CONNETICUT STATE BOARD OF MEDIATION AND ARBITRATION
LABOR DEPARTMENT

38 WOLCOTT HILL ROAD
WESTHERSFIELD, CONNECTICUT

Wednesday, February 19, 2014

TRANSMITTAL MEMORANDUM

Windsor Locks, Town of
and
IBPO
Local 523

Case # 2012-A-0419
Koistinen, Sgt. Robert

ARBITRATION AWARD

Copies were sent to the following parties:
Elliot B. Spector, Esquire
Frederick L. Dorsey, Esquire
Steven N. Wawruck, Jr., First Selectman
Douglas A. Hall, Esquire
David C. Hebert, National Representative
Town Clerk*
File

Gerald T. Weiner, Esquire
Tanya Malse
Frank Krzywicki

*When applicable, this transmittal is filed with the town clerk in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

CONTACT PERSON

Helen E. Roy
2013-MA-0098
STATE OF CONNECTICUT
DEPARTMENT OF LABOR
STATE BOARD OF MEDIATION AND ARBITRATION

RULING

In the Matter of

TOWN OF WINDSOR LOCKS
AND

IBPO LOCAL 523

AWARD DATE: February 19, 2014

CASE NO. 2012-A-0419

HEARING DATE: JULY 10, 2013

LOCATION OF HEARING: State Board
of Mediation and Arbitration
38 Wolcott Hill Road
Wethersfield, CT 06109

APPEARANCES: Frederick L. Dorsey, Esquire (Management)
Elliot B. Spector, Esquire (Union)

ISSUE

On or about January 11, 2012, did the Town of Windsor Locks have just cause to
terminate the employment of Sergeant Robert Koistinen?

If not, what shall the remedy be in accordance with the contract?
FACTS

This matter is before the State Board of Mediation and Arbitration as the result of a grievance (Joint Exhibit 1) filed against the Town of Windsor Locks ("Town") by the International Brotherhood of Police Officers Local 523 ("Union"). The essence of the grievance asserts the Town violated the Collective Bargaining Agreement ("CBA") when the Town's Police Commission terminated the employment of Robert Koistinen ("Grievant"), a sergeant in the Town's Police Department, without just cause.

The grievance was not resolved through the CBA grievance procedure and arbitration was requested. Grievant was represented by private counsel waiving his right to Union representation. The matter was heard on three hearing dates: April 1, 2013, May 21, 2013 and July 10, 2013. The parties had the opportunity to present evidence and witnesses as well as submit post hearing briefs and reply briefs. The Panel held three executive sessions on September 18, 2013, September 30, 2013 and December 20, 2013.

In 1978, Grievant became a regular patrol officer for the Town and in 1999 was promoted to sergeant. Prior to the discipline in this grievance, Grievant had no history of discipline during his thirty year plus career with the Department.

On October 29, 2010, at approximately 11:56 p.m., several 911 calls were received by the Police Department at headquarters reporting that a bicyclist was struck by a motor vehicle. One call reported that the operator may have thrown something in the caller's yard and she believed the operator was drunk. When the calls were received Grievant and Officer Sherokow were in the dispatch area of the Police Department and both left to respond to the accident scene which was only .71 miles away (Joint Exhibit 6, Page 13). Sherokow arrived at the scene and noticed off duty officer, Michael Koistinen standing near
a vehicle. He approached Michael Koistinen and asked if he was hurt and Sherokow immediately saw a victim lying in the road. Sherokow went to the aid of the victim and had no further interaction with Michael Koistinen. Grievant arrived shortly thereafter and approached a resident of 156 Spring Street who said that the operator of the vehicle threw something in her yard. Grievant made a quick pass of the yard with his flashlight and found nothing. The woman continued to look for the object. Grievant then recognized his son, Michael Koistinen, as being the driver of the vehicle that struck the bicyclist. Grievant radioed dispatch at headquarters so the Chief, the Captain and the regional accident squad (NCMARS) could be notified. There was some additional communication between Grievant and dispatch and at approximately 12:10 a.m., Grievant left the scene with Michael Koistinen, his son, in the back seat. The woman at 156 Spring Street continued to look for the object on her lawn.

Grievant proceeded to headquarters with his son in the back seat as he believed dispatch was having difficulty notifying NCMARS and Grievant knew where their phone number was located. Grievant went into the Police station while Michael Koistinen remained in the back seat. Upon his arrival at headquarters, Grievant discovered that dispatch already made contact with NCMARS. Grievant traveled back to the scene with his son in the back seat of his vehicle and arrived at approximately 12:16 a.m. Grievant, however, again left the scene with his son in the back seat to see if he could find a special services van at headquarters which contained barricades, lights, etc. to bring back to the scene. During this time, officers were tending to the victim who had no vital signs and an ambulance arrived. There were no other officers on the scene.
Grievant entered the Police Department at approximately 12:20 a.m. and returned back to his vehicle at 12:22 a.m. as he could not find the keys to the van. During this period of time Michael Koistinen was not interviewed by any Police officers. At 12:36 a.m. an East Windsor EMT began to interview Michael Koistinen and assessed that he was an "emotional mess" (Joint Exhibit 6, Page 14). The Chief of Police arrived at the scene at approximately 12:37 a.m. and was told by Grievant that Michael Koistinen may have thrown something out of his car window and the witness was still in her yard. No one attempted to interview the witness. At approximately 12:47 a.m. sergeant Baron arrived and was told he was in charge of the investigation.

At approximately 1:00 a.m., Michael Koistinen was transported to the hospital and Grievant went off duty. By this time, there were several Police officers on scene including NCMARS. The Captain of NCMARS arrived on the scene at approximately 2:00 a.m. even though he was notified at 12:20 a.m. of the incident. Officer Dowd arrived at the scene at approximately 4:00 a.m. and informed the NCMARS team to search the yard at 156 Spring Street and within minutes of starting the search a broken glass bottle which contained beer was found and tagged as evidence. The Town engaged the Marcum Advisory Group ("Marcum") to perform an independent review of the Police response to the fatal incident involving off duty Police officer Michael Koistinen, Grievant’s son. (Joint Exhibit 6).

Michael Koistinen was charged with a number of criminal statute violations.

General order #89-01 (Joint Exhibit 5) deals with Department policy for investigations of Police personnel. Section 4 of that policy prohibits a ranking officer such as Grievant from investigating himself or anyone in his immediate family who might be involved in a situation where there is a possibility of being charged with a criminal offense
or complaint. In that instance, the next highest ranking officer is to be called to investigate the situation.

This incident created a great deal of public discussion and media coverage which to a large extent was adverse to the Department and Town. Both Michael Koistinen and Grievant were arrested. Michael eventually received a jail sentence (Town Brief, Page 10). Grievant was criminally charged with interfering with the investigation in his son’s case and he was found not guilty. (Town Exhibit 4, and Town Brief, Page 10).

After receiving the Marcum Report, acting Chief Chester DeGray recommended to the Commission that Grievant be demoted to patrol officer and suspended for 90 days. The First Selectman asked the Commission to override DeGray’s recommendation and terminate Grievant for conduct unbecoming a Police officer, neglect of duty and improper reporting and investigation of crimes. Grievant was, in fact, terminated by the Commission.

The relevant Contract and Policy provisions are:

**ARTICLE 16- DISCIPLINARY ACTION**

**Section A.**

No employee shall be discharged or otherwise disciplined except for just cause. In the event that disciplinary action is taken by the Chief of Police, the employee so disciplined or the Union may appeal said action through the grievance procedure of this Agreement. If the disciplinary action is initially imposed by the Board of Police Commissioners, then the disciplined officer or the Union may file a grievance under the grievance procedure of this contract directly with the Board of Police Commissioners, bypassing the Head of the Department.

**Section B.**

Prior to the imposition of disciplinary action of sufficient gravity so as to be imposed by the Board of Police Commissioners, the employee shall be notified of proposed disciplinary procedures and shall be offered a hearing before the Board at which he/she may be represented by counsel.
Appeal by an employee or the Union of a disciplinary decision made by the Chief or the Commission through the grievance and arbitration provisions of this Agreement, shall be the sole and exclusive avenue of appeal, notwithstanding other avenues which may be otherwise available.

GENERAL ORDER

POLICY

3. When a police officer/civilian employee or their immediate family is involved in a local situation where there is a possibility of their being charged with a criminal offense or a criminal complaint is made against them, a Sergeant shall respond and handle that situation. If there is no Sergeant on duty, it shall be the responsibility of the Shift Commander to call in a Sergeant for this purpose. The Chief of Police shall be notified of this investigation, in writing, on his next working day.

TOWN POSITION

The Town argues that Grievant neglected the following duties during his involvement in the incident in violation of Town rules, Joint Exhibit 4.

1. He gave no personal direction and supervision to two officers under his command at the scene;

2. He failed to exercise any control to avoid destroying or lessening evidence at the scene, as he failed to search for the object allegedly thrown from the vehicle;

3. He demonstrated conduct unbecoming an officer either while on or off-duty detrimental to the service. There was extreme unfavorable media coverage, as a result of Grievant’s failure to investigate and removing his son from the accident scene, thereby making his son unavailable to other officers at the scene. The Town argues that the adverse media coverage brought reproach and discredit to the Department. They argue that the public is of the opinion that Greivant’s behavior constituted a coverup and an
example of improper preferential treatment of family members.

The Town argues that Grievant did nothing with regard to the first two witnesses he encountered and took no action to avoid destroying or lessening the evidence or to prevent promiscuous handling of the same.

The Town asserts that it conducted a fair and thorough investigation by retaining an outside independent firm (Marcum) who had experience with these types of matters.

The Town concludes it is impermissible for an arbitrator to substitute his/her judgment for that of the Employer with regard to discipline and penalties should only be modified which are beyond the range of reasonableness and are unduly severe. The Town further asserts that while Grievant’s thirty four years of employment with the Town be taken into consideration, this is far outweighed by the seriousness of the offense and the negative impact it has had especially if Grievant is reinstated.

UNION POSITION

Grievant argues that the standard of just cause to discipline must be guided by the well established seven prong test:

1. Was the Employee forewarned of the consequence of his misconduct?

2. Was the Employer’s rule or order reasonably related to safe and efficient operations?

3. Did the Employer, before administering the discipline, investigate to discovery whether the Employee did, in fact, violate or disobey a rule or order?

4. Was the Employer’s investigation conducted fairly and objectively?

5. Did the investigation product substantial evidence or proof that the Employee was guilty as charged?
6. Has the Employer applied its rules, orders and penalties evenhandedly and without discrimination?

7. Was the degree of discipline reasonably related to the seriousness of the Employee's proven offense and the Employee's past record?

Grievant argues that he was not on notice that his conduct was unacceptable and would have serious consequences. The allegation that Grievant left the scene two times within the first twenty-two minutes after arriving did not warrant serious discipline. The Union argues the Town did not offer specific policies or orders related to such a discretionary act. Moreover, Grievant argues that he had no reason to believe the object the witness saw being thrown from the car would be destroyed or disappear while he was gone. Grievant asserts his concern to have NCMARS on the scene as soon as possible was a higher priority than securing the yard.

Grievant asserts that the only order applicable to this incident was 89-901 (Joint Exhibit 5) and this was fully complied with. By immediately calling for the Captain and Chief when Grievant arrived at the scene he recognized that his son could be charged with a crime and, therefore, he deferred to higher ranking members of the Police Department, i.e. the Chief and Captain.

Grievant argues that the Marcum investigation did not produce any evidence that he was guilty of violating any policy, intentionally committed any wrongdoing or that he failed to do any act justifying punishment. The only alleged errors, according to Grievant, in the Marcum report was leaving the scene and the report concluded there was no current Police Department or Town policy that was violated nor were his actions contrary to best practice of operations.
Grievant further argues that when he arrived at the scene, he looked for the object thrown from the car which was more than any other officer at the scene did. The object was ultimately found and Grievant argues that his failure to immediately find the object did not cause harm.

Grievant maintains that there was no evidence that any officers in the past were ever disciplined for discretionary decisions, let alone decisions which had no negative effect on the investigation and, accordingly, the Town did not apply its Rules, Orders and Penalties evenhandedly and without discrimination. Moreover, no other officer on the scene the evening of the incident was ever disciplined.

Grievant concludes that the town failed to sustain any offense by Grievant and the discipline imposed does not reasonably relate to the Employee’s proven actions and/or Employee’s past record which consisted of thirty-four years of service without any discipline prior to this offense.

DISCUSSION

The underlying facts of this grievance arose out of a disturbing and sad set of circumstances. An off-duty officer, Michael Koistinen, caused his motor vehicle to strike a young boy on a bicycle, resulting in fatal injury. The Panel heard numerous witnesses over three days describing the circumstances in great detail as well as having multiple exhibits entered into evidence. The Panel carefully reviewed all of the evidence and testimony and, in fact, held three separate executive sessions discussing the facts surrounding the incident.

The Panel’s jurisdiction is limited to whether the Town had just cause to terminate the employment of Grievant as a result of his actions on or about January 11, 2012, and
if not, what shall the remedy be in accordance with the contract.

The Panel has carefully reviewed the thorough and detailed report of Marcum Advisory Group (Joint Exhibit 6) who were retained by the Town to conduct an independent review of the Police response concerning the incident. Indeed, this Report contains an independent and thorough analysis of Grievant’s and other responders’ actions on the night in question.

The Marcum Report ("Report") found that Grievant should not have left the scene of the accident and should have remained until more personnel arrived. The Report goes on to say:"while clearly not in line with proper Police practices, these actions, however, did not appear to produce any negative impact on the overall investigation". (emphasis added), page 21 of the Report. Moreover, the Report did not find any Town policy that prohibits an officer from leaving the scene but concluded that it was not the best practice of operation. The Report further concluded that it was the responsibility of a Police Department Supervisor to ask questions of the operator of the vehicle after the accident. The Panel finds that this should have been done by the first responding "non-related" Supervisor or the Chief or Captain. General Order 89-01 prevented Grievant from proceeding in the matter since an immediate family member (his son) was involved. (Joint Exhibit 5)

The Report does find fault with the activities of several members of the Town Police Department as well as the commander of NCMARS. The Report also found that under the circumstances "the accident scene appeared to have been adequately preserved and protected for investigation". (Page 25). The Report concludes "however, we do not find any evidence of an overall conspiracy to protect Michael Koistinen or any information
pointing to malicious intent to not obtain testing as to alcohol". (Page 28)

The charges against Grievant can be summarized as improperly leaving the scene of the accident and failure to ask his son questions immediately after the accident. As to the first charge, the Panel is persuaded by the Report’s conclusion that the accident scene appeared to have been adequately preserved and protected for investigation. While it was wrong for Grievant to leave the scene on two occasions there appears to be no specific Police or Town policy in effect that he violated, and it was not unreasonable to drive to headquarters in order to make certain that NCMARS was promptly notified. Moreover, once he arrived on the scene of the incident, he immediately requested that senior officers, including the Chief, be notified of the accident to presumably take over the investigation.

Grievant was also charged with failure to question his son immediately after the accident. The Panel concludes that any questioning of his son on the night in question would have been a violation of Town General Order 89-01 (Joint Exhibit 5). A Town Police Officer is precluded from investigating any incident involving himself or his or her immediate family if criminal activity is potentially involved. Accordingly, Grievant, under the circumstances, and the Policy set forth in General Order 89-01, was prudent in not asking questions of his son and he further immediately phoned dispatch so that higher ranking personnel could be notified of the incident.

The Panel, however, cannot completely excuse Grievant from his actions on the night in question. While he did act appropriately in many areas, seeking assistance from senior officers, surveying the area for evidence immediately upon his arrival, he displayed poor judgment in placing his son in the back seat of his car and traveling to and from Police headquarters on two occasions over a very short period of time. The appropriate course
of action Grievant should have pursued was to make certain he had absolutely no contact with his son that evening. He needed to have other officers make the initial contact and pursue the ensuing investigation in a thorough and comprehensive fashion. Placing his son in his vehicle and leaving the scene on two occasions was inappropriate. While his actions require discipline, the termination of a thirty four year employee with absolutely no prior discipline is without just cause and unduly severe. The Town’s own independent investigation (Marcum) concluded that: “Sgt. Koistinen…appears to have made some initial sound supervision decisions”. The report further states: “we also do not take issue with the action taken of putting Michael Koistinen, the operator, in his SUV vehicle.” (Page 20).

The Panel was made aware of the adverse publicity and media coverage generated against the Town and the Police Department as a result of the investigation of this incident as argued by the Town. While mindful of this claim by the Town, the Panel has focused on whether Grievant’s conduct warranted termination. The Panel is in agreement with the conclusions reached in the Report that there was no Town policy that was violated by Grievant. He did, however, exhibit poor judgment in the particular decision of leaving the scene on two occasions and discipline is appropriate. The termination, however, was without just cause in view of all the circumstances as well as Grievant’s thirty-four years of good service.

The Panel, after a thorough review of the evidence and testimony in this matter, and by a preponderance of the evidence, unanimously finds that the Town did not have just cause to terminate the employment of Grievant on or about January 11, 2012. The appropriate discipline in this matter shall be a one year suspension without pay.
DECISION

The Panel unanimously finds that the Town did not have just cause to terminate Grievant's employment and concludes that the appropriate discipline shall be a one year suspension without pay. Grievant shall be reinstated to his prior position with back pay and benefits for the period of time beyond the one year suspension without pay.

By:
Gerald T. Weiner, Neutral Arbitrator

Frank R. Krzywicki, Labor Arbitrator

Tanya J. Malse, Management Arbitrator