IN THE MATTER OF ARBITRATION BETWEEN

Fraternal Order of Police, Lodge #5	*	AAA Case No.
	*	
	*	01-19-0000-3389
	*	
Union	*	James T. Crone-
	*	Suspension/Transfer
	*	
AND	*	
	*	
City of Philadelphia	*	
	*	
	*	
	*	
Employer	*	

For the Union: James Glowacki, Esq.

For the Employer: Frank E. Wehr II, Assistant City Solicitor

OPINION AND AWARD

Dates of Hearing: September 12, 2019

Date of Award: October 16, 2019

Arbitrator: Samantha E. Tower, Esq.

BACKGROUND

The City of Philadelphia (City) and the Fraternal Order of Police, Lodge No. 5 (Union) are parties to a Collective Bargaining Agreement (CBA). The Union filed this grievance, alleging that Detective James Crone (Grievant) was improperly suspended for ten (10) days and improperly transferred from the Homicide Unit to the Major Crimes Unit after an [redacted] incident. (J2)

Grievant started working for the City in the Police Department (Department) approximately twenty-two (22) year ago. He was promoted to Detective in 2000 and assigned to the Homicide Unit in 2006. Grievant worked in the Homicide Unit until his suspension and transfer.[1]

The facts underlying this grievance are not in dispute. Grievant drafted a letter on a work computer during work time on [redacted] and placed it at a workstation within the Homicide Unit. Grievant testified that he taped the letter on the desk immediately above a

[1] Grievant was officially transferred and suspended in January 2019 but was temporarily transferred pending investigation in [redacted].

trash can at one of the workstations in the Homicide Unit. The letter states:

> Greetings fellow coworker,
>
> Typing my activity sheet, I couldn't help but notice the distinct odor of beef. Upon some investigation, I determined the culprit to be the rotting flesh of your rib bone dinner in the wastebasket just below this workstation. Now, in that I have a sense of etiquette and social fluency instilled in me from my upbringing by traditional, caring parents, I am offended by this. Alas, that same education prevents me from being upset with you- you can't blame a filthy savage for being a filthy savage. As I'm sure you were not burdened by significant schooling, and were birthed to an alcoholic, absent father and a rancid whore of a mother, you simply are ignorant of the fact you are little more than an upright animal. The conditions of our workplace are not glamorous or accommodating, but we can make it tolerable to be inhabited by decent, civilized human beings by following some simple rules of propriety. I am not in any manner trying to embarrass you, just the opposite; I'm here to offer my guidance and assistance in helping you make the difficult transition from a grotesque, primal animal to tolerable coworker. Please seek me out for help, in confidence of course, you don't have to live as the deplorable thing you are.
>
> Warm Regards,
>
> Jimmy Crone

(C1)

Grievant admits that he wrote and posted the letter after he found the remnants of a coworker's rib dinner in the trash under his workstation. Grievant testified that the letter was not targeted toward any specific person. He said that he did not know who left the

food in the trash. Grievant testified at length about the dirty, unhygienic atmosphere in the Homicide Unit. He explained that he had returned to the Homicide Unit after a long, hot day working at the scene of a possible homicide. Grievant said he was moved to write and post the letter on [redacted] above the trash can in an attempt to "shock" the offender into changing his or her ways. He testified that he was being a "smart ass" when he wrote the letter. (T. Grievant)

Copies of the letter were distributed more widely throughout the Unit, the letter was leaked to the media, but Grievant testified that he took neither of these actions. He testified that he thought the matter was closed after his supervisor talked to him about the letter two days after he wrote it, but his life was forever changed when the letter was in the press because now he is labeled as a racist. Grievant said that he would take that day back if he could and he is only asking that he be punished in accordance with what he did. He testified that he took great pride in being in the Homicide Unit and that he is a skilled criminal investigator with a lot of value to offer the Unit.

Grievant received the following discipline for his conduct:

- Official Reprimand for Neglect of Duty, Section 5-§011-10
- Official Reprimand for Disobedience, Section 6-§009-10
- Ten Day Suspension and Transfer for Conduct Unbecoming, Section 1-§001-10 (Unspecified)

(J2)[2]

There is no dispute that, along with being copied and posted widely throughout the Homicide Unit on [redacted], the day after Grievant posted it above the trashcan, at a workstation the letter also was leaked to the media and sent anonymously to the Police Commissioner.[3] Former Police Commissioner Ross held a press conference in which he responded to media interest in Grievant's letter, and the news media covered the matter. (C3)

There is no dispute that the Homicide Unit is a dirty and unsanitary place to work. The area is rarely cleaned and has bags of evidence, some of which contain bodily fluids, laying around. There is also no dispute that Grievant pays a lot of attention to his appearance and to keeping his surroundings clean. He is the only

---

[2] This grievance is only related to the ten (10) day suspension and transfer.
[3] The letter was placed on keyboards, hung on walls and doors, and placed in drawers in the Homicide Unit.

detective to get his car detailed and he brings disinfecting wipes to work to wipe down the shared workstations. His cleanliness is commonly known in the Homicide Unit.[4]

The Homicide Unit is primarily an open area with approximately fifty (50) shared work areas. The detectives have to share space, including computers. At any given time there could be 30-40 detectives working simultaneously because there are always detectives working overtime in the Unit.

There is no dispute that Grievant is an excellent homicide detective. Lieutenant N[redacted] D[redacted]'s unrebutted testimony is that Grievant is a very competent and thorough investigator. Grievant's September 11, 2018 Employee Assessment completed by his Commanding Officer was positive:

> Detective Crone during the time you have been under my supervision, you have performed your duties in an exceptional manner. You have been diligent in your investigations and have shown a great ability to gain the confidence of the

[4] Detective L[redacted] H[redacted] and Detective R[redacted] V[redacted] both testified that the Homicide Unit is dirty and unsanitary. They both said that Grievant is known in the Unit for his cleanliness. They also testified that they think highly of Grievant as a detective.

witnesses and the defendants, and manage to illicit their cooperation in investigations. Your knowledge and professionalism allows you to work well with your co-workers. You can be dependent upon to perform any task with little or no supervision.

(C7)

Lieutenant N[redacted] D[redacted], an administrative Ltn. for the Homicide Unit, testified that he found the letter in his office and saw the letter distributed throughout the Homicide Unit. When he talked to Grievant, Grievant admitted that he wrote the letter and posted it where the trash was left but denied that he made copies and distributed it more widely.

Ltn. D[redacted] testified that when he actually read Grievant's entire letter, he thought it was an extreme response to trash left in a workspace. He said that the letter offended many people across racial and gender lines and that Grievant's intent is not a factor in considering whether he violated any rules. The letter used inappropriate language and it was designed to shock people. Ltn. D[redacted] said that he was not personally offended but since the letter was posted in the open it is open to interpretation to people inside and outside the Unit.

Ltn. D[redacted] explained that the Homicide Unit is under a microscope with the District Attorney and the public. When an incident like this becomes public it creates a challenge because homicides can be turned over simply because there is a question about the detective. Also, an incident like this can be challenging internally because it disrupts the cohesiveness of the Unit.

Ltn. D[redacted] explained that being assigned to the Homicide Unit, the Major Crime Unit, or the Special Victims Unit is a step up from the units throughout the Department. Usually people with investigative experience are in Homicide or Major Crimes. According to Ltn. D[redacted], even though Grievant was not demoted in rank, his transfer to Major Crimes could be seen as a demotion in terms of prestige because the Homicide Unit is the pinnacle in the Department.

On cross-examination, Ltn. D[redacted] testified that he receives complaints about detectives all the time. He said that he has never received a complaint about Grievant related to racism or racial bias.

Sergeant Brent Conway, Equal Employment Opportunity (EEO) Investigator, testified that he conducted the EEO investigation into the anonymous complaint about Grievant's letter. Sgt. Conway said that he determined that the letter did not reach the level of an EEO violation but was found to be unprofessional for the workplace and in violation of Departmental Code.

Captain John Stanford, Commanding Officer of the 19th District, testified that he was on the Board for Grievant's Prediscipliniary Board of Inquiry (PBI) hearing. Captain Stanford explained that he gave consideration to the fact that Grievant was in the Homicide Unit because that Unit is one of the most prestigious in the Department. It is a Unit that is a model for other cities and the Department has to be cautious about who is assigned to the it. The Department is under public scrutiny and needs to be aware of public image. Captain Stanford testified that if the Department did not address Grievant's letter properly it would be sending a message to the citizens and victims in Philadelphia that the Department does not take it seriously.

When asked whether the uncleanliness of the work area was a mitigating factor, Captain Stanford answered that it was not. He said that many officers are unhappy about things at work but they are expected to serve the people; nor does their discontent give them a right to violate Departmental policy.

Captain Stanford testified that it was appropriate to transfer Grievant because the letter shows that Grievant lacks empathy and brings into question Grievant's ability to separate frustrations from his job. He said that the ten (10) day suspension was justified. He questioned Grievant's ability to be a police officer at all and explained that, as a detective, Grievant must be able to interact with all kinds of different people. Captain Stanford questioned Grievant's judgment for writing down these kinds of thoughts. He added that he did not get the feeling that Grievant was truly sorry for writing the letter. On cross-examination, Captain Stanford testified that he questioned Grievant's ability to maintain an appropriate level of empathy when needed because of the way Grievant reacted to his frustration by writing the letter and because Grievant did not seem to understand why his

letter could be offensive to some people when asked about it at the PBI.

The Parties presented the following stipulated issue at the hearing: Were the transfer and suspension of Grievant for just cause? And if not, what shall be the remedy?

The Parties stipulated at the arbitration hearing that if the Arbitrator finds that the transfer was not for just cause and that Grievant would be entitled to the difference in lost Overtime, the calculation will be done by the parties with the Arbitrator retaining limited jurisdiction to resolve any dispute related to the specific calculation.

UNION POSITION

The Union asserts that just cause did not exist for the suspension and transfer of Grievant. It insists that the punishment here does not fit the misconduct committed by Grievant. Grievant did not know the identity of the individual who left the food in the trash can and was not motivated by racist intent.

The Union contends that Grievant is someone who takes pride in his appearance and cares about cleanliness. The Homicide Unit is a dirty, horrible, unsanitary area that is overrun with rodents. On [redacted], Grievant spent hours at a crime scene in the heat of the summer, and it is understandable why Grievant was bothered by the smell in the trash can. Grievant took it as a sign of disrespect. The Union stresses that when Grievant took out his frustration he wrote one letter and posted it on one trash can; he did not print more copies or take the issue outside the unit. Instead, because of the way someone distributed the letter and the media coverage, Grievant experienced a massive amount of harm to his reputation and to his income in lost overtime opportunities.

The Union objects to the City's position that Grievant had a lack of understanding or recognition for how the letter could be offensive. It points out that Grievant said he understood how the letter could be offensive but denies that it was racist.

The Union also contends that the City used inappropriate tactics while preparing for the arbitration

hearing by interviewing Union witnesses. It argues that that creates a chilling effect on the testimony of the witnesses because they are also City employees. According to the Union, the City's tactics frustrate a full and fair arbitration process.[5]

The Union contends that the Arbitrator should rescind the suspension and transfer; issue a make whole remedy, and remand the calculation of Grievant's missed overtime to the Parties.

EMPLOYER POSITION

The City contends that the Union's grievance should be denied in its entirety because it had just cause to suspend Grievant for ten (10) days and to transfer him to the Major Crimes Unit. It stresses that there is no dispute that Grievant wrote the letter and that the letter contains language that is offensive to many people. Grievant's intent is irrelevant. The City conducted a

[5] The City responded at the arbitration hearing that there is nothing improper or unethical about it interviewing Union witnesses. There is nothing on the record that shows that the witnesses were pressured or threatened or that they should change their testimony.

thorough investigation and the outcome was fair and reasonable. It asserts that this is not simply about Grievant's actions of writing and posting the letter; this is about concerns about Grievant's decision-making ability and empathy.

The City acknowledges that Grievant had a difficult job in Homicide and he was an outstanding detective in that Unit; however, the City asserts that Grievant lacked the necessary judgment of a detective in the Homicide Unit when he wrote and posted the letter. Grievant is a government employee who represents the City and the Department. When an incident like this is brought to the public's attention, the public does not see just one officer; rather, it damages the reputation of the Department and everyone in the Department is damaged.

The City contends that everyone has bad days at work, but personal feelings and frustrations do not always have to be shared. When they are shared, they may be interpreted in a way that the writer may not intend. Moreover, the City is concerned that Grievant fails to realize that he set this in motion and put himself in a position to be judged when he wrote and posted the letter.

His failure to take responsibility for writing and sharing this letter constitutes another reason why the City had just cause to suspend and transfer Grievant.

The City also objects to Grievant's desire to help others become more like him. It insists that that is not Grievant's job. His job is to be a homicide detective. The City points out that even Grievant admits that his conduct was inappropriate and that his approach was wrong. The City stresses that the Department needed to transfer him out of a position where his actions could negatively affect the Department, especially in a place of high public scrutiny like the Homicide Department. The message needed to be sent that although Grievant was an excellent Homicide Detective, professionalism is valued.

The City requests that the Arbitrator enter an award denying the instant grievance in its totality and upholding the suspension and transfer.

FINDINGS

The stipulated issue to be decided is: Were the transfer and suspension of Grievant for just cause? And if not, what shall be the remedy?

A determination as to whether there was just cause for an employee's discipline must be made on a case-by-case basis, in light of the relevant facts and circumstances in a given case. The initial inquiry is whether the evidence establishes that the employee committed the misconduct with which he or she was charged at the time the discipline was issued.

Here, there is no dispute that Grievant wrote and posted the letter. Even Grievant acknowledges that the letter is offensive and testified that it was worded "too strongly." (T. Grievant) The Union argues that the discipline simply does not fit the misconduct; thus, there was no just cause for the ten (10) day suspension and the transfer.

Regarding the ten (10) day suspension, the range of discipline for a violation of Conduct Unbecoming, Section 1-§001-10, is Reprimand to Dismissal. (C7) Grievant admits that he wrote and posted the letter in an

effort to "shock" the perpetrators into changing their behavior. Even if that was his motivation, however, the unrebutted testimony of Sgt. Conway corroborates the conclusion of the EEO investigation that the letter "contained language that was inappropriate for the workplace." (C5) Moreover, even assuming that Grievant's letter was not written with a specific race or gender in mind, a reasonable person who read the letter would find at least some of its contents offensive and inappropriate for the workplace. Similarly, even if Grievant did not intend for his letter to be leaked outside the Homicide Unit, I see no sound basis on which he could have assumed he could maintain control over the potential distribution of a letter that could offend many different groups of people after he posted it in the workplace. The City has a right to expect its employees, especially those employees, like Grievant, who work with the public in the most sensitive situations, to exercise better judgment when dealing with personal frustration.

Additionally, although I think corrective discipline gives Grievant an opportunity to learn from his mistake and I do not anticipate that he will repeat the behavior at issue here, I am persuaded by the City's

concern over Grievant's refusal to acknowledge that some of the language in the letter could be construed to be directed toward a particular race or gender, regardless of whether that was his intent. Grievant appeared genuinely contrite at the arbitration hearing for writing such a "shocking" letter, but I find it troubling that he could not acknowledge that someone reading the words therein could find them racially biased.[6] At the very least, he took a substantial risk, in the context of present American society, that "savage" would give rise to a racial connotation in the mind of an objective reader of the letter. I agree with the City that Grievant represents the City and all the employees in the Police Department, and I find that the evidence establishes that he engaged in conduct unbecoming any employee in violation of Section 1-§001-10 (Unspecified). Based on the totality of the evidence in this particular record, for the reasons set forth above I find that the 10-day suspension issued to Grievant was appropriate, give the offensive nature of the letter and the lack of judgment shown by him. Accordingly,

---

[6] Instead Grievant said that someone who has "an inherent confirmation bias" could think that some of the words in the letter are racist. (T. Grievant)

I find that the City had just cause to issue a 10-day suspension for his violation of Section 1-§001-10.

Regarding the issue of Grievant's transfer from the Homicide Unit to the Major Crimes Unit, I do not find that the totality of relevant evidence sufficiently supports the City's claim that Grievant cannot continue to work in the Homicide Unit because it is a high profile, high prestige assignment and Grievant did not exercise the proper discretion that is required to be a detective in the Homicide Unit. While both Union and City witnesses testified consistently that the Homicide Unit is the most prestigious unit and is revered throughout the country, the undisputed evidence also shows that the Major Crimes Unit is another highly revered unit in the Police Department. Ltn. D[redacted] testified that individuals with investigative experience are assigned to Homicide or Major Crimes and that assignments to Homicide, Major Crimes, or Special Victims are "steps up" from the other Units throughout the Department. Grievant was not transferred to a position as a Detective in a district with no special mandate, and I am not persuaded by the evidence in this record that Grievant's placement in Major Crimes rather than Homicide protects the Department from scrutiny from

the District Attorney or the public. Moreover, while the City correctly questions Grievant's judgment with writing and hanging the letter, there is no evidence that this single incident is indicative of a pattern of poor judgment or lack of discretion that would affect his ability to perform his job duties in the future.

Further, the evidence in this record is overwhelmingly positive regarding Grievant's work in the Homicide Unit. His work in the Homicide Unit was uniformly praised by the Union and City witnesses. Grievant's Employee Assessment completed after the [redacted] incident includes his supervisor's evaluation, which states:

> Detective Crone during the time you have been under my supervision, you have performed your duties in an exceptional manner. You have been diligent in your investigations and have shown a great ability to gain the confidence of the witnesses and the defendants, and manage to illicit their cooperation in investigations. Your knowledge and professionalism allows you to work well with your co-workers. You can be dependent upon to perform any task with little or no supervision.
>
> (C7)

Captain Stanford testified that he thought the transfer was appropriate because the letter shows Grievant's lack of empathy and inability to separate his

frustrations from his work; however, unrebutted evidence in the record shows that Grievant has demonstrated an ability to gain the confidence of witnesses and defendants, as well as, an ability to elicit cooperation during investigations (C3) The fact that he has demonstrated this ability in the stressful environment of homicide investigations shows that he is capable of working with different kinds of people and is able to show empathy while performing his job. Therefore, on the totality of the evidence in this record, I do not find that the City had just cause to transfer Grievant. Accordingly, the grievance will be denied in part and sustained in part in the Award below.

AWARD

For the reasons set forth above, the grievance is denied to the extent that it alleges that there was no just cause for Grievant's 10-day suspension and sustained to the extent that there was no just cause for his transfer. The City is directed to rescind Grievant's transfer and to make him whole except for the period of his 10-day suspension. I remand to the parties the calculation of the difference in lost overtime which resulted from his transfer from the Homicide Unit to the Major Crimes Unit, and I retain

limited jurisdiction for six (6) months to resolve any dispute related to the specific calculation of overtime.

Samantha E. Tower, Arbitrator
October 16, 2019