

CITY OF CENTRALIA POLICE
DEPARTMENT,
Employer,

and

TEAMSTERS LOCAL 252,
Union

ARBITRATOR'S OPINION AND AWARD

**PERC Case 134999-P-22
DISCIPLINARY GRIEVANCE
ARBITRATION**

Arbitrator: Donna E. Lurie

SENT ELECTRONICALLY TO PERC AND THE PARTIES:

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INTRODUCTION

This matter came before Arbitrator Donna Lurie upon the filing of a grievance and a subsequent Demand for Arbitration by Teamsters Local 252 (hereafter “Union”) regarding the termination of the Grievant by the City of Centralia Police Department (hereafter “City”) (City Exhibit 38). This arbitration is governed by the Collective Bargaining Agreement (CBA) between the parties in effect from 2021-2023 for Commissioned Personnel (Substitute City Exhibit 1) and RCW 41.58.070. The parties agreed to substitute the CBA for Commissioned Personnel for the CBA originally submitted as City Exhibit 1. After PERC assignment of the Arbitrator, the parties requested an in-person hearing. After a postponement requested by the parties, an evidentiary hearing was held on August 10 and 11, 2022 in Centralia, Washington. Hearing sessions were taped, and a recording was provided to Counsel and to the Arbitrator. The City and the Union were each given a full opportunity to provide opening statements, introduce documents, examine and cross examine sworn witnesses, and make arguments in support of their positions. Both parties were represented by highly competent counsel.

The City submitted 53 separate exhibits. The Union submitted 15 separate exhibits. The parties agreed to a packet of relevant criminal statutes that were marked as Joint Exhibit 1. In compliance with PERC expectations of privacy for the Grievant and witnesses, the Arbitrator will use job titles and/or initials rather than the names of persons participating or mentioned in the arbitration hearing. Three witnesses testified on behalf of the City – Detective Sergeant DC, Patrol Sergeant BC, and Chief of Police SD. The Grievant was the only witness that testified on his behalf. The parties agreed to submit post-hearing briefs and supplementary caselaw. The Hearing record was closed after receipt of post-hearing briefs on September 19, 2022.

ISSUE STATEMENT AGREED BY THE PARTIES

The only issue before the Arbitrator is the issue that was jointly submitted by the parties: Did the City have just cause to terminate the employment of the Grievant? If not, what is the appropriate remedy?

FACTUAL BACKGROUND

The City of Centralia (hereafter “City”) provides law enforcement services to its residents through the Centralia Police Department. The Grievant was hired as a patrol officer on April 1, 2006 (Union Exhibit B) and signed an Oath of Office (City Exhibit 32). The Grievant’s employment history encompasses a mixture of admonishments, disciplinary actions, positive evaluations, and commendations. Most of the previous misconduct and disciplinary actions will be discussed later in this Award.

The City provided evidence of prior infractions and discipline for the Grievant. None of the City exhibits were contested by the Union, nor were objections made as to the weight to be accorded to these exhibits. The City’s termination decision was made in response to the Grievant’s handling of a potential domestic violence situation and felony hit and run incident on September 11, 2021 (City Exhibits 15 & 35).

In contrast to the evidence submitted by the City, the Union provided a performance appraisal for 2019-2020 showing that the Grievant met department standards (Union Exhibit A). The Grievant received performance ratings of “Good”, “Satisfactory”, or “Excellent” on performance reviews in February of 2016, 2017, and 2018 (Union Exhibits B, C, D). The Grievant was commended for being “polite, tactful, and respectful of others” (Union Exhibit A). The Grievant was viewed as being “well versed in the law” and capable of applying the RCW’s “as well or better than most officers at this department” (Union Exhibit B). The Grievant’s reports were cited as “thorough and containing all the relevant information” (Union Exhibit C). The Grievant was commended for handling the “most calls for service, the most misdemeanor arrests, the most criminal citations, and the most infractions issued” (Union Exhibit D). In 2018, the Grievant was nominated for a VFW National Law Enforcement Award (Union Exhibit G) and received an award for Sworn Employee of the Year from the Centralia Police Force (Union Exhibit H).

On September 11, 2021, police dispatch received a call regarding a vehicle and pedestrian collision at a mobile home park in Centralia (City Exhibit 7). Officers were advised that the driver had left the scene in a Toyota Camry pulling a small utility trailer.

The Grievant and another officer went to the scene of the collision to investigate. A third officer and a police sergeant arrived sometime later (BC testimony). The Grievant volunteered to serve as the primary investigating officer. As primary officer, the Grievant was responsible for leading the investigation, deciding what tasks needed to be done, assigning tasks to other officers, completing the main narrative of the incident report, and conducting any follow-up activities that were needed (Grievant testimony). While one of the officers took photos of the victim and the area, the Grievant was responsible for identifying and interviewing potential witnesses. The victim was sitting on the ground and seriously injured. She had a gash on her head and contusions on her body consistent with being run over by a vehicle (City Exhibit 5). While the victim was in pain and had difficulty breathing, she did identify the driver as her long-time domestic partner. Her personal possessions were strewn on the ground. An ambulance soon arrived, and the victim was taken to the hospital.

One of the neighbors (MG) approached the Grievant and volunteered that she had not seen the collision; however, she heard the collision and was aware of the history between the victim and the driver. MG had spoken with the driver before he left the scene. The driver was aware that he had run over the victim and that the victim had serious injuries. The driver refused to stay at the scene, and he drove away (City Exhibits 4 & 19). MG and her husband called 911 to report the collision. MG shared that the victim communicated that the driver had hit her and then ran over her with the vehicle or the trailer. MG shared the license plate of the vehicle with the Grievant (City Exhibit 8). The Grievant taped an interview with MG (City Exhibit 4). The Grievant asked Dispatch to issue an "attempt to locate" (ATL) to find the driver (City Exhibit 10).

MG stated that the victim may have been hit in the face and then run over (City Exhibit 4). No follow-up was done to investigate a hit to the face. No taped interview was conducted with the victim's mother or son, even though both persons were present at the scene when the ambulance arrived (City Exhibits 18 & 24).

The Grievant drove to the hospital and waited for the victim to be stabilized with a chest tube. Another officer was present at the hospital and during the interview, but that officer's presence was never noted by the Grievant (City Exhibits 22 & 25). The

Grievant obtained the victim's authorization to release medical records to the police and classified the incident as "vehicular assault" (City Exhibit 6). As the victim waited for medical treatment, the Grievant taped his one and only interview with the victim (City Exhibits 2 and 3). Despite having several broken ribs, a punctured lung, a broken clavicle, and a gash on the forehead, the victim attempted to answer the Grievant's questions (City Exhibit 2). The victim shared that she had been arguing with her domestic partner and that her partner "hit her and ran her over" (City Exhibit 2). The victim shared that she thought the collision was an accident and was not done on purpose (City Exhibit 2). The Grievant's interview with the victim took a few minutes – the transcript is 2.5 pages long, double-spaced (City Exhibit 2). Although the Grievant offered to conduct a follow-up interview with the victim at a later time, the Grievant did not do so. The Grievant provided the victim with information on a domestic violence hotline (p. 23 of City Exhibit 23). The Grievant quickly concluded that there was no "probable cause" to find that any crimes had occurred (Grievant testimony).

The Grievant changed police records on the vehicular assault to a "family dispute" (City Exhibit 9). Within a few minutes of completing the hospital interview with the victim, the Grievant cancelled the "attempt to locate" the driver (City Exhibits 7 & 10). The Grievant filed an incident report, stating that he was unable to "locate any witnesses" (City Exhibit 8). The Grievant characterized the victim's responses to his questions as "circular" and claimed that he did not get any "useful information" (City Exhibit 8). The Grievant's report concluded that there was no probable cause to believe that any crime had occurred. The case was closed as "information only" (City Exhibit 8). The classification of "information only" signaled that there was no need for follow-up (DC testimony).

The City maintains that a sergeant supervising the shift had a conversation with the Grievant at a Chevron station and verbally directed the Grievant to send his notes and report to department detectives for a follow-up investigation (BC testimony; City Exhibit 20). The Sergeant testified to making that request of the Grievant, but he was unsure where that conversation took place on the evening of the collision (BC testimony). The Grievant maintains that he was never directed to forward his notes and report to department detectives (Grievant testimony). The Grievant testified that sending the

notes and reports to detectives would be a waste of time, since they were likely to be sent back to him (City Exhibit 23; Grievant testimony). The Grievant shared that he did not want this case cluttering his inbox (Grievant testimony).

The Grievant was informed by email on September 16, 2021 that the medical records for the victim were available (City Exhibit 11). That email was deleted by the Grievant, and he conducted no review of the pertinent medical records (City Exhibits 12 & 25). City computer records established that the Grievant had full access to his work computer and that he continued to engage in email correspondence between September 16-28 of 2021 (City Exhibits 13 & 14).

On September 23, 2021, the police received a request for added police protection due to the return of the driver to the neighborhood (DC testimony; City Exhibit 8). The Grievant received a Personnel Complaint on September 29, 2021, and he was immediately placed on administrative leave pending a disciplinary investigation (City Exhibits 15 & 16). The Complaint alleged that the Grievant was in violation of CPD Policy section 320.5.7 (b), that he failed to properly investigate assault in a domestic violence case and RCW 46.52.020 regarding a duty of care in an accident resulting in injury (City Exhibit 15). In addition, the Grievant was alleged to violate CPD Policy section 310.4 (g), section 310.9 (a), and RCW 10.99.030(5) (City Exhibit 15).

An internal affairs investigation was conducted. Comprehensive interviews were held with the victim (City Exhibit 17), the victim's mother and the victim's son (City Exhibits 18 & 24), the neighbor (MG) (City Exhibit 19), the police sergeant in charge of the shift on September 11, 2021 (City Exhibit 20), the officer who took photos of the potential crime scene (City Exhibit 21), and the officer who was present at the collision scene and at the hospital (city Exhibit 22). This officer was told by the Grievant not to bother writing a supplemental report on the incident. The Grievant had an extensive interview with the City police detective in charge of the investigation (City Exhibit 23). A complete investigation report and transcripts were filed with the City on December 2, 2021 (City Exhibit 25). The investigator noted that the collision incident had been reclassified by the Grievant as a "family dispute", that the ATL was cancelled by the Grievant without an attempt to locate, that the Grievant's report was marked as "information only", that

the presence of another officer was missing from the report and the transcript of the victim's interview, that no notes or follow-up were provided to detectives in the Workflow system to investigate further, that no mention was made of the trailer involved in the collision, that no Sector Collision report had been completed, that the Grievant did not follow up on the case after receiving the medical records, that the Grievant did not interview the driver, and that the Grievant did not conduct a follow-up interview with the victim (City Exhibit 25).

The Centralia Chief of Police sent a notice of investigative findings and the offer of a pre-disciplinary meeting (Loudermill hearing) to the Union's attorney (City Exhibit 34). The Grievant refused to participate in the meeting and offered no mitigating information (Police Chief testimony). After the meeting, the Chief of Police summarized the allegations and the basis for a termination decision (City Exhibit 35). Official notices were filed with the Washington State Criminal Justice Training Commission and the Centralia Civil Service Commission (City Exhibits 36 & 37).

The Union filed a grievance challenging the termination on December 20, 2021 (City Exhibit 38). The grievance was processed through the grievance procedure, and the Union moved the grievance to arbitration (City Exhibit 39) under RC 41.58.070.

APPLICABLE CONTRACT PROVISIONS

ARTICLE 35 EMPLOYEE DISCIPLINE

35.1 All disciplinary action, including suspension and termination, taken against an employee shall only be for just cause; provided, however, this provision shall not apply to an employee's non-promotional probationary period during which time the employment status shall be strictly at will.

35.2 Types of Discipline: Progressive discipline is acknowledged and utilized by the Employer. The forms of discipline generally utilized in seeking corrective action may include, but shall not be limited to: oral warning, written warning, demotion, suspension, and/or employment termination. The nature and gravity of the offense will determine the degree to which progressive discipline is used.

35.3 Disciplinary Investigations: Prior to an employee being interviewed by the Chief of Police, Commander, Detective Sergeant or outside agency when assigned to investigate a personnel complaint under the provisions of CPD Policy 1010 entitled Internal Affairs 08/16/17, regarding non-criminal matters which may lead to disciplinary action, an employee shall receive written notification providing the following information:

- 35.3.1** The basis of the alleged inquiry and the policies alleged to have been violated, if any; and
- 35.3.2** Notice of his or her right to have a Union representation present at the interview; and
- 35.3.3** A copy of the original written complaint, which caused the inquiry to be initiated.

35.3.4 Interviewing and/or questioning of an employee shall be conducted during reasonable hours and preferably when the employee is on-duty. If the employee is off duty, he/she shall be compensated according to Article 16, Overtime.

35.3.5 When present at the interview, the Union representative shall have the opportunity to ask questions, to bring out additional facts, and to counsel the employee under investigation, provided that the employee may be asked to give an initial statement of events in question.

35.3.6 At the time of completion of the inquiry of a non-criminal possible disciplinary matter, the Employer shall notify the employee of its disposition as soon as is reasonably possible. At the conclusion of the inquiry, the Employer shall provide to the employee a written determination of the allegation in question as sustained, unfounded, exonerated, or not sustained. Failure to cooperate in such non-criminal investigations may be grounds for disciplinary action.

35.3.7 Non-criminal internal investigations shall be conducted either by a non-union employee of the department or in the alternative, by a detective sergeant or administrative sergeant. In no case shall a union employee, other than a detective or administrative sergeant, be assigned to conduct non-criminal internal investigations on behalf of the Employer. Informal non-criminal internal complaints may be handled by an employee's immediate supervisor, following department policy, however: if during the course of the investigation the complaint becomes formal in nature it shall be handled as outlined above. In no instance shall an informal complaint lead to corrective action above a correction notice. Employees will be allowed to attach a rebuttal letter to any form of discipline including correction notices.

35.3.8 It shall be incumbent upon the Employer to conduct internal non-criminal investigations of alleged policy violations, including allegations of employee misconduct, in a timely manner. The following conditions shall be applicable:

35.3.8.1 Investigations of allegations made against an employee(s) shall immediately be initiated upon conclusion of any associated criminal investigation into the matter, if applicable. A final determination shall be made on the merits or lack thereof within forty-five (45) calendar days from the date the issue was brought to the Employer's attention. The forty-five (45) calendar day period shall not include time in which the employee and/or witnesses may be on vacation or sick/disability leave or at out-of-town training.

35.3.8.2 Failure of the Employer to initiate an investigation and/or to make a final determination on the allegations within forty-five (45) calendar days shall result in the automatic dismissal of the allegations without further redress, unless the Employer provides written notice to the employee specifying the length of extension and why. Such extension shall not exceed thirty (30) calendar days unless both the Employer and the Union mutually agree upon an additional extension: however, such agreement shall not be unreasonably withheld. It is understood that "final determination" is intended to define the end of the Employer's investigation and consideration period. Once reached the Employer shall notify the employee of its decision regarding the validity of the complaint or any disciplinary action within fifteen (15) days of the final determination unless the parties mutually agree to extend this period in segments not to exceed fifteen (15) days.

35.3.9 Administrative Leave: On a case-by-case basis, the Employer may place an employee on administrative leave with pay for an indefinite period of time, as determined by the City Manager to be in the best interests of the Employer during the pendency of an investigation or other administrative proceeding. Administrative Leave with pay shall not be considered "discipline" and, as such, may not be grieved under the grievance procedure of this agreement.

(Substitute City Exhibit 1)

DISCUSSION

NOTICE AND REASONABLE EXPECTATIONS OF THE EMPLOYER

Most labor arbitrators expect employers to provide reasonable rules and policies that are widely disseminated and enforced in a consistent way. See How Arbitration Works, Elkouri and Elkouri, (BNA, 8th edition, 2016), p. 15-77. In addition to published policies and regulations, prior discipline for similar infractions will place an employee on notice that certain behaviors are prohibited and subject to discipline (Ibid., p. 15-79 citing *City of Duluth*, 113 LA 1153 (Neigh, 2000) and *Potash Company of America*, 49 LA 582 (Abernethy, 1963)).

The City provided the official job description for police officers (City Exhibit 31). This description includes several essential functions. Pertinent to this case are the following expectations:

8. Must be able to gather information in criminal investigations by interviewing and obtaining the statements of victims, witnesses, suspects, and confidential informers.
15. Must be able to detect and collect evidence and substances that provide the basis of criminal offenses and infractions that indicate the presence of dangerous conditions.
2. Knowledge of federal, state, county and city laws, regulations, and ordinances as they pertain to law enforcement duties and responsibilities.
6. Ability to communicate effectively with persons in physical and/or emotional distress.

The City provided Centralia Police Department Policies that included the following stated expectations for department officers:

600.3.1 Investigation and Prosecution

1. Make reasonable attempts to locate, identify, and interview (written or taped if possible) all available victims, complainants, witnesses, and suspects
- b. If the preliminary determination is that no crime occurred, determine what other action may be necessary, what other resources may be available, and advise the informant or complainant of this information.

600.5 Investigation and Prosecution

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

a. *All reasonable investigative efforts have been exhausted, no reasonable belief that the person who committed the crime can be identified, and the incident has been documented appropriately.*

d. Investigation has proven that a crime was not committed.

310.4 Domestic Violence

b. When practicable, officers should obtain and document statements from the victim, the suspect, and any witnesses in or around the household or location of occurrence.

g. If the suspect is no longer at the scene, *officers should make reasonable efforts to locate the suspect to further the investigation*, provide the suspect with an opportunity to make a statement, and make an arrest or seek an arrest if appropriate.

Factors that should NOT be used as sole justification for declining to take enforcement action include:

1. Whether the suspect lives on the premises with the victim.
4. The physical or emotional state of either party.
5. Use of drugs or alcohol by either party.
6. Denial that the abuse occurred where evidence indicates otherwise.
7. A request by the victim not to arrest the suspect.
9. Speculation that the complainant may not follow through with prosecution.
10. Actual or perceived characteristics such as race, ethnicity, national origin, religion, sex, sexual orientation, gender identity, *economic status*, age, cultural group, disability, or *marital status of the victim or suspect*.
11. The social status, *community status*, or professional position of the victim or suspect.

320.5.8 Performance

b. The falsification of any work-related records, making misleading entries or statements with the intent to deceive...

320.5.9 Conduct

f. Discourteous, disrespectful, or discriminatory treatment of any member of the public or any member of this department or the City.

At the time of the September 11, 2021 incident, the Grievant had served as a Centralia police officer for 15 years. The Grievant had received extensive training in law enforcement (City Exhibit 30). His training courses included implicit bias, domestic violence investigations, collision investigations, and writing skills (City Exhibits 23 and 30). The Grievant possessed a college degree in criminal justice (City Exhibit 23). Previously cited Union exhibits (Union Exhibit B) established the Grievant's knowledge of RCW's related to potential criminal offenses and domestic violence. The Grievant had experience in conducting investigations of potential crimes and writing reports (City Exhibit 23; Grievant testimony). In fact, the Grievant became an instructor for his colleagues in writing sector collision reports (Grievant testimony).

No personnel complaint was placed into evidence for the pizza lunch incident in June of 2021; therefore, the Arbitrator can only conclude that the Grievant did not know that he was under investigation on September 11, 2021 for a similar infraction. The City conducted an investigatory interview on September 20, 2021 for minimizing the seriousness of a June, 2021 domestic violence call and response to the call 110 minutes later (City Exhibit 42). The Grievant had been suspended in 2014 for inaccurate reports and misleading answers to internal investigators (City Exhibit 43). The Grievant was effectively put on notice from the 2014 discipline that inaccurate reports and misleading answers in an internal investigation were unacceptable and could lead to more severe discipline.

The Union argues that less severe discipline was issued to other police officers for policy violations. Some of the officers received a Correction Notice or a suspension for failure to close out calls properly (Union Exhibits I, J). The Arbitrator does not know if these incidents were the officers' first or fifth infraction. Unlike the Grievant, both officers took personal responsibility for their actions. The Union introduced evidence of lesser discipline for unsatisfactory investigations (Union Exhibits K, L, M and N). Unlike the Grievant, each of these individuals accepted personal responsibility for their actions. Again, the Arbitrator does not know the employment or disciplinary history of these individuals. The Grievant was the only Union witness to testify on his behalf.

Based on the documents, testimony, and arguments of the parties, the Arbitrator finds that reasonable notice was given to the Grievant on the City's expectations for a competent investigation of potential crimes and a potential domestic violence incident, for the proper writing and processing of a police report, and for accurate and truthful responses to questions in an internal investigation.

INTERNAL INVESTIGATION OF THE SEPTEMBER 11, 2021 INCIDENT

Most labor arbitrators require employers to conduct a "careful and unbiased investigation" of the charges to determine if there are "sufficiently sound reasons to discipline the employee before taking disciplinary action" (How Arbitration Works, pp. 2-14 to 2-15, citing *Grace Industries*, 102 LA 118 (Knott, 1993)). No evidence was introduced to demonstrate any personal bias against the Grievant by any of the officers involved in the internal investigation and/or in the department decisions over an appropriate disciplinary penalty.

The Arbitrator carefully reviewed the multiple interviews conducted of several individuals involved in the collision incident and report (City Exhibits 17-24), paying special attention to the interview with the Grievant. The Grievant was read his Garrity rights and questioned in the presence of a Union representative (City Exhibit 23). The Grievant's responses in his interview reveal combativeness, a refusal to take personal responsibility for his actions, and evasiveness. Some examples include being evasive about which officers arrived at the collision scene – naming only himself and the officer taking photos (p. 2 of City Exhibit 24). He "didn't recall" having any memorable conversation with the victim's mother. He told the investigator that he tried to get specifics about how the victim was hit by the car or the trailer, but he "couldn't get any details" (pp. 4-5). The Grievant insisted that the driver admitting that he ran over the victim, seeing that she was seriously injured, and quickly leaving the scene did not mean that a crime occurred (p. 8). He "did not recall" if he asked the victim about being hit in the face, in addition to being run over by her domestic partner (p. 9). When the victim started to talk about a cigarette during the argument, the Grievant cut her off and did not follow up to get specifics. His response was, "well, this wasn't an investigation about cigarettes" (p. 12). When asked if it was possible that a cigarette burn could have

been involved in the argument, the Grievant responded, “it’s possible that he [the driver] made an animatronic cigarette monster that attacked her” (p.12). When questioned about his reasoning for asking the victim whether the argument was over “bills, booze, broads, kids, or an overdue library book”, the Grievant didn’t know why he asked that question (p. 13). When questioned on why he kept asking the victim, a layperson, whether she was the victim of a crime, the Grievant responded that the victim “might be” an expert in criminology or the RCW (p. 14). His response to the question “did you ask any of the firearms questions” was “probably not” (p. 22). When questioned whether the police station was the only location where the Grievant discussed the collision case with the sergeant, the Grievant responded that he “didn’t remember” (pp. 15-16). The Grievant maintained that he “tabled” the case until the medical records arrived; however, he was unsure how there would be any accountability for follow-up since he had closed the case (pp. 16-17). The Grievant did not request that the case come back to him for follow-up; yet, he insisted that he planned to follow up (p. 22).

After the victim told the Grievant that her domestic partner ran her over and left the scene, the Grievant did not ask any questions about what the driver did to help her after the collision. The Grievant agreed that he knew the driver had left the scene (p. 20).

Investigator: One of the major points of hit and run is that you’re supposed to stay around after you’ve committed a collision, whether it was accidental or not.

Grievant: I’m not sure that’s entirely correct. I know you have a duty, but I don’t think it’s necessarily to stay put. Obviously, the two know each other. There’s no confusion over who was involved. If he knows that she’s taken care of because her mother is there and the ambulance is on the way, it’s *within the realm of possibility* to think she told him to get lost.

Investigator: How does he know that she is taken care of? How would he know if he didn’t remain on the scene?

Grievant: *These are guesses. I have not talked to the fellow. I don’t know what he knew at the time. I’m saying it’s plausible.* (See p. 20 of City Exhibit 23) (emphasis added)

Review of the transcripts of multiple interviews of several individuals (City Exhibits 17-24) and the investigation report (City Exhibit 25) leads the Arbitrator to conclude that the internal investigation was thorough and conducted in a fair and professional manner. The internal investigation provided sufficiently sound reasons to discipline the Grievant.

DID THE GRIEVANT ENGAGE IN MISCONDUCT?

Police officers have difficult and challenging jobs. They have to make quick decisions on whether a situation is safe and whether or not a suspect should be pursued. Witnesses generally agreed that the Centralia Police Department received domestic violence calls almost daily. It is easy to become jaded when such calls are endless, and many victims recant or decide not to file charges against the perpetrator. The Grievant prided himself on speed and efficiency. He was commended for having the most service calls (Union Exhibit D). Unfortunately, cutting short an investigation and moving too quickly to a legal conclusion can result in an incomplete and flawed investigation.

The Grievant had a duty to investigate several potential crimes when he arrived at the collision scene, as well as when he interviewed the victim at the hospital. The victim had clearly been hit and run over by a vehicle or a trailer. She had life-threatening injuries and difficulty breathing. One did not need a medical report to see that she was seriously injured (City Exhibit 5). The incident posed several potential assault charges. The Grievant needed to find facts, not engage in speculation or plausibility. In order to determine if there were violations of RCW 9A.36.041, RCW 10.31.100, RCW 46.52.020, and/or a felony hit and run case (Joint Exhibit 1), it was crucial for the Grievant to find and interview the driver to determine what he knew when he left the collision scene and what led up to the collision. It was unacceptable for the Grievant to guess at the driver's knowledge and culpability. Essentially, the Grievant took a shortcut as soon as the victim stated that she thought the collision was an accident after an argument. RCW 46.52.020 does not contain an exception for cases where the victim thinks the collision was an accident (Joint Exhibit 1). The Grievant seemed fixated on the element of intent. He lost interest in the case as soon as he concluded that there wasn't intent to assault or hit the victim.

If the Grievant had interviewed MG more carefully and interviewed the victim's mother and son, he would have learned that the driver was under the influence of methamphetamine and/or alcohol in violation of RCW 46.61.502 (City Exhibit 19). It would have been important to find the driver and obtain a blood sample within two hours of the collision to determine the extent of intoxication. Unfortunately, the Grievant cancelled the "attempt to locate" (ATL) just minutes after concluding his cursory interview with the victim. No evidence was obtained to determine whether RCW 46.61.502 had been violated.

The Grievant knew that the victim and the driver were in a long-term domestic partnership; yet, he did not seek facts and details that would corroborate or dismiss a domestic violence charge of assault. No questions were asked about firearms. The Arbitrator has listened to the tape of the hospital interview several times. Little opportunity was given to the victim to explain the couple's argument and the events that led up to the collision. The Grievant's questions regarding "bills, booze, broads, kids, or an overdue library book" were sarcastic, insensitive to the victim's pain, and demeaning at her expense. The comment that being a "prick" is not against the law minimized the victim's anger at the driver for running her over and leaving the scene. The Grievant asked the victim four times whether she thought she was the victim of a crime. By the fourth time, she gave a definite yes. The Grievant asked her to identify the crime, as though she would know the statutory components of various crimes. The victim stated "assault". Rather than seek particulars, the Grievant continued with his circular questioning. It seemed as though the Grievant did not want to hear any specifics so that he could quickly dispose of the case. The Grievant did not follow up with the victim, nor did he interview any other witnesses, even though he had 18 days between the collision and his administrative leave. The Grievant had 12 days after access to the victim's medical records that confirmed her life-threatening injuries.

The Grievant quickly disposed of the case by cancelling the attempt to locate the driver, dismissing the neighbor's information as hearsay, re-classifying the 911 call as a "family dispute", writing a report for "information only", finding no probable cause, blaming the victim for a lack of information, telling the other officer present at the hospital to skip

writing a supplemental report, concealing the presence of the officer, and not filing a sector collision report. Not once did the Grievant take responsibility for rushing the investigation or treating the victim as unworthy of his time and effort.

The Grievant maintained that he would have followed up on the case, if not for his administrative leave on September 29, 2021. The Grievant had 18 days to do some follow up work. The police report was buried as “information only” for a “family dispute”. The Grievant deleted the email informing him of the existence of medical records. Based on these facts, this Arbitrator cannot accept the Grievant’s claim as credible.

After reviewing the exhibits, witness testimony, arguments and supplementary caselaw presented by the parties, the Arbitrator concludes that the Grievant violated department policies 600.3.1, 600.5, 310.4, 320.5.8, and 320.5.9.

ARE THERE MITIGATING OR AGGRAVATING FACTORS?

The City decided to terminate the employment of the Grievant, concluding that the Grievant had failed to correct his behavior from previous discipline (City Exhibit 39). The Arbitrator must consider previous discipline and employment history in determining whether there are mitigating and/or aggravating factors in this case. According to an arbitration case involving the same Grievant, he received a letter of reprimand in 2009 for violations of the City’s arrest policy and a two-day suspension for violating department policy in the improper processing of a burglary report (City Exhibit 43). More specifically, the Grievant was found to fail to pursue a complaint because the Grievant held a low opinion of the complaining party (City Exhibit 43). The Grievant received another letter of reprimand in 2010 for violating department policy on pursuits and was directed to undergo refresher training on department policies and rules regarding pursuits (City Exhibit 43). Late in 2010, the Grievant received a “correction notice” for violating department policy due to his falsely calling in sick after being admonished for wearing an improper uniform (City Exhibit 43). The Grievant was counseled by a police sergeant and received critical comments in his quarterly performance review for failure to perform patrol duties (parking alongside a building and not working) and not coming to the support of other officers as a backup on duty calls (City Exhibit 43). The City’s decision to issue a 2-week suspension to the Grievant in 2012 for inaccurate reports

and evasive responses was upheld by an arbitrator, although the decision to terminate the Grievant was reversed in 2014 (City Exhibit 43).

The Grievant's sarcastic and evasive responses during the internal investigation strike at the heart of an officer's credibility and diligence as an enforcer of the law. A police department cannot afford to keep officers on staff who have multiple Brady letters due to their lack of credibility under questioning. As a result of another arbitrator's findings regarding the credibility of the Grievant in 2014, the County prosecutor's office chose to issue a "Brady letter" to disclose potential impeachment evidence to future defendants (City Exhibit 44). In 2020, the County prosecutor's office issued another "Brady letter" regarding the Grievant because of factual discrepancies between his taped interview statement and his written report (City Exhibit 45). In 2021, a third "Brady letter" was issued involving the Grievant and his misrepresentation and failure to disclose material facts regarding the pizza lunch, his untimely response to a domestic violence call, and his failure to disclose his actions during the domestic violence investigation (City Exhibits 46 and 47). Trust has been broken.

If this case involved the Grievant's first violation of department policy, his 15 years of service and commendations would be mitigating factors. No employee is expected to be perfect. Unfortunately, the Grievant has had numerous policy and conduct violations over the course of his employment. His misconduct demonstrates a pattern of selecting which aspects of the job he chooses to do and then seeking to cover his transgressions with evasive or misleading answers. It is a tragedy that an intelligent and well-trained police officer would jeopardize his career by dismissing a vehicle-pedestrian collision between domestic partners as a waste of his time and energy.

WHAT IS THE APPROPRIATE PENALTY FOR THE GRIEVANT'S MISCONDUCT?

The Union argued that the Grievant's actions and decisions were errors in judgment and should receive a penalty less severe than termination. In contrast to an error in judgment, arbitrators have defined "gross negligence" as "intentional or willful acts or omissions, in flagrant and reckless disregard of the consequences to persons or property". Discipline and Discharge in Arbitration citing *Village of Key Biscayne*, 133 LA 176 (Sergent, 2014) and *TW Recreational Services*, 93 LA 102 (Richard, 1989). Many

of the cases involving gross negligence have focused on habitual acts of misconduct and a level of willfulness and intent on the part of the employee, Discipline and Discharge, pp. 4-20 to 4-22. Gross negligence has been accepted as sufficient cause for immediate termination.

Based on the evidence and the arguments presented, the Arbitrator finds that the Grievant engaged in habitual acts of misconduct. The Grievant demonstrated willfulness and a clear intent to quickly dispose of the instant case to keep it out of his inbox, with reckless disregard of the consequences to a potential victim. The Grievant engaged in gross negligence in his cursory investigation and his manipulation of the reporting process. Most disturbingly, the Grievant sought to cover up his misconduct with evasive and misleading answers during the internal investigation.

The evidence supports a finding that the City has met its burden in demonstrating just cause for the termination of the Grievant.

AWARD

Based on the weight of the evidence and arguments presented by the parties, the Arbitrator finds that the City had just cause to terminate the employment of the Grievant. The grievance is dismissed.

Respectfully submitted this 7th day of October, 2022.

/s/ Donna E. Lurie, Arbitrator

Arbitrator Donna E. Lurie

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