

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF WESTFIELD

-and-

INTERNATIONAL BROTHERHOOD OF POLICE
OFFICERS, LOCAL S574

ARB-23-9857

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Christopher Brown, Esq. - Representing City of Westfield
Andrew Bettinelli, Esq.

Gary Gentile, Esq. - Representing International Brotherhood of
Police Officers, Local S574

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 have just cause to terminate the grievant. The grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
January 6, 2025

INTRODUCTION

On February 10, 2023, the International Brotherhood of Police Officers, Local S574 (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 on May 23, 2023, June 2, 2023, and June 29, 2023.

The parties filed briefs on January 16, 2024.

THE ISSUE

Did the City have just cause to terminate the grievant? If not, what shall be the remedy?

RELEVANT WESTFIELD POLICE DEPARTMENT RULES AND REGULATIONS (IN PART)

1.0 INTRODUCTION

Law Enforcement professionals have a unique role in today's society. The power and authority granted to the police are substantial. ...

As with any granting of authority, there comes an accompanying responsibility. For police professionals it involves, at a minimum, the adherence to law and the fair and impartial exercise of such authority.

Many expectations of police conduct "go without saying." Certainly officers must obey the law, exercise responsibilities within constitutional guidelines, and obey lawful orders. However, the establishing of a manual of rules and regulations is a time-tested tradition in police departments.

It is only fair that officers have some way of **KNOWING IN ADVANCE** [emphasis in original] what is expected and what conduct is prohibited. Many forms of conduct that are "unbecoming a police officer" are known from common sense or learned during training on the job. However, when this is not the case, or when a particular action is either required or prohibited, it is helpful to spell it out in a manual such as this. ...

The standard of conduct expected of law enforcement officers is often higher than that demanded of other municipal employees. We recognize this in accepting appointment to our chosen profession. When the needs of public confidence require, we are held to a high ethical standard which dictates the avoidance of even the appearance of impropriety. Likewise, we acknowledge the need for reasonable restrictions on our **OFF-DUTY CONDUCT**, [emphasis in original] especially when it reflects on our profession or the department.

This manual will generally serve as the basis for departmental discipline. It does not attempt, nor could any such document, cover every possible situation. It attempts to outline the minimal level of conduct expected of each officer. Familiarity with its contents is required. ...

The Law Enforcement Code of Ethics is a time-honored tradition among members of our profession. Its inclusion in this manual is meant to remind officers of the lofty goals and worthwhile objectives which are consistent with our professional calling. One sign of a true profession is that it has a code of conduct concerning voluntarily adopted ethical standards, ours is no exception. This department, and indeed this community, expects officers to adhere to this code of conduct.

LAW ENFORCEMENT CODE OF ETHICS

As a Law Enforcement officer, ... I will keep my private life unsullied as an example to all; ...I will be exemplary in obeying the laws of the land and the regulations of my department; ...

2.0 PROFESSIONAL CONDUCT AND RESPONSIBILITIES

The police are the most visible and readily accessible representatives of local government. They respond to calls for assistance of a diversified nature and are expected to resolve a wide

variety of community problems as they occur. Police Officers are professionals, and, as such, are expected to maintain exceptionally high standards in the performance of their duty while conducting themselves at all times, both on and off-duty, in such a manner as to reflect favorably upon themselves and the department. Effective police operations require loyalty to the department and to one's associates, maintaining a genuine spirit of cooperation and rendering appropriate assistance to another police officer or citizen exposed to danger or in a situation where danger may be lurking.

Public scrutiny, and sometimes public criticism, is directed not only at police performance, but also at behavior, on and off duty, of those who deliver police services. ... At a minimum, officers are required to obey all lawful statutes as well as regulations established by the department. ...

2.3 CONDUCT UNBECOMING OF AN OFFICER

Officers shall not commit any specific actor acts of immoral, improper, unlawful, disorderly or intemperate conduct, whether on or off duty, which reflect (s) discredit or reflect (s) unfavorably upon the officer, upon other officers or upon the police department. Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and its members.

Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members.

Conduct unbecoming an officer shall also include off-duty conduct where there is a nexus or connection between the act or acts committed or omitted by the officer and that individual's continued fitness or ability to effectively perform his or her required duties and responsibilities. Another important consideration is the impact or adverse effect said conduct may have on the operation, morale, integrity, reputation or effectiveness of the department and the ability of the officers not involved in said act to effectively perform their required duties and responsibilities.

8.6 COOPERATION WITH INVESTIGATIONS

Officers shall answer questions truthfully, respond to lawful orders, and render material and relevant statements, in an internal department investigation when such orders, questions and statements are directly related to job responsibilities or fitness for duty. Nothing in this section shall be violative of one's federal or state constitutional rights.

9.8 CRIMINAL CONDUCT

Officers shall not commit any criminal act (felony or misdemeanor) or violate the regulatory or criminal laws or statutes of the United States or of any state or local jurisdiction (by-law/ordinance) whether on or off duty.

Note: an officer may be guilty of violating this rule regardless of the outcome of any criminal court case. Conviction for the violation of any law is *prima facie* evidence of a violation of this rule. However, even in the absence of a conviction (which requires proof beyond a reasonable doubt), an officer may still be disciplined under this rule for the conduct that was involved since a preponderance of the evidence is the quantity of proof required in such cases.

12.8 OFF DUTY USE OF ALCOHOL

Officers shall not use alcoholic beverages off duty to the extent that their conduct is obnoxious or offensive and discredits them or the department. Officers, off duty, shall not consume alcoholic beverages or medication to the extent that they are unfit to report for their next regularly scheduled tour of duty.

RELEVANT MASSACHUSETTS GENERAL LAW

M.G.L. c. 6E, § 1

"Untruthful" or "untruthfulness", knowingly making an untruthful statement concerning a material fact or knowingly omitting a material fact: (i) on an official criminal justice record, including, but not limited to, a police report; (ii) while testifying under oath; (iii) to the commission or an employee of the commission; or (iv) during an internal affairs investigation, administrative investigation or disciplinary process.

FACTS

The City of Westfield (City) and the Union are parties to a collective bargaining agreement that was in effect at all relevant times to this arbitration. The Union is the exclusive bargaining representative for all employees listed in the recognition clause of the collective bargaining agreement including Sgt. William Cavanaugh (Cavanaugh / grievant).

The grievant joined the Westfield Police Department (Police Department / WPD) as a reserve officer in 2012 and was appointed as a full-time officer in 2013. In 2021, he was promoted to acting sergeant.

Upon joining the Police Department, Cavanaugh was given, and acknowledged receipt of, the WPD Rules and Regulations. The WPD Rules and Regulations provide standards of conduct applicable to both on-duty and off-duty officers' behavior.

On December 31, 2021, the grievant and his girlfriend, Stephanie Cusack (Cusack) were at the Southwick Inn celebrating New Year's Eve and drinking alcohol. Cavanaugh and Cusack left the party at approximately 12:45 AM on January 1st and drove to Cavanaugh's home.

Prior to her relationship with Cavanaugh, Cusack was in a relationship with Westfield Firefighter Zachary Florek (Florek). Cavanaugh believed that Florek was continuing to contact Cusack even after their breakup. Cavanaugh believed that Florek repeatedly drove by his house, including in the early-morning hours of January 1st, when Florek was actually on duty.

Cavanaugh, believing that Florek was driving by his house and continuing to harass Cusack, got in his car while intoxicated and drove to Florek's residence to confront him. Surveillance footage shows Cavanaugh, alone in the vehicle, exit the driver's side door shirtless and walk to the Florek residence and ring the doorbell. Florek's mother (Mrs. Florek) answered the door as she was watching the dog while her son was at work. A clearly intoxicated Cavanaugh begins yelling at Mrs. Florek about her son and screaming expletives before returning to his car and driving away. Upon his departure, Mrs. Florek called her son and reported the incident. On January 3, 2022, Florek filed a formal complaint with the WPD.

In response to the Florek complaint, the WPD began a formal Internal Affairs (IA) investigation of Cavanaugh's actions on the evening of December 31 / January 1. This investigation was conducted to determine if Cavanaugh had violated WPD Rules, policies, regulations, or other laws.

On January 11, 2022, Captain Pitoniak and Captain Dickinson interviewed Cavanaugh. In this interview, Cavanaugh told the investigators of his belief that Florek was guilty of in-person and digital harassment of Cusack and himself due to their relationship. During this interview, investigators showed Cavanaugh the surveillance footage from Florek's home at 25 Spruce Street. After watching the video, Cavanaugh admitted drinking alcohol that evening and agreed that he was intoxicated. Cavanaugh, however, denied that he drove to Spruce Street instead claiming that Cusack had driven.

On January 26, 2022, Cavanaugh was interviewed for a second time. During this interview, Cavanaugh changed his story about driving to Spruce Street.

Cavanaugh now claimed that Cusack had driven from the Southwick Inn to his residence and then she had driven part of the way to Spruce Street before she got out of the driver's seat and laid in the back seat out of sight. Cavanaugh said he then drove the short distance to Spruce Street. Cavanaugh was, however, unable to tell investigators where the driver exchange happened.

On February 28, 2022, investigators interviewed Cusack. The interview was recorded. Cusack informed the Investigators that she did not drive Cavanaugh to Spruce Street on the night in question. Cusack warned Cavanaugh not to go and he ignored her advice and left while she was in the bathroom. Cusack provided the investigators with a copy of a text exchange with her friend in which she had stated that she did not know where Cavanaugh went. In a subsequent interview on March 1, 2022, Cusack stated that Cavanaugh had driven the whole evening, both from the Southwick Inn to his residence and from his residence to Spruce Street in contradiction to Cavanaugh's statements to investigators.

Cavanaugh was interviewed for the third time on March 7, 2022. In this interview, he again changed his story about how he got to Spruce Street, now explaining that while he did not remember any of the details of that evening due to his intoxication, he found a text message from Cusack asking where he was. Based on this text, which he failed to provide to the investigators, he claimed that he must have driven himself to Spruce Street.

At the conclusion of the investigation, Captain Dickinson prepared a report summarizing the investigation and his findings. The report concluded that Cavanaugh had violated WPD Rules. The WPD Rules violated included:

1. Code of Ethics
2. Professional Conduct and Responsibilities
3. Conduct Unbecoming an Officer
4. Off Duty Use of Alcohol
5. Cooperation with Investigations

The report also concluded that Cavanaugh had violated the Police Reform Bill's Untruthfulness provision when discussing his actions on the night in question, specifically who drove to Spruce Street.

On February 22, 2022, the Massachusetts State Police (MSP) contacted the WPD regarding information provided to them by Trooper TJ Cusack (TJ Cusack), the brother of Stephanie Cusack, about a domestic dispute between his sister and Cavanaugh. The initial report indicated that Cavanaugh had assaulted Cusack and pointed a gun to his own head during the incident. WPD investigators were in contact with Cusack and interviewed her the next morning.

In this interview, Cusack reported that Cavanaugh had repeatedly physically and verbally abused her over the course of several months. Cusack reported at least five separate instances of physical or verbal abuse. As a result of this interview, Cavanaugh was placed on administrative leave and ordered to surrender his service weapon. The WPD opened a second IA investigation into Cavanaugh.

In her interview with the WPD, Cusack stated that in October 2021, Cavanaugh became violent with her for the first time. Upon reviewing the evidence provided, the investigators concluded that the incident happened on November 6, 2021. Cusack reported that Cavanaugh, in a fit of jealousy, struck her across the face, and her neck was all red from Cavanaugh pushing her against the wall while holding her neck. Cusack was able to provide pictures and video of her face, lips and neck that she recorded while locked in Cavanaugh's bathroom.

Cusack also reported an incident on December 3, 2021, the night of the WPD Christmas party. Cavanaugh became highly intoxicated and upon arriving at home began yelling at Cusack, pushed her to the ground, punched her in the face and stomped on her back, which she had recently had surgery on. Cusack provided investigators with pictures of her black eye, and her bruised and battered lips.

Cusack reported an incident from February 20, 2022, where Cavanaugh after returning from a shift at the WPD, poured soda on and tried to pull her out of bed by her hair. In the course of the dispute, Cavanaugh took his service weapon out and pointed it towards his head and told her he was going to kill himself if she did not leave.

On February 23, 2022, another domestic incident between Cavanaugh and Cusack resulted in the police being dispatched to Cavanaugh's home. After sending multiple verbally harassing texts to Cusack, while working his shift at WPD, Cavanaugh arrived home and initiated a physical confrontation that resulted in the police being called. Cavanaugh, after learning that Cusack had called

Captain Dickinson at the WPD, threatened that if she was going to ruin his career, he was going to ruin hers. Subsequently, Cavanaugh told the police upon their arrival at his home that Cusack had been fired for stealing drugs from Baystate Medical Center, and that she was purchasing illegal drugs.

On March 31, 2022, Captains Dickinson and Pitoniak interviewed Cavanaugh in the presence of his Union counsel. In this interview, Cavanaugh was asked if he ever hit Cusack. Cavanaugh denied that he ever hit her. Cavanaugh was further asked if he ever hit any women, which he again denied repeatedly. Cavanaugh was then shown photographs of Cusack's injuries, which he attempted to blame as injuries she allegedly suffered at Baystate Medical Center. Later, Cavanaugh tried to claim that the injuries were related to a medical condition and/or Cusack's substance use. Cavanaugh then tried to paint Cusack as unreliable due to her substance use and provided digital evidence of what he claimed were her drug transactions. Cavanaugh was asked why he hadn't reported her drug transactions to the Drug Unit of the WPD and claimed that he didn't know about it until late February. This claim, however, was refuted by an earlier statement by Cavanaugh that he had seen evidence of an alleged drug buy in November 2021.

In furtherance of the investigation, Captain Dickinson interviewed a former intimate partner (Victim 1) of Cavanaugh. Victim 1 was able to provide credible evidence of verbal and physical abuse by Cavanaugh contrary to his answers during his interview that he had never hit a woman. Victim 1 stated that the abuse was a result of jealousy and usually occurred when alcohol was involved.

At the conclusion of the investigation, Captain Dickinson prepared a report summarizing the investigation and his findings. The report concluded that Cavanaugh had violated WPD Rules. The WPD Rules violated included:

1. Conduct Unbecoming an Officer
2. Criminal Conduct
3. Off Duty Use of Alcohol
4. Cooperation with Investigations

The report also concluded that Cavanaugh had violated the Police Reform Bill's Untruthfulness provision when he failed to answer truthfully about if he had ever hit a woman, and when he lied about not reporting Cusack's alleged drug buys to the Drug Unit because he was unaware of them.

Finally, Captain Dickinson recommended that the Court pursue five counts of a violation of M.G.L. c 265 § 13M (Assault or assault and battery on a family or household member).

1. Domestic Assault and Battery on November 6, 2021.
2. Domestic Assault and Battery on December 3, 2021.
3. Domestic Assault and Battery on February 18, 2022.
4. Domestic Assault and Battery on February 20, 2022.
5. Domestic Assault and Battery on February 22, 2022.

Disciplinary Hearing

After the results of the internal affairs investigations were reviewed by the Police Chief, the charges were referred to the Westfield Police Commission (Commission), which is the appointing authority for the WPD. The Commission

held a hearing at which the grievant was represented by Union Counsel and introduced evidence in his defense. The Commission reviewed statements and recorded interviews, weighed evidence and assessed the credibility of witnesses. The Commission found there was just cause and voted unanimously to terminate the grievant.

First IA Investigation

The Commission found that there was overwhelming evidence that Cavanaugh was the driver of the vehicle that drove to Florek's house, and that he admitted that he drove after drinking heavily. The Commission found that Cavanaugh's untruthfulness became more apparent during the hearing when he denied every allegation made by every victim towards him. The only time he admitted any wrongdoing was when the video evidence was irrefutable. The Commission found that Cavanaugh violated all the charges put forth against him and his untruthfulness was obvious.

Second IA Investigation

The Commission found that Cavanaugh violated all the charges against him from this investigation. Cavanaugh's defense was that Cusack was dependent on drugs and that every allegation was fabricated. The Commission found Cusack was coherent and truthful in her recorded interviews. The Commission found that Victim 1 was extremely credible, appearing honest and forthright. Cavanaugh's defense to her allegations were that she was jealous and this was her way to get back at him for their breakup. The Commission found his explanations to be preposterous and not credible.

The Commission found Cavanaugh to be untruthful and unbelievable. It found him to be unfit to remain a police officer. Cavanaugh was terminated on September 20, 2022.

The Union filed a grievance challenging the termination that was denied at all steps of the grievance procedure by the Employer, resulting in the instant arbitration.

POSITIONS OF THE PARTIES

THE EMPLOYER

Well-settled principles of just cause fully support the City's termination of the grievant. Arbitrators consider seven factors in determining if an employer had just cause to support its actions.

1. Whether the Employee had Forewarning of the Consequences of Their Conduct

The WPD Rules are given to each officer upon appointment. It is undisputed that the grievant received a copy of the WPD Rules and acknowledged receipt. Certain things, such as criminal acts, are so obviously out of bounds for a law enforcement officer that no warning should be necessary, but nonetheless the WPD Rules expressly prohibit criminal conduct. Given the serious nature of the grievant's violations, which include lying to investigators, criminal conduct, discrediting his professionalism, and tarnishing the reputation of the Police Department, there is no reasonable argument that the grievant did not understand the potential consequences of his actions.

2. Whether the Employer's Rule was Reasonably Related to Orderly, Efficient and Safe Operations of the Workplace

There is no reasonable basis to dispute the City's position. The WPD Rules provide that police are held to a high standard in both their on-duty and off-duty conduct because the needs of public trust and confidence demand it. The regulations of off-duty conduct, particularly where it involves truthfulness, criminal conduct, and actions which reflect on the officer's professionalism and the reputation of the police department, are essential to this goal. All of the rules and laws violated by the grievant seek to regulate conduct in such a way as to maintain public trust and confidence in law enforcement officers.

3. Whether the Employer Made a Reasonable Effort to Discover Whether the Employee Violated the Rule and Whether the Employer's Investigation was Fair and Objective

The City amply demonstrated both factors were met. Shortly after receiving reports which indicated that WPD rules had been violated, Internal Affairs investigators were assigned to determine whether any rules, regulations or laws were violated. The investigators were very thorough, conducting many interviews, and collecting a significant amount of evidence. The resulting written reports were detailed and thorough. The grievant was interviewed four times and was able to provide his version of events and offer evidence to investigators and had the opportunity to have his Union representative and legal counsel present.

4. Whether Substantial Evidence or Proof Sustained the Findings of the Employer

The City presented multiple sources of evidence to support each of the violations alleged against the grievant. The Appointing Authority made credibility

determinations and concluded that the City's witnesses were credible and that the grievant's explanations were not believable. Significantly, regarding the charges in the second investigation, the same evidence on which the Appointing Authority based its decision was presented two days later at the show cause hearing in court where an outside third-party agreed that there was probable cause to charge him with several criminal counts.

5. Whether the Employer applied its Rules, Orders and Penalties Evenhandedly and Without Discrimination

Given the sheer number of violations which were sustained by investigators, there was no equivalent or similar past discipline of other unit members to use for comparison. However, the Massachusetts Civil Service Commission has upheld the termination of a Westfield Police Officer for lying to internal investigators, which is part of the conduct that the grievant was found to have committed.¹

The grievant introduced a Civil Service decision where a Westfield police officer received a two-day suspension for an off-duty incident related to excessive intoxication.² This case is not relevant and should be given no weight as the facts and circumstances are completely different from the instant case. In that case, an officer became intoxicated and passed out on the floor of a bar and had to be taken to the hospital. Here, in addition to multiple incidences of off-duty misconduct involving the use of alcohol, the Appointing Authority found the grievant had committed several other infractions, including engaging in criminal conduct, and

¹ *Desharnias v. Westfield*, CSC Case No. D1-09-406 (2010).

² *Coach v. City of Westfield*, CSC Case No. D-09-259 (2009).

lying to internal investigators. The grievant did not simply pass out at a bar, he admitted to driving while so severely intoxicated that he could not remember the events of the night of January 1, 2022, putting the public at risk. He attempted to confront Mr. Florek at his home, ringing the doorbell, shirtless, at 1:30 A.M. and yelled vulgarities at Mr. Florek's mother who answered the door. He clearly appears to be intoxicated on the video and can be seen getting back in his vehicle and driving north.

6. Whether the Degree of Discipline Administered was Reasonably Related to the Seriousness of the Employee's Offense, and Past Record of the Employee.

Even in the absence of prior discipline, the level of discipline imposed was completely appropriate. Taken as a whole, the violations are clearly sufficient to warrant termination. A litany of arbitration decisions have upheld employer's decision to terminate employees based on findings of untruthfulness, or findings that officers had engaged in violent conduct, in particular domestic violence, without regard for progressive discipline.

Conclusion

Finally, notwithstanding the charges related to untruthfulness and domestic violence, the sustained violations are serious and supported by troubling facts. The grievant was found to have violated WPD Rules, the Law Enforcement Code of Ethics, WPD Rule 2.0 Professional Conduct and Responsibilities, WPD Rule 2.3 Conduct Unbecoming an Officer, and WPD Rule 12.8 Off Duty Use of Alcohol. The City presented evidence of each of the above-referenced factors to establish that there was just cause to terminate the grievant's employment based on his

conduct. Accordingly, the Arbitrator should find for the City and deny the Union's grievance.

THE UNION

The City Has Not Met Its Burden To Establish Just Cause

It is the Employer's burden to establish just cause, not the Union's burden to prove lack of it. The Union asserts that there are five core elements an employer must establish in order to meet its burden.

First, an employee must show that it established a reasonable and clearly written rule or standard of conduct. Second, prior to its use, an employer must show that it communicated the rule or standard of conduct to the employee to the extent that the employer can show both that the employee understood what conduct was acceptable, what conduct was not, as well as the consequences for violations. Third, an employer must show that it is consistent in its application or enforcement of the rule or standard of conduct. In other words, the employer must show that whenever the rule or standard of conduct has been breached by an employee, corrective measures are always taken. Fourth, an employer must show the employee violated the rule or standard of conduct to the extent of the wrongdoing. In other words, a knowing breach on the part of the employee. Fifth, an employer must show that it employed the principles of progressive discipline in

a reasonable manner, taking into consideration any mitigating factors.³ The City has failed to meet its burden to establish just cause for termination.

Case No. IA-05-2022-SD

This disciplinary action arose as a result of a complaint made by Zachary and Carrie Florek. Previously, Zachery Florek was in a dating relationship with Cusack. They resided at his home located at 25 Spruce Street in Westfield. Shortly thereafter, Cusack began a dating relationship with Cavanaugh. They resided at Cavanaugh's home located at 52 Yankee Circle, also in Westfield.

It was not long after Cavanaugh began his relationship with Cusack that he learned that Zachery Florek, despite his breakup, continued to contact Cusack with unwanted texts and attempted visits. The unwanted contact and harassment of Zachery Florek upon Cusack continued through December 2021, despite the multiple requests by both Cusack and Cavanaugh that he stop. This culminated with the incident that was the subject of this complaint.

On the evening of December 31, 2021, both Cavanaugh and Cusack were out together at the Southwick Inn celebrating New Years Eve. While there, Cavanaugh consumed alcohol. They then left the Southwick Inn and drove back to Cavanaugh's home, arriving after midnight, January 1, 2022. Shortly thereafter, Cavanaugh left his residence, and drove to the Florek residence to confront Florek regarding Cusack. Cavanaugh admitted that when he arrived at the residence he was intoxicated. Carrie Florek, Zachery's mother answered the door as Zachery

³ Holley and Jennings, The Labor Relations Process, 2nd Ed., Dryden Press 1984, at p. 303.

was not home. Cavanaugh admitted that he was discourteous toward Carrie Florek, used profanity, and that his conduct was unprofessional.

The Remedy

There is no dispute that the City has promulgated rules and regulations applicable to members of the Police Department, and that Cavanaugh received a copy. It is the responsibility of the City to promulgate reasonable and clear rules and standards of conduct. The rules and regulations cited by the City are both vague and overbroad to such an extent that they accomplish nothing other than some general requirement to be polite to the public. As a result, such generalized rules are difficult to enforce due to their lack of articulated standards of conduct. More importantly, they are ripe for the potential of selective enforcement, which cannot serve as the basis for just cause.

The City produced no evidence as to how these rules are communicated to members of the Police Department. No evidence was presented showing any effort to either refine or further clarify what type of conduct would subject an officer to disciplinary action. Further, the City produced no evidence showing prior instances of conduct, similar to Cavanaugh's, that were met with corrective measures. This lack of evidence suggests selective enforcement.

Finally, due to the vague and overbroad nature of these rules, an officer could be disciplined multiple times for the same offense. Such a result is repugnant to basic principles of just cause. Termination of employment for this type of offense is wholly unwarranted, and established principles of progressive discipline should have applied.

Case No. IA-07-2022-SD

This internal affairs matter arose as a result of a complaint made by Cusack wherein she alleges that Cavanaugh committed domestic assault and battery upon her on the dates of November 6, 2021, December 3, 2021, February 18th, 20th and 23rd, 2022.

At the arbitration hearing, the City chose not to call Cusack as a witness, instead relying statements, reports, and photographs in lieu of live testimony. The record is comprised solely and exclusively of hearsay evidence. In an administrative hearing, findings of fact that are supported solely by hearsay evidence cannot constitute evidence as a matter of law. As a result, the City has failed to meet its burden of proof to establish just cause.

In the instant matter, the hearsay evidence presented by the City is inherently unreliable. Additionally, by failing to call Cusack as a witness, the City deprived Cavanaugh of his right to confront his accuser and the right to cross-examination, rights inherent in the due process principles that comprise the burden of just cause. The record is replete with inconsistencies and inaccuracies regarding Cusack, including, but not limited to the following.

First, all of Cusack's statements are unsworn. In addition, she gave the City at least six statements, many different than others. She was never examined on any of the inconsistencies in her statements.

Second, there is evidence of drug use and possible drug abuse by Cusack. She was never cross examined on this subject to see if her recollection of facts in this case is clear.

Third, a District Court Magistrate held a show cause hearing in September 2022. Cusack chose not to appear to testify, and the Magistrate found no probable cause.

Fourth, Cavanaugh read and placed into the record letters written to him by Cusack proclaiming her trust and affection for him, inconsistent with her allegations of assault.

Finally, it should be noted that the decision by the City to not call Cusack deprived the arbitrator of the ability to observe the demeanor of Cusack for the purpose of weighing the credibility and reliability of her testimony. Cavanaugh categorically denied the allegations made by the City, and his sworn testimony remains un rebutted. The City seeks what amounts to the capital punishment of discipline. In order to do so, it must do more than submit unsworn, hearsay evidence.

Conclusion

Based on the foregoing, the Union has established that the City failed to meet its burden to show it had just cause to terminate the employment of Cavanaugh. We ask that the grievance be sustained, and that the City be ordered to reinstate Cavanaugh forthwith and make him whole for all of his losses.

OPINION

The issue before me is: Did the City have just cause to terminate the grievant? If not, what shall be the remedy?

For all the reasons stated below, the City did have just cause to terminate the grievant. The grievance is denied.

First and foremost, the City conducted two extremely thorough and fair investigations of the grievant. Multiple witnesses were interviewed in each instance, and Cavanaugh was interviewed multiple times and given every opportunity to explain and/or defend his actions. Two reports were authored by the investigating officers which were reviewed by the Chief of Police before being referred to the Westfield Police Commission, the appointing authority for Westfield Police Officers.

The Commission held a hearing and reviewed the reports and evidence provided, including all video recordings of interviews and surveillance cameras. Cavanaugh was represented by counsel, allowed to present rebuttal evidence and testify on his own behalf. At the conclusion of this hearing, the Commission found Cavanaugh to be guilty of all the charges against him and found him to be “untruthful and unbelievable” and his denials of every allegation to be “preposterous and not credible.” The Commission noted that the only time Cavanaugh accepted responsibility was when confronted with overwhelming video evidence of his wrongdoing.

At the present arbitration hearing, both sides submitted substantially the same evidence and testimony as was presented to the Commission. Cavanaugh again denied all of the allegations against him, claiming they were all fabricated against him and again only took responsibility for his actions when presented with

the same irrefutable video evidence. I, like the Commission before me, find Cavanaugh's denials and explanations at this arbitration hearing to be untruthful.

The video evidence from the Spruce Street incident clearly shows an intoxicated Cavanaugh drive himself to Florek's house, vulgarly confront Florek's mother, and then return to his car and again drive away while intoxicated. Compounding Cavanaugh's problems is the fact that it took three different IA interviews and two different versions of a story before he would acknowledge that, while he could not remember due to his intoxication, some of his text messages indicate he may have driven himself to Florek's house. Again, the video surveillance speaks for itself, and Cavanaugh's explanations for his actions clearly show that he was not truthful in his responses to the investigators during his IA interviews. I have found no compelling evidence that would warrant a reversal of the Commission's decision regarding the first IA investigation.

In relation to the second IA investigation, after reviewing all of the evidence presented, including the videos of the witnesses' statements to investigators and Cavanaugh's interview with investigators, and after hearing Cavanaugh's testimony at this arbitration hearing, I find no evidence or reasonable rationale to overturn the Commission's findings on the charges brought against Cavanaugh.

The City, conducted two thorough and fair investigations into the allegations against Cavanaugh. The Commission conducted an impartial hearing to review the evidence and allow Cavanaugh to defend himself before terminating Cavanaugh for just cause. Nothing presented in this arbitration hearing, by either side, provides me with any reason to overturn that decision.

AWARD

The City did have just cause to terminate the grievant. The grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
January 6, 2025