

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between: *

TOWN OF AUBURN *

-and- *

ARB-17-6342

AUBURN DISPATCHERS UNION, MCOP, *

LOCAL 388A *

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

James Hoban, Esq. - Representing Town of Auburn

Jennifer Smith, Esq. - Representing Auburn Dispatchers Union,
MCOP, Local 388A

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Town had just cause to terminate Maureen MacLean, and the grievance is denied.

Timothy Hatfield, Esq.
Arbitrator
May 12, 2020

INTRODUCTION

On November 13, 2017, the Auburn Dispatchers Union, MCOP, Local 388A (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a hearing in Westborough at the Offices of Mirick, O'Connell, DeMallie & Lougee on February 1, 2018, April 17, 2018, May 17, 2018, June 18, 2018, July 30, 2018, September 6, 2018 & September 11, 2018.

The parties filed briefs on January 18, 2019.

THE ISSUE

Did the Town have just cause to terminate Maureen MacLean? If not, what shall the remedy be?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article 6– Discipline

The Town will not discipline any permanent employee without just cause.

Disciplinary action or measures will include written reprimand, suspension and discharge. Any written reprimand, suspension or discharge imposed upon a permanent employee may be processed as a grievance through the regular grievance procedure.

Article 9– Grievance Procedure (In Part)

Section 1. For purposes of this Article, a grievance will be defined as an actual dispute arising as a result of the application or interpretation of one or more express terms of this Agreement. ...

Section 4. If the grievance is still not settled, the Union and the Town can submit the issue to the State Board of Conciliation and Arbitration for arbitration. The decision of the arbitrator will be binding on both parties and will be limited exclusively to the interpretation of the terms of this contract. The arbitrator will have no power to add to, subtract from or modify this Agreement.

The arbitrator shall not render any decision contrary to state or federal law. In disciplinary cases before an arbitrator, the town shall have the burden to prove by a preponderance of the evidence that there was just cause for the disciplinary action. ...

FACTS

The Town of Auburn (Town) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. Maureen MacLean (MacLean) worked as a dispatcher for the Town from 1988 until her termination in 2017.

The dispatchers are employed in the Town's Police department and are supervised by the Police Department's command officers. Dispatchers are responsible for handling 911 calls and dispatching all emergency service personnel – Police, Fire and Emergency Services (EMS). They are also responsible for answering a non-emergency business line and for handling walk-in traffic at the police station. The position of dispatcher can be stressful at times, as dispatchers are expected to simultaneously listen to, and respond to, multiple parties over the phone and radio, while dispatching the correct public safety personnel. Two civilian dispatchers are on duty, 24 hours a day, 7 days a week. MacLean typically worked the day shift, from 7:00 a.m. to 3:00 p.m.

June 21, 2017 Incident

MacLean worked the day shift on June 21, 2017 along with Kyla Fontaine (Fontaine). It was very busy in the dispatch center as there were multiple calls out at the same time and a lot of traffic on the radio. There was a medical call for service that Fire Captain Justin Brigham (Captain Brigham) responded to. As he responded to this call, Captain Brigham called dispatch (dispatch or fire alarm) to confirm the address of where he was going, and MacLean took the call answering with a quick one-word response before the channel was open. Captain Brigham did not hear any response from MacLean to his call. Captain Brigham called fire alarm a second time and heard no response as MacLean again responded with one word before the channel was open. At that point MacLean told Fontaine that she should answer their calls, stating, "I'm not answering them again, I've already answered them three times." On the third call, Fontaine answered and gave Captain Brigham the information he needed, but by this time he had driven past the correct address had to turn around. Captain Brigham had no difficulty hearing Fontaine once she took over the call. During the two failed interactions, MacLean made no attempt to resolve the communication issue other than telling Fontaine to handle the third attempt by Captain Brigham.

On the same afternoon, three firefighters, Scott Davis (Davis), Rick Nicholson (Nicholson) and Adam LaFlash (LaFlash), came over to dispatch to visit with Fontaine and to congratulate her on graduating from the police academy. While they were there, Fontaine told them that earlier, MacLean had answered a 911 call, didn't speak to the caller, and slammed the phone down and walked out

of the building. Fontaine claimed that she had to return the phone call to the 911 caller. Fontaine testified at the hearing that she had not told anyone that MacLean had refused to answer a 911 call, despite the statements of the three firefighters. The three firefighters each said that Fontaine had told them that MacLean had answered a 911 call that day, had slammed the phone down without speaking to the caller and had left the building forcing Fontaine to call back the 911 caller.¹ MacLean was in fact attempting to contact the Town's dog officer. After being unable to contact the dog officer at two different phone numbers, MacLean slammed the business line phone down and left the dispatch center to take a break. At no time did MacLean slam down the 911 line, nor did Fontaine have to recall a 911 caller as she alleged to her fire fighter friends.

The following day, Fire Chief Coleman (Coleman / Chief Coleman) called Police Chief Andrew Sluckis (Sluckis / Chief Sluckis) and made a formal complaint about MacLean based upon McLean's conduct as a dispatcher the previous day. Coleman reported that MacLean had been unprofessional in her dealings with members of the Fire Department and had failed to acknowledge and audibly respond to multiple calls to the dispatch center. In addition, Coleman reported that he had been advised by members of his department that MacLean had received a 911 call, slammed the phone down without speaking to the caller, cursed and left the dispatch center. Coleman complained about MacLean's attitude and

¹ Fontaine's testimony about this incident is questionable on multiple levels. Her denial at the arbitration of telling the three fire fighters that MacLean hung up on a 911 caller is not credible. Additionally, the facts she recounts for the fire fighters on the day in question about MacLean's actions are not borne out by the call log.

demeanor over the telephone and her “mic clicking”² on the radio. Coleman reported that he had spoken to members of his department about MacLean and her attitude and demeanor in person and on the phone. Coleman told Sluckis that MacLean’s problematic behaviors were pervasive, and he wanted something done about them.

After receiving Coleman’s complaints, Sluckis called Operational Lieutenant Todd Lemon (Lemon) and told him he wanted an internal affairs investigation about MacLean’s handling of fire department calls. On June 22, Lemon called Coleman to get his complaints directly from him. Coleman reiterated what he had told Sluckis. Coleman also told him of a similar incident on May 30, 2017, where MacLean had failed to respond to multiple calls to the dispatch center.

May 30, 2017 Incident

On May 30, 2017, Ambulance 2, with Firefighter Chris Pierce (Pierce) driving, attempted to notify fire alarm that they were taking a patient to St. Vincent’s Hospital. Dispatch Supervisor Erin Chicoine (Chicoine) and MacLean were working the first shift. Pierce, on two occasions, contacted fire alarm and on each occasion, MacLean responded “go ahead” prior to the radio channel being open. Pierce was unable to hear any response. Pierce again tried to communicate with dispatch and finally announced that they were transporting a patient to St. Vincent’s Hospital. Pierce felt that MacLean was “mic clicking” rather than answering the radio and identifying herself. Finally, MacLean said to Chicoine,

² A “mic click” is a term used by members of the fire department to describe the sound made by the momentary opening of the fire radio channel without any verbal transmission being heard.

“can you answer them, clearly my radio is broken.” Chicoine took over communications. At this point, Chief Coleman got on the radio and asked fire alarm if the station was receiving Ambulance 2’s calls. Chicoine said that they were, and her partner had responded to the prior calls. A subsequent radio check did not find any problem with MacLean’s equipment. MacLean made no attempt to correct the communication failures with Ambulance 2 prior to Chicoine taking over on the call.

July 11, 2017 Incident

Another incident occurred after Lemon had commenced his internal affairs investigation of MacLean and was included in the investigation to determine whether any discipline of MacLean was appropriate.

On July 11, 2017, Lemon called Police Sergeant Daniel Lamoreaux (Lamoreaux) and asked him to investigate a complaint that a civilian named Robert Gagner (Gagner) had made. Gagner had called the Police Department to report a hit-and-run accident which involved his wife’s car. Gagner had attempted to make a report through dispatcher MacLean. When MacLean initially answered the phone, she did not identify herself as is required. Gagner attempted to give her a partial plate number for the vehicle that hit his wife’s car in a parking lot. MacLean refused to take it, stating that they did not take reports over the phone. MacLean told Gagner that he would have to come to the Police Department to file a report. Gagner became frustrated and hung up.

Lamoreaux reviewed the log and found that MacLean had not logged in the incident. He then listened to the recording of the phone call and found that the call

had failed to reach a successful conclusion. Gagner was attempting to explain to MacLean about the hit and run and she repeatedly said that they don't take reports over the phone. He was attempting to give her information and she would not take it over the phone. Lamoreaux found that MacLean did not attempt to call Gagner back after he hung up and while Gagner sounded frustrated, Lamoreaux thought that something could have been done to successfully resolve the situation.

Lamoreaux wrote a report of the incident and forwarded it to Communications Supervisor Sgt. Justin Starkus (Starkus) and Lemon. Starkus determined that MacLean had been derelict in her duties by not identifying herself when she initially answered the phone, not making an entry of the call in the log, and not sending an officer down to the scene. He recommended that MacLean receive a reprimand for this misconduct.

Disciplinary History

MacLean has an extensive history of citizen complaints for inappropriate demeanor and unprofessional behavior. Most of these complaints resulted in either a counseling session or a written reprimand. MacLean received a two-day suspension and a referral to EAP as a result of an incident in 2014. In that instance, a caller dialed 911 to report a suspected drunk driver. The Town's review of the call found that MacLean spoke in a monotone, sounded irritated, unwelcoming, automated and mechanical throughout the call, and her extended placement of the caller on hold without warning caused the caller - who was originally helpful and eager - to become defensive and reluctant to continue on the call. The Union and the Town agreed that MacLean should receive a two-day

suspension and a referral to the EAP program. Chief Sluckis warned MacLean that:

[she] is a valuable employee that we want to keep working here as long as she wants [to] stay, but if there was any further misconduct relative to her behavior in dispatch or citizen's complaints, he was going to impose stricter discipline.

Additional, Chief Sluckis told her, you have one foot out the door, and she said she understood and would do better. Upon reaching the agreement, MacLean signed an acknowledgement form stating: "I fully understand what is expected of my conduct and agree to act courteously and professionally to the best of my abilities while performing my duties."

Investigations

On August 16, 2017, Town Manager Julie Jacobson (Town Manager / Jacobson) put MacLean on paid administrative leave pending the outcome of the ongoing investigations. On September 20, 2017, Lemon issued a 33-page final report and submitted it to the Town Manager and to Chief Sluckis. On September 22, 2019, the Town conducted a "Loudermill" hearing pursuant to Cleveland Board of Education v. Loudermill, 470 U.S. 532 (1985). The Town Manager served as the hearing officer.

On October 19, 2019, the Town Manager issued her decision and terminated MacLean. The attached Notice of Termination listed six reasons for this action:

- 1) Multiple complaints were made by your co-workers and citizens of the Town of Auburn since as early as 1993 regarding your unprofessional conduct in the station with your co-workers and over the telephone with private citizens.

- 2) You have an extensive history of complaints regarding your conduct for which you have received discipline including counseling, verbal and written reprimands and a suspension, as well as mandatory participation in the Employee Assistance Program.
- 3) On May 31, 2017, you failed to maintain clear and effective communications with the Auburn Fire Department personnel over the fire radio creating hazardous and unsafe working conditions endangering public safety in violation of Town policy and potentially damaging interdepartmental relations.
- 4) On June 21, 2017, you failed to maintain clear and effective communications with the Auburn Fire Department personnel over the fire radio creating hazardous and unsafe working conditions endangering public safety in violation of Town policy and potentially damaging interdepartmental relations.
- 5) On July 11, 2017 the Auburn Police Department received another citizen's complaint regarding your unprofessional and rude behavior with respect to a call to report a hit and run accident; and
- 6) During the investigation and at the hearing you failed to demonstrate any concern or take any responsibility for [your] conduct.

The Union filed a grievance over MacLean's termination that the Town denied at all steps of the grievance procedure and resulted in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

It is well established that the burden of proof to demonstrate just cause for discipline falls on the employer. The standard that an employer must meet to establish just cause is well known. The employer must show: 1) the employee is on notice of a rule or policy, the infraction of which may result in discipline; 2) the

employee committed an infraction of the rule or policy; and 3) the amount of discipline issued is in keeping with the seriousness of the offense.

Here, the just cause standard is easily met. MacLean received and acknowledged her access to the Auburn Police Department's Policies and Procedures, and by Department regulation is chargeable with and held to Departmental standards whether she familiarizes herself with them as required or not. MacLean was also expressly warned in July 2014 with respect to discourtesy to the public that she "had one foot out the door" and would be subjected to more severe discipline in the event of further infractions. Thus, the record amply demonstrates that MacLean was on notice of the rules she was terminated for violating.

The record demonstrates that MacLean violated at least twelve of the Auburn Police Department's Policies and Procedures in her handling of the calls on May 20, 2017, June 21, 2017 and July 11, 2017. In light of MacLean's extensive history of complaints, prior disciplinary history, the leniency she had been afforded in connection with prior complaints and violations, and her failure and refusal to correct her conduct and behavior despite the Town's prior efforts, termination was warranted.

Town Manager's Decision

On October 19, 2017, the Town Manager issued her decision on termination. In the decision, she noted that MacLean had worked for twenty-eight years as a dispatcher and had been the recipient of extensive disciplinary action as far back as 1993 continuing through 2014. On June 21, 2017, the Police

Department received a complaint from the Fire Department concerning MacLean's failure to follow proper radio transmissions during a medical call. Lt. Lemon was directed by Chief Sluckis to investigate. During this investigation, it was discovered that a similar incident had taken place on May 30, 2017. In addition, while the investigation was ongoing, the police department received yet another citizen complaint concerning MacLean's interaction with the public on July 11, 2017, when a citizen called to report a hit-and-run accident.

The Town Manager found that MacLean exhibited "a pattern of unprofessional conduct over almost the entire history of her employment as a dispatcher with the Auburn Police," and that her "shortcomings with respect to inappropriate demeanor and unprofessional behavior have been brought to her attention time and time again." MacLean, "has not demonstrated any desire to improve her conduct and she continues to be disruptive to the operation of the dispatch services of the Town of Auburn." The Town Manager concluded that:

the Town has provided Dispatcher MacLean ample opportunity to correct her behavior. She has been counseled many times and received both verbal and written reprimands. Even a two-day suspension without pay has not been impactful enough for Dispatcher MacLean to address her behavior and attitude. Dispatcher MacLean has refused to accept any responsibility for her actions. Allowing Dispatcher MacLean to continue her employment jeopardizes the effective operation of the dispatch services provided by the Auburn Police Department and the safety of Town personnel and the public.

As a result, MacLean was terminated from the Town, effective October 17, 2017.

MacLean was the Subject of Multiple Complaints of Unprofessional Attitude and Behavior

MacLean's disciplinary history reflects fourteen separate documented incidents resulting in complaints between August 19, 1993 and July 22, 2014. Thus, with the three additional incidents investigated after June 22, 2017, MacLean had seventeen documented disciplinary complaints as of the date of her discharge. Even a cursory review of the documentation underlying the various complaints for discourtesy and telephone demeanor reveals that the behavioral complaints that came to light during the internal affairs investigation are long standing behavioral problems which, as the Town Manager found, MacLean has never corrected despite numerous reprimands, warnings and opportunities for improvement.

On July 22, 2014, MacLean was suspended for two days and referred to EAP as discipline for a complaint of discourtesy to the public. On this occasion, a female caller had called in to report a suspected drunk driver. After reviewing the call, Lt. Maass found that MacLean's voice was monotone, irritated, and unwelcoming throughout the call, that her demeanor was automated and mechanical and the extended use of hold and placing the caller on hold without warning caused the caller who was initially helpful to become defensive and reluctant. Chief Sluckis, after reviewing Lt. Maass' report and meeting with MacLean, suspended her for two days and accepted her referral to EAP. Lastly, Chief Sluckis told MacLean that:

[she] is a valuable employee that we want to keep working here as long as she wants [to] stay, but if there was any further misconduct relative to her behavior in dispatch or citizen's complaints, he was going to impose stricter discipline. Chief Sluckis told her, you have

one foot out the door, and she said she understood and would do better.

The Town Manager's reliance on MacLean's extensive history of complaints and her prior discipline including at least three reprimands and a suspension for discourtesy to the public was well-grounded and demonstrated that there was just cause to terminate MacLean.

Co-Worker Complaints

The Town has repeatedly received complaints from co-workers, agencies, police officers and the public that MacLean is rude, discourteous and unprofessional. MacLean used profanity on a daily basis in response to whatever might be frustrating her at the moment. She would often mumble about officers not f[*]cking listening the first time when she had to repeat something. There was also evidence that MacLean would become agitated when it was busy including when, for example, multiple officers were engaged in traffic enforcement, and she would curse and slam things around in the dispatch center. Lastly, there was also evidence that MacLean on multiple occasions abruptly left dispatch, leaving her partner to handle whatever frustrated her and/or whatever came in while she was out.

The daily use of profanity, particularly with respect to police officers and firefighters merely trying to do their jobs, is unprofessional and contributes to a hostile atmosphere. Similarly, slamming things around when frustrated is unprofessional and contributes to a hostile work environment, as does being rude and sarcastic to other town employees calling via radio or telephone for information. Discourtesy or antagonism toward fellow employees or supervisors

violates Town policy and is considered serious enough to justify the suspension of the progressive discipline system and the immediate imposition of discipline.

Dispatching of Fire Calls

In the Town's notice of termination, the Town Manager found that on June 21, 2017 and May 30, 2017, MacLean failed to maintain clear, effective and professional communications with the Auburn Fire Department personnel over the fire radio creating hazardous/unsafe working conditions, endangering public safety and potentially damaging interdepartmental relations.

As Captain Brigham testified, the dispatchers are the only means fire department personnel have of communicating with the 911 callers that are requesting emergency services to get additional information. They are the means by which police and fire coordinate their respective responses to emergency calls and the means by which mutual aid is called. Captain Brigham testified that MacLean was a tough dispatcher to work with. Difficult because of her radio mannerisms and the way she conducted herself on the radio. Fire department personnel had to re-ask for information and would not get any response or would only hear a "mic click." Lt. LaFlash, firefighters Davis, Nicholson and Pierce similarly testified that this was a problem they routinely experienced with MacLean, but not with any of the other dispatchers. Chief Coleman, who monitored both fire and police frequencies, believed that MacLean's mic clicking was intentional based on the frequency with which it occurred when she was dealing with fire personnel in comparison to its infrequent occurrence during police dispatch transmissions. Chief Coleman continued that whether responders are calling dispatch to receive

information or provide it, it is a safety issue for all involved if dispatch does not answer the responders on the radio.

MacLean's radio deficiencies also presented a safety risk to the public and those in need of emergency services. MacLean's failure and refusal to comply with proper radio protocols and procedures needlessly delays response times and places those in need of services at risk. The June 21, 2017 call involving Captain Brigham exemplifies this problem. As the audio of the call makes clear, Captain Brigham called in three separate times over a period of approximately two minutes and nine seconds without ever getting a response that was audible to him. As a result of MacLean's refusal to make any effort to establish two-way communication with Captain Brigham in circumstances where he was clearly not reading her, he drove past the location of the call and had to turn around and go back. It is not difficult to see how the refusal by MacLean to perform her job functions could have catastrophic results. The just cause standard does not require the Town to wait until someone dies or experiences complications as a result of a needlessly-caused delay before acting to terminate a non-performing dispatcher.

MacLean's Ambivalence

The June 21, 2017 and the May 30, 2017 calls both concerned emergency medical responses. The June 21, 2017 call involved Captain Brigham and despite MacLean readily acknowledging that reducing response times is critical during medical emergencies, she also flatly admitted that she was not concerned that Captain Brigham was not receiving her despite multiple calls. MacLean made no effort to try anything different, she did not try the foot pedal, did not call over to the

fire department, did not try Captain Brigham on the back-up radio, she simply did nothing to establish proper communications. Moreover, MacLean had no explanation for why she failed to do anything else when her transmissions to Captain Brigham were not acknowledged. This is indicative of a complete lack of concern for both the patient and the effective operations of the Town's emergency services.

The May 30, 2017 call involved a potential heart attack, which MacLean acknowledges is a medical emergency. Like the June 21, 2017 call MacLean never did anything differently when she was unable to establish effective communication with firefighter Pierce on the radio after multiple calls. In fact, MacLean allowed eighty-eight seconds to elapse between her second inaudible response and firefighter Pierce's third call to dispatch. In fact the only thing that MacLean did was say "they can go f[*]ck themselves" and asked her partner to take over the call. When interviewed concerning the communication failures, MacLean had no explanation for her failures, demonstrated no concern as to why her communications had failed, and demonstrated no concern for the patient.

Thus, there is ample support for the Town Manager's finding that MacLean was completely ambivalent that her communications with the fire department were problematic and showed no concerns that the calls of May 30, 2017 and June 21, 2017 involved medical emergencies. The lack of concern and failure to accept responsibility for her own failures provides just cause for termination.

July 11, 2017 Complaint

On July 11, 2017, Lieutenant Lemon received a complaint from a citizen that MacLean had been rude and unprofessional when he called to report a hit-and-run accident involving his wife. During the call, MacLean did not identify herself, cut off the caller on multiple occasions and failed to offer the caller any assistance. The caller, who became frustrated, hung up and called back the same day to complain about how he was treated.

Moreover, the fact that MacLean would behave as she did while she was the subject of an active and ongoing investigation is telling. Less than three weeks after a formal complaint by Chief Coleman and two weeks after receiving a formal notice of an internal affairs investigation into her conduct, MacLean was so rude, brusque and unhelpful in connection with a relatively routine call for service that a formal complaint was made. The fact that MacLean could not temper her behavior, and at least, give the impression that she was trying to be helpful, suggests her attitude and behavior are simply not correctable.

Conclusion

In sum, by the time of her termination on October 17, 2017, seventeen separate complaints had been lodged against MacLean. She had been repeatedly disciplined over two decades with little or no effect on her attitude and behavior. Accordingly, the Town Manager had ample grounds to take that history and its failure to improve MacLean's conduct into account in evaluating the necessity for discipline and its severity. In light of the three new complaints concerning the calls

of May 30, 2017, June 21, 2017 and July 11, 2017 being sustained, the Town Manager properly concluded that as a result, termination was justified.

For the reasons set forth above, the Town has proven, by a preponderance of the evidence, that it had just cause to discharge MacLean and respectfully requests that the Arbitrator uphold the Town's action and deny the grievance.

THE UNION

By letter dated October 19, 2017, the Town terminated MacLean after twenty-eight years of service, based on the following conclusions:

- 1) The Town alleged: that multiple complaints were made by your coworkers and citizens of the Town of Auburn since as early as 1993 regarding [Dispatcher MacLean's] unprofessional conduct in the station with her coworkers and over the telephone with private citizens;
- 2) The Town alleged that: [Dispatcher Maclean] had an "extensive" history of complaints regarding her conduct for which she had received discipline ranging from counseling to a two-day suspension and mandatory participation in the Employee Assistance Program;
- 3) The Town alleged that: on May 31, 2017, [Dispatcher MacLean] failed to maintain clear and effective communications with the Auburn Fire Department personnel over the fire radio creating hazardous and unsafe working conditions endangering public safety in violation of Town policy and potentially damaging interdepartmental relations;
- 4) The Town alleged that: on June 21, 2017, [Dispatcher MacLean] failed to maintain clear and effective communications with the Auburn Fire Department personnel over the fire radio creating hazardous and unsafe working conditions endangering public safety in violation of Town policy and potentially damaging interdepartmental relations;
- 5) The Town alleged that: on July 11, 2017, the Auburn Police Department received [a] citizen's complaint regarding [Dispatcher MacLean's] unprofessional and rude behavior with respect to a call to report a hit and run accident; and

- 6) The Town alleged that: at the investigation and at the hearing [Dispatcher MacLean] failed to demonstrate any concern or take any responsibility for her conduct.

However, over the seven days of the arbitration hearing, the Town failed to demonstrate sufficient evidence to support termination based on the above allegations. In the instant action, by terminating MacLean's employment, the Town has violated every facet of the just cause standard, abandoning it wholesale in violation of the collective bargaining agreement. Here, rather than following the collective bargaining agreement and disciplining a long serving dedicated employee only with just cause, the Town has lumped together a few incidents, none of them serious, none of them requiring the collective bargaining equivalent of capital punishment, and attempted to terminate MacLean based on the overall heft of the combined allegations. Under the tenants of just cause, this result cannot stand.

June 21, 2017 Fire Call

When MacLean listened to the audio of the June 21, 2017 call for the first time during the IAD investigation on July 27, 2017, she immediately recognized that although she believed that she had been transmitting clearly on the call, there was room to improve. After hearing the audio, she committed to employ several strategies to improve communications, including speaking louder, using longer call responses and depressing the transmit button for longer before speaking. When an issue with her dispatching was raised for the first time in her twenty-eight years of service, she immediately developed a plan to correct the issue. Based on this alone, termination was not appropriate. Here verbal counseling proved effective

to bring MacLean into conformance with performance standards and resolved the issue.

However, it is troubling that the Town and Captain Brigham strained to exaggerate evidence to demonstrate that termination was warranted. For example, Town Exhibit nine, a purported transcript of the audio call, editorializes, and misrepresents the actual audio of the call. When Starkus claims that MacLean's response was "garbled transmission", in fact the audio clearly shows that MacLean says "go ahead". More troubling is the fact that this purported transcript was presented to the appointing authority and represented to be factually accurate, while it was deliberately misleading.

Equally as troubling were Captain Brigham's self-serving misrepresentations about MacLean and his claim to have no personal animosity towards MacLean. Yet as far back as 2015, Captain Brigham is quoted as screaming on the apparatus floor how much he hates MacLean. While Captain Brigham claims that MacLean has had problems for decades dispatching fire calls, there is no evidence to support this claim. Captain Brigham's whole performance was an attempt to justify his personal animosity by exaggerating issues in the desperate hope that his transparent lies would be enough help for the Town's discipline to stick.

May 30, 2017 Fire Call

The Town's evidence concerning the May 30, 2017 call is equally troubling. First, despite working with a supervisor on the day in question, a supervisor who claimed to understand what MacLean did wrong, Chicoine did not address the

issue with her and did not report the issue to command staff for over a month. Additionally, Fire Chief Coleman was aware of the call and took no action, strongly suggesting that the May 30th call does not merit discipline.

No Evidence of Intentional Misconduct

In her report, the Town Manager determined that on June 21, 2017 and May 30, 2017, MacLean intentionally failed to make transmissions in accordance with proper Departmental policy because the radio equipment was working. The fact that other dispatchers were able to effectively communicate with fire department personnel on different consoles does not demonstrate that MacLean's console was working. It only establishes that the other dispatch console was working and that the fire department equipment was working. That the radio was working alone is not enough evidence to draw a conclusion that MacLean was intentionally hampering communications. In fact, all the information we have demonstrates that, at worst, MacLean was unintentionally making an error and was unaware that there was an issue.

June 21, 2017 Conduct and Alleged Hostile Work Environment

The Town also appears to be advancing a theory that MacLean's termination was warranted based on her behavior on June 21, 2017, where she allegedly slammed down the phone and then left dispatch. Additionally, the Town appears to be relying on an ill-defined alleged pattern of conduct that the Town asserts created a hostile work environment. The Town has not, and cannot, meet its burden to demonstrate first that MacLean's behavior, even if as alleged,

somehow rises to the level of hostile work environment, and second, that MacLean's behavior merited termination.

During her IAD interview on July 27, 2017, MacLean, when confronted with the charge that she had slammed down the phone in dispatch, recalled that she had received a call on the business line about a dog loose in a neighborhood. MacLean unsuccessfully attempted to contact the dog officer on two phone numbers. In her frustration with the dog officer not answering calls from the station, MacLean slammed down the phone and left dispatch to take her break. The call log supports MacLean's version of the events. MacLean took the original call at 9:41 AM and completed her efforts to contact the dog officer at 9:43 AM. The next phone call was at 9:45 AM on the 911 line for a medical emergency. There were no other calls until 10:20 AM on the 911 line, and a 10:21AM call that MacLean answered.

The call log differs dramatically from the testimony of Fontaine, and the reports of firefighters LaFlash, Nicholson and Davis. Fontaine reported that MacLean had slammed down the phone and walked out of dispatch claiming "f[*]ck 911" while three phones were ringing. The call log clearly proves that Fontaine's claims to LaFlash, Nicholson and Davis were a fabrication. Based on the call log evidence, it is clear that MacLean's conduct was limited to hanging up the phone frustrated after being unable to reach the dog officer, despite multiple attempts.

Hostile Work Environment

The crux of this allegation is premised on the reports by Hayward, Fitzgerald, Fontaine, and Chicoine. Fontaine has demonstrated a fluidity with facts

and reality that has seriously undermined the veracity of any concerns she raised about MacLean. In fact, what appears to be happening is that Hayward, Fitzgerald, Chicoine and Fontaine were bonding by griping about MacLean and spreading false allegations increasing tensions in dispatch. What is clear is that MacLean was the victim of a hostile work environment and a culture of bullying that was tolerated by the Town. Further, the Town's shoddy investigation relied on the complaints of a clique of workers instead of interviewing all of MacLean's co-workers who could have provided a clearer picture of what was actually happening in dispatch.

While MacLean admitted that she would handle her frustrations at work by muttering expletives, this was hardly uncommon in the Auburn Police Department, where there was a lot of swearing and foul language. MacLean even returned to counseling to help handle stress once the issue was addressed with her at the IAD investigation.

The Town has failed to demonstrate that MacLean's behavior created a hostile work environment for any of her coworkers, and this allegation cannot be the basis to sustain any discipline.

July 11, 2017 Citizen Complaint

Although the Town now attempts to advance the theory that this citizen complaint is an independent basis for termination, the Town's own agent, dispatch supervisor Starkus previously determined, following an investigation, that this call merited a written reprimand only – not termination. It is the Union's position that MacLean's handling of this call, in fact, deserved no discipline at all.

Upon listening to the call, it is clear that: 1) MacLean was not rude to Gagner; 2) Gagner was rude to her and acted in an entitled and condescending manner; and 3) no rule violations occurred. Rather, MacLean was following the policy to not dispatch a cruiser out of town and asked the caller to come into the station to make a report since it was clear the accident was not in progress. Finally, there was no need to log the call, until Gagner came into the station to file the report. The only error MacLean made was not identifying herself by name at the beginning of the call. A minor error that was the byproduct of multitasking, as she was in the middle of dispatching a police call at the same time.

However, the inclusion of the July 11, 2017 call, and the disregard for the supervisor's recommendation is a transparent attempt to connect the instant action to MacLean's prior two-day suspension, for the purpose of establishing progressive discipline. It is clear that Lemon simply cut and pasted this separate investigation into his investigative report.

Failure of Progressive Discipline

When the issue of communicating with the fire department was brought to MacLean's attention for the first time during her interview on July 27, 2017, she immediately outlined a plan to correct the problem and implemented it. The informal conversation that occurred during the IAD interview was the perfect intervention. Industrial discipline is intended to be corrective and not punitive. Progressive discipline, under a just cause framework, demands the lowest level of intervention for corrective action. Here, once brought to her attention, MacLean

fixed the problem. Termination was inappropriate and violates the collective bargaining agreement.

Regarding the Town's claims of behavioral issues, even assuming *arguendo* that some discipline was merited, termination was far too severe punishment especially considering that MacLean had not had a complaint of discourtesy, or any other discipline in three years which reset the discipline clock. Because the discipline clock reset, the previous two-day suspension cannot be relied upon as a building block to support termination under just cause. Further, even if the Town could use the stale two-day suspension, jumping from that to termination is too big a leap to be sustained.

Conclusion

The Town has not met its burden to prove that there was just cause to dismiss MacLean. The Union requests that the Arbitrator issue an award upholding the grievance and reinstate MacLean in compliance with the collective bargaining agreement.

OPINION

The issue before me is: Did the Town have just cause to terminate Maureen MacLean? If not, what shall the remedy be? For all the reasons stated below, the Town did have just cause to terminate Maureen MacLean and the grievance is denied.

The most critical job duty for a dispatcher is the dispatching of emergency services for their community, be it police, or fire services. In this regard, MacLean has failed in her most critical duty, properly communicating with fire personnel

while dispatching emergency services. Her utter failure, after twenty-eight years as a dispatcher, to properly communicate with fire personnel over the radio is inexcusable. Even more troubling is the fact that MacLean's radio communication failure was directed specifically at fire department personnel. The record shows that there was no issue with proper radio communication during police emergency calls. This deliberate action by MacLean, in placing fire department personnel, and citizens of the Town, seeking emergency services, in jeopardy of delayed responses warrants termination.

The seriousness of MacLean's actions on the fire calls outweighs her twenty-eight years of service. Acknowledging that many of MacLean's abilities as a dispatcher were technically sound, highlights the unbelievability of the Union's claim that MacLean was unaware, until the internal affairs investigation, that her actions on fire calls were problematic. Forcing fire personnel to make repeated calls to dispatch by mic clicking or making a short, one-word response prior to the channel being open is not an accident for a seasoned dispatcher. For reasons known only to MacLean, she chose to act in a manner, on the radio, that was deliberately difficult with strictly fire personnel.

The Town submitted copious amounts of testimony and documents concerning MacLean and her interactions with her co-workers over the course of her career as a dispatcher. Much of the co-worker complaint testimony was suspect and self-serving at best. MacLean undoubtedly was an abrasive co-worker at times, but I also find the clique mentality of her co-workers equally troubling and their testimony questionable as a result. Simply because MacLean had personality

conflicts with other dispatchers and certain police employees, does not prove that she created a hostile work environment worthy of an independent justification for termination as argued for by the Town.

In addition, the Town's extended presentation of MacLean's prior disciplinary history surrounding her dealings with the public is enlightening but not necessarily in the manner the Town wishes. Instead of showing that the Town had been vigilant in disciplining an employee for perceived violations, it shows that the Town did not take its citizen's complaints seriously. If the Town truly felt that MacLean's interactions with the public were so problematic to warrant a separate rationale for termination, it would not have taken over twenty years to seriously deal with the issue. Repeated verbal counseling sessions or written reprimands with no further follow up failed to provide the foundation for an independent basis for termination.

However, I note the Town's increased attentiveness to progressive discipline surrounding the 2014 complaint against MacLean that resulted in a two-day suspension, a referral to EAP, and a warning from Chief Sluckis that MacLean "ha[d] one foot out the door if her interactions with the public didn't improve." This discipline and warning effectively serves as notice to an employee of the need to change a behavior and could be the foundation for a step in the chain of progressive discipline. Ultimately, however, neither MacLean's interactions with her co-workers, nor her, periodic questionable interactions with the public rise to the level necessary for termination. MacLean's termination rests on her intentional targeting of fire personnel with her disruptive failure to communicate effectively

over the radio. The Town has the undisputed right to terminate an employee who deliberately places other Town employees and, by extension, citizens of the Town seeking emergency services in a compromised position by her actions.

For all the reasons stated above, the Town had just cause to terminate Maureen MacLean, and the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
May 12, 2020