COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

DLR Docket No. MUP-20-7789

FERRUCCIO ROMEO	)
Charging Party,	)
v.	)
TOWN OF WINTHROP,	)
Respondent	)

CHARGING PARTY FERRUCCIO ROMEO'S REQUEST FOR REVIEW OF THE DISMISSAL OF CHARGE OF PROHIBITED PRACTICE

I. INTRODUCTION

Charging Party Ferruccio Romeo, a police officer for the Town of Winthrop, appeals the dismissal of Charge MUP-20-7789. Mr. Romeo holds the rank of sergeant. Yet again, the investigator has treated Officer Romeo's Charge as if he had to prove his case on the merits at the investigation stage.[1] However, as will be explained below, Officer Romeo has amply met his burden to establish that there is probable cause that the Town has violated G.L. c. 150E.

In his Charge, Officer Romeo alleges that the Town violated G.L. c. 150E, §§ 10(a)(1),

[1] The Commonwealth Employment Relations Board ("CERB") recently reversed the dismissal of three of Mr. Romeo's charges of retaliation against the Town (each arising out of the same line of events as gave rise to the Charge in this case), holding that the investigators had taken too cramped a view of Mr. Romeo's burden to establish a prima facie case. These decisions are attached hereto as Exhibits F and G. Notably, Investigator Sorokoff, who dismissed Mr. Romeo's Charge in this case, was also the investigator who improperly dismissed Charge MUP-19-7261, which the CERB reversed on July 27, 2020. See Exhibit G.

Exhibits A-J were all exhibits that were submitted by Claimant to the Investigator prior to the In-person Investigation in this case.

(3), and (4) by unilaterally altering seniority for the purposes of shift bidding, which resulted in Officer Romeo being placed on the night shift, despite the fact that he holds one of the longest tenures in the entire Department. More specifically, despite the fact that the Union's collective bargaining agreement stated unambiguously that seniority was defined as seniority in the department, upon Mr. Romeo's promotion to sergeant the Chief used an alternative method of calculating seniority – seniority within each rank – to ensure that Romeo received an undesirable shift. As will be explained below, the Chief has employed this method to unlawfully retaliate in the past, and he is once again relying on his playbook to retaliate against Officer Romeo.

Although the Department of Labor Relations ("DLR") Investigator correctly found that Officer Romeo established probable cause to support the first two elements of his prima facie case of retaliation, the Investigator erred in finding that Officer Romeo did not establish the third element of his prima facie case – that the Town took an adverse action against him – and the fourth element– that the Town's actions were unlawfully motivated. (Investigator's Dismissal at 7-9.) As will be explained below, the Investigator improperly prejudged the merits of the case on the issue of retaliatory motivation, which presents inherently-fact intensive questions that must be addressed only after evidence has been put on at a full hearing.

The Charge in this case cannot be viewed in a vacuum, as it arose from a course of retaliatory conduct that has been ongoing since at least 2014. Mr. Romeo was a police officer for the Town of Winthrop for nineteen years before his termination on January 9, 2015. During his nineteen years of service, Officer Romeo's record was unblemished. During the last eleven years, Officer Romeo was president of Winthrop Police M.C.O.P Local 421, AFL-CIO (hereinafter "the Union") and was the Union's sole officer. On January 9, 2015, Officer Romeo was terminated as the result of a long-brewing conflict with Chief of Police Terence Delehanty

arising from Romeo's advocacy as Union President, and particularly his work on contract negotiations and aiding two female officers who both successfully challenged[2] gender discrimination they faced from the Town. Officer Romeo regularly assisted those officers in filing and processing grievances, posting them on a union bulletin board, and most importantly, taking those grievances to arbitration.

Importantly, one of the officers for whom Officer Romeo advocated as union president, Nancy Dalrymple, pursued and won a gender discrimination case before the Massachusetts Commission Against Discrimination ("MCAD") in January 2014, and the Town was ordered to promote her to sergeant. Although the Town had no choice to promote her to sergeant, the Chief retaliated against her in **exactly the same way as he did against Mr. Romeo in this case**. The Chief implemented in-rank seniority (rather than seniority in the department as a whole) for the purposes of shift bidding to ensure that Ms. Dalrymple would get the less-desirable night shift.[3]

In November 2014, the Town accused Officer Romeo of falsifying a detail slip and subsequently terminated him. However, the Town's unfounded allegation was mere pretext. Officer Romeo submitted a grievance through the Union challenging his termination, and the

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[2] Officer Judy Racow brought a gender discrimination suit against the Town and won a jury verdict for more than $2 million in Racow v. Town of Winthrop, No. 2014-3200-E (Suffolk Super. Ct. March 22, 2018). Officer Nancy Dalrymple brought a gender discrimination and retaliation complaint before the Massachusetts Commission Against Discrimination and prevailed in MCAD and Dalrymple v. Town of Winthrop, 02-BEM-03751, 05-BEM-01174, 05-BEM-02944, Decision of the Hearing Officer (Jan. 22, 2014). The Town was fined $50,000 as a result of its egregious conduct.

[3] The Union grieved this clear violation of the collective bargaining agreement, but Mr. Romeo, the union president, was then terminated by the Town, and officers who took control of the Union after his departure and who were friendly to the Chief withdrew the grievance before it was arbitrated. (Investigator's Dismissal at 4.)

Union took his case to arbitration.[4] The arbitration was held over four days, and after hearing the testimony of twelve (12) witnesses and considering forty-four (44) exhibits, the arbitrator issued a decision on February 28, 2016, finding in Officer Romeo's favor. The Arbitration Award, attached hereto as Exhibit A, found that Officer Romeo had not engaged in dishonesty and that the Town lacked just cause to terminate him. As such, the Award ordered the Town to reinstate Officer Romeo and to make him whole.

Unfortunately, the Arbitration Award did not bring an end to the acrimony the Town has displayed toward Officer Romeo. Rather than abide by the Award, the Town challenged it in Superior Court. The Massachusetts Appeals Court ultimately affirmed the Arbitration Award in May 2018. Officer Romeo was not reinstated to his position until September 8, 2018. The Union and the Town also could not agree on the amount of back pay and benefits due to Officer Romeo, and the Union demanded a remedies arbitration. On January 21, 2019, the arbitrator issued a Remedy Award adopting the Union's position (attached hereto as Exhibit B). Thereafter, the Town agreed in writing to pay Officer Romeo $530,000, but then repudiated this agreement without any meritorious basis. Officer Romeo together with the Union had to file yet another lawsuit against the Town, Winthrop Police Brotherhood, Local 421 et al. v. Town of Winthrop, Civ. Act. No. 19-1566E (Suffolk Super. Ct.), in order to enforce the agreement. The Union also filed a charge before the DLR, MUP-19-7277, alleging that the Town's repudiation constituted unlawful conduct in retaliation for Mr. Romeo's concerted, protected activity as

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[4] Officer Romeo also filed a lawsuit in Suffolk Superior Court alleging that Romeo v. Town of Winthrop et al., Civ. Act. No. 2015-02140 H (Suffolk Super. Ct.) alleging that his termination constituted unlawful discrimination under the Massachusetts Law Against Discrimination, which remains pending. Additionally, Officer Romeo filed two charges with the DLR, MUP-14-4210 and MUP-15-4652, which were deferred to his Union arbitration and remain pending. These charges allege that his termination was in retaliation for his activity as Union president.

union president, which caused his termination in 2015. Only in July 2019 did the Town finally submit the $530,000 to Mr. Romeo.

In the midst of all of this acrimony, the Town also took the retaliatory measures complained of in the instant charge. Although Mr. Romeo was promoted to sergeant on December 8, 2018,[5] the Town then used a method of seniority for the purpose shift bidding that violated the collective bargaining agreement in order to ensure that Mr. Romeo would have low seniority within the position of sergeant. As a result, Mr. Romeo must now work the night shift. – refusing to reinstate Officer Romeo to all of his duties (resulting in a significant loss of compensatory time and Kelly Hours), and denying Officer Romeo the opportunity to sit for an examination for promotion to lieutenant. The Investigator was too eager to dismiss this claim of retaliation. First, the Investigator concluded that Officer Romeo that being forced to take the night shift was not an adverse action – this conclusion defies common sense. Second, the Investigator held that Mr. Romeo had not established that the Town's action was unlawfully motivated. However, as courts in Massachusetts and across the country have found, retaliatory motivation is a fact-intensive inquiry that is not appropriate to decide without the benefit of witness testimony and cross-examination. See, e.g., Blare v. Husky Injection Molding Systems Boston, Inc., 419 Mass. 437, 439 (1995). The Investigator simply took the Town at its word that its actions were not motivated by unlawful retaliatory animus. Moreover, the Investigator completely ignored years of retaliatory measures that the Town took against Officer Romeo. The retaliation complained of in this charge should not be viewed in a vacuum. The Town's motivation in taking these actions against Officer Romeo present precisely the kind of fact-

[5] The Town had little choice but to promote Mr. Romeo, as he was first on the Civil Service promotional list for sergeant, and there was an open position. A refusal to promote him would have been obvious retaliation.

intensive question that can only be resolved through hearing under oath and cross-examination. Therefore, the Investigator was incorrect to dismiss the charge at the investigation stage.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Town Unlawfully Terminates Officer Romeo in Retaliation for his Activities as Union President

Ferruccio Romeo was employed as a patrol officer for the Town of Winthrop from 1996 until his termination on January 9, 2015. (Investigator's Dismissal at 2.) Officer Romeo had served as the president of the Winthrop Police Union MCOP Local 421 for eleven years prior to his termination. (Investigator's Dismissal at 2.) As Union President, a voluntary non-paying position, Officer Romeo assisted two female Town of Winthrop police officers, Judy Racow and Nancy Dalrymple, in filing numerous grievances and MCAD Complaints during 2014 – as well as many others since 2006 – against the Town alleging sex discrimination. (Romeo MUP-14-4210 CERB Brief at 3, attached as Exhibit K.)[6] Officer Romeo reviewed, signed off on, and submitted those grievances to the Chief, and took several of those grievances to arbitration on the Union's behalf. (Romeo MUP-14-4210 CERB Brief at 3-4, Exhibit K.)[7] Officer Romeo was also intimately involved in ongoing contract negotiations as the Union's president. (Investigator's Dismissal at 2.) Over the course of 2014, Police Chief Terence Delehanty became increasingly angry at Officer Romeo for his activity assisting the two female officers and aggressively

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[6] For the purposes of providing some additional background, Mr. Romeo cites the brief before CERB in MUP-14-4210, which explains the retaliatory circumstances of Officer Romeo's termination. Officer Romeo supported that charge with several affidavits. The brief is attached hereto as Exhibit K. Charging Party explained these details to the Investigator during the In-Person Investigation. Additionally, Ms. Dalrymple attended the In-Person Investigation as a witness for Mr. Romeo.

[7] As will be explained, *infra*, one of the arbitrations involved retaliatory conduct taken by the Town against Officer Nancy Dalrymple, which was essentially identical to the retaliation that Officer Romeo now alleges in this case.

negotiating on the Union's behalf. (Romeo MUP-14-4210 CERB Brief at 3-4, Exhibit K; Investigator's Dismissal at 2.)

On December 1, 2014, just a week after the conflict between Chief Delehanty and Officer Romeo came to its peak, Chief Delehanty placed Officer Romeo on administrative leave allegedly because he had attended Union contract negotiations on November 24, 2014, while at the same time being assigned to a paid detail. (Romeo MUP-14-4210 CERB Brief at 4-5, Exhibit K; Investigator's Dismissal at 2.) The detail in question was a mobile or "floating" detail that simply required Officer Romeo to be available with his cruiser to respond to any issues that may have arisen along a construction truck route. Romeo was able to satisfy his obligations of the detail while at the same time attending the contract negotiations, since he was able to leave with his cruiser at a moment's notice. (Romeo MUP-14-4210 CERB Brief at 5, Exhibit K.) Although others had in the past regularly attended union negotiations while on details without facing any reprimand or discipline,[8] and Officer Romeo did not hide the fact that he was at the negotiations while assigned to a detail, and even though he was never paid for the detail, he was terminated for this supposed misconduct on January 9, 2015. (Romeo MUP-14-4210 CERB Brief at 4-5, Exhibit K.)

B. Officer Romeo Successfully Challenges His Termination

Following Officer Romeo's termination, he filed a grievance through the Union, and the Union demanded arbitration. (Investigator's Dismissal at 2.) Officer Romeo also filed two charges with the DLR. After the Town had put Officer Romeo on administrative leave (but prior to his termination), he filed MUP-14-4210 alleging that the Town had retaliated against him for

[8] In fact, a second officer, Officer Hagemeister, attended the very same union negotiation while on the same detail as Officer Romeo, but was neither placed on administrative leave nor terminated. (MUP-14-4210 CERB Brief at 3-4, Exhibit K.)

his activities as Union president. Although the DLR initially dismissed this charge, Officer Romeo appealed the dismissal to CERB, and CERB on March 16, 2015, and on May 21, 2015, the DLR elected to defer the charge pending Officer Romeo's Union arbitration. On June 24, 2015, Officer Romeo also filed charge MUP-15-4652 to ensure that he adequately challenged his termination (and not just his placement on administrative leave), which the DLR also deferred to arbitration. (Investigator's Dismissal at 2.)

On July 13, 2015, Officer Romeo also filed a lawsuit in Suffolk Superior Court alleging that the Town had engaged in unlawful retaliation against him in violation of the Massachusetts Law Against Discrimination, G.L. c. 151B §§ 4(4) and (4A), Romeo v. Town of Winthrop et al., Civ. Act. No. 2015-02140 H (Suffolk Super. Ct.), because the Town was motivated to terminate him because of his advocacy assisting Officers Nancy Dalrymple and Judy Racow in their efforts to oppose the Town's gender discrimination. (Investigator's Dismissal at 2.)

Officer Romeo's union arbitration began on August 24, 2015, and took place over four nonconsecutive days. On February 28, 2016, the arbitrator issued an Award (Exhibit A). As described in the Award, the issues for the arbitrator to decide were: "Was there just cause for the termination of Officer Ferruccio Romeo? If not, what shall be the remedy?" The arbitrator made the following relevant findings:

(1) With respect to fulfilling his obligations on the Pump Station detail on November 24, 2014, Mr. Romeo "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." Exhibit A at 20. Mr. Romeo was not "dishonest when he acted on his belief that he could use the Town Hall as his base from which he could execute the detail." Exhibit A. at 20.

(2) Mr. Romeo was "carrying out the detail for the hours required, while at the same time, participating in the [union] negotiations." Exhibit A at 20.

(3) Mr. Romeo did not "file[] a false detail slip on November 24, 2014." Exhibit A at 24.

(4) Mr. Romeo "did not lie to [Winthrop Police Chief Delehanty] during the investigation on December 1, 2014." Exhibit A at 22. Mr. Romeo "simply gave his opinion to the Chief about the detail based on conversation with [DCR manager] Colometo. Mr. Romeo 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." Exhibit A at 22.

(5) During the Town Hearing on December 18, 2014, Mr. Romeo did not engage in "deliberate misrepresentation" with respect to the sequence of the events of November 24, 2014. Exhibit A at 23.

(6) "There was not just cause for the termination of Officer Ferruccio Romeo." Exhibit A at 24.

The Arbitration Award also ordered the Town to reinstate Officer Romeo and to make him whole. Exhibit A at 24.

Rather than following the Arbitration Award, the Town filed suit in Suffolk Superior Court to vacate it in Town of Winthrop v. Winthrop Police Brotherhood, Local 421, 16-0938B, Civ. Act. No. 16-0938B (Suffolk Super. Ct.). The court initially vacated the Arbitration Award, which the Union appealed. On May 21, 2018, the Massachusetts Appeals Court issued a decision reversing the lower court's decision and directing the court to enter judgment confirming the Award. See Town of Winthrop v. Winthrop Police Brotherhood Local 421, 93 Mass. App. Ct. 1111, at *3 (May 21, 2018). Even then, the Town delayed implementing the directives of the Arbitration Award by filing for further appellate review before the Supreme Judicial Court. The SJC denied the Town's request on June 29, 2018. Town of Winthrop v. Winthrop Police Brotherhood Local 421, 580 Mass. 1104 (June 29, 2018).

The Town did not ultimately return Officer Romeo to payroll until July 22, 2018, and it did not return him to duty until September 8, 2018. (Investigator's Dismissal at 3.) But after his reinstatement, the Town and the Union could not agree on the amount of back pay and benefits, and the Union demanded a remedies arbitration, which took place on October 18, 2018. The

arbitrator issued a Remedy Award (Exhibit B) on January 21, 2019, adopting the Union's view of the back pay and benefits the Town owed to Officer Romeo. The Town then agreed in writing to pay Officer Romeo $530,000 to settle the Remedy Award. However, shortly thereafter, the Town reneged on its agreement and stated that it would not pay the money to Officer Romeo. The Town never sought to vacate the Remedy Award in Superior Court.

On April 18, 2019, the Union filed charge MUP-19-7277 alleging that the Town was not complying with the back pay aspect of the arbitrator's Arbitration Award and Remedy Award. (Investigator's Dismissal at 2 n.5.) The Union and Officer Romeo also filed another lawsuit in Suffolk Superior Court, Winthrop Police Brotherhood, Local 421 et al. v. Town of Winthrop, Civ. Act. No. 19-1566E (Suffolk Super. Ct.), alleging breach of contract, contempt of court, and seeking to confirm the Remedy Award. The Town did not remit the agreed-upon $530,000 to Officer Romeo until July 2019. (Investigator's Dismissal at 2-3 n.5.)[9]

Officer Romeo moved the DLR to revive charges MUP-14-4210 and MUP-15-4652 on March 2, 2016, shortly after the Arbitration Award issued. The DLR continued to hold those charges in abeyance until August 15, 2018, when it referred them to mediation. The mediation took place on July 23, 2019, and did not result in a settlement. (Investigator's Dismissal at 2.) On August 9, 2019, the DLR finally allowed Officer Romeo's motion to revive the charges. On July 27, 2020, the CERB reversed the Investigator's dismissal of the charge and directed the DLR to issue a complaint. (CERB Decision on MUP-14-4210 and MUP-15-4652, Exhibit F.) The parties are in the process of scheduling a hearing on those charges.

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[9] Once the Town remitted the payment to Officer Romeo, the Union withdrew MUP-19-7277. (Investigator's Dismissal at 2-3 n.5.) Prior to the dismissal, Officer Romeo moved to intervene in that charge in order to challenge the retaliation that he suffered by not being returned to all of his duties, but the DLR denied his motion because he could pursue those charges in the instant charge instead.

Officer Romeo's civil suit alleging retaliation in violation of the Massachusetts Law Against Discrimination remains pending and is set for trial in April 2021.

C. The Town Retaliates Further Against Officer Romeo

Upon returning Officer Romeo to his job, the Town refused to assign him to his previous duties as CJIS Representative, which caused Officer Romeo to lose approximately 50 hours of compensatory time per year. (CERB Decision on MUP-19-7261 at 2-3, Exhibit G.) These duties consisted of certification and maintenance of the CJIS system and of confidential passwords. (CERB Decision on MUP-19-7261 at 3, Exhibit G.) Likewise, the Town refused to return him to his detail maintenance duties, which consisted of adjusting detail hours, scheduling details, and following up on collections for details that were not paid. (CERB Decision on MUP-19-7261 at 3, Exhibit G.) As a result of the Town's refusal to return these detail duties to Officer Romeo, he has lost 48 "Kelly hours" per year, despite the fact that the arbitrator specifically ordered the Town to make him whole. (CERB Decision on MUP-19-7261 at 3, Exhibit G.; Arbitration Award at 24, Exhibit H.)

Officer Romeo filed Charge MUP-19-7261 in order to challenge this retaliatory conduct, but on March 13, 2020, Investigator Sorokoff issued a decision holding that there was no probable cause that this conduct by the Town violated the Law, because Officer Romeo could not establish that the Town's conduct was motivated by unlawful retaliatory animus. (CERB Decision on MUP-19-7261 at 3-4, Exhibit G.) Officer Romeo appealed Investigator Sorokoff's decision to the CERB, which reversed the decision with respect to the CJIS Representative position. (CERB Decision on MUP-19-7261 at 4-5, Exhibit G.) The CERB described the Town's explanations for its actions as "trivial." (CERB Decision on MUP-19-7261 at 5, Exhibit G.)

D. Dispute Over Promotional Examinations and Eventual Promotion

Almost as soon as Officer Romeo was returned to the Town's payroll, he requested to sit for a promotional examination for sergeant. Although the Town held a sergeant promotional examination on April 3, 2018 (prior to Officer Romeo's reinstatement), an order in Officer Racow's lawsuit compelled the Town to permit her to take a makeup examination on October 25, 2018. (Investigator's Dismissal at 2; CERB Decision on MUP-19-7261 at 3 n.3, Exhibit G.) On July 23, 2018, a day after Officer Romeo was reinstated to payroll, he sent a letter to Chief Delehanty expressing interest in sitting for the makeup sergeant's promotional examination.[10] The Town did not agree to allow him to sit for the examination until September 13, 2018, and the Town did not provide Officer Romeo with the study materials until September 14, 2018. As a result, Officer Romeo had 49 days to prepare for the examination despite the fact that officers in Winthrop are typically provided 90 days or more to prepare. Officer Romeo sought a preliminary injunction in his civil suit seeking to delay the examination to December 13, 2018, which the court denied. Nevertheless, Officer Romeo sat for the October 25, 2018 examination, passed, and was third on the civil service list. In early 2018, the Town had posted a provisional sergeant position. When it became clear that Officer Romeo was the most-senior officer who applied for the provisional sergeant's position, the Town opted not to fill it. A permanent sergeant's position became open, and on December 8, 2019, Officer Romeo was finally promoted to sergeant. (Investigator's Dismissal at 2.).

E. The Shift Bidding Process and Related Retaliation Against Romeo

The Town had little choice but to promote Officer Romeo given the fact that he was first on the Civil Service list at the time the permanent sergeant's position became open – if the Town

[10] These facts are briefly referenced in the Investigator's Dismissal at 2. Officer Romeo presented them in more detail during the In-Person Investigation. Additionally, these facts are supported by their inclusion in the Investigator's Dismissal of MUP-19-7261, which Officer Romeo can provide upon request.

had not, it would have risked obvious vulnerability to a claim of retaliation. The Town instead employed a subtler form of retaliation – forcing Officer Romeo to work on the night shift despite the fact that he is one of the most senior members of the Department. (Investigator's Dismissal at 5.) The Town accomplished this goal by using an interpretation of "seniority" for the purpose of shift bidding that violated the collective bargaining agreement.

The collective bargaining agreement that was in place at the time of the shift bid in question states specifically that "[s]eniority is defined as the length of continuous full-time employment in the Winthrop Police Department." (Patrol Officer and Sergeants CBA, Article XXXIII, Exhibit A.) This language stands in stark contrast to that within the Lieutenant's collective bargaining agreement, which stated "[t]he seniority of Lieutenants shall date from the time of their promotion to such rank." (Lieutenants CBA, Article XXXII, Exhibit B.) Nevertheless, ten (10) days after the Town promoted Officer Romeo to the rank of sergeant, Deputy Chief Goodwin issued General Order 19-09, which set forth the methodology for the upcoming shift bid, which would determine each officer's shift for the following year. (General Order 19-09, Exhibit D.) The General Order stated that "[a]ll Sergeants not assigned to a special assignment shall bid their shift according to in rank seniority." (General Order 19-09, Exhibit D.) Having wielded this exact same method of retaliation against Nancy Dalrymple when she was promoted to sergeant in 2014, the Town knew that using this method of determining seniority would result in Officer Romeo's assignment to the night shift, since he was the newest sergeant and therefore had the least in-rank seniority. If the Town had abided by the collective bargaining agreement and used departmental seniority rather than in-rank seniority, Officer Romeo would not have been placed on the night shift, as he was one of the most senior officers in the Department. (Investigator's Dismissal at 5.)

The Department implemented the shift bidding process in 2006, and at that time, seniority was determined by the overall time spent in the department. (Investigator's Dismissal at 5; 2007-2009 Shift Bid Memos, Exhibit C.) While the Investigator incorrectly asserts that neither party submitted evidence as to how seniority was determined between 2010 and 2013, Officer Romeo and Officer Dalrymple both explained that departmental seniority was the norm until the Chief used in-rank seniority for shift bidding in early 2014 in order to retaliate against Officer Dalrymple when the Town promoted her to sergeant at the direction of the MCAD. (Dalrymple MCAD Decision, Exhibit I.)

During the In-person Investigation, Officer Dalrymple explained that in April 2014, she was reassigned to an overnight shift, which she grieved on April 4, 2014. (Town's Exhibit 3; Investigator's Dismissal at 3.) Then on June 2, 2014, the Department issued a memo regarding the procedure for the July/August 2014 shift bid, which stated "[i]n order to expedite the process every officer not assigned to a specialty shall bid their shift according to in rank seniority . . . ." (Investigator's Dismissal at 3; Town's Exhibit 2.) This memo reflected the first time that in-rank seniority was used for the purposes of shift bidding, and the change was adopted in order to retaliate against Officer Dalrymple – in other words, to ensure that she as a new sergeant would be assigned to an undesirable shift.[11]

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[11] The Town's argument that the in-rank seniority policy had been in place for shift bidding since 2005 is nonsensical and wrong, given the fact that the shift bidding process was not even implemented until 2006. The Departmental Rule that the Town relies on in making this argument **by its own terms** concerns seniority for the purposes of determining seniority when officers are assigned to an "investigation, case, or detail" or the Incident of Command when officers arrive on the scene of an emergency. (Town's Exhibit 1.) This regulation simply has nothing to do with shift bidding.

The Town and the Investigator also made much of the fact that the MCAD found no probable cause for Dalrymple's subsequent retaliation claim since the in-rank seniority policy was in place since 2005, but again the MCAD was just factually incorrect. (Investigator's Dismissal at 4 n.6.) Moreover, a Lack of Probable Cause Finding by MCAD is "not a final order

Officer Dalrymple grieved that change to the shift bidding seniority calculation methodology on June 12, 2014. (Dalrymple Grievance, June 12, 2014.) The Town denied her grievance, and Officer Romeo as union president demanded arbitration in November 2014. (Investigator's Dismissal at 4.) However, Officer Romeo was placed on administrative leave in December 2014 and then terminated in January 2015, before the grievance was actually arbitrated. (Investigator's Dismissal at 4.) After Officer Romeo was terminated, officers who were friendly to the Chief took control of the Union and withdrew the grievance, and as such, the issue was never resolved. (Investigator's Dismissal at 4.) Thereafter, the in-rank seniority issue ceased to be an issue, because as Officer Dalrymple explained, personnel changes and reassignments caused there to no longer be a difference between the officers who had the highest seniority in the Police Department and the officers who had the highest in-rank seniority." (Investigator's Dismissal at 4 n.8.)

It was not until Officer Romeo was promoted to sergeant that the Chief once again used in-rank seniority to deny a more desirable shift to an officer with greater seniority within the department than his in-rank peers. (Investigator's Dismissal at 4.) Indeed, Officer Romeo had

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issued by the full commission in an adjudicatory proceeding." See Zannerini v. Massachusetts Commission Against Discrimination, 74 Mass. App. Ct. 1119, at *2 (2009). Indeed, G.L. c. 151B, § 9 permits individuals who have received a Lack of Probable Cause finding to file an independent claim in Massachusetts Superior Court. See id. Furthermore, courts address such complaints de novo, and as the First Circuit has explained, the probative force of findings by the administrative agencies that investigate complaints related to discrimination "varies considerably" from case to case. See Hilton v. Wyman-Gordon Co., 624 F.2d 379, 383 (1st Cir. 1980). Officer Dalrymple explained during the In-Person Investigation in this case that she chose not to pursue her MCAD claim in court because by that point, she had been placed in a different shift, and she was nearing retirement age. Tellingly, Officer Dalrymple had actually filed an MCAD charge in the late 90s, received a Lack of Probable Cause finding, and nevertheless prevailed in superior court and then in a reported Appeals Court decision. See Dalrymple v. Town of Winthrop, 50 Mass. App. Ct. 611, 612-22 (2000). As such, the MCAD finding in this instance cannot be treated as dispositive.

At the very least, this question is one of fact that must be resolved at a hearing.

more seniority within the Department than other sergeants, but he was nevertheless at the bottom of in-rank seniority and was assigned to the night shift as a result. (Investigator's Dismissal at 5.)

Further demonstrating the fact that the use of in-rank seniority violated the operative collective bargaining agreement, the Town then proposed a Memorandum of Agreement adopting in-rank seniority for shift bidding, and the Union (still controlled by officers friendly to the Chief) agreed. (Memorandum of Agreement ¶ 5, Exhibit E.)

III. ARGUMENT

The Investigator incorrectly concluded that Officer Romeo failed to demonstrate probable cause that (1) the Town took an adverse action against Officer Romeo when it forced him to take the night shift; and (2) the Town was motivated by unlawful retaliatory animus when it used a seniority system for the purposes of shift bidding that violated the collective bargaining agreement. The DLR is empowered to dismiss a charge of prohibited practice on a finding that there is no probable cause to believe that a violation of the law occurred. See Quincy City Hosp. v. Labor Relations Com'n, 400 Mass. 745, 748 (1987). The phrase "probable cause" 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 Com'n, 54 Mass. App. Ct. 1114, at *2 n.3 (2002) (internal citations omitted). The probable cause standard is a relatively modest burden, where the DLR need only determine "that there is probable cause to believe the conduct **could** violate the law." See 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) (emphasis added). Furthermore, it is not the Investigator's role to make "a prejudgment of the merits." Id. (citing

School Committee of Stoughton v. Labor Relations Comm'n, 4 Mass. App. Ct. 262, 272-73 (1976); additional citations omitted).

To establish a prima facie case of retaliation, the 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 (Jan. 9, 2009); Town of Carver, 35 MLC 29, 47, MUP-03-3094 (June 30, 2008); City of Boston, 35 MLC 289, 291, MUP-04- 4077 (May 20, 2009); Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (Nov. 9, 1985).

Only the third and fourth elements are at issue, and Officer Romeo will address each in turn.

A. The Town Took and Adverse Action Against Officer Romeo

The Investigator erred by concluding that Officer Romeo's assignment to the night shift was an adverse employment action. Despite conceding that the night shift was less desirable for Officer Romeo, the Investigator somehow also faulted Officer Romeo for not providing evidence that "Romeo's new shift was a less preferable shift." (Investigator's Dismissal at 7.) Officer Romeo explained that the night shift was less preferable to him, and the very fact that it was the shift that resulted from his low in-rank seniority demonstrates that it was less preferable to the other sergeant's as well.

An "adverse employment action" is some personnel action by the employer that materially disadvantages an employee in some way. City of Holyoke, 35 MLC 153, 156, MUP054503 (CERB Jan. 9, 2009). The Investigator appears to believe that unless Officer

Romeo could show that he received a lower salary or less overtime as the result of taking the nightshift, then his assignment to the nightshift cannot comprise an adverse employment action. (Investigator's Dismissal at 7.) The Investigator relied on In re Board of Higher Education, 43 MLC 148, 2016 WL 7094056, at *11 (CERB Nov. 30, 2016), but that case is easily distinguishable. There is an obvious and common sense difference between being put on the night shift, as was the case here, and simply not getting to teach a preferred course schedule, as was the case in Board of Higher Education. See id. Indeed, placement on the night shift inherently materially disadvantages an employee because it impacts sleep, family life, and even safety.

Under analogous retaliation provisions of discrimination statutes, courts around the country have held that an employee's transfer to the night shift can constitute an adverse employment action. As the Sixth Circuit explained in the context of Title VII, "inconvenience from a less favorable schedule can render an employment action 'adverse' even if the employee's responsibilities and wages are left unchanged.'" Ginger v. District Columbia, 527 F.3d 1340, 1344 (D.C. Cir. 2008). "A shift assignment that makes normal life difficult for an employee may constitute an adverse employment action." Tanaka v. Department Accounting and General Services, 2011 WL 1598718, at *6 (D. Hawaii April 27, 2011) (internal citations omitted). Indeed, the court in Freedman v. MCI Telecommunications Corp., 2255 F.3d 840, (D.C. Cir. 2001), explained that "[i]t is hard to say that transfer to the night shift would not constitute such a change, at least in conditions or privileges" that would render such a transfer an adverse employment action.

For example, in Ginger the Sixth Circuit held that switching police officers from a permanent night shift to a rotating shift was an adverse employment action because it "severely

affected their sleep schedules and made it more difficult for them to work overtime and part-time day jobs." Ginger, 527 F.3d at 1344. Similarly, in Spees v. James Marine, Inc., 617 F.3d 380, 392 (6th Cir. 2010), the court held that assignment to the night shift was an adverse employment action despite the fact that the employee testified only briefly that she was not happy with it because of how it affected her family. Numerous other courts have similarly held that a switch to an undesirable schedule can constitute an "adverse employment action" in support of a retaliation claim. See, e.g., Mondzelewski v. Pathmark Stores, Inc., 162 F.3d 778, 788 (3d Cir. 1998) ("Assigning an employee to undesirable schedule can be more than a 'trivial' or minor change in the employee's working conditions.'"); Hamilton v. Rogers, 791 F.2d 439, 441 (5th Cir. 1986) (holding that evidence was sufficient to uphold a claim of Title VII retaliation based on retaliatory assignment to the night shift); Isley v. Aker Philadelphia Shipyard, Inc., 191 F. Supp. 3d 466, 472 (E.D. Pa. June 9, 2016) (finding a plaintiff had established a prima facie case of retaliation under Title VII where his transfer to the night shift shortly after he made complaints was a retaliatory adverse action); Khan v. Cook County, 1996 WL 432410, at *2 (N.D. Ill. July 30, 1996) (considering "whether a change to the night shift is a minor or material change in working conditions" such that it could constitute retaliation under the Americans with Disabilities Act ("ADA") and holding that it could be a material change); Maddox v. County of San Mateo, 746 F. Supp. 947, 953 (N.D. Cal. 1990) (where a plaintiff alleged retaliation under Title VII and California Fair Employment and Housing Act ("FEHA") based in part on the employer's refusal to transfer the plaintiff from the graveyard shift, the refusal was treated as an adverse action).

Furthermore the DLR has routinely found that even minor retaliatory changes in schedule constitute adverse employment actions. See, e.g., In the Matter of Com., of Massachusetts,

Secretary of Administration and Finance, SUP-10-5606, 2014 WL 3347900, at *18 (Davis, Hearing Officer June 3, 2014) (rejecting the Commonwealth's argument that a threat to alter the employee's work schedule was not an adverse action, "because it changed [the employee's] work hours to 8:00 a.m. to 4:30 p.m., and prior to that date, he had regularly worked from 7:30 a.m. – 4:00 p.m."), reversed on other grounds in In the Matter of Com., of Massachusetts, Secretary of Administration and Finance, 2015 WL 4709537, at *3-7 (CERB July 31, 2015); In the Matter of Southbridge School Committee, MUP-06-4762, MUP-07-5010, 2014 WL 495238, at *18 (Hatfield, Hearing Officer Jan. 31, 2014) (Under the adverse action standard . . . , changing [the employee's] class schedule and placing her on paid administrative leave constitute adverse actions.").

Here, as a matter of common sense, placement on the night shift **does** affect Officer Romeo's family life as well as the ability to work overtime details. Although the parties did not delve in great detail to the impact the night shift has had on Officer Romeo during the In-person Investigation (as Investigator Sorokoff's questioning focused on other aspects of the alleged retaliation), the impact would be further developed in a hearing. Officer Romeo's entire sleep schedule has been flipped, which unavoidably impacts his relationship with his wife. Moreover, most overtime details are scheduled for day shifts. If Officer Romeo were to work those daytime details, his sleep would be even more significantly impacted than it already has been by simple virtue of being switched to the night shift. Investigator Sorokoff once again treated the In-person Investigation as if its goal were to make a determination on the merits, deciding a disputed question of fact on the merits – whether or not the night shift materially disadvantaged Officer

Romeo – as if it the case was at the hearing stage.[12] Her conclusion should be reversed so that the materiality of the change to Officer Romeo's can be fully fleshed out through his testimony in a hearing.

B. The Town was Motivated by Retaliatory Animus

The second element at issue here is whether the Town's action was motivated by a desire to penalize or discourage the protected activity. Crucially, as many Massachusetts courts and courts around the country have observed, the question of retaliatory motive is fact-intensive and rarely appropriate for disposition absent an evidentiary hearing or trial. See, e.g., Blare, 419 Mass. at 439 ("The ultimate question of the defendants' state of mind is elusive and rarely established by other than circumstantial evidence . . . which requires the jury to weight the credibility of conflicting explanations of the adverse . . . decision."); Walsh v. City of Worcester, 89 Mass. App. Ct. 1128, at *3 (2016) ("A claim of pretext or retaliation is a fact intensive one."); Santiago-Ramos v. Centennial P.R. Wireless Corp., 217 F.3d 46, (1st Cir. 2000) ("[C]ourts should exercise particular caution before granting summary judgment for employers on such issues as pretext, motive and intent"); Wright v. Murray Guard, Inc., 455 F.3d 702, (6th Cir. 2006) ("Inquiries regarding what actually motivated an employer's decision are very fact intensive and thus will generally be difficult to determine at the summary judgment stage."); Singfield v. Akron Metro Hous. Auth., 389 F.3d 555, 564 (6th Cir. 2004) (explaining that "in discrimination and retaliation cases, an employer's true motivations are particularly difficult to ascertain, . . . thereby frequently making such factual determinations unsuitable for disposition at the summary judgment stage.").

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[12] The Investigator also relied on City of Boston, 35 MLC 289, 291 (May 20, 2009), but in that case, the "adverse action" was merely an added responsibility for a Boston Public Library employee to oversee couriers as they counted cash to be taken to the bank – hardly even an inconvenience.

As the Investigator correctly acknowledged, retaliatory motive can be established either through direct evidence, circumstantial evidence, and reasonable inferences drawn from that evidence. (Investigators Dismissal at 8.) Additionally, "several factors may suggest unlawful motivation, such as: timing of the alleged discriminatory act in relation to the protected activity, triviality of reasons given the by employer, disparate treatment, an employer's deviations from past practices, or expressions of animus or hostility toward a union or protected activity." Town of Blackstone, 46 MLC 109, 118, MUP-17-5940 (Nov. 25, 2019).[13]

Despite the fact that an employer's retaliatory motive is a fact-intensive question that generally cannot be determined without an evidentiary hearing (see *supra* at 20-21), the Investigator took it upon herself to do just that without the benefit of any testimony under oath and without any opportunity for cross-examination. The Investigator accepted the Town's explanation for its conduct at face value despite the ample background evidence that could lead to a plausible inference that the Town used the in-shift seniority to punish Officer Romeo and saddle him with the night shift.

Since his termination on January 9, 2015, Officer Romeo and the Town have been

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[13] As the Investigator noted, in a case where a charging party relies on circumstantial evidence, the CERB uses a tri-partite analysis:

> Under this analysis, once the charging party establishes a prima facie case, the employer may rebut it by producing evidence that a legitimate reason motivated the adverse action. If an employer produces evidence of a legitimate, non-discriminatory reason for taking the adverse action, the case becomes one of "mixed motives." The CERB then considers whether the employer would have taken the adverse action but for the employee's protected activity. Suffolk County Sheriff's Department, 27 MLC 155, 160, MUP-1498 (June 4, 2001); Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000). The charging party bears the burden of proving that, but for the protected activity, the employer would not have taken the adverse action. Athol-Royalston Regional School Committee, 28 MLC 204, 214, MUP-2279 (January 14, 2002); Town of Athol, 25 MLC 208, 211, MUP-1448 (June 6, 1999).

(Investigator's Dismissal at 6.)

engaged in an unrelenting battle consisting of union arbitration, litigation before the superior and the Massachusetts Appeals Court (and several different cases no less), and charges before the DLR. Even when Officer Romeo prevailed at his arbitration in February 2016, the Town did not reinstate him but instead sought to have the Arbitration Award vacated. Even when Officer Romeo (through the Union) prevailed at the Massachusetts Appeals Court confirming the Arbitration Award in May 2018, the Town resisted reinstating Officer Romeo to his job until September 2018. Even when Officer Romeo prevailed at his remedy arbitration and the Town initially agreed to an amount to pay him in January 2019, the Town reneged on its agreement and refused to pay him until July 2019 after Officer Romeo and the Union had filed a lawsuit in Suffolk Superior Court and the Union filed yet another charge of prohibited practice with the DLR. The Town did not promote Officer Romeo until it had no choice to do so in December 2019, because refusing to do so would have been extremely obvious retaliation. The upshot here is that the Town has taken every opportunity to punish Officer Romeo for his union activity, and the Town's insistence on using in-rank seniority for purposes of shift-bidding – even though it violated the collective bargaining agreement – fits that pattern. At the very least, this acrimonious relationship suffices to demonstrate that the Town could have violated the Law and that a hearing is appropriate. Only after the parties have put on witnesses, with the opportunity for cross-examination, can the true motivation for the Town's conduct be sussed out.

Echoing her approach when she wrongfully dismissed Charge MUP-19-7261, which the CERB recently reversed, the Investigator once again bent over backwards to explain these facts away. The Investigator argues that the Town used the same seniority formula it has used since 2014 in its December 2019 shift bidding process. (Investigator's Dismissal at 8.) Of course the Investigator has chosen to ignore the fact that the Chief implemented the in-rank seniority

method for shift bidding in 2014 (departing from past practice and in violation of the collective bargaining agreement) in order to retaliate against Officer Dalrymple for her litigation before MCAD that resulted in an order for the Town to promote her to sergeant. When Officer Romeo helped Officer Dalrymple challenge this retaliation by taking it to arbitration, the Town fired Officer Romeo. With Officer Romeo out of the way, the arbitration was withdrawn. After hard-fought litigation in a union arbitration and in court, Officer Romeo was reinstated in 2018. In order to avoid the further appearance of unlawful retaliation (since Officer Romeo was first on the Sergeants promotional list), the Town promoted him but then used the in-rank seniority method to ensure that Officer Romeo was assigned to the night shift.[14] Officer Romeo's promotion was the first time that in-rank seniority actually had an impact since Dalrymple grieved it in 2014, because between 2015 and 2019, departmental seniority was aligned with in-rank seniority in the Department. Furthermore, the Town implicitly admitted that the in-rank seniority method of shift bidding violated the operative collecting bargaining agreement, by proposing an amendment to the agreement soon after Officer Romeo filed this Charge. The Investigator's assertion that "Romeo did not present any evidence that the Town expressed any animus or hostility toward the Union or Romeo's protected activity" is thus laughable. (Investigator's Dismissal at 8.) Any reasonable finder of fact could conclude that the Town's actions reflected unlawful animus because of Officer Romeo's protected activity.

The Investigator acknowledges that Officer Romeo has engaged in "a lot of protected activity" but asserts that the Town's retaliation was not close in time to the protected activity. (Investigator's Dismissal at 8.) Officer Romeo was only permitted to take the assessment center

[14] The Investigator's statement that in-rank seniority was applied to all sergeants misses the point. (Investigator's Dismissal at 8.) The Town knew that by using that method, it would specifically disadvantage Officer Romeo, as he was a new sergeant.

examination for promotion to sergeant because he was reinstated as a result of a union arbitration and obtained an order to be permitted to take the examination from the arbitrator – even then he was not provided the study materials for the assessment center within the normal time window. When the Town finally promoted him on December 8, 2018 (again because it had little other choice), the Town announced a mere ten (10) days later that it would use the in-rank seniority method for shift bidding, which would result in Officer Romeo's being assigned to the night shift. The promotion was the result of his protected activity, and the Town retaliated ten (10) days later.

Finally, the Investigator credited the Town's so-called "legitimate reasons" for its use of in-rank seniority. The Investigator points to the fact that the Union opted not to arbitrate the policy when it was implemented in 2014, **but that happened purely because the Town terminated Officer Romeo in order to ensure that he could no longer, as president of the Union, advocate for Officers Dalrymple and Racow.** The Town fired him to ensure that he could not advance their arbitrations, including the arbitration challenging the in-rank seniority method of shift bidding, and the strategy succeeded. As such, the Town then wielded the same retaliatory method of shift bidding when Officer Romeo was later promoted. To say that the Town was simply sticking to its policy is under such circumstances is utterly disingenuous.

The Investigator wrongly pre-judged the merits on these fact-intensive questions without any benefit of testimony under oath or cross-examination, and therefore the dismissal was improper.

IV. Conclusion

For the reasons mentioned above, the Commonwealth Employment Relations Board should reverse the dismissal of the Charge and direct the DLR to issue a Complaint.

Respectfully submitted,

Ferruccio Romeo,
Charging Party,
by his counsel,

Harold L. Lichten, BBO # 549689
Thomas P. Fowler, BBO # 688521
Lichten & Liss-Riordan, P.C.
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Boston, MA 02116
(617)994-5800
hlichten@llrlaw.com
tfowler@llrlaw.com

Dated: October 28, 2020

CERTIFICATE OF SERVICE

A copy of the foregoing document has been sent via electronic mail, this 28th day of October, 2020 to counsel for the Town of Winthrop Howard Greenspan, Esq.

Thomas P. Fowler, Esq.

Exhibit A

Winthrop Police Union
MCOP Local 421
AFL-CIO

Ferruccio Romeo, President
Stephen Acone, Vice-President
Guilio Bonavita, Secretary/Treasurer
Mary Crisafi, E-Board
617-846-1212

Winthrop Police Department
3 Metcalf Sq.
Winthrop, MA 02152

AGREEMENT

WINTHROP POLICE UNION

M.C.O.P. LOCAL 421 AFL-CIO

AND

TOWN OF WINTHROP

JULY 1, 2011 – JUNE 30, 2014

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ARTICLE XXXII
COURT TIME

Any officer who goes to court before or after his/her regular shift or on a day off, shall be paid a minimal amount equal to four (4) hours. The officer shall be paid the regular rate of pay for the court time when she/he is on his/her regular tour of duty. Any officer who is requested to appear in court other than on his/her regular tour of duty shall be compensated at the rate of one and one-half (1-1/2) times the regular rate.

ARTICLE XXXIII
SENIORITY

Seniority is defined as the length of continuous full-time employment in the Winthrop Police Department.

The Employer recognizes the principle of seniority in layoffs due to lack of work, provided that 'the senior employee is available and qualified to do the remaining work.

The Employer, in recognition of seniority, shall allow an employee to bid for a vacancy on a different work shift which is caused by death or retirement as long as it is of comparable duty and rank and does not involve a specialty.

That the seniority provisions of the contract relative only to job bidding for vacancies on a different work shift? would provide a clause that would allow aggrieved members of the Bargaining unit to appeal any seniority decision made by the Chief of Police to the Town Manager, the Town Manager's decision shall be final and binding on both parties. Seniority shall be broken by:

A) Resignation.

(B) Layoff due to lack of work for a period of sixty (60) days.

(C) Discharge for just cause.

ARTICLE XXXIV
EDUCATIONAL BENEFITS

The Employer agrees to compensate each employee Fifty Dollars ($50.00) per year for each three (3) credits an employee earns towards an Associates Degree or a Bachelors Degree in law enforcement at an accredited university.

Exhibit B

MCOP Local 430

Memorandum of Agreement

Between

Town of Winthrop

And

Winthrop Superior Police Officers Union, MCOP Local 430

The Town of Winthrop and the Winthrop Superior Police Officers Union, MCOP Local 430, hereby agree except as indicated herein the agreement between the parties effective July 1, 2017 through June 30, 2018 will continue full force and effect.

1. **Salaries**

   July 1, 2018 1.5%

2. The Town will undertake a compensation and reclassification study prior to the beginning of contract negotiations for the successor agreement effective July 1, 2019. The cost will be conducted at the Town's expense.

3. **Wages**

   If any other union receives a greater accumulative cost of living raise on the wage scale the same increase would be applied for this union.

Town of Winthrop

Lt David E. [illegible] A-3
Winthrop Superior Police Officers Union, MCOP Local 430

Date: 05/13/19

Date: 5-10-19

Any officer who goes to court before or after his/her regular shift or on a day off, shall be paid a minimum amount equal to four (4) hours. The officer shall be paid the regular rate of pay for the court time when she/he is on his/her regular tour of duty. Any officer who is requested to appear in court other than on his/her regular tour of duty shall be compensated at the rate of one and one-half (1-1/2) times the regular rate.

ARTICLE XXXII
SENIORITY

Section 1. The Seniority of Lieutenants shall date from the time of their promotion to such rank. Employees in the same rank promoted on the same date shall their relative seniority determined on the bases of the grade they receive on the Civil Service examination for that rank, broken down to the smallest possible percentage. If the grade of two or more employees is the same, the date of their application for their respective examinations shall govern.

Section 2. Unless otherwise stated, length of service for all other purposes shall be calculated in accordance with the provisions of M. G. L. Chapter 31, Section 33.

Section 3. Employees taking a leave of absence of more than six (6) months shall have the aggregate seniority reduced by said period of absence.

ARTICLE XXXIII
EDUCATIONAL BENEFITS

The Employer agrees to compensate each employee Fifty Dollars ($50.00) per year for each three (3) credits an employee earns towards an Associates Degree or a Bachelors Degree in law enforcement at an accredited university.

The employee will earn these credits on his/her own time and the Employer shall not be responsible for the employee's tuition.

ARTICLE XXXIV
DISCIPLINARY ACTION

Section 1: Employees who have completed their probationary period of twelve (12) months shall not be disciplined or discharged except for just cause. The probationary period shall commence upon the graduation from the Police Academy.

Exhibit C

Email Report Printed: 11/19/2009 @ 0947

Sent : 05/22/2007 @ 1124 By: Sergeant Stephen P Rogers 581
Subject: SHIFT BIDDING FOR 2007-20

TO: All Officers

FROM: Sgt. Rogers

RE: Shift Bidding for 2007-2008

Shift bidding will run from Monday May 21, 2007 to Monday May 28, 2007 at 4pm.

In order to expediate the process it would be great if every officer according to seniority picks their shift as soon as possible. As of this e-mail two people have picked already.

This would make the process go quickly and be done well before Monday May 28, 2007. However understanding this goal may not come to fruition due to certain inevitable obstacles all officers who have not picked a shift by Monday May 28, 2007 at 4pm will be contacted in order of seniority to pick the shift they would like.

The calling process will follow the detail assignment guidelines. If you have not picked by Monday May 28, 2007 at 4pm please make yourself available in person, by phone, or email me your preferences in order to me by that date. If someone cannot be contacted the pick will move to the next person on the seniority list and so on.

I'm hoping we can all work together and the process will be well done before Monday May 28, 2007 at 4pm.

Thanks,

Sgt. Rogers

PS Group 1 PM's I look forward to working with you all again on every single holiday for 2007-2008.

Email Report Printed: 11/19/2009 @ 0956

Sent : 10/31/2007 @ 1942 By: Chief Terence M Delehanty
Subject: SHIFT BIDDING

TO: All Officers

FROM: Assistant Chief Terence Delehanty

RE: Shift-Bidding for January 2008

DATE: October 31, 2007

Shift-Bidding will be conducted commencing Monday November 2, 2007 and is to be completed by Monday November 19, 2007 @ 1600 hrs.

All Officers are asked to pick their assignment in order of Seniority. Please pick your selection and place your name next to it when your name appears next on the Seniority List. All Officers should make themselves available in person, by telephone or pager. Officers, who believe they may not be available, email your preferences (at least 3 in order of preference) to Sgt. Rogers prior to becoming unavailable.

If you are not available and you do not make your preferences known in advance, you will be skipped and be given your choice of whatever option(s) remain. Officers will be contacted in order of Seniority to ensure the time guidelines referenced above are strictly adhered to.

The process should be completed well before the completion date if everyone picks when their turn comes up.

For as long as this Agreement remains in effect, the new schedules will commence with Group1 in the first Sunday in July and January of each fiscal year. Shift-Bidding will commence on the first Sunday in May and end on the third Sunday in May for the July Schedule. Shift-Bidding will commence on the first Sunday in November and end on the third Sunday in November for the January Schedule.

Sgt. Rogers has been assigned to oversee the Bidding process. Please contact him with any questions. Any issues that you believe may be contractual please consult with your Union President.

Email Report Printed: 11/19/2009 @ 1009

Sent : 04/24/2008 @ 1700 By: Chief Terence M Delehanty
Subject: SHIFT BIDDING

TO: All Officers

FROM: Assistant Chief Terence Delehanty

RE: Shift-Bidding for July 2008

DATE: April 24, 2008

Shift-Bidding will be conducted commencing Sunday May 4th, 2007 and will be completed by Sunday May 18th, 2008 @ 1600 hrs.

All Officers are asked to pick their assignment in order of Seniority. Please pick your selection and place your name next to it when your name appears next on the Seniority List. All Officers should make themselves available in person, by telephone or pager. Officers, who believe they may not be available, email your preferences (at least 3 in order of preference) to Sgt. Rogers prior to becoming unavailable.

If you are not available and you do not make your preferences known in advance, you will be skipped and be given your choice of whatever option(s) remain. Officers will be contacted in order of Seniority to ensure the time guidelines referenced above are strictly adhered to.

The process should be completed well before the completion date if everyone picks when their turn comes up.

For as long as this Agreement remains in effect, the new schedules will commence with Group1 beginning their work schedule on the first Sunday in July and January of each fiscal year. Shift-Bidding will commence on the first Sunday in May and end on the third Sunday in May for the July Schedule. Shift-Bidding will commence on the first Sunday in November and end on the third Sunday in November for the January Schedule.

If there are any questions or concerns please see your supervisor(s), who will either provide the answer or get the answer for you. Any issues that you believe may be contractual please consult with your Union President.

Email Report Printed: 11/19/2009 @ 1054

Sent : 05/24/2009 @ 1914 By: Sergeant Stephen P Rogers 581
Subject: SHIFT BIDDING

MEMO

TO: All Officers
FROM: Sergeant Stephen Rogers
DATE: Sunday May 24, 2009

SUBJECT: Shift Bidding for July 2009

Below is the procedure for the July 2009 shift bid:

¢ Shift bidding will run from Monday May 25, 2009 to Monday June 1, 2009 at 4pm.

¢ The Shifts will commence with the AM shift due in on Saturday July 4, 2009 at 10pm. The Day and PM shifts will begin on Sunday July 5, 2009. (This is the first Sunday of July as previously agreed to.)

¢ In order to expedite the process it would be great if every officer according to seniority picks their shift as soon as possible, this would make the process go quickly and be done well before Monday June 1, 2009. However understanding this goal may not come to fruition due to certain inevitable obstacles all officers who have not picked a shift by Monday June 1, 2009 at 4pm will be contacted in order of seniority to pick the shift they would like.

¢ The calling process will follow the detail assignment guidelines. If you have not picked by Monday June 1, 2009 at 4pm please make yourself available in person, by phone, or email so we have your preference by that date. If someone cannot be contacted the pick will move to the next person on the seniority list and so on.

¢ I'm hoping we can all work together and the process will be done well before Monday June 1, 2009 at 4pm.

¢ Please be advised I have been the supervisor assigned to manage the shift bidding process for this bid. Any questions regarding confusion in the process please contact me and I will assist you. Any issue which is contractual please see your union president.

¢ Please note the Employer retains all rights and powers that they have or may hereafter be granted by law in managing the Police Department and directing the working force and may exercise same without being made the subject of a grievance except as expressly provided within the collective bargaining agreement itself. The above shift bidding policy is solely and exclusively the prerogative of the Employer and only subject to the limitations that are expressively provided for in the collective bargaining agreement.

Exhibit D

Town of Winthrop

Police Department
Chief Terence Delehanty

GENERAL ORDER 19-09

TO: SERGEANTS
FROM: DEPUTY CHIEF GOODWIN
DATE: 12/18/2019
RE: SHIFT BIDS

- Sergeants shift bidding will start on Wednesday December 18, 2019 at 4PM and conclude on Thursday December 26, 2019 at 4PM.
- All Sergeants not assigned to a special assignment shall bid their shift according to in rank seniority. If all Sergeants have not picked by Thursday December 26, 2019 at 4PM the Sergeant next to pick who has failed to pick will be skipped and the next senior Sergeant will have 5 minutes to pick and the process will continue until all remaining available shifts are selected. Any Sergeant failing to bid a shift by the given deadline 4PM Thursday December 26, 2019 causing a delay in the process will be assigned by the administration.
- If you are unable to physically be at the station during the allotted 8 days for bidding send an email to Deputy Chief Goodwin.
- Any questions regarding the defined bidding process contact Deputy Goodwin. Any issue perceived to be related to the Collective Bargaining Agreement please see your Union President.
- The Chief retains all right of assignment defined in Article V of the Collective Bargaining Agreement

The transition date will be announced after Bids are received

RESTRICTED FOR LAW ENFORCEMENT USE ONLY: NOT FOR PUBLIC DISSEMINATION

Winthrop Police Department

Sgt's / Supervisor Shift Bid December 18, 2019

AM Shift

Group 1	Group2

DAY Shift

PM Shift

#1 SGT. HICKEY

#2 SGT. GERGERIAN

#3 SGT. CALLINAN

Exhibit E

Memorandum of Agreement
between
Town of Winthrop
and
Winthrop Police Union MCOP Local 421, AFL-CIO

This Agreement is between the Town of Winthrop (the "Town") and the Winthrop Police Union MCOP Local 421, AFL-CIO (the "Union"). Except as indicated herein, the collective bargaining agreement ("CBA") between the Town and the Union (collectively, the "Parties") effective July 1, 2017 through June 30, 2018 shall continue in full force and effect.

1. Duration

   Amend the parties' CBA to reflect a duration of July 1, 2018 – June 30, 2019.

2. Article XIX – Salaries and Hours

   Effective July 1, 2018, there shall be a wage increase of one and one-half percent (1.5%).

   Retroactive payment shall only be made to individuals who are members of the unit or otherwise employed by the Town as of the time of ratification of this Agreement.

3. Article XXI – Longevity

   The Parties agree to an increase in longevity payments of one-half percent (0.5%). Effective July 1, 2018, the annual longevity payments made to qualified employees who have worked the required number of years as of July 1 of the fiscal year in which the payment is made shall be:

5 years of service as of July 1	1.0% of base
10 years of service as of July 1	1.5% of base
15 years of service as of July 1	1.7% of base
20 years of service as of July 1	1.9% of base
25 years of service as of July 1	3.5% of base

   Retroactive payment shall only be made to individuals who are members of the unit or otherwise employed by the Town as of the time of ratification of this Agreement.

4. Article XXIV – Extra Paid Details

   The hourly detail rate shall be fifty-five dollars ($55.00) for all details, whether Town details or private details. The Parties agree that the new detail rate shall not apply retroactively to details already worked by employees prior to the execution of this Agreement. New detail rates shall go into effect ~~30 days after execution of this~~ Immediately upon ratification Agreement. MC

5. Article XXXIII – Seniority

The Parties agree to delete the language in Article XXXIII in its entirety and replace it with the following:

> Seniority is defined as the length of continuous full-time employment in the Winthrop Police Department. The employer recognizes the principle of seniority in layoffs, provided that the senior employee is available and qualified to do the remaining work consistent with Chapter 31 of the Massachusetts General Laws.
>
> Seniority for purposes other than layoffs shall be determined first by rank, second by continuous service in the rank. The employer in recognition of seniority shall allow an employee to bid for a vacancy on a different work shift which is caused by death or retirement as long as it is of comparable duty and rank and does not involve a specialty. In matters relative to vacancies or other contractual provisions, aggrieved members of the bargaining unit may appeal any seniority decisions made by the Chief of Police to the Town Manager; however, the Town Manager's decision shall be binding on both parties.
>
> Seniority shall be broken by: a) resignation; b) layoff due to lack of work for a period of 60 days or more; or c) discharge for just cause.

6. Article XXXIV – Educational Benefits

The Parties agree that bargaining unit members currently employed by the Town who have not yet acquired their degree as outlined in Article XXXIV of the CBA shall receive an additional twenty-four (24) months in which to do so. This extension shall not apply to any new employees hired by the Town after the execution of this Agreement by the Parties.

This Memorandum of Agreement is subject to ratification by the Union membership, approval by the Town Manager and funding by the Town Council.

Agreed to by the Parties on the dates indicated below:

TOWN OF WINTHROP

By: _____
Name: AUSTIN CASSIDY
Title: TOWN MANAGER
Date: 05/28/20

WINTHROP POLICE UNION
MCOP LOCAL 421, AFL-CIO

By: _____
Name: Michael Connolly
Title: Union President
Date: 05/29/20

Exhibit F

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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CHARLES D. BAKER
GOVERNOR
KARYN E. POLITO
LIEUTENANT GOVERNOR
PHILIP T. ROBERTS
DIRECTOR

COMMONWEALTH EMPLOYMENT RELATIONS BOARD
MARJORIE F. WITTNER
CHAIR
JOAN ACKERSTEIN
BOARD MEMBER
KELLY STRONG
BOARD MEMBER

July 27, 2020

Thomas Fowler, Esq.
Lichten and Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116

Ferruccio Romeo
[redacted]
Saugus, MA 01906

Howard Greenspan, Esq.
220 Broadway, Suite 304
Lynnfield, MA 01940
Saugus, MA 01906

Re: MUP-14-4210, MUP-15-4652, Town of Winthrop and Ferruccio Romeo

Dear Mr. Fowler, Mr. Romeo and Mr. Greenspan:

On July 9, 2020, the Department of Labor Relations (DLR) consolidated the above referenced charges of prohibited practice for the Commonwealth Employment Relations Board's (CERB) review. For the reasons set forth below, the CERB finds probable cause to believe that the Town of Winthrop (Town) violated Section 10(a)(3), and, derivatively, Section 10(a)(1) of M.G.L. c. 150E when it placed Ferrucio Romeo (Romeo) on administrative leave in 2014 and terminated him in 2015. The CERB therefore reverses the dismissal of MUP-14-4210 and remands both matters to the DLR to issue a complaint consistent with this ruling.

Background

Romeo has been a police officer with the Town's Police Department for over twenty years. From December 2004 until February 2015, Romeo also served as the president of Winthrop Police, MCOP, Local 421, AFL-CIO (Union).

These charges concern the events leading up to Romeo's termination in January 2015. In or around September 2014, Romeo filed a grievance on behalf of a bargaining

unit member and posted documents related to that grievance on a bulletin board at the police station where he worked. On September 12, 2014, Romeo refused requests by the Town's human resource director and police chief to remove the posted documents.

On November 24, 2014, Romeo was assigned to a 7:00 a.m. to 3:00 p.m. detail with the Department of Conservation at a local pump station. That same day, from 10:00 a.m. to 3:00 p.m., Romeo attended a bargaining mediation session at Winthrop Town Hall. On December 1, 2014, the Town placed Romeo on administrative leave pending an investigation into his submitting a detail pay slip for the November 24th pump detail while attending the mediation session. Another employee also attended the mediation while working a detail but did not submit a pay slip.

On December 12, 2014, Romeo, on behalf of the Union, and in his capacity as Union president, filed Case No. MUP-14-4210 with the DLR alleging that the Town had engaged in prohibited practices within the meaning of Sections 10(a)(1), 10(a)(2), 10(a)(3) and 10(a)(4) when it placed him on paid administrative leave.

Around December 18, 2014, the Town held a disciplinary hearing regarding the charges against Romeo. On January 9, 2015, the Town terminated Romeo for: 1) falsifying a detail slip, 2) lying during an investigation; and 3) violating various department rules and regulations.

On January 14, 2015, a DLR Investigator conducted an in-person investigation of MUP-14-4210.[1] The investigation record, including the dismissal letter, reflects that both parties had the opportunity to present evidence and make arguments regarding Romeo's termination at the investigation. On March 5, 2015, the DLR Investigator dismissed MUP-14-4210 on grounds that Romeo had not established that the termination was unlawfully motivated.[2] The Investigator focused on Romeo's claim that he had been treated

[1] Romeo, who is also an attorney, appeared on behalf of the Union during the investigation. He did not retain counsel until MUP-14-4210 was dismissed.

[2] Without additional discussion, the Investigator noted that he dismissed the Section 10(a)(4) allegation under the same analysis that he used with the Section 10(a)(3) allegation. In a separate discussion, the Investigator dismissed the Section 10(a)(2) allegation for lack of probable cause to believe that the Town had dominated, interfered, or assisted in the formation, existence or administration of the Union. He also separately analyzed and dismissed the independent Section 10(a)(1) allegations pertaining to the Town's order that Romeo remove the grievance response from the bulletin board and to the termination. In his Request for Review, Romeo did not make any arguments concerning the dismissal of the Section 10(a)(4), 10(a)(2) or independent Section 10(a)(1) allegations. Instead, he repeatedly argued that the only "reasonable," or "plausible" explanation for his termination was his recent Union activity, i.e., supporting the grievances of the two female police officers and refusing to remove grievance-related correspondence from the Union bulletin board. We treat these arguments as seeking

differently than another bargaining unit member who attended the same mediation while also being assigned to a detail. The Investigator dismissed the charge based on his finding that this officer was not similarly situated to Romeo because he did not submit a detail pay slip for the day.

On March 16, 2015, Romeo filed a Request for Review of the dismissal with the CERB, arguing that the Investigator had improperly overlooked several affidavits that he had submitted during the investigation.[3] Romeo argues that those affidavits reflect that Romeo reasonably believed that the detail he was assigned to was a "roving" detail, which allowed him to attend the contract negotiations as long as he was available to respond in the event of emergency; that no one had ever objected to or conducted internal investigations into officers attending contract negotiations while being assigned to a detail; and that the discipline imposed differed significantly from the Town's disciplinary past practice. The Union had also filed a demand to arbitrate Romeo's grievance over his termination and Romeo alternatively asked the DLR to defer the charge to the arbitration.

On May 21, 2015, before the CERB ruled on the Request for Review, the DLR granted the request to defer MUP-14-4210 to arbitration. On June 24, 2015, Romeo filed a separate charge, MUP-15-4652, alleging that his January 9, 2015 termination violated Sections 10(a)(1), (2), (3), and (4) of the Law and requesting that it be deferred to arbitration along with MUP-14-4210.[4] The DLR granted that request without conducting an in-person investigation into MUP-15-4652.

On February 26, 2016, an arbitrator issued an award. On March 2, 2016, Romeo filed a request with the DLR to resume processing both unfair labor practice charges. charges.On August 19, 2019, after the Town had exhausted its judicial appeal of the award pursuant to M.G.L. c. 150C, and subsequent mediation efforts were unsuccessful, the DLR granted Romeo's request to reopen MUP-14-4210 and MUP-15-4652. On July 9, 2020, the DLR decided to consolidate the matters for the CERB's review and thus both cases are now before us.

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review of the dismissed Section 10(a)(3) allegation only, and, thus, do not address the dismissal of the Section 10(a)(2), 10(a)(4), and independent Section 10(a)(1) allegations.

[3] Since filing the request for review, Romeo has been represented by counsel.

[4] On April 4, 2016, in Romeo's reply to the Town's opposition to Romeo's request to revive both of these charges after the arbitration award issued, Romeo explained that he filed MUP-15-4652 as a procedural formality because when he filed MUP-14-4210, he did so in his capacity as Union president. He thus filed MUP-15-4652 in his individual capacity to ensure that he had standing as an individual to challenge his termination at the DLR.

Ruling

As a preliminary matter, we clarify what the record on review consists of in these consolidated matters. As in all pre-complaint dismissals, the record before us on review of MUP-14-4210 is the investigation record consisting of the charge, the investigation exhibits, the dismissal letter, the Request for Review and the Town's response. 456 CMR 15.05(9); 456 CMR 15.08. Because, as the DLR indicated in the show cause letter, MUP-15-4652 raises an identical issue arising from the same set of facts that Romeo had the opportunity to raise in MUP-14-4210, i.e., whether the Town's decision to terminate Rome was in retaliation for his concerted protected activity in violation of the Law, and because that issue has already been fully investigated by the DLR, the record in MUP-15-4652 consists of the charge and the investigation record in MUP-14-4210.[5]

Turning to the merits, to establish a prima facie case of a Section 10(a)(3) 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. Town of Carver, 35 MLC 29, 47, MUP-03-3094 (June 30, 2008). It was uncontested during the investigation that the Union had established the first three elements of the prima facie case. The fourth element, unlawful motivation, was contested.

Unlawful motivation can be established by direct evidence or circumstantial evidence and reasonable inferences drawn therefrom. Suffolk County Sheriff's Department, 27 MLC 155, 159, MUP-1498 (June 4, 2001). Absent direct evidence of unlawful motivation, several factors may suggest unlawful motivation, including the timing of the alleged discriminatory act in relation to the protected activity; the triviality of reasons given by the employer, or shifting and inconsistent 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. Town of Carver, 35 MLC at 47.

In his Request for Review in MUP-14-4210, Romeo contended that the Investigator failed to address the evidence of disparate treatment set forth in the affidavits from police officers and superior officers that Romeo provided during the investigation of his charge, including, in particular, statements made by one or more affiants to the effect that the Town had a longstanding practice of permitting officers to leave fixed details; that the Police Chief had recently received complaints about officers leaving details but, unlike the Department's response to Romeo leaving his detail, had not initiated an internal investigation, disciplined any officers or issued any communications regarding this issue; and that over the years, other officers had left their assigned detail location on many occasions but none had been disciplined or terminated. The CERB agrees that the affidavits contain these statements and that the Investigator did not address this information in the dismissal letter. The CERB has further considered statements in some

[5] As noted above, on July 9, 2020, the DLR consolidated MUP-14-4210 with MUP-15

of the affidavits, which assert that the discipline that the Town imposed on Romeo was unduly harsh and disproportionate to the alleged offense. Such evidence of disparate treatment, coupled with the closeness in time between the Town's discipline and the dispute between Romeo and the Town over posting grievance-related materials, provides probable cause to believe that the Town's conduct violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law.

For these reasons, the CERB remands these charges to the DLR to issue a complaint alleging that the Town's decision to place Romeo on administrative leave in December 2014 and its decision to terminate him in January 2015 violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law.

SO ORDERED

Very truly yours,
COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

Marjorie F Wittner

_____
MARJORIE F. WITTNER, CHAIR

Joan Ackerstein

_____
JOAN ACKERSTEIN, CERB MEMBER

Exhibit G

THE COMMONWEALTH OF MASSACHUSETTS
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BOARD MEMBER
KELLY STRONG
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July 27, 2020

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Ferruccio Romeo
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Re: MUP-19-7261, Town of Winthrop and Ferruccio Romeo

Dear Mr. Lichten, Mr. Fowler, Mr. Romeo and Mr. Greenspan:

Ferruccio Romeo (Romeo) appeals from two aspects of a Department of Labor Relations (DLR) Investigator's dismissal of the above-referenced charge of prohibited practice. After reviewing the investigation record, the dismissal and the parties' arguments on review, the Commonwealth Employment Relations Board (CERB) affirms one aspect of the dismissal but remands the other aspect to the Investigator to issue a complaint consistent with this ruling.

Background

This charge concerns the terms under which the Town of Winthrop (Employer or Town) reinstated Romeo to his position as a police officer with the Town's Police Department, where Romeo has served for over twenty years. Romeo also served as Union president for eleven years, from December 2004 until February 2015. In that

capacity, he was involved in contract negotiations and filed grievances. In November 2014, the Town placed Romeo on administrative leave in connection with attending a contract mediation at the same time he was assigned to work a detail. On January 9, 2015, the Town terminated Romeo. In addition to filing two prohibited practice charges over the termination, MUP-14-4210 and MUP-15-4652,[1] Romeo filed a grievance.

On February 26, 2016, an arbitrator issued an opinion concluding that the Employer had not established just cause for Romeo's termination. The arbitrator reduced the discipline to a Letter of Warning and ordered Romeo to be made whole for all lost wages and benefits less offsetting income. The Town filed a complaint to vacate the award pursuant to M.G.L. c. 150C. The Superior Court overturned the award. The Appeals Court subsequently reversed the Superior Court decision and upheld the arbitration award on May 21, 2018.

On July 22, 2018, the Town reinstated Romeo for pay purposes. On September 8, 2018, the Town reinstated him to duty. On January 21, 2019, the arbitrator issued a remedy award adopting the Union's position on backpay owed. On April 11, 2019, Romeo filed the instant charge alleging that, since his reinstatement, the Town had violated Sections 10(a)(3), 10(a)(4) and, derivatively Section 10(a)(1) of the Law by retaliating against him for his protected activities in four different ways.[2] On April 18, 2019, the Union filed MUP-19-7277, alleging that the Town was not complying with the arbitrator's remedy award in violation of Sections 10(a)(1), (3) and (5) of the Law. Romeo and the Union also sought enforcement of the award in Superior Court. After the Town paid Romeo $530,000, the Union withdrew MUP-19-7277 before the DLR investigated it.

On March 13, 2020, a DLR Investigator dismissed MUP-19-7261 in its entirety. Romeo filed a timely request for review of two aspects of the charge: 1) that the Town had failed to reassign him to certain duties that he had been assigned to before being

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[1] In Case Nos. MUP-14-4210 and MUP-15-4652, Romeo filed charges respectively in his capacity as Union President and as an individual, alleging that the Town's conduct violated Sections 10(a)(1)-(4) of the Law. The dismissal letter in this matter provides the complex procedural background of both these cases. In a ruling issued today, the CERB remanded both charges to the DLR to issue a consolidated complaint alleging that the administrative leave and termination violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. The DLR issued the consolidated complaint today.

[2] Romeo's original charge in MUP-19-7261 alleged that the Town had failed to bargain in good faith over a successor collective bargaining agreement in violation of Section 10(a)(5), and derivatively Section 10(a)(1) of the Law. The DLR sent a show cause letter to Romeo on April 19, 2019, advising him that individual employees have no standing to file charges alleging that an employer has failed to bargain in good faith. On April 26, 2019, Romeo filed an amended charge alleging that the Town violated Sections 10(a)(1) (3), and (4) of the Law for interference, discrimination and retaliation for his various protected activities since his "unlawful and retaliatory termination."

terminated; and 2) that the Town failed to permit him to participate in a Civil Service examination on December 8, 2018 for promotion to lieutenant.

The first allegation concerned two job duties that Romeo performed before he was terminated: 1) maintaining the Department of Justice Criminal Information Services (DCJIS) system; and 2) detail maintenance. Before he was terminated, Romeo earned "Kelly hours," a form of compensatory time, for performing these duties. Romeo had performed the DCJIS duties for fifteen years. After Romeo's termination, Delehanty reassigned these duties to a lieutenant, who is in a different bargaining unit. Romeo's detail maintenance duties included adjusting hours, scheduling details and following up on collections for details that were not paid. Pursuant to a 2010 agreement, the Union was responsible for pursuing collections. After Romeo's termination, Delehanty assigned two other bargaining unit employees to adjust the detail hours. Upon reinstatement, Romeo asked Delehanty to reassign both the detail and DCJIS duties to him. Although the Chief and the Deputy Chief indicated that they would, they never did and thus, the officers who had been assigned to these duties after Romeo was terminated continued to perform them.

The Investigator dismissed the details allegation because she found no direct or indirect evidence to support the allegation that the Town refused to reassign these duties to Romeo because of his concerted, protected activity. She noted that the Union was in charge of collections, and that Romeo had not been the only bargaining unit member performing the other detail duties. She also found no evidence of disparate treatment or animus toward Romeo's Union activities or the Union generally.

The Investigator dismissed the allegations pertaining to DCJIS responsibilities based on the considerations that het Town raised, i.e., that it had reassigned those duties in the intervening years and, once Romeo was reinstated, opted to keep those duties in a different bargaining unit, rather than reassign them to Romeo.

The Investigator dismissed the allegation pertaining to the lieutenant's exam on grounds that M.G.L. c. 31, §59 does not permit persons who have not had one year of experience as a sergeant to sit for a lieutenant's exam. Romeo did not directly dispute this statutory requirement but contended that but for his termination, he would have been promoted to sergeant, and thus eligible to sit for the lieutenant's exam. The Investigator rejected this argument as speculative. She further noted that Romeo had presented no evidence of disparate treatment, trivial reasons, or evidence of the Town's animosity toward the Union or to Romeo's protected activity.

On review, Romeo argues with respect to the detail duties that the Investigator failed to consider that, had he not been terminated, he would still have been performing the detail duties, and the only reason he was not was due to his unlawful termination. Romeo asserts that the Town's stated reasons for not reassigning these duties are "red herrings" because the import of the arbitrator's award was to restore Romeo to the position he would have been in had he not been terminated. Romeo also notes that the arbitrator's remedy award compensated Romeo for these lost duties.

Regarding the lieutenant's exam, Romeo disputes that it was speculative that he would have attained sergeant rank had he not been terminated.[3] Romeo also claims that, to the extent the Town argues that it could not have permitted Romeo to sit for the exam, he is still owed damages for losing the opportunity to take the exam and be promoted.

Ruling

The CERB affirms the dismissal of the portion of the charge relating to Romeo's sitting for a lieutenant examination. Romeo does not dispute that Civil Service Law, M.G.L. c. 31, §59, states that only employees who have served for a least a year in the next lower rank, sergeant, are eligible to take the lieutenant's exam. Romeo was not a sergeant as of December 2018, when the exam was held. Furthermore, Romeo appealed the Town's decision and the Civil Service Commission denied it. Under these circumstances, given the statutory prohibition on his taking the exam, even assuming that Romeo could establish a prima facie case of a Section 10(a)(3)/Section 10(a)(4) violation, Romeo could not establish that but for his Union or DLR activity, the Town would have allowed Romeo to sit for the exam.[4]

We reach a different conclusion regarding the Town's failure, upon request, to reinstate Romeo to his former DCJIS duties. As the Investigator explained, to establish a prima facie case of a Section 10(a)(3) or Section 10(a)(4) violation, the charging party must demonstrate 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 conduct was motivated by a desire to penalize or discourage the protected activity. Town of Carver, 35 MLC 29, 47, MUP-03-3094 (June 30, 2008). It is undisputed that Romeo's protected concerted activity in this case includes not only his pre-termination protected conduct as Union president, but numerous post-termination events of which the Town was aware, including the Union's and his involvement in the arbitration proceeding and its aftermath, and the various prohibited practice charges both he and the Union filed arising out of the termination.

The only disputed aspect of Romeo's prima facie case is the fourth element, unlawful motivation. In the absence of direct evidence, unlawful motivation may be established through circumstantial evidence and reasonable inferences drawn from that

[3] Romeo argues that the CERB should presume he would have been promoted because he sat for a make-up sergeant exam on October 25, 2018, ranked third on the list despite having less time to study than other officers, and was promoted to sergeant on December 8, 2019.

[4] Romeo's assertion that he should, at a minimum, be compensated for his inability to take the exam because he would have been eligible to take it had he not been terminated is a remedy issue arising out of his termination and not properly raised in this proceeding.

evidence. Id. at 48. Several factors may suggest unlawful motivation, including, among other things, the triviality of reasons given by the employer. Id.

Here, the Town's main reason for not reinstating Romeo to the DCJIS duties is that they were already assigned to a lieutenant, and that the arrangement was "working well." This is a trivial explanation because it fails to explain why the Town could not or did not *return* these duties to Romeo who, prior to his termination, had performed them for fifteen years. The Town also claims that the arbitration award did not require it to restore all of Romeo's former duties. This too is a trivial explanation because, as the Union correctly notes on review, the point of a make-whole remedy is to restore the situation as nearly as possible as that which existed prior to the wrongful conduct. Newton School Committee v. Labor Relations Commission, 388 Mass. 557, 576 (1983) Although, as the Investigator points out, it is true that Romeo failed to present any evidence that the Town treated him differently than other bargaining unit members in not reassigning him to these duties, there is no evidence that any other similarly-situated bargaining unit members existed. Thus, where it is to be expected that an employer will reassign the duties of a terminated employee, the triviality and paucity of the Town's explanation for not restoring those duties to Romeo, after an arbitrator found no just cause for the termination, provides probable cause to believe that they were not restored to retaliate against Romeo for the variety of protected, concerted activity that he has engaged in since 2014 in violation of Sections 10(a)(4), 10(a)(3) and, derivatively, Section 10(a)(1) of the Law. We otherwise summarily affirm the Investigator's decision regarding the detail duties for the reasons set forth in the dismissal letter.

Conclusion

The CERB affirms the dismissal of that part of MUP-19-7261 alleging that the Town violated Section 10(a)(4), Section 10(a)(3) and, derivatively, Section 10(a)(1) by not permitting Romeo to sit for the lieutenant's exam or reassigning him certain detail maintenance duties upon his reinstatement to duty. The CERB remands the allegation that the Town violated Section 10(a)(4), Section 10(a)(3) and, derivatively, Section 10(a)(1) pertaining to the reinstatement of Romeo's DCJIS duties to the DLR to issue a complaint consistent with its ruling.

Very truly yours,
COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

Marjorie F Wittner

MARJORIE F. WITTNER, CHAIR

Joan Ackerstein

JOAN ACKERSTEIN, CERB MEMBER

APPEAL RIGHTS[5]

Pursuant to the Supreme Judicial Court's decision in Quincy City Hospital v. Labor Relations Commission, 400 Mass. 745 (1987), this determination is a final order within the meaning of M.G.L. c. 150E, § 11. Any party aggrieved by a final order of the Board may institute proceedings for judicial review in the Appeals Court pursuant to M.G.L. c.150E, §11. **To claim such an appeal, the appealing party must file a Notice of Appeal with the Commonwealth Employment Relations Board within thirty (30)**

[5] These appeal rights pertain to the CERB's affirmance of the dismissed allegations in MUP-19-7261 only. A remand to issue a complaint is not a final order within the meaning of Section 11 of the Law.

Exhibit H

In the Matter of the Arbitration between:

WINTHROP POLICE LOCAL 421
TOWN OF WINTHROP, MASSACHUSETTS

Re: AAA No. 01-15-0002-6830 (Discharge of Feruccio 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 Conservsation 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 bread 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 what "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 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 offer, 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 agues 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.

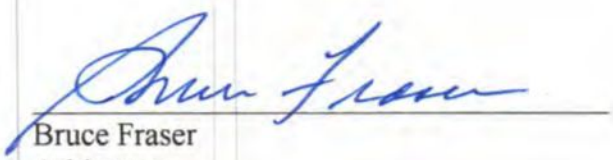
In summary, I find that Charge 1, that the Grievant filed a false detail slip on November 24, 2014, was not proven. Romeo worked the Pump Station detail from start to finish, albeit from an unauthorized location, the Town Hall, with no apparent defect.

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.



Bruce Fraser
Arbitrator

Scituate, MA
February 26, 2016

Exhibit I

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and NANCY DALRYMPLE,
Complainants

v.

Docket Nos.: 02-BEM-03751
05-BEM-01174
05-BEM-02944

TOWN OF WINTHROP,[1]
Respondent

Appearances: Jonathan J. Margolis and Beth R. Meyers, Esqs. For Complainant
Michelle Randazzo and Peter E. Montgomery, Esqs. For Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On November 7, 2002, Nancy Dalrymple ("Complainant") filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD") charging that the Town of Winthrop discriminated against her on the basis of gender and retaliated against her for filing prior complaints alleging discrimination.[2] On April 28, 2005, Complainant filed additional charges of gender discrimination and retaliation against the Town of Winthrop and individually-named respondents.[3] On November 4, 2005, Complainant filed a third charge of gender discrimination and retaliation against the Town of Winthrop and individually-named respondents.[4] A lack of probable cause finding was issued in the first complaint on March 11, 2004 but was reversed after appeal on September 30, 2005.

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[1] At the commencement of the public hearing, the parties agreed to release the individual respondents from the case.
[2] MCAD Docket No. 02-BEM-03751.
[3] MCAD Docket No. 02-BEM-01174.
[4] MCAD Docket No. 05-BEM-02944

On December 21, 2007, a preliminary disposition was issued in the second complaint in which the claims against individuals David Goldstein, Richard DiMento and Virginia Wilder were found to lack probable cause but the claims against the Town were found to have probable cause. A probable cause finding was issued by the Investigating Commissioner in the third complaint on September 2, 2010.

The cases were certified for a public hearing on January 28, 2008, February 10, 2009, and August 23, 2011, respectively. It was determined that the matters would be consolidated and heard together. The public hearing commenced on July 8, 2013 and continued on July 9, 11 and 15, 2013. On the first day of hearing, Complainant moved to dismiss claims against individually-named Respondents Virginia Wilder, Martin O'Brien, Brian Perrin, and Susan Bolster. The motion was granted.

The following witnesses testified at the public hearing: Complainant, Michael McManus, Virginia Wilder, Stephen Rogers, Paul DeLeo, Susan Bolster, Frank Scarpa, and Ronald Vecchia. The parties submitted Joint Stipulations of Fact and forty-nine (49) agreed-upon exhibits. In addition, Complainant submitted five (5) additional exhibits and Respondent submitted three (3) additional exhibits. Two (2) chalks pertaining to Paul DeLeo's promotion to lieutenant were also submitted.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant became a permanent police officer in the Town of Winthrop in 1982. Transcript I at 27. For a number of years she was the only woman on the force. Transcript II at 42. Complainant has a Bachelor of Arts degree and a

Master of Science degree in the fields of political science and criminal justice administration. She attended the police academy and holds certificates of completion in areas of first aid, fingerprinting, breathalyzer operation, and investigation of sex offenses. At various times during her tenure with the Winthrop Police Department, she was the police union vice president and member of the police union executive board. At the time of public hearing she was the second most senior member of the Department. Only Lieutenant Frank Scarpa had more seniority. Joint Exhibit 11.

2. Prior to January 1, 2006, the Winthrop police chief reported to the Winthrop Board of Selectmen which functioned as the Appointing Authority for the Winthrop Police Department. The chief could not hire or promote without the Board's approval. Transcript II at 94. Although the Board of Selectmen was technically the Appointing Authority, it deferred to the Chief's recommendations regarding the appointment and promotion of police personnel. The Board of Selectmen was a part-time entity administered by an executive secretary. Virginia Wilder served as the Board's executive secretary from 1989 to January 1, 2006. Wilder was the conduit between department heads and the Board of Selectmen. She knew about litigation brought by Complainant against the Town, attended Complainant's jury trial against the Town, and testified at the MCAD in regard to previous claims brought by Complainant. Transcript II at 162-167. On January 1, 2006, the Town changed to a town council form of government and abolished the Board of Selectmen. Transcript II at 93.

3. The Winthrop Police Department operates under the provisions of Massachusetts civil service law. Joint Stipulation 35. In 1987, Complainant took, but did not pass, a civil service examination for promotion to police sergeant. Transcript I at 36.

4. In 1989, Complainant filed an MCAD complaint alleging that she was treated differently from other members of the Winthrop Police Department in regard to such matters as executing arrest warrants and participating in drug raids**.** The charge went to public hearing and resulted in an award of $25,000.00 in damages and an additional award for attorney's fees. See Dalrymple v. Town of Winthrop, 15 MDLR 1473 (1993). The award was upheld on appeal. See Town of Winthrop v. MCAD and Dalrymple (Suffolk, ss, CA 965667C, November 1998, Cratsley, J), *affirmed* Town of Winthrop v. Dalrymple and another, Memorandum and Order pursuant to Appeals Court Rule 1:28 (Doc. No. 99-P-280, December 28, 2000).

5. Between 1990 and 1991, Complainant brought several additional charges to the MCAD pertaining to a shift reassignment, the omission of her name in regard to firearm recertification, and the refusal to reassign her to the station during her second pregnancy.

6. In August of 1992, Complainant was terminated from her position as police officer for "conduct unbecoming" in regard to her alleged refusal to return to work after a leave of absence following her second pregnancy and her efforts to extend the leave based on a doctor's note addressing problems with her hands (a work-related injury to one hand and pregnancy-related tendonitis in the other).

Chief Angelo LaMonica initiated the termination. Complainant appealed to the Civil Service Commission and, after being out of work for almost three years, the Civil Service Commission in 1995 ordered Complainant reinstated with back pay upon a medical determination that she was fit to return to duty. Transcript I at 27-28.

7. In 1995, Complainant filed a complaint with the MCAD for gender discrimination and retaliation arising out of her dismissal from the police force. The case was removed to Suffolk Superior Court (Docket No. 95-4248B). Following trial, a jury awarded Complainant damages in the amount of $575,000.00 for compensatory and punitive damages against the Town of Winthrop and individually against former Police Chief LaMonica. The verdict was upheld on appeal. See Dalrymple v. Town of Winthrop, 50 Mass. App. Ct. 611 (2000). The Supreme Judicial Court subsequently denied further appellate review. Joint Stipulation 58. The judgment was common knowledge within the Town of Winthrop and its police department. Transcript III at 115, IV at 11, 28-29.
8. In 1995, Complainant took a civil service examination for sergeant and placed third on the list for promotion to sergeant. Transcript I at 36. The Town promoted the top two patrol officers to sergeant off the eligible list. Respondent's Exhibit 2 (arbitration decision at p. 2); Transcript I at 37.
9. On October 23, 1999, Complainant again took a civil service examination for sergeant. Complainant placed first on the March 23, 2000 eligible list. Complainant's Exhibit 1; Transcript I at 37; Respondent's Exhibit 2 (arbitration decision at 2). It is customary in the Town of Winthrop Police Department to

select the first candidate on the eligible list to fill a vacancy unless there is a valid reason for bypass in which case the Chief must provide a written justification for the bypass. Goldstein Deposition at 45.[5]

10. In December of 2000, Michael McManus became chief of the Winthrop Police Department. Transcript II at 92. He had previously been a lieutenant. Transcript II at 51. Prior to his appointment as chief, there were four lieutenants and five sergeants. Transcript II at 103. There had been five sergeants in the Department since at least 1995. Transcript III at 49. After his appointment, there were three lieutenants (Perrin, Scarpa, and Lessard) and five sergeants (DeLeo, Femino, Hickey, Scholwin, and Diaz). Chalk A; Transcript I at 176; Transcript II at 69, 104.[6]
11. In 2001, the Town paid Complainant $784,633.96 in compensatory and punitive damages and interest in fulfillment of the 1995 jury award, the MCAD award(s), and possibly other judgments that Complainant held against the Town. Joint Stipulation 59; Transcript II at 169. Around the time that the judgment was paid, Ronald Vecchia and Marie Turner were re-elected to the Winthrop Board of Selectmen after a period of time when they were off the Board. Transcript IV at 76; Turner Deposition at 11, 64. They both denied any recollection of discussions about the Appeals Court verdict for Complainant even though it represented

[5] David Goldstein was the Winthrop Police Chief from 2004 to 2009. He does not live in Massachusetts and, thus, could not be served with a subpoena to command his testimony at the public hearing. In lieu of live testimony, I accepted portions of his November, 2006 deposition into evidence.

[6] According to Joint Stipulation of Facts #22, the 2001 Annual Town Report lists Paul Deleo as a lieutenant. I discredit this information since it conflicts with the credible evidence cited herein as well as Joint Stipulation 41 which states that Sergeant DeLeo was promoted to lieutenant on March 1, 2002.

almost half of the police personnel budget. Id. at 77, 79; Deposition at 28. I do not credit their testimony.

12. Chief McManus testified in at least one prior action brought by Complainant before the MCAD and in the jury trial. Transcript I at 34, II at 43.

13. In March of 2002, the Town promoted Sergeant Paul DeLeo to lieutenant. Respondent's Exhibit 2 (arbitration decision at p. 2); Chalks A & B; Joint Stipulation 41. DeLeo was first on the civil service eligible list for lieutenant. Transcript II at 115. During McManus's tenure as chief, he never recommended an officer for promotion who was lower than first on a promotion list. Transcript II at 68.

14. After DeLeo's promotion, there were four lieutenants and four sergeants. Transcript I at 49; Chalk B. One of the existing lieutenants, Lt. Perrin, was moved out of the day shift and put in charge of detectives. Transcript II at 113. After DeLeo's promotion and Lt. Perrin's transfer, some shifts lacked supervisory coverage which made it more likely that a supervisory officer would have to be hired on an overtime basis to ensure the presence of a superior officer on all shifts. Transcript II at 152-153; III at 116.

15. Chief McManus did not request funding for an additional sergeant's position in his proposed budgets for fiscal years 2002 (7/01-6/02) and 2003 (7/02-6/03). Transcript II at 105-107. He testified that he did not do so because even without a fifth sergeant's position, there were still two superior officers on each shift. Transcript II at 109, 120. Chief McManus testified that he did not believe another sergeant would significantly reduce supervisory overtime because: 1) the fifth

position would be assigned to a particular shift; 2) overtime costs on the other shifts would be unaffected; and 3) the Department always spends whatever overtime is allocated. Transcript II at 126-127. I do not credit his testimony.

16. Then-Board of Selectman Marie Turner testified at deposition[7] that the Board didn't requisition a promotional list for sergeant after Deleo's promotion to lieutenant because the Police Department was operating well with four lieutenants and four sergeants and because of extreme cutbacks on overtime. Deposition at 38. However, she also stated that she didn't know about overtime usage following DeLeo's promotion and never requested to see supervisory overtime data. Deposition at 47, 74. According to Turner, Complainant should not have won "close to a million dollars" in damages because she was not subjected to discrimination. Deposition at 36-37, 62-63, 66. Nonetheless, Turner denied having any conversations about Complainant's litigation and denied that there was any discussion about Complainant winning a lawsuit against the Town. Deposition at 62-64. I do not credit Turner's testimony.

17. Sergeant Stephen Rogers, police union president from 2003 to 2004, testified in contradiction to Chief McManus that four sergeants was an insufficient number to achieve the cost-effective goal of having two supervisors on every shift. Transcript III at 55; Complainant's Exhibit 5 ("Promotion Versus Overtime Expenditure"). Rogers testified that he provided McManus with Complainant's Exhibit 5 while McManus was chief. The document purports to show the cost savings of promoting supervisors versus spending on supervisory overtime.

[7] Marie Turner was a member of the Winthrop Board of Selectman in 2000 to 2003 when Michael McManus was the chief of police. The parties agreed to submit portions of Turner's deposition in lieu of her live testimony.

Transcript III at 57-58. According to Sergeant Rogers, prior to a shift configuration in 2006, it was necessary to have a total of nine or ten supervisors (sergeants and/or lieutenants) in order to maintain supervisory coverage on each shift. Transcript III at 62. In March of 2002, there were only seven supervisors in the Department aside from the Chief, who supervised the whole department and Lt. Perrin, who supervised detectives. Chalk B; Transcript III at 62-63.

18. Chief McManus asserted that he did not know how many times Complainant had taken the sergeant's promotional exam or where she stood on the promotional list for sergeant as of March, 2002. Transcript II at 123-124. I do not credit this testimony.

19. Former Executive Secretary Virginia Wilder testified that she was approached by Complainant multiple times in 2002 about whether the Board planned to call for the sergeant's list on which she was the top candidate. Transcript II at 176. Wilder said that she informed Complainant that fiscal constraints prevented the appointment of a fifth sergeant. Transcript II at 180-181. Although I credit that this is what Wilder told Complainant, I do not credit the substance of what she said. I found Wilder to be an evasive witness who testified unconvincingly that she couldn't recall "talk" about Complainant's prior lawsuit, that she didn't object to the jury's verdict of $575,000.00 for Complainant, and that she considered the jury as having done "what they had to do." Transcript II at 165, 171. These assertions are contradicted by the deposition testimony of Police Chief Goldstein who stated that "it may very well have been" Wilder who told him that she didn't

agree with the court decision in favor of Complainant and that Wilder was "not reticent about the decision." Deposition at 82.

20. The eligible list from the 1999 sergeant's exam expired in October of 2002. During the life of the eligible list -- on which Complainant was the top-scoring candidate -- the Town did not use it to make any promotions to sergeant. Transcript II at 63.

21. Prior to the expiration of the eligible list for sergeant in October of 2002, Complainant filed a grievance on September 13, 2002 stating that the Town's failure to make a promotion from the list constituted discrimination and retaliation against her. Respondent's Exhibit 2. The grievance, denied by Chief McManus, proceeded to arbitration and resulted in an arbitration decision denying the grievance on the basis that the Town of Winthrop's Board of Selectmen (the Appointing Authority) was not obligated to fill a sergeant's position whenever a vacancy occurred. Respondent's Exhibit 2 (arbitration decision); Transcript I at 174.

22. Complainant testified that filling a fifth sergeant's position from the eligible list on which she was the top candidate would have reduced the need for supervisory overtime. Transcript I at 66. She acknowledged, however, that a fifth sergeant would not eliminate supervisory overtime on all shifts. Transcript I at 163, 168.

23. According to Chief McManus, the money to cover the cost of promoting a patrol officer to sergeant in 2002 would have been approximately $5,000.00 to $6,000.00 and could have been found in the police department budget. Transcript II at 81.

24. Complainant volunteered for and began serving as school resource officer in the fall of 2002. Prior to taking the school resource assignment, she worked the 4:00 p.m. to midnight shift, for which she received an eight percent pay differential. During the time that Complainant served as school resource officer, she continued to receive the eight percent night-shift pay differential even though she worked an "administrative schedule" which consisted of working Mondays through a half-day on Fridays. Transcript II at 12. While she served as school resource officer, Complainant took time off during school vacations without counting it as vacation time until Chief Goldstein prohibited her from doing so. Transcript I at 80-82; II at 10-11; Goldstein Deposition at 61.
25. On October 19, 2002 Complainant took another civil service exam for police sergeant. Transcript I at 40, 148; Joint Stipulation 43.
26. On November 7, 2002, Complainant filed the first of the three complaints at issue in this decision: MCAD complaint 02 BEM 03751. Complainant charged that the Town of Winthrop engaged in gender discrimination and retaliation against her by allowing the eligible list for sergeant to expire in October of 2002 so that she would not be promoted because of her previously-filed sex discrimination claims.
27. On March 31, 2003, a new eligible list for sergeant was established by the state Human Resource Division from the 2002 sergeant's exam. Terence Delehanty was first on the eligible list with a score 80; Complainant and Stephen Rogers were tied at second place on the eligible list with scores of 74. Joint Stipulation 44.

28. On April 28, 2003, the Board of Selectmen appointed two male patrol officers -- Terence Delehanty and Stephen Rogers -- as acting sergeant sergeants. Joint Exhibit 5; Transcript I at 72. Rogers was selected to fill a vacancy created by Sergeant Diaz who was deployed on a military assignment for approximately eight weeks. Transcript II at 13, 131; III at 68; Joint Stipulation 45. Delehanty was selected to fill in for Sergeant Scholwin who was preparing to retire. Transcript I at 73, 127. At the time the acting promotions were made, Rogers and Diaz worked the same 4:00 p.m. to midnight shift whereas Complainant worked days as school resource officer. Transcript II at 14; 133-134. Delehanty was then a permanent patrol officer for seven years, Rogers was then a permanent patrol officer for eight years, and Complainant was then a permanent officer twenty-one years. Transcript III at 68.

29. Chief McManus testified that when he recommended Delehanty and Rogers as acting sergeants, he hadn't yet seen the May 2, 2003 certification of candidates from the October 19, 2002 civil service exam for sergeant. Transcript II at 130, 142. While Chief McManus may not have seen the actual certification (Joint Exhibit 1; Transcript II at 13), I do not believe that he was unaware of the candidates' relative standings on the eligible list from which the certification derived.

30. According to Chief McManus, while Delehanty and Rogers were serving as acting sergeants, they asked permission to attend command school. Transcript I at 20; II at 134-135. Because too few people enrolled in the summer command school program, Rogers went to the next scheduled session which occurred after

he returned to patrol officer from his acting sergeant assignment. The command school serves as a training school for recently-promoted sergeants. Transcript III at 71. Chief McManus was not credible when he testified that he would have approved Complainant's request to go to command school if she had asked. In permitting Rogers to attend command school, Chief McManus evinced an intent to promote him to the permanent rank of sergeant.

31. On May 2, 2003, three candidates were certified to the Town of Winthrop off the eligible list from the October, 2002 exam for sergeant: Terence Delehanty, the top-ranked candidate and the next two candidates -- Complainant and Stephen Rogers -- who were tied. Joint Stipulation 44.

32. On May 19, 2003, Terence Delehanty was promoted to permanent sergeant to fill the vacancy caused by Sergeant Scholwin's retirement. Transcript I at 74; Joint Stipulation 46.

33. In January of 2004, Chief McManus retired and in the following month, David Goldstein became the Winthrop police chief. Transcript II at 40; II at 192; Goldstein Deposition at 17. After being hired, Police Chief Goldstein had conversations with the Board of Selectmen's Executive Secretary Virginia Wilder about Complainant's litigation against the Town. Goldstein Deposition at 38. Chief Goldstein testified at deposition that "it may very well have been" Wilder who told him that she didn't agree with the court decision in favor of Complainant and that Wilder was "not reticent about the decision." Deposition at 82. Chief Goldstein also requested that the Town allow him to promote a fifth sergeant on

the basis that it was more cost effective than hiring sergeants on supervisory overtime. Goldstein Deposition at 23, 70. I credit this testimony.

34. Shortly after Chief Goldstein was hired in January of 2004, he "commissioned" Sergeant Stephen Rogers to perform a financial analysis of police department personnel costs entitled "Supervisor Budget Expenditure Analysis." Deposition at 70-72. Based on the analysis, Chief Goldstein concluded that it would be better to hire another sergeant rather than pay for supervisory overtime. Complainant's Exhibit 6; Goldstein Deposition at 70, 105. Chief Goldstein estimated that the difference in pay between a police officer and a sergeant was approximately $100.00 per week and that this expenditure would result in a "substantial savings" in supervisory overtime. Goldstein Deposition at 70, 93, 105, 113. The study states that the Department spent $30,250.21 in overtime costs to fill vacant supervisor spots on shifts in FY 2004 (July 1, 2003 to June 30, 2004) whereas the total cost of adding two supervisors would have been $13,180.29. Complainant's Exhibit 6.

35. According to Sergeant Rogers, the addition of two supervisors would have permitted lieutenants or sergeants to be assigned to each of the three groups within the police department's day, evening and overnight shifts. Transcript III at 104-106. Rogers testified that such an arrangement would have ensured that two supervisors were assigned to work each shift since shifts were, at all times, staffed by two out of a shift's three groups. Id. The plan also called for one supervisor to work an outside beat in situations where there were two supervisors on the same shift. Transcript III at 102. Sergeant Rogers testified that having two supervisors

assigned to work the same shift meant that there would be supervisory coverage even if one of the supervisors took time off for sickness, vacation, personal time, training, etc. Sergeant Rogers asserted that such an approach would substantially reduce, albeit not eliminate, supervisory overtime but that without promoting another sergeant it wasn't possible. Transcript III at 55, 94.

36. Chief Goldstein communicated his support for increasing the number of sergeants to the Town Manager and to the Board of Selectmen via Executive Secretary Wilder. Deposition at 89-91. On July 20, 2004, Chief Goldstein requested that the Board of Selectmen call for the sergeant's list in order to add one or more supervisory officers as a way of reducing the costs for supervisory overtime, but the Board did not act favorably on his request. Transcript II at 195; Joint Exhibit 13.
37. Chief Goldstein testified credibly that prior to becoming chief he was told by the Board of Selectmen that there were five sergeant positions, but that after becoming chief, he was told by the Board that there were "not" five positions. Deposition at 22. The reduction in sergeant positions was not negotiated with the police union nor was it brought before Town Meeting.
38. In the summer of 2004, Complainant voluntarily returned to the 4:00 p.m. to midnight shift after serving two academic years as school resource officer. Transcript I at 78-80, 92.
39. In August of 2004, Chief Goldstein requested a certification of names from the October 19, 2002 examination in order to fill a sergeant's vacancy created by the retirement of Sergeant Diaz which had occurred approximately six months earlier.

Joint Exhibit 19; Transcript I at 93; II at 136. Two names were certified: Complainant and Rogers, who both had scores of 74. Id.; Joint Exhibit 1.

40. In order to assist in selecting between the tied candidates, Chief Goldstein designated a "promotion board" consisting of two internal officers -- Lieutenant Frank Scarpa and Sergeant Salvator Femino -- and two external officers. Sergeant Femino had previously testified as a Town witness at one of Complainant's earlier MCAD hearings. Transcript I at 101. The promotion board conducted an oral review of the two candidates on September 23, 2004. Transcript I at 94; II at 3. Board members filled out forms on which they graded answers to questions to six hypothetical questions, three informational questions, the candidates' oral presentations, and the candidates' appearance and communication skills. Joint Exhibit 43. The form did not contain a place for members of the board to take account of the candidates' length or breadth of experience. Id.; Transcript I at 102.

41. Complainant had approximately three weeks to prepare for the review process. Transcript I at 96. The candidates received instructions to submit an outline and prepare an oral presentation addressing "The Winthrop Police Department Through the Next Five (5) Years" and prepare for an oral examination regarding relevant laws, regulations, bylaws, and requirements for search warrants and eyewitness identifications. Joint Exhibit 45. Complainant testified that she believed Rogers received notice of the review process sooner that she did. Transcript II at 15. I do not credit this testimony.

42. Sergeant Rogers testified that the training he had received at command school helped him prepare for the presentation. Transcript III at 78. He made a PowerPoint presentation using a projector belonging to the Town. Id.

43. Complainant testified that she thought about using an overhead projector or slides for her presentation and contacted the Chief about the availability of projection equipment but she was told it wasn't available so she used an easel with flip pages on which she wrote handwritten material. Transcript I at 99-100. At the end of her presentation, Complainant was asked whether she believed that the screening process had been fair and she answered yes. Transcript I at 102.

44. The promotion board recommended Rogers for the sergeant's position even though Complainant had fifteen years more seniority on the police force and there were no female superior officers on the Winthrop Police Department. Transcript I at 103; Joint Exhibit 8. Frank Scarpa participated in the promotion board as the chairperson. Transcript IV at 34; Goldstein Deposition at 88.

45. The Town of Winthrop promoted Rogers to sergeant, effective September 27, 2004. Joint Stipulation 47. The promotion of Rogers left Complainant as the only individual remaining on the sergeant's list.

46. Chief Goldstein characterized Complainant as having strong and weak points as a police officer. Deposition at 41. He described her strengths as dealing with the public, handling desk duties in the dispatch area, handling walk-in issues, and being respectful to her supervisors. Deposition at 42. He described Complainant as honest, intelligent, and "for the most part" a team player, but noted that she could be "overly critical," was at times "very insecure" in regard to decision-

making, required coaching, and "oftentimes" asked too many questions. Deposition at 42-43.

47. On April 19, 2005, Chief Goldstein emailed Secretary Wilder to again express his view that adding an acting supervisor would be a "good idea" in terms of "supervisory overtime. Joint Exhibit 14.

48. On April 28, 2005, Complainant filed MCAD charge 02-BEM-01174 alleging gender discrimination and retaliation against the Town of Winthrop and individually-named Respondents in regard to the Town promoting Rogers to sergeant in September of 2004.

49. In the summer of 2005, the Town of Winthrop Board of Selectmen called for a new exam for police sergeant. Transcript I at 112-114. The new test was given in October of 2005, around the same time that the previous eligible list for sergeant expired. Transcript I at 118; Complainant's Exhibit 2. Complainant took the exam and scored at the top of the list. Id.

50. The eligible list from the October 19, 2002 sergeant's exam expired on October 1, 2005 without being used by the Town.

51. Chief Goldstein again wrote the Board of Selectmen in October of 2005 about ways of decreasing overtime costs. Joint Exhibit 3. The Chief's letter noted that an "inordinate" amount of overtime funds were devoted to supervisory overtime,[8] that one of the active lieutenants was unable to supervise members of the patrol force because he was on light duty, and that the Department's supervisory staff (consisting of four sergeants and four lieutenants) were the most senior members

[8] The letter asserts that between July 1, 2005 to October 1, 2005, supervisory overtime costs amounted to $25,966.88. Joint Exhibit 4 at p.2.

of the force with the largest share of accumulated leave such as vacation days and the highest rates of compensation when working overtime. Joint Exhibit 3, p.4; Transcript III at 91. To address these matters, one of the Chief Goldstein's twelve proposals was to increase the existing number of lieutenants and sergeants by two positions. Joint Exhibit 3, p. 5. The proposal was rejected by the Board of Selectmen -- Brian Perrin,[9] Sue Bolster, and Martin O'Brien – who were concerned that the Police Department was top heavy with supervisors. Transcript II at 19.

52. On November 4, 2005, Complainant filed MCAD charge 05-BEM-02944 alleging gender discrimination and retaliation against the Town of Winthrop and individually-named respondents in regard to the Town declining to promote her to sergeant off the civil service list that expired on October 1, 2005.

53. In 2006, an eligible list was established from the October 22, 2005 sergeant's exam. Complainant's name was at the top of the list. Complainant's Exhibit 2. She was not promoted to sergeant off the list.

54. At some point in 2006, Chief Goldstein altered the shift configuration in order to reduce supervisory overtime problems. Transcript III at 85-86, 98. Under the revised shift configuration, a lieutenant was put in charge of all groups within a shift whether or not the lieutenant was not on duty. Goldstein Deposition at 28-29. The Chief entered into an agreement with the union to run shifts with only four individuals, to designate the senior patrol officer as the "Officer in Charge" and to give that officer a stipend. Deposition at 36. As of the date of deposition,

[9] Brian Perrin was a lieutenant on the Winthrop Police Department as well as a member of the Board of Selectmen.

Chief Goldstein had only given the Officer in Charge designation to one female officer, Judy Racow, on a single occasion. Deposition at 48. Chief Goldstein stated that in addition to Complainant, Officer Racow had filed a charge of discrimination against the Police Department. Deposition at 57.

55. Complainant was out of work from January of 2008 to December of 2010 for reasons unrelated to this litigation. Transcript I at 139. The parties have stipulated that the period from January 8, 2008 up to and including October 19, 2010 should be excluded from any calculation or award of damages.

56. Chief Goldstein left the Winthrop Police Department in early 2009. He was succeeded by Terence Delehanty who was appointed Chief in September of 2009.

57. In the fall of 2011, Complainant took a promotional exam for sergeant but did not pass. Transcript II at 30.

58. In September of 2012, the Town of Winthrop made Mary Crisafi its first female sergeant. Transcript I at 103, 129. The Town had not made any sergeant promotions since that of Stephen Rogers in 2004. Transcript I at 168. There was a special ceremony to mark the promotion. Transcript IV at 42. Complainant was emotionally disturbed by the promotion. Transcript IV at 43.

59. Complainant testified that her attempts to be promoted have "taken over [her] life and that she experiences pain whenever she works under a less senior male officer. According to Complainant she let go of her anger from earlier disputes with the Town because she was "vindicated" in 2000 and 2001, but that after being denied promotion, she felt herself as becoming "invisible" on the force. Transcript II at 28. Complainant testified that due to holding in her feelings, she

has had stomach problems, lost hair, had chest pains, had sporadically high blood pressure experienced chronic hives, and has experienced insomnia. Complainant testified to feelings of anger, rage, despair, hopelessness and frustration. Transcript I at 134. Complainant stated that her symptoms caused her to seek medical care from her primary care physician, a gastroenterologist, a cardiologist and a pulmonologist, but not any mental health professionals. Transcript I at 134; II at 26. She was prescribed stomach medication for acid reflux and Xanax for a period of time but only took the latter medication "occasionally" because she didn't want to be on it." Transcript I at 136. Complainant did not place any medical records into evidence and had no health care professionals testify on her behalf. Complainant acknowledged that she had abdominal pain prior to 2002 and distress also caused by the illness and death of her mother in 2003 and her house burning down in November of 2005, an event which resulted in a four-plus year absence from her home and the loss of all the contents of her house. Transcript II at 26, 29-30. Complainant testified that she did not seek treatment with any mental health care professionals and did not introduce medical records into evidence.

60. Lt. Frank Scarpa is a thirty-seven year member of the Winthrop Police Department, former union president, and Complainant's shift commander for approximately eight years. Transcript IV at 28-29. He testified that Complainant's lack of success at being promoted has emotionally affected her over the years. Transcript IV at 40. According to Lt. Scarpa, Complainant would frequently remark on her status. He described it as "weighing" on her mind. Id.

at 41. He assessed her as a very good patrol officer, an officer who "knows her stuff," and someone he can rely on. Transcript IV at 41. Lt. Scarpa asserted that she would be a very good sergeant. Id.

61. Complainant testified that the amount of overtime she worked has varied over the years. She worked less overtime prior to 2006 and more thereafter because her children were older. Transcript I at 124-125. Starting in 2006, she also earned several thousand dollars per years covering shifts as a senior patrol officer. Transcript I at 125. Complainant testified that had she been promoted to sergeant in 2002 or thereafter, her base pay would have been larger, her "Quinn bill" percentage would have been larger, her longevity pay would have increased, and her pension would have been higher. Transcript II at 21.

62. The parties stipulated that Complainant earned $728.040 per week as a step 6 patrol officer in FY 03; $749.880 per week as a step 6 patrol officer in FY 04 and $779.878 per week as a step 6 patrol officer in FY 05. Joint Stipulations 49-51. During those same years sergeants in the Winthrop Police Department earned the following: $826.62 per week; $851.434 per week and $885.486 per week. Joint Stipulations 52-54. From 2002, Complainant had received a 25% Quinn bill salary increase which is calculated using her base salary rate.

III. CONCLUSIONS OF LAW

A. Gender Discrimination

Complainant does not proffer direct evidence of forbidden bias and therefore, in order to establish a prima facie case of disparate treatment discrimination, she must show that she: (1) is a member of a protected class; (2) was performing satisfactorily; (3)

suffered an adverse employment action; and (4) was treated differently from similarly-situated, qualified person(s) not in her protected class. See Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000) (elements of *prima facie* case vary depending on facts).

The first two elements are satisfied in that there were no female supervisors in the positions of sergeants or lieutenant during the years when Complainant sought promotion, and that Complainant was a member in good standing of the Winthrop Police Department who scored at or near the top of multiple promotional exams. Regarding the third element of a prima facie case, Complainant alleges that the Town subjected her to the following adverse actions: it failed to make any promotions to sergeant from the 1999 sergeant's exam which Complainant topped (02-BEM-03751);[10] it promoted Rogers to sergeant in September of 2004 even though Complainant had the same exam score and greater seniority (05-BEM-01174); and it failed to promote Complainant from the eligible list for sergeant which was established in October of 2002 and expired in October of 2005 (05-BEM-02944). Complainant's allegations are supported by credible evidence that the Town failed to make any promotions to sergeant between 1999 and 2005 whenever she topped civil service eligible lists for the position; overlooked Complainant for elevation to acting sergeant in 2003 in favor of less senior male patrol officers who were thereby given a leg up in the permanent promotion process, and declined to

[10] Respondent argues that since no one was promoted, there was no adverse action resulting from Complainant's failure to attain sergeant status as a result of the 1999 exam results. Such an argument overlooks the fact that the Town promoted individuals to sergeant from civil service exams in 1995 and 2002 when Complainant was *not* the top-scoring candidate but declined to do so from the 1999 civil service exam when Complainant *was* the top-scoring candidate. Since the Town traditionally promotes candidates in the order of their standing on civil service eligible lists, the failure to make any sergeant promotions from the 1999 exam was tantamount to a refusal to promote Complainant. Compare Wheelock College v MCAD, 371 Mass. 130, n.6 (1976) (suggesting that there would be no prima facie case where college declined to rehire an academically-qualified woman due to teaching position being abolished).

permanently promote Complainant to sergeant in 2004 in favor of a male candidate with the same score by using a screening process of dubious neutrality. In all of these situations, Complainant was on the losing end of circumstances that favored similarly-situated male patrol officers.

Respondent asserts that the Town's failure to make sergeant promotions at various times when Complainant topped eligible lists for the position is not an adverse action, but such a contention is without merit. See Hurley v City of Melrose Police Department, 27 MDLR 7 (2005) (where police chief declined to use eligible list and delayed sergeant promotions in order to open the field to younger candidates, such inaction deemed an adverse action evidencing age discrimination). Whether alone or in concert with other conduct favoring male competitors, such inaction is evidence of discriminatory animus.

Having established a prima facie case of discrimination, the burden of production shifts to Respondent to articulate and produce credible evidence to support legitimate, nondiscriminatory reasons for not promoting Complainant. See Abramian, 432 Mass. 116-117; Wynn & Wynn v. MCAD, 431 Mass. 655, 665 (2000). Respondent focuses on fiscal constraints to justify the lack of any permanent sergeant promotions off the eligible list which remained in effect for a three-year period following the 1999 sergeant exam. According to Chief McManus, he did not request funding to make such a promotion in fiscal years 2002 and 2003 even though the number of sergeants decreased from five to four because he did not believe another sergeant would significantly reduce supervisory overtime. His testimony is supported by the assertion of former Executive Secretary Wilder that fiscal constraints prevented the appointment of a fifth sergeant and by the

assertion of then-Selectman Marie Turner that the Police Department operated well with only four sergeants.

In regard to acting sergeant promotions in April of 2003, the selection of Terrance Delehanty reflects his status as the top candidate on the 2003 eligible list for sergeant[11] in combination with the Town's practice of selecting the top candidate for permanent promotion absent a compelling reason for bypass. Since Delehanty was the presumed favorite for the next permanent promotion, it stands to reason that the Town gave him the acting position. The selection of Stephen Rogers was justified on the basis that he worked the same four-to-midnight shift as the sergeant whose place he temporarily filled, in contrast to Complainant who worked days as a school resource officer.

When Respondent finally made a permanent promotion to sergeant in 2003, it selected Delehanty in conformity to his rank on the eligible list and, in the following year, selected Rogers, with whom Complainant was tied, to fill a second sergeant's vacancy. In order to justify the latter promotion, Respondent administered an ostensibly-neutral selection process. The selection board consisted of internal and external panelists. The board entertained oral presentations from candidates Rogers and Dalrymple and evaluated their responses to a uniform set of interview questions. The foregoing circumstances are sufficient to satisfy Respondent's burden at stage two.

Complainant, at stage three, must show by a preponderance of evidence that Respondent's articulated reasons were not the real ones but a cover-up for a discriminatory motive. See Knight v. Avon Products, 438 Mass. 413, 420, n. 4 (2003); Lipchitz v. Raytheon Company, 434 Mass. 493, 504 (2001). Complainant retains the

[11] Chief McManus claimed not to have seen a certification of candidates for permanent promotion to sergeant prior to selecting Delehanty for acting promotion, but I believe that Chief McManus was aware of Delehanty's position as the top candidate on the eligible list.

ultimate burden of proving that Respondent's adverse actions were the result of discriminatory animus. See id.; Abramian, 432 Mass. at 117. I conclude that Complainant has satisfied her burden at stage three for the following reasons.

Following Complainant's appointment to the Winthrop Police Department, there were numerous years when she stood at the top of civil service lists for promotion to sergeant without any positive result. Her name first rose to the top of such a list from a 1995 civil service exam after two males were promoted to sergeant. Several years later she once again stood at the top of civil service list for promotion when she scored highest on the 1999 civil service exam for sergeant. In neither case, did Respondent make use of the lists as long as Complainant topped them.

After the promotion of Paul DeLeo to lieutenant in March of 2002, the number of sergeants on the force decreased from five to four. At that time, it would have been cost-effective to fill a fifth sergeant's position. I base my conclusion on the fact that DeLeo's promotion caused additional supervisory officers to be hired on an overtime basis in order to ensure the presence of a superior officer at all times. Then-Chief McManus conceded that the cost of adding a sergeant would have been only five to six thousand dollars yearly and could have been found in the police department budget. His successor, Chief Goldstein, also acknowledged that it would have been more cost-effective to hire another sergeant rather than to pay for supervisory overtime and, for this reason, sought (albeit unsuccessfully) to fill a fifth sergeant's position. Sergeant Rogers likewise testified that the existing number of sergeants was insufficient to achieve the cost-effective goal of having two supervisors on every shift which, according to Sergeant

Rogers, required a total of nine or ten supervisors rather than the seven who were available to supervise patrol officers in March of 2002.[12]

Notwithstanding the cost-effectiveness of filling the fifth sergeant's position, Respondent refrained from back-filling DeLeo's sergeant slot for as long as Complainant was the top candidate on the eligible list for sergeant from the 1999 exam. I conclude that it did so in order to avoid having to promote Complainant in conformity to its practice of selecting the top candidate off an eligible list unless compelling reasons justified a bypass. Since Complainant stood at the top of the eligible list between March of 2000 and October of 2002 and since there were no compelling reasons to bypass her for promotion, adherence to the practice would have resulted in awarding Complainant the fifth sergeant's position if it were filled during the life of the eligible list.

After the eligible list expired in October of 2002, Complainant took yet another civil service exam for sergeant in October of 2002. She received an exam score that was lower than that of Terrance Delehanty but was the same as that of Stephen Rogers. Six months later, Respondent made acting promotions of Patrol Officers Delehanty and Rogers. These acting promotions paved the way for the subsequent permanent promotions of the male candidates by giving them experience as sergeants and by allowing them to attend command school. The acting promotions were followed in May, 2003 by the permanent promotion of Delehanty and in September, 2004 by the permanent promotion of Rogers. While neither of these actions resulted in the bypass of Complainant on the eligible list from the October of 2002 exam, they nonetheless had the

[12] A 2004 arbitration decision about the staffing of superior officers on the Winthrop Police Department opined that the Appointing Authority was not obligated to fill a sergeant's position whenever a vacancy occurred, but that decision analyzes the parties' collective bargaining obligations and not whether the refusal to fill the position violated Chapter 151B. Respondent's Exhibit 2.

effect of favoring male employees with seven and eight years' experience, respectively, over Complainant who was a female candidate with twenty-one years of experience.

The allegedly-neutral screening process for permanent promotion was, moreover, tainted by Stephen Rogers receiving access to Town equipment for his presentation to the promotion board whereas Complainant was denied such access. Although the Town sought to portray male candidate Stephen Rogers as superior to Complainant in 2004, then-Chief Goldstein testified that Complainant was a strong candidate in terms of dealing with the public, handling desk duties in the dispatch area, handling "walk-ins," and being respectful to her supervisors. He described Complainant as honest, intelligent, and generally a team player, although sometimes overly critical, insecure in making decisions and prone to asking too many questions. Lt. Frank Scarpa, a thirty-seven year member of the Winthrop Police Department, former union president, and Complainant's shift commander for approximately eight years, described Complainant as a very good patrol officer, one who "knows her stuff," someone he can rely on, and someone who would be a very good sergeant.

The promotion of Rogers resulted in the continued lack of any female superior officers on the Winthrop Police Department for another nine years. Complainant subsequently took another civil service exam in 2005 for sergeant and again scored at the top of the list but never became a sergeant. I infer from the above circumstances that Complainant's gender played a '"material and important ingredient"' role in the selection process. See Chief Justice for Administration and Management of the Trial Court v. MCAD, 439 Mass. 729 (2003) *citing* Lipchitz v. Raytheon Co., 434 Mass, 493, 506, n. 19 (2003) (jury could infer that female candidate was not promoted because of

discriminatory intent where reasons for promoting a male candidate over a female candidate could be considered false). Gender discrimination has been demonstrated by the pretextual reasons given for failing to fill a fifth sergeant's position, by the staffing of open sergeant slots (acting and permanent) with male candidates in preference to Complainant, and by the failure to fill sergeant positions during times when Complainant stood as the top candidate on eligible lists. The financial rationales provided by Respondent do not stand up to factual scrutiny, as evidenced by contrary data compiled by Chief Goldstein and Sergeant Rogers. Respondent attempts to address each and every circumstance that resulted in Complainant's non-promotion, but does not adequately explain why Complainant, unlike her male comparators, failed to secure a supervisory position after decades on the Department and why there were no female supervisors until 2012. Based on the foregoing, Complainant has proven by a preponderance of the evidence that Respondent discriminated against her based on her gender.

Even if nondiscriminatory reasons played some part in the decisions to promote Delehanty and Roger, the evidence establishes that a combination of gender-based and retaliatory animus played a motivating role in depriving Complainant of any promotions throughout her decades-long employment by the Winthrop Police Department. I conclude that Respondent's gender and retaliatory animus (see below) are inextricably intertwined as determinative factors in this case.

B. Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a

distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995). In the absence of direct evidence of a retaliatory motive, the MCAD must follow the burden-shifting framework set forth in McDonnell Douglas Corp. v. Green, 411 Mass. 972 (1973) and adopted by the Supreme Judicial Court in Wheelock College v. MCAD, 371 Mass. 130 (1976). See also Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655 (2000).

To prove a prima facie case of retaliation, Complainant must demonstrate that: (1) he engaged in a protected activity; (2) Respondent was aware that he had engaged in protected activity; (3) Respondent subjected him to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action. See Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000). While proximity in time is a factor in establishing a causal connection, it is not sufficient on its own to make out a causal link. See MacCormack v. Boston Edison Co., 423 Mass. 652 n.11 (1996), *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996).

Once a prima facie case is established, the burden shifts to Respondents at the second stage of proof to articulate a legitimate, non-retaliatory reason for their action(s) supported by credible evidence. *See* Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973). If Respondents succeed in doing so, the burden then shifts back to

Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is not the real reason, but a pretext for retaliation. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001). Complainant may carry this burden of persuasion with circumstantial evidence that convinces the fact finder that the proffered explanation is not true and that Respondents are covering up a retaliatory motive which is a motivating cause of the adverse employment action. Id.

Applying the aforementioned elements to the matter at hand, there can be no doubt that Complainant participated in protected activity when she filed MCAD complaints in 1989, 1990, 1993, 1995, 2002, and 2005. Following the adjudication of the matters brought in 1990s, Complainant collected $784,633.96 in damages from the Town in 2001 to redress discriminatory acts by Respondent. Various Town witnesses seek to downplay the impact of the award, but I do not credit their testimony. More accurate expressions of the Town's views were communicated in the deposition testimony of former Board of Selectman Marie Turner and Chief Goldstein. Turner asserted that Complainant should not have won the award because she was not the subject of discrimination. Executive Secretary Virginia Wilder was described as "not reticent" in stating that she didn't agree with the court's decision in favor of Complainant. Various town officials were compelled to testify in the legal proceedings brought by Complainant.

I conclude that Complainant's lawsuits against the Town fostered a deep resentment against Complainant which caused her to be denied an acting promotion to sergeant in 2003[13] and permanent promotions from the 1999 sergeant's exam which she

[13] Respondent argues that any claims based on the April, 2003 acting sergeant promotions are untimely because the acting promotions took place after Complainant filed her November, 2002 MCAD complaint and more than six months prior to Complainant filing her April and November, 2005 MCAD complaints. I do not accept this rationale because the full impact of the acting promotions did not become apparent until

topped[14]; the 2002 sergeant's exam on which she stood in a second-place tie;[15] and the 2005 sergeant's exam which she topped.[16] Rather than maintain a staff of five permanent sergeants as it had previously done, Respondent spent more money throughout the 2002 to 2006 period to fill sergeant positions on an overtime basis. The evidence indicates that it did so in order to avoid promoting Complainant, despite the testimony of Chief McManus that additional supervisors were not needed to cover shifts. In arriving at this conclusion, I find it noteworthy that Chief McManus came up through the ranks of the Winthrop Police Department, was on the force during Complainant's litigation against the Town, testified in at least one prior action brought by Complainant, and was unconvincing in claiming ignorance about where Complainant stood on the promotional list for sergeant in 2002.

Respondent attempts to downplay the link between Complainant's damage award of $784,633.96 in 2001 and the promotion of Officer Rogers to sergeant in 2004, but proximity in dates is not the only criterion in making out a causal link. The sizable nature of the award ensured that it would not soon be forgotten. In any event, a three-year span between protected activity and adverse action mischaracterizes the sequence of events since Complainant filed an MCAD complaint in November of 2002 in which she accused

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Complainant failed to obtain a permanent sergeant promotion in September of 2004 (when it went to Officer Rogers). Complainant thereafter filed a timely retaliation complaint with the MCAD eight months later.

[14] In regard to the 1999 sergeant's exam, the relevant period is the last seven months of the life of the exam's eligible list -- March of 2002 to October of 2002. During this period, the roster of sergeants on the Winthrop Police Force dropped from five to four following Sergeant DeLeo's promotion to lieutenant. The drop in the number of sergeants presented an opportunity to fill the empty fifth sergeant's position from the eligible list on which Complainant stood as the top candidate but Respondent declined to do so.

[15] In regard to the 2002 sergeant's exam, Respondent made two promotions to sergeant from the eligible list to fill positions vacated by Sergeants Scholwin and Diaz. Although Complainant was tied as the second candidate on the eligible list and had substantially greater seniority than the candidate with whom she was tied, she was not promoted.

[16] In regard to the 2005 sergeant's exam, the relevant period extends from the establishment of the eligible list, which Complainant topped, and the reconfiguration of shifts in 2006 which eliminated at least some need for supervisory overtime to augment the four permanent sergeants on the Department's roster.

the Town of gender discrimination and retaliation. Respondent's attempt to downplay the relationship between Complainant's protected activity and her failure to be promoted also ignores the fact that one of the members of the promotion board testified against Complainant in a prior proceeding she brought against the Town. For all of these reasons, Complainant's allegations against Respondent do not constitute a past conflict long forgotten but, rather, a decades-long struggle between Complainant and the Town of Winthrop over allegations of gender discrimination. I do not credit the Town's contention that it has long ago forgotten any such disputes and that Complainant, alone, harbors continuing animus. On the basis of my credibility findings, I conclude that Complainant has made out a prima facie case of retaliation.

Once a prima facie case is established, the burden shifts to Respondent at the second stage of proof to articulate a legitimate, non-retaliatory reason for its action, supported by credible evidence. In attempting to carry this burden, Chief McManus claimed at the public hearing that a fifth sergeant's position was unduly costly, that supervisory overtime was necessary regardless of the number of permanent sergeants, and that Officer Rogers made a more effective presentation to the promotion board in 2004 and, thus, fairly won the vacant sergeant's position. Such rationales are sufficient to satisfy Respondent's burden at stage two.

At stage three, Complainant asserts that the Town's financial rationale for refusing to fill the fifth sergeant's position between 2002 and 2006 and its explanation for promoting Officer Rogers rather than Complainant in 2004 are false and that the motivating cause for these actions was retaliation. I concur. The credible evidence in the record establishes that it would have been less expensive to fund an additional sergeant's

position during 2002-2006 rather than maintain supervisory coverage through the hiring of sergeants on an overtime basis and that the promotion board favored Rogers over Complainant as a result of retaliatory animus against Complainant. In arriving at this conclusion I am not influenced by a contrary finding in an arbitration matter between Complainant's Union and the Town concluding that the Town was not obligated contractually to fill a vacant sergeant's position. The arbitrator arrived at this conclusion pursuant to the parties' collective bargaining agreement whereas I arrive at the conclusions set forth herein pursuant to Chapter 151B.

IV. REMEDIES AND DAMAGES

A. Affirmative Relief

Pursuant to G.L.c.151B, sec. 5, the Commission has the authority to issue orders for affirmative relief. I conclude that the findings of fact set forth in this decision merit such action and that Complainant is entitled to promotion to sergeant, retroactive to March of 2002, when the number of sergeants on the Department decreased from five to four. See Hurley and Ford v City of Melrose, MDLR (2008) (Full Commission Decision concluding that MCAD's powers to award affirmative relief allow for promotion of Complainant to police sergeant with retroactive pay where hearing officer determined that Complainant would have been promoted but for age discrimination).

B. Lost Wages and Benefits

Chapter 151B provides for monetary restitution to make a victim whole, including the same types of compensatory remedies that a plaintiff could obtain in court. See Stonehill College, 441 Mass at 586-587 (Sossman, J. concurring) *citing* Bournewood Hosp., Inc. MCAD, 371 Mass. 303, 315-316 (1976). In appropriate circumstances, the

MCAD is also authorized to award front pay as well as back pay as part of a compensatory damage award. See Beaupre v. Smith & Associates, 50 Mass. App. Ct. 480 (2000) *citing* Conway v. Electro Switch Corp., 402 Mass. 385, 387-388 (1988); Madden v. Town of Falmouth Harbormaster Waterway Dept., 15 MDLR 1949 (1993). Front pay is appropriate where the discriminatory act occurs near an individual's retirement date and/or where comparable positions would be difficult to find. See Haddad v. Wal-Mart Stores, Inc., SJC 10261 (October 5, 2009) (nineteen-year front pay award appropriate where plaintiff planned to work for defendant until retirement, where few comparable employment opportunities existed, and where plaintiff's ability to obtain employment undermined by defendant's harm to her reputation); Fitzpatrick v. Boston Police Department, 18 MDLR 29, 30 (1996); Madden,15 MDLR at 1967-68.

As lost wages, Complainant is entitled to the difference between the salary, overtime, retirement benefits, Quinn Bill benefits, longevity benefits, and any other income or benefits she earned as a patrol officer and that which she would have earned as a sergeant commencing in March of 2002 but excluding the period from January 8, 2008 to October 19, 2010. The parties are directed to confer and together determine the differential.

C. Emotional Distress Damages

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award damages for the emotional distress suffered as a direct result of discrimination. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). An award of emotional distress damages must rest on substantial evidence that is causally-connected

to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. See Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Complainant's entitlement to an award of monetary damages for emotional distress can be based on expert testimony and/or Complainant's own testimony regarding the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation provides support for an award of emotional distress but is not necessary for such damages. See Stonehill, 441 at 576.

Complainant testified convincingly that she experiences distress whenever she works under a less senior male officer. According to Complainant, she let go of her anger from earlier disputes with the Town because she was "vindicated" in 2000 and 2001, but that after being denied promotion, she felt herself becoming "invisible" on the force. Complainant testified that due to internalizing her feelings, she has had stomach problems, hair loss, chest pains, sporadically high blood pressure, chronic hives, and insomnia. Complainant testified to feelings of anger, rage, despair, hopelessness and frustration. Lt. Frank Scarpa, Complainant's shift commander for approximately eight years, testified that Complainant's lack of success at being promoted has emotionally affected her over the years. According to Lt. Scarpa, Complainant would frequently remark on her status. He described it as "weighing" on her mind.

Complainant stated that her symptoms caused her to seek medical care from her primary care physician, a gastroenterologist, a cardiologist, and a pulmonologist. She was prescribed Xanax for a period of time and stomach medication for acid reflux.

Notwithstanding the foregoing stressors, Complainant did not seek treatment with any mental health care professional, only took Xanax "occasionally," did not place any medical records into evidence, and had no health care professionals testify on her behalf. Complainant acknowledged that she had abdominal pain prior to 2002 and suffered distress due to her mother's illness and death in 2003. Complainant's emotional state was also impacted by her house burning down in November of 2005, which caused a four-plus year absence from her home and the loss of all the contents of her house. In addition to these factors, some of Complainant's emotional distress must be attributed to other employment-related litigation that is separate and distinct from these proceedings. As the Supreme Judicial Court has noted, there must be substantial evidence of a causal link between the claimed emotional distress and the alleged discriminatory conduct. See DeRoache v. MCAD, 447 Mass.1, 8 (2006) (where the Court determined that there was no causal connection between the discriminatory act of retaliation and the employee's emotional distress); Stonehill College v. MCAD, 441 Mass. at 576.

After considering all the factors contributing to Complainant's emotional distress, I conclude that only a portion of Complainant's emotional distress can be attributed to her failure to be promoted to sergeant. Complainant is entitled to $50.000.00 in emotional distress caused by the gender animus and retaliatory actions established in this case.

V. CIVIL PENALTY

Pursuant to G.L. c. 151B, section 5, the Commission may, in addition to any other action which it takes under the section, assess a civil penalty against the Respondent in an amount not to exceed fifty thousand ($50,000.00) dollars if Respondent is "adjudged to have committed two or more discriminatory practices during the seven year period ending on the date of the filing of the complaint." Within the seven-year period prior to the initial filing date in these consolidated matters, Respondent was adjudged by this Commission to have committed gender discrimination against Complainant for which $25,000.00 in damages and attorney's fees was awarded. See Dalrymple V. Town of Winthrop, 15 MDLR 1473 (1993), *affirmed* Town of Winthrop v. MCAD and Dalrymple (Suffolk, ss, CA 965667C, November 1998, Cratsley, J), *affirmed* Town of Winthrop v. Dalrymple and another, Memorandum and Order pursuant to Appeals Court Rule 1:28 (Doc. No. 99-P-280, December 28, 2000). Within the same seven-year period, Respondent was also adjudged by a Suffolk Superior Court jury to have committed gender discrimination and retaliation against Complainant for which $575,000.00 in compensatory and punitive damages was awarded. Suffolk Superior Court (Docket No. 95-4248B), *affirmed* Dalrymple v. Town of Winthrop, 50 Mass. App. Ct. 611 (2000). The sum total of the litigation between Complainant and Respondent convinces me that the Town's conduct towards Complainant over her thirty-year career has been egregious and intransigent. Complainant, alone, has failed to achieve promotion through the ranks of an organization in which male officers, as a matter of course, achieve higher rank. Such failure has been degrading, demoralizing and financially detrimental. Based on the foregoing, the Town merits the maximum civil penalty available, to wit $50,000.00.

VI. ORDER

Based on the foregoing findings of fact and conclusions of law and pursuant to the authority granted to the Commission under G. L. c. 151B, sec. 5, Respondent is ordered to:

(1) Cease and desist from all acts of gender discrimination and retaliation;

(2) Promote Complainant to sergeant retroactive to March 1, 2002;

(3) Pay Complainant the differential between what she would have earned as a sergeant commencing on March 1, 2002 and what she earned as a patrol officer, plus all benefits incidental thereto and interest on the back pay award at the rate of twelve per cent per annum starting on the date that Complainant filed her November 7, 2002 retaliation complaint through such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue;

(4) Pay Complainant the sum of $50,000.00 in emotional distress damages with interest at the rate of twelve per cent per annum. Said interest shall be apportioned equally among the three complaints with the interest obligations commencing on the date that each of the three complaints was filed and continuing until paid or until this order is reduced to a court judgment and post-judgment interest begins to accrue;

(5) Pay to the Commonwealth of Massachusetts a civil penalty in the sum of $50,000.00.

(6) Conduct, within one hundred twenty (120) days of the receipt of this decision, a training of the Winthrop Police Department's managers and

supervisors. Such training shall focus on gender discrimination and retaliation. Respondent shall use a trainer provided by the Massachusetts Commission Against Discrimination or a graduate of the MCAD's certified "Train the Trainer" course who shall submit a draft training agenda to the Commission's Director of Training at least one month prior to the training date, along with notice of the training date and location. The Commission has the right to send a representative to observe the training session. Following the training session, Respondent shall send to the Commission the names of persons who attended the training.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 22nd day of January, 2014.

_____

Betty E. Waxman, Esq.,
Hearing Officer

Exhibit J

Winthrop Police Union

MCOP Local 421 AFL-CIO

Ferruccio Romeo, President
Guilio Bonavita, Secretary/Treasurer
Mary Crisafi, E-Board

Winthrop Police Department
3 Metcalf Sq.
Winthrop, MA 02152

Posted 06-16-2014 FR

Grievance Form

Officer: Sergeant Nancy J. Dalrymple

I.D. Number: 908

Rank: Sergeant

Date: June 12, 2014

VIOLATION: During the recent shift bid conducted in the Department and facilitated by Sergeant Steve Rogers I was prevented from bidding for a shift in the proper order of my departmental seniority, as specified under the contract. This seniority was already used as a determining factor in a past Grievance. Additionally, I, as well as other Sergeants within the Department, was not given the opportunity to bid in order of seniority for the created Administrative Sergeant's Position.

Article I., Article II. Article III. Article XXX. Article XXXI., Article XXXIII.

REQUESTED REMEDY: 1. Chief Delehanty conduct the shift bid according to departmental seniority as other assignments are conducted.

2. All departmental members enjoy the same privileges and working conditions.
3. The Chief post ALL Supervisory positions as part of the annual/semi annual shift bid.
4. The Town of Winthrop and the Winthrop Police Department cease all retaliatory actions towards me in violation of the law.

Grievant:

Grievance Committee:

Exhibit K

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS
BEFORE THE COMMONWEALTH EMPLOYMENT RELATIONS BOARD

DLR Docket No. MUP-14-4210

WINTHROP POLICE MCOP LOCAL 421, AFL-CIO, and FERRUCCIO ROMEO	)
Charging Parties,	)
v.	)
TOWN OF WINTHROP,	)
Respondent	)

CHARGING PARTY FERRUCCIO ROMEO'S REQUEST FOR REVIEW OF THE MARCH 5, 2015 DISMISSAL OF CHARGE OF PROHIBITED PRACTICE

I. Introduction

Ferruccio Romeo was a police officer for the Town of Winthrop for nineteen years before his termination on January 9, 2015. During his nineteen years of service, Officer Romeo's record was unblemished. During the last eleven years, Officer Romeo was president of Winthrop Police M.C.O.P Local 421, AFL-CIO (hereinafter "the Union") and was the Union's sole officer. As Union President, Officer Romeo assisted two female Town of Winthrop police officers in filing numerous grievances over the last year against the Town alleging sex discrimination. Officer Romeo reviewed, signed off on, and posted the grievances on the Union's bulletin board. Police Chief Terence Delehanty became angry at Officer Romeo for his activity assisting the two female officers and particularly for Officer Romeo's refusal to remove certain correspondence related to the officers' grievances from the Union bulletin board. On December 1, 2014, just

weeks after the conflict between Chief Delehanty and Officer Romeo came to its peak, Chief Delehanty terminated Officer Romeo allegedly because he had attended Union contract negotiations on November 24, 2014, while at the same time being assigned to a paid detail. Although others had in the past done the same thing, and Mr. Romeo did not hide the fact that he was at the negotiations while assigned to a detail, and even though he was never paid for the detail, he was terminated for conduct that at most warranted significantly lesser discipline. The only plausible explanation for the firing of this nineteen year veteran with an unblemished record, is his protected union activity.

However after a Department of Labor Relations in-person investigation that took place on January 14, 2015, without the presence of Union or personal counsel for the charging parties, the investigator dismissed the Charge on the basis that the Union did not support its claim of unlawful motivation and failed to demonstrate that Officer Romeo faced disparate treatment. In dismissing Officer Romeo's Charge, the investigator focused solely on Officer Romeo's argument that the Town treated him differently than another officer who had attended the November 24, 2014 mediation when he was assigned to a detail but was not punished. The investigator rejected this argument, because the other police officer did not submit a pay slip for the hours that he attended the meeting. However, in concluding that Officer Romeo faced no disparate treatment, the investigator failed to consider the seriously disproportionate nature of the discipline that the Town issued to Officer Romeo for his relatively minor misconduct. If this Charge is allowed to proceed to a hearing, Romeo would show that (1) several Town of Winthrop police officers have in the past attended union negotiations with the Town while submitting detail slips for roving details without any disciplinary consequences; and (2) the Town has never terminated a police officer for misconduct, including instances that were

comparatively worse than Officer Romeo's. At the in-person investigation, Officer Romeo submitted affidavits from four other police officers that support both of those propositions (attached hereto as Exhibits A-D). Officer Romeo is prepared to submit additional evidence at hearing, which admittedly he did not submit at the in-person investigation. It is important to note that he was not represented by counsel at that point.

Finally this Charge should be deferred pending the arbitration of Officer Romeo's termination. Although the Union had not yet demanded an arbitration on Officer Romeo's termination at the time of the January 14, 2015, in-person investigation by Investigator Swinderman, the Union submitted a timely demand for arbitration with the American Arbitration Association on February 13, 2015, a copy of which is attached hereto as Exhibit A. Therefore under the principal of Collyer Insulated Wire, 192 NLRB 837 (1971), deferral to arbitration is appropriate so that an arbitrator can determine whether Officer Romeo's conduct constituted just cause for termination before the Department of Labor Relations makes a determination on Officer Romeo's Charge.

II. FACTS

Ferruccio Romeo was employed as a patrol officer for the Town of Winthrop from 1996 until his termination on January 9, 2015. (Aff. of Romeo ¶¶ 1, 31 submitted in support of his charge at the in-person investigation of January 14, 2015, attached hereto as Exhibit E.) Officer Romeo had served as the president of the Winthrop Police Union MCOP Local 421 for eleven years prior to his termination. (Aff. of Romeo ¶¶ 3-4, Ex. E.) Throughout 2014, and over the last several years, Officer Romeo assisted two female officers in filing grievances against the Town for sex discrimination. (Aff. of Romeo ¶¶ 7-11, Ex. E.) In Officer Romeo's capacity as Union president, he reviewed, signed off on, and posted the grievances on the Union bulletin board.

(Aff. of Romeo ¶ 7-11, Ex. E.) Additionally, Officer Romeo posted, as a matter of course, the responses to the grievances by Chief Terence Delehanty. (Aff. of Romeo ¶¶ 5, 13, Ex. E.) Chief Delehanty's frustration with Officer Romeo for engaging in this protected concerted conduct came to a head in late November 2014, shortly before the Town placed Officer Romeo on administrative leave and subsequently terminated him. (Aff. of Romeo ¶¶ 13-20, Ex. E.) In August 2014, Chief Delehanty had issued a response to one of the female officer's grievances, and Officer Romeo posted it to the Union bulletin board. (Aff. of Romeo ¶ 13, Ex. E.) The grievant was upset by Chief Delehanty's response, because she felt that the response was a personal attack that questioned her trustworthiness. (Aff. of Romeo ¶ 11, Ex. E.) In September 12, Human Resources Director Stacy DiChiara asked Officer Romeo to remove Chief Delehanty's response from the bulletin board, and Officer Romeo refused to remove it, because the grievant had not requested its removal. (Aff. of Romeo ¶ 15, Ex. E.) On November 18, 2014, the grievant submitted a letter to Chief Delehanty requesting reconsideration of his response to her grievance. (Aff. of Romeo ¶ 16, Ex. E.) On November 20, 2014, Chief Delehanty emailed Officer Romeo and told him once again to remove the Chief's response to the August grievance as well as the grievant's letter asking for reconsideration. (Aff. of Romeo ¶ 18, Ex. E.) Chief Delehanty argued that the bulletin board was a shared between the Union and the Town, that the letter requesting reconsideration violated the Collective Bargaining Agreement, and that Officer Romeo's posting of that letter violated the Collective Bargaining Agreement. (Aff. of Romeo ¶ 18, Ex. E.) Officer Romeo responded on November 22, 2014, that he would not remove any of the letters in question from the Union bulletin board, as the grievant had not requested their removal, and because there had been no violations of the Collective Bargaining Agreement. (Aff. of Romeo ¶ 19, Ex. E.)

Shortly thereafter, on December 1, 2014, Chief Delehanty placed Officer Romeo on administrative leave. (Aff. of Romeo ¶ 20, Ex. E.) Chief Delehanty accused Officer Romeo of submitting a false detail slip for a detail that Officer Romeo worked on November 24, 2014. (Aff. of Romeo ¶ 20, Ex. E.) The detail in question was a "roving detail" with the Department of Conservation (DCR) from 7:00 AM until 3:00 PM, during which time the officer was required to be on-call in the area near the Short Beach Pump Station to assist should any issues arise related to the Winthrop Beach Nourishment project. Though Officer Romeo did in fact attend the mediation at the Winthrop Town Hall from 10:00 AM until 3:00 PM that day, he was available on-call with his radio on and his cruiser in the Town Hall parking lot ready to provide assistance to the DCR if needed. There was a general understanding among the Winthrop police officers that they could rightfully report completion of these "roving details" as long as they spent the time of the detail in the general vicinity the Short Beach, in uniform with their radios on and their cruisers available, ready to respond to a DCR request for assistance with an issue. (Aff. of Dalrymple ¶¶ 8-10, Ex. B; Aff. of Hickey Jr. ¶¶ 14-28, Ex. C.) There also was a general understanding among the officers that it was permissible to attend contract negotiations with the Town while on such a "roving detail" as long as they were available on-call, because neither the Police Department nor the DCR had ever objected to this practice in the past. (Aff. of Dalrymple ¶¶ 8-10, Ex. B; Aff. of Hickey Jr. ¶¶ 14-28, Ex. C.) Regardless, Chief Delehanty placed Officer Romeo on administrative leave on December 1, 2014, and on January 9, 2014, the Town issued a letter to Officer Romeo notifying him that he was dismissed from his position as a police officer with the Town. (Aff. of Romeo ¶¶ 20, 31, Ex. E.) Thereafter, Officer Romeo and the Union filed a charge that the Town's conduct violated M.G.L. c. 150E, §§ 10(a)(1)-(4). The Department of Labor Relations conducted an in-person investigation on January 14, 2015. At the time of the

investigation, the Union had not filed a demand for arbitration for Romeo's termination. However, the Union filed an arbitration demand on February 13, 2015. (Arbitration Demand, Ex. F.)

III. Argument

A. The Investigator's disparate treatment analysis failed to adequately consider the seriously disproportionate nature of the discipline that the Town issued to Officer Romeo in response to his minor alleged misconduct.

The Town's termination of Officer Romeo was unlawfully motivated by a desire to penalize him for engaging in protected activity. See City of Holyoke, 35 MLC 153, 15, MUP 04-4503 (January 9, 2009). As the investigator stated in the dismissal of the Charge, "to support a claim of unlawful motivation, a charging party may rely on circumstantial evidence and reasonable inferences drawn from that evidence." See City of Holyoke, 35 MLC at 156. As the investigator stated further, several factors that suggest unlawful motivation include "the timing of the alleged discriminatory act in relation to the protected activity, triviliaty 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." See City of Holyoke, 35 MLC at 157.

The investigator's dismissal of the Charge relies chiefly upon the fact that in his view, the Union failed to demonstrate that the Town was unlawfully motivated by Officer Romeo's signing and supporting grievances as Union President. The investigator focused only on Officer Romeo's argument that the Town treated him differently than another employee who had also attended the November 24 contract negotiation while on a detail but was not punished. The investigator found that this was not disparate treatment sufficient to demonstrate the Town's unlawful motivation, because the other employee did not submit a pay slip for the hours that he

attended the negotiation. However, this is by no means the only evidence demonstrating that Officer Romeo faced disparate treatment. Importantly, the investigator failed to consider the seriously disproportionate nature of the Town's discipline in light of Officer Romeo's minor alleged misconduct, which can only be explained by Chief Delehanty's anger at Officer Romeo for his union activity. Officer Romeo never had any discipline in his entire 19 year tenure as a Winthrop Police Officer, and the Town decided to terminate him for his first minor incident. Arguably, Romeo committed no misconduct whatsoever, as he was available on-call in accord with the requirements of the Short Beach Pump Station roving detail. If this Charge is allowed to proceed to a hearing, the evidence will show that several officers have in the past attended contract negotiations with the Town while working and getting paid for a detail without facing any discipline or even accusations of misconduct by the Town. The evidence will also demonstrate that the Town consistently has issued discipline more lenient than termination to police officers who committed worse misconduct than Officer Romeo's. In fact, during Officer Romeo's 19 year tenure as a police officer, the Town only terminated a single officer for misconduct, and this termination was rescinded almost immediately. At the in-person investigation, Officer Romeo submitted the affidavits of Officer Judy Racow, Sergeant Nancy Dalrymple, Sergeant Arthur Hickey Jr., and Lieutenant Frank Scarpa (Exhibits A-D), which support Officer Romeo's contention that the discipline issued to him was disproportionate in comparison to the Town's past practices. Officer Romeo is prepared to submit additional evidence to support these contentions, should the Charge proceed to a hearing, which admittedly he did not submit at the in-person investigation. Again, it is important to note that he was not represented by counsel at that point.

The only reasonable explanation for the Town's disproportionate response to the minor misconduct is that Chief Delehanty and Town Manager McKenna were angry at Officer Romeo for supporting the grievances of the two female police officers throughout 2014 and refusing to remove grievance-related correspondence from the Union bulletin board. The conflict between Officer Romeo and Chief Delehanty over the grievance issue came to a head between November 18, 2014 and November 22, 2014, when Romeo refused to withdraw the grievances, responses, and letters from the Union bulletin board. Three days later, on November 25, 2014, Chief Delehanty accused Officer Romeo of the detail slip misconduct. The Town terminated Officer Romeo for the detail slip incident, despite his immaculate record, and despite the fact that he had arguably done nothing wrong. Officer Romeo attended the contract negotiation while remaining on-call for his detail, ready to respond to a DCR request for assistance immediately. He did this based on his understanding, and indeed based on a common understanding among the Winthrop police officers, that this conduct was permissible. Because Chief Delehanty and Town Manager McKenna were angry at Officer Romeo for his union activity, they used this negligible misconduct as an opportunity to terminate him.

B. The Department of Labor Relations should defer this charge pending the outcome of the arbitration of Officer Romeo's termination.

Pursuant to Collyer Insulated Wire, 192 NLRB 837 (1971), deferral to arbitration is appropriate here rather than dismissal of the Charge. The Commonwealth Employment Relations Board has adopted the policy expressed in Collyer. See Whittier Regional School Committee, 13 MLC 1325, 1331-42. The Department of Labor Relations may defer a pre-arbitral dispute to the parties' grievance-arbitration process while retaining jurisdiction to review the arbitrator's award or to monitor further progress of the parties toward the resolution of the dispute. See City of Boston, 1 MLC 1228 (1974). Additionally, 456 C.M.R. § 15.13 provides that "At any time

during the pendency of a charge at the Division, the Director may refer the matter to an investigator who may issue an order: . . . (b) deferring any charge which the subject of a pending grievance or arbitration." Under the Collyer deferral policy, deferral is appropriate where (1) the contract clearly provides for the grievance and arbitration of disputes, (2) the action taken by the employer was not designed to undermine the Union and was based on a substantial claim of contractual privilege, and (3) it appears that the arbitral interpretation of the contract will resolve both the unfair labor practice issue and the contract interpretation issue in a manner compatible with the law. See Whittier Regional School Committee, 13 MLC at 841-42; Natick School Committee, 11 MLC 1387, 1395-96. The rationale behind the deferral policy is to "encourage the prompt and effective settlement of public sector disputes utilizing binding grievance and arbitration procedures and to employ arbitrators with an expertise in contract analysis." In the Matter of City of Holyoke and International Brotherhood of Police Officers, Local 388, Case No. MUP-2734, 2002 WL 34459877 (MA LRC November 29, 2002) (citing Collyer Insulated Wire).

Officer Romeo's Charge should be deferred pending the outcome of the arbitration of his termination grievance. During the January 14, 2015, in-person investigation, there was no arbitration pending. However, the Union filed a timely arbitration demand, pursuant to the Collective Bargaining Agreement, on February 13, 2015. Under Collyer, deferral is clearly appropriate here, because the Union is utilizing the duly established arbitration procedure in order to challenge the Town's unlawful termination of Officer Romeo. The arbitrator's decision will hinge on whether Officer Romeo's termination was supported by just cause. To determine the existence of just cause, the arbitrator will necessarily consider whether or not the Town's termination of Officer Romeo was a disproportionate reaction to the gravity of the alleged misconduct, and whether the Town treated Officer Romeo differently than other officers that it

has disciplined in the past. Therefore, consideration of the Charge should be deferred pending the arbitration.

IV. Conclusion

For the reasons mentioned above, Charging Party Ferruccio Romeo respectfully requests that the Commonwealth Employment Relations Board review the March 5, 2015, dismissal of the Charge, reverse the dismissal, and defer the Charge pending the outcome of arbitration.

Respectfully submitted,

Ferruccio Romeo,
Charging Party,
by his counsel,

Harold L. Lichten, BBO # 549689
Thomas P. Fowler, BBO # 688521
Lichten & Liss-Riordan, P.C.
729 Boylston Street, Suite 2000
Boston, MA 02116
(617)994-5800
hlichten@llrlaw.com
tfowler@llrlaw.com

Dated: March 16, 2015

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appearance has been sent via U.S. Mail, this 16th day of March, 2015 to counsel for the Town of Winthrop Howard Greenspan, Esq., 220 Broadway, #204, Lynnfield, MA 01940

Thomas P. Fowler, Esq.

EXHIBIT A

27

AFFIDAVIT

I, Judy Racow, hereby depose and say.

1.My name is Judy Racow. I am a female resident of the Town of Winthrop Massachusetts.

2.I have been employed as a Police Officer for the Town of Winthrop since 1993.

3. I was assigned as a plain clothes detective in 1995 and was the only female in the unit. I held that position from 1995 through May of 2006 when I was removed for the first time and reassigned to uniform patrol.

4.I have extensive training in narcotics investigations, sexual assaults, criminal investigations, property and evidence room management, fingerprinting, sex offender registration, community policing, investigation and prosecution for crimes against persons with disabilities and elder abuse, juvenile policing, narcotics identification, E911 and rape investigations. In 1995 I received the Hanna Award and Medal of Valor for my work as an undercover officer.

5.As part of my duties as a detective, I and Detective Robert Jaworski, were involved in numerous undercover narcotics investigations with the Chelsea Drug Task Force "weed and seed" that included MSP, Chelsea Detectives, Winthrop Detectives, DEA, ATF, Suffolk District Attorney's Office and HUD.

6.On or around March 2001, the Suffolk County Detective Unit along with the Winthrop Detectives, I and Robert Jaworski and the Chelsea Drug Task Force began an undercover operation against a local known drug dealer known as Robert "Chubba" Carter, who was also the father of Winthrop Police Officer Wayne Carter and Massport Police Officer Robert Carter. The investigation lasted several months resulting in Carter's arrest and subsequent prosecution and conviction for 3 counts of Distribution of a Class B substance Cocaine and 1 count of Distribution in a School Zone the Dalrymple School.

7.During the undercover drug operation, then Reserve Officer Sean Delehenty, brother of Chief Terence M. Delehanty, queried a confidential number plate in May 2001 at the request of Carter who he was very friendly with. Reserve Officer Sean Delehanty gave the information to the target of the investigation Carter and

compromised and jeopardized the undercover officer's identity and impeded the investigation. Trooper Joseph Masterson confirmed the number plate of the undercover vehicle had been queried by ID # 937 which is assigned to Reserve Officer Sean Delehanty and was confirmed by me and detective Robert Jaworski.

8.On or around May 2006 I was removed from my detective position by Chief David B. Goldstein alleging budgetary and staffing shortfalls.

9.On or around May 2006, I filed a Grievance regarding my transfer and reassignment to the Uniformed Patrol Division. Officer Ferruccio Romeo assisted and supported me as President of the Local.

10.On or around May 2006 I filed a Complaint with MCAD as I was the only female detective removed despite having the most training. I filed the MCAD Complaint after consulting with Officer Ferruccio Romeo as he was the president of the Local Union and I am aware that he is a licensed attorney and was knowledgeable in this area of the law.

11.On or around January 2007 – December 2008 I was placed back in the detective unit temporarily pursuant to a drug grant to work solely narcotics investigations.

12. I was approached by then Sgt. Delehanty and asked what it would take to resolve the MCAD matter. He stated to me that maybe I and my family would like to go on a vacation and that we could go to Disney using vacation time and it would not be charged to me. I replied by telling him that I could not accept that and that I wanted my position back in the Detective Unit and Attorney Fees paid. Ultimately that was what was agreed upon as a resolution after my probable cause finding at MCAD. The matter was settled April 3, 2012.

13.On or around January 6, 2009 I was re-assigned back to the Uniformed Patrol Division.

14.On or around July 23, 2008, I received a Letter of Counseling from Lt. Detective Brian Perrin regarding a conflicting order that I had questioned. I filed a Grievance on this matter on or around July 24, 2008. The matter was resolved at the first step of the Grievance Process by Chief David B. Goldstein and Temporary Acting Assistant

Chief Terence M. Delehanty and the letter was removed from my Personnel record. I was represented by Union President Ferruccio Romeo in this matter.

15.On or around November 20, 2008, Lt. Terence M. Delehanty informed me that he was conducting an internal investigation regarding a Board of Probation check on the Town of Winthrop's Finance Director Michael Bertino regarding criminal activity outside of the Town of Winthrop. At that time I had run a BOP check to confirm or eliminate the information I had received as part of my regular duties. I was also instructed how to answer the questions that was provided to me by Lt. Delehanty due to the fact that it would have implicated other officers who informed me of the information regarding a Town employee to begin with. The results of the internal investigation were Unfounded but I received a Counseling regarding any Town department Head in matters related to law enforcement in the future.

16.On or around January 2009 I was reassigned back to uniformed patrol until September

17.On or around July 14, 2008, Executive Officer Terence M. Delehanty notified Union President Ferruccio Romeo that he had contacted the 3 Officers that had been layed off or accepted a layoff voluntarily and they all refused to be recalled.

18.On or around June 2009 Officer Sean Delehanty requested a voluntary layoff so he would be placed at the top of the Civil Service layoff list and be eligible to transfer to the Saugus Police Department due to his seniority which was a higher paying department.

19.On or around July 21, 2009, shortly after being hired from the Civil Service layoff list, Saugus Police Chief Domenic DiMella placed Officer Sean Delehanty on Administrative Leave with Pay pending the outcome of an Internal Investigation regarding Sean Delehanty's involvement in the Carter Undercover Drug Investigation in 2001. Saugus Police Chief Domenic DiMella also received information that Officer Sean Delehanty went before the Grand Jury and pleaded the 5th regarding the running of a license plate for a known local drug dealer. Saugus Police Chief Domenic DiMella reported there was no record of this matter in Sean Delehanty's Personnel file when the Saugus Detectives conducted a background check. Saugus Police Chief Domenic DiMella informed Police Chief Terence M. Delehanty, who failed to disclose the matter to the Saugus detectives that conducted the original background investigation, that if

he did not take his brother back in Winthrop he would be terminated from the Saugus Police Department.

20.On July 22, 2009 Acting Chief Terence M. Delehanty issued a Personnel Order informing the Winthrop Police Department members that he has recalled Sean Delehanty from his Voluntary layoff, even though he had refused to be recalled.

21.On or around September 2009, I was reassigned along with Detective Robert Jaworski to a temporary Narcotics Detective posting.

22.On or around November 2009, I was assigned to investigate, along with Lt. Detective Brian Perrin, Officer William Donnellan, then Officer Mary Crisafi and Detective Robert Jaworski an armed robbery at Wyatt's Mobil Mart on Main Street in Winthrop.

23.I was the lead investigator in this case and identified the Suspect, Robert "Chubba" Carter after reviewing video surveillance of the incident. He was subsequently arrested on or around November 23, 2009 and prosecuted and convicted. Chief Terence M. Delehanty approached me during the course of the Court Proceedings and asked me to ask the District Attorney for leniency because his sons, Wayne Carter and Robert Carter, who he had a very close and personal relationship with, were Police Officers. I did not speak with the DA regarding the Chief's request. Upon the day of sentencing, the DA expressed concern and dismay that Chief Terence M. Delehanty had requested leniency for Robert "Chubba" Carter and I informed her that he had also requested it through me but I did not pursue it. The DA stated it was highly inappropriate that the Police Chief make such a request.

24.In September 2012 I met with Lt. Scarpa and Lt. Perrin regarding Officer/Detective Callinan's disrespectful treatment of me. Union President Ferruccio Romeo also assisted and supported me during this difficult time.

25.In July 2013 I learned I was being investigated by my department without notification.

26.In September 2013 I was again removed from the Detective Unit.

27. I filed a grievance under CBA in September 2013. It was denied by the Town on October 11, 2013. Union President Ferruccio Romeo assisted and supported me.

28.January 7, 2014 I was injured in the line of duty while working my 1600-0200 Shift.

29.There were numerous issues pertaining to my duty status as a result of my injury. I was always represented by my Union President Officer Romeo during all proceedings surrounding numerous union issues particularly discrimination and retaliation.

30.I filed a complaint with the Human resource director Stacy Dichiara . The complaint was lodged as a result of actions of inappropriate behavior at best by then part time Detective Callinan. This event was a department held Christmas Party sponsored by the Chief as well as several other supervisors and ranking officers.

31.After being told I could file my compliant verbally by the Human Resource Director I was told it then had to be in writing per the Town Manager. On or about August 7, 2014 I filed same complaint in writing addressed to the Town Manager James McKenna through Stacy Dichiara. She repeatedly informed me via town E-Mail that she was advised by Town Manager this matter was a union issue and to speak with my union rep. After several back and forth conversations informing the Town Manager that it was not a Union issue and he had a duty to act, Town hired Jean Heartl to investigate.

32.During Union grievances filed under the CBA pertaining to my injury and duty as well as my unused vacation time carry over I was assisted and represented by Union President Romeo.

33.On August 21, 2014 Chief Delehanty wrote a response letter denying my grievance dated August 14, 2014. The response contained his personal subjective opinion of me. These comments had no basis in fact when I complained the Town blamed the Union and tried to order the Union President Officer Romeo to remove the posting from the Union board. It is the customary practice to post all union business on the Board. I was aware of that as I had observed numerous Grievances and responses posted on the Union Boards over the years. Chief Delehanty was well aware of this as well having been a union officer in the past as well as an intern with the IBPO while in Law School. The Town tried to blame the Union for posting Union materials when in fact my humiliation and discomfort from other officer comments to me was the direct result of what inaccuracies Chief Delehanty wrote and the hurtful contents, not the fact it was posted by the Union President and his refusal to allow the Chief of Police to control the Union Board and interfere with Union business and the operation of the Union. During the month of November 2014 I also wrote several letters to

the Town Manager in regards to the actions by Chief Delehanty and his comments about me as an officer and to reconsider his denial of my Grievance. My requests went unaddressed and even in a response from the Town Manager he stated that I bought any harm I suffered on myself. These Letters were also posted at my request on the Union Board as they were part of my Grievance.

34. I also have pending litigation against the Town due to the treatment I have received by them. I have also personally named Chief Delehanty and the Town of Winthrop in my case.

I swear or affirm that the foregoing representations are true and correct to the best of my information, Knowledge and belief.

Dated January 12, 2015

Judy A. Racow

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. DATE: 1-12-15

Before me then personally appeared the above named Judy A. Racow,

Identified by MASS. Drivers License

who acknowledged, by her signature, the foregoing Affiant to be true and to be the Affiant's free act and deed.

Notary Signature Diane L. Penney

Notary Name(printed): Diane L. Penney

Notary Commission Expires: 9-24-2015

EXHIBIT B

AFFIDAVIT OF NANCY J. DALRYMPLE

1. I am a Police Sergeant for The Town of Winthrop in The Winthrop Police Department.

2. I was appointed as a Police Officer for the Town of Winthrop on July 22, 1980. I have been promoted to the rank of Sergeant since March 1, 2002.

3. Since 1989 to the present I have been involved in numerous legal matters vs. The Town of Winthrop/Winthrop Police Department and many elected and appointed town officials. In addition to many grievances under the Collective Bargaining Agreement (CBA) between the Town of Winthrop and the Police Unions and their subsequent Arbitrations, my matters have been heard at The Massachusetts Commission Against Discrimination, The Civil Service Commission, Labor Relations Commission, The Superior Court, The Appellate Court, The Massachusetts Supreme Judicial Court and the Federal District Court for the District of Massachusetts, 1st Circuit.

4. I have been assisted in many of these matters which usually involved some portion of the CBA during the past eleven years by the current Union President for those years, Ferruccio Romeo.

5. Union President Romeo was a witness at several proceedings as well as being listed as such on submitted witness lists for many of these mentioned matters over the years.

6. As recently as the spring and summer of 2014 I have filed several grievances under the CBA on my own as well as jointly with Off. Judy Racow who also has been and is currently a plaintiff in several issues that are now currently before the Massachusetts Commission Against Discrimination (MCAD). In addition to contract issues these filed grievances pertained to discrimination and retaliation against myself and others by the current Chief of Police, Terrance M. Delehanty. Union President Romeo has assisted me as well as Officer Racow with the processing of our grievances as well as filing for arbitration on several matters. These matters are all still pending.

7. Several of the above mentioned grievances filed in 2014 came as result of a Decision from the Massachusetts Commission Against Discrimination in January 2014 after a full Public Hearing held in 2013 where the Town and others were found to have discriminated and retaliated against me.

8. During the course of my employment for over thirty-five years I am aware of officers coming and going from detail assignments.

9. On October 10, 2014 I was assigned to the Pump Station Detail. Upon my arrival to my assignment I inquired of DCR Project Manager Steve Colometto at his trailer what my

assignment was as well as the expectation of me while on the detail. It is customary for me to inquire on a new first time assignment and I had inquired previously regarding assignments when working the DCR Gate Assignment on Winthrop Shore Drive as well as the escorting of the sand trucks. I made this inquiry at the DCR trailer of Mr. Colometto in the presence of DCR Inspector, Michael Vickery.
I was instructed at this time by Mr. Colometto that my assignment that day as I was in a marked vehicle was to be available for any emergencies. I then inquired what type of instances he was envisioning. I was told that in the event a truck tipped over as that had happened previously in Revere or if any other detail officers were having a problem with a truck driver or if there were any trucks reported to be speeding then I may be called upon to assist as I was mobile. Mr. Colometto also made a comment to the effect that we didn't have to worry about any beach goers crossing now.

10. During the course of my detail assignment on October 10, 2014 I observed and heard over the radio other officers that were assigned to fixed post details leave their details under the direction of the Chief of Police.

11. During the course of my employment with the Town of Winthrop for over thirty-five years I have also been a Union Official many times and as a result I personally know full well that the Town of Winthrop and its Police Department has been found responsible by the courts and other investigative agencies to have retaliated against officers for protecting their rights as well as assisting other officers under the CBA and in the courts.

I affirm that the foregoing representations are true and correct to the best of my information, knowledge and belief.

Submitted by,

Nancy J. Dalrymple

Nancy J. Dalrymple

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Romeo, Ferruccio,
Appellant
v.
Town of Winthrop,
Respondent

Case No. D-14-300

Date: January 9, 2015

Affidavit

I, Arthur G. Hickey Jr., hereby depose and say,

1. My name is Arthur G. Hickey Jr.

2. I have been employed by the Town of Winthrop in the Police Department full time since 1983.

3. I am currently a Sergeant and have been since 1997.

4. I am a Supervisor in charge of overseeing and am responsible for a Day Shift from 7:00 a.m. – 5:00 p.m. on a 4 on 4 off schedule that includes Ferruccio Romeo.

5. I have been Ferruccio Romeo's direct and immediate Supervisor for approximately the last 15 years.

6. During the last 15 years of supervising Ferruccio Romeo, I have never had to counsel, discipline or question his judgment as a person or a Police Officer.

7. Ferruccio Romeo has always conducted himself professionally, ethically, courteous and above board.

8. Ferruccio Romeo has no record or history of any disciplinary matters, inappropriate conduct or behavior.

9. Ferruccio Romeo has been the President of the Local Union for approximately 11 years.

10. I have been the President of the Local Union in the past during my career.

11. The role of President of the Local, in my personal experience and as an observer involving Ferruccio Romeo over the last 11 years, is very contentious, adversarial and controversial with the Chief of Police and the Town Officials.

12. Ferruccio Romeo has been a very strong and active Local Union President and his relationship with Chief Terence M. Delehanty and Town Manager James Mckenna has been very adversarial over the last several years in his role as the President of the Local.

13. Ferruccio Romeo has always exhibited high moral character and I believe him to be very trustworthy and a strong advocate for the lawful rights of others in and outside the Police Department.

14. Based upon my personal knowledge over the last 32 years, Officers constantly float off their details and have never been disciplined about it.

15. I worked several details for the DCR regarding the Winthrop Beach Nourishment Project from March 2014 – present.

16. I spoke with Resident Engineer Steve Colometo regularly and he never instructed me about any specific instructions or guidelines regarding the requirements of any of the DCR Details.

17. Besides an initial memo in March 2014 from Chief Terence M. Delehanty regarding the Crest Ave DCR Details, I never observed or received any memos, instructions, directives, orders or written correspondence from Chief Terence M. Delehanty regarding the duties and requirements of the DCR Details.

18. In early April 2014, I became aware that Chief Terence M. Delehanty had received a complaint about the DCR Detail Officers on Crest Ave not being in position.

19. I asked Chief Terence M. Delehanty about it because I was assigned to Crest Ave at that time. The Chief said he didn't mean me but other Officers.

20. I asked the local merchants if they had filed or reported a Complaint and everyone denied making such a report as they were very satisfied and appreciated the Officers in the area.

21. I am not aware of any internal investigation initiated about this matter. I am not aware of any Officer being disciplined over this matter.

22. I am not aware of any memos, written or verbal instructions or written or verbal communications from the DCR being distributed to the Officers or posted on any Bulletin Boards in the Police Department regarding the DCR Details.

23. I am not aware of any requirements or specific instructions either verbally or in writing regarding the DCR Pump Station Detail.

24. Neither the DCR, nor Chief Terence M. Delehanty required a Supervisor be assigned to oversee the DCR Details daily until after the Detail in question completed on November 24, 2014 by Ferruccio Romeo.

25. Based upon my 32 years of experience and the accepted practices currently in the Police Department relative to Police Details the DCR Pump Station Detail was satisfied and completed appropriately on November 24, 2014 by Ferruccio Romeo.

26. Other Officers assigned to the Pump Station Detail, as well as numerous other Details, between October 2014 and November 24, 2014 left their assigned location on numerous occasions as I personally observed them to be in the Police Station for extended periods of time beyond breaks for lunch or restroom breaks.

27. The Police Station is located directly across the Street from the Town Hall.

28. No internal investigation has been initiated and none of these Officers has ever been disciplined to the best of my knowledge.

29. On December 1, 2014, I was working my assigned Day Shift with Ferruccio Romeo.

30. Sometime in the middle of the morning Ferruccio Romeo was called in to the Chief's Office accompanied by Lt. Brian J. Perrin.

31. Shortly thereafter, Ferruccio Romeo came back into the Control Room and dropped off his cruiser keys and left the building.

32. I was unaware, as his direct and immediate Supervisor, that Ferruccio Romeo had been placed on Administrative Leave with Pay. I was also unaware that he had been ordered to turn in his department issued firearm, badge and Police radio.

33. At approximately 3:40 p.m. on December 1, 2014, I was called in to the Chief's Office. Chief Terence M. Delehanty stated he was very upset that he had to investigate an incident involving Ferruccio Romeo and a Detail. He stated the Town Manager had ordered him to investigate it and that he was unable to sleep the last couple of nights because he was asked to investigate it by Town Manager James McKenna. He further apologized to me for not letting me know sooner what had transpired since I was Ferruccio Romeo's immediate supervisor.

34. Based upon my personal knowledge, experience, practices of the Winthrop Police Department and the Town of Winthrop Ferruccio Romeo has been and continues to be punished excessively and unjustly and it is directly related to his position as President of the Local Union and his advocating for other Officers in the exercise of their protected rights.

I swear or affirm that the foregoing representations are true and correct to the best of my information, knowledge and belief.

01.09.15

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. Date: 01/09/15

Before me, then personally appeared the above named affiant Arthur Hickey
Who acknowledged, by his signature, the foregoing Affidavit to be true and to be the affiant's free act and deed. DL # S 37824854 MA

Notary Signature: Maria José Carvalho Arrais

Notary Name (Printed): MARIA JOSÉ CARVALHO ARRAIS

My Commission Expires: NOV, 16, 2018

MARIA JOSE CARVALHO ARRAIS
Notary Public
COMMONWEALTH OF MASSACHUSETTS
My Commission Expires
November 16, 2018

EXHIBIT D

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Romeo, Ferruccio,
Apellant
v.
Town of Winthrop,
Respondent

Case Number: D-14-300

Date: January 9, 2015

AFFIDAVIT OF FRANK SCARPA

Name: Frank Scarpa
Occupation: Lieutenant Winthrop Police Department

I, Frank Scarpa, swear or affirm:

1. I have been employed by the Town of Winthrop in the Police Department since 1977.

2. I earned the rank of Sergeant in 1988.

3. I am currently a Lieutenant and have been since 1992.

4. I am currently the senior Lieutenant in the Winthrop Police Department in my 38th year of service to the Town of Winthrop.

5. I am a Shift Commander and have supervisory responsibilities during my Shift from 4:00 p.m. – 2:00 a.m. on a 4 on 4 off schedule.

6. I have extensive training regarding internal affairs, internal investigations and disciplinary matters involving Police Officers.

7. The training that I have attended and completed during my career regarding disciplining of Officers, teaches that discipline must be swift, uniform, and certain.

8. The Winthrop Police Department does not have a history of adhering to the practice of disciplining Officers pursuant to the training I have received.

9. The incident of the current matter should have taken approximately a week to fourteen days to resolve based upon my training and experience.

10. Based upon my training, the issue and knowledge of no disciplinary history of this Officer with 19 years of service, I would recommend the following discipline be issued under these circumstances:
    (a.) Non-Payment for the Detail in question;
    (b.) Verbal Counseling; and
    (c.) Brief Written Letter of Counseling in Officer's Personnel Record for 6 months to be removed as long as there is no further repeat of such.

Further Affiant saith not.

I swear or affirm that the above and foregoing representations are true and correct to the best of my information, knowledge and belief.

Date: 01-08-15

Frank Scarpa

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. Date: 1/8/15

Before me, then personally appeared the above named Affiant Frank Scarpa
Who acknowledged, by his signature, the foregoing Affidavit to be true and to be the Affiant's free act and deed.

Notary Signature:

STEPHEN TASSINARI NOTARY PUBLIC COMMONWEALTH OF MASSACHUSETTS MY COMM. EXPIRES MARCH 14, 2019

(Seal)

Notary Name (Printed): Stephen Tassinari

My Commission Expires: 3/14/19

EXHIBIT E

AFFIDAVIT

I, Ferruccio Romeo, hereby depose and state as follows:

1. I have been employed as a Police Officer for the Town of Winthrop since 1996.

2. I have had no disciplinary history during my career as a Police Officer.

3. I am the President of the Winthrop Police Union M.C.O.P. Local 421 representing Sergeants and Patrol Officers.

4. I have been the President of the Union since December 2004.

5. As President of the Local, I review, process and sign off on Grievances for violations of the Collective Bargaining Agreement. I also post Grievances and correspondence related to Grievances on the Union Bulletin Board. I also post general Union information on the Union Bulletin Board.

6. I am currently the only elected Union Official of the Local Union.

7. From March 2014, to present, several Grievances were filed by female officers and a minority officer and processed by me as President of the Local that included violations of discrimination and retaliation against Police Chief Terence M. Delehanty. All relevant documentation for these Grievances was posted on the Union Board as part of my representational responsibilities.

8. Officer Judy Racow filed several Grievances for violations of the Collective Bargaining Agreement including discrimination, retaliation and unequal treatment against Chief Terence M. Delehanty. I reviewed the Grievances, signed off on them and posted them on the Union Board.

9. Officer David Brown filed a Grievance with Judy Racow and Nancy Dalrymple for violations of the Collective Bargaining Agreement including discrimination and retaliation against Chief Terence M. Delehanty. I reviewed the Grievance signed off on it and posted it on the Union Board. David Brown subsequently removed his name from the Grievance because he had been ridiculed by other Officers and due to a disagreement he had with Nancy Dalrymple over a Shift assignment and seniority.

10. Nancy Dalrymple filed several Grievances for violations of the Collective Bargaining Agreement including discrimination and retaliation. I reviewed these Grievances, signed off on them and posted them on the Union Board.

11. Several of these Grievances remain outstanding and unresolved. Several of these Grievances have been processed for Arbitration.

12. I have counseled, advised, assisted and supported Officers in the exercise of their protection of their Civil Rights as President of the Local Union.

13. On August 21, 2014, Chief Terence M. Delehanty issued a written response to Officer Judy Racow's Grievance dated August 15, 2014. The response was posted on the Union Board as part of my representational responsibilities. The Chief's response was a personal attack against Officer Judy Racow and her trustworthiness as a Police Officer. The contents of the Chief's response caused her embarrassment and humiliation among her peers.

14. On September 12, 2014, I received an email dated September 11, 2014 from Human Resources Director Stacy DiChiara requesting the Chief's response be removed from the Union Board as she had received a Complaint from Judy Racow about it being posted.

15. On September 12, 2014, I notified HR Director Stacy DiChiara via email that the Union would not remove the posting as it was customary practice by the Union to post Grievances and Grievance responses from the Town particularly when the Union signs off on any Grievance. Additionally I informed her that Judy Racow was not upset at the posting of the Chief's response but to the contents of it. Judy Racow never requested that I remove the Chief's response from the Union Board. She was also advised that her request may be a violation of Law.

16. On November 18, 2014, Judy Racow requested reconsideration of the denial letter she received from Town Manager James McKenna. I reviewed the reconsideration request as it directly involved the Grievance, signed off on it and posted it on the Union Bulletin Board as part of my representational responsibilities.

17. On November 19, 2014, Officer Patrick Curran was reading the reconsideration letter posted on the Union Board from Judy Racow to Town Manager James McKenna. Patrick Curran remarked "we're gonna need a bigger boat." Chief Terence M. Delehanty then suddenly appeared from the side hallway and remarked that the Board was a shared

board and mumbled some other comments that I did not hear. Neither I nor Patrick Curran made any remarks or responses to Chief Terence M. Delehanty as he exited to the front lobby. Patrick Curran stated to me that he meant we will need more Bulletin Boards as the 2 currently in place were fully occupied with pending unresolved Grievances.

18. On November 20, 2014, I received an email from Chief Terence M. Delehanty referring to the Judy Racow reconsideration request relative to her Grievance to Town Manager James McKenna. The Chief was alleging a violation of the Collective Bargaining Agreement. He also stated that Judy Racow had requested his original Grievance response be removed from the Union Bulletin Board as well. This was inaccurate and untruthful. The Chief was interfering and attempting to coerce me in the exercise of my rights guaranteed under M.G.L. c.150E. The Chief was attempting to control the administration of the Union's business.

19. On November 22, 2014, I notified Chief Terence M. Delehanty via email that the Judy Racow reconsideration request was not a violation of the Collective Bargaining Agreement and that she had never requested it be removed. I also responded to the Bulletin Board issue and the Union's position. I reiterated the fact that Judy Racow was upset with his Grievance response and his personal attack against her and that Town Manager James McKenna had failed to address Judy Racow's concerns.

20. On December 1, 2014, I was placed on Administrative Leave with Pay and ordered to turn in my department issued firearm, badge and Police radio and banished from the workplace for allegedly submitting a detail slip that I did not work. I was ordered not to discuss the matter with anyone except legal counsel depriving me of my right to a fair and impartial hearing as I was unable to prepare a proper defense. I fully satisfied the detail and submitted a valid detail slip for payment.

21. On December 18, 2014, I attended and testified at a disciplinary hearing presided over by the appointing authority McKenna on my own behalf. The Town's only witness was Delehanty. I was not allowed to cross examine alleged parties he had interviewed and I was never interviewed by Delehanty. Delehanty testified untruthfully at this hearing. Delehanty never interviewed or reviewed video surveillance footage of other Officers that had performed that detail.

22. On January 7, 2015, I received a phone call at my residence at approximately 9:15 p.m. from Town Manager James McKenna informing me that he had drafted a termination

letter and attempted to coerce me into admitting to wrongdoing that I had not committed.

23. McKenna informed me that he did not wish to terminate me but was being forced to do so by other people.

24. McKenna also made statements about my pension, career and healthcare benefits.

25. McKenna suggested I contact Delehanty the next morning at his office and meet with him. I informed McKenna I did not trust Delehanty and feared he would fabricate additional allegations against me particularly after what he had done up to this point.

26. I agreed to meet with him and Delehanty in an effort to resolve this matter.

27. On January 8, 2015, I received a phone call at my residence at approximately 9:20 a.m. from McKenna informing me he had coordinated a meeting at 4:00 p.m. and it would be held at Uno's restaurant in Revere with him and Delehanty.

28. I arrived at Uno's in Revere with a witness but neither McKenna nor Delehanty showed up.

29. Later in the evening, I was reviewing my emails and discovered an email from Sandulli regarding a settlement offer if I agreed to release the Town of all pending legal matters including the Unfair Practice Charge, MCAD Complaint, Civil Service Appeal and Grievance.

30. A second email was forwarded to me by Sandulli he had received from Greenspan confirming Delehanty or McKenna would be attending the 4:00 p.m. meeting.

31. On January 12, 2015, I received a letter at my home via U.S. mail from McKenna informing me he had decided to dismiss me as a Police Officer of the Town of Winthrop.

32. On January 13, 2015, I attended a pre-hearing Conference at the Civil Service Commission. A hearing has been scheduled for March 12, 2015.

33. Judy Racow also has pending litigation against Chief Terence M. Delehanty personally and the town of Winthrop in Superior Court Docket No. 14-3200E. She also has had a negative long history with Delehanty and his family members and close friends because

she carried out her duties as a Police Officer as a detective that involved Delehanty's family and relatives of his close friends.

34. I have been the only elected Union Official over the last 11 years to participate in all the adversarial and controversial matters against the Chief and Town Manager as well as other Town officials and Department Heads.

35. Chief Terence M. Delehanty and Town Manager James McKenna have retaliated against me for performing my representational responsibilities as President of the Union through Labor Counsel Howard L. Greenspan.

36. Chief Terence M. Delehanty and Town Manager James McKenna have excessively and unjustly punished me for carrying out my representational responsibilities as President of the Local Union through Labor Counsel Howard L. Greenspan.

37. Chief Terence M. Delehanty and Town Manager James have committed mental extortion in their pursuit of having me admit to wrongdoing for which I have not committed and they have threatened termination because I have protected Officers in my capacity as President of the Local Union and my representational responsibilities.

38. Chief Terence M. Delehanty and Town Manager James McKenna have violated M.G.L. c.150E in their attempts to control and or eliminate me as the President of the Local Union through Labor Counsel Howard L. Greenspan.

SIGNED under the pains and penalties of perjury, this 13th day of January 2015.



Ferruccio Romeo

EXHIBIT F

AMERICAN ARBITRATION ASSOCIATION®

LABOR ARBITRATION RULES
DEMAND FOR ARBITRATION

Date: February 13, 2015

Name of Filing Party: Winthrop Police Union, MCOP Local 421, AFL-CIO			Name of Filing Party's Representative: Alan H. Shapiro, Esq.		
Check applicable box: Filing Party is ☑ Union or ☐ Employer			Name of Firm (if applicable): Sandulli Grace, P.C.		
Address:			Representative's Address: 44 School Street, Suite 1100		
City:	State:	Zip Code:	City: Boston	State: MA	Zip Code: 02108
Telephone:	Fax No.:		Telephone: 617-523-2500	Fax No.: 617-523-2527	
Cell Phone:			Cell Phone: 617-877-1756		
Email Address:			Email Address: ashapiro@sandulligrace.com		
Additional Email(s) to be Copied on Correspondence:			AAA Should Communicate With Me By: ☑ Email ☐ Fax ☐ Mail		

The filing party, a party to a Collective Bargaining Agreement dated 7/1/11 , which provides for arbitration under the Labor Arbitration Rules of the American Arbitration Association, hereby demands arbitration.

Nature of Grievance: ☑ Discharge ☐ Suspension ☑ Other Discipline ☐ Contract Interpretation ☑ Other

Describe:

Placement of Officer Romeo on administrative leave and subsequent discharge.

Remedy Sought: Reinstatement. Back pay and compensation including paid details and overtime and all benefits. Retroactive to date of admin leave. Make whole. Record cleansed.

Name of Grievant(s) (if applicable): Ferruccio Romeo

The filing party requests that hearings be held at the following location: Boston AAA

You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association office located in Boston , with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within ten (10) days after notice from the AAA.

Name of Respondent: Town of Winthrop					
Check applicable box: Respondent is ☐ Union or ☑ Employer			Name of Respondent's Representative (if known): Howard Greenspan, Esq.		
Contact Person: James McKenna, Town Manager			Name of Firm (if applicable):		
Address: 1 Metcalf Square			Representative's Address: 200 Broadway, Suite 304		
City: Winthrop	State: MA	Zip Code: 02152	City: Lynnfield	State: MA	Zip Code: 01940
Telephone:	Fax No.:		Telephone: 781-598-4545	Fax No.:	
Email Address:			Email Address: hgreenspan@greenspanlawyers.com		

AAA Customer Service can be reached at 800-778-7879.

Reminders: Send a copy of this form to the other side at the time it is forwarded to the AAA. Please reference appropriate fees pursuant to the fee schedule outlined in the Labor Rules. You can file your case online by visiting the AAA's website at **www.adr.org**. Please select "AAA Webfile" from the list of side menu options. *You may also wish to visit our website for a complete list of our administrative services and procedures, including our Grievance Mediation Procedures, Expedited Procedures, List Only Service and List with Appointment. Your case manager can also provide additional information.*