

American Arbitration Association
Case Number: 01-23-0004-9391

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In the Matter of the Arbitration

Between

FRATERNAL ORDER OF POLICE, LODGE 5
"UNION"

OPINION

-and-

AND

CITY OF PHILADELPHIA
"CITY"

AWARD

Grievance: Capt. Anthony D. Ginaldi
(204877)
Seven Day Suspension

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BEFORE: Randi E. Lowitt, Esq., Arbitrator

APPEARANCES

For the City

Krystal Charity, Esq.

For the Union

Joseph Salamon, Esq.
Willig Williams & Davidson

Pursuant to the provisions of the collective bargaining agreement between THE CITY OF PHILADELPHIA (hereinafter, "the City") and FRATERNAL ORDER OF POLICE, LODGE 5 (hereinafter, "the Union"), the above-named arbitrator was designated by the American Arbitration Association as Arbitrator to hear and decide the matter in dispute between the above-identified parties.

A hearing was held at the offices of the AAA in Philadelphia on October 8, 2024. The parties were represented by counsel and were afforded a full and fair opportunity to conduct direct and cross examination of sworn witnesses, to present relevant evidence and to argue their relative positions. The record was closed after receipt of a copy of the transcript. All matters, while not necessarily cited in this Opinion and Award, have been considered. All Claims not expressly granted herein are denied.

The parties arranged for a court reporter for the hearing. That record was made available to the parties and to the Arbitrator. Any additional notes taken by the Arbitrator and all materials attendant to the arbitration will be destroyed or deleted at the time this Opinion is disseminated.

The Issue:

Did the City have just cause to suspend Captain Ginaldi for seven (7) days?

If not, what shall be the remedy? (9).¹

¹ Numbers in parentheses correspond to appropriate page numbers in the transcripts.

BACKGROUND

Captain Anthony Ginaldi has been with the Philadelphia Police Department (PPD) since 1989. In 2021, at the time of the alleged incident, he was Commanding Officer of the 39th District. Ginaldi offered the myriad commendations he had received over this tenure with the PPD. (Union Exhibit #2). He explained that, as a general premise, while the minimum staffing for a shift should have been 13 officers, he almost never had that number of officers on a shift. (73-78). Subsequent to an incident involving one of his officers, Ginaldi was investigated (Joint Exhibit #3) and then brought before the PBI, whereafter he was issued a seven day suspension, which the Commissioner confirmed. (Joint Exhibit #4). Ginaldi grieved.

R■■■■ H■■■■ has been a Police Officer with PPD for eighteen (18) years. On February ■■■ 2021, H■■■■ reported to work and Lieutenant B■■■■, her immediate superior, assigned her to Temple Hospital to relieve a detail that had been on duty there. When she asked who would be assigned with her, B■■■■ told her that she would be working alone because there was insufficient personnel for her to have a partner assigned. She told him she was not comfortable with being assigned alone, but asked if he was ordering her to go alone, to which he said he was. While on her way to Temple Hospital, H■■■■ contacted her Union to tell them about the detail. She was then contacted by B■■■■ and told he was sending another officer instead of her; she was reassigned to patrol. H■■■■ related

that having one officer on a hospital detail is violative of the rules and directives. (54-56). H■■■■ said that when she came in the following week, she was told that Ginaldi ordered that she would not be permitted to work the overtime scheduled over the next few weeks. She said she never had any discussion with Ginaldi about the Temple Hospital detail or the overtime issue. She ultimately filed a complaint, which she said led to retaliation in the form of one of her sick days being coded AWOL, and someone being sent to her home to determine whether or if she was actually home sick. (56-60).

While H■■■■ acknowledged that there is a rule regarding orders that conflict with regulations, the chain of command, and compliance without worry of repercussion, she reiterated that she did follow the order given by B■■■■ and would have worked the Temple Hospital shift, alone, had it not been for being called off of the work detail. (Union Exhibit #1) (60-70).

On February ■■■, 2021, the day of the incident, Ginaldi recalled hege was notified by B■■■■ that Officer R■■■■ H■■■■ had refused a detail assigned to her. According to Ginaldi, he told B■■■■ that “there’s actions and consequence to...this conduct...” While Ginaldi testified that he left it to B■■■■ to determine the disciplinary consequences, Ginaldi also testified that he intervened in that discipline. He explained that the detail to the Hospital was to oversee an incapacitated patient, that there was no conceivable way for that patient to become a problem for the detailed

officer, or for the patient to escape, and that he did not have sufficient personnel to assign two officers to the detail. (78-84).

As to the overtime, Ginaldi acknowledged that he believed that "Officer H [REDACTED] (sic) needed negative reinforcement to bring her back into conformity...I was going to reassign her upcoming detail...However, I didn't have to...the client...cancelled their contract with us so I didn't have to take any action in that direction anymore." (85-86). Ginaldi said he never actually had to remove H [REDACTED] because, after he removed her, the detail was cancelled. He said he has the discretion to assign overtime. And, Ginaldi further explained the idea of negative reinforcement as "structured non-punitive discipline...could be anything from an unsavory detail.... There are multiple ways to kind of reinforce an attitude with an officer to let them understand it...that has consequences to actions...." (86-89).

Ginaldi did not acknowledge that B [REDACTED] revoked H [REDACTED]'s assignment, but reiterated that she needed negative reinforcement. Ginaldi said that B [REDACTED] had not told him H [REDACTED] had questions, but said that she had refused to go on the detail. He reiterated that B [REDACTED] had not disciplined H [REDACTED], but said "(b)ased on the situation that the lieutenant related to me. That one of the members of his platoon refused a detail, and he vacillated on taking any action on that. And I explained to him that you have to do something. You can't just let it ride." (91-94). Ginaldi neither ordered B [REDACTED] to discipline H [REDACTED] nor did he discipline B [REDACTED] for

failing to do so. And, he said he never spoke to H [REDACTED] about any of what transpired, insisting she could have come to him to discuss it. Ginaldi insisted that negative reinforcement is not formal discipline. But he did say "I direct supervisors to take care of their platoons. ...Because he (B [REDACTED]) didn't. I told him to do something, or we were going to do something else. He...he went along with something else..." (94-96) (104-106). Ginaldi again reiterated the commonplace fact of negative reinforcement, and that taking the overtime, which ultimately was cancelled anyway, fit the bill. (96-100).

Brent Conway is a lieutenant in the Internal Affairs Division (IAD). He was the investigator assigned to the complaint filed against Ginaldi by Hines. He compiled the investigative file. (Joint Exhibit #3). He took note of Directive 4.13, regarding detainees in hospitals and that two (2) officers will be sent to guard a prisoner. (Joint Exhibit #5). Conway's final determination was "...Captain Ginaldi gave an order to only have one officer go to this hospital detail, which is a violation of the policy, and that Captain Ginaldi took disciplinary action against Officer H [REDACTED] (sic) in retaliation for her refusing to follow that order." (15-21). This is reflected in the conclusions of the report. (21-22).

Conway was questioned on his findings, specifically what the safety issue would have been for H [REDACTED], since the prisoner was incapacitated. While acknowledging the prisoner's incapacitation, Conway pointed to

issues that may occur with family members, and et cetera. He was asked about his findings in the report and said "Our findings found that the policy was violated, and that there was a failure to supervise and abuse of authority for the disciplinary action that was imposed, that was imposed on Officer H [REDACTED] (sic)." (23-27). With regard to the overtime assignment, Conway acknowledged that the overtime assignment had been cancelled by the client. However, he also acknowledged that Ginaldi had ordered the overtime assignment taken away, before the cancellation, because Ginaldi alleged that H [REDACTED] had violated a direct order from B [REDACTED]. (28-41).

James Wagner is a sergeant with the PPD Labor Relations Unit. He became aware of what had transpired after Ginaldi filed a grievance. His department's involvement was to determine that Ginaldi had not "received more days that he should have.this is a perfect example of how it should go. It's definitely within the...recommendation set forth by the PBI board. ...It's within the guidelines. It's, if you look at the first charge, the failure to comply with the police commissioner's orders, it's a reprimand of five days. ...They wind up as giving him five days with that. ...And the failure to supervise, they wind up giving him two days of that. And that could be a reprimand of five days and/or a dismissal." (Joint Exhibit #s 1, 4). (42-44). Wagner related that the discipline was consistent with similar disciplinary action given to others. However, he acknowledged that the

failure to supervise penalty would not have been dismissal, but could have been demotion. (44-47). He also acknowledged that the Police Commissioner has the authority to modify discipline, but that he did not do so. He acknowledged that Ginaldi received the maximum penalty for neglect of duty, and said that he believed the penalty to be appropriate because "...I understand the Captain's reasons for...for putting the one person on...on the detail. But even, if this...even shouldn't rise to the level of a captain." (47-50).

Relevant Portions of Documentary Evidence

Article 1, Conduct Unbecoming, reads, in part, as follows:

Section	Charge	1 st Offense	2 nd Offense	3 rd Offense	reckoning Period
1-§011-10	Abuse of authority	Reprimand to Dismissal	Reprimand to Dismissal	Reprimand to Dismissal	5 Years
...					
8-§003-10	Failure to properly supervise subordinates.	Reprimand to 5 days and/or demotion	5 to 10 days and/or demotion	15 to 20 days and/or demotion	2 Years
....					

(Joint Exhibit #1).

PPD Directive 7.19, 5, Orders from a Superior – Procedures, states in part:

B. Conflicting Orders

1. Personnel who are given an order that is in conflict with a previous order or regulation shall respectfully call attention to such conflict. If the supervisor giving the order does not alter or retract the conflicting order then the order shall stand and, under those circumstances, the responsibility shall be the supervisor's. In such situations personnel obeying the conflicting order shall not be held responsible for disobedience of any order issued.
2. When an order contrary to the provisions of any previous order, rule, regulation, or directive is given to a member, the member shall comply with the order unless it is a violation of the law, and shall thereafter submit a memorandum through the chain of command to the issuing officer/supervisor's Commanding Officer stating the facts and circumstances. (PLEAC 1.4.2)

(Union Exhibit #1).

PPD Directive 4.13,, E (3), states, in part:

The Patrol Supervisor in the district where the hospital is located will:

3. Ensure that two (2) uniformed officers from the district of arrest have been assigned to guard the detainee.

(Joint Exhibit #5).

POSITIONS OF THE PARTIES

The City:

The City avers that there is just cause to sustain the discipline given Ginaldi. "...It's not a case about a scheduling dispute or difference of opinion over assignments. ...It's clearly about a failure to supervise and to retaliate or question. A seven day suspension is not excessive or punitive beyond what is warranted, reflects the seriousness of the Grievant's actions." (108-109). The City reviewed the circumstances of what occurred, the facts and testimony given by H████ and the other witnesses, and contends that the suspension was fair and just. It highlights Ginaldi's own words, about how he was going to use negative reinforcement against an officer who was standing up for what she was entitled to, based on PPD directives. "Through the course of this arbitration, we've shown that the Grievant retaliated against Officer H████ (sic), failed to supervise appropriately.... The City conducted a thorough investigation, and based on the findings, imposed a suspension that not only justified their suspension, but was necessary to preserve the integrity of the Department and the safety of its officers." (109). Therefore, the City demands that the discipline be sustained.

The Union:

The Union maintains that the City has not met its burden of proof. As to the neglect of duty charge, the Union highlights Ginaldi's testimony as to

why sending one officer to the hospital detail was appropriate, based on understaffing in his district and the fact that the detail was not, in any way, dangerous. It offers, rather, that Ginaldi was using good, sound judgment, as he is obligated to do. Further, it notes that, notwithstanding the City's concerns, the wing of the hospital where the prisoner was being held was a secure wing. And, the Union insists that the directive is more of a guideline, rather than a hard and fast rule, for which violation should not automatically lead to discipline. "...(T)he Captain's decision to send a single officer under these circumstances wasn't neglect of duty. He was actually doing his duty effectively. But, even if ... (I)...find that this decision as a technical violation warrants discipline, the City has not presented...evidence from a decision maker as to why the maximum penalty allowable under the circumstances was appropriate." (110-113).

As to the failure to supervise charge, again the Union believes the City is overreaching. "... (T)hat's premised on the same conduct for the same reasons. His decision to send a single officer doesn't justify a discipline in this case. Furthermore, in all of this testimony, the City has not proven that Captain Ginaldi, in fact, modified a single one (sic) Officer H [REDACTED]'s (sic) overtime assignments. It is true that he intended to do so, but he did not. The contract was cancelled before he could do so. He simply did not modify an overtime assignment. ... (T)he Captain's mere intent to remove Officer H [REDACTED] (sic) from an overtime assignment cannot form the basis of this

discipline." (113-114). Therefore, the Union demands that the grievance be sustained, and that Ginaldi be made whole.

OPINION

After a complete review of all the evidence and testimony, I find that the City did have just cause to suspend Ginaldi for seven (7) days. My reasoning follows.

This entire case boils down to something quite simple. H■■■■ was given an order by her lieutenant. She was uncomfortable following the order because she believed it to be one that was violative of rules. She told her lieutenant as much. Nevertheless, she did proceed to follow the order. In the interim, Ginaldi was told about her discomfort, by the lieutenant. Ginaldi determined that H■■■■ needed negative reinforcement, notwithstanding the fact that she was on her way to comply with the order, and notwithstanding the fact that her lieutenant did not impose any discipline on her, negative reinforcement or otherwise.

H■■■■ followed the rules, protocols and procedures when she complained to her lieutenant about the assignment that was not by the directive, notwithstanding the fact that the prisoner in the hospital was incapacitated. She headed to the job at the hospital, despite her reticence, but was called back by her superior before she could begin the shift. Ginaldi, who testified that his lieutenant was the one who made assignments and that the lieutenant was the one who should have determined what was going to happen with H■■■■ and whether she would be disciplined, decided to insinuate himself into the situation because, as

he acknowledged, B [REDACTED] was not disciplining H [REDACTED], and Ginaldi set into action the negative reinforcement. The fact of the client purportedly calling off the overtime before the negative reinforcement could have been accomplished does not change the fact of what occurred, much like the “bad guy” who plans a crime only to be foiled by the police before he executes it – and is charged with an “attempted” crime, something for which he is culpable, as is Ginaldi in this instance. Ginaldi cannot have it both ways – having the lieutenant being charged with certain tasks and then determining for unknown reasons that he should be involved, and then trying to absolve himself of responsibility because the overtime never took place anyway.

The EEO report by Conway validates this. (Joint Exhibit #3). The interviews conducted by Conway show a clear timeline of events. Two sergeants (F [REDACTED] and M [REDACTED]) said it was not commonplace to assign one officer to guard a prisoner, but that Ginaldi gave permission for it to occur in this instance. B [REDACTED] noted H [REDACTED]'s concerns about there being only one officer, and said he told her she could return to her original assignment, and that he assigned another officer to the hospital. Ginaldi acknowledged giving the direction for one officer to guard the prisoner in the hospital. He said B [REDACTED] told him H [REDACTED] refused to go to the hospital, that B [REDACTED] was “leery about taking disciplinary action” against H [REDACTED], and that he told B [REDACTED] there had to be consequences. Ginaldi reiterated that he was the

one who took the overtime detail from H■■■■, and that it was then cancelled by the client.

The EEO report states, in part:

This investigation revealed Captain Ginaldi abused his authority, when he made the decision that one officer would be assigned to guard a prisoner, who was admitted to Temple Hospital. Captain Ginaldi does not have the authority to change or alter departmental policies. Additionally, Captain Ginaldi's decision created a safety issue for Officer H■■■■ and/or any other officer, who was assigned to guard the prisoner, by him or herself.

...

This investigation revealed Captain Ginaldi retaliated against Officer H■■■■ by taking away a Reimbursable Overtime detail, after she refused to comply with Lieutenant B■■■■'s order to guard a prisoner...by herself. Captain Ginaldi did not have the authority to order officers to guard a prisoner...by themselves. Captain Ginaldi also did not have the authority to administer disciplinary action without first conducting an investigation.

(Joint Exhibit #3).

The EEO investigation does not show evidence of bias. Conway interviewed myriad witnesses and distilled it into a credible report. Subsequently the Police Board of Inquiry (PBI) reviewed the evidence, and issued the disciplinary action to be taken; the Commissioner did not change that discipline. In light of the actions of Ginaldi, the PBI's response was measured, appropriate, and with just cause. Notwithstanding Ginaldi's work commendations and the Union's strong defense, there is no basis for modifying the decision to suspend Ginaldi.

In view of the foregoing, I issue the following:

AWARD

The grievance is denied.



Randi E. Lowitt
Arbitrator

Dated: November 1, 2024

State of New Jersey)
) ss.:
County of Morris)

I, Randi E. Lowitt, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.



Randi E. Lowitt
Arbitrator

Dated: November 1, 2024