

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between: \*

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CITY OF LOWELL \*

\*

-and- \*

ARB-20-8363

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AMERICAN FEDERATION OF STATE, \*

\*

COUNTY AND MUNICIPAL EMPLOYEES, \*

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COUNCIL 93, LOCAL 1705 \*

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Arbitrator:

Meghan Ventrella, Esq.

Appearances:

John Hucksam, Esq. - Representing the City of Lowell

Eric McKenna, Esq. - Representing the American Federation of State, County and  
Municipal Employees, Council 93, Local 1705

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 City did not have just cause to issue Paulino Cartiero (Cartiero or grievant) a three-day suspension. The three-day suspension shall be forthwith adjusted to a one (1) day suspension, and Cartiero shall be made whole for all lost wages and benefits consistent with this decision.



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Meghan Ventrella, Esq.  
Arbitrator  
September 13, 2021

### **INTRODUCTION**

On December 18, 2020, the American Federation of State, County and Municipal Employees, Council 93, Local 1705 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (DLR) appointed Meghan Ventrella, Esq. to act as a single neutral arbitrator with the full power of the DLR. The undersigned Arbitrator conducted a virtual hearing via Web Ex on April 12, 2021.

The parties filed briefs on May 21, 2021.

### **THE ISSUE**

City proposed issue: Whether Mr. Cartiero has demonstrated a repeated pattern of rudeness, confrontation, hostility, unprofessionalism and speaking in a condescending manner to members of the public and has failed to meet the fundamental responsibility of his position as a Parking Control Officer/Meter Enforcement Officer to conduct himself in a professional manner and be able to tolerate possible derogatory verbal comments from disgruntled citizens, to be able to handle extreme verbal abuse from disgruntled citizens without entering into confrontations and to always conduct himself in a professional matter?

Union's proposed issue: Did the City of Lowell discipline the grievant without just cause and without regard of the progressive discipline procedure in violation of the CBA? If so, what shall be the remedy?

At the arbitration, the Union and the City each submitted an issue. Both parties agreed to allow the arbitrator to choose the issue. As the arbitrator, I find the most

appropriate issue is: Was there just cause to issue Paulino Cartiero a three-day suspension? If not, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

#### **Article 5: Management Rights of Employer**

The Employer shall not be deemed to be limited in any way by this Agreement in the performance of the regular and customary functions of municipal management, and reserves and retains all powers, authority and prerogatives including, but not limited to: the right to manage the affairs of the City, and to maintain and improve the efficiency of operation; to determine the methods, means, processes and personnel by which operations are to be conducted; to determine the size of and direct the activities of the working force; to determine the schedule and hours of duty and the assignment of employees to shifts subject to Article 11; to assign work, to determine the work tasks, classification and standards of productivity and performance. And to evaluate employees with regard thereto; to hire, promote, assign, and transfer employees; to discipline, suspend, demote and discharge employees for just cause; to undertake experimental programs not inconsistent with statute or ordinance, subject to collective bargaining requirements where applicable; to engage persons outside the bargaining unit to perform bargaining unit work and otherwise to contract out such work, subject to Article 34, §3; and to issue reasonable rules and regulations governing the conduct of each department, provided that such rules and regulations are not inconsistent with express provisions of this Agreement.

#### **Article 6: Grievance Procedure and Arbitration**

*Section 1:* As provided in M.G.L.c. 150E, §8, the grievance procedure hereinafter set forth shall only be involved in the event of any dispute concerning the interpretation or application of this collective bargaining agreement. No other matters shall be the subject of the grievance procedure. Where a grievance, as defined here §1 involves suspension, dismissal, removal or termination it shall be processed beginning at the second (2<sup>nd</sup>) step, Article 6, §4. If the case reaches arbitration, the arbitrator shall have the power to suggest a resolution of the grievance up to and including restoration to the job with all compensation and privileges that would be been due the employee.

#### *Section 2 B: Progressive Discipline Program*

In an effort to provide more uniform attendance and equal and impartial enforcement by management, the following progressive program shall remain in force for employees covered by this agreement:

**Level 1-Oral Warning-** For the first infraction an oral warning shall be given with the steward present. It shall be reduced to writing and placed in the employee's file for six (6) months. If no similar infraction occurs within the

ensuing six (6) months from the date of the oral warning was given, it shall be removed from the employee's file.

**Level 2- Written Warning-** If a similar infraction occurs during the above-mentioned six-month period, the employee who received the oral warning shall receive a written warning with the steward present. If no similar infraction occurs within the ensuing twelve (12) months from the date of the written warning both the oral and written warnings shall be removed from the employees' file.

**Level 3- Other Discipline-** If a similar infraction occurs within the above mentioned twelve (12) month period, such infraction may lead to discipline which involves suspension or ultimate discharge.

#### *Section 5: Arbitration*

The arbitrator hereunder shall be without power to alter, amend, add to, or detract from the language of this Agreement. The decision of the arbitrator shall be final and binding upon the parties.

#### **FACTS**

The Union and the City of Lowell (City) are parties to a successor collective bargaining agreement that was in effect at all relevant times to this arbitration. In April of 2014, the City hired the grievant, Paulino Cartiero (Cartiero/ grievant) as a Parking Control Officer/ Meter Enforcement Officer (Enforcement Officer) for the City's Parking Department (Department). As an Enforcement Officer, Cartiero enforces parking rules and regulations and patrols assigned specific areas and issues tickets for violations. Additionally, Carteiro is required to conduct himself in a professional manner and be able to tolerate possible derogatory verbal comments and abuse from disgruntled citizens, without entering into confrontations.

In March of 2020, Cartiero was injured at work and went out on medical leave until August of 2020. Upon returning to work in August of 2020, the City ticketed Cartiero's vehicle when he parked in his regular garaged parking spot. After Cartiero complained,

the Parking Department retracted the ticket. Additionally, in 2020, two enforcement officers resigned from the Parking Department, which left only Cartiero and another officer to write tickets.<sup>1</sup>

#### 2016 to 2019 Customer Interactions

As an Enforcement Officer, Cartiero has encountered many disgruntled customers. The City advises the enforcement officers to contact the Lowell Police Department (LPD) for assistance when members of the public become agitated or aggressive. For example, on March 24, 2016, Cartiero had to call the LPD to assist with speaking with an angry business owner. On July 12, 2017, Cartiero issued a ticket for a meter violation and the owner of the vehicle started to yell expletives. Cartiero called the LPD and relayed the information about the hostile individual. On August 11, 2017, Cartiero approached a vehicle that was illegally parked in a commercial spot, but the individual refused to move his vehicle. The individual became so agitated that he exited his vehicle and threatened to punch Cartiero's face if he issued him a ticket. Cartiero called the LPD.

On or about March 23, 2018, Cartiero issued a meter violation ticket for a black Toyota, when a man approached him stating he was a "Lowell cop." The officer expressed that he was upset about the ticket but that he would pay it. The officer further stated that "when I pull you over and give you a ticket, you're gonna have to pay yours too, I know who you are, you're a F\*\*\* A\*\*\*\*." On June 28, 2018, Cartiero asked a woman who illegally

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<sup>1</sup> The Union submitted a resignation letter from one of the enforcement officers, which stated that they were resigning due to a harassing environment in the Parking Department. However, the individual who allegedly wrote the document did not testify about their experience in the Department.

parked in tow zone to move her vehicle. Later that day, Cartiero approached the same woman who was still illegally parked and told her to move her vehicle. The woman became irate and cursed at Cartiero.

On July 2, 2018, Cartiero issued a woman a meter violation ticket. The woman yelled at Cartiero that if he was going to give her another “f\*\*cking ticket, she was going to report him.” Cartiero ignored the woman and continued with his route. However, the woman continued to yell at him, so Cartiero radioed the LPD, and an officer arrived on the scene. Cartiero filed a report on the incident with the LPD. Afterward, the woman went to the Parking Department to report Cartiero for issuing her a ticket. On October 12, 2018, an unidentified man yelled expletives at Cartiero and told him to leave the “f\*cking neighborhood.” Cartiero returned to his City vehicle to radio the LPD as he felt threatened. The LPD arrived on scene and spoke with the unidentified man, who told police that Cartiero had given him the finger and ticketed his son. Cartiero denied ever giving him the finger; he then called his Supervisor Anna Scanlon (Scanlon) and reported the incident.

On or about February 27, 2019, a young man threw a ticket at Cartiero and stated that “here take your f\*cking ticket” and then walked away. Later on, Cartiero saw the same young man in his car, the individual made a hand motion resembling a gun shooting at Cartiero. On or about June 14, 2019, Cartiero approached a vehicle that was illegally parked when small children bolted out of the car and ran. Carterio radioed the LPD because he did not see an adult around. On September 23, 2019, Cartiero observed a vehicle parked in a bus stop. Cartiero asked the driver of the vehicle to move their car, and the driver drove up to block an unmetered alley. Cartiero asked the driver again to

move their vehicle but they refused so Cartiero issued the vehicle a ticket. About ten minutes later, the driver returned to the scene and yelled at Cartiero that they were going to get him fired.

On September 27, 2019, Cartiero ticketed a vehicle in a tow zone on Central Street. When Cartiero turned to leave, a man from across the street started yelling at him and calling him names. On or about December 17, 2019, a woman came rushing out of Dunkin Donuts yelling at Cartiero about issuing her a ticket. Cartiero did not issue her a ticket and continued driving his route. On December 18, 2019, Cartiero was checking the parking kiosks when a man started yelling at him to stop writing tickets or he would call the police.

On January 16, 2020, Cartiero was on West Adams Street in the City, when he issued a ticket for a vehicle blocking the sidewalk by a light pole. The owner of the vehicle approached Cartiero and start yelling at him. The man went into his house and came back out with a shovel in his hands. The man came after Cartiero stating he was going to kill him. Cartiero radioed the police who made their way to the scene. On February 10, 2020, Cartiero issued a ticket on Market Street in the City. Shortly thereafter, an older woman started screaming at him about the ticket, then a man came towards him cursing and stating that it was his car. Cartiero retreated from the scene and continued on his route. Later that day, the older woman and the man were at the front desk of the Parking Department speaking with Cartiero's supervisor.

On February 25, 2020, Cartiero pulled over his City vehicle on Merrick Street as much as he could and put on his hazard lights. After exiting his vehicle, Cartiero issued a ticket to a vehicle in a tow zone. Officer Callahan of the City's LPD approached Cartiero

and instructed him not to pull over on the side of the road like that again or he would “write him up.”

### Citizen Complaints<sup>2 3</sup>

Members of the public can file a complaint about enforcement officers on the City’s website. On September 27, 2019, a member of the public complained that Cartiero was very rude when she illegally parked in front of her apartment for ten minutes. On October 10, 2019, a fellow employee of the Parking Department complained that Cartiero was rude when he asked the residents of 101 Riverside Street to move their vehicles. The individual stated that Cartiero had an extreme attitude problem. On December 4, 2019, a citizen complained that Cartiero was very rude and disrespectful about a residential permit sticker for her vehicle.

On December 13, 2019, a citizen complained about Cartiero’s rude attitude when he ticketed him in a metered lot on Appleton and Gorham Street. On January 6, 2020, an individual complained that Cartiero was very rude. On January 17, 2020, a business owner filed a complaint that Cartiero had been harassing their customers and was very rude about ticketing. On January 24, 2020, a citizen complained that Cartiero was very unprofessional when he issued a warning citation for a faded residential permit sticker.<sup>4</sup>

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<sup>2</sup> At the time of each submitted complaint, the City did not address these allegations with Cartiero.

<sup>3</sup> Cartiero denied ever acting in a rude or unprofessional manner while executing his Enforcement Officer duties. Due to the number of written complaints and the consistency in describing his attitude, I find that Cartiero did engage in rude and unprofessional behavior. Additionally, several of the written complaints came from individuals who did not receive a ticket and therefore had no reason to complain other than Cartiero’s attitude.

<sup>4</sup> The City submitted a citizen complaint about an officer that was dated January 5, 2021, which is several months after the suspension.



Out of Assigned Area

On or about December 4, 2019, the City assigned Cartiero to work the North Campus route. Subsequently, the City discovered that Cartiero had travelled to Shattuck Street, outside of his assigned area.<sup>5</sup> The City didn't speak with Cartiero at the time about why he was out of his assigned area. In fact, the City did not perform any sort of investigation to discover why Cartiero was out of his area that day.

Cartiero did not specifically remember what happened on December 4, 2019. However, Cartiero asserted that if he was out of his assigned area he was probably coming to or from the Department's office to his assigned area and issued a ticket along the way. Under the previous parking director, the City instructed enforcement officers to write tickets for obvious violations that they observed while out of their assigned route. Terry Ryan (Ryan), the current Parking Director, admitted that the Department has not been clear with the enforcement officers on the policy of ticketing outside their assigned routes.

Written Warning

By letter dated March 22, 2019, Tobias Marx (Marx), the former Parking Director for the City, issued Cartiero a formal written warning. In the written warning, Marx stated that he had spoken with Cartiero several times about his interactions with customers while on duty as an Enforcement Officer. Marx informed Cartiero that his approach and communications with customers were not acceptable, and it was his responsibility to see that his customer interactions were satisfactory and respectful at all times. Marx informed

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<sup>5</sup> The City did not explain when or why it discovered Cartiero was out of his assigned area on December 4, 2019. Additionally, the City did not establish how long Cartiero was out of his assigned area on December 4, 2019.

Cartiero that the written warning would be removed from his personnel file within 6 months provided that his work became acceptable and there were no disciplinary actions during that time. Additionally, Marx informed Cartiero that any future infractions would result in continued discipline up to and including termination.

### Suspension

On September 16, 2020, Eileen Donoghue (Donoghue), the City Manager, issued Cartiero a three-day suspension effective September 28, 2020.<sup>6</sup> Donoghue informed Cartiero that the three-day suspension was based on:

- 1) For the good of the service of the City of Lowell Parking Department:  
and;
  - a. You have been spoken to and received warnings regarding your inability to communicate in a professional, courteous, respectful manner with parkers and residents; and
  
- 2) For behavior unbecoming a City of Lowell employee, to wit:
  - a. We have received numerous written complaints about you wherein a pattern of “rudeness, hostile, unprofessional, speaking in a condescending manner, has an extreme attitude problem, something needs to be done to address his attitude” is the common trend in all of the formal complaints;
  - b. Dereliction of duties; out of assigned area. You were on Shattuck Street when you were assigned to North Campus;
  - c. You have failed to demonstrate respect and courtesy for others;
  - d. You have cause inappropriate disturbances and/or disruptions with offensive behavior and have on more than one occasion needed to call for police assistance;
  - e. You are now putting safety of the other Parking Enforcement Officers in jeopardy.

Additionally, Donoghue stated that Cartiero must undergo further training satisfactory to his Department head because he had received prior discipline on this matter. On or about September 29, 2020, Cartiero filed a grievance appealing his suspension.

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<sup>6</sup> As previously noted, Cartiero was injured at work and was out on medical leave from March of 2020 until August of 2020.

**Positions of the Parties****Union**

The Union argues that the City lacked just cause for the three-day suspension. First, the Union argues that the City did not provide Cartiero with adequate warning that his alleged conduct would lead to discipline. The Union asserts that the City did not put Cartiero on notice that he could be subject to suspension for the allegations contained in the September 2020 discipline letter, including but not limited to being out of his assigned area. Furthermore, the Union contends that the City does not have a written policy in place regarding employee discipline for interactions with the public resulting from issuing parking tickets, nor was any such policy disseminated to employees.

Next, the Union argues that the City did not conduct a thorough and fair investigation of the incidents alleged in the suspension letter. The Union argues that Ryan did not investigate the authenticity of any of the citizen complaints and did not allow Cartiero an opportunity to explain his side of the story before issuing discipline. Additionally, the Union argued that enforcement officers are often subject to false or exaggerated complaints from members of the public. The Union asserts that the City received complaints from members of the public about other enforcement officers, but only Cartiero was disciplined.

The Union argued that the City did not follow progressive discipline when it issued Cartiero a three-day suspension. The Union argues that the City should not have issued Cartiero any level of discipline. However, if the arbitrator disagrees, then the suspension should be reduced to a lesser form of discipline such as a written or verbal warning. According to the Union, the City's failure to timely address the alleged incidents in the

suspension letter and its alleged harassment of Carteiro when he returned to work from medical leave proved that the actions were not serious in nature and that the City did not have just cause. In short, the Union alleges that the City failed to prove that Carteiro engaged in any of the charges listed in the suspension letter. The Union argues that the City lacked just cause to issue Carteiro a three-day suspension, and the discipline should be vacated and the grievant made whole.

### Employer

The City argues that it had just cause to issue Carteiro a three-day suspension on September 16, 2020 for his inability to communicate in a professional, courteous, respectful manner with members of the public and for dereliction of his duties by being out of his assigned area. The City asserts that Carteiro has failed to meet the fundamental responsibility of his position as an enforcement officer to conduct himself in a professional manner. The City argues that Carteiro's failure to act in a professional manner put the safety of other enforcement officers in jeopardy, and as such, his actions constitute substantial misconduct. Furthermore, the City argues that the Enforcement Officer job description clearly required Carteiro to conduct himself in a professional manner when engaging with disgruntled citizens. The City asserts that there is ample evidence to support just cause for the three-day suspension, and that the grievance should be denied.

### **OPINION**

The issue before me is: Was there just cause for the three-day suspension? If not, what shall be the remedy? For all the reasons stated below, the City did not have just cause to issue Carteiro a three-day suspension.

### Behavior Unbecoming a City of Lowell Employee

a. Dereliction of duties- out of assigned area

The City issued Cartiero a three-day suspension in part because he was out of his assigned area on December 4, 2019. However, under previous parking directors, enforcement officers were allowed to ticket obvious violations when they were driving to and from their assigned areas, and the current director admitted that the policy was confusing and unclear as to whether the officers were still allowed to ticket outside their assigned areas. It is clear from the record that the City never clearly retracted or amended said policy. As such, Cartiero never received proper notice that ticketing outside of his assigned area while travelling to and from the Department's office would be a dereliction of his duties.

Further, the City did not establish that Cartiero was out of his assigned area for any other reason than to issue a ticket for an obvious violation on his way to or from the Department's office to his assigned area. In fact, the City did not establish that Cartiero violated any policies by driving out of his assigned area on December 4, 2019. Thus, the City has not proven that Cartiero's presence outside his assigned area on December 4, 2019 was a dereliction of his duties. Therefore, the City did not have just cause to discipline Cartiero for being outside his assigned area on December 4, 2019.

b. Pattern of Rude and Unprofessional Behavior/ Failure to demonstrate respect and courtesy for others

The City of Lowell issued Cartiero a three-day suspension in part because the Parking Department received numerous written complaints about a pattern of rudeness and unprofessional behavior. By letter dated March 22, 2019, the City issued Cartiero a formal written warning for his unprofessional interactions with members of the public. After

the written warning, the City received approximately seven (7) written complaints from members of the public complaining about Cartiero's rude and unprofessional behavior.

The Union argued that the written complaints were submitted by disgruntled constituents trying to vacate a ticket. However, some of the complaints were not from individuals who even received a ticket, and therefore, they had no incentive to lie about Cartiero's unprofessional behavior. In fact, one of the complaints was submitted by a City employee who knew Cartiero from the Parking Department. The individual described Cartiero's behavior during their interaction as unprofessional and stated that Cartiero had an attitude problem. Even if the City could have done a better job of following up with individuals who submitted complaints about Cartiero, it is impossible to ignore the fact that the City received several complaints about him that clearly described his behavior as unprofessional and rude. It is clear from the record that Cartiero has been rude and unprofessional in some of his interactions with constituents while working as an Enforcement Officer.

The Union contends that the City did not have just cause to discipline Cartiero because there is no policy on interacting with the public, and therefore Cartiero's actions did not violate a City policy. However, the City clearly describes in its job requirements for an Enforcement Officer that it expects the employees to interact with the public in a professional and polite manner. As engaging with disgruntled constituents in a professional and polite manner is a crucial job responsibility of an Enforcement Officer, the City's concerns that Cartiero has repeatedly engaged in unprofessional behavior are warranted.

The Union argues that the City engaged in disparate treatment when it disciplined Cartiero because it did not discipline other enforcement officers who were the subject of citizen complaints. However, the Union never established that the other enforcement officers received as many written complaints as Cartiero. Moreover, the Union never established that the other enforcement officers had also received verbal and written warnings about their interactions with the public. As such, the Union failed to demonstrate that the other enforcement officers were similarly situated, and that the City engaged in disparate treatment when it issued Cartiero a three-day suspension.<sup>7</sup> For all the aforementioned reasons, the City had just cause to discipline Cartiero for his continued unprofessional and rude behavior when interacting with members of the public.

- c. Inappropriate disturbances and/or disruptions with offensive behavior and have on more than one occasion needed to call for police/ Safety of other Enforcement Officers

The City issued Cartiero a three-day suspension in part because of his need to call for police assistance on more than one occasion. First, the Department instructed all enforcement officers to call for police assistance if they felt unsafe, and as described above, Cartiero called for police assistance when he felt unsafe. The City did not demonstrate that Cartiero's decision to call for police assistance was unwarranted. Additionally, the City did not demonstrate that Cartiero's actions caused or escalated the hostile interactions with members of the public on those occasions when he radioed for the LPD. The City has not demonstrated that Cartiero called for police assistance

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<sup>7</sup> Additionally, the Union argued that Cartiero was subjected to harassment when he returned from medical leave. However, the Union failed to establish that Cartiero or any other enforcement officer was facing harassment from management at the workplace.

inappropriately or that he jeopardized the safety of fellow enforcement officers. Thus, the City did not have just cause to discipline Cartiero for calling the LPD for assistance.

Additionally, the City argued that Cartiero's repeated failure to conduct himself in a professional manner put his safety and the safety of the other enforcement officers and the public in jeopardy. As described above, Cartiero had exhibited a pattern of unprofessional and rude behavior when interacting with members of the public. The City's concerns that Cartiero's continued rude and unprofessional behavior could endanger himself and others was warranted. If Cartiero interacted with an individual in an unprofessional or rude manner, that person could escalate the interaction in a dangerous manner. As such, the City had just cause to discipline Cartiero for endangering himself and others with his continued unprofessional behavior when interacting with members of the public.

#### Previous warnings

As explained above, Cartiero had exhibited rude and unprofessional behavior when interacting with residents or parking customers on numerous occasions. Such rude and unprofessional behavior puts himself and others at risk. As such, the City is within its rights to discipline Cartiero for his rude and unprofessional behavior. However, the remaining issue is whether the City had just cause to support its decision to issue Cartiero a three-day suspension. The City argues that it had just cause to support its decision to issue a three-day suspension because Cartiero was already notified through verbal and written warnings that his behavior was unacceptable and needed to change. However, the City issued Cartiero a three-day suspension for several reasons, not just his unprofessional interactions with members of the public.



As explained above, the City issued Cartiero a three-day suspension for endangering himself and others with his pattern of unprofessional behavior. While I agree with the City that such behavior could endanger Cartiero and others, the City had not expressed such concerns in its verbal or written warnings to Cartiero. Additionally, the City cited Cartiero's need to call the LPD for assistance on a few occasions as cause for concern. However, the City never established that Cartiero was to blame for provoking those individuals on those occasions, or that Cartiero's concerns for his safety were unfounded.

Furthermore, the City decided to issue Cartiero a three-day suspension for dereliction of his duties for being out of his assigned area on December 4, 2019. However, as explained above, the City did not have a clear policy for this incident and did not notify Cartiero that the behavior would constitute a dereliction of his duties. Consequently, the City has not established just cause to support all of its reasons for issuing a three-day suspension. However, the City did establish that Cartiero had engaged in unprofessional and rude behavior with members of the public after he received a written warning explaining that such behavior was not appropriate. Therefore, the City should have issued Cartiero a lesser discipline than a three-day suspension.

The Union argued that Cartiero's alleged infractions were not serious in nature because if they were, the City would have addressed its concerns in real time. However, the evidence demonstrated that Cartiero was engaging in a pattern of unprofessional behavior. While it would be ideal for the City to address any concerns it may have about employees as soon as possible, it would be difficult to address a pattern of behavior

before it was apparent that Cartiero was engaging in a series of unprofessional interactions.

The Union contends that the City should have issued Cartiero another verbal or written warning instead of a three-day suspension. The Union notes that the City issued Cartiero a written warning on March 22, 2019 and did not issue the three-day suspension until September 16, 2020. The Union asserts that per the parties' CBA, the City should have removed the written warning from Cartiero's personnel file as of September 22, 2019 since he did not have any similar infractions in the following six months. As a result, the most severe discipline the City should have issued Cartiero was a written warning.

Essentially, the Union argued that if Cartiero could go more than six months without a similar infraction, then the progressive discipline should start anew with a verbal or written warning. Although Cartiero may not have been disciplined within the six months following his written warning, he did exhibit unprofessional and rude behavior towards members of the public in the months following the written warning. It is clear that Cartiero has not been deterred from engaging in rude and unprofessional behavior with members of the public from the verbal or written warnings he has received. Consequently, the discipline should have been less than a three day suspension, but more severe than a written warning.

For the reasons stated above, I find that while the City had just cause to discipline Paulino Carterio for his pattern of unprofessional and rude behavior, it did not have just cause to issue a three-day suspension. A reduced penalty of a one (1) day suspension is more appropriate based upon his years of service and overall performance of his job

duties. A one (1) day suspension balances the need for meaningful discipline with an opportunity for the employee to correct his actions.

**REMEDY**

I order the City to reduce the three-day suspension of Paulino Cartiero to a one-day suspension, remove all references to the three-day suspension from his personnel file, and make him whole for all lost wages and benefits that resulted from his three-day suspension minus the one-day suspension now imposed.

**AWARD**

The City did not have just cause to issue Paulino Carterio a three-day suspension. The three-day suspension shall be forthwith adjusted to a one-day suspension, and Cartiero shall be made whole for all lost wages and benefits consistent with this decision.



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Meghan Ventrella, Esq.  
Arbitrator  
September 13, 2021