

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**ADAM LEVESQUE,**  
*Appellant*

v.

**TOWN OF  
MIDDLEBORO,**  
*Respondent*

**Case No.: D1-12-228**

**DECISION**

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

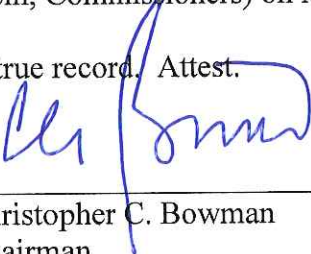
Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. The Appellant submitted written objections to the Tentative Decision and the Respondent submitted a response to the Appellant's objections.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Town of Middleboro to terminate Mr. Levesque as a police officer is affirmed and Mr. Levesque's appeal under Docket No. D1-12-228 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on May 1, 2014.

A true record. Attest.

  
\_\_\_\_\_  
Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

Timothy G. Kenneally, Esq. (for Appellant)

Leo J. Peloquin, Esq. (for Respondent)

Joshua R. Coleman, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**Division of Administrative Law Appeals**

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Docket Nos.: D1-12-228, CS-12-667

**ADAM LEVESQUE,**

Appellant,

v.

**TOWN OF MIDDLEBOROUGH,**

Respondent

**Appearance for the Appellant:**

Timothy G. Kenneally, Esq.

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350 Gifford Street, Suite 26

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**Appearance for the Respondent:**

Leo J. Peloquin, Esq.

Joshua R. Coleman, Esq.

Collins, Loughran and Peloquin, P.C.

320 Norwood Park South

Norwood, MA 02062

**Administrative Magistrate:**

Angela McConney Schéeppers, Esq.

**SUMMARY OF TENTATIVE DECISION**

The Town of Middleborough had just cause to terminate the Appellant from his position as police officer for violating the terms of his last chance agreement. The Appellant filed inaccurate grant activity reports and contacted a witness, in violation of the police chief's order, during the ensuing police department investigation. I therefore recommend that the Civil Service Commission dismiss the appeal.

**TENTATIVE DECISION**

**INTRODUCTION**

The Appellant, Adam Levesque, pursuant to G.L. c. 31, § 43, filed a timely appeal with the Civil Service Commission (Commission) on August 10, 2012, claiming that the Town of

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CIVIL SERVICE COMMISSION

Middleborough did not have just cause to terminate him from his position as police officer. The Appellant had signed a last chance agreement (LCA or Agreement) on August 6, 2010, after the Department found that he compromised a drug investigation by informing an alleged drug dealer that he was under police surveillance. (Exhibit 3.) The Agreement provided that the Board of Selectmen would have just cause to dismiss the Appellant if he engaged in any future misconduct. The Board of Selectmen terminated the Appellant on July 23, 2012 after finding that he had violated the Agreement.

A pre-hearing conference was held on September 11, 2012 at the offices of the Commission, One Ashburton Place, Room 503, Boston, MA 02108. On November 26, 2012, the Appellant filed a motion to amend his complaint to include a claim for violation for G.L. c. 31, § 42. That motion was later withdrawn.

On November 27, 2012, pursuant to 801 CMR 1.01(11)(c), a Magistrate from the Division of Administrative Law Appeals (DALA) conducted a full hearing at the offices of the Commission, in accordance with the Formal Rules of the Standard Rules of Practice and Procedure. 801 CMR 1.01. The hearing was continued on January 31, 2013 and February 6, 2013 at the Middleborough Town Hall, 20 Center Street, Middleborough, MA 02346.

The Appellant called William James Ferdinand, a Special Police Officer and a Commissioner of the Middleborough Board of Park Commissioners, and Francis Cass, the Middleborough Parks Superintendent. The Appellant also subpoenaed Sergeant David Beals, Jr. and testified on his own behalf. The Respondent called Police Chief Bruce D. Gates.

The witnesses were sequestered. The stenographic transcript serves as the official record of this hearing. As no notice was received from either party, the hearing was declared private.

I marked the Respondent's Pre-Hearing Memorandum "A" for identification. I admitted

thirty-seven (37) joint exhibits into evidence. I admitted the Appellant's bypass appeal form as Exhibit 38. I admitted the Stipulated Facts, signed by the parties at the September 11, 2012 pre-hearing conference, as Exhibit 39. Both parties submitted their post-hearing briefs on April 29, 2013, whereupon the administrative record closed.

### **FINDINGS OF FACT**

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

1. The Appellant, Adam Levesque, has been a patrolman in the Middleborough Police Department (Department) since June, 2001. (Exhibits 38 and 39; Testimony of the Appellant.)
2. The Board of Selectmen is the appointing authority for the Department. (Exhibit 1.)
3. Chief Bruce D. Gates has been chief of the Department since 2009 and has been a police officer for almost thirty years. (Testimony of Chief Gates.)
4. The conduct of police officers is governed by the Middleborough Police Department Rules and Regulations. These Rules and Regulations were in effect at all times relevant to this matter. (Exhibit 28; Testimony of Chief Gates.)

#### *A. Appellant's Previous Discipline*

5. In 2010, a detective placed a global positioning system (GPS) device on the vehicle of JP, the target of a Department drug investigation. JP was a repeat offender for drug and breaking-and-entering offenses and had been arrested numerous times. After the Department lost the ability to track the suspect, JW, who was JP's cousin and also a suspected drug dealer, informed Det. Lake that he had "tipped off" JP after receiving knowledge of the surveillance

from Levesque. The surveillance was comprised, and the Department lost the GPS device.

(Exhibit 3.)

6. A General Policy of the Department, dated February 3, 1969 provides:

2) No police officer ... will discuss any case outside this Department without prior permission from the Chief of Police.

3) In the event any ... [officers] are approached by any individual for Police information they will refer the individual to the Police Station...

4) There will be no deviation from this order.

(Exhibit 5.)

7. Lieutenant David M. Mackiewicz is the officer in charge of Internal Affairs for the Department. In January 2010, Chief Gates directed him to conduct an Internal Affairs investigation into the allegation of whether the Appellant had "compromised a Department investigation by improperly revealing that [JP] was under surveillance." After conducting a thorough investigation, on July 16, 2010, Lt. Mackiewicz opined that the allegation was not corroborated and should be considered "UNSUBSTANTIATED." (Exhibits 4 and 27.)

8. In the meantime, the Department pursued an investigation separate from that of Internal Affairs. The Department found that the Appellant failed to provide complete information and answers, despite specific written and verbal directives from Chief Gates. Later questioning revealed that the Appellant lived next door to the suspect's girlfriend, and that the Appellant's wife and the suspect's girlfriend sometimes waited at the same bus stop. (*See supra* Finding of Fact 5; Exhibit 3; Testimony of Cass.)

9. The Department charged the Appellant with alerting the suspected drug dealer of the Department investigation. The Appellant was subject to discipline up to or including termination. (Testimony of Chief Gates.)

*B. Last Chance Agreement*

10. On August 6, 2010, the Appellant signed a Last Chance Agreement with the Board of Selectmen in lieu of termination. The Appellant was suspended without pay for eight work shifts, to be served at the chief's discretion within the ensuing twelve months. In consideration for the Appellant's acceptance of the Agreement discipline, the Town agreed not to pursue further disciplinary action. The LCA also included the following terms:

Levesque denies that he intentionally tipped off [JP] about the surveillance. The Middleborough Police Department's internal investigation will find that the charge that Levesque alerted [JP] was unfounded.

Levesque admits to the Department finding that he shared with his wife details of the ongoing investigation of [JP] and that was a violation of the Department's rules and regulations.

Levesque admits that there is sufficient evidence to support a Department finding that, in the Department's investigation of whether he was responsible for [JP] being tipped off, he failed to provide complete information despite specific written and verbal directives given to him by the Chief and that this was a violation of the Department's rules and regulations. Levesque denies that he purposely withheld any information, but admits he could have given more complete and definitive information. ...

Levesque will not retaliate in any manner against ... [JP], [the drug dealer's cousin] and the [drug dealer's girlfriend.] Except in emergency situations, he shall refrain from contact with such individuals without advance notice to and the presence or approval of a supervisor.

(Exhibits 3, 27 and 28.)

11. In the Agreement, the Appellant agreed:

This is Levesque's last chance to refrain from any other conduct warranting a suspension of any length without pay. If the Police Chief and/or the Board of Selectmen determine that Levesque has engaged in conduct warranting a suspension without pay of any length, including for a failure to comply with any term(s) of this Agreement, the Town will have just cause to discharge Levesque. Any appeal of the discharge will be limited to the issue of whether the conduct resulting in the suspension without pay of any length occurred. If it is determined in any appeal proceeding that the conduct occurred, dismissal will be the appropriate level of discipline and it is not subject to appeal.

(Exhibit 3.) (emphasis supplied.)

*C. The Instant Appeal*

12. From May 14 until June 3, 2012, the Department participated in the Click-It or Ticket grant program, funded by the Highway Safety Division of the Massachusetts Executive Office of Public Safety (EOPS). The grant provided overtime pay for high visibility police presence, whereby police officers would pull over motorists for motor vehicle violations, and simultaneously issue citations for child/adult seat belt violations.<sup>1</sup> (Exhibits 6, 7, 8, 21 and 23; Testimony of Chief Gates, Testimony of Beals, Testimony of the Appellant.)

13. Sergeant David A. Beals, Jr., the Department's grant coordinator, was the supervisor for the program. Under the grant, police officers were required to pull over three motorists per hour. The police officers also had to document the motor vehicle stops on Traffic Enforcement Grant Activity Reports (grant activity reports), and place them in Sgt. Beals's mailbox in order to get paid. In an email dated May 17, 2012, Sgt. Beals advised the officers that in the event one was unable to make the required three stops per hour, the officer had to note the reason on the grant activity sheet. Sgt. Beals also noted that if an officer made an arrest while on the Click-It or Ticket program, it would be expected that the number of motor vehicle stops would be affected. (Exhibits 6, 7, 8, 21 and 23; Testimony of Chief Gates, Testimony of Beals, Testimony of the Appellant.)

14. William Ferdinand, a graduate of the Plymouth Training Academy, has worked as a special police officer (SPO) for four years. He hopes to be a patrol officer in the Department someday. His duties as a SPO include walking beats, working details, and volunteering at parades or other events at the direction of the chief. He serves the Town as Chairman of the Parks Commission, a voluntary position. Ferdinand works at the convenience store of A-Prime,

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<sup>1</sup> Pursuant to M.G.L. c. 90, § 13A, seat belt violations may only be enforced as a secondary violation. (Exhibit 32.)



a gas station located on High Street in Middleborough and overnight at Hannaford's grocery store. (Testimony of Ferdinand.)

15. Ferdinand has been the Appellant's best friend for the past ten years. Not only was the Appellant's father Ferdinand's baseball coach, but Ferdinand and the Appellant's brother played on the same baseball team. The Appellant and Ferdinand have also coached sports together. Ferdinand was a guest at the Appellant's wedding, and is the godfather of one of the Appellant's children. Ferdinand is so close to the Appellant's family that the Appellant's children fondly call him "uncle." (Testimony of the Appellant, Testimony of Ferdinand.)

16. As a special police officer, Ferdinand was required to ride along with a regular police officer. He had ridden along with the Appellant in a previous Click-It or Ticket program, and they had taken turns conducting motor vehicle stops. (Testimony of Ferdinand.)

17. Francis Cass has been the Town of Middleborough Park Superintendent for twenty-two years. He has been friends with the Appellant for fifteen years. The Appellant worked for the Parks Department during the summers when he was a teenager, and was a maintenance worker in the Parks Department until he became a police officer. As superintendent, he is Ferdinand's supervisor. Cass, Ferdinand, and the Appellant have all coached football together. At one point, the Appellant played as a quarterback for Cass in a semi-pro football team. (Testimony of the Appellant, Testimony of Cass.)

18. The Appellant worked overtime in the Click-It or Ticket program on May 17, 2012 from 12:00 p.m. to 4:00 p.m. On May 23, 2012, he worked overtime in the Click-It or Ticket program from 8:00 a.m. to 12:00 p.m. He had participated in the program before without incident. He submitted his grant activity reports to the Department as required. (Exhibit 6; Testimony of Chief Gates, Testimony of the Appellant.)

19. Sergeant Deborah A. Batista regularly reviewed entries in the Department's police log. On May 30th, she emailed Sgt. Beals about the Appellant's May 29, 2012 log entries, which reported stops of both SPO Ferdinand and Cass. She was concerned that the Appellant was "fudging" stops. (Exhibit 25; Testimony of Beals.)

20. On June 5, 2012, Sergeant John Graham was alerted that the Appellant had listed two of his friends as motor vehicle stops while assigned to the Click-it or Ticket program on May 29, 2012. Sgt. Graham examined the log and found that the Appellant had conducted a traffic stop of Ferdinand at Plympton and Thomson Streets at 10:26:52. He had also conducted a traffic stop of Cass on Jackson Street at 10:40:36. (Exhibit 11.)

21. This was not the first time that the Appellant had listed friends on a grant activity report. He had listed Ferdinand as a motor vehicle stop on April 10, 2009 and on May 26, 2010. On those occasions he listed Ferdinand's registration, but omitted his name. (Testimony of Ferdinand.)

22. At the end of his shift on June 5, 2012, Sgt. Graham, a local girls' softball coach, went to a local playground to inspect field conditions. He ran into Park Superintendent Cass and asked him whether the May 29, 2012 motor vehicle stop had occurred. Cass said no. He said that the Appellant had pulled up while he was at the park working. Cass then saw the Appellant writing down his license plate number on a piece of paper. When Cass asked the Appellant what he was doing, he said not to worry, I won't enter it into the computer. Sgt. Graham then informed Cass that he had seen his information in the Department log. (Exhibits 11, 13 and 14; Testimony of Beals, Testimony of Cass.)

23. When Sgt. Graham called Sgt. Ferreira as he was leaving the park, they both agreed to contact Sgt. Beals because he was in charge of Click-it and Ticket and was already

investigating the Appellant's entries. Later that day, Sgt. Graham approached Sgt. Beals and updated him on his conversation with Cass. (Exhibit 11; Testimony of Beals.)

24. On June 6, 2012, Sgt. Ferreira approached Sgt. Beals and let him know of his conversation with Sgt. Graham. Sgt. Beals later spoke to Lieutenant Peter Andrade about what he had discovered about the Appellant and the May 2012 motor vehicle stops. Lt. Andrade ordered Sgt. Beals to submit a report to him, along with copies of the relevant supporting documents. Sgt. Graham also submitted a memorandum to Lt. Andrade. (Exhibits 11 and 33; Testimony of Beals.)

25. On June 7, 2012, Sgt. Beals submitted a memorandum to Lt. Andrade. He reported that according to the Appellant's grant activity sheets, he had stopped Ferdinand while he was operating a gray 1989 Dodge Dynasty on May 23, 2012 at 13:02 at A Prime on High Street. Ferdinand was the fourth stop listed. According to the grant activity sheets, the Appellant again stopped Ferdinand, operating a gray 1989 Dodge Dynasty on May 29, 2012 at 10:26 at Plympton and Thompson Streets. Ferdinand was his eleventh stop for the day. The Appellant also pulled over Cass, operating a red 1999 Chevy 1500, at 10:40 on Jackson Street. He recorded Cass as the twelfth stop. (Exhibit 33.)

26. On June 7, 2012, Sgt. Graham and Lt. Andrade interviewed Cass at the police station. Sgt. Graham asked Cass if he recalled his interaction with the Appellant on May 29, 2012. Cass said that that day he had been working at the Pierce Playground when the Appellant pulled up in his cruiser. While working, Cass observed the Appellant writing down the license plate number of his parked vehicle. When Cass asked him what he was doing, the Appellant said that he needed another stop for his Click-it or Ticket grant, but that he would not enter Cass's information into the system. Cass said that he did not want his information entered in the police

computers, and the Appellant assured him that that would not be the case. Sgt. Graham asked Cass whether he had been operating the motor vehicle and had been pulled over by the Appellant with activated blue lights. Cass insisted that the motor vehicle had been parked, but that during their conversation, the Appellant had remarked that he had a bad shock. Cass also disclosed that he had seen the Appellant earlier in the day while they were both operating motor vehicles, but that at no time had he been subject to a motor vehicle stop. (Exhibits 13 and 14; Testimony of the Appellant, Testimony of Cass.)

27. Cass submitted a Victim/Witness statement to the Department on June 7, 2012.

He stated therein:

While parked at Pierce Playground in front of the Masi Field I was approached by a police cruiser. Inside the cruiser was officer Levesque. Mr. Levesque asked me if I might assist him with a program that the Police Dept. had been participating in. He informed me that he needed to pull over a few vehicles, + asked if I'd mind having my truck "pulled over" for a stop. I said I didn't mind helping but that I didn't want any aspect of my participation to be put in the computer.

(Exhibit 14.)

28. On June 7, 2012, Lt. Andrade interviewed Ferdinand at the police station. He advised Ferdinand that the interview was confidential and that any disclosure could lead to his dismissal from the Department. During the interview, Ferdinand denied that the Appellant had stopped him on May 23 and May 29, 2012. Ferdinand said that he had not discussed the alleged motor vehicle stops with the Appellant, but that he had discussed the matter with Cass.

(Exhibits 12 and 18; Testimony of Ferdinand.)

29. All police officers in the Department are subject to certain standards of required conduct, including truthfulness and conduct becoming an officer. The Rules and Regulations provide:

Section I. Rules and Regulations. C. General Conduct on Duty.

1. Required Conduct.

c. Submitting Reports. Promptly and accurately complete and submit all reports and forms as required.

e. Truthfulness. An officer shall truthfully state the facts in all reports as well as when he appears before any judicial, departmental or other official investigation, hearing, trial or proceeding. He shall cooperate fully in all phases of such investigation, hearings, trials and proceedings. ...

2. Prohibited Conduct

The following acts by a member of the Department are prohibited or restricted:

b. Improper or Unsuitable Conduct. Any type of misconduct which reflects discredit upon the member as a police officer, or upon his fellow officers, or upon the police department he serves.

(Exhibit 28.)

30. After the June 7, 2012 interviews of Cass and Ferdinand, Lt. Andrade and Sgt.

Graham submitted memoranda to Chief Gates. (Exhibits 12 and 13.)

31. After receiving the memoranda, Chief Gates hand-delivered an order to the Appellant on June 7, 2012, immediately placing him on administrative leave. In that order, the chief advised the Appellant that the Department was investigating his May 23 and May 29, 2012 grant activity reports. The order directed that:

While on paid administrative leave, you are prohibited from exercising any authority or privileges of a Middleborough Police Officer. You must turn in any property of the Department, including your badge, Police Identification card and Sig Sauer P226 weapon serial # ... . If you need to come to the Police Station, you can only do so with advance notice to and permission from me.

You are not to take any action, directly or indirectly, that would tend to discourage, persuade, or retaliate against a witness with respect to that witness' truthful cooperation in this matter, including but not limited to William J. Ferdinand and Francis J. Cass and any employee of the Middleborough Police Department.

You are not to discuss this matter with anyone except me and if you choose your legal representatives.

Your failure to abide by the terms of your administrative leave and/or obey any of the other directives above will constitute grounds for discipline, up to and

including dismissal. This is separate and apart from any discipline that arises from substantiation of any charges that result from the investigation.

(Exhibit 2.)

32. The Appellant did not challenge the chief's order. Police officers may challenge an order, according to Department Rules and Regulations:

Section I. Rules and Regulations. B. Professional Conduct and Responsibilities. 2. Orders.

a. General Orders. General Orders are permanent written orders issued by the Chief of Police outlining policy matters which affect the entire Department. A General Order is the most authoritative written order the Chief issues, and may be used to amend, supersede or cancel any previous order. General Orders remain in full effect until amended, superseded or cancelled by the Chief. ...

c. Unlawful orders. No member shall knowingly issue an order in violation of any law or any departmental regulation. Unlawful orders shall not be obeyed. The subordinate shall notify the ordering officer of the illegality of his order. Responsibility for refusal to obey rests with the subordinate. He shall be strictly required to justify his action.

d. Unjust or Improper Orders. Lawful orders which appear to be unjust or improper shall be carried out. After carrying out the orders, the subordinate may file a written report to the Chief via the chain of command indicating the circumstances and the reasons for questioning the orders, along with his request for clarification of departmental policy. ...

(Exhibit 28.)

33. The Department investigation revealed that the Appellant's May 23, 2012 reported stop of Ferdinand was not based on a motor vehicle stop, but on a telephone call. The Appellant called Ferdinand while he was working at A-Prime. Ferdinand's motor vehicle was parked in the gas station's parking lot. During the personal telephone call, the Appellant mentioned Ferdinand's broken driver's side window. The Appellant had known about the broken window for a long time. (Exhibits 21 and 22; Testimony of Chief Gates, Testimony of Ferdinand.)

34. The Department investigation revealed that the Appellant's May 29, 2012 reported stop of Ferdinand was not based on a motor vehicle stop, but on a sequence of text messages:

Levesque: Stopping u again...lil (*sic*) [laughing out loud]

Ferdinand: What for this time?

Levesque: Speeding Lol. [laughing out loud]

Ferdinand: Thanks a lot jack ass.

(Exhibits 22, 23 and 24.)

35. At the time the text messages were exchanged, Ferdinand was driving to the Appellant's house to house-sit while workmen made repairs. (Exhibits 22 and 24; Testimony of the Appellant, Testimony of Ferdinand.)

36. The Department investigation revealed that the Appellant's May 29, 2012 reported stop of Cass was not based on a motor vehicle stop, but on a visit to Cass while he was working at the Park Department. During their conversation, the Appellant noticed that Cass's parked vehicle was missing a shock absorber. Cass said that his father had not had the time to fix it. The Appellant told Cass that he was going to list him down as a "stop" under the grant. Cass acquiesced after being reassured that his information would not be listed in the Department computer. (Exhibit 14; Testimony of the Appellant, Testimony of Cass.)

37. Chief Gates contacted EOPS about the Appellant's inaccurate grant activity reports. He was informed that there would be no repercussions as long as the Department did not seek reimbursement for the overtime shifts. The Department did not submit the Appellant's grant activity reports for May 23 and 29, 2012 to EOPS. The reimbursement to the Appellant totaled three hundred and seventy-five dollars, paid from Department funds. (Testimony of Chief Gates.)

38. Chief Gates informed the Plymouth County District Attorney's office about the Appellant's inaccurate grant activity reports. The Chief learned that the Appellant's perfidy would have to be disclosed to defense counsel as exculpatory evidence. (Testimony of Chief Gates.)

39. A few days after the chief's June 7, 2012 order, the Appellant called Ferdinand and invited him to his home. The Appellant said that the family dog was dying. When Ferdinand arrived, the Appellant said that he was on administrative leave as a result of his motor vehicle stops. The Appellant also disclosed that he was worried about losing his job. The Appellant then asked Ferdinand whether he had been interviewed. Ferdinand said that he could not talk about it. The Appellant asked a second time, and Ferdinand again declined to discuss it. When the Appellant pressed him a third time, Ferdinand provided him with the interview questions and Ferdinand's responses. During this conversation, Ferdinand revealed that he had told investigators that he had traveled to the Appellant's home, after his overnight shift at Hannaford's, via Plymouth Street on the morning of May 29, 2012. (Exhibit 18; Testimony of the Appellant, Testimony of Ferdinand.)

40. On June 25, 2015, Chief Gates issued the Appellant a Notice of Charges and Dismissal for a hearing before the Board of Selectmen (Board) on June 28, 2012. The charge was as follows:

You falsely claimed that you had made motor vehicle stops on May 23 and 29, 2012 in connection with a grant that paid you overtime but required you to make a minimum number of such stops during a four hour overtime shift; you did so less than two years after signing a last chance agreement under which you agreed that conduct that warranted a suspension of any length in the future would mean your dismissal.

(Exhibit 15.)



41. The Notice of Charges and Dismissal further advised the Appellant that he was subject to a Last Chance Agreement. (*See supra* Findings of Fact 10 and 11; Exhibit 15.)

42. On June 28, 2012, the chief, Ferdinand and the Appellant appeared at the §41 hearing. The Appellant testified about his May 29, 2012 motor vehicle stop of Ferdinand. He testified that he had erred when he listed the stop as occurring at Plympton and Thompson Streets on the grant activity reports. He recounted that the stop had occurred near the Church of the Green, where Plymouth, Plympton, East Main and Wood Streets all intersect, and that he meant to write Plympton/Plymouth on the grant activity report. The hearing was continued to July 23, 2012. (Exhibit 23 and 36A; Testimony of the Appellant, Testimony of Chief Gates.)

43. Before the §41 hearing was completed, on July 5, 2012 Chief Gates issued both the Appellant and Ferdinand orders requesting written responses and supporting documents as part of the Department investigation by July 13, 2012. The orders provided:

- Do not tamper with or destroy any evidence;
- Provide a written report that includes a complete, detailed response to the following questions, with a separately numbered or lettered response to each question;
- Provide, with your report, any “documents” that contain responsive or relevant information, including copies of any text messages between you and [Levesque] [William Ferdinand] [Fran Cass];
- Do not discuss this matter or your responses with anyone except your legal[union] representative and me;
- Submit the complete report to me no later than 12:00 noon on Friday, July 13, 2012;
- If requested to do so, attend and answer questions at a follow-up interview;
- Tell the truth at all times, including in your response to the questions below and in any follow-up interview. Untruthfulness includes making false statements and/or intentionally omitting significant facts or pertinent facts.

Your failure to follow these directives will subject you to discipline, up to and including dismissal. This is separate from and apart for discipline for any misconduct determined in the underlying investigation.

(Exhibits 16 and 17.)

44. The Appellant submitted his response on July 13, 2012, responding to each question with the following answer:

Absent a grant of immunity from all District Attorneys within the Commonwealth of Massachusetts and the Attorney General I decline to answer questions ... including all subparts based upon the Rights afforded me under Article 12 of the Massachusetts Declaration of Rights. *Carney v. Springfield*, 401 Mass. 610 (1988).

(Exhibit 16A.)

45. On July 13, 2012, Ferdinand hand-delivered his response to the chief. Ferdinand told Chief Gates that something was bothering him a lot and that he had to discuss it with him. Ferdinand revealed that after the chief's June 7, 2012 orders, but before the first day of the §41 hearing on June 28, 2012, he had spoken to the Appellant. He told the chief that he had disclosed the substance of his interviews with Lt. Andrade and Sgt. Graham. (Exhibit 19; Testimony of Chief Gates, Testimony of Ferdinand.)

46. In Ferdinand's handwritten response, he stated that on May 23, 2012, 1:02 p.m., he was at work at A-Prime on High Street. Ferdinand wrote that he could not recall being stopped by the Appellant on that date, but he was certain that he had not handed over his driver's license and motor vehicle registration to the Appellant on that day. In his July 13, 2012 conversation with the chief, Ferdinand said that he interacted with the Appellant so frequently that he could not recall if a motor vehicle stop had occurred on May 23, 2012. (Exhibits 18, 19 and 24; Testimony of Chief Gates, Testimony of Ferdinand.)

47. In his written response, Ferdinand documented that he was not speeding, nor was he stopped by the Appellant on the morning of May 29, 2012 at Plympton and Thompson Streets. Ferdinand did recall exchanging text messages with the Appellant on that morning, but could not recall the exact time. Ferdinand reiterated in his conversation with the chief that he

was certain that he was not stopped by the Appellant on May 29, 2012. In his written response, Ferdinand wrote that although he had related the substance of his interview with Lt. Andrade with the Appellant, he had not disclosed the substance of his interview with Cass. (Exhibits 18, 22 and 24; Testimony of Chief Gates, Testimony of Ferdinand.)

48. On July 13, 2012, issued a Notice of Additional Charge for Ongoing Dismissal Hearing to the Appellant. The second charge was:

After I had expressly ordered you not to do so, you discussed with special police officer William Ferdinand, a key witness, what he had told investigators in the investigation into whether you had falsely reported that Ferdinand had been stopped by you during an overtime shift in order to meet the requirement that you make a certain number of stops during the shift.<sup>2</sup>

(Exhibit 20.)

49. On the second day of the §41 hearing, the Board proceeded with the second charge in addition to the first charge. The Board voted to terminate the Appellant by a vote of 4-1. (Exhibit 1.)

50. On August 6, 2012, the Board issued its decision and the following findings:

- Middleborough Patrol Officer Adam Levesque falsely reported interactions with two close friends, William Ferdinand and Fran Cass, as “stops” under the Click It or Ticket Grant.
- Levesque blatantly disobeyed Chief Gates’ June 7, 2012 Order not to discuss with Ferdinand the Department’s investigation of whether he had falsely reported his interactions with Cass and Ferdinand as “stops” under the Grant, including discussions with Ferdinand what he had told Department investigators.
- Levesque’s conduct violated several Department regulations, including the requirement that an officer be truthful at all times and obey the order of a superior officer.

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<sup>2</sup> On September 6, 2012, Chief Gates disciplined Ferdinand for discussing his Department interviews with the Appellant, a violation of the Department Rules and Regulations, Section I. B. 2. Orders. (*See supra* Finding of Fact 32.) Ferdinand was suspended from taking details for two weeks, from September 9 until September 14, 2012. (Exhibit 29.)

Accordingly, we find that there is just cause to dismiss Officer Levesque for his misconduct in this matter alone and/or in combination with the "last chance" provision of the Settlement Agreement/Last Chance Agreement he signed with the Board in August, 2010.

(Exhibit 1.) (emphasis supplied.)

51. The Appellant filed an appeal with the Commission on August 10, 2012.

(Exhibits 38 and 39.)

### CONCLUSION AND ORDER

#### A. *Applicable Legal Standards*

G.L. c. 31, § 43, provides:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

An action is "justified" if 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." *Commissioners of Civ. Serv. v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971); *Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 12 Mass. 1102, (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). 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." *School Comm. v. Civil Serv. Comm'n*, 43 Mass.

App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

The Appointing Authority's burden of proof by a preponderance of the evidence 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). "The commission's task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact ... the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether '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.'" *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823 (2006). *See Watertown v. Arria*, 16 Mass. App. Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983) and cases cited.

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823 (2006) and cases cited. The role of the 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." *Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102, (1997). *See also Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003); *Police Dep't of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.* (2000); *McIsaac v. Civil Serv. Comm'n*, 38 Mass App. Ct. 473, 477 (1995); *Watertown v. Arria*, 16 Mass. App. Ct. 331, 390 Mass. 1102 (1983).

The Commission is guided by "the principle of uniformity and the equitable treatment of

similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune employees' suspensions to ensure perfect uniformity. *See Boston Police Dep't v. Collins*, 48 Mass. App. Ct. 408, 412 (2000).

"The 'power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.' " *Falmouth v. Civil Serv. Comm'n*, 61 Mass. App. Ct. 796, 800 (2004) quoting *Police Comm'r v. Civil Serv. Comm'n*, 39 Mass. App. Ct. 594, 600 (1996). Unless the Commission's findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation." *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823 (2006). *See also Leeman and Pagluica v. Haverhill*, 26 MCSR 327 (2013).

"It is well established that the Commission should give great weight to the provisions of a Last Chance Agreement, a voluntary agreement between an employer and employee, which, typically in lieu of immediate termination, effectively puts an employee on notice that any further discipline will result in his or her termination. The Commission does not make decisions in a vacuum, however, and it is appropriate to consider the circumstances that gave rise to this particular agreement." *Davis v. Newton*, 20 MCSR 402, 405-06 (2007).

I have reviewed the evidence and the testimony. I find that that the Town of

Middleborough was justified in terminating the employment of Adam Levesque. The Appellant violated diverse Department Rules and Regulations that were serious enough to warrant discipline in the form of suspension, thus triggering the termination clause in the Last Chance Agreement. The Appellant failed to promptly and accurately complete and submit his May 23 and May 29, 2012 grant activity reports under the Click-it or Ticket program as required, failed to truthfully state the facts therein, discussed a case outside the Department without permission from the chief, tampered with a witness, failed to speak the truth at the June 23 and July 28, 2012 §41 hearing before the Board of Selectmen, and engaged in misconduct which reflected discredit upon him as a police officer, upon special police officer Ferdinand, and upon the Middleborough Police Department.

At all times relevant to this matter, the Appellant was already subject to an August 6, 2010 Last Chance Agreement. There is no dispute that on May 23, May 29 and June 7, 2012, the LCA was in full force and effect. There is also no dispute that the Appellant was subject to the chief's June 7, 2012 order that he refrain from any contact with witnesses to the May 23 and May 29, 2012 events. Any conduct that warranted a suspension, including a violation of the terms of the LCA, gave the Town just cause to terminate the Appellant. According to the terms of the LCA, any appeal of the discharge would be limited to whether the underlying conduct had in fact taken place. (Exhibits 2, 3 and 20.)

The Appellant entered into the Last Chance Agreement in lieu of termination after a botched Department drug investigation. The Department had placed a GPS device onto a drug dealer's vehicle during a drug investigation in January 2010. After the Department lost the ability to track the vehicle, the drug dealer's cousin informed officers that he had let the drug dealer know

he was under surveillance after being so informed by the Appellant. The Department was not able to recover the GPS device. (Exhibit 3.)

After the Appellant was suspended, the Town agreed not to pursue further discipline in consideration of the Appellant's acceptance of the discipline and his abiding by the terms of the LCA. Per the LCA, the Appellant denied that he had intentionally alerted the drug dealer to the Department investigation, but acknowledged that he had shared details about the drug investigation with his wife in violation of Department rules and regulations.

In his testimony before DALA, the Appellant argued against the validity of the August 6, 2010 LCA. This is not the forum for such an argument. The Appellant entered into the Agreement with the advice of counsel, and the time for such negotiation and argument has long passed. This hearing's purpose was the determination of whether the Appellant had conducted himself in such a manner that discipline was necessary. "The commission cannot substitute its judgment for that of the city regarding the wisdom or necessity of LCAs ..." *Attleboro v. Civil Serv. Comm'n et al.*,<sup>3</sup> No. 13-P-797 (Mass. App. Ct. Jan 22, 2014).<sup>4</sup> The Appellant signed the LCA, acknowledging that he understood its terms and promising to abide by them. This he has failed to do.

Less than two years after signing the LCA, the Appellant was charged with two charges: Charge 1 - false documentation of traffic grant enforcement activity; and Charge 2 - violation of

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<sup>3</sup> William O'Connell.

<sup>4</sup> *O'Connell v. Attleboro*, 25 MCSR 325 (2012), *aff'd Attleboro v. Massachusetts Civ. Serv. Comm'n et al.*, No. 2012-908 (Bristol Sup. Ct. April 9, 2013). The Appellant was terminated after he refused to enter into a last chance agreement. The Commission modified the discipline to a ninety-day suspension on the grounds of progressive discipline and the superior court affirmed. The Appeals Court reversed, finding that the commission "improperly substituted its judgment for that of the city ..." *Attleboro v. Civil Serv. Comm'n et al.*, No. 13-P-797 (Mass. App. Ct. Jan. 22, 2014).



the chief's order to refrain from contact with witnesses.

The Appellant was investigated after another officer noticed that he had pulled over two of his friends as part of the Click-it or Ticket program. Not only were the friends both town officials and well-known to officers in the Department, one of them was a special police officer in the Department.

A Department investigation revealed that the Appellant's May 23, 2012 documented stop of SPO and Chairman of the Parks Commission Ferdinand was not based on a motor vehicle stop, but on a telephone call. The Appellant had called Ferdinand while he was working at A-Prime, and his motor vehicle was parked in the gas station's parking lot. During the personal telephone call, the Appellant mentioned Ferdinand's broken driver's side window, which he had known about for a long time.

The Department investigation revealed that the Appellant's May 29, 2012 reported stop of Ferdinand was not based on a motor vehicle stop, but on a sequence of messages texted while Ferdinand was driving to the Appellant's house to house-sit while workmen made repairs.

The Appellant's May 29, 2012 reported stop of Park Superintendent Cass was not based on a motor vehicle stop, but on a visit to Cass while he was working at the Park Department. During their conversation, the Appellant noticed that Cass's parked vehicle was missing a shock absorber. Cass said that his father had not had the time to fix it. The Appellant told Cass that he was going to list him down as a "stop" under the grant. Cass acquiesced after being reassured that his information would not be listed in the Department computer.

The Appellant's filing of false reports violated Department Rules and Regulations Section I. C. 1. c., which requires prompt accurate completion and submission of all reports; Section I. C. 1. e., which requires that an officer shall truthfully state the facts in all reports; and

Section I. C. 2. b., which prohibits any type of misconduct which reflects discredit upon a member as a police officer, fellow officers or the department he serves. (Finding of Fact 29.)

I find that the Appellant submitted false reports that would have entitled him to pay that he had not earned, implicated a fellow officer in his misconduct, and placed the Department in danger of being removed from the EOPS Click-it or Ticket program for malfeasance. The Town's removal from the Click-it or Ticket program would have reduced public safety in Middleborough.

The Appellant's filing of inaccurate reports provided just cause for the appointing authority to issue discipline including suspension, thereby triggering the Town's right to dismiss the Appellant under the terms of the LCA. The filing of a false report in and of itself may provide just cause for the termination of a police officer. *Mozeleski v. Chicopee*, 21 MCSR 676 (2008). *See also Meaney v. Woburn*, 18 MCSR 129, 133 (2005) (long term officer properly terminated in part for submitting false reports); *Layne v. Tewksbury*, 20 MCSR 372 (2007) (discharge of police officer for filing false reports to cover up his conduct is proper); *Grinham v. Easton*, Docket Nos. D-05-293, CS-07-99, Recommended Decision, (July 16, 2007), *adopted by Final Decision*, 20 MCSR 534 (2007), *aff'd Grinham v. Civil Serv. Comm'n et al.*,<sup>5</sup> No. 07-4189-A (Suff. Sup. Ct. Nov. 20, 2008), *aff'd Grinham v. Easton et al.*,<sup>6</sup> No. 09-P-1163 (Mass App. Ct. June 4, 2010) (officer who filed false reports and lied about his conduct was properly discharged).

In an order hand-delivered on June 7, 2012, the Appellant was ordered to surrender all property of the Department, including his badge, police identification card and firearm. The

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<sup>5</sup> Town of Easton.

<sup>6</sup> Civil Service Commission.

order also directed the Appellant not to have any contact, directly or indirectly with witnesses: mentioning specifically Ferdinand and Cass. The Appellant was also ordered not to discuss the matter with anyone but the chief or his own legal counsel. (Finding of Fact 31.)

A few days after June 7, 2012, the Appellant contacted Ferdinand and invited him over on the ruse that the family dog was dying. When Ferdinand arrived, the Appellant told him that he was on administrative leave as a result of improper motor vehicle stops, and that his job was on the line. The Appellant then asked Ferdinand whether he had been interviewed. Ferdinand was reluctant to provide the information that the Appellant was seeking. When the Appellant asked Ferdinand what he had said, Ferdinand again demurred. When the Appellant pressed him a third time, Ferdinand told him everything that had transpired in his investigative interview with the Department.

The Appellant's behavior amounted to witness intimidation and witness tampering. He outranked Ferdinand within the Department. The Appellant used their years of friendship and family connections to pressure Ferdinand, whose disclosures put them both in violation of Department orders. The Appellant's behavior is not mitigated by his argument that he violated the chief's order against witness contact because he was despondent, and needed to talk to his best friend Ferdinand about it.

I find that the Appellant's conduct violated the General Policy of the Department, dated February 3, 1969, which prohibited a police officer from discussing any case outside the Department without prior permission from the Chief of Police. It also violated the chief's June 7, 2012 order to the Appellant, prohibiting contact with witnesses, which had specifically mentioned Ferdinand by name. The order did not allow for any deviation. (Findings of Fact 6 and 31.)

On June 28, 2012, the Appellant testified on the first day of his §41 hearing. The Appellant testified that he had mistakenly listed the location of the May 29, 2012 Ferdinand motor vehicle stop as Plympton and Thompson Streets, instead of Plympton and Plymouth Streets. I infer that the Appellant's testimony differed from his grant activity reports because he had already spoken to Ferdinand, and learned that Ferdinand had told the Department's investigators that he had traveled to the Appellant's home via Plymouth Street that day. (Findings of Fact 25 and 34.)

The §41 hearing was continued to July 23, 2012.

On July 13, 2012, the chief learned from Ferdinand that he had spoken to the Appellant and disclosed everything he had told Department investigators *before* the Appellant had testified at the §41 hearing. On July 16, 2012, Chief Gates issued a Notice of Additional Charge for Ongoing Dismissal Hearing. The chief charged that after he expressly ordered the Appellant in his June 7, 2012 order to stay away from witnesses, the Appellant contacted Ferdinand and elicited his testimony to Department investigators.

On July 23, 2012, the second day of hearing, the Appellant testified that he understood the chief's June 7, 2012 order prohibiting witness contact, and that he had made a "terrible mistake." On July 23, 2012, the Board voted to terminate the Appellant by vote of 4-1. The Appellant appealed to the Commission.

I find that the Appellant testified untruthfully on the first day of the §41 hearing in violation of Department Rule and Regulation Section I. C. 1. e., which requires that an officer "shall truthfully state the facts in all reports as well as when he appears before any judicial, departmental or other official investigation, hearing, trial or proceeding. ..." His untruthful testimony was also in violation of Section I. C. 2. b., which prohibits any type of misconduct

which reflects discredit upon a member as a police officer, upon fellow officers or the department he serves. (Finding of Fact 29.)

The Appellant's conduct in the instances of witness tampering and his later untruthfulness at the §41 hearing is so egregious, that I find that they provided sufficient reason for his termination, even in the absence of a LCA. The Appellant's behavior lacked integrity. He comported himself without maturity, common sense, or good judgment. Despite the chance that the Town extended to the Appellant on August 6, 2010, the Appellant has amply demonstrated that he cannot remain a Middleborough police officer.

In his testimony before DALA, the Appellant argued that due to his lack of training, he believed that his May 23 and May 29, 2012 interactions with Ferdinand and Cass were "motor vehicle stops." The Appellant also admitted that he had entered Ferdinand's information on a grant activity sheet during previous Click-it or Ticket programs. He evaded discovery on those occasions, April 10, 2009 and May 26, 2101, because he had only listed Ferdinand's license plate number. The Appellant's actions diminished the efficacy of the Click-it or Ticket program to reinforce the use of seat belts, a lifesaving measure.

The Appellant testified that if he knew of defects in motor vehicles, he was authorized to enter the owners' information on a grant activity report as part of the Click-it or Ticket program. He testified that on May 23, 2012, Ferdinand had a broken window, that on May 29, 2012 Ferdinand was speeding, and that on May 29, 2012, Cass had a broken shock absorber. He argued that the primary purpose of Click-It or Ticket was traffic enforcement. The Appellant had worked Click-It or Ticket overtime in the past, and was presumably aware of the purpose of the grant: the checking of motor vehicle occupants for seat belt compliance. I find that the Appellant's testimony in this regard was more evidence of his untruthfulness.

The Appellant also argued that there was animus between him and the chief due to his union activities. He argued that the chief deliberately calculated his vacation time incorrectly because of his union activity and also reimbursed him at the regular wage instead of overtime for prisoner watch at a hospital. However, the evidence shows that the Appellant did not hold any leadership roles in his union. He never met with the chief, the Town Administrator, the Board of Selectmen or any superior officers on behalf of the union. The Appellant was never more than a union member. I find that the chief bore no bias towards the Appellant.

The Appellant's self-aggrandizement was manifest during the JP drug investigation, which led to the LCA in the first place. Although only a patrol officer, the Appellant testified that he worked with the detectives and performed detective-level work during that investigation. He testified that he had the most solved cases, the most arrests, and the most activity of all the police officers in the Department. He testified that it was his goal to become a detective.

The Appellant complained that he received disparate treatment in comparison to other police officers who also submitted inaccurate grant activity reports. However, no other police officer stood in the Appellant's shoes. The Appellant was the only police officer who was subject to a Last Chance Agreement. No other police officer documented a motor vehicle stop in the Click-it or Ticket program based on a telephone call or a text message. No other police officer implicated a fellow officer or Town officials in inaccurate grant activity reports. No other police officer recorded interactions with friends as motor vehicle stops.

Although he was subject to a Last Chance Agreement, the Appellant participated in misconduct that was not only fraudulent, but *easily discoverable*. Ferdinand and Cass were well-known individuals. There was no penalty for failing to complete twelve stops in four hours, yet he was compelled to falsify records. His conduct was unbecoming an officer of the

Middleborough Police Department.

The Appellant was not interviewed during the Department investigation before he was placed on administrative leave on June 7, 2012 and issued a Notice of Charges on June 28, 2012. On July 5, 2012, the chief issued orders to Ferdinand and the Appellant, seeking more information. However, the Department investigation had been completed and the § 41 hearing was ongoing. There had already been one day of testimony on June 28, 2012, and the second day of hearing was scheduled for July 23, 2012. Ferdinand submitted his response to the chief on July 13, 2012. The Appellant submitted his response to the chief also on July 13, 2012, refusing to answer without immunity from all District Attorneys within the Commonwealth of Massachusetts and the Attorney General, based upon his rights under Article 12 of the Massachusetts Declaration of Rights. The chief's order was not for a separate investigation since he added the second charge to the appointing authority hearing already in process. The Appellant was already testifying in the §41 hearing, and any further information the chief sought could have been elicited from the Appellant under oath. I do not find that the Appellant failed to be forthcoming in his answers in this regard pursuant to Rules and Regulations Section I.C.1.e.

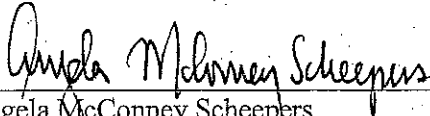
I find that the Appellant's misconduct warranted suspension. The Town has to prove nothing further, and thus had sufficient grounds to terminate the Appellant pursuant to the LCA. *See Gilligan v. Quincy*, 25 MCSR 516 (2012). There is no evidence that the City's decision was based on political considerations, favoritism or bias. Thus the Town's decision to terminate the Appellant is "not subject to correction by the Commission." *Cambridge*, 43 Mass. App. Ct. at 305.

Based on the preponderance of credible evidence presented at the hearing, I conclude that the Town of Marlborough had just cause to terminate Adam Levesque. Accordingly, I

recommend that the appeal be dismissed.

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Angela McConney Scheepers  
Administrative Magistrate

DATED:

**FEB 24 2014**