

TOWN OF BARNSTABLE
BARNSTABLE FIRE DISTRICT
PRUDENTIAL COMMITTEE
1841 PHINNEY'S LANE
BARNSTABLE, MA

Meeting Date: December 31, 2018

TIME: 4 PM

PLACE: Barnstable Fire Station, 3249 Main Street, Barnstable, MA

The meeting was called to order by William Jones, Chairman of the Prudential Committee at 4 PM. Also, in attendance was Prudential Committee member Joshua Miller, Fire Chief Frank Pulsifer, Deputy Fire Chief Rick Pfautz, District Chief Charles Eager, Local Attorney Paul Hines, Firefighter Ryan Jones, Captain Kevin Brailey, Firefighter Neil Tuepker and Richard Ogonowsky, Jr.

Meeting was setup as part of the grievance process between Firefighters' Local 3276 and the Fire District as set out in the Collective Bargaining. The Fire Chief had denied the Step 1 grievance filed by the Local contesting the dismissal of a firefighter for disobeying a direct order. This is the Step 2 appeal to the Prudential Committee in the process. The Prudential Committee at the beginning of the meeting there would be no decision made today and they were here to listen to what the Local had to say. A decision will be rendered within the 45 day period allowed by the grievance process although it was not expected to take the full 45 days. Mr. Hines spoke on behalf of the Local and the discharged employee.

Mr. Hines advises the Prudential Committee that if the case moves to arbitration the employer has the burden of proof. Mr. Hines states anytime there is a termination of an employee we are talking about the most serious sanction that can be imposed. Mr. Hines emphasizes the discharged employee's career with the Department which began in 1996. He rose through the ranks to the position of Captain. He has been exposed to conditions responding to emergencies. These types of experiences lead to Post Traumatic Stress Syndrome and the discharged employee has dealt with it. He was out of work for this but due to good treatment and counselling he was able to come back to work. He was back to work when this incident happened. Mr. Hines is unsure of what facts the Department is using because he hasn't seen many detailed facts. He said he has only seen interview sheets and knows of a meeting held with an attorney for the District was present.

Mr. Hines says what happened in this case was there was a miscommunication over cancelling an overtime assignment. The Deputy told the discharged employee to cancel an overtime assignment for firefighter Cabral. Firefighter Cabral and the discharged employee had a conversation. During this time, it came to the attention of the discharged employee that the exact situation had occurred had occurred on September 8 involving Groups 2 and 4. He said was the exact same situation and the overtime was not cancelled. Mr. Hines said he would address the text sent in a moment. He said the text was a snippet of what happen during the conversation. Firefighter Cabral convinced the discharged employee that the situation happened previously so the discharged employee said "Fuck it, lets go with it and we will deal with it latter". Mr. Hines says it always concerns him when he sees the word "insubordination". He said the situation here was not any type of disrespect for the Deputy or insubordination directly to the Deputy. Even the text did not say "Fuck the Deputy" it said "What the fuck". It was not directed at the Deputy or was it disobedience of a direct order. Mr. Hines categorized this as confusion regarding an ongoing matter of concern between the Union and Department. The whole staffing issue has been an ongoing issue. In fact, it wasn't too long before the Union President sent a letter to the Prudential

Committee to discuss the matter. Whenever this happens to a Union Official such as the discharged employee it brings up the question whether the official may be subjected to disparate treatment. Mr. Hines said looking at the timing of the situation as a whole the sending of the letter and the disciplinary action seems somewhat over the top for tit/tatty offense. He sees it a rules violation but not a terminable offense. It was just a good faith dispute on whether firefighter Cabral could work the overtime shift. That is something that could have been remedied but calling all parties in a day or two latter and deal with them. If the situation resulted in some undo cost to the District level a little fine. Mr. Hines also told the Committee if you review the seven rules of discipline the first rule is "Was the employee adequately warned of the consequences of his conduct? The second rule is "Was the employer's rule or order reasonably related to efficient and safe operations of the Department? Mr. Hines says the very reason are sitting here today where 8 days prior where under the same situation the overtime was allowed the problem has not been fixed. There not been any type of remedial order sent out to Department. No SOP or SOG has been out to the Department saying on such and such date overtime was cancelled and these are the rules going forward. He says this is essential in these types of cases. Mr. Hines believes this time of situation can be easily corrected. Again, he reiterates that this situation has not been addressed by any type of order to this date. Mr. Hines that this is an absolute failure of management.

Mr. Hines told the Committee that they have the text and he assures then that the termination will not be upheld by any objective arbitrator who will review this case. He said if he goes down the list for just cause discipline this case was not handled properly. He believes the District originally handled it properly. When it first happened, the Deputy called the discharged employee into his office and had a candid conversation about the matter.

Mr. Hines then what he thinks happens during the conversation between firefighter Cabral and the discharged employee. He belief it was probably heated personally knowing firefighter Cabral. Here are two people who work together, live together in the station and serve on the Union Board together. He belief this another It happened during the whole staffing issue the Prudential Committee will be dealing with. issue an arbitrator will review mitigating circumstances. He can not believe you can take a 22-year firefighter who has had an explementary record of service and just want to get rid of him after all you have paid to train him on the failure of having a SOP or SOG on this.

Mr. Hines said the ultimate question from what he has seem is the discharged employee is being charged with not conveying the Deputy's orders to firefighter Cabral. If that is what he is being charged with that is sort of a no brainer because he did convey the orders and that led to the discussion. Perhaps he should have relented and said fuck it come on in but he certainly did what he was told.

Mr. Hines said the way this should have been handled should have been as initially done by the Deputy calling in the discharged employee for a discussion, the issuance of a warning and finally the issuance of a SOG to the Department letting everyone know what the rules of engagement are going forward on this overtime issue. Hopefully it will never happen again. Then it can be handled at the table with Prudential Committee.

Mr. Hines said because the discharged employee is a Union President it is always taken as a mitigating factor. He truly belief there is not just cause for termination. It could have been handled with a warning and followed up with a SOG.

Motion made, seconded and passed to adjourn the meeting.