

BEFORE THE STATE OF NEVADA GOVERNMENT
EMPLOYEE-MANAGEMENT RELATIONS BOARD

FILED
April 5, 2024
State of Nevada
E.M.R.B.
7:14 a.m.

JOSEPH MENDOZA and NORTH LYON
FIREFIGHTERS ASSOCIATION,
INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS, LOCAL 4547,

Case No. 2023-027

Complainants,

vs.

NORTH LYON COUNTY FIRE
PROTECTION DISTRICT,
DANIEL McCASSIE, in his official
capacity, MIKE CALLAGY, Jr., in his
official capacity, and HARRY WHEELER,
in his official capacity,

Respondents.

SECOND JOINT STATUS REPORT

COME NOW, Complainants and Respondents, by and through their respective attorneys, and hereby file this Second Joint Status Report pursuant to the Board's Order dated November 13, 2023, in this matter:

Arbitrator Andrea Dooley issued her Decision and Award dated February 28, 2024, from the arbitration on February 8, 2024, regarding the termination of Petitioner JOSEPH MENDOZA ("Captain/President Mendoza") by Respondents on August 17, 2023. Exhibit 1. Arbitrator Dooley held:

In short, Employer has failed to demonstrate that there was just cause to discharge Captain Mendoza. Captain Mendoza shall be reinstated to his prior position and made whole.

Id., p. 14 (emphasis in original). Further, Arbitrator Dooley held:

**... Captain Mendoza's probation has ended, and he shall return to his position in a post-probationary status.
The grievance is sustained.**

Id., p. 16 (emphasis in original).

1 On or about March 29, 2024, Respondent NORTH LYON COUNTY FIRE PROTECTION
2 DISTRICT provided Captain/President Mendoza with an estimate of his back pay.
3 Captain/President Mendoza returned to duty on April 1, 2024.

4 In light of Arbitrator Dooley's Decision and Award the parties are discussing settlement of
5 the instant action. However, this matter may proceed at this time.

6 DATED this 5th day of April, 2024.

7 DYER LAWRENCE, LLP

8
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EXHIBIT 1

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EXHIBIT 1

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IN THE ARBITRATION PROCEEDINGS

BETWEEN THE PARTIES

NORTH LYON FIREFIGHTERS
ASSOCIATION, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS,
LOCAL 4547

Union,

and

NORTH LYON COUNTY FIRE
PROTECTION DISTRICT,

Employer.

(Grievances re: Introductory Period Extension
and Termination of Joseph Mendoza)

Case No. AAA No. 01-23-003-4948 and
No. 01-23-003-7370

DECISION AND AWARD

INTRODUCTION

This dispute involves the application and interpretation of the Collective Bargaining Agreement (“CBA” or “Agreement”) between North Lyon County Fire Protection District (“Employer” or “District”) and North Lyon Firefighters Association, International Association of Firefighters, Local 4547 (“Association” or “Local 4547”). Pursuant to the Agreement between the parties, the parties selected the undersigned Arbitrator to serve as the neutral decision-maker in this case. The matter came up for hearing via video conference on February 8, 2024. The

1 parties submitted this matter to the Arbitrator after presentation of evidence, oral argument by
2 the Association, and closing brief by the District.

3
4 **APPEARANCES**

5 For the Association: Thomas J. Donaldson, Esq.
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7 2805 Mountain Street
8 Carson City, NV 89703

9 For the Employer: Nick D. Crosby, Esq.
10 Marquis Aurbach, Chtd.
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13 **ISSUES**

- 14 1. Does the decision to extend Grievant's probation constitute a Grievance under the
15 Collective Bargaining Agreement?
- 16 2. Whether just exists for terminating Captain Joseph Mendoza's District employment,
17 and, if not, what is the appropriate remedy?
- 18 3. If the appropriate remedy includes Captain Mendoza's reinstatement to District
19 employment, is he a probationary or post-probationary captain?

20 **RELEVANT CONTRACT AND POLICY PROVISIONS**

21 **ARTICLE 11. VACANCIES AND PROMOTIONS**

- 22 **L.** Any EMPLOYEE who believes he has been wronged in the promotional process
23 by the DISTRICT in an arbitrary, capricious, or discriminatory manner, may,
24 within ten (10) workdays of the perceived wronging, utilize the grievance
25 procedure outlined in Article 32 starting at Step 1. If agreeable to both parties,
26 expedited arbitration, if needed, may be used for grievances filed regarding this
27 paragraph.

28 **ARTICLE 21. WORK RULES**

- 29 **A.** The DISTRICT may adopt rules and regulations and issue directives and bulletins,
30 consistent with the Nevada Revised Statutes and this Agreement. In addition to any

1 other legal requirements (including NRS 288), no rule, regulation, nor amendment or
2 cancellation thereof shall become effective until notice thereof has been posted in
3 each fire station for a period of seven (7) working days.

4 1. Exception: Rules, regulations, and directives specific to safety issues pertaining to
5 personnel and/or the public will be effective immediately upon posting with an
6 electronic mail of the rule, regulation or directive being sent to each member of
7 the department.

8 B. The parties agree that all current directives, bulletins, policy procedures, operational
9 notices, memos and other materials relating to the DISTRICT's operational policies
10 and administration policies shall be issued in a manner of proper index, consecutive
11 number and date of issue electronically. Said manuals shall be updated no less
12 frequently than annually. The DISTRICT shall provide copies of the above mentioned
13 manuals to each fire station and one copy to the UNION.

14 **ARTICLE 29. PROGRESSIVE AND CORRECTIVE DISCIPLINARY ACTION**

15 A. Progressive and corrective disciplinary action is designed to provide a fair and
16 structured way for EMPLOYEES to improve their job performance and/or
17 behavior which does not meet the standards or demands of their position and to
18 provide a system for fair and equitable treatment of those EMPLOYEES who will
19 not or cannot bring their performance up to expected standards.

20 1. It is the policy of the DISTRICT, through a progressive and corrective
21 discipline system, to give EMPLOYEES an opportunity to improve their job
22 performance and/or behavior which does not meet the standards or demands
23 of their position. An EMPLOYEE may be summarily dismissed (i.e. instant
24 dismissal without notice) only in the event of gross misconduct, defined as
25 acts which are intentional, wanton, willful, deliberate, reckless, or in
26 deliberate indifference to an employer's interest,

B. The goal of the progressive and corrective discipline system is to correct or
improve unsatisfactory performance/behavior and the measures utilized will be
commensurate with the deficiency to be corrected.

C. The District shall not reprimand, demote, suspend, or discharge an EMPLOYEE
without just cause. The term 'just cause' includes the concept of progressive
discipline, where appropriate.

D. An EMPLOYEE may appeal a written reprimand, demotion, suspension, or
discharge through the grievance procedure of Article 31 of this Agreement.

E. An EMPLOYEE shall, on his request and by appointment, be permitted to
examine his personnel file. An EMPLOYEE shall be given a copy of any material
in his file if it is to be used in connection with a grievance or personnel hearing.

1 **ARTICLE 31. GRIEVANCE PROCEDURE**

2 **A.** A grievance is a disagreement between an individual, or the UNION, and the
3 DISTRICT concerning interpretation, application or enforcement of the terms of
4 this Agreement.

5 **DISTRICT PERSONNEL POLICY**

6 **3.9.1** Introductory Period. All new and rehired paid members, except elected officials
7 and those identified as “at-will,” will serve a 12-month introductory period
8 beginning with the day the paid member initially reports for work. Current paid
9 members who are promoted or transferred will also be required to serve a 12-
10 month introductory period. During this “introductory period,” the paid member
11 and the district have the opportunity to evaluate one another and determine
12 whether the paid member is a good fit for the position. At its sole discretion, the
13 district may extend this introductory period up to an additional six months when
14 the district has had insufficient opportunity to assess the paid member’s ability to
15 perform the job functions or such extension is determined appropriate. . . Prior to
16 completion of the introductory period, the supervisor/manager will conduct at
17 least two performance evaluations, one at six months and the other prior to the
18 completion of the twelfth month, to ascertain the advisability of continued
19 employment.

20 **STATEMENT OF THE FACTS**

21 Joseph Mendoza began working as a volunteer with the North Lyon County Fire
22 Protection District in approximately November 2011. For the purposes of this matter, Mr.
23 Mendoza became a full-time employee of the District in July 2020. In his annual evaluation in
24 July 2021, Mr. Mendoza was rated as “meeting standards.” Exhibit (“EX”) A¹. He completed his
25 probation under Captain Josh Collin.
26

¹ Association exhibits are identified by alphabet letters; Employer exhibits are identified by numbers and pages within the exhibit.

1 On June 15, 2022, Mr. Mendoza was offered a promotion to Captain. The offer letter
2 stated:

3 Your initial appointment will be as a Probationary Fire Captain. The probationary period
4 is an extension of the selection process during which we will further evaluate your
5 qualifications for the job. **The probationary period will last twelve months and may
6 be extended for an additional three months if more time is needed to evaluate your
7 ability to perform the assigned job.** You will be notified when you have completed the
8 probationary period. During the probationary period, you may be demoted from this
9 position with or without cause. EX B.

10 Soon after, Mr. Mendoza was nominated and elected to be the President of Local 4547.

11 On January 31, 2023, the Association's bargaining committee sent Fire Chief Jason
12 Nicholl a letter requesting bargaining for a new agreement. The letter was signed by Mr.
13 Mendoza as the Union's President. Later that day, Chief Nicholl asked Captain Mendoza to
14 come into the administrative office. In the middle of the office, Chief Nicholl began yelling at
15 Mr. Mendoza and using profanities, saying such things as, "What the fuck is this? This is a big
16 fuck you," while hitting the papers that were in his hand.

17 When Mr. Mendoza asked what the papers were, Captain Nicholl said, "This fucking
18 letter, it's your fucking signature, you did this." Chief Nicholl's outburst was overheard by other
19 people in the office and was deescalated by one of the other chiefs.

20 On February 2, 2023, the Union, by its lawyer, Thomas J. Donaldson, filed a complaint
21 against Chief Nicholl for his conduct with the District's Human Resources Representative,
22 Kasey Miller.

23 On March 22, 2023, Captain Mendoza completed his final call at approximately 4:52
24 a.m. He briefly slept, waking at 7:00 a.m. in order to complete his reports and prepare to hand off
25 the station to the captain in command of the next shift. Captain Mendoza's shift ended at 8:00
26

1 a.m. and, after that time, he completed his reports and began to clean his room for the next
2 captain. At 8:45 a.m., Captain Mendoza realized that he was running late for a training session
3 that was set to begin at 9:00 a.m. at POOL/PACT offices in Carson City, approximately 40-50
4 miles away. Mr. Mendoza called the trainers at POOL/PACT to let them know he was running
5 late. The woman who answered the phone indicated that they would see him when he got there.
6 Mr. Mendoza went to his personal office to retrieve his laptop and training materials, however,
7 approximately five miles after leaving his office, he realized he had forgotten his binder and
8 returned to the office to pick it up. After that, Mr. Mendoza stopped for a coffee at Starbucks
9 because he had just completed a 48 hour shift.
10

11
12 Captain Mendoza arrived at the POOL/PACT training at approximately 10:30 a.m. When
13 he arrived, he was notified by one of the trainers, Kevin Coulam, that because he had arrived
14 more than an hour late, he would not get credit for the day's session. Mr. Mendoza said he had
15 not been given that information when he called to let them know he would be late and indicated
16 he would not have come if he had known he would not credit for the day. Mr. Coulam agreed to
17 allow Captain Mendoza to make up the missed module during the lunch break provided to all
18 participants. Mr. Mendoza completed the module in lieu of taking his lunch break.
19

20 At 12:24 p.m. that afternoon, Stacy Norbeck, General Manager of Human Resources for
21 POOL/PACT, notified Chief Nicholl, Ms. Miller, and POOL/PACT Legal Counsel Rebecca
22 Bruch that Captain Mendoza had arrived an hour and a half late to the class. EX 2, DIST0036.
23

24 Captain Mendoza returned to complete the training on the following day, and ultimately received
25 credit for completing the training program.
26

1 Later that week, Captain Mendoza submitted his employee time report and an overtime
2 request for the training. He included nine hours of overtime for the time spent at the training on
3 March 22. EX 2, DIST0053. Chief Nicholl noted in the time report that Captain Mendoza was
4 late to the session and dropped the 9 hour overtime to 7.5 hours for that day. Chief Nicholl also
5 amended Captain Mendoza's overtime request. EX 2, DIST0054. Captain Mendoza was not paid
6 the overtime he requested for that period. In the next pay period, Captain Mendoza noted on his
7 time report that he "was shorted on last pay period, please make right." Again, his request was
8 denied and he was not paid for that time.
9

10 On April 20, 2023, Chief Nicholl sent Captain Mendoza a letter that stated:

11 Last pay period, you requested nine hours of overtime for attendance at a training session
12 on with POOL/PACT on 03/22/23 that began at 0900 and ended at 1700. This was
13 mandatory training, and you were allowed eight hours of training O/T and one hour
14 commute for a total of nine hours of overtime. On 3/23/2023, we received a notice from
15 the instructor of the class that you were 1.5 hours late to the class. Notwithstanding that
16 late arrival, you recorded nine hours of time for that day when you were only eligible for
17 7.5 hours of overtime, which could subject you to discipline.

18 According to dispatch logs, the last call you responded to that morning was 230802,
19 which you cleared at 0452. This clear time well exceeds the two hour clause for overtime
20 located in Policy Operation 5, Section 1.e.i. Furthermore, you were appropriately relieved
21 of duty by the oncoming captain at 0800 with no indication that you were required to
22 remain on the clock beyond your regularly scheduled hours. Your tardiness to class
23 therefore is not paid as the 2.5 hours between your relief and your arrival at class are not
24 district-engaged time.

25 On June 15, 2023, the Board of Directors of the District moved to assume the
26 supervision of Captain Mendoza and another employee who had filed a complaint against Chief
27 Nicholl. The Board assumed supervision of these employees for the purpose of evaluating their
28 job performance. EX 4, DIST0107. The Board stated,

29 Chief Nicholl will continue to be the supervisor for the two employees regarding the day-
30 to-day operations of the Department. Chief Nicholl is directed to report performance of
31 disciplinary issues to the Chairman of the Board. The Board will take whatever actions

1 are available to the chief and are appropriate in conjunction with the Department policies
2 and the collective bargaining agreement.” (Id.)

3 On June 20, 2023, Battalion Chief Tim Myer performed Captain Mendoza’s performance
4 evaluation for July 1, 2022 to December 31, 2022, finding Captain Mendoza’s performance
5 “exceeds standards.” EX 4, DIST0152-155. Battalion Chief Myers also completed Captain
6 Mendoza’s performance evaluation for July 1, 2022-June 20, 2023 on June 20, 2023, finding that
7 Captain Mendoza’s performance exceeded standards for that time period. EX 4, DIST0157-160.

8 At a Board meeting on June 27, 2023, the Board discussed whether to extend Captain
9 Mendoza’s probation. “Attorney Rebecca Bruch advised Chairman McCassie to remind the
10 Board that the only thing that is before you today is to determine whether you are going to
11 extend Captain Mendoza’s probation for a very short period of time to allow for an assessment to
12 take place once you’ve had an opportunity to get up to speed.” EX 4, DIST0111-112. After
13 colloquy and testimony from other witnesses in support of Captain Mendoza, the Board moved
14 to extend Captain Mendoza’s introductory period to allow the Board adequate time to prepare for
15 an assessment of his performance. EX 4, DIST0114.

17 On July 1, 2023, Mr. Mendoza filed a grievance over the Board’s decision to extend his
18 probationary period on June 27, 2023. EX 10.

19 On July 5, 2023, Captain Mendoza was notified that an investigation into the allegations
20 of Chief Nicholl had been completed and, as a result, “The investigator found Chief Nicholl’s
21 conduct did violate Department Policy 12.1 regarding conduct unbecoming a paid member of the
22 Department for discourteous treatment of a coworker.” EX D. The investigator also found that
23 there was no violation of the hostile work environment policy or bullying policy, that the conduct
24 was not retaliatory or harassing. Id.
25
26

1 On August 2, 2023, District Board Chair Dan McCassie notified Mr. Mendoza that the
2 Board would be considering three questions at their August 10, 2023 board meeting:

- 3 1. Whether your introductory period in your current position should be extended based
4 on your performance.
- 5 2. Whether you should continue in your position as a Captain.
- 6 3. Whether any discipline should be imposed as a result of conduct during your
7 introductory period. Specifically, the board will be looking at conduct related to two
8 incidents:

9 A. On March 22, 2023, the Department received notice regarding disruptive conduct
10 at a PoolPACT training class.

11 B. You recorded overtime on your timecard for the PoolPACT training class which
12 was not overtime related to work activities. When you were told the time was not
13 compensable overtime, you then recorded the same time on your next timecard,
14 potentially creating timecard fraud. EX 2, DIST0030-31.

15 At the August 10, 2023, Board meeting, there was extensive discussion about the
16 questions presented in the August 2 letter, but the Board did not take action. Instead they
17 deferred the matter to their August 17, 2023 meeting.

18 In the August 17, 2023 meeting, Director Wheeler moved “to terminate the employment
19 of Joe Mendoza based on his egregious policy violations effective immediately. . .with
20 clarification of the violation being 12.1.1.2 – falsification of making material emissions (sic) on
21 forms, records, or reports, including applications, timecards, and other district records.” EX 1,
22 DIST0017. The motion passed 3-2 after Director Murphy’s amendment to “make this a verbal
23 reprimand with proceeding coaching as well (because) it would be the more appropriate course
24 of action before we walk this district into yet another lawsuit” was denied. Id.

25 On August 23, 2023, Mr. Mendoza filed a grievance of his discharge. EX 6.
26

1 On October 5, 2023, the District Board of Directors gave Chief Nicholl a verbal
2 reprimand to be left in his file for 90 days.

3 **DECISION AND AWARD**

4 The District has raised, as a preliminary matter, whether the decision to extend grievant's
5 probation can be grieved under the Article 31, which defines a grievance in the following way:
6

- 7 A. A grievance is a disagreement between an individual or the UNION and the
8 DISTRICT concerning interpretation, application or enforcement of the terms of this
9 Agreement.

10 The Employer cites Article 29 to support the conclusion that an employee cannot grieve
11 the extension of probation because employees are limited to challenging only "a written
12 reprimand, demotion, suspension or discharge." While this is an accurate description of the
13 disciplinary actions contemplated by Article 29, the extension of probation is not disciplinary
14 and does not arise under the CBA. The extension arises under Personnel Policy 3.9.1, which
15 gives the district the sole discretion to "extend this introductory period up to an additional six
16 months when the district has had insufficient opportunity to assess the paid member's ability to
17 perform the job function or such extension is determined appropriate."

18 In the Employer's view, because the District has sole discretion under the Personnel
19 Policy, it is not subject to the grievance procedure.

20 The Association has two counterarguments. First, the Association cites Article 21 Work
21 Rules, which states, "The DISTRICT may adopt rules and regulations and issue directives and
22 bulletins, consistent with the Nevada Revised Statutes and this Agreement."
23

24 In the Association's view, this section incorporates the District's work rules into the
25 Agreement by reference, both because the parties have agreed in their CBA to the District's
26 capacity to make those rules and because the rules must be consistent with the Agreement per

1 Article 21. In other words, if the Association has a dispute about the application of a work rule,
2 the grievance procedure is the appropriate venue to resolve that dispute because work rules are
3 included in the Agreement.

4 The Association's proposed interpretation is consistent with the terms of the grievance
5 procedure itself, which is intended to be the forum for the resolution of disputes between an
6 individual employee or the Association and the District. Since Personnel Policy 3.9.1 is a work
7 rule, it has been incorporated by reference into the CBA in Article 21.

9 The Association also argues the introductory period extension is grievable because of
10 Article 11.L., which permits an employee to grieve "perceived wrongdoing" in the promotional
11 process. The Association argues that the introductory period is part of the promotional process
12 subject to review. While this may be the case, the Association did not put on evidence about the
13 meaning of Article 11.L., and the arbitrator is reluctant to expand the meaning of the agreement
14 unilaterally when their other argument is more persuasive.

16 **The Association may grieve disputes over District work rules pursuant to Article 21;**
17 **thus the grievance concerning the extension of Captain Mendoza's introductory period**
18 **may be arbitrated.** The resolution of this grievance will be discussed below.

19 The Employer bears the burden of demonstrating that just cause exists for discipline. The
20 just cause standard typically requires progressive discipline, when appropriate. Typically,
21 disciplinary action is expected to be corrective in nature as well if the circumstances warrant it.
22 An employer need not impose progressive discipline where the conduct is more serious.

24 However, when a serious charge is made against an employee it should be narrowly construed,
25 because of the long-lasting effects of such an accusation on an employee's career.

1 The Employer has stated as its basis for termination that Captain Mendoza falsified his
2 time card when he recorded that he has worked nine (9) hours of overtime on March 22, 2023,
3 when he had in fact only worked 7.5 hours of overtime.

4 None of the facts of this incident are undisputed. Having worked a shift prior to the
5 training, Captain Mendoza was entitled to 9 hours of overtime. That represented 7 hours of
6 training and 2 hours of travel time (one hour each way). The training began at 9:00 a.m. and
7 included a 1 hour paid lunch break. Captain Mendoza should have left at 8:00 a.m. for the
8 training but instead left at 8:45 a.m. He went his office to get materials and was delayed due to
9 his failure to get everything he needed on the first trip to the office. He stopped for coffee and
10 arrived at 10:30 a.m.

11
12 Captain Mendoza was 1.5 hours late. That would indicate that he was entitled to 7.5
13 hours of overtime. However, Captain Mendoza worked through lunch for 1.0 hour to make up
14 the work he had missed, and did not use the free paid hour of lunch when other attendees did.
15 Therefore, he was entitled to credit for that time worked in lieu of the time he lost stopping at his
16 office and at Starbucks.

17
18 In addition, Captain Mendoza was performing work between 8:00 a.m. and 8:45 a.m.
19 That is also time that he would reasonably expect to be compensated for. Chief Nicholl indicated
20 that he was not authorized to perform work at that time, and counseled Captain Mendoza to that
21 effect in a letter dated April 20, 2023.

22
23 Based on the extent of the work that Captain Mendoza performed on March 22, 2023,
24 including making up training work that he missed, he reasonably believed that he was entitled to
25 overtime pay that has been authorized for the training. He was honest and forthright about what
26 had happened that day, and performed the work that was expected of him. Chief Nicholl

1 disagreed and provided a reasonable basis for declining to approve the overtime. At worst,
2 Captain Mendoza was forgetful after a long shift; there's no evidence that he willfully falsified
3 his timecard or misled the District about his time usage on that day.²

4 The fact that Chief Nicholl only provided a written counseling supports the conclusion
5 that Chief Nicholl didn't think that Captain Mendoza was engaged in misconduct. Chief Nicholl
6 didn't want to pay the overtime, and did not pay the overtime.
7

8 The fact that the District did not impose discipline until August 17, 2023 – five months
9 after the alleged misconduct – supports the conclusion that the District did not think the overtime
10 issue was serious or fraudulent.

11 The Union argued that discharge following counseling is “double jeopardy.” According
12 to Elkouri,

13
14 The arbitral concept of “double jeopardy” has been explained as follows: ‘The key to this
15 arbitral doctrine is not the Constitution but rather fundamental fairness, as guaranteed by
16 the contractual requirement of just cause for discipline, This when an employee has
17 suffered a suspension for an offense it would be unfair . . .to fire him before he has
18 committed a second offense.’³

19 The District might argue that Chief Nicholl's April 20, 2023, letter didn't constitute
20 discipline but rather was notice that discipline might ensue. There's nothing to support the
21 conclusion that Chief Nicholl, the sole decisionmaker at that time, intended to take any further
22 disciplinary action although it was within his authority to do so. If the District had wanted, at that
23 time, for further discipline to be imposed, they could have directed Chief Nicholl to impose it,
24

25
26 ² Rather than put it on the next week's time report, Captain Mendoza probably should have filed a
grievance about the denial of overtime pay instead. Putting it on the report doesn't constitute time fraud; he was
clearly disputing the denial of OT rather than fabricating it.

³ *How Arbitration Works*, 6th Ed., Elkouri & Elkouri, p. 981.

1 but they didn't have the authority to do that because they were not responsible for the
2 supervision of Captain Mendoza. The responsible decisionmaker imposed a written counseling
3 and that was the full extent of the warranted discipline. Discharging Captain Mendoza for the
4 same set of circumstances was indeed "double jeopardy" that is not permitted under just cause
5 principles.
6

7 The District directors initially sought to discipline Captain Mendoza for misconduct at
8 the training, but were unable to get witnesses from the hearing who would support the initial
9 report from a trainer that Captain Mendoza had been disruptive. There was no evidence at the
10 hearing that Captain Mendoza had acted inappropriately.

11 **In short, the Employer has failed to demonstrate that there was just cause to**
12 **discharge Captain Mendoza. Captain Mendoza shall be reinstated to his prior position and**
13 **made whole.**
14

15 The final question is whether, in reinstating Captain Mendoza to his prior position, he
16 returns as a probationary or post-probationary captain. The Employer argues that Captain
17 Mendoza's introductory period had been extended by the District board on June 27, 2023, and he
18 was therefore on probation at the time of his discharge. In the District's view, it was within their
19 sole discretion to extend that probationary period, and that the decision to do so is not reviewable
20 by the Arbitrator. Having disposed of that question earlier, we turn to the question of whether the
21 District had the right to extend Captain Mendoza's probation in this case.
22

23 Personnel Policy 3.9.1 states, "At its sole discretion, the district may extend this
24 introductory period up to an additional six months **when the district has had insufficient**
25 **opportunity to assess the paid member's ability to perform the job functions or such**
26 **extension is determined appropriate.** . . . Prior to completion of the introductory period, the

1 supervisor/manager will conduct at least two performance evaluations, one at six months and the
2 other prior to the completion of the twelfth month, to ascertain the advisability of continued
3 employment.

4 The district's authority to extend the introductory period is not unlimited. Instead, they
5 may extend the period either 1) when the district has had insufficient opportunity to assess the
6 paid member's ability to perform the job functions or 2) when such extension is deemed
7 appropriate.
8

9 In this case, the District had sufficient opportunity to assess Captain Mendoza's ability.
10 Battalion Chief Myers evaluated Captain Mendoza's ability and deemed it exceeded the
11 standard. BC Myers was in Captain Mendoza's chain of command and properly qualified to
12 evaluate Captain Mendoza. The district board members were not qualified to evaluate Captain
13 Mendoza's ability to perform the job functions. They do not have the emergency or fire training,
14 expertise, or experience to evaluate a fire captain, but BC Myers does. Chief Nicholl does too,
15 but he failed to exercise that function of his job.
16

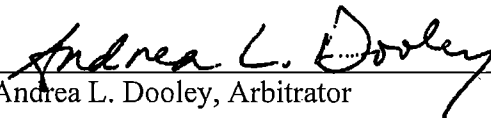
17 The district thinks it's suspect that BC Myers completed the 6-month and 12-month
18 performance reviews in the same time period, but since a six month review needed to be
19 completed, and it had not been completed by Chief Nicholl, it was appropriate for BC Myers to
20 document that Captain Mendoza's performance had exceeded standards at his six-month mark in
21 the role. In fact, there's no dispute about Captain Mendoza's actual performance. No board
22 member, no fire department employee, and no member of the public ever raised any concerns
23 about Captain Mendoza's ability to perform his job functions or about the content of BC Myer's
24 performance evaluations.
25
26

1 The District did have sufficient time to review Captain Mendoza's performance. They
2 Board members proposed to extend his probation on June 15 and did not discharge him until two
3 months later on August 17. That was sufficient time to review Captain Mendoza's performance
4 and the veracity of BC Myer's performance evaluations. In fact, the performance evaluation was
5 agendized for the August 10 meeting but rather than evaluating Captain Mendoza, they spent the
6 meeting discussing reasons to discipline him.
7

8 The District might further argue that "such an extension was deemed appropriate"
9 because they were undertaking an investigation into whether he had engaged in misconduct on
10 March 22. Having failed to demonstrate that any misconduct occurred, an extension is therefore
11 no longer appropriate. The reasoning behind the extension no longer exists, and the District had
12 both time to evaluate and a qualified evaluation of Captain Mendoza. **Therefore, Captain**
13 **Mendoza's probation has ended, and he shall return to his position in a post-probationary**
14 **status.**
15

16 **The grievance is sustained.**

17 Dated: March 5, 2024
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19 
20 Andrea L. Dooley, Arbitrator
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