

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF LOWELL

-and-

AFSCME, Council 93

ARB-21-8643

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Kerry Jenness, Esq. - Representing City of Lowell  
Nicholas Anastasi, Esq.

Jared Kelly, Esq. - Representing AFSCME, Council 93

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 suspend Lori Neville for ninety days. The City did have just cause to suspend Lori Neville for thirty-five workdays. The City is hereby ordered to make Neville whole for all losses above the level of a thirty-five-workday suspension.



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Timothy Hatfield, Esq.  
Arbitrator  
October 13, 2022

### **INTRODUCTION**

On May 24, 2021, AFSCME, Council 93 (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department. The undersigned Arbitrator conducted a virtual hearing via Web-Ex on November 18, 2021.

The parties filed briefs on December 31, 2021.

### **THE ISSUES**

Did the City of Lowell have just cause to suspend Lori Neville for a period of ninety days in light of her involvement in the events that took place on June 23, 2020? If not, what shall be the remedy?

### **RELEVANT CONTRACT LANGUAGE**

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

#### **Article VI Grievance Procedure and Arbitration (In Part)**

##### **Section 1. Matters Covered**

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 herein §1 involves suspension, dismissal, removal or termination it shall be processed beginning at the second (2nd) 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 have been due the employee.

## Section 2. Suspension and Dismissal

### A. General

As provided in M.G.L. c.150E, §8, in case of suspension or dismissal of an employee with more than ninety (90) days of service, if such employee elects, grievance arbitration shall be the exclusive procedure, and accordingly, an employee shall not have recourse to the Civil Service Commission, Retirement Board, or any other administrative procedure precluded by the election of grievance arbitration under §8. ...

### B. Progressive Discipline Program

In an effort to provide more uniform attendance and equal and impartial enforcement by management, the following progressive discipline 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 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 (6) 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 employee's 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.

Level 1 and 2 are grievable through the grievance procedure. If the employee's civil service status so permits, Level 3 actions are appealable through the civil service procedure, or the employee may elect to process a suspension or discharge through the grievance procedure.

## **RELEVANT LOWELL POLICE DEPARTMENT RULES AND REGULATIONS (IN PART)**

### K. ACCOUNTABILITY AND DISCIPLINE

**7. Other Punishable Offenses** - Any violation of rules, regulations, policies or procedures of the Department shall subject an officer or employee to discipline, as well as any of the following offenses: ...

b. Any malfeasance, nonfeasance, misfeasance of official duties.

**RELEVANT LOWELL POLICE GENERAL ORDER (IN PART)**

IV. **COMMUNICATIONS EQUIPMENT AND RESOURCES (IN PART)**

A. Initial Incident Recording and Officer Status Tracking [81.2.3] ...

2. Dispatchers should attempt to judge the characteristics of the call to determine whether an emergency or non-emergency response is required. Characteristics of importance include, but are not limited to: [81.2.6 (a)]

- a. Tone of voice / demeanor of caller.
- b. Nature of the call.
- c. Whether the incident is in progress.
- d. Are there any injuries?
- e. Is there a threat of violence, injury, or death?
- f. Prior experience with the caller or suspects.
- g. Type of background noise if any.

3. As much relevant information as possible should be obtained by Communication Center personnel. Once determined they shall inform the caller of the agency's response, including direct service or referral to other agencies.

4. Communications Center personnel shall always seek to enhance officer safety and assist officers in anticipating the conditions to be encountered at the scene. Communications Center personnel should take care to obtain as much relevant information as possible during in-progress or potentially serious incidents and this information should be promptly relayed to responding patrol units.

**FACTS**

The City of Lowell (City or Employer) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The grievant, Lori Neville (Neville / grievant) is a dispatcher in the City's Police Department. Neville has worked as a dispatcher for approximately twenty-one years.

Dispatchers can be assigned numerous roles depending on a particular shift, including call-takers, lead police dispatcher, back-up dispatcher, fire dispatcher, or Law Enforcement Alerting Portal (LEAPS). The Dispatch Center is staffed with between four and six dispatchers on all shifts. Call-takers answer calls from the main business line for the Police Department, as well as 911 emergency calls. The lead police dispatcher is responsible for dispatching available units for police calls, and fire dispatcher is responsible for dispatching available units for fire calls. The back-up police dispatcher will serve as a call-taker or at the LEAPS station and will serve as acting police dispatcher if the lead dispatcher is unavailable. The LEAPS dispatcher is responsible for uploading information requested for Department warrants or background checks, as well as running all the motor vehicles, stolen cars, and license plates.

On June 23, 2020, Neville was assigned as the lead dispatcher on her shift. At 12:02 p.m., Neville interacted with Portable 15 over the radio for an unrelated matter.<sup>1</sup> The Dispatch Center was busy that day with multiple emergencies, and received one hundred and sixty-five calls between 2:15 p.m. and 3:35 p.m. At 2:44

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<sup>1</sup> Portable 15 is a Patrol Officer on a walking beat; this beat included 21 Coral Street.

p.m., Dispatcher Kouy (Kouy) received a call on the non-emergency line for a suspicious vehicle outside 21 Coral Street. Kouy entered the call into the Computer Aided Dispatch System (CAD) as a suspicious motor vehicle. The call was pre-coded into the system as a Priority 2 call. Neville, as Lead Dispatcher, reviewed this call in the CAD system, but did not dispatch any officers to the scene. While Neville believed that she did not have any available police officers to respond to this call, Car 5 was available at the time of the initial call, until it was dispatched to a motor vehicle accident at 2:54 p.m. Car 6 was also available at the same time until it was dispatched to another scene at 3:03 p.m.<sup>2</sup> Finally, Portable 15 was also walking in the area and available.

At 3:19 p.m., Neville attempted to call the initial caller back to check if the suspicious vehicle was present and to let the caller know that the call had been logged into the system and not forgotten, but she received no response. At 3:20 p.m., at Neville's request, Dispatcher Jacqueline Fernandez (Fernandez) attempted to call the initial caller and she too got no response. At 3:21 p.m., the initial caller called back and Fernandez answered. Fernandez asked the caller if the suspicious vehicle was still present outside 21 Coral Street. The caller reported that she did not know as she was not at that location. She reported that she had been asked by her neighbor to call. Fernandez assured the caller that the call was in "the stack," and a police cruiser would be sent as soon as possible, but there

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<sup>2</sup> During the Arbitration hearing, Neville testified that "she must have been doing something else" in response to a question about why she failed to dispatch Car 5 and/or Car 6 to Coral Street.

had been a few emergencies. The caller and Fernandez continued to dialog with the caller stating:

If I were you I would really look into this because from what they're saying it's not good, so if I was you I would not take this for a joke either, you know what I mean?

Fernandez inquired what the caller meant by "it's not good." The caller stated:

I don't know. My neighbor called me. She's like crying. She's like scared. ... She has a baby, I'm at work, I live downstairs and they're calling me like freaking out. So I think they're like really scared that they know who these people are and it's for them. ... I had my kids in there and told my kids to get out of there, out of the first floor. I have no idea what's going on, but I'm just letting you guys know it might be something that you guys should really look into as soon as possible."

Fernandez responded with "we are, we just had a couple of emergencies going on." Once the call ended, Fernandez continued answering calls in her assignment as call-taker. Fernandez did not update the CAD system or add a CAD alert.

At 3:27 p.m., Dispatcher Therese Cooper (Cooper) answered a call on the 911 emergency line from a resident of Coral Street. Cooper had difficulty hearing and/or understanding the caller when she was attempting to ascertain where he was calling from. After mistakenly believing he was calling from Groves Street, she eventually was able to confirm that he was calling from Coral Street. The caller reported that a car was being towed. When questioned by Cooper about the car being towed, the caller reported that it was a black Chevy Tahoe that belonged to the resident of 21 Coral Street. The caller also stated that "some kid" had pulled up to him, and he was not sure if the kid had a gun. Cooper did not hear the caller say anything about a gun and did not follow up on that statement. Cooper asked the caller for additional information about the owner of the car and whether the

caller was outside. The caller responded that he would go outside once the police arrived. He also provided Cooper with the phone number of the car's owner and again requested that the police be sent right over. Cooper informed the caller that there was already a call in the system for 21 Coral Street but that she would update them. At 3:32 p.m., Cooper called the car owner and received no answer. Cooper then informed Neville that there was another call about Coral Street before excusing herself to use the restroom. At 3:33 p.m., there was a 911 call for shots fired on Coral Street. Ultimately, there was a shooting at 21 Coral Street that resulted in a fatality.

Subsequently, the Lowell Police Department's Office of Professional Standards conducted an internal investigation. Lieutenant Marisol Nobrega (Lieutenant Nobrega) conducted the investigation. Five dispatchers, along with the Director of Communications were interviewed. Lieutenant Nobrega did not interview any of the police officers on duty that day. Lieutenant Nobrega issued a report of her findings on October 5, 2020. She concluded that Neville committed an act of misfeasance by failing to dispatch available police units to 21 Coral Street between the time of the initial call coded as a suspicious vehicle, and the time of the call for shots fired. Lieutenant Nobrega also noted in her report that the CAD system is not always updated for consecutive calls for the same address, and no policy exists mandating that the CAD system must be updated for all calls, unless new or additional information is obtained about an ongoing call.

Based on the information contained in Lieutenant Nobrega's report, City Manager Eileen Donoghue (City Manager Donoghue) suspended Neville for ninety



working days,<sup>3</sup> for failing to dispatch available police units to 21 Coral Street, and for failing to properly judge the characteristics of a call. The Union filed a grievance over the suspension that was denied at all Steps of the grievance procedure, resulting in the instant arbitration.

### **POSITIONS OF THE PARTIES**

#### **THE EMPLOYER**

The central question is whether, under the just cause standard, the City was justified in suspending Neville for ninety days for her serious breach of her duties and of City policies including, as lead dispatcher responsible for monitoring the call stack and dispatching officers to calls as they came in, failing to dispatch available patrol units and a mobile officer for approximately fifty minutes despite being aware that there were patrol units available.

#### **Just Cause**

As a provisional employee under Massachusetts' civil service laws, Neville was suspended for just cause pursuant to M.G.L. c. 31, §41. While Neville elected to contest her suspension via grievance arbitration under the collective bargaining agreement, that agreement does not define just cause. Accordingly, the City submits that it is appropriate to look to the relevant definitional standards as applied in the civil service context when assessing the City's just cause determination in this case.

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<sup>3</sup> The City unsuccessfully attempted to justify the discipline of Neville with evidence of analogous lengthy suspensions of other Dispatchers. The evidence was unpersuasive.

Just cause has been judicially defined in the context of M.G.L. c. 31 as substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service. In determining whether just cause exists, the conduct in question need not rise to the level of criminal misconduct. Thus, the appropriate inquiry is whether the employee has been guilty of substantial misconduct which adversely affects the public interest. There is no requirement to speculate as to whether a less severe disciplinary measure would have secured appropriate employee behavior.

Neville's serious breach of duty constitutes substantial misconduct that adversely affects the public interest. By failing to confirm the availability of patrol units and failing to dispatch any units to the scene, Neville put the public at risk, and ultimately a woman was fatally injured. A dispatcher of Neville's experience should have confirmed whether any patrol units were available at the time that the initial call came in, or at the very least sometime during the approximately fifty minutes between the initial call and the call for shots fired.

Neville violated City policies by failing to confirm the availability of patrol units and failing to dispatch units to a call in an efficient manner. Specifically, she violated Section K 7 regarding accountability and discipline by contributing to the delay in the police response to the call, which is an act of misfeasance. Neville did not offer an adequate defense for failing to dispatch a patrol unit to the call for close to an hour, despite knowing that there were units available. Neville in fact dispatched at least one other unit to another call during that time. Neville's lack of

action constitutes malfeasance and/ or nonfeasance that constitutes just cause for her suspension.

The City had just cause to suspend Neville for ninety days. In similar cases, severe discipline was imposed by the City, including termination in one instance. It can hardly be said that Neville's acts constituted something other than substantial misconduct which adversely affected the public interest. Accordingly, a ninety-day suspension was justified.

For all the forgoing reasons, the City requests that the arbitrator rule in the City's favor and uphold the City's January 21, 2021 just cause suspension.

#### **THE UNION**

There are two proof issues in the arbitration of discipline and discharge cases. The first issue involves proof of wrongdoing; the second, assuming the guilt of wrongdoing is established, concerns the question of whether the punishment assessed should be upheld or modified. Neville was disciplined for incidents that unjustifiably implicate and impugn her moral character. It is well established that a high quantum of proof, that of clear and convincing evidence, is required in cases involving matters of personal reputation.

Here, the City suspended Neville for ninety days based on a unjustified conclusion that she believed the CAD entry for Coral Street concerned a drug deal. This is untrue, as it was not until her second interview with Lieutenant Nobrega that Neville hypothesized that the description put into the CAD system could have been interpreted as a drug deal. If the original entry to the CAD system had included the information that the vehicle in question had been there all day, it would

have indicated that it was not a drug deal. Notwithstanding this, the City still levied serious allegations against Neville and imposed lengthy, severe and punitive discipline upon her. Neville was investigated and disciplined by the City as though she knew multiple individuals were calling into the emergency communications center regarding Coral Street. The initial call came in on the non-emergency line for a suspicious vehicle, and no further information was submitted into the CAD system to indicate there would be any danger or violence.

#### No Substantial Evidence of Proof of Guilt

The City has not satisfied its burden of proving Neville committed a wrongdoing. This is because the internal investigation did not determine that Neville violated any policy. The City cited Neville for an act of misfeasance which was based purely on its subjective belief that she violated a policy. Neville's actions, or inactions, did not rise to the level of a policy violation. Lieutenant Nobrega stated in her investigation report that Neville failed to dispatch an available unit to Coral Street when the original call came in. Lieutenant Nobrega found there were three available units when the original call came in and three separate units were dispatched after the initial call to other situations. The City characterized Neville's decision not to dispatch a cruiser to Coral Street as an act of misfeasance.

As Neville explained at the hearing, there were several reasons why she did not send a cruiser to Coral Street after the initial call for service. In her review of the CAD system entry, Neville, in her professional judgement, did not believe the call warranted immediate attention. The emergency communications center

does not dispatch based on the priority number the CAD system generates. The designated dispatcher considers the narrative contained within the CAD entry and any prior history from the location. The CAD entry in question did not indicate that the vehicle had been at the location all day; if it had Neville would have dispatched a unit earlier. After the original call came in, Neville dispatched cruisers as they became available to other subsequent calls that were of a higher priority. It is within the dispatcher's purview to review and ascertain which calls are most in need of available cruisers. Further, Neville did not know she had cruisers available to dispatch as they had not radioed in that they were clear from their prior call.

Neville was also cited for violating the Lowell Police General Order Communications Center Policy for failing to properly judge the characteristics of a call to determine whether an emergency response was required. City Manager Donoghue referenced Neville's comments from her second interview with Lieutenant Nobrega that Neville believed the call from Coral Street to be a drug deal in her explanation of how Neville violated the General Order Communications Policy. The City was incorrect to discipline Neville based on the General Order Communications Policy as she did not take any calls regarding Coral Street. Each of the sections cited in the discipline letter explicitly reference a call or caller, or statements to be made by a dispatcher to a caller. Since Neville never spoke to any callers, she cannot be cited for violating the General Order Communications Policy.

The City has not satisfied its burden to prove that Neville committed any wrongdoing. Therefore, there was no just cause for issuing a ninety-day

suspension, where the City has provided no evidence that she was guilty of any act, or failure to act.

Penalty Not Reasonably Related to the Seriousness of the Offense and Neville's Past Disciplinary Record

Neville's suspension was not reasonably related to the seriousness of the offense and her unblemished record. The discipline was out of step with the purposes of progressive discipline, was punitive rather than corrective, and ignored mitigating circumstances.

The City has not demonstrated that the discipline issued was based on the seriousness of the offense and Neville's unblemished record. Neville has been employed as a dispatcher with the City for over twenty-one years with an unblemished record. Given that the City produced no evidence of wrongdoing by Neville, punitive discipline is inconsistent with progressive discipline. Neville did not handle any calls related to Coral Street. As such, the City cannot cite her for violating the Lowell Police General Order Communications Policy. Further, Neville cannot be cited for misfeasance of her duties for failing to dispatch a cruiser to Coral Street following the initial call. Crucial information was excluded from the CAD system that would have affected her determination to send a cruiser; without such information she could not accurately assess the situation.

Conclusion

For all the foregoing reasons, the City violated the collective bargaining agreement when it suspended Neville for ninety working days for unfounded allegations of misfeasance and violating policy. The Union requests that the Arbitrator find that Neville committed no wrongdoing, and that there was no just

cause for the discipline issued to her. The Union requests that Neville be made whole in every way, and that the Arbitrator retain jurisdiction of this matter until completion of the make whole remedy.

### **OPINION**

The issue before me is: Did the City of Lowell have just cause to suspend Lori Neville for a period of ninety days in light of her involvement in the events that took place on June 23, 2020? If not, what shall be the remedy?

For all the reasons stated below, the City did not have just cause to suspend Lori Neville for ninety days. The City did have just cause to suspend Lori Neville for thirty-five workdays.

The incident at 21 Coral Street is a multifaceted event that involves multiple employees from the Dispatch Center. The focus of this arbitration hearing and decision is solely based on the actions of Neville on the day in question, and not the actions of other employees who were also disciplined. While acknowledging that there was a significant negative outcome that day, the analysis here must be focused on Neville's role in the events of the day. Ultimately, it must be acknowledged that Neville was not the initial call taker who entered the call from the non-emergency line as a call for a suspicious vehicle. In fact, Neville never took any of the calls that came in regarding Coral Street. Neville, was however, the lead dispatcher responsible for dispatching available officers to scenes in response to calls to the emergency dispatch center that were then entered into the CAD system.

The City does not have a policy that mandates that the CAD system be updated for all calls. Routinely, dispatchers receive calls on both the non-emergency line and the 911 line that are repeat calls for an incident already logged into the CAD system. These calls are required to be logged into the CAD system only if there is new or additional information provided by the caller.

In this instance, as Lieutenant Nobrega noted in her investigative report, the initial caller called the non-emergency line at 2:44 PM, and the call was logged into the CAD system as a suspicious vehicle. Neville opened the call and reviewed the information contained in the CAD system and decided not to dispatch anyone to the scene based both, on her belief that it was not an emergency situation, and her ultimately mistaken belief that she did not have any available units to respond. After Lieutenant Nobrega's investigation, it was her belief and ultimately City Manager Donoghue's conclusion that Car 5, Car 6, and Portable 15 were available to respond to the initial call if Neville had dispatched them. While Neville disputes that Car 5, Car 6 and Portable 15 were available at the time of the initial call, there is no dispute that Neville dispatched Car 5 to a motor vehicle accident at 2:54 p.m. and Car 6 to another incident at 3:03 p.m., which is after the initial call and prior to the shots fired call at Coral Street. Thus, it is undisputed that even if the City is incorrect in its belief that officers were available at the time of the initial call (2:44 p.m.), officers were available just prior to the motor vehicle accident and Neville failed to dispatch them to Coral Street. Neville's testimony that "she must have been doing something else" in response to why she failed to dispatch Car 5 and/or Car 6 to Coral Street prior to the motor vehicle accident was unsatisfactory. Finally,



Neville's testimony that she was unaware of any other calls concerning Coral Street is unconvincing and in direct contrast to information that Lieutenant Nobrega obtained, stating that Cooper had told Neville that "they're calling back about Coral Street" after she had taken a call just prior to the shots fired call being received. Neville's failure to dispatch officers to Coral Street between the time of the initial call and the call for shots fired is worthy of discipline.

The next issue to address is whether Neville violated the Lowell Police General Order, Communications Policy. As the Union correctly points out, this policy is directed at dispatchers who personally handle calls, and Neville, as lead dispatcher on the day in question, did not handle any calls herself. Under the facts of this case, applying this policy to Neville is inappropriate. As such, the City failed to prove that Neville violated the policy, and any alleged violation of this policy cannot form the basis of discipline in this matter.

The final issue to address is the appropriate level of discipline. The City's issuance of a ninety-day suspension is excessive and is not supported by just cause. Neville's actions in failing to dispatch officers to Coral Street between the time of the initial call and the call for shots fired was unacceptable and certainly worthy of discipline. However, the City's partial reliance on the alleged violation of the Communications policy is misplaced, and Neville is an employee with twenty-one years of experience and an exemplarily discipline-free record. Finally, the City was unpersuasive in showing evidence of disciplining any bargaining unit member in the past with such a lengthy suspension. The City was ultimately only able to provide information on a prior six-week suspension in response to questions about

similar discipline handed out to dispatchers in the past. These factors serve as important elements in formulating the appropriate level of discipline to support just cause and must be factored into the final decision.

Based on the facts presented at the hearing, the testimony of the witnesses, and Neville's cumulative work record, I find that the City has just cause to suspend Neville for thirty-five workdays. The City is hereby ordered to remove from Neville's personnel file all references to a ninety-day suspension and replace it with a thirty-five-workday suspension. The City shall make Neville whole for all losses sustained above the level of a thirty-five-workday suspension. I shall retain jurisdiction until such time as the parties have reached agreement on the make whole remedy.

### **AWARD**

The City did not have just cause to suspend Lori Neville for ninety days. The City did have just cause to suspend Lori Neville for thirty-five workdays. The City is hereby ordered to make Neville whole for all losses above the level of a thirty-five-workday suspension.



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Timothy Hatfield, Esq.  
Arbitrator  
October 13, 2022