

FEDERAL MEDIATION AND CONCILIATION SERVICE
IN THE MATTER OF THE ARBITRATION BETWEEN

PALM BEACH COUNTY BENEVOLENT ASSOCIATION/ GARRY WILSON,

Union,
and

FMCS Case No: 17501-54817
Grievant: Garry Wilson
Arbitrator: Donald J. Spero

THE CITY OF RIVIERA BEACH,

Respondent.

NEW CORRECTED OPINION AND ORDER OF ARBITRATOR

The evidentiary hearing in this matter took place in Riviera Beach, Florida on October 11, 12, 13, and December 5, 2017, before Arbitrator Donald J. Spero who was duly selected by the parties through the Federal Mediation and Conciliation Service. The grievant, Sergeant Garry Wilson, was represented by Lawrence Fagan, Esq., counsel for the Palm Beach County Police Benevolent Association (the "Union"). The City of Riviera Beach (the "City") was represented by Jack I. McLean Jr., Esq. The parties had full opportunity to present evidence, examine and cross-examine witnesses and to offer argument, including post-hearing briefs.¹

Garry Wilson, who was a sergeant in the police force of the City, grieves his dismissal from that position by the City. He seeks reinstatement to his position of sergeant, back pay for lost wages and restoration of benefits.

Factual background

Sergeant Wilson grew up and spent most of his life in the City of Riviera Beach. He was hired by the City as a police officer on October 23, 1995. (Tr. 713). On February 13, 2009, he was promoted to sergeant in the police force. (Tr. 506). Sergeant Wilson's personnel file, or in police terminology his "jacket," has numerous written negative entries

¹ References to pages in the transcript of the evidentiary hearing are designated herein as "Tr." Exhibits submitted by the City are designated "City. Ex."

along with abundant entries praising his service to the public. (City Ex.'s 14 and 15). The incident that led to his discharge was an encounter with one Isaiah James that took place on August 9, 2015, at a Walgreens store at U.S. 1 and Blue Heron Boulevard in Riviera Beach.

Mr. James, along with his father, was at the Walgreens store to purchase liquor. Tr. (413). When he arrived at the Walgreens store he drove into a designated handicap space where he parked his vehicle next to a parking space occupied by sergeant Wilson's patrol vehicle. (Tr. 731-32). Mr. James' vehicle had a handicap placard appropriately displayed, hanging from his rear-view mirror. (Tr. 425). Sergeant Wilson observed that Mr. James, a large African American man [six-foot-eight, 300 pounds (Tr. 428, 429)] did not appear to him to be impaired or visibly handicapped in any respect. Sergeant Wilson followed Mr. James into the store where he questioned his entitlement to park in a handicap space. Mr. James became enraged at being questioned about his handicap status. His comments to Sergeant Wilson were peppered with expletives and profanity. At one point a lady, apparently a store employee, told Mr. James "You need to bring it down." (Tr. 240).

Subsequently, in the store parking lot. Mr. James began filming Sergeant Wilson with his cell phone. As he approached Sergeant Wilson the sergeant slapped Mr. James' cell phone. This caused the phone to drop from Mr. James hand and fall to the pavement incurring some damage. (Tr. 438).

The following is illustrative of some of the dialogue between Mr. James and Sergeant Wilson.

Mr. James: Cop right here saying I'm not disabled because I don't look disabled. I'm a God damn disabled veteran who served my country for almost ten years. He's saying -

Sergeant Wilson: You just get out of the car and throw -

Mr. James: You're not the arbitrator of my damn - my handicap. Okay, fucking United States Government. When I got blown up for my fucking country eight times and was in a coma for two fucking months, I didn't decide I was disabled. You don't get to decide if I'm disabled or not. I want your God damn name because you are harassing me on a Sunday morning just because I don't look handicapped. You don't look well enough to be an officer. With your gut

hanging over your stomach. I didn't say shit to you. I got out with my father, went in to get my God damn alcohol, minding my own business.

Run the God Damn plate. No God Damn warrant. Run the God Damn handicap sticker. I'm a fucking disabled veteran. I parked in the handicap spot because I want to park in a handicap spot. I don't need you ---whoa, whoa, whoa, whoa. You don't have any right to do that. Officer.

Sergeant Wilson: Move the camera out of my face. [This is the point at which the cell phone left Mr. James hand and struck the pavement.]

Mr. James: Don't do that. Don't ever do that. Watch them. Don't do that. Don't ever do that. Watch out. Hey, call another officer over here, right now. Call the police. Call the God damn police. You just knocked my camera. This is a \$700.00 phone. You can't knock my camera out of my thing. Send another officer over here, man. How do - why you do that? Why would you do that?

Sergeant Wilson: Where's your driver's license.

Mr. James: You want my driver's license too? You want the insurance? You can't do that man. Hey, somebody else - somebody with a cooler head come over here. You can't do shit like that, officer. Come on, now. If I did that to you, you'd take me to jail. You'd arrest me for assaulting a police officer. You Can't do that. Just because you're rattled doesn't mean you have to lose your temper like that. So you cracked my phone. Look at that. That's an \$800.00 phone you just cracked.

Sergeant Wilson: It ain't cracked.

Mr. James: It's right there. It's cracked. A crack on my screen. You just broke my phone. Just so you know, there's three screws in my leg right there. Traumatic brain injury. I'm Fucking disabled veteran I don't feel safe with you over here. All that shit from getting blown and shot at up two times in Iraq and one time in Afghanistan. Just because I don't look like a disabled person doesn't mean I'm not disabled. You don't get to decide that. Uncle Sam says I'm 90 percent disabled for the rest of my life. That's how it works. Ten years of serving my damn country. You don't get to decide that.

There's the paramedics. I'll let them know. Call somebody else, man. That's messed up. Hey, you guys. Call some - call a police officer right now. This dude over here says I'm not handicapped, then fucking - when I had my phone—he slapped my phone right out of my hand on the floor. Call somebody right now. You can still call for a police officer. [Paramedics on the scene declined to become involved in the encounter.]

Run the God damn plate. Run the God Damn plate. No God damn warrant. Run the God damn handicap sticker. I'm a fucking disabled veteran. I parked in the handicap because I want to park in a handicap spot. I whoa, whoa, whoa. You do not have any that right to do that. Officer.

Sergeant Wilson: Move the camera out of my face.
(Tr. 239 - 242).

....

Mr. James: Officer I'm a damn disabled veteran

Sergeant Wilson: "I didn't see a limp."

TR.248: Mr. James I am a disabled veteran.

Sergeant Wilson: Does that make you any better than a citizen in a wheelchair?

Mr. James: I went through the process to get the damn –

Sergeant James: Does that make you better than a citizen or an old lady in a wheelchair that really need that place?

Mr. James: So, I Don't really need it?

Sergeant Wilson: I'm just saying you walked in.

Mr. James: So I don't really need it?

Sergeant Wilson: I'm just saying

Mr. James: I walk with a limp and a screw in my leg.

Sergeant Wilson: I didn't see a limp. I didn't see a limp.

Mr. James: You saw me walk a short distance.

Sergeant Wilson: I got screws in my legs.

Mr. James: That's the whole purpose.

Sergeant Wilson: There's screws in my legs.

....

Sergeant Wilson: I've got screws and pins in my legs.

Mr. James: You saw me walk a short distance.

Mr. James: Put my identification up.

Sergeant Wilson: Do what you want to but you, but you still in the wrong.

Mr. James: How am I in the wrong? I have a —

Sergeant Wilson: You can't walk. There's people out there who can't walk.

Mr. James: I'm a U.S. Citizen.

Sergeant Wilson: So that makes you better than an old lady who can't walk?

Mr. James: I'm not saying there's anyone better than me, officer. I'm just saying I walk with a limp.

....

Mr. James: I'm not saying there's anyone better than me officer. I'm just saying I walk with a limp. That's the sole purpose.

Sergeant Wilson: I'm just saying what makes you better - oh, I'm a soldier.

Mr. James: I am.

Sergeant Wilson: Okay. Good. Good. Good. But what makes you better -

Mr. James: I'm not saying there's anyone better than me officer. I'm just saying I walk with a limp. That's the sole purpose.
Sergeant Wilson: I'm just saying what makes you better - oh, I'm a soldier.
Mr. James: I am.

Sergeant Wilson: Do that make you any better than a citizen in a wheelchair?

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Sergeant Wilson: I'm just saying you walked in.

Mr. James: I walk with a limp and a screw in my leg.

Sergeant Wilson: I didn't see a limp. I didn't see a limp.

Mr. James: You saw me walk a short distance.

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Mr. James: That's the whole purpose.

Sergeant Wilson: There's screws in my legs.

.....

Mr. James; I am a disabled veteran.

I'm a US citizen.

Sergeant Wilson: Ok. So that makes you than an old lady that can't walk.

Mr. James: I'm not saying there's anyone better than me officer. I'm just saying I walk with a limp. That's the sole purpose.

Sergeant Wilson: I'm just saying what makes you better - oh, I'm a soldier.

Mr. James: I am.

Sergeant Wilson: Okay. Good. Good. Good. But what makes you better –

Pursuant to a call to the police department by Mr. James, Sergeant Frank La Porta arrived at the scene. (TR. 371, 442). He testified, believably, that he was concerned with calming Mr. James down. (Tr. 80, 81). It has been Sergeant La Porta's experience that citizens are displeased when he questions their handicap placards. (Tr. 379-80). Sergeant La Porta was able to calm Mr. James down. (Tr. 464, 468,). However, it was necessary for Sergeant La Porta to tell Mr. James not to cuss at him. (Tr.254-55). Mr. James replied that soldiers cuss. Mr. James was satisfied with Sergeant La Porta's dealing with the situation. He described Sergeant La Porta as a "good officer." (Tr. 473).

Mr. James revealed in credible testimony that in combat he incurred traumatic brain injury. His lower body is completely crippled from being blown up. (Tr. 415). He suffers from

PTSD. He has a 90% disability rating. (Tr. 416). In the course of his military service Mr. James had three tours in combat totaling 39 months in combat. (TR. 452). He was shot twice in Iraq and once in Afghanistan.

Mr. James posted the video he made with his camera on YouTube (Tr.65-68, 474). The posting attracted a great deal of negative publicity sharply critical of Sergeant Wilson and the Riviera Beach police department in the treatment of a veteran who was disabled due to severe injuries received in military combat. (Tr. 65, 66, 497). Assistant Police Chief Michael Madden testified believably that there were hundreds of comments made on the Department's social media page expressing displeasure in the treatment of disabled veterans. (Tr. 65, 66). Police Chief Clarence Wilson testified that there were comments expressing outrage at the treatment of a disabled veteran. (Tr. 497). This had a substantial impact on operations and ability to communicate with the public. (Tr. 498). The comments question the Department's ability to conduct a fair investigation, apply due process procedures and why Sergeant Wilson was not terminated. The Chief provided no specific examples of occurrence of these problems.

The state's attorney brought a criminal action against Sergeant Wilson charging him with battery and criminal mischief. The charges were tried before a jury. Sergeant Wilson was acquitted of the battery charge but the jury found him guilty of the criminal mischief charge. (Tr. 266). The court withheld adjudication on the criminal mischief charge. (Tr. 267, City Ex. 4). As a result, Sergeant Wilson has no criminal conviction on his record.

Sergeant Wilson was notified of the termination of his employment by Riviera Beach City Manager Danny D. Jones in a letter dated March 1, 2017. (City Ex. 17) In the letter, Mr. Jones wrote:

Your conduct on August 9, 2015, was entirely inconsistent with the Department's expectations of its officers – particularly those in a supervisory role. During this encounter, you failed to conduct yourself with professionalism and to set a good example for other officers, as well as the public. Your conduct was also criminal in nature given the jury's verdict of guilty as to the Criminal Mischief count - notwithstanding the Court's decision to withhold adjudication of guilt.

Your conduct brought local, national and international embarrassment to the Department. Your conduct and poor judgement eroded the public's confidence in law enforcement in this community and

contributed to worldwide condemnation of this Department as your actions were flashed across the globe.

...
Your employment history following your promotion to sergeant is replete with serious performance gaps, demonstrating a complete lack of leadership and a failure to respond to training.

Mr. Jones letter cited Sergeant Wilson with the following violations

Riviera Beach Department Rules and Regulation, Section IV, part 2.9 – Conduct toward the Public; Section IV, Part II, 5.1 - Noncriminal violations 5.5 – Commission of Moral Character Offenses Which Would Lead to Decertification by the Florida Police Standards and Training and Section IV, Part VII 7.1 – Maintain Job Knowledge and Skills.

The foregoing sections are reproduced below (see City Ex. 8):

5.1 - Noncriminal violations

Sworn personnel shall adhere to all federal, state and local laws and ordinances, including those punishable by no other penalty than a fine, forfeiture, or other civil penalty. If the member brings the Department into disrepute or otherwise impairs the efficiency or operation of the Police Department, and/or has an adverse effect upon the future performance of duties by the personnel concerned. (Included, but not limited to, traffic infractions.) A violation is subject to reprimand, suspension, and/or demotion or dismissal.)

5.5 - Commission of Moral Character Offenses Which Would Lead to Decertification by the Florida Police Standards and Training

Riviera Beach Police Department personnel shall adhere to all federal, state and local laws, and shall not commit any act or crime defined by the Florida State Statutes as a misdemeanor, first or second degree, whether otherwise impairs the operation or efficiency of the Police Department.

Part VII, 7.1 - Maintain Job Knowledge and Skills

Riviera Beach Police Department personnel are required to maintain job knowledge and skills required for the performance of official duties. Riviera Beach Police Department personnel shall maintain and demonstrate proficiency in required interpersonal skills, and use of Department equipment and vehicles. Personnel shall maintain and demonstrate their knowledge of the law and criminal procedure and shall maintain proficiency in the care and use of firearms, demonstrating proficiency in accordance with standards and qualification requirements for sworn personnel. Riviera

Beach Police Department personnel may be tested for proficiency as provided in the Standard Operating Procedures, with each failure to qualify constituting an additional defense. Failure to maintain job skills shall result in counselling, instruction, and training and may also result in a suspension. Repeated failure to maintain necessary job skills after counselling and instruction shall result in increasing the severity of disciplinary actions. (A violation is subject to reprimand, suspension and/or demotion or dismissal.)

Sergeant Wilson recognizes the impropriety of his exchange with Mr. James. He conceded that he "I shouldn't have tongue 'wrassled' with him." (Tr. 746). ... I shouldn't have been verbally going back and forth." (*Id.*) ... I realized that I made a mistake, you know, in the ending of my career". (Tr. 750-51). He is embarrassed that he "put the City out." (Tr. 824). "I do not like embarrassing my City." (*id.*) "it will never happen again, in my life again" (Tr. 825).

Issue to be decided

Was Sergeant Wilson disciplined for just cause?

Position of the City

Sergeant Wilson's encounter with Mr. James demonstrated lack of proper control. He failed to follow proper Departmental procedure in handling his doubts about the propriety of Mr. James entitlement to a handicap placard. The City points to many instances in which his unsatisfactory conduct was reduced to writing and became a part of his jacket. (See for examples City Ex.'s 14 C through 14 G). Testimony established intemperance in his dealing with superiors. He walked away from Major Spencer Rozier, his supervisor, while the Major was trying to counsel him. (Tr. 324-25). It appeared to the Major that he would become physical. Another sergeant pulled Sergeant Wilson away from the Major.

The City argues that the police officers identified as retaining their positions after committing serious acts of misconduct are grounded in facts not comparable to Sergeant Wilson's inappropriate behavior.

Sergeant Wilson's termination was recommended by Police Chief Clarence Williams, who is the same individual who recommended him for promotion to Sergeant. (Tr. 484-85).

Position of the Union

Sergeant Wilson's supervisor was Major Spencer Rozier who wrote him up for trivial matters including his wearing a "soul patch" goatee, inability to scan a document with the copier and a matter regarding a report relating to a dead cat. Major Rozier and Captain Freeman were out to "get" Sergeant Wilson. They unfairly targeted him for discipline. The Union argues that Sergeant Wilson was never given proper training on how to spot a handicapped individual or the relation of one's appearance to handicap. The Union points to the rage and verbal tirade of Mr. James.

Sergeant Wilson slapped the phone in Mr. James' hand as he felt threatened by this large man approaching him. The Union points out that Sergeant Wilson was found by a jury to be not guilty of the criminal charge of battery. The guilty finding on the criminal mischief was not adjudicated on by the court and did not result in a conviction.

According to the Union the penalty of discharge was excessive discipline in light of the facts of the case.

The Union argues that the City's investigation of the incident was flawed. Captain Tanzy Vassell, who authored the Internal investigation ("IA") report relating to the August 9, 2015, incident (City Ex. 6), did not interview Mr. James' father or other potential witnesses, including the clerk in the store, patrons in the store and the paramedics. The only witnesses interviewed by Captain Vassell were Sergeant La Porta and Sergeant Wilson. (Tr. 258). The Union points to others who committed serious acts of misconduct who were not disciplined as severely as Sergeant Wilson. The Union refers to Sergeants Mike Dodson, Tony Williams, Peter Modica and Nate Gordon, all of whose violations were comparable to Sergeant Wilson's.

The Union submits that the penalty of discharge was excessive discipline in light of the facts of the case. Sergeant Wilson had not been previously disciplined for like conduct. Progressive discipline would have been more commensurate with the alleged violation. The Union prays that Sergeant Wilson should be reinstated and made whole for lost wages and benefits.

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Findings of the Arbitrator

The individuals advanced as receiving lesser discipline for serious infractions are not suitable comparators for a finding of disparate treatment in assessing Sergeant Wilson's discipline.

Testimony showed that Sergeant Tony Williams, who had been drinking while off duty, stopped by a house party and urinated in front of the partygoers, including children. He was not dismissed. (Tr. 622). His discipline included an alcohol abuse course. (Tr. 651). Sergeant Dodson, while off duty and at his mother's house, falsely reported that he was injured during a home invasion. (624-25). His wounds were actually self-inflicted. Sergeant Modica slapped a female officer on the buttocks. He was not terminated. (Tr. 625-26). He is still a sergeant. Nate Gordon was accused of tipping people who were serving drug sentences. (Tr. 626). He received a five-day suspension. He is currently a captain.

Unlike Sergeant Wilson, none of the purported comparators was disciplined for conduct in dealing with an individual in the public who was questioned about an alleged infraction. None of the incidents involved in their discipline brought about negative public scrutiny.

Sergeant Wilson's qualifications to serve as a police officer.

Several members or former members of the Riviera Beach Police Department who had familiarity with Sergeant Wilson's work testified as to their views about Sergeant Wilson's qualifications as a police officer. The City presented witnesses who viewed him as not properly retained in the Department. Assistant Police Chief Michael B. Madden opined that Sergeant Wilson lacked the discretion and judgement to perform the job of a police officer. (Tr. 79, 80). He criticized his demeanor in dealing with the public. (Tr. 86). Retired Police Major Alexander Freeman, who had been Sergeant Wilson's supervisor, found him to be substandard. (Tr. 98). He was critical of the sergeant's being found sleeping in the parking lot, unprofessional dress, at times aggressiveness and use of profanity. (Tr. 98, 99, 102, 108.) On one occasion he approached Major Freeman in a threatening manner and had to be pulled away by Sergeant Patterson. (Tr. 103-04).

Major Rozier testified that he found Sergeant Wilson to be negative and argumentative. (Tr. 318-19). He argued every time the Major gave him instructions. He spoke to Sergeant Wilson about sleeping in his vehicle, sleeping during lineup, grooming

and, showing up on time. (Tr. ,98, 99, 102.322, 358). He considered Sergeant Wilson to be aggressive. (Tr. 102).

However, even some of the city's witnesses had positive comments on Sergeant Wilson's abilities and past service. Major Freeman noted that Sergeant Wilson was great on the burglary task force. He was a "pit bull" in going after suspects. He commented that they solved a lot of crimes. (Tr. 120-21). Major Rozier testified that Sergeant Wilson was capable of doing the work of a sergeant. (Tr. 340). He had the potential to do the job. The Major stated that whenever a critical incident such as a shooting took place you could count on Sergeant Wilson to be present and do his job. (Tr. 355). Sergeant La Porta, who worked with Sergeant Wilson for many years, ranked him as among the top sergeants he worked with. (Tr. 385-86).

Sergeant Peter Modica found him to be reliable, passionate and well rounded. (Tr. 404). He also observed that he had seen plenty of guys sleeping in lineup. (Tr. 405).

Sergeant Wilson's witnesses praised his performance and his abilities. Assistant Chief David Harris, who retired from the police force in 2014, found him to be a streetwise police officer who could handle himself. (Tr. 568). He had observed Sergeant Wilson professionally in violent situations. (Tr. 569). He got his job done. (Tr. 569, 574). As a homicide detective, he was a "home run hitter." (Tr. 571). He also agreed that the Isaiah James incident was a public relations nightmare. (Tr. 583). He further emphasized the need for an officer to deescalate a hostile situation, to bring it to a level of calmness where you both can converse on the same level. (Tr. 605). But he was critical of the dismissal of an officer with a 21-year distinguished career for a ten-minute incident. (Tr. 620).

Retired Sergeant Randy Edwards testified that he regards Sergeant Wilson as a great supervisor. (Tr. 675). He stated that Sergeant Wilson is compassionate. He purchased school supplies for children who could not afford them. He found Sergeant Williams to be competent, conscientious and a good police officer. (Tr. 708). He admired Sergeant Wilson's involvement with the community such as coaching basketball and football. (Tr. 708-09).

Sergeant Wilson's disciplinary history Involves no incidents involving hostile interactions with civilians.

The written negative memorandums in Sergeant Wilson's jacket relate to poor interactions with his supervisors, unkempt appearance, missing court dates where he was to appear as a witness, failure to complete required training, failure to provide a citizen with a report regarding a strangled cat, insubordination and absence from work without leave. (See City Exhib14 C through 14 J). Chief Williams could provide no instances where Sergeant Wilson received discipline for actions comparable to his encounter with Mr. James or violence in dealing with civilians. (Tr. 247-48). These infractions are not to be treated lightly but they do not show any history of hostile interactions with civilians to indicate that the incident with Mr. James suggests a history of poor dealing with the public or a likelihood that incidents like the August 9, 2015 episode with Mr. James are likely to reoccur. It was and is up to the City to deal with those incidents with such progressive discipline as it deems appropriate. These incidents are inappropriate considerations in the discipline administered for the Isaiah James incident.

In addressing the negative material in his jacket Sergeant Wilson was highly critical of the conduct and abilities of Major Rozier and Captain Freeman who wrote the negative materials in Sergeant Wilson's jacket. First it must be noted that the actions of the supervisors were not grieved by Sergeant Wilson. Therefore, they stand as written. His dismissal is not a forum for challenging those entries. Neither is it a referendum on the competence of those supervisors. It is also significant that in his testimony he attacked such irrelevant materials.

It was clearly established that as an employee he was contentious, argumentative and purely a pain for his supervisors to manage. However, these faults are not appropriate in considerations in assessing his confrontation with Mr. James. They were more appropriately considered contemporaneously and might be considered in discipline involving like conduct. They have already been dealt with.

In contrast to the negative materials about Sergeant Wilson's conduct his jacket is replete with written commendations and comments praising the services he has rendered to citizens. (see City Exhibit 15). These include recognition of his for his work in the apprehension of three violent drug suspects, his posing a taxi cab driver to solve a string

of cab driver robberies, assistance to numerous public entities and the care he rendered when a citizen's father was found dead. These materials, while they do not justify misconduct, show Sergeant Wilson to be a dedicated public servant as well as caring in his treatment of citizens.

The City has not proven violations of all of the regulations cited in City Manager Jones' letter notifying him of his dismissal.

5.1 – Noncriminal violations

This regulation is a catch-all. It penalizes violations of laws and impairing the operation of the Department. Neither of these infractions were shown to have occurred. No evidence was presented by the City to show any impairment to its operation by Sergeant Wilson's actions. Chief Williams' testimony in response to leading questions that Sergeant Wilson's conduct impaired the operations of the Department. He provided no persuasive examples of such impairment. (see Tr. 498-99 below):

Q. [By City's counsel]: Did this video – this conduct which led to the video bring disrepute on the department in your opinion?

A. [By Chief Williams: Yes, it did without a doubt.

Q Did it impair your operations in terms of how you carried out in terms of how you carried out the business of notifying the public?

A It had substantial impact on our operations and our abilities to communicate effectively with the public.

This dialogue does not convince the Arbitrator that the functions of the Department were impaired by the notoriety following the publication of Sergeant Wilson's confrontation with Mr. James.

There was no evidence introduced by the City that indicated Sergeant Wilson violated the law. He was acquitted by the jury of the battery charge and the court effectively nullified the jury verdict finding him guilty of the criminal mischief charge. However, the regulation does bar bringing the Department into disrepute.

Clearly there was publicity that reflected negatively on the Department. However, the provision is overly broad. It would cover any act which received negative notice. Such negative actions publicly expressed are a hazard of running a police department. This could occur any time there is a police shooting, whether justified or not.

In the current matter the City accepted the negative publicity at face value leaving Sergeant Wilson to respond on his own. It did not publicly address the need for checking the validity of placard use or the fact that Sergeant Wilson was exonerated of criminal charges. Clearly veterans severely injured in combat merit due consideration. So do police officers whose hazardous duties daily subject them to dangers in encountering the most violent and dangerous elements of the community.

The Union has satisfactorily established that Sergeant Wilson was not unjustified in striking at Mr. James cell phone. Mr. James, a large man, was invading his space. He was close enough to Sergeant Wilson to allow the sergeant to reach the cell phone. Sergeant Wilson threatened by Mr. James proximate presence. It is with reluctance that a police officer, whose life is frequently imperiled, should be second guessed about his apprehensions of danger. Only very solid evidence is needed to challenge a police officer's fears of being threatened. Such evidence was not forthcoming here.

Nevertheless, Sergeant Wilson did engage in an impropriety by engaging in verbal repartee with a citizen rather than trying to calm the situation as did Sergeant La Porta. His conduct, which was contrary to proper police procedure, thereby did result in placing the Department in an unfavorable light. He thus did act inconsistently with that requirement of the regulation and was properly subject to discipline for that misconduct. This fact calls for appropriate discipline.

5.5 – COMMISSION OF MORAL CHARACTER OFFENSES WHICH WOULD LEAD TO DECERTIFICATION BY THE FLORIDA POLICE STANDARDS AND TRAINING

The response to this purported infraction is self-explanatory. Sergeant Wilson's behavior was unprofessional but obviously not immoral. Neither was there any suggestion of Sergeant Wilson losing his certification. The City did not take steps to revoke Sergeant Wilson's certification.

Part VII, 7.1 - Maintain Job Knowledge and Skills

The only portion of this section violated by this regulation was his to failure to "demonstrate proficiency in required interpersonal skills" in his comments to Mr. James. Police officers are expected to calm a confrontational experience, not to exacerbate it. The experience with Mr. James is the only example of such a violation in his 23 years of able service with the Department. It does not demonstrate a likelihood that there will be

a repetition of that conduct by one with 23 years of experience as a police officer. It does not justify the severity of discharge, the "capital punishment" of the workplace.

The violation of this regulation has no relevance to knowledge of criminal procedure or "proficiency in the care or use of firearms." This portion of the regulation has no bearing on the conduct for which Sergeant Wilson was disciplined and was not considered in assessing his discipline.

Discharging Sergeant Wilson was given an excessive penalty for his exchange with Isaiah James.

Sergeant has not expressed a *mea culpa* for the matters considered in his disciplinary history, but as indicated above, they are not pertinent to the incident resulting in his termination. He has acknowledged his error in dealing with Mr. James and expressed extreme regret at his having placed the City of Riviera Beach in an unfavorable light. His admission of his error and a significant penalty will make it unlikely that there will be a repetition of the conduct for which he was penalized. A suspension for four weeks will be a strong incentive for moderation of his conduct in his future dealings with citizens.

ORDER OF ARBITRATOR

In accordance with the foregoing, it is ordered that the Sergeant Wilson be reinstated to his former position with the same credit for length of service and entitlement to benefits as if her service had not been interrupted. He shall be made whole for loss of benefits and loss of earnings that were not mitigated or could have been mitigated by other employment. The Arbitrator will retain jurisdiction for four weeks from the date of this opinion to allow the parties to present arguments on mitigation if they wish to do so.

Entered this 11th day of March, 2018

By: s: Donald J. Spero

Arbitrator

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