

ARBITRATION AWARD

In the Matter of Arbitration Between] American Arbitration Association (AAA)
CITY OF PHILADELPHIA- Employer] 01-24-0003-2069
AND] Grievance: 10 Day Suspension
Grievant: Phillip Jefferson

AFSCME DISTRICT COUNCIL 47-Union

IMPARTIAL ARBITRATOR: Larry Cheskawich
PLACE/DATE OF HEARING: Hearing held March 21, 2025, Philadelphia, PA

EMPLOYER APPEARANCES: Ms. Krystal Charity, Esq.– Assistant City Solicitor/City of Philadelphia
Law Dept.- Attorney/Advocate

Ms. Vongvilay Mounelasy–Deputy Commissioner/City of Philadelphia-
Witness
Ms. Nicole Brown-Dept of Labor/Employee and Labor Relations/City of
Philadelphia-Witness
Ms. Anne Taylor, Esq.- Litigation Chair/City of Philadelphia- Did not
Testify.

UNION APPEARANCES: Mr. Jordan Konell, Esq., Willig, Williams and Davidson-
Attorney/Advocate

Mr. Phillip Jefferson - Grievant- Witness
Mr. Jesse Jordan- Local AFSCME DC 47 Representative- Did not Testify.

PROCEEDINGS: Grievance filed and processed to arbitration. Witnesses sworn and
sequestered; transcript taken; parties’ arguments closed on the record
via oral summation; official record closed on April 3, 2025 upon receipt
of transcript from Court Reporter.

DATE OF DECISION: April 22, 2025

ADMINISTRATION/BACKGROUND:

By email dated May 13, 2024, the undersigned was notified of his selection by the American Arbitration Association (“AAA”) to hear and decide a matter in dispute between the City of Philadelphia (“City” or “Employer”), and AFSCME District Council 47 (“AFSCME” or “Union”). The Employer was represented by Ms. Krystal Charity, Esquire, of the City of Philadelphia Law Department, Philadelphia, PA, while the Union was represented by Mr. Jordan Konell, Esquire, of the firm Willig, Williams & Davidson of Philadelphia, PA. After a series of email exchanges regarding scheduling between the parties and the Arbitrator, which included scheduling and subsequent postponements in October, and November, 2024 as well as February, 2025, the parties were served notice on February 18, 2025 that on March 21, 2025, a hearing would be conducted, in person, in this matter. Said hearing was to be conducted, and was in fact conducted, at the Philadelphia offices of AAA, at 230 Broad Street, 12th Floor, Philadelphia, PA, beginning at 10:00AM EDT.

The matter in dispute concerned the October 6, 2023 disciplinary suspension taken against Mr. Phillip Jefferson (“Grievant”) for a violation of the City of Philadelphia Sexual Harassment Prevention Policy, and more specifically by his being untruthful in providing false statements during an interview concerning an alleged sexual harassment incident. In pertinent part, the disciplinary action issued to the Grievant on October 6, 2023, a seven (7) paragraph explanation, (J-3) stated:

“You are hereby notified that you are suspended without pay from the above position for a period of ten (10) working days covering the period from the beginning of business on October 9, 2023-October 20, 2023 at the close of business, for the following reasons:

A disciplinary Hearing was held on April 11, 2023 to address charges detailed in the Employee Violation Report dated March 2, 2023. The charge of providing false statements during the investigative interview was upheld.”

The disciplinary action was timely grieved on June 12, 2023, (J-2)¹ alleging a lack of just cause for the discipline; and the matter was subsequently timely advanced to arbitration. At the March 21st arbitration hearing, the parties were afforded full opportunity to introduce documentary evidence; provide testimony and cross-examine witnesses in support of their respective positions; as well as present rebuttal witnesses. Additionally, the parties submitted three (3) Joint Exhibits; the Employer introduced three (3) Exhibits during the hearing; and the Union did not submit any Exhibits on its behalf. The parties elected to close the arbitration hearing by providing oral summation and argument, and upon submission of the official hearing transcript, the record was closed on April 3, 2025. The matter is now ripe for disposition and determination as follows, beginning with the listing of enumerated Exhibits:

¹ Grievance submitted at J-2 indicated a “filing date” of 6/12/2023, prior to the suspension. There was no further questioning or explanation at hearing.

EXHIBITS:

Joint Exhibits:

- (1) **Exhibit J-1**-Relevant portions of the Collective Bargaining Agreement, City of Philadelphia and DC 47, Local 2187 American Federation of State, County and Municipal Employees, July 1, 1992-June 30, 1996.
- (2) **Exhibit J-2**-AFSCME DC 47 Local 2187 Grievance, dated June 12, 2023.
- (3) **Exhibit J-3**- Notice of suspension to Grievant, dated October 6, 2023.

Employer Exhibits:

- (1) **Exhibit D-1**- Executive Order No. 18, Sexual Harassment Prevention in City Government Policy, dated July 19, 2018.
- (2) **Exhibit D-2**-PHL Youth Week Registration Chart, August 2022.
- (3) **Exhibit D-3**-Sexual Harassment Prevention Policy Employee Acknowledgement Form, dated August and September, 2018.²

ISSUE:

As agreed by the parties at the hearing:

“Did the City of Philadelphia have just cause to issue Mr. Phillip Jefferson a ten (10) day suspension, and if not, what shall the remedy be?”

² Upon questioning from the Union, it was acknowledged and stipulated that there were two (2) policy acknowledgement forms/sign offs.

PERTINENT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT:

ARTICLE 16.

DISCIPLINE AND DISCHARGE

- (A) **JUST CAUSE.** It is agreed that management retains the right to impose disciplinary action or discharge provided that this right, except for an employee in probationary status, is for just cause only.
- (B) **DISCIPLINARY ACTION HEARINGS.** An employee subject to disciplinary action shall not be suspended without pay or discharged prior to completion of Step III of the Grievance Procedure unless in the judgment of the appointing authority or designee said employee poses a threat to himself/herself or other person or persons.
- (C) **PROGRESSIVE DISCIPLINE.** The City shall have the right to discipline or discharge any employee in the bargaining unit for just cause only. Disciplinary actions shall be progressive in nature where appropriate. The City and Local 2187 agree that discipline should be directed toward maintaining or improving the City's services. This clause does not apply to probationary employees.
- (D) **EXPUNGEMENT OF REPRIMANDS.** An employee who receives no written reprimands or any more severe discipline for a period of at least two (2) years shall have any prior-received written reprimands expunged from his/her personnel file.

POSITION OF THE PARTIES:

Employer Position:

The Employer argues that trust is fundamental and foundational to any organization, and especially in this matter, and so it is with the City of Philadelphia Department of Human Services ("DHS"). The Employer argues that honesty is not only expected, but it is indeed required, in order to maintain operational integrity and honesty. The Employer points out that the instant case is about an employee, who during the course of questioning in an investigation, made a choice, plain and simply, to not tell the truth. The Employer stresses that it was not a

case of “mis-remembering,” or making a truly honest mistake, but a choice to weaken the trust foundation. Specifically, the Grievant claimed to have not registered nor attended two City-sponsored youth events. Having months to ponder and realize his mistake, especially subsequent to March 1st, 2023, when he received his report from Employee Relations, up to March 17th, 2023, where he still did not admit his false statement, the Employer points out that it took until April 11th, 2023 at the panel hearing for him to finally disclose or confess his false statement.

The Employer explains that the Grievant, an Administrative Technician, attended a City-sponsored youth event, and when asked during an investigation if he had registered/attended the event, he replied that he had not. The Employer contends that records and testimony surrounding the investigation will reveal that the Grievant’s statements were false. The City proffers that a fair, measured, and complete investigation occurred, and that a subsequent panel hearing was held, where a more serious charge was dismissed. The Employer states that plain and simply, the Grievant lied during an official investigation, which merited a ten (10) day suspension being issued to the Grievant. The Employer stresses that this level of discipline reflects the seriousness of dishonesty as well as the Department’s commitment to integrity and public trust, and when integrity is compromised, accountability and consequences must follow.

The Employer argues that every element of just cause has been met, and it reminds the Arbitrator that while it acknowledges the requirement to bear the burden in this discipline case, the standard does not approach the “beyond a reasonable doubt” level. In addition to a fair and complete investigation occurring, with Union representation provided at the appropriate meetings, the City points out that a reasonable work rule exists, and the Grievant is well aware of it.

The Employer concludes by arguing that the level of discipline should not be reduced, in that a ten (10) day suspension is proportionate to the breach of honesty and integrity. The Employer argues that honesty is not optional, nor is it a technicality. As this was not a minor and excusable lapse, nor was it a “mis-statement,” and because dishonesty cannot be excused even once, the Employer maintains just cause exists for the discipline imposed. The Employer argues that a message must be sent that truth is not optional, and it asks that the grievance be denied in its entirety.

Union Position:

The Union contends that just cause does not exist for the discipline issued to the Grievant, a twenty-four (24) year employee without a “nick” of discipline on his record. The Union explains that the Grievant, a lifelong passionate Philadelphian was enjoying an earned day off, an Administrative Leave day at a PA Youth Vote event on [REDACTED]. The Union further explains that the Grievant was particularly interested in the topic being discussed, enough to spend an earned day off near the workplace. The Union continues its explanation of the situation by indicating that the Grievant pre-registered for other events during the week, being

turned away from an event the next day, but being able to attend a “community conversation” held that Friday (same week) outside City Hall in the Fashion District.

The Union describes that in early October, 2022, the Grievant was called into an interview, without being told prior as to what the interview concerned. At that interview, the Union states that the Grievant was informed that a woman filed an allegation of sexual harassment against him, subsequent to the [REDACTED] event. The Union argues that the Grievant was “incredibly nervous,” “horrified,” “scatterbrained,” and “overwhelmed,” and that he tried to focus on that accusation during the interview, recalling events of [REDACTED]. It was in that instance and atmosphere that the Grievant responded that he had not registered nor tried to attend other events that week. The Union argues that the Grievant made a mistake or a “misstatement,” with no deceptive motive to do so. The Union adds that the Grievant is remorseful and deeply regrets making such a mistake.

The Union contends that in the midst of several weeks transpiring between the event in August and October interview, that the Grievant was permitted to transfer from the City Board of Pensions to the Department of Human Services (DHS). The Union points out that the Grievant was not employed with the DHS when the alleged allegation/altercation occurred. The Union explains that in March, 2023, the Grievant was issued an Employee Violation Report (ERU) alleging a violation of the City’s Sexual Harassment Prevention Policy, by providing a false statement during an investigation. The Union further specifies that in April, 2023 a disciplinary hearing was held, followed by the issuance of the ten (10) day suspension in October, 2023, six months after the hearing, for providing false statements during an investigation. The Union notes that there was no issuance of discipline regarding the sexual harassment allegation, and that the Grievant was permitted to transfer departments during the pending investigation. The Union argues that a six-month delay in the issuance of this discipline is unjust, not commensurate with just cause, and is antithetical to the notion of due process, being administratively unacceptable. The Union further points out that it is highly prejudicial that the letter of suspension (**J-3**) refers in large part to a sexual harassment allegation that was unfounded.

In conclusion, the Union argues that the City has a very high burden to substantiate, in that a ten (10) day suspension is not commensurate to what occurred. The Union argues that the Grievant was not even subject to an “investigation” and not shown the attendance registration roster (**D-2**) in the interview with Ms. Brown, an interview in which he was not informed prior as to its nature and purpose. Instead, he was the victim of a “gotcha” in the midst of a high pressure questioning over sexual harassment allegations. The Union argues that the City referred in its case to comparable falsification cases as guidance in arriving at the level of discipline, yet it produced no specific examples. The Union stresses that what occurred was a mistaken statement, immaterial to an investigation that led to a conclusion that was ultimately rejected by the Department. The Union adds that issuing discipline six (6) months subsequent to a disciplinary hearing, as well as [REDACTED] subsequent to an infraction is not corrective in nature, rather it is punitive and disproportionate. The Union points out that the Grievant was

credible and remorseful at the April, 2023 panel hearing, as well as at the grievance arbitration hearing. As such, the Union requests that the grievance be sustained and that the Grievant be made whole, with a clearing of his record.

DISCUSSION:

Bearing the burden of proof in this discipline case, the Employer first presented Ms. Nicole Brown (“Ms. Brown”) who testified that she was employed by the City Department of Labor in a Training position. She stated that her position in 2022 was the Senior Employee and Labor Relations Specialist. She stated that she has been employed by the City of Philadelphia for twenty-five (25) years, and with the Employee and Labor Relations Unit (ELU) for two-and-a-half years. She described her day-to-day duties as investigating various complaints against City policy, such as Sexual Harassment, EEO and Workplace Violence.

In reference to the current matter, she stated that she was familiar with the Grievant. She recalled taking part in his investigation, and that she had just begun employment with the Department at the time, but the matter had recently been opened prior to her arrival. She stated that she proceeded to contact witnesses, the complainant, and respondents, to schedule interviews. She stated that after the interviews and gathering of information, she completed a summary report with her conclusions. She recalled interviewing the Grievant and specifically asking him if he attended “the event in question.” She stated that she asked him of the events of the day, what had happened, and she recalled that the Grievant explained where he sat, what type of Leave he utilized, and what part he took in the event. Ms. Brown testified that she asked him “how many events that he had registered for,” and that the Grievant stated that he “only registered for the one event.” Ms. Brown stated she further asked him “how many events he attended,” and that his response was that he “only attended the one event.”

Ms. Brown next identified the City Sexual Harassment Prevention Policy (**D-1**), the basis of which she used for the investigation. The witness specifically referenced item #8 of the Policy, entitled Duty To Cooperate, referencing that all employees must cooperate with an investigation, and they are subject to discipline up to and including termination for a failure to cooperate. Ms. Brown testified that she did not believe the responses elicited by the Grievant were truthful, based on other witness testimony and attendance/registration rosters indicating the Grievant attended or attempted to attend all three (3) of the events. The witness stated that she had possession of the roster at the time of the interview. She referenced the document (**D-2**) at the hearing.

Direct examination of Ms. Brown was concluded by her stating that she attended the Grievant’s disciplinary hearing and testified at said hearing, where she outlined her investigation and findings. She stated that she recommended disciplinary/corrective action commensurate with the infraction, concluding that the Grievant did not cooperate fully and truthfully with the investigation.

On cross examination, the witness indicated that while she could not remember the exact date of the Grievant's interview, she recalled it occurred in March, 2022,³ and she acknowledged that she did not give the Grievant the reason or subject matter of his interview. She indicated that while he responded that he did not attend any other events in [REDACTED], she had documents indicating that he had in fact registered/attended these events. She stated that she could not recall if she followed up with him on these specifics, as well as she acknowledged that she could have shown him the documents (D-2), at the interview. Ms. Brown also acknowledged that the disciplinary panel in fact did issue the Grievant a ten (10) day suspension, but it was not for violation of the City's Sexual Harassment Prevention Policy (D-1).

On re-direct examination, the witness agreed that it was not her duty to correct an interviewee during the investigation.

After further questioning/clarification from this Arbitrator, Ms. Brown stated that while the document (D-2) may indicate that the Grievant did not attend any of the days' events, the reality of the matter was that the Grievant did in fact admit attending, but the documents were not correctly updated.

On further direct questioning, the witness explained that the document was not updated, as the Grievant attended the first day, was turned away the second day, but he in fact did attend the third day of the event.

On further cross examination, the witness further clarified that the information indicated on Exhibit (D-2) is incorrect, but it does indicate, without dispute, that the Grievant registered for all the days' events on [REDACTED], as indicated on the document.

The City introduced Ms. Vongvilay Mounelasy, ("Ms.Mounelasy") the Deputy Commissioner, Department of Human Services (DHS), of the City of Philadelphia, as its second witness. She described her duties as consisting of being the Commissioner over the Administrative Support Services Division, which supports the entire DHS. The witness specified areas of oversight including Human Resources, Safety, Transportation, Records Management and Procurement. Among her responsibilities are review of disciplinary hearing transcripts and making a disciplinary recommendation to the Commissioner. The witness described the mission of the Department as investigative services, especially provision of services to ensure safety, permanency and the well-being of families and children.

In discussing her involvement in the particular matter of the Grievant, Ms. Mounelasy stated that she reviewed the transcript of his disciplinary hearing, paying particular attention to the Grievant's responses and reviewing similar or comparative cases, prior to making a recommendation to the Commissioner. The witness briefly referenced one particular

³ While the witness testified without correction that the interview occurred in [REDACTED]," this date is five (5) months prior to the alleged accusation/infraction (s) . A more than reasonable assumption/conclusion can be made that the witness meant to state [REDACTED] as the correct year.

comparative case related to falsification during an investigation, and she added there are other cases related to falsification. She stated in absolute terms that the Grievant was aware of the Department and City handbook and policies, including the Sexual Harassment Prevention Policy. Ms. Mounelasy referenced Exhibit (D-3), an acknowledgement form indicating the Grievant received the Policy in 2018. The witness described her assessment of the transcript, and in particular, she noted that during the hearing the Grievant was “well-prepared to demonstrate” that he attended other events, in contrast to his response in the interview, which was a “quick no” that he did not attend any other events during the questioned time period. She stated that this contrast weighed in her recommendation to the Commissioner. She clarified that integrity plays an important part in the workplace and in the activities of the employees, with the expectation of honesty when questioned regarding a very serious allegation. She added that failure to do so is a misleading deception towards the investigator.

Ms. Mounelasy continued her testimony by describing her familiarity of the Grievant’s classification as an Administrative Technician in the Finance Division, making eligibility determinations for children in the Medical Eligibility Unit. The witness indicated that the Grievant had no other disciplinary sanctions on his record to consider. She reiterated that there were “no other comparable cases” to consider, but there were other falsification matters, but no case where an employee provided a false statement during an investigation.

On cross examination, Ms. Mounelasy indicated that she was not present to witness any steps of the investigation of the Grievant. She confirmed that the Grievant was a Clerk III at the Board of Pensions at the time of the incident and investigation, and while she could not recall exact dates, she also confirmed that the investigation was ongoing during the time of the Grievant’s transfer to the DHS. The witness acknowledged that the charge of violating the Sexual Harassment Policy was not ultimately upheld, but only the charge of providing false statements during the investigation. Ms. Mounelasy also acknowledged that in reviewing the last paragraph of the disciplinary letter (J-3), there is specific reference only to the events of [REDACTED], the sexual harassment allegation.

On re-direct examination, the witness recalled that she only became aware of the investigation into the Grievant’s actions when he actually became an employee of the DHS Department, specifically when the disciplinary report was issued to the Department. She could not recall a specific date, however she confirmed it was after the Grievant was already working in DHS. She added that she did not type the disciplinary letter of notice.

On re-cross examination, Ms. Mounelasy stated that no one in DHS was aware of the alleged misconduct of the Grievant before he began employment with DHS.

The Union presented the Grievant, Mr. Phillip Jefferson, as its sole witness. The Grievant indicated that he is a lifelong resident of Philadelphia, and that he began employment with the City on June 25th, 2001. He indicated he works for the City because it presents a good opportunity for upward mobility, as well as offering good pay, benefits, vacation, a pension plan, and Union security. He stated that he began working in DHS as a Clerk Typist in a Childhood/Healthy Homes program. He testified that much of his work entailed typing and processing reports and entering data, as well as recording and typing environmental reports concerning lead in children, and also home visit reports. He stated that he next worked for the City Board of Pensions and Retirement as a Clerk Typist III, assisting employees with buy-back of pension matters, as well as processing reports. He stated that he subsequently moved to DHS on January 6, 2023, taking a position as an Administrative Technician for medical eligibilities and determinations under the Finance Division. In that role, he testified that he determines health insurance eligibility for children and whether State reimbursement is received. He added that he enjoys the position, as he feels he can make an impact on children's lives.

The Grievant continued his testimony by explaining his life outside work, describing how he enjoys family time, time at church, and time attending movies, festivals, concerts, conferences, community events, as well as travel. He clarified that he has a passion for education, seeking opportunities to "learn something new." He recalled attending an event for PA Youth Votes in [REDACTED], specifically referencing [REDACTED]. He stated that he took an Administrative Leave (AL) day to attend the event, as he stated he has an interest and passion for young people, especially for the role young people play in politics, education and government. He recalled that he pre-registered for the event sometime in July, 2022, and specifically on [REDACTED], he stated he went to attend speeches in the Mayor's Reception Hall, followed by lunch in the Reception Room. He stated that in the afternoon, he attended workshops held in various optional breakout sessions. He added that "nothing else of note" happened during that event.

The Grievant continued by stating on the next day, [REDACTED], he attempted to attend a health wellness event, but was denied admission, as the event was targeted to adults with children, and his name wasn't "on the list." He stated that while he did pre-register for the event, he promptly left after being told he needed to have a child to attend the event. The Grievant next recalled that he attended an event on [REDACTED], a community panel discussion in the Fashion District, an event for which he pre-registered. He recalled that he attended about nine (9) or ten (10) different events in [REDACTED] and additionally, about four (4) or five (5) events each in [REDACTED] and [REDACTED].

The Grievant next testified regarding being called by Ms. Brown from the Mayor's Office of Labor Relations, specifically to attend "an interview pertaining to a confidential matter." He stated that he was told nothing else about the interview, and that it occurred on October 6, 2022, about [REDACTED] subsequent to the [REDACTED] events. He testified that when he first arrived, that he was "stunned, in shock, in disbelief," as he was told that he was being accused of sexual harassment. Mr. Jefferson recounted the specific questions he was asked by Ms.

Brown in the interview, including being asked if he had registered for, or attended other events during the week of [REDACTED] [REDACTED]. He stated that his response to Ms. Brown was “no,” explaining he responded in such manner due to him being “in such a state of shock, and disbelief and totally confused about this allegation.” He testified that he had no intention to deceive Ms. Brown, and that he regrets saying “no,” because he “realize (d) she used that against me to say that I was guilty of what the accusation was.” He added that he apologizes for saying “no”.

The Grievant continued testimony by clarifying that while the interview was in October, 2022, the next he heard anything about it was March 1, 2023. The witness described how he was called into a meeting by the Chief Financial Officer on March 1st, where he was told there was a need to discuss his Employee Relations Report. The Grievant stated that he invoked his Weingarten rights and requested Union representation, as well as he was instructed by his Union representative to not attend the meeting; was placed on paid Administrative Leave pending the outcome of the investigation; and that his Union representative requested all information pertaining to the matter via a virtual meeting on March 2nd. He stated that the next meeting was a preliminary meeting on March 17th, 2023, followed by a full panel hearing on April 11, 2023. He recalled that the outcome of that meeting was that the panel determined to not uphold the charge of sexual harassment against the Grievant, however it would recommend a ten (10) day suspension for making the false statements in the interview, with the final determination to be made by the DHS Commissioner.

The Grievant concluded direct examination by clarifying that the discipline was issued to him in October, 2023, six (6) months following the April, 2023 panel recommendation. The Grievant stated that the six (6) intervening months were “rough,” and the impact of the suspension was “hurtful,” as he stated that he had never been suspended a day in his life, either in school or any employment situation. He added that he felt the suspension was an attack on his character and integrity, as well as it presented a financial hardship to lose two (2) weeks of pay.

On cross examination, the Grievant concurred that he received a promotion into DHS, from a Clerk III to an Administrative Technician, and was “chosen from a list.” The Grievant acknowledged that he had Union representation during his interview with Ms. Brown in October, 2022, as well as the March and April 2023 hearings. He indicated that he was permitted to take a “break” one time during the interview with Ms. Brown. Mr. Jefferson stated that he provided no additional information to Ms. Brown regarding his situation, subsequent to the October, 2022 interview, and that the first time he realized that he “mis-spoke” in that interview was when he was reminded by an AFSCME District Council 33 representative, as prior to that, he was in a state of shock, confusion and disbelief regarding the whole situation.

Cross examination concluded with the Grievant clarifying that the first time he admitted to “mis-speaking” was at the panel hearing, responding to a panelist as to the reason why he responded “no” to Ms. Brown in October, 2022. Mr. Jefferson reiterated that he regretted

giving the “mis-statement,” because it is now being used against him, and that he feels remorse for the actual “mis-statement”.

On re-direct examination, the Grievant clarified that his prior representation consisted of Union representatives, but not attorneys. Additionally, the Grievant stated the event of [REDACTED] was a “mix” of youth and adults.

FINDINGS:

Unlike the vast majority of cases heard at arbitration, there is virtually unanimous agreement on the material facts of this instant arbitration case. It is established without dispute that the Grievant was questioned in October, 2002 regarding an allegation of sexual harassment, stemming from an [REDACTED] event that the Grievant acknowledged attending. There is no dispute that during the interview, he was asked if he pre-registered or attended any other events, other than [REDACTED], during the week ending [REDACTED]. There was no hesitation in the Grievant’s response of “no”. There was no request to clarify the question or repeat it. True, the interviewer possessed a document indicating the Grievant’s response was not accurate, however, no fault can be found in her not pointing this out to the Grievant. There was no requirement for her to do that. The Grievant explained that he was in such an emotional condition over the sexual harassment allegation and questioning, that he answered in the manner that he did. The Grievant testified that he regrets making the statement, because it was subsequently “used against him.” The Grievant testified at arbitration that he feels remorse.

The City legitimately argues without dispute that honesty and integrity comprise the vital foundation of the mission of the DHS, and that there are consequences to breaching that foundation. The City employs a bona-fide work related policy concerning Sexual Harassment Prevention, which addresses cooperating during an investigation, which the Grievant acknowledged receiving. The policy/work rule is reasonable and job-related. While there is no denial that the Grievant responded in the negative to Ms. Brown’s questioning, the Union contends that a game of “gotcha” was played by the City, in that the question asked was at best extremely tangential to the crux of the alleged investigation/allegation; that the Grievant had no forewarning as to the subject matter of the interview; and the response was given while the Grievant was in an extremely emotionally distraught condition. There is no dispute that the Grievant was “cleared” of the original sexual harassment allegation, and there is no dispute that the Grievant admitted regret that he answered the question in the negative in April, 2023, at the convening of the discipline panel, *prior* to the issuance of the discipline in October, 2023.

With the factual circumstances properly established, the primary area of dispute concerns the level of discipline administered to the Grievant, and as the Union argues, if there is merit at all for any discipline? The Union points out that the disciplinary matter before this

Arbitrator is unjust in that an inordinate amount of time elapsed between the alleged incident and the issuance of discipline, denying the Grievant appropriate industrial due process. Furthermore, while the City argues that the elements of just cause have been adequately satisfied, the Union contends that the Grievant did not provide a false statement during an investigation, rather he made a “mis-statement” in the heat of career-threatening questioning. Additionally, the Union argues that the level of discipline is not supported by rationale and specific comparable cases, and does not show any consideration for the Grievant’s length of unblemished service, which includes a promotion occurring in the midst of this particular investigation.

Thus, it is now appropriate at this juncture to review this case in light of the traditional just cause tenets, in order to arrive at the proper decision.

As indicated above, a reasonable policy/work rule exists, as described in Exhibit (D-1). The Policy is reasonably related to the work environment, and provides under item VII that an employee must cooperate with an investigation. That cooperation without argument includes answering a question truthfully, to the best of one’s ability. Exhibit (D-3) indicates that the Grievant acknowledged receiving this Policy, and there was no record evidence produced to indicate that the Grievant did not understand his obligations under the Policy. The standard of a reasonable, work-related work rule satisfactorily distributed, with the Grievant being aware of the Policy, has been met.

Similarly, there is no dispute that a thorough investigation of the matter occurred. What began initially as an investigation into a sexual harassment allegation, one in which the Grievant was exonerated, it ultimately evolved into an investigation into an incorrect statement given by the Grievant in the midst of the original investigatory interview. He was afforded a pre-disciplinary panel hearing in April, 2023. The investigation produced sufficient evidence to establish that the Grievant did not speak truthfully to Ms. Brown in October, 2022, when asked if he pre-registered or attended other events during the week of [REDACTED]. Whether the utterance is characterized as a “mis-statement,” a false statement, a simple mistake, or a blatant falsehood, for the intents of this arbitration, *the utterance was untruthful*. This is substantiated by the testimony of Ms. Brown, Exhibit (D-2), and the admission of the Grievant himself. Sufficient evidence was obtained in order to find that a violation of the Policy occurred.

Record evidence establishes that the Grievant was afforded adequate due process and opportunity to present his side of the events. The Grievant was afforded, and availed himself of, Union representation when requested at the various interviews/panel hearings. Undisputed record evidence establishes the Grievant was aware of the charges of providing a false statement at his April, 2023 panel hearing. At that time, he testified that he provided a reason to the panel for his response.

The Union argues that industrial due process did not occur in this matter, due to the lack of information regarding the October, 2022 interview beforehand, which resulted in an

occurrence of “gotcha,” focusing on a response that was not related to the initial allegation. Additionally, the Union argues that Ms. Brown possessed accurate information regarding pre-registration and attendance at the investigatory interview, and that if she would have clarified /discussed/challenged the Grievant on his response at that time, the matter could have been resolved. Furthermore, the Union argues that the timelines of the process were unduly and unfairly prolonged, causing the Grievant to suffer, awaiting the outcome of the investigation. It points out this occurred over more than an eighteen (18) month period, during which time the Grievant was afforded a promotion into a different Department. While I do not find these factors persuasive to alter my finding that due process was afforded the Grievant, these arguments will be evaluated more thoroughly in my consideration of mitigating/extenuating factors, as to whether the proper level of discipline was issued in this matter.

I have thoroughly reviewed and considered all the respective parties’ arguments placed on the record concerning whether the ten (10) day suspension should be upheld, or whether reduction or total elimination of discipline and a make whole remedy should occur in this case. The City is correct in asserting that honesty is a hallmark trait in the Department, and any department for that matter, and that it is not optional, but it is a requirement. The City is correct in that providing a statement or response during an investigatory interview that is not true is a potentially serious matter. The Grievant is tasked with job duties and responsibilities that require integrity and accuracy. Record evidence indicates that the Grievant and Union representation were permitted at least one “break “during the October interview, as well as the Grievant testified that he was informed by an AFSCME District Council 33 representative that he answered the particular question in the negative, at some period of time following the October, 2022 interview, but prior to him being promoted and working under a different Union representative in early 2023. There is no evidence to indicate that he approached management prior to April, 2023 to explain why he may have answered the questions in the negative. While there was no requirement on his part to do so, it calls his credibility, or his feelings of true remorse, into careful review. It is noted that the Grievant testified at the arbitration hearing that he regrets making the statement as he did, but for the reason that it “was used against him”. Nevertheless, he acknowledged that he gave an untrue statement. He never denied his actions, either before the disciplinary panel or at the arbitration hearing.

The City has presented testimony that in determining the penalty, it acknowledged there existed other falsification cases, but there were no other comparable cases to consider, specifically where there was a false statement provided during an investigation. No other rationale or consideration of factors was presented, nor any further explanation as to how the determination of a ten (10) day suspension was determined. The parties’ Agreement (J-1) at Article 16. specifies that:

“Disciplinary actions shall be progressive in nature where appropriate.”

It is important to note that this is not only general labor relations theory, or an employer-promulgated policy, rather it is a provision of a jointly-negotiated collective bargaining

agreement. That being said, no evidence or testimony was produced by the City to indicate that progressive discipline was even considered, or on the contrary, why a ten (10) day suspension was deemed appropriate, rather than a reprimand or low-level suspension. The City acknowledged the long-term service (over twenty-two (22) years at the time of the infraction) of the Grievant, and there was no dispute that he had an “unblemished” disciplinary record. Yet, there was no testimony presented to indicate that this long-term unblemished service was given *any* consideration in determining the level of discipline. Additionally, what is puzzling to this Arbitrator is the fact that approximately [REDACTED] months transpired between the alleged date of infractions ([REDACTED] and October), to the March and April disciplinary hearings. The reason for the ten (10) day suspension, the false statement made in October, 2022 was established and proven before that particular October, 2022 interview ended. Ms. Brown held the evidence in her hand that contradicted the statement of the Grievant. Although another year transpired before discipline was issued, there is no record evidence to indicate any other information was obtained during that one year time period, that was germane to the matter of his false statement. Additionally, there was no record evidence to indicate that the disciplinary panel gave any mitigating consideration to the explanation given by the Grievant for his untrue statement, even though six (6) months transpired before the issuance of the discipline. Ms. Mounelasy in fact testified that she noticed that his response at the disciplinary panel was in sharp contrast to his quick “no” at the October, 2022 interview. She testified that she took particular note of this difference, but she did not expound on what impact that had on the disciplinary decision.

There was no dispute that the Grievant was promoted from a list during this ongoing investigation/time period, although unrebutted testimony indicated that DHS had no knowledge of the prior allegations until he was actually employed by DHS. I find most troubling and concerning to the City’s case, the length of time (six (6) months) between the April disciplinary panel hearing and the issuance of discipline in October, 2023. While the parties’ Agreement presented at Exhibit (J-1) does not have timeliness requirements, without any record evidence of explanation as to why this length of time was taken between the various steps of the process, the Union argument that the discipline was punitive and not corrective in nature, and it did not consider any mitigating circumstances, receives much merit in the opinion of this Arbitrator.

The City argues that the infraction committed by the Grievant was serious in nature and that honesty is critical, foundational and is not an optional choice. However, when six (6) months transpire between the infraction and the pre-disciplinary panel, followed by another six (6) months transpiring between the pre-disciplinary panel and the issuance of discipline, all the while the employee is permitted to work in a position requiring integrity and honesty, (a promotion at that) without any explanation as to the extended timelines, the claim that the infraction is serious is diminished somewhat. Furthermore, it is undisputed that Ms. Brown was aware in October, 2022 that the statement provided by the Grievant was untruthful, yet there was no testimony as to how his response affected /hindered, or was even remotely related to

the original investigation. Indeed, record evidence indicates the Grievant was exonerated regarding the original sexual harassment allegation.

The Union points out that the Grievant admitted to the panel six (6) months prior to the issuance of discipline, that he did not provide an accurate statement in October, citing the reasons of being distraught and in shock over the sexual harassment allegation. The Union points out that the Grievant has been consistent in his explanation at the panel and at the arbitration hearing. Additionally, the Union argues that while the Grievant was in fact exonerated from wrongdoing concerning the sexual harassment allegation, the major essence of the suspension letter addresses the unfounded allegation. The Union argues this establishes that the suspension was more punitive than being corrective in nature, causing the Grievant stress and overall suffering, as the Grievant testified. I agree. While the City argues that the discipline issued must send a clear message that dishonesty will not be tolerated, an inordinate and unexplained delay in the issuance of discipline tends to send a wrong message of a false sense of security, in that swift justice will not occur for what is deemed a serious offense. While the explanation of the Grievant will not relieve him of any consequences for his untrue statement in October 2002, his explanation is not irrational and far-fetched, but rather it is somewhat understandable, consistent, and did not reveal any intent to deceive the investigator.

Finally, the Union argues that the letter of discipline is highly prejudicial, in that it makes no small reference to the harassment allegation for which he was exonerated. I also agree with this argument. The suspension letter gives the appearance that the sexual harassment allegation, while unfounded, yet very manifest in the letter, remains at the forefront of the disciplinary action. In fact, the second paragraph of the letter explicitly states that the Grievant was found to have engaged in conduct that violated the City's Sexual Harassment Prevention Policy. The date referenced in the final sentence of the disciplinary letter refers to the date of the alleged sexual harassment incident, however, the false statement for which the suspension was issued occurred sometime on October, 2022. This matter is further addressed in the Award portion of this decision.

As all Arbitrators are, I am loathe to substitute my judgment in determining a level of discipline in matters where I do not find arbitrary or capricious reasons for the level of discipline rendered, or if the level of discipline is reasonable, given the totality of the circumstances and factors placed into evidence. In this instant matter however, I find the ten (10) day suspension issued to the Grievant to be untimely, unreasonable, disproportionate, not corrective in nature, and otherwise unjust and excessive.

In reliance upon a trusted authority, Elkouri & Elkouri,⁴ I note:

"Absent express limitations on their authority to modify penalties, two general views historically have been held by arbitrators. One view is that an arbitrator may not modify a penalty absent arbitrary, capricious, or

⁴ "How Arbitration Works," 6th Ed., Elkouri & Elkouri, Ruben, pp. 959 and 960.

discriminatory reasons, and the other view is that an arbitrator may do so if the penalty does not meet a reasonable person test. The first view evolved in a line of decisions following reasoning expressed in Stockham Pipe Fittings Co.:

Where an employee has violated a rule or engaged in conduct meriting disciplinary action, it is primarily the function of management to decide upon the proper penalty. If management acts in good faith upon a fair investigation and fixes a penalty not inconsistent with that imposed in other like cases, an arbitrator should not disturb it....The only circumstances under which a penalty imposed by management can be rightly set aside by an arbitrator are those where discrimination, unfairness, or capricious and arbitrary action are proved-in other words, where there has been abuse of discretion."

Further guidance provided by Elkouri⁵ indicates:

"(A)n arbitrator usually applies the equity concept in a discipline case so as to include the power to appraise penalties in terms of the fitness and fairness for the particular offense, since the extent of the penalty is logically reviewed as related to the action for which the employee is held responsible.... Thus, management's rights, implied or expressed in an agreement, are qualified and reviewable by the need to be reasonable and fair, rather than arbitrary and capricious."

Additional guidance from Elkouri⁶ explains:

"In less serious cases, arbitrators are very likely to change or modify an employer's discipline if such discipline is too harsh for the offense committed. In those cases, discipline may be considered to be excessive if it is disproportionate to the degree of the offense, if it is out of step to the principles of progressive discipline, if it is punitive rather than corrective, or if mitigating circumstances were ignored. Arbitrators, thus often modify disciplinary penalties imposed by management when there are mitigating circumstances that lead the arbitrator to conclude that the penalty is too severe or that the employer lacks, or has failed to follow, progressive discipline procedures."

And finally from Elkouri⁷:

"vii. Grievant's Past Record

Some consideration generally is given to the past record of any disciplined or discharged employee. An offense may be mitigated by a good past record and it may be aggravated by a poor one. Indeed, the employee's past record often is a major factor in the determination of the proper penalty for the offense. In many cases, arbitrators have reduced penalties in consideration of the employee's long, good past record."

I have duly considered all the evidence placed on the record before this Arbitrator, specifically balancing the facts on one hand that the Grievant did not answer truthfully in October, 2022, and that honesty and integrity is foundational to any employment situation. On the other hand, I find facts to support that the seriousness of this offense is mitigated by its relation to the original investigation and the inordinate amount of time taken by the City to issue *corrective* discipline pertaining to it; the fact that the City awarded the Grievant a promotion in the midst of the investigation, which brings into question its argument in the seriousness of the offense; the lack of

⁵ Ibid, pg. 962.

⁶ Ibid, pg. 966.

⁷ Ibid, pg. 983.

progressive discipline or an explanation as to why progressive discipline was not appropriate; the lack of evidence that the Grievant's long-term unblemished service was even a consideration; and the suspension letter which incorrectly references prohibited contact and in fact, states that the Grievant violated the Sexual Harassment Policy on [REDACTED]. Based on the above, I find that the ten (10) day suspension issued to the Grievant, date served October 6, 2023, was punitive and excessive, disproportionate and not corrective in nature, and shall be correctly and justly reduced to a one (1) day suspension. I order the letter of ten (10) day suspension to be expunged from the Grievant's records, to be replaced by a letter of a one (1) day suspension solely for providing a false response to questioning during an investigatory interview in October, 2022. I order the Grievant to be made whole for nine (9) days of backpay, seniority, benefits and any other emoluments that the Grievant is normally entitled to, as a result of this Award.

AWARD:

The grievance is modified. The City did not have just cause to issue a ten (10) day suspension to the Grievant, Mr. Phillip Jefferson, as it is excessive. I find that there was just cause to issue discipline in the form of a one (1) day suspension for providing a false statement during an investigatory interview in October, 2022. The letter of ten (10) day suspension is to be expunged from the Grievant's file, and to be replaced by a letter of one (1) day suspension, for giving a false statement during an investigatory interview in October, 2022. The Grievant is to be made whole for nine (9) days of backpay, seniority, benefits and any other emoluments normally restored through this type of Award, at the appropriate rate.

This Arbitrator will retain jurisdiction for thirty (30) calendar days from the date of this Award, for the sole purpose of Award implementation. This period may be extended by mutual agreement of the parties.

LARRY CHESKAWICH

Larry Cheskawich

Arbitrator

Allentown, PA

April 22, 2025