

CONNECTICUT STATE BOARD OF MEDIATION AND ARBITRATION  
LABOR DEPARTMENT

38 WOLCOTT HILL ROAD  
WETHERSFIELD, CONNECTICUT

June 24, 2021

TRANSMITTAL MEMORANDUM

*New Haven, City of*  
and  
*CACP*  
*Local Elm City*

\*\*\*\*\*  
*Case # 2021-A-0003 Santiago, Jason*

*# 20-15*  
\*\*\*\*\*

ARBITRATION AWARD  
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Copies were sent to the following parties:

Norman A. Pattis, Esquire

Dennis C. Murphy

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Michael C. Culhane

C. Simpson, LR Director; Chief O. Rey

Betty Kuehnel

F. Cotto, President; M. Segar, Esquire

Town Clerk\*

File

\*When applicable, this transmittal is filed with the town clerk in accordance with Section 31-98, Chapter 560, of the Connecticut General Statutes.

CONTACT PERSON

Julie Ferrigno



STATE OF CONNECTICUT  
STATE BOARD OF MEDIATION AND ARBITRATION

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In the Matter of:

Case No. 2021-A-0003

City of New Haven

-and-

CACP, Elm City Local

Hearing Date(s)  
November 4, 2020  
November 19, 2020  
December 11, 2020  
January 19, 2020  
February 1, 2021

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Date of Award: June 24, 2021

Hearing Location: Via Zoom

ARBITRATION AWARD

Dennis C. Murphy, Esq., Chairman  
Betty Kuehnel, representing the union  
Michael C. Culhane, representing the employer

Floyd J. Dugas, Esq., representing the City  
Norman Pattis, Esq., representing the Union

## Procedural History and Issue

This is a dispute between the City of New Haven (city) and the CACP, Elm City Local (union) concerning the termination of Jason Santiago (Santiago). Five hearings were held virtually on the matter where the parties, after due notice, appeared and offered testimony, evidence and an ability to cross examine same. The parties filed briefs and reply briefs. The parties jointly submitted the following Issue for determination:

1. Did the City have just cause to terminate the Grievant?
2. If not, what shall the remedy be? (Joint Exhibit 1).

## Relevant Provisions of the Collective Bargaining Agreement And General Orders

### General Order 1.03

Officers shall conduct themselves in accordance with the U.S. and State Constitution and all applicable laws; police officers shall not commit any act or action unbecoming of an officer; employees shall not engage in conduct that would cause discredit to the Department.

### General Order 6.01.02.

...In compliance with applicable law, officers shall use only the amount of force necessary and reasonable to control a situation, effect an arrest, overcome resistance to arrest, or defend themselves or others from harm...There is a compelling public interest that officers authorized to exercise the use of force do so in an objectively reasonable manner and in a way that does not violate the civil rights guaranteed by our Constitution and applicable law. Officers who use excessive or unjustified force degrade the confidence of the community that they serve, undermine the legitimacy of a police officer's authority, and hinder the Department's ability to provide effective law enforcement services to the community.

### Findings of Fact

1. At 7:05 a.m. Christmas morning 2019, a vehicle which had been operated by Luis Rivera ("Rivera") became disabled on Lombard Street in New Haven. Officer Michael Hinton ("Hinton") was dispatched to the scene on report of an intoxicated person. Upon arrival, Hinton found Rivera and the disabled vehicle. Although he initially placed Rivera in handcuffs apparently without incident, he released Rivera since it was Christmas morning, and he gave him an opportunity to get the vehicle towed before he had it towed away.

At some point a women named Julie Cruz ("Cruz") interjected herself into the scene. She implored Rivera to call his cousin to tow the car, in an aggressive, chaotic manner. Sensing he was losing control of the situation, Hinton called for assistance. A short time later three other officers arrive: Officer Leonardo (Leonardo), Officer Billups (Billups) and Santiago.

A civilian video of the incident (City Ex. 14), and body worn camera ("BWC") footage from the officers involved were reviewed by the Panel as to what occurred next. (City Ex. 13). The following is a description of what occurred and the source, or author.

#### Description

#### Source

Santiago arrives on scene and asks Hinton what was going on; Rivera and Cruz are arguing, and Rivera offers his hands and tells officers to arrest him.

Santiago BWC at 00:53; Hinton BWC (2) at 2:45

Leonardo escorts Cruz away from Rivera, Rivera turns toward her and says, "don't touch her, don't fucking touch her."

Leonardo BWC at 1:40

Santiago tells Rivera to relax; Rivera responds "you relax." Santiago then says, "I have had enough of this guy." As he says that he turns Rivera around and attempts to handcuff him.

Hinton BWC (2) at 3:20; Santiago BWC at 2:23

Rivera begins to resist, and officers struggle with Rivera for apparently one minute. During this time Santiago is twisting Rivera's leg in a "pain compliance technique."

Hinton BWC (2) at 3:24

Hinton is heard telling Rivera to put his hands behind his back; clicking of handcuffs can be heard.

Hinton BWC (2) at 4:26

Santiago is then seen standing and releasing Rivera's leg. At this point Rivera is handcuffed and laying on his stomach. Santiago can then be seen kicking Rivera with moderate force in the groin with his right foot.

Hinton BWC (2) at 4:30

Immediately after the kick Rivera says "you kicked me in the nuts."

Hinton BWC (2) at 4:31

Rivera is then heard saying "you're a fagot ass nigga."

Hinton BWC (2) at 4:33

Santiago is then heard saying "all that for nothing."

Hinton BWC (2) at 4:41; Santiago BWC at 3:43

Santiago is then seen lifting Rivera up by his left ponytail; Hinton also has his hand on the ponytail and appears to be assisting Santiago lifting Rivera to his feet.

Hinton BWC (2) at 4:42; Santiago BWC at 3:45

NOTE: Up to this point there is no mention of spitting by any of the officers, and no sound is heard from Rivera suggesting he is spitting.

As soon as Rivera is on his feet, a sound which sounds like spitting can be heard. Santiago punches Rivera in the face and Rivera falls to the ground face down.

Hinton BWC (2) at 4:45; Santiago BWC at 3:48

Hinton is heard saying "bro why you spit"; Rivera is observed face down on the ground.

Hinton BWC (2) at 4:49

Santiago then walks over and points his finger in the areas of Rivera's left ear and says, "that's assault second on a police officer."

Hinton BWC (2) at 4:52; Santiago BWC at 3:54

After calling in on the radio a laceration to his hand and laceration to subject's face, Santiago tells Rivera "you don't ever spit in someone's face stupid."

Santiago BWC at 4:38

Hinton then holds Rivera by his two ponytails.

Santiago BWC at 4:59

Rivera then directs a stream of insults to officers. Rivera is seen spitting blood on the road.

Santiago BWC at 5:20

Santiago asks Hinton "who drove this car" Hinton responds "FD (Fire

Santiago BWC at 5:50

Department) says he was, he's saying she was (referring to "Cruz").

Santiago is then heard saying he (Rivera) is getting that DWI now. Hinton BWC (2) at 5:58; Santiago BWC at 5:00

More expletives from Rivera directed to officers. Hinton BWC (2) at 6:18

Santiago walks over to the black truck he was driving and has a brief exchange with Leonardo "that fucker spit on me." Santiago BWC at 5:40

Hinton is heard saying to Rivera "what are you retarded." Hinton BWC (2) at 6:20

Hinton asks Rivera if he had been drinking; Rivera is not responsive. Hinton BWC (2) at 6:50

Santiago walks back toward Rivera who says, "there's the bitch ass nigga who punched me; Santiago says, "yes I did." Santiago BWC at 6:00

Santiago says, "it's Christmas morning, what is wrong with you?" He repeats "it's Christmas morning, you should be home with your kids." Hinton BWC (2) at 7:02

Santiago asks Jessica Morales if she is Rivera's wife; she says yes. Hinton BWC (2) at 7:20; Santiago BWC at 6:02

Santiago then asks who Cruz is and says, "who are you to him... you're the side chick huh?" Santiago BWC at 6:38

As he is holding Rivera's ponytails, Rivera says don't hold my hair "I aint Hinton BWC (2) at 7:21



your bitch." Hinton responds "that's how your boyfriend do it. Then "I gotta make sure you stay put."

Hinton tells Rivera he is going to stand him up and walk him to the sidewalk (so the tow driver can tow the car). Rivera responds, "you better control your buddy." Rivera says, "you're not going to pull me up by my hair." Hinton responds, "I'm not going to pull you up by your hair."

Hinton BWC (2) at 8:25

Officers then roll Rivera onto his right side and lift him to his feet. Hinton continues to hold Rivera's ponytails.

Hinton BWC (2) at 8:35

As they escort Rivera to the sidewalk an officer (believed to be Hinton) is heard saying "be careful of him spitting."

Hinton BWC (2) at 8:46

Santiago is heard saying "because he is going to do it again."

Hinton BWC (2) at 8:50

Blood can be seen on Rivera's face and on the ground where he was lying face down.

Hinton BWC (2) at 8:45

Rivera is laid down on the sidewalk facing up with his hands handcuffed behind his back.

Hinton BWC (2) at 9:00

The vehicle is then towed.

Hinton BWC (2) at 9:37

Santiago is heard saying "it's Christmas morning bro."

Hinton BWC (2) at 9:43

Rivera says, "I was not intending this shit."

Hinton BWC (2) at 9:48

Sergeant Guliuzza is heard on the radio saying "you good, do you need me out there?" Santiago responds, "I would say you should swing by."

Santiago BWC at 9:20; Hinton BWC (2) at 10:10

Ambulance shows up; Santiago asks to be cleaned up; says Rivera spit at him so he punched him in the face.

Santiago BWC at 9:43

Santiago asks (believed to be Morales) "were you with him last night (speaker says "no"), he continues that's where to should have been."

Santiago BWC at 9:52

Hinton fills out paperwork for tow driver and says, "this shit turned into a nightmare."

Hinton BWC (2) at 10:40

Hinton walks over to the paramedic ambulance and says "Jason, sorry about that man, I'm gonna mess up your Christmas."

Hinton BWC (2) at 12:58

Hinton asks paramedics if they have a mask. Santiago can be seen being attended to by paramedics.

Hinton BWC (2) at 13:16

Santiago asks Morales if Rivera has any diseases, she responds no.

Santiago BWC at 13:15

Santiago says "he squared up to fight boss;" Hinton responds, "he squared up a couple times. I said go ahead and throw that punch if you want. But he did not do it."

Hinton BWC (2) at 14:40; Santiago BWC 13:40

Rivera is then seen with a mask partially covering his face. Hinton BWC (2) at 16:03

Hinton talking to Jessica Morales as owner of the vehicle towed. Hinton BWC (2) at 17:20

Sgt. Guliuzza appears. Rivera on stretcher. Then loaded into ambulance. Officers seen cleaning blood off their clothes. Hinton BWC (2) at 19:13

2. The incident was brought to Chief Reyes' attention when Assistant State's Attorney Jennifer Lindade was preparing for the prosecution of the suspect and became concerned about what she saw on the video. Lindade wrote to Lt. David Zannelli, head of the NHPD's Internal Affairs Division, expressing "serious concerns about the force used against the suspect." (City Ex. 3). An internal affairs investigation ensued ultimately resulting in the Santiago's termination. Following his termination, CACP, Elm City Local (the "Union") filed a grievance on behalf of the Grievant

3. An Internal Affairs Investigation was opened and conducted by Detective Jessica Stone (Stone) and Sergeant Christopher Fennessey (Fennessey). Officer Hinton told the investigators that he did not see Santiago kick Rivera between the legs nor did he see him pick Rivera up by the hair braids. He also said he did not see Rivera spit, but heard him do so.

4. Investigators also interviewed Santiago. Santiago stated Rivera pulled up his pants which Santiago stated, based on his training and experience, was a sign he was preparing to fight. Santiago stated, when he grabbed Rivera his intent was to move him away from the vehicle so it would be towed but Rivera became combative, pulling his arms away and trying to strike officers. Santiago tried to take Rivera down using a "leg sweep" technique, but it failed. At that point Santiago grabbed Rivera's lower body, lifted him up and brought him to the ground. (Id. at p. 20).

5. Santiago initially told the investigators that he did not kick Rivera, but after being shown the video he acknowledged that he did so, but unintentionally. Santiago stated in his Supplemental Report on the matter that Rivera had been spitting on other officers. (Ex. 1 at 7). The Supplemental Report Santiago submitted was dated a month after the incident. A required Use of Force was filed, according to Santiago, but no original or copy can be found. After viewing the video, Santiago explained that he heard spitting. The videos do not show any discernable spitting until a moment before Santiago punched Rivera in the face. Rivera falls to the ground.

Stone interviewed Rivera who stated alternately that he didn't remember being kicked, and, that it wasn't a really hard kick.

6. Stone consulted David Acosta, a Department use of force trainer. In his IA interview he concluded, after reviewing the videos, that the hair pulling and the kick to the groin was not justified and a violation of the use of force policy, but that in his opinion, the punch was justified.

At the hearing before this Panel, Acosta testified that the hair pulling might be justified if it were not actually bearing or pulling Rivera's weight. He further testified that he could not say with certainty, and then, did not have an opinion on, whether the kick was justified because he would need to know more about Santiago's state of mind and his view of the totality of the circumstances.

Acosta was disciplined by the Chief between the IA interview and when Acosta testified before this Panel. Further, the Chief testified that there was pressure on the matter from his fellow officers.

7. Stone and Fennessey concluded that Santiago's kick to the groin and pulling Rivera up by the hair was unreasonable and excessive. They found the punch to the face was reasonable. Thus, Santiago was found in violation of General Orders 6.01.02, 6.01.04 and 1.03.

8. Chief Reyes, a lifelong member of the New Haven community, ordered a Loudermill hearing in the matter. At the hearing, Santiago did not accept any responsibility or remorse for what occurred. The Chief testified credibly that this caused him concern that the conduct might reoccur. After consulting with his Assistant Chiefs, the Chief recommended to the Police Commission that termination was the appropriate measure. The Chief has no authority to terminate employees. The New Haven Police Commission does.

9. Subsequent to Acosta's testimony before this Panel which totally negated his previous opinions with respect to Santiago's actions, the City hired Eric Daigle to review the matter. Daigle is a former state trooper and an attorney with broad expertise in the area of police use of force. Daigle reviewed the video tapes of the incident and the exhibits in this matter. He made the following observations in his report:

1. Santiago states: "I had enough of this guy."
2. After attempting to arrest Rivera, a fight ensued, resulting in Rivera being placed in handcuffs, "Santiago stood up while moving away from Rivera, Santiago appeared to deliberately kick Rivera between the legs/in the groin area with his right foot."
3. After stating to Rivera "all that for nothing. It didn't have to get to that man" "Santiago then reached down and grabbed Rivera's braid and pulled him up from the ground by his braid" (Hinton assisted by grabbing the back of Rivera's shirt).
4. When Rivera reached his feet, Santiago released his braid, Rivera turned toward Santiago and Santiago almost simultaneously struck Rivera in the face with a closed fist causing Rivera to fall to the ground.
5. Santiago then points his finger in Rivera's face and says "you don't spit. That's assault 2<sup>nd</sup> on a police officer."
6. In front of Rivera's wife, Morales, he asks Cruz "who are you to him? You the side chick, huh?" at which point Cruz becomes angry and starts yelling.
7. As a result of Santiago striking Rivera's face, Rivera was bleeding from the mouth and Santiago suffered a laceration to his hand. (Ex. 17, p. 6-7)

Daigle then expressed the following opinions as they relate to Santiago:

37. "It is my opinion to a reasonable degree of professional certainty that Santiago's kick/strike with his foot to Rivera's groin or genital area does not meet industry standards and was a violation of the New Haven Police Department's Use of Force Policy...Santiago's kick/strike to Rivera's groin was unreasonable and in violation of the Department's use of force policy in that he was not actively resisting, or posing a threat to officers...Section 1.03.09 requires officers to 'treat all members

of the public with courtesy and respect"... Rule 5.2 provides "No police officer shall ridicule, mock, taunt, belittle, willfully embarrass, humiliate or shove any person...In general society, the kick to an individual's genitals carries with it an element of degradation against the person, and is often done for the purpose of humiliating or degrading that individual..."

38. "It is my opinion to a reasonable degree of professional certainty that Santiago grabbing Rivera's braids with his hands and pulling up Rivera to a standing position by his braids does not meet industry standard and was in violation of New Haven Police Department policy and procedure...Rivera was handcuffed and facing away from Santiago...Although trained technique, using the hair to pull a subject to a standing position is not, and is an unreasonable tactic, resulting in unreasonable use of force..."
39. "It is my opinion to a reasonable degree of professional certainty that Santiago's closed fist punch to Rivera's face did not meet industry standards regarding use of force and was a violation of Department policy related to use of force...NHPD General Order 6.01...provides that 'officers shall use only the amount of force necessary and reasonable to control a situation, effect an arrest, overcome resistance to arrest, or defend themselves from harm'...It is true Rivera was resisting up until the time he was handcuffed, and did spit bodily fluids at or on Santiago once he was brought to his feet, but in weighing Santiago's response to the action I find it unreasonable...In my opinion, Officer Santiago's punch was retaliatory and the risk of causing significant injury far outweighed the treat posed."
40. "National use of force standards set forth by clearly established law, policy and training do not support the action of punching a handcuffed subject in the face for spitting. An analysis of the incident...does not lead to the conclusion that a punch to the face was an appropriate response to spitting in this situation..."
41. "NHPD General Order 1.03, Rules of Conduct, Section 1.03.09, requires officers to 'treat all members of the public with courtesy (sic) and respect.'...Santiago...asked if Morales was the girlfriend...at that point, Santiago pointed across the street to where Cruz was standing and asked 'who are you to him? You the side chick, huh?' Cruz became enraged and agitated again...Santiago's comment to Cruz was clearly rude, disrespectful, and inciteful...for no other purpose than to belittle, embarrass and humiliate her. As such Santiago's comment to Cruz was

in violation of New Haven Department Rules of Conduct, specifically, 1.03.09-Principal Fire-Courtesy and Respect and Rules 5.1 and 5.2.” (City Ex. 17)

10 The Union presented a number of witnesses before this Panel, testifying to the high character of Santiago. Officer Eduardo Leonardo testified to Santiago’s truthfulness and respect in the eyes of the community. A Trevor Burke testified that he knows Santiago as a selfless individual who always sought to protect others. Officer Eric Aviles testified that he has known Santiago for over 14 years and sees him as a high standard, outstanding officer. Officer Joseph Bleck testified that he has known Santiago since before joining the force in 2014. Santiago, according to Aviles, has always been truthful, a true leader.

11. Santiago graduated Western University in 2010 and joined the police force in 2012. He became certified in crisis intervention, patrol rifle operator and the Honor Guard. He was twice awarded the Medal of Valor

### Arguments of the City

The City argues that it had just cause to terminate Santiago’s employment. The City’s Opening Statement at the hearing included: “I would just add that we all can take judicial notice about what’s been going on in terms of racial injustice and accountability in the state of Connecticut, throughout the country, and one of the criticisms that has been leveled is that police departments don’t hold their people accountable.”

The City argues that this Panel only need to determine whether the City’s action was not “arbitrary, capricious or unreasonable.” That this Panel should only ensure that the action is taken in good faith, upon a fair investigation, and fixes a penalty not inconsistent with similar circumstances. And leniency, it argues, is something only the employer may grant.

The City argues that a number of points support termination.

First, Assistant State's Attorney Lindade who, according to the City's brief, "was so shocked by what she saw.." that she transmitted the videos to the Department.

Next, Stone and Fennessey, fellow union members, found Santiago in violation of the use of force General Orders.

As to Acosta, it argues that his IA testimony was clear in finding that Santiago's kick and hairpulling violated the order. And, between the IA testimony and the hearing before this Panel, Acosta had been disciplined and had received certain pressures on the matter from the bargaining unit members.

Further, the City cites Graham v. O'Connor, 490 U.S. 388 (1989) and its progeny to support the City's determination.

### Arguments of the Union

The Union argues that Santiago's termination was an unwarranted overreaction to the national unrest caused by the George Floyd matter in May of 2020. That the City's Opening Statement confirmed that.

The Union further argues that the investigation in the matter was so flawed that it deserves no reliance. As to the kick, Santiago did not remember kicking Rivera, and Rivera barely remembers being kicked. Santiago appears on the video to simply losing his balance, however Stone never asked Santiago if that was what happened. And, if an accidental kick occurred, the victim indicated he didn't realize he was kicked.

The Union argues that the City's case totally collapsed when Acosta, the Department's expert on excessive force, first told the IA investigators that in his opinion upon review of the videos, that Santiago used excessive force. But, at the hearing before this Panel reversed his view entirely when he testified that it all depended on Santiago's state of mind at the time, and the totality of the circumstances. Acosta never interviewed Santiago, and Stone never asked the questions.

Further, the Union argues that any after the fact report by Daigle should be ignored; that the determination to terminate Santiago did not rely upon such after the fact, City sponsored report.

Santiago, the Union argues, is a man admired by his peers and the community which wants him back on the force. Thus, the termination should be overturned.



## Discussion

The City has the burden to demonstrate by a preponderance of the evidence that it had just cause to terminate Mr. Santiago. It has met that burden.

The City urges the Panel to employ as a standard of review the "arbitrary, capricious or unreasonable" standard. We decline to do so. The "preponderance of the evidence" standard, which incorporates a number of guideposts as elements of "just cause", is the appropriate standard.

The City correctly cites the case law which stands as a dome over this matter: Graham v. O'Connor, 490 U.S. 388 (1989), held in material part: "the degree of force used in effecting an arrest, investigatory stop, or other seizure is evaluated by using an objective, reasonable police officer standard. The reasonableness of each particular use of force will be judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at the time. In determining the appropriate level of force to be used, officers shall evaluate each situation in light of the unique facts and circumstances of each case. Those factors include, but are not limited to, the seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to escape; and whether the subject was posing an imminent threat to officers or others." See also, Horton v. California, 496 U.S. 128, 138, 110 S. Ct. 2/301, 110 L. Ed. 2d 112 (1990) ("*The United States Supreme Court has endorsed an objective standard, noting that 'evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer.'*"); Whren v. United States, 517 U.S. 806, 813, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996) ("[s]ubjective intentions play no role in ordinary, probable-cause, Fourth Amendment analysis"); Ornelas v. United States, 517 U.S. 690, 696, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996) (probable cause based upon evaluation of "facts, viewed from the standpoint of an objectively reasonable police officer"); Maryland v. Macon, 472 U.S. 463, 470-71, 105 S. Ct. 2778, 86 L. Ed. 2d 370 (1985) ("[w]hether a Fourth Amendment violation has occurred 'turns on an objective assessment of the officer's actions in light of the facts and circumstances confronting him at the time...and not on the officer's actual state of mind at the time the challenged action was taken...'").

Upon review of the video, in reliance on the determination of the IA investigators in this matter, and as elucidated by the Daigle report, we find that Santiago lost his composure and temper, as he kicked Rivera, a handcuffed man face down, in the groin. Santiago's own words: "I've had it.." disclose this.

It may be noted that this Panel does not rely upon any opinion that may or may not have been expressed about this matter by Assistant State's Attorney Lindade. She did not testify at the hearing.

Upon reviewing the video, the kick certainly was not seen as a strong, highly forceful thrust of his boot into Rivera's groin. However, it was a thrust of his boot with sufficient force to have Rivera instantaneously blurted out "You kicked me in the nuts!"

Santiago initially reported that he had no recollection of kicking Rivera. His lack of memory on the subject is either lacking in credibility or concerning. Rivera's exclamation was clearly audible. It is hard to believe Santiago did not hear it, or perhaps, his anger overrode his senses. There can be no true determination made on the matter. Upon reviewing the video he said he must have lost his balance, causing his boot to strike Rivera's groin.

Rivera's later version of not remembering being kicked deserves little weight. Several factors render his statements to the department unreliable. Including being intoxicated or in an otherwise impaired state at the time, to a need to curry favor while his criminal case was pending.

Sometimes degrees of touching, or violence, is relevant to a judgment of what penalty is commensurate. Often, the nature of the act itself provides the answer. If an officer is caught stealing a \$5 item, is that truly any different than a \$500 item. We think not. Here, we chose not to attempt to discern what exact force of a kick should be met with termination versus a lesser penalty. A kick in the nuts is, well, a kick in the nuts. And, the fact that Rivera was handcuffed face down exacerbates judgment on the conduct.

With respect to the pulling of Rivera's hair, it certainly appeared forceful and weight bearing. It was sufficient an act for Rivera to ask both officers not to pull his hair. We recognize that grabbing and using someone hair to control the direction of the face is a trained and reasonable technique. Standing up a face down handcuffed individual by the hair is not. Several other options of standing him up were available, as demonstrated by Officer Hinton who assisted by grabbing Rivera's shirt. Stone, Fennessy, Acosta (until he changed his mind), Daigle, the Chief and assumably the Police Commission found the hair pulling to be excessive force in violation of the policy. We do as well.

It is not clear the extent to which the Police Commission based their decision of termination on Santiago's punch to the face. It is interesting that Stone, Fennessey and Acosta found that the punch was reasonable. Daigle found it "retaliatory and the risk of causing significant injury far outweighed the threat posed". Some police departments train that a punch to the face may be used as a "distracting blow" to someone resisting and posing an immediate threat to an officer's safety. Rivera's spit

was a disgusting, violent and perhaps disease causing act can be seen as an immediate threat. It is not difficult to understand punching an individual in the face after being spat upon by such individual. But should a police officer do so to a handcuffed individual? It appears that Daigle judged the blow in the context of the entire situation, including Santiago's expression that he had "had it".

With such conflicting viewpoints, it is difficult for this Panel to discern the reasonableness of the punch. We can rely on industry standards in determining a question of "just cause", when they are clear and uniformly understood by all affected. It appears much work needs to be done to grapple with the industry standards around reasonable use of force, so that all officers are on clear notice.

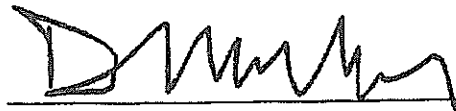
The Union's argues that the termination was an unwarranted rush to judgment as a result of the George Floyd matter and ensuing community expression of outrage. It is always worth review when public officials may be inspired or cowed by public outrage. This is especially true when the outrage is based upon unacceptable racist or bigoted views. We do not have that here. Although the City's opening statement did bring our awareness to "racial injustice", both Santiago and Rivera are Latino. There was no claim of racial animus. So the Union is correct in opining that the City's comment was irrelevant.

If the public officials in this matter took into account an outcry for heightened police accountability surrounding police use of force, then so be it. This Panel finds, on the facts of this case, as demonstrated, full accountability was warranted.

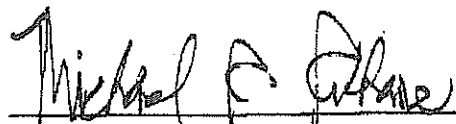
#### Award

The City had just cause to terminate the grievant.

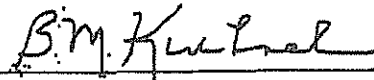
Case No. 2021-A-003

A handwritten signature in dark ink, appearing to read "D. Murphy", written over a horizontal line.

Dennis C. Murphy, Esq. Chairman

A handwritten signature in dark ink, appearing to read "Michael C. Culhane", written over a horizontal line.

Michael C. Culhane,  
Management Member

A handwritten signature in dark ink, appearing to read "Betty Kuehn", written over a horizontal line.

Betty Kuehn  
Labor Member