

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of the Arbitration Between:

CITY OF WOBURN

-and-

NEW ENGLAND POLICE
BENEVOLENT ASSOCIATION

ARB-12-2207

Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Ellen Callahan Doucette, Esq. - Representing City of Woburn
Thomas Horgan, Esq. - Representing New England
Police Benevolent Association

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 issues, and, having studied and weighed the evidence presented, conclude as follows:

AWARD

The Employer did have just cause to terminate Mr. Charles Stock, and the grievance is denied.



Timothy Hatfield, Esq.
Arbitrator
June 25, 2014

INTRODUCTION

On September 7, 2012, the New England Police Benevolent Association (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L., Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield, Esq. to act as a single neutral arbitrator with the full power of the Department.¹ The undersigned Arbitrator conducted a hearing at Woburn City Hall on November 18, 2013.

The parties' filed briefs on December 23, 2013.

THE ISSUE

Did the Employer have just cause to terminate Mr. Charles Stock? If not what shall be the remedy?

RELEVANT CONTRACT LANGUAGE

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

Article VII – Grievance Procedure (In Part)

Section 1 - ... For purposes of a grievance processed beyond Step 2, a grievance shall be defined as a complaint, dispute or controversy between the City and the Union (and/or officer) involving only an interpretation of a specific provision of this Agreement. ...

Step 4 – If the decision of the Mayor is not acceptable to the Union, it may be appealed to the State Board of Mediation and Arbitration² within 30 days.

¹ Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations "shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws."

² See fn. 1.

Article XX – Miscellaneous (In Part)

Section 5 – Each officer shall be provided with a copy of the rules and regulations of the government of the police department. ...

Section 13 – No tenured officer shall be disciplined, demoted suspended or discharged except for just cause.

Article XXIV – Management Rights (In Part)

3 (c) Subject to applicable law and this Agreement, to select and determine the number of employees and categories of positions to be established; to determine their qualifications; to evaluate employees; to determine their duties and assignments; to direct their work; to determine the content of job classifications and job descriptions; to promulgate reasonable rules and regulations; to issue and amend and revise policies, rules, regulations and practices; to take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the City and to direct the City employees. ...

RELEVANT POLICIES AND PROCEDURES

Rules and Regulations For The Government Of The Police Department Of The City Of Woburn (In Part)

Section 1(F) – Required Conduct

12 - Reporting to Duty – All Officers shall report for duty at the time and place required by their assignment or as otherwise directed by the Chief or their commanding officer. They shall be properly uniformed and suitably equipped, ready to immediately assume their police responsibilities and shall not absent themselves from duty without leave.

...

Section 1(G) – Prohibited Conduct

1 – Conduct Unbecoming an Officer – The Commission of any specific act or acts of immoral, improper, disorderly or intemperate personal conduct which reflects discredit upon the officer himself, upon his fellow officers or upon the Police Department

2 – The commission of any felony or misdemeanor, or the violation of the criminal laws or statutes of the United States or of any local jurisdiction.

Policy and Procedure No. 25 – Use of Force (In Part)

Authorized Firearms – The standard service firearms issued by the Department are:

- Smith & Wesson Model M&P .45 Standard, .45 caliber, semiautomatic pistol
- Smith & Wesson Model M&P .45 Compact, .45 caliber, semiautomatic pistol

Officers shall only carry firearms issued by the Department while on duty and may carry this weapon while off duty. ...

**Policy and Procedure No. 54 – Uniforms
Section IV – Equipment**

All Officers assigned to regular patrol duty shall carry or have in their possession the following: ...

1. The Department issued black Safariland Model 6360-419-61/62 black safety holster containing the Officer's department-issued firearm.

City of Woburn Municipal Code (In Part)**2-73 – Uniforms and equipment**

All members of the Police Department, except plainclothes men, so-called, shall wear the prescribed police uniform and badge while on duty and shall carry a loaded firearm and police baton, as issued and authorized by the Chief of Police in accordance with the "Rules and Regulations for the Government of the Police Department of the City of Woburn", as adopted by the City Council on July 1, 1980 and approved by the Mayor on July 8, 1980.

FACTS

The Union and the City are parties to a collective bargaining agreement that was in effect at all relevant times. The City has also issued Rules and Regulations for the Government of the Police Department of the City of Woburn, as well as the City of Woburn Municipal Code.

The grievant, Charles Stock (Stock) was appointed to the position of full-time permanent Patrolman for the Woburn Police Department (WPD) on August 31, 2008.

Stock met Barbara Lee Cooney (Cooney) on November 27, 2009 and they began dating the next evening. Stock told Cooney that he was separated from his wife.³ The relationship became more serious in the summer of 2010 when they began discussing Stock obtaining a divorce so they could get married.

In November of 2010, there was an incident between Cooney's then fourteen year old son and Stock. Stock got into a verbal and physical altercation with Cooney's son and Cooney had to intervene. Cooney informed Stock that he could not put his hands on her son, at which point Stock threw her head into a window in her bedroom.⁴

In January 2011, Cooney attempted to end her relationship with Stock. Stock became so angry that he punched Cooney's car leaving a dent.⁵ Again, on February 16, 2011 there was another incident between Stock and Cooney at a Dunkin Donuts in Woburn. Cooney testified that after a heated argument inside they went outside and Stock grabbed the keys from the ignition so she could not leave. Cooney testified that upon arrival of the police (after someone in Dunkin

³ Stock at this time, and at all relevant times to this matter was married and living with his wife and daughter.

⁴ Stock acknowledged an incident with Cooney's son but claimed that he stepped into an altercation between Cooney and her son who was pushing his mother and that all three fell when he slipped on a rug. Stock denied any further altercation with the boy and denied that the altercation with Cooney afterwards in the bedroom had ever occurred. Although Cooney did not report the incident at the time that it occurred and remained in a romantic relationship with Stock afterwards, I credit her version of the incident in question, based upon her demeanor and the internal consistency of her testimony.

⁵ Stock denied punching Cooney's car in anger, instead he testified that he fell on some ice and dented her car. Based on the demeanor and deportment of Cooney's testimony, I credit her version of this event.

Donuts called 911), Stock talked to the responding officer and got him to leave the scene. Stock claims that he and Cooney were simply saying goodbye and that it was Cooney who told the police officer that nothing had happened. While it is unclear from the testimony and the police report what actually transpired outside during this incident, I take note that the parties were engaged in a heated argument of such an extreme nature that someone inside Dunkin Donuts felt the need to call 911 to help defuse the situation.

On July 28, 2011, Stock was working a detail, as Cooney attended a cookout with friends. Stock's detail ended earlier than anticipated and he contacted Cooney to finalize plans. They agreed to meet at Cooney's house and then head to John Brewers restaurant in Medford. Cooney testified that Stock was angry that she was still at the party.⁶ While at the restaurant, Cooney had two glasses of wine, while Stock drank water. Stock became angry because Cooney was talking to the bartender with whom she grew up. Stock and Cooney left the restaurant in the early hours of July 29, 2011 and began to drive back to Cooney house. While in the car Stock and Cooney engaged in an argument and Stock began punching the ceiling of the car. Cooney got out of the car and began to walk away. Stock followed her in the car and yelled for her to get back into the vehicle. When she refused, Stock got out of the car, stepped in front of her and demanded that she get back into the car, which she did. Upon re-entering the car, Stock punched Cooney with his left fist above her right eye. Stock then grabbed Cooney by her ponytail and repeatedly hit her about the face

⁶ Stock denies that he was angry. Based on the totality of the evidence and testimony presented, I credit Cooney on this point.

and neck. Cooney was able to free herself and escape from the car.⁷ Catherine Perret (Perret), an eyewitness to the incident called 911. A Medford Police Officer then met Cooney on the sidewalk as she walked toward the Medford Police station. Cooney was taken to the Medford Police station and treated by Medford EMS personnel; she declined to go to the hospital. The Medford Police Department Arrest/Incident Report indicated that Cooney had a welt on the right side of her forehead.

After the incident, Stock repeatedly called Cooney's cell phone. A Medford police officer answered Cooney's phone and informed Stock that he was to go to the Woburn Police Station and turn himself in, which Stock did.

On July 29, 2011, Stock was arraigned in Somerville District Court on the charge of domestic assault and battery. On August 2, 2011, Cooney applied for and received a Restraining Order against Stock that prohibited him from contacting her and required that he stay away from her, her home and her son. The Restraining Order ordered Stock to immediately surrender all guns, ammunition and firearms licenses. The Restraining Order has been consistently renewed and does not expire until February 17, 2015.

On August 1, 2011, Stock was placed on Administrative Leave pending the outcome of an internal affairs investigation into his arrest on domestic assault and battery charges.

⁷ Stock denies hitting or striking Cooney. Stock claims that he did pull Cooney by her ponytail but that was to stop her from exiting the car into oncoming traffic. Based on the totality of the evidence, including independent eyewitness statements and testimony presented, I credit Cooney's version of this incident.

On January 13, 2012, a hearing was held before Mayor Scott Galvin (Mayor Galvin) to consider whether Stock should be subject to discipline in connection with the issuance and extension of the Restraining Order against him, which prohibits Stock from possessing a firearm for any reason. On January 18, 2012, Stock was suspended indefinitely without pay.

On May 29, 2012, Stock entered an Admission to Sufficient Facts on the charge of assault and battery. The matter was continued without a finding and Stock was placed on probation for one year.

On June 27, 2012, Mayor Galvin notified Stock of a hearing to decide potential further discipline. A hearing was held on July 9, 2012. On July 11, 2012, Mayor Galvin terminated Stock via letter which stated in part:

A full hearing was held before me on July 9, 2012 at Woburn City Hall which you attended accompanied by your legal counsel. After careful consideration of the testimony offered under oath, documentary evidence submitted and personal statements, I find that there is just cause for termination of your employment as a Woburn Police Officer for violations of the Rules and Regulations of the Woburn Police Department, to wit:

Section I, Rules and Regulations of the Woburn Police Department
Section I., Rules and Regulations

Section F. Required Conduct, paragraphs:

9. Attention to Duty
10. Devotion to Duty
12. Reporting to Duty
25. Use of Force (requiring officer to carry a specific firearm)
54. Uniforms (requiring officer to carry issued duty weapon when on duty)

Section G. Prohibited Conduct, paragraphs:

1. Conduct Unbecoming an Officer

Municipal Code of the City of Woburn, Title 2, Section IX, Police
Department

2-73 – Requires all members of the Police Department to carry a loaded firearm as issued and authorized by the Chief of Police.

The specific reasons for your termination are based upon your actions which are documented by City Exhibits 1 through 12 (copies attached), which indicate that on May 29, 2012 in the Somerville District Court, you admitted to sufficient facts to the criminal charge of Domestic Assault and Battery for repeatedly striking a woman and causing her bodily harm. This act resulted in your being placed on probation for one year and the issuance of an Indefinite Restraining Order against you (Docket # 1110R000437) which prohibits you from possessing a firearm for any reason.

Though I understand that an admission to sufficient facts may not result in a conviction, as a result of your admitted actions and the issuance of the Restraining Order, it is clear that you engaged in conduct unbecoming a member of the Woburn Police Department, and have failed to meet the requirements and standards expected by the citizens of Woburn from individuals who hold the position of a Woburn Police Officer. Your admitted actions also violated your Oath of Office as a Woburn Police Officer and the Code of Ethics of a Law Enforcement Officer.

Stock filed a grievance on July 17, 2012, that was denied by the City at all steps of the grievance procedure and resulted in the instant grievance.

POSITIONS OF THE PARTIES

THE EMPLOYER

The City begins by stating that it had just cause to terminate Stock from his position as a Patrolman with the Woburn Police Department based upon violations of the Woburn Police Department's Rules and Regulations and the Woburn Municipal Code. Specifically, the City argues that Stock was in violation for conduct unbecoming a police officer, which was based upon an assault and battery he committed on July 29, 2011 upon his then girlfriend Cooney, and the issuance of a Restraining Order by the Somerville District Court that prohibits him

from carrying a firearm for any reason and thus prevents him from complying with police and city requirements that all members of the police department carry firearms while on duty.

The City argues that police officers must be held to a higher standard of conduct. The City cites Police Commr. of Boston v. Civil Ser. Comm'n. 22 Mass. App.Ct. 364, 371 (1986) for the concept that:

Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

In light of the high standard to which Stock must be held, the testimonial and documentary evidence presented, including Stock's admission to sufficient facts on the charge of assault and battery, the City feels that it has demonstrated just cause to terminate Stock. Stock's egregious conduct in committing an assault and battery upon Cooney certainly constitutes conduct unbecoming a police officer. In addition, the issuance of a Restraining Order that prohibits Stock from possessing and carrying a firearm also constitutes a violation of the applicable Rules and Regulations.

Conduct Unbecoming a Police Officer

Stock's May 29, 2012 Admission to Sufficient Facts on the charge of assault and battery pursuant to M.G.L. c.265, §13A is evidence of conduct unbecoming a police officer. The definition of assault and battery as determined by the application of common law is: "the intentional and unjustified use of force

upon the person of another, however slight, or the intentional doing of a wanton or grossly negligent act causing personal injury to another.” Commonwealth v. Welch, 16 Mass.App.Ct. 271, 275 (1983). Incredibly, Stock attempted to mitigate the impact of his admission by testifying at the arbitration hearing that he did not fully understand the charge against him despite being accompanied by legal counsel. Stock attributes this alleged lack of understanding to the shortcomings of the presiding judge who allegedly failed to sufficiently inquire as to Stock’s understanding of the criminal charge during the requisite inquiry or colloquy required by Rule 12(a)(3). However, on direct examination, Stock acknowledged that the judge asked him if: he understood his right to a trial; he had time to speak with his attorney; and he was admitting to sufficient facts on the charge of assault and battery. Presumably, when the judge asked Stock if he admitted to sufficient facts and Stock said yes, he could only have been referring to the one set of facts available to the assistant district attorney, which were the facts set out in the Medford Police report where Cooney stated that Stock had pulled her hair and punched her repeatedly about the face and neck.

Violation of Rules and Regulations – Carrying a Firearm

On August 2, 2011, the Somerville District Court issued a Restraining Order that has been continuously extended and now prohibits Stock from possessing or carrying a firearm until February 17, 2015. The existence of the Restraining Order and its prohibitions which are based on Stock’s actions in committing an assault and battery on Cooney results in violations of various Rules and Regulations of the Woburn Police Department. Police officers are

required under the Rules and Regulations to carry a firearm while on duty, and Stock's inability to legally carry a firearm is just cause for termination of his employment.

The City concludes that for the reasons set forth above, the arbitrator should find that there was just cause for the termination of Stock and deny the Union's grievance.

THE UNION

The Union begins with the premise that the decision to terminate Stock was the result of the City's improper decision, and was made without just cause. The Union argues that there are two proof issues in disciplinary cases. The first involves proof of wrongdoing, and the second is a question of whether the punishment assessed by management should be upheld or modified.

In disciplinary and termination cases, arbitrators have relied on the seven tests of just cause. In this case, the Union points to two areas of concern regarding the termination of Stock. First, the Union questions whether the City obtained "substantial and compelling evidence or proof that the employee was guilty as charged." Second, the Union disputes that the degree of discipline administered was reasonable as related to the seriousness of the employee's proven offense.

In this case, the City did not obtain substantial and compelling evidence that Stock was guilty of the offenses as alleged in the termination notice. The City failed to prove that Stock admitted to striking Cooney or causing her bodily harm on the night of July 28, 2011. The City has also failed to prove that by

admitting to sufficient facts on May 29, 2012, Stock was admitting to repeatedly striking Cooney causing her bodily harm. When Stock admitted to sufficient facts, the undisputed evidence shows that he was admitting only to an unwanted touching of Cooney when he grabbed her ponytail and pulled her back into the moving vehicle. There is no evidence that Stock admitted to repeatedly striking Cooney. In order to prove that Stock repeatedly struck Cooney, the City must rely on the testimony of Cooney, Stock, and Perret as they are the only witnesses who claim to have personal knowledge of events in question. Furthermore, as his admission was the basis for his termination, the City must present evidence to support their finding that he admitted to striking Cooney repeatedly.

There is no evidence in the form of testimony, transcript or otherwise offered by the City to suggest that Stock admitted to repeatedly striking Cooney as was alleged in the police report and in his letter of termination. The only evidence on the subject was offered by Stock in the form of his own testimony based on his conversation with counsel, knowledge of the law of assault and battery and the affidavit of counsel.

Similarly, as there is no evidence that Stock admitted to the striking which lead to his termination, there remains a factual dispute whether Stock struck Cooney at all. On the night in question, Cooney testified that she exited the vehicle and walked toward the Medford police station. She admitted that she never called 911. The police did not take any photographs of Cooney's alleged injuries nor did she seek medical attention. Cooney did not testify credibly about

this and other incidents. Cooney testimony about the Dunkin Donuts incident in which she claimed that Stock did all the talking and convinced the responding officer to leave, differs from the police report. The police report noted that it was Cooney who stated that she and Stock were just saying goodbye and that nothing had happened.

An employer can discipline an officer for off-duty misconduct where a workplace nexus exists. There must be some connection between the off-duty misconduct and the employer's interest that legitimizes the employer's decision to take disciplinary action. The alleged incident between Stock and Cooney took place while Stock was off-duty and the employer has failed to show by a preponderance of the evidence that a connection exists between the off-duty conduct and Stock's employment. The City failed to establish that this incident or the subsequent issuance of the Restraining Order either harmed the City's business or adversely affected Stock's ability to perform his job. Also, the City did not show that any other officers within the department were negatively impacted or now are reluctant to work with Stock.⁸ The City has failed to offer a reasonable rationale for terminating Stock based on: (a) its inability to prove the underlying facts giving rise to the issuance of the restraining order; (b) its inability to offer sufficient evidence to disprove Stock's and his criminal defense attorney Brad Bailey's recollection of events on May 29, 2012; and (c) the lack of

⁸ Stock testified at the arbitration that Judge Walker, who presided over the last hearing concerning the Restraining Order, had indicated that he would likely allow Stock to carry a firearm for work purposes if he was reinstated.

evidence establishing any harm to the City or loss of trust in Stock's abilities to perform his duties as a police officer.

The Union asserts that Stock is not guilty of misconduct and requests that he be reinstated with full back pay. However, assuming arguendo that there is a finding of misconduct against Stock, the Union asserts that the penalty of termination is harsh and does not fit the seriousness of any alleged misconduct. The Union requests that Stock be made whole and be restored to his position and receive an award of lost wages.

OPINION

The issue before me is: Did the Employer have just cause to terminate Mr. Charles Stock? If not what shall be the remedy? For all the reasons stated below, I find that the Employer had just cause to terminate Mr. Charles Stock, and the grievance is denied.

There is no dispute that as of July 11, 2012, the date of Stock's termination, he was unable to satisfy a basic requirement of his position as Woburn Police Officer, the eligibility to carry a firearm. The Restraining Order issued to Stock strictly prohibits him from carrying not only his department issued firearm as is required under the Rules and Regulations of the Woburn Police Department and the Municipal Code for the City of Woburn but any firearm. This Restraining Order has been continually renewed by the court and is in effect through February 17, 2015. The City is under no obligation to leave a patrol officer's position open for Stock in the hope that he might sometime in the future be eligible to possess and carry a firearm, a fundamental requirement for all

Woburn Police Officers.⁹ Based solely on this fact alone, the City had just cause to terminate Stock.

However, there are other criteria, which support a finding of just cause including: (a) Stock's actions on July 28, 2011, (b) his subsequent arrest for assault and battery, and (c) his pleading of sufficient facts to the charge of assault and battery in the Somerville District Court. I agree with the City's assertion that police officers must be held to a higher standard of conduct given their prominent position and responsibilities in the community. Stock's conduct on the night in question clearly is conduct unbecoming a Woburn Police Officer. I do not credit Stock's testimony about the events of that evening or his denials of striking Cooney. Regardless of the fact that Cooney declined to seek hospital treatment at the police station after the attack, the Medford Police report unequivocally states that Cooney had a welt on the right side of her forehead. The statements submitted to the police by Perret, Cooney's testimony, and the written police report all contradict Stock's testimony.

Additionally, certain other aspects of Stock's testimony also ring hollow, including his claims that he intervened in an altercation between Cooney and her son and that all three fell when he slipped on a rug and that he did not intentionally punch Cooney's car causing a dent but slipped on ice into the car.

Finally, Stock's claim that his plea to sufficient facts on the charge of assault and battery was for pulling Cooney's ponytail rather than for repeatedly

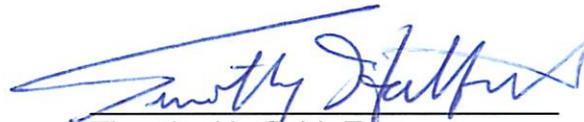
⁹ It is immaterial whether or not Judge Walker indicated that he would likely allow Stock to carry a firearm for work purposes if he was reinstated, when it is undisputed that he was not eligible to carry a firearm at the time of his termination.

striking her, is ultimately immaterial given the reasons behind my finding of just cause. Nonetheless, his assertion is still unpersuasive given the evidence and testimony presented at the arbitration hearing. Given Stock's experience and knowledge as a police officer, it is inconceivable that he was not aware that he was admitting to sufficient facts of an assault and battery based on his striking of Cooney as detailed by the Medford Police in their reports and interviews. Stock's claims to the contrary defy plausibility.

For all the reasons stated above, the grievance is denied.

AWARD

The Employer did have just cause to terminate Mr. Charles Stock, and the grievance is denied.

A handwritten signature in blue ink, appearing to read "Timothy Hatfield", written over a horizontal line.

Timothy Hatfield, Esq.
Arbitrator
June 25, 2014