

Dep't of Correction v. Dominguez, Hernandez, and Christie
OATH Index Nos. 615/19, 731/19, and 770/19 (May 21, 2019), *aff'd*, NYC Civ. Serv. Comm'n
Case Nos. 2019-0824, 2019-0825 (Feb. 5, 2020), **appended**

Petitioner charged Correction Officers Dominguez, Hernandez, and Christie with being disrespectful towards a co-worker and making incomplete, inaccurate, or misleading statements about the incident. Evidence showed that Officer Dominguez was disrespectful and that he and Officer Christie made incomplete, inaccurate, or misleading statements. Petitioner failed to prove remaining charges. Penalties of 20 and 10 days' suspension recommended for Officers Dominguez and Christie, respectively.

**NEW YORK CITY OFFICE OF
ADMINISTRATIVE TRIALS AND HEARINGS**

In the Matter of
DEPARTMENT OF CORRECTION

Petitioner

- against -

IRVIN DOMINGUEZ, JOSE HERNANDEZ, AND ROBERT CHRISTIE

Respondents

REPORT AND RECOMMENDATION

KEVIN F. CASEY, *Administrative Law Judge*

Petitioner, the Department of Correction, brought this disciplinary proceeding under Section 75 of the Civil Service Law. It alleged that respondents, Correction Officers Irvin Dominguez, Jose Hernandez, and Robert Christie, performed their duties inefficiently and engaged in unbecoming conduct of a nature to discredit the Department when they were disrespectful in tone and demeanor to a colleague and made incomplete, inaccurate, or misleading statements about the incident in their written reports and Mayoral Executive Order ("MEO") 16 interviews (ALJ Ex. 1).

At the three-day hearing, which ended on March 15, 2019, petitioner relied on documentary evidence, surveillance video, audio recordings, and testimony from four witnesses. Respondents testified and offered documentary evidence and an audio recording.

For the reasons below, I find that petitioner proved some charges and recommend penalties of 20 and 10 days' suspension for Officers Dominguez and Christie, respectively.

ANALYSIS

The charges arise from an incident on June 9, 2017, in the Department's canine unit trailer on Riker's Island. There is no dispute that Captain Victor Maldonado and Correction Officer Joseph Hehl exchanged words in the trailer, Officer Dominguez got involved, the dispute escalated, and Officer Christie restrained Officer Hehl. The trailer sustained minor damage, discovered two days later by Captain Santana. That led to an investigation. Petitioner brought charges against Officer Hehl and respondents and would have brought charges against Captain Maldonado, but he retired. Officer Hehl accepted a 10-day suspension for his role in the incident. Respondents denied any wrongdoing.

There was inconclusive surveillance video and eyewitnesses offered confusing or dramatically different accounts of what took place inside the trailer. Five days after the incident, Officer Hehl wrote in a report that he had an argument with Captain Maldonado, Officer Dominguez struck him, Officer Hernandez slammed him against a wall and held him while Officer Dominguez punched him in the face, and Officer Christie grabbed him in a chokehold and threw him to the ground. Officer Hehl further claimed that Officers Hernandez and Dominguez prevented him from leaving the trailer.

At trial, Officer Hehl backtracked. He continued to insist that Officer Dominguez struck him in the face. However, he now claimed that Officers Hernandez and Christie only used defensive force to prevent him from harming anyone. Respondents maintained that Officer Hehl was the aggressor. Officer Dominguez denied that he cursed at or struck Officer Hehl. Officer Christie said that he restrained Officer Hehl, but he was uncertain who or what caused damage to the trailer. Officer Hernandez recalled that he initially held Officer Hehl and later held Officer Dominguez, but he did not see Officer Hehl throwing objects or falling to the floor.

Testimony regarding the incident in the trailer

Petitioner's witnesses

Correction Officer Diedre Marshall testified that she and Captain Maldonado worked in the conference room of the canine unit's main trailer on June 9, 2017 (Tr. 123). At one end of the trailer, there was a storage area, referred to as the "safe room," and at the trailer's other end there was a captain's office (Tr. 194; ALJ Ex. 2; Pet. Ex. 3).

At about 7:50 p.m., Officer Hehl entered the trailer and, referring to another office, asked, “Who the fuck broke Ruiz’s office door?” (Tr. 125-26, 135). Captain Maldonado replied, “Officers don’t have offices” and Officer Hehl declared, “I don’t give a fuck” (Tr. 136-28). After Captain Maldonado noted that he was on the phone with his wife, Officer Hehl said, “You’re not built like that, son” (Tr. 126, 128, 136). Officer Marshall feared that Officer Hehl was provoking a fight, left the trailer, met Officer Christie, and asked him to go into the trailer to calm Officer Hehl (Tr. 127, 137).

A few minutes later, Officer Christie told Officer Marshall that he went in the trailer, saw Officer Hehl and Captain Maldonado calmly talking, and everything was fine (Tr. 128, 138). Officer Marshall returned to the trailer at 8:15 p.m. and saw Officer Hehl talking to Captain Maldonado (Tr. 129). Finding nothing out of order, Officer Marshall left (Tr. 130-31, 140).

Officer Hehl testified that after Captain Maldonado said, “Ruiz doesn’t have a fucking office here,” they sat at the conference table and discussed their differences (Tr. 14, 46-47). Captain Maldonado and Officer Hehl were talking when Officer Dominguez entered the trailer and asked Captain Maldonado, “Are you good?” (Tr. 16). Officer Hehl asked Officer Dominguez, “What about me? You’re not going to ask me if I’m good?” (Tr. 16). In reply, Officer Dominguez told Officer Hehl, “I don’t give a fuck about you” (Tr. 16).

Officer Dominguez also called Officer Hehl a “fucking liar” (Tr. 17). Officer Hehl told Officer Dominguez to mind his own business (Tr. 17). In reply, Officer Dominguez called Officer Hehl a “snitch,” apparently referring to a pending EEO complaint that Officer Hehl had made against Officer Dominguez’s partner (Tr. 17, 20, 36, 52).

After calling Officer Hehl a “snitch,” Officer Dominguez walked towards him (Tr. 20-21). Officer Hehl stood up and they grabbed each other’s shirts, tussled, shoved each other, and cursed (Tr. 21, 52). After Officer Hehl banged against a wall, other officers entered the trailer and intervened (Tr. 23, 52).

Officer Hehl testified that Officer Hernandez grabbed him and threw him against the wall and Officer Dominguez “sucker punched” him in the face (Tr. 24, 29-30, 53). Officer Christie grabbed Officer Hehl from behind and they both fell to the floor, where Officer Hehl felt someone kick him (Tr. 25, 27, 54). Though Officer Hehl did not see who kicked him, he assumed that it was Officer Dominguez (Tr. 25-26).

At trial, Officer Hehl denied that Officers Hernandez or Christie attacked him (Tr. 25). Instead, he insisted that they were merely trying to break up the fight (Tr. 25, 29, 42). Officer Hehl acknowledged that, at the time of the incident, he suspected that Officers Hernandez or Christie had been acting in concert with Officer Dominguez (Tr. 25, 29).

After falling down, Officer Hehl got up and threw a fire extinguisher (Tr. 27). The fire extinguisher's hose struck Officer Christie's face. Officer Christie told Officer Hehl, "You hit me" (Tr. 23, 27-28, 55). Officer Villodas and Captain Maldonado led Officer Hehl into the captain's office (Tr. 31, 55). They told him to calm down, he said that he wanted to go home, and the captain said, "I can't let you go home like this" (Tr. 32). After Officer Hehl calmed down, he left the captain's office and sat down at the table in the conference room (Tr. 32, 56).

Officer Hehl shook hands with and hugged Officers Hernandez, Christie, and Dominguez (Tr. 34, 58-59). According to Officer Hehl, the trailer window had been shattered, as if it had been shot at with a BB gun (Tr. 57). Some of the officers briefly stepped outside the trailer to look around (Tr. 57).

Back inside the trailer, one of the officers referred to the altercation and asked, "What are we going to do with this?" (Tr. 33). Other officers told Officer Hehl that, if he said anything, they would claim that he had assaulted Officer Dominguez (Tr. 34). Officer Hehl told the captain, "I gave you my word. Nothing's going to happen. I'm not going to say anything" (Tr. 33). Officer Dominguez, who had been standing by the exit, moved out of the way and Officer Hehl walked out of the trailer towards his car, parked outside (Tr. 32-33). Realizing that he left his keys in the trailer, Officer Hehl went back into the trailer, got his keys, and drove home (Tr. 33, 62). Officer Hehl estimated that 45 minutes elapsed from when he walked into Captain Maldonado's office until he went home (Tr. 33).

At trial, Officer Hehl identified photos that he took of himself, which depicted bruising and redness on his back and under his right eye (Tr. 34, 37-39; Pet. Ex. 4). Officer Hehl sent the undated photos via email to petitioner's investigator on January 9, 2018, six months after the incident (Pet. Ex. 4). In the email, Officer Hehl stated, "I spoke with my attorney and it turns out I took the pictures on Monday June 12, 2017" (Pet. Ex. 4).

Correction Officer Villodas, a close friend of Officer Hehl, testified that he entered the trailer after hearing a commotion (Tr. 85, 91). Inside, he saw Officer Hehl punching holes in a wall (Tr. 81). Captain Maldonado was there, along with Officers Dominguez, Hernandez, and

Christie (Tr. 82). Officer Villodas pushed Officer Hehl into the captain's office, followed by Captain Maldonado (Tr. 85, 93-94). Officer Hehl, who was very emotional and angry, said that he wanted to go home, but Captain Maldonado told him that he was in no shape to drive (Tr. 93, 95). After about ten minutes in the office, Officer Hehl returned to the conference area, apologized, and shook hands with or hugged all of his colleagues (Tr. 86, 102, 104). They sat around the table for about an hour and Officer Villodas recalled that there was garbage on the floor (Tr. 88, 101).

Officer Villodas recalled that, while they sat at the table, the trailer window broke or shattered (Tr. 86, 102). Some of the officers briefly stepped outside to look around (Tr. 86-87). They were concerned about the shattered window, because one week earlier someone had shot at Officer Christie's vehicle on the Grand Central Parkway (Tr. 87, 102). After looking outside the trailer, the officers went back inside (Tr. 87). When Officer Villodas went home shortly after 10:00 p.m., Captain Maldonado and Officers Hehl, Dominguez, Christie, and Hernandez were still inside the trailer (Tr. 89).

Respondents' testimony

Officer Dominguez denied calling Officer Hehl a "liar" or a "snitch" or using any force against him (Tr. 231, 241-42, 254). According to Officer Dominguez, he was doing paperwork in the trailer when he saw Officer Hehl and Captain Maldonado having a heated discussion (Tr. 219-20). Officer Dominguez asked the captain whether everything was okay and the captain told him to leave the trailer for a second (Tr. 220, 222, 250, 253).

After leaving the trailer, Officer Dominguez went to nearby bleachers and talked to fellow officers (Tr. 222-23, 248). He re-entered the trailer to finish paperwork that the captain needed to sign (Tr. 222-24, 248). Officer Hehl asked Officer Dominguez, "What about me? Why didn't you ask me if I was okay?" (Tr. 225). According to Officer Dominguez, he replied, "What do you mean?" and Officer Hehl immediately threw his keys at him and charged at him (Tr. 225-26, 232).

The captain stepped between them, but Officer Hehl grabbed Officer Dominguez's arm and pushed him against the wall (Tr. 226, 232). Other officers entered the trailer and tried to stop Officer Hehl, who began throwing anything that he could get his hands on, including books, a garbage can, a coffee machine, and a microwave (Tr. 226, 249, 264-66). Officer Hernandez put his hand on Officer Dominguez's chest and asked if he was okay (Tr. 226, 234).

Meanwhile, Officer Christie tried to grab Officer Hehl and they both fell to the floor (Tr. 226, 263, 269). When they got up, Officer Hehl threw a fire extinguisher and Officer Christie said, "You hit me" (Tr. 226, 271). Officer Hehl calmed down, paced back and forth, and punched a wall (Tr. 226-27, 271-72). Though Officer Dominguez did not see where Officer Hehl went, he later saw him come out of the captain's office (Tr. 227). Officer Dominguez heard Officer Hehl say something like, "This is not over," "I'm gonna follow him home and finish it," and "He's lucky I don't have my gun" (Tr. 227). Shortly afterwards, Officer Hehl apologized to everyone (Tr. 227).

When things calmed down, the officers were talking around the table and the trailer window shattered (Tr. 278). Officer Dominguez thought that broken window may have had something to do with Officer Christie's incident the previous week, but he also suspected that the window cracked when Officer Hehl threw his keys (Tr. 278).

Officer Dominguez testified that he told the others in the trailer that he wanted to report the incident but the captain discouraged him from doing so (Tr. 228, 243). The captain said that Officer Hehl was "going through a lot of things," "we still care about him," "nothing happened here," "I'll take care of it," and he would discuss it with supervisors (Tr. 228, 244, 279). Officer Dominguez accepted Officer Hehl's apology and went home after hugging and shaking hands with him (Tr. 227, 273).

Officer Christie testified that he did not see anyone hit Officer Hehl and he did not see Officer Hehl punch a wall (Tr. 306, 312, 316). Instead, he recalled going to the trailer at 8:00 p.m. after speaking to Officer Marshall (Tr. 284-85, 302). When Officer Christie entered, Officer Hehl and Captain Maldonado were talking at the table (Tr. 285). Officer Hehl appeared upset and Officer Christie asked if everything was okay (Tr. 286-87). The captain replied that everything was fine but he needed Officer Christie to step outside (Tr. 286). Officer Christie left the trailer (Tr. 287).

About thirty minutes later, after hearing a loud commotion, Officer Christie and other officers ran into the trailer (Tr. 288, 303). Officer Christie saw Captain Maldonado standing between Officers Hehl and Dominguez (Tr. 289). Officer Hehl appeared irate and said that he wanted to fight (Tr. 289). Officer Hernandez went to Officer Hehl and was "kind of holding him back against the wall" (Tr. 289-90). The captain ordered the officers to leave the trailer and

Officers Christie, Dominguez, Hernandez, and Hehl walked outside (Tr. 290, 319). After about two minutes, Officers Hehl and Dominguez returned to the trailer (Tr. 291).

Moments later, Officer Christie went inside the trailer for the third time and saw the captain standing between Officers Hehl and Dominguez (Tr. 291). Officer Hehl pushed Officer Dominguez (Tr. 291). Officer Christie grabbed Officer Hehl from behind with a bear hug (Tr. 291, 309). Officer Hehl said, "Get the fuck off me" and they both fell to the floor (Tr. 291, 309-10). As they tried to get up, Officer Hehl threw a garbage pail and a fire extinguisher (Tr. 292). The hose from the fire extinguisher hit Officer Christie below his left eye (Tr. 292). Officer Christie said, "You just hit me in the face" and Officer Hehl backed off (Tr. 292). Officer Villodas and Captain Maldonado escorted Officer Hehl to the captain's office (Tr. 293).

Officer Hehl later came out of the captain's office and sat down at the conference table (Tr. 293). He cried, apologized to everyone, and hugged the other officers (Tr. 293-94, 316). The captain told everyone to sit at the table and they talked (Tr. 294). Meanwhile, the trailer window cracked (Tr. 294-95). Officer Christie and other officers went outside to investigate but did not see anything (Tr. 295). They re-entered the trailer and continued to talk (Tr. 295). The captain "made it clear" that there was nothing to be reported (Tr. 295). He had mediated the dispute and there was nothing more to do (Tr. 295, 308).

Two days later, other officers confronted Officer Christie and one of them asked why "his boy got fucked up," referring to Officer Hehl (Tr. 298-99, 318). Officer Christie told them that he held Officer Hehl back because he had been acting very aggressively (Tr. 299).

Officer Christie recalled that, one week before the trailer incident, his car had been shot at on the Grand Central Parkway (Tr. 286). The shot broke the driver's side window and at least one bullet entered the car (Tr. 286). Officer Christie was very grateful for the assistance of Officer Hehl, who was a union delegate and one of the first to arrive at the scene to offer help (Tr. 286).

Officer Hernandez testified that he did not engage in any offensive conduct (Tr. 176). Instead, he restrained Officer Hehl to prevent him from getting into further trouble (Tr. 177). Officer Hernandez recalled entering the trailer and seeing Captain Maldonado talking to Officer Hehl, who appeared upset (Tr. 148). The captain said that he needed a minute to speak privately with Officer Hehl (Tr. 149, 196). Officer Hernandez stepped outside (Tr. 149, 202).

Shortly afterwards, Officer Hernandez heard Officer Hehl screaming (Tr. 150, 202). Officer Hernandez and others went into the trailer and stepped between Officer Hehl and Captain Maldonado (Tr. 150, 158-59, 184). According to Officer Hernandez, he used one arm to hold Officer Hehl back (Tr. 150). Officer Hehl acted “like a madman” and said, “I don’t give fuck, I’m being transferred anyway,” “I’ll fight anyone . . . here or across the bridge,” and “Get the fuck away from me” (Tr. 159, 186-87, 191). Captain Maldonado asked the officers to relax and go outside, which they did (Tr. 150, 160, 187-88).

A few minutes later, Officer Hernandez heard Officer Hehl screaming that he wanted to fight (Tr. 151, 160, 191). Officer Hernandez entered the trailer for the third time, accompanied by Officer Christie (Tr. 151, 160, 191). The captain stood between Officers Dominguez and Hehl (Tr. 151). With the palm of his hand, Officer Hernandez “secured” or “held” Officer Dominguez, who said that he was fine (Tr. 151, 161-62, 193-94). Officer Christie and another officer grabbed Officer Hehl (Tr. 151, 191).

Officer Hernandez testified that he could not see what was going on behind him because he was holding Officer Dominguez (Tr. 204). After Officer Hernandez heard Officer Christie say that he was struck in the face, Captain Maldonado told everyone to relax, and, along with Officer Villodas, escorted Officer Hehl into the captain’s office (Tr. 151, 162, 204-05). As Officer Hehl entered the captain’s office, he punched the wall twice (Tr. 205, 207).

While seated at the conference table with other officers, Officer Hernandez saw garbage, a fire extinguisher, and keys on the floor (Tr. 204-05). He picked up the garbage and noticed a crack in the trailer window (Tr. 207-08).

Fifteen to thirty minutes later, Captain Maldonado and Officers Hehl and Villodas came out of the captain’s office (Tr. 152). Officer Hehl, who appeared upset, apologized, kissed, hugged, and shook hands with everyone, including Officer Dominguez (Tr. 152, 165, 209-10). They sat around the table and talked for an hour (Tr. 153, 165). Officer Hernandez did not see any injuries on Officer Hehl (Tr. 165). He recalled that Captain Maldonado mediated the dispute and told the officers that he assumed responsibility for any required reporting (Tr. 177, 209, 214).

Surveillance video

There was no surveillance video of the conference room where the incident took place. Instead, petitioner introduced video of the trailer’s exterior and the interior of the safe room (Pet.

Exs. 2, 2a). Relevant portions of the video showed that Officer Hehl entered the trailer and Officer Marshall left one minute later (7:50 p.m.). Officer Christie entered the trailer briefly and left (8:00 p.m.). Officer Marshall walked in and out of the trailer (8:15 p.m.). Officer Dominguez entered the trailer and went to the safe room (8:20-8:22 p.m.).

At 8:35 p.m., the trailer shook for about 15 seconds, a picture frame fell (Pet. Exs. 2, 2a). One minute later, Officer Christie ran into the trailer, followed by Officer Hernandez 15 to 20 seconds later (8:36 p.m.). After another minute, Officers Dominguez, Hernandez, Christie, and Hehl all walked out of the trailer (8:37 p.m.).

Officer Hehl re-entered the trailer at 8:38 p.m. (Pet. Exs. 2, 2a). One minute later Officer Dominguez entered, followed by Officer Christie (8:39 p.m.). Officers Hernandez and Villodas tried to enter the trailer but the door would not open. Someone opened the door from the inside, allowing the officers to enter (8:40 p.m.). Officer Christie walked into the safe room to change a radio battery (8:41 p.m.).

At 9:11 p.m., Officer Hernandez opened the trailer door and signaled to another officer who left the area (Pet. Exs. 2, 2a). Officer Hernandez re-entered the trailer and Captain Maldonado, Officer Christie, and Officer Villodas later stepped outside the trailer for about five minutes (9:43-9:48 p.m.). Officer Christie stepped outside the trailer for a minute (9:56). Two minutes later, Officer Hehl stepped outside the trailer, walked to his car, and returned to the trailer (9:59 p.m.). Thirty minutes later, Officer Christie left the trailer and drove away and Officer Hehl did the same thing a few minutes later (10:34-10:38 p.m.).

The investigation and reports

None of the witnesses memorialized the incident on the day that it occurred. Two days later, Captain Santana noticed damage to the trailer. A poster and map were out of place, there were two freshly plastered holes in the wall, and the trailer window had been shattered (Tr. 68-69; Pet. Ex. 3). Captain Santana ordered every officer who was on duty that morning to submit a report regarding the trailer damage (Tr. 69). All the officers who submitted reports, including Officer Christie, stated that they had no knowledge of what had occurred (Tr. 70; Pet. Ex. 7).

A day or two later, Officer Hehl told Captain Santana that he had been involved in a physical altercation in the trailer with Officers Dominguez, Hernandez, and Christie (Tr. 73, 77). Officer Hehl claimed that Officer Dominguez had called him a “snitch,” “got in his face,” and there was a push (Tr. 73, 76). Somebody grabbed him and he fell or was thrown to the floor,

where he was stomped in the back (Tr. 73, 76). Captain Santana did not recall that Officer Hehl referred to a “punch” and Officer Hehl did not tell Captain Santana that he had damaged the trailer (Tr. 77-78).

On June 12, 2017, Assistant Deputy Warden (ADW) Mitton ordered all canine unit officers to report whether they knew how the trailer damage occurred, whether there had been a physical altercation among staff on June 9, and whether any injuries were sustained (Pet. Ex. 14).

In his report, Officer Hehl wrote that Officer Dominguez cursed at him, called him a snitch, lunged at him, and struck him in the face while he was being restrained by other officers (Pet. Ex. 5). Officer Dominguez wrote that the altercation began when Officer Hehl threw keys at him without provocation and that Officer Hehl was the aggressor who threw multiple objects, until he was restrained by the others (Pet. Ex. 10). Officers Marshall and Villodas submitted reports that were consistent with their trial testimony (Pet. Ex. 15; Resp. Ex. B).

Captain Maldonado, who did not testify, submitted a report that mirrored Officer Dominguez’s version of events. Moreover, Captain Maldonado noted that he did not report the incident because he had mediated the problem, no punches were thrown, and there were no visible injuries to anyone. He stated that the window was shattered by the garbage pail thrown by Officer Hehl (Resp. Ex. D).

Officer Christie wrote that he entered the trailer after hearing a commotion, saw Officer Hehl push Officer Dominguez, and he restrained Officer Hehl, who threw numerous objects (Pet. Ex. 8). Officer Hernandez reported that as he began to enter the trailer with Officer Dominguez, Captain Maldonado told them to wait outside for a minute. After hearing Officer Hehl yelling, Officer Hernandez entered the trailer with Officer Christie and others to separate and stand between Officers Hehl and Dominguez. Officer Hernandez reported that Officer Hehl threatened to fight, Captain Maldonado ordered him to stop yelling, and Officer Christie said, “You hit me. I can’t believe you hit me in the face.” According to Officer Hernandez, he saw Officer Hehl punch the wall twice. After going into the captain’s office with Officer Villodas and Captain Maldonado, Officer Hehl returned to the table, they discussed the matter, Officer Hehl apologized, they shook hands, and they were dismissed. Officer Hernandez wrote that “no one was fist fighting” in the trailer and no one had any visible injuries (Pet. Ex. 12).

MEO 16 Interviews

Six to seven months after the incident, investigators interviewed Officer Hehl and respondents pursuant to MEO 16. Petitioner introduced the recordings at trial, without transcripts. For the most part, the officers' MEO 16 interviews were consistent with their trial testimony. However, there were some minor differences.

For example, Officer Hehl stated that after Officer Dominguez called him a "snitch," they stood up, "started talking shit to each other," and bumped chests. Officer Hehl also acknowledged throwing the fire extinguisher, but he insisted that he did not strike anyone. He did not recall throwing a trash can and denied throwing keys or books; he also denied punching the wall (Pet. Ex. 6).

Officer Dominguez repeatedly stated during his MEO 16 interview that he could not recall details. For example, he stated that Officer Hehl threw everything that was not bolted down, but he could not recall anything in particular that was thrown (Pet. Ex. 11 at 10:45-11:10). Officer Dominguez also said that other officers never grabbed Officer Hehl because he was throwing so many things they could not get close to him (*Id.* at 15:10). After refreshing his recollection by referring to his written report, Officer Dominguez recalled that other officers "pried" Officer Hehl off him (*Id.* at 18:30).

Officer Christie stated during his MEO 16 interview that he did not notice any broken glass or holes in the wall until the day after the incident (Pet. Ex. 9 at 22:00). He insisted that, on the night of the incident, he only saw some garbage on the floor and he did not see Officer Hehl punch the wall (*Id.* at 23:35).

In his interview, Officer Hernandez said that he held Officer Hehl during his initial dispute with Captain Maldonado and held Officer Dominguez during the later dispute, but he could not see behind him, did not see anyone throw a fire extinguisher or garbage can, and did not see Officer Hehl on the floor (Pet. Ex. 13 at 5:25, 7:35, 10:25-10:30, 11:00, 17:45, 19:50, 19:55, 23:10-23:40, 26:00, 34:20). Officer Hernandez recalled that immediately after the incident, when he was cleaning up, he saw damage to the trailer, including the garbage on the floor and broken glass (*Id.* at 9:40, 15:10-15:30, 24:15, 30:15). He stated that there was no fight or "tussle," which he described as "something physical" (*Id.* at 5:20, 14:05, 17:00, 21:00, 23:30, 23:50). Instead, Officer Hernandez, described the incident as a series of disputes where officers stepped between Officer Hehl and others and people were held back (*Id.* at 5:25, 7:35, 11:00,

21:10, 23:10, 25:50, 34:20-45). At one point, Officer Hernandez said that he heard Officer Christie say that he had been “punched” (*Id.* at 11:00). However, Officer Hernandez quickly clarified that he heard the word “hit” instead of “punch” (*Id.* at 11:00-25, 11:55).

Officer Darren Kempen, who did not testify at trial and did not work on the day of the incident, stated during an MEO 16 interview that he heard about the dispute from other officers and he notified the Department’s EEO office. On June 11, 2017, he saw the broken window and holes in the wall. He spoke to Officer Hehl, who did not want to talk about the incident. After seeing cell phone photos of Officer Hehl’s injuries, Officer Kempen urged him to report the incident. Officer Kempen further claimed that he spoke to Officer Christie, who told him that something happened but he should “stay out of it” (Pet. Ex. 17).

Investigator’s Report

Investigator Santiago Cornejo summarized the MEO 16 interviews, reports submitted by members of the canine unit, and the surveillance video (Pet. Ex. 1). Besides the evidence offered at trial, Investigator Cornejo confirmed that the Department’s EEO office heard about the incident on the day that it occurred. Moreover, the Department of Investigation and the Bronx District Attorney’s Office interviewed Officer Hehl one week after the incident, but the matter did not result in criminal charges (Pet. Ex. 1; Tr. 60-61).

The Charges

Petitioner charged each respondent with two specifications of inefficient performance of duties, conduct unbecoming an officer, and conduct of a nature to discredit the Department (ALJ Ex. 1). To prevail, petitioner “has the burden of proving its case by a fair preponderance of credible evidence.” *Dep’t of Correction v. Hall*, OATH Index No. 400/08 at 2 (Oct. 18, 2007), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD/08-33-5A (May 30, 2008). In assessing credibility, relevant considerations include demeanor, consistency of testimony, supporting evidence, witness motivation, bias or prejudice, and whether the testimony comports with common sense and human experience. *See, e.g. Dep’t of Sanitation v. Menzies*, OATH Index No. 678/98 at 2-3 (Feb. 4, 1998), *aff’d*, NYC Civ. Serv. Comm’n Item No. CD 98-101-A (Sept. 9, 1998).

Disrespectful tone and demeanor (Specification 1)

Petitioner alleged that each respondent was disrespectful in tone and demeanor to Officer Hehl (ALJ Ex. 1; Pet. Ex. 1, Rule 3.20.010 (officers must present a professional demeanor and

act in a dignified manner)). Co-workers may disagree, but they must maintain decorum and discretion. *See, e.g., Dep't of Correction v. Peterson*, OATH Index No. 2095/12 at 7 (Jan. 11, 2013) (disruptive, profanity-laced, verbal disagreement among correction officers is not permitted). This allegation should be sustained, in part. Petitioner proved that Officer Dominguez acted disrespectfully towards Officer Hehl, but did not prove that Officers Christie or Hernandez committed similar misconduct.

It was unclear what happened inside the trailer. The surveillance video was ambiguous; an eyewitness to the entire incident, Captain Maldonado, did not testify; and petitioner's main witness, Officer Hehl, provided wildly different versions of events. Most notably, at trial Officer Hehl disavowed his earlier claims that Officers Hernandez and Christie participated or assisted in an assault. Petitioner speculated that Officer Hehl changed his story out of "sympathy for his co-workers" (Tr. 269). According to petitioner, Officer Hehl's initial claim, that Officer Hernandez slammed him against the wall, allowing Officer Dominguez to sucker punch him in the face, and that Officer Christie forcibly took him to the ground, was the most accurate version (Tr. 369). The evidence did not support this theory.

Officer Hehl's recantations at trial did not appear to be the product of sympathy, fear, or intimidation. Instead, he conceded that some of his initial accusations stemmed from suspicions rather than fact. Upon reflection, he realized that Officers Hernandez and Christie were not participants in an assault; they merely tried to break up a dispute and avoid further harm.

I found Officer Hehl's description of the initial encounter with Officer Dominguez to be consistent and plausible. To his credit, Officer Hehl accepted some responsibility for his wrongdoing. He acknowledged that the episode began when he cursed at Captain Maldonado, which Officer Marshall confirmed. The argument continued when Officer Hehl made a sarcastic remark and Officer Dominguez replied with a sharp rebuke. The dispute escalated when Officer Dominguez called Officer Hehl a "fucking liar" and Officer Hehl told him to mind his business. The dispute turned physical after Officer Dominguez called Officer Hehl a "snitch" and both officers grabbed each other and tussled.

In contrast, Officer Dominguez's recollection of how the dispute started did not make sense. To begin with, Officer Dominguez claimed that he had minimal prior contact with Officer Hehl and they did not have a bad relationship (Tr. 230). However, Officer Dominguez knew that

his partner was involved in Officer Hehl's EEO complaint, which caused friction in the close-knit canine unit (Tr. 230, 257).

At trial, Officer Dominguez recalled that Officer Hehl attacked him in the trailer without provocation after the following events. Officer Dominguez asked the captain if he was okay, Officer Hehl said, "What about me?" and Officer Dominguez replied, "What do you mean?" According to Officer Dominguez, Officer Hehl immediately threw his keys at him and lunged at him. It was unlikely that Officer Hehl suddenly became violent in response to an innocuous question. Instead, it was more likely that Officer Dominguez, upset about his partner facing a transfer due to the EEO complaint, called Officer Hehl a "fucking liar" and a "snitch," which led to a physical confrontation.

The surveillance video indicated that the dispute reached its peak at 8:35 p.m., when the trailer shook violently for at least 15 seconds. Notably, Captain Maldonado and Officers Hehl and Dominguez were the only ones in the trailer at that time. The confrontation was so furious that other officers rushed inside. Remarkably, Officer Dominguez claimed that the trailer shook because of its flimsy construction and Officer Hehl's erratic behavior, which consisted of him throwing keys, the captain stepping in front of him, and Officer Hehl grabbing or pushing. Based on the video and the response of the other officers, it was a more violent dispute.

Though I credited Officer Hehl's description of what started the dispute, petitioner failed to prove what happened after the other officers entered the trailer. Officers Dominguez and Hehl may have grabbed and pushed each other at the outset. But petitioner did not prove that Officer Dominguez "sucker punched" Officer Hehl in the face as other officers held him back. No other witness confirmed that Officer Dominguez punched Officer Hehl. Moreover, Captain Maldonado and other officers stood between Officers Dominguez and Hehl shortly after the incident escalated, which would have made it difficult for either of the officers to land a punch.

Officer Hehl produced undated photos showing that he had a black eye, but he did not send it to petitioner's investigator until six months after the incident. There was no independent evidence to establish when Officer Hehl took the photo. There was no evidence that Officer Hehl sought any medical attention. And there was no credible evidence that anybody else, inside or outside the Department, saw Officer Hehl's black eye that night or in the days that followed. Officer Kempen, who appeared to be a friend of Officer Hehl's, recalled during his MEO 16

interview that he saw some cell phone photos of injuries, but that claim is entitled to little weight because he did not testify and there was no proof that he saw the same photos offered at trial.

Despite earlier claims that Officer Hernandez “slammed” him against a wall and Officer Christie grabbed him in a “choke hold,” Officer Hehl conceded at trial that neither officer struck or hit him—they only tried to break up the dispute (Tr. 29-30). The surveillance video also undercut Officer Hehl’s claim of a violent assault because the trailer did not shake after Officers Hernandez and Christie entered the trailer.

In his prior statements, Officer Hehl suggested Officers Dominguez and Hernandez stood by the exit to prevent him from leaving, but at trial he claimed that only Officer Dominguez stood in the doorway and that Officer Hernandez was in the vicinity (Tr. 38-39). There was no credible evidence to support either claim. Rather, the evidence showed that the captain and Officer Hehl’s close friend, Officer Villodas, accompanied him to an office to defuse the situation and that Captain Maldonado observed that Officer Hehl was in no condition to drive home. By all accounts, they returned to the conference room, reconciled, and talked it over for about an hour. Respondents did not prevent Officer Hehl from leaving.

Officer Hehl wrote in his initial report that, as they talked it over in the trailer, Officer Hernandez said, “If this comes out, we will say that you assaulted Dominguez, and we all broke it up. That’s what we are going with” (Pet. Ex. 5). At trial, however, Officer Hehl testified that unidentified officers made those remarks and he told “them” that he would not say anything (Tr. 34). Based on this inconsistent testimony, petitioner failed to prove that Officer Hernandez made the comment.

It was particularly troubling that Officer Hehl refused to admit that he punched the holes in the wall. There was no dispute that somebody caused that damage during the altercation. Nearly all of the eyewitnesses—including Officer Hehl’s close friend Officer Villodas, who had no motive to lie—credibly and consistently identified Officer Hehl as the culprit.

In short, Officer Hehl offered inconsistent, implausible, and unsupported testimony about what took place after the initial dispute with Officer Dominguez. Thus, petitioner failed to prove that Officers Hernandez and Christie committed misconduct inside the trailer. Despite the flaws in Officer Hehl’s testimony, I credited his central, consistent claim that, after his angry disagreement with Captain Maldonado, the dispute re-ignited when Officer Dominguez called

him a “fucking liar” and a “snitch.” Such comments by Officer Dominguez went beyond legitimate disagreement and were disrespectful in tone and substance.

Incomplete, inaccurate, or misleading reports (Specification 2)

Petitioner alleged that respondents made incomplete, inaccurate, or misleading statements in their written reports and MEO 16 interviews (ALJ Ex. 1; Pet. Ex. 1, Rule 4.30.020 (prohibiting false reports)). To prove this charge, petitioner must show that the underlying incident occurred and that respondents’ statements materially deviated from the actual events. *See Dep’t of Correction v. Rothwell*, OATH Index No. 1963/17 at 11 (Nov. 3, 2017), *modified*, Comm’r Dec. (Jan. 8, 2018) (misconduct proved where captain failed to state in her use of force report and MEO 16 interview that she struck an inmate). Furthermore, the use of imprecise language should not be punished as a false or misleading statement if there was no intent to conceal or deceive. *See Dep’t of Correction v. Galarza*, OATH Index No. 348/90, 433/90 at 22 (June 11, 1990) (statement not misconduct unless it is due to “some fault, not mere inadvertence or poor drafting”); *see also Dep’t of Correction v. Dyce*, OATH Index Nos. 1456/08, 1459/08 & 1542/08 at 9-10 (June 17, 2008), *modified on penalty*, NYC Civ. Serv. Comm’n Item No. CD 09-23-M (Apr. 6, 2009) (failure to recall, during an MEO 16 interview, profanities that were uttered four months earlier, during a loud, cacophonous extraction, was not misconduct).

The evidence showed that Officers Dominguez and Christie made incomplete or inaccurate statements, designed to mislead. However, petitioner failed to prove that Officer Hernandez made similar statements.

Officer Dominguez’s written report and MEO 16 interview statements omitted material details. Though Officer Dominguez wrote and spoke at length about the events leading up to the dispute and its aftermath, he failed to mention that the altercation occurred shortly after he called Officer Hehl “a fucking liar” and a “snitch” (Pet. Exs. 7, 11). This was misconduct, because Officer Dominguez omitted those key facts in an effort to conceal his wrongdoing. *See Dep’t of Correction v. Johnson*, OATH Index No. 1639/05 at 9-10 (Aug. 18, 2005), *modified on penalty*, Comm’r Dec. (Oct. 27, 2005), *modified on penalty*, NYC Civ. Serv. Comm’n Item No. CD 07-29-M (Mar. 14, 2007) (report that omitted events leading to the use of force was misleading).

Petitioner also alleged that Officer Dominguez falsely denied that a “physical altercation” took place (Pet. Ex. 1). As noted, the credible evidence proved that Officer Dominguez provoked the dispute, but it was not entirely clear who initiated the physical contact. In his

report and MEO 16 interview, Officer Dominguez claimed that Officer Hehl lunged at him, grabbed him, and had to be pried off by others. Officer Dominguez also noted that Officer Hehl pushed Captain Maldonado. Because petitioner failed to prove those facts were untrue, it also failed to prove that Officer Dominguez's recollections were inaccurate, incomplete, or misleading.

Officer Christie's initial report of the incident, in response to Captain Santana's order, was incomplete and misleading. Specifically asked how damage "was done" in the trailer, Officer Christie wrote that he had "no knowledge on how the damage was done or who did it" (Pet. 7). At trial, Officer Christie conceded that he was present during an altercation in the trailer, he saw Officer Hehl throw a fire extinguisher, and was there when the window broke. Because somebody had fired a shot at Officer Christie's car one week earlier, the breaking of the trailer window was a particularly memorable event. Confronted with the discrepancy between his initial written report and his later statements, Officer Christie claimed that he left those details out of his report because he was not sure when the damage occurred or who caused it. That claim is not believable.

If Officer Christie was uncertain exactly how the window broke or other damage occurred, he could have noted that after fully reporting what he did see. Instead, he wrote that he had "no knowledge." That brief, inaccurate statement was an improper attempt to cover-up the altercation that Officer Christie witnessed in the trailer.

Officer Christie's initial report also failed to mention two holes in the wall. At trial, Officer Christie claimed that he did not notice the holes on the night of the incident. That, too, defied belief. The trailer is a small space, the punching at the wall occurred at the end of the incident, and Officer Christie was there for up to an hour after the dispute ended. Under these circumstances, it is unlikely that Officer Christie failed to see or hear Officer Hehl punched the wall twice. It was also unlikely that he failed to notice the damage until the next day.

Officer Hernandez did not submit a report in response to Captain Santana's order. Captain Santana ordered all the officers who were on duty on June 11, 2017, to submit a report regarding their knowledge of the damage to the trailer and he recalled that Officer Hernandez was one of the officers on duty. Petitioner did not charge Officer Hernandez with insubordination and there was no reliable evidence, such as a timekeeping record, to show that he was on duty on June 11 or that he ever received an order from Captain Santana.

However, Officer Hernandez did submit a three-paragraph report on June 13, in response to an order from ADW Mitton, which included the following details. Officer Hernandez saw and heard Officer Hehl yelling and screaming; he accompanied three other officers into the trailer “to separate and stand in between” Officers Hehl and Dominguez; he heard Officer Hehl ignore the captain’s orders to stop yelling and making threats; he heard Officer Christie say, “You hit me on my face,” the captain ordered Officer Hehl into his office; Officer Hehl punched the wall twice; and the incident ended with Officer Hehl rejoining officers at the table and apologizing. Officer Hernandez also wrote that he did not see any “fist fighting” in the trailer and nobody sustained any visible injuries (Pet. Ex. 12). At trial, Officer Hernandez stressed that he was given less than one hour to write the report, which he wrote at home on his day off (Tr. 154-55, 167).

Six months later, during a 35-minute minute MEO 16 interview, Officer Hernandez provided more details. He recalled that the incident unfolded in stages and he walked out of the trailer twice before entering for a third time and separating Officers Dominguez and Hehl. Officer Hernandez said that he held Officer Dominguez with one hand. He noted that the garbage pail had been thrown by Officer Hehl and there was garbage on the floor, but he did not see the pail or anything else being thrown, because he was concentrating on Officer Dominguez.

Though the petition did not specify what parts of Officer Hernandez’s report or interview statements were misleading, the investigator’s report asserted that Officer Hernandez’s report “omitted pertinent information about the incident” and that, at the MEO 16 interview, he falsely denied that “the altercation was physical” and that “no force was used on anyone during the incident” (ALJ Ex. 1; Pet. Ex. 1 at 14). At trial, petitioner argued that Officer Hernandez’s report “clearly misleads” the reader because the “tone and the tenor” made it appear that Officer Dominguez was “nowhere in the trailer” (Tr. 373). Petitioner further claimed that Officer Hernandez: “effectively admitted” that the report was incomplete when he said, during the MEO 16 interview that he thought he could amend it and add details later; inaccurately described the dispute as two separate events rather than one continuous event; and “concocted” his claim that he put his hand on Officer Dominguez as “an excuse” for his inability to see what happened behind his back (Tr. 372-75). After finding fault with Officer Hernandez’s recollection of where everybody stood during the incident, petitioner found it “strange” that he made no mention of a coffee pot or microwave on the floor (Tr. 376).

Petitioner's claims do not withstand scrutiny. Much of petitioner's argument rests on the premise that Officer Hehl's original description of the incident was the most accurate. However, Officer Hehl was an unreliable narrator and the video evidence showed that Officer Hernandez was not inside the trailer during the most violent part of the incident. Thus, petitioner failed to prove that Officer Hernandez's main claim, that he stepped between Officer Hehl and others to prevent further harm, was untrue.

Officer Hernandez's report could have been more specific and I was not convinced that he had been told that he only had one hour to submit it. But he submitted the report in response to a specific order to answer three questions regarding his knowledge about the cause of the trailer damage, a physical altercation among staff, and physical injuries. Read in its entirety, Officer Hernandez answered each of those questions. In contrast to Officer Christie, who initially wrote that he had no knowledge of what happened, Officer Hernandez identified himself as one of three officers who entered the trailer to separate and stand between Officers Hehl and Dominguez, noted that Officer Hehl punched the holes in the wall, and stated that there were no visible injuries (Pet. Ex. 12). Contrary to petitioner's claim, the report places Officer Dominguez inside the trailer.

Notably, Officer Hernandez's report is similar in length and detail to the report submitted by Officer Villodas, who was not charged with any misconduct (Pet. Ex. 12; Resp. Ex. B). Officer Villodas entered the trailer shortly after Officer Hernandez, referred to "an alleged altercation," and noted that Officer Hehl punched the wall. He wrote that Officer Hernandez was one of two officers who were "holding Officer Dominguez back" while Officer Christie "held Officer Hehl back," which was more precise than Officer Hernandez's report that he stood between and separated the two officers, but neither report describes a fight or physical altercation.

It was hardly surprising that Officer Hernandez provided more details in his 35-minute MEO 16 interview than in his one-page report. That inevitably occurs at any MEO 16 interview where multiple investigators question a witness, but that does not render the initial report incomplete or misleading. Based on the audio recording, Officer Hernandez made a good faith effort to answer every question posed to him. There was no attempt at deception or evasion.

Petitioner's claim that Officer Hernandez "effectively admitted" that his report was incomplete rests on isolated remarks taken out of context. For example, when an investigator

explained how the report could have contained more detail, Officer Hernandez replied, “I follow you” (Pet. Ex. 13 at 34:45). He also referred to filing an amended report if necessary and receiving an opportunity to provide further clarification at an interview. However, as the entire interview makes clear, Officer Hernandez repeatedly stood by his original report, he was adamant that there was no fight, and he flatly stated his belief that no amended report was necessary (Pet. Ex. 13 at 4:32, 14:05, 17:00, 23:30, 26:30-26:40, 35:15).

There is no merit to petitioner’s argument that it was misleading to refer to this incident as two or three separate events rather than one continuous incident. Even accepting petitioner’s view of the evidence, the incident could fairly be described as a series of incidents beginning with a verbal dispute between Officer Hehl and Captain Maldonado that subsided, followed by a verbal dispute between Officers Hehl and Dominguez, which escalated to a physical dispute and ended when the captain and other officers intervened.

Petitioner also failed to prove that Officer Hernandez was deceptive when he reported that he did not see Officer Hehl throw objects or fall to the floor. Officer Hernandez had no motive to lie about those details. After all, Officer Hernandez did not minimize Officer Hehl’s wrongdoing. Instead, he described Officer Hehl as an out-of-control aggressor who punched the wall and he inferred that Officer Hehl must have thrown the garbage on the floor. It was a chaotic, rapidly unfolding incident, in a confined space, among several people. Under these circumstances, petitioner failed to prove that Officer Hernandez could see and recall everything that Officer Hehl did.

Finally, there was also nothing “strange” about Officer Hernandez’s failure to mention a displaced microwave or coffee pot in his report or MEO 16 interview. Officer Dominguez was the only person to suggest that Officer Hehl had thrown either a microwave or a coffee pot. No other witness credibly claimed that Officer Hehl threw either item. To accept petitioner’s argument would be mean that an officer commits misconduct whenever another officer includes different details in a report or MEO 16 interview.

Motion to amend the charges

After the close of evidence, petitioner moved to amend the charges, to conform to the proof at trial, to include an allegation that the officers committed misconduct by failing to report the incident (Tr. 324-25). The evidence at trial showed that Captain Maldonado was present for the entire incident and told the officers that there was no need to submit a report. Captain

Maldonado made statements to the effect that he had mediated the dispute, he did not want get Officer Hehl into trouble, or he would notify appropriate authorities. Petitioner argued that officers must go over a captain's head and report an unusual incident further up the chain of command when a captain is a participant; however, petitioner failed to cite any rule that expressly imposed such a requirement (Tr. 332-33). Because petitioner made its request two years after the incident and at the end of trial, the motion to amend was denied as untimely and a change in theory (Tr. 327-28, 337). *See Dep't of Correction v. Hamil & Villodas*, OATH Index Nos. 1213/18, 1215/18 at 14-16 (July 9, 2018), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2018-1174 (Mar. 14, 2019) (denying motion to amend, made after redirect examination of an investigator, as an untimely change of theory).

FINDINGS AND CONCLUSIONS

1. The Department proved that Officer Dominguez was disrespectful in tone and demeanor to a fellow officer on June 9, 2017, as alleged in the petition.
2. The Department failed to prove that Officers Christie and Hernandez were disrespectful in tone and demeanor to a fellow officer on June 9, 2017, as alleged in the petition.
3. The Department proved that, in their written reports and MEO 16 interviews, Officers Dominguez and Christie made incomplete, inaccurate, or misleading statements, as alleged in the petition.
4. The Department failed to prove that, in his written report or MEO 16 interview, Officer Hernandez made incomplete, inaccurate, or misleading statements, as alleged in the petition.

RECOMMENDATION

After making the above findings, I requested and reviewed summaries of respondents' personnel histories. Petitioner hired Officer Dominguez in 2000 and Officer Christie in 2013. Officer Christie also served in the United States Marine Corps (Tr. 282). Both officers have unblemished disciplinary records.

Petitioner requested penalties of 45 and 30 days' suspension for Officers Dominguez and Christie (Tr. 386). Respondents argued that, if the petitioner proved the charges, a 10-day

suspension would be the proper penalty (Tr. 386). Based on the proven charges and mitigating factors, penalties of 20 and 10 days' suspension would be appropriate.

Recent penalties for officers with no prior disciplinary records who submit false or misleading reports and make misleading statements in MEO 16 interviews have ranged from 10 to 30 days' suspension. *See Dyce*, OATH 1456/08, 1459/08, & 1542/08 at 13 (Civil Service Commission reduced penalty for long-term officer, with no prior record, to 10 days' suspension for omitting necessary details from use of force report and MEO 16 interview); *Hamil*, OATH 1213/18, 1215/18 at 17 (15-day suspension upheld by Civil Service Commission for officer who made false or misleading statements in a use of force report); *Dep't of Correction v. Ford*, OATH Index No. 734/13 at 29-30 (May 23, 2013) (20-day suspension upheld for officer who submitted false and misleading use of force report and made false or misleading statements at MEO 16 interview); *see also Dep't of Correction v. Cantelmo*, OATH Index No. 2562/17 at 5 (Jan. 12, 2018) (30-day suspension for an officer who submitted a false report and made false statements at an MEO 16 interview about a use of force). An added penalty is appropriate for officers who treat co-workers with disrespect. *See, e.g., Dep't of Correction v. Buford*, OATH Index No. 388/02 (June 17, 2002), *adopted*, Comm'n Dec. (Aug. 15, 2002), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 03-49-SA (June 12, 2003) (10-day suspension for cursing at a captain and refusing to immediately follow an order).

Here, petitioner proved that Officer Dominguez called Officer Hehl a "fucking liar" and a "snitch" and deliberately omitted those details from his report and MEO 16 interview. Even if Officer Dominguez did not initiate the physical altercation and only defended himself, his disrespectful and unprofessional comments needlessly provoked Officer Hehl. Officer Dominguez compounded his error by making repeated false statements designed to minimize his own wrongdoing. His 19 years of service with the Department, without any prior misconduct, is a significant mitigating factor.

The evidence also showed that Officer Christie submitted a misleading report and made misleading statements when he claimed that he had no knowledge of any damage to the trailer or who caused it. This was a misguided attempt to cover up for Officer Hehl's misconduct. However, the evidence also showed that Officer Christie was a peacemaker who entered the trailer and restrained Officer Hehl to prevent him from causing harm to himself or others. Indeed, he maintained his professionalism even after Officer Hehl struck him with a fire extinguisher and

falsely accused him of being an aggressor. Although this does not excuse Officer Hehl's repeated misstatements or omissions, his actions inside the trailer and lack of a prior disciplinary record, are substantial mitigating factors.

Accordingly, I recommend penalties of 20 and 10 days' suspension for Officers Dominguez and Christie, respectively.

Kevin F. Casey
Administrative Law Judge

May 21, 2019

SUBMITTED TO:

CYNTHIA BRANN
Commissioner

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**THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION**

In the Matter of the Appeal of

ROBERT CHRISTIE

Appellant

-against-

DEPARTMENT OF CORRECTION - DOC

Respondent

*Pursuant to Section 76 of the New York
State Civil Service Law*

CSC Index No: 2019-0824

DECISION

ROBERT CHRISTIE (“Appellant”) appealed from a determination of the Department of Correction (“DOC”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of a 10-day suspension following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission (“Commission”) heard arguments from the parties on January 9, 2020.

The Commission has considered the arguments presented on this appeal, and reviewed the record of the disciplinary proceeding. Based on this review, the Commission concludes that there is sufficient evidence in the record to support the findings of fact and the conclusions of law, and that the penalty is appropriate.

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Therefore, the final decision and penalty imposed are hereby affirmed.

SO ORDERED.

Dated: February 5, 2020

**THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION**

In the Matter of the Appeal of

IRVIN DOMINGUEZ

Appellant

-against-

DEPARTMENT OF CORRECTION - DOC

Respondent

*Pursuant to Section 76 of the New York
State Civil Service Law*

CSC Index No: 2019-0825

DECISION

IRVIN DOMINGUEZ (“Appellant”) appealed from a determination of the Department of Correction (“DOC”) finding Appellant guilty of incompetency and/or misconduct and imposing a penalty of a 20-day suspension following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission (“Commission”) heard arguments from the parties on January 9, 2020.

The Commission has considered the arguments presented on this appeal, and reviewed the record of the disciplinary proceeding. Based on this review, the Commission concludes that there is sufficient evidence in the record to support the findings of fact and the conclusions of law, and that the penalty is appropriate.

This portion of page 1 is deliberately left blank.

Therefore, the final decision and penalty imposed are hereby affirmed.

SO ORDERED.

Dated: February 5, 2020