPR Deputy Commissioner of Programs concerning, "Incident at [REDACTED]". The email stated:

There was a group of kids that got onto the roof of the building at [REDACTED] [REDACTED] on [REDACTED]. Upon learning of this, supervisor Art McQuoid went over to speak to them, but they hopped off the roof and proceeded into the girls bathroom, which has an entrance outside the building. Art was able to speak to a few kids not in the bathroom, then proceeded to lock the kids in the bathroom when they wouldn't come out. The kids found their way out (I think the door unlocks from the inside), and one of them is seen mouthing off to Art. At this point, Art grabbed the kid by the shirt and held him against the wall of the building.

I only had bits and pieces of the story until I saw the video late in the day yesterday to verify everything and then spoke to Beth and Anne Marie to fill in the details and to get video access.

I spoke with [PPR Director] Orlando first thing this morning and he suggested I reach out to you for advice on how to proceed.

Happy to talk this out if need be, thanks! ³⁴

Mr. McQuoid reported to [REDACTED] on [REDACTED] morning, [REDACTED], but received a call from District Manager Perkowski at 11:55 a.m. directing him to report to [REDACTED] [REDACTED] and to continue to report there for administrative duties until the investigation of the July 10 incident was completed.³⁵

³⁴ Employer Exhibit 1.

³⁵ Although there were times when the City's witnesses referred to Mr. McQuoid being placed on "paid administrative leave", Mr. McQuoid testified he continued to work at [REDACTED] for three months.

On or about August 4, 2023, Mr. McQuoid was notified by memorandum from PPR Human Resources Manager Caleb that, “the department intends to issue a 20-day unpaid suspension.” The memo charged Mr. McQuoid with violating the City’s workplace violence policy and acting in conflict with his responsibilities as mandated reporter, noting that the incident had been reported to the City’s Department of Human Services (“DHS”), where an investigation is pending.³⁶ The memo also advised Mr. McQuoid of his right to a disciplinary hearing.

At no point prior to the August 4 notice of intended discipline was Mr. McQuoid interviewed or requested to provide a statement concerning the incident by anyone in PPR or Human Services.

A disciplinary hearing was convened by PPR Human Resources Manager Caleb on Thursday, August 17, 2023. Mr. McQuoid, AFSCME LU 2186 President Gennifer Reed and Vice President Brett Besler were present. Mr. McQuoid saw the video for the first time at this meeting. Vice President Bessler testified that the City did not provide an incident report or any documentation that had been relied on in reaching the disciplinary recommendation, as is the usual practice between these parties. During the hearing, Mr. McQuoid was asked to narrate the video (although he had not previously seen it). He testified that Ms. Caleb frequently interrupted his explanation, stopping the video to question his description of the video content. When the Union objected to Ms. Caleb’s repeated interruptions, she truncated the meeting and called security to

(continued) It is undisputed, however, that whether he was assigned administrative duties or whether he was on leave, he continued to be paid his regular wages until he served the 15-day suspension.

³⁶ PPR Human Resources Manager Caleb testified that District Manager Perkowski called DHS because she is required to report “suspected abuse of children.” Ms. Caleb testified DHS was unable to conduct an investigation because it could not identify the youths. LU 2186 Vice President Bessler testified that Union was unable to confirm that a report had been made at all, despite repeated inquiries to DHS.

escort the Union representatives from her office. The meeting was reconvened on Thursday, August 31, 2023, which was also attended by Ms. Caleb, Mr. McQuoid, Mr. Bessler and Ms. Reed.

On or about September 11, 2023, the Union filed a grievance on behalf of Mr. McQuoid, stating he, "... had received discipline in the form of an unpaid suspension of 15 days without just cause." The grievance also stated, "Disciplinary hearing decision deemed unacceptable by member and Union Local 2186. Filing at Step III."³⁷

A Step III hearing was convened by PPR Commissioner Orlando Rendone on September 14, 2023. The hearing was conducted virtually as a Teams meeting. Commissioner Rendone and Deputy Commissioner Marissa Washington each attended remotely. Mr. McQuoid and AFSCME Local 2186 Vice President Bessler participated remotely but were together at the same location.³⁸ The video was again shown, this time narrated by Commissioner Rendone. Mr. McQuoid was provided the opportunity to explain what was occurring in the video.³⁹

Deputy Commissioner Washington testified that PPR has an expectation that a Recreation Leader II, acting as the most senior supervisor on site, has an obligation to act professionally and to not engage in physical interactions with misbehaving youth at PPR facilities. She also testified that a supervisor is required to report any negative interactions which occur during the day to their supervisors or managers and are mandatory reporters under the Child Protection Policy.

On or about September 29, 2023, PPR Human Resources Manager Caleb issued the Notice of Suspension to Mr. McQuoid. The suspension was based on the Department finding that Mr. McQuoid had locked multiple children in the bathroom and initiated a physical encounter with a

³⁷ Joint Exhibit 3.

³⁸ Employer Exhibit 10.

³⁹ Deputy Commissioner Washington testified she was unable to view the video during the hearing, but was able to follow along as she had reviewed the video with PPR Human Resources Manager Caleb before the hearing, although she did not specify how long before that hearing she had viewed it.

minor child in violation of the City's Workplace Violence Policy. It further concluded that Mr. McQuoid actions constituted conduct unbecoming a City employee. The notice specifically concluded, "at no time did any of the children initiate physical contact." The Notice also states that the unpaid suspension was reduced from 20-days to 15-days based on Mr. McQuoid's prior work performance. He was further required to "take related appropriate training as determined by the department."⁴⁰

Mr. McQuoid served the 15-day unpaid suspension as directed on October 2 through October 20, 2023.

Mr. McQuoid received his 2023 Annual Performance Review on or about November 3, 2023,⁴¹ with an overall rating of "Superior". For the five previous years, he was rated superior or outstanding on the metric, "Relationship with People – Ability to get along with others; effectiveness in dealing with the public, other employees, patients or inmates." He has no categories in which he was rated as needing improvement since 2018.⁴² His 2023 rating for Relationship with People was Satisfactory and the comments of his supervisor, District Manager Perkowski, read:

Art, you do a good job at [REDACTED]. Your camp staff was very good and super attentive with the campers. I witnessed campers participating in many structured activities throughout the summer including the end of summer talent show on the last day. You work very well with many organizations in the area to permit a great deal of the fields throughout the district. You hired a complete pool staff early in the year and were able to be among the first in the city to open for our communities. Continue to work on building winter programs at [REDACTED]. Dealing with the public in a professional manner is the cornerstone of our work. In the future, if you ever find yourself in a dangerous or precarious situation, please get yourself to

⁴⁰ Joint Exhibit 2.

⁴¹ Mr. McQuoid received this evaluation just two weeks after his return from the 15-day suspension on October 20, 2023.

⁴² Union Exhibit 1.

safety, and then call 911 and/or notify me when it is safe to do so. Reports need to be made for us to address issues together as they arise, in efforts to prevent them from reoccurring in the future. I look forward to the continuation of great summer activities and the growth of fall programs at [REDACTED]

POSITIONS OF THE PARTIES

City of Philadelphia:

The City argues it had just cause to issue a 15-day suspension to Mr. McQuoid. Recreation Leaders II have a responsibility to serve and support the people of Philadelphia, particularly to youth, to create a safe place to play and to engage with others. On [REDACTED], Mr. McQuoid encountered a group of youths trying to access the roof of a building at Jacobs Playground. The youths did respond or retreat at his initial command. Mr. McQuoid's actions did not de-escalate the situation. His explanation of what was happening during the video were not believable. The child did not accidentally run into his hands. The children did not threaten him. Even if they had, children making threats does not justify the use of physical force to restrain children or to lock them in the bathroom. The video makes it clear that the children are trying to get away from the situation.

Mr. McQuoid has more than three decades of experience working as a recreation leader in Philadelphia. As a well-seasoned employee, he should have known he was expected to report the interaction to his district manager. He failed to do and, when asked, did not acknowledge his actions violated City policies and his obligations as a mandatory reporter. It is disingenuous for him to argue he was not adequately trained to effectively respond without a physical interaction in this case. The City considered discipline assessed in similar situations, Mr. McQuoid's lengthy tenure and good performance record when it settled on the 15-day suspension.

The collective bargaining agreement does not guarantee overtime opportunities to bargaining unit employees. The grievant is not entitled to the overtime wages he could have earned during [REDACTED]. Mr. McQuoid was placed in an administrative role for which he continued to be compensated while the incident was investigated.

The City asserts it had just cause to discipline the grievant; consequently, the grievance should be denied.

AFSCME Local 2186:

The Union asserts the City has failed to meet its burden to establish that it had just cause to suspend Mr. McQuoid and a 15-day suspension was an appropriate discipline. Mr. McQuoid is a dedicated employee with thirty plus years of service who cares about and enjoys working with young people. The City's faith in him was not diminished by this incident as he will again be responsible for [REDACTED] in the [REDACTED]

There were no City employees who witnessed the interaction between Mr. McQuoid and the group of youths on [REDACTED]. The City chose not to interview Mr. McQuoid before it decided to recommend discipline to better understand what happened. Management reviewed video footage of the incident and concluded something needed to be done to address the situation. Although it argues that Mr. McQuoid violated the City's expectations in dealing with the youth, it never articulated what those expectations are, either before or after the incident. Even after serving the suspension, the City has failed to provide "related appropriate training" which it directed the grievant take.

The conclusions the City drew from watching the video are inaccurate and inconsistent with the video itself. There is no indication that the youths were "trying to get away" or that Mr. McQuoid physically restrained anyone or locked anyone in the bathroom. Mr. McQuoid was trying

to protect the youths from continuing to engage in risky behavior (climbing onto the roof) and from having the incident escalate or get out of control. The video supports Mr. McQuoid's description that the youths were cursing, yelling, throwing things at him, and being generally disruptive. The youths were not trying to get away from him because they feared physical violence; they were trying to get away to continue their mischief and to continue to harass Mr. McQuoid.

The Union also notes that the comparators the City offered to support the 15-day suspension are not, in fact, applicable. The primary case involves an employee in a separate and distinct bargaining unit and involved a neurologically diverse child enrolled in a City recreational program who the grievant knew and had many interactions which over the course of the program.⁴³ The second case involved a Recreation Leader 3, involved a physical altercation with an adult, and is a Notice of 15-day Suspension which references the employee's "otherwise unblemished record as an employee."⁴⁴ There were no further details provided on the second case, including whether the discipline was grieved and arbitrated.

For these reasons, the Union argues the grievance should be granted and Mr. McQuoid should be made whole, including by providing him with the overtime wages he would have earned working Sundays for the period of [REDACTED] season at [REDACTED].

DISCUSSION

The just cause standard requires proof that the incident underlying the charge occurred, that the offending employee was afforded adequate due process, and that an appropriate level of discipline was imposed, considering all the relevant surrounding circumstances. The burden of meeting the just cause standard rests with the employer.

⁴³ Employer Exhibits 7 and 8.

⁴⁴ Employer Exhibit 9.

To meet this burden, the employer must convince the arbitrator (who the parties have mutually selected) that the discipline imposed was fair punishment for a proven infraction and one supported by a fair analysis of the evidence presented by the parties. To substantiate that an incident occurred, the employer must have conducted a fair, impartial, and unbiased investigation and provided the employee the opportunity to provide evidence and explanation for the alleged conduct.

Preliminarily, it is appropriate and necessary for the City to err on the side of caution to safeguard minors when they are at City parks and pools. That responsibility must be balanced, however, by the City's obligation to have just cause to issue discipline to its employees. This grievance raises a question as to what weight an employer can fairly accord the video recording of an incident to which there were no eye-witnesses other than the individuals involved. The video includes no sound and is limited to the span of the camera angle. It is temporally limited and does not reveal what may have happened prior to the recording or to what may have been occurring outside of the camera frame, e.g., when the youths were behind the building. The recording does not evidence whether or what the youths were yelling or when Mr. McQuoid yelled to them from the pool, other than by observing the physical reactions of those in the frame.

Perceptions drawn from review of video footage are contextually colored according to the preconceived biases of the viewer. That is particularly apparent in this case. When Deputy Commissioner Salvatore first contact PPR Human Resource Manager Caleb, his email contained many inaccuracies. The youths were not on the roof and did not hop off the roof. Mr. McQuoid did not lock anyone in the women's bathroom. While admitting that he only had bits and pieces of the story, Deputy Commissioner Salvatore provided enough conclusionary information to skew Ms. Caleb's preconception. Further, the "statements" provided by District Manager Beth Perkowski were all from employees who did not witness the incident, two of whom only looked

at the video.⁴⁵

Ms. Caleb testified she was not able to review the video until more than a week after the [REDACTED], incident due to technical difficulties, yet she was able to recommend that Mr. McQuoid be removed from his normal duties and placed on administrative duties within hours of the Deputy Commissioner's email. Without having seen the video herself, she had to rely on the inaccurate description provided by Deputy Commissioner Salvatore. While not second guessing the conclusion she and others reached, it is clear that the Grievant's explanation adds a context to the video which is not otherwise available.

After carefully and repeatedly reviewing the video and the testimony provided by the Grievant, I conclude that his testimony is not obviously contradicted by the video, which fails to convey the tones and words of the youths and Mr. McQuoid during the incident.

The purpose of discipline in a workplace is to address job-related behavior that does not meet the employer's communicated expectations for performance. The imposition of discipline clearly communicates to an employee that the employer has a problem with his performance and/or conduct and provides an opportunity for improvement. A well-designed disciplinary process begins with due process. The employer must provide an adequate and fair investigation of the alleged misconduct. If the conclusion is reached that employee has committed a violation, the employer must allow the employee to provide information which may help the employer understand why the conduct occurred.

PPR Human Resources Manager Caleb testified that she does not normally interview the "charged employee" before the disciplinary hearing because it would be redundant; the employee

⁴⁵ For this reason, Employer Exhibit was not accorded any weight as it constitutes hearsay which cannot validate or verify any of the facts of the incident.

has the opportunity to present his side of the story when the disciplinary hearing is held. In this case, however, because he was the only PPR employee to witness the interaction (albeit as a participant in it), the City would have been well-served to get his statement before recommending discipline. The discipline imposed must take into consideration the totality of the circumstances. Just cause requires more than drawing a conclusion based on reviewing an incident purely by video without the benefit of audio or any context and/or by crediting conclusionary statements may by individuals who were not witnesses to the incident.

Discipline which meets the just cause standard furthers an employer's interests to rehabilitate the performance of an otherwise satisfactory employee, to deter similar conduct by this employee and others, and/or to protect the employer's ability to successfully operate its business. It appears that all these interests were in play when the City issued discipline to Mr. McQuoid. The discipline rendered, however, does not advance of the City's interests.

Mr. McQuoid is accountable under the City's policies to conduct himself professionally and with care for the children, youth, adults, and families who use the [REDACTED] and [REDACTED]. There was no evidence adduced in this proceeding to support the conclusion that Mr. McQuoid failed to conduct himself professionally and with care over his thirty plus years career.⁴⁶ His record during his lengthy tenure with PPR includes no prior discipline. His experience and record reflect that he has an implicit understanding of PPR's professional expectations and that he has high personal integrity. As the City recognized in Ms. Caleb's testimony, this was undoubtedly not the first time Mr. McQuoid had encountered and had to redirect cheeky, unsupervised youth who were intent on mischief.

What the City asked of Mr. McQuoid was that he conduct himself professionally and in

⁴⁶ See Union Exhibit 1, Mr. McQuoid's performance reviews for 2018 – 2023.

accordance with the City's expectations for interactions with minors. The record, including the video, establishes that this is exactly what he did. He did not initiate harmful physical contact, he identified the youth who appeared to be the "ringleader" and encouraged the youths to desist from their mischief. He ultimately directed the youths to leave the playground (as he points to the exit), but they did not do so. In fact, they continued to mill around the building, trying to open doors, going into the bathroom, and rocking the trash can after the incident. They do not appear at any point in the video to be frightened or concerned for their physical welfare.

The Grievant was a credible and straightforward witness. Everything recorded in PPR Human Resources Manager Caleb's notes from the 2-day disciplinary hearing in August 2023 is consistent with Mr. McQuoid's testimony at the arbitration. He obviously cares deeply for the communities he serves and takes seriously his obligation to foster positive experiences for children and youth who visit [REDACTED] and [REDACTED]. He did not overreact to the situation by calling the police and balanced his approach with concern for the safety of the youth (outside and inside the bathroom) and the children on the playground and at the pool. His experience was evident when he discerned there was a risk in going into the bathroom, with no other adults present, not knowing who or how many individuals might be in the room. Pulling the door closed to deal with the boys and the boards first was a reasonable approach to keep the situation from escalating and to keep himself safe from potential harm. There is no evidence to suggest that he "locked" anyone in the bathroom.⁴⁷

Mr. McQuoid did make a serious error in judgement, however, when he decided not to

⁴⁷ Although Ms. Washington testified that whether Mr. McQuoid locked the youths in the bathroom had no impact on her deciding the City had just cause to issue him a 15-day suspension, the Notice of Suspension states the discipline is based on a finding that Mr. McQuoid "did lock multiple children in the bathroom..." Joint. Exhibit 2.

report the incident to his district manager. If for no other reason than to protect himself and the City should there be a complaint, he should have reasonably known a report on the incident was required. Mr. McQuoid did not offer an explanation as to why he did not make a report other than to say that this is the type of behavior from youths that he addresses regularly during his workday.

For the reason discussed herein, the suspension for violating Section 2B of the City's Workplace Violence Policy and displaying conduct unbecoming of a City employee is found to be without just cause. Mr. McQuoid is, however, responsible for failing to provide a report on the incident to his district manager. His failure to report the incident before the end of the day did violate reasonable expectations for the most senior member of staff at the [REDACTED] on [REDACTED] [REDACTED]. Consequently, the 15-day suspension is to be reduced to a 1-day suspension.

Overtime Opportunities

The purpose of an order requiring reinstatement and back pay is aimed at "restoring the economic status quo the employee would have enjoyed but for the imposition of discipline which does not meet the just cause standard. There is general arbitral consensus that, absent specific direction found in the collective bargaining agreement or a well-established past practice of the parties, a make-whole award should restore to the grievant what he would have earned but for the unjustified discipline.

This is not a case concerning the unfair or inequitable application of a contractual overtime provision where the customary remedy for a proven contractual violation is to give injured employees first option for future overtime opportunities. In this case, there are limited overtime opportunities for Recreational Leaders II, except during the summer pool hours, because the City has authorized overtime compensation to secure lifeguards for the period of 1:00 – 5:00 p.m. on Sundays. Mr. McQuoid testified that, as the supervisor of [REDACTED], he has the right of first

refusal for these overtime hours and has consistently taken advantage of this opportunity to supplement his children's college funds in the past.

Mr. McQuoid testified he worked these overtime hours every summer to supplement his income. Because he was assigned administrative duty from July 12 through the end of the 2023 summer pool season,⁴⁸ Mr. McQuoid did not have his customary opportunity to work overtime.

From the time that he was placed on administrative duty and removed from the pool on [REDACTED], until the [REDACTED] closed on August 14, 2023, there were five Sundays on which he could have worked overtime hours. Upon verification that Mr. McQuoid has, in fact, worked all available Sundays over previous summers when he was assigned to Jacobs Pool, and that he was available to work on each of these five Sundays, he is entitled to be compensated for the overtime hours he would have otherwise worked.

DECISION

For the reasons discussed herein, the grievance is granted in part and denied in part. The City has not met its burden to prove that the grievant violated Section 2B of the City's Workplace Violence Policy and engaged in conduct unbecoming of a City employee. The record is sufficient to establish that Mr. McQuoid failed to report the interaction he had with the youths on the afternoon of July 10, 2023, as would reasonably be required of the senior supervisory employee at the worksite.

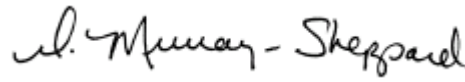
The City is directed reduce the 15-day suspension imposed to a 1-day suspension, and to make Mr. McQuoid whole for the 14-day reduction in the suspension, including lost overtime opportunities. The City is further directed to remove all references to the 15-day suspension for

⁴⁸ According to publicly available information, Jacobs Pool closed on Monday, August 14, 2023. There were five Sundays between July 12 and August 14, 2023.

violating the City's Workplace Violence Policy from his file. Additionally, any reference to this incident shall be removed which infers, in any way, that Mr. McQuoid engaged in an act of physical or verbal abuse of a minor, as those charges were not substantiated and there was no proof provided that DHS was contacted or that it engaged in an investigation.

Finally, the City is required to immediately provide to Mr. McQuoid the "appropriate training" (if any) referenced in the September 29, 2023, Notice of Suspension.

Dated: May 30, 2024

A handwritten signature in cursive script that reads "D. Murray-Sheppard".

DEBORAH L. MURRAY-SHEPPARD
Arbitrator