



Spokane Police Lieutenants & Captains Association

TO: Director J. McDevitt

FROM: Capt. B. Arleth 310

DATE: March 14, 2016

RE: IA C15-108

Sir,

I have read the case file for internal affairs investigation C15-108, in which I was alleged to have violated POL 340.3.5(d) Performance-Disobedience or Insubordination. I am also in receipt of both the case finding **SUSTAINED** on this matter, as well as a Letter of Reprimand from Interim Chief of Police Dobrow dated February 26, 2016. I received this letter on March 1, 2016. It was left on my desk for me when I arrived at work.

I am submitting this memo to your office for file with the Letter of Reprimand in the Internal Affairs case file, my personnel file, as well as any public records release of those documents due to the fact that I believe this matter should have only been resolved as **EXONERATED**.

Regarding internal affairs findings, the Spokane Police Department uses a "clear and convincing" standard. Clear and convincing requires that the issue be substantially more likely true than not. Other courts have described clear and convincing as "[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witness must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact the firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established." Given your extensive legal background I am sure you are aware of this standard having a higher burden than a preponderance of the evidence.

I don't believe that the facts and statements from witnesses support a clear and convincing standard for the allegation to have been sustained. Likewise, I believe the evidence in this case falls short of a clear and convincing standard.

Interim Chief Dobrow wrote he concluded there was "ample evidence". He then articulated partial evidence that led him to his finding decision. Unfortunately, he chose to extract only a portion of the emails and voice mails that were between Assistant Chief

Meidl and me. In reality my email covered several points beyond the clarification question cited:

1. What Judy Knight's quote for moving costs included. This is critical due to the fact that Ed Lukas wrote an email that the city "would not move out the furniture (from Intermodal) that was purchased and designed specifically for the space" and "we are not replacing the new furniture...". Lukas also said "I want Judy to run point on the move." His email made it clear Judy was in charge, as well as the fact that some furniture could be moved from Peyton to the Intermodal. Subsequently, Judy Knight's email also indicated some furniture would be taken by the movers. The quote for moving was ordered by Judy Knight. There are 6 steps under "Scope of Work" with the second step "Relocate contents, furniture, and equipment moving to the New Intermodal building."
2. I articulated clearly there was no new furniture at the Intermodal office. I submitted photos to Assistant Chief Meidl along with my explanation.
3. I articulated that the move date of 12/29 would be a challenge due to it being between the holidays when we had been scheduled to move and be operational January 4.

Assistant Chief Meidl did not answer what was included in Judy Knight's quote. This is important because this is the quote the movers were operating from when they advised Kurt Reese that all contents were to be removed and they could move whatever we wanted from Peyton to the Intermodal. Assistant Chief Meidl did not address the issue of Ed Lukas' inaccurate statement of new furniture being placed in the Intermodal. Again, there was no new furniture. Assistant Chief Meidl did address how I was to accomplish the move by packing belongings for officers who were off duty. This was accomplished. Assistant Chief Meidl also sent an email to clarify that the move in date was definitely 12/29. I had my subordinates make sure we accomplished the move on this date per instruction.

Interim Chief Dobrow relied on this voicemail from Assistant Chief Meidl to determine that I had been given a directive: "Hey Brad, its Craig Meidl. I got your email I'm actually off today until next Monday but wanted to get back to you. As far as the move, the furniture, and the packing, all that is carved in stone. It is decisions that were made at a level above me or Rick and it was a pretty much this is what it's going to be go forth and do it. I'm paraphrasing but that's pretty accurate to the tone, direction and message so, at least in this area very clear to me that the direction from city hall is going to be exactly what's happening so when I see you in person I can talk to a little more about it and other than that as a courtesy those who are going to be working can pack up the boxes for those who are not so they can moved or they'll have to figure out other arrangements, but its carved in stone. I'll be in next week if you want to chat we can chat".

There are three topics noted in this voicemail:

1. The move. This was clarified by a follow up email on 12/23, specifying 12/29 as the move date, and was accomplished.
2. The furniture. There was no clear direction, merely a reference to direction from city hall being exactly what was to happen which I took to be an overall reference to the entire message being from city hall.
3. The packing. This was clarified in the voicemail to pack for officers not working on the move dates and this was accomplished.

This was the entirety of any instruction or direction I received from Assistant Chief Meidl except for the follow-up email that affirmed receipt of the voicemail and emphasized that the move date of 12/29 was carved in stone.

However, in his internal affairs interview, Assistant Chief Meidl told Major Lundgren he considered the direction an order and that the order was not followed. When Major Lundgren asked “what part of the order was not followed?”, Assistant Chief Meidl replied “My direction to him was that the Peyton furniture would not be moved into the Intermodal. On the day the move occurred, the furniture from the Peyton Building was moved and assembled in the Intermodal in direct conflict with the direction I gave him.”

Clearly this direct statement is not supported by the voicemail transcript nor the email. Major Lundgren did not followup with Assistant Chief Meidl to determine how Meidl directed me to not move furniture from the Peyton Building. I can find no documentation in the investigative file that shows anyone, including Lukas and Knight, had any intent that absolutely no furniture was to be moved from the Peyton Building. In fact, there is no evidence that anyone in SPD or from city hall ever gave an absolute restriction on one set of used furniture in its entirety moving or staying in place.

In reviewing the emails related to the move in general, it is clear to me that Ed Lukas designated Judy Knight to be in charge, and subsequently she wrote the scope of work for the movers. It is well documented in the interviews with Lt. Stevens, Sgt. Reese and I that the movers indicated their understanding was that the Peyton Building space was to be emptied entirely and that they were authorized to move whatever furniture we wanted to the Intermodal space. On page 6 of Sgt. Reese’s interview he details his conversation with the movers that they understood their instruction to be to remove everything from the Peyton Building to the Intermodal, put whatever we wanted in the Intermodal and take the leftovers to storage. Reese articulated how he clarified this with the moving supervisor several times.

Although Interim Chief Dobrow, and Interim Ombudsman Logue found the investigation to be thorough, I disagree on several points:

1. Not all witnesses involved were interviewed. Only Assistant Chief Meidl, Lt. Stevens, Sgt. Reese and I were interviewed. Ed Lukas, Judy Knight, the employee from the moving company, as well as Det. J. Reisenauer and Ofc. McCasland would all be likely witnesses who could answer questions directly related to the intention of the move, any conversations, and actions.

2. The issue of why the furniture was considered new was never explored. As this was the apparently the key factor to Ed Lukas' direction that certain items would not be removed from the Intermodal it appears his decision was based on fundamentally wrong information. During the interview I was asked about my opinion on whether moving to the Intermodal from the Peyton Building was a good idea. Major Lundgren explained this line of questioning was important as to determining mindset and enthusiasm level of accomplishing tasks in an insubordination complaint. Following this logic, it would have been important to determine why city hall asset management personnel stated they "were led to believe" the furniture in the Intermodal was new, and how this inaccurate information influenced Interim Chief Dobrow and Assistant Chief Meidl in filing this complaint. Both Ed Lukas and Judy Knight were under this impression. According to Reese's interview statements Judy Knight expressed consternation about City Administrator Sanders reaction to finding out we had removed the furniture from the Intermodal. I think it is reasonable that if my opinion on the move relates to what furniture was relocated, the issue of why Asset Management staff was so concerned about the used, not new furniture remaining in place should also have been explored.

3. Statements attributed to Interim Chief Dobrow by Assistant Chief Meidl were made that I had made statements at a community meeting that if the precinct were moved crime would go up downtown. I categorically deny this, and explained the meeting was a Downtown Spokane Partnership meeting, and that I did not say crime would go up. If unsubstantiated third hand statements that are negative to the accused's reputation are included in an interview the person who the statement is reportedly attributed to should be interviewed as a witness to determine what, if any, bearing the statement has to the complaint at hand. This issue was explored in Assistant Chief Meidl's interview by Major Lundgren as to whether those alleged statements were appropriate for a Captain to have made.

Additionally, the Lieutenant's and Captain's Association requested that the investigation be reviewed by an Administrative Review Panel. My understanding is that this request was denied as Interim Chief Dobrow did not want Lieutenants to have to review a complaint against a Captain, although this has occurred in the past. Subsequently, a second request was made by the Association to have an Administrative Review Panel composed only of Captains review the investigation. This request was also denied and I understand the rationale was that it would be problematic for peers to review another peer's complaint. I find this troubling due to the fact that Interim Chief Dobrow directed the complaint be filed, made comments in roll call and other department briefings that would lead me to believe he had pre-determined the outcome, and appeared to not want other police senior staff to render an opinion. According to witnesses to Interim Chief Dobrow's comments he made statements similar to "...If you knew what I know.."

referring to the nature of the complaint, "...it's a very serious policy violation...". He also referred to the entire situation with an analogy to oral board questions about stealing candy bars where the value is not as important as the issue of theft.

In summary:

1. Due to no documented clear instruction regarding furniture from Assistant Chief Meidl's voicemail, along with his interview statement that is unsupported that he told me not to remove any furniture from the Peyton Building, there is no order or clear instruction and therefore the allegation of insubordination should not have been sustained. Likewise there was never a blanket prohibition on moving some furniture to the Intermodal from the Peyton, nor was there any new furniture removed from the Intermodal.
2. Interim Chief Dobrow selectively cited portions of one communication exchange and did not demonstrate a clear and convincing standard at arriving at his determination.
3. The investigation was not thorough and complete.
4. I did instruct Sgt. Reese to have some furniture disassembled at the Intermodal to make room for better used furniture after he related his conversation with the moving supervisor to me. This was based on my understanding that Ed Lukas had put Judy Knight in charge of the move and by extension the moving company and their statements were reliable and directed by Judy Knight. A portion of the furniture from the Peyton Building was moved to storage and is depicted front and center in the evidence photos taken by Major Lundgren as proof. A portion of the furniture installed in the Intermodal was retained as documented in Major Lundgren's report.
5. As related to above, Interim Chief Dobrow stated in the Letter of Reprimand that I had an affirmative obligation to seek clarification if the directive was ambiguous or confusing. This is example of responsibility shifting. I stand by my well detailed email questions. In contrast, the voicemail left by Assistant Chief Meidl was not clear. Good communication needs to occur both ways. My questions could have been answered in detail by Assistant Chief Meidl. At the same time, I didn't find anything confusing about the information relayed to me by Sgt. Reese as to the statements given to him by the movers. It was clear to me the move contract and supervision was outside the police department and under the guidance of Asset Management. In my interview I referenced the Police Service Area Captain's duties which include "equip the precinct". When presented with new information at the time the move was actually occurring I made a decision that did not involve any cost, any liability, nor any harm, and actually enhanced the working conditions at the precinct space, which is what I am paid to do. Any time prior to this in my career I have delegated and seen delegated the responsibility of office furniture acquisition and placement to the detective and sergeant level.
6. It appears to me Interim Chief Dobrow's directive to Assistant Chief Meidl was premature, and the investigation then became agenda driven in light of the statements

Interim Chief Dobrow made regarding the complaint and investigation, which he followed through with a sustained finding and letter of reprimand, which I believe should be corrected to EXONERATED in view of the information in this memo.