



HUMBOLDT BAY FIRE

Joint Powers Authority

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April 19, 2017

Matt McFarland
Engineer
President, Humboldt Bay Firefighters Local 652

RE: Written Response to Formal Level Two Grievance

Engineer McFarland,

Please receive this Formal Level Two Grievance Response to the Level Two Grievance you presented to me on Thursday, April 13, 2017 at 1530 hours.

I have taken the time to review the points and materials presented in your packet to me, as well as the attachments provided previously with your Formal Level One Grievance and Informal Grievance to Supervisor that you referenced in the Level Two Grievance document. All of your points and timelines have been taken into account and used for consideration. Additionally, I have conducted some research of my own on the topic.

In review of the documents provided, the timeline looked correct through the written response from Battalion Chief Robertson. You noted that you had not received a written response from Chief Robertson within the seven day window on April 8. I am not aware of the time of your Formal Level Two Grievance being submitted to Chief Robertson, but I learned via email of the submission on Sunday, April 2nd at 8:49 PM. My assumption is that the Formal Level One Grievance was submitted sometime during the date of April 1st, 2017, as you reference, but I do not have confirmation of the time. A written response from Chief Robertson was delivered via email addressed to you, and cc'ed to me on Saturday, April 8, 2017 at 10:44 PM. In checking the Plan of the Day for Friday, April 7 and Saturday, April 8, you were not on shift, but off duty on Comp Time Off and away from the department. This is confirmed through Callback Staffing. Because Chief Robertson was out of town as well when he sent the email, I printed a secondary hard copy of the email, including dated time of sending, and placed this into your mailbox at Station 1 on Monday, April 10, 2017.

From the Formal Level Two Grievance you provided to me, I note that you said you have worn the "Black Lives Matter" pin since November, 2016. You also acknowledge that you are aware of the Uniform Policy "stating that one pin may be worn if it is fire service related and in good taste." Policy 1.E.2 – Uniform Requirements, Appendix K, Section A states "Up to one additional miscellaneous insignia or pin may be worn if they are fire service related and in good taste." As referenced in my letter of March 20, 2017, Section B of Appendix K states that "Other pins, patches, or insignias must be approved by the Fire Chief prior to wearing on uniform

items.” I had not noticed the pin on your uniform prior, as I do not always see you when you or other members of the department are on shift, and when I see department members, I do not always encounter yourself or other members of the department in your class B uniform shirt or jacket.

During our discussion on March 6, 2017, you conveyed your thoughts that you felt the pin was fire service related because it reached to a section of the population. You also conveyed that you had received positive feedback from some members of the public when they had seen the pin. I recall conveying at that time that I did not feel the pin was fire service related. You added within the Formal Level Two Grievance packet that “since it is critically important that all citizens of the greater Eureka area feel safe and comfortable around first responders, whom they encounter in some of their most vulnerable moments, I determined the pin to be without a doubt related to my service as a firefighter.” The “Black Lives Matter” pin does not show a pattern or design of a tool, emblem, or other insignia that can be observed and readily recognized as tied to the fire service by a member of the fire service or a member of the public. It is not recognizable like other emblems such as a fire engine or truck, a Maltese cross, a sprinkler head, EMT pin, or an ax to list a few examples. If the pin was shown to a cross section of the community, or the department, I do not believe many would readily associate the pin as fire service related. To date, I still do not view the pin as fire service related because of this.

At no time before you began wearing the pin, nor after you had been wearing the pin did you contact the Fire Chief to ask or confirm if the pin would be considered as “fire service related,” especially knowing that the pin did not represent a typical fire service example. I would have thought this would have occurred, seeing as the pin was not an image readily recognizable and typically tied with the fire service.

You referenced two examples of times when a pin was worn on a uniform in our department. One was referenced as to within the last couple of years, when an employee wore an Easter lily pin, and noted that the symbol of the Easter lily is considered political in nature. The other example was that another employee sometimes wears a pirate themed pin, and you noted that the pin has no relation to the fire service or to community relations. It is hard to address the two incidents, because I do not recall having seen either pin being worn. In both cases, neither pin is fire service related, and would have required Fire Chief approval under policy 1.E.2 – Uniform Policy, Appendix K, Section B. Because neither were approved, both would be a violation of our uniform policy, and if viewed by a supervisor, that supervisor should have inquired as to whether the wearer had sought approval by the Fire Chief. If approval had not been sought or granted under Appendix K, Section B of our Uniform Policy, the pins should have been requested to be removed in compliance with policy by an immediate supervisor.

Additionally, you noted that you believe the pin to be in good taste, since it is fundamentally a positive statement about the worth and value of a human life. I do not argue the value of a human life. I think we all can agree that human life is the upmost of what we work to serve and protect in the course of our position as a firefighter, and fundamentally as another human. I am not in agreement or supportive of the pin being of good taste. I again convey this from the concern of law enforcement across the country, and the non-law enforcement segment of our population who has felt threatened and offended by the actions and messages that have come out of many of

the organized protest gatherings across the country. I understand your view of being inclusive of a section of the population, but by doing so, you are also excluding another portion of the population.

You previously provided information to Chief Jelinek and Chief Robertson about what “Black Lives Matter” stands for, specifically pointing to my statement and perception that members of the group have been violent or called for violence on law enforcement around our county. I had previously also stated that because of violence that has occurred from or following protest events where “Black Lives Matter” members participated, local law enforcement and a section of the community have felt threatened or offended by the group. In the verbal grievance stage and the Formal Level One stage, you provided documents about what “Black Lives Matter” is, and specific information about the perception that the movement is anti-police. You reference in your Level Two Grievance packet that I stated in my March 20, 2017 letter that the reasons asking you to remove the pin all seemed to involve my concern that it could be perceived as anti-police. You noted in the packet that “Black Lives Matter is absolutely not intended to be anti-police, and if some people choose to interpret it that way, that’s not my fault.” You indicated that you would be happy to discuss why the group is not intended to be anti-police.

I reviewed the excerpts that you provided regarding “Black Lives Matter” and their stance regarding police officers. One document was titled “11 Major Misconceptions About the Black Lives Matter Movement.” You provided section 9 from that document. The misconception that was presented was that the movement hates police officers, and you highlighted the statement “The movement is not an anti-people movement; therefore it is not an anti-police-officer movement.” While the original organizers of the movement may not be anti-police, there has been a very strong component message that comes out of the movement at organized protests and rallies that pushes an anti-law enforcement sentiment.

I accessed and reviewed the entire document that you took section 9 from, found on the “Black Lives Matter” webpage, and found through internet searches. I wanted to review the entire document to see what information could be gleaned. Throughout the document, and included in the title, reference is given to the word “movement.” In fact, the document uses the term movement in every one of the 11 examples it uses to clarify misconceptions about the group. In section 10 of the document, the statement is provided:

“...there is a deep skepticism about whether the American system is salvageable, because it is so deeply rooted in the ideas of racial caste. In this regard, the BLM movement, together with the Occupy movement of years past, is causing a resurgence of a viable, visible, and vocal (black) left in national politics. Moving some issues of import onto the 2016 election agenda should therefore be viewed as a tactic, not a goal.”

The statement further shows the group as being political. Section 6 provides reference to the church, and references both the past civil rights movement and the call of past religious leaders for peaceful protest. The section talks about the current movement having a very different relationship to the church, and how some current involved religious leaders and protesters have rejected the idea of keeping the peace or turning the other cheek. In our original discussion, and

in my March 20, 2017 letter, I had voiced concern that “Black Lives Matter” was a strong political movement, and was not appropriate to be worn on the uniform.

Another document provided was from a story where a “Black Lives Matter” cofounder stated that the group was not about the murder of police officers. While the leaders may not be advocating violence, we have also seen numerous protestors calling for and delivering violence at sponsored events. A third document addressed frequently asked questions about “Black Lives Matter,” with a section on “Blue Lives.” This document gave many references to “Black Lives Matter, too” as the discussion point, but discounted the terms “All Lives Matter” and “Blue Lives Matter” as “missing the point. Black Lives Matter, too. Not instead of.” Unfortunately, this can have a tendency to make those persons supporting “All Lives Matter” and “Blue Lives Matter” feel marginalized as well.

You also added the statement to your Formal Level Two grievance form “Furthermore, my job isn’t to protect the feelings of local police officers, rather it is to provide equal access to emergency services for all residents of our service area, regardless of race, gender, religion, etc.”. You are partially correct in that statement; your job is to provide equal access to emergency services for all residents of our service area, regardless of race, gender, religion, etc. What you must take into account, however, is that there are statements found within all of our job descriptions that also dictate effective working relationships. Taken directly from the Humboldt Bay Fire Job Description for Fire Engineer, and listed as an example of Essential Job Functions, you must be able to “work closely with other emergency medical staff, police, and public safety and fire personnel from other agencies.” You must have knowledge of “techniques for dealing effectively with the public, vendors, contractors and staff, in person and over the telephone,” and “techniques for providing a high level of customer service to the public and staff, in person and over the phone.” Additionally, a Fire Engineer must have the ability to “Use tact, initiative, prudence and independent judgement within general policy and legal guidelines in politically sensitive situations,” and “establish and maintain effective working relationships with those contacted in the course of work.” In all cases, the statement about your job isn’t to protect the feelings of local police officers flies in the face of the job description for the position you hold at Humboldt Bay Fire regarding effective working relationships. Wearing a “Black Lives Matter” pin on your uniform while working with law enforcement officers does not promote a positive working environment for you or our department and our allied agencies given the issues of violence that have occurred across our nation associated with protests organized by the group.

We learned of the “Black Lives Matter” pin being worn on the uniform after it was seen by Eureka Police Chief Mills. He spoke of the pin during a meeting that Deputy Chief Reynolds was also attending. Chief Mills was concerned about the aspects of a political movement pin being worn on a uniform, and from the message that pin cast to members of law enforcement and many members of the public who would see the message on a uniform during working hours, and did not agree with either the movement or the violence that was unfortunately being associated with the movement.

Part of my decision to request the removal of the “Black Lives Matter” pin from your uniform, in addition to the wearing of the pin being out of compliance with our uniform policy, was that the group is a movement, potentially even a political movement as it pushes for change in our

country. As I stated verbally March 6, 2017, and in my written follow up on March 20, 2017, I referenced our uniform policy in my decision, that "Black Lives Matter" was a strong political movement in our country, that some followers and members of the movement have called for violence against law enforcement, and many in our community and across our country had become polarized against the movement. This speaks of a segment of our population. We know there are persons in our community that both support or oppose the movement. It has always been the practice of Humboldt Bay Fire, and of the Eureka Fire Department/City of Eureka and Humboldt No. 1 Fire Protection District prior to not have items that could be considered political, religious, or offensive displayed on our uniforms. This practice has held true for movements and religious views, whether we supported them or did not agree with them. If there was a chance of controversy, we would not display the item on our uniform, our stations, or apparatus. As a case in point, last year a member of our community was here visiting, and was promoting "Blue Lives Matter" pins in support of law enforcement, during the same period that "Black Lives Matter" was frequently in the news. They asked if we wanted pins to wear on our uniforms to show our support of law enforcement. We declined the offer, and let the individual know that we could not wear pins or other items on our uniforms that took a stance or position on a movement or religious belief. We were required to remain neutral in uniform, as we did not wish to place the fire department in the middle of an issue that could offend members of our community. Further, the "Blue Lives Matter" pin was not considered fire service related.

In *Riggs v. City of Fort Worth*, 229 F.Supp.2d 572, the court held that "a police officer's uniform is not a forum for fostering public discourse or expressing one's personal beliefs." The case revolved around an officer's claim for First Amendment rights to display tattoos. As currently interpreted by the US Supreme Court, the First Amendment offers public employees no free speech protection unless they are speaking as a private citizen on a matter of public concern. With the Riggs case the court pointed out when in uniform a public employee's right to express him/herself can be taken off the table, and this included tattoos, patches, pins, political buttons, and advocating religion or religious views. Additionally, in *Immigration & Naturalization Service v. Federal Labor Relations Authority*, 855 F.2nd 1454, the United States Court of Appeals, Ninth Circuit found that the employer, Immigration & Naturalization Service, had the right to require employees to wear uniforms, and also was allowed to prohibit employees from wearing non-uniform authorized insignia. The court also held that the employees' first amendment rights were not infringed upon by regulating or prohibiting non-uniform insignia on uniforms. Additionally, the court held that the service's failure to enforce rules on rare occasions when an employee had worn a non-uniform insignia on their uniform did not establish viewpoint discrimination.

Unfortunately, if a non-fire service related or recognized "Black Lives Matter" pin or button is allowed to be worn on our uniform, other pins or buttons must also be allowed and cannot be excluded. This could easily include all manner of items that one person or group would support or back, but others in the group or community would not. Though extreme, Swastika pins, racial group or divide pins, religious pins, and any other item could be worn. This is why we strive to maintain a neutral stance, so as not to find our department in the middle of political, religious, racial, gender, or other issues. That is one of the many ways we insure that we will provide service to all, in a neutral, un-biased, non-confrontational manner.

In summary, the "Black Lives Matter" pin is not a readily recognizable emblem of the fire service. The pin is representative of a strong movement within our country that has polarized many to take sides. While the original founders of the "Black Lives Matter" movement may not have intended for the movement to be anti-police, many of the followers of the group and events organized by the group have called for violence and have become violent. Other pins may have been worn at times in the past, but were worn in violation of the Uniform Policy if approval was not sought or granted. Your job as an Engineer with Humboldt Bay Fire is to provide service to all members of the community. Not being concerned with the feelings of local law enforcement goes against sections of the job description for Engineer, as you are tasked with maintaining effective working relationships with allied agencies and other members of the community, including police. Humboldt Bay Fire, and our parent agencies prior have maintained a neutral positions and stance in our community related to political movements and other movements so as not to exclude or offend any member of our community. Court decisions in the State of Texas, United States Court of Appeals, Ninth Circuit, and the US Supreme Court have held that a uniform is not a venue for freedom of speech, and have included tattoos, patches, pins, political buttons, or the advocating of religion or religious views. If the "Black Lives Matter" pin is allowed to be worn, all pins must be allowed for any message or movement. We have already excluded an offer of "Blue Lives Matter" pins being worn on the uniform last year so to avoid issues with offending members of our community, and because the pins were not fire service related. For these reasons, I uphold my original decision to not allow the "Black Lives Matter" pin to be worn on the uniform. Under the First Amendment, you have every right to wear the pin during your off duty time, out of uniform, when not representing the department.

If you have any questions, please do not hesitate to contact me.

Respectfully,

A handwritten signature in blue ink, appearing to read "Bill Gillespie". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bill Gillespie
Fire Chief
Humboldt Bay Fire