IN THE MATTER OF ARBITRATION
BETWEEN

CITY OF FINDLAY	)	**OPINION AND AWARD**
	)	
	)	
AND	)	
	)	**DAVID HILL TERMINATION**
	)	
OHIO PATROLMEN'S BENEVOLENT ASSOCIATION	)	

JAMES M. MANCINI, ARBITRATOR

APPEARANCES:

FOR THE UNION

Michelle T. Sullivan, Esq.

FOR THE CITY

Gary C. Johnson, Esq.

S U B M I S S I O N

This matter concerns a grievance filed on January 8, 2013 by Sgt. David Hill. The Grievant claimed that he had been unjustly terminated in violation of the Collective Bargaining Agreement between the City of Findlay (hereinafter referred to as the City or Employer) and the Ohio Patrolmen's Benevolent Association (hereinafter referred to as the Union of OPBA). The arbitration hearing was held on May 8 and 21, 2013 in Findlay, Ohio. The parties subsequently presented post-hearing briefs.

B A C K G R O U N D

The Grievant, David Hill, has been employed as a sergeant with the Findlay Police Department since November 2005. Prior to that time, he served as a full-time patrolman for six years. At the time of his termination, the Grievant was one of two sergeants working on the midnight shift.

Sgt. Hill's duties included doing the roll call at the start of the shift. The shifts are supervised by two sergeants with ten to fifteen officers on each shift. Roll call lasts about fifteen to twenty minutes with sergeants making assignments and giving patrol officers all the pertinent information of the day. Once the roll call is completed, the sergeants then turn in the district assignments to the dispatchers. During this time, the

officers have time to talk amongst themselves. According to the Grievant and two other officers who testified, they typically joke around with one another following roll call.

On November 13, 2012, the Grievant along with Sgt. Dan Harmon were on duty during the midnight shift. Sgt. Harmon was running the roll call with the Grievant sitting with the other patrol officers in the room. Following the roll call, the officers started several conversations amongst themselves including one about the upcoming FOP Christmas party. In that Sgt. Hill was President of the local FOP lodge, they were asking questions of him as to who would be on the committee for the Christmas party. The Grievant testified that as he was looking around the room for those on the committee, he saw Officer Morgan Greeno. The Grievant stated that as he attempted to say "Morgan," the word "Whoregan" came out of his mouth. Officer Greeno stated that she heard the Grievant refer to her as "Whoregan" but did not say anything at the time. The Grievant and Officer Greeno carried on their conversation about the upcoming Christmas party for another twenty minutes. According to Sgt. Hill, at no time did Officer Greeno ever tell him that his reference to her as "Whoregan" offended her. Officer Greeno subsequently filed a harassment complaint against the Grievant over his reference to her as "Whoregan." During the investigation of the incident by Lieutenant Robert Ring, other officers who heard the "Whoregan" reference did not believe that it was a mean spirited comment. Some felt that it was a mere slip of the tongue by the Grievant. When Lieutenant Ring interviewed Sgt. Hill, he too stated that it was a slip of the tongue.

Officer Greeno filed a harassment complaint on November 21, 2012 with the department. She advised Lt. Ring of the harassment she was receiving from the Grievant as well as other police officers on her shift. Officer Greeno stated that the Grievant's reference to her as "Whoregan" essentially conjugated the word "whore and Morgan." She stated that Sgt. Hill as her supervisor should not refer to his officers in such a demeaning manner. Officer Greeno also indicated to Lt. Ring that Sgt. Hill had condoned or participated in comments being made to her by other officers on the shift suggesting that she was having a sexual relationship with the building custodian and as a result had become pregnant. The Grievant denied ever making jokes about Officer Greeno having a romantic relationship with Randy, the building custodian. According to the Grievant when other officers would make jokes about this topic, Officer Greeno would play along and did not appear to be offended.

Lt. Ring conducted the investigation of the sexual harassment complaint filed by Officer Greeno. According to the lieutenant's report, Greeno was visibly upset when he spoke to her and was angry about what had happened. She also mentioned that she felt the Grievant's comment may have stemmed from her impending testimony at the time against Sgt. Hill in a disciplinary arbitration which was set for November 28, 2012. Lt. Ring also spoke to Sgt. Harmon who conducted the roll call on November 13th. Sgt. Harmon indicated that he had heard Sgt. Hill call Officer Greeno "Whoregan." However Sgt. Harmon stated that he had never heard Sgt. Hill refer to Greeno as "Whoregan" on

any other occasion. The lieutenant also received written statements from other officers who were present on the day in question. Officer Chris Huber indicated that he did not think the comment made by Sgt. Hill in calling Officer Greeno a "Whoregan" was a big deal. Officer Jason Morey stated the comment made by Sgt. Hill simply "slipped out" and was not intentional. Officer Darin Lawrence stated that Sgt. Hill's use of the word was more of a "tongue tie" than a deliberate comment. Officer Joe Smith felt that it was made with an attempt at humor that was taken the wrong way. When the lieutenant interviewed Sgt. Hill, he stated that it was a "slip of the tongue" and that he has never unfairly treated Officer Greeno. Sgt. Hill further indicated that he was thinking of two things at once and the phrase came out by mistake. He denied meaning anything derogatory by it. The Grievant denied calling Officer Greeno a "Whoregan" as a result of a pending arbitration hearing. Sgt. Hill also stated that he never made any comments to Officer Greeno about her having a sexual relationship with Randy the custodian. Rather, the Grievant indicated that those comments came from other officers on the shift and it was a typical type of banter engaged in at roll call.

Lt. Ring in his summary of the investigation stated that it was unacceptable for a supervisor to refer to a female subordinate as a whore regardless of the setting. He also did not believe that Sgt. Hill made the comment accidentally. He stated that the term "whore" is a sexual one and when relayed from a male supervisor to a female subordinate constituted sexual harassment. He noted that Sgt. Hill did not immediately apologize or

try to explain the comment to Officer Greeno. The lieutenant concluded that Sgt. Hill calling Officer Greeno "Whoregan" violated several departmental guidelines including those prohibiting sexual harassment of another officer. After reviewing the Grievant's prior record, Lt. Ring recommended that Sgt. Hill be given a thirty day suspension and demoted from his position as sergeant to one of patrol officer.

Lt. Ring's investigative report was forwarded to Captain Sean Young. Captain Young after reviewing the investigation determined that the Grievant's reference to Officer Greeno as "Whoregan" was more than a slip of the tongue. The captain noted that this was the second incident involving Sgt. Hill's attempt to use humor in front of the patrol officers he supervised. The captain listed all of the prior misconduct engaged in by Sgt. Hill including his taser of a juvenile, the accidental discharge of a taser into the leg of Officer Brian White, and placing his loaded service weapon in his mouth during one of his roll calls. Captain Young also found that Sgt. Hill had participated in jokes about Officer Greeno having a romantic relationship with Randy, the building custodian. Captain Young determined that such actions from a supervisor constituted gross misconduct on the part of Sgt. Hill and violated departmental rules and regulations. Captain Young noted that the prior suspension of Sgt. Hill had little affect on correcting his negative behavior. He also pointed out that Officer Greeno was scheduled to testify at an arbitration hearing regarding disciplinary action being sought against Sgt. Hill and as a result there was a question as to whether or not the Grievant calling Officer Greeno

"Whoregan" amounted to intimidation. Captain Young concluded that he did not believe the Grievant's unacceptable behavior was correctible. He found the violations committed by Sgt. Hill to be egregious and totally unacceptable for a supervisor. As a result, he recommended that the Grievant be terminated.

Police Chief Gregory R. Horne reviewed the recommendations made by both Captain Young and Lt. Ring and found that they both thought that the Grievant had engaged in serious misconduct. Chief Horne felt that Sgt. Hill's reference to Officer Greeno as "Whoregan" was an attempt to demean Officer Greeno in front of the officers at roll call. He believed that it created a hostile work environment and constituted sexual harassment. Chief Horne also charged the Grievant with engaging in bias treatment of Officer Greeno with respect to her evaluations. The Chief noted the prior incidents involving the Grievant included his placing a loaded firearm in his mouth to show displeasure over a promotion of Sgt. Harmon. For that incident, he received a ten day suspension. The Chief also relied upon the charge made by Officer Greeno that Sgt. Hill had failed to address comments made by other officers that she was having an affair with the building custodian and had become pregnant. The Chief found that the pattern of conduct engaged in by Sgt. Hill was egregious and that his prior suspension had no apparent effect on correcting his conduct. The Chief also noted that several promotions had come up and the Grievant's wife was up for one of them and did not receive the promotion. He believed that this frustrated Sgt. Hill. The Chief concluded that because

of the gun in the mouth incident and the "Whoregan" comment referencing Officer Morgan Greeno, he could no longer control Sgt. Hill and the only way to stop such conduct was to terminate him. The Chief indicated that he followed the department's Discipline Matrix in terminating the Grievant.

Subsequently, Sgt. Hill filed his grievance herein claiming that he had been terminated without just cause. The matter proceeded to a hearing before Safety Director Paul Schmelzer. He ordered that Lt. Ring interview several roll call attendees once again to determine whether they had heard the "Whoregan" statement and also to gain further incite into whether joking around of a sexual nature had taken place. The lieutenant re-interviewed several officers who were there for the roll call. They each indicated that they had heard the reference to Morgan Greeno as "Whoregan." Several of the officers indicated that they had heard comments by others about a relationship between Officer Greeno and Randy, the building custodian. For example, Officer Jason Morey stated that the Greeno/Randy jokes had been occurring for some time and Officer Greeno was actively involved in most of the conversations. He stated that he never felt that the joking crossed the line and that to his knowledge Officer Greeno never indicated that the joking needed to be stopped. Officer Brian Young as well as Officer Joe Smith basically agreed with that statement. During her testimony, Officer Greeno acknowledged that officers give each other a hard time and joking around was fairly common. She did state that she was offended by the remarks insinuating that she was pregnant with Randy's child.

During her testimony, Officer Greeno acknowledged that she has referred to male officers as "garbage dicks" in reference to the officers sexual history. She has also teased male officers with remarks about them engaging in oral sex with a homeless person named "Chrissy" who had poor hygiene and was well known to all of the other officers.

POSITIONS OF THE PARTIES

POSITION OF THE EMPLOYER

The City contends that the Grievant's numerous offenses have made him unemployable by the police department. The evidence clearly demonstrates that the Grievant committed the offenses with which he has been charged. This includes Sgt. Hill referring to Officer Greeno as "Whoregan" in front of numerous other police officers. Sgt. Hill was properly terminated in accordance with the police department's "Discipline Matrix." There is no basis to mitigate the termination penalty imposed and therefore the City's decision to discharge Sgt. Hill should be upheld.

The City maintains that the evidence clearly shows that the Grievant referred to Officer Greeno as "Whoregan" at a roll call with other officers in attendance. Not only did Sgt. Hill know that he was wrong in calling Greeno "Whoregan," he never attempted to rectify the matter. It is clear that the Grievant intended to demean Officer Greeno. Moreover, the City points out that Sgt. Hill has treated another female officer, Candice Paul, with the same type of disrespect. The evidence shows that the Grievant picked on Officer Paul who is new to the force and even recommended that she be terminated. After Officer Paul was transferred from Sgt. Hill's shift by the Chief, her evaluations improved. Sgt. Hill's treatment of Officer Paul is consistent with the type of treatment he

gave Officer Greeno and indicates that his comment in calling Greeno "Whoregan" was no accident.

The Employer further points out that the Grievant has committed multiple prior disciplinary actions which prohibit the mitigation of his termination in this case. This included disclosing a fellow sergeant's prior mental treatments and also putting a pistol in his mouth at a roll call feigning suicide. It was also established that the Grievant, a taser training instructor, tasered a fourteen year old son of one of his friends just for fun. The Grievant's actions indicate that he is completely out of control and has no consideration for fellow officers, citizens, or the police department. As a result, there should be no mitigation of the Grievant's termination in this case.

The City argues that the termination of the Grievant is warranted through application of the department's Discipline Matrix. The City refers to a prior arbitration which involved disciplinary charges brought against Sgt. Hill for telling patrolmen that a promoted sergeant was recently treated for mental health issues and was now assigned to their shift. It also involved Sgt. Hill placing the barrel of his weapon in his mouth and acting out a suicide. The arbitrator determined that the thirty day suspension was excessive and not in keeping with the Discipline Matrix. The City maintains that the decision by the arbitrator in that case to apply the department's Discipline Matrix must also be applied in this case. The issues before this arbitrator are identical to those in the prior case. The Grievant engaged in demeaning comments to fellow officers and for that reason under the Discipline Matrix, the Grievant's termination is warranted.

POSITION OF THE UNION

The Union contends that the City has failed to establish by clear and convincing evidence that the Grievant engaged in the alleged misconduct. The evidence failed to show that Sgt. Hill sexually harassed or even permitted other officers to sexually harass Officer Greeno. A fair investigation was not conducted and as a result it must be held that just cause was not established for the Grievant's termination in this case. The Union requests that Sgt. Hill be reinstated to his former position as sergeant with no loss of seniority and full back pay.

The Union argues that Officer Greeno cannot claim that she was subjectively offended by Sgt. Hill's referring to her as "Whoregan" on only one occasion which was made in passing at the end of roll call. The evidence showed here that Officer Greeno's own behavior at work undermines any subjective claim that she makes to being offended by Sgt. Hill's remark. The evidence showed that in the course of the joking around which takes place on the shift, Officer Greeno has referred to male officers as "garbage dicks" in reference to the officer's sexual history. She has also teased male officers with vulgar remarks about the officers engaging in oral sex with a homeless person with poor hygiene. These types of remarks are more vulgar and lewd than the isolated "Whoregan" remark which Sgt. Hill inadvertently uttered on November 13, 2012 that Officer Greeno now claims offended her. As a result, a case of sexual harassment cannot be established

here because it is evident that Officer Greeno cannot claim to have been subjectively offended by the "Whoregan" remark.

The Union further maintains that the City failed to prove that Sgt. Hill created a hostile work environment for Officer Greeno. The "Whoregan" comment as well as the teasing about a fictitious relationship between Officer Greeno and the building custodian must be evaluated in light of the general work environment at the department. All witnesses agreed that officers constantly joke around with some jokes becoming vulgar with sexual innuendo. The Union points out that prior to Sgt. Hill, no other officer has ever been disciplined for engaging in this kind of joking around in the department. Moreover, once again Officer Greeno was an active participant in the joking around including the banter about her having a fictitious relationship with Randy, the custodian. Officer Greeno went so far as to bring in a love letter Randy wrote her and had one of the trainees read it at roll call for the amusement of the other officers on the shift. Officer Greeno acknowledged that she did not mind the teasing which came from her peers. The Union notes that Sgt. Hill did not participate in the teasing about Officer Greeno having a relationship with the maintenance man. Considering the environment which existed in the department wherein officers joked around using vulgar and lewd humor at times, it cannot be said that Sgt. Hill's one-time reference to Officer Greeno as "Whoregan" created a hostile work environment for her. It was simply an isolated comment made in passing. As such, the City cannot meet the burden of proving that Sgt. Hill sexually

harassed Officer Greeno or that he permitted the creation of a hostile work environment for her.

The Union also argues that the City committed fatal due process violations throughout the investigation. It was shown that Captain Young prepared an initial draft of his recommendation for the termination of Sgt. Hill after hearing only Officer Greeno's account of the incident. At about the same time, Lt. Ring began his investigation which focused almost exclusively on the "Whoregan" remark. The Union points out that Lt. Ring recommended a thirty day suspension and the a demotion to patrol officer. Moreover, Captain Young did no further investigation of his own and had only the facts gathered in the lieutenant's investigation on which to base his recommendation.

The Union submits that the termination of Sgt. Hill for the "Whoregan" reference was excessive and should be set aside. Contrary to the City's claim, the prior arbitration decision did not stand for the proposition that the Discipline Matrix Guidelines are to be mechanically applied. In the instant case, the City did not meet its burden of proving a case of sexual harassment by Sgt. Hill against Officer Greeno. Rather, name calling of fellow employees is more appropriately classified as a violation of the rule pertaining to Conduct Toward Fellow Employees, a Class A offense. Even if the arbitrator were to find that Sgt. Hill sexually harassed Officer Greeno, the guidelines would place the sexual harassment on the Discipline Matrix as a Class C offense. The corresponding Matrix Guideline recommends a penalty at Step 2 for such offenses ranging from a three-ten day suspension to termination. It is apparent that the City had

other disciplinary options short of termination to apply to Sgt. Hill's case especially considering that he is a long term sergeant who has previously held special assignments of trust and who consistently received excellent performance evaluations.

O P I N I O N

The basic issue presented herein is whether the City had just cause to terminate the Grievant and if not, what is the appropriate remedy. The just cause standard requires clear and convincing proof that the employee has committed the alleged offense and the penalty imposed is warranted under the circumstances presented. Therefore, the City had to satisfy its burden of proving by clear evidence that the Grievant engaged in the alleged misconduct and that his termination was warranted.

As indicated in Chief Horne's disciplinary notice to the Grievant dated January 8, 2013, Sgt. Hill was charged with having violated the department's rules and regulations regarding Conduct Unbecoming an Officer and as the Chief stated the most serious violation being one of the department's sexual harassment policy. The Chief as well as Captain Young stated that the Grievant was terminated for sexually harassing Officer Greeno by referring to her as "Whoregan." The Chief charged Sgt. Hill with creating a hostile work environment by unfairly singling her out and criticizing her work performance. Sgt. Hill was also found guilty of participating in jokes about Officer Greeno and Randy, the janitor.

After a careful review of the record presented, this arbitrator must find that the Grievant inappropriately referred to Officer Morgan Greeno as "Whoregan." The Grievant admits that he referred to Officer Greeno as "Whoregan." Although Sgt. Hill claims that he inadvertently made the "Whoregan" remark, this arbitrator would have to

agree with the finding made by Captain Young who stated that incorporating the word "whore" with Officer Greeno's first name, Morgan, has to be considered more than a mere slip of the tongue or a simple mistake made by Sgt. Hill. As Lt. Ring stated in his report, the term "whore" does not just come out of one's mouth as a "slip of the tongue." Although there was no evidence indicating that the Grievant ever called Officer Greeno "Whoregan" on any other occasion, Sgt. Hill acknowledged that he has heard other officers refer to Officer Greeno in that manner. There is every indication that the Grievant intentionally referred to Officer Greeno as "Whoregan" and that he did so in front of about a dozen officers who were present in the roll call room on November 13, 2012. Several other officers stated to Lt. Ring during his investigation of the incident that they had overheard the "Whoregan" remark made by Sgt. Hill. Therefore, this arbitrator must find that the Grievant engaged in totally improper conduct towards Officer Morgan Greeno when he deliberately referred to her as "Whoregan."

The Union in its vigorous defense of Sgt. Hill's misconduct in this case argues that the "Whoregan" remark was not that serious because Officer Greeno herself has engaged in off-color joking around with the officers on her shift. The evidence did show that Officer Greeno actively participated in the joking about the alleged relationship between herself and Randy, the building janitor. It is also evident that Officer Greeno has teased the male officers with various vulgar remarks with reference to their sexual history. However, it was established that Officer Greeno was deeply offended by Sgt. Hill referring to her as "Whoregan" in front of other officers who were present in the roll

call room. Officer Greeno during her testimony indicated that she found the "Whoregan" remark as being completely disrespectful. Lt. Ring indicated in his investigative report that Officer Greeno was "visibly upset" when he spoke to her about the incident. It is evident therefore that although Officer Greeno herself has engaged in off-color banter with her fellow officers at times, it is clear that Sgt. Hill's reference to her as "Whoregan" was offensive to Officer Greeno and embarrassed her in front of the other officers who were present in the roll call room. For such disrespectful conduct exhibited towards Officer Greeno, Sgt. Hill was deserving of a severe disciplinary penalty.

This arbitrator must also find that the Grievant was guilty of failing to properly carryout his supervisory duties as sergeant by not stopping the unwelcome remarks being made by other officers about Officer Greeno. The evidence showed that officers on Sgt. Hill's shift would frequently make disrespectful remarks about Officer Greeno during roll call. These included remarks that she was having an affair with the building janitor and had become pregnant. While there was no clear evidence that Sgt. Hill ever made any of these remarks himself, it is evident that the disrespectful remarks were made by other officers in his presence. Sgt. Hill admitted that he has heard such remarks about a fictitious relationship between Officer Greeno and the custodian. The Grievant also admitted that he never intervened in an attempt to stop the officers from making the improper remarks. Officer Greeno testified that the comments concerning her having a child with the building maintenance custodian had been going on for some time and that Sgt. Hill had failed to address the matter even after she attempted to let everyone know

that the remarks were no longer being taken as a joke. Although Sgt. Hill did not recall ever hearing Officer Greeno indicate that the remarks were unwanted, it should have been apparent to him given his supervisory authority that such vulgar comments concerning Officer Greeno were totally inappropriate. As Lt. Ring stated, the department cannot have a supervisor who permits things to happen and then expect him to have control over the subordinates he supervises. By allowing patrol officers on his shift to continue to make inappropriate remarks about Officer Greeno, it must be held that Sgt. Hill failed to properly carryout his supervisory duties as a sergeant in the department.

Therefore, this arbitrator finds that it was clearly established that the Grievant engaged in conduct unbecoming an officer in the instant case. The evidence shows that the Grievant inappropriately referred to Officer Greeno as "Whoregan." Contrary to the Grievant's claim, the combination of the words "whore" with Officer Greeno's first name, Morgan, has to be considered to be more than a mere slip of the tongue. Rather, the evidence showed that Sgt. Hill deliberately made the "Whoregan" remark in front of other officers who were present at roll call in order to embarrass Officer Greeno. The Grievant was also guilty of failing to carryout his supervisory duties as sergeant by allowing improper remarks to be made about Officer Greeno and the building custodian by the other patrol officers on his shift. The Grievant's actions in this case violated the department's rule which prohibits officers from engaging in acts that "demean" another employee. As a result, this arbitrator must find that the City had just cause to impose severe discipline against Sgt. Hill in this case.

This arbitrator however cannot find from the record before him that the Grievant was guilty of violating the police department's Sexual Harassment Policy as claimed by the City. The Chief indicated that the most "serious violation" which the Grievant committed in this case was that he violated the department's Sexual Harassment Policy. The Chief testified that he based his conclusion solely on Sgt. Hill's calling Officer Greeno "Whoregan." It is clear however that this one time "Whoregan" remark made by Sgt. Hill cannot reasonably be construed as constituting an improper act of sexual harassment under the department's policy.

The department's Sexual Harassment and Hostile Work Environment Policy clearly states that "a single incident" will not be sufficient to create a hostile work environment. Sexual harassment under that policy is defined as conduct that is "repeated…" The evidence in this case establishes that Sgt. Hill made the "Whoregan" remark on only one occasion, November 13, 2012. Even Officer Greeno acknowledged that she never heard Sgt. Hill make this remark at any other time. All of the patrol officers who were interviewed by Lt. Ring during the investigation of the incident confirmed that they had never heard Sgt. Hill make the "Whoregan" remark at any other time. Therefore, it must be concluded that Sgt. Hill's inappropriate "Whoregan" remark was only made once and never repeated by him. As such, it cannot be said that Sgt. Hill violated the department's policy regarding sexual harassment or creating a hostile work environment.

It is also important to recognize here that the evidence fails to clearly demonstrate that Sgt. Hill ever engaged in the joking around which took place about Officer Greeno allegedly having a fictitious affair with the building janitor. Testimony from other officers including Officers Brian Young, Darin Lawrence and Andrew Welch established that it was only the other officers on the shift who teased Greeno in this manner. Officer Greeno did claim that Sgt. Hill participated in this on-going banter. However each of the other officers who were interviewed by Lt. Ring including Sgt. Harmon provided statements that they never heard Sgt. Hill make any inappropriate comments about Officer Greeno having a fictitious relationship with Randy, the building janitor. In that there is no clear evidence showing that Sgt. Hill participated in this kind of teasing, it cannot be said that he in any way created a hostile work environment for Officer Greeno. Again, it should be reiterated that under the department's policy, Sgt. Hill's one time reference to Officer Greeno as "Whoregan" cannot be construed as creating a hostile work environment for her.

This arbitrator also does not find any merit to the City's claim that Sgt. Hill singled out Officer Greeno and subjected her to unwarranted criticism about her job performance. Officer Greeno in her supplement to her original complaint stated that she was being held to a different standard than others on her shift. However, there was no other evidence produced to support Officer Greeno's claim. Even Lt. Ring during his investigation of Greeno's complaint never made any determination that Sgt. Hill was treating her differently than others on his shift. In Sgt. Hill's evaluation of Officer

Greeno dated August 11, 2012, he generally gave her satisfactory ratings indicating her strengths were her eagerness to learn and her dependability. There simply was insufficient evidence presented to indicate in any way that Sgt. Hill treated Officer Greeno in a disparate manner as compared to other officers on his shift.

This arbitrator is compelled to address another allegation made by the City which came up late in this case. The City produced another officer, Candice Paul, in an attempt to establish that the Grievant also treated her in an unfair manner. Officer Paul, who has been on the police force for approximately two years, testified that at one point she served on the second shift under Sgt. Hill. According to Ms. Paul, she believed the evaluations which she received from Sgt. Hill were unreasonable. Ms. Paul also indicated that she was still kind afraid of working for Sgt. Hill. However, Officer Paul admitted that she could not say that Sgt. Hill was treating female officers differently than the male officers. Officer Paul also indicated that she learned a lot from Sgt. Hill and he gave her good advice. It should be noted that Officer Paul never made any formal accusation of wrongdoing on the part of Sgt. Hill and there was never an investigation by the department of his treatment of Officer Paul. Therefore, this arbitrator must find that the testimony of Officer Paul falls well short of that needed to establish that Sgt. Hill treated female officers more harshly than he did male officers.

In summary, this arbitrator finds from the evidence presented that the Grievant committed a serious violation of departmental rules during a roll call on November 13, 2012 when he referred to Officer Morgan Greeno as "Whoregan." The evidence clearly

establishes that Sgt. Hill deliberately made the "Whoregan" remark in front of other patrol officers. As stated by Lt. Ring, the term "whore" does not just come out of one's mouth as a "slip of the tongue." It was shown that Officer Greeno was offended and embarrassed by the remark. The Grievant also was guilty of failing to carryout his duties as a sergeant on the midnight shift in not putting an end to unwanted comments made by other officers about Officer Greeno having a relationship with Randy, the building custodian. However, this arbitrator must find that the evidence fails to clearly demonstrate that Sgt. Hill violated the department's policy regarding sexual harassment. As the policy states, a one time remark such as calling Officer Greeno "Whoregan" is insufficient to establish a case of sexual harassment. Moreover, the evidence also did not show that Officer Greeno was treated unfairly by Sgt. Hill who provided her with satisfactory evaluations. The City simply failed to clearly prove that Sgt. Hill created a hostile work environment for Officer Greeno.

In that not all of the charges brought against Sgt. Hill were clearly established in this case, the discharge penalty imposed must be set aside. As a result, the Grievant is to be immediately reinstated to his previous sergeant position with full seniority. However with respect to the proven charges against Sgt. Hill, this arbitrator finds that a severe disciplinary penalty is in order. The City cited a prior arbitration decision concerning the department's Discipline Matrix Guidelines. This arbitrator would agree that the Discipline Matrix should be applied in this case. As indicated, the evidence here shows that the Grievant engaged in conduct unbecoming an officer which is a Class C offense

by making a disrespectful remark regarding Officer Greeno by calling her "Whoregan." It is apparent that this is the Grievant's second Class C offense within a very short period of time. As indicated in the prior arbitration, the Grievant committed a similar offense by not treating Sgt. Harmon in a respectful manner which resulted in a ten day suspension. The Discipline Matrix provides that for a second offense of this type, a "level four or five" form of discipline would be in order. Under the Matrix, this would mean that the discipline could range from a 3-10 day suspension up to termination.

This arbitrator finds from the entire record presented including Sgt. Hill's prior disciplinary record that it would be appropriate that the termination penalty imposed be reduced to a disciplinary suspension. As indicated, the instant matter involved Sgt. Hill committing a second serious offense wherein he exhibited a complete lack of respect for another officer. The prior case was especially appalling considering that Sgt. Hill dispersed confidential medical information about a newly promoted sergeant as having been in a mental institution and then placing his .45 caliber pistol in his mouth. Likewise in the instant matter, Sgt. Hill showed a complete lack of respect for Officer Greeno by calling her "Whoregan" in front of other officers. Sgt. Hill must bear responsibility for his actions which precipitated the chain of events which led to his termination. As a result, a lengthy disciplinary suspension is warranted. There is to be no lost wages provided in this case. Such a lengthy disciplinary suspension will serve to impress upon the Grievant that at all times he is to show complete respect for other officers in the

department. In that the grievance is not being upheld or denied in its entirety, it would be appropriate for the parties to share equally in the cost of this arbitration.

A W A R D

The grievance is granted in part. The City had just cause to discipline Sgt. David Hill for his disrespectful conduct in referring to Officer Greeno as "Whoregan" in front of other officers. The Grievant was also guilty of failing to carryout his supervisory duties to stop other officers from making inappropriate remarks about her. However, the evidence failed to clearly demonstrate that Sgt. Hill sexually harassed Officer Greeno in violation of departmental policy. Therefore for the reasons indicated, the termination is to be reduced to a disciplinary suspension. The Grievant is to be immediately reinstated to his former sergeant position with full seniority. However, there is to be no lost wages provided in this case.

AUGUST 29, 2013

James M. Mancini /s/
JAMES M. MANCINI, ARBITRATOR