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WA PERC Case No. 135056-22
Arbitrator Case No. 22-05-34

IN THE ARBITRATION PROCEEDINGS PURSUANT TO
THE AGREEMENT BETWEEN THE PARTIES

LAKWOOD POLICE INDEPENDENT GUILD

v.

CITY OF LAKEWOOD

Police Officer Termination Appeal

ARBITRATOR'S
OPINION AND AWARD

January 3, 2023

APPEARANCES

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INTRODUCTION

This arbitration arose under the terms of the collective bargaining agreement (Agreement, Collective Bargaining Agreement, CBA) between the City of Lakewood (City, Employer) and the Lakewood Police Independent Guild (Guild) on behalf of Police Officer [REDACTED] (Grievant).

Under the terms of RCW 41.58.070, Arbitrator Renée Mayne was appointed by the Washington Public Employment Relations Commission to preside over the arbitration proceeding and issue an Opinion and Award.¹

The arbitration hearing convened on August 31, 2022, and September 1, 2022, in the City Council Chambers located at 6000 Main Street, Lakewood, Washington, 98499.

The Arbitrator administered an oath of honesty to the witnesses: [REDACTED] (via Zoom), [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The parties had full opportunity to examine and cross-examine witnesses, submit relevant exhibits and evidence, and argue the issues in dispute.

The parties filed their post-hearing briefs with the Arbitrator on November 7, 2022. The arbitration record officially closed on November 7, 2022, at 6:03 p.m., and the dispute was submitted for the Arbitrator's Opinion and Award.

¹ Washington Public Employment Relations Commission letter dated May 3, 2022.

PARTIES' ISSUE STATEMENTS

Each party submitted separate issue statements to the Arbitrator in their closing briefs on November 7, 2022. The City's proposed issue statement asked, "Did the City have just cause to terminate the employment of Officer [REDACTED], and if not, what is the appropriate remedy?" The Guild's proposed issue statement asked, "Whether the discharge of Officer [REDACTED] was for just cause? If not, what is the appropriate remedy?"

CITY EXHIBITS

1. Collective Bargaining Agreement, effective January 1, 2021 to December 31, 2022.
2. Vehicle photos taken by Officer [REDACTED] (November 1, 2020).
3. Audio/visual of Officer [REDACTED] Conference with Officer [REDACTED] (Background Noise Suppressed).
4. Audio/Visual of Officer [REDACTED] Conference with Officer [REDACTED] (Original)
5. Audio/Visual of Synchronized Car Cameras/Microphone (Background Noise Suppressed).
6. Audio/Visual of Synchronized Car Cameras/Microphone (Original).
7. Application for Search Warrant (November 1, 2020).
8. Inventory and Return of Search Warrant (November 1, 2020).
9. Email from Judge Granting Search Warrant (November 1, 2020).
10. Order from Judge Granting Search Warrant (November 1, 2020).
11. Arrest Report (November 1, 2020).
12. Supplemental Report (November 2, 2020).
13. Supplemental Report (November 17, 2020).
14. Information in State v. Curtis Moore (January 19, 2022).
15. Notice of Internal Investigation (January 12, 2022).
16. Subject Employee Interview Notice (January 18, 2022).
17. Email from Sgt. [REDACTED] to Officer [REDACTED] re: Access to Report (January 18, 2022).
18. Notice of Paid Administrative Leave (January 24, 2022).
19. Employee Obligations and Protections Form (January 24, 2022).
20. Transcript of Investigation Interview w/Officer [REDACTED] (January 24, 2022).
21. Transcript of Investigation Interview w/Officer [REDACTED] (January 26, 2022).
22. Transcript of Investigation Interview w/Sergeant [REDACTED] (January 26, 2022).
23. Transcript of investigation interview w/Officer [REDACTED] (February 10, 2022).

24. In-Car Video Footage Review Notes from Sergeant [REDACTED].
25. Photos of Scene of Arrest.
26. CAD Incident Detail Report (November 1, 2020).
27. Investigation Report (February 22, 2022).
28. Report Review of Lieutenant [REDACTED] (February 22, 2022).
29. Review and Recommendation of Assistant Chief [REDACTED] (February 23, 2022).
30. Notice of Pre-Disciplinary Hearing (February 24, 2022).
31. Letter from Attorney James David to Police Chief [REDACTED] (March 7, 2022).
32. Report of Discipline to Criminal Justice Training Commission (March 8, 2022).
33. Notice of Termination (March 9, 2022).
34. Lakewood Police Department Standards Manual 1.1.2(C) Truthfulness.
35. Revised Code of Washington (RCW) 43.101.105.
36. Notice of Officer Separation (March 15, 2022).
37. Officer [REDACTED] Training Records.
38. Transcript of Motion to Suppress in State v. Moore (March 2, 2022).
39. Order on Motion to Suppress in State v. Moore (March 17, 2022).
40. Sergeant [REDACTED] Front Camera Original (November 1, 2020).
41. Officer [REDACTED] Front Camera Original (November 1, 2020).

GUILD EXHIBITS

1. Synced Video of Incident (USB drive).
2. Enlarged Synced Video of Incident (USB drive).
3. Performance Evaluations.
4. Training Records.
5. Collective Bargaining Agreement.
6. Internal Affairs Report.
7. Amended Information (August 31, 2021).
8. Motion to Dismiss No. 1 (September 20, 2021)
9. Second Amended Information (September 21, 2021).
10. Motion to Dismiss No. 2 (January 26, 2022).
11. Prosecutor Response to Motion to Dismiss (February 1, 2022).
12. Defense Reply to Motion to Dismiss (February 4, 2022).
13. Lakewood Motion to Quash (February 14, 2022).
14. Defense Reply to Motion to Quash (February 22, 2022).
15. Lakewood Response to Reply (February 22, 2022).
16. Order to Provide Internal Affairs Report to Judge (February 23, 2022).
17. Declaration by Lieutenant [REDACTED] Regarding Receipt of Internal Affairs Report.
18. Court Findings.
19. Transcript of Court Hearing.

20. Email from Sergeant [REDACTED] (November 1, 2020).

RELEVANT STATE LAW

Washington Revised Code Title 7. Uniform Arbitration Act.

Chapter 7.04A. RCW § 704.A.010 - § 704.A.200.

Washington Revised Code Title 41. Public Employment, Civil Service, and Pensions.

Chapter 41.58: Public Employment Labor Relations. RCW § 41.58.070. Law Enforcement Personnel Disciplinary Grievance Arbitration-Procedures-Effect of Collective Bargaining Agreements-Arbitrator Roster.

Washington Revised Code Title 43. State Government Executive.

Chapter 43.101 Criminal Justice Training Commission. RCW § 43.101.105. Denial, Suspension, or Revocation of Peace and Corrections Officer Certification.

Section (2) The commission must deny or revoke the certification of an applicant or officer if the applicant or officer:

Subsection (d) Has been terminated by the employing agency or otherwise separated from the employing agency after knowingly making, or found by a court to have knowingly made, misleading, deceptive, untrue, or fraudulent representations in the practice of being a peace officer or corrections officer including, but not limited to, committing perjury, filing false reports, hiding evidence, or failing to report exonerating information.

RELEVANT POLICE DEPARTMENT POLICY

Law Enforcement Role and Authority. Section 1.1 Law Enforcement Agency Role: Subsection C. Truthfulness.

C. Members of the Lakewood Police Department shall be forthright and truthful at all times on all matters which pertain to their duties, conduct, observations, and any other pertaining to the official business of the Lakewood Police Department. Officers will not misrepresent facts, either by omission or commission, when in the performance of official duties. No portion of this section shall be interpreted to imply that members are prohibited from using deception to accomplish an official investigative purpose.

RELEVANT CONTRACT LANGUAGE

CBA Article 3 Section 3.01 Management Rights: Subsection G.

G. The City has the right to discipline, suspend, demote, discharge, or take other disciplinary actions against non-probationary employees for just cause. Scheduling of disciplinary days

off will be at the convenience of Department operations, but must be scheduled within six months.

CBA Article 5 Discipline and Discharge Section 5.01: Subsections A. and B.

- A. The parties recognize the essential purpose of any law enforcement agency is to enforce the criminal laws. Moreover, the parties recognize the courts have held it would substantially impair law enforcement agencies if they were required to employ individuals within their ranks who have violated the very laws said agencies are charged with enforcing.
- B. The parties recognize the right of the City to discharge, suspend, demote, or otherwise discipline an employee for just caus[e].

CBA Article 5 Discipline and Discharge Section 5.04: Subsections A. and B.

5.04. Disciplinary Investigations: This Section does not apply to on-scene law enforcement investigations occurring at the time police services became involved in an event. The following procedures apply to follow-up or subsequent investigations of complaints of misconduct conducted by the Lakewood Police Department. In such administrative investigations, the following guidelines shall be followed:

- A. "Interview of a subject employee" as used herein shall mean any questioning by an agent of the City who is conducting an investigation (as opposed to a routine inquiry) of the employee being interviewed, when the agent knows (or reasonably should know) that the questioning could result in employee discipline This section shall not apply to an investigation concerned solely and directly with alleged criminal activities.
- B. At least forty-eight (48) hours before an interview of a subject employee, the employee shall be informed in writing of the nature of the matter in sufficient detail to reasonably apprise him/her of the factual basis of the matter. Each notification shall include the following statement and related MOS section: "If sustained, based on what we know now, the most applicable Manual of Standards section is....." At any time during the investigation, up to and including the review by the Chief for disposition, should information be discovered that indicates a more appropriate MOS section, an amendment will be made with notice provided to you or your Guild representation."

CBA Article 15 Grievance Procedure: Section 15.01

15.01. Grievance Procedure: Any grievance that may arise between the parties concerning the application or interpretation of this Agreement shall be settled in the manner prescribed by this grievance procedure.

A "grievance" is defined as a claim or dispute by an employee, group of employees, the City or the Guild concerning the interpretation or application of the provisions of the Agreement. Should a claim or dispute arise, an earnest effort shall be made to settle such claims or disputes promptl[y].

CBA Article 16 Arbitration: Sections 16.04 and 16.06.

16.04. Limitations on Arbitrator's Authority: The arbitrator shall not have the right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. Any decision or award the arbitrator renders shall be final and binding upon the City and the Guild. The arbitrator's decision may not provide for retroactivity further than the time period specified in Step 1 in Article 15 above to the filing of the grievance.

16.06. Arbitration Expenses: The fees and expenses of the arbitrator shall be borne equally by the Guild and the Cit[y].

SUMMARY OF FACTS

The grievant, Police Officer [REDACTED], was hired by the City of Lakewood Police Department on April 5, 2004, as one of its inaugural police officers.² During his 16-year career at the Police Department, he served in many collateral and specialty assignments. For the Officer's collateral assignments, he was a founding member of the Honor Guard and Civil Disturbance Unit. He was also a Police Training Officer, Firearms Instructor, founding member of the Unmanned Aerial Systems drone program, Less Lethal and Chemical Munitions Instructor, member of the Bar Sweep Team, Police Explorer Advisor, a member of the Bicycle Patrol, and Step-Up Sergeant. His specialty assignments included Special Operations Investigator, Neighborhood Policing, and Proactive Property Crimes Investigator.³

The Officer was terminated from the Police Department for untruthfulness in a search warrant affidavit and police report, stemming from a burglary he responded to on November 1, 2020.⁴ According to the Officer, this was the only discipline he received in his law enforcement career.⁵ The Officer maintained he unknowingly made a misstatement when he explained to

² Hereafter, the grievant is referred to as "the Officer."

³ Tr.2 258-268.

⁴ City Ex.33.

⁵ Tr.2 280:19-20.

another Lakewood police officer how he seized a firearm from a suspect's vehicle at the scene of the burglary.⁶

A Burglary in Progress

On the morning of November 1, 2020, the Officer was the third Lakewood law enforcement officer dispatched to respond to a burglary in progress. Sergeant [REDACTED] was the first to arrive, and the second was Officer [REDACTED].

The Suspect's Bullet and Stolen Credit Cards

The burglary suspect, Curtis Moore, was searched by Sergeant [REDACTED], who found a nine-millimeter bullet in Mr. Moore's pocket.⁷ As a felon, he was prohibited from possessing ammunition or a firearm. During the arrest, Mr. Moore was also found to be in possession of 18 credit cards that did not belong to him.⁸

The Suspect's Fiancée and Her Injured Leg

At the same time Sergeant [REDACTED] was conducting a search of the suspect, Officer [REDACTED] was speaking with the suspect's fiancée, Miah Snelling. Officer [REDACTED] spoke with her from the passenger side of the car, where she was seated in the front of a 2008 Ford Escape SUV.⁹

Sergeant [REDACTED] had first asked Officer [REDACTED] to get her out of the car, but Ms. Snelling told Officer [REDACTED] she had an injured leg from a recent accident, and she was unable to get out of the passenger seat. Once the Officer arrived, Sergeant [REDACTED]

⁶ Tr.2 401:3-15.

⁷ Tr.1 139:21-25; 140:1; Tr.2 338:22-24.

⁸ Tr.2 312:14-23.

⁹ Tr. 353:20-23; Sport Utility Vehicle.

informed him the suspect had a nine-millimeter bullet in his pocket, and it was possible a firearm was in the SUV. The Sergeant then directed the Officer and Officer [REDACTED] to get Ms. Snelling out from the vehicle. As they walked toward the car, Officer [REDACTED] informed the Officer her leg was hurt.¹⁰

The Officer Tried to Get Ms. Snelling Out of the SUV

As the Officer began walking toward the front passenger side of the car, Officer [REDACTED] walked on the driver side. The Officer was briefly visible on the in-car video recording before he reached the passenger. But the Officer was no longer visible on the camera once he reached the passenger door. Yet, his voice was clearly audible when he told Ms. Snelling to “get out of the car” as he walked toward the passenger door.¹¹

Through the Officer’s microphone, though barely audible, Ms. Snelling was heard to say, “Yes.” Then there was the faint sound of a grunt or groan as the back of the car showed an ever-so-slight movement in the video. The Officer is clearly heard on the audio when he said, “Just hobble over here.” The car movement in the video appeared to show Ms. Snelling was trying to comply with the Officer’s order to exit the vehicle.¹² The Officer testified, “I recognize[d] that she’s making an effort to get out of the car, but she can’t.”¹³

The barely audible sounds from Ms. Snelling, before the Officer reached the passenger door, were attributed by the Officer to the distance from the microphone on his uniform to where she was located. The Officer testified that Ms. Snelling’s voice, while barely audible in the recording as he approached the vehicle, was clearly heard on the recording as he spoke with her

¹⁰ Tr.2 339:11-13; 18-25.

¹¹ Guild Ex.2.

¹² Guild Ex.2.

¹³ Tr.2 342:1-2.

while she was seated in the front passenger seat with the door open.¹⁴ The Police Chief, [REDACTED], testified that on the date of the incident, the Lakewood Police Department had issued body cameras only to its motorcycle officers.¹⁵

“Where is the Gun At?”

The Officer testified that when he reached the passenger door, Ms. Snelling was still in the passenger seat with the door open wide.¹⁶ As the Officer approached her, he asked, “Where is the gun at?” Ms. Snelling’s non sequitur response was, “Hi. Do you remember me?” They had a brief discussion about her previous crime-related encounters with him, and he acknowledged his memory of her. The Officer said that as he glanced at her, he was also eyeing what was in the vehicle.¹⁷ He said, “She has been someone who I have interacted with and [I] didn’t immediately feel her to be a great threat to me.”¹⁸

Then the Officer asked her, “Does he have a gun in the car?” Ms. Snelling stumbled with her words to respond, and then she said the gun was in a bag, and it was not hers. The Officer then pointed his finger several times at bags in the car, and he questioned Ms. Snelling as to which bag the gun was located.¹⁹ According to the Officer, Ms. Snelling then pointed to a small black bag that was between her left leg and the center console on the front seat of the vehicle.²⁰

The Officer Seized the Black Bag with the Gun

The Officer testified that with Officer [REDACTED] serving as his cover on the driver

¹⁴ Tr.2 345:2-23.

¹⁵ Tr.1 240:1-6.

¹⁶ Tr.2 26:14-23; 345:2-5.

¹⁷ Tr.2 342:6-12.

¹⁸ Tr.2 343:22-24.

¹⁹ Tr.2 344:18-23.

²⁰ Tr.2 346:12-22.

side and because Ms. Snelling was still in the passenger seat and the car door was wide open, the Officer quickly reached over her and grabbed the black bag.²¹ He is then heard saying, “Ok. Hang tight. Just hang back here.”

Thereafter, the in-car video showed the Officer walking quickly past the back of the SUV from the passenger side with the black bag in his hand. He was the first to emerge in the camera’s field of view. The video then showed Officer [REDACTED] appear from the driver side arriving one step from the back of the SUV, and at the same time, Ms. Snelling appeared near the back bumper of the car from the passenger side.²² Below is a summary of the time frames on the video:²³

- 12:05 The Officer told Ms. Snelling, “Get out of the car.”
- 12:07 The Officer told Ms. Snelling, “Just hobble over here.”
- 12:11 The Officer asked, “Where’s the gun at?”
- 12:12 The conversation between Ms. Snelling and the Officer as recounted on page 11.
- 13:15 The Officer told Ms. Snelling, “Ok. Hang tight. Just hang back here.”
- 13:18 The Officer emerged walking fast from the passenger side of the SUV.
- 13:20 Officer [REDACTED] arrived from the driver side, one step from the back of the SUV.
- 13:20 Ms. Snelling arrived from the passenger side close to the back bumper of the SUV.

The Officer Told Sergeant [REDACTED] How He Recovered the Firearm

The Officer showed the gun in the black bag to Sergeant [REDACTED]. He then explained to the sergeant that after he used a ruse by assuming there was a firearm in the vehicle, Ms. Snelling pointed to him to where the gun was located, which was on the passenger seat between her leg and the console. The video showed that as the Officer talked with the sergeant, he reenacted how Ms. Snelling pointed him to the gun in the bag: the Officer moved his right arm and hand leftward over

²¹ The in-car video camera had partial line-of-sight, which did not include the passenger window or door.

²² Guild Ex.1 12:05-13:20.

²³ The 2008 Ford Escape SUV body length is 14.5 feet from bumper to bumper. Source: <https://www.edmunds.com/ford/escape/2008/features-specs/>

his torso, with his right index finger pointed downward.²⁴

The Officer Allegedly Risked his Safety Recovering the Gun with Ms. Snelling in the Car

The Officer was questioned as to why he would risk reaching over Ms. Snelling to grab the firearm when she was seated in the vehicle. He testified, “If the person is standing outside the car and I turn my back on them to access something inside of a vehicle, I am one hundred percent exposed to whatever they might decide to do to me without my knowledge, as far as being able to see or respond to any actions they might take. I wouldn't do that. If Officer [REDACTED] had been standing next to me covering her, I still wouldn't have done tha[t].”²⁵

Conference with Sergeant [REDACTED] Regarding a Search Warrant

After the Officer had taken the firearm, he and Officer [REDACTED] conferred with Sergeant [REDACTED] as to whether a search warrant was necessary to remove the gun from the bag. The Officer then sought permission from the suspect, Curtis Moore, to open the bag, but Mr. Moore refused.²⁶

The Officer informed the sergeant that Mr. Moore had not admitted it was his gun, and therefore would not give permission to open the black bag. Sergeant [REDACTED] said he would call the city prosecutor for current guidance on issuing search warrants due to changes in the law.

Sergeant [REDACTED] tried to reach the city prosecutor, and being unable to do so, he called Police Officer [REDACTED], who was known to have extensive experience with search warrants.²⁷

²⁴ Guild Ex.1: 14.38-14.47; Tr.2 346:12-22; 357:15-25; 358:1-20.

²⁵ Tr.2 365:4-19.

²⁶ Tr.2 363:8-25; 364-368.

²⁷ Guild Ex.1: 35:56-35:59.

The Officer's Discussion with Officer [REDACTED]

When the sergeant handed the phone to the Officer, he testified that he thought he was to confer with the city prosecutor for legal advice, but instead the sergeant told him he was talking to Officer [REDACTED]. The Officer said he was confused as to why he was talking with Officer [REDACTED]. He thought it was a waste of his time because he was seeking legal advice, and the Officer knew how to write a search warrant. The Officer said that while Officer [REDACTED] was talking, he began to mentally process all that he needed to do regarding this case and others from that day.²⁸

The audio of this phone call showed that during the conversation with Officer [REDACTED], the Officer told him, "She stepped out of the car, I grabbed the gun." Officer [REDACTED] asked why he would take a gun out of an empty vehicle, and the Officer said because they were felons.

Multiple times Officer [REDACTED] raised the problem of taking the gun out of a vacant car and the Officer did not correct him. The Officer testified he was confused as to why Officer [REDACTED] kept focusing on an empty vehicle when Ms. Snelling was in the car when he took the gun.²⁹

The Officer Allegedly Made a Misstatement

The Officer testified he did not give his full attention to the conversation with Officer [REDACTED] and at times was not listening to him; his was focus was on the day's work to be done. The Officer said that as a result, he misstated how he presented the firearm seizure to Officer [REDACTED]. He averred that he did not know he made a mistake when he told Officer

²⁸ Tr.1 91:8-25; 92:1-2.

²⁹ Guild Ex.1: 36:03-41:15; Tr.1 93; 94:1-5.

[REDACTED] the sequence of events on November 1, 2022, and therefore, did not know to correct the record.³⁰

Curtis Moore's Defense Counsel's Review of the Evidence

Curtis Moore had three charges pending in September 2021: burglary in the second degree, possession of a firearm in the second degree, and identity theft. In preparation for trial, his defense attorney reviewed the in-car video and audio recordings of the Officer's actions and discussions with the suspect, the suspect's fiancée Miah Snelling, and his phone call with Officer [REDACTED].

After her review, the defense attorney determined the Officer had been untruthful in his police report, and in the search warrant he sent to the Pierce County Superior Court on November 1, 2020. The Officer had also issued two supplemental police reports for the same case on November 2, 2020, and November 17, 2020, without any changes to the facts as to whether Ms. Snelling was out of the car when he seized the gun. The attorney then reported her findings to [REDACTED], Pierce County Deputy Prosecuting Attorney.³¹ On September 20, 2021, the defense attorney served on Ms. [REDACTED] a motion to suppress the charges against her client, Mr. Moore.³²

Deputy Prosecuting Attorney's Review of the Evidence

[REDACTED] testified at the arbitration hearing by video conference. She said Curtis Moore's attorney contacted her to convey there was a discrepancy as to whether Ms. Snelling was in the car when the Officer recovered a firearm in the vehicle.

³⁰ Tr.2 379:2-25; 380-392.

³¹ Tr.1 44:25; 45:1-2.

³² Tr.1 30:3-4.

Ms. [REDACTED] said, “She indicated that the police report and the search warrant affidavit stated that Mr. [REDACTED] reached across the passenger to obtain a bag that was believed to contain a firearm. However, in listening to the audio, she believed that the audio portrayed that the passenger was actually removed from the vehicle. When I say ‘removed,’ that Officer [REDACTED] had asked her to step out of the car and she then did so.”³³

Ms. [REDACTED] said she then listened to the audio multiple times with headphones, playing it at a slower pace, and then she went back and reviewed the reports and the search warrant again. Ms. [REDACTED] testified, “In reviewing the police report, the search warrant affidavit and the videos, I agreed with the defense that there were what appeared to be inconsistencies between the audio and report and affidavit.”³⁴ Thereafter, an investigator in Ms. [REDACTED]’s office contacted the Lakewood Police Department regarding what was heard in the audio in comparison with what the Officer wrote in the search warrant and police report on November 1, 2020, the same day as the arrest.³⁵

When questioned if the three charges against the suspect could have been prosecuted, Ms. [REDACTED] said, “In considering that with the community’s current view on police officers and I think unfortunate rise in distrust of police officers, I found that proceeding with this case would -- I would be unlikely to prevail on these charge[s].”³⁶

Phone Call from Sergeant [REDACTED] to the Officer

The Officer was asked at the arbitration hearing, “How did you learn of an investigation into the incident on November 1, 2020?” He answered, “I got a phone call, I believe it was from

³³ Tr.1 50:4-24.

³⁴ Tr.1 57:21-25.

³⁵ Tr.1 67:21-25; 68:1-15.

³⁶ Tr.1 59:12-17.

Sergeant [REDACTED], to come over to the office to talk with him during one of my patrol shifts. I went there and he informed me that there was an allegation that was going to be investigated.

The Officer said Sergeant [REDACTED] told him, “[I] can't really tell you anything about it, we just need to start talking about availability for you to come in to have an interview conducted.” The Officer said he received the notice of internal investigation either on the same day or within a few days of his meeting with Sergeant [REDACTED].³⁷

Notice of Internal Investigation

During January 2022, Sergeant [REDACTED] was assigned to the Professional Standards Section within the Lakewood Police Department.³⁸ Sergeant [REDACTED] served as the department’s internal investigator in the instant case. The investigation centered on the allegation from the prosecutor’s office that the Officer was untruthful in his search warrant affidavit and police report following the arrest of Curtis Moore on November 1, 2020.

On January 12, 2022, Sergeant [REDACTED] issued a notice of internal investigation to the Officer. The pertinent portions of the notice stated:

“This notice is to advise you that a standards or a chain of command investigation has been initiated with you as the subject employee. An allegation has been made against you and I have been tasked with conducting an investigation into the allegations made in the complain[t].”

“Summary of Complaint: PSS has been informed by the Pierce County Prosecuting Attorney’s Office, of an allegation that information documented in an affidavit and official police report, authored by you, contained information contrary to factual.”³⁹

³⁷ Tr.2 295:7-24.

³⁸ Tr.1 102:8-9.

³⁹ City Ex.16.

The Guild attorney asked the Officer at the arbitration hearing if “the notice referenced an unknown search warrant, on an unknown date, at an unknown time at an unknown location” and the Officer answered, “Yes.”⁴⁰ On January 18, 2022, the Officer received the official notice of interview from Sergeant [REDACTED], which was scheduled for January 24, 2022.⁴¹ The Officer testified about the notice at the arbitration hearing:

“I specifically asked him if he could tell me anything more so that I could start to begin to refresh my recollection, because when he gives me this information that I'm being accused of something, that for me is like so far out of the realm of possibility for something that I know that I would ever do, I was shocked. You know, I'll be honest, I was shocked. I looked at the information I was being given and I'm, you know, obviously running through the events I've been involved with over my career involving search warrants and things like that, and I couldn't think of anything that would be related to an issue where something I had said or done was inconsistent [with] a search warrant.”⁴²

Internal Investigator Provided the Officer Additional Case Information

On January 18, 2022, the same day Sergeant [REDACTED] emailed the Officer the notice to appear for an internal investigatory interview, he emailed the Officer to inform him of a change in the information available to the Officer and his counsel before the in-person investigation:

“After speaking further with Lt. [REDACTED] and Chief [REDACTED] about this issue it has been determined that the summary statement provided on the notification form is consistent with past practice. However, the amount of time that has passed from the time the incident occurred until now is a major factor in your ability to at least have a general idea about the incident itself. Having that in mind, Chief [REDACTED] has authorized us to provide you and Mr. David with the incident number. That number is 2030600789. I am rescinding my previous order for you not to look up the case. You may review the incident report. Access to the ICV footage has been restricted to Lt. [REDACTED] and myself. We will not be providing access to this prior to disposition of this internal investigation.”⁴³

⁴⁰ Tr.2 296:3-22.

⁴¹ City Ex.16.

⁴² Tr.2 296:8-22.

⁴³ City Ex.17.

The Police Department's leadership had decided to allow the Officer and his counsel to receive the case incident number ahead of the investigatory interview; however, the department withheld from the Officer and his attorney access to the entire in-car video and audio evidence from the incident on November 1, 2020, until after the investigation was completed.⁴⁴

First Investigatory Meeting of the Officer on January 24, 2022

The Officer attended the investigatory meeting with his Guild attorney. During the meeting, Sergeant [REDACTED] led the investigation; Lieutenant [REDACTED] was also present.⁴⁵

Sergeant [REDACTED] presented short clips of audio and video as he questioned the Officer whether Miah Snelling was in or out of the Ford Escape when the Officer seized the firearm in the bag. The Officer testified, "They showed me several small sections of video from the entire incident and then asked [me] questions related to those small sections of a very large video, what ended up being three separate video sources." The Officer testified he was not shown the entirety of all the video and audio evidence on January 24, 2022, nor did he receive copies to review at the conclusion of the investigative interview.⁴⁶

The Officer was Placed on Administrative Leave

However, upon the conclusion of the investigation meeting on January 24, 2022, the Officer was presented with a notice that placed him on administrative leave.⁴⁷

Internal Investigative Interview with Officer [REDACTED]

⁴⁴ City Ex.17; In-Car Video (ICV).

⁴⁵ Tr.2 298:21-25.

⁴⁶ Tr.2 300:5-24.

⁴⁷ Tr.2 303:17-25; 304:1-3.

On January 26, 2022, Officer [REDACTED] was interviewed by Sergeant [REDACTED]; Lieutenant [REDACTED] was also present. The subject was whether Miah Snelling was in or out of the vehicle when the Officer seized the gun in the bag. Officer [REDACTED] was the sole witness to the interactions between the Officer and Ms. Snelling while they were at the Ford Escape.⁴⁸

Officer [REDACTED] testified that when the Officer seized the firearm in the bag, “I believe she was still in the vehicle.” He added, the Officer told Ms. Snelling to “hobble over here,” and “it sounded as if she was still in the car.” However, Officer [REDACTED] stated, “I don’t recall him actually retrieving the bag.”⁴⁹

Second Investigative Meeting of the Officer on February 10, 2022

The second meeting was to further investigate the movement in the car after the Officer ordered Ms. Snelling out of the car and, “Just hobble over here.” Lieutenant [REDACTED] said at the meeting that while there was no video of Ms. Snelling getting out of the car following the Officer’s order, it appeared in the video that the movement seen from the back of the car was Ms. Snelling exiting the vehicle. The Officer maintained she was in the vehicle when he grabbed the gun.⁵⁰

Criminal Rule 8.3 Government Misconduct Hearing

On March 2, 2022, Curtis Moore’s defense attorneys presented evidence of government misconduct before the Pierce County Superior Court. The prosecutor, [REDACTED], had already dismissed the second-degree burglary and gun charges due to the inconsistencies in the evidence.

⁴⁸ City Ex.21.

⁴⁹ City Ex.21 16:30-40; 17:1-15; 18:13-19; 19:11-20.

⁵⁰ City Ex.23 1-18.

However, Ms. [REDACTED] proceeded to defend the identity theft charge in the Section 8.3 hearing.⁵¹

The defense counsel subpoenaed Officer [REDACTED], Sergeant [REDACTED], Officer [REDACTED], and the Officer to testify. Officer [REDACTED] testified he said he had no memory of the incident on November 1, 2020. Sergeant [REDACTED] had little memory of the events on that date. Officer [REDACTED] gave testimony about his conversation with the Officer immediately following the incident. The Officer gave the most detailed testimony of the witnesses appearing before the court, based on his recollections from 16 months earlier. He also told the court that he had recently been diagnosed with attention deficit hyperactivity disorder. The Officer said this might explain the misstatement he made while on the phone call with Officer [REDACTED] on November 1, 2020.⁵²

At the conclusion of witness testimony, the defense attorney and prosecutor began their closing arguments. The defense attorney asserted that the final charge pending against Mr. Moore should be dropped due to government misconduct by Sergeant [REDACTED], Officer [REDACTED], and the Officer. The prosecutor told the Superior Court Judge and the defense attorney:

“So, what you have is audio of Officer [REDACTED] approaching the vehicle and communicating with the passenger. [Y]ou [are] just hearing audio. And what the full picture is, is that audio, in combination with [the] Officer description of what happened are those mutually exclusive? {C}an those two exist together?”

I think the defense has admitted that they can. She said it’s a great story. He says and if you think about how that looks, he said she’s in the car as he’s approaching it. Watch the video to see how quickly after approaching that car and, sort of, leaving the field of view on the camera, he says, “Step out of the vehicle.” If he says step on out of the vehicle as he is approaching, and it’s a car, it’s not that big,

⁵¹ City Ex. 38:3-177.

⁵² City Ex.38:34-129; Tr.1 64:7-11.

and she doesn't make it all the way out of the vehicle. She's injured. He says she's in visible pain. And so can she jump out of the car quickly? He seems to say that she couldn't. So by the time he gets to the car, she's still there. He says he can't remember whether both legs were out of the car or one leg was out of the car, or both legs were in the car, but that she was sort of turned to talk to him.

Can that exist together with what's on the audio? It can. And I would explain why beyond the audio, listening alone to the audio without the Officer's explanation, without an actual video recording would think she was out of the vehicle. He says, "Hobble over here." Can he say that as he is approaching the vehicle? Yes. And his explanation is that what is happened. They're not mutually exclusive. It's not impossible for his story to match the audio.

So in that sense, was there governmental misconduct by [the] Officer? N[o]."⁵³

Superior Court Decision on Criminal Rule 8.3 Government Misconduct Hearing

On March 17, 2022, the Pierce County Superior Court ruled on the allegation that the three officers who responded to the burglary on November 1, 2020: Sergeant [REDACTED], Officer [REDACTED], and the Officer, had engaged in government misconduct.

Further, the Court found, "It was incredible to believe that [the] Office[r] would have an entire conversation regarding a serious mistake in the handling of evidence with the Sergeant supervising the scene and with a trusted officer who appears to be some sort of expert on the matter, and he would never correct either of them that he did, in fact, do the right thing. It is incredible to believe [the] Office[r]'s testimony that his compassion for the female passenger overwhelmed his training on officer safety. The audio did not support a version of the events where [the] Office[r] violated his training out of compassion for the female passenger."⁵⁴

The City Refused to Provide Necessary Information Relevant to the Charges Against the Officer

According to the Officer's counsel, James David:

⁵³ City Ex.38 120:13-25; 121; 122:1-2.

⁵⁴ City Ex.39 5-6.

“The City continued to bar [the Officer] from looking at the videos of the incident. Despite not having seen or fully reviewed the video, and despite Lt. [REDACTED] suggesting that [the Officer] *not* testify and assert his 5th Amendment right to remain silent, [the Officer] testified about the events on November 1, 2020. [The Officer] did so, because he knew he was right, and he wanted to explain his actions.”

“[The Officer]’s employment history and work ethic are exemplary. His evaluations consistently rate him as a very good officer, with high integrity, and knowledge of the laws, and one who accepts responsibility for his actions.”

“[The Officer] elected to testify regarding the events in the second dismissal hearing. He did so, knowing that the prosecutor had written to the court that she believed (without conducting an actual investigation) that [the Officer] had falsified his report and the search warrant. He knew that the prosecutor and defense counsel based their decision on the recorded phone call to Officer [REDACTED]. (Neither the prosecutor nor the defense attorney ever looked at the fact that [the Officer]’s description to [REDACTED] was incorrect. Neither made an argument to that effect to the court.):

“At the time he testified in the hearing, [the Officer] had not reviewed the full audio recording as the City refused to provide it to him until after the investigation was complete. Nevertheless, [the Officer] wanted to explain what happened and testified. It wasn’t until weeks later that [the Officer] finally figured out the problem with the case – his own misstatement to Officer [REDACTED].”

“The City, without knowing about the misstatement continued their investigation and suggested there is some slight evidence to support that Snelling got out of the car earlier – because the car moved, but not once did they point out a rather huge problem with their position – the car did not move when Moore got out of it. City Ex 5, 6. “*synchronized video*” beginning at 6:00.”

“There is no clear evidence that mere movement confirms she exited. This partial view is not a reasonable means to make a determination of what occurred. If the camera had shown the door and Snelling exiting as the City suggests it would be clear, however there is nothing shown to sufficiently draw that conclusion without speculative overreach to support a predisposed position. The City discounted other causes for movement of the car, such her moving in the car, the door moving, shifting of weight in the car, and shifting of the overall suspension from when Moore got out as well.

“[The Officer]’s version is also supported by the actions of Officer [REDACTED]. [REDACTED] was initially ordered by Sgt. [REDACTED] to remove Snelling from the vehicle. He contacted her in the passenger seat of the car and allowed her to remain there due to her injuries. He walked away from the car, before returning to the driver’s side of the car. [REDACTED] was warned of the possible firearm at which time [REDACTED] told [the Officer] about Snelling’s hurt leg. [REDACTED] stayed on the driver’s side of the car, a typical place to cover an officer as it gives the cover officer a broad view of the interior of the car.”

“A trained officer – such as [REDACTED] – would not remain on the driver’s side of a vehicle when an officer was speaking to a subject outside a car about a firearm. Instead, the training would require the cover officer to go to the same side of the car in order to assist the officer contacting the subject.”

“While reviewing the facts, consideration must be given to the fact that the City’s investigators didn’t even realize that [the Officer]’s description to Officer [REDACTED] about Snelling identifying the bag and he then telling her to get out of the car before he grabbed the bag was incorrect. They assumed it was not accurate believing she was already out of the car when she identified the bag, but they never investigated the possibility that [the Officer]’s inaccurate description was at the center of the matter.”

“The City went through 5 interviews, City Ex 20, [the Officer] (1/24/22), Officer [REDACTED] (1/26/22) Sgt. [REDACTED] (1/26/22) and [the Officer] again (2/10/22) and Sgt [REDACTED] prepared long notes on his review of the video, City Ex. 24, but they never noticed such a simple straight forward fact and they never investigated [the Officer]’s misstatement to Officer [REDACTED].”

“The City had barred [the Officer] from accessing the videos except for a few small parts of it during interviews on January 24, 2022 (see City Ex 20) and on February 10, 2022 (see City Ex 23). [The Officer] was only provided the report and videos after the report was finished and after Lieutenant [REDACTED] reviewed the report and recommended discipline, City Ex. 28, the Assistant Chief [REDACTED] read it and recommended discipline, City Ex 29 and Chief [REDACTED] read it and recommended discipline, City Ex. 30 on February 24, 2022. All of them followed the original logic, and not a single one of them realized the simple truth – that [the Officer]’s description to Officer [REDACTED] was wrong.”

“[The Officer] produced and provided the synchronized video and explained the error in his Loudermill hearing, on the afternoon of [M]arch 7, 2022. He was terminated by the city manager [two days later].”⁵⁵

Lieutenant [REDACTED]’s Mistakes in the Case Report and Summary

At the time [REDACTED] authored the case report and summary of the internal investigation of the incident on November 1, 2020, he was a sergeant. When asked by the Officer’s attorney at the arbitration hearing, “Do officers make mistakes?” Lieutenant [REDACTED] answered, “Absolutely.”⁵⁶

⁵⁵ Guild’s Post-Hearing Brief 9-12.

⁵⁶ Tr.1 209:24-25.

Contained in the internal investigation report was a material mistake then-Sergeant [REDACTED] made in how he described where the gun was located, in proximity to Miah Snelling. The sergeant stated in his report the gun was in a bag “next to her feet,” yet, the audio indicated the Officer had said the bag was on the seat next to her leg. Below is the lieutenant’s testimony at the arbitration hearing regarding his mistake in how he described the location of the gun:⁵⁷

Q. How many times do you think you reviewed the video?

A. A lot.

Q. I noticed throughout your report you referenced that he kept saying that the gun was in a bag next to her feet.

A. Yeah, I didn't -- go ahead.

Q. Have you ever taken any steps to correct that?

A. I have not. I was not aware of that.

Q. So, you made an error?

A. Absolutely, yeah, sure. Well, if you play the video, you can see why I put feet and not seat. Feet and seat sound pretty similar.

Q. Sitting next to her on her feet would be --

A. Sitting next to her feet.

Q. Her actual statement as we heard earlier was it was next to her on the seat. That doesn't sound consistent, does it, with at her feet or on her feet, does it?

A. On her feet, no.

Q. Or next to her feet?

A. Sure.

The Officer was Terminated

The Officer was provided the Police Department’s audio and videos of the November 1, 2022 incident after the investigation was completed and after the Internal Affairs report was released, but before the Loudermill due process hearing on March 7, 2022.⁵⁸

⁵⁷ Tr.1 212:3-24.

⁵⁸ Tr.2 332:12-21.

Following the Section 8.3 Government Misconduct hearing on March 2, 2022, and the Loudermill hearing on March 7, 2022, the City of Lakewood City Manager terminated the Officer for untruthfulness on March 9, 2022.⁵⁹

The Officer's Education and Career Trajectory

The Officer began his first law enforcement training at the age of 14, when he joined the Police Explorer Post in Olympia, Washington. He was involved in the program for five years, until he graduated from high school.⁶⁰ He then attended Pierce College in Lakewood, Washington.

The Officer testified, “While working my way through my associate's program at Pierce College, I was employed by the City of Olympia Police Department as a police cadet, which is a paid internship for the city where you are noncommissioned personnel who assists commissioned law enforcement officers.”⁶¹

The Officer graduated from Pierce College with an associate's degree in criminal justice.⁶² Then he transferred from Pierce College to Washington State University at Pullman, where he earned his bachelor's degree in business administration.⁶³ The Officer explained, “[W]hen I transferred over to Pullman, I joined the Washington State University police internship program, and I worked for them for the two years that I was there in Pullman.”⁶⁴ The Officer graduated from Washington State University in 2003, and he was hired by the City of Lakewood in March 2004.⁶⁵

The Police Officer's Performance Appraisals

⁵⁹ City Ex.33.

⁶⁰ Tr.2 254:16-19.

⁶¹ Tr.2 255:8-14.

⁶² Tr.2 254:16-19.

⁶³ Tr.2 254 24-25; 255:1

⁶⁴ Tr.2 255:16-19.

⁶⁵ Tr.2 256:22-25; 257:1-5.

The Arbitrator reviewed the Officer's performance appraisals between 2005 and 2021. Below is a sample of the favorable and unfavorable comments written by the Officer's supervisors and other higher-ups during his 16 years as a police officer at the Lakewood Police Department.⁶⁶

March 2005: "I believe [the] Officer to be of very high integrity." (0010)⁶⁷ "I would assess Officer [REDACTED] as needing improvement rather than unsatisfactory in the operation of vehicles and equipment. These areas have been identified formally to [REDACTED] as something he must work on. In the next rating period, if dramatic improvement is not evident, I will support an unsatisfactory rating in this area." (0012)

August 2005: "[The Officer] has done an excellent job while on probation and has grasped all the fundamentals and principles related to police work." (0013)

March 2006: "[The Officer] isn't afraid to admit when he doesn't know how to proceed in a given situation." (0016) "I believe his honesty and integrity are of the highest order." (0020) "[The Officer] has received letters of praise from at least three people, each noting his professionalism and helpful assistance." (0021)

April 2007: "[The] Officer writes complete and effective reports." (0026) "Officer [REDACTED] was unable to meet this goal for a variety of reasons, not the least of which were call load and staffing, especially while assigned to swing shift." (0025)

April 2008: "[The] Officer consistently demonstrates integrity and honesty." (0039)

April 2009: "[The] Officer volunteers his time to work with the Explorer program on a weekly basis. He puts a lot of hard work into the program and their progress has been quite impressive. The Explorer's have placed high in the ranking in every competition over the past year and [the] Officer has been the driving force behind their success." (0053-54)

April 2010: "[The] Officer is a hard-working, pro-active officer." (0062)

April 2011: "While I haven not supervised [the] Officer for very long, I have been very impressed with his demeanor when dealing with difficult people in the field." (0071)

April 2012: "I have been very impressed with [the] Officer's work, it is detailed, easy to read and contains the necessary elements to substantiate the charging." (0081) "[The] Officer had some personal issues arise that would normally impact one's work performance, but he has risen above this to continually produce quality

⁶⁶ Guild Ex.3.

⁶⁷ Documents' Bates number(s).

work.” (0081).

December 2013: The Officer ‘s Self-Assessment (last sentence) “I hope that I am thought of [a]s a man who made mistakes and took responsibility for his actions. A man who learned from his mistakes and refused to let the negative aspects of his life define him. I hope others will learn from my mistakes and always remember to take responsibility for their actions and learn and grow from them.” (0091) “[The] Officer is completing probation. He is a great asset to the department, and I was extremely pleased that he returned.” (0092). “With a preventable accident I would cite emergency vehicle operation as an area of improvement.” (0095) “I am happy with [the] Officer’s choice to be a PTO. He is one of the few officers that got his start with Lakewood PD and has a special ownership with this department. He can give a unique perspective to the trainees. He is also a great role model for new officers because of his vast experience with this department.” (0098)

December 2014: List one thing this employee does well: “Empathy towards a wide variety of people.” (0117)

December 2015: [C]ongratulations to [the] Officer for passing the written portion of the Sergeant test with the highest score.” (0127)

December 2016: “I do not have to remind [the] Officer to complete tasks or reports. He works efficiently and thoroughly.” (0142) “He could work on being more concise.” (0146)

December 2017: “I am often approached by people that work at the City, are community members, community business owners, and co-workers in the department that are appreciative of the work that [the] Officer does.” (0154) “He could work on being a little more concise.” (0156)

December 2018: Supervisor Comments: “[The] Officer is the Step-Up Sergeant when I am away. I have complete trust in his abilities to keep up with the administrative duties as well as lead the team when needed.” (0188) Although always respectful, and professional he can dominate a conversation at times. I suggest he consider this and practice more listening skills. (0190) “[The] Officer establishes and maintains relationships with ease. He works with people in crisis or in dire need of assistance on a regular basis and always shows empathy.” (0190) Handwritten Note: “Two words – Thank You!! You are the epitome of resilience and persistence in improving the Lakewood community. Joe.” (0181)

December 2019: Handwritten Note: “[The] Officer has been an absolutely huge asset to the NPO (Neighborhood Police Officer) Unit. His tireless work has brought about significantly positive changes to the city as a whole. I appreciate all of his hard work and the example he left for future NPOs to follow. (209) Handwritten Note: “[The] Officer is relentless in his efforts to make Lakewood a better place. He is the tip of the spear on many community improvements and always willing to

help out. I appreciate his “can do” approach and positive contributions to this department.” (0188) “I have observed [the] Officer communicating with members of the community both in-person and via e-mail. He is professional and effective. He has an appropriate approach given the nature and context of the contact, which usually lends itself to a successful interaction.” (0212)

December 2020: [The] Officer has acted as step-up supervisor in my absence. He is currently on the sergeant’s list and has shown me that he has the ability to be supervisor. He consistently makes practical common-sense decisions, can prioritize the order of work during dynamic situations, maintain a calm presence and effectively communicates.” (0221) “Officer [REDACTED] has several extra duty assignments outside of patrol and needs to be mindful of not over committing himself so he can maintain the same level of thoroughness in his work. (0225)

December 2021: Handwritten Note: “Very impressive eval [Officer] – your leadership stands tall given all the various teams you serve on – thank you!! Joe. (0227) “I fully endorse [the Officer] to be promoted within the LPD. He is mission driven and has shown a consistent track record of quality community policing and self-starting initiative that I would like to see spread to the many officers we will be hiring in the coming years.” (0231) Due to his high level of training and expertise, he often has a lot of information to convey. As he prepares for a leadership role, I would encourage him to actively refine and edit his communications and seek to say more with less.” (0233)

POSITION OF THE EMPLOYER

According to the Lakewood Police Department, the video and audio recorded interaction between Officer [REDACTED] and Miah Snelling, and his recorded statement to Officer [REDACTED], proved that Ms. Snelling was out of the car when the Officer took possession of Mr. Moore’s firearm. A defense attorney, prosecuting attorney, and judge, all reached the same conclusion after reviewing the recordings.

The Police Department averred that the preponderance of the evidence in the sequence of events in the video and audio also proved that the Officer was untruthful when he wrote and submitted his police report to the Police Department, and the search warrant to a Superior Court judge. The City of Lakewood proved there was just cause to terminate the Officer. The grievance must be denied.

POSITION OF THE GUILD

The Officer was unaware he made a misstatement in his phone discussion with Officer [REDACTED] until he was ordered to appear in an internal investigation thirteen months later.

The “untruthfulness” charge against the Officer lacks the evidence to prove he was intentionally untruthful. Further, the Police Department withheld portions of the audio and video evidence from the Officer in violation of the collective bargaining agreement.

The Officer did not have to appear and risk incriminating himself at the Section 8.3 hearing, but he chose to testify, and he was honest with his answers in the court as well as during the internal investigation. The grievance should be sustained, and the Officer made whole.

ARBITRATOR’S OPINION

Compliance with the Collective Bargaining Agreement

The Collective Bargaining Agreement Section 5.04: Subsection B. states:

“At least forty-eight (48) hours before an interview of a subject employee, the employee shall be informed in writing of the nature of the matter in sufficient detail to reasonably apprise him/her of the factual basis of the matter.”

City Exhibit No. 17, an email from Sergeant [REDACTED], Internal Affairs investigator, to the Officer on January 18, 2022, six days before the internal investigation, showed that the Police Department intended to withhold audio and video evidence from the Officer and his attorney, until after the internal investigation was completed. The entire email message is as follows:

“After speaking further with Lt [REDACTED] and Chief [REDACTED] about this issue, it has been determined that the summary statement provided on the notification form is consistent with past practice. However, the amount of time that has passed from the time the incident occurred until now is a major factor in your ability to at least have a general idea about the incident itself. Having that in mind,

Chief [REDACTED] has authorized us to provide you and Mr. David with the incident number. That number is 2030600789. I am rescinding my previous order for you not to look up the case. You may review the incident report. Access to the ICV footage has been restricted to Lt [REDACTED] and myself. We will not be providing access to this prior to disposition of this internal investigation.”

(Emphasis added by Arbitrator Mayne)

Apart from this email, no evidence of an existing past practice that was known to and tacitly agreed to by both parties, was entered into the arbitration record. Therefore, the Arbitrator finds the Officer’s right to receive “sufficient detail to reasonably apprise him/her of the factual basis of the matter,” included receiving the recorded files of the incident at least 48 hours before his first interview in the internal investigation.

The Arbitrator also finds that withholding this evidence until after the investigation concluded, was a due process violation of the intent of the CBA Section 5.04: Subsection B.

In-Car Audio and Video Evidence

On November 1, 2022, the Lakewood Police Department had not yet equipped its patrol officers with body-worn cameras but used in-car video and audio recordings. The Arbitrator finds the in-car video recorded evidence to be inconclusive, due to the lack of visual evidence as to whether Miah Snelling was seated in the car or standing next to the vehicle when the Officer seized the firearm from the Ford Escape.^{68 69}

⁶⁸ Marlin M. Voz, Edward P. Goggin, Co-Editors, *How Arbitration Works*, Elkouri & Elkouri, 5th Ed. (1997) 15 918 “Discharge and disciplinary action by management has been reversed where the action violated basic notions of fairness or due process.”

⁶⁹ Marvin E. Hill, Jr., Anthony V. Sinicropi, *Remedies in Arbitration*, 2nd Ed. (1991) “The most common cited violation of “due process” standards in the arbitral forum revolves around the investigation of the incident giving rise to the penalty assessed.” (Hill and Sinicropi, *Evidence in Arbitration*, 2nd Ed. 242-245, BNA Books, 1987.

Police Officer [REDACTED], the only witness present at the vehicle with the Officer and Ms. Snelling, demonstrated during his testimony at the internal investigation, that he did not have a clear recall of the incident's details from about fifteen months earlier.

The inference drawn by the Police Department, that Ms. Snelling was out of the vehicle based upon the audio recording of the Officer's misstatement, was unproven.^{70 71}

ARBITRATOR'S AWARD

Based upon the forgoing, the Arbitrator finds:

1. There was insufficient evidence to prove the Officer was knowingly untruthful at the time he misstated the sequence of events, as to how he took possession of a firearm from a suspect's Ford Escape on November 1, 2020.

Therefore, the City of Lakewood did not prove there was just cause to terminate the Officer as required per Article 3 Section 3.01 Management Rights: Subsection G., and Article 5 Discipline and Discharge Section 5.01: Subsection B., within the Collective Bargaining Agreement

2. The Police Department did not provide the Officer manifest due process in the internal investigation as required per Article 5 Discipline and Discharge, Section 5.04, Subsection B. within the Collective Bargaining Agreement.

Therefore, the Officer's procedural due process rights were unfairly denied during the Internal Affairs investigation.

The Arbitrator hereby orders the City of Lakewood to:

1. Expunge the Officer's employment record of the charge that he was untruthful.
2. Immediately return the Officer to his position as Police Officer and restore his seniority, including the time-period in which he was terminated without just cause.

⁷⁰ Norman Brand, Editor-in-Chief, *Discipline and Discharge in Arbitration* (1998) 2 II. 35 "Due process is an integral part of just cause, requiring employers to treat employees fairly during the disciplinary process." (United Tel. Co. of Fla. 61 LA 443 Murphy, 1973)

⁷¹ Theodore J. St. Antoine, Editor, *The Common Law of the Workplace* 2nd Ed. (2005) 208 § 6.14 Investigation, "Most arbitrators require than an employer's decision to discipline or discharge an employee be based on a meaningful, more-than-perfunctory factual investigation." Comment: a. This requirement is sometimes described as part of an employee's due process protections, and sometimes as an element of the employer's necessary showing of just cause."

3. Make the Officer whole for all lost wages less earnings and make whole for lost benefits including retirement and health insurance.

The Arbitrator shall retain jurisdiction for sixty days following the date of this award over the make-whole remedy in the orders stated above.

RENÉE MAYNE, ARBITRATOR

DATE