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Larry Snelling
Superintendent of Police

April 2, 2024

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL. 60622

**RE: Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties
Complaint Register Number #2019-0003634
Police Officer Andres Barrezueta, #17671**

Dear Chief Administrator,

After careful review of the recommendations made by the Investigator in this matter, the Superintendent concurs with the findings of COPA related to all two (2) allegations against Police Officer Andres Barrezueta but does not concur with COPA's recommended penalty of separation.

STATEMENT OF FACTS AND SUMMARY OF FINDINGS

COPA sustained (2) two allegations against P.O. Andres Barrezueta ("Officer Barrezueta"), a Chicago Police Department (CPD) member, seeking separation stemming from two (2) social media posts which Officer Barrezueta posted on Facebook in 2018 and 2019 that COPA deemed racially and sexually insensitive and disparaging.

On August 08, 2019, the Office of Inspector General for the City of Chicago ("OIG") received a complaint intake from a complainant, [REDACTED] ("Ms. [REDACTED] Ms. [REDACTED] alleged that she was sent a screenshot of a Facebook post "made by a city employee" that depicted a clown in "black face" paint standing outside the Mayor's office.² The screenshot which was posted on Facebook on July 28, 2019, was posted under the name "Andy Barrezueta" in the Facebook group, <https://www.facebook.com/groups/cityworkers/>. The OIG searched the City of Chicago employee database for the name, "Barrezueta" and found a Chicago Police Officer with the name Andres M. Barrezueta.³ The OIG then referred the investigation to the Civilian Office of Police Accountability ("COPA") on September 18, 2019.⁴

On September 16, 2020, COPA conducted an interview with Officer Barrezueta concerning the photo at

¹ Att. 1, Letter from OIG Complaint Notification, OIG Reference #2019-0001819.

² *Id.*

³ *Id.*

⁴ Att. 2, OIG Referral Letter.

issue in the complaint filed by Ms. [REDACTED]⁵ For reference, the photo depicts former Mayor of Chicago, Lori Lightfoot, dressed up in a black tuxedo, with a red nose and white-colored paint above both her eyebrows and around her mouth.⁶ The photo is posted under the name, "Andy Barrezueta - City Workers Past and Present" with the date of July 28.⁷

During the interview with COPA, Officer Barrezueta admitted that his Facebook page is filed under "Andy Barrezueta" and that he is part of the Facebook group, "City Workers Past and Present."⁸ Officer Barrezueta also admitted that he did post the photo at issue.⁹ When asked what the photo depicts, Officer Barrezueta stated, "It depicts the mayor as a clown."¹⁰

On January 4, 2024, over three (3) years later after the first statement was taken, COPA conducted another interview with Officer Barrezueta concerning another separate photo which was posted under the name "Andy Barrezueta" on Facebook on May, 21, 2018.¹¹ The photo depicts former Mayor of Chicago, Rahm Emmanuel, dressed up in a leotard with a rainbow-colored, phallic-shaped object protruding from the center of his forehead with a caption reading, "FEAR ME, I AM A UNICORN."¹² During this interview with COPA, Officer Barrezueta admitted that he did post the photo at issue.¹³

COPA made the following determinations on the allegations:

It is alleged by [REDACTED] that on about August 8, 2018, Officer Barrezueta, Star #17671, committed misconduct through the following act:

1. Posted a racially offensive image depicting the Mayor of Chicago on the internet to a Facebook community known as "City Workers Present and Past," where it was viewed by the Complainant in violation of the Chicago Police Department Rules and Regulations #2, #3, #6, and #8; **SUSTAINED**

It is alleged by COPA that in 2018, Officer Barrezueta, Star #17671, committed misconduct through the following act:

2. Posted a homophobic and disparaging image depicting the former Mayor of Chicago on the internet to a Facebook community known as "City Workers Present and Past," in violation of the Chicago Police Department Rules and Regulations #2, #3, #6, and #8; **SUSTAINED**

ANALYSIS

COPA's investigation has revealed two social media posts, namely photos or "memes", posted by Officer Barrezueta which possibly may be viewed as offensive to certain communities of people and protected

⁵ Att. 5, Barrezueta, Andres - Statement 9-16-20 - Transcript.

⁶ Att. 7, screenshot of wwwfacebook (2019-09-09T16-54-32-20193636).

⁷ *Id.*

⁸ Att. 5, Barrezueta, Andres - Statement 9-16-20 at p. 8, lines 8-19.

⁹ Att. 5 at p. 9, lines 4-18.

¹⁰ Att. 5 at p. 10, line 3.

¹¹ Att. 20, Barrezueta, Andres - Statement 01-04-2024 -Transcript.

¹² Att. 17, screenshot of wwwfacebookcom_2019-10-24T14-09-47.

¹³ Att. 20 at p. 24, lines 17-22.

classes who are served by the Chicago Police Department and in this case in particular, African Americans and the LGBTQ community. Officer Barrezueta admitted to making these posts but denied any intent to disparage any protected class with either of the posts.

General Order G09-01-06, Use of Social Media Outlets, has since been rescinded and revised but was in effect on the date of this incident.¹⁴ Section V, Subsection C, states, "Department members are prohibited from posting, displaying, or transmitting: 1. any communications that discredit or reflect poorly on the Department, its missions or goals. 2. content that is disparaging to a person or group based on race, religion, sexual orientation, or any other protected class."¹⁵

A. Officer Barrezueta Was Speaking As A Private Citizen Concerning A Matter Of Public Concern Which Is Protected By The First Amendment But The Department's Interest In Efficiently Fulfilling Its Public Service Is Greater Than Officer Barrezueta's Interest In Speaking Freely

To support its finding, COPA, in its analysis, cites to *Thomas Pappas v. Rudolph Giuliani, Mayor of the City of New York*, 290 F.3d 143 (2d Cir. 2002).¹⁶ In *Pappas*, the Court utilized a balancing test which was established in *Pickering v. Board of Education*, 391 U.S. 563 (1968) and then modified in *Connick v. Myers*, 461 U.S. 138 (1983) in its decision regarding a government employee who argued that his action of sending bigoted materials via mail was protected by his First Amendment right.¹⁷

This balancing test consists of a three-part analysis to determine if the First Amendment protects speech by a government employee. The test is (1) whether the employee is speaking as a private citizen or pursuant to their official duties, (2) if speaking as a private citizen, whether the speech is regarding a matter of public concern, and (3) if speaking as a private citizen, and on a matter of public concern, is the government employer's interest in efficiently fulfilling its public service greater than the employee's interest in speaking freely.

Regarding part one (1) of this test, Officer Barrezueta was speaking as a private citizen and not pursuant to his official duties. Officer Barrezueta posted the photos on a "private" Facebook page known as "City Workers Present and Past" which was not publicly accessible unless the page administrator allowed access.¹⁸ Additionally, Officer Barrezueta did not directly identify himself as Chicago Police Officer on this Facebook page nor did he indirectly identify himself by any comments he posted in the comment section of each of the posts.

COPA addresses during Officer Barrezueta' second interview, three (3) years later after his first interview, that if you click on Officer Barrezueta's Facebook page, there is a picture of Officer Barrezueta in a Chicago Police uniform.¹⁹ However, COPA agrees that this photo is not on the private "City Workers Past and Present" page where the photos at issue were posted.²⁰ Additional supporting evidence that Officer Barrezueta did not directly or indirectly identify himself as a Chicago Police Department member is the fact that the complainant for the photo involving former Mayor Lightfoot never stated she believed or assumed "Andy Barrezueta" was a Chicago Police Officer. In its complaint notification letter to COPA, the OIG states in its summary that the complainant alleged that a friend sent her a screenshot of a posting made by a "city

¹⁴ Att. 15, G09-01-06 Social Media Outlets.

¹⁵ Att. 15 at p. 2.

¹⁶ Att. 25, COPA Final Summary Report, at pp. 2 and 3.

¹⁷ *Pappas v. Giuliani*, 290 F.3d 143, 145-46 (2d Cir. 2002).

¹⁸ Att. 20 at p. 15, lines 13-24.

¹⁹ Att. 20 at p. 31, lines 1-5 and Att. 23.

²⁰ Att. 20 at p. 31, lines 7-13.

employee."²¹ It was the OIG that searched the post name "Andy Barrezueta" in the City of Chicago employee database and found "Chicago Police Officer Andres M. Barrezueta."²²

In regards to part two (2) of the balancing test, having established that Officer Barrezueta was speaking as private citizen, we must determine whether or not the speech is regarding a matter of public concern. Posts which may be interpreted as promoting racism or anti-LGBTQ are almost always a matter of public concern and protected speech under the First Amendment. However, it may not be protected if it is found to interfere with the Department's mission of public service which brings us to part three (3) of the analysis.

Regarding part three (3) of the balancing test, we must determine if the Department's interest in efficiently fulfilling its public service is greater than Officer Barrezueta's interest in speaking freely. In their first interview regarding the photo of former Mayor Lightfoot, COPA asks Officer Barrezueta about his intent on posting the photo. Referring to some comments located under the posting of the photo, COPA in particular points to a comment asking if this photo is depicting the Mayor in "black face" and asks Officer Barrezueta if this suggestion of a possible "black face" meme was his intention when posting the photo.²³ Officer Barrezueta responds that it was not his intention and when asked what his intention was, he responded, "humor."²⁴ When asked to elaborate on what humor he was attempting to display with the photo, Officer Barrezueta responded, "She called my representative a clown so I made her into a clown." Officer Barrezueta was referring to Mayor Lightfoot calling FOP president, John Cantazara, a "clown."²⁵ It was found during the investigation that Officer Barrezueta has posted additional pictures of former Mayor Lightfoot in clown attire.²⁶ In his second interview regarding the photo with former Mayor Emmanuel and his intent with posting the photo, Officer Barrezueta states "humor" as the purpose for the post.²⁷

Regarding the photo of former Mayor Lightfoot, the Department believes that COPA's determination that the photo depicts the concept of "blackface" is questionable. Blackface involves the practice of an individual using burnt cork or dark makeup to portray themselves as a Black person. In this case, Officer Barrezueta did not change or darken the color of Mayor Lightfoot's skin. He used a photo of her head with her natural skin color and added the clown features.

While Officer Barrezueta explained that he never intended to offend any race or sexual orientation with his posts, the images made via the private Facebook page can be interpreted as offensive and bias. Such bias against protected class members impedes the Departments interests, fosters a lack of public trust and confidence, inhibits the orderly operation of the Department, and interferes with the Department's mission of public service.

With that being said, the investigation conducted by COPA was not thorough and COPA's recommended penalty of separation is egregious.

²¹ Att. 1, OIG Complaint Notification To COPA Letter, Complaint Summary.

²² *Id.*

²³ Att. 5 at p. 12, lines 1-4.

²⁴ Att. 5 at p. 12, lines 5-7.

²⁵ Att. 5 at p. 12, lines 8-11.

²⁶ Att. 6, screenshot of wwwfacebookcom 2019-09-09T16-55-35-20193634 and Att. 10, screenshot of wwwfacebookcom 2019-09-09T16-51-40-20193634.

²⁷ Att. 20 at p. 33, lines 20-21.

B. COPA's Investigation Is Flawed In Regards To Failing To Interview The Complainant, Length Of Time Between The Two Separate Interviews With Officer Barrezueta, And Length Of Time To Reach A Finding

First, the only complainant regarding the allegations was never interviewed by COPA. We have no statement from the complainant as to why she was offended by the photo of former Mayor Lightfoot or if she knew or even assumed that the person posting the photo was a Chicago Police Officer. This information is vital in showing that the post created distrust or a lack of confidence in the Department in the view of a citizen. Additionally, the complainant did not observe the post firsthand and may not have even been a member of the private Facebook group but rather was sent the screenshot from a "friend."²⁸

Second, COPA received no complaint regarding the photo of former Mayor Emmanuel but rather added the allegation after scouring through the old posts made by Officer Barrezueta. The post of former Mayor Emmanuel was actually posted before the post of former Mayor Lightfoot. However, although COPA claims they were armed with this information prior to Officer Barrezueta's first interview statement on September 16, 2020, they did not question Officer Barrezueta regarding the Emmanuel post during this first interview.²⁹ Instead, COPA waited until over four (4) years later to interview Officer Barrezueta a second time on January 4, 2024 regarding the Emmanuel post.

Lastly, COPA had all the information they needed to conduct a proper investigation in 2019 however waited until a year later after the original complaint to interview Officer Barrezueta for the first time and then waited another four (4) years to conduct a second interview and ultimately conclude the investigation. This case did not involve a magnitude of evidence that required examination which would somehow justify the length of time it took COPA investigators to reach a finding. Also, within this four (4) year period, COPA failed to conduct an interview with the one (1) complainant/witness.

C. COPA's Recommended Penalty Is Excessive And Not Consistent With Previously Applied Penalties For Similar Investigations

The recommended penalty of separation for Officer Barrezueta is excessive. According to the consent decree, discipline is to be consistently applied. "COPA and CPD will ensure that the recommended level of discipline for findings is consistently applied in a fair, thorough, and timely fashion, based on the nature of the misconduct. COPA and CPD will also ensure that mitigating and aggravating factors are identified, consistently applied, and documented" (Paragraph 513, Consent Decree, State of Illinois v. City of Chicago, (No. 17-cv-6260, N.D. Illinois, January 1, 2019). The Consent Decree further requires the Department to "use best efforts to ensure that the level of discipline recommended for sustained findings is applied consistently across CPD districts..." (Id. at Paragraph #514).

In Log/CR #1088100, COPA conducted an investigation regarding an accused Department member's Facebook posts and found that the posts "discredited or reflected poorly on the Department and/or disparaged a person or persons of a protected class."³⁰ In this case, the accused made comments regarding protests taking place in the City of Chicago regarding the Laquan McDonald shooting. One post read, "...An officer got punched yesterday...Alderman Sawyer and other members of the Black Caucus...demanded the offender be released...It will not be long until the war starts." COPA found that this comment showed, "disdain for the people he was supposed to protect and interfered with the Department's efforts to establish trust in the community." Another post read, "...well, let's just hope this case goes before a black judge, because if it goes before a white judge, then when officers get found not guilty, the city will burn." COPA found that this

²⁸ Att. 1.

²⁹ Att. 20 at p. 11, lines 23-24.

³⁰ Arbitrator Decision, GR 025-22-005/55, CR No. 1088100 at p. 2.

comment was "racially demeaning in relation to potential judge assignments to the case." COPA ultimately recommended a suspension of thirty (30) days. The Arbitrator found that this misconduct "in no way merited a thirty-day suspension" and due to the amount of time that had passed from when the allegation was made until the hearing (eight years), the Arbitrator found that no penalty should be imposed. The Arbitrator explained that, "To now punish the Grievant for his inappropriate comments made over eight years ago would be counter-productive and bring about disaffection and disillusionment with the system of justice applicable to Chicago Police officer."

In Log/CR #2020-2076, BIA conducted an investigation regarding an accused Department member's Facebook posts and found that the posts impeded the Department's efforts to achieve its policy and goals, bringing discredit upon the Department.³¹ In this case, the accused made comments regarding the civil unrest during the George Floyd protests. The comments read, "...time to let the bullets fly" and "Fuck them animals! CPD needs to kick ass!" The complainant in this case stated that she was concerned and offended by these comments because the accused identified himself as "CPD" and the complainant believed that the accused phrase "them animals" referred to "black people." BIA recommended a ten (10) day suspension and the Arbitrator agreed. In his analysis, the Arbitrator considered four (4) points in reaching his finding. First, that the Department has a "social media" policy and the accused acknowledged that he was aware of that policy. Second, that Facebook activity can become public and the posts can sometimes be seen by unintended individuals. Third, that the accused identified himself as a CPD officer. Fourth, that the complainant believed the accused was making racial comments as well as suggesting a police policy of a violent response.

Similar to these previous cases, Officer Barrezueta made posts via Facebook, one of which was interpreted as offensive and bias to a civilian complainant. The Department had a social media directive in place at the time these posts were made, G.09-01-06, Use of Social Media Outlets, and Officer Barrezueta acknowledged that he was aware of the policy.³² Although it was posted on a private Facebook group page, Officer Barrezueta should have never assumed that his personal posts and information were completely protected from the public eye as was proven in this case. Even though Officer Barrezueta never directly identified himself as a Chicago Police Officer on the page, any individual was able to click on his user name which in turn linked them to his personal page showing a picture of Officer Barrezueta in full uniform in front of a marked squad car.

CONCLUSION

In determining the proper penalty in this case, the inadequacies of the investigation should be taken into account. Again, there was only one (1) complainant who was never interviewed and was sent a screenshot of the post from a third-party. The length of the investigation was excessive and raises the question if any discipline almost five (5) years later, would be considered just or corrective. Weight should also be added to the fact that Officer Barrezueta had discontinued his Facebook account in 2020.

While Officer Barrezueta never made any direct, personal disparaging comments in the comment section regarding any class of people, as the accused officers in the previously mentioned cases did, these images posted to the private Facebook page can and were interpreted as offensive and bias. Such bias against protected class members, even if only one was offended, impedes the Departments goals and mission regarding public service.

The evidence as presented is sufficient by the preponderance standard to sustain the allegations,


³¹ Arbitrator Decision, GR 124-21-008, CR No. 2020-2076.

³² Att. 5 at p.30, lines 21-24.

however the recommended penalty is excessive taking into consideration the recommended level of discipline applied in previous similar investigations. A consistent penalty is a ten (10) day suspension.

The Department looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii). If COPA and the Department find themselves at an impasse on the resolution of this matter, the Department asks that COPA include all attachments from the log investigation to the member of the Police Board selected to conduct the review.

Sincerely,



Larry Shering
Superintendent of Police