

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of Arbitration between: *
*
CITY OF METHUEN * ARB-16-5480
*
and *
*
NEW ENGLAND POLICE BENEVOLENT *
ASSOCIATION, LOCAL 117 *

Arbitrator:

James Sunkenberg, Esq.

Appearances:

- Richard J. D'Agostino, Esq. - Representing City of Methuen
- Thomas E. Horgan, Esq. - Representing New England Police Benevolent Association, Local 117

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issue, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The City of Methuen did not have just cause to impose a five-day suspension on Dispatcher Sherri Ventrillo on June 15, 2016. The City of Methuen shall reduce Ventrillo's discipline to a two-day suspension, and make Ventrillo whole for all lost wages and benefits to which she is entitled.


James Sunkenberg, Esq.
Arbitrator
March 23, 2018

INTRODUCTION

On September 12, 2016, the New England Police Benevolent Association, Local 117 (Union) unilaterally filed a petition for arbitration with the Department of Labor Relations (DLR). Pursuant to M.G.L. Chapter 23, Section 9P, the DLR appointed James Sunkenberg, Esq. to act as a single neutral arbitrator with the full authority of the DLR. On January 26, 2018, the undersigned Arbitrator conducted a hearing in Boston, Massachusetts. On February 23, 2018, the City of Methuen (City) filed a post-hearing brief, and the Union filed a post-hearing brief on February 26, 2018.

ISSUE

The parties stipulated to the issue:

1. Whether or not the City of Methuen had just-cause to impose a five (5) day suspension on Dispatcher Sherri Ventrillo on June 15, 2016.
2. If not, what shall be the remedy?

FACTS

Grievance History

This matter arises from a June 15, 2016 Union grievance challenging the City's five-day suspension of Police Dispatcher Sherri Ventrillo (Ventrillo), a member of the Special Services Unit and sixteen-year employee of the Methuen Police Department (Department). On June 15, 2016, Methuen Chief of Police Joseph E. Solomon (Solomon) issued to Ventrillo a Notice of Discipline – Suspension (Notice of Discipline).

The Notice of Discipline described Ventrillo's alleged violations as follows:

Notice is hereby given that after reviewing reports pertaining to Incident Number, 590525, an 911 call for service which you were involved in on June 5, 2016, and taking into consideration all of the evidence, including Supervisors[] reports, I have determined cause exists that you violated Methuen Police Department Rules and Regulations and Massachusetts [Ge]neral Laws, as follows:

- I. Violation of MPD Policy and Procedure Chapter 4, (Professional Conduct and responsibilities) under Rule 5.1 Incompetence, and Chapter 7 (Orders) when you failed to properly log the event/call for service; as required by the Communications Center Dispatcher Operations Manual Section 4:5:a[.]
- II. Violation of MPD Policy and Procedure Chapter 4, (Professional Conduct and responsibilities) under Rule 5.1 Incompetence and Chapter 7 (Orders) when you failed to obtain the callers address; as required by the Communications Center Dispatch Operations Manual Section 9.1.d.
- III. Violation of MPD Policy and Procedure Chapter 4, (Professional Conduct and responsibilities) under Rule 5.1 Incompetence and Chapter 7 (Orders) when you failed to contact the victim back to advise him of the delayed response times; as required by the Communications Center Dispatcher Operations Manual Section 8:n.¹
- IV. Violation of MPD Policy and Procedure Chapter 4, (Professional Conduct and responsibilities) under Rule 5.1 Incompetence and Chapter 7 (Orders) and MPD Rule Violation 5.0 – Neglect of Duty; when you failed to provide all the pertinent information when dispatching the call for service to the officer as required by the Communications Center Dispatcher Operations Manual Section 7:1[.]

Of major concern to this department is your failure to relay the appropriate information to responding officers. Such failures not allowing officers to arm themselves with the knowledge of what is occurring to appropriately and tactically respond accordingly. [sic]

The Notice of Discipline described the incident as follows:

[On] Sunday, June 5, 2016, at 1829 hours, Dispatcher Ventrillo received a 911 call from James Geary. Mr. Geary reported to Dispatcher Ventrillo his wife had just nearly been struck by a motor vehicle in the parking lot of Market Basket, 70 Pleasant Valley Street. Mr. Geary went on to state the operator of the vehicle confronted him and attempted to start a physical altercation. Mr. Geary advised he would not fight the subject. The male then got back into his vehicle and left the parking lot. Mr. Geary could not provide a direction of travel for the vehicle but was able to provide the registration and a description of the vehicle. Mr. Geary advised he would be inside the Market Basket shopping with his wife

¹ I note that the cited provision is Section 8.2.n, not Section 8.n.

[aw]aiting the arrival of MPD. At this time, (approximately 1830 hours) Dispatcher Ventrillo dispatched Officer [V]elasquez to the scene, relating this was for a report of an erratic operator who was no longer on scene with no direction of travel. (Dispatcher Ventrillo failed to notify responding officer that the suspect vehicle attempted to start a physical altercation)[.] Officer Velasquez was subsequently detoured from responding to this call to assist another officer with a combative subject, and response to the Market Basket call was delayed until 1904 hours when Officer Aiello was dispatched as all remaining units were tied up until approximately 1903 hours. At no time between 1930 [sic] hours and 1904 hours did Dispatcher Ventrillo attempt to notify the victim that response would be delayed, or notify the Commanding Officer that the Market Basket call for service was more substantial than just an erratic operator.

Officer Aiello responded to Market Basket and was unable to locate Mr. Geary or the vehicle involved. He spoke with two employees of Market Basket about the incident but neither had seen anything. He then cleared the scene at approximately 1911 hours, approximately forty two minutes after the call was first answered. Again, at no time was Officer Aiello made aware of the substance of the call for service. Dispatcher Ventrillo also failed to update the log note noting the specifics of the call for service and also include that Officer Velasquez was rerouted to another call and nowhere in the log note had Officer Aiello's response been noted.

Finally, the Notice of Discipline assessed the following disposition:

During the week of July 25, 2016 Dispatcher Ventrillo shall be assigned to an administrative schedule. Dispatcher Ventrillo shall receive a (5) day unpaid suspension for the above noted violations. The unpaid (5) Five suspension days shall be served on July 25, 26, 27, 28, 29.

[It is] important to note that you have previously been given the following disciplinary action:

1. December 2013 – You received a two day unpaid suspension for MPD Rule Violation 5.0, Neglect of Duty and Rule Violation 9.0 Attention to duty – as a result of a failing to take appropriate action in regards to your response to Incident Number 501683.²

²On or around December 19, 2013, the City, the Union and Ventrillo entered into an agreement disposing of Ventrillo's discipline related to Incident Number 501683, a call for service involving domestic violence. The parties mutually agreed that Ventrillo violated MPD Rule and Regulation 5.0 – Neglect of Duty; MPD Rule and Regulation 9.0 – Attention to Duty; and MPD Rule and Regulation 5.1 – Incompetence. The parties agreed that Ventrillo failed to take appropriate action when responding to an October 19, 2013 call for service. For her violations, Ventrillo received two, two-day unpaid suspensions to run concurrently, which she served on December 3 and 4, 2013.

Finally, please be advised that any further incidents of this nature will be subject to further disciplinary action, up to and including possible termination of your employment. A copy of this letter is being placed in your personnel file.

On June 15, 2016, the Union filed a grievance. Solomon engaged Richard M. Stanley (Stanley), a third-party and retired police chief, to conduct the Step One disciplinary hearing, which occurred on July 27, 2016. On August 4, 2016, Stanley issued a memorandum to Solomon dismissing Violations I and II, and sustaining Violations III and IV. Stanley wrote, "In conclusion, based on my findings on each violation above I have sustained your decision to impose a five day unpaid suspension on Dispatcher Ventrillo."

By letter dated August 9, 2016, the Union advanced the grievance to Step Two. On August 26, 2016, a Step Two hearing was held, and by letter dated August 30, 2016, the City sustained Ventrillo's five-day suspension. By letter dated September 7, 2016, the Union notified the City that it would initiate grievance arbitration.

Methuen Police Department, Rules and Regulations

Chapter 4 – Professional Conduct and Responsibilities

The police are the most visible and most readily accessible representatives of local government. They respond to calls for assistance of a diversified nature and are expected to resolve a wide variety of community problems as they occur. Police employees are professionals, and, as such, are expected to maintain high standards in the performance of their duty while conducting themselves at all times, both on and off duty, in such a manner as to reflect favorably upon themselves and the Department.

Effective police operations require loyalty to the Department and to one's associates, maintaining a genuine spirit of cooperation and rendering appropriate assistance to a fellow police employee or citizen exposed to danger or in a situation where danger may be impending.

To accomplish these purposes, the professional responsibilities of police employees within their area of jurisdiction, include the following functions:

- a. The protection of life and the safeguarding of property.
- b. The prevention and control of crime.
- c. The investigation of crime, the apprehension of criminal offenders and the recovery of stolen property.
- d. The preservation of public peace and good order.
- e. The immediate response to public emergencies.
- f. The creation of a sense of safety and security for the entire community through vigilant preventive patrol and community policing.
- g. The accomplishment of all police objectives within the law and the constitutional guarantees of all citizens.
- h. The performance of such other police related services, duties, functions and responsibilities required of the employee by the Department and/or the community.
- i. The advancement of a cooperative relationship with the general public.
- j. The creation of awareness through the implementation of educational programs.

Public scrutiny, and some times public criticism, is directed not only at police performance but also at the behavior, both on and off duty, of those who deliver police services. The establishment of proper standards for police behavior must not only meet the expectations, of the citizen but also protect the rights of police employees. [sic]

The Department recognizes that its employees have certain basic personal rights and restricts those rights only when necessary to ensure the integrity of the Department and its personnel and that the highest quality of police services are maintained. Certain areas of concern and restriction are as follows:

Chapter 5 – Neglect of Duty

Employees are required to be attentive to and not neglect their sworn duty. Employees must not absent themselves from their assigned duty without leave. They must not leave their post or assignment without being properly relieved; likewise, they must take suitable and appropriate police action regardless of whether they are on or off-duty when any crime, public disorder or other incident requires police attention or service. Examples of neglect of duty include but are not limited to: failure to take appropriate action on the occasion of a crime, public disorder or other act or condition deserving attention; absence without leave; failure to report to duty at the time and place designated; unnecessary absence from one's assignment during a tour of duty; failure to perform duties or comply with any rule or regulation, general or special or other order; or failure to conform to Department policies and/or procedures.

Employees shall not be absent from work without permission or abstain wholly or in part from the full performance of their duties without permission. Employees

shall not be absent from their assigned duty without leave; leave their post, sector, community, or assignment without being properly detailed, relieved or making required notifications; fail to take suitable and appropriate police action when any crime, public disorder, or other incident requiring police attention requires such police action; fail to promptly perform, as directed, all lawful duties required by constituted authority, notwithstanding the employee's normal assignment of duties and responsibilities.

Rule 5.1 – Incompetence

No employee shall fail to maintain sufficient competency to perform his duty and to assume the responsibilities of his position. Incompetence may be demonstrated by, but is not limited to, the following:

1. A lack of knowledge of the application of laws required to be enforced;
2. An unwillingness to perform assigned tasks;
3. The failure to conform to work standards as established by job descriptions and department policies and procedures for the employee's rank, grade, and position.
4. Repeated infractions of the rules and regulations, job descriptions, or policies and procedures.

Chapter 7 – Orders

An order is defined as a command or instructional [sic] oral or written, given by one member of the Department to another member of lesser rank. It is essential to the proper operation of a police agency that employees promptly obey all lawful orders. Every employee of the Department shall promptly obey, without reservation, the rules, regulations, policies and procedures of the Department and all lawful commands of a Superior including those commands relayed from a superior by an employee of the same or lesser rank.

Methuen Police Department, Communications Center, Dispatch Operations Manual

Section 7 – Dispatcher's Role in Emergency Situations

1. Notify the Officer in Charge of the Station as to the nature of such emergency and pertinent details related thereto.
2. Stand by for further calls from cruisers, relay information as to the extent of progress and coordinate emergency information and efforts.
3. Refer all command decisions to the Officer in Charge of the Station.

Section 8 – Telephone Etiquette

1. The telephone is the most available, and therefore the most important, means of access the citizen has of obtaining the services of the Police Department. It is also the fundamental method of communications within and between each unit of the police organization and their chief means of informational messages.
2. Whenever a dispatcher answers a call, he/she is about to meet someone, to engage in a conversation as important as a face-to-face visit. He/She represents the Department. Therefore:
 - a. Answer promptly, "Methuen Police, Dispatcher (state your name), this line is being recorded, how may I help you."
 - b. Answer each call as if it were an emergency. Place yourself in the position of the one who may be ill or suffering from fear or panic. Every ring for that person is an eternity.
 - c. Speak directly into the mouthpiece. Use of "speaker phone" without handset is prohibited. This insures that you will be properly understood and will not waste time repeating questions.
 - d. Speaking in a normal tone; do not shout or swallow your words. A calm, competent, decisive voice, that is courteous, will never antagonize the caller.
 - e. Take charge of the conversation [sic], cut off any unnecessary conversation, and determine the caller's need by asking questions as to who, what, when and control, and ask the questions.
 - f. Write down all information[,] never leave anything to memory.
 - g. Avoid jargon or slang, use proper English.
 - h. Show interest!
 - i. Your tone of voice reveals your attitude, the person calling needs assistance or information that is very important to him or her.
 - j. Use the caller's proper name; make him/her feel you have a personal interest in his/her call.

- k. Try to visualize the caller. The telephone is an impersonal object, and we may tend to be curt, less courteous, or lose our temper more easily than if we were meeting the caller in person.
 - l. Know the Department's policy regarding the type [of] call to be accepted or referred within the Department or to another agency.
 - m. Make sure the information gets to the proper person. Never give the caller misinformation. Never guess, but refer them to the proper person. If requested information is not immediately available, obtain the caller's name and telephone number and return the call.
 - n. EXPLAIN WAITS! Advise callers in need of an officer, for non-emergencies, the expected time of arrival of responding personnel. Explain why it will take time to check information, etc. A person waiting on the "dead line" may become irritable and uncooperative.
 - o. Terminate calls positively and courteously. If appropriate, thank the person for calling.
 - p. All messages should be written down and left with the Officer in Charge of the Station, especially calls to detectives when nobody is in the office.
3. All calls of official police business by officers into Dispatch shall be over [the] department phone system. Personal cell phones shall not be used by dispatchers to receive/make phone calls to/by personnel.

Incident of June 5, 2016

Police dispatchers dispatch patrol officers, but the Officer in Charge (OIC) has the authority to redirect dispatched officers to higher priority calls as needed. On the evening of June 5, 2016, Ventrillo and another dispatcher were working. Sergeant Eric Ferreira (Ferreira) was the OIC, and Sergeant Delano was the Patrol Supervisor. Seven patrol officers were also working, including Officers Velazquez (Velazquez) and Aiello (Aiello).

Beginning at 18:28:29 on June 5, 2016, Mr. James Geary (Geary) called 911 and spoke with Ventrillo. Geary reported that the driver of a grey, Toyota pick-up truck with

commercial plates had not been paying attention and had nearly struck Geary's wife in the parking lot of a Market Basket grocery store on Pleasant Valley Street in Methuen (Market Basket) as Geary and his wife were walking into the store. Geary reported that the driver "had wanted to go flying out of the parking lot," was "driving like an asshole," and that the driver "made it like it was our fault." Geary further reported that the driver got out of the car twice and tried to start a physical altercation before driving off onto Pleasant Valley Street. Geary could not identify which direction the driver went once leaving the parking lot. After verifying that no one had sustained any injury, Ventrillo told Geary that she was sending an officer over to talk to Geary, and asked him his current location. Geary answered that he was going into Market Basket to pick a few things up, and would then be outside the store. Ventrillo told Geary to "stay there" and talk to the officer. The call lasted slightly less than two minutes.³

Beginning at 18:30:27, Ventrillo dispatched Velazquez, whom was in the vicinity of the Market Basket and the only officer not currently responding to another call, to Market Basket to speak with Geary.⁴ Ventrillo told Velazquez that Geary was out in front of the Market Basket, referenced the incident as a "vehicle that was driving erratic in the parking lot," and gave Velazquez a description of the vehicle, including its license

³ Ventrillo testified that Dispatch initially treats all calls as an emergency, but that by the time this call ended she did not consider this call to be an emergency because the situation had de-escalated, the driver of the vehicle had left the area, no one sustained an injury, and Geary wanted to continue shopping. During his testimony, Ferreira asserted that Geary's call was an emergency, but the City did not rebut Ventrillo's testimony with any facts.

⁴ The Department was responding to three other calls at the time of Geary's call: a business alarm, a hold-up alarm at a fast-food restaurant, and an individual in need of medical evaluation at Linton Avenue. Ferreira testified that it was a "very busy night" at the time of Geary's call.

plate. Velazquez then asked Ventrillo if the vehicle was still in the area, and Ventrillo told Velazquez that the vehicle had left the parking lot traveling in an unknown direction. Velazquez responded, "Copy." At approximately 18:31, within seconds of Velazquez responding "Copy" to Ventrillo telling him that the vehicle had left the parking lot, Ferreira redirected Velazquez to the Linton Avenue call. To Ferreira's redirection of Velazquez, Ventrillo responded, "Copy."⁵

Beginning at 19:03:44, Velazquez cleared the Linton Avenue call and advised Dispatch that he was going to Pleasant Street on a suspicious motor vehicle call. At this time, Aiello also cleared his call. Beginning at 19:04:29, Ventrillo asked Aiello, the only officer then not currently responding to a call, to "check in front of Market Basket" and see if the subject was still there. Beginning at 19:08:10, Aiello informed Dispatch that he was heading to Market Basket and asked about the vehicle he was looking for. Ventrillo responded that Geary was waiting out front, he was shopping at the Market Basket, a grey pick-up had almost struck Geary's wife before leaving the parking lot and that Geary and the driver of the vehicle had "some words or something." Beginning at 19:11:56, Aiello advised Dispatch that he did not locate Geary outside the Market Basket.

At no time from 18:31, when Ferreira redirected Velazquez, to 19:04:29, when Ventrillo dispatched Aiello to Market Basket, did Ventrillo call Geary to inform him that the Department's response would be delayed. Ventrillo testified that she did not call Geary back because she assumed that Velazquez had contacted Geary prior to

⁵ Ventrillo testified that she heard Velazquez get redirected over the radio.

Ferreira redirecting Velazquez to Linton Avenue.⁶ Ventrillo testified that if she had known that Velazquez did not make contact with Geary at the time of the initial dispatch, she would have called Geary back and informed him of the delayed response.

Investigation of June 5, 2016 Incident

Subsequent to June 5, 2016, the Department became aware of a Facebook post criticizing its response to Geary's call, and Ferreira was assigned to investigate.⁷ On June 7, 2016, Ferreira submitted a report recommending that Ventrillo receive disciplinary action for the four alleged violations with which Solomon subsequently charged her.⁸ Ferreira relied upon the Recording and log notes when drafting his report. He did not interview any percipient witnesses, but he did take the following undated statement from Ventrillo:

On 6-5-2016 I received a call from Mr. Geary. He was at Market Basket on Pleasant Valley St. He was upset that a gray pick-up truck was driving erratic and almost struck his wife. He stated that the truck left the lot in an unknown direction. I advised him to stay out front to speak with an officer. At approx. 1828 I dispatched the area cruiser to speak with Mr. Geary out front of Market Basket ref an erratic gray pick-up truck Ma co R57871 no longer in the lot. At 1831 he was called off by the supervisor to back up other units on emergency calls and left the Market Basket parking lot. Due to several ongoing calls we did

⁶ Ventrillo testified that she assumed Velazquez had contacted Geary because Velazquez said he was leaving from Market Basket and did not see the suspect vehicle. If Velazquez did make such a statement to Ventrillo, the Dispatch recording (Recording) did not audibly capture it. Ventrillo also testified that she did not become aware that Velazquez did not make contact with Geary until Velazquez cleared the Linton Avenue call and indicated that he was heading back to Market Basket. If Velazquez made this statement, the Recording also did not capture it.

⁷ The City did not produce the Facebook post that Ferreira described as a "complaint" that the Department received, and the City's witnesses could not articulate how or when the Department became aware of this Facebook post.

⁸ Ferreira testified that his report included a copy of the Facebook post, but his report does not contain or reference any such post.

not have any free units. The area cruiser was called off a short time later and was responding back to Market Basket when another transmission requested back up. The area cruiser was again called off by his superior and sent to another call. At 1701 [sic] we had an officer clear another call and was sent back to Market Basket. He was unable to locate Mr. Geary or anyone that had seen anything that had happened.

On 6-7-2016 I was advised that the log note should have been entered as a road rage and had not been updated with the outcome of the call.⁹ Due to emergency circumstances I forgot to clear the officer from the call and add unfounded at this time.

ARGUMENT

City of Methuen

The City argues that it had just cause to impose a five-day suspension on Ventrillo, and that the five-day suspension is the “appropriate remedy.” Ventrillo has a disciplinary history with the Department, and she has previously engaged in similar misconduct. On November 26, 2013, Ventrillo was found to have violated MPD Rule and Regulation 5.0 – Neglect of Duty, for failure to take appropriate police action; MPD Rule and Regulation 9.0 – Attention to Duty, for failure to be vigilant and alert in the performance of her duties; and MPD Rule and Regulation 5.1 – Incompetence, for failure to conform to established work standards. At that time, Ventrillo admitted to her misconduct and entered into an agreement with the City in which she accepted a three-day suspension.¹⁰

⁹ In her testimony regarding why she classified the incident as an erratic driver rather than a road rage incident, Ventrillo accurately noted that Geary did not say that the driver intentionally almost hit Geary’s wife. Ventrillo further testified that no Department policy or training differentiates between erratic driving and road rage, and the City did not rebut this point.

¹⁰ Ventrillo accepted a concurrent two-day suspension, not a three-day suspension.

In the instant case, on the night of June 5, 2016, Ventrillo violated Methuen Police Department Policy and Procedure, Chapter 4, regarding Professional Conduct and Responsibilities, and also violated Rule 5.1 by incompetently handling the dispatch situation. Further, Ventrillo's failure to contact the victim and advise him of a delayed response time directly violated Department Policy and Procedure, Chapter 7, because Ventrillo did not follow orders when she failed to return a call to inform the alleged victim that a police response would be delayed. Ventrillo's failure to keep the alleged victim informed is misconduct in violation of the Communications Center Dispatcher Operations Manual, Section 7.1.¹¹

Most importantly, Ventrillo failed to obey direct orders and follow required procedure when she did not properly inform the responding officer that a threat of violence was made against the alleged victim at the scene of the incident. Ventrillo's failure diminished the responding officer's ability to properly prepare in a tactical manner and approach the situation with an acute mindset that the situation may have presented a greater danger than Ventrillo related. The evidence presented at the hearing demonstrated that Ventrillo's negligence exposed the responding officer to the possibility of ambush and/or serious harm. Ventrillo had no way to know whether the alleged suspect was armed or returning to the scene with a weapon. It is imperative, under all incident circumstances, that the dispatcher provides as much information as possible regarding an incident, in order for the responding officer(s) to be as mentally and tactically prepared as possible, that he/her/they may be confronting a dangerous or malicious situation. Ventrillo's dereliction of her duty was a direct violation of MPD Rule

¹¹ The alleged violation is of Section 8.2.n, not Section 7.1.

5.0 – Neglect of Duty and indifferent disregard of her training in the requirements of the Communications Center Dispatcher Operations Manual, Section 7:1.

The City conducted itself appropriately after investigation by the Officer in Charge, Sergeant Ferreira. Although two of Ventrillo's cited offenses were dismissed after an impartial hearing, the remaining misconduct, in addition to prior misconduct, warrants the progressive disciplinary action of the five (5) day suspension. After a Step 3 Hearing, the Mayor upheld the five-day suspension.¹² As a paramilitary organization, it is imperative that all personnel follow orders and adopted policies and procedures "to the letter." Ventrillo neglected her duty to these crucial personnel standards, and the grievance should be dismissed.

NEPBA

The City did not have just cause to suspend Ventrillo for five days. The employer has the burden of proving that just cause supported the discipline, and it has not done so in this case. Under the traditional seven tests of just cause, the City has failed to meet its burden as to proof and penalty. The City did not prove that Ventrillo was guilty of Violations 3 and 4 as alleged in the suspension notice, and the degree of discipline that the City imposed was not reasonably related to the seriousness of Ventrillo's alleged offense and her record in service of the Department.

The City has failed to provide substantial or compelling evidence that Ventrillo violated Section 8.n of the Operations Manual. Under this policy, the dispatcher should provide an expected time of arrival to the caller, but it is also the policy and practice of the Department for the dispatched officer to notify Dispatch if he or she is redirected to

¹² This was Step Two, not Step Three.

another call before clearing the current call. In this instance, Velasquez never notified Dispatch or Ventrillo that he was redirected to another call. Accordingly, Ventrillo was never put on notice of any possible delays, and she therefore had no actionable information to give her reason to notify Geary of any possible delays. Upon learning that Velasquez had never spoken with Geary, Ventrillo immediately dispatched an officer to Market Basket. Because the redirected officer never notified Dispatch of his new orders per Department policy, Ventrillo is not responsible for the failure to notify Mr. Geary of a possible delay and did not violate Section 8.n.

The City has also failed to provide substantial or compelling evidence that Ventrillo violated Section 7.1 of the Operations Manual. Ventrillo satisfied all of the requirements of this policy by providing the officer with the caller's specific location, the caller's phone number, the suspect's license plate number, a description of the suspect's vehicle, and inquiring about the suspect's direction of travel when leaving the store. Ventrillo also satisfied Section 7.1 when she utilized her discretion and determined the severity and nature of the call, and when she provided sufficient information concerning the facts affecting the safety and efficiency of the call when she logged it as an "erratic motor vehicle." Based upon the information provided to her, Ventrillo determined that the call was not an emergency because there were no injuries, the suspect had left the scene, and no on-going threat existed. Although Ventrillo was advised on June 7, 2016, that the log note should have been entered as "road rage" rather than "erratic driver," those terms are nowhere defined and/or differentiated. Therefore, the definition of "erratic driver" is subjective and within the discretion of the Dispatcher. In the totality of the circumstances, logging the call as an "erratic driver" or

“road rage incident” did not diminish the responding officer’s safety, efficiency, or ability to prepare for the non-ongoing, non-emergency situation. The choice of either term to describe the non-ongoing incident would not have likely affected the urgency of the call relative to the more severe ongoing emergencies at the time. The logged information was sufficient for both Velasquez and Aiello in regards to Section 7.1 and the officers’ safety and efficiency in responding to the call. The pertinent information in this case was the non-emergency status of the call, the general details of the incident, and location and contact information of the caller, which Ventrillo provided to the officers. Because Ventrillo included all the pertinent details affecting officer safety or efficiency of the response to the call, she did not violate Section 7.1.

The five-day suspension is excessive and not reasonably related to the seriousness of Ventrillo’s alleged offenses or her discipline record with the Department. The suspension is excessive because it is disproportionate to the degree of the alleged offense when there was no proportionate change in the number of days suspended after half of the violations were dismissed. The suspension is also excessive because it is out of step with the principles of progressive discipline and more punitive than corrective when Solomon immediately suspended Ventrillo instead of working to correct her behavior for her offense of this nature.

Regarding the “log issue,” the Officer in Charge was ultimately responsible for ensuring that the call logs on June 5, 2016 were accurate prior to ending the shift. Sgt. Ferreira violated Department policy by failing to check the call logs at the end of his shift, yet he still initially charged Ventrillo with failing to properly log the call with Geary. Because the responsibility of ensuring the log notes are correct falls with the Officer in

Charge, and the Officer in Charge did not correct the log, Ventrillo is not ultimately responsible for the log discrepancies at the closing of the June 5 shift.

Ventrillo has been suspended for allegedly violating Section 7.1 and Section 8.n of the Dispatcher Operations Manual. Section 8.n applies to “non-emergencies,” and Section 7.1 applies to “emergencies.” Ventrillo can only be held accountable for violating one section, if any, because an incident cannot be an emergency and a non-emergency simultaneously. This situation was a non-emergency, and only Section 8.n would apply; Section 7.1 is inapplicable to non-emergencies.

In conclusion, the Union’s grievance should be upheld, and it should be determined that the City violated the Collective Bargaining Agreement and did not have just cause when it suspended Ventrillo. The Union requests that Ventrillo be made whole and receive an award of lost wages.

OPINION

The parties framed the issue before me as whether or not the City of Methuen had just cause to impose a five (5) day suspension on Dispatcher Sherri Ventrillo on June 15, 2016. Ventrillo violated Section 8.2.n of the Dispatch Operations Manual (Operations Manual), but the City did not prove that Ventrillo violated Section 7.1 of the Operations Manual. Accordingly, the amount of discipline is excessive, and the City did not have just cause to suspend Ventrillo for five days.

The City dismissed two of the four initial allegations against Ventrillo without reducing her initial level of discipline. The City argues that Ventrillo’s alleged violations, as set forth in Counts III and IV of the Notice of Discipline, nevertheless constitute just

cause to suspend her for five days without pay. I address the substance of each allegation in turn.

Count III alleges that Ventrillo violated Chapter 4, Rule 5.1 and Chapter 7 of the Department's Rules and Regulations when she violated Section 8.2.n of the Operations Manual by failing to contact Geary back to advise him of the delayed response time. Section 8.2.n requires dispatchers to explain waits to callers. Section 8.2.n is silent, however, regarding the affirmative obligation of dispatchers to call back the non-emergency caller when a delay arises after a dispatcher has dispatched an officer, but before the officer makes contact with the non-emergency caller. Regardless, Ventrillo's testimony that she would have called Geary back if she knew that Velazquez did not initially make contact with Geary establishes that Ventrillo understood such an obligation to exist.

Ventrillo testified that she did not know that Velazquez had not made contact with Geary when Ferreira redirected Velazquez to Linton Avenue. I do not credit this testimony because Ventrillo acknowledged Ferreira's redirection of Velazquez at the time that it occurred, and it occurred within several seconds of Ventrillo informing Velazquez that the vehicle had left the parking lot. Even if Velazquez was responding from close proximity, the redirection was nearly contemporaneous with the dispatch, and Ventrillo knew, or should have known, that Velazquez had not made contact. Ventrillo's testimony that she did not become aware that Velazquez did not make contact until he cleared the Linton Avenue call and indicated he was heading back to the Market Basket is also not credible because on the Recording Velazquez indicates

that he is going to look into a suspicious motor vehicle on Pleasant Street, not that he is returning to Market Basket.

In sum, Ventrillo acknowledged a duty to call Geary back if she knew that Velazquez did not initially make contact. Ventrillo knew, or should have known, that Velazquez did not initially make contact. Ventrillo therefore violated Section 8.2.n of the Operations Manual and the City had just cause to discipline her for this violation.

Count IV alleges that Ventrillo violated Chapter 4, Chapter 5, Rule 5.1 and Chapter 7 of the Department's Rules and Regulations when she violated Section 7.1 of the Operations Manual by failing to provide all the pertinent information to the officer upon dispatching Geary's call for service. Section 7 governs the "Dispatcher's Role in Emergency Situations." Because Geary's call was not an emergency situation Section 7 does not apply and Ventrillo did not violate it.

As the Union notes, the City alleges that Ventrillo violated Section 8.2.n, which by its own terms applies to non-emergencies, and Section 7, which by its own terms applies to emergencies. The Union argues that a call cannot be both an emergency and a non-emergency at the same time. The City did not reconcile this incongruity.

No factual evidence supports the City's position that this was an emergency situation at the time that Ventrillo dispatched Velazquez, or later Aiello. Although it is conceivable that the driver of the vehicle could have returned to the Market Basket with a weapon, there is no evidence that this possibility was more than hypothetical, and to classify a situation as an emergency based solely upon a hypothetical outcome would render nearly all situations emergencies, which is an approach that is inconsistent with the express references to emergency and non-emergency situations in the

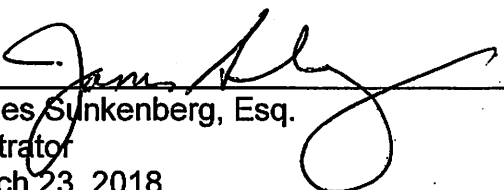
Department's Operations Manual. When Geary called 911 the driver had left the scene, no one was injured, and Geary indicated a desire to continue shopping. These facts do not support the City's position that an emergency situation existed.

In sum, Ventrillo did not violate Section 7.1 because Section 7.1 did not apply to this non-emergency situation. Because Section 7.1 forms the basis from which the City alleges that Ventrillo violated Chapter 4, Chapter 5, Rule 5.1 and Chapter 7 of the Department's Rules and Regulations, the City did not prove that she violated these provisions, and the City did not have just cause to discipline her under Count IV of the Notice of Discipline.

Having concluded that the City had just cause to discipline Ventrillo under Count III, but not under Count IV, I must consider whether just cause supports the amount of discipline that the City imposed. I conclude that it does not. The violation of Section 8.2.n is a failure of service to the public, and, although serious, is less serious than the allegations contained in Count IV, which if sustained would have implicated the safety of both the public and the responding officer. Considering the allegations, the discipline imposed, the nature of the single violation found, and Ventrillo's record of service and prior disciplinary history, I find the appropriate amount of discipline to be a two-day suspension rather than a five-day suspension.

AWARD

The City of Methuen did not have just cause to impose a five-day suspension on Dispatcher Sherri Ventrillo on June 15, 2016. The City of Methuen shall reduce Ventrillo's discipline to a two-day suspension, and make Ventrillo whole for all lost wages and benefits to which she is entitled.



James Sunkenberg, Esq.
Arbitrator
March 23, 2018