American Arbitration Association
Voluntary Labor Tribunal
Case No. 01-21-0016-6904

IN THE MATTER OF ARBITRATION BETWEEN

NEW BEDFORD POLICE UNION
AND
CITY OF NEW BEDFORD

AWARD OF THE ARBITRATOR

The Undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered by the above named parties and having been duly sworn and having duly heard the proofs and allegations of the parties AWARDS as follows:

Officer Nazario

It cannot be found that Officer Nazario provided favorable or preferential treatment to Mr. Dunn. Accordingly, the twenty-day suspension must be reduced. Nonetheless, as the primary officer at the scene, Officer Nazario was responsible for completing an accident report and conducting an investigation into the reasons for Mr. Dunn hitting the two cars. As stated above, Officer Nazario was totally remiss in fulfilling his police duties with respect to Mr. Dunn’s automobile crash, and the cause of the crash, and his conduct warrant discipline. Officer Nazario previously received a letter of reprimand and a two-day suspension. Accordingly, based on the totality of circumstances, and the principle of progressive discipline, the suspension of Officer Nazario should therefore upheld but reduced from twenty days to fifteen days. The grievant should be made whole for lost wages for five days.

Officer Jesse Branagan

It cannot be found that Officer Branagan provided favorable or preferential treatment to Mr. Dunn. Accordingly, the three-day suspension must be reduced. His dereliction of duty at the crash site, however, warrants
discipline. Officer Branagan previously received an oral reprimand and counseling. Accordingly, based on the totality of circumstances, and the principle of progressive discipline, Officer Branagan should therefore be reduced from three days to a one-day suspension. The grievant should be made whole for lost wages for two days.

Officer Algimantas Harrell

It cannot be found that Officer Harrell provided favorable or preferential treatment to Mr. Dunn. Accordingly, the three-day suspension must be reduced. His dereliction of duty at the crash site, however, warrants discipline. This was the first and only action of misconduct of which Officer Harrell has ever been charged by the Department in his nine years of employment. Accordingly, based on the totality of circumstances, and the principle of progressive discipline, Officer Harrell should not have been suspended for his conduct on the May 2, 2021. Based on all the factors, the suspension of the grievant should be reduced to a written disciplinary warning. The grievant should be made whole for lost wages for the three-day suspension.

In view of the findings and conclusions, the City and the Union must share the Arbitrator’s fee equally.

August 15, 2022
Boston, Massachusetts

Gary D. Altman
American Arbitration Association  
Voluntary Labor Tribunal  
Case No. 01-21-0016-6904  

IN THE MATTER OF ARBITRATION BETWEEN  

NEW BEDFORD POLICE UNION  
AND  
CITY OF NEW BEDFORD  

ARBITRATION DECISION AND AWARD  

Introduction  
The City of New Bedford ("Employer" or "City") and the New Bedford Police Union ("Union") are parties to a Collective Bargaining Agreement. Under the Collective Bargaining Agreement, grievances not resolved during the grievance procedure may be submitted to arbitration under the rules of the American Arbitration Association. The parties presented their case in a virtual arbitration proceeding before Gary D. Altman, Esq., on March 1, and April 26, 2022. The Union was represented by Andrew J. Gambaccini, Esq., and the City by Eric T. McKenna, Esq. The parties had the opportunity to examine and cross-examine witnesses and to submit documentary evidence. The parties submitted post-hearing briefs.  

Issue  
The parties did not agree to an issue at the outset of the hearing. The City proposed that the issue should read as follows:  

Did the City of New Bedford violate Article 19 of the parties’ Collective Bargaining Agreement by disciplining the grievants without just cause?
If not, what shall be the remedy?

The Union proposed that the issues should read as follows:

1. Did the City of New Bedford have just cause to suspend Officer Abraham Nazario for twenty (20) days for violations of Rules 503.6, 502.1, 515.6 (b), 515.6 (l), 515.6 (o), 604.5.6 of the New Bedford Police Department Rules and Regulations as well as Directive 20-89 of the Standards of Conduct? If not, what shall be the remedy?

2. Did the City of New Bedford have just cause to discipline Officer Jesse Branagan, including a suspension for three (3) days, for violations of Rules 502.1, 515.6 (b) and 515.6 (l) of the New Bedford Police Department Rules and Regulations as well as Directive 20-89 of the Standards of Conduct? If not, what shall be the remedy?

3. Did the City of New Bedford have just cause to discipline Officer Algimantas Harrell, including a suspension for three (3) days, for violations of Rules 502.1, 515.6 (b) and 515.6 (l) of the New Bedford Police Department Rules and Regulations as well as Directive 20-89 of the Standards of Conduct? If not, what shall be the remedy?

The contractual language provides that the standard of just cause shall be the basis of all discipline. Just cause requires a review of the misconduct at issue as well as a review of the level of discipline that was imposed. Accordingly, the issues to be decided in this case are:

(1) whether there was just cause for the 20 day suspension of Officer Abraham Nazario, if not what shall the remedy be?

(2) Whether there was just cause for the 3 day suspension of Officer Algimantas Harrell, if not what shall the remedy be?

(3) Whether there was just cause for the 3 day suspension of Officer Jesse Branagan, if not what shall the remedy be?
Facts

Discipline was imposed on three New Bedford Police Officers for their response to a vehicle crash that occurred during the early morning hours of May 1, 2021. Officers Algimantas Harrell and Officer Jesse Branagan received three day suspensions. Officer Abraham Nazario received a twenty-day suspension. All three are experienced New Bedford Police Officers, and have been involved in a number of motor vehicle stops where drivers have been operating under the influence. Officer Nazario has been a police officer with the New Bedford Police Department for approximately fourteen years, Officer Branagan for approximately seventeen years, and Officer Harrell has been a police officer with the City for approximately nine and one-half years.

Incident of May 1, 2021

On or about May 1, 2021, all three officers were assigned to the midnight to 8:00 am shift in the City’s downtown area. Officer Nazario and Officer Branagan were partners but operating separate police cruisers due to the Department’s COVID-19 protocols. Officer Harrell was assigned to Unit 15, which is a roving patrol, to assist other police officers who were called to incidents in the downtown area.

On or about May 1, 2021, at approximately 1:23 am, the New Bedford Police Department received a 911 call from [redacted], a resident of an apartment complex on [redacted] in New Bedford. [redacted] told the police

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1 Officer Branagan received an oral reprimand in 2014, and a counselling in 2016. Officer Harrell had no formal discipline in his record.
2 Officer Nazario previously received a reprimand in 2016 and a two-day suspension for violations of Department’s rules and regulations also in 2016.
that he heard a loud bang, and looked outside his window and saw that a vehicle appeared to have hit another vehicle, and the driver remained sitting in the car for five to ten minutes listening to loud music. He then noticed that the vehicle drove away from the accident scene. The vehicle crash occurred at [redacted]. This location is near bars and restaurants in downtown New Bedford. [redacted] reported that the vehicle had its lights off, drove first to a nearby parking spot in the cul-de-sac and then proceeded to drive up Commercial Street out of [redacted]’s line of sight. [redacted] was able to take a photo of the license plate of the vehicle but was unable to observe the driver.

Officer Nazario and his partner, Officer Branagan, were dispatched to the scene. Officer Harrell was also dispatched as the rover for the Downtown area, and was the first officer to arrive on the scene. Officer Harrell stated that the dispatch transmission indicated that there was a possible hit and run, and that a grey vehicle had been seen fleeing. The crash site was dark but illuminated by streetlights, and the area was wet from rain.

Officer Harrell stated that a red Toyota Rav-4 and a black pick-up truck appeared to have been struck by a third unknown vehicle, and he took pictures of the damaged vehicles. There was also a sign pole that was knocked over. Officer Harrell did not initially see the driver who had struck the other vehicles, but heard the dispatcher who indicated that the grey sedan was registered to Hugh Dunn. Mr. Dunn was a New Bedford City Councilor. Officer Harrell testified that the name of Hugh Dunn meant nothing to him, and he had no idea that Mr. Dunn was a New Bedford City
Councilor and did not hear anyone at the scene or any of the other Officers say that Mr. Dunn was a City Official.

Officer Branagan and Officer Nazario then arrived at the scene in their patrol cars. Officer Nazario was the “primary” officer pursuant to the Department’s custom of rotating which officer serves as the primary officer at an incident scene. As the primary officer, Officer Nazario was responsible for gathering facts in order to complete a police report of the incident, and taking charge of the scene. Other officers who report to the scene are still responsible for the performance of any and all police duties.

When the Officer arrived, [redacted] came out of his apartment and spoke with Officer Branagan. Officer Branagan testified that [redacted] told him that he was the one that made the call to the police, and showed him pictures and videos that he had taken with his cell phone. The pictures showed that the vehicle owned by Mr. Dunn had struck a Rav-4, and the license plate of the car that struck the other vehicle. Officer Branagan stated that [redacted] had offered to send him the pictures that he had taken but he told him that they were not necessary. The Police Dispatcher had also ran the license plate that [redacted] had called in, that indicated that the car was registered to Hugh Dunn.

Soon after the call from dispatch, Officer Branagan noticed a grey sedan with plates that matched those described by the dispatcher, parked on Commercial Street, approximately three hundred feet from where the two cars had been hit. All three officers then walked over to the vehicle. Officer Branagan and Officer Harrell walked to the
front of vehicle and Officer Nazario stayed in the rear of the vehicle.

As Officer Harrell and Officer Branagan approached the vehicle, they both noticed that the car had damage on the front and rear passenger side; on the front passenger side the tire was coming off the rim and it appeared that the vehicle could not be driven. Officer Branagan shined his flashlight into the vehicle and observed that the driver was sitting in the driver’s seat. Officer Branagan tapped on the driver’s door window and the operator opened the driver’s side door.

Officer Branagan asked the driver for his driver’s license. The driver provided his driver’s license and he was identified as Hugh Dunn. Officer Branagan testified that he did not know Mr. Dunn, and did not know that he was a New Bedford City Councilor. Officer Branagan stated that he spoke with Mr. Dunn for about 30 seconds, when Mr. Dunn gave him his license, and stated that he could not smell any odor of alcohol from Mr. Dunn. Officer Branagan further testified that he did not believe that Mr. Dunn had attempted to leave the scene of the accident since he was parked a short distance from the crash site, on Commercial Street.

Officer Branagan then walked to the back of the car where Officers Nazario and Harrell were standing, and he gave Officer Nazario, who was the primary officer on the scene, Mr. Dunn’s license. Officer Branagan stated that he then walked to his cruiser and entered vehicle information into the computer in the cruiser. Officer Branagan stated that he was not present when Officer Nazario then spoke with Mr. Dunn, and he did not speak to the medics, who arrived on the scene. Officer Branagan stated that he did
not learn that High Dunn was a City Councilor until sometime after the incident, and that Mr. Dunn was treated the same as any other person would have been treated in a similar situation. Officer Branagan stated that he waited for the tow truck to arrive to take Mr. Dunn’s car, and then he left the scene.

In the meanwhile, Officer Nazario walked up to Mr. Dunn’s vehicle and he was still sitting in the driver’s seat of his car. He asked the driver for his name, and Mr. Dunn told him his name. Officer Nazario recalled that Mr. Dunn told him that he had lost his phone, and Officer Nazario then used his flashlight to try and find the phone in the car. Officer Nazario testified that Mr. Dunn appeared "confused, shaken and disoriented", but he did not ask Mr. Dunn if he had anything to drink that evening, did not smell the odor of alcohol, and did not ask Mr. Dunn how the accident had happened. Officer Nazario stated that Mr. Dunn then exited the car, walked to the back of the car, and that Mr. Dunn did not stumble or appear impaired.

Officer Harrell saw Mr. Dunn get out of his car, and that Mr. Dunn did not need any assistance getting out of his vehicle, and had no problem standing up. Officer Harrell said he did not notice any injuries but that Mr. Dunn complained about ________, and Officer Harrell then called for medics. Mr. Dunn was placed in Officer Nazario’s cruiser while waiting for the paramedics to arrive. Officer Harrell stated that he was in the presence of Mr. Dunn for approximately ten to fifteen minutes, and that he did not detect any odor of alcohol. Officer Harrell testified that Mr. Dunn did not appear to be under the influence, that he did not slur his words, and
his eyes were clear, and he appeared to be acting in a normal manner.

Officer Harrell testified that he spoke with one of the medics who arrived at the scene and told him about the vehicle crash, and that he took pictures of the struck vehicles and of Mr. Dunn’s vehicle. Officer Harrell stated that the medics arrived and that he had no discussion with the medics about whether Mr. Dunn was under the influence of alcohol, nor did the medics say anything about Mr. Dunn being under the influence. Officer Harrell stated that he left the scene soon after speaking with the medics, who were still on the scene when he left. Officer Harrell testified that he did not learn that Mr. Dunn was a City Councilor until after the incident.

Officer Nazario testified that he decided not to arrest or issue a citation to Mr. Dunn for hitting the parked cars. Officer Nazario stated that he was acting as a “community care taker” to ensure that Mr. Dunn received the proper medical attention, and that he could follow up later with Mr. Dunn about the circumstances that gave rise to his hitting the parked cars. Officer Nazario stated that Mr. Dunn agreed to speak with him at a later time, and Officer Nazario gave Mr. Dunn’s license to the medic who arrived at the scene, and that he had no conversations with any of the medics that evening.

Officer Nazario explained that he did not believe that he had probable cause for an arrest, that there was no evidence of impairment and that Mr. Dunn’s car was still in the area where the accident took place so that it did not appear to be a hit and run, and that he had not actually

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3 Officer Harrell testified that Officer Nazario did not ask for the pictures for his report, and since he was not asked, he did not give them to him.
seen Mr. Dunn operate the vehicle. Officer Nazario stated that he did not check to see whether Mr. Dunn had any prior motor vehicle citations or criminal record. No field sobriety test was performed on Mr. Dunn. Officer Nazario stated that he received a call that a Spanish-speaking Officer was needed at another location, he then left the scene, and at that time Mr. Dunn was with the medics.

Officer Nazario did not go to the Hospital that night to speak to Mr. Dunn, nor did he seek the Hospital Report. Officer Nazario testified that Mr. Dunn came to the station a couple of nights later. Officer Nazario explained that he had to complete the accident report, and Mr. Dunn walked through the events that happened on May 1. Officer Nazario testified that Mr. Dunn told him that his recollection of what had occurred was “fuzzy”, that he had a late dinner and had taken Benadryl that evening for an allergy, that he remembered hitting one of the cars, but could not recall anything else. Officer Nazario stated that he did not ask Mr. Dunn questions relating to the accident, whether he was drinking or whether he was taking any prescription medications. After speaking with Mr. Dunn, Officer Nazario added this information in a supplemental accident report.

Carlos Felix, a local citizen who often appears at police calls, heard the police dispatch and was on the scene that night, and had posted a video to social media on May 2. Mr. Felix, in his Internet posting, indicated that City Councilor Dunn had crashed his car and then had attempted to leave the scene of the crash site. The Internet posting of this event generated a good amount of public interest in Mr. Dunn and the police response to Mr. Dunn’s conduct.

Chief Paul Oliveira has worked for the New Bedford Police Department for thirty years, and was promoted
through the ranks to his current position of Chief of the
Department. Chief Oliveira first served as Acting Chief,
and was assigned as permanent Chief on June 1, 2021. Chief
Oliveira testified that when he came to work on May 3, he
learned that there were social media reports of a car crash
involving Hugh Dunn a New Bedford City Councilor, that
there were pictures and videos posted on the internet of
the crash site, and there were claims from a local reporter
that the police had given special treatment to Mr. Dunn
because of his position as a City Councilor. Chief Oliveira
stated that the matter was “blowing up” as there were many
calls from the media wanting details of the Department’s
treatment of Mr. Dunn.

Officer Nazario was directed to complete an offense
report for the incident. Chief Oliveira stated that he also
assigned the matter to Professional Standards to ensure
that the Department’s policies procedures were followed. In
addition, Chief Oliveira testified that because of public
attention and the reports that Mr. Dunn had received
special treatment from the Police, he thought it
appropriate to have an outside agency review whether Mr.
Dunn had engaged in any criminal activity. Consequently,
Chief Oliveira called Tom Quinn, the District Attorney of
Bristol County, to investigate whether Mr. Dunn had engaged
in any criminal conduct. District Attorney Quinn then
assigned Massachusetts State Police Officer Christopher
Dumont to investigate whether Mr. Dunn had engaged in
criminal conduct.

Christopher Dumont has been with the Massachusetts
State Police for the past seventeen years and currently

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4 These reports are not filled out for vehicle accidents when citations or criminal charges are not issued.
serves as a Lieutenant. Lieutenant Dumont testified that in May of 2021 the Bristol County District Attorney called him and asked him to investigate Mr. Dunn’s conduct and whether criminal charges should be brought against Mr. Dunn. Lieutenant Dumont testified that he was told that the New Bedford Police Chief had requested assistance from the District Attorney, and he then began his investigation into whether Mr. Dunn may have engaged in criminal activity. Lieutenant Dumont testified that the Professional Standards Division of the New Bedford Police Department conducted its own internal investigation with respect to the Officers’ conduct on the vehicle crash.

Detective Julio Martinez has been with the New Bedford Police Department for sixteen years, and has been assigned to the Professional Standards Division for the past two years. Detective Martinez testified that on May 3, 2021 he was assigned to investigate the three Officers’ activity on the night in question, and whether Department procedures were followed. Detective Martinez testified that he and Lieutenant Dumont interviewed a number of the witnesses individually and together: Officers Nazario, Harrell, and Branagan, the bartender from Cork Tapas, patrons at the restaurant, the medics who arrived at the scene, who took the video on the night in question, and the owners of the cars that were struck by Mr. Dunn. Lieutenant Dumont further stated that he reviewed videos from the restaurant, receipts from Cork Tapas, medical records, and went to the scene, and also reviewed the damage to Mr. Dunn’s car.

Lieutenant Dumont and Detective Martinez reviewed the video taken by who saw Mr. Dunn’s car jump the curb and hit the parked Rav-4. The car then travelled about
360 feet, where it was found on Commercial Street. Detective Martinez and Lieutenant Dumont explained that the car was not operable due to the damage, had to be towed and it was later determined that the car had been “totaled”. Lieutenant Dumont viewed the car at an autobody shop where he observed the damage to the car. Lieutenant Dumont stated that he spoke with [Name redacted] and [Name redacted], the two medics who arrived at the scene. The two paramedics testified at the arbitration hearing.

[Name redacted] has worked for the New Bedford Emergency Medical Services for seven years. [Name redacted] stated that on May 1 he was paired with [Name redacted]. [Name redacted] testified that he observed Mr. Dunn get out of the cruiser and walk to the back of the ambulance. [Name redacted] stated that Mr. Dunn initially stumbled when he got out of the cruiser, and Mr. Dunn said “don’t shoot me”. [Name redacted] stated that Mr. Dunn was then placed in the back of the ambulance with [Name redacted]. [Name redacted] recalled that he then walked with one of the police officers to where Mr. Dunn’s car was parked on the side of the road, to look at the damage to the car, and [Name redacted] stayed to attend to Mr. Dunn.

[Name redacted] stated that he then walked back to the ambulance and one of the Police Officers handed him Mr. Dunn’s license. He noticed that the license had raised bumps or something stamped on the license, which he assumed meant that the driver was someone special such as a drug investigator. [Name redacted] testified that an Officer told him that the driver was Hugh Dunn who was a New Bedford City Councilor. [Name redacted] did not know or recognize the Officer who handed him the license. [Name redacted] stated that he gave
Mr. Dunn’s back his license, and said to his partner “hey dude he is one of the City Councilors”.  

stated that when he returned to the ambulance, after looking at Mr. Dunn’s damaged vehicle, he saw, and that further testified that Mr. Dunn was not cooperative, would not answer their questions about his injuries, would not sit down, and only did so after they told him that they would go back and get the police.  stated that he drove the ambulance and they took Mr. Dunn to the Hospital.  testified that somebody from the Hospital later told him that evening that Mr. Dunn was belligerent.  

worked for the New Bedford EMS for less than a year prior to the May 1, 2021 incident.  recalled being called to an accident in the early morning hours of May 1, 2021, and when he and arrived at the scene, one of the police Officers told him that the patient was in the back of one of the cruisers and he went to see the patient.  remembered that while walking over to the cruiser he asked one of the police officers whether the patient was drunk, and the Officer responded that it was “not my place to determine”.  

tested that the patient, who had not yet been identified to him, left the cruiser, walked over and got into the ambulance.  testified that he was wearing a facemask at the time, and he could not remember whether he smelled alcohol on Mr. Dunn, and that he was not slurring his speech, but his speech did not appear to be

5 This information was not provided to the Officers.
normal.\textsuperscript{6} stated that Mr. Dunn’s eyes were normal, but that had nothing to do with assessing whether someone is impaired. stated that told him that there was some marking on Mr. Dunn’s license and that Mr. Dunn was a City Councilor. testified that he did not walk over to the accident scene nor did he look at the damage to Mr. Dunn’s car. stated that he did not know Mr. Dunn, or know that he held a position on the New Bedford City Council. Lieutenant Dumont obtained copies of the report from the New Bedford EMS; the records indicate that.

Detective Martinez testified that Officer Nazario did not complete an accident report on May 1, but eventually completed his accident report on May 4, and he did not cite Mr. Dunn for any motor vehicle infractions. Detective Martinez stated that Officer Nazario did not believe that Mr. Dunn was impaired or that he intended to leave the scene of the crash, and that it was simply an accident. Detective Martinez stated that Officer Harrell had taken pictures at the scene, but they were not originally part of Officer Nazario’s police report, and that Detective Martinez obtained these pictures and added the pictures to the report.

Lieutenant Dumont, from the State Police, completed his investigation on May 28, 2021. He final report was twelve pages. His investigation included going to the collision repair shop to view Mr. Dunn’s car, which was declared to be totaled, reviewing the medical reports from

\textsuperscript{6} In his interview on May 7, 2021 with Lieutenant Dunn and Detective Martinez, six days after the incident, told the Officer that.
the Hospital, which indicated that Mr. Dunn eloped from the Hospital after he was admitted; it also references his interview with persons who were with Mr. Dunn at Cork Wine and Tapas on the night in question, and the waitress who served Mr. Dunn alcohol on the night in question. He also reviewed the bar receipts that showed alcoholic drinks ordered by Mr. Dunn. After his investigation, Lieutenant Dumont concluded that there was probable cause to issue Mr. Dunn criminal citations, and the citations were then issued for:

- Negligent operation of a motor vehicle.
- Operating a motor vehicle while under the influence of alcohol.
- Leaving the scene of a property damage crash.

On June 9, 2021 Detective Martinez submitted his investigative report to Lieutenant Holmes, supervisor of the Division of Professional Standards for New Bedford Police Department. Detective Martinez wrote:

In conclusion, based on the above testimony this investigator believes that the three responding officers handled this incident very poorly. Officer Nazario along with his partner Officer Branagan failed to ask the most basic questions while investigating this accident. Officer Nazario stated that he did not even consider the possibility that Mr. Hugh Dunn may have been intoxicated. It should be noted that there are approximately six establishments that sell alcohol in that general location, but Officer Nazario did not even consider that alcohol may have been a contributing factor. It should also be noted that these officers have been assigned to the center district for a very long time. They all should have been aware that an accident around the time of the crash, when the bars are closing, makes for a strong possibility that alcohol may be involved.
This investigator also finds it very suspicious that the two paramedics who arrived on scene stated that 

However, all three officers denied smelling an odor of alcohol. This investigator also finds it very suspicious that during the interview of Mr. Dunn's driver license and it felt unique, like a punch mark or like something was raised on the license. Mr. Dunn stated that he asked the officer on scene if this male was important, which he was informed that Mr. Dunn is a city council member. However, when all three officers were interviews they denied knowing that Mr. Dunn was a city council member and all three officers stated that they never told the medic that Mr. Dunn was a city councilor. There is no legitimate reason why the very basic investigative questions were not asked by three trained police officers on scene. Furthermore, the primary officer failed to proceed to St. Luke's Hospital in order to retrieve an actual statement from the city council member.

Officer Nazario failed to investigate this incident the proper way. There was a 911 caller stating that the driver is leaving the area and provided Mr. Hugh Dunn's registration number. This investigator believes that Mr. Dunn would have left the area if it wasn't for Mr. Dunn's front tire being off the rim. Officer Nazario did not locate the 360 feet of marks on the pavement. This investigator understands it was dark, but every officer has a flashlight. Also there was no reason for Mr. Dunn to leave the parking lot where he collided with the first or second vehicle. Officer Nazario stated that he believed that Mr. Dunn had a head injury and called for the medics. It should be noted that Mr. Dunn did not have any visible injuries to his as stated above. During Officer Branagan's interview he tried to separate himself from this incident. Officer Branagan stated that he only obtained Mr. Dunn's license but doesn't question him about his whereabouts. Officer Branagan stated that he was not the primary officer, when ask about this investigation.
Officer Harrell mentioned in his interview that he took photographs of the vehicles involved in the accident but failed to attach them to the report. Officer Harrell did not even provide these photographs to the investigating officer. I was informed by Sergeant Christopher Dumont that Officer Harrell stated that he took the photographs because he was trying a new application on his cellular telephone. The following will be attached to this case file 10 CD's containing the all interviews belonging to this case and I USB containing video surveillance.

Detective Martinez found that Officer Nazario violated the following Department Rules:

20-89 Directive - Standards of Conduct

502.1 - Suspicious Conduct.

503.6 - Improper Influence.

515.6(b) Failure to perform according to the department rules and regulations.

515.6 (l) - Improperly performing or neglecting to perform the duties assigned.

515.6 (o) - Commission of any act contrary to the good order and discipline of the department.

604.5.6 - The Patrolman shall carefully investigate all complaints assigned.

Detective Martinez found that Officer Branagan violated the following Department Rules:

Directive - Standards of Conduct

20-89 Directive - Standards of Conduct

502.1 - Suspicious Conduct.

515.6 (l) - Improperly performing or neglecting to perform the duties assigned.
Detective Martinez found that Officer Harrell violated the following Department Rules:

Directive - Standards of Conduct
20-89 Directive - Standards of Conduct
502.1 - Suspicious Conduct.
515.6 (I) - Improperly performing or neglecting to perform the duties assigned.

Lieutenant Holmes reviewed Detective Martinez Professional Standards Report and agreed with the Detective Martinez’s conclusions on the rules violations committed by the three Officers. He wrote in his review of the findings:

Looking further into Officer Abraham Nazario's testimony, he stated that he did not see any visible signs of injury to Mr. Dunn nor did he smell any alcohol emitting from Mr. Dunn's breath or any signs of intoxication. Yet when you look at the testimony of the two medics, stated in his interview that one of the Police Officers told him that Mr. Dunn was a New Bedford City Councilor. has no reason to lie about what a police officer told him.

Therefore I am led to believe that a police officer was not truthful during this investigation, for all three officers were asked during their interviews if they knew Hugh Dunn or if they mentioned to a medic that Hugh Dunn was a City Councilor. All three officers stated in their interviews with us that they did not know that Mr. Hugh Dunn was a New Bedford City Councilor and all three officers stated that they were not the one who told the medic that Hugh Dunn was a City Councilor.

At this time we are unable to prove which Police Officer made the statement to Medic , that Mr. Hugh Dunn was a City Councilor. When we
showed photos of the three Officers in question, Officer Abraham Nazario, Officer Jesse Branagan and Officer Algimantas Harrell, was unable to pick out the Police Officer that he says made the statement to him that Mr. Hugh Dunn was a New Bedford City Councilor.

Chief Oliveira held hearings on the rules violations found by Professional Standards, and agreed with the findings and conclusion. Chief Oliveira then recommended to John Mitchell, Mayor of the City of New Bedford, that Officer Nazario should be suspended for twenty days, and Officer Harrel and Officer Branagan suspended for three days. The Mayor agreed and this discipline was grieved and the matter submitted to arbitration.

ARTICLE 19 DISCIPLINARY ACTION

No permanent police officer shall be removed, dismissed, discharged, suspended or disciplined in any other manner except for just cause. ... No material pertaining to the conduct, service, character, or personality of a police officer that is not substantiated shall be placed in a police officer’s file.

RULES AND REGULATIONS OF THE NEW BEDFORD POLICE DEPARTMENT

Directive 20-89 of the Standards of Conduct (This directive is x pages has not been reprinted in this Decision.

Rules and Regulations 502.1 – Suspicious Conduct

A member shall not pursue a course of conduct which will raise suspicion among the public that he is likely to be engaged in acts that are in violation of his trust. G.L. c. 268A, s. 23(b)

Rules and Regulations 503.6 – Improper Influence

No member shall by his conduct, give reasonable basis for the impression that any person can improperly
influence him or unduly enjoy his favor in the performance of his official duties, or that he is unduly affected by the kinship, rank, position or influence of any party or person. G.L. C. 268A, s. 23(e)

Rules and Regulations 515.6(b)

Failure to perform according to the department rules and regulations.

Rules and Regulations 515.6 (l)

Improperly performing or neglecting to perform the duties assigned.

Rules and Regulations 515.6(o)

Commission of any act contrary to the good order and discipline of the department.

Rules and Regulations 604.5.6

The patrolman shall carefully investigate all complaints assigned.

Directive 20-89 of the Standards of Conduct

Discussion

The present case involves three New Bedford Police Officers who responded to a police dispatch on May 1, 2021 that there was a vehicle crash. After an internal investigation, and hearing before the Chief of Police, Officer Abraham Nazario was suspended for twenty (20) days; Officer Jesse Branagan and Officer Algimantas Harrell were suspended for three (3) days. There can be no question that the matter took on a heightened sensitivity and public scrutiny as the driver of the vehicle that struck the two parked cars was Hugh Dunn, a New Bedford City Councilor.

A local reporter apparently heard the police radio transmission that indicated that Mr. Dunn was involved in a
vehicle crash, and that he allegedly tried to leave the crash site. There is no dispute that no motor vehicle or criminal citations were issued by the New Bedford Police. As would be expected, when it became public that a local politician was involved in potentially unlawful behavior and there were criminal charges, questions arose as to whether the New Bedford Police gave preferable treatment to the local politician. There can be no question that Chief Oliveira took appropriate action, by having the Professional Standards Division conduct an investigation into the actions of the responding police officers, and by seeking assistance from the District Attorney to have the Massachusetts State Police investigate whether criminal charges should have issued against Mr. Dunn for his conduct on May 1, 2021.

Lieutenant Christopher Dumont, from the Massachusetts State Police, was assigned by the Bristol County District Attorney to investigate whether Mr. Dunn engaged in potential criminal conduct. After his investigation, Lieutenant Dumont concluded that there was probable cause for the issuance of three citations against Mr. Dunn: (1) Negligent operation of a motor vehicle; (2) Operating a motor vehicle while under the influence of alcohol; (3) Leaving the scene of a property damage crash. The fact that Lieutenant Dunn reached a different conclusion than the New Bedford Police Officers who responded that evening, does not, in and of itself, lead to the conclusion that the New Bedford Police Officers acted inappropriately.

The decision to pursue criminal charges is oftentimes a matter of discretion and judgement. There can be differences of opinion among police officers as to their respective impressions with respect to whether probable
cause existed for the existence of criminal conduct. Moreover, the New Bedford Police Officers that responded that evening, particularly Officer Nazario, the primary officer, made their decisions based on events that occurred that evening, and not based on a month long investigation. Nonetheless, Lieutenant Dumont’s investigation and his ultimate conclusions are certainly relevant when assessing the response of the three New Bedford Police Officers. The obvious question is what led the New Bedford Police Officers to decide not to pursue criminal action, and whether that decision was due to the fact that a New Bedford City Councilor was the one that was involved in the vehicle crash that evening.

The Division of Professional Standards found that the Officers’ response that evening, especially Officer Nazario as the primary officer, was woefully inadequate. The conclusions of Detective Martinez are set forth on page 174 of his report and are quoted, in part, on page 15 of this Decision, and there is no need to once again fully cite his conclusion. In sum, the report and testimony offered at the arbitration shows that the Officers failed to ask any questions of Mr. Dunn as to the cause of the accident, did not ask where Mr. Dunn was coming from, nor where he was going when he struck the parked cars.

The Officers have patrolled this section of New Bedford and certainly knew that there were a number of restaurants and bars in close proximity of the crash site, yet none of the Officers asked what Mr. Dunn had been doing prior to the accident or whether he had been drinking that evening. The radio dispatch indicated that the car had driven away from where the cars were hit, yet no questions were asked as to why Mr. Dunn decided to drive away from
the crash site, nor any questions as to how he came to hit two parked cars. Officer Nazario made no mention in his report that Mr. Dunn’s vehicle had backed into two cars and he then drove more than 300 feet from the crash site.

It is inexplicable that based on the time and circumstances of the crashes, and the fact that the closing times of the bars was 1:00 am, that the accident was in proximity to the bars, and that two parked cars were struck, and that Mr. Dunn’s vehicle was not at the site where he hit the vehicles, did not raise even an iota of concern that alcohol may have been a factor. Detective Martinez’s conclusion that the Officers handled the matter “very poorly” was stating the obvious.

The testimony demonstrates that Officer Nazario, as the primary officer, had more responsibility than Officers Harrell and Branagan. Specifically, Officer Nazario had the responsibility to complete the police reports and gather information to ensure that he would prepare a complete and accurate police report of the events that occurred, and the driver’s culpability. Officer Nazario failed miserably in this regard. He made no effort to go to or call the Hospital to check on the medical status of Mr. Dunn. He did not go to the Hospital to speak with Mr. Dunn that evening, instead he waited until Mr. Dunn came to the police station two days after the crash. By failing to contact the Hospital he never learned that Mr. Dunn had left the Hospital before he was discharged on May 1, which would have raised questions about Mr. Dunn’s claim of an injury.

When Mr. Dunn came to the station, again, Officer Nazario did not ask any questions of Mr. Dunn as to what had occurred that evening, he simply wrote down the responses given to him by Mr. Dunn, that he was having a
late dinner, was taking Benadryl for his dog allergy, and that his memory was foggy. Officer Nazario did not ask where Mr. Dunn had dinner the evening of his crash, whether he was drinking at dinner, whether he was with anyone, or whether he had any prescription for his allergies.

There are certain events, which by their very nature, lead to logical assumptions. Backing up and hitting two parked cars, in an area of the City’s liquor establishments, shortly after the bars had closed for the evening, and then driving away from the scene, raises legitimate assumptions that alcohol was somehow involved. A reasonable police officer should have considered that alcohol could have been a factor in Mr. Dunn’s otherwise inexcusable car crashes, yet Officer Nazario did not even consider that alcohol played a role in the crashes. His conclusion was reached even after he found Mr. Dunn to be “confused, shaken and disoriented”.

It is inexplicable that Officer Nazario took no actual steps to investigate whether Mr. Dunn was under the influence. It is understandable that Officer Nazario was concerned about Mr. Dunn’s medical condition as Mr. Dunn claimed he was hurt. Mr. Dunn’s alleged injuries, however, do not excuse Officer Nazario’s total indifference to the circumstances that led up to the crash; he struck two parked cars, and drove away from the site.

It may be true, as maintained by the Union, that the New Bedford Police do not have the same resources as the Massachusetts State Police to investigate car crashes, and the Department was extremely busy during the shift. Nonetheless, that Officer Nazario simply accepted Mr. Dunn’s statement that he had nothing to drink, and conducted no investigation as to whether Mr. Dunn’s
assertions were true, is incomprehensible. Officer Nazario’s inaction is a dereliction of duty and worthy of discipline.

Officers Branagan’s and Harrell’s roles in the incident were not as defined as Officer Nazario. They were not the primary officer on the scene. Although they were on duty and reported to the scene and expected to perform their police duties, it appears that their responsibilities were more in the nature to assisting Officer Nazario at the scene and they did not have the responsibility to complete the accident report, nor to further investigate after they left the site. It is not unreasonable that they deferred to Officer Nazario’s decision as to whether criminal charges should have been filed.

Officer Harrell took pictures when he arrived at the scene. There should be no question that Officer Harrell could have provided Officer Nazario pictures that he took of the struck vehicles when he arrived at the scene. Officer Harrell did not offer the pictures to Officer Nazario, and Officer Nazario did not ask whether pictures were taken. The accident report thus was devoid of any pictures of the damage to the struck vehicles or of the damage to Mr. Dunn’s vehicle. This was an oversight but cannot be considered as a flagrant neglect of duty.

Officer Branagan failed to interview Mr. Dunn at the scene as to his activities that evening. The citizen who called in the accident and came to the scene offered Officer Branagan pictures that he had taken, and Officer Branagan declined. The evidence shows that he and Officer Harrell took no action or initiative to consider the circumstances that led to Mr. Dunn striking two parked cars. Although Officer Branagan should have done more to
support Officer Nazario at the scene, I cannot find that Officer Branagan’s actions were maliciously motivated or a flagrant neglect of duty.

It is one thing to conclude that Officer Nazario failed to adequately perform his duties, it is an altogether different matter, however, to conclude that his negligence was done because of Mr. Dunn’s position as a New Bedford City Councilor. This is the case for Officers Harrell and Branagan.

The evidence that the Officers knew that Mr. Dunn was a City Councilor came from [redacted]. [redacted] testified that he was handed Mr. Dunn’s license from one of the Officers and that he noticed that the license had raised bumps like brail, or the license had some kind of stamp on it, and he assumed that it meant that the driver was somebody important, such as an undercover drug investigator. 7 [redacted] testified that he asked one of the police officers about the license and the police officer said that Mr. Dunn was a City Councilor. The City thus argues that at least one of the police officers knew that Mr. Dunn was a New Bedford City Councilor. All of the Officers stated, during the investigation and during their testimony in this proceeding, that they did not tell [redacted] that Mr. Dunn was a City Councilor.

I must conclude that there is no reliable evidence that any of the Police Officers knew of Mr. Dunn’s position as a New Bedford City Councilor. Lieutenant Holmes wrote that he did not believe the Officers’ claim that none of them knew or told [redacted] that Mr. Dunn was a City Councilor. A few days after the incident, [redacted] was

7 Lieutenant Dumont stated that Massachusetts’ drivers licenses have no such marking.
shown photos of the three officers, but he could not identify any of the officers as being the one that told him that Mr. Dunn is a City Councilor. Lieutenant Holmes, in his review of Detective Martinez’s final report, stated:

At this time we are unable to prove which Police Officer made the statement to Medic that Mr. Hugh Dunn was a City Councilor. When we showed photos of the three Officers in question, Officer Abraham Nazario, Officer Jesse Branagan and Officer Algimantas Harrell, was unable to pick out the Police Officer that he says made the statement to him that Mr. Hugh Dunn was a New Bedford City Councilor.

The City assumes that the police officers must have known that Mr. Dunn was a New Bedford City Councilor. Any such assumptions cannot be substantiated. There is nothing in the record to suggest that Mr. Dunn’s position as a City Councilor was so well known that any police officer should have known his position. Moreover, there is no evidence that any of the Officers had any dealings with Mr. Dunn in his role as City Councilor or knew him at all. It also must be stated that all the Officers denied knowing Mr. Dunn’s position as a City Councilor and the Chief testified that none of the Officers’ were found to have been untruthful during the Department’s investigation. Thus, the very serious allegation that Mr. Dunn was given favorable treatment because of his position as a City Councilor cannot be substantiated.

Disciplinary Penalty

As a general matter, an arbitrator should not "second guess" at the penalty imposed by the Employer.

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8 Certainly after this incident Mr. Dunn had more public notoriety in his position as a City Councilor.
Nevertheless, this does not mean that an arbitrator's sole purpose is only to determine whether the employee has engaged in the wrongful conduct. The Collective Bargaining Agreement requires that just cause be the standard that is applied to disciplinary actions. Just cause has long been held to embrace not only a finding of whether the alleged actions have occurred but also whether the discipline imposed by the employer was appropriate for the offense.

In many cases, the reasonableness of the penalty imposed on an employee rather than the existence of proper cause for disciplining him is the question an arbitrator must decide. ... In disciplinary cases generally, therefore, most arbitrators exercise the right to change or modify a penalty if it is found to be improper or too severe, under all the circumstances of the situation. The right is deemed to be inherent in the arbitrator's power... Elkouri and Elkouri, How Arbitration Works, Vol 4. p. 668.

In general, arbitrators often consider whether the principles of progressive discipline have been followed when evaluating disciplinary penalties.

To claim that a local City Councilor was given favorable treatment because of his role as public official is a very serious matter. The citizens of New Bedford have the right to believe that all citizens, no matter whether they hold a position in City government, are treated equally and fairly under the law. It would be a grave injustice if Mr. Dunn was treated more leniently than any other citizen of the community. That this suspicion was in the public eye, is the result of the conduct of three New Bedford Police Officers who responded to the crash site, and failed to conduct any semblance of an investigation into the cause of Mr. Dunn’s car crash. If the New Bedford Police had completed a competent and complete
investigation, it would have done away with the public concern that a City Councilor was given favorable treatment by the New Bedford Police.

As stated above, there is insufficient evidence that any of the three officers granted favorable treatment to Mr. Dunn because of his position as a local public Official. This conclusion, in and of itself, requires that the discipline be reduced from the current level of discipline imposed on the three officers. The lack of a competent investigation, however, justifies the imposition of discipline against all three Officers. It must also be stated that the fact that the Officers were directed to undergo additional training was an appropriate management response, and there is no justification to remove any reference to the training from the Officer’s files.

In addition the Department acted correctly in considering whether the Officers had engaged in prior discipline. The principle of just cause warrants that principles of progressive discipline be followed except in the most egregious situations, and there is no good reason that progressive discipline should not be considered in assessing the level of discipline to be imposed.

Conclusion

Officer Nazario

It cannot be found that Officer Nazario provided favorable or preferential treatment to Mr. Dunn. Accordingly, the twenty day suspension must be reduced. Nonetheless, as the primary officer at the scene, Officer Nazario was responsible for completing an accident report and conducting an investigation into the reasons for Mr. Dunn hitting the two cars. As stated above, Officer Nazario was totally remiss in fulfilling his police duties with
respect to Mr. Dunn’s automobile crash, and the cause of the crash, and his conduct warrant discipline. Officer Nazario previously received a letter of reprimand and a two day suspension. Accordingly, based on the totality of circumstances, and the principle of progressive discipline, the suspension of Officer Nazario should therefore upheld but reduced from twenty days to fifteen days. The grievant should be made whole for lost wages for five days.

Officer Jesse Branagan

It cannot be found that Officer Branagan provided favorable or preferential treatment to Mr. Dunn. Accordingly, the three day suspension must be reduced. His dereliction of duty at the crash site, however, warrants discipline. Officer Branagan previously received an oral reprimand and counselling. Accordingly, based on the totality of circumstances, and the principle of progressive discipline, Officer Branagan should therefore be reduced from three days to a one-day suspension. The grievant should be made whole for lost wages for two days.

Officer Algimantas Harrell

It cannot be found that Officer Harrell provided favorable or preferential treatment to Mr. Dunn. Accordingly, the three day suspension must be reduced. His dereliction of duty at the crash site, however, warrants discipline. This was the first and only action of misconduct of which Officer Harrell has ever been charged by the Department in his nine years of employment. Accordingly, based on the totality of circumstances, and the principle of progressive discipline, Officer Harrell should not have been suspended for his conduct on the May 2, 2021. Based on all the factors, the suspension of the grievant should be reduced to a written disciplinary
warning. The grievant should be made whole for lost wages for the three-day suspension.

In view of the findings and conclusions, the City and the Union must share the Arbitrator’s fee equally.

August 15, 2022
Boston, Massachusetts

Gary D. Altman