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ARBITRATION HEARING

IN THE MATTER OF:)
 GRIEVANCE ARBITRATION)
 OFFICER JAMES FOXX)
)
 CITY OF SPRINGFIELD,)
)
 Employer,)
)
 and)
)
 PB & PA UNIT #5,)
)
 Union.)

Arbitration Hearing held on January 7th, 2021
 scheduled for the hour of TIME, at the Lincoln
 Library, Springfield, Illinois, before DONNA M.
 DODD, an Illinois Certified Shorthand Reporter and
 Notary Public.

PRESENT:
 MS. ELIZABETH SIMON,
 Arbitrator
 Ms. Donna M. Dodd, CSR

DONNA M. DODD, CSR
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1 APPEARANCES:

2

3 STEVE RAHN
 4 EMILY FANCHER
 800 East Monroe Street
 Springfield, Illinois 62701

5 Appeared on behalf of Employer,

6

7 RONALD J. STONE
 Stone Law Office
 1501 West Fayette Avenue
 Springfield, Illinois 62704

9 Appeared for PB & PA Unit # 5.

10

11

12

13 ALSO PRESENT:

14 Mr. Don Edwards
 Mr. Nick Correll
 15 Mr. Ken Winslow
 Mr. Kenneth Scarlette
 16 Mr. Charles Peters
 Mr. James Foxx
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1 ARBITRATOR SIMON: Good morning,
 2 everybody. This hearing is taking place on January
 3 7th, 2021 in Springfield, Illinois between the
 4 Springfield Police Benevolent and Protective
 5 Association, PB & PA Unit 5, and the City of
 6 Springfield.

7 I'm Elizabeth Simon serving as the
 8 Arbitrator in this case. In an off-the-record
 9 discussion, the parties have stipulated to the
 10 arbitrability of this case and my jurisdiction to
 11 hear and decide the case.

12 Will the parties please state their
 13 appearances for the record?

14 MR. RAHN: Steven Rahn. I am Assistant
 15 Corporation Counsel for the City of Springfield.

16 MS. FANCHER: My name is Emily Fancher,
 17 F-A-N-C-H-E-R. I am Assistant Corporation Counsel
 18 for the City as well.

19 MR. WINSLOW: Kenny Winslow, Chief of
 20 Police, City of Springfield.

21 MR. SCARLETTE: My name is Ken Scarlette,
 22 S-C-A-R-L-E-T-T-E. I am Assistant Chief for the
 23 Springfield Police Department.

24 ARBITRATOR SIMON: Thank you. And for the

6

1 Union?

2 MR. STONE: Oh, my name is Ron Stone. I'm
 3 the attorney for the PB & PA Number 5.

4 MR. EDWARDS: My name is Don Edwards. I'm
 5 a detective with the Police Department and the
 6 President of the PB & PA.

7 MR. FOXX: My name is James Foxx, former
 8 Springfield police officer.

9 MR. CORRELL: I'm Nick Correll. I'm a
 10 paralegal with the City of Springfield.

11 ARBITRATOR SIMON: Okay.

12 MR. STONE: Can I be so bold as to ask
 13 everybody to speak up a little bit because I don't
 14 know if it's just me, but I'm having a little bit
 15 of trouble hearing everybody.

16 ARBITRATOR SIMON: No, that's fine, and I
 17 will also say the same thing.

18 All right. Then I believe we are
 19 ready to proceed. I have the exhibits from the
 20 Union and the City in hand.

21 This is a discharge case, so the City
 22 will go first. May I hear opening arguments?

23 MR. RAHN: Yes. This is a simple case.
 24 The facts aren't seriously disputed. Officer Foxx

7

1 was fired for sending a text to a fellow officer,
 2 an African-American officer, which used the term
 3 "house nigga". To compound the situation when the
 4 black officer responded that he didn't know what
 5 Officer Foxx meant by the text, Foxx sent a
 6 screenshot of the Urban Dictionary definition of
 7 the term, which only reenforced the racist nature
 8 of the slur.

9 Now the Union may dispute the context
 10 of the text. They may suggest that slur was
 11 intended as a joke. They may point out that he was
 12 referring to himself. They'll say that he didn't
 13 mean offense. Ultimately they're going to argue
 14 that the punishment is too harsh.

15 But the Chief of Police and his staff
 16 have done everything in their power to let the rank
 17 and file officers know that racism in any form is
 18 intolerable, intolerable. They've devoted
 19 countless hours and efforts to promote the trust
 20 and communication with the minority community and
 21 sought to increase the number of minority officers
 22 in their ranks. Officer Foxx's text were simply
 23 inexcusable and unacceptable.

24 Now this happened before the nation

8

1 has been rocked by the George Floyd incident and
 2 its aftermath. This was not a reaction to those
 3 events; however, those events underscore the stakes
 4 here. They underscore how important the Chief and
 5 his staffs' efforts to build and keep open
 6 communications and trust between the
 7 African-American community and the department.

8 How important it is to demonstrate
 9 with actions, not just lip service, that racism
 10 will not be tolerated within the Springfield Police
 11 Department, that we're serious about recognizing
 12 and removing the very few "bad apples" before any
 13 hidden bias results in a tragedy. That's all.

14 ARBITRATOR SIMON: Thank you.

15 Does the Union wish to make its
 16 opening now or reserve it for its case in chief?

17 MR. STONE: I'll give one now. Thank you.

18 ARBITRATOR SIMON: Go ahead.

19 MR. STONE: Much of what factually Mr.
 20 Rahn speaks of is true, but I think the case goes
 21 deeper than that and will show that James Foxx has
 22 a sterling background in multiple years in the
 23 military, deployments working with many, many
 24 African-Americans and other people of color. He

<p style="text-align: right;">9</p> <p>1 works security at St. John's Hospital, and then 2 finally got his dream job of being a police officer 3 in the Springfield Police Department. Never had 4 any issues.</p> <p>5 They work at night and one thing that 6 was missing in the City's opening was that Officer 7 Foxx and Officer Williams are friends. Officer 8 Foxx and Officer Williams are friends with all of 9 our witnesses that will testify today.</p> <p>10 The evidence will show that they work 11 together. They did calls for service together. 12 They worked in the Patrol Division in uniform, so 13 they were the ones getting dispatched to scenes. 14 They ate most of their meals together for years and 15 joking, teasing, giggling people is part and parcel 16 of being a police officer, much like sports locker 17 rooms I guess.</p> <p>18 Now he didn't just send this out of 19 the blue. There was a long, lengthy MPT. That's 20 Mobile Data Transmission. That's the thing that 21 they have in their cars, long passages of that.</p> <p>22 Officer Williams was sitting on a 23 house protecting it as he was ordered and Officer 24 Foxx was covering his beat, and the jokes started</p>	<p style="text-align: right;">11</p> <p>1 (The witness was sworn in by 2 the Court Reporter.) 3 JAMES FOXX, 4 called as a witness herein, at the instance of the 5 City, having been duly sworn upon his oath, 6 testified as follows: 7 DIRECT EXAMINATION 8 BY MR. RAHN: 9 Q. Please state your name and occupation. 10 A. James Foxx. I am currently an officer 11 with the Grandview Police Department. 12 Q. Okay. Can you understand me real well? 13 A. Yes. 14 Q. Can you understand me, sir? 15 A. Yes. 16 Q. Thank you. 17 How long have you been employed with 18 Grandview? 19 A. Early September of last year. 20 Q. You were formerly employed by the 21 Springfield Police Department; correct? 22 A. Yes, sir. 23 Q. And you started I believe in January of 24 2018?</p>
<p style="text-align: right;">10</p> <p>1 in that he was giving him heat for having to cover 2 his beat, and it went stronger and stronger, and he 3 will tell you that he crossed the line, and when he 4 realized that he sent an apology, and I believe the 5 evidence will show that for, you know, a minute or 6 two he went overboard.</p> <p>7 And Mr. Rahn is correct, this happened 8 on February 4th of 2020 and the George Floyd 9 incident happened on May 25th of '20, so almost 10 four months earlier.</p> <p>11 So I guess the issue comes down to, 12 you know, whether somebody's career and life is 13 going to get thrown away for some unseen comments 14 made in gist, albeit in bad taste, that took a 15 minute.</p> <p>16 ARBITRATOR SIMON: Thank you, Mr. Stone. 17 Mr. Rahn, will you call your first 18 witness, please? 19 MR. RAHN: Yes. The City calls James 20 Foxx. 21 MR. FOXX: Where do I go? 22 MR. RAHN: Over here. 23 ARBITRATOR SIMON: Right there, please. 24</p>	<p style="text-align: right;">12</p> <p>1 A. Yes, sir. 2 Q. Now you were working as a patrol officer 3 on the early morning of February 4th, 2020; 4 correct? 5 A. Yes, sir. 6 Q. And you were working the Watch 4 shift? 7 A. Yes, sir. 8 Q. Which runs from 10:30 P.M. to 7:30 A.M. 9 ordinarily; correct? 10 A. Yes. 11 Q. Officer Lawrence Williams was on that same 12 shift with you; wasn't he? 13 A. Yes. 14 Q. You were engaging him in an MDC 15 conversation; correct? 16 A. Yes. 17 Q. Can you explain what MDC stands for? 18 A. Mobile Data Computer. It's the terminal 19 that we use to receive our calls, to disposition 20 our calls, to message each other, to -- it's pretty 21 much our heart. 22 Q. It's sort of like a chat room between 23 officers? 24 A. Part of it, yes.</p>

13

1 **Q.** Is that fair?
 2 **A. Yes.**
 3 **Q.** Okay. Both the computer network that
 4 you -- that you do this on and what the -- you do
 5 it on your -- your squad car computer; correct?
 6 **A. Yes.**
 7 **Q.** And you -- and the network, that is, it is
 8 the City network; correct?
 9 **A. Yes. Yeah.**
 10 **Q.** And a record is kept of the conversations
 11 that go on?
 12 **A. Yes. It's all recorded, yes. It's pretty**
 13 **much everything we do on there is recorded, so**
 14 **that's how they're able to retrieve the messages**
 15 **that I sent for this case.**
 16 **Q.** I'm going to say first, lots of times when
 17 we're going back and forth you're going to
 18 anticipate what I'm saying or I'm going to
 19 anticipate. I have a bad habit of doing it too,
 20 but try to wait until I finish a question before
 21 you answer and, likewise, I'll wait until you
 22 finish answering.
 23 **A. I apologize.**
 24 **Q.** It will make it easier for the court

14

1 reporter.
 2 **MR. STONE:** Could I suggest perhaps he
 3 should move his whole table back so that the court
 4 reporter can hear better?
 5 **ARBITRATOR SIMON:** All right. Let's do
 6 that then.
 7 (Whereupon the table was moved at
 8 this time.)
 9 **BY MR. RAHN:**
 10 **Q.** And you've been told to be careful what
 11 you say on the MDC, because it's subject to
 12 disclosure under the Freedom of Information Act;
 13 correct?
 14 **A. Yes.**
 15 **Q.** Now, in the MDC exchange that you were
 16 having with Officer Williams the morning of
 17 February 4th, you were joking with each other about
 18 having to do each others work; is that a fair
 19 characterization?
 20 **A. Yes.**
 21 **Q.** Could you open the book there to Exhibit
 22 4, please?
 23 **A. (So complied with request.)**
 24 **Q.** Can you identify Exhibit 4 for us?

15

1 **A. Exhibit 4 is the conversation me and**
 2 **Lawrence were having on the computer.**
 3 **Q.** Okay. And it's three pages; correct?
 4 **A. Yes.**
 5 **Q.** And as I understand it, it's in
 6 chronological order, but the bottom of each page is
 7 the earlier and then it goes up from there and each
 8 one above them, the previous is a little bit later?
 9 **A. Yes.**
 10 **Q.** Okay. And this is an exhibit, you were
 11 shown a copy of this exhibit at your interview at
 12 the Internal Affairs investigation; correct?
 13 **A. Yes.**
 14 **Q.** And Lieutenant Markovic at that time had
 15 marked it Exhibit 1, which is actually covered up
 16 by, or partially covered by the exhibit marker
 17 here; correct?
 18 **A. Yes.**
 19 **Q.** Now the earliest exchange on this was, the
 20 bottom of page 1 occurred at 2:18:56 in the
 21 morning; correct?
 22 **A. Correct.**
 23 **Q.** And that was from you to Officer Williams
 24 wherein you said, you gonna handle your own beat

16

1 tonight?
 2 **A. Correct.**
 3 **Q.** Okay. And we can skip the next text.
 4 That's not relevant. But he responded then at
 5 2:19:12, ha ha ha, I always do; correct?
 6 **A. Correct.**
 7 **Q.** Okay. And then you responded again, BS.
 8 I'm working on paper from your beat and my back is
 9 starting to hurt from carrying 800?
 10 **A. Yes.**
 11 **Q.** And he responded. I assume you took that
 12 jokingly as well, that well, do more deadlifts?
 13 **A. Of course.**
 14 **Q.** And it proceeded through page 1 and then
 15 onto page 2, and I'm going to ask you to direct
 16 your attention then to the exchange that's second
 17 from the top.
 18 **A. Okay.**
 19 **Q.** Then that was at 2:22:18 you said, I'm
 20 going to send you a message via text so it's
 21 secure; correct?
 22 **A. Right.**
 23 **Q.** Is that --
 24 **A. Yes, correct.**

1 Q. -- what that says?
 2 And he responded LOL?
 3 A. Correct.
 4 Q. And LOL I assume means the same as it does
 5 in text, laugh out loud?
 6 A. Correct.
 7 Q. And then you did send him a text on the
 8 phone; correct?
 9 A. Correct.
 10 Q. And I'd like you to take a look then at
 11 Exhibit 5, and at the top of Exhibit 5, is this the
 12 text that you sent?
 13 A. Correct.
 14 Q. Could you read that, please?
 15 A. **You're making me feel like 800's house**
 16 **nigga.**
 17 Q. And what was his response?
 18 A. **I don't even know what that means.**
 19 Q. What did you do then?
 20 A. **Sent him a definition.**
 21 Q. And where did you get the definition?
 22 A. **The Internet.**
 23 Q. And what was the definition that you sent?
 24 A. **You want me to read the whole thing?**

1 Q. And you're familiar with what an iPhone
 2 looks in text mode; correct?
 3 A. Yes.
 4 Q. Your initials are J.F.?
 5 A. Yes.
 6 Q. Does Exhibit 5 appear to you to be a
 7 screen capture of Officer Williams' iPhone
 8 containing the three texts that you sent him and
 9 his one text to you?
 10 A. Yes.
 11 Q. Going back to your MDC exchange on Exhibit
 12 4, the second page, you said you were going to send
 13 him a text message "so it's secure"?
 14 A. Yes.
 15 Q. You wanted to make sure that the Exhibit 5
 16 exchange didn't appear on the official MDC network;
 17 correct?
 18 A. **I mean, I didn't really think about it at**
 19 **the time, but yeah, sure. Yes.**
 20 Q. You didn't want your supervisors to see it
 21 I assume?
 22 A. **Well, if you're going to -- you know, you**
 23 **got to keep it somewhat professional in a**
 24 **professional medium. So if you're going to send**

1 Q. Yes, please.
 2 A. **A house slave, the one who is always after**
 3 **the master, the kind of slave that is the closest**
 4 **to the master. The most flexible type of slave.**
 5 **Nowadays, often used to designate blacks who serve**
 6 **like a white like they slaves.**
 7 **Keep going?**
 8 Q. Yes.
 9 A. **Also see Uncle Tom. The house nigga will**
 10 **sell you up the river. So to massa, he'll look**
 11 **bigger, and when ya bet under a rock, he'll**
 12 **slither.**
 13 Q. Did he respond to that?
 14 A. **He did not.**
 15 Q. Okay. A few hours later then, at 7:31,
 16 you sent another text to him; correct?
 17 A. Correct.
 18 Q. Please read that text that you sent.
 19 A. **My bad man. Didn't think you'd take it**
 20 **that way. We've had banter like this in the past**
 21 **and I didn't think it was that serious.**
 22 Q. Now you're -- did you send your text on an
 23 iPhone?
 24 A. Yes.

1 **someone a little bit of headgear then, yes, I would**
 2 **just as soon it not be on an official device.**
 3 Q. And you didn't want it subject to FOIA I
 4 assume?
 5 A. **Well, he has it on his phone, so I didn't**
 6 **really think if it was going to get this far it**
 7 **would be totally hidden, so either way it can get**
 8 **FOIA'd out.**
 9 Q. But you knew it was a violation of the
 10 Workplace Harassment Policy?
 11 A. **At the time I really didn't see it as**
 12 **harassment. It's not a continuing issue. We've**
 13 **joked like this in the past. So no, it wasn't**
 14 **going to my mind as far as, oh, man, I get 12 for**
 15 **this. I should probably hide it.**
 16 Q. But did you admit to Lieutenant Markovic
 17 in your IA interview that it did violate policy?
 18 A. **Premium policy, yes.**
 19 Q. Also in that interview you told Lieutenant
 20 Markovic that the reason that you switched to text
 21 for the message was because you were getting tired
 22 of going back and forth from your report writing to
 23 the chat box?
 24 A. Correct.

21

1 **Q.** Let's see how that works. You were on a
 2 computer; correct?
 3 **A. Correct.**
 4 **Q.** Writing a report?
 5 **A. Correct.**
 6 **Q.** And then the chat box appears in the lower
 7 corner?
 8 **A. It does not appear in the lower corner.**
 9 **You have to switch screens every time. So say you**
 10 **get a message, you have to go like out of what**
 11 **you're doing, go to it. It doesn't pop up like a**
 12 **normal computer.**
 13 **Q.** The fact that you got the message pops up;
 14 doesn't it?
 15 **A. It will show, like, it will make a little**
 16 **noise, yeah.**
 17 **Q.** Okay. And so then you have to go and
 18 click on the chat box?
 19 **A. Correct.**
 20 **Q.** And send the MDC message?
 21 **A. Correct.**
 22 **Q.** Okay. And you were getting tired of
 23 clicking back and forth?
 24 **A. Correct.**

22

1 **Q.** So when you wanted to send this text
 2 message that's Exhibit 5, you didn't send it by
 3 clicking on the MDC, instead you clicked on the MDC
 4 to tell him, I'm going to send you a message using
 5 my phone?
 6 **A. Yes, so I can continue working on what I'm**
 7 **doing.**
 8 **Q.** So you switched to the MDC anyway?
 9 **A. To read what he sent me, yes.**
 10 **Q.** And was the real reason that you didn't
 11 want it to be located on the MDC?
 12 **A. I wasn't really trying to hide anything.**
 13 **Like I said, he has the text, so if this is going**
 14 **to be brought to an issue, like it was, it's still**
 15 **there.**
 16 **Q.** What did so it's secure mean?
 17 **A. Part of the joke.**
 18 **Q.** You agree that your text to Officer
 19 Williams that morning violated the Department's and
 20 the City's Workplace Harassment Policy?
 21 **A. Correct.**
 22 **Q.** As a Springfield police officer and even
 23 just two years on the force, you received multiple
 24 trainings in workplace harassment; correct?

23

1 **A. Correct.**
 2 **Q.** Now let's go back to the third and final
 3 text that you sent on Exhibit 5.
 4 **MR. STONE:** I'm sorry, Counsel. Which
 5 number are we looking at?
 6 **ARBITRATOR SIMON:** Exhibit 5.
 7 **MR. STONE:** Thanks.
 8 **BY MR. RAHN:**
 9 **Q.** What were the circumstances that caused
 10 you to send that text?
 11 **A. Well, he had approached me in the garage**
 12 **after the fact. I was still doing reports sitting**
 13 **in the garage. Everyone was turning their cars in,**
 14 **turning their equipment, things like that.**
 15 **When he approached me he was laughing.**
 16 **He had a smile on his face. He was like, hey, man,**
 17 **I knew what that meant. You didn't need to send**
 18 **that stuff, still laughing with a smile on his**
 19 **face, smacked the window, window seal of the car**
 20 **and walked away.**
 21 **And as I got in to register at the**
 22 **time, I was writing my reports, I got done and I'm**
 23 **like, kind of weird that he brought that up, so I**
 24 **was like, hey, just in case I may have offended**

24

1 **you, that's why I sent that message.**
 2 **Q.** You thought that you had offended him?
 3 **A. I just thought it was weird that he**
 4 **brought it up, so there was the possibility that I,**
 5 **yes, I did offend him.**
 6 **Q.** Now, three months prior to this incident,
 7 in November of 2019, you received additional roll
 8 call training on workplace harassment at the Watch
 9 4 squad meeting; correct?
 10 **A. Correct.**
 11 **Q.** And you had just attended inservice
 12 training on January 22 on workplace harassment;
 13 correct?
 14 **A. Correct.**
 15 **Q.** Do you believe that the use of the N word
 16 by a white person other than as a direct quote is
 17 racist?
 18 **A. No.**
 19 **Q.** Do you believe the term house nigga is
 20 racist?
 21 **A. Can you repeat the question, please?**
 22 **Q.** Do you believe the term "house nigga" is
 23 racist?
 24 **A. It depends on how it's being used.**

1 **Q.** Do you believe your text was racist?
 2 **A. No.**
 3 MR. RAHN: That's all I have.
 4 MR. STONE: I'll wait until our case in
 5 chief.
 6 ARBITRATOR SIMON: All right. Then you're
 7 done for now. Thank you.
 8 MR. RAHN: Our next witness has been
 9 sequestered. He's going to go get him.
 10 ARBITRATOR SIMON: Yes.
 11 (The witness was sworn in by
 12 the Court Reporter.)
 13 ANDREW DODD
 14 called as a witness herein, at the instance of the
 15 City, having been duly sworn upon his oath,
 16 testified as follows:
 17 DIRECT EXAMINATION
 18 BY MS. FANCHER:
 19 **Q.** Will you please state your name and
 20 occupation for the record, please?
 21 **A. Andrew Dodd. I'm the Commander of the**
 22 **Field Office Division of the Springfield Police**
 23 **Department.**
 24 **Q.** Okay. How long have you been employed

1 **School of Staffing Command last year.**
 2 **Q.** Okay. And you stated earlier, you had a
 3 mask on so I just want to clarify for the record,
 4 your current position is Commander of Field
 5 Operations?
 6 **A. That is correct.**
 7 **Q.** And were you working that position in
 8 February of 2020?
 9 **A. I was.**
 10 **Q.** And in your present position what are your
 11 duties?
 12 **A. I assist the Deputy Chief in running the**
 13 **division, making decisions, directions, policies**
 14 **for the division and corporate with the rest of the**
 15 **staff, and assisting other departments. Part of**
 16 **the job is disciplining, going over and being**
 17 **involved in the decision making in that process.**
 18 **Q.** And when you reference discipline, does
 19 that include initiating or partaking in any
 20 Internal Affairs decisions?
 21 **A. Yes, ma'am.**
 22 **Q.** As it pertains to the facts of the present
 23 matter, when did you first become aware of the
 24 incident involving Officer Foxx?

1 with the City?
 2 **A. Just over 16 years.**
 3 **Q.** And can you please just provide a brief
 4 background of your positions while you've been
 5 working at the City?
 6 **A. I started as a patrol officer. I was a**
 7 **Field Training Officer for a number of years, a**
 8 **member of the Street Crimes Division, sergeant,**
 9 **lieutenant. I was Field Training Coordinator and**
 10 **Commander of the Emergency Response Team. Over a**
 11 **year ago got promoted to Commander of Field**
 12 **Operations.**
 13 **Q.** And you can probably take your mask off.
 14 **A. Thank you.**
 15 MR. STONE: Could I just ask that you
 16 speak up a little bit?
 17 THE WITNESS: Yes.
 18 BY MS. FANCHER:
 19 **Q.** Did you require any special education or
 20 testing or training to hold your current position?
 21 **A. There was testing involved to the rank of**
 22 **sergeant and the rank of lieutenant and then it's**
 23 **the Chief's decision to get up to the rank of**
 24 **Commander, and then I completed the Northwestern**

1 **A. As soon as I walked into the station that**
 2 **morning I was advised by now retired Sergeant**
 3 **Fricke that he had an incident he wanted to bring**
 4 **to my attention, so him and I went into Lieutenant**
 5 **Steele's office and that's when he told me about**
 6 **this.**
 7 **Q.** Would that have been on February 4th of
 8 2020?
 9 **A. Yep, first thing in the morning.**
 10 **Q.** Okay. And when you were speaking with
 11 Sergeant Fricke what did he advise you happened?
 12 **A. That he had been contacted by Officer**
 13 **Williams.**
 14 MR. STONE: I would object to hearsay.
 15 ARBITRATOR SIMON: So I'm going to admit
 16 it, not for the truth of the matter asserted but
 17 for what his response was, what he understood what
 18 happened.
 19 THE WITNESS: Lieutenant Fricke or
 20 Sergeant Fricke advised me that he was contacted by
 21 Lawrence Williams. He wanted to talk about an
 22 incident that happened the night before. They met
 23 at a gas station over on the west side of town
 24 called the Gas-N-Go.

29

1 Lawrence advised him that Officer
 2 Foxx --
 3 ARBITRATOR SIMON: That's double hearsay.
 4 That I do have a problem with. You can summarize
 5 the gist of what you understood him to be saying,
 6 please.
 7 THE WITNESS: There was a text sent from
 8 Officer Foxx to Officer Williams that had racial
 9 and inappropriate nature and then Sergeant Fricke
 10 was able to show me a screenshot of that text.
 11 BY MS. FANCHER:
 12 Q. Okay. And so after your conversation with
 13 Sergeant Fricke what did you do next?
 14 A. **I came upstairs and met with Deputy Chief**
 15 **Mumaw, who is my supervisor, and Assistant Chief**
 16 **Scarlette advised them of what -- what had happened**
 17 **this far.**
 18 Q. Did you create any documentation in
 19 response to that information you were given?
 20 A. **After meeting with them I completed an IA**
 21 **complaint form, a Citizen's Action Complaint Form.**
 22 Q. Okay. And is that Citizen's Action
 23 Complaint Form, would that be a part of the
 24 Internal Affairs file that is marked as Exhibit 3?

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1 You have that book in front of. You can look at it
 2 there.
 3 A. **It's not in here.**
 4 Q. It's the first page of the third exhibit.
 5 A. **Oh, yep. I flipped right past it. Yes,**
 6 **that is correct.**
 7 Q. Okay. And can you just briefly explain
 8 what a Citizen's Action Request is?
 9 A. **So this is the first form that gets filled**
 10 **out for an IA complaint to be generated with the**
 11 **Internal Affairs Division. It outlines who's**
 12 **making the complaint, what the rule violations are,**
 13 **personnel involved, and then it gives a short**
 14 **narrative of -- kind of the information as we have**
 15 **it at that point. So it's a short document that**
 16 **kind of gets the process started.**
 17 Q. And was generating that type of request
 18 form a part of your assigned duties at the time?
 19 A. **Yes.**
 20 Q. And did you list the facts provided to you
 21 from your conversation with Sergeant Fricke in that
 22 document?
 23 A. **Yes.**
 24 Q. And based on those facts that are in your

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1 report or your document that you put together, did
 2 you feel at that point that there was sufficient
 3 information to proceed with an Internal Affairs
 4 investigation?
 5 A. **Absolutely.**
 6 Q. Okay. And why?
 7 A. **The screenshot that I was shown and given**
 8 **of the text exchange, information contained in**
 9 **there, it was a clear violation of our Rules of**
 10 **Conduct Number 5, Workplace Complaint, and then**
 11 **also for Rule 21 for unbecoming, because of the**
 12 **detriment it could do to the department.**
 13 Q. Okay. So it was your opinion at that
 14 point that there had been rule violations
 15 essentially?
 16 A. **Yes.**
 17 Q. And that was ROC 21 and ROC 5?
 18 A. **Rule 21 as part of ROC Addendum Number 2**
 19 **and Rule Number 5, and then Rule Number 5 would**
 20 **cover the violations of Rules of Conduct obviously.**
 21 ARBITRATOR SIMON: I'm sorry. Rule 5
 22 would cover what?
 23 THE WITNESS: So it's two different Rules
 24 of Conduct. One, ROC 2, Addendum 2, covers a bunch

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1 of specific rule violations, like Rule 21,
 2 Unbecoming Conduct, and then the Rule 5 based on
 3 that same is the violation of a different General
 4 Order, and that's due to him violating Rules of
 5 Conduct 5 as the Workplace Harassment Policy and
 6 Discriminatory Practices. That's why there are two
 7 different rule violations.
 8 ARBITRATOR SIMON: Thank you.
 9 BY MS. FANCHER:
 10 Q. In relation to your opinion that those
 11 rule violations occurred, can you just explain why
 12 as to each one?
 13 MR. STONE: I'm not sure I see the
 14 relevance of this. Isn't it up to the Arbitrator
 15 to decide?
 16 ARBITRATOR SIMON: The relevance of this?
 17 MR. STONE: Yeah.
 18 ARBITRATOR SIMON: That is my ultimate
 19 decision. It would be helpful to hear what his
 20 interpretation was. That's not going to be mine
 21 but --
 22 THE WITNESS: So the Rule 21, the
 23 unbecoming conduct, basically the acts in itself
 24 can bring the department into disrepute and show

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1 unfavorably to the officer, to the department.
2 So that's, in general, what Rule 21
3 looks at, and then the Rule 5 is for violation of
4 Rules of Conduct 5, which is the Workplace
5 Harassment policy, which is our antidiscrimination
6 policy that's in the department. So that's why the
7 two.

8 BY MS. FANCHER:

9 **Q.** So you felt that just Officer Foxx's
10 actions violated those harassment policies;
11 correct?

12 **A. Yes.**

13 **Q.** Okay. Did you form any other personal
14 impressions at that time in regards to his actions?

15 **A. I was surprised by them, especially, you
16 know, all the training we've done and how that
17 Rules of Conduct 5 is very well-known in the
18 department, something we train on yearly, had just
19 had training on. So I was very surprised that a
20 member of the department would send such an
21 inappropriate text message to another member of the
22 department.**

23 **Q.** And after you created your Citizen's
24 Action Request, did the department proceed with the

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1 IA investigation?

2 **A. Yeah. That's what started it, and a later
3 date or time, I'm not sure if it was that same day,
4 I signed the Affidavit to send to Lieutenant
5 Markovic. This document is what starts the process
6 though.**

7 **Q.** Okay. And are you aware whether the staff
8 eventually gave a final recommendation for
9 discipline of Officer Foxx in this matter?

10 **A. I am.**

11 **Q.** Okay. And did they give a final
12 recommendation?

13 **A. Yeah. Final recommendation for
14 termination.**

15 **Q.** Okay. And were you involved in that
16 discussion?

17 **A. Yes.**

18 **Q.** Okay. And based on your training and
19 experience and your current position as a member of
20 the command staff for the Springfield Police
21 Department, did you agree with that decision for
22 termination?

23 **A. Absolutely I agreed with the decision.**

24 **Q.** And can you just briefly explain why?

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1 **A. I want every member of the department to
2 feel comfortable in the workplace, that they should
3 be able to trust each other, especially with
4 everything that we have to do, and I don't want any
5 members of the department to have to worry about
6 another member using inappropriate language,
7 especially those terms, and I don't believe that
8 they, certain members could trust Officer Foxx, and
9 would take strong issues with that. So it looks
10 very bad, and I think it's very unfavorable on the
11 department and the members to have kept him on.**

12 **Q.** And do you think reinstating Officer Foxx
13 would negatively effect the positive efforts that
14 the Police Department has taken to create strong
15 community relations?

16 **A. Yes, absolutely.**

17 **Q.** And for similar reasons or what were
18 your --

19 **A. Same reasons. You know, the department
20 needs to have trust inside of itself between
21 officer and officer and also outside the department
22 from members of the community we serve. It's a
23 diverse community in Springfield and they should
24 not have to question any member of this department**

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1 **and their beliefs based on stuff that they send.**

2 MS. FANCHER: I think that's all I have
3 for right now.

4 MR. STONE: I just have a couple of
5 questions.

6 CROSS EXAMINATION

7 BY MR. STONE:

8 **Q.** Are you aware of any such conduct by
9 Officer Foxx prior to this incident along those
10 lines?

11 **A. No. No, sir.**

12 **Q.** Do you have any reason to believe that he
13 would engage in such conduct if he were returned to
14 the Springfield Police Department and, if so, why?

15 **A. Do I have any reason to believe he would
16 do it again is basically your question?**

17 **I don't know Officer Foxx very well,
18 so I cannot, you know, testify to his character.**

19 **Q.** Wouldn't you think that somebody would
20 have gotten the message if they're returned to the
21 Springfield Police Department?

22 **A. My concern would be --**

23 **Q.** I asked you a question.

24 **A. Can you repeat it one more time?**

1 Q. The question was, would you feel that
 2 somebody would have gotten the message that they
 3 can't do this in the future if they would be
 4 returned to the Springfield Police Department?
 5 A. That they cannot do it in the future?
 6 I want every member to know that it's
 7 unacceptable, whether or not he would come back and
 8 do it again is not. The message should be that
 9 this is unacceptable.
 10 Q. I'll ask my question one more time.
 11 Do you have any reason to believe that
 12 Officer Foxx if he was returned to the Springfield
 13 Police Department whether he would engage in that
 14 same sort of conduct afterwards?
 15 A. I don't think I can testify to what he
 16 would do in the future, so I would have to say, no
 17 I wouldn't, no reason to believe he would do it
 18 again, but I have no way to predict his future
 19 behavior.
 20 Q. Could you speak up a little bit?
 21 A. I have no -- I have no basis to judge what
 22 he would do in the future, so I'm not sure how to
 23 answer your question.
 24 MR. STONE: All right. Thank you.

1 different areas?
 2 A. Yes.
 3 Q. Continuing?
 4 A. Yes.
 5 Q. And do officers also violate rules that
 6 they've been told that they shouldn't in those
 7 trainings?
 8 A. I think there are mistakes that get made
 9 in police work, just like any profession, and
 10 unfortunately some are vastly different than
 11 others, and I think this is one -- there should be
 12 no question that that information in the text that
 13 he sent, that's not a mistake. That wasn't
 14 inadvertently violating a General Order.
 15 Q. That wasn't my question.
 16 My question was, don't other officers
 17 who receive training in ways to conduct themselves
 18 commonly get cited for violations?
 19 A. Yes. Yes. There are other violations
 20 that are cited.
 21 MR. STONE: Okay. Thank you.
 22 ARBITRATOR SIMON: Does the City have a
 23 follow-up question?
 24 MR. STONE: That's all I have. I'm sorry.

1 ARBITRATOR SIMON: Any other questions?
 2 Are there any other questions, Mr. Stone, at this
 3 time of this witness?
 4 MR. STONE: No.
 5 ARBITRATOR SIMON: I didn't hear.
 6 Any direct -- redirect?
 7 MS. FANCHER: Just briefly.
 8 REDIRECT EXAMINATION
 9 BY MS. FANCHER:
 10 Q. Commander Dodd, do you think that, based
 11 on the training that Officer Foxx -- we've already
 12 talked about the training he received. Don't you
 13 think that he should have gotten the message the
 14 first time from that?
 15 A. I think the policies are very clear that
 16 that type of language and that type of conduct is
 17 not acceptable in the Springfield Police
 18 Department. But that message should be clear and
 19 has been clear to every officer that it's
 20 unacceptable.
 21 MR. STONE: I have one question.
 22 RECROSS EXAMINATION
 23 BY MR. STONE:
 24 Q. Don't officers get training in a lot of

1 MS. FANCHER: I think we would just like
 2 Officer -- Commander Dodd to be able to finish what
 3 he was saying before opposing counsel cut him off.
 4 Do you have any --
 5 THE WITNESS: I think they're saying
 6 that --
 7 MR. STONE: Well --
 8 ARBITRATOR SIMON: So I think if you want
 9 to ask a question, I think rather than ask him to
 10 follow up that would be -- that would be
 11 appropriate.
 12 REDIRECT EXAMINATION
 13 BY MS. FANCHER:
 14 Q. Commander Dodd, can you explain the
 15 distinction between this incident and other minor
 16 violations of any of the General Orders the City
 17 has?
 18 A. Mistakes can be made. It's a hard job.
 19 There is a lot that goes on. So we understand that
 20 mistakes are made, but I don't -- this is a
 21 different category for me. This is an intentional
 22 act to send this text message to another officer in
 23 clear violation of I think a pillar General Order
 24 that we have preventing workplace harassment,

1 **discrimination within the department. So it's one**
 2 **thing to make a mistake in violating a General**
 3 **Order. It's another one to so blatantly and**
 4 **intentionally disregard one of this importance.**
 5 **That's what I was getting at.**

6 ARBITRATOR SIMON: Do you have -- Mr.
 7 Stone, do you have a follow-up question?

8 MR. STONE: No. I have no questions.

9 ARBITRATOR SIMON: All right. Commander,
 10 you're excused. Thank you.

11 THE WITNESS: Thank you.

12 (The witness was sworn in by
 13 the Court Reporter.)

14 ARBITRATOR SIMON: Good morning. I'm
 15 Elizabeth Simon. I'm serving as the Arbitrator
 16 today. Please have a seat.

17 MR. STUENKEL: Thank you. Good morning.

18 JOSH STUENKEL,
 19 called as a witness herein, at the instance of the
 20 City, having been duly sworn upon his oath,
 21 testified as follows:

22 DIRECT EXAMINATION

23 BY MS. FANCHER:

24 Q. Will you please state your name and

1 Investigations?

2 A. Yes.

3 Q. And were you working in that same position
 4 in February of 2020?

5 A. I was.

6 Q. Did you need any special education for
 7 training to hold your current position?

8 A. **There are promotional exams for sergeant**
 9 **and lieutenant, beyond that it's appointed. I do**
 10 **have a Masters in Criminal Justice Administration**
 11 **from Western Illinois University, and I'm a**
 12 **graduate of Northwestern's School of Staffing**
 13 **Command.**

14 Q. And in your present position what are your
 15 duties?

16 A. **I oversee the management operations of the**
 17 **Investigations Division, which includes detectives,**
 18 **Crime Scene investigators, Street Crimes Unit, and**
 19 **other task forces.**

20 Q. Okay. And are there times that you would
 21 participate in Internal Affairs investigations?

22 A. **Yes. Due to us having one lieutenant**
 23 **assigned to Investigations, I have been assisting**
 24 **the lieutenant over there with some of those**

1 occupation for the record?

2 A. **Joshua Stuenkel, S-T-U-E-N-K-E-L. I'm the**
 3 **Deputy Chief of Investigations for the Springfield**
 4 **Police Department.**

5 Q. And how long have you been employed with
 6 the City?

7 A. **I've been employed for just over 20 years.**

8 Q. Okay. Could you please provide a brief
 9 background of the positions you've held while
 10 you've been at the City?

11 A. **Like everyone, I started as a patrol**
 12 **officer, then served as a Crime Scene investigator,**
 13 **a detective, patrol sergeant, and a detective**
 14 **sergeant, a Watch Lieutenant, then I was, in 2018,**
 15 **appointed to Commander of Investigations, and then**
 16 **in 2019 Deputy Chief of Investigations.**

17 Q. Okay. And at any time during your
 18 employment with the City were you -- did you have
 19 any position on the PB & PA Union?

20 A. **I did. As a detective and as a sergeant I**
 21 **served on the PBPA board as Treasurer, Vice**
 22 **President, and President.**

23 Q. Okay. And you stated your current
 24 position is Deputy Chief of Criminal

1 investigations.

2 Q. And that would be at the direction of the
 3 Chief?

4 A. Yes.

5 Q. In this particular case did you
 6 participate in the Internal Affairs investigation?

7 A. I did.

8 Q. Okay. Again, as it pertains to this
 9 present case, when did you first become aware of
 10 the incident involving Officer Foxx and Officer
 11 Williams?

12 A. **I believe it was the morning of February**
 13 **4th, 2020. There was a discussion among the**
 14 **command staff that morning.**

15 Q. Okay. And in that discussion with command
 16 staff, were you advised just of the facts of the
 17 incident?

18 A. **I was advised that Officer Foxx had sent a**
 19 **derogatory text message to Officer Williams and**
 20 **when Officer Williams indicated via the text that**
 21 **he didn't understand what that meant, that Officer**
 22 **Foxx then responded with a definition of that term**
 23 **from the Urban Dictionary.**

24 Q. And what was your reaction to learning all