

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

FOP LODGE 5,

"Union,"

-and-

CITY OF PHILADELPHIA,

"Employer."

**OPINION
AND
AWARD**

AAA Case No. 01-22-0003-6836
(Inspector DeShawn T. Beaufort - Suspension)

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

Appearances:

For the Union:

Richard G. Poulson, Esq.
Willig Williams & Davidson

For the Employer:

Katelyn Mays, Esq.
Ahmad Zaffarese

FOP Lodge 5 and the City of Philadelphia are parties to a collective bargaining agreement ["Agreement"]. [Ex. J-1]. On August 24, 2022, the Union filed a grievance alleging that the City violated the Agreement by suspending Grievant DeShawn Beaufort without just cause. [Ex. J-2]. The City denied the grievance and thereafter the Union submitted the unresolved grievance for binding arbitration. On August 5, 2022, AAA notified me that I was chosen to serve as arbitrator.

An arbitration hearing was held at AAA's Philadelphia offices on December 21, 2023, at which time the parties were afforded the opportunity to argue orally, present witnesses and submit documentary evidence into the record. A stenographic recording of the proceedings was taken. Testifying on behalf of the City were Chief Inspector Christopher Flacco and Lieutenant Christopher Morton – Internal Affairs.¹ Testifying on behalf of the Union were [REDACTED], Chief Inspector [REDACTED], and Grievant Beaufort.² The parties provided oral closing argument. The record was declared closed after confirming receipt of the transcript on February 2, 2024.

¹ Flacco's testimony is located from T:32-58. Morton's testimony is located from T:58-92.

² [REDACTED] testimony is located from T:26-32. [REDACTED]'s testimony is located from T:92-104. Grievant Beaufort's testimony is located from T:104-146.

ISSUE

The parties stipulated to the following issue:

Whether the discipline imposed upon Inspector DeShawn Beaufort was supported by just cause, and if not, what shall the remedy be?

[T:6, lines 19-23].

RELEVANT CONTRACT PROVISIONS

ARTICLE XX. DISCIPLINE AND DISCHARGE

A. General

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

CIVIL SERVICE REGULATION 14

14.04 Rejection of employee during probationary period

At any time during the probationary period, the appointing authority, or his/her designated representative, with approval of the Director, may discharge or demote a probationary employee, if said appointing authority, or his/her designated representative, determine that such employee is unable or unwilling to perform his/her duties satisfactorily, or that his/her habits and dependability do not merit his/her continuance in the City service or that information revealed during the pre-employment background investigation requires removing the employee from the position. The appointing authority, or his/her designated representative, may, depending on the circumstances justifying the rejection,

recommend that the name of the rejected probationer be either removed or restored to the eligible list. The name of the rejected probationer will not be restored to a continuous or periodic list if his or her name already appears on the eligible list as a result of applying and passing the exam again for the same continuous or periodic list in accordance with regulation 9.121.

* * *

14.042 Appeal rights of rejected probationary employee

An employee who was rejected during the probationary period does not have the right to appeal to the Civil Service Commission against such action.

BACKGROUND

DeShawn Beaufort ["Grievant"] has been employed by the City Police Department for approximately 27 years. At the time that this matter arose, Grievant Beaufort had been assigned as the Chief Inspector of the Office of Professional Responsibility since November 19, 2020, and was serving during his probationary period which was scheduled to expire on May 18, 2021. The Grievant received satisfactory ratings and several citations over his career. [See Exs. U-1 & U-2]. The Grievant has no prior discipline.

On [REDACTED], the Grievant was involved in an off-duty incident. The matter was investigated by Lieutenant Christopher Morton of the Internal Affairs Division. The allegation against the Grievant was summarized in the IAD investigation report:

On [REDACTED] 1, at approximately [REDACTED], Lower Southampton Township Police Department (L.S.P.D.) responded to an incident at East Street Road at Central Avenue, Feasterville, PA 19053. P/O [REDACTED] (L.S.P.D.) responded to a radio assignment for a report of an armed subject that insinuated he had a weapon. The complainant and victim, Chief Inspector DeShawn Beaufort, in off-duty status, reported to P/O [REDACTED] there was a road-rage incident that occurred near the [REDACTED], which is located at [REDACTED] in Lower Southampton Township, Bucks County, PA.

[Ex. C-1(a)].

On March 1, 2021, Morlon conducted a recorded interview of the Grievant. A transcript and summary of the interview are included in the IAD Investigation Report that was sent to the Police Commissioner. [Exs. C-1 (a) & (b)]. The summary provides:

Chief Inspector Beaufort stated during his interview on [REDACTED], he was on vacation and off-duty, dressed in civilian clothes wearing a black sweatshirt and grey sweatpants and operating his personal 2020 Kia Telluride (SUV) in the area of East Street Road and Central Avenue in Lower Southampton Township, PA. Chief Inspector Beaufort was leaving the [REDACTED] parking lot, making a right turn onto Central Avenue, when a male in an older blue Lincoln almost struck the driver's side of Chief Inspector Beaufort's vehicle. The operator of the blue Lincoln was operating at a high rate of speed, blowing his car horn, yelling and flipping his middle finger at Chief Beaufort, who was forced to take corrective measures by braking hard to avoid a high-speed collision. The operator of the blue Lincoln was traveling south on Central Avenue and was observed stopped at the red light at Central Avenue at East Street Road.

Once it was safe to proceed, Chief Inspector Beaufort completed his turn onto Central Avenue and proceeded in the right lane to the steady red signal at Central Avenue and East Street Road. The operator of the blue Lincoln, later identified as [REDACTED], was in the left south facing lane, and Chief Inspector Beaufort was in the right turn only lane with his vehicle placed to the right of [REDACTED] vehicle. Both vehicles were stopped at the steady red light, and the operators of both vehicles exchanged words.

Chief Inspector Beaufort initiated the verbal exchange with [REDACTED] while stopped at the red light when he rolled down his window and stated to [REDACTED], "You were saying something?" [REDACTED] responded, "Oh you wanna go", which Chief Inspector Beaufort interpreted as do you want to fight. Chief Inspector Beaufort described [REDACTED] as appearing extremely angry and observed him reaching down

repeatedly and grabbing towards his left ankle. [REDACTED] then stated, "I got something fucking for you!" Chief Inspector Beaufort heard [REDACTED] repeatedly say that phrase, as he was continuing to reach down by his left leg. Chief Inspector Beaufort observed [REDACTED] open his driver's side door as to get out of his car, but then close the driver's side door. At this point, due to [REDACTED] statement and actions, Chief Inspector Beaufort believed that [REDACTED] could possibly be armed with a handgun.

Chief Inspector Beaufort yelled, "Yo what are you doing" and [REDACTED] responded saying, "Don't reach!" He repeated that phrase at least two more times. Chief Inspector Beaufort responded, "Yo" and showed his hands so that [REDACTED] could see that he had no weapons in his hands. Chief Inspector Beaufort became increasingly concerned for his safety, believing that he keeps cellphone on his hip, via a belt clip, and did not want to reach for it, because he believed that such a movement would escalate the situation, causing [REDACTED] to "start shooting."

Chief Inspector Beaufort decided the best way to attempt to deescalate the situation was for him to pull out his police badge, which was readily accessible, and to identify himself as a police officer. Chief Inspector Beaufort identified himself as a police officer, and [REDACTED] responded, "I don't give a fuck about that badge!" Chief Inspector Beaufort responded, "You know what you're right" and then the light turned green, and both vehicles started to pull away.

[REDACTED] operating the Lincoln Town Car, slowed down in the middle of East Street Road and Central Avenue, as Chief Inspector Beaufort continued west on East Street Road.

Chief Inspector Beaufort explained that approximately ten minute later, as he was returning from another store and driving back eastbound on East Street Road, he passed the [REDACTED] located at [REDACTED]. Chief Inspector Beaufort noticed the blue Lincoln Town Car parked in the last bay of the [REDACTED] garage. Chief Inspector Beaufort explained that the [REDACTED] bay doors are mostly glass, and the vehicle was illuminated by the interior lights, and he believed that the operator of the Lincoln Town Car was attempting to hide the vehicle from public view. Chief Inspector Beaufort pulled into

the [REDACTED] parking lot, towards the front entrance, and went into the Mid[REDACTED] in an attempt to gather critical information, such as a detailed description of the offender and his vehicle, prior to contacting 911. Chief Inspector Beaufort identified himself as a police officer as he entered the [REDACTED], and he briefly spoke to a male employee that was behind the counter. Chief Inspector Beaufort was attempting to speak with the operator of the Lincoln Town car, which was unsuccessful, therefore he exited the store and called 911.

Chief Inspector Beaufort exited the [REDACTED] [REDACTED] and contacted 911, and requested that a marked police unit respond to his location. While Chief Inspector Beaufort was on the call with the 911 dispatcher, he observed the offender, [REDACTED], enter his vehicle and proceed to reverse his vehicle out of the bay area; then he proceeded to drive off, while waving at Chief Inspector Beaufort. Chief Beaufort believed that [REDACTED] behavior, leaving prior to the arrival of the on-duty police officer, only strengthened his belief that [REDACTED] was armed and was fleeing the location to avoid arrest. While the offender was stopped at the traffic light at [REDACTED], Chief Inspector Beaufort was able to get a full description of the male and the vehicle he was operating, which he then relayed to the 911 dispatcher as the offender fled the scene eastbound on East Street Road at a high rate of speed.

Moments later, Sergeant [REDACTED] (L.S.P.D.) arrived at the scene and Chief Inspector Beaufort identified himself as a police officer, and explained what had transpired. Sergeant [REDACTED] explained that other officers had a vehicle stopped and instructed Chief Inspector Beaufort to follow him in an attempt to make a positive identification on the subject and vehicle that were stopped by Lower Southampton police officers.

Chief Inspector Beaufort followed Sergeant [REDACTED] to the area of Central Avenue and Chestnut Street in Bensalem Township, PA, where he made a positive identification of [REDACTED] and the blue Lincoln Town Car as the male and vehicle that were involved in the incident, and the male that had threatened him with a weapon. Chief Inspector Beaufort stated that the incident ended when [REDACTED] was arrested for Terroristic Threats and Disorderly Conduct.

Chief Inspector Beaufort described his role in the incident as the victim, and that the incident started as a traffic violation; however, [REDACTED] quickly escalated the situation. Chief Inspector Beaufort described [REDACTED] as extremely aggressive and threatening. Chief Inspector Beaufort stated he was armed with his off-duty weapon, which he kept concealed in a body-band underneath his sweatshirt, and at no time during the incident did he chase after the offender or attempt to arrest him.

Chief Inspector Beaufort explained he did not contact 911 at the onset of the incident because due to his positioning next to the offender's vehicle, and that he did not expect the incident to escalate to where he was being threatened with a weapon. Chief Inspector Beaufort waited to contact 911 until after he gathered a detailed description of the offender, the offender's vehicle, and direction of travel of the offender, which he provided to the 911 dispatcher, which in turn lead to the responding officers locating and arresting [REDACTED].

On 02-24-21, the assigned spoke to Lt. [REDACTED] (L.S.P.D.), who confirmed that his officers conducted a search of the seized Lincoln Town Car and recovered a piece of steel rebar, approximately eighteen-inches (18") on length with a taped handle, from underneath the front seat of the Lincoln Town Car. Lt. [REDACTED] (L.S.P.D.) confirmed that [REDACTED] was being charged with Terroristic Threats (M-2) and Disorderly Conduct (M-2), and that a preliminary hearing was scheduled [REDACTED]
[REDACTED]

*Update: The preliminary hearing was later rescheduled [REDACTED]
[REDACTED]*

[Id.].

Based upon the IAD Report, IAD Inspector John Stanford sustained violations of Directive 10.10, Off-Duty Police Actions. After summarizing the events that transpired on [REDACTED], Stanford made the following conclusions:

Per Philadelphia Police Department Directive 10.10 entitled, *Off-duty Police Actions*, all off-duty police actions reflect upon the integrity of the individual sworn member, as well as the Philadelphia Police Department. Therefore, all off-duty police action in any minor family or neighborhood disputes, summary offences, or traffic violations, unless such action is necessary to prevent bodily injury, serious bodily injury, or death. Sworn members shall call Emergency 9-1-1 in these situations.

Also noted in Directive 10.10, under Procedures: 2A, most times an off-duty officer lacks body armor, may be unarmed, and usually lacks backup communications. In cases where the officer observes behavior warranting police intervention, the officer should dial Emergency 9-1-1, clearly identify themselves as a police officer, and be a good witness. When possible, a call to 9-1-1 should be placed prior to taking any other action.

This investigation found that an infraction occurred and the actions of Chief Inspector Beaufort were inconsistent with Directive 10.10. Chief Inspector Beaufort and the subject were engaged in a verbal exchange while stopped at a traffic light, leading to a confrontational situation in which Chief Inspector Beaufort stated that he believed the subject was armed with a firearm. He failed to immediately contact Emergency 9-1-1 after separating himself from the initial contact with [REDACTED] at East Street Road and Central Avenue. After separating himself from the situation by distance and time, approximately ten minutes; Chief Inspector Beaufort again failed to contact Emergency 9-1-1. He also chose to reengage himself back into a potentially dangerous situation by entering the [REDACTED] to attempt to speak with the subject prior to the notification and arrival of uniformed police officers.

This investigation has **SUSTAINED** that **Chief Inspector DeShawn Beaufort, Payroll [REDACTED] Office of Professional Responsibility**, abused his authority when he used his position as a sworn member of the Philadelphia Police Department to further investigate an incident that was under the jurisdiction of another county's law enforcement agency.

During his interview for this investigation, Chief Inspector Beaufort explained that after the initial incident and contact

with the operator of the Lincoln Town Car, both vehicles departed the immediate area traveling in opposite directions. After approximately ten minutes, Chief Inspector Beaufort stated that he was returning from another store and driving back eastbound on East Street Road when he passed the [REDACTED] located at [REDACTED]. Chief Inspector Beaufort then stated that he noticed the blue Lincoln Town Car parked in the last bay of the [REDACTED] garage. Chief Inspector Beaufort further explained that he pulled in the Midas parking lot, towards the front entrance, and went into the [REDACTED] in an attempt to confirm that the vehicle and the male were in fact the ones involved in the incident. Chief Inspector Beaufort stated that he identified himself as a police officer as he entered the [REDACTED]; he briefly spoke to a male employee that was behind the counter and requested to speak with the operator of the Lincoln Town Car. Chief Inspector Beaufort's attempt to speak with the operator of the Lincoln Town Car was unsuccessful, therefore he exited the store and called 911.

Chief Inspector Beaufort's actions, while he was off-duty and in another jurisdiction, constituted an abuse of his authority when after the initial incident and contact with [REDACTED], he entered the [REDACTED] and identified himself as a police officer in an attempt to confront [REDACTED]. It was only after the attempt had failed that Chief Inspector Beaufort placed a call to Emergency 9-1-1.

This report should be forwarded to the Commanding Officer, Police Board of Inquiry for proper action.

[/d.].

In April 2021, the Grievant was notified that he was rejected during his probationary period as Chief Inspector because of his actions on [REDACTED] [REDACTED]. [Ex. U-3]. The effective rejection date was April 15, 2021. [/d.]. The notice included a summary of the incident. The notice indicated:

This course of conduct displays both a lack of maturity in deescalating a situation and poor decision making skills, which are key functions that are prerequisites to perform in the leadership role as a Chief Inspector with the Philadelphia Police Department. Therefore, you are being rejected during your probationary period. [Id.].

On June 8, 2021, the Grievant wrote a letter to Police Commissioner Danielle Outlaw requesting that the matter be reconsidered because he believed there were details of the incident that were not brought to her attention. [Ex. C-1(d)]. On June 15, 2021, the Grievant was re-interviewed by Morton. [Id.]. On June 18, 2021, Stanford concluded that "[b]ased on a review of the original investigation and the interviews conducted on 06-15-21, the details of the incident remain the same; and there were not any details or information excluded, omitted or misrepresented in the memorandum to the Police Commissioner dated 03-22-21. [Ex. C-1(a)].

On February 8, 2022, a Police Board of Inquiry was held. Christopher Flacco, Chief Inspector of the Narcotics Bureau, served as the President of the PBI. On February 9, 2022, Flacco wrote the following memorandum to the Police Commissioner that provides, in relevant part:

2. At the beginning of the hearing, Inspector Beaufort plead guilty to the charge of 5-§012-10 and the board was charged with recommending a penalty. The two sworn members of the board recommended the maximum penalty of a 10-day suspension while the civilian member

recommended a 5-day suspension. Regardless of the guilty plea, it was clear that the inspector grossly violated the policy. At the initial incident, Beaufort showed his badge and identified himself as a police officer because he believed the male had a gun and posed a threat; however, he went and conducted personal business at a local store and was driving home when he spotted the subject vehicle. He then went into that store and identified himself as an officer again in an attempt to confront the male. In the interviews conducted by IAD, there was a 10-minute time span between the first encounter and the second. If there was a fear that the male was armed and posed a threat, why was no action taken by the inspector immediately at the time of the first encounter? Also, if the event was over at the conclusion of the first incident and 911 was not notified, why was there a sudden need to confront the male 10-minutes later? The actions and lack of action on the part of Inspector Beaufort were clearly problematic. These facts as well as his position as the commanding officer of OPR led to the penalty recommendation.

3. The board also recommended a guilty finding to the charge of 1-§011-10. The two sworn members of the board recommended a reprimand while the civilian member recommended a two-day suspension. The closing argument by the advocate claimed that the abuse of authority was based on the arrest of the defendant. This conflicted with the testimony of Inspector Stanford who testified that the abuse of authority was Inspector Stanford using his badge inside the [REDACTED] store in an attempt to confront the defendant. At some point, while in the store, Inspector Beaufort called 911 although we were not clear, based on the evidence, at what point the call was made. The mitigating factor for the penalty was the divergence of the closing argument with the testimony of Inspector Stanford as well as the phone call to 911.

[Ex. C-2].

The City issued a notice of suspension for the sustained charges of Conduct Unbecoming, Section 1-§011-10 (Abuse of authority) and Neglect of Duty, Section

5-§012-10 (Failure to comply with the Department's off-duty policy). [Ex. J-3]. On August 24, 2022, the Union filed a grievance alleging that the City violated the Agreement by suspending the Grievant without just cause. [Ex. J-2]. The City denied the grievance and thereafter the Union submitted the unresolved grievance for binding arbitration. This matter ensued.

Christopher Flacco has been assigned as the Chief Inspector in charge of the PPD Narcotics Bureau since July 2020. Prior to that, Flacco served as the Chief Inspector in charge of the Office of Professional Responsibility ["OPR"] for seven and one-half years. Flacco testified that he served on the PBI Board that considered the charges against the Grievant. Flacco indicated that he did not have "a lot of independent recollection" of the Grievant's PBI hearing and relied upon the memorandum he submitted to the Police Commissioner on February 9, 2022. [See Ex C-2]. With respect to the charge that the Grievant abused his authority, Flacco recalled there was a conflict between the PPD advocate's closing argument, and the testimony presented by Inspector Stanford. Flacco testified that regardless of the conflict that "if I remember correctly, in the board's opinion, Inspector Beaufort should not, once that ten-minute window had passed, go into the store. And if he felt that the individual had a gun, then he should have called 911, been a good witness and go from there." [T:49, line 13-19]. Flacco elaborated:

[Flacco, On Re-Direct]

Q. [By City Counsel Mays] Why did you feel the directive was violated here with Inspector Beaufort?

A. If I remember correctly - - and I don't have the notes of testimony in front of me - - there was an incident between two vehicles. I'm not going to call it a road rage, but a road incident between two vehicles. The driver of the - - not Inspector Beaufort's car - - made movements or indicated in some way to Inspector Beaufort that he had a gun. Inspector Beaufort is off duty, he's in his private vehicle, that should have been a phone call to 911. Then, when you saw the car again and you didn't call 911 at that time, but if you saw the car again at the [REDACTED] shop and then you went into the [REDACTED] shop to what my understanding and recollection, sitting here, was to confront the individual within the [REDACTED] shop, that goes beyond just being wrong. [T:56, lines 6-23].

Flacco also indicated that he believes police officers assigned to OPR "should be held to a much, much higher standard" given their duty to enforce the rules of the Department. [T:57, lines 17-18].

Flacco testified that he has known the Grievant "for a lot of years" and does not hold any bias against him. [T:38, lines 3-4]. Flacco recalled that he interviewed the Grievant before he was promoted to Captain. Flacco testified that he was transferred out of OPR in July of 2020. Flacco indicated that Stanford replaced him as the Chief Inspector of OPR on an interim basis until the Grievant took over. Flacco testified that IA investigations are sometimes farmed out to private law firms to avoid bias, the potential for bias, or the appearance of impropriety. When

asked specifically whether an investigation of the Chief Inspector of OPR would have to be farmed out, Flacco testified that it may be prudent to do so, but it was not required. Flacco also testified "if you want to do a complete, thorough, comprehensive [IA] investigation and there is a court matter coming up, you would want the testimony from the court hearing, obviously, as part of the investigation." [T:54, lines 8-13].

Lieutenant Christopher Morton has been assigned to Internal Affairs – Investigative Support Services ["ISS"] for the past five (5) years. Morton serves as the "supervisor of an investigative squad that handles police corruption, any criminal allegations, anything along those lines." [T:59, lines 6-9]. Morton indicated that ISS is separate and apart from the rest of IAD in the event that an investigation must be conducted on other officers assigned within IAD. Morton testified he was assigned to investigate this matter because the Grievant, the Chief Inspector of OPR, was involved. Morton stated, "I work in Internal Affairs but I work across the parking lot in a separate building from the chief at the time." [T:60, lines 16-18]. Morton testified he knew the Grievant before the investigation because the Grievant was his boss. Morton indicated he has no bias against the Grievant and considers him to be a great leader and boss.

Morton testified to the steps he took to complete his IA investigation. Morton submitted a summary of his investigation in a ten (10) page memorandum that

moved up through the chain of command. [See Ex. C-1(a), pp. 1-10]. Morton testified his report eventually went to Inspector Stanford who was responsible for reaching the conclusions of the investigation. Morton was not asked for his input on the conclusions. Morton recalled reinterviewing the Grievant after Commissioner Outlaw received a request from the Grievant on June 8, 2021. [See Ex. C-1(d)]. With respect to the Grievant's conduct at the [REDACTED], Morton testified, "I don't think there was that much of a discrepancy." [T:87, lines 14-15].

[REDACTED] is the [REDACTED] y for Bucks County. Louka was assigned to handle charges against [REDACTED] who eventually pled guilty to two (2) misdemeanor charges of disorderly conduct as a result of the incident involving the Grievant. [REDACTED] testified that based upon his review of the incident that the Grievant did not do anything wrong. On cross, [REDACTED] acknowledged he is not familiar with the PPD's off-duty policy and was not involved in the IA investigation.

Chief Inspector [REDACTED] was previously assigned to OPR as a Staff Inspector for approximately two and one-half years and conducted several hundred investigations. [REDACTED] was not responsible for investigating the allegations against the Grievant and has no independent knowledge of the incident. [REDACTED] testified that in her experience with IA investigations where there were allegations that involved civil or criminal court activity that the IA

investigations "basically slowed down to a stop due to the fact that the investigation has an open or a pending case." [T:94, lines 12-15]. Francis stated that in order to review and evaluate information that may be critical to the IA investigation that it usually proceeds "after a case is adjudicated and any evidence or related information that will help us in our investigation is received and we can proceed forward." [T:94, lines 15-19]. [REDACTED] testified it is unusual for an IA report and conclusions to be issued six (6) weeks after an alleged incident and before reviewing evidence from a criminal case that is still pending.

The Grievant has been employed by the PPD for 27 years. He has no prior discipline and has never received an unsatisfactory rating. [See Ex. U-1]. The Grievant was promoted to Inspector in 2018, and then to Chief Inspector in 2020. Officers are required to complete a six (6) month probationary period upon promotion. In November of 2020, the Grievant was assigned to OPR. The Grievant testified that he replaced Stanford who was serving in an acting capacity.

The Grievant testified to the events of [REDACTED]. His testimony was substantially similar to and consistent with his IA interview and the summary contained in the IA investigation report. [Exs. C-1(a) & (b)]. The Grievant indicated that he was aware of the PPD's off-duty policy that requires officers to report when they identify themselves as police officers and show their badges while off-duty. The Grievant emphasized it was always his intention to comply with

the off-duty policy. The Grievant indicated that when he was at [REDACTED] he identified himself and showed his badge because the manager believed he was lying about the incident. The Grievant testified he called 911 after the manager indicated [REDACTED] was not going to speak with him. He later called [REDACTED]. The Grievant believed his actions were consistent with the off-duty policy. The Grievant indicated he continued to oversee all of the IA investigations after the [REDACTED] incident. The Grievant stated, "[t]he only thing that changed was I couldn't sign off on anything." [T:127, lines 17-18].

The Grievant testified he previously received an award for his actions in a prior off-duty incident. The Grievant indicated he prevented a car-jacking while driving home from work in an unmarked vehicle.

The Grievant did not believe it was proper for Stanford to oversee his IA investigation because "it's an employee overseeing his boss, so this is a little problem there." [T:130, lines 10-11]. The Grievant testified that he was rejected during probation for Chief Inspector because of this incident. [See Ex. U-3]. The Grievant indicated it is unusual for an IA investigation to be completed in six (6) weeks. The Grievant stated that had he remained in the Chief Inspector rank for 30 more days he would have completed his probationary period. The Grievant noted that had IA waited for the related court case to be finalized before completed its investigation that he no longer would have been serving his

probationary period. The Grievant believes the average person would question the Department's failure to farm out the IA investigation.

The Grievant testified that he loves his job with the Department, but he also applied for police chief positions in Baltimore County, Kansas City, and New Orleans. The Grievant indicated that although he was a finalist for each of these positions that "the incident we're discussing right now was a hinderance". [T:137, lines 10-11]. He also believes given the current rules there is little chance he will ever make Chief again in the Department. When asked in hindsight what he would do differently, the Grievant testified:

[Grievant, On Direct]

- A. I would have just exercised more patience during the incident. When it comes to being a police officer, verifying, doing those types of things, that's what we do. Would I - - you know, like I said, I would have went to work that day. I would have just exercised more patience when the accident almost happened and just ignored it to that extent.
- Q. [By FOP Counsel Poulson] * * * would the fact that maybe you might have done things a little differently that day, does that mean your conduct on [REDACTED], in your view, warranted any formal disciplinary action?
- A. No, because I believe I exercised some severe discretion in terms of my approach to the matter. That day, I did have my weapon on me, which I never pulled. I exercised caution. I definitely think I utilized my training and being able to diffuse a situation, even to the point of showing the badge to try to get the person to think, if I do have an illegal gun, if I am involved with a police officer, I just wouldn't - -

you know, not be involved, but it didn't matter to that person, so I tried various different ways to kind of diffuse the situation.

[T:138, line 12 through T:139, line 19].

On cross-examination, the Grievant testified that he believed that his efforts to verify information on his own were consistent with the off-duty policy. He also acknowledged that he did not immediately call 911 when he thought [REDACTED] had a weapon in his car and, instead, went to [REDACTED]. The Grievant reiterated that he felt it was not safe to call 911 while he was interacting with [REDACTED] in their vehicles because of concern that [REDACTED] would interpret his actions as an effort to reach for a weapon.

SUMMARY OF THE ARGUMENTS

The City's Position

The City contends that the discipline imposed upon the Grievant is supported by just cause. With respect to the 12-day suspension, the City maintains that the evidence shows that the Grievant's actions on [REDACTED], violated the Department's Off-Duty policy. The City submits that the Grievant should have called 911 as soon as he believed that [REDACTED] had a weapon. Instead, the Grievant went shopping, proceeded to take steps on his own to conduct an investigation, and showed his badge in another county. The City asserts that the Grievant's "actions and lack of actions demonstrated a lack of self-restraint and judgment and the discipline was entirely just, especially given his role in Internal Affairs in OPR." [T:149, lines 7-12].

The City maintains that the Grievant's rejection during his probationary period is not arbitrable. The City supports its position with a side letter between the parties dated December 18, 2009, and two (2) arbitration awards addressing the same issue between the parties. [Exs. C-3 through C-5].

For these reasons, and the entire record, the City contends that it had just cause to discipline the Grievant, and requests that the grievance be denied.

The Union's Position

The Union contends that the discipline imposed upon the Grievant is not supported by just cause. The Union indicates the City failed to provide "specific testimony to what the exact violation was, although it appears to be that Inspector Beaufort did not report the off-duty incident in a prompt enough manner to satisfy the police department." [T:151, lines 3-8]. On this point, the Union points out there are no time limitations for an officer to report an off-duty incident. The Union submits that the Grievant properly exercised the same judgment he used and was commended for when he broke up a carjacking:

It wasn't an immediate emergency where he had to pull over and call 911 in his judgment as a police officer, but he fully intended to report that when he could. It just was this coincidence of seeing the car in the [REDACTED] and pulling over at that point in time, I think resulted in why we are here. Maybe it wouldn't have mattered for some of the other more problematic aspects of this case regarding intent of the police department with respect to Chief Inspector Beaufort's career, but he didn't do anything wrong by not calling 911 or contacting the police department at that point to report the off-duty conduct initially. He exercised judgment in trying to verify before he called the police. Why? He said, look, I am in Lower Southampton Township, if I'm going to report someone with a gun, there is going to be a big response. He did what a responsible police officer would do. Maybe not everybody would do that. Maybe some people would've just called earlier. Maybe some people would have said, forget it, I'm done, not reporting it, not doing anything. Inspector Beaufort is by the book. He's going to report the fact he showed his badge and he sees the Lincoln Town Car - - and he's sick, by the way - - he doesn't keep going home. He pulls in, he says, I am going to do what I do as a police officer and he wasn't yelling at anybody, he wasn't waving around a badge, he was doing what responsible people do and that's what he did. He did good police work.

[T:152, line 20 through T:154, line 10].

The Union emphasizes that the Grievant has no prior discipline. Yet, he was suspended for 12 days and demoted in the first instance. The Union points out that the range for the offenses he was charged with begin with a reprimand.

The Union contends the City failed to provide the Grievant with industrial due process because the internal affairs investigation was kept in house rather than farming it out to an outside entity. The Union points out that "the person who is deciding whether the charges are sustained is the person who stands to directly benefit from discipline being imposed." [T:158, lines 19-23]. The Union submits the "compressed time frame" of the investigation adds to the poor optics of this matter. [T:159, line 19].

Lastly, the Union maintains that the arbitrator has the authority to address the City's rejection of the Grievant during his probationary period in the position of Chief Inspector since his rejection was based solely upon his conduct on

[REDACTED]

For these reasons, and based upon the entire record, the Union submits the discipline imposed upon the Grievant was not supported by just cause, requests that the grievance be sustained and the Grievant be made whole in all respects.

DISCUSSION

I have carefully considered all of the arguments and evidence submitted into the record. The issue is whether the discipline imposed upon Inspector DeShawn Beaufort was supported by just cause. The City has the burden to prove that it had just cause to discipline the Grievant. The Grievant is charged with conduct unbecoming a police officer and neglect of duty in connection with his off-duty conduct on [REDACTED]. Section 1-§011-10 of the Disciplinary Code refers to "abuse of authority". The penalty for a first offense ranges from a reprimand to dismissal. Section 5-§012-10 of the Disciplinary Code defines "neglect of duty" as "failure to comply with the Department's off-duty policy." The penalty for a first offense ranges from a reprimand to a 10-day suspension.

I will first address whether the Grievant's rejection during his probationary period is arbitrable. This issue was expressly addressed by the City and the Union in a letter dated December 18, 2009, that provides, in pertinent part:

This will also confirm that the Fraternal Order of Police Lodge No. 5 has no right to pursue arbitration on behalf of probationary employees and that probationary employees are not subject to the just cause provisions of the contracts and interest arbitration awards between the parties. The Fraternal Order of Police Lodge No. 5 agrees that there is a specific waiver of arbitrability that applies to any contractual challenge to the rejection during probation of any represented employee.

[Ex. C-3].

The issue was later addressed by Arbitrator David Reilly in an Award dated August 5, 2022, after the Union challenged the City's demotion of Javier Montenez from Sergeant to Police Officer prior to the completion of his probationary period. The issue was similarly addressed by Arbitrator Scott Buccheit in an Interim Award dated April 10, 2023, after the Union challenged the City's demotion of Michael Labrice from Lieutenant to Sergeant prior to the completion of his probationary period. In each instance, the arbitrator concluded that the December 18, 2009 letter executed by the parties supported the City's position that a rejection during the probationary period is not arbitrable. Having extensively reviewed the December 18, 2009 letter and the awards, I conclude that the Grievant's rejection during his probationary period is not arbitrable. As expressly stated in the letter, "there is a specific waiver of arbitrability that applies to any contractual challenge to the rejection during probation of any represented employee."

With respect to the internal affairs investigation that eventually led to the charges and discipline imposed in this matter, notwithstanding its expediency, the decision to keep the matter in house, and Stanford's role in the process, I am persuaded that Morton's investigation was conducted thoroughly and without bias.

I now shift the focus to the discipline that was imposed upon the Grievant for violating the Department's off-duty policy. Directive 10.10 "Off-Duty Police Actions" provides, in pertinent part:

1. POLICY

- A. The safety of sworn members and others in the immediate area shall be the paramount concern when deciding to take any off-duty police action. Also, any action taken off-duty must always be consistent with Federal and State law and Departmental policies and procedures. All off-duty police actions, regardless of the jurisdiction of occurrence, are subject to review, investigation and disciplinary action, if warranted.
- B. All off-duty police actions reflect upon the integrity of the individual sworn member as well as the entire Philadelphia Police Department. Therefore, all off-duty police actions must be beyond reproach and avoid even the appearance of any improprieties. As such, sworn members shall not take any off-duty police action in any minor family or neighborhood disputes, summary offenses or traffic violations, unless such action is necessary to prevent bodily injury, serious bodily injury or death. Sworn members shall call Emergency 9-1-1 in these situations.
- C. In most off-duty situations, the safest and tactically superior action is to simply call Emergency 9-1-1 and provide detailed information for the responding on-duty officers. There is no cowardice in not taking off-duty police action when not properly prepared or equipped. It is simply proper officer safety tactics to protect yourself as well as your family.

[Ex. C-1(e)].

Chief Inspector Flacco's memorandum to the Police Commissioner provided a reasoned analysis behind the Board's decision to recommend a 12-day suspension and guilty findings based upon the Grievant's conduct on [REDACTED]. During the arbitration proceedings, Flacco admitted he did not have "a lot of independent recollection" and relied upon his memorandum to the Commissioner to explain the basis for the PBI's recommendations. This said, there was nothing in his testimony during the hearing to suggest or show that Flacco possessed an ill motive or any bias against the Grievant.

I have independently reviewed all of the evidence presented in this matter. Although I find the Grievant's work history to be commendable, I conclude the evidence supports the City's decision to discipline the Grievant for his conduct on [REDACTED]. Most notably, the facts and circumstances show that the Grievant decided to perform a personal errand rather than calling 911 once he separated from Troffo on the road. He then proceeded to commence his own investigation and identify himself as a police officer in the [REDACTED] store. I am persuaded that these actions are inconsistent with the Department's off-duty policy notwithstanding the fact that there was only a ten (10) minute gap between the time that the Grievant encountered [REDACTED] on the road and when he entered [REDACTED] and proceeded to call 911 once he realized [REDACTED] was not

³ The memorandum indicates that the Grievant pleaded guilty to the charge of 5-§012-10 at the beginning of the PBI hearing.

coming out to see him. Although I find that the Grievant was a credible witness, his explanations for his conduct do not serve to excuse his actions.

Based upon the above, and the entire record, the City had just cause to discipline the Grievant. However, it is not clear from this record whether the Grievant's exemplary record over his 27-year career was factored into the decision to suspend him for 12 days in his first instance of discipline. It is a common axiom that discipline must be corrective rather than punitive in nature. Taking everything into consideration, the charges are sustained, but the Grievant's suspension shall be reduced from 12 days to 5 days. The Grievant shall be made whole in all other respects.

AWARD

The City had just cause to discipline the Grievant, but the penalty shall be modified to a 5-day suspension without pay. The Grievant shall be made whole in all other respects.

Dated: March 4, 2024



Robert C. Gifford