

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

DLR Docket No. MUP-19-7261

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-19-7261. In his Charge, Officer Romeo alleges that the Town violated G.L. c. 150E, §§ 10(a)(1), (3), and (4) by taking several retaliatory actions against him for his protected union activity. Although the Department of Labor Relations (“DLR”) Investigator correctly found that Officer Romeo established probable cause to support the first three elements of his prima facie case of retaliation, the Investigator erred in finding that Officer Romeo did not establish the fourth element of his prima facie case – that the Town’s actions were unlawfully motivated. (Investigator’s Dismissal at 7-9.) Officer Romeo brings this narrow appeal only with respect to two of his four allegations of retaliation: (1) that the Town retaliated against him by failing to reinstate him to all of his duties as ordered by an arbitration award following his January 2015 termination; and (2) that the Town retaliated against him by denying him a

promotional opportunity for the position of lieutenant. 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.

More specifically, 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 challenged¹ 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. 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 Union took his case to arbitration.² The arbitration was held over four days, and after hearing

¹ 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 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).

² 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

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

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.

In the midst of all of this acrimony, the Town also took the retaliatory measures complained of in the instant charge – 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 these two claims of retaliation, dismissing them purely on the conclusion that Officer Romeo could not establish probable cause that the Town was motivated by retaliatory animus in taking these actions against him. 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-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 1.) 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 1.) 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.)³ 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.) Officer Romeo was also intimately involved in ongoing contract negotiations as the Union’s president. (Investigator’s Dismissal at 1-2.) 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 negotiating on the Union’s behalf. (Romeo MUP-14-4210 CERB Brief at 3-4; Investigator’s Dismissal at 1-2.)

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.) 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.) Although others had in the past regularly attended union

³ For the purposes of providing some additional background, Claimant cites the brief currently 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 C.

negotiations while on details without facing any reprimand or discipline,⁴ 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.)

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 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.)

⁴ 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.)

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.)⁵

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. To Officer Romeo's knowledge, however, there have been no further decisions on those charges from CERB or the DLR.

Officer Romeo's civil suit alleging retaliation in violation of the Massachusetts Law Against Discrimination remains pending and is set for trial on July 27, 2020.

C. The Town Refuses to Return Certain Duties to Officer Romeo Upon his Reinstatement

Upon returning Officer Romeo to his job, the Town refused to assign him to his previous duties as CJIS Representative, which has caused Officer Romeo to lose approximately 50 hours of compensatory time per year. (Investigator's Dismissal at 4.) These duties consisted of certification and maintenance of the CJIS system and of confidential passwords. (Investigator's Dismissal at 4.) 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. (Investigator's Dismissal at 4.) As a result of the Town's refusal to return these detail duties to Officer Romeo, he has lost 48 "Kelly hours" per year. Notably, the arbitrator specifically ordered the Town to remit back pay to Officer Romeo to compensate him

⁵ 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.

for the hours lost pertaining to the CJIS Representative and detail duties prior to his reinstatement. (Investigator's Dismissal at 2 n.5; Remedy Award at 9, Exhibit B.)

D. Dispute Over Promotional Examinations

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, 5.) 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. 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. This left Officer Romeo with 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. (Investigator's Dismissal at 5.) In early 2018, the Town had posted a provisional sergeant position. (Investigator's Dismissal at 5.) 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. (Investigator's Dismissal at 5.) A permanent sergeant's position became open, and on December 8, 2019, Officer Romeo was finally promoted to sergeant. (Investigator's Dismissal at 5.).

Additionally, the Town held an examination for promotion to a lieutenant's position on December 8, 2018. (Investigator's Dismissal at 5.) Officer Romeo had sought to sit for that

examination as well, arguing that had he not been terminated in January 2015, he likely would have been made a sergeant sufficiently earlier to qualify for the lieutenant promotional examination. (Investigator's Dismissal at 5.) The Town denied his request. (Investigator's Dismissal at 5.)

III. ARGUMENT

The Investigator incorrectly concluded that Officer Romeo failed to demonstrate probable cause that the Town was motivated by unlawful retaliatory animus both in its refusal to return Officer Romeo to all of his previous duties when he was reinstated from his termination and when the Town precluded Officer Romeo from the opportunity from promotion to lieutenant. 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).

The only element at issue here is whether the Town's actions were 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.”).

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).⁶

A. The Investigator’s Analysis Regarding the Town’s Failure to Reinstate Officer Romeo to all of His Previous Duties Improperly Prejudged the Merits

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 12-13), 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

⁶ 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 8.)

explanation for its conduct at face value despite the ample background evidence that could lead to a plausible inference that the Town refused to reinstate Officer Romeo to all of his duties in order to punish him for his conduct as union president and for successfully challenging his termination. As Officer Romeo explained, following his reinstatement the Town refused to return him to his administrative duties concerning the Police Department's details as well as his duties as Criminal Justice Information Services ("CJIS") representative. As a result, Officer Romeo has lost out on a significant amount of compensatory time and Kelly hours.

Since his termination on January 9, 2015, Officer Romeo and the Town have been 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 upshot here is that the Town has taken every opportunity to punish Officer Romeo for his union activity, and the Town's refusal to reinstate him to the detail maintenance and CJIS representative duties are part and parcel of that retaliatory 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.

The Investigator, however, bent over backwards to explain these facts away. Even though the Arbitration Award directed the Town to reinstate Officer Romeo and to make him whole, the Town refused to return him to all of his duties. Curiously, the Investigator concluded that the Arbitration Award did not specifically state that the Town had to reinstate Romeo to his former duties, but as a matter of common sense, that is what it means for the Town to reinstate him and to make him whole. The Arbitrator asserts that the "issue here is not whether Romeo would have kept these duties had he not been terminated," but the point of a make whole remedy is to put Officer Romeo in the position he would have been in absent the unlawful conduct. See City of Lawrence, MUP-11-6279, 2013 WL 3328032, at *2-3 (June 28, 2018). In this case, there is no reason whatsoever to presume that Officer Romeo would have given up those duties absent the Town's unlawful conduct, and the Remedy Award even acknowledged that by providing for the money he lost from those duties prior to his reinstatement. (Investigator's Dismissal at 11.) Inexplicably, the Investigator treats the question of the motivation behind the Town's decision not to return Officer Romeo to those duties as totally separate from the Arbitration Award and the reinstatement. Treating this decision in a vacuum ignores the years of animus the Town has displayed toward Officer Romeo because of his union conduct.

Furthermore, the Town's "legitimate reasons" for its decision not to return those duties to Officer Romeo are not legitimate at all. While the Town argues that some detail duties had been assigned to other officers from 2011-2013, that fact is irrelevant. (Investigator's Dismissal at 12.) At the time Officer Romeo was terminated in 2015, he had performed those duties for at least 10 years. The fact that Officers Femino and Bonavita also performed some detail slip duties prior to Officer Romeo's termination has nothing to do with the question of whether the Town was

motivated by retaliatory animus in its refusal to return Officer Romeo's detail duties.⁷

Furthermore, the Investigator's observation that a 2010 agreement made the Union responsible for certain follow-up duties for detail payments rather than the Town is a red herring. Officer Romeo was the Union's president and sole officer, and so in effect, those duties were allocated to him. With respect to the CJIS duties, the Town argued that it had assigned them to a lieutenant and were happy with that arrangement. (Investigator's Dismissal at 12.) The only reason that the Town had ever assigned those duties to the lieutenant at all was the result of its retaliatory animus toward Officer Romeo. The Investigator concluded that there was no probable cause that retaliatory animus was the but-for cause for the Town's decision not to return the CJIS duties back to Officer Romeo, but there is just no way that such a conclusion could be reached without a hearing.

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.

B. The Investigator Improperly Dismissed Officer Romeo's Claim that he was Denied the Opportunity for Promotion to Lieutenant

The Investigator was also incorrect to find there was no probable cause to support Officer Romeo's claim that the Town was motivated by retaliatory animus when it refused to permit him to sit for the December 8, 2018, lieutenant promotional examination. The Town cannot dispute the fact that because Officer Romeo was separated from his position from January 9, 2015 to September 8, 2018, he was not able to sit for any promotional examinations during that period.

⁷ Tellingly, after Officer Romeo was terminated, his detail follow-up duties were assigned to Officer Hagemeister, who had engaged in the exact same purported misconduct of which the Town accused Officer Romeo. (Investigator's Dismissal at 4-5; Romeo MUP-14-4210 CERB Brief at 6.) Officer Hagemeister faced no consequences for this purported misconduct. (Romeo MUP-14-4210 CERB Brief at 6.)

The only reason that Officer Romeo was separated from his position in the first place was due to the Town's unlawful retaliatory animus against him.

The Investigator concluded that Officer Romeo's argument was "purely speculative" that he would have been promoted to sergeant earlier, which would have allowed him to qualify for the lieutenant promotional examination. Officer Romeo's argument is, however, quite reasonable given the fact that when he had **half** the time officers in Winthrop are typically provided to prepare for the examination, he not only passed but ranked third on the civil service list. The Town held several sergeant promotional examinations during the time Officer Romeo was separated, and it is reasonable to believe he would have been promoted as the result of any of those tests. Even if Officer Romeo's argument is speculative, it was the Town's unlawful conduct that put him in the position to have to speculate. Furthermore, it is a question of fact as to whether the Town was actually motivated by retaliatory animus when it decided not to let Officer Romeo sit for the examination.

Finally, to the extent that the Town argues that it could not have permitted Officer Romeo to sit for the lieutenant promotional examination, Officer Romeo is still owed damages for the denial of the opportunity to take it and the resulting loss of the opportunity to be promoted. As the Supreme Judicial Court has held, damages to a terminated employee may include "promotion expectations" despite the fact that such expectations are inherently somewhat speculative. See Selmark Associates, Inc. v. Ehrlich, 467 Mass. 525, 545 (2014) (citing Boothby v. Texon, Inc., 414 Mass. 468, 475 (1993)). Thus, the Investigator's dismissal of this claim was incorrect.

C. Alternatively, the DLR Should Have Deferred a Finding on Officer Romeo's Charge Until His Prior to Pending Charges Had been Resolved

In the alternative, CERB should direct the DLR to defer a decision on this matter until the resolution of Officer Romeo's two currently-pending charges, MUP-14-4210 and MUP-15-4652,

which allege that he was terminated for his protected, concerted activity as Union President. During the in-person investigation, Officer Romeo motioned to consolidate his charge with those pending charges. (Investigation at 2 n.3.) The Investigator denied Officer Romeo's motion, because she found it more appropriate to dismiss the case. (Investigation at 2 n.3.) Later in her decision, however, she appeared to hold it against Officer Romeo that those pending charges had not been resolved: "To the extent that Romeo maintains that the Town terminated him in retaliation for his protected activity, I note that there have been no findings to date, by the arbitrator or by the DLR, to support this conclusion" (Investigation at 9 n.17.)⁸ Applying circular logic, the Investigator dismissed the charge in part because there were no findings that the Town's termination of Officer Romeo constituted unlawful retaliation, but she refused to await the resolution of those pending charges because she felt this charge should be dismissed.

In fact, the resolution of those two pending charges will provide the full context necessary for this charge to be decided. The Town's retaliatory conduct alleged in the instant charge has its genesis in Officer Romeo's termination. Resolving this charge first put the cart before the horse, and instead, the Investigator should have granted Officer Romeo's motion to consolidate the charges.

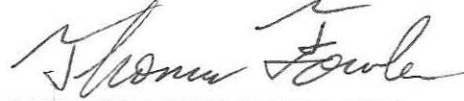
IV. Conclusion

For the reasons mentioned above, Charging Party Ferruccio Romeo respectfully requests that the Commonwealth Employment Relations Board review the dismissal of the Charge, reverse the dismissal, or in the alternative defer consideration of the Charge until the merits of Charges MUP-14-4210 and MUP-15-4652 have been determined.

⁸ Oddly, the Town has repeatedly asserted that the Arbitration Award addressed Officer Romeo's retaliation argument. It did not.

Respectfully submitted,

Ferruccio Romeo,
Charging Party,
by his counsel,



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Dated: March 30, 2020

CERTIFICATE OF SERVICE

A copy of the foregoing document has been sent via electronic mail, this 30th day of
March, 2020 to counsel for the Town of Winthrop Howard Greenspan, Esq.



Thomas P. Fowler, Esq.

EXHIBIT A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article XXXV - Disciplinary Action

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

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

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

...

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

...

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

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

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

...

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

...

ARTICLE IX. VIOLATION GUIDELINES

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

CONTENTIONS OF THE TOWN

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

Charge 1.

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

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

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

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

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

Charge 2.

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

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

Charge 3.

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

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

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

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

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

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

CONTENTIONS OF THE UNION

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

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

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

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

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

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

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

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

DISCUSSION

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

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

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

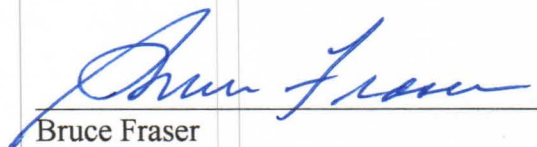
I find that Charges 2 and 3 were not proven by the Town.

AWARD

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

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

Scituate, MA
February 26, 2016



Bruce Fraser
Arbitrator

EXHIBIT B

In the Matter of the Arbitration between:

WINTHROP POLICE UNION, LOCAL 421
-and-
TOWN OF WINTHROP, MA

Re: AAA Case No. 01-15-0002-6830
Remedy: F. Romeo Reinstatement

AWARD

The details of the Remedy are sufficiently long and complex that they are best read in the body of the Award.

January 21, 2018
Pembroke, MA

Bruce Fraser

Bruce Fraser
Arbitrator

Winthrop Police Union, Local 421	Remedy Discussion
-and-	Case No. AAA 01-15-0002-6830 Officer F. Romeo Grievance
Town of Winthrop, MA	January 21, 2019

A remedy hearing was held in Winthrop, MA on September, 17, 2018, in Winthrop, MA. 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 November 18, 2018.

THE ISSUE

What should be the remedy due Ferruccio Romeo for the Town of Winthrop's termination of Officer Ferruccio Romeo without just cause?

INTRODUCTION

The grievant, Ferruccio Romeo, was placed on administrative leave on November 30, 2014, thereby precluding him from working overtime and details, and terminated from the Winthrop Police Department on January 9, 2015. The Union grieved the termination on January 16, 2015, and hearings were held on August 24, September 24, October 21, and November 2, 2015. Post-hearing briefs were received by the Arbitrator by January, 28, 2016, and an Award from the Arbitrator sustaining the grievance was issued on February 26, 2016.

The decision was appealed to the Superior Court, which vacated the Award on April 3, 2017, based on certain findings-of-fact which were not in the record. The Appeals Court reversed and confirmed the Award in a 1:28 decision on May 21, 2018, writing, "here,...the arbitrator's award

does not violate the well-defined public policy requiring honesty in police officers, because the arbitrator found that Romeo was not dishonest.” The Town thereupon petitioned for further judicial review which the Supreme Judicial Court denied on June 29, 2018. The Town restored Officer Romeo to a paid status on August 3, 2018.

A second arbitration hearing was held on October 18, 2018, to determine the remedy. Briefs were received by the Arbitrator on November 19, 2018. This award is the Arbitrator’s assessment of the facts and proposals presented by the parties. The position of the Union is to insure that Officer Romeo is made whole for the economic loss he suffered by virtue of his being terminated from the Winthrop Police Department from January 9, 2015 until August 3, 2018 – as if he had not been terminated. The Town takes the view that Officer Romeo should be compensated only for lost wages (including longevity, Quinn Bill, and holiday pay), overtime and detail pay, less a deduction for W-2 income, unemployment compensation, and business income.

The parties specified that the Arbitrator should decide the concepts to govern back-pay liability in each instance, but should not determine the specific amount, only the basic approach to the matters. I have done so, attempting to provide a rationale for my recommendation, considering “salary” and “benefits” to be broad and encompassing terms.

In what follows, a statement comparing the positions of the Union and the Town on the different compensation issues is presented first, followed by my recommendation on each of them.

POSITIONS OF THE PARTIES ON THE ISSUES AND THE RECOMMENATIONS

General

The position of the Union is to insure that Officer Romeo is made whole for the economic loss he suffered by virtue of his being terminated from the Winthrop Police Department from

January 9, 2015 until August 3, 2018. Officer Romeo is to be compensated for what he would have earned. The Town takes the view that he should be compensated only for lost wages (including longevity, Quinn Bill, and holiday pay), overtime and detail pay, less a deduction for W-2 income, unemployment compensation, and business income. Its proposal is that the Award should consist of only:

1. \$251,722 for regular wages including longevity, Quinn, and holiday pay
2. \$101,131 for overtime and detail pay
3. A deduction of \$86,825 for W-2 income, unemployment compensation and business income
4. A total of \$266,028 (\$251,772 plus \$101,131 less \$86,825) minus whatever the arbitrator determines is fair for the Grievant's failure to mitigate damages.

The Issues

Straight Wages

Union Position – The Union requested that the Town pay the amount of \$252,000 for lost base pay, including lost salary, holiday pay, educational differentia, and longevity for the termination period.

Town Position – The Town proposes to pay the amount of \$251,722 in regular wages. [Note: All amounts are reduced to the closest dollar amount.]

Arbitrator Recommendation – The Parties should find a compromise position for the \$378 difference. The amount due is \$251.xxx, plus the interest on this amount (the Parties must decide the rate) from the time Romeo was reinstated on August 3, 2018 to when he is paid the total amount, presumably in late January, 2019.

Details & Overtime

Union Position – The Union maintains that there is no dispute that Officer Romeo is entitled to the details and overtime he would have earned had he been working during the entire period. He was consistently among the highest earners and to place him in the middle is a disservice. Moreover, the use of a formula based on his previous earnings may not accurately address the fluctuating nature of the overtime and detail opportunities for the entire period. A fair way to calculate his potential -earnings during this period would be to consider the particulars of actual details and overtime earnings from December 2014 to September 8, 2018 and use an average of the top third earners in each category.

Town Position – The Town proposed \$101,131 based on an average for details

and overtime. It objects to the Union's proposal, stating that it was speculative in nature. The Town rejects the suggestion that the detail and overtime pay for lieutenants be included, since they are a separate bargaining unit. If they are included, then so should the retired police officers and reserves who are paid overtime and perform details.

Arbitrator Recommendation – Given Officer Romeo's participation and his earnings in Detail and Overtime was above average, I suggest that he be compared with the top third of like officers in this matter and receive the average amount of these individuals for the time he was omitted from participation.

Outside Compensation as an Offset

Union Position – What interim earnings Officer Romeo realized during his termination period were gained from his knowledge and skill as an attorney (see Tax Returns) and not because he was a Police Officer. In 2015, while still working as a Police Officer, he earned \$83,000 working as an attorney. This income is not relevant to mitigation.

Town Position – The Town maintains that the amount of damages should be offset by the amount of outside compensation earned by Officer Romeo, including the amount of unemployment compensation paid to him during the period of his absence. Specifically, since the Form 1040 from the year 2015 shows Wages of \$6,256, a Business income of \$59,629, and Social Security Benefits of \$20,940, the award should be reduced by \$86,824.97.

Arbitrator Recommendation – I do not view outside earnings that were carried on prior to his termination to be relevant here. His legal practice is unrelated to his police work, it may have been carried out to supplement his Town earnings, or it may have been for investment purposes. Whatever the case, it was not relevant to his police activities and should not be viewed as an offset.

In addition, I view Social Security income totally irrelevant to this matter and should also not be seen as an offset. I am not aware of the amount of Romeo's Unemployment Benefits, but they should be identified and not reimbursed.

The Mitigation of Damages

Union Position – The charges against Officer Romeo were toxic accusations against a police officer which effectively disqualified him from law enforcement and nearly derailed his secondary job as an attorney, due to the Superior Court's decision spurred on by the Town's claims of Officer Romeo's reported untruthfulness to the Board of Overseers. He simply could not obtain a reasonable job despite many tries. Moreover, there is no contractual basis which supports mitigation of owed salary.

Town Position – The Town maintains that the amount of salary owed Officer

Romeo should be offset by any income he received from working during this period. This includes the issues of separate income from legal work, Social Security, and Unemployment Compensation.

Arbitrator Recommendation – I know of no duty to mitigate, absent the CBA expressing this specific requirement. Moreover, there was no notice by the Town that it was necessary for Officer Romeo to attempt to mitigate the back salary he would receive. The notion of mitigation of damages in arbitration involves obtaining a position that is roughly the same as the one from which the grievant was removed. However, I have serious doubts that Officer Romeo could obtain employment at any of the dozens of organization he listed, given that he had been fired for, among other things, lying to his employer, and this was known. The Town made no credible effort to either cast serious doubt on the numerous places where Officer Romeo attempted to find similar employment, nor did it suggest a number of places where he might find employment. The examination of his attempt was rather cursory. I find no basis for migration of salary owed.

Tax Increase in 2019

Union Position –The Town’s “make-whole” payment will be considered by the IRS as taxable income and may place Officer Romeo in a higher tax bracket than before. Through no fault of his own, he will be forced to pay more in taxes and retain less income, than if his termination had never occurred. The Town should be required to pay any additional money due to the tax bracket, a process known as “Gross Up.”

Town Position – The Town does not believe that it owes interest on the back pay.

Arbitrator Recommendation – If, when the FY 2019 taxes are computed, Officer Romeo must pay over-and-above those which he would have paid had he been compensated in a timely way, the Town should make sure that Officer Romeo does not suffer extra payment simply because of the delayed payment of his salary and benefits because of the Town’s termination actions. If he does have to pay additional taxes in 2019, I believe that the Town should be responsible for the difference.

Pre-Judgement Interest

Union Position – If wages were delayed by no fault of Officer Romeo, he deserves interest.

Town Position – The Town maintains that the Arbitrator’s award is that Officer Romeo be made whole for all lost wages and benefits, less offsetting income. There is no mention in the Award of pre- or post-award interest. It is not customary for an arbitrator to grant interest on claims which he finds owing. However, interest has been granted where there are special circumstances such as

an employer's dilatory conduct, or a necessary delay in the grievance process, or bad faith. None of these facts are present here.

Arbitrator Recommendation – I find no basis for awarding any interest to the monies owed to Officer Romeo prior to the Award of February 16, 2017. Thereafter, I find interest appropriate.

Post-Judgement Interest

Union Position – The Union argues that Officer Romeo is not adequately made whole unless the Town pays appropriate interest on payments wrongfully withheld for the past 2.5 plus years. This addition is increasingly justified by arbitrators, especially where there are post-judgement delays. In the present case, the Town does not dispute that Officer Romeo is owed at least \$252,000, but to date, it has refused to pay any money and has enriched itself with the interest accrued. The Town should be required to pay statutory interest, under L.G. c.231, Section 61, from the date of the arbitration award, February 26, 2016, for all monies owed as of that time, compounded quarterly. In addition, the Town should be required to pay interest, compounded quarterly, on all monies owed, calculated on a monthly basis, from February 27, 2018 to September 8, 2018.

Town Position – The Town maintains that neither the parties' Agreement nor this submission expressly authorizes the arbitrator to award payment of interest. It maintains that it is not customary for the arbitrator to grant interest on claims. As above, it states that this is not a case where an employer delayed conducting the grievance process, or arbitration hearing, or acted in bad faith.

Arbitrator Recommendation – I find it to be fair that the Town pay interest from February 16, 2017, forward, when it rejected the arbitrator's decision to reinstate Officer Romeo following the Award, and entered into the Appeals process. At this point, the Town was gambling that the decision would be reversed and that it would have to pay nothing, and did not seek a stay of enforcement of the Award, pending appeal. The cost of this gamble was the interest charge on any monies owed Officer Romeo on items such as salary, benefits, etc. for the period between February 16, 2017 and August 3, 2018, when he was placed back on the payroll. The rate of interest should be determined by the parties.

Claims of Vacation Hours, Sick Leave, Personal Time, or Compensatory Time

Stipends/Differentials

Union Position – The Union also notes that Officer Romeo earned a night differential and officer-in-charge stipends in 2014. He should be compensated for the years he was out, for these lost earnings based upon his 2014 earnings.

Town Position – The Town rejects any payment of Stipend & Differentials.

Arbitrator Recommendation – If the opportunity for working the extra-duty activities was the same as in 2014, and unless the weight of arbitral evidence is opposed to this additional benefit, I think that some accommodation should be made for the period after the February 16, 2017.

Uniform Allowance.

Union Position - Officers are entitled to \$850 each year for uniforms, whether or not they use these funds to purchase uniforms, and whether or not these funds are sufficient for them to maintain their uniforms. Officer Romeo did not receive this benefit for the time he was out and should be paid the sum of \$1,700.

Town Position – The Town rejects any payment for uniforms.

Arbitrator Recommendation – Officer Romeo presumably received payment for 2015, missed 2016 and I understand that he did receive uniform payments in 2017 and 2018. This should cover his uniform needs.

Health Insurance

Union Position – The Town paid \$17,000 a year during Romeo's absence towards family health insurance premiums. Officer Romeo's actual cost for health insurance for the entire period, including premiums, deductibles, and co-pays, amounted to approximately \$10,500. Because the Town would have had to pay more than three times that amount in premiums alone, it should be ordered to pay for Officer Romeo's health care costs that were not covered by the Town.

Town Position – The Town rejects any payment for health insurance.

Arbitrator Recommendation – When Officer Romeo was absent from duty, he paid \$10,500 for health insurance. The Town should reimburse him for this amount.

Paid Leave

Union Position – The Town should credit or compensate Officer Romeo for all paid leave, including Vacation Leave (600 hours), Sick Leave (169 hours), Personal Leave (90 hours) and Compensatory/Time Due (360 hours) he would have accrued during his absence.

Town Position – The Town rejects any payment of benefits earned in past years. Since neither vacation days nor personal leave are accrued from year to year under the parties' Agreement, they should be denied. In addition, compensatory time must be earned and should not be included in the award.

Arbitrator Recommendations

1. Vacation Leave - According to Article XXXVI, Section 3, provides that “vacation leave shall not be accumulated from one vacation year to another, and salary shall not be paid in lieu of vacation....” It follows that Officer Romeo would have to have taken paid vacation for the years he was off-duty or lost the days. His back pay award will have paid him for this time. For the calendar year 2018, he would have been eligible to take vacation upon his return August 3, 2018 and the Union states that the Town credited him for the hours he should have received on July 1, 2018.

The Union also argued that vacation leave would be allowed to carry over with the Chief’s permission, and he has stated that he has allowed up to 40 hours to be carried over. Thus, Officer Romeo should be compensated or credited with 40 hours of additional vacation leave, which he would have earned.

2. Sick Leave in the amount of 1,600 hours was credited by the Town to Officer Romeo. The Union maintains that he should be credited with 169 hours more. Upon proof of the validity of the claim, the Town should credit him with this amount.

3. Personal Leave is not carried over to the following year. Thus no credit is due here.

4. Compensatory Leave/Time Due for not using Sick Leave time for 3 months. Officer Romeo consistently used very little Sick Leave. His absence caused him not to earn these extra hours of leave. However, these hours translated into time off from his duties, which meant vacation time, for which he is being paid by the Town retroactively.

Officer Romeo also performed additional job duties such as CJIS liaison and Details Maintenance for the Department, and averaged about 90 hours per year of “due time.” It is my understanding that this time was treated as compensatory time when he was excused from work. This, also, is covered by the back-pay order to the Town which it must pay.

This completes my assessment of the issue brought to me concerning making Officer Romeo whole as a result of an erroneous termination.

January 21, 2019
Pembroke, MA

Bruce Fraser

Bruce Fraser
Arbitrator

EXHIBIT C

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, triviality of reasons given by the employer, disparate treatment, an employer's deviation from past practices, or expressions of animus or hostility towards a union or the protected activity." 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,



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Thomas P. Fowler, BBO # 688521
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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

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 1998 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 Dabrymple School.

7. During the undercover drug operation, then Reserve Officer Sean Delahanty, brother of Chief Terence M. Delahanty, queried a confidential number plate in May 2001 at the request of Carter who he was very friendly with. Reserve Officer Sean Delahanty 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, 2008 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 Dichiaro. 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 complaint 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 Dichiaro. 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 Heard 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.

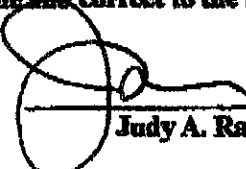
33. On August 21, 2014 Chief Delehanty wrote a response letter denying my grievance dated August 14, 2014. The response contained his personal subjective opinion of me. These comments had no basis in fact when I complained the Town blamed the Union and tried to order the Union President Officer Romeo 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 brought 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. Pennell

Notary Name(printed): DIANE L. PENNELL

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.

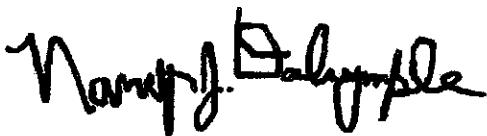
I was instructed at this time by Mr. Colometto that my assignment that day as I was in a marked vehicle was to be available for any emergencies. I then inquired what type of instances he was envisioning. I was told that in the event a truck tipped over as that had happened previously in Revere or if 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,

A handwritten signature in black ink, reading "Nancy J. Dalrymple". The signature is written in a cursive, flowing style with a large initial "N".

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.

Arthur Hickey 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 Jose Carvalho Arrais

Notary Name (Printed): MARIA JOSE CARVALHO ARRAIS

My Commission Expires: NOV, 16, 2018

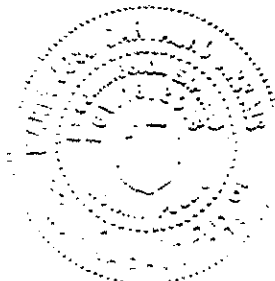
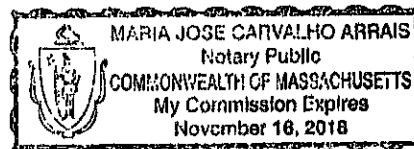


EXHIBIT D

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

**Romeo, Ferruccio,
Appellant**

Case Number: D-14-300

v.

Date: January 9, 2015

**Town of Winthrop,
Respondent**

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
Frank Scarpa

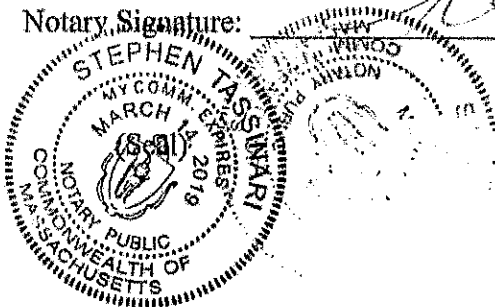
COMMONWEALTH OF MASSACHUSETTS

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: [Signature]



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.

A handwritten signature in black ink, appearing to read 'Ferruccio Romeo', is written over a horizontal line.

- Ferruccio Romeo

EXHIBIT F



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.					