



October 10, 2014

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Via U.S. Mail and Email

John J. Weathers, Attorney
Illinois Fraternal Order of Police Labor Council
974 Clock Tower Drive
Springfield, IL 62704-1304

RE: Grievance C-14-02

Dear Mr. Weathers,

On July 30, 2014, the FOP filed a grievance in response to Chief Anthony Cobb's recommendation to terminate Officer Matt Rush, which was effective August 8, 2014. Chief Cobb's July 23, 2014 recommendation to terminate Officer Rush occurred after the department conducted three investigations of allegations of misconduct. Those investigations resulted in the conclusion that Officer Rush violated the following Champaign Police Department rules: Rule 1 Section (A)(3) & (B)(1) / General Conduct & Fitness; 2(A)(1) / Communication, Information and Records; 3(B)(1) / Courtesy; 5(A)(2) / General Operations; and 5(D)(1) / Physical & Deadly Force.

The FOP filed a grievance directly with me at Step Two of the grievance process. The grievance specifically states the FOP's assertion that the termination action was in violation of Articles 31, 32, and 36 of the City's agreement with the FOP. On September 18, 2014, a meeting was held to discuss the grievance and the facts surrounding Officer Rush's conduct during the three incidents on March 3, April 11, and May 26, 2014 that formed the basis for Chief Cobb's recommendation to terminate his employment. Attending the grievance meeting were Matt Rush, Dan Bailey, Matt Roeschley, Joan Walls, Lori Bluhm, Jennifer Bannon, Lt. Jon Swenson, Chief Anthony Cobb, Tamara Cummings, you, and myself.

During the meeting, the FOP provided its position that while Officer Rush admits having violated department rules of conduct over the three incidents investigated by Champaign Police Administration, his termination is unwarranted and in violation of the FOP agreement. After my review of the incident reports, interviews, investigation reports, and incident videos, my understanding of the key facts underlying the three incidents giving rise to his termination is as follows:

Incident 1, March 3, 2014 – Traffic hit and run at 1111 West Bradley Avenue: Investigation found that Officer Rush violated Rule 1(A)(3) in failing to submit a traffic citation in a timely manner and in failing to provide the involved motorists

with necessary forms and exchange information. On May 28, Chief Cobb supported a one day suspension for this rule violation.

Incident 2, April 11, 2014 – Domestic and aggravated battery call, [REDACTED] Drive: This incident was subject to an administrative use of force review to determine whether the use of force applied by the officers on scene was reasonable, necessary, appropriate, and justified under current laws and departmental policies. This review was conducted by Lt. Tod Myers. During this review, it was determined that Officer Rush made several unprofessional and inappropriate comments, including the use of profanity toward a member of the public, which was a violation of department rules. Officer Rush also pulled/jerked the arm of the person being arrested, which did not appear to be necessary under the circumstances. Officer Rush further used force against the subject being arrested by using his knee to push her into the squad car and then applying a knee strike to the arrestee *after* she had been secured in the squad car. Officer Rush did not document the use of his knee to push her into the car or the subsequent knee strike in his incident report, which is a violation of department policy. During our meeting on September 18, 2014, Tamara Cummings, General Counsel for the FOP, indicated that Officer Rush admitted during the investigation that he did not include the knee strike in his report because he did not recall having done it.

Police Department Administration noted multiple rule violations by Officer Rush during the April 11, 2014 incident: Rule 3(B)(1)/Courtesy; Rule 5(A)(2)/General Operations; Rule 5(C)(1)/Persons in Custody; and Rule 5(D)(1)/Physical and Deadly Force. Based upon Officer Rush's disciplinary history and that this incident was a violation of four separate department rules, Chief Cobb approved a three day suspension for Officer Rush.

Incident 3, May 26, 2014 – “Assist Fire” Call, 610 Goldenvue/Criminal Damage to Property, Thornton's at 101 South Mattis: This incident was also subject to an administrative use of force review. This review was conducted by Lt. David Shaffer. The investigation concluded that while Officer Rush's initial use of force on scene was consistent with department policy, Officer Rush administered a punch to [REDACTED] *after* he had restrained [REDACTED] on the ground and positioned himself on top of her. This punch was not documented in Officer Rush's report.

During our September 18, 2014 meeting, Officer Rush claimed the motions that he made after taking [REDACTED] to the ground were an attempt to further restrain [REDACTED] left arm and prevent her from grabbing him, as she had already pinched his neck during initial contact and drawn blood. He disputed the characterization of this action as a punch.

In addition to conducting interviews of persons involved, Lt. Shaffer and Lt. Jon Swenson reviewed the in-car videos of this event multiple times during the use of force review. Both state that they are unable to explain Officer Rush's motions as anything other than a punch.

During our September 18, 2014 meeting, even Ms. Cummings, General Counsel for the FOP, stated that when she reviewed the video with Lt. Swenson on June 5, she believed at the time that the Officer had administered a punch to [REDACTED]. However, the FOP disputed at the September 18 meeting whether the use of force review was appropriate because there had been no citizen complaint, the Sergeant on scene did not report this use of force, and in the FOP's opinion, the video quality does not provide sufficient evidence to support the investigation's conclusions.

On June 20, 2014, in concluding the use of force investigation, Lt. Swenson identified five separate rule violations committed by Officer Rush: Rule 3(B)(1); Rule 5(D)(1); Rule 2(A)(1); Use of Force Policy Section 1.3.4(B)(3)(c); and Rule 1(B)(1). Chief Cobb's recommendation to terminate Officer Rush was based not only upon this incident, but upon a pattern of behavior that had been established through multiple incidents with multiple rule violations that included the unwarranted use of force and failing to provide truthful, complete, and accurate accounts of his behavior in multiple incidents.

Response to FOP Assertions that the City Violated Specific Sections of the FOP Agreement

Article 36 of the labor agreement between the FOP and the City of Champaign clearly states "the CITY has and will continue to retain the rights and responsibilities to direct the affairs of the Police Department in all of its various aspects." This includes establishing employee performance standards and holding employees accountable to those standards. I want to reiterate the point that I made during our September 18, 2014 meeting, that the Police Department and City Management have full rights – and the responsibility – to conduct regular reviews of use of force incidents. These reviews are appropriately conducted at the direction of the Chief, and do not require a citizen complaint as a triggering event. Also, even if a front-line supervisor does not raise a concern about the use of force or an officer's conduct at an incident, that does not constitute a waiver of management's right or its obligation to review officer performance to ensure that it meets the law, City and departmental policies, and the standards of conduct that we expect from our employees. Central to this obligation is the City's responsibility and commitment to the public and its safety.

In each of these three incidents, Champaign Police Administration conducted appropriate and thorough incident reviews. Interviews and facts considered were well-documented and Officer Rush was afforded every opportunity to explain and defend his conduct. Officer Rush's discipline has been administered consistently with appropriate laws, policies, and the terms of the FOP Agreement.

Article 32 states that "Discipline shall be based on just cause, administered progressively and correctly based on the individual circumstances of each case." From my review of the incident investigations, the FOP contract, and the commonly-used standards governing just cause, I conclude that the Police Administration has clearly established

just cause for discipline and applied appropriately progressive discipline based upon the facts of the incidents, the Officer's conduct, and prior disciplinary history.

The City gave Officer Rush advance notice of its policies and rules, and Officer Rush was aware of the consequences of violating department rules. All department personnel receive copies of department policies and receive training on these policies and performance standards. Further, Officer Rush had been disciplined for similar incidents in the past, and had been given specific direction with respect to use of force and appropriate documentation of all incidents.

The City's policies and rules, particularly its policies governing use of force, are targeted toward maintaining the orderly, efficient, and safe operation of the City and the protection of the public and fellow police officers.

As stated above, the City conducted a fair and objective investigation of Officer Rush's conduct in response to each of his prior disciplinary incidents. After careful consideration of the facts gathered, the department determined that it had substantial evidence that Officer Rush had violated department policies. Officer Rush's discipline has been administered without discrimination, consistent with his prior record, and based upon the seriousness of the offense.

The City administered progressive discipline in response to Officer Rush's infractions. Officer Rush had eight (8) instances of discipline issued between January 2011 and September 2013. Discipline issued for those violations include repeated counselings, letters of reprimand, and both a 2-day and 3-day suspension. The three (3) additional incidents requiring discipline that are the subject of this grievance all occurred within three months of each other, bringing the total incidents of discipline to eleven (11) in less than three and a half years.

Specific to use of force violations and violations where he failed to properly document an incident, Officer Rush was counseled in December 2012 for an incident involving a noncompliant subject; received a 2-day suspension on September 10, 2013 for multiple rule violations related to a domestic violence incident; and was issued a 3-day suspension for rule violations related to the April 11, 2014 incident. Chief Cobb's recommendation to terminate Officer Rush was made on July 23, 2014, only after the department had documented a pattern of unacceptable behavior, which included incidents related to use of force and failure to document for which Officer Rush had been disciplined in the past. The combination of the frequency of Officer Rush's rule violations and the serious nature of his use of force violations are reasonable grounds for the Chief to recommend termination in response to Officer Rush's conduct.

Article 31. Finally, the FOP's grievance alleges a violation of Article 31. Article 31 governs "Demotions and Dismissals." Article 31.2 defines "dismissal" for purposes of Article 31 as "the involuntary termination of an officer for non-disciplinary reasons, including unsatisfactory job performance."

Specifically, dismissals for unsatisfactory job performance under Article 31 relate to unsatisfactory performance in areas including "job knowledge, job aptitude, job attitude,

quantity of work, quality of work, physical or medical fitness for duty, relations with the public, relations with other officers and employees, communications skills, initiative, resourcefulness and dependability.” (Article 31.2.B.) While Officer Rush’s pattern of behavior certainly demonstrates deficiencies in several of the above areas, including relations with the public, Officer Rush’s termination was due to disciplinary reasons. Therefore, Article 31 does not apply to his termination.

Conclusions

Officer Rush has committed multiple violations of departmental rules and policies across multiple incidents since his date of hire. The two most recent incidents involve him using force that has been determined to be unjustified given the circumstances of the situations. Following the April 11, 2014 incident, he failed to completely and accurately document his actions, and admits that he did not recall administering a knee strike after the arrestee was secure in the squad car.

With respect to the May 26, 2014 incident, his explanation of his “striking motion” as an attempt to restrain [REDACTED] arms is completely implausible given the video evidence of the incident and the results of the investigation. I, too, reviewed the video multiple times and can only conclude that he punched [REDACTED] after he had taken her to the ground and was straddled across her body. There is no indication in his body movement that he is trying to avoid her reaching for him with her free arm, nor is his motion consistent with “reaching” to restrain her. He does not appear to recoil or dodge to avoid her reach; in fact, there appears to be very little movement of his head or torso. The only motion is the rapid and forceful cocking of his right arm which is consistent with a punch or a blow to [REDACTED] body. As in the April incident, Officer Rush’s use of force was unwarranted and he has failed to accurately document or recount his actions. The combination of his inexcusable use of force and misrepresentation of his actions is completely unacceptable conduct for a City of Champaign Police Officer. Such conduct puts the safety of the public and the safety of his fellow officers at risk.

After careful consideration, I do not find that the FOP has proven that the Chief’s recommendation to terminate Officer Rush is in violation of your agreement with the City of Champaign. I conclude that the Chief’s recommendation to terminate Officer Rush is appropriate. Therefore, I am denying this grievance.

Sincerely,



Dorothy Ann David
City Manager

DAD/zv