

BEFORE THE ARBITRATOR

PORT ANGELES POLICE DEPARTMENT,

Employer

and

PERC Case No. 136079-R-22

TEAMSTERS LOCAL 589,

Union.

AWARD

Appearances:

For Port Angeles Police Department:

Michael C. Bolasina
Summit Law Group

For Teamsters Local 589:

Thomas A. Leahy
Reid McCarthy Ballew & Leahy LLP

Arbitrator:

Susan J.M. Bauman

Pursuant to the terms of the collective bargaining agreement between the City of Port Angeles, hereinafter "City", "Employer", "Police Department" or "PAPD", and Teamsters Local 589, hereinafter "Teamsters" or "Union", for the period January 1, 2022 through December 31, 2024, the undersigned was appointed to hear and decide a dispute between the parties regarding the termination of Officer []. A hearing was held in Port Angeles, Washington, on March 14, 2023. The parties stipulated that the grievance was properly before the undersigned. The hearing was transcribed. Both parties had the opportunity to present evidence and make arguments. The parties filed written briefs, the last of which was received on May 30, 2023, whereupon the record was closed. Based upon all the evidence presented and arguments made, the Arbitrator renders this Opinion and Award.

ISSUE

The parties stipulated that the issue to be decided is:

Did the Employer have just cause to terminate the Grievant? If not, what is the appropriate remedy?

RELEVANT PORTIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE II – RIGHTS OF PARTIES

Section A – Management Rights

The City and its management representatives shall retain all customary rights, powers, functions, and authority normally reserved by management consistent with State law, local ordinances, and Department rules and regulations. This management rights section does not give Management the right to change or modify the existing negotiated contractual language of the Agreement. The Management rights shall include but not be limited to the following:

- The City retains its rights to manage and operate the Department except as may be limited by an express provision of this Agreement.
- Set standards of service, establish Department policy/procedures, work rules/regulations, safety procedures, and personnel policies and procedures.
- Select, increase, diminish or change equipment, vehicles, machinery, etc., including the introduction of any and all new, improved or automated methods of equipment.
- Assign work and establish work schedules.
- Engage in all types of personnel transactions and disciplinary proceedings in accordance with established ordinances, rules, “Just Cause”, and Department Policy and Procedures Manual.
- Effect a reduction in authorized positions because of a lack of work, fiscal limitations, organizational changes, or other legitimate reason.
- Determine the number and classification of personnel.
- Take any action necessary to carry out its mission in an emergency.

RELEVANT PORT ANGELES POLICE DEPARTMENT AND CITY POLICIES

Port Angeles Police Department Policy 605 – Sexual Assault Investigations

605.2 POLICY

It is the policy of the Port Angeles PD that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will aggressively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

605.8 REPORTING

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. This includes incidents in which the allegations appear unfounded or unsubstantiated.

LAW ENFORCEMENT CODE OF ETHICS

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception; the weak against oppression or intimidation and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality and justice.

I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided in me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objective and ideals, dedicating myself before God to my chosen profession . . . law enforcement.

Port Angeles Police Department Policy 322 – Standards of Conduct

322.5 Causes for Discipline

The following are illustrative of causes for disciplinary action. This list is not intended to cover every type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service.

322.5.2 ETHICS

(g) Any other failure to abide by the standards of ethical conduct.

322.5.8 PERFORMANCE

(d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of the department or its members.

322.5.9 CONDUCT

(h) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with this department.

(m) Any other on- or off-duty conduct that any member knows or reasonably should know is unbecoming to a member of this department, is contrary to good order, efficiency, or morale, or tends to reflect unfavorably upon this department or its members.

Port Angeles Police Department Policy 1008 – Personnel Complaints

1008.6.2 ADMINISTRATIVE INVESTIGATION PROCEDURES

Whether conducted by a supervisor or a member of the Detective Division, the following applies to all employees:

(j) All employees shall provide complete and truthful responses to questions posed during interviews.

FACTS

The Employer herein, the Port Angeles Police Department (PAPD) is composed of two divisions, operations and PENCOMM 911. The head of the department has served as the Police Chief since July 2016. The commissioned personnel on the operations side include the Deputy Chief, five (5) sergeants, five (5) corporals, two (2) patrol teams of eleven (11) officers each, detectives, and some others, totaling approximately 40 people. There are approximately 25 people in the PENCOMM 911 division when it is fully staffed. Prior to his termination in August 2022, the Grievant was a patrol officer.

The primary types of cases handled by the Detective Division of the PAPD are sexual assault and child abuse cases. The Detective Sergeant estimates that 99% of the cases in that division are of this type. The Division generally does not handle work property crimes or felony property crimes. All detectives in the

PAPD have had, in accordance with Washington law, a 24-hour training which includes trauma-informed interview techniques and resiliency, as well as evidence collection and suspect interviewing. Patrol officers do not receive this training; they attend a two-hour training that is not in-depth regarding interviewing or investigating crimes of this nature. In the normal course of events, a patrol officer will file an initial report of a sexual assault and the investigation will be conducted by a detective.

The Grievant joined the PAPD in 2007 and has served as a patrol officer throughout his tenure. He does not have a fully formed left arm. Despite this apparent physical limitation, the PAPD supported his application to the Police Academy and, through the efforts of the now Deputy Chief, ensured that he successfully completed the training and joined the force.

The Grievant's initial years at the PAPD went very well. He responded to calls, took initiatives, listened to complaints and concerns of residents, and was well liked. On calls, he talked with people and made them feel comfortable about the police and police processes. He got to know people in the community, and they were able to rely on him to get results, wherever possible. It is likely that he spent too much time responding to calls and making people feel comfortable because complaints arose from other officers that he was spending too much time on each call, leaving them to have to respond to many more calls. He also was not getting his reports filed on a timely basis, resulting in being released from the field to finish reports and, again, leaving others on his patrol squad to respond to more calls.

On April 27, 2019, the Grievant was placed on a Personal Improvement Plan (PIP) with these objectives:

- Demonstrate the ability to handle calls for service in a timely and expeditious manner consistent with the mission of the organization and goals of the squad.
- Cognitive that dialogue with customers is dependent to the requirements for the case objectives and is in a manner consistent with the mission of reporting and prosecuting cases.
- Meeting and maintaining case management requirements.
- Your time at work is consistent with the objectives of the organization.

The Grievant was advised on September 26, 2019, that he had successfully completed the requirements of the PIP and he was congratulated on his effort. Although the documentation shows a successful outcome, this was a very stressful experience for him and he has stated on more than one occasion since that he would leave the Department rather than be placed on another PIP. There is however, indication that the PIP worked in that in 2021, the Grievant responded to more calls (1,984) and wrote more reports (321) than any other officer. He was named Officer of the Year for his efforts.

The events giving rise to the termination of the Grievant's employment, and the instant grievance, started on March 22, 2022, when he self-dispatched to a call alleging that an individual was trying to abandon a truck on the bike path. Upon arrival, the Grievant spoke to the driver who assured him that it was not his intent to leave the truck there. The Grievant was about to leave when a woman jumped out of the passenger seat and ran to him, making many allegations including that she had been kidnapped by police and medics, that her boyfriend was stalking her, that her boyfriend kept getting into her apartment, and that a physician, [redacted], at the Olympic Medical Center had touched her breasts and told her that she "has nice tits."

The Grievant had dealt with [Redacted] before and was aware that she had mental and drug abuse issues. He knew that most of her allegations had been made before and had been found to be unfounded. He found her allegation of sexual abuse to be incredible. He advised [Redacted] that when she was ready, they could sit down for an interview. The Grievant closed this case "HBO", handled by officer. Entering HBO into the system indicates that the Officer is clear to respond to other cases and that s/he does not intend to file a report or do any further follow-up on the matter.

Two days later, on March 24, 2022, [Redacted]'s brother called dispatch and specifically asked to speak with the Grievant regarding his sister who was making statements about being sexually assaulted by a physician and being abducted by persons impersonating police officers and/or medics. The Grievant arranged to meet the brother and the rest of her family and [redacted] in the parking lot of her apartment building. Again, at this meeting, [redacted] spoke, among other matters, of the physician in the emergency room touching her inappropriately and making comments about her breasts. The Grievant noted that she was in an agitated state and gave her and the family members his card and asked that she contact him to set up an interview. He closed this call as "HBO" as well.

On or before May 10, 2022, the Grievant became aware that some other women had made complaints about [redacted], an emergency room physician at Olympic Medical Center, engaging in inappropriate touching and commenting with female patients. He reported to a detective that [redacted] had made similar allegations. He, in turn, told the Detective Sergeant that there is another allegation about [redacted]. After being unable to locate the Grievant's report on this topic, the Det. Sgt. spoke to the Grievant's Sgt. about having the Grievant complete a report. In response to an order from the Sgt., the Grievant completed a report dated May 11, 2022¹.

Upon review of this report, the Det. Sgt. was surprised to find that the incident with [redacted] had occurred in March 2022. On May 16, she notified the Deputy Chief (DC) of a possible policy violation by the Grievant's failure to complete a report. The DC assigned the Det. Sgt. to do an internal investigation. On the same day, the Corporal advised the Grievant, in writing, of the investigation:

In April of 2022, the Detective Division began a sexual assault investigation after a report was made on 04/16/2022. The report was regarding a suspect that worked in the Emergency Department at Olympic Medical Center. Shortly later, a second victim came forward and made a report to PAPD. It was determined that the suspect was the same employee. The Detective Division notified OMC of the allegations involving the report made on 4/16/2022 which resulted in the employee being placed on administrative leave.

Last week detectives found out there was potentially another victim that made an earlier report to you in March 2022. You disclosed to a detective that your victim named the same suspect as did the other victims. It was found that no case report was completed

¹ In this initial report, the Grievant confused the sequencing of his two contacts with [redacted]. He did not realize this until sometime after the investigative interview with the Det. Sgt.

at that time. Sergeant A[] was notified, and he requested that you complete the report as soon as possible.

You completed a case report (2022-5118) on 5/10/2022 and it was forwarded to detectives.

The case report was reviewed by Detective Sergeant M[] on 5/15/2022. You indicated that the victim had made two possible sexual assault disclosures to you between 3/16/2022 and 3/22/2022. No case report was generated until 5/10/2022.

This memo is to notify you that you are the subject of an internal investigation which may result in formal discipline. The policy violations under investigation are:

605.2 Policy
605.8 Reporting

We hope to resolve this investigation as quickly as possible.

On June 8, 2022, at a time suggested by the Grievant and agreed to by the Det. Sgt., an investigative interview took place. The Grievant declined to allow the interview to be recorded. He was accompanied by a Cpl. serving as Union Steward, and the Teamsters Union Representative. After the Grievant had scheduled the time for the interview, which was not during his normal duty hours, he was advised that he had to testify in court on a criminal matter that day. He testified prior to his interview, but the interview was interrupted for approximately 15 minutes while he had to return to court to provide additional testimony. During his investigative interview with the Det. Sgt., the Grievant indicated he did not find [redacted] to be credible, that although he had cleared both cases HBO, he had intended to file a report. However, he stated that due to staffing, shift coverage and officers being busy going from call to call, he had not had time to write a report. In response to questioning as to why the cases had been cleared HBO, he indicated that he accidentally clears cases HBO or frequently clears them as HBO even when he intends to write a report.

The Grievant was working the graveyard shift at the time, and the Det. Sgt. did not find the "lack of time" response to be credible. She reported this to the DC. As a result, on June 9, the Grievant was placed on administrative leave by the Chief and by memo dated June 10, he was notified by the DC that the scope of the investigation had been expanded:

This memo is to notify you that you are the subject of an internal investigation which may result in formal discipline up to and including termination. The policy violation(s) under investigation is/are:

Code of Ethics, Honesty
322.5.2(g) Ethics, Any other failure to abide by the standards of ethical conduct

322.5.8 (d) Performance, Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members

322.5.9 (h) ...,dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member's relationship with the department

322.5.9 (m) Any other on- or off-duty conduct that any member knows or reasonably should know is unbecoming a member of this department, is contrary to good order, efficiency, or morale, or tends to reflect unfavorably upon this department or its members.

An additional memo was sent to the Grievant by the DC on June 13, 2022, again expanding the nature of the investigation:

This memo is to notify you that you are the subject of an internal investigation which may result in formal discipline up to and including termination of employment. The policy violation(s) under investigation is/are:

1008.6.2. (j) Administrative Investigation Procedures: All employees shall provide complete and truthful responses to questions posed during interviews.

About two weeks later, on June 28, the Grievant, Union Steward Corporal and Teamsters Representative met with the Chief. According to the Chief, this meeting was called at the request of the Teamsters. The Grievant testified that it was his understanding that the HR Director suggested to the Teamsters Representative that he request a meeting with the Chief. As with his investigatory interview with the Det. Sgt., the Grievant did not agree to have the meeting recorded. The Chief stated that the investigation was on-going and that he was not the investigator, and he did not question the Grievant. Instead, the Teamsters Business Representative asked the Grievant a series of questions that were prepared in advance. There was one question and answer in particular that surprised the Chief: "Were you honest with Sgt. []?" The Grievant replied: I gave Sgt. the most truthful answer I could." The Chief wrote this down and later asked the Grievant if this was correct, to which the Grievant replied: "According to my recollection." Additionally, the Chief asked the Grievant why he waited to write the initial report. The Grievant stated that his primary reason was that he wanted more information, though in response to questions from the Teamsters Representative, he had indicated that he wanted more evidence, including the video from the hospital.

The meeting ended with the Chief stating that the Grievant should consider providing the investigator with the same information that had been provided to the Chief. The Grievant and the others indicated that they would follow up with the Det. Sgt. and schedule a meeting.

On July 8, the Grievant submitted a report that corrected errors and clarified the dates of his contact with [redacted]. On July 11, he submitted a written statement regarding this matter. This memo included new and different information:

- Corrects the sequencing error regarding the two contacts with [redacted]. On March 22, 2022, after advising [redacted] that she had been detained under the Involuntary Treatment Act (ITA) by real police officers, he provided her with his business card containing his contact information and asked that she contact him for an interview.
- With respect to the March 24 call from [redacted]'s brother, the Grievant told his Cpl. of his plan to meet with her and her family in the parking lot. The Cpl. advised him not to be alone with [redacted] as she had accused paramedics of kidnapping her and of touching her inappropriately.
- The Grievant felt the need for further investigation and additional information. He knew he could confirm the date and time of the ITA. He wanted the date and approximate time of the incident; the Emergency Department room she had been in; a signed waiver of Patient Physician Privilege form. He wanted all of these things because he was aware that there are surveillance cameras throughout the OMC campus and all of this would be needed to apply for a search warrant. He stated: "I believe that the best way to obtain the additional information that I sought was by interviewing [redacted] in a controlled and more stable environment that could assist her physiological and mental state."
- Further, the Grievant indicated that submitting the report without the additional information and only containing [redacted]'s brief statement, his report would have been rejected and sent back for him to obtain the information
- The Grievant further stated that he did not recall whether he had spoken to a supervisor about the call for service after he cleared it. He was able to locate the ITA and confirm the existence of the ITA occurring on 3/16/2022.
- The Grievant then stated that he worked the rest of his shift on 3/24/2022; was on his weekend from 3/25/2022 through 3/28/2022; worked 3/29/2022 through the morning of 4/2/2022 and was not contacted by [redacted]; was on vacation from 4/2/2022 through 4/21/2022.
- As of 5/4/2022, he had not been contacted by [redacted] but heard about other reports regarding [redacted] from a co-worker on patrol. This "made this investigation even without the additional information a priority."
- During the night shift that ended on 5/4/2022 there was a physical confrontation with JW after he assaulted a Corporal. The Grievant stayed after his 13 hour shift to notify a detective about [redacted]'s statement. On 5/8/2022, he returned to duty and was ordered by the Sgt. to write the report. The report was completed.
- From the time he last spoke with [redacted] to the morning of 5/4/2022, he worked 12 shifts.
- He was notified on 6/7/2022 by the Prosecutor's Office that TP had turned himself in and that trial would be on 6/8/2022. That day, he was in and out of court three times, the third of which interrupted his interview with the Det. Sgt. During that interview he answered questions honestly and to the best of his recollection, given that he normally works 1600 to 0300.

On July 24, the Det. Sgt. delivered her Internal Investigation Report to the DC. Two days later, the DC delivered a memo to the Chief in which he sustained the findings against the Grievant and recommended discipline. The same day, a Notice of Intent to Discipline and Scheduling of Pre-Disciplinary Hearing was delivered to the Grievant. That hearing, the *Loudermill* hearing, took place on August 5, 2022.

Those present at the hearing were the Grievant, a Union Steward, the Teamsters Business Representative, the City of Port Angeles Human Resources Director, and the Chief. Once again, the Grievant did not want the hearing to be recorded. The Chief's notes from the meeting indicate the following:

- The Grievant acknowledged that he had "screwed up".
- The Grievant said he did not lie.
- He said "I messed up the case".
- He explained his behavior during the investigation by saying that "I can't remember things", "I had two friends die", and that he was on two medications, and was trying to get one of the medications "right".
- The Grievant stated that he had done investigations before and tried to convince the Chief that what he had done in this case was normal and the investigation was aspirational.
- He did not explain his failure to write the report except to say that he had intended to do so and then had gotten onto other things. The Grievant stated that because of the experience and feedback on his previous PIP he closes calls HBO so that they do not remain open needlessly.
- With respect to meeting again with the Det. Sgt., the investigator, after the prior meeting with the Chief, the Grievant stated that the Det. Sgt. was "off" and not reachable by phone.
- The Chief advised the Grievant that he wanted to believe him and that was not the same as being able to believe him. The Grievant did not offer anything concrete that would stitch together all of his previous explanations in a manner that would make them consistent with one another.

After the *Loudermill* hearing, by written communication dated August 19, 2022, the Chief advised the Grievant that his employment with the PAPD was terminated. The letter includes the factual bases for the decision, together with a listing of the policies that had been violated:

- Policy 605.2 Sexual Assault Policy and 605.8 Required Reporting
- Law Enforcement Code of Ethics
- Policy 322.5.2(g) Ethics; 322.5.8(d) Making False or Misleading Statements; 322.5.9(h) Dishonest or Disgraceful Conduct; 322.5.9(m) Conduct Unbecoming
- Policy 1008.5.2(j) Complete and Truthful Responses to Questions Posed During Interviews Required
- City of Port Angeles Personnel Manual Section 9.03 Causes for Disciplinary Action: (E) Conduct unbecoming an employee in the public service on or off duty which adversely affects the employee's performance, reflects poorly on the City, or negatively impacts the employee's ability to effectively perform the job. (M) Dishonesty, including but not limited to falsification of records, time cards or other work activity...*Dishonesty as defined by Oxford Dictionaries "Behavior or prone to behave in an untrustworthy, deceitful or insincere way."*

A timely grievance was filed. The parties were unable to resolve the matter and this arbitration ensued.

Additional facts are included in the Discussion, below.

POSITIONS OF THE PARTIES

The City

The Employer contends that it has just cause to terminate the Grievant, citing *The City of Seattle Police Department v. City of Seattle*, 155 Wn. App.878 (2010). In that case, the Court defined just cause:

“Just cause” is a term of art in labor law, and its precise meaning has been established over 30 years of case law. Whether there is just cause for discipline entails much more than a valid reason; it involves such elements as procedural fairness, the presence of mitigating circumstances, and the appropriateness of the penalty. Seven factors are considered in determining whether there was just cause for discipline, including whether the employer applied its rules even-handedly, and whether the degree of discipline was reasonably related to the seriousness of the infraction given the employee’s record of service.

Id., at 889

The employee had notice of the possible/probable consequences of his conduct. He was aware of the consequences of being found to be dishonest during an internal investigation and he knew that dishonesty was a very serious and terminable offense.

The employer’s rule, order, or policy is reasonable. Neither the Union nor the Grievant questioned the City’s policies on honesty. Washington law requires police officers to be honest in the performance of their duties.

The Employer conducted a fair and objective investigation. The Grievant had three weeks to prepare for the investigatory interview with the Det. Sgt. and to answer questions as to why he failed to file a report regarding [redacted]’s allegations until ordered to do so by his Sgt. The Grievant chose the date and time for the interview; he was asked simple and straightforward questions about his actions. The Det. Sgt. also interviewed the Grievant’s supervisors, then investigated the Grievant’s responses to determine their credibility. She offered the Grievant additional interviews after he met with the Chief which the Grievant refused.

There is substantial evidence to support the employer’s decision. The Grievant’s initial explanation for not completing a report was that he was too busy going from call to call. The DC reviewed the Grievant’s records and determined that was not plausible. The Grievant began changing his reasons for not doing the report:

- He told his Sgt. on May 10, 2022, that he did not write a report because he did not find [redacted]’s disclosure to be credible.
- He told the Det. Sgt. on June 9, 2022, that he did not intend to write a report after the first disclosure because he did not find [redacted]’s disclosures to be credible.

- In the same interview, the Grievant stated that he intended to write a report after the second disclosure but that he was too busy going from call to call.
- He told the Chief on June 28, 2022, that he wanted to do more investigation, and specifically mentioned obtaining video from the hospital as the primary reason for not writing a report.
- In his July 11, 2022 memo the Grievant stated that he was waiting to interview [redacted] in a private setting and getting a physician-patient waiver, a search warrant and a video before writing the report.
- At the *Loudermill* hearing, the Grievant stated that he was emotionally troubled by the death of two officers.
- At the *Loudermill* hearing, the Grievant stated that he was suffering from general anxiety at the time and could not remember anything.
- At the *Loudermill* hearing, the Grievant stated that he did not write a report because he had gotten distracted by other things.
- At the arbitration hearing, the Grievant testified that after the first disclosure he was mulling over writing a report for the rest of the shift and needed to open another call with the hospital as the location.
- At the arbitration hearing, the Grievant stated that he was just waiting for “one more thing” such as call back from [redacted] before he wrote a report because he knew that otherwise it would be rejected by the Detective Division as being too scant.

This was a cascading snowball of dishonesty, particularly in the context of the PAPD where it is known that detectives do follow-up investigations on sexual assault allegations because they have the training and time to do them. The Grievant’s offering of shifting and increasingly incredible explanations for failing to write the report can only be construed as an intent to deceive.

The employer has applied its rules and penalties evenly to all employees. The degree of discipline matches the seriousness of the offense. There is no dispute between the City and the Union that a sustained finding of dishonesty supports termination.

The employer considered many mitigating factors, such as work record, disciplinary history, lack of intent to cause harm, etc. Before making his final decision, the Chief considered the Grievant’s performance history. Termination was particularly difficult for the Chief as the Grievant overcame significant obstacles to become a police officer, had done good work as a police officer and was, in many ways, the friendly face of the PAPD. These mitigating factors are insufficient to override the seriousness of the Grievant’s dishonesty, a cardinal sin violation for police officers.

Based on all of the facts and arguments, the City requests that the grievance be denied and the termination of the Grievant be upheld.

The Union

According to the Union, termination is too harsh based on the Grievant’s years of service. The Employer has the burden of establishing that it had just cause to terminate the Grievant by clear and convincing

evidence. Inasmuch as a finding that the Grievant was dishonest may end the Grievant's career in law enforcement, this higher standard is appropriate. As a long-term employee of the PAPD with no prior written warnings or suspensions on his record (other than the Performance Improvement Plan), termination is too harsh under the principles of both progressive discipline and just cause. Though he had been on the PIP, the Grievant performed well for the City throughout most of his career, his recent struggles being the result of anxiety and personal issues.

In addition, the Grievant was clear throughout the arbitration hearing that he had learned his lesson and is not beyond rehabilitation. He deserves a second chance.

The City did not prove that the Grievant lied, the reason he was terminated. The [redacted] situation was unusual. The City acknowledged that a written warning would have been issued to the Grievant for his failure to file a timely report with respect to [redacted]. To sustain the termination, the City must prove by clear and convincing evidence that the Grievant lied during the investigation. The fact that the Grievant did not have the best investigative plans and/or ideas related to [redacted], and the fact that he did not follow proper protocols is not lying. The Grievant's initial encounter with [redacted] caught him off guard; an unusual situation because the initial call had to do with illegal dumping. He needed time to process his interaction with her and what the appropriate next steps might be. This was a difficult time for him. He asked [redacted] and her family to speak with him at the police station, a calmer environment, so that he could get a clearer picture of the situation. He left his business card, but [redacted] did not set up an appointment for an interview.

This was a difficult time for the Grievant. He was suffering from terrible anxiety and having medication issues. This interfered with his ability to function properly at work and to explain himself. But, not giving the best and clearest answers is not lying. At the time of the internal investigation, the Grievant was dealing with these issues, didn't really know what was going on, and wasn't doing his job properly. But, he did not lie. A long-term employee like this should be given the benefit of the doubt.

With hindsight, the Grievant realizes that he should have quickly written a report related to [redacted]. At the time, however, he thought he needed more information and/or evidence before he could do so, and he didn't have time to get that additional information and/or evidence. He now understands that his investigation plan was flawed – he should just have written the report based on his interaction with [redacted]. This is just a bad decision on the Grievant's part, it is not lying. It does not warrant termination.

The Grievant also did not do the best job of explaining his thought process and thinking related to the situation during the internal investigation. Again, this is not lying. And he explained the main reason why he didn't do a good job explaining his situation was that he was suffering from anxiety and personal issues.

His plan to do a further investigation of [redacted]'s situation was flawed and against protocols. But it is not lying. This is a performance problem that warrants some type of discipline less than termination. The City has not proved that the Grievant lied. Termination is too harsh a penalty.

The Grievant realizes that he made a mistake regarding the [redacted] investigation, and he has clearly learned his lesson. He did not lie – he just did not do a good job explaining himself because of the anxiety, stress, and medication issues he was dealing with at the time. He should be returned to work and made whole in all ways, subject to a lesser form of discipline issued by the Arbitrator.

DISCUSSION

This is a disciplinary case in which the burden of proof is on the City to demonstrate that the Grievant engaged in the activity alleged and that termination is appropriate under the totality of the circumstances. The Union argues that since termination is akin to capital punishment in terms of the working world, a higher standard of proof than the usual predominance of the evidence should apply. The Union cites cases in support of the “clear and convincing evidence” standard which the undersigned will utilize in analyzing the facts of this case in the context of the policies alleged to have been violated.

There is no dispute that police officers are held to high standards of ethical performance, as noted in the Law Enforcement Code of Ethics. The Grievant knew, and understood, that his position in the community and within the PAPD entailed living a “good, clean” life, not engaging in dishonesty, law-breaking, or any other form of disrupting the trust of the Department and the residents of the City of Port Angeles.

The State of Washington has adopted the seven tests of just cause to be utilized in the analysis of a disciplinary grievance. There is no dispute between the parties with respect to most of these tests of just cause, other than whether termination is the appropriate disciplinary action for the Grievant’s behavior, and the proper interpretation of that behavior. The Union does not contest that the Grievant provided an ever-changing explanation for his failure to write a report about his two contacts with [redacted]. Rather, it is the Union’s position that the Grievant did not lie, and that the PAPD cannot prove that he lied. Accordingly, the Union argues that the Grievant should be re-instated, with a lesser form of discipline for his failure to timely file a report.

To the undersigned, the issue is not the fact that the Grievant failed to file a report, but the fact that he cannot explain why he did not file the report and has provided different “reasons” on each occasion he is required to discuss it: during the investigatory hearing, when he met with the Chief, when he submitted a written statement to the Det. Sgt. who was investigating the case, at the *Loudermill* hearing, and at the arbitration hearing.

Dishonesty and lying are common words, with well-known meaning. According to dictionary.com, dishonesty means “a lack of honesty; a disposition to lie, cheat or steal.” Lie has several meanings, including:

1. a false statement made with deliberate intent to deceive; an intentional untruth.
2. something intended or serving to convey a false impression; imposture.
3. an inaccurate or untrue statement; falsehood.

One can lie, or be dishonest, without having the intent to do so.² That is, intent is not a factor to consider in determining whether the Grievant was dishonest. That is the case here. The Grievant argues that he did not intend to deceive, to lie, but that his mental condition, stress and anxiety, did not allow him to provide clear and concise responses to questions. Unfortunately, he ended up making false statements, being dishonest.

Sexual assault cases are a huge part of the caseload of detectives in the Department. PAPD policy 605.8 requires that all members of the PAPD write a report in all reported or suspected cases of sexual assault, including those incidents in which the allegations appear unfounded or unsubstantiated. The record is clear that the Grievant did not file a report about [redacted]'s allegations of having been sexually assaulted and that he did not find her statements to be credible as they were mixed in with numerous other comments and complaints that she made that he knew to be untrue. There is no question that the Grievant violated this policy and, in so doing, failed to abide by the standards of ethical conduct and took action that is contrary to good order and could reflect unfavorably on the department, a violation of Policies 322.5.9 (h) and (m).³

The Grievant is charged with violating PAPD Policy 1008.6.2 (j) which requires that “[a]ll employees shall provide compete and truthful responses to questions posed during interviews.” It is uncontested that during the investigatory interview, the Grievant stated that he did not have enough time to file the report as he was busy going from call to call. The mere fact that he added substantially to this statement at each subsequent opportunity makes very clear that the Grievant violated this policy. In addition in being untrue, the frequent additions signify that his initial responses were incomplete.

The Grievant provided many different and, to some extent, conflicting reasons for why he failed to file a report after his initial contact with [redacted]. It was his initial response of saying that he was too busy going from call to call that raised the stakes in the investigation. Initially, the only question being investigated was why was there no report, why was it late?⁴ Had the Grievant responded that he forgot about it, he would probably have received a written reprimand. But he gave an untrue and incomplete answer, contended that he was too busy to write the report, and then, on subsequent occasions, provided different and varied reasons for failing to write the report: needed more information, [redacted] wasn't

² See, also, the definition of dishonesty contained within City of Port Angeles Personnel Manual 9.03: *Dishonesty as defined by Oxford Dictionaries “Behavior or prone to behave in an untrustworthy, deceitful or insincere way.”*

³ The incident between [redacted] and [redacted] occurred on or about March 16, 2022, almost a month before the first known victim (other than [redacted]) reported being assaulted by [redacted] to the PAPD. Although it is speculative, it is quite possible that follow-up on [redacted]'s complaint could have prevented some of the additional sexual assaults by [redacted]. Prevention of crime is a primary goal of any police department, and any action or failure of action that might allow another crime to occur must be considered as reflecting adversely on the Department.

⁴ The Grievant closed each of the interactions with [redacted] with the notation “HBO”, handled by officer. In so doing, he effectively removed these calls for service from any listing of cases that required follow-up. Had he entered “report” on his mobile data terminal, he would have, eventually, been reminded that he needed to do follow-up on the cases, such as writing a report. The Grievant's explanation for why the cases were closed HBO makes little sense in the context of his supposedly having thought about filing a report after the second encounter and even his claim that he thought about entering a new case with the hospital as the location after his first encounter with [redacted].

credible, wanted to do an investigation. He went so far as to describe the nature of the investigation that he would perform, including an interview with [redacted]. The Grievant knew that his role as a patrol officer was to write an initial report, and the detectives would take it from there. They are trained in interviewing trauma victims; he is not. They are supposed to do investigations, and take whatever time is needed to do them; he is not.⁵

Though the initial investigation of the Grievant had to do with his failure to write a report, the response of being too busy resulted in an expansion of the investigation and a review, by the Deputy Chief, of all of the Grievant's available time during the relevant period, from the first interaction with [redacted] until the report was finally prepared. A review of the activity log revealed at least 49 times where the Grievant had a block of time of one hour or more in which he could have written a report. He clearly was not too busy going call to call! This was a dishonest response.

The Grievant testified that after the March 24th interaction with [redacted] he had one four-day week of work and then went on vacation for three weeks, April 2nd through April 21st. The activity log confirms the three weeks of vacation but indicates that the Grievant worked every day between March 24th and April 1st. While this might be unusual, given the normal schedule in the police department, it indicates that the Grievant had even more time to file his report than he acknowledged. It also raises additional questions about the Grievant's credibility.

There is also a dispute as to when the Grievant realized that he should file a report, or when he advised the Detective Division of the sexual assault allegation made by [redacted]. The Grievant testified that he did so on the morning of May 5, whereas the investigation showed it to be on May 10. Given that the report that was finally submitted is dated May 11, the testimony of the Grievant, together with his detailed recollection of the activity that occurred on his shift⁶ cannot be credited.

The Grievant explained his behavior as his being stressed out and anxiety ridden because of the death of two persons with whom he attended the police academy. He stated that he was trying to get his medications corrected. He also stated that he did not remember things. He contends that he did not lie, but only did not do a good job explaining himself because of the anxiety, stress, and medication issues. Unfortunately, he did not bring these issues to the attention of the Department before he violated numerous Department rules, before his behavior led the Chief and Deputy Chief to question his honesty, his fundamental ability to function as a police officer. When he was asked, at the meeting with the Chief, whether he had responded to the Det. Sgt.'s questions truthfully, he was unable to respond with an unqualified "Yes." He qualified his response by saying "I gave Sgt. [] the most truthful answer I could". In response to a follow-up, he then added "according to my recollection."⁷ These responses raised red flags for both the Chief and the Deputy Chief who was charged with reviewing the investigative report and making disciplinary recommendations.

⁵ Both the Grievant and another patrol officer testified that they sometimes played a role in investigations. Neither was able to describe a situation where they undertook the entire investigation without the knowledge and guidance of superior officers or detectives.

⁶ Activity which does not appear to be supported by the entries on the activity report.

⁷ The Grievant was not asked a similar question during the arbitration hearing.

After his meeting with the Chief, the Grievant agreed to meet again with the investigator to share with her what he had told the Chief. He chose, instead, to submit a written statement to her. This was well within his rights. However, when questioned as to why he chose to submit a statement rather than meet with the Det. Sgt., the Grievant claimed that she was unavailable. The record is clear that this was a false statement. It is not clear why the Grievant would make such a statement, but he did.

The Union argues that the Grievant should not be terminated for his behavior as this was a first offense, his disciplinary record and achievement level is exemplary. Teamsters argue that the Employer should have utilized a form of lesser discipline, that the well-established principle of progressive discipline has not been followed here. The Union points to numerous arbitration decisions in which employees found to have violated similar policies have had their terminations overturned. None of those cases are relevant to the matter at hand; none of the employers in the referenced cases were police departments. Police officers are held to a higher standard of truthfulness than employees in other industries. This is largely because they often must testify in court, under oath. A record of failing to provide complete and accurate answers, which is clearly the case herein, can lead to impeachment of the officer when called as a witness in a case the City is prosecuting. The PAPD cannot afford to have members of the force who cannot be called to testify in hearings, officers who are likely to be subject to intense cross-examination about their record of truthfulness and honesty. The Grievant himself acknowledged that “you lie, you die” is something he learned at the Academy.

The Grievant had ample time between being notified that an investigation had been opened to determine whether he had violated department policies 605.2 and 605.8 regarding the taking of and reporting of sexual assault complaints to review his actions, to prepare for the investigative interview. The time of the interview was chosen by the Grievant. He was notified the night before that hearing that he was being called to testify in court that day. He made the decision to continue with the investigatory interview. He could have requested a postponement. At the arbitration hearing, for the first time, the Grievant argued that he did not have a fair investigatory interview; that the interviewer only asked yes and no questions, that he did not have an opportunity to explain his answers. The Det. Sgt. who did the interview testified credibly that she asked both yes/no questions and open-ended questions. The Grievant refused to allow that interview to be recorded, and neither of the Union representatives who were present at the interview testified at the hearing. The Grievant’s complaint about the investigatory interview came too late in the process to be viewed as anything more than a last minute attempt to raise questions about the fairness of the interview. His failure to raise this matter earlier in the process, and failure to provide support for his allegations, must lead to a finding that the investigation was fair.

Again, much time passed between the notice of investigation and the interview. In the intervening period, the Grievant had ample time to review information and to prepare for the interview. His testimony made clear that he did not do that. He went to the interview and provided what is essentially a nonsensical and untrue response to the question of why he had not filed the report earlier: he was too busy going from call to call.

There is no question that the Grievant violated policies 605.2 and 605.8 by not filing a report about [redacted]'s claims of having been sexually assaulted. The fact that the Grievant found her not to be credible in no way allows him to not file a report.

As noted above, the failure to file the report arguably violated department policy 322.5.9 (h) and (m). The Grievant's inability to provide a rational and straightforward response to questions about his actions violates these provisions as well as policy 322.5.2(g) and 322.5.8(d). The Grievant was untruthful in the investigatory interview, and his subsequent attempts to explain himself only compounded the problem. Perhaps it was not his intention to lie, to be dishonest. Yet, he did lie; he was dishonest.

Despite the Grievant's extensive record of commendations for his ability to work with the people of Port Angeles, his being named Officer of the Year for 2021, his inspiration for differently abled persons, the evidence is clear and convincing that the Grievant failed to be honest and truthful in his dealings with the investigator in this case. The Grievant's behavior is not excused by his unreported stress and anxiety or his medication issues.⁸ There can be no progressive discipline, no lesser penalty, when a police officer cannot provide complete and honest answers to questions asked of him.

Based on the above and the record in its entirety, the undersigned issues the following

AWARD

The Employer had just cause to terminate the Grievant. The grievance is denied and dismissed

Dated at Madison, Wisconsin, this 12th day of June, 2023..

/s/

Susan J.M. Bauman

⁸ Had he reported these facts when first questioned about the report, the outcome of this case might be different as he would probably have been placed on leave until he was able to resume his duties as a police officer.