

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS

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In the Matter of the Arbitration Between:

CITY OF WOBURN

-and-

NEW ENGLAND POLICE  
BENEVOLENT ASSOCIATION

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ARB-14-3599

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Arbitrator:

Timothy Hatfield, Esq.

Appearances:

Ellen Callahan Doucette, Esq.	-	Representing City of Woburn
Thomas Horgan, Esq.	-	Representing New England
Joseph A. Padolsky, Esq.	-	Police Benevolent Association

The parties received a full opportunity to present testimony, exhibits and arguments, and to examine and cross-examine witnesses at a hearing. I have considered the issues, and, having studied and weighed the evidence presented, conclude as follows:

**AWARD**

The City of Woburn did have just cause to suspend Officer Jerome Gately for four months but did not have just cause to demand an apology from Officer Gately.

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Timothy Hatfield, Esq.  
Arbitrator  
March 25, 2015

### **INTRODUCTION**

On April 14, 2014, **the** New England Police Benevolent Association (Union) filed a unilateral petition for Arbitration. Under the provisions of M.G.L. Chapter 23, Section 9P, the Department of Labor Relations (Department) appointed Timothy Hatfield Esq. to act as a single neutral arbitrator with the full power of the Department.<sup>1</sup> The undersigned Arbitrator conducted a hearing at Woburn City Hall on June 24, 2014.

The parties filed briefs on July 25, 2014.

### **THE ISSUE**

Did the City of Woburn have just cause to suspend Officer Jerome Gately for four months? If not what shall the remedy be?

### **RELEVANT CONTRACT LANGUAGE**

The parties' Collective Bargaining Agreement (Agreement) contains the following pertinent provisions:

#### Article VII – Grievance Procedure (In Part)

Section 1 - ... For purposes of a grievance processed beyond Step 2, a grievance shall be defined as a complaint, dispute or controversy between the City and the Union (and/or officer) involving only an interpretation of a specific provision of this Agreement. ...

Step 4 – If the decision of the Mayor is not acceptable to the Union, it may be appealed to the State Board of Mediation and Arbitration<sup>2</sup> within 30 days.

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<sup>1</sup> Pursuant to Chapter 145 of the Acts of 2007, the Department of Labor Relations “shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the ... the board of conciliation and arbitration ... including without limitation those set forth in [chapter 23C](#), [chapter 150](#), [chapter 150A](#), and [chapter 150E of the General Laws](#).”

<sup>2</sup> See fn. 1.

Article XX – Miscellaneous (In Part)

Section 5 – Each officer shall be provided with a copy of the rules and regulations of the government of the police department. ...

Section 13 – No tenured officer shall be disciplined, demoted suspended or discharged except for just cause.

Article XXIV – Management Rights (In Part)

3 (c) Subject to applicable law and this Agreement, to select and determine the number of employees and categories of positions to be established; to determine their qualifications; to evaluate employees; to determine their duties and assignments; to direct their work; to determine the content of job classifications and job descriptions; to promulgate reasonable rules and regulations; to issue and amend and revise policies, rules, regulations and practices; to take whatever action is either necessary or advisable to determine, manage and fulfill the mission of the City and to direct the City employees. ...

**RELEVANT POLICIES AND PROCEDURES**

Rules and Regulations For The Government Of The Police Department Of The City Of Woburn (In Part)

Section 1(E) – Orders

An order is a command or instruction, written or oral, given or issued by a superior officer. All lawful orders, written or oral, shall be carried out fully and in the manner prescribed. ...

4 – Unjust or Improper Orders

When lawful orders which appear to be unjust or improper are given, the officer to whom the order is given shall respectfully notify the superior officer issuing such order of its impropriety. If the order is not corrected, then the order is to be carried out. After carrying out the order, the officer to whom the order was given may file a written union grievance or complaint to the Executive Board in accordance with the collective bargaining agreement, via the chain of command indicating the circumstances and the reasons for questioning the order, along with a request for clarification of department policy. An officer who performs an order found to be unjust or improper by the Chief, will not be held responsible for carrying out such order. ...

## Section 1(G) – Prohibited Conduct

1 – Conduct Unbecoming an Officer – The Commission of any specific act or acts of immoral, improper, disorderly or intemperate personal conduct which reflects discredit upon the officer himself, upon his fellow officers or upon the Police Department. ...

9 – Improper Associations – Officers and employees shall avoid regular or continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment, or who have a reputation in the community or the Department for present involvement in felonious or criminal behavior, except as necessary to the performance of official duties, with the knowledge and approval of the Chief or the officer's Commanding Officer, or where unavoidable because of family relationships of the officers.

10 – Incompetence – An officer shall maintain sufficient competence to perform his duty and to assume the responsibilities of his position. Incompetency may be demonstrated, but is not limited to, the following:

- a. A lack of knowledge of the application of laws required to be enforced;
- b. An unwillingness or inability to perform assigned tasks;
- c. The failure to conform to work standards established for tasks;
- d. Repeated poor evaluations or repeated infractions of the rules and regulations.

12 – Insubordination – Failure or deliberate refusal to obey a lawful order given or issued by a superior officer.

**FACTS**

The Union and the City are parties to a collective bargaining agreement that was in effect at all relevant times. The City has also issued Rules and Regulations for the Government of the Police Department of the City of Woburn (Rules and Regulations).

Jerome Gately (Gately) was appointed to the position of full-time permanent Patrolman for the Woburn Police Department (WPD) on November 1, 1990. On June 23, 2000, the City informed Gately that it was going to hold a

disciplinary hearing regarding a series of issues that took place between October 1997 and December 1999. On July 18, 2000, Gately and the City entered into a Last Chance Agreement. In lieu of termination, the City suspended Gately for one-year.

Candice Ahern (Ahern) and Gately, at all times relevant to this arbitration, were in a long term, committed dating relationship.<sup>3</sup> On June 25, 2013, Ahern was arrested and charged with distribution of a Class B substance (oxycodone). On June 27, 2013, Gately accompanied Ahern to her arraignment at the Woburn District Court. Gately was off-duty and in plain clothes.

On July 11, 2013 Kristen Johnson (Johnson) filed a complaint with the WPD alleging that Gately was harassing her and her friend Thomas Sergeant (Sergeant) because he believed that she was responsible for Ahern's arrest.

On July 12, 2013, Chief Robert Ferullo (Chief Ferullo or Chief) had a meeting with Gately. Captains Robert Rufo and John Murphy (Captain Murphy) also attended this meeting. Chief Ferullo informed Gately that he had been cleared of any wrongdoing in a prior investigation, but that he was subject to another investigation relating to the Johnson complaint. Chief Ferullo also testified that he gave Gately a verbal order to stay away from Ahern under the

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<sup>3</sup> Gately described the relationship as "unconventional". Gately has been separated from his wife since 1999, but has not filed for divorce and Ahern also remains married.

guidelines of Section 1(E)(9) of the Rules and Regulations concerning improper associations.<sup>4</sup>

On September 18, 2013, Chief Ferullo notified Gately in writing that he was the subject of a citizen complaint and that an Internal Affairs investigation would be conducted. The Chief ordered Gately to have no contact with Ahern, Johnson, or Sergeant and to immediately report any contact that he might have had with any of those individuals. Gately notified the Chief of two inadvertent contacts with Sergeant while he worked his second job, but never notified the Chief of any contact with Ahern.

On November 4, 2013, the Chief ordered Gately to produce his cell phone records for the time period of September 18, 2013 through October 18, 2013. On November 5, 2013, the Chief ordered Gately to produce a written report of all contact he had with Ahern by November 14, 2013. This deadline was extended on two occasions. On December 6, 2013, a nolle prosequi was entered in the Woburn District Court as to the criminal charges against Ahern. Also on December 6, 2013, Gately submitted his report to the Chief regarding his contact with Ahern. Gately stated that he “attempted as best I could to comply with the order but on various unknown occasions had direct contact with her.”

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<sup>4</sup> Gately denies that a verbal order was given to him on this date. Whether the Chief gave this order verbally on July 12, 2013, is the subject of much debate between the parties. Ultimately, I need not reach this issue because, as all parties agree, Chief Ferullo gave Gately a written order on September 18, 2013 ordering him to stay away from Ahern. Additionally, Gately admits that he disregarded this order and had intentional contact with Ahern on multiple occasions prior to the dismissal of the charges against her on December 6, 2013.

Retired Chief Alfred Donovan (Donovan) was appointed by the Chief to conduct the Internal Affairs investigation of Gately. Gately, accompanied by legal counsel, met with Donovan on December 13, 2013. Gately admitted that subsequent to receiving the Chief's September 18, 2013 written order mandating that he have no contact with Ahern, he had direct and intentional contact with Ahern by telephone and had met with her over ten times. Donovan's report was submitted to the Chief on December 26, 2013.

On January 22, 2014, Mayor Scott D. Galvin (Mayor or Mayor Galvin) notified Gately that he was considering disciplining him for violating direct orders given to him by Chief Ferullo. On January 28, 2014, a hearing was held on the issue of whether there was just cause to discipline Gately. On January 30, 2014, the Mayor notified Gately that there was just cause to suspend him from his position as a patrolman for a period of four months. The Mayor stated that "I find that the significant discipline is warranted for your deliberate and continuous actions in violating the Rules and Regulations of the Woburn Police Department." The Mayor also found that Gately's actions displayed a measure of disrespect to his fellow officers and ordered Gately to issue an apology to "the Mayor, all Superior Officers, the WPD, and members of the Woburn Police Drug Task Force." Gately filed a grievance on February 28, 2014, that was denied by the City at all steps, and resulted in the instant arbitration.

**POSITIONS OF THE PARTIES****THE EMPLOYER**

The Rules and Regulations of the WPD pertaining to compliance with orders, and the expected and prohibited conduct, which all of its officers, regardless of rank, are required to be aware of and abide by, are clear, unambiguous and consistently applied. Gately was aware of those Rules and Regulations and the consequences of failing to comply with them. The City investigated Gately's failure to comply with Chief Ferullo's order and produced evidence that overwhelmingly demonstrates that Gately violated certain of those Rules and Regulations.

Gately does not dispute that he violated the Chief's order that he have no contact with Ahern. Rather, according to his own testimony, Gately deliberately disobeyed the Chief's order because, in his opinion, Ahern was not guilty of the criminal charges filed against her. Gately's opinion regarding Ahern's guilt or innocence is irrelevant and does not justify or excuse disobeying the Chief's order. Indeed, if an officer believes that an order was unlawful or was improper, he/she has recourse under the Rules and Regulations, which includes filing a grievance over the order. There is no evidence that Gately took any action to protest the Chief's order.

Gately's opinion as to whether Ahern was guilty or innocent does not mitigate the level of discipline that he received. Gately's actions in disobeying the Chief's order that he have no contact with an individual who was facing drug distribution charges, brought by his own police department, undermined the



operation of the WPD and brought discredit upon himself as a police officer. Furthermore, Gately showed no remorse for his actions.

Constitutionality of Improper Association Regulation

The Rules and Regulations prohibit “Improper Associations” by requiring its officers to: “avoid regular or continuous associations or dealings with persons whom they know, or should know, are persons under criminal investigation or indictment ... except where unavoidable because of family relationships of the officers.” The exception for family members is not available to Gately as Ahern is clearly not a member of Gately’s family, as they do not reside together, nor can their “unconventional relationship” be characterized as familial. Gately, while separated, is still officially married, and Ahern also remains married.

Despite Ahern’s status as a defendant in a (then) pending criminal matter, Gately attempted to justify his continued association with her as being protected by the U.S. Constitution. In support of his position, Gately proffered a 1973 case from the Michigan Court of Appeals, where a regulation of the Detroit Police Department was found to be unconstitutionally vague. Even assuming that this Arbitrator has the authority on constitutional grounds to review a regulation or reverse discipline imposed, the proffered case is not consistent with the current state of the law in the Commonwealth of Massachusetts and should be disregarded.

Conduct Unbecoming an Officer

Police officers must be held to a higher standard of conduct. Police Commr. of Boston v. Civil Ser. Comm'n. 22 Mass. App.Ct. 364, 371 (1986) stands for the concept that:

Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

The Rules and Regulations define "Conduct Unbecoming an Officer" as "the commission of any specific act or acts of immoral, improper, disorderly or intemperate personal conduct which reflects discredit upon the officer himself, upon his fellow officers, or upon the Police Department." Given the high standard by which police officers are required to conduct themselves, there is no question that Gately's act of willful disobedience of the Chief's order is certainly intemperate personal conduct. Gately's actions constitute conduct unbecoming a police officer.

Incompetence

The Rules and Regulations state that incompetence may be demonstrated by: "an unwillingness or inability to perform assigned tasks; ... (and) the failure to conform to work standards established for an officer's rank, grade or position. ..." Gately's admission that he disobeyed the Chief's order demonstrated his unwillingness to perform assigned tasks, as well as a failure to conform to work

standards, which in this case require that a police officer adhere to the requirements of the Rules and Regulations.

#### Insubordination

Gately's willful failure to comply with the Chief's orders to have no contact with Ahern is a clear and indefensible example of insubordination.

#### Reasonableness of Suspension

Gately's disciplinary record is not unblemished. Based upon significant violations of the Rules and Regulations, Gately served a one-year suspension and entered into a last chance agreement in July 2000. Although Gately was not terminated for the incidents in dispute here, it is informative that Gately is a police officer for whom rules and regulations appear to be words without a meaning. Also, there is no evidence of the occurrence of similar circumstances involving other members of the WPD, and Gately's due process rights were preserved at all stages of the grievance and disciplinary hearing. In light of the foregoing, the four-month suspension was not only reasonable but absolutely necessary.

#### Conclusion

For all the reasons set forth above, the City requests that the Arbitrator find that there was just cause to suspend Gately for a period of four months, and that he uphold the City's order requiring Gately to apologize as detailed in the notice of suspension. In the event that the Arbitrator reduces the suspension imposed, the City suggests that any back pay awarded be reduced by any unemployment compensation that Gately may have received.

**THE UNION**

Gately and Ahern are in a dating relationship. They see and/or speak to each other every day of the week. They have been dating steadily since April, 2012. Chief Ferullo was aware of this relationship, as Ahern attended a memorial service and a funeral with Gately that Chief Ferullo also attended. There is no doubt that the Chief was aware of this long-term relationship.

Prior to July 12, 2013, Stephen Gerrior (Gerrior) filed a citizen's complaint against Gately. Chief Ferullo met with Gately on July 12, 2013 and told him that he was cleared of any wrongdoing relative to this complaint. Chief Ferullo claimed that on July 12, 2013, he ordered Gately to stay away from Sergeant, Johnson and Ahern. Chief Ferullo also informed Gately that he was subject to another investigation. Captain Murphy was also present at the meeting and supported the Chief's account of the conversation. Chief Ferullo claimed that he ordered Gately to stay away from Ahern because she was the subject of a criminal investigation. Gately denied being ordered to stay away from Ahern at the July 12, 2013 meeting. Gately does not deny that Chief Ferullo issued a written order on September 18, 2013 ordering him to stay away from Ahern.

Chief Ferullo stated that he was generally aware of what occurred within the WPD. Yet, there is no dispute that the WPD allegedly began to investigate Ahern in January, 2013. The investigation continued through Ahern's arrest on June 25, 2013. Ahern was arraigned two days later, and Gately, while off-duty and in plain clothes, was in the courtroom. Despite Ahern's arrest and arraignment, Chief Ferullo did not order Gately to stay away from Ahern. Even

assuming that Chief Ferullo ordered Gately to stay away from Ahern on July 12, 2013, the Chief did not issue his order until seventeen days after Ahern's arrest and two weeks after her arraignment.

At the July 12, 2013 meeting, Chief Ferullo had Gately sign an acknowledgment of receipt of documents including: (1) the last chance agreement between Gately and the City dated July 18, 2000; (2) a settlement agreement, dated July 18, 2000 between Gately and the City; and (3) a copy of the Rules and Regulations. None of these documents reference the alleged stay away order.

Chief Ferullo hired Donovan to investigate Gately. Chief Ferullo gave Donovan the following directive:

As a result of information received during a previous Internal Investigation that Officer Gately had violated the written no contact order by having direct contact with Candice Ahern, this investigator was directed to investigate whether Officer Jerome Gately had violated the September 18, 2013, written order issued by Chief Robert Ferullo and make a determination whether his conduct violated any of the Woburn Police Department's Rules, Regulations, Policies, Procedures, Code of Conduct or Laws of the Commonwealth of Massachusetts.

A review of the investigation directive and the remainder of Donovan's Investigative Report does not show that Gately was given the stay away order on July 12, 2013 as claimed by Chief Ferullo. Further, when Chief Ferullo ordered Gately to produce his cell phone records during the course of the investigation, the time period requested began on September 18, 2013, not on July 12, 2013.

Gately admits that his relationship with Ahern continued without interruption even after the Chief issued the stay away order. It was his belief that the order was unlawful. The Chief's order was in violation of Federal law and in

violation of a WPD rule. Police officers, just like everyone else, have a fundamental right to associate freely. Sponick v. Detroit Police Department, 211 N. W. 2d 674 (Mich. Ct. App. 1973). In Sponick, the Michigan Court of Appeals held that some of the associations proscribed by the Detroit Police Manual have no possible bearing on the integrity of a police officer and that of his department and no possible bearing on the public's confidence in the police. Additionally, the court found that the rule as proscribed, gave the superior officer the power to restrict a police officers' fundamental right to associate freely with unrestricted discretion. Chief Ferullo exercised unrestricted discretion against Gately that he would not exercise against himself. He ordered Gately not to associate with his longtime girlfriend Ahern, even though the Chief testified that if his wife was charged with a crime that he would stand by her. The Chief decided that because Gately was not married to Ahern, he was empowered to tell Gately that he could not associate with Ahern.

Officer Dana Gately, brother of the grievant and president of the Union, testified that based upon his knowledge about the discipline that other police officers received during his nine years on the Union's executive board, this is the first time the Chief has ever ordered a police officer not to associate with someone. Although Ahern's guilt or innocence is not at issue here, her innocence magnifies the injustice of the Chief's order. The City has not offered a single piece of evidence to show or suggest that the public's confidence in the police was hindered. The City has not claimed that Gately was engaging in misconduct in breach of the trust of his position. Gately did not provide

information to Ahern, he did not reveal investigative information, and he did not aid or abet Ahern in her allegedly criminal conduct.

Finally, the duration of the Chief's order shows that the Chief's intent was to keep Gately away from Ahern. As of December 6, 2013, the case against Ahern was officially closed. Chief Ferullo testified that as of December 6, 2013, the order was no longer in effect. Yet, the Chief did not rescind the order in writing until March 12, 2014. The Chief still was attempting to prevent Gately from freely associating with his longtime girlfriend.

For all the reasons stated above, Gately has received an unjustified and unprecedented four-month suspension, and the Union requests that the arbitrator rescind the four-month suspension and restore any and all lost benefits to Gately.

### **OPINION**

The issue before me is: Did the City of Woburn have just cause to suspend Officer Jerome Gately for four months? If not what shall the remedy be?

For all the reasons stated below, the City of Woburn did have just cause to suspend Officer Jerome Gately for four months but did not have just cause to demand an apology from Officer Gately.

The pertinent facts of this case are not in dispute. Chief Ferullo issued a written order on September 18, 2013, for Gately to stay away from Ahern who had been arrested on June 25, 2013, for distribution of a Class B substance. Gately chose to disregard the written order and continued to see Ahern, his

longtime girlfriend, in violation of the Chief's order and the Rules and Regulations of the Woburn Police Department.

The Chief was well within his rights under Section 1(G)9 of the Rules and Regulations to order Gately not to associate with Ahern after her arrest. The Union argues that because the Chief's order violated Gately's right to freedom of association and the Rules and Regulations themselves, Gately somehow was absolved from following the Chief's order. I need not reach the Union's claim that the Chief's order violated Gately's right to freedom of association because Section 1(E)4 of the Rules and Regulations clearly and unambiguously sets out the procedure to follow if an officer feels that an order from a superior officer is unjust or improper, and Gately did not avail himself of that process. Instead, Gately simply ignored Chief Ferullo's order and continued to see Ahern. He did not follow the proper procedure set up to address any concerns that he may have had that the Chief's stay-away order violated his constitutional right to freedom of association, or his contention that Ahern, as his girlfriend, fell into the family exception of Section 1(E)9. Gately committed insubordination because he chose to ignore the order and did not even attempt to follow the procedures outlined above.

In addition to insubordination, the City also charged Gately with conduct unbecoming an officer and incompetence. Gately's conduct in ignoring the Chief's order is certainly "improper" and thus fits the Rules and Regulations' definition of conduct unbecoming an officer. Additionally, the Rules and Regulations state that "failure to conform to work standards established for the



officer's rank, grade or position" is incompetence. Gately's failed to adhere to the Rules and Regulations when he disregarded the Chief's order, and then did not utilize the process as described in Section 1(E)4 to challenge what he contended was an improper order. Gately's failure to comply with the Rules and Regulations of the WPD satisfies the standard of incompetence outlined in the Rules and Regulations.

#### Four-Month Suspension and Demand for an Apology

While the employer argues that the four-month suspension and order of apology are reasonable and justified given the blatant disregard that Gately showed to the Chief when he disobeyed his order, the Union calls the discipline unjustified and unprecedented. As a preliminary matter, I concur with the Union that this four-month suspension is unprecedented given that there is no evidence that any other similarly situated WPD employee had ever been suspended for four months. However, that fact, in and of itself, does not mean that the discipline was unwarranted or too harsh.

The City has proved that Gately was insubordinate, engaged in conduct unbecoming an officer, and met the definition of incompetent as outlined in the Rules and Regulations. Additionally, Gately's prior disciplinary history is convoluted. Gately, served a one-year unpaid suspension and signed a "last chance agreement" to avoid termination in 2000. The City, in this instance, has decided not to attempt to invoke the termination clause of that agreement, but instead decided that a four-month suspension was appropriate for Gately's current transgressions. Based on Gately's admissions that he consciously

disregarded Chief Ferullo's order because he disagreed with it, his decision to not follow the procedures of the Rules and Regulations, and his disciplinary history as outlined above, I find that the City's decision to suspend him for four-months is not excessive.

The City does not have just cause, however, to demand an apology from Gately for his actions. The rationale behind workplace discipline is that it is intended to be corrective in nature and not punitive. I find that a four-month unpaid suspension is sufficient for Gately to understand that his actions were unacceptable. The City's further demand that he make "an in-person apology to [the Mayor] as the appointing authority, to all superior officers of the Woburn Police Department and to members of the Woburn Police Drug Task Force, as well as a written apology to all other members of the Woburn Police Department that will be posted in the non-public area of the Woburn Police Department" is superfluous and not supported by just cause, as it does not further the corrective nature of the four-month suspension.

### **AWARD**

The City of Woburn did have just cause to suspend Officer Jerome Gately for four months but did not have just cause to demand an apology from Officer Gately.

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Timothy Hatfield, Esq.  
Arbitrator  
March 25, 2015