

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between the

FOP LODGE #5,

"Union,"

-and-

CITY OF PHILADELPHIA,

"Public Employer."

**OPINION
AND
AWARD**

AAA Case No. 01-21-0003-9699
(P/O Andre Coles (279699) – Discharge)

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

Appearances:

For the Union:

Thomas M. Gribbin, Esq.
Willig, Williams & Davidson

For the Employer:

Katelyn Mays, Esq.
Ahmad Zaffarese

FOP Lodge 5 ["Union"] and the City of Philadelphia ["City"] are parties to a collective bargaining agreement ["Agreement"]. [Ex. J-1]. On May 14, 2021, the Union filed a grievance alleging that the City violated the Agreement by terminating the employment of Police Officer Andre Coles ["Grievant"] without just cause. [Ex. J-2]. After the City denied the grievance, the Union submitted the unresolved grievance for binding arbitration on May 20, 2021. [Ex. J-3].

On February 16, 2024, an arbitration proceeding was held at AAA's Philadelphia offices at which time the parties were afforded the opportunity to argue orally, present witnesses and submit documentary evidence into the record. A stenographic recording of the proceedings was taken. Testifying on behalf of the City were Deborah Francis – Chief Inspector of the Intelligence Bureau, Captain Jose Medina, [REDACTED] and Captain Gregory Malkowsky. Testifying on behalf of the Union were [REDACTED] and Grievant Coles. On March 29, 2024, the record was declared closed.

ISSUE

The parties stipulated to the following issue:

Whether the City had just cause to discharge the Grievant.
If not, what shall be the appropriate remedy?

CITED CONTRACT PROVISIONS

Article XX, Discipline and Discharge

A. General

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

BACKGROUND

Prior to his discharge, Grievant Andre Coles had been employed by the City Police Department as a Police Officer since September 30, 2013, with two prior disciplines; the first, a DUI in 2015, which resulted in his assignment to desk duty and a pay reduction for an unspecified probationary period of time, and the second, a charge of conduct unbecoming for lying during the course of an investigation in May of 2017, for which he served a 10-day suspension, though the matter is subject to a pending grievance. The Grievant has been assigned to the 25th District since February 24, 2016.

The basis for the Grievant's discharge is an incident that occurred on [REDACTED] [REDACTED] [REDACTED]. At about 3:07 a.m. that day, 14th District officers responded to a "Person with a Gun" dispatch, based on a 9-1-1 phone call from [REDACTED] at the Grievant's personal residence address in the City. As set forth in a Commanding Officer's Internal Investigation Memorandum of March 9, 2020, and investigated by then-Lieutenant Jose Medina of the Internal Affairs Division¹ beginning February 25, 2019, [REDACTED] stated that her boyfriend, Police Officer Andre Coles, arrived home intoxicated "and a verbal argument ensued and escalated

¹ Then-Lieutenant Medina's investigative role in the Internal Affairs Division required him to submit factual findings of a case assigned to him. Such findings were based on witness and officer interviews, photographs, his preparing of a report that is passed "up the chain of command" (T:43-44). A copy of the report he prepared is marked as C-1 in evidence and it includes recorded transcribed interviews of principal witnesses, and investigating officers, summaries of those interviews, and numerous other documents, including police reports, warrants, etc.

to a physical altercation." [Ex. C-1]. Police Officers [REDACTED] were first to arrive at the residence, followed soon after by Police Officer [REDACTED]. All three reported that [REDACTED] admitted them into the residence, where they observed clothes piled near the front door.

The [REDACTED] written summary of Little's observations was that [REDACTED] told her that Coles was attempting to get her to leave the residence; that the Grievant came home drunk; that they argued in the basement, where it became "physical." Little observed "small scratches" on [REDACTED], the Grievant's shirt was ripped, and he had scratches on his chest.

The [REDACTED] written summary of [REDACTED] observations was that he "mostly spoke" with the Grievant, noting that he was talkative, ". . . appeared intoxicated, had slurred speech and was swaying as he was speaking to him." [REDACTED] observed that the Grievant had "watery eyes and had a strong odor of alcohol emanating from his person."

The [REDACTED] [REDACTED] [REDACTED] written summary of [REDACTED] observations was that Coles told him that after concluding his work shift, he went out to drink with his [REDACTED] and then drove home, whereupon [REDACTED] questioned him about whom he was with and asked him for his cellphone. They argued after he gave her his phone and began to "tussle." Bond stated that [REDACTED] told him that Coles kept an

off-duty weapon in the residence, but when she led him to its ostensible location, no weapon was found. [REDACTED] described the mark on [REDACTED] face as an "open palm strike," though Coles denied he slapped her. [REDACTED] reported that Coles "had a strong odor of alcohol on his breath" and "rambled" when speaking. Coles told him that his duty firearm was at the District inside his locker.

The written summary of the interview of [REDACTED] on [REDACTED] provides that when, Coles, her [REDACTED], arrived home and entered through the basement door, she walked downstairs and saw him, observing that he appeared drunk. She asked him where he had been, and he replied that he had been drinking at "Buccann" with his [REDACTED] and co-worker(s). [REDACTED] stated that Coles Face-Timed his [REDACTED] [later identified as [REDACTED]] to verify his whereabouts.

The written summary of [REDACTED] interview continues. [REDACTED] stated that the [REDACTED] answered, and Coles said to her, "My [REDACTED] doesn't believe I was out with you, can you tell [REDACTED] [REDACTED] stated that the [REDACTED] replied, "Hello. He was with me." [REDACTED] stated that [REDACTED] asked the [REDACTED] [REDACTED] "As a superior, how does it look that he's out drinking with you guys and has a DUI in the past?" [REDACTED] stated that the [REDACTED] [REDACTED] replied, "Well, he was supposed to stay with his co-worker." [REDACTED] stated [REDACTED] then asked [REDACTED] [REDACTED] "Oh, you guys couldn't get him an Uber to make sure he's safe for his well being?" [REDACTED] stated that

██████ replied, "He was supposed to stay with his co-worker, but I guess he didn't." ██████ stated that ██████ replied to the ██████ "So, you're telling me it's okay for you guys to break the law?" ██████ stated that ██████ ██████ did not respond. ██████ stated that ██████ (██████ hung up.

The written summary of ██████ interview also provides the following. ██████ stated that Coles became angry and walked upstairs to the bedroom. ██████ heard him throwing things. ██████ stated that ██████ walked upstairs and saw Coles throwing her clothes and various personal items of hers onto the floor. ██████ stated that Coles said, "Get the fuck out of my house" and "You're not going to talk to my ██████ like that and hang up on her." ██████ stated that she tried to stop Coles from throwing ██████ belongings by grabbing them from his hands and when ██████ did, Coles pushed ██████ with two hands onto the floor. ██████ stated ██████ stood up and Coles again pushed ██████ to the floor, a process that repeated "approximately seven to eight times, sometimes using his left hand only." ██████ stated ██████ dialed 9-1-1 as Coles continued throwing her belongings.

The written summary of ██████ interview continues. ██████ stated that ██████ again attempted to grab ██████ belongings from Coles, who "mugged ██████ twice in the face" by gripping the left side of ██████ face with his left hand and pushing ██████ away from him. ██████ stated that the last time Coles pushed ██████ ██████ grabbed the collar of his shirt, causing him to fall to the ground, also, where they "tussled" and

he tried to restrain [REDACTED] by ". . . getting on top of [REDACTED] and placing his body weight on her." During this altercation, Coles told [REDACTED] "Get your shit and get the fuck out" and "You aren't shit, that's why your family isn't there for you." [REDACTED] stated [REDACTED] sustained scratches to the left side of [REDACTED] face, a bruise on [REDACTED] knee and bruises and soreness to both arms. [REDACTED] stated that Coles did not have his firearm on him at the time of the incident.

Also included in the written summary of [REDACTED] interview is the following. [REDACTED] was asked if [REDACTED] reported that Coles was armed with a gun. [REDACTED] stated that [REDACTED] told police radio that Coles was a cop and was "putting his hands on [REDACTED] but denied reporting that he had a firearm. Investigator Medina photographed [REDACTED] injuries that included scratches on the left side of [REDACTED] face, a bruise on [REDACTED] inner right arm and another on [REDACTED] right knee.

Lastly, the written summary of [REDACTED] interview provides the following. [REDACTED] stated that Coles had been "physical with [REDACTED] in the past" but could not recall any date. [REDACTED] described an incident with Coles that involved a knife; [REDACTED] claimed that Coles got on top of [REDACTED] and covered [REDACTED] nose and mouth with his hand. [REDACTED] stated that [REDACTED] reached under [REDACTED] pillow and removed a knife to scare Coles off of [REDACTED]. [REDACTED] stated that Coles reached for the knife and pressed it into [REDACTED] hand, which caused [REDACTED] to sustain a cut on [REDACTED] hand. [REDACTED] stated that the incident was never documented.

Police [REDACTED] [REDACTED] [REDACTED] was interviewed by then-Lieutenant/Investigator Medina on March 5, 2019. The written summary of her interview provides that she has a "working relationship" with Coles. She was off duty on [REDACTED] when she met Coles at "Buccann" at about 12:45 a.m. and afterwards went home. [REDACTED] stated that she received a phone call from Coles soon after she arrived home in which he asked her to verify his whereabouts because his [REDACTED] inquired. [REDACTED] stated that she responded that Coles had been out for a drink with her. [REDACTED] stated that the phone, "hung up and the conversation ended." She said that Cole's voice sounded normal and she could not tell that he was involved in a domestic incident at the time. [REDACTED] stated that, "[REDACTED] did not ask her any additional questions, only about Police Officer Coles's whereabouts that night." [REDACTED] denied that Coles was drunk when he left Buccann.

[REDACTED] of the 14th District was interviewed on [REDACTED] [REDACTED] by Lieutenant Daniel McCoy at Internal Affairs. The written summary of her interview provides that she responded to a "Person with a Gun" dispatch involving Coles. She stated that upon arriving at the residence, she stepped over a pile of clothes by the front door. She spoke with [REDACTED] who said Coles had been out drinking with his [REDACTED] after work and did not think, "it was appropriate." [REDACTED] stated that [REDACTED] told her that she spoke with Coles's [REDACTED] on the phone "and yelled at her for allowing him to drink after work." Mellet stated

that [REDACTED] told her of a physical altercation between [REDACTED] and Coles and that Coles scratched [REDACTED] face. [REDACTED] also complained of pain in her arms and legs. [REDACTED] stated that she observed two scratches on the left side of [REDACTED] face. [REDACTED] was asked if she needed medical attention, and she declined.

[REDACTED] stated she walked to the rear bedroom and spoke with Coles. She observed that the black tank top Coles was wearing was ripped and there were scratches on his chest. [REDACTED] confirmed with Coles that his duty weapon was at the 25th District. She stated that Coles told her that he and [REDACTED] argued over his whereabouts, and it escalated to "tussling and pushing between them both" that occurred in the living room and basement. [REDACTED] stated she notified covering Lieutenant [REDACTED] of the incident and instructed Police Officer [REDACTED] to begin a crime scene log.

[REDACTED] was interviewed by Lieutenant James Clough at Internal Affairs on February 23, 2019. The written summary of the interview provides that she was asked by [REDACTED] to respond to a "domestic incident" at off duty Police Officer Cole's residence. [REDACTED] stated that when she arrived at the residence, several other 14th District officers were present. She stated that Coles was in the rear bedroom and [REDACTED] was seated in the living room. [REDACTED] stated that [REDACTED] told her that Coles arrived home drunk, and that she and Coles

had a physical altercation after Coles called his [REDACTED] to verify his whereabouts.

The summary corroborates many of the details provided in summaries of other investigating officers. [REDACTED] stated that Coles told her he had been out drinking. She did not observe any indicators that led her to believe he was intoxicated at the time she spoke with him.

Police Officer Coles was interviewed on [REDACTED] by Investigator Medina and related "the following in summary." Coles stated that on [REDACTED], when he was off duty, he and [REDACTED] met for drinks (of which he had "a few") at "Buccann" and then proceeded home. Upon his arrival, [REDACTED] asked him where he had been. Coles stated he had been at Buccann for a few drinks with [REDACTED] and co-workers. Coles stated that [REDACTED] accused him of lying about where he had been and took his cellphone from his hand. Coles stated that [REDACTED] looked at his phone and called [REDACTED] using the "speaker" option. Coles stated that [REDACTED] asked the [REDACTED] if he had been out drinking with her, to which [REDACTED] replied, "yes." Coles stated that [REDACTED] asked [REDACTED] "Do you think it is responsible to go out drinking with someone who had a DUI in the past?" and "You're not going to answer my question?" Coles stated that [REDACTED] did not respond to

either question and [REDACTED] said to her, "Oh, you cops think you can do whatever you want?"

The written summary of Coles' interview also provides the following. Coles stated that he became upset at the manner in which [REDACTED] spoke to [REDACTED] and he walked towards [REDACTED] reaching out for his phone. Coles stated that he observed that the phone screen turned "black," indicating to him that [REDACTED] had hung up. Coles stated that he called [REDACTED] a "bitch," asking [REDACTED] why she had been disrespectful to his [REDACTED]. He stated that he told [REDACTED] that [REDACTED] needed to get [REDACTED] stuff and leave. Coles stated that [REDACTED] walked into the bathroom with his phone and shut the door.

The written summary of Coles' interview continues as follows. Coles stated that he proceeded upstairs, grabbed [REDACTED] clothes, and threw them to the floor near the front door. Coles stated that he returned to the basement, where [REDACTED] stood near the bottom step, and asked [REDACTED] for his phone and [REDACTED] returned it to him. Coles stated he again called [REDACTED] a "bitch," told [REDACTED] to get [REDACTED] belongings and [REDACTED]. Coles stated that [REDACTED] began "to strike him with both hands, open palms." Coles stated he tried to get away from [REDACTED] by walking up the staircase and [REDACTED] followed him, continuing to strike him. Coles stated he asked [REDACTED] to stop hitting him and [REDACTED] stopped. Upstairs, Coles continued to throw more of [REDACTED] clothing on the floor, again called her a "bitch," to which [REDACTED] responded by

attempting to strike him again with open palms. Coles stated he tried to block his face from the strikes and then pushed [REDACTED] by placing both of his hands on [REDACTED] shoulders to get [REDACTED] away from him and stop the hitting. Coles stated that [REDACTED] began to scratch his chest and then [REDACTED] ripped his shirt. Coles stated that [REDACTED] said [REDACTED] wasn't going anywhere and "You'll see, wait 'til the cops get here." Coles stated that the doorbell rang and police had arrived. Coles stated that [REDACTED] told the officers that "[he] had a gun on his person" to which he told them that he did not have a gun on him, nor was one in the house and that his gun was at the District inside his locker.

Medina noted in the summary that Coles's firearm was reclaimed on [REDACTED] from inside of the 25th District. The summary also provides that Coles denied being intoxicated upon his arrival home; denied sustaining any injuries from [REDACTED] and denied that he struck [REDACTED] denied that he got on top of [REDACTED] to restrain [REDACTED] and that [REDACTED] fell after he pushed [REDACTED] Coles stated that he hasn't communicated with [REDACTED] since [REDACTED], nor has [REDACTED] communicated with him since then. On [REDACTED], [REDACTED] according to Coles, texted him, requesting that he pick up [REDACTED] belongings. [REDACTED] stated he dialed 9-1-1 and when police arrived, he handed the officers [REDACTED] belongings, which they delivered to [REDACTED]

The Internal Investigation Memorandum provides that immediately after the latest incident, Coles and [REDACTED] obtained Protection from Abuse Orders against each other, which have since been vacated.

The Memorandum reports several added items. Police records show that Coles and [REDACTED] were involved in a previous domestic incident on [REDACTED] [REDACTED] resulting in [REDACTED] arrest and a charge of vandalism. The charge was dropped after Coles failed to appear for the court hearing. Police records also show that Coles and [REDACTED] were involved in another domestic incident on [REDACTED], resulting in a laceration to one of Cole's fingers. He did not press charges against [REDACTED]. The Memorandum also provides that on [REDACTED] [REDACTED], the latest case was submitted to the District Attorney's office. Charges against Coles were declined on January 9, 2020. Coles successfully completed the pre-arrest diversion requirements. The Memorandum also indicates that "[t]he incident history details show that [REDACTED] dialed 911 and reported that P/O Coles was drunk and acting violent." The Memorandum also provides that "[t]he details described that P/O Coles possibly had his weapon on location; however, [REDACTED] never stated to Police Radio that P/O Coles was in possession of a firearm."

Deborah Francis is currently Chief Inspector of the Intelligence Bureau of the Philadelphia Police Department. (T:24). At the time relevant to the subject of

this hearing, she was Staff Inspector with the Internal Affairs Division and for two years, oversaw Internal Affairs investigations regarding complaints against police officers. In that period, she "handled a few hundred investigations," and one of them was the [REDACTED] investigation of the domestic incident regarding Grievant Coles. (T:26). She did not prepare the Memorandum; her role was to review the "package,"² ensuring that interviews were completed, proper questions were asked, and that evidence supported findings that were presented to her. (T:27). Francis testified that the "Conclusion" on the final page of the "Memorandum" prepared by then-Lieutenant Medina was "basically hers". (T:27).

Then-Staff Inspector Francis concluded that the "investigation into the allegation of Domestic-Assault against Police Officer Andre Coles #3679, PR#279699, 25th District is SUSTAINED". (Ex. C-1). More specifically, the "Conclusion" provides in a pertinent part:

[REDACTED] stated P/O Coles pushed [REDACTED] onto the floor approximately seven to eight times and struck [REDACTED] in the face. [REDACTED] stated P/O Coles attempted to restrain [REDACTED] by getting on top of [REDACTED] and placing his body weight onto [REDACTED]

P/O Coles denied that he struck [REDACTED] and got on top of [REDACTED] to restrain [REDACTED]. P/O Coles stated [REDACTED] attempted to strike his face with open palms, and in an attempt to block

² I infer that the "package" included the memorandum, the transcribed recorded interviews or "statements" of [REDACTED] and Coles, those of all police officers who arrived at the scene, a crime log, the declination memorandum, a copy of a previous arrest warrant and other reports. (C-1).

his face from the strikes, he pushed [REDACTED] away by placing both of his hands on [REDACTED] shoulders. P/O Coles could have avoided physical contact between himself and [REDACTED] . . .

A copy of this investigation will be forwarded to the Commanding Officer, Police Board of Inquiry, for action.

[Ex. C-1]

Francis testified that "sustained" means "that the incident occurred," more specifically, it was a "domestic assault" based on witness interviews, and physical evidence presented through photographs. (T:28-29). Officers are on notice of possible discipline for a "sustained" finding of domestic assault. All such findings proceed to the "Charging Unit" to determine a charge against an officer before the matter is presented to the Police Board of Inquiry (PBI) for a hearing. (T:30 & 35).

Francis conceded that the "Conclusion" was drafted by the case investigator and she did not recall if she edited the drafted "Conclusion" page. (T:34). Medina testified credibly that he drafted the "Conclusion" that Chief Inspector Francis signed. He did not recall if she edited his draft (T:60-61). Francis signed the page, testifying that her approval meant that she agreed "we had enough to support the fact that there was an incident and that he was involved in that incident and that it was sustained." (T:34-35).

Medina testified that he interviewed [REDACTED] Coles and the officers who responded to the scene of the [REDACTED] domestic incident. His recollection of those interviews substantially corroborates the respective versions of events and reportage set forth in his Memorandum (T:45-50, 51-52). On cross-examination, he elaborated on a [REDACTED] domestic incident between Coles and [REDACTED] to which she referred in her interview, and is memorialized in police reports, including an affidavit of probable cause and an arrest warrant included in the Internal Investigation "package". (Ex. C-1).

In [REDACTED] recorded transcribed interview on [REDACTED], [REDACTED] stated that on an unspecified day in [REDACTED],³ during a period in which [REDACTED] was not living with Coles, he had withheld [REDACTED] mail and [REDACTED] unsuccessfully sought police assistance in retrieving it. [REDACTED] admittedly became frustrated and aggravated and in kicking the security door of Coles's house, caused its glass to shatter. [REDACTED] stated that Coles called police and [REDACTED] was arrested for vandalism. [REDACTED] also stated that [REDACTED] had an altercation with a neighbor, "The neighbor put his hands on me. I kicked the neighbor off of me twice and I realized I had to leave..."

In his recorded and transcribed interview on February 3, 2020, Coles stated that in [REDACTED] he and [REDACTED] were not living together, that [REDACTED] was living with [REDACTED]

³ The documented date of this incident, as set forth in an Affidavit of Probable Cause, included in C-1, is [REDACTED]

mother and that [REDACTED] called him, asking if [REDACTED] could stay with him. Coles stated that he said, "no," that [REDACTED] should stay with [REDACTED] mother until [REDACTED] receives the assistance [REDACTED] needs. Coles stated that [REDACTED] mother, "tried to 302 her," referring to a temporary institutionalization for a psychological evaluation. Coles stated [REDACTED] told him that [REDACTED] had left [REDACTED] mother and was not returning. Coles stated that he told [REDACTED] "to go to Temple or Episcopal but it wasn't safe for us to live in the same house right now."

Coles stated that [REDACTED] showed up at his home and tried to kick in his door, broke a window and then tried to break in through the basement. Coles called police. He stated that his neighbor had witnessed [REDACTED] conduct and that exterior cameras on his house "caught everything." [REDACTED] was arrested, pursuant to a warrant. (Ex. C-1).

Medina testified that the arrest report showed that [REDACTED] was charged with two felonies (attempt to commit burglary and attempt to commit criminal trespass) and two misdemeanors (criminal mischief and possession of instrument of criminal mischief), with a "summary offense" of "harassment." (T:57-58). Medina's testimony is corroborated by a copy of the Arrest Warrant issued for [REDACTED] included in C-1.

Also, in [REDACTED] recorded and transcribed interview, [REDACTED] explained the context of an earlier ([REDACTED] "knife" incident; Coles had told [REDACTED] of an episode he experienced at work that day to which [REDACTED] responded that, "he was out of line. . . for gripp[ing] [sic] someone up . . . and he [Coles] didn't like it." [REDACTED] continued, "So he jumped on top of me and that's when I grabbed the knife from underneath the pillow and opened it to scare him off of me because I was afraid for my life." (Ex. C-1). Asked why Coles ". . . g[o]t on top of you," [REDACTED] replied, "I have no idea."

A Philadelphia Police Department "Investigation Interview Record" of Coles taken on [REDACTED] provides another context of their altercation, though it concurred that [REDACTED] "had a knife in [REDACTED] right hand. I [Coles] was trying to get it off of [REDACTED] and [REDACTED] was fighting me." In struggling over the knife, Coles suffered a "laceration of the finger," as memorialized in a "patient discharge summary" of the Emergency Department at [REDACTED] on [REDACTED]. (Ex. C-1).

Captain Gregory Malkowsky has more than sixteen years' experience in the "Labor Relations Unit" of the City Police Department. Malkowsky and Investigator Medina provided testimony concerning the charging process. With respect to this incident, after the Internal Investigation Memorandum, inclusive of the transcribed interviews, summaries and supporting documents was reviewed and

approved in [REDACTED], it was sent to the Police Charging Unit because the allegation of domestic assault against the Grievant was "sustained." In turn, the Charging Unit assessed what the most appropriate charge(s) shall be, based on the investigation (T:62 & 136). That assessment is sent to the Police Commissioner for approval. Afterwards, the charge "comes back down in a 7518" and is given to the charged officer, who can plead guilty or not guilty. If the officer elects to plead "not guilty," the case normally proceeds to the Police Board of Inquiry for hearing. (T:62 & 136). Sometimes, if the Police Commissioner determines that the case presented to her is "serious enough," she can take "direct action," bypassing a hearing before the PBI and placing the charged officer on a 30-day suspension with the intent to dismiss. (T:138). In Malkowsky's experience, "direct action" is taken in cases in which the officer is criminally charged, as well. (T:135-136, 139).

In this matter, Police Commissioner Danielle Outlaw did not take "direct action" and the case proceeded to the PBI for a hearing because the Grievant pleaded "not guilty" to the charge of "conduct unbecoming-unspecified". (T:137). The Specification portion of the "Statement of Charges Filed and Actions Taken" document provides:

On [REDACTED] you arrived home intoxicated and were involved in a domestic incident at 933 East Charprock Street wherein you used physical force against your [REDACTED]. On [REDACTED], the matter was referred to the District Attorney's Office,

which declined to charge you criminally after you completed a pre-arrest diversionary program on [REDACTED]. Your actions, as documented through an Internal Affairs investigation demonstrate conduct unbecoming an officer.

[Ex. J-4]

On October 5, 2020, the PBI hearing convened with the investigating officers and the Grievant called as witnesses. The three-member Board panel unanimously recommended a finding of "guilty" and a penalty of a five-day suspension. (Ex. J-4; T:203). Malkowsky testified that prior discipline(s) may be considered in making a discipline determination in a subsequent case. (T:142). He also testified that prior disciplines would have been presented to the PBI members at a subsequent hearing and they would have considered it in deciding the appropriate penalty in that subsequent case. (T:143).

The Police Commissioner has the right to make "changes," following a PBI recommendation, according to the unrebutted testimony of Captain Malkowsky (T:137). Commissioner Outlaw changed the recommended penalty from a five-day suspension to a dismissal on or about May 3, 2021. (Ex. J-4; T:137).

Malkowsky testified that he was surprised by the change because the recommended penalty was at "the low end" of penalties available for the offense, thought the range of penalties includes discharge. (T:137 & 141). Malkowsky did not speak with the Commissioner about the case and admitted

that he does not know her reason(s) for deviating from the recommended discipline. (T:141). Then-Staff Inspector Deborah Francis also admitted her surprise that the Grievant was dismissed. (T:39). On or about May 13, 2021, Grievant Coles was suspended for thirty days, with the intent to dismiss." (Ex. J-4).

On May 14, 2021, the Union issued a letter to Captain Malkowsky advising of its grievance contesting Coles's termination, "without just cause" and seeking as a remedy that he be "made whole for all losses". (Ex. J-2).

██████████ a ██████████ of Coles, testified during the arbitration proceedings. ██████████ has lived in ██████████ home since 2016. (T:147). In ██████████, he and a friend encountered ██████████ standing at the top step of Coles's house upon his return home from an errand. He testified that ██████████ turned to him and said, "Oh, I'm glad you pulled up, you going to see some shit now." (T:148). ██████████ testified that "██████████ started banging on the door like, insanely...██████████ started kicking the door, you know, things like that, right. I said, I guess I can be frank, we all adults. I said, 'yo, what the fuck are you doing?'...And ██████████ was like, 'What, you better mind your mother-fucking business.'" (T:148-149).

██████████ testified that the [door] window broke and ██████████ walked down the top set of steps and picked up a solar flood light and a rock from the ground in front

of Coles's house. [REDACTED] testified that she threw the solar light at him, missing him but hitting his parked car. [REDACTED] said to [REDACTED] "you have to go" to which she replied, "He's going to give me and my mother fucking shit." [REDACTED] testified that [REDACTED] continued to walk towards him:

I said, 'Yo, you hit my fucking car.' [REDACTED] walked towards me and said, "What, you want some of this, too?" I was like, you better get out of my damn face. That's when [REDACTED] went back and said, pop and [REDACTED] hit me in my jaw.

[T:152]

[REDACTED] testified that he did not retaliate and was not injured. He told his friend to call the police. [REDACTED] testified that [REDACTED] walked around to the side of Coles's house (a corner property) where another entry door is located. He testified, "I seen [REDACTED] break that window in that door on the side." (T:153).

[REDACTED] admitted that he and [REDACTED] hadn't spoken to one another before this incident; [REDACTED] didn't verbally respond to him when he rarely passed by [REDACTED] as a neighbor and said, "Hello, how are you doing?"

[REDACTED] also admitted that he knows Coles as his neighbor and they "hang out, sit around, watch the game, have a drink or two once every three months. Not every three months but around that kind of time frame." He also acknowledged that Coles, "normally comes in in the morning, about the time I

go out for work". (T:156-157). [REDACTED] testified that he and Coles, "are not buddies; he's around the age of my son pretty much." [REDACTED] has not heard loud voices or arguments emanating from Coles's house. (T:157-160). [REDACTED] testified that Coles is "very calm" and never gets angry or raises his voice. (T:155).

[REDACTED] testified on direct examination by City Counsel that on [REDACTED], Coles arrived home at 2:30 a.m. and said he was drinking with his [REDACTED] and co-workers at a bar. (T:76). [REDACTED] continued:

And then he FaceTimed his [REDACTED] and he told her to please tell [REDACTED] that I was out drinking with you guys. And she did, she confirmed. And I asked him, you know, why did you FaceTime with your sergeant. He then told me I was afraid to speak to her. I told him I was not. I grabbed the phone. I spoke to her. I told her, you know why is it okay for police officers to be out drinking and driving.

[T:76]

[REDACTED] testified that in looking at Coles's cellphone, she saw text messages "to a friend saying he was with his Sergeant and co-workers drinking at the bar". (T:79). Asked if she called 9-1-1, [REDACTED] testified:

Yes, actually after the pushing and shoving, I did call. And I remember before the call, you know, he mugged me in my face, [meaning] his hand on my face (open palm) and mugged me down to the floor . . . I believe it was two to three times before I made the call. [T:79]

█████ was asked on direct examination if █████ told the 9-1-1 operator that Coles had a gun. █████ testified, "I believe they asked me if there is a firearm in the house and I think I did say it was his duty gun." (T:79). Immediately asked if █████ knew whether his duty weapon was in the house, █████ testified, "I don't remember." █████ also could not remember if Coles owned another personal weapon. (T:80).

In cross-examination about the 2014 knife incident with Coles, █████ acknowledged that he did not "physically touch [█████] before he left the [bed]room." █████ admitted taking the knife, placing it under her pillow, turning off the light, pretending to sleep under the blanket. █████ testified that Coles jumped on █████ and "put his hand on my mouth and nose". (T:93-94). █████ immediately added, "In my mind, I was prepared to defend myself in any situation that could possibly come my way with a police officer that is under the influence." (T:94-95).

In the earlier direct examination of █████ when asked to tell as much as █████ could recall about the knife incident, █████ replied at length (about 35 transcribed lines) but did not mention nor allude to Coles being "under the influence". (T:73-75). Asked on cross-examination why █████ suspected that Coles would jump on her, █████ answered, "I suspect that he did not like what I told him about his job and how he does his job". (T:94).

In cross-examination about the [REDACTED] "vandalism" of Coles's residence, [REDACTED] first denied that [REDACTED] broke any glass in any door and then admitted breaking glass in the front door. (T:100-101). [REDACTED] did not recall "kicking out" any solar light on the walkway to Coles's house and denied attacking Coles's neighbor, [REDACTED]. She testified that [REDACTED]

. . . actually tried walking up the steps and putting his hands on me so when he was walking up the steps, he's like a really huge guy, was in the Army, as well. And as self-defense, you know, before he put his hands on me, as he was walking towards me, I did kick him away for self-defense...

[T:102]

Then asked, "so before he put his hands on you, you actually punched him, didn't you?" She replied, "No, he gripped my arm. When he did, I kicked him off of me." (T:102).

[REDACTED] admitted that [REDACTED] attends therapy sessions and takes medication for [REDACTED]. [REDACTED] acknowledged having been evaluated at [REDACTED]. (T:128-129).

Coles testified that on one full day before the [REDACTED] altercation, [i.e., [REDACTED]], he and [REDACTED] attended [REDACTED] sister's birthday party, where [REDACTED] accused him of flirting with one of her sister's friends there. (T:185 & 198). Coles testified that he replied that he was not flirting, but only discussing "houses and

properties" with her. Coles testified that [REDACTED] said that they would talk when they returned home. Coles testified that when they arrived home, [REDACTED] kept asking, "what's going on with you" and he replied, "Nothing. I'm not even attracted to her. I would never disrespect you and try to talk to [REDACTED], especially knowing she's friends with your sister." (T:186). Coles testified, "We didn't talk that night because of what happened at the birthday party, so that led to the next day, which led to the altercation." (T:186). He testified that to avoid arguing with [REDACTED] after work the next day, he agreed "to go to Buccann, hang out and have some drinks," hoping [REDACTED] would be asleep when he arrived home. (T:187).

On direct examination by Union Counsel, Coles was asked to describe his relationship with [REDACTED]. He testified:

We had our good times but we also had our bad times and it was toxic. The signs were there but I love [REDACTED] and I thought I could help [REDACTED] out. I learned the hard way it's hard to deal with somebody that has mental issues . . . My parents told me [but] . . . I had to see it for myself . . .

[T:166]

Coles denied that he was drunk when he arrived home on [REDACTED] specifically, that he drank two or three beers over the two hours he and his [REDACTED] and co-workers patronized Buccann. (T:187-188, 211). He denied that he was supposed to stay at a friend's house that night. (T:211). Coles testified that

when he entered his house, [REDACTED] walked downstairs from the bedroom, asking him where he had been. He testified that he told [REDACTED] of meeting his [REDACTED] and co-workers at Buccann for drinks, but [REDACTED] did not believe him. Coles testified that [REDACTED] then grabbed his cellphone and called his [REDACTED] – the last person he spoke with on his phone. Standing next to [REDACTED] Coles heard [REDACTED] answer her phone and confirm that Coles had been at Buccann with her and co-workers. (T:191-192). He testified that [REDACTED] said into the phone, "All you cops think y'all can do anything you want," to which [REDACTED] did not respond. Coles testified that [REDACTED] again spoke into his cellphone, "You think it's ok for Andre to drink and drive knowing he had a DUI in the past?" (T:192-193). Coles testified that [REDACTED] "hung up," though he admitted not knowing exactly when she did. (T:193). [REDACTED] said to Coles, "Why are you being disrespectful to my [REDACTED] I'm now going to be in trouble". (T:193). Coles testified that [REDACTED] refused to return his cellphone to him and [REDACTED] retreated to the bathroom with it and closed the door. He testified that he thought, "I'm not doing this with her" and he said, "You've got to leave."

Coles testified that he then walked upstairs and started grabbing [REDACTED] clothes and throwing them at the front door. He testified that he walked downstairs where he saw [REDACTED] "standing there as if [REDACTED] was waiting for me". (T:194). He testified they had this exchange:

Coles: Are you done yet? Can I have my phone?

■■■■ [returned his phone to him]

Coles: Now, bitch, get out. Go back to your mom's house.

■■■■ What did you call me?

Coles: You is a bitch. I tried to help you out and you call and disrespect my ■■■■ You got to go.

■■■■ I'm not going anywhere.

[T:194]

Coles testified that they walked upstairs and ■■■■ "started swinging at me." He denied hitting ■■■■ or "mugging" her or pushing her down. (T:195). He testified that he did not see her call 9-1-1.

Late in Coles's examination and during cross-examination, he had this exchange with Counsel for the City:

Coles: I never got arrested. I never touched ■■■■

Counsel: So if other officers said they saw scratching and bruising, is that a lie?

Coles: Yes.

Counsel: Ok. So Captain Medina lied when he said he saw scratches and bruising to her ■■■■

Coles: Yes.

Counsel: and the other officers who said that as well, they lied?

Coles: Yes.

[T:216-217]

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

SUMMARY OF THE ARGUMENTS

The City's Position

The City contends that it had just cause to terminate the Grievant. It avers that the Internal Affairs Division investigation was "fair and complete," specifically, it sustained a finding that Coles had committed domestic assault against his [REDACTED].

The City argues that Coles arrived home intoxicated and became angered by the way [REDACTED] "disrespected" his [REDACTED]. He began pushing [REDACTED] hitting [REDACTED] with open palms and throwing [REDACTED] clothes. It points out that [REDACTED] admitted that she had done things she regretted in the past, owning her behavior, including having received medical treatment [REDACTED] to help [REDACTED].

The City contends that this case does not concern the [REDACTED] "knife" incident. The City emphasizes that [REDACTED] is not the one seeking her reinstatement to [REDACTED] job. It points out that Coles never admitted that he was wrong in the course of their six-year toxic relationship. He has asserted that his fellow officers are liars because they stated they observed injuries to [REDACTED] in [REDACTED]. Coles has asserted that Captain Medina lied when he said he took pictures and saw injuries to [REDACTED] that night.

The City argues that the punishment is fitting because Coles has a prior disciplinary history and, in this instance, displayed a lack of self-control, rational thinking and sound judgment. It posits the question – is there just cause to discharge only when an officer assaults a domestic partner severely enough to require hospitalization?

The City seeks as a remedy that the grievance be denied; and that the Commissioner's decision to suspend Coles and then discharge him be upheld. If that remedy is not awarded, the City seeks a remedial clarification regarding the imposed 30-day suspension that preceded Coles's discharge.

The Union's Position

The Union maintains that the City has not met its burden of proving by clear and convincing evidence that it discharged Officer Coles for just cause. The Union contends that Coles has never been criminally charged; that he was found to have committed a first offense penalty of "conduct unbecoming, unspecified" on a single charge. The PBI recommendation was a five-day suspension. Chief Inspector Francis, according to the Union, said that in her experience, if an officer is not arrested, it is atypical that that officer would be discharged. The Union avers that in her testimony, Francis "went out of her way" to testify that Coles was involved in a domestic assault but she did not attribute fault to him. Captain Gregory Malkowsky is familiar with the officers comprising the PBI and he testified about their high level of experience, institutional knowledge and impartiality, according to the Union. The PBI recommended a five-day suspension. The Union contends that nothing in the record indicates why the PBI-recommended penalty was modified.

The Union contends that Officer Coles deserves no discipline whatsoever because the City's case relies exclusively on the testimony of [REDACTED]. The Union asserts that [REDACTED] testimony is not credible. The Union argues that [REDACTED] explanation for pulling a knife on Officer Coles in 2014 fails to offer any context as to why [REDACTED] would be facing a physical threat from him; she claims that Coles

came into the darkened bedroom and for no apparent reason, jumped onto [REDACTED] prompting [REDACTED] to grab the knife from under a pillow and point it at him. The Union asserts that [REDACTED] could not even recall whether Officer Coles's hand was cut.

The Union argues that regarding the [REDACTED] incident, [REDACTED] testified falsely that [REDACTED] was not arrested; rather, that [REDACTED] turned herself in to the police department. [REDACTED] also first testified that [REDACTED] did not break glass at Officer Coles's house only to contradict [REDACTED] a short time later by acknowledging that [REDACTED] had broken glass in a window there. The Union contends that [REDACTED] statement to Investigator Medina includes a concession that [REDACTED] shattered glass in a storm door and Union Exhibit 1 shows damage to Officer Coles's house, but [REDACTED] had no recollection of her breaking glass at the hearing. City Exhibit 1 includes an affidavit of probable cause, an arrest warrant and an IAD Report showing that [REDACTED] was arrested and charged with more than simple vandalism. The Union argues that [REDACTED] believes she was justified to act as she did because Coles had kicked [REDACTED] out of his house, forcing [REDACTED] to live in her car.

On [REDACTED], the Union argues, Coles was out after work to avoid [REDACTED] because [REDACTED] had unjustifiably accused him of flirting with a woman at [REDACTED] sister's birthday party on the previous day. The Union contends that [REDACTED] did not believe Coles's statement of his whereabouts on the [REDACTED] and he called his [REDACTED] in [REDACTED] presence to prove it. [REDACTED] then spoke to his [REDACTED] in a way

that angered Coles and instructed [REDACTED] to leave his house, according to the Union. The Union asserts that [REDACTED] then attacked Coles in [REDACTED] effort to stop him from throwing [REDACTED] clothes by the front door. It contends that [REDACTED] first called the police, but [REDACTED] version defies belief. [REDACTED] spoke calmly and without interruption to police while [REDACTED] was alone in the downstairs bathroom with Coles's cellphone, according to the Union. The rest, it argues was a "set-up"; clothes were not strewn about and no furniture had been knocked over.

The Union seeks as a remedy that the grievance be sustained; that the Arbitrator order Coles's reinstatement to his prior position and be made whole for all lost wages and benefits, including lost overtime compensation from the date of his suspension to the date of reinstatement. It also seeks in the Award that Coles's personnel file be expunged of all reference(s) to the matter of his discharge.

DISCUSSION

I have carefully considered the arguments and evidence submitted into the record. The City has the burden to prove that it had just cause to terminate the Grievant's employment. The Grievant is charged with conduct unbecoming – CONDUCT UNBECOMING, SECTION 1-001-10 (Unspecified).

In this matter, the Union contends that no discipline is warranted largely because the City's case rests on the not-credible testimony of [REDACTED] regarding the [REDACTED] and [REDACTED] incidents. The City contends that the Commissioner's decision to discharge Officer Coles should be upheld because he has a prior discipline arising from a DUI; and in this matter, he arrived home intoxicated and pushed and hit his [REDACTED] because he was angry at the way [REDACTED] spoke to his [REDACTED]

I have independently reviewed the evidence in this matter, including the Internal Investigation Memorandum and attached documents (C-1), other exhibits marked in evidence and testimony of the witnesses. Neither the City nor the Union has contested the thoroughness and accuracy of then-Investigator Medina's Memorandum and compilation of attached documents.

Two of the first three investigating officers who arrived at Coles's house, pursuant to [REDACTED] cellphone call, [REDACTED] separately concurred that Coles had a "strong odor" of alcohol on his breath, together with other symptoms, including slurred speech and watery eyes. Coles was likely in such condition in his house in the early hours of [REDACTED], even if, as he testified, he drank two or three beers in the two or so hours he, [REDACTED] and two co-workers patronized Buccann. For this reason, I do not credit Coles's denials about his inebriation.

I also find ample evidence from the record of interviewed officers who arrived at the scene and from Investigator Medina's observations of [REDACTED] when he interviewed her on [REDACTED], that [REDACTED] had scratches on [REDACTED] face some bruises on [REDACTED] arms and legs.

I am mindful of City Counsel's observation that [REDACTED] is not the one seeking reinstatement to [REDACTED] position in this case. I would be remiss to ignore the matter of [REDACTED] credibility, however, because it bears on the context and substance of events leading to and including the [REDACTED] early morning physical altercation between [REDACTED] and the Grievant.

The record and transcript regarding the [REDACTED] "knife incident" and "[REDACTED] vandalism" incident implicates [REDACTED] credibility and shows [REDACTED] aggression. As

Coles and [REDACTED] both testified, in [REDACTED] [REDACTED] bluntly objected to and criticized what [REDACTED] believed was an arbitrary, violent, and unnecessary showing of force by him, as set forth in an anecdote he told [REDACTED] of his workday just before their bedtime. Without any indication of a physical threat by Coles before he walked into their bathroom, [REDACTED] reached for a knife, hid it under [REDACTED] pillow, turned off the light and pretended to be asleep when he emerged from the bathroom. I do not find credible that Coles, without a hint of [REDACTED] pretext, would, unprovoked, climb on top of [REDACTED] and cover [REDACTED] nose and mouth with his hand. It makes sense to me that he might do something like that in an effort to forcibly remove the knife from [REDACTED] hand when [REDACTED] pulled it from underneath the pillow, begging the question of why [REDACTED] needed to pick up and hide the knife at all. I also find that [REDACTED] credibility is undermined because [REDACTED] did not recall that the resulting laceration to Coles's hand required medical treatment at a hospital.

I also do not find credible [REDACTED] attested version of [REDACTED] altercation with Coles's neighbor, [REDACTED], in [REDACTED] [REDACTED] candidly and credibly testified that [REDACTED] evidently angry and frustrated, announced to him that [REDACTED] was going to do some "shit" and proceeded to kick the front door of Coles's house and break glass in it. When Davis verbally challenged [REDACTED] conduct, [REDACTED] picked up a solar light by the walkway and threw it at him, missing, but hitting his car. When he more assertively verbally challenged [REDACTED] [REDACTED] punched him on his jaw.

█████ initial version of the incident omitted any reference to █████ touching █████ before █████ hit him and █████ then changed █████ testimony when challenged, stating that he grabbed █████ and █████ then kicked him away. Considering Davis's forthright, consistent, and detailed testimony and █████ shifting version of the incident, I credit █████ testimony. The printed photographs of damage to the doors of Coles's house, together with the affidavit and arrest warrant issued in █████ name, corroborate █████ aggression.

Coles credibly testified that █████ falsely accused him of flirting with █████ at █████ sister's birthday party on or about █████. The accusation was not resolved or withdrawn later that night, prompting Coles's acceptance the next day of an invitation to patronize Buccann after his shift, with the hope of arriving home after █████ had gone to sleep. His testimony is unrebutted. This context provided for a renewal of █████ suspicion when Coles arrived home around 2:30 a.m. on █████, and of his defensive urge to have █████ confirm to █████ his whereabouts.

█████ testified of █████ various remarks to █████ mostly a series of accusations, with the purported reply from the █████ specifically, that Coles was supposed to have slept at a friend's house that night (rather than drive home after imbibing alcohol, ostensibly). Coles testified that █████ only confirmed his presence with others that night at Buccann. █████ in her interview with

Inspector Medina, denied both hearing [REDACTED] accusations and replying to any. She admitted confirming Coles's whereabouts and the company he kept.

One way to reconcile their divergent testimonies or statements is to find that [REDACTED] or [REDACTED] hung up after confirming or hearing a confirmation of Coles's whereabouts. If the latter, [REDACTED] may have feigned that [REDACTED] remained on the call, intentionally seeking to humiliate or frustrate Coles, who was present to hear [REDACTED] accusations to his [REDACTED]. Regardless of which version (or some other) is accurate, Coles became incensed, as he admitted, calling [REDACTED] a "bitch" and demanding that [REDACTED] leave, and soon proceeded upstairs to the bedroom when [REDACTED] retreated to the basement bathroom, closed the door, and called police on his cellphone. Afterwards, [REDACTED] returned Coles's cellphone to him upon his demand, but they physically struggled over his continuing to throw [REDACTED] clothes to the front door, again calling [REDACTED] a "bitch" and demanding that [REDACTED] leave his house.

I have no cause to doubt the accuracy and completeness of then-Lieutenant Medina's Internal Investigation Memorandum and compilation of documents. It establishes, as I do from [REDACTED] and Coles's testimonies, that [REDACTED] suffered scratches to [REDACTED] face and bruises to arms and legs in their altercation. For this reason, I do not credit Coles's attested denials that he hit [REDACTED] in any way. He did not deny that they physically struggled, a likely source of [REDACTED] scratches

and bruising. I also do not credit Coles's cross-examination testimony that the investigating officers and then-Investigator Medina "lied" in reporting [REDACTED] facial scratches and bruises to [REDACTED] arms and legs. It is my impression that Coles was acutely agitated and frustrated at that juncture of his cross-examination. While not excusing that testimony, I have found that a substantial majority of Coles's testimony is credible and consistent with other evidence in the record.

Nor do I have any independent reason or rationale to second-guess the PBI's determination on Coles's guilt for "domestic assault" or its recommendation that the appropriate penalty was a five-day suspension. Captain Malkowsky, called to testify in the City's case, credibly testified in his substantial and relevant experience about disciplinary matters that either proceed to PBI or not, in instances when the Commissioner determines that the matter is serious enough to warrant "direct action." In such instances, the charged officer has been criminally charged as well and the Commissioner determines that discharge is the appropriate penalty.

Coles was not criminally charged, as evidenced by the District Attorney's declination letter. The Commissioner elected not to take direct action on the Charging Unit's determination that Coles had committed domestic assault, resulting in a charge of "conduct unbecoming-unspecified." Pleading "not guilty," Coles proceeded in due course to hearing before the PBI, whose three

members assess the evidence they hear, consider the charged party's past disciplines and performance and render a decision and penalty recommendation, if any. Neither the Union nor the City has argued that any irregularity or impropriety tainted the PBI proceeding or recommendation.

Police Commissioner Outlaw then determined that the penalty of discharge shall be imposed on the Grievant. Both Malkowsky and Chief Inspector Davis credibly testified of their "surprise" at the Commissioner's determination, Malkowsky offering that the recommended penalty was at the "low end" of possible disciplines for the offense. Under these circumstances, one should reasonably expect a proffered explanation or justification from the Commissioner for her determination. None has been proffered in the record evidence. Without more and considering the City's burden to prove that discharge is the appropriate punishment, I find that the City has not carried that burden. Moreover, the City has not presented evidence demonstrating that the PBI-recommended penalty of a five-day suspension was improper or inadequate, under all the circumstances.

Based upon the entirety of the record evidence, I am persuaded that the PBI's recommendation on the penalty was reasonable and not inconsistent with the facts of this case. Its recommendation is entitled to significant weight.

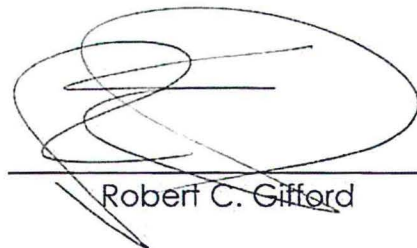
I concur with the City Counsel that a victim of domestic assault need not be hospitalized in order for his/her assailant to be meritoriously dismissed. But in keeping with the City's protocol and unrebutted credible testimony of Captain Malkowsky on this record, such an employee/assailant would, at a minimum, first be criminally charged, an action that the District Attorney specifically declined in the case of this Grievant. Accordingly, based on all of the foregoing and the entire record, I find that the City did not have just cause to dismiss the Grievant.

Based upon the foregoing and the entire record, the Grievant's dismissal shall be reduced to a five-day suspension without pay and he shall be reinstated to the position he held at the time of his suspension (pending dismissal) within a reasonable period of time and made whole in all other respects.

AWARD

The City had just cause to discipline the Grievant but not to discharge him. In accordance with the above, the penalty shall be modified to a five-day suspension without pay and Grievant shall be reinstated to the position he held at the time of his suspension (pending dismissal) within a reasonable period of time and made whole in all respects. His personnel record shall be expunged of document(s) regarding his dismissal and modified in accordance with this decision.

Dated: April 24, 2024



Robert C. Gifford