COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:	
CITY OF WORCESTER and NAGE, LOCAL 495	ARB-25-11517

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Theresa M. Reichart, Esq. -Representing the City of Worcester

Kara L. Parks, Esq. -Representing NAGE, Local 495

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 had just cause to terminate Mark Fair's employment, and the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
October 26, 2026

INTRODUCTION

On August 12, 2025, NAGE, Local 495 (Union) filed a unilateral petition for Arbitration with the Department of Labor Relations (Department). 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 WebEx on January 30, 2026.

The parties filed briefs on or about February 27, 2026.

THE ISSUE

The parties did not agree on an issue. The Union proposed:

> Whether the City of Worcester had just cause to terminate the employment of Mr. Fair. If not, what should be the remedy?

The City of Worcester (City) proposed:

> Whether or not the City had cause to terminate the employment of Mr. Fair. If not, what shall be the remedy?

I find the issue to be:

> Whether the City had just cause to terminate Mr. Fair's employment. If not, what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

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

Article 4- Management Rights

In the interpretation of this Agreement, the City shall not be deemed to have been limited in any way in the exercise of the regular and customary functions of municipal management or governmental authority and shall be deemed to have retained and reserved unto itself all the powers, authority and prerogatives of municipal management or governmental authority including,

but not limited to, the following examples: the operation and direction of the affairs of the departments in all of their various aspects; the determination of the level of services to be provided; the direction, control, supervision and evaluation of the employees; the determination of employee classifications; the determination and interpretation of job descriptions, but not including substantive changes; the planning, determination, direction and control of all the operations and services of the departments (and their units and programs); the increase, diminishment, change or discontinuation of operations in whole or in part; the institution of technological changes or the revising of processes, systems or equipment; the alteration, addition or elimination of existing methods, equipment, facilities or programs; the determination of the methods, means, location, organization, number and training of personnel of the departments, or its units or programs; the assignment and transfer of employees; the scheduling and enforcement of working hours; the assignment of overtime; the determination of whether employees (if any) in a classification are to be called in for work at times other than their regularly scheduled hours and the determination of the classification to be so called; the determination of whether goods should be made, leased, contracted or purchased on either a temporary or a permanent basis; the hiring, appointment, promotion, demotion, suspension, discipline, discharge, or relief of employees due to lack of funds or of work, or the incapacity to perform duties or for any other reason; the making, implementation, amendment, and enforcement of such rules, regulations, operating and administrative procedures from time to time as the City deems necessary; and the power to make appropriation of funds; except to the extent abridged by a specific provision of this Agreement or law.

The rights of management under this article and not abridged shall not be subject to submission to the arbitration procedure established in Article 11 herein.

Nothing in this article shall be interpreted or deemed to limit or deny any rights of management provided the City bylaw [sic].

Article 11 - Grievance Procedure

For the purposes of this Article, a grievance shall be defined to be an actual dispute arising as a result of the application or interpretation of the express terms of this contract, Chapter 3 (the Leave Ordinance) and Appendix C (the Salary Ordinance) of the Revised Ordinances of the City of Worcester, 1996, providing, however, that any matter under the jurisdiction of the Civil Service Commission or the Worcester Retirement Board, any matter involving the purported exercise of management rights (Article 4 of this contract), supervisory orders or any matter reserved to the discretion of the City by the terms of this agreement shall not be subject to this grievance procedure nor construed as being grievable....

The parties agree that any decision of the arbitrator in a grievance between the City and the Union or an employee shall be admissible in any subsequent proceeding between the City and the Union or employee involving the same matter.…

***

5.) The award of the arbitrator shall be final and binding upon all parties, subject to the following conditions:

a.) The arbitrator shall make no award for grievances initiated prior to the effective date of this Article.

b.) The arbitrator shall have no power to add to, subtract from, or modify this contract or the rules and regulations of the City and the Charter, Ordinances and Statutes concerning the City, either actually or effectively.

c.) The arbitrator shall only interpret such items and determine such issues as may be submitted to him by the written agreement of the parties...

***

Article 36 - Permanent Appointment: Non-Civil Service Employees

***

2. A permanent employee, as defined in this article, shall have the right to grieve his discharge or suspension by initiating a grievance to the City Manager, in accordance with the procedures set forth in Article II, s. 2(h), of this agreement. The action of the appointing authority shall be final, unless the action is found to be without cause by the arbitrator.

Article 37- Miscellaneous Provisions

***

13. Drugs and Alcohol

***

Employees having tenure under Chapter 31 of the General Laws or just cause rights under Article 36 of the contract shall have the right to appeal under Chapter 31, or arbitration, any suspension or discharge imposed as a result of this paragraph.

RELEVANT CITY POLICIES

Policy Against Harassment of Individuals in Protected Classes (in part)

AN EXECUTIVE ORDER
AMENDING THE CITY'S POLICY THAT PROHIBITS
HARASSMENT OF INDIVIDUALS IN PROTECTED CLASSES…

I. Policy

EQUAL OPPORTUNITY AND NON-DISCRIMINATION POLICY

***

The City of Worcester is fully committed to equal opportunity in its employment decisions, programs and activities, in compliance with all applicable federal and state laws and regulations and in furtherance of appropriate affirmative action efforts. The City of Worcester prohibits discrimination and harassment against any individual on the basis of age, gender expression/identity, genetic information, marital status, color, national origin, language, physical or mental disability, pregnancy, race, religion, sex, sexual orientation, [and] status as a US veteran. (footnotes omitted.)

***

A. Introduction

…The City is committed to providing a working environment that is free of all forms of abuse or harassment...

Harassment on the basis of age, gender expression/identity, genetic information, marital status, color, national origin, language, physical or mental disability, pregnancy, race, religion, sex, sexual orientation, or veteran status (hereafter referred to as "protected class harassment") is a form of behavior that adversely affects the employment relationship. It is prohibited by Federal and/or State law. Protected class harassment of individuals occurring in the workplace or in other settings in which individuals of the City may find themselves in connection with their employment is unlawful and will not be tolerated by the City ….

Because the City takes allegations of protected class harassment seriously, we will respond promptly to complaints of protected class harassment; and where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate, including discharge.

It is important to note that while this policy sets forth our goals of promoting a workplace that is free of protected class harassment, the policy is not designed

or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of protected class harassment.

B. Definition of Protected Class Harassment

….the following is a non-exhaustive list of situations that could constitute protected class harassment[:]

- verbal abuse on the basis of any protected status;
- use of words that degrade a protected class or person because of his/her protected class status;…
- verbal abuse, including degrading language, comments, jokes, teasing or threats directed at a person because of his/her protected class status;…

C. Individual Responsibilities

Each individual of the City is personally responsible for:

- ensuring that his/her conduct does not harass any other employee….

D. The Rule

It is therefore, against the policy of the City for any individual, whether a member of a protected class or not, to harass another individual on the basis of protected class status by…

- ...creating a hostile or intimidating work environment for the employee.

It is also against the policy of the City for an individual to harass any person with whom the employee comes in contact on the job or to engage in any protected class harassment or inappropriate or unprofessional conduct in the workplace.

II. Violation of Policy

Any individual violating this policy will be subject to appropriate discipline, including possible discharge.

III. Procedures for Complaints

A….

C. Decision

After the response of the charged individual has been made, and any further investigation which may be warranted has been carried out, the City will make a final decision. If the City finds that the allegations in the complaint have been established by the investigation, the City will initiate discipline of the charged individual. Discipline will be appropriate to the offense and employees involved, and may include discharge. (footnote omitted.)

FACTS

Background

At all relevant times, NAGE bargaining unit member Mark Fair (Fair) was employed by the City as a Motor Equipment Operator in the Street Division of the City's Department of Public Works (DPW). Fair had been employed by the City for over 25 years. During his tenure, the City had disciplined him numerous times, issuing specifically: two 1-day suspensions (2002 verbal altercation with a co-worker and 2004 failure to maintain a safety bag in his vehicle); two 3-day suspensions (2008 insubordination and 2015 positive marijuana test); and a 4-day suspension (2004 insubordination/threatening a supervisor).

City's Policy Against Harassment of Individuals in Protected Classes

The City maintains a Policy prohibiting harassment of individuals in protected classes (the Policy) and requires its employes to acknowledge that they have received and read copies of the Policy. The City also provides harassment prevention training. Fair acknowledged on June 6, 2018, that he had received the training and a copy of the Policy.

Pre-2024 Instances of Racial Statements

On October 7, 2022, DPW employee Todd Wader (Wader) filed a complaint stating that Garage Mechanic Francisco Martinez (Martinez) had used the "N-

word" in the workplace.[1] Martinez was recounting a story involving a non-employee in another location; he did not direct the slur at Wader or anyone else in the workplace. The City subsequently investigated the incident and determined that Martinez made the statement attributed to him. Because the statement violated the Protected Class Harassment Policy, the City suspended Martinez for one day.

On November 9, 2022, someone accused Wader of referring to people who are Hispanic as "Brownies" or "S**cs."[2] As a result of this allegation, the City transferred Wader out of the Central Garage, and he lost overtime opportunities for three months.

The July 11, 2024 Incident

On July 11, 2024, Fair entered the City's Central Garage to check on the status of his work vehicle which was undergoing repairs in the Garage. Fair saw Martinez[3] and asked him who was working on Fair's truck. Martinez responded: "a mechanic." Fair repeated his question, and Martinez repeated his response. Fair became upset that his vehicle was not repaired, and Martinez told Fair to leave the Garage. Fair and Martinez exchanged words, including expletives, and their conversation became heated. During the exchange, Fair called Martinez a "f**king

[1] The parties stipulated to the date of Wader's complaint.

[2] The parties stipulated to the date of this accusation.

[3] Martinez identifies as Hispanic.

sp*c."[4] Wader, who was in the Garage at the time, overheard Fair make that statement.

The City's Investigations into the July 11 Incident

Martinez did not immediately report the racial slur to the City. However, Fair filed a complaint against Martinez on July 12, 2024. The City's Executive Office of Diversity, Equity and Inclusion (DEI Office) initiated an investigation into Fair's complaint and interviewed Wader on September 5, 2024, and Martinez on September 18, 2024. During Martinez's interview, Martinez told the City's investigator that Fair had called him a "f**king sp*c" on July 11, 2024. Wader was in the room as Martinez's Union representative but did not indicate that Fair made the disputed racial statement.

As a result of Martinez's accusation, the DEI Office began a second investigation into Fair's conduct. The City's investigator spoke to Wader again on September 25, 2024, and Wader confirmed that Fair used the racial slur. The City interviewed former City laborer Matt Zielonka (Zielonka) on September 27, 2024, in connection with both investigations. Zielonka indicated that he did not hear Fair make the racial slur. The City interviewed Fair on October 3, 2024, and Fair denied ever using a racially derogatory term when speaking with a coworker. The investigator weighed the credibility of all the interviewees and determined that the statements of Martinez and Wader were credible. The DEI Office notified Fair on October 29, 2024, that it had substantiated the allegation against him.

[4] This finding reflects my determination that Fair made the disputed racial statement, in anger, and directed it at Martinez.

The Discipline and the Grievance

On April 7, 2025, the City recommended that Fair be terminated for "violating the Equal Opportunity and Non-Discrimination Policy, using and directing a racial slur towards a coworker, dishonesty, and conduct unbecoming of [a] public employee." The City held a termination hearing on June 3 and June 10, 2025. The City's Hearing Officer credited Martinez's and Wader's testimony that Fair called Martinez a "f**king sp*c" on July 11, 2024, and she concluded that the City had just cause to discharge Fair. The City terminated Fair on July 21, 2025.

The Union subsequently filed a grievance which the City denied at all steps of the grievance procedure. The Union then filed the instant petition for arbitration.

POSITIONS OF THE PARTIES

THE UNION

The Union contends that the accepted just cause standard includes the following elements: prior notice, reasonable rule or order, fair investigation, proof of guilt, equal treatment, and reasonable penalty. Applying those elements to the facts in this case shows that the City did not have just cause to terminate Fair. Consequently, he should be reinstated to his position and made whole for all his losses.

First, the City did not provide adequate notice. Fair received no training on the Policy between 2018 and 2024 and was never told that he could be terminated for a single policy violation.

Second, the City's investigation was not conducted fairly and objectively and its result lacks credible proof. The investigator's report pre-dated the City's

interview with Fair which demonstrates the likelihood of reverse engineering. Further, there is no credible proof that Fair used a racial slur against Martinez. The City's investigator did not carefully analyze the credibility of Martinez's allegation and Wader's corroboration and should have credited Fair's denial.

Next, there was evidence that the City does not enforce the Protected Class Harassment Policy fairly. Martinez previously used a racial slur in the workplace but received only a 1-day suspension.

Finally, the City did not follow its own progressive discipline policy. The policy that Fair allegedly violated does not indicate that violations are egregious and will result in termination for a single incident. The City's progressive discipline policy disciplines different types of negative behavior separately, and Fair had never previously been investigated or punished for violating the Protected Class Harassment Policy. Therefore, terminating him for one unproven allegation is completely unreasonable.

Conclusion

The City conducted a flawed investigation and discharged Fair without just cause. Fair should be reinstated to his former position and receive back pay to the date of his termination.

THE EMPLOYER

The City satisfied its burden of proof of showing by a preponderance of the evidence that it had both cause and just cause to terminate Fair.

First, the credible evidence established that Fair directed a racial slur to a co-worker. The City presented the testimony of Martinez and another co-worker who overheard it. Neither witness had any motive to fabricate the allegation.

Second, there was no disparate treatment because there is a clear distinction between Fair's conduct and Martinez's prior use of a racial slur. Martinez used offensive language while recounting a story and did not target his comment toward any individual. Conversely, Fair directed a racial slur at Martinez, and thus his conduct constitutes racial harassment.

Further, Fair's actions warranted termination, and the City acted consistently, reasonably, and within its disciplinary authority. Directing a racial slur at an employee in the workplace crosses the boundaries of acceptable behavior, and it is recognized as egregious, demeaning, and destructive of the dignity of the targeted employee. Consequently, Fair's termination was necessary to uphold the City's fundamental obligation to maintain a workplace that is free from racial hostility and discrimination.

Conclusion

The City acted consistently, reasonably, and within its disciplinary authority when it terminated Fair. His actions show that he is unworthy to continue in public service.

Opinion

This case is not about shop talk or course name-calling. Although Fair may have been justifiably irritated by Martinez's snide response to a legitimate question about the progress of his truck's repairs, Fair expressed his frustration by calling

Martinez a racially derogative term. I find that Fair's conduct was egregious. Regardless of whether Fair remembered the details and nuances of his previous anti-harassment training, he should have known that racial harassment is unacceptable in the workplace. Thus, for the following reasons, the City had just cause to terminate Fair's employment.

First, after hearing from all the relevant witnesses, I have credited testimony that Fair called Martinez a "f**king sp*c." Martinez testified to this fact, Wader corroborated Martinez's testimony, and I found these witnesses to be credible.[5]

Second, Fair had adequate notice that he could be terminated the first time he directed a racial slur at a colleague. The Policy states that "[p]rotected class harassment…is unlawful and will not be tolerated by the City." Although the Policy does not spell out that employees can be terminated for first-time offenses, it implies it by stating that "any individual violating this policy will be subject to appropriate discipline including possible discharge." The Policy also states that "[b]ecause the City takes allegations of protected class harassment seriously, we will respond promptly to complaints of protected class harassment; and where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate, including discharge." Nowhere in the Policy does it state that progressive discipline is required. Rather, Section III, Procedures

[5] I also find that the City conducted a fair and objective investigation. Although the Union argues that the City dated the investigative report before it interviewed Fair, the Union did not submit the report into evidence. In light of my determination that Fair called Martinez a "f**king sp*c," the date on the investigator's report does not invalidate the results of the investigation.

for Complaints, Section C. Decision, states that "If the City finds that the allegations in the complaint have been established by the investigation, the City will initiate discipline of the charged individual. Discipline will be appropriate to the offense and the employees involved, and may include discharge…." Discharge is mentioned prominently throughout the Policy; thus, Fair cannot reasonably have been surprised by the level of discipline he received.

Further, although the Union faults the City for failing to repeat or update the training after 2018, as a long-term employee, Fair could be expected to retain the knowledge that the policy prohibits employees from directing racial epithets at their co-workers. I am similarly unpersuaded by the Union's argument that Fair did not understand the Policy. It is not particularly hard to comprehend that the Policy prohibits lashing out at colleagues using well-known racial slurs.

Next, I reject the Union's argument that the City treated Martinez more favorably than Fair when both men used racially charged words. Fair called Martinez by a racially derogatory name in frustration or anger. In contrast, Martinez used a racially derogatory term to refer to an individual when he was recounting a story. Martinez's statement was offensive, but he did not use it to intentionally demean a colleague. Even if I believed that Martinez's use of the "N" word merited harsher punishment, the context for the two statements was significantly different, and thus the distinctions in the punishment they received did not constitute disparate treatment.

Finally, I find that the City's progressive discipline policy did not require it to impose a lower form of punishment. It is undisputed that the City has previously

disciplined Fair numerous times for various offenses, none of which involved calling employees racially-insulting names. The Union argues that because the City's progressive discipline policy treats each type of negative behavior separately, the City should have given Fair a lower level of discipline because it was the first time he racially harassed a co-worker. This argument does not comport with the City's obligation to prohibit racial harassment in the workplace. Instead, it would require the City to allow employees to make racially-demeaning comments in hopes that progressive discipline would eventually, as the Union contends, "[do] its job." Such a result does not ensure that employees are treated with the respect and dignity that they deserve and the law requires.

In sum, Fair's conduct was egregious and merited the ultimate punishment. Thus, the City had just cause to terminate Fair.

AWARD

The City had just cause to terminate Mark Fair's employment, and the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
October 26, 2026