

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

ROBERT N. HARRINGTON,
Appellant

v.

TOWN OF WINCHENDON,
Respondent

D-02-623 (1-Day Suspension)
D-02-622 (4-Day Suspension)
D-03-296 (Termination)

Appellant's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, §43, the Appellant, Robert N. Harrington (hereafter "Harrington" or "Appellant"), is appealing the actions of the Appointing Authority, the Town of Winchendon (hereafter "Town" or "Appointing Authority")

suspending him for one day (Case No. D-02-623), suspending him for four days (Case No. D-02-622) and terminating him (Case No. D-03-296) from the position of Police Chief in the Town of Winchendon. The Commission consolidated all three appeals. A full hearing with sworn testimony was held at the offices of the Civil Service Commission on July 17, August 25, October 27, November 1, December 1, and December 21, 2006. (A significant delay occurred between the pre-hearings regarding these appeals and the full hearing partly because the Appellant, a member of the Army National Guard, was called up to active duty for an extended period of time.) At the Appellant's request, the full hearing was declared to be a public hearing. All witnesses, with the exception of the Appellant and Town Administrator James Kreidler, were sequestered. 18 tapes as well as transcripts of the hearing were made. The transcripts were deemed to be the official record of the proceedings.

FINDINGS OF FACT:

Based on the 140 exhibits entered into evidence, and the testimony of:

For the Appointing Authority:

- James Kreidler, Winchendon Town Manager;
- Allen J. Lafrennie, Winchendon Fire Chief;
- William Geoffroy, Winchendon Police Sergeant;
- James Spofford, Winchendon Police Officer;
- Theresa Flint, Winchendon Dispatcher;
- George Barnes, Reporter, Worcester Telegram & Gazette;
- Karen Ludington, Investigating Officer;
- David Connor, Executive Director, Winchendon Housing Authority;
- Corey Bohan, former Winchendon Dispatcher;
- Lynn Kendall; Citizen of Winchendon;
- Richard McAllister, former Winchendon Selectmen;
- Jonathan Tuttle, AFSCME Staff Representative;
- Lois Abare, Winchendon Town Clerk;
- Alida Herring, Executive Assistant to the Winchendon Appointing Authority;

For the Appellant:

- Robert Harrington, Appellant;
- Linda Bevan, Winchendon Town Assessor;
- Richard Bedard, Winchendon School Business Manager;
- Richard Chase, former Winchendon Building Inspector;
- Raymond Anair, Winchendon Police Officer;
- Jason Miglionico, former Winchendon Police Officer;

I make the following findings of fact:

I. *Background*

1. Prior to his termination in May, 2003, Harrington was a tenured civil service employee of the Winchendon Police Department, serving as the Chief of Police from December, 1999 until May, 2003. Previous to that ascension to the rank of Chief of Police, Harrington served the Town in paid positions continuously since 1980, beginning through employment as an Explorer Scout assisting with fires, and continuing with employment as: an on-call firefighter for the Winchendon Fire Department; a temporary houseman for the Winchendon Fire Department; an emergency medical technician for the Town; a reserve intermittent officer for the Winchendon Police Department beginning in the mid-1980s; and as a full time police officer for the Town beginning in 1995. (Testimony of Appellant)
2. With regard to educational history, Harrington holds an Associate's degrees in criminal justice, as well as human services, from Mount Wachusett Community College, a Bachelor's degree in criminal justice from Western New England College and a Master's degree from Western New England College. (Testimony of Appellant)

3. Harrington also has served in other public sector positions, including service as a part time patrol officer in Ashburnham; a part time patrol officer in Templeton; and, in the capacity of a full time campus police officer for both the Walter Fernand State School and Fitchburg State College. (Testimony of Appellant)
4. Since May 21, 1981, Harrington has been a member of the United States military, serving first as a medic, and thereafter having been promoted to: a squad leader supervising eight persons; a platoon sergeant commanding between twenty to thirty persons; a First Sergeant overseeing four persons and four supervising squad leaders; and now a Master Sergeant. From 1986 until the present, Harrington has served militarily in the role of a supervisor. In conjunction with that service, Harrington has received training on leadership and management supervision. Recently, Harrington has been called for active tours of duty: to provide security at the Salt Lake City Winter Olympics; to patrol the border with Mexico; to provide various specialized support and security missions throughout the Commonwealth; as well as to serve in Iraq. (Testimony of Appellant)
5. In or about 1995 or 1996, Harrington, then a patrol officer for the Town, received a written reprimand for sleeping on duty, a reprimand that was removed from his personnel file after a period of time. (Testimony of Appellant)
6. When Harrington was appointed as Chief of Police in December, 1999, the Winchendon Town Manager was Larry Melean. (Testimony of Appellant)
7. In December, 2000, James Kreidler contracted with the Town to become its new Town Manager and began work in January, 2001, although personal matters

prevented Kreidler from working in a full time capacity until about February, 2001.

(Testimony of Kreidler)

8. Mr. Kreidler's educational background includes a bachelor's degree in government from Columbia University and a master's degree in public administration with a local government specialization from Clark University. (Testimony of Kreidler)
9. Mr. Kriedler's service in public administration began after college as an assistant to the Mayor of the City of Gardner. After five and half years in Gardner, he moved to the Town of Ayer serving as Town Administrator for five and half years until he became the Town Manager in Winchendon. (Testimony of Kreidler)
10. Pursuant to the Town charter, or delegations arising therefrom, the position of Winchendon Town Manager is a strong one, serving as the Appointing Authority for the Chief of Police and reporting to the five member Board of Selectmen (Testimony of Kreidler)
11. James Kreidler and the Appellant, in almost all respects, are polar opposites. Kreidler is a cerebral, professorial person who weighs his words and actions carefully. He rightfully takes pride in his professional accomplishments and relationships, but his serious demeanor can at times be off-putting to some. The Appellant is a more personable individual who takes pride in his "up from the bootstraps" success story. He is a product of the local school system and he has strong roots in the community. Several members of his family attended all six days of this public hearing.
12. A flash point for these two men occurred several months after Kreidler's appointment as Town Manager. At that time, Kreidler dispassionately told the Appellant that, had he been Town Manger at the time, he never would have appointed the Appellant as

the Town's Police Chief. To Kreidler, the statement was simply an expression of his professional opinion that someone with no command experience in a local police department should not be promoted directly from police officer to Police Chief. According to Kreidler, the statement in no way suggested a lack of support for the Chief and did not portend the Appellant's eventual fate. For the Appellant, the statement was personal – and yet another indication of Kreidler's pre-determined desire to remove him as Police Chief and make his own appointment.

13. Even prior to the assumption of his duties in Winchendon, in or about December, 2000, Kreidler was advised of an issue percolating, an issue that involved the Winchendon Police Department and a member of the Board of Selectmen. Specifically, in the time period between his first and second interviews for the position of Town Manager, Kreidler met with Larry Sordoni, a member of the Winchendon Board of Selectmen, for lunch in Ayer. During that meeting, Sordoni provided Kreidler with material indicating that the substance contained therein was the first thing that Sordoni would like Kreidler to deal with in Winchendon. Kreidler viewed the material and noted that it involved the Police Department, and asked if the Chief of Police had dealt with the matter at that point; when Sordoni replied that he wished Kreidler to handle the matter, Kreidler advised that he would go through the normal protocol in such instances, which would channel through the Chief of Police first, and would state as much publicly. (Testimony of Kreidler)
14. The subject matter of the above-referenced material from Sordoni centered upon an incident that took place during the term of Town Manager Melean, an event in which Sordoni's son, during a graduation party in or about June, 1999, had taken his father's

boat out on a local waterway and, during the course of his travels, had struck and damaged a buoy that had been placed on the water by another Winchendon citizen in an attempt to control speeding boaters on the lake. (Testimony of Kreidler and Appellant)

15. Officer James Spofford of the Winchendon Police Department investigated this incident, which resulted in charges being filed against Sordoni's son. Thereafter, a complaint was registered against the officer, alleging that Spofford was rude during the course of his investigation. (Testimony of Appellant)
16. The Appellant investigated the complaint and, during the course of the investigation, determined that, beyond discourtesy, it appeared that Spofford had inflated the price of the buoy to an amount above \$250.00, thereby turning a misdemeanor into a felony charge. As a result, Spofford was issued a suspension for a term of three (3) days. (Testimony of Appellant)
17. Spofford subsequently appealed the suspension, and a hearing was conducted by newly-appointed Town Manager Kreidler, a hearing that was attended by Richard McAllister, a retired Winchendon police officer. (Testimony of Appellant, Kreidler and McAllister)
18. Following the hearing, which took place in April 2001, Kreidler testified that he was left with the impression that Harrington had not been forthcoming during the hearing. (Testimony of Kreidler)
19. Following the hearing, Kreidler summoned both Harrington and Spofford to his office and negotiated a resolution that both could live with: the suspension was reduced to a

written reprimand for writing a poor report and there would be no appeal taken from the discipline. (Testimony of Kreidler)

20. Retired Police Officer Richard McAllister believed that it was a “disgrace” that Spofford was suspended by Harrington for “doing his job” and that it was shameful that Harrington took the word of a member of the Board of Selectmen over one of his officers. (Testimony of McAllister)
21. To McAllister, this was another example of certain Selectmen working for themselves and not the Town, and, accordingly, McAllister initiated a recall petition in which he sought the recall of Selectman Cindy Boucher. McAllister’s friend, Germaine Brooks, sought the recall of Selectman Sordoni. Mc Allister testified before the Commission. (Testimony of McAllister)
22. It was clear to this Commissioner, in observing McAllister during his testimony, that there was genuine personal dislike for Harrington, with whom he had served while a Winchendon police officer. (Demeanor of McAllister)
23. As a result of the recall petition, Boucher and Sordoni were recalled and McAllister and Brooks won election to the Winchendon Board of Selectmen. (Testimony of McAllister)
24. Once on the Board of Selectmen, McAllister testified to other matters that led him to conclude that Harrington was not, in his words, “chief material.” Included in this testimony were references to a situation in which Harrington left for National Guard duty after an officer was involved in a shooting and a situation in which Harrington went to the Winter Olympics as part of his Guard duty when the Police Department budget for overtime was in trouble. (Testimony of McAllister)

25. Within a matter of months after taking his seat on the Board, McAllister called for a meeting with Harrington, despite prior indications from Kreidler that the Board of Selectmen had no standing to do so as the Town Manager, not the Board, was the Appointing Authority for Harrington. Either during the resultant executive session discussion, or following the executive session and upon return to a public meeting, McAllister made a motion for a vote of no confidence in Harrington, a motion that was not seconded and died on the vine. (Testimony of Kreidler)
26. While the actions of then-Selectman McAllister, and his predecessor, former Selectman Sordoni, represented inappropriate intervention in matters not under the Board's jurisdiction, I find that Town Manager Kreidler acted appropriately in regard to his interactions with both selectmen. As referenced above, when then-Selectman Sordoni, who would be voting on who would be the Town's next Manager, invited Kreidler to lunch --prior to Kreidler's appointment-- to discuss a personal grievance he had regarding a police-related matter, Kreidler made it clear that he would address the issue through the normal process and would state so publicly. When Sordoni's successor, Mr. McAllister, sought to target Chief Harrington, Kreidler rebuffed his efforts and made it clear that Selectman McAllister was overstepping his bounds. Based on these incidents, and Kreidler's responses involving each of them, I find that Kreidler's decision to discipline, and ultimately terminate, the Appellant, was not influenced by the political unrest in Winchendon at the time, which included the removal of two selectmen through a recall process.

Discipline Issued by Kreidler against Harrington immediately preceding the instant matters

27. Kreidler issued a verbal reprimand to Harrington within approximately three months of Kreidler's assumption of full time duty as Town Manager, in May, 2001, and, over the span of the next eight months, until January, 2002, issued an additional six letters of reprimand to Harrington. The Appellant's prior disciplinary record includes:

- a. Documentation of a verbal warning, dated 5/22/01, for failing to take appropriate action regarding pending litigation. (Exhibit 36)
- b. A 5-day suspension dated, 6/4/01, for failure to properly handle a fatal shooting, including issuing a press release he knew or should have known was false, failing to correct the press release after realizing it was false, failing to keep the Appointing Authority informed once the Appellant realized the press release was false, failing to keep the involved officer on administrative leave during the investigation as per Department policy, and failing to file a report of his involvement at the scene of the fatal incident. (Exhibit. 37) The Appellant did not appeal this suspension. (Testimony of Kreidler)
- c. Written warning, dated 9/17/01, for presenting false information at a grievance hearing. (Exhibit 9)
- d. Written warning, dated 10/4/01, for failing to advise the Appointing Authority of a litigation matter and for knowingly misrepresenting to counsel for the Town that the Appointing Authority was aware of the complaint. (Exhibit 10)
- e. Written warning, dated 1/10/02, for making false accusations against and insubordination to the Appointing Authority. (Ex. 11) The Appellant submitted a written response to this written warning stating that he had no direction as to the chain of command. He did not address the false accusation issue. (Exhibit 15)
- f. Documentation of a verbal warning, dated 1/22/02, for failing to adequately perform basic job requirements. (Exhibit 12)
- g. Written reprimand, dated 1/23/02, for the Appellant's misrepresentation of statements made by the Appointing Authority. (Exhibit 13) The Appellant submitted a written response to this written warning. (Exhibit 17)
- h. A second written reprimand, dated 1/23/02, for failure to adequately perform basic job requirements. (Testimony of Kreidler, Exhibit 14)

The One Day Suspension (D-02-623)

28. The first imposition of discipline for consideration in this consolidated appeal is the January 24, 2002 suspension of Harrington for one (1) day. As set forth in the letter of suspension, the allegation underlying this discipline is that in January, 2002, the Town made its second of two payments to Winchendon police officers pursuant to the Quinn Bill and, in doing so, brought the amount paid pursuant to that particular line item in the Police Department budget to \$61,800.00, when the amount budgeted for the line item was only \$52,000.00. (Exhibit 18.) The letter of suspension goes on to indicate that Harrington knew or should have known that the amount budgeted and appropriated was inadequate to fund the Town's obligations; that Harrington "first attempted to blame [his] secretary for the error despite the fact that [he] submitted the budget for appropriation as is [his] responsibility under [his] employment contract and [his] position description"; that Harrington personally benefited from this educational incentive payment; and, that this constitute[d] a failure to perform the duties of the position competently and a failure to keep the Town Manager adequately informed of ongoing matters. (Exhibit 18)
29. The Appellant, as Chief of Police, was responsible, in accordance with his job description and employment contract, for the preparation and administration of the Winchendon Police Department budget. (Testimony of Kreidler; Exhibits 1 & 2)
30. The Appellant, as Chief of Police, was responsible for being informed of all administrative and financial matters regarding the Police Department. (Exhibits 1 & 2)

31. The Appellant, as Chief of Police, was responsible for keeping the Appointing Authority informed of all administrative and financial matters regarding the Police Department. (Exhibits 1 & 2)
32. The Appellant, as Chief of Police, was responsible for exhibiting leadership and responsibility. (Exhibits 1 & 2)
33. The Quinn Bill is an educational incentive that provides police officers with a percentage increase to their base salary depending upon the level of degree obtained. For an Associate's degree, an increase of 10% is received, whereas a Bachelor's degree garners a 20% increase and a Master's degree results in an additional 25% added to base pay. (Testimony of Appellant)
34. Additionally, for Winchendon police officers, the union contract calls for educational incentive payments on a per credit basis, for persons who might have secured credits toward a degree in criminal justice but who have not attained the next level of degree available. (Testimony of Kreidler)
35. In terms of the background process for the Quinn Bill payment, Harrington and his secretary would gather transcripts, copies of degrees and other documentation to support a claim for an officer, and would submit the material to the Department of Education. (Testimony of Appellant)
36. The educational incentive for Winchendon police officers is paid in two installments, the first in July and the second in January. (Testimony of Kreidler)
37. On this Quinn Bill payment, by union contract, the Town is responsible for only half of the total amount payable to an individual officer; in other words, if the Commonwealth of Massachusetts fails to fund its half of the obligation, the officer

does not receive that portion of the benefit and cannot make a claim for additional payment from the Town. (Testimony of Appellant)

38. In January 2002, the Appellant authorized, and the Town made, the second of two equal Quinn Bill payments for the 2002 fiscal year to eligible police officers, including the Appellant. (Testimony of Kreidler)

39. The amount of these payments brought the total Quinn Bill payments for the 2002 fiscal year to approximately \$61,800, which exceeded the \$52,000 budgeted by the Appellant for the Quinn Bill line item. (Testimony of Kreider)

40. As a result, the Chief did not have enough money in the Police Department budget to meet the budgetary obligations for that fiscal year. (Testimony of Kreidler)

41. According to Kreidler, in later reviewing the material once the error was discovered, it appeared that Harrington had added the two Quinn Bill payments, but had not calculated properly the total amount of the educational incentive, which would have included the contractual per credit payment for Winchendon police officers. (Testimony of Kreidler)

42. The Appellant had received a spreadsheet every month showing the current account information, including the percentage of the budget expended to date. (Testimony of Kreidler)

43. Exhibit 18 and the testimony of Kreidler indicate that the one-day suspension was in part based upon a failure to exhibit leadership, insofar as it is alleged that Harrington sought to deflect responsibility for this error toward his administrative assistant when he sought to explain how the mistake occurred. (Exhibit 18; Testimony of Kreidler)

44. Both Mr. Kreidler and Mr. Harrington testified before the Commission regarding whether or not Harrington was in fact attempting to deflect responsibility for the above-referenced error to his administrative assistant, which Kreidler believes he was. Harrington testified that he was simply conveying to Kreidler what had transpired and was in no way attempting to shift blame to Ms. Offerrall, Harrington's former administrative assistant. (Testimony of Kreidler and Harrington)
45. Seeking to show disparate treatment regarding the one-day suspension for this error, the Appellant called Linda Bevan, Winchendon Assessor for over twenty-four years. Ms. Bevan testified that there were "[p]robably several" or "[m]any" instances in which she had committed similar budgeting errors, by unintentionally underbudgeting an account, and for which she had to seek a transfer of reserve funds. (Testimony of Bevan) For some of these transfers, Kreidler signed off on an approval to make a transfer request to the Finance Committee. (Exhibits 31 and 32.)
46. Although Bevan was given authorization from Kreidler to seek a reserve fund transfer from the Finance Committee, Kreidler refused a similar approach with Harrington, and instead indicated that he would have to go to the Town Meeting to request the transfer. (Testimony of Appellant)

The Four Day Suspension

47. The second piece of discipline presented for consideration in this consolidated appeal is the March 11, 2002 suspension of Harrington for four (4) days. As set forth in the letter of suspension, the allegation underlying this discipline is that Harrington failed to be forthright to, and failed to communicate adequately with, Kreidler regarding the resolution of complaints, predominately in the nature of workload concerns,

registered by Harrington's administrative assistant, Ms. Yma Offerall. (Exhibit 19.)

The sanction was originally contemplated as a five-day suspension and was recommended as such by the hearing officer at the Appointing Authority level.

(Exhibit 26.) However, in correspondence dated July 23, 2002, Kreidler reduced the suspension to four (4) days given that a portion of the five (5) day contemplated discipline was made the subject of a complaint by Harrington to the United States Department of Labor, which resulted in that agency's recommendation to Kreidler that any charges associated with Harrington's military status be dismissed. (Exhibits 24 – 26)

48. As the backdrop for this matter, there was a point in time in late 2001 during which both Harrington and the Fire Department Chief lobbied for the movement of the Town dispatchers to the control of the Police Department. (Testimony of Appellant)

49. As a result of the dispatch reorganization, additional administrative duties fell upon Harrington and his part time secretary, Yma Offerall. (Exhibit 21 and 78; Testimony of Appellant)

50. In or about December, 2001, Offerall filed a complaint with the Administrative Staff Union (AFSCME) President Linda Bevan. (Testimony of Bevan)

51. Kreidler then gave the complaint to Harrington and ordered him to discuss the matters with Offerall. (Testimony of Appellant)

52. As a result of Kreidler's directive, Harrington sat down with Offerall, telling her that Kreidler wanted them to go over the issues in her letter. According to the Appellant, as these were issues that had been talked about between the two time and again, Offerall at some point told Harrington that "you explained your position to me. I

understand it. I'm fine with it." Again according to the Appellant, she told Harrington that she was "all set" with the complaint. (Testimony of Appellant) Harrington then drafted a written response to Kreidler indicating that Kreidler's order had been obeyed. (Exhibit 21)

53. In early 2002, Harrington was deployed by the National Guard for a five week security detail at the Salt Lake City Olympics. (Testimony of Appellant).
54. Kreidler testified that, while Harrington was away, he saw Offerall picking up mail for the Police Department and engaged her in conversation, indicating that he was glad that she and Harrington had worked out the issues and that the concerns were resolved. Kreidler testified that Offerall then indicated that the issues had not been gone over, that they were not resolved and that she was still upset. (Testimony of Kreidler)
55. Upon Harrington's return from his deployment, Kreidler held a meeting in his office in early March, 2002, attended by Harrington and Offerall. Kreidler testified during this hearing that Harrington admitted during this meeting that he in fact had not discussed the issues with Offerall and that what was contained within Exhibit 21 was not accurate. (Testimony of Kreidler) In turn, Harrington testified to the contrary that he told Kreidler that all of the issues had been discussed with Offerall and that Exhibit 21 was accurate. (Testimony of Appellant).
56. Offerall resigned from the Winchendon Police Department on July 12, 2002 in order to secure full time employment with the Winchendon Housing Authority. In her resignation letter, she thanked Harrington for his assistance, wished him well and

wrote that she would be available for part time work at the police department in the future should it be available. (Testimony of Appellant; Exhibit 43)

57. Entered into evidence as Exhibit 44 is an undated two-page typewritten document, signed by Yma Offerall and witnessed by a Jose B. Aguero, that indicates that she and Harrington had reviewed and discussed the complaint and that she had indicated, after discussion, that she was fine with the rest of the complaint. (Exhibit 44.) This statement also indicates that, in a conversation with Kreidler after that meeting, she had voiced her displeasure not necessarily at the meeting, but with the continued frustration over the additional responsibilities assigned to her. (Exhibit 44.)
58. To rebut this statement, the Town offered evidence, both in the form of testimony from Kreidler, and a “memo to file” that Kreidler wrote in December 2002, that Kreidler, in December, 2002, was approached by Offerall who stated that she had been asked to sign a statement for Harrington and believed it to be inaccurate. (Testimony of Kreidler and Exhibit 45) This statement also indicates that Offerall had refused to sign the statement. (Exhibit 45.)
59. The Executive Director of the Winchendon Housing Authority, David Connor, who was friends with the Appellant, testified before the Commission that he saw the Appellant at the Housing Authority’s offices approximately a year and a half ago, and that the Appellant requested to speak with Ms. Offerrall. (Testimony of Connor)
60. Mr. Connor further testified that immediately after the Appellant left, Ms. Offerrall came to him and stated, “Can you believe what just happened?” “He asked me to sign a paper.” “I believe this is all lies.” (Testimony of Connor)

61. Mr. Connor testified that he asked Ms. Offerrall if she wanted him to ask the Appellant to leave, but she said he had already left. Mr. Connor testified he also advised her, as a friend and co-worker, not to sign the statement if it was lies.

(Testimony of Connor)

62. In addition, following the Appellant's visit to her new place of employment, Ms. Offerrall contacted Mr. Kreidler to advise him that she was concerned about the events involving the Appellant and his attempts to have her sign the statement he prepared for her. Ms. Offerrall provided a copy of the unsigned statement to the Town Manager in or about December 2002. Contemporaneous with his discussions with Ms. Offerrall, the Town Manager, as referenced above, memorialized the conversation in a memo to file. (Testimony of Kreidler, Exhibit 45)

The Termination

63. The third, and final, imposition of discipline presented to this Commission for review in this consolidated appeal is the May 27, 2003 decision to terminate Harrington based upon ten administrative charges that, cast generally, allege dishonesty; instances of purported retaliatory action against the dispatchers of the Town following a vote of no confidence taken by the dispatch union; instances in which it is alleged that Harrington lost his temper while on duty; and a statement made to the press in support of Harrington's brother that is asserted to be improper as it took place during the pendency of an administrative investigation into his brother's conduct.

64. Section 12.01 of the Winchendon Police Department's General Orders provides, "Officers of the Winchendon Police Department shall conduct themselves in a professional manner at all times while on duty." (Exhibit 6)

65. Section 12.02 of the Winchendon Police Department's General Orders prohibits officers "from making comments or offering opinions which may be regarded as insulting or denigrating to others." (Exhibit 6)
66. Section 12.03 of the Winchendon Police Department's General Orders provides, "Professional conduct shall include language used in and around the station and dispatch area, as well as that used when dealing with the general public. Officers will be expected to control themselves when dealing with upset or unpleasant people and situations. Verbal abuse of fellow officers, dispatchers or the general public will not be acceptable." (Exhibit 6)
67. The Appellant, as Chief of Police, was responsible, in accordance with his employment contract for "supervision and control of all training programs for Department personnel, and the assignment to such program." (Ex. 1)
68. The Winchendon Police Media Relations Policy provides that the Police Department will cooperate with the media "as long as these activities do not unduly interfere with the departmental operations, infringe upon individual rights, or violate the law." (Exhibit 7)
69. The position of Chief of Police is a municipal employee covered by G.L. c. 268A. (Exhibit 5)
70. The Appellant, as Chief of Police, was responsible, in accordance with his employment contract for "communications with the public, including the media, on matters relating to crime, police operations, and Department Policy." (Exhibit 1)

Facts Regarding Termination Charge 1: Untruthfulness surrounding incident involving the Town's Memorial Day Parade

71. On or about May 16, 2002, a veteran, the Grand Marshall of the Town's Memorial Day parade and a citizen of Winchendon, spoke with the Town Manager and said he had heard he might not be able to get a ride in a police cruiser for the 2002 Memorial Day parade as he had in the past. (Testimony of Kreidler)
72. The veteran, now deceased, was a resident of the Town, a World War II veteran, and served for many years at the Grand Marshall of the Memorial Day Parade. (Testimony of Kreidler)
73. The Town Manager consulted with Chief Harrington who advised him a ride would be provided to the veteran in the parade. (Testimony of Kreidler)
74. The Town Manager and Appellant then together spoke to the veteran via speakerphone, and confirmed that the veteran would have a ride in the Memorial Day Parade. (Testimony of Kreidler)
75. On May 17, 2002, the Appellant presented the Town Manager with a memorandum stating he met with the veteran on the afternoon of May 16, 2002, and that the veteran told him that two of the Town's Selectmen, Burton Gould and Richard McAllister, had been the individuals who told him (the veteran) that he would not be provided with a police cruiser for the Memorial Day Parade due to a shortage of funds. The Appellant further stated that the veteran told him this discussion took place at the Central Street Café, where the Selectmen held their "little selectmen meetings." (Testimony of Kreidler; Exhibit 48)
76. According to the veteran, Mr. Gould and Mr. McAllister never told him that he would not be provided with a police cruiser and, in fact, never spoke to Mr. Gould or Mr. McAllister about this issue. The veteran stated that it was the Fire Chief who

mentioned to him that he may not be provided with a cruiser for the parade. (Exhibits 66 and 77)

77. The Appellant's memorandum further stated that he spoke to Lynn Kendall, one of the owners of the Central Café, and asked her "... about Mr. Gould and Mr. McCallister [sic] being in the restaurant in the morning," and that "I [the Appellant] was advised that they go there every morning between 6:00 am and 7:30 am during the week." (Exhibit 48)
78. Ms. Kendall testified before the Commission that the Appellant did come to see her at the Café and told her he would like to bring some friends into the Café for breakfast but he did not want to come in at the same time Burt [Gould] and Rick [McAllister] were there because they were not getting along. (Testimony of Kendall)
79. Ms. Kendall testified that she advised the Appellant it would be safe to come in after 8:00 a.m. She further testified that the Appellant never asked, and she never stated, that Mr. Gould and Mr. McAllister were there every morning. In fact, Ms. Kendall testified that Mr. McAllister was only in the Café once or twice a month. (Testimony of Kendall)
80. Ms. Kendall testified before the Commission that the Appellant never came into the Café with friends as he had indicated to her. (Testimony of Kendall) The Appellant, on cross-examination, admitted he never brought anyone to the Café after speaking with Ms. Kendall. (Testimony of Appellant)
81. The Appellant also admitted, upon questioning from this Commissioner, that his true intent in speaking with Ms. Kendall was to get information on the Selectmen. (Testimony of Appellant)

82. When pressed by this Commissioner as to why he had fashioned his inquiry in this way, when his true intent was to gather information relating to what he alleged the World War II veteran sated, Harrington responded that he did not tell Kendall the specifics because he did not want to “blow the issue up” and, knowing that McAllister and Gould were her patrons, he wished to gather information in a manner that would allow him to correct the record without causing unnecessary problems for Kendall. Earlier, during his direct examination testimony, Harrington similarly had referred to his desire to keep the conversation casual and of a low profile, and he did not want it to come across as a “big” investigation because Kendall had customers she relied upon and Winchendon is a small town. (Testimony of Appellant)
83. The Appellant, however, stated in his letter to Kreidler that Mr. Gould and Mr. McAllister met frequently (i.e., every morning) at the Central Street Café. (Exhibit 48)
84. Ms. Kendall testified that Mr. McAllister approached her a day or two after her discussion with the Appellant and showed her the letter written by the Appellant stating he was “advised that they go there every morning.” Ms. Kendall stated she wrote a statement correcting the Appellant because his statement was false. (Testimony of Kendall; Exhibit 50)
85. Ms. Kendall further testified that she was upset with the Appellant for using her, and it affected her ability to trust the Appellant. (Testimony of Appellant)
86. Ms. Kendall stated that the Appellant approached her later and “kind of apologized I guess but he didn’t really apologize.” (Testimony of Kendall)

87. Mr. McAllister testified that he and Mr. Gould never planned to meet at the Central Street Café at any time, that they may have been in the Café at the same time on limited occasions, and that they never conducted Town business at the Café.
(Testimony of McAllister)
88. Mr. McAllister explained that he filed a complaint against the Appellant because the allegations made by the Appellant in his May 17, 2002 letter were “entirely false.”
(Testimony of McAllister)
89. Mr. McAllister testified that as a result of the Appellant’s allegations, he requested a written statement from Ms. Kendall and Mr. Mason. (Exhibits. 50 and 77)
90. Mr. McAllister further stated that he only went to the Café once or twice a month and that he never spoke with Mr. Mason except perhaps to say “Hi.” Mr. McAllister stated that he, in fact, did not really care for Mr. Mason and never really spoke with him. (Testimony of McAllister)
91. Mr. McAllister testified that he never spoke with the veteran about the Memorial Day Parade, nor did he ever tell him he would not be driven in a police cruiser.
(Testimony of McAllister)
92. The Appellant testified that after learning of Mr. McAllister’s statements, he went back to Ms. Kendall and the veteran. The Appellant further testified that he then went back to Kreidler and orally informed him he misunderstood Ms. Kendall’s statement concerning the selectmen. (Testimony of Appellant)
93. The Town Manager, however, testified that no such discussion occurred and that, in fact, at that point all communications between he and the Appellant were documented. (Testimony of Kreidler) The Appellant acknowledged he was

documenting any significant conversation between he and Kreidler. (Testimony of Appellant) Moreover, Kreidler had ordered the Appellant to reconcile the inconsistent statements in writing. (Exhibit 51)

94. The Appellant submitted a second memorandum to Kreidler, in response to the letter submitted by Mr. McAllister as directed by Kreidler. The Appellant did not submit any further information in his June 10, 2002 memorandum, and he did not note Ms. Kendall had clarified her statement about the selectmen. Further, the Appellant's June 10, 2002 memorandum did not reconcile anything. Rather, he simply reiterated the content of his May 17, 2002 letter. (Exhibit 52)

95. Ms. Kendall was a good witness and her testimony was highly credible. In a quiet, plain-spoken fashion, she offered plausible and consistent testimony that was devoid of any ulterior motives. Ms. Kendall expressed genuine disappointment that Robert Harrington had falsely represented the statements she had made to him in response to his inquiries. I give great weight to her credible testimony. (Testimony, Demeanor of Kendall)

Facts Regarding Termination Charge 2: Alleged Retaliatory Discipline Against Dispatchers Following Vote of No Confidence

96. The second administrative charge in the termination component of this case alleges that, following a vote of no confidence by the Winchendon dispatchers' bargaining unit on May 8, 2002, Harrington "issued numerous reprimands" on matters for which discipline had not been imposed previously, and that such discipline was not imposed consistently amongst dispatchers. It is asserted that this behavior violates the Department's General Order requiring professional behavior, that it breached

Harrington's duty to provide leadership and constitutes conduct unbecoming of a police officer. (Exhibit 63)

97. On May 8, 2002, the dispatchers' bargaining unit took a vote of no confidence in the Appellant. (Testimony of Flint)

98. Following the vote of no confidence, the Appellant issued Mr. Bohan, a dispatcher, a written reprimand for not pushing the watch tour button while on duty. Both Ms. Flint and Mr. Bohan testified before the Commission that the watch tour button policy was not followed by the dispatchers because it conflicted with a policy requiring them to remain in the dispatch area. (Testimony of Bohan and Flint)

99. During his testimony, Harrington provided an overview of the specifics and issues relating to the watch tour duty of dispatchers. Harrington indicated that within the Winchendon Police Department, there are two buttons located by the various holding cells. Oriented to the dispatch console area, the dispatchers are required to go through a door, walk approximately twelve feet, past some cells, and push a button located on the wall, and take an additional couple of steps to push a second button in another portion of the cell area.. Given the distances involved, Harrington testified that dispatchers remained able to monitor the dispatch console and take 911 calls while performing this duty, which was to take place when there were prisoners in the cells. (Testimony of Appellant) Generally, prisoners were required to be checked every thirty minutes, although if the prisoner was a suicide risk, or "Q-5," the policy required physical checks every fifteen minutes. (Testimony of Flint)

100. At some point, the dispatchers raised a concern about this duty, a duty that they were advised was a requirement of the position upon their hire. (Testimony of

Appellant) Some dispatchers believed it to be more efficient, and better in substance, simply to monitor prisoners using audio and visual equipment located in the dispatch area proper. (Testimony of Flint and Appellant)

In addition, some dispatchers asserted that there was a conflict between the policy requiring them to perform the watch tour duty, and the policy prohibiting them from leaving the dispatch area unattended. (Testimony of Bohan)

101. At some point, Harrington was asked by Kreidler as to why dispatchers were required to push the button and Harrington replied that state law mandated that the button be pushed, and the audio and video equipment was to be used as a supplement to that tour. (Testimony of Appellant)
102. Prior to December 3, 2001, and during the tenure of a previous dispatch supervisor, Harrington was made aware on one occasion that the watch tour button duty was not being performed. In response, Harrington spoke with the supervisor, advising him of the state requirement that the duty be performed and the supervisor thereafter disseminated an email, in June, 2001, to the dispatchers stressing the point. (Testimony of Appellant) This directive, accepted into evidence as Exhibit 72, states in pertinent part, "YOU MUST I REPEAT MUST" press the watch tour button. (Exhibit 72)
103. Although dispatchers, including Flint and Bohan, testified before the Commission that this policy on the watch tour button was not followed (Testimony of Flint and Bohan) there was no evidence presented that Harrington was aware that the policy was not being followed, save for the instance during the previous supervisor's tenure that culminated in Exhibit 72.

104. On June 7, 2002, Harrington was notified by email correspondence from Sergeant Ralph Harrington, his brother, that, the night prior, Sergeant Harrington had placed a prisoner, who was a suicide risk, into a holding cell and, some four hours later, determined that Bohan, on duty at the time, had not performed the watch tour duty, a failure that Bohan admitted. (Exhibit 101.) Thereafter, Harrington issued Bohan a written reprimand for the failure. (Testimony of Appellant)
- Harrington did not suspend Bohan or take any further disciplinary action.

Facts Regarding Termination Charge 3: The Filing of an Immediate Threat Against Bohan Following Vote of No Confidence

105. The third administrative charge in the termination component of this matter alleges that, in or about June, 2002 and after the Winchendon dispatchers' vote of no confidence, Harrington filed an "immediate threat" notice with the Registry of Motor Vehicles in circumstances that did not warrant such action. It is asserted that this behavior violates the Department's General Order requiring professional behavior, that it breached Harrington's duty to provide leadership and constitutes conduct unbecoming of a police officer. (Exhibit 63)
106. In the early morning hours of May 28, 2002, Jason Miglionico, then a Winchendon police officer for several years and now an Auburn police officer, was on routine patrol when he heard a radio dispatch from Rick Oinonen that Oinonen was at the high school with several persons running from the school to a vehicle. (Testimony of Miglionico)
107. Miglionico began to respond to Oinonen's location and, while en route, heard a dispatch transmission of a report of a vehicle speeding up and down Grove Street

- toward the intersection of Grove Street with Central Street, the primary thoroughfare in Winchendon. (Testimony of Miglionico)
108. Upon arrival at the school, Miglionico observed Oinonen speaking with Bohan, and Miglionico then proceeded to survey the school building itself to check for vandalism or broken ports of entry. (Testimony of Miglionico)
109. Finished with that task, Miglionico began to move toward Oinonen's location, by that point in time, Bohan had left the school parking lot. Miglionico engaged Oinonen in conversation, during which Oinonen related that Bohan, along with 4 other acquaintances, had been "car bowling," or bowling a bowling ball out of a motor vehicle while driving. Bohan further admitted to Oinonen that he and his party were responsible for the incident that generated the earlier radio dispatch on Grove Street. (Testimony of Miglionico)
110. Miglionico, who was the officer in charge of that shift, indicated to Oinonen that, because the incident involved a municipal employee, and indeed a Police Department employee, Oinonen would need to generate a report. (Testimony of Miglionico)
111. As Miglionico and Oinonen spoke, a second dispatch report of a vehicle on Grove Street "car bowling" across Central Street was received. (Testimony of Miglionico)
112. While Miglionico responded to this second report, the dispatcher advised Miglionico to turn his radio to scramble. The dispatcher then advised that the reporting party had identified Bohan as the driver of the

- vehicle, and that the vehicle then was reportedly in the IGA supermarket parking lot near the intersection of Central and Grove. (Testimony of Miglionico)
113. Upon arrival at the scene, the vehicle was no longer present and, while Oinonen spoke to several persons in the parking lot, Miglionico searched the area and observed the motor vehicle, a silver Ford Taurus, described in both dispatch reports, in a Dunkin' Donuts parking lot. (Testimony of Miglionico)
114. Miglionico effected a traffic stop of the vehicle and asked the driver, Bohan, to get out of the vehicle to speak with him. Miglionico engaged Bohan in conversation near the rear of Bohan's vehicle, in essence asking him what had taken place. Initially, Bohan was silent, eventually admitting that he was involved in the car bowling but indicating that he would rather not identify the others who had been involved. Miglionico responded that a police report would be generated regardless what Bohan said. Bohan indicated that he would tell Miglionico what he wanted to know if the information stayed there. Miglionico reiterated that a report would be created. (Testimony of Miglionico)
115. Miglionico then released Bohan, spoke with Oinonen and proceeded to make contact with the parties who had reported the car bowling earlier. That contact revealed more specifics as to the nature of the incident, in that the vehicle in question had been driving up Grove Street, turning around and speeding down the road only to slam on its brakes at the intersection, when someone would then throw a bowling ball from the vehicle. The witnesses further reported to Miglionico that the noise had awoken a sleeping child and that the practice almost had caused two accidents. In the first incident, the vehicle almost went into the

intersecting roadway without stopping and almost struck another vehicle. In the second incident, the bowling ball almost struck a passing vehicle. (Testimony of Miglionico)

116. That night, prior to returning to the Police Department, Miglionico made the decision to seek charges against Bohan based upon the results of his investigation. He called into the station for an arrest number so that he would be able to input the specifics into the computer system upon his return. Miglionico testified that Harrington had no role whatsoever in that decision, a decision that was to charge Bohan with operating to endanger recklessly, disturbing the peace and disorderly conduct. (Testimony of Miglionico)
117. While at the station and at approximately 3 a.m., Miglionico testified that he telephoned Harrington at home to advise him of what happened and what Miglionico was going to do. Miglionico testified that he did so, as the officer in charge of the shift, pursuant to a policy that encourages notification of the Chief of Police in circumstances that the officer believes warrants notification. Miglionico testified that he put himself in the shoes of a Chief of Police, and he believed that Harrington should be notified that an employee of the Police Department was going to be charged criminally by an officer in the same Department. (Testimony of Miglionico)
118. Miglionico testified that the telephonic conversation was very brief, that Miglionico informed Harrington of the incident with Bohan and that Miglionico

was going to be taking out criminal charges. During that conversation, there was no mention of an immediate threat by either Harrington or Miglionico.

(Testimony of Miglionico)

119. The following morning, as Miglionico was leaving work and as Harrington was arriving, Miglionico advised Harrington that he also was going to be filing an immediate threat report against Bohan based upon the incident of the previous night. Harrington responded that Miglionico should do what he has to do, in no way advising or directing that an immediate threat report be filed. (Testimony of Miglionico)
120. Miglionico testified that his decision to file an immediate threat was based upon a number of factors, factors guided by his training and experience in such matters. Specifically, Miglionico cited the flagrancy of the offense, the degree of risk to public safety and the driving record of Bohan. (Testimony of Miglionico)
121. According to his testimony, Miglionico placed a great deal of emphasis on Bohan's driving history. Miglionico testified that he personally had involvement in two prior incidents with Bohan, including a vehicle going off a roadway at a high rate of speed and the issuance of a speeding ticket, and was aware of Bohan's involvement with other officers regarding motor vehicle infractions. (Testimony of Miglionico)
122. Miglionico testified that he also reviewed Bohan's driving record and that it was extensive. (Testimony of Miglionico) Indeed, this Commissioner notes that Exhibit 94, a redacted document that reveals Bohan's motor vehicle infractions cited by the Winchendon Police

Department, consists of a litany of both civil and criminal driving offenses as of May 28, 2002. This Commissioner also notes that, as of May 28, 2002, this enormous record related to an individual who was just twenty-two years old. (Exhibit 94.) Finally, Miglionico testified that Exhibit 94 was not what he reviewed on the night in question. Exhibit 94 reveals only incidents involving the Winchendon Police Department. Rather, Miglionico testified that he reviewed records pertaining to Bohan's entire driving history, including motor vehicle citations from other law enforcement agencies, and that such record was even longer. (Testimony of Miglionico) Notwithstanding the fact that Miglionico has a friendly relationship with Harrington and his brother, I found his testimony to be credible in regard to the events involving the immediate threat report. His answers were consistent and supported by documentary evidence and he expressed a sincere concern regarding the danger that Bohan's actions represented. (Testimony, Demeanor of Miglionico)

123. Also as a result of the "bowling incident," the Appellant admitted he contacted Chief Victoria, Town of Ashby Chief of Police, who had sponsored Mr. Bohan into the police academy. (Testimony of Appellant)

124. The Appellant could not recall how he learned that Chief Victoria had sponsored Mr. Bohan, nor did he recall making a call to the Academy to find out who sponsored Mr. Bohan, but he stated he may have made a call to the Academy about Mr. Bohan. (Testimony of Appellant) The Town Manager, however, testified that the Police Department phone records reflected that phone calls were placed to the Police Academy on the morning in question, and that the Appellant had previously

admitted to him that he called the Academy regarding Mr. Bohan. (Testimony of Kreidler)

125. After the charges against Bohan were subsequently dropped, the Appellant admitted that he never called Chief Victoria back to advise him of this change. (Testimony of Appellant)

Facts Regarding Termination Charge 4: Refusal to Provide Training to Dispatchers Following Vote of No Confidence

126. The fourth administrative charge in the termination component of this case alleges that, following a vote of no confidence by the Winchendon dispatchers' bargaining unit on May 8, 2002, Harrington refused to provide required training to the Winchendon dispatchers. It is asserted that this behavior violates the Department's General Order requiring professional behavior, that it breached Harrington's duty to provide leadership and constitutes conduct unbecoming of a police officer. (Exhibit 63)
127. Dispatcher Flint testified that she believed that dispatchers were required to have CPR, 911, LEAPS, First Responder and suicide prevention training, but that such training had not been received over time, with lack of training being an issue when Ashmore was in control of dispatch. (Testimony of Flint)
128. Flint testified that, in lobbying for the dispatchers to come under the authority of the Police Department, Harrington promised that additional training would be provided to the dispatchers. (Testimony of Flint)
129. Harrington provided testimony on the subject of CPR training, a training issue that he said he was aware that dispatchers had raised over time and that he believed was an outstanding issue at the time Harrington took control of dispatch.

In particular, Harrington, an emergency medical technician himself, indicated that as he thought through the issue of CPR training for dispatchers, concerns arose regarding the appropriateness of such training. CPR training, Harrington testified, carries with it a duty to act or provide assistance when necessary, with the failure to do so raising the specter of liability. At the same time, the duty to act carries the responsibility to continue rendering assistance until someone of equal or greater training relieves the certified person. The conflict, Harrington, believed, arose in that dispatchers generally work alone and, if they were required to provide CPR to someone in the station and to continue doing so, 911 calls would be bounced to neighboring municipalities and officers' radio calls would go unanswered. (Testimony of Appellant)

130. The Town's presentation, as it relates to the charge of Appellant's alleged retaliation by withholding dispatchers' training after their vote of no confidence, seemed to rely principally upon a line-item transfer executed on May 8, 2002, the same date as the vote of no confidence, that transferred \$2,000.00 from the line item for dispatchers' training and certification to the miscellaneous supplies line-item. On this issue, Harrington testified that, toward the end of fiscal year 2002, his assistant brought a budget transfer form to him. Harrington's assistant, who had the capacity to look at prior years' expenditures for supplies, indicated that she wished to ensure that there were adequate funds in the miscellaneous supplies line-item, for the purchase of paper or the like.

(Testimony of Appellant) This particular transfer form called for the movement of \$2,000.00 from the dispatchers' certification and training line item to the miscellaneous supplies line-item. (Exhibit 54.)

131. The rationale for this particular transfer is confirmed by Exhibit 116, a spreadsheet for Winchendon Police Department expenditures from July 1, 2001 through March 31, 2002 and printed on April 3, 2002. In particular, the critical portion of this document is the fourth page, on which are listed the two accounts at issue with this transfer. As of March 31, 2002, the miscellaneous supplies line-item, originally budgeted for \$577.27, was down to \$0.84. (Exhibit 116.) As of the same March 31, 2002 date, the certification and training line-item, originally budgeted for \$2,700.00, had just \$35.00 expended, leaving a balance remaining of \$2,665.00. (Exhibit 116.) Harrington testified that, at the close of any fiscal year, it was not uncommon to stock up on materials such as paper or other supplies (Testimony of Appellant) and 84 cents would buy very little.

Facts Regarding Termination Charge 5: Interrupting a Dispatcher While on Duty and Dispatching on May 20, 2002

132. The fifth administrative charge in the termination component of this case alleges that, on May 20, 2002 and following the vote of no confidence by the Winchendon dispatchers' bargaining unit, Harrington lost his temper and interrupted a dispatcher while she dispatched two separate motor vehicle accidents in circumstances that caused the dispatcher to feel threatened. It is asserted that this behavior violates the Department's General Orders requiring professional behavior and that officers refrain from verbal abuse of dispatchers, that it breached Harrington's duty to provide leadership and constitutes conduct

- unbecoming of a police officer. (Exhibit 63)
133. On May 20, 2002, Harrington walked into the dispatch area of the Winchendon Police Department and observed, posted on the dispatch console near the window at which the public transacts its business, a press release on the subject of the vote of no confidence recently taken by the dispatchers' union. (Testimony of Appellant)
134. Harrington removed the press release from the console, and began asking Theresa Flint, the dispatcher on duty, what the release was doing there and who authorized its posting. (Testimony of Appellant and Flint) Flint testified that Harrington entered the room such that her back was to him. (Testimony of Flint)
135. At the time, Flint testified that she was on the phone requesting advanced life support for a motor vehicle accident, and therefore did not respond to Harrington. Flint testified that Harrington was yelling, and was slamming the piece of paper in his hand with a pen. (Testimony of Flint)
136. Harrington testified that, as he asked Flint about the press release, he initially did not know that she was on the telephone, as he was on her left side, she had long hair that was down at the time and he did not see the receiver at her right ear. (Testimony of Appellant)
137. Flint testified that, in response to Harrington's question about who authorized the posting, she said "I don't know" and that the entire interaction lasted a couple of minutes. (Testimony of Flint)

138. Flint testified on direct examination only that the Appellant's actions interfered with her frame of mind and, in her frank words, "pissed me off." (Testimony of Flint)
139. The Town entered as an exhibit a tape recording of that morning, a recording that the Town asserts demonstrates the interference with Flint's duties. (Exhibit 74.) On the tape, as Flint's telephone call to Woods Ambulance is ringing, a voice can be heard in the background, a voice which does not strike this Commissioner as being raised or yelling, and Flint can be heard saying "I don't know." The voice speaking in the background and Flint's apparent response to that voice all take place while the call to Woods Ambulance is ringing, reflecting no interference with that call. Flint testified during cross examination that her ability to contact Woods Ambulance or speak to the Woods Ambulance representative was not interfered with by her responding "I don't know" to Harrington. (Testimony of Flint)

Facts Regarding Termination Charge 6: Frightening a Dispatcher on July 18, 2002

140. The sixth administrative charge in the termination component of this matter alleges that, on or about July 18, 2002, while on duty, Harrington "frightened a dispatcher by lunging at her[,] by waving his arm at her "while becoming angry" and while the dispatcher "was trying to back away." It is asserted that this behavior violates the Department's General Orders requiring professional behavior and that officers refrain from verbal abuse of dispatchers, that it breached Harrington's duty to provide leadership and constitutes conduct unbecoming of a police officer.

141. During the early stages of this matter, counsel for the Town sought and received authorization to issue a subpoena to a Mrs. Melissa Martin, or, as she was known at the time of the Appointing Authority hearing, Ms. Melissa Leray. Martin was the dispatcher allegedly involved in this interaction with Harrington on July 18, 2002.
142. As represented by counsel for the Town, there was difficulty in securing Martin's willingness to participate in this hearing and there was some discussion regarding use of the transcript from the Appointing Authority hearing in lieu of live testimony. (Transcript)
143. Prior to the fifth day of hearing on December 1, 2006, unsolicited correspondence, dated November 13, 2006 and from Mrs. Martin, was directed to this Commissioner, Kreidler and counsel for the Town. Prior to the December 1, 2006 hearing date, a copy of that correspondence was forwarded by Town counsel to counsel for the Appellant. This letter was incendiary toward the Appellant. Moreover, the correspondence indicated that the witness would not agree to appear before the Commission, rendering counsel for the Appellant unable to cross examine her as to the motivation for, or with respect to the content of, the correspondence.
144. Counsel for the Town sought admission of both the prior hearing transcript and the November 13, 2006 correspondence, and counsel for the Appellant registered various objections to both documents.
145. In considering this matter, this Commissioner decided not to accept the letter as an exhibit, and in order to ensure that the letter did not taint the proceedings, I

decided not to allow the testimony of Miss Martin via the Appointing Authority hearing's transcript.

Facts Regarding Termination Charge 7: Various Instances of Losing Temper

146. The seventh administrative charge in the termination component of this case alleges that, on “numerous other occasions between December 20, 1999 and the present,” Harrington lost his temper while on duty, including one incident in which Harrington purportedly “became so enraged that [he] ended up spitting in the face of a dispatcher” after another dispatcher had advised a group of dispatchers that Harrington had said he would correct a mistake that he had made. It is asserted that this behavior violates the Department’s General Orders requiring professional behavior from officers, that officers shall refrain from offering opinions which might be regarded as insulting or denigrating to others and that officers shall refrain from verbally abusing dispatchers. (Exhibit 63)
147. On June 13, 2002, several dispatchers and AFSCME Union Business Agent Jonathan Tuttle met with the Appellant and the Town Manager to discuss the issues raised by the dispatchers’ May 8, 2002 vote of no confidence.
(Testimony of Kreidler and Bohan and Appellant)
148. During this meeting, Mr. Kreidler testified that the Appellant became enraged at one of the comments made by Ms. Martin, jumped out of his chair, swore at the dispatcher and put his finger within inches of her nose. Again according to Mr. Kreidler, the Appellant yelled, and turned red and then purple in the face. The

Appellant was so mad, according to Mr. Kreidler, that spit flew from his mouth and hit Ms. Martin. (Testimony of Kreidler)

149. Mr. Bohan testified that the Appellant was yelling at Ms. Martin, exclaiming, “that’s bullshit.” He also testified that he witnessed spit inadvertently come out of the Chief’s mouth. (Testimony of Bohan)
150. The Town Manager testified that the Appellant’s behavior at the above-referenced meeting was “menacing” and “shocking” and actually witnessing such behavior “put him back on [his] feet.” (Testimony of Kreidler)
151. After catching his breath, the Appointing Authority told the Appellant to knock it off and sit down. (Testimony of Kreidler)
152. Mr. Tuttle, who was called at the request of the Commission, testified that during this meeting the Appellant “blew up.” Mr. Tuttle further testified that he was taking notes to document the Appellant’s behavior, which later became part of an unfair labor practice charge, because he believed the Appellant’s behavior was “chargeable.” (Testimony of Tuttle)
153. Harrington, testifying about the same meeting, stated that at a certain part of the meeting, Melissa Martin made reference to a grievance filed by Bohan that Harrington had denied, and indicated that she had a conversation with Harrington in which Harrington commented that he was wrong and wanted to apologize. Harrington testified that he was taken aback by the comment, and that he asked Martin why she was lying. Harrington testified that he was upset and was speaking sternly, for the reason that he believed Martin was lying in front of a

large group of people regarding a matter that involved Harrington directly.

(Testimony of Appellant)

154. Flint also testified about this incident, stating that, after the incident, which she described as a back and forth, that Kreidler responded by telling “everybody” to calm down or “let’s calm down.” (Testimony of Flint)
155. Other witnesses testified about other alleged incidents, in which Harrington allegedly lost his temper, including an incident involving a malfunctioning air vent and an off-duty officer using a Town computer. After listening to the testimony regarding these other alleged incidents, I find that the Chief did not lose his temper during these other incidents.

Facts Related to Termination Charge 8: Firearms Inventory

156. The eighth administrative charge in the termination component of this case alleges that, on or about June 3, 2002, Harrington lied to a sergeant regarding the status of a firearms inventory when Harrington stated that the project was awaiting approval from Kreidler. It is asserted that this behavior breached Harrington’s duties to provide leadership and to tell the truth, and constitutes conduct unbecoming of a police officer. (Exhibit 63)
157. In early 2002, Sergeant Geoffroy approached Harrington with a proposal, based upon the example of other departments, to exchange the Winchendon Police Department’s surplus, outdated, unused or seized weapons for value to be used to effect an upgrade in the Department’s arsenal. (Testimony of Appellant and Geoffroy)

158. Geoffroy contacted three companies for bids on the proposed transaction. (Testimony of Geoffroy) Harrington testified that he understood Town or Department policy to require three bids for any transaction with a value of \$1,000.00 or more. (Testimony of Appellant) Although Geoffroy testified to some awareness of such a policy, his testimony was that the policy was implicated only if there was to be a purchase at a value of more than \$1,000.00. (Testimony of Geoffroy)
159. Thereafter, Geoffroy received two bids and took the information to Harrington by way of a status update, indicating to Harrington that there was a third solicitation that had been made but to which no response had been received. (Testimony of Appellant and Geoffroy)
160. Exhibit 58 consists of correspondence from Geoffroy to Harrington dated April 3, 2002 and regarding the inventory issue, reflecting the status of the matter and asking that he be contacted to start the process. In turn, Exhibit 59 is correspondence dated April 4, 2002 from Harrington to Kreidler, regarding the April 3, 2002 correspondence from Geoffroy and indicating that a copy of that correspondence is being provided “for your information.” (Exhibits 58 and 59)
161. Harrington testified that, upon receiving Exhibit 58 from Geoffroy, he drafted Exhibit 59 and provided it to Kreidler during a meeting between the two men at which a great many issues were discussed. Harrington indicated that he handed Kreidler the memoranda, indicated that he would like to speak to area municipal police departments regarding their use of less than lethal weaponry and that, once he received the third bid from Geoffroy, he would bring that to Kreidler as well.

- Harrington further testified that he brought this issue to Kreidler's attention prior to receipt of the third bid not only to make Kreidler aware of the matter, in accordance with his preference to be kept updated on departmental matters, but also to get approval from Kreidler as to the process in general, although not necessarily the particulars, such as the bid selected. Harrington recalled Kreidler indicating "ok" and not otherwise responding to the issue. (Testimony of Appellant)
162. Thereafter, Geoffroy followed up with Harrington as to the status of the firearms inventory, a conversation within which Geoffroy testified that Harrington either said words to the effect that it was in Kreidler's hands, that Harrington was waiting for a response from Kreidler or that Harrington was waiting for approval from Kreidler. (Testimony of Geoffroy)
163. Kreidler testified that in the fall of 2002, some months after the Geoffroy and Harrington memoranda and after Harrington had been placed on administrative leave in July, Geoffroy approached Kreidler and inquired about the status of the firearms inventory matter. Geoffroy indicated to Kreidler that he had forwarded the inventory information to Harrington, and that Harrington had responded that the matter was in the hands of Kreidler, awaiting approval. (Testimony of Kreidler)
164. Kreidler testified that he was unaware as to what Geoffroy was referring and, believing that Harrington had lied to Geoffroy about this matter, referred the issue to Ludington for investigation. (Testimony of Kreidler) Harrington testified that, during one of his interviews by Ludington, she asked about the inventory and she

indicated that Kreidler had said that he had no information regarding the inventory. Harrington thereafter located a copy of the material and forwarded it to Ludington. (Testimony of Appellant)

165. At some point, the correspondence from Harrington was located in the files of the Town Manager's office. The document, however, did not bear the "file" stamp that Kreidler testified that he affixes to material once he has reviewed it. Kreidler testified that the general process for receiving documents in his office is that, should the document be received through his assistants, it will be date stamped and forwarded to him for review. (Testimony of Kreidler) Alida Herring testified that, should a document be received by Kreidler directly, his support staff would appreciate it if he would give it to them to stamp, but Kreidler does not always follow procedure in that regard. (Testimony of Herring)

Facts Related to Termination Charge 9: Statement to the Press

166. The ninth administrative charge in the termination component of this matter alleges that, on or about July 23, 2002, Harrington "made a statement to the press, while on duty, in support of [his] brother, a sergeant in the Town's Police Department under [Harrington's] direct supervision. This statement related to criminal allegations of sexual misconduct that had been filed by another Department employee, who was also under [Harrington's] direction and supervision, while an administrative investigation was ongoing regarding the same allegation." It is asserted that this conduct violated the Department Policy and Procedure on Police Media Relations, which provides for media cooperation only to the extent that such activities "do not unduly interfere with the

- departmental operations, infringe upon individual rights, or violate the law” and constitutes a violation of G.L. c. 268A, s. 23 (B) (3) by creating the appearance of impropriety regarding family and others. (Exhibit 63)
167. At some time in the first half of 2002, an employee of the Police Department made allegations of criminal sexual misconduct against Sergeant Ralph Harrington, the Appellant’s brother. Exhibits 61 and 112) After receipt of those allegations, the Town Manager discussed the issue with the Appellant as the Department Head, and advised him that he would be placing the Chief’s brother on paid administrative leave pending an administrative investigation to determine whether Sergeant Harrington had violated the Department’s Sexual Harassment Policy. The Appellant was also advised that he was to have no direct involvement in this matter since it involved his brother. (Testimony of Kreidler)
168. The Town Manager placed Sergeant Ralph Harrington on administrative leave with pay and initiated an investigation. This investigation, however, was put on hold when the District Attorney’s office initiated a criminal investigation into the same matter. (Testimony of Kreidler)
169. The Town Manager testified that he advised the Appellant in both instances (prior To, and after the District Attorney’s investigation) that Sergeant Ralph Harrington was being placed/would remain on administrative leave. (Testimony of Kreidler)
170. After some form of proceeding, the District Attorney elected not to pursue the matter further, and notified the Town of its decision on July 18, 2002, which was a Thursday. That same day, the Town Manager advised the Appellant that

- Sergeant Ralph Harrington would remain on paid administrative leave during the continuation of the Town's administrative investigation.¹ (Testimony of Kreidler)
171. On Friday, July 19, 2002, the following statement was attributed to the Appellant in the Worcester Telegram and Gazette: "I'm 100 percent behind my brother". (Exhibit 61)
172. A second article containing substantially similar language also quoted the Appellant as stating, "I have full confidence my brother will be cleared." (Ex. 112)
173. Harrington testified that he stated to Barnes that, removing himself as Chief, as a brother, he stood behind his brother one hundred percent. (Testimony of Appellant)
174. Barnes testified that, to the best of his memory, his quotation of Harrington is what Harrington said on the matter during that telephonic conference. (Testimony of Barnes)

Facts Regarding Termination Charge 10: Alleged Deception Toward the Investigating Officer

175. The tenth, and final, administrative charge in the termination portion of this matter relates to alleged untruthful comments made to Ludington, the investigating officer, in connection with the Memorial Day parade and "immediate threat" issues. It is asserted that this behavior violates the Department's General Order requiring professional behavior, that it breached Harrington's duty to tell the truth and constitutes conduct unbecoming of a police officer.

¹ The parties stipulated to the fact that Sergeant Harrington was continued on administrative leave on July 18, 2002.

176. The component of this charge related to the Memorial Day parade forms the basis for a separate charge underlying Harrington's termination. As has been discussed, the Memorial Day parade issue, including the allegations as to Harrington's statements, elsewhere forms the basis for an administrative charge. During her testimony, Ludington indicated on no fewer than four occasions that, during her interviews of Harrington, he "reiterated" what had been conveyed to Kreidler and what forms a foundation for the charge discussed earlier.
- (Testimony of Ludington) Accordingly, I incorporate my findings of fact as they relate to the first administrative charge in the termination portion of this matter in considering this allegation.
177. The second component of this charge, allegedly dishonest statements made to Ludington regarding "immediate threats", consists of two assertions: first, that Harrington was dishonest with Ludington when he indicated that "immediate threats" could be used for "any purpose"; and, second, that Harrington was dishonest when he allegedly estimated the number of immediate threats issued by the Winchendon Police Department in the prior year to be between six and twelve. (Testimony of Ludington)
178. Harrington testified that he recalled, during one of his interviews with Ludington, that she had inquired about the standards by which an immediate threat charge can be issued, and had asked specifically whether the issuance of an immediate threat is limited to matters involving elderly drivers who have lost the ability to drive safely. To that inquiry, Harrington responded, as he reaffirmed during his testimony before the Commission, that the issuance of immediate threats is not

- confined to the elderly, that there is a broad range of instances in which anyone, depending upon the circumstances and consistent with statutory guidelines, can be the subject of an immediate threat. (Testimony of Appellant)
179. Ludington’s testimony on this matter seemed to derive entirely from a conversation that she had with at least two Winchendon police officers in which she inquired how immediate threat charges were used by the Department. She was informed that the primary use was for seniors who could not safely drive any longer, which led her to conclude that Harrington’s statement that immediate threat charges could be used for “any” reason was without basis and was dishonest. (Testimony of Ludington)
180. The statutory scheme governing immediate threats is codified in G.L. c. 90, s. 22. The statute governs the ability of the registrar of motor vehicles to suspend or revoke a license and, by extrapolation, the standards by which police officers are to file immediate threat charges and chiefs of police are to authorize such filings. Section 22 provides that the registrar of motor vehicles may suspend or revoke a license without a hearing when the holder of a license has committed a violation of motor vehicle laws that gives the registrar “reason to believe that continuing operation by such holder is and will be so seriously improper as to constitute an immediate threat to the public safety.” (Exhibit 55.)
181. The second assertion within this component of charge ten alleges that Harrington was untruthful when, during one of his interviews with Ludington, she, in order to “get a better handle” on their frequency, asked Harrington “if he could tell me approximately how many would be issued in a year” and Harrington, it is

asserted said “in the previous year he believed six to 12 had been filed by his [D]epartment.” (Testimony of Ludington)

182. Following up on that inquiry, Ludington requested that Kreidler ask the acting Chief of Police at the time, Frederick Cloutier, how many immediate threats had been issued. Ludington testified that the information she received back was that one former officer did not participate, “[s]ome had filed none. Some had filed one. I believe one officer as I recall had filed two in the previous year.” (Testimony of Ludington)
183. When refreshed with the report of her investigation, Ludington testified that only one officer reported having filed an immediate threat in the prior year, that officer having filed two, and that Sergeant Ralph Harrington answered with the number he had filed in his years as a police officer. Ludington testified that the two from that officer, plus the one involving Bohan, meant that three immediate threats had been filed, not six to twelve. Ludington also indicated that the former officer who did not participate was Officer Miglionico. (Testimony of Ludington)
184. At the time of Ludington’s interviews, the Appellant was on administrative leave and did not have access to departmental files or computers. Harrington indicated to her that the Winchendon Police Department did not maintain a file specifically on immediate threats. (Testimony of Ludington)
185. Harrington testified that he told Ludington that he estimated the number of charges would be six to twelve. (Testimony of Appellant)
186. Miglionico testified during this hearing that he had filed immediate

threats in the year preceding the May, 2002 Bohan incident, that there were not “a lot” but he would say that there were more than one. (Testimony of Miglionico)

This moves the number of immediate threats to the lowest level of the range estimated by Harrington.

CONCLUSION

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300,304 (1997). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995); Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is satisfied “if it is made to appear more likely or

probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there.”

Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

The public hearing regarding these appeals stretched over six full days. Fortunately, however, the proceedings lacked much of the personal acrimony that often accompanies termination cases that come before the Commission. That was in large part due to the professional demeanor of counsel for both parties and their respective clients. The allegations, taken collectively, fall into the following three broad categories: 1) alleged retaliatory actions taken against the Town’s dispatchers after they took a vote of no-confidence in the Chief; 2) untruthfulness; and 3) poor judgment and temperament as well as poor performance in his capacity as Chief of Police.

Prior to addressing these three broad categories and the underlying charges related to each of them, I offer the following conclusions regarding Town Manager James Kreidler. Mr. Kreidler is the consummate professional with impeccable credentials and a proven track record in the field of public administration. Based on the testimony of over a dozen witnesses from the Town of Winchendon, including Mr. Kreidler himself, and a review of the relevant exhibits and my own observations of him throughout the six days of proceedings, I conclude that Mr. Kreidler is a manager with high integrity and strong credibility whose expertise is an asset to the Town of Winchendon.

Notwithstanding my above-referenced conclusions regarding Mr. Kreidler, it was clear to this Commissioner, as candidly acknowledged by Kreidler himself, that Kreidler had concluded early in his tenure as Town Manager that Robert Harrington was not qualified to serve as the Town's Police Chief. It was in this context that Kreidler did, at a minimum, have a heightened awareness of the actions and overall performance of Chief Harrington. Not surprisingly, Kreidler made an early decision to document his observations and interactions with his Police Chief. Kreidler appropriately documented his observations and concerns regarding the actions of Chief Harrington during his tenure and many of those observations would serve as the underpinning of the charges related to the suspensions and ultimate termination of Chief Harrington. However, having carefully reviewed all of the exhibits and testimony regarding these appeals, the Commission finds that many of the *conclusions* reached by the Town Manager (i.e. – that each of Harrington's actions, as documented by Kreidler, allegedly constituted misconduct on the part of Harrington) were not supported by a preponderance of the evidence, particularly

in regard to the first category of termination charges relating to alleged retaliation against the Town's dispatchers.

Allegations of Retaliation Against the Dispatchers

In support of these allegations, the Town argued that Harrington reneged on a commitment to provide training to dispatchers by transferring \$2,000 from the training account to an office supplies account (See Termination Charge 4). However, the Town has presented absolutely no evidence that training or certifications that were contemplated from the time of the no-confidence vote to the end of the fiscal year were compromised or taken away as a result of this transfer. Put simply, the Town overreached on this charge and, despite the inordinate amount of time spent on this issue before the Commission, I find no evidence that the transfer was done in an attempt to retaliate against the dispatchers.

Also in regard to the overall allegation of retaliation against the dispatchers, the Town cites the revocation of the driver's license of then-dispatcher Corey Bohan through the filing of an immediate threat report with the Registry of Motor Vehicles, that was approved, but not initiated by, Harrington. (See Termination Charge 3) This Commissioner was perplexed as to why the Town continued to rely on this allegation as justification for termination. It is undisputed that then-dispatcher Corey Bohan and his cohorts engaged in a life-threatening game called "car-bowling" in which Bohan would literally throw a bowling ball out of a car and down a hill toward the intersection of a busy public way in Winchendon. As a result, a Winchendon police officer, after reviewing Bohan's lengthy driving record, filed an immediate threat report with the

Registry of Motor Vehicles, that was authorized by Mr. Harrington. The Town alleges this was retaliation by Harrington, as it occurred after Bohan joined other dispatchers in the vote of no-confidence in Harrington. As noted elsewhere in this decision, the Town concluded that Bohan was the subject of alleged retaliation by Harrington on at least three occasions. Notwithstanding his horrendous judgment, as evidenced by his “car-bowling” activities, I found his testimony to be credible. However, similar to other charges against Harrington, even if all of Bohan’s testimony regarding Harrington is true, Harrington’s actions, as recounted by Bohan, do not constitute misconduct on behalf of Harrington. After reviewing all of the testimony, including that of Bohan himself, and all of the exhibits, I conclude that Harrington’s approval of the police officer’s request to file an immediate threat report against Bohan was reasonable, justified and not retaliatory. In doing so, the Commission also rejects the argument by the Town that immediate threat reports are reserved solely to instances in which there is an elderly person who has lost the ability to drive. While reaching this conclusion, this Commissioner did indeed find it troubling that Harrington, in addition to signing off on the immediate threat report, used poor judgment by taking the additional step of calling Bohan’s sponsor to the local police academy and informing him of the underlying incidents. The overall issue of poor judgment is discussed later in this decision.

Finally, in regard to the overall allegation of retaliation against dispatchers after their no-confidence vote, that leaves the allegation that a decision by Harrington to discipline then-dispatcher Bohan for failing to push a watch tour button near the police holding cells was retaliatory. Exhibit 72 dispels any notion that Harrington concocted this issue regarding the watch tour button after the vote of no confidence. In fact, Exhibit 72 shows

that two years prior to this incident, then-Chief Harrington wrote a sternly worded memorandum to all dispatchers reminding them that they must press the watch tour button every 30 minutes while serving as a dispatcher. Although dispatchers testified before the Commission that this policy on the watch tour button was not followed, there was no evidence presented that Harrington was aware that the policy was not being followed, except for one incident which prompted the above-referenced memorandum authored by Harrington to all dispatchers. In fact, confirming that Harrington's belief that the policy that was followed was reasonable, the Appellant submitted into evidence what was marked as Exhibit 119. Exhibit 119 is a July 2, 2002 cover memorandum from Harrington to Kreidler from the Executive Office of Health and Human Services, Department of Public Health, regarding the then-recent inspection of the holding cell facilities of the Winchendon Police Department. This state audit process, Harrington confirmed, included review of the time stamp sheets. While it certainly raises this Commissioner's eyebrow that Bohan's failure to activate the watch tour button was reported by Sergeant Ralph Harrington, the brother of then-Chief Harrington, I conclude that the issuance of a reprimand against Bohan was not retaliatory.

In summary, I find that the Town has not shown by a preponderance of the evidence that Chief Harrington retaliated against the Town's dispatchers after their vote of no-confidence in him. (See Termination Charges 2, 3 and 4).

Allegations of Untruthfulness

Three of the charges underlying the decision by the Town to terminate the Appellant relate to the Appellant's alleged untruthfulness. (See Termination Charges 1, 8 and 10)

Charge 8, which relates to the status of a firearms inventory, is not supported by a preponderance of the evidence for the reasons discussed below and Charge 10 is effectively duplicative of Charge 1. Charge 1, however, which relates to the Town's annual Memorial Day Parade, is supported by a preponderance of the evidence and, for the reasons discussed below, was deeply troubling to the Commission.

The Town would have been well-advised to voluntarily drop Charge 8 in light of the testimony and exhibits presented to the Commission. At some point after Harrington had been placed on administrative leave, the Town Manager was approached by a police sergeant who inquired about an issue he was working on related to the department's firearms inventory. The sergeant told Kreidler that Chief Harrington had informed him that he (the Chief) had discussed the matter with Kreidler and that the issue was still pending with Kreidler. Upon hearing this information, Mr. Kreidler believed that this was yet another instance in which Harrington was lying and he promptly informed the investigator assigned to the Harrington case and asked her to investigate the matter further. As it turns out, there was indeed a memorandum, *in the Town Manager's Office*, from Chief Harrington to Kreidler regarding this issue, which I conclude the Town Manager forgot he had been given by Harrington. This Commissioner asked Mr. Kreidler, if, once he realized he had the document in his office files, whether he cleared the record with the police sergeant by telling him that the material actually had been received. Kreidler indicated that he did nothing with respect to this "exculpatory" material evidence because it involved an ongoing investigation and he was just waiting until the investigator reached her conclusions. Apparently, however, that inaction has continued for approximately five years, because the police sergeant, on cross-

examination, indicated that he still had no knowledge of a document being misfiled by Kreidler's office. While a relatively small point, the above-referenced chain of events, and the fact that Kreidler had no interest in setting the record straight on this issue, partially contributed to this Commissioner's overall conclusion that the Town was deliberately overreaching on many of the charges which formed the basis of Harrington's discipline, including his ultimate termination from the Winchendon Police Department.

The third and final charge related to untruthfulness, however, was supported in part by the credible testimony of Lynne Kendall, the then-owner of the Central Café in Winchendon. The details regarding the events surrounding the Memorial Day Parade are outlined in the findings of fact above. (See Finding of Facts 71 – 95) In summary, a local war veteran, now deceased, somehow was led to believe he would not receive a police escort in the Town's annual Memorial Day parade. As part of a conference call between the Town Manager, Harrington and the veteran, the matter was resolved to the extent that the veteran was assured he would receive an escort and it was agreed that Harrington would arrange the details with the veteran. Harrington, however, at his own peril, wouldn't let the issue rest. When he met with the veteran regarding the escort, he questioned him as to who told the veteran he wouldn't be given a police escort. According to Harrington, the veteran pinned the blame on two members of the Board of Selectmen, including Harrington's nemesis, Charles McAllister. According to Harrington, the veteran told him that the two selectmen informed him of this information at one of their "little selectmen meetings" at the Central Street Café. A letter written by

the veteran disputes Harrington's account of this conversation, but the veteran, now deceased, was obviously not available as a witness before the Commission.

What was actually said between Harrington and the veteran during the above-referenced conversation was less important to this Commissioner, however, than the subsequent actions of then-Chief Harrington, including his conversations with Ms. Kendall and his representation of that conversation to others, including the Town Manager. Even assuming *arguendo*, that the veteran made the statements that Harrington has attributed to him, Harrington's subsequent actions were deceitful in that he misled a private citizen and, even more troubling, Harrington deliberately misrepresented statements made to him by this private citizen in an attempt to manufacture false allegations against two members of the local Board of Selectmen. Specifically, the Appellant knowingly lied in submitting a letter to the Appointing Authority stating that Ms. Kendall told him that two selectmen went to her café "every morning between 6:00 am and 7:30 am during the week".

Whatever conversation occurred between the Appellant and Ms. Kendall could not, as the Appellant described it, have resulted in the conclusion that he simply misunderstood Ms. Kendall. Had this genuinely been the case, Ms. Kendall would not have come to distrust the Appellant as she plainly does. As noted in the findings of fact, Ms. Kendall was a good witness who lacked any ulterior motives for testifying against Harrington. Her testimony was highly credible. When I asked the Appellant why he took the steps he did in regard to this incident which ultimately involved speaking to Ms. Kendall, he responded by stating he was worried about the inconsistent messages being sent by different people in the Town government. However, it is clear that there was no longer a

pending issue after the above-referenced conference call. The matter was closed, and the only reason for Harrington to speak with the veteran was to discuss the logistics of the parade. Similarly, he had no reason to speak to Ms. Kendall. The Appellant's motivations became personal in nature at some point and his actions, including his untruthful statements, reflected poorly on both him and his position as Police Chief. An Appointing Authority is well within its rights to take disciplinary action when a police officer has "a demonstrated willingness to fudge the truth in exigent circumstances" because "[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or might embarrass a fellow officer." See Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 801 (2004); citing City of Cambridge, supra at 303.

Poor judgment and temperament as well as poor performance in his capacity as Chief of Police.

The remaining four charges proffered by the Town in the termination case involve allegations by the Town that the Chief exhibited poor judgment and temperament as well as poor performance in his capacity as Police Chief. (See Termination Charges 5, 6, 7 and 9)

Termination Charges 5, 6 and 7 all involve allegations that Harrington lost his temper in various situations. In regard to Charge 5, the Town has not shown, by a preponderance of the evidence, that Harrington interrupted a dispatcher while she was dispatching two separate motor vehicle accidents in such a manner so as to cause the dispatcher to feel threatened or in a manner that impeded her ability to respond to an emergency call. First, having listened to the testimony of the dispatcher in question, I find that there is a

relatively high threshold for Ms. Flint to feel threatened by anyone in the workplace. As the exhibits and testimony showed, Ms. Flint is an unvarnished, “tell it like it is” individual who had no problem initiating a no-confidence vote in Harrington and then boldly posting a press release (which had a police phone number listed as the contact number) regarding this no-confidence vote in the dispatch room. Moreover, even Ms. Flint, whose testimony was credible, testified that other than being “pissed off” at the Chief regarding their brief interaction in the dispatch room on the day in question, she did not feel threatened.

Similarly, Termination Charge 6 is unsupported by a preponderance of the evidence, but for different reasons. The only two percipient witnesses to this charge are Harrington and an individual named “Melissa Martin” whom the Town was unable to produce as a witness before the Commission. Having refused to comply with a subpoena to appear, Ms. Martin nevertheless attempted to inappropriately insert herself into the proceedings via an unsolicited, self-serving letter addressed to this Commissioner. In order to ensure that this letter did not taint the proceedings, I did not accept the letter as an exhibit and I gave no weight to any hearsay evidence or statements proffered by Ms. Martin. It is well settled that the Commission holds its hearings regarding disciplinary matters on a de novo basis, upon which it makes its own findings of fact. Sullivan v. Municipal Ct. of Roxbury, 322 Mass. 566, 569 (1948). Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). Given the state of this evidentiary record, this Commissioner has been precluded from making the necessary credibility determinations on this charge and, as the Town is the party with the burden of proof to sustain discipline, I find that this charge must be dropped.

Termination Charge 7 alleges that Harrington lost his temper on “numerous occasions” between December 28, 1999 and December 19, 2002. It is important and telling to note that three of the alleged temper-related incidents never arose until the Town began its investigation in 2002. Moreover, having listened to all of the testimony and reviewed all of the exhibits, I have concluded that only one of the incidents merits discipline. Specifically, the Town alleges that Harrington lost his temper during a meeting in June 2002 that was attended by Kreidler, Harrington, several dispatchers as well as a union representative for the dispatchers, Jonathan Tuttle. I found Tuttle’s testimony, in particular, to be highly credible. He never sought to overreach in his comments and he offered a dispassionate and plausible account of what occurred at the meeting in question. By all accounts, this appears to have been a lengthy meeting that focused upon a number of issues, and took place the month following the dispatchers’ union’s vote of no confidence in Harrington. After reviewing all of the evidence and the testimony of several individuals who attended the meeting in question, I conclude that Harrington did indeed lose his temper at the June 2002 meeting with dispatchers and he behaved in a manner that is inconsistent with the professional demeanor expected of a Police Chief and department rules.

Termination Charge 9 alleges that Chief Harrington acted in an unprofessional manner and in violation of Town Policies and Procedures when he made a statement to the media regarding an investigation into his brother, Sergeant Ralph Harrington, whom he supervised. While the parties reference and disagree on exactly what the Appellant said to the reporter in question, in addition to whether the Appellant was referencing a dismissed criminal allegation or a pending administrative investigation, I find the answers

to those questions to be of no import. Chief Harrington's brother, a sergeant in the same police department Robert Harrington was charged to lead, was the subject of a sensitive ongoing internal investigation, for which criminal charges were filed and later dropped. At no point – before, during or after – this investigation, would it have been appropriate for Chief Harrington to comment about this matter to the local media, other than to assure Town residents that he would have no role in the matter. In making the statement to the media that he did, Harrington exercised poor judgment that could reasonably call into question his fairness and objectivity as Police Chief.

One-Day Suspension and Four-Day Suspension

The one-day suspension that preceded the termination involved an error in which the Police Department under-budgeted the amount needed to cover “Quinn Bill” payments to police officers by several thousand dollars. It is undisputed that the error occurred and a Town Meeting vote was required in order to cover the difference. I conclude that the Chief failed to exercise the necessary oversight to prevent this error from occurring. Nevertheless, the Town once again overreached when it suggested that Harrington acted unprofessionally by allegedly trying to place the blame for the error on his administrative assistant, an allegation for which I find insufficient evidence.

The four-day suspension that also preceded the termination involves, like three of the charges in the termination case, shades of untruthfulness. Specifically, the Town alleges that Harrington failed to be forthright to, and failed to communicate adequately with, Kreidler regarding the resolution of complaints, predominately in the nature of workload

concerns, registered by Harrington's administrative assistant, Ms. Yma Offerall, who did not testify before the Commission.

I find the Town Manager's testimony in this regard to be sufficiently credible and an accurate representation of the events that occurred. Specifically, I conclude that Harrington represented to Kreidler that his assistant's concerns had been fully addressed and resolved, when in fact, he had only discussed , not resolved them with her.

Commission Rulings on Termination and Suspensions

If the Commission decides to modify a penalty, it must provide explanation of its reasons for so doing, because a decision to modify shall be reversible if unsupported by the facts or based upon an incorrect conclusion of law. Faria v. Third Bristol Division of the Dist. Ct. Dep. 14 Mass. App. Ct. 985, 987 (1982). Police Commissioner of Boston v. Civil Service Commission. 39 Mass. App. Ct. 594, 602 (1996). When the Commission modifies an action taken by the Appointing Authority, it must remember that the power to modify penalties is granted to ensure that employees are treated in a uniform and equitable manner, in accordance with the need to protect employees from partisan political control. Id. at 600. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 801 (2000).

Three of the termination charges proffered by the Town of Winchendon against Robert Harrington are supported by a preponderance of the evidence; the remaining seven charges are not supported by a preponderance of the evidence. In regard to the seven charges that were not supported by a preponderance of the evidence, the Commission reaches the inescapable conclusion that the Town deliberately overreached

in an attempt to bolster its case in support of Harrington's termination from the Winchendon Police Department.

Notwithstanding the Town's overreaching, the remaining three charges which were supported by a preponderance of the evidence raise serious questions regarding Robert Harrington's ability to serve in the capacity as Police Chief. Specifically, Harrington lost his temper and acted unprofessionally in a meeting with dispatchers, in addition to exercising poor judgment when speaking to the media about matters involving his brother, Sergeant Ralph Harrington. Further, and most disturbing, were Harrington's actions in regard to what should have been a routine matter involving the Town's Memorial Day Parade. As referenced above, Harrington, acting as the Town's Police Chief, deliberately misrepresented the comments of a private citizen in order to impugn two members of the Board of Selectmen.

On a final note, the Commission obviously has a rich history hearing disciplinary appeals, including hearing those appeals filed by police officers and Police Chiefs seeking to overturn discipline imposed by their respective Appointing Authority. After six days of hearings and carefully reviewing all of the testimony and exhibits in this case, this Commissioner came to the inescapable conclusion that law enforcement officials, even those accused of far more serious misconduct than that alleged against Chief Harrington, were not subject to the severity of discipline imposed in this case against Mr. Harrington.

For all of the above reasons, the Commission hereby *modifies* the decision of the Appointing Authority in regard to the termination (D-03-296). Robert Harrington is to be

demoted from his position as Police Chief to his former position as police officer, without any loss of pay or benefits that he would have received as a police officer, as allowed by law.

Further, for all of the reasons cited above, the decisions of the Appointing Authority regarding the one-day suspension (D-02-623) and the four-day suspension (D-02-622) are both affirmed and the appeals regarding those suspensions are hereby *dismissed*.

In light of the fact that four years has transpired since the Town terminated Mr. Harrington, the effective date of the termination appeal (D-03-296) shall be October 1, 2007, giving the Town and the Appellant one last opportunity to reach a settlement agreement. Should the parties reach a mutual settlement agreement before October 1, 2007, they shall notify the Commission and Case No. D-03-296 shall be dismissed. In the absence of such a settlement agreement, the decision in Case No. D-03-296 will become effective on October 1, 2007.

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman, Guerin, Henderson, Marquis and Taylor, Commissioners) on July 19, 2007

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Marc Terry, Esq. (for Appointing Authority)

Michael J. Akerson, Esq. (for Appellant)

Andrew J. Gambaccini, Esq. (for Appellant)