

LICHTEN & LISS-RIORDAN, P.C.

ATTORNEYS AT LAW

HAROLD L. LICHTEN*
SHANNON LISS-RIORDAN*^Δ
MATTHEW W. THOMSON*
ADELAIDE H. PAGANO*

729 BOYLSTON STREET, SUITE 2000
BOSTON, MASSACHUSETTS 02116

WWW.LLRRLAW.COM

THOMAS P. FOWLER*[◇]
OLENA SAVYTSKA*
ANNE KRAMER*^Δ
MICHELLE CASSORLA*[◇]
ZACHARY RUBIN*^{◇,•}
ANASTASIA DOHERTY*

TELEPHONE 617-994-5800
FACSIMILE 617-994-5801

OF COUNSEL

MATTHEW D. CARLSON*^Δ
BENJAMIN J. WEBER*[◇]

* ADMITTED IN MASSACHUSETTS
Δ ADMITTED IN CALIFORNIA
◇ ADMITTED IN NEW YORK
• ADMITTED IN NEW JERSEY
• ADMITTED IN CONNECTICUT
◇ ADMITTED IN DISTRICT OF COLUMBIA
◇ ADMITTED IN TENNESSEE

June 30, 2020

VIA ELECTRONIC MAIL

Philip T. Roberts

Director

Department of Labor Relations

Charles F. Hurley Building

19 Staniford Street, First Floor

Boston, MA 02114

efile.dlr@mass.gov

RE: MUP-14-4210/Town of Winthrop and Winthrop Police, MassCOP Local 421
MUP-15-4652/Town of Winthrop and Ferruccio Romeo
Show Cause Letter

Dear Director Roberts:

I write on behalf of Charging Party Ferruccio Romeo in response to your Show Cause letter of June 19, 2020. In your letter, you explained that the DLR has determined that Charge MUP-15-4652 should be consolidated with MUP-14-4210 before the Commonwealth Employment Relations Board ("CERB"), because the two charges raise an identical issue arising from the same set of facts. As will be explained below, Mr. Romeo objects to the consolidation of these two charges before CERB, because the DLR should first take the opportunity to consider MUP-15-4652 in light of the union arbitration decision of February 26, 2016.

Mr. Romeo filed Charge MUP-14-4210 in order to challenge his placement on administrative leave, alleging that the Town of Winthrop had retaliated against him for his protected conduct pursuant to G.L. c. 150E, §§ 10(a)(1), 10(a)(2), 10(a)(3), and 10(a)(4). Mr. Romeo was then terminated on January 9, 2015. The DLR conducted an in-person interview of the charge on January 14, 2015. On March 5, 2015, the Investigator dismissed the charge (attached hereto as Exhibit A), and Mr. Romeo filed a request for review with the CERB. In Mr.

L I C H T E N & L I S S - R I O R D A N , P . C .

Romeo's brief before the CERB, he argued that the charge should be deferred to his then pending union arbitration. Notably, at the time that the in-person investigation had been conducted, Mr. Romeo's union arbitration had not yet been initiated.¹ Mr. Romeo argued that deferral to arbitration was appropriate, because in order for the arbitrator to determine the existence of just cause, the arbitrator necessarily had to consider whether or not the Town's termination of him was a disproportionate reaction to the gravity of the alleged misconduct, and whether the Town treated Mr. Romeo differently than other officers that it has disciplined in the past. Obviously, those considerations would also impact the question of whether the Town's non-retaliatory explanations for Mr. Romeo's termination were pretextual. As such, the DLR issued a decision on May 21, 2015, deferring the charge to arbitration.

In order to ensure that he had timely challenged his termination (as his initial charge was filed prior thereto and challenged only his placement on administrative leave), Mr. Romeo filed Charge MUP-15-4652 on June 24, 2015 and requested that it also be deferred to arbitration. On August 4, 2015, the DLR deferred this charge to Mr. Romeo's pending arbitration.

The Arbitrator issued his decision on February 26, 2016 (attached hereto as Exhibit B), holding that the Town did not have just cause for his termination. As such, on March 2, 2016, Mr. Romeo submitted requests that both charges be revived. The DLR allowed Mr. Romeo's requests on August 9, 2019.

Despite the fact that both charges stem from the same operative facts, it is important that the DLR consider Charge MUP-15-4652 rather than send it directly to the CERB. MUP-14-4210 was investigated before Mr. Romeo's arbitration was even initiated and decided without the benefit of the Arbitrator's decision. Without the benefit of a hearing or witness testimony, the Investigator found that Mr. Romeo did not support his claim of unlawful retaliatory motivation. The Investigator merely took the Town's word for it with respect to its proffered non-discriminatory rationale for terminating Romeo.

Recognizing that the DLR has discretion to consolidate the two charges, see 456 CMR 12.04, it should not do so. Instead, the DLR should now seize upon its opportunity to conduct an Investigation with the benefit of the Arbitration decision. The Arbitrator made several important findings that ought to impact whether or not there was probable cause that the Town committed a violation of the law. The probable cause burden is relatively modest, and is defined as "such a state of facts in the mind of the . . . [Investigator] as would lead a [person] of ordinary caution and prudence to believe, or entertain an honest and strong opinion" that a violation of the law could have occurred. Massachusetts Correction Officer Federated Union v. Labor Relations

¹ The Union filed its demand for arbitration to challenge Mr. Romeo's termination on February 13, 2015.

L I C H T E N & L I S S - R I O R D A N , P . C .

Com'n, 54 Mass. App. Ct. 1114, at *2 n.3 (2002) (internal citations omitted). Furthermore, it is not the Investigator's role to make a "prejudgment of the merits." In the Matter of Mahar Teachers Association and Michael Magee, MUPL-14-3671, CERB Decision on Appeal of Hearing Officer Decision, 2017 WL 930092, at *5 n.16 (Feb. 28 2017) (internal citation omitted).

The Town's proffered reason for terminating Mr. Romeo was that he supposedly submitted a payment slip for a detail he did not actually work. The Arbitrator, however, found specifically that Mr. Romeo "was performing all the tasks of working the detail for some 5 hours that day" and that Mr. Romeo "was acting honestly when he submitted the DCR bill for [the detail on] November 24, 2014." (Arbitration Award at 20, Exhibit B.) These findings make it much more likely that an Investigator would find that Mr. Romeo can demonstrate probable cause that the Town harbored unlawful retaliatory motivation for terminating him, since one major consideration in evaluating unlawful motivation is "triviality of reasons given by the employer." City of Holyoke, 35 MLC 153, 156, MUP-04-4503 (Jan. 9, 2009).

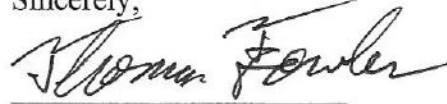
In addition to the detail slip, issue, the Town also grounded Mr. Romeo's termination on an accusation that Mr. Romeo had lied to Chief Delehanty during the course of his investigation of the detail slip incident as well as the Due Process hearing held by the Town of Winthrop to determine his discipline. (Arbitration Award at 11, Exhibit A.) The Arbitrator also found those justifications to be specious, stating "I find that [Mr. Romeo] did not lie to the Chief during the investigation on December 1, 2014." (Arbitration Award at 22, Exhibit A.) Furthermore, the Arbitrator found that although the Town had attempted to paint Mr. Romeo's failure to accurately recollect a few details of the sequence of events on the morning of November 24, 2014, this failure was not deliberate misrepresentation and instead merely a mistaken recollection. (Arbitration Award at 22-23, Exhibit A.) Particularly damning, the Arbitrator noted that the Town had not permitted Mr. Romeo to review records that would permit him to refresh his recollection of the sequence of events prior to his hearing. (Arbitration Award at 23, Exhibit A.) This failure by the Town suggests that the Town was more concerned with ousting Mr. Romeo than developing a factually accurate record, further supporting the notion of unlawful retaliatory motive.

The CERB should not have to consider these findings for the first time on appeal when the DLR Investigator did not have the opportunity to address them. Additionally, the briefing before CERB was submitted back in 2015, and it is not clear that Mr. Romeo will even have the opportunity to supplement his briefing in light the Arbitration Award. If anything, it would be more appropriate for the CERB to remand consideration of MUP-14-4210 to the DLR for reconsideration in light of the Arbitration Award. In light of the foregoing, Mr. Romeo

L I C H T E N & L I S S - R I O R D A N , P . C .

respectfully requests that the DLR proceed with an in-person investigation of Charge MUP-15-4652.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas Fowler", written over a horizontal line.

Thomas Fowler

cc: Patrick Bryant, Esq.
Pyle Rome Ehrenberg, P.C.
2 Liberty Sq., 10th Floor
Boston, MA 02190
pbryant@pylerome.com

Howard Greenspan, Esq.
220 Broadway, Ste. 304
Lynnfield, MA 01940
[hgreespan@greenspanlawyers.com](mailto:hgreenspan@greenspanlawyers.com)

EXHIBIT A



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
19 STANFORD STREET, 1ST FLOOR
BOSTON, MASSACHUSETTS 02114
Email: efile.dlr@state.ma.us
Telephone: (617) 626-7132
FAX: (617) 626-7157
www.mass.gov/dlr

CHARLES D. BAKER
GOVERNOR
KARYN E. POLITO
LIEUTENANT GOVERNOR
ERICA F. CRYSTAL
DIRECTOR

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD
MARJORIE F. WITTNER
CHAIR
ELIZABETH NEUMEIER
BOARD MEMBER
HARRIS FREEMAN
BOARD MEMBER

March 5, 2015

Ferruccio Romeo
Winthrop Police, MassCOP Local 421
[REDACTED]
Saugus, MA 01906

Howard Greenspan, Esq.
220 Broadway, #204
Lynnfield, MA 01940

RE: MUP-14-4210, Town of Winthrop

Dear Mr. Romeo and Mr. Greenspan:

On December 12, 2014, the Winthrop Police, MassCOP Local 421 (Union) filed a charge of prohibited practice with the Department of Labor Relations (Department), alleging that the Town of Winthrop (Town) had engaged in prohibited practices within the meaning of Sections 10(a)(1), 10(a)(2), 10(a)(3), and 10(a)(4) of Massachusetts General Laws, Chapter 150E (the Law). Pursuant to Section 11 of the Law, as amended by Chapter 145 of the Acts of 2007, and Section 15.04 of the Department's Rules, I conducted an in-person investigation of the allegations contained in the charge on January 14, 2015. Based on the evidence presented during the investigation, I have decided to dismiss the charge for the reasons explained below.

BACKGROUND

Ferruccio Romeo (Romeo) has served as Union President for eleven years. During his time as Union President, he has reviewed, filed, and supported numerous grievances and filings against the Town.¹ Romeo made a practice of posting Union grievances and responses from Town Manager James McKenna (TM) or Chief of Police Terry Delehanty (Chief) to a bulletin board.

¹ The Union submitted into evidence a series of grievances that include various allegations of violations of the collective bargaining agreement between the parties and filings at the Massachusetts Commission Against Discrimination.

One of these grievances was filed on August 15, 2014, and concerned Officer Judy Racow (Racow). Romeo posted a response to the grievance by the Chief dated August 21, 2014. On or about September 8, 2014, Racow sent a letter to the TM stating that the Chief's response included unnecessary comments and caused her embarrassment and humiliation. Racow requested that her grievance be moved to step two of the grievance procedure. On September 11, 2014, Town Human Resources Director Stacy DiChiara (DiChiara) sent Romeo an email stating:

Judy Racow has come to us saying she is being harassed by her co-workers due to the chief's response to her grievance being hanged on a bulletin board in the station. I have spoken to the Chief as well as [TM] and it has been concluded that neither of them hanged the response. We would like to request the response be taken down to avoid Officer Racow feeling harassed or uncomfortable in her place of work.

On September 12, 2014, Romeo responded to DiChiara stating that he would not take down the response, and that this request and any future similar requests may be considered a violation of Section 10(a)(1) of the Law.

On November 20, 2014, the Chief sent an email to Romeo stating:

On November 19th, 2014, I noticed on the shared Bulletin Board between the Union and the Department dated November 18th, 2014 a letter from Officer Racow to [TM]. This letter is not in compliance with Article VII Section 2 of the Collective Bargaining Agreement and therefore should be removed. We also express concern that this posting is not in compliance with above-mentioned provisions of the collective bargaining agreement as it is not from the union and is not a notice of routine nature according to the terms of our collective bargaining agreement.

As you are further aware that your member has expressed concern that my grievance response dated August 21, 2014 was posted on the same bulletin board and you should honor her request to have that response removed as well.

On November 22, 2014, Romeo emailed the Chief and stated that the letter to the TM and his response would not be removed from the bulletin board.

On or about November 24, 2014, Romeo was assigned to work a detail with the Department of Conservation and Recreation (DCR) from 7:00 AM until 3:00 PM. Romeo had completed this same detail on other occasions. The Union argues that DCR representatives told Romeo that he only needed to be "on call" and available in case he was needed during his detail. That same day, Romeo spent from approximately 10:00 AM until 3:00 PM attending a mediation session held between the Town and the Union for a successor collective bargaining agreement under the auspices of the Joint Labor Management Committee.

On or about November 25, 2014, the Chief reviewed outside detail records to be submitted for payment and found a detail slip submitted by Romeo for payment for eight hours of detail work between 7:00 AM and 3:00 PM on November 24, 2014.

On or about December 1, 2014, the Town placed Romeo on paid administrative leave pending an investigation regarding the paid detail on November 24, 2014.

The Union argues that the Town treated Romeo differently than another employee who attended the November 24 meeting when he was assigned to a detail but was not investigated or disciplined. The Town responded that this employee also did not submit a pay slip for the hours that he attended the meeting.

On or about December 18, the Town held a discipline hearing for Officer Romeo. The Town argues that it held the hearing was because Romeo submitted a false detail slip, was untruthful in his statements during a discipline investigation, and violated rules and regulations of the Police Department.

On or about January 7, 2015, the TM called Romeo and told him that the Town had drafted a termination letter and wanted to discuss settling the case. During this conversation, TM asked Romeo to meet with the Chief the following day.

On January 8, 2015, the TM called Romeo and set a meeting for 4:00 P.M. later that day. Romeo went to the meeting but the Chief and TM did not attend. That evening, Romeo saw two emails from Union counsel, Joe Sandulli, regarding a settlement offer and a forwarded email from Town counsel, Howard Greenspan, confirming the 4:00 P.M. meeting.

The Town issued a letter dated January 9, 2015 to Romeo notifying him that he was dismissed from his position as a police officer with the Town.

Analysis

Retaliation

The Union alleges that the Town violated Section 10(a)(3) of the Law by terminating Romeo in retaliation for his protected, concerted activity. To establish a prima facie case of a 10(a)(3) retaliation violation, a charging party must show that 1) the employee engaged in concerted activity protected by Section 2 of the Law; 2) the employer knew of the concerted, protected activity; 3) the employer took adverse action against the employee; and 4) the employer's action was motivated by a desire to penalize or discourage the protected activity. City of Holyoke, 35 MLC 153, 156, MUP-04-4503 (January 9, 2009).

There is no dispute that Romeo participated in protected, concerted activity in his role as Union President, and that the Town had knowledge of this activity. Further, there is no dispute that being dismissed from a position is an adverse action.

The Union did not support its claim of unlawful motivation. To support a claim of unlawful motivation, a charging party may rely on circumstantial evidence and reasonable inferences drawn from that evidence. City of Holyoke 35 MLC at 156. Several factors may suggest unlawful motivation, including the timing of the alleged discriminatory act in relation to the protected activity, triviality of reasons given by the employer, disparate treatment, an employer's deviation from past practices, or expressions of animus or hostility towards a union or the protected activity. Id. at 157. Timing alone is insufficient to support a finding of illegal employer motivation. Id.

The Union argues that the Town was unlawfully motivated because it dismissed Romeo after he signed and supported a series of grievances. The Union argued that the Town treated Romeo differently than another employee who attended the November 24 meeting when he was assigned to a detail but was not punished. However, the Town established that the other employee did not submit a pay slip for the hours that he attended the meeting. This difference undermines the Union's argument of disparate treatment because the Town argues that it disciplined Romeo because he submitted the pay slip, not for attending the mediation. The Union did not provide any other evidence of anti-Union animus in the Town's dismissal of Romeo. Thus, the Union has not established that the alleged adverse action was motivated by a desire to penalize Romeo for his protected activity, and has not established a prima facie case. Accordingly, I do not find probable cause to believe that the Town violated the Law in the manner alleged, and I dismiss this portion of the Union's charge.²

10(a)(2)

Section 10(a)(2) of the Law provides that it is an unfair labor practice for an employer to dominate, interfere, or assist in the formation, existence, or administration of any employee organization. The Commonwealth Employment Relations Board (CERB) will find employer domination when an employer initiates or provides the impetus for the formation of an organization, dictates its form and structure, or selects its representatives. Blue Hills Regional Technical School District, 9 MLC 1271, 1277, MUP-4613 (September 10, 1982).

Interference in the existence and administration of an employee organization occurs when an employer deprives a union of an economic benefit, or grants a union an undeserved economic advantage. City of Boston, 14 MLC 1606, 1617, MUP-5574 (March 25, 1988) (citing New Bedford School Committee, 13 MLC 1009, 1016, MUP-5363 (June 9, 1986)).

Unlawful assistance arises when an employer's actions aid one employee organization at the expense of another employee organization. Commonwealth of Massachusetts, 7 MLC 1228, 1235, SUP-2380 (August 22, 1980).

The facts that the Union presented at the investigation did not establish that the Town violated Section 10(a)(2) of the Law. The Union did not provide any cases that support any of their allegations as a violation of Section 10(a)(2) of the Law, and I have found none. Since the Union has not presented any evidence of specific allegations or case law that would support a finding of probable cause that the alleged actions constitute a violation of Section 10(a)(2) of the Law, I dismiss this portion of the Union's charge.

² I dismiss the Union's 10(a)(4) allegation under the same analysis as I used with the Section 10(a)(3) allegation. See City of Boston, 35 MLC 289, MUP-04-4077 (May 20, 2009)(the same elements of proof apply to alleged violations of both Section 10(a)(3) and Section 10(a)(4) of the Law).

Independent 10(a)(1)

The Union additionally alleges that the Town independently violated Section 10(a)(1) of the Law by requesting that the Union take down communications between Racow and the TM or the Chief from the bulletin board. An employer violates Section 10(a)(1) of the Law if it engages in conduct that tends to restrain, coerce or interfere with employees in the free exercise of their rights under Section 2 of the Law. Town of Mashpee, 11 MLC 1252, MUP-5141 (November 20, 1984). Section 2 of the Law provides that employees shall have the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment. Unlawful interference will be found if the employer's speech contains an expressed or implied threat or promise of benefits with regard to employees' participation in protected, concerted activities. See Watuppa Oil Co., Inc., 2 MLC 1032, 1038, CR-3466 and UP-2280 (July 18, 1975). The pertinent inquiry regarding a Section 10(a)(1) violation is the effect that the employer's conduct would tend to have on "reasonable employees." Mass. Board of Regents (U.Mass. Medical Center), 14 MLC 1397, 1401, SUP-2901 (December 21, 1987). Even without a direct threat of adverse consequences, the CERB has found a violation when an employer makes disparaging remarks about an employee's exercise of protected activities. Athol-Royalston Regional School Committee, 26 MLC 55, 56, MUP-1832 (November 2, 1999). Here, there was nothing implied or directly stated within the emails from DiChiara or the Chief that would tend to restrain, coerce, or interfere with a reasonable employee's rights under Section 2 of the Law.

The Union's primary argument regarding the Town's dismissal of Romeo is that the Town retaliated against him. The Union additionally alleges that the Town's dismissal of Romeo independently violated Section 10(a)(1) of the Law. The CERB has held that allegations focusing on the intent of an employer rather than the effect the action has on employees are more appropriately analyzed under Section 10(a)(3) rather than Section 10(a)(1). City of Cambridge, 30 MLC 31, 32, MUP-01-3033 (September 3, 2003)(citations omitted). Nexus in time between Romeo's participation in negotiations and the grievance process and his termination alone, does not support a finding of an independent 10(a)(1) violation of the Law. The Union has cited no cases, and I know of none, holding that an alleged adverse action that did not violate Section 10(a)(3) of the Law could independently violate Section 10(a)(1) of the Law merely by the proximity in time between the termination and the alleged protected activity. Consequently, I find no probable cause to believe that the Town violated the Law in the manner alleged and I dismiss this portion of the Union's charge.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



AARON SWINDERMAN, ESQ. INVESTIGATOR

APPEAL RIGHTS

* The charging party may, within ten (10) days of receipt of this order seek a review of the dismissal by filing a request with the Commonwealth Employment Relations Board, pursuant to Department Rule 456 CMR 15.04(3). The request shall contain a complete statement setting forth the facts and reasons upon which such request is based. The charging party shall include a certificate of service indicating that it has served a copy of its request for review on the opposing party or its counsel. Within seven (7) days of receipt of the charging party's request for review, the respondent may file a response to the charging party's request.

EXHIBIT B

In the Matter of the Arbitration between:

WINTHROP POLICE LOCAL 421
TOWN OF WINTHROP, MASSACHUSETTS

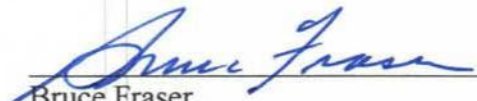
Re: AAA No. 01-15-0002-6830 (Discharge of Ferruccio Romeo)

AWARD

There was not just cause for the termination of Officer Ferruccio Romeo. He shall be given a Letter of Warning for failing to receive authorization for an alternative location for performing the Pump Detail on November 24, 2014, prior to working the detail.

He shall be made whole for all lost wages and benefits, less offsetting income. I shall retain jurisdiction for 30 days to resolve any disputes arising from the award.

February 28, 2016
Scituate, Massachusetts


Bruce Fraser
Arbitrator

Winthrop Police Local 421	Arbitration Decision & Award
	AAA No. 01-15-0002-6830 Grievance: F. Romeo
Town of Winthrop, Massachusetts	February 26, 2016

Hearings were held in the Town of Winthrop, MA on August 24, September 24, October 21, and November 2, 2015. The Union was represented by Patrick Bryant, Esq., and the Town was represented by Howard Greenspan, Esq. Post-hearing briefs were received by the Arbitrator on January 28, 2016.

THE ISSUE

The parties agreed upon the following issue:

Was there just cause for the termination of Officer Ferruccio Romeo?

If not, what shall be the remedy?

THE FACTS

In 2014, the Town of Winthrop, Massachusetts undertook the Winthrop Beach Nourishment Project funded by the Massachusetts Department of Conservation and Recreation (DCR). This project involved moving considerable sand and rock to the Winthrop beach area. In mid-Fall, 2014, it became necessary to add a detail to the daily Winthrop Police Department details in order to assist the traffic in connection with the work being carried out. This detail, known as the Pump Station detail, required an officer with a cruiser to work out of the D.P.W. pumping station at the end of Crest Avenue, with license to move about the area as needed.

The Pump Station detail required the officer who had signed up for it on any given day to be on duty from 9 am until 3 pm-a total of 6 hours-although he was authorized to indicate 8 hours at

his signing in at 7 am when he was to report to the DCR office. After signing in, the Pump Station detail officers were free to spend the first two hours of the detail as they wished, as long as they arrived at the pump station by 9 am. The detail required that the officer was to be available if there was an incident along the truck route that required attention. The detail officer was not required to remain at the Pump Station, but could cruise along the route as long as the police radio was on and was able to respond quickly to an incident. A one hour lunch break was authorized as were bathroom breaks, as needed. Generally, work for this detail ceased about 2:30 pm and the detail officer present was not required thereafter, and was free to leave.

At the time of the incident leading to this grievance, Ferruccio Romeo, the Grievant, had been a Patrolman for 19 years with the Winthrop Police with an unblemished record, had been the Union President for some 11 years, and had acquired a law degree and passed the Massachusetts Bar during this time. He was not scheduled for a day shift on November 24, 2014, and signed up for the Pump Station detail for that day. However, as the Union President, he was scheduled to attend a negotiation session on that date, beginning at 10 am. [Note: The term *negotiation* will be used throughout to refer to both negotiation and mediation sessions.] He attended the negotiation session from approximately 10 am to 2:30 pm on November 24, 2014, and did not go to the Pump Station between 10 and 2+ that day. He submitted a Pump Station detail slip for 8 hours of work on November 24, 2014.

On November 25, in checking over the detail slips from the day before, Police Chief Terence Delehanty noticed that Romeo had submitted a slip for 8 hours worked on the Pump Station detail, while for 5 hours of that time, he was engaged in Union-Town negotiations along with the Chief.

On December 1, 2014, the Chief had questioned a number of individuals, including Romeo, to whom he later wrote the following:

I am writing to inform you that I am placing you on Administrative Leave with Pay pending the outcome of an internal investigation of a detail you worked on 8/24/14 (sic)

Please turn in your firearm, badge, radio, and I.D. to Sergeant Rogers the Administrative Sergeant while you are on leave.

I am also ordering you not to discuss this matter with anyone except for your legal representatives while the investigation is ongoing.

You will be notified when and where your employee interview will take place by my office.

On December 9, 2014, Town Manager James McKenna wrote to Romeo informing him that he would hold a Town Due Process hearing to consider Romeo's actions on November 24, 2014, "which might result in discipline including dismissal for just cause." The hearing was held on December 18, 2014.

[Note: The following testimony was taken either at the Due Process hearing or at the Arbitration hearing and is interpolated unless indicated otherwise.]

At the Town hearing, the Chief testified that on November 25, 2014, he realized that he saw Romeo at the negotiation session while the detail slip indicated he was on detail duty. On December 1, 2014, he called Romeo to his office, offered him Union representation, which he refused, but stated that he wanted to explain the matter. The Chief stated that Romeo explained that it was his understanding from speaking with Manager Steve Colometo and Mike Vickery of DRC that the Pump Station detail was a floating detail, one where you didn't have to remain in one place, but as long as you were available to respond, you need not remain in a specific loca-

tion. The Chief stated that Romeo felt that because he understood it was a floating detail, that he hadn't done anything wrong.

Pursuant to his investigation, the Chief telephoned a number of individuals with Lt. Perrin in the room. [Perrin presumably heard only one side and was not asked to be a witness at either hearing.] The Chief testified that he called the DCR Resident Manager Steven Colometo who is in charge of the Winthrop Beach Project. According to the Chief, Colometo explained that the purpose of the detail was to monitor truck traffic specifically from the Pump Station location, and when asked if it was a floating detail, replied that no, it was a stationary detail. Colometo said he did not recall talking to other officers about it being a floating detail. His memo, dated October 6, 2014, states, in part, that "Winthrop shall have 1 detail at Short Beach near D.P.W. building with a cruiser."

The Chief also spoke with DCR Inspector Mike Vickery who works for Colometo who stated it was a stationary detail to monitor truck traffic on Crest Ave. When asked specifically whether or not he informed the detail officers if they could perform their duties on a floating basis, he did not directly answer the question, but said that it was a stationary post.

When questioning Officer Feeley about his understanding of the detail, Feeley stated that it was a stationary post and that the officer was expected to remain on the post except for bathroom and lunch breaks. When Officer Defreitas, he replied that the detail was called the "Pump Station" and that's where he thought he should be. Inquiring of Lt Frank Scarpa what he believed that pump station detail entailed, he replied that you were assigned there to respond to emergencies, "that you were like a one-man strike force, that if anything happened along the truck route that, you would respond and take care of it. When asked by the Chief if it was his understanding

that it was a stationary post, Scarpa said “You had to be there.” From these responses, the Chief stated that he drew the conclusion that Romeo’s version was not viable.

When questioned at the arbitration hearing whether or not the Pump Station detail was different from the other details, Sergeant Arthur Hickey stated, “The job is to go to the pump house, take a cruiser, go to the pump house and just sit there. And should an emergency arise, they send you for anything along the truck route involving the DRC.” When asked if Romeo, while at the negotiation at the Town Hall, would be able to respond if there were a call to Pump Station detail, Hickey’s response was “Oh absolutely... We’re talking a short distance here had there even been an issue along the truck route or anywhere else in town for that matter.” When asked if it’s a “roaming detail,” he did not answer directly, but pointed out that it’s kind of crazy sitting in one spot for eight hours.” On cross examination, he acknowledged that he never advised an officer assigned to the Pump Station detail that they didn’t have to go there.

When questioned under cross-examination, the Chief admitted he did not have any documents describing what the Pump Station detail consisted of, and stated that he was not aware that the officer on this detail is seldom called upon to do anything. He did acknowledge that after the Romeo incident, he ordered a supervisor to be hired for these details

When cross-examined about the discipline imposed on various officers, the Chief acknowledged he followed a policy of progressive discipline, although he stressed that where you began would depend on the severity of the event, and the person’s willingness to accept responsibility, and their willingness to be retrained.

The Chief stated that discipline is commensurate with the infraction, and “when a person recognizes they have done something wrong and is willing to accept responsibility for that is dif-

ferent, much different in my view, than a person who as not accepted responsibility. He continued, that "when you've recognized you did something wrong and you recognize that you shouldn't have done that, you won't repeat it. A person who doesn't recognize that will repeat it (the behavior), and I think the goal is to make sure the behavior's not repeated." He did not agree that the fact that he had assigned a supervisor for these details after the Romeo incident meant that the failure of supervision bore some responsibility for Romeo's event.

At the Town hearing on December 18, 2014, the Grievant, Ferruccio Romeo, testified that he had never put a slip in for a detail he didn't work, that he had worked that detail on November 24, 2014, and stated that he had worked the Pump Station detail three times before that week.

Romeo testified that his understanding of the detail is that it was a mobile detail, it did not have a fixed post." He continued that

My belief, based on the information that I had, was that I would be able to fulfill the requirements of that detail because it was a mobile detail and because of the distances involve...in case any emergency responded (sic), I would be available within a general radius of the actual work site.

Romeo testified that when he met with the Chief in his office along with Lt. Perrin, he was informed that he was being placed on Administrative Leave pending an investigation involving the detail slip he had submitted. After receiving the Chief's permission to explain his position, he explained what he had been informed of the detail and stated to the Chief that he "should know that I would never put in for a slip without actually working a detail." Romeo continued that he then explained to the Chief his understanding of what the detail consisted of, in particular, that he had been informed by Colometo, Vickery, and Lessard that the only responsibility for that detail was to be available for emergencies.

At this point Romeo stated that the Chief left the room saying "Let me see if I can at least rescind the Administrative Leave portion." He returned a short time later, explained that he was counseled against doing it, and thereupon implemented the Administrative Leave.

Romeo testified on direct examination that on November 24, he followed his usual practice: he arrived at the station at 7 am, picked up an available cruiser (in this case Winthrop 9-4), then went to the DCR trailer at Mermaid and Shore where he submitted his slip for the day, putting the start time of 7 am on the slip but leaving the end time for the DCR official to enter. He then left, keeping his radio on, and returned to the Police Station about 9:45. When asked on indirect examination to repeat the events of the morning, he repeated the same chronology, although admitting that his recollection was perhaps at times faulty.

On redirect examination at the Due Process hearing, the Chief testified that the video and card access controls for November 24, show that Romeo had arrived at the Police Station parking lot at about 7:24 am in his personal vehicle, entered the police building at 7:29, and left the building at 8:21. Then, at 9:28 he entered the police parking lot again, entered the police building at 9:32, and at 9:54 he exited the building to attend the negotiation.

At the arbitration, hearing Romeo agreed with the chronology given by the Chief, explaining that he had been asked to recall a morning of nearly a month earlier after he had already performed the Pump Station detail three times before that week, and was upset and concerned with the actual details of the day that followed. He explained further that because the Chief had forbade him access to the relevant documents, he just repeated his usual routine. Once he checked the documentation which was made available to him only in mid-January 2015, he recognized his error, which he acknowledged at the arbitration.

Romeo testified at the arbitration hearing about the morning prior to the negotiation. He stated that he entered the Winthrop Police Station wearing his uniform and carrying a radio, he spoke with Lt. Perrin, informing him that he was going over to the negotiation, but did not mention specifically that he was on a detail. He also did not notify either Colometo or Vickery that he would be attending a negotiation for part of the day. He noted that, looking back on the day, he should have informed them.

Romeo testified that the negotiation lasted until about 2:30, much longer than everyone had expected. He left the Town Hall, turned in his keys to the cruiser, and left the area. He drove by the pump station on his way out of town, about 2:30, but he saw no activity. He stated that he received no detail calls on that day and submitted the DCR slip for the detail, for 8 hours.

Romeo once again testified at the arbitration hearing that it was his understanding that it was a mobile detail and not fixed. When asked what various people told him to lead him to believe it was a mobile and not a fixed worksite, he stated that when he inquired of Colometo the responsibility of the officer with the cruiser, Colometo replied that he just wanted the officer to be available if something should happen, stating, "I don't want to get one of your shift officers tied up. So just be available." Romeo reported that when he checked with Lt Lessard, the officer stressed that you have to be available. He added that he had not received any information from the Chief or Lieutenants as to what responsibilities were attached to this detail.

Romeo again stated that it was his belief that he "could perform the detail being mobile pretty much anywhere in town because it's only 1.8 square miles." He added that when he previously had worked this detail, he spent roughly several hours at the Pump Station, and the rest of the time was mobile throughout Winthrop.

When asked on cross examination if, according to his understanding, it would be permissible to stay in a house in Winthrop all day as long as he were available, Romeo responded that it could satisfy his **detail obligation** but he would not do it – it would be inappropriate.

Lt. Scarpa was asked what he would do if he had been in charge of Romeo when he came in to the negotiation in uniform, with a cruiser and a radio: how would he deal with it? He stated that he would determine where Romeo was supposed to be working, and if he had permission to leave the post. When asked how he would handle Romeo's case specifically, he would have counseled Romeo that he should leave or get back to where you were or whatever. He stated, "but I assumed everybody at the meeting knew that he was on that detail." He stated further that if he were not notified but became aware that Romeo was on detail, he would talk to him, would tell him that he had been at the negotiations for an awful long time and that he should notify the appropriate people so they could make arrangements. I guess I'd give him a warning, I would counsel him. "I would say that you would start off with a verbal, written, and then go from there.

On cross-examination, Scarpa stated that he had done several Pump Station details and that the Chief had asked him what his understanding was concerning the responsibilities of the detail. He replied that it would be a fixed post, but you could from time-to-time leave it to check the route. He stated that he would leave it occasionally during the course of an eight hour shift but he felt that his obligation was to be in the general area of the pump station. "It said pump station; otherwise it would have just said patrol." And, when asked if he would sanction an officer billing for a private detail that he wasn't present for, Scarpa said no.

As a result of the Due Process hearing, on January 9, 2015, McKenna dismissed Romeo as a Police Officer for the following reasons:

1. On November 24, 2014, you submitted a voucher for a detail slip for pay for 8 hours pay in the total amount of \$344 for a detail at the Short Beach Pump Station. During the time that you billed for this detail, you were not present at the detail. Billing for services rendered without being present constitutes unacceptable judgment fraud, and conduct unbecoming a police officer.
2. The above referenced conduct constitutes a dishonest act which is contrary to the trust that citizens put in public safety officers.
3. You specifically stated that the engineers from the Commonwealth of Massachusetts stated to you that it was unnecessary for you to be physically present at the detail. Your statement was specifically contradicted by the DCR resident engineer as well as the DCR inspector. Your assertion that you didn't have to be present at the detail was also specifically contradicted by other members of the Police Department.
4. Your statements during the disciplinary investigation and the hearing were untruthful which in and of itself constitutes just cause for your dismissal.
5. The above referenced conduct violates the rules and regulations of the Department, specifically 1.4.8 integrity, 1.11.2 personal behavior, and 1.11.113 conduct unbecoming an officer.

The above referenced conduct constitutes just cause for your dismissal as a police officer. Specifically, there is a strong public policy against employing police officers who are untruthful.

The Town had never previously notified Romeo that he was contemplating discipline for untruthfulness.

On January 16, 2015, Officer Romeo grieved his dismissal. It reads, in part, as follows:

...

On January 12, 2015, I received, via U.S. Mail, written Notice from Town Manager James McKenna, dated January 9, 2015, that he had decided to dismiss me after he allegedly reviewed all the evidence presented at a disciplinary hearing he presided over as the Appointing Authority on December 18, 2014....The Notice did not include an effective date of dismissal. I was never interviewed during the investigation that was initiated and conducted by Chief Terence M. Delehanty and Chief Terence M. Delehanty was the only witness to testify on behalf of the Town. I was ordered not to talk about the alleged investigation or the alleged incident on December 1, 2014, except for my legal counsel, by Chief Terence M. Delehanty, which is a violation of my due process rights to prepare a defense and confront

witnesses. I was never allowed or able to cross examine any alleged parties interviewed for the alleged investigation. The disciplinary hearing conducted on December 18, 2014 was biased and not factual. The facts are in dispute and Chief Terence M. Delehanty testified untruthfully and has been biased against me for several years that further create suspicion of his evil motives and intent. This decision is also after I was threatened by Town Manager James McKenna on January 7, 2015 during a phone call discussion that he placed to me at my home at 9:15 p.m. that if I did not accept a 30 day suspension he would be forced to terminate me as long as I released the Town of all my pending legal matters against them. (sic) He also attempted to coerce me by mentioning my loss of healthcare and pension... The decision to dismiss me is without just cause, procedurally flawed, and contrary to Law

When the parties were unable to resolve the grievance, the Union appealed to arbitration.

The following provision of the parties **Agreement** is relevant:

Article XXXV - Disciplinary Action

No permanent employee shall be removed, dismissed, discharged, suspended or charged in any manner *except for just cause* and at any hearings or interviews attendant thereto the police officer will have an opportunity to have an attorney present on his behalf.

The following provisions of the **Winthrop Police department – Rules and Regulations** are relevant:

Section 1.4.8 Integrity – no Department member shall under any circumstances make any false official statements or intentional misrepresentation of facts;

...

Section 1.11.2 Personal Behavior – Each member shall while on duty conduct him/ herself in a manner that will reflect credit on themselves and the Winthrop Police Department. No employee shall engage in conduct which tends to bring the Department into disrepute or reflects discredit upon the members of the Department or which tends to impair the operation or efficiency of the Department or the employees;

...

Section 1.11.13 Conduct Unbecoming an Officer – Members shall not commit any specific act or acts of immoral, improper, unlawful, disorderly, or intemperate conduct, whether on or off duty, which reflect(s), discredit or reflect(s) unfavorably upon the member, upon other members, or upon the police department. Members shall

conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department and its members.

Conduct unbecoming a member shall include that which tends to indicate that the member is unable or unfit to continue as a member of the department, or tends to impair the operation, moral integrity, reputation or effectiveness of the department or its members.

...

The following article of the Winthrop Police Department – Detail Policy, is relevant.

...

ARTICLE IX. VIOLATION GUIDELINES

Progressive discipline shall apply for all violations of these rules and regulations, policy and procedures or orders of the Chief of Police.

CONTENTIONS OF THE TOWN

The Town contends that the removal of the Grievant was for just cause. Specially, it charges him with (1) filing a false detail slip; 2) lying to the Chief during the course of his investigation; and (3) lying at the Due Process hearing held by the Town of Winthrop to determine his discipline. I will consider them in turn.

Charge 1.

The charge of filing a false detail slip was based on Romeo's submission of a detail payment slip for the amount of \$344 for a day's work on November 24, 2014, in which he indicated that he had worked 8 hours of detail duty, whereas for at least 4 of these 8 hours he was attending a negotiation session in Town Hall.

Romeo claimed that the detail was a "floating detail," which permitted him license to roam in the vicinity of the truck route in his cruiser while waiting for a call from the dispatcher that he was needed, and argued that the Town Hall was positioned in an acceptable location to wait for a

radio summons. His contention that the detail was to be labeled a “floating detail” was not supported by other police officers or DCR employees and must be considered a false claim.

The Chief testified that officers on a shift for the Town or detail duty could participate in negotiations, usually over their lunch break, but he was aware of no policy that would allow an officer on detail for the third party to participate in negotiations. Based on this testimony and facts, Romeo was charged with filing a false detail slip.

The Town contends that the submission of the detail bill by Romeo for service not rendered constituted unacceptable judgment, and conduct unbecoming a police officer, and that his conduct also violated Department Rules of Conduct. The Town maintains that the Grievant violated these rules and regulations when he submitted a false detail slip for 8 hours of work on November 24, 2014. It maintains that Police officers are required to refrain from indictable conduct...they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Charge 2.

The Town contends that Romeo lied to the Chief during the course of the investigation, specifically with respect to the duties and responsibilities of the detail. According to the Chief at the investigation on December 1, 2014, Romeo told him that the detail was a “floating detail” and he was not required to be at a specific location. He also informed the Chief that he had spoken with Manager Colometo as to his responsibilities on the detail. The Chief stated he also interviewed Colometo (by phone) who told him that the purpose was to monitor truck traffic specifically from that location. The Chief also reported that when he asked if it was a “floating detail,” Colometo said no and that he had not advised officers that it was a floating detail.

The Town further claims that Romeo's testimony to the Chief of what Colometo had told him was completely contradicted by Colometo at the arbitration who, among other things, testified that he never told Romeo that he wasn't supposed to be either at the Pump Station or on the truck route.

Charge 3.

The Town contends that Romeo lied during the Town hearing when he testified as to his activities on the day before the negotiation began. According to Romeo's testimony at the Due Process hearing, he got his slip signed at the DCR offices, picked up a coffee and bagel, went to the pump station, and remained there until about 10 am when he went to Town Hall for the negotiation.

The Town revealed at the end of the Due Process hearing that the video and door access controls on the Police Station show that Romeo entered the police parking lot at 7:24 am in his personal vehicle, entered the police building at 7:29, and left the building at 8:21. Then, at 9:28 he entered the police parking lot again, entered the police building at 9:32 and at 9:54 he exited the building to attend the negotiation next door. The Town contends that this recitation of his whereabouts for the 3 hours (7-10 am) before the negotiations began, is a complete fabrication and lie.

More generally, the Town continues that if the only misconduct of Romeo was filing a false detail slip (Charge 1), there would be some grounds for reversing the dismissal based on the principles of progressive discipline. However, it argues that due to this untruthfulness, it would violate public policy to reduce the discipline and to reinstate Romeo.

The Town offers several cases where there has been a ruling against a police officer who has lied. The Town states that police officers who lie on a police report filing criminal charges and lying under oath are all felonies and Courts have ruled that it would be a violation of public policy permitting someone who committed such as act to work as a police officer. Put simply, the Town asserts that Romeo's proven record of dishonesty prevents him from useful service as a law enforcement officer.

In sum, the Town concludes that Romeo submitted a fraudulent request for detail reimbursement, lied about the lack of need for an officer to be present during this detail, and further lied about his whereabouts on the day in question.

Finally, the Town rejects the assertion by the Union that the Town's actions were in retaliation for carrying out his duties as Union President. Although there was evidence presented that the Grievant and the Chief had locked horns a number of times, there was no evidence of retaliation against Romeo for his diligence doing his Union President's job.

CONTENTIONS OF THE UNION

The Union contends that Officer Ferruccio Romeo, a veteran police officer and Union President with a spotless personnel record, was not terminated for just cause when he attended a negotiation while assigned to a detail. It maintains that he violated no actual or known policy, his conduct was consistent with conduct allowed by other officers, the investigation of the matter ignored contrary evidence, and the punishment far exceeded progressive discipline, in particular the punishment meted out to officers for similar or more severe conduct, such as for insubordination, lying, or unexcused absences. The Union also maintains that the animosity between the

Chief and Romeo which has existed for years, surely contributes to the severity of the punishment.

The Union contends that the Town failed to establish that Romeo violated a policy of the Department, or that it was completely unreasonable for him to believe that officers could attend a negotiation while assigned to a detail (especially a non-stationary detail). The only dispute about the mobile nature of the detail is, with radio contact in case Romeo was needed and a cruiser at his disposal, whether he could go to a negotiation meeting in Town Hall and remain for an extended period of time. There is no question that officers on detail have spent their lunch hour at negotiation sessions, some for longer stretches.

The Union further contends that the Town's contention that Romeo was untruthful during the investigation, the Town's termination hearing, or the Arbitration hearing, do not rise to the level of deliberate lies, intended to deceive the Town about the facts at issue here. In particular, Romeo's statements about the Pump Station were consonant with the DCR representative and fellow police officers. In addition, his original statements concerning his whereabouts during the period of 7-10 am on November 24, while inaccurate, were not intended to mislead, and were a byproduct of the Town preventing him from adequately preparing for the hearing. Moreover, the Town Manager did not point to this discrepancy as contributing to his decision to terminate.

In addition to failing to provide requisite notice of the untruthfulness charges, the Union argues the Town's case suffers from the following defects: 1) The Chief never formally interviewed Romeo, despite a written promise to do so; 2) The Chief never interviewed the supervisors on the shift in question, which would have confirmed that they knew Romeo was at the negotiations; 3) The Chief did not interview all the people who worked the Pump Station detail, or

examine the past practice of officers attending negotiations while on a detail; 4) The Chief never disciplined supervisors for allowing Romeo to attend negotiations while assigned to a detail.

Finally, the Union contends that the termination of Romeo was inconsistent with the commitment to progressive discipline. The offense of attending a negotiation while on a non-stationary detail cannot be regarded as an inherently serious act, as illustrated by the Chief's permission for other officers to do so in past negotiations. Moreover it is inconsistent with the discipline imposed on other officers found to be AWOL, or untruthful, and the penalty is not supported by Romeo's blemish-free performance history. In fact, Romeo's forthright admissions about his conduct argue against termination.

Here, the Town claimed it terminated Romeo for attending contract negotiations while assigned to a detail, and for making false statements about the nature of the detail and his whereabouts that morning. While the Town phrased its charges in various ways, the case boils down to two charges: 1) attending negotiations while assigned to a detail is conduct unbecoming and/or dishonest; and 2) Romeo's December 1 statement about his conversation with Colometo and his December 18 statement about his November 24 whereabouts from 7:30-8:20 am, were untruthful. Both charges fail on procedural and substantive grounds.

DISCUSSION

The Town contends that the removal of the grievant was for just cause. Specially, it charges the Grievant with (1) filing a false detail slip; 2) lying during the course of the investigation; and (3) lying at the hearing held by the Town of Winthrop to determine his discipline. I consider them in turn.

The **first charge** is that Officer Romeo submitted a false detail slip. Referring to Black's Law Dictionary, we find the following:

FALSE - In law, this word usually means something more than untrue: it means something designedly untrue and deceitful and implies an intention to perpetrate some treachery or fraud... The word "false" has two distinct and well recognized meanings: (1) intentionally or knowingly or negligently untrue; (2) untrue by mistake or accident or; honestly after the exercise of reasonable care...

...

False Token – a false document or sign of the existence of a fact

The statements above capture the essence of what I take is meant by the Town's accusation that the Grievant submitted a "false slip." The claim is that the Grievant knowingly and deliberately submitted a document stating that he had worked the Pump Station detail from 9-2+ on November 24, 2014, when in fact he had not.

What is meant by "working the Pump Station detail"? The Grievant correctly believed that he should be on the ready to respond to any incident along the truck route. He also believed that being present in the Town Hall on November 24 would fulfill the requirements of working the detail: he had radio contact with the dispatcher, although he was not called that day; he was in very close proximity at all times to the truck route he was assigned to assist in case of difficulty; he had a cruiser at his disposal; and he was free to respond if called.

It was Romeo's belief that his physical location, while waiting for a call, was flexible: he believed that the Town Hall was an acceptable location, and that it was reasonable to position himself there, given the requirements of the detail. He offered the following: "I could perform the detail being mobile pretty much anywhere in town because the town is only 1.8 square miles." When asking DCR manager Colometo to characterize the responsibility of the Pump Station detail, Romeo recalled him saying words to the effect, I just want you to be available if something

happens. I don't want to get one of your shift officers tied up. So just be available. Colometo made it very clear that a primary requisite of this detail is that the officer assigned should always be available to respond.

The critical question here is the following: Was Romeo working the Pump Station detail when he was working the detail from the Town Hall? I find in the affirmative. He was performing all the tasks of working the detail for some 5 hours that day, albeit from an unapproved location. There was no protestation from either the Town or DCR that the detail had not been performed satisfactorily.

However, Romeo did not ask for nor receive approval from the DCR personnel or the shift commander for this change of venue before he opted to make the change. It was a mistake not to do so, disobeying the verbal instructions he had been given by Colometo. But I do not find him dishonest when he acted on his belief that he could use the Town Hall as his base from which he could execute the detail. He was, in the words of Colometo, "available" the entire shift. I find that he fulfilled the tasks of working the Pump Station detail that day, albeit from a location that had not been approved, and was acting honestly when he submitted the DCR bill for November 24, 2014.

It is worth noting that because he was engaged in working the Pump Station detail while attending the negotiation, the issue of detail time spent by him at the negotiations that was raised is not relevant. He was carrying out the detail for the hours required, while at the same time, participating in the negotiations.

The **second charge** brought by the Town is that Romeo lied to the Chief during the course of the investigation conducted by the Chief on December 1, 2014. According to the Chief's testi-

mony, Romeo explained that it was his understanding of the detail, gained from speaking with Manager Steve Colometo of DCR, that he characterized the detail as a *floating detail*: a detail where you didn't have to remain in one place as long as you were available. Because he understood it to be a *floating detail* in this sense, he didn't believe that he had done anything wrong on November 24 when he worked the detail from the Town Hall.

Romeo also informed the Chief that he had spoken with Manager Colometo as to his responsibilities on the detail. When asked what he said to Colometo, he responded,

I asked Mr. Colometo what was required of the officer with the cruiser. I did not say anything about a location. I asked him what's the responsibility of the officer with the cruiser. And he stated to me as I just want it to be available if something happens. I don't want to, you know, I don't want to get one of your shift officers tied up. So just be available.

In addition, Romeo testified at the Due Process hearing in response to a question about how he could work the detail on November 24 and yet attend the negotiation, replied,

My belief, based on the information that I had, was that I would be able to fulfill the requirement of the detail because it was a *mobile* detail and because of the distance involved; [and] in case [of] any emergency response, I would be available with[in] a general radius of the actual work site.

I can find no testimony from Romeo where he asserted that Colometo gave him permission to work the detail from other than the Pump Station.

According to the Chief, Colometo, who was interviewed on the telephone on the same day, December 1, explained that the purpose of the detail was to monitor truck traffic and emergencies along the truck route primarily from the Pump Station location. When he inquired if it was a *floating detail*, the Chief stated that Colometo replied no, it was a *stationary detail*.

No one, neither Romeo, Colometo, nor the Chief, provided a definition (or definitions) of a *floating detail* as it applies to police work. (Black Law Dictionary and Google also fail to do so.) But in my view, a definition is irrelevant. It is clear that Romeo believed, albeit erroneously, that the detail gave wide latitude as to where the officer might work from, and this is what he conveyed to the Chief. Colometo, on the other hand, expected the officer to sit at the Pump Station or drive on the truck route. This was Colometo's testimony at the arbitration hearing a year later.

On December 1, 2014, Romeo simply gave his opinion to the Chief about the detail based on conversation with Colometo. He did not state affirmatively that the detail was a "floating detail," and never asserted that Colometo agreed with him, but only offered that as a way of describing it. I find that he did not lie to the Chief during the investigation on December 1, 2014.

The **third charge** brought by the Town is the contention that Romeo lied during the Town Hearing on December 18, when he testified to his pre-negotiation activities on November 24. According to Romeo's testimony at the Due Process hearing, he picked up his cruiser, got his slip signed at the DCR offices, picked up a coffee and bagel, went to the pump station, and remained there until about 10 am when he went to Town Hall for the negotiation. The Town revealed at the end of the Due Process hearing that the video and door access controls on the Police Station show that Romeo entered the police parking lot at 7:24 a.m. in his personal vehicle, entered the police building at 7:29, and left the building at 8:21. Then, at 9:28 he entered the police parking lot again, entered the police building at 9:32 and at 9:54 he exited the building to attend the negotiation next door. The Town contends that his recitation of his whereabouts for the 3 hours (7-10), the time before the negotiations began, is a complete fabrication and lie.

Romeo testified at the arbitration hearing that the Town's statement of his whereabouts on November 24th were indeed correct, and he had erred on his recollection on December 18. He pointed out that the testimony he gave at the time recalled from events of almost a month before, that this was the fourth Pump Station detail he had worked that week, and because the Chief froze his access to all documents until January 22, 2015, he was not able to refresh his memory using the video and door access monitor records before the Town hearing on December 18, 2014. Instead, he simply repeated what he had done the previous times he had worked the detail.

Although Romeo's testimony at the Town hearing was inaccurate, I do not find it was intended to deceive. Rather I find that it was a failure to recollect accurately what had occurred on the morning in question. He had nothing to gain by offering this incorrect account of his activities between 7-10 am that morning. His time was his own between 7 am and 9 am and returning at about 9:30 am to prepare for the negotiations with his lawyer would be expected.

Moreover, the Grievant is a lawyer, he has dealt with interrogations and lying for years in his capacity as the Union President, and he is well aware of what perjury is, and what damage perjury can bring to a police officer. He was aware that lying in these circumstances could potentially jeopardize his career as a police officer. Once he saw the video and keycard records information from that morning, days after the Due Process hearing, he realized that he had misspoken during the Town hearing.

I find the inaccuracy of the testimony reflecting what actually occurred the morning of November 24 was contributed in large part due to the Town preventing him access to the video and keycard records before the Due Process hearing. I find no deliberate misrepresentation on his part.

In summary, I find that Charge 1, that the Grievant filed a false detail slip on November 24, 2014, was not proven. Romeo worked the Pump Station detail from start to finish, albeit from an unauthorized location, the Town Hall, with no apparent defect.

He was aware that the intention of Colometo was to have an officer at the Pump Station or on the truck route, yet he chose not to seek prior authorization for a change of location to the Town Hall, from either the DCR or his shift commander, but worked the detail from that unauthorized location. For this action, he shall be given a Written Letter of Warning for not following the Pump Station guidelines.

I find that Charges 2 and 3 were not proven by the Town.

AWARD

There was not just cause for the termination of Officer Ferruccio Romeo. He shall be given a Letter of Warning for failing to receive authorization for an alternative location for performing the Pump Station detail on November 24, 2014, prior to working the detail.

He shall be made whole for all lost wages and benefits, less offsetting income. I shall retain jurisdiction for 30 days to resolve any disputes arising from the award.

Scituate, MA
February 26, 2016



Bruce Fraser
Arbitrator