

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**ADAM LEVESQUE,**  
*Appellant*

v.

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

**TOWN OF  
MIDDLEBOROUGH**  
*Respondent*

**DECISION AFTER REMAND**

On May 1, 2014, the Civil Service Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, making that Tentative Decision the Final Decision of the Commission. The decision of the Town of Middleborough (Town) to terminate the Appellant was affirmed and the Appellant's appeal was denied.

On September 21, 2015, the decision was remanded to the Commission by the Superior Court "for the limited purpose of considering the validity of [an] August 6, 2010 Last Chance Agreement and whether [the Appellant]'s conduct constitutes just cause for termination independent of the Agreement." The Commission referred the matter back to the Magistrate.

On December 19, 2018, pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision After Remand 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 After Remand 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 After Remand of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Town of Middleborough 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; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 14, 2019.

Civil Service Commission

/s/ Christopher Bowman  
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)(1), 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)

Edward McGrath, Esq. (Chief Administrative Magistrate, DALA)

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

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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.

Foley and Foley, P.C.

350 Gifford Street, Suite 26

Falmouth, MA 02540

**Appearance for the Respondent:**

Leo J. Peloquin, Esq.

Joshua R. Coleman, Esq.

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220 Norwood Park South, Suite 1D

Norwood, MA 02062

**Administrative Magistrate:**

Angela McConney Scheepers, Esq.

**SUMMARY OF TENTATIVE DECISION UPON REMAND**

The Appellant's conduct warranted termination independently of the valid last chance agreement. After the Middleborough Police Department opened an investigation into the Appellant's filing of inaccurate grant activity reports, he contacted a witness in direct violation of the police chief's order and gained information to assist him in his Section 41 hearing. I therefore recommend that the Civil Service Commission dismiss the appeal.

## TENTATIVE DECISION UPON REMAND

On September 21, 2015, this matter was remanded by the Plymouth Superior Court, (Chin, J.) to the Civil Service Commission (Commission) for the limited purpose of considering the validity of the August 6, 2010 Last Chance Agreement (LCA or Agreement) and whether the Appellant's conduct constituted just cause for the termination independent of the Agreement. *Levesque v. Massachusetts Civil Serv. Comm'n*, Docket No. CV-00548-A (Plymouth Sup. Ct., Sept. 21, 2015).

On October 2, 2015, the Commission issued an Order after Remand, further remanding the matter to the DALA magistrate in order to (1) further conduct proceedings to address the issues raised by the Court; and (2) issue a revised Tentative Decision to the Commission with the customary comment period afforded to both parties prior to a Commission vote.

The Appellant requested a rehearing. Pursuant to the Commission's October 2, 2015 Order, on October 28, 2015, I ordered the parties to submit briefs by November 30, 2015 on the remanded issues of the Agreement's validity and the whether the Appellant's actions warranted termination independent of the Agreement. In the DALA order, I stated that I would not hold further hearings unless either party could specify what the proposed new testimony would offer and why it could not have been proffered during the three-day Commission hearing.

The Superior Court is clear that this matter was remanded for the limited purpose of determining the validity of the Agreement and whether the Appellant's conduct warranted termination independent of the Agreement. I held a hearing limited to these issues at the Division of Administrative Law Appeals on April 5 and 6, 2017. The hearing was conducted according to the formal rules of the Standard Adjudicatory Rules of Practice and Procedure. 801 C.M.R § 1.01. The witnesses were sequestered. The stenographic record serves as the

official record of the hearing upon remand.

Respondent Town of Middleborough (Town) objected to the remand hearing and the Appellant's proffered exhibits. The Town posited that a critical witness to the validity of the Agreement was Michael Hanley, Esq., who served as counsel for the New England Police Benevolent Association, Inc. (NEPBA), Local 76, Middleborough Police Officers (Union). Mr. Hanley represented the Appellant/Union in the Agreement, the matter of Mr. Levesque's dismissal, and filed the civil service appeal on Mr. Levesque's behalf. (Exhibit 38.) The first civil service hearing was conducted on November 27, 2012, January 31, 2013 and February 6, 2013. Mr. Hanley passed away later in the year on September 30, 2013.<sup>1</sup> The Town posited that Attorney Hanley had successfully saved Mr. Levesque's position by negotiating the Agreement.

The Appellant submitted six additional exhibits, disciplinary records of patrolmen in the Middleborough Police Department (Department) (Exhibits 40-44).<sup>2</sup> I had precluded some of those disciplinary records in the earlier hearing because I did not think they were relevant. I admit them now to illustrate the factual distinction between the conduct of Mr. Levesque and the other police officers who were disciplined.

The Town submitted 30 additional exhibits (Exhibits 45-74). The documents related to the Department's investigation before the matter was resolved by the Agreement; negotiation of the Agreement; and the Appellant's proceeding before the Department of Labor Relations charging that Mr. Hanley had breached his duty of fair representation in a) the negotiation and

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<sup>1</sup> Exhibit 72.

<sup>2</sup> Exhibit 40. 2012 investigation and discipline file of Patrolman Angelo Joseph LaPanna, III;  
Exhibit 40A. Patrolman LaPanna's May 17, 2012 Traffic Enforcement Grant Activity Report;  
Exhibit 41. March 17, 2009 Decision of Sergeant R.;  
Exhibit 42. March 26, 2010 Letter of Reprimand issued to Patrolman BC;  
Exhibit 43. June 22, 2011 report of one-day suspension issued to Patrolman KD; and

agreement leading to the LCA and b) the matter leading to the Appellant's 2012 dismissal. The Appellant objected to Exhibits 69, 70 and 71, regarding his Department of Labor Relations appeal and the Union's representation of his matter during the negotiation of the LCA and his later dismissal.<sup>3</sup> This appeal was concurrent with the dates of the first hearing of this civil service matter. I admitted the exhibits.

The Town called Patrolman Angelo Joseph LaPanna, III, Lieutenant David Michael Mankiewicz and retired Chief Bruce Gates. I had precluded Officer LaPanna's testimony as an Appellant's witness in the first hearing.

I marked the Appellant's Remand Brief as Exhibit "C" and marked the Respondent's Remand Brief as Exhibit "D." I marked the Appellant's Remand Brief as Exhibit "E" and marked the Respondent's Remand Brief as Exhibit "F."

I incorporate by reference my original findings, Findings of Fact 1 – 51, as set forth in my decision dated May 1, 2014, and make the following supplemental findings of fact:

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Exhibit 44. December 19, 2009 – January 28, 2010 investigation time-line of Chief Bruce Gates.

<sup>3</sup> Exhibit 69. Concurrent with his civil service matter, the Appellant filed a January 23, 2013 claim with the Department of Labor Relations (DLR), alleging that the Union had breached its duty of fair representation by a) advising him to sign the LCA; b) allowing the Town to bring another charge against him; c) failing to challenge Chief Gates' June 7, 2012 order; and d) by failing to argue that the Board of Selectmen should not decide on the falsification of records charge against him. The DLR dismissed the matter on April 17, 2013. *Levesque v. New England Police Benevolent Assoc., Inc.*, Docket No. MUPL-13-2569, Decision (Dep't of Labor Relations, Apr. 17, 2013), *aff'd* (Employment Relations Bd., Sept. 24, 2013).

Exhibit 70. The Union's response to the Appellant's April 26, 2013 appeal of the April 17, 2013 DLR decision to the Employment Relations Board (ERB).

Exhibit 71. The ERB affirmed the decision of the DLR investigator. *Levesque v. New England Police Benevolent Assoc., Inc.*, Docket No. MUPL-13-2569, Decision (Employment Relations Bd., Sept. 24, 2013).

## **FINDINGS OF FACT**

### *I. Discipline of Department Officers*

52. Around the first week of July, 2012, Lt. David Michael Mankiewicz, head of Internal Affairs, advised then-Chief Bruce Gates that as a result of the Levesque investigation, he had checked the traffic enforcement grant activity reports of the other officers participating in the Click it or Ticket Program. Lt. Mankiewicz noticed that on his May 17, 2012 grant activity sheet, Patrolman Angelo Joseph LaPanna, III had also entered the registration plate of William Ferdinand. This registration plate had also been recorded on Adam Levesque's grant activity sheets. Chief Gates advised Lt. Mankiewicz to find out from Mr. Ferdinand if he had been stopped by Officer LaPanna. (Exhibit 40.)

53. At the time, Officer LaPanna had been a patrolman for eleven years. He had not had any prior discipline. (Exhibit 40.)

54. Because the chief and the lieutenant were both out of the office for vacation days, they did not speak again until July 20, 2012. At this time, the lieutenant advised Chief Gates that Mr. Ferdinand had not been stopped by any police officers in the last few months. Chief Gates then contacted Officer LaPanna and scheduled an interview for July 30, 2012 at 3:00 p.m. (Exhibit 40.)

55. On July 26, 2012, Chief Gates hand delivered a copy of the May 17, 2012 grant activity sheet and a letter advising of the July 30, 2012 interview, enclosing an order not to discuss the matter with anyone except the chief and his legal representatives. Officer LaPanna admitted to the

chief that he had already discussed the matter with his wife and the union representative. (Exhibits 34 and 40.)

56. The interview proceeded as scheduled on July 30, 2012. As part of the investigation, Chief Gates ran an offline CJIS search to check the number of times the registration plate was run. The search revealed that the vehicle had had an active inspection sticker since November 2011. However, Officer LaPanna had said that he pulled over the vehicle because the inspection sticker was invalid. The CJIS search also revealed that the registration plate had not been run in the sequence as described by Officer LaPanna. (Exhibit 40.)

57. As part of the investigation, Mr. Ferdinand also submitted written responses to questions from the chief. In his responses, Mr. Ferdinand noted that he had not been pulled over by Officer LaPanna. He confirmed that his vehicle had been properly inspected. (Exhibit 40.)

58. The investigation concluded with a Settlement Agreement among the Town of Middleborough (Town), the Union and Officer LaPanna. Officer LaPanna agreed that he had not pulled Mr. Ferdinand's vehicle over "or go through the other steps required for a motor vehicle stop." The parties agreed that the conduct warranted a suspension without pay for three shifts. However, because of Office LaPanna's lack of a disciplinary record and his agreement to relinquish two vacation days, the Town agreed not to discipline him for the incident. The parties further agreed that if Officer LaPanna did not engage in any other conduct warranting suspension without pay, the document would be removed from his personnel file if a prospective employer requested his file for



consideration of a position. (Exhibit 40.)

59. On October 8, 2008 at approximately 2:00 a.m., while he was on duty, uniformed and wearing his service weapon, Sgt. R. drove to his family home in his police cruiser. (Exhibit 41.)

60. Sgt. R. entered the bedroom where his eighteen-year old was sleeping. He struck her in the face, causing pain and bruising. He pulled her hair, yelled at her and informed her that she could no longer live in the family home. (Exhibit 41.)

61. Sgt. R.'s fifteen-year old daughter woke up and went to see what was going on. Sgt. R. yelled at her, pushed her and used his chest and body to bump her back towards her own bedroom. He also grabbed her by the neck, threw her into her bedroom and pushed her on to the bed. When the fifteen-year old kicked at Sgt. R. to keep him away, he raised his closed fist at her. (Exhibit 41.)

62. Sgt. R. eventually left the home, only to drive by a few minutes later, parking and observing the home for approximately ten minutes some distance away. (Exhibit 41.)

63. After the boyfriend of the older daughters came to take both girls to a safe place for the night, Sgt. R. pulled in behind the boyfriend's car so that he couldn't leave. He then exited the cruiser, and began yelling and demanding to know where his daughters were going. Sgt. R. then reached into the passenger side window and tried to slap the younger daughter. He eventually moved the cruiser upon his wife's pleas. As his daughters left in the car, he threatened, "Wait 'til I see you next time." (Exhibit 41.)

64. Before his shift ended at 8:00 a.m., Sgt. R. approached Sergeant Robert Ferreira and gave a false account of the incident, omitting references to his assaultive behavior. Toward the end of his shift, the sergeant also used a Department computer to compose a letter to his wife, complaining about her “sticking up” for her daughters. (Exhibit 41.)

65. On February 5, 2009, Sgt. R. was issued a Notice for a March 4, 2009 Section 41 hearing for the purpose of determining whether he should be disciplined, up to and including discharge from employment, for engaging in misconduct while on duty on the morning of October 8, 2008. The Notice advised of the charge of conduct unbecoming a police officer, with the specific violations of the following Department Rules and Regulations: 1) Professional Conduct and Responsibilities; 2) Improper or Unsuitable Conduct; 3) Criminal Conduct; 4) Neglect of Duty; and 5) Untruthfulness. (Exhibit 41.)

66. Sgt. R., his daughters, the older daughter’s boyfriend, the younger daughter’s school adjustment counselor and Sgt. Ferreira were among the witnesses. In its March 17, 2009 Notice of Decision, the Board of Selectmen (Board) found that not only was the sergeant’s testimony self-serving and not credible, witnesses including his older daughter amended their testimony in order to protect his career. The Board found that Sgt. R. was untruthful in his account of the October 8, 2009 events in his verbal report to Sgt. Ferreira later that morning. The Board also found that he was untruthful during the hearing before the Board. (Exhibit 41.)

67. The Board issued five findings of fact, finding that on October 8, 2009: 1) Sgt. R. had driven his cruiser to his home without authorization;

2) that he had struck his older daughter in the face; 3) that he had assaulted his younger daughter; and 4) that he had a confrontation with his daughter and her boyfriend in the driveway. The Board found that Sgt. R.'s conduct was unacceptable for a Department police officer. Further, his actions were particularly egregious for a police sergeant who is expected to lead by example and is responsible for supervision of subordinate officers.

(Exhibit 41.)

68. The Board found that there were unique circumstances, and coupled with the sergeant's lack of previous discipline, decided to impose discipline short of discharge. The Board imposed an immediate three-month suspension, a reduction in rank from sergeant to patrolman, and an order to submit to a mental health evaluation and an order to successfully complete any treatment recommended by the Town's physician. Further, Sgt. R.'s return to work was contingent upon certification from the Town physician. Finally, any failure on Sgt. R.'s part to comply with any of the preceding conditions, or with any follow-up orders from the police chief, would form a separate basis for more discipline, up to and including discharge. (Exhibit 41.)

69. On March 26, 2010, Sgt. Joseph Perkins issued Patrolman BC a letter of reprimand for failing to write a supplemental report for a September 2009 arrest. Due to the heavy call volume on the night of the arrest, the sergeant expected BC to complete the supplemental report at a later time. As the case approached pretrial in February 2010, Sgt. Perkins asked BC again to complete the supplemental report. When the sergeant inquired again early in March 2010, BC admitted that he had lost the

information due to the passage of time. Sgt. Perkins reminded BC that per Department policy, all reports should be completed in a timely manner, and all direct orders are to be followed. (Exhibit 42.)

70. On July 15, 2011, Lt. Mackiewicz supervised the 4:00 p.m. to 12:00 a.m. shift. Because of a shortage caused by granting a day off to an officer, the midnight shift fell below the required minimum staffing of five officers. When Lt. Mackiewicz was unable to fill the shift with a patrolman, he offered it to the supervisors and took the position himself. (Exhibit 43.)

71. When roll call was called at 11:45 p.m., Patrolman KD was absent. After KD did not answer repeated calls made to his phone, Sgt. Perkins was dispatched to KD's home to ask him to report to work. When Sgt. Perkins went to KD's home, he found his vehicle parked there and his dogs making a racket, but ended up banging on the door to no avail. (Exhibit 42.)

72. Lt. Mackiewicz then went to bar where KD's girlfriend worked. The bartender telephoned the girlfriend on behalf of the lieutenant, and got KD on the line. Lt. Mackiewicz informed KD that he had a midnight shift and that the Department was running the shift short. When KD replied that he was unaware that he was scheduled to work because 4:00 p.m. to 12:00 a.m. was his regular shift schedule, Lt. Mackiewicz reminded him that the schedule had been posted for a week. KD said that he was at the Taunton Beagles and was unable to report for work. Lt. Mackiewicz told him to expect disciplinary action. (Exhibit 43.)

73. Because Sgt. Debra A. Batista was unable to find someone to

fill the shift, the July 16, 2011 12:00 a.m. to 8:00 a.m. shift fell below minimum staffing levels. Lt. Mackiewicz decided to take a patrol sector, and to summon mutual aid if a situation arose. (Exhibit 43.)

74. On July 17, 2011, KD submitted a letter of apology to Lt. Mackiewicz. He admitted that he had been informed of the July 16, 2011 scheduled in an electronic mail message from Lt. Andrade. KD stated that he had made a mistake.

75. On July 22, 2011, KD appeared for an administrative interview with Chief Gates and Officer Schofield. The chief then disciplined KD for violating Department rules in 1) refusing to obey a lawful order when he failed to obey Lt. Mackiewicz's order and report for duty on the July 16, 2011 12:00 a.m. to 8:00 a.m. shift; and 2) and in failing to report for duty whenever so ordered by proper police authorities at a regularly appointed time and absenting himself from duty without leave. The discipline was meted out as follows: one day suspension for refusing to obey a lawful order, reduced to a four-hour extra duty bicycle shift; a one-day suspension for failing to report to duty, reduced to a four-hour extra duty bicycle shift; and deduction of a personal day in order to reimburse the Department for paying him for the unworked July 16, 2011 shift. Chief Gates agreed to purge the disciplinary letter from KD's personnel file if he had no similar disciplinary issues in the following six months. (Exhibit 43.)

76. On July 25, 2011, Chief Gates filed a memorandum in regard to KD's discipline. The chief noted that the officer had no prior discipline, and was credible in his assertion that he had forgotten about his shift change. The chief also noted that KD would not have taken the call on his

girlfriend's phone if he had something to hide. KD admitted that he had been drinking, and so could not show up to work. (Exhibit 43.)

*Investigation of Appellant's Prior Discipline*

77. On March 8, 2010, Chief Gates asked Mr. Levesque to submit a written report as part of the investigation in regard to the compromised drug operation that led to the LCA, including responses to twenty-five provided questions. Question 8 stated:

Did you want a role in the [JP] investigation? Did you ask to have a role? Who did you ask? Were you disappointed or upset that you were not involved in the [JP] investigation? Did you express it to anyone? To whom? When? What did you say?

(Exhibit 54.)

78. Mr. Levesque responded:

Yes I did want a role in the [JP] investigation. As a professional I like to utilize the talents that I have to help solve crime. I do not remember if I asked to have a role. I was disappointed that I did not have a role in this investigation because personally I wanted to catch [JP]. As far as expressing this to anyone I do not recall if I did or not.

(Exhibit 55.)

79. As part of the investigation, the Department also interviewed JW. JW is the cousin of JP, and was an individual known to the police.

(Exhibit 58.)

80. On May 7, 2010, Chief Gates interviewed Mr. Levesque in the presence of Mr. Hanley, Mr. Peloquin, the Town Counsel, and Lt. Mankiewicz. In the interview, Mr. Levesque confirmed his disappointment that he was not part of the JP investigation. He also admitted that he had arrested JP on at least three occasions. When the chief inquired as to why JW would report that Mr. Levesque had revealed the existence of a GPS

device on his cousin JP's car, the following exchange occurred:

Chief Gates: ... I'm asking if you know a reason or motivation for him to try to make that statement up on tape to a Middleborough Police Officer.

Appellant: I have no factual basis, I have my own opinion but nothing factual.

Chief Gates: And what's that opinion?

Appellant: My opinion is that to get me their biggest thorn in their side out of the way and possibly protect someone else.

Chief Gates: And if you would know why do you think [JW] would pick you over thirty-eight other Middleborough Police Offices to make this up?

Appellant: My opinion, Chief, I'm high profile.

Chief Gates: In what manner?

Appellant: In terms of the Police Department, I'm high profile.

Chief Gates: You mean you're proactive?

Appellant: Correct. You know, in terms of that kind of community. I'm well known by the criminals in terms of ...

Chief Gates: Why are you well known?

Appellant: Because I'm very pro-active. I really enjoy my job and I like getting bad guys off the street and I guess that makes a name for yourself within that community.

(Exhibit 58.)

81. The interview continued on June 17, 2010. On July 1, 2010, Mr. Peloquin submitted a proposed Settlement Agreement/Last Chance Agreement to Mr. Hanley in order to resolve the disciplinary matter. The agreement would be subject to the approval of the Board of Selectmen, but the chief and the Town Manager had already agreed to recommend it as an alternative to a civil service hearing. (Exhibits 59 and 60.)

82. On July 1, July 6, July 12, July 14, July 19, July 20, July 21, July 26, July 30, August 2 and August 3, 2010, Mr. Hanley and Mr.

Peloquin exchanged electronic mail messages about the drafting of the Agreement. There was negotiation about the terms acceptable to Mr. Levesque. (Exhibits 61-63.)

83. On January 23, 2013, concurrent with his civil service hearing, Officer Levesque filed a breach of duty of fair representation claim against NEPBA with the Division of Labor Relations (DLR). G.L. c. 150E, § 10(b)(1). Mr. Levesque alleged that the Union 1) permitted the Town to violate his due process rights during the termination hearing and the related investigation when it a) failed to demand two separate proceedings to address two separate alleged offenses against him; b) failed to challenge the legality of the Order that the Town claimed he violated, which denied him the ability to speak to his coworkers/potential witnesses about the allegations against him; c) breached its duty of fair representation by failing to require that the Board rule on the central underlying charge – falsification of records – when it voted to terminate; and 2) the Union further breached its duty of fair representation when it advised and permitted Mr. Levesque to execute an unconscionable and grossly unfair Last Chance Agreement dated August 6, 2010. Mr. Levesque claimed that he was unaware of the breach until the time of his termination on August 6, 2012. (Exhibit 68.)

84. On April 17, 2013, the DLR investigator dismissed Mr. Levesque's claim. The investigator specifically addressed Mr. Levesque's claim that he signed the LCA because he was unaware of Lt. Mackiewicz's July 16, 2010 letter that the charge that was unsubstantiated. The investigator noted that the LCA stated within its four corners that the



charge of alerting JP was unfounded, and that Mr. Levesque had failed to “provide complete information despite specific and written and verbal directives given to him by the Chief and that this was a violation of the Department’s rules and regulations.” (Exhibits 4 and 69.)

85. Mr. Levesque appealed the DLR dismissal to the Employment Relations Board (ERB). On September 24, 2013, the ERB reviewed Mr. Levesque’s appeal of the DLR decision, and found that Mr. Levesque’s arguments quarreled with how the Union had represented him. “However, unions, even when represented by an attorney, are not required by law to represent grievants as an attorney would represent clients.” ERB found that the fact that the Union may have made other or different arguments on Mr. Levesque’s behalf when representing him is insufficient to establish a violation of the law in the absence of evidence that its strategy amounted to a breach of the duty of fair representation. (Exhibit 71.)

### **CONCLUSION AND ORDER**

I followed the orders of the court, admitted evidence and took testimony for the discrete and limited purpose of determining the validity of the Agreement and whether the Appellant’s conduct warranted termination independent of the Agreement.

Both parties submitted new exhibits. I have reviewed all the evidence, and made additional findings.

#### *The Last Chance Agreement was Valid*

Mr. Levesque entered into this Agreement with the advice of counsel and upon admission that he should not have shared details about a drug investigation with his wife. Mr. Levesque was actively involved in negotiating the terms of the Agreement. In fact, he and his counsel conferred with the Department many times. The parties exchanged numerous

electronic mail messages. It was advantageous for Mr. Levesque to enter into such an agreement, and he did so in lieu of a Board hearing with the potential for termination.

Mr. Levesque has repeatedly referred to the July 16, 2010 Internal Affairs memorandum from Lt. Mackiewicz to Chief Gates, alleging that the Department withheld exonerating information from him during the JP investigation, specifically that the Department could not substantiate that he had improperly revealed that JP was under surveillance. (Exhibit 4.) I find that Mr. Levesque was not coerced or tricked into signing the LCA. The LCA clearly states that the IA “will find that the charge that Levesque alerted [JP] is unfounded,” and focused on Mr. Levesque’s refusal to obey the chief’s directives and supply information during the investigation. Mr. Levesque admitted, and it is stated within the LCA, that “he admits he could have given more complete and definitive information.” (Exhibit 3.)

I addressed Mr. Levesque’s arrogance and self-aggrandizement in my first decision, and those characteristics are present again in Finding of Fact 79. Mr. Levesque badly wanted to be part of the JP drug investigation, and imagined for himself within the Department a role greater than that of a patrolman. His vanity clouded his judgment and steered his conduct in the JP matter.

*Mr. Levesque’s Conduct Warranted Termination even in the Absence of a LCA*

Even in the absence of a Last Chance Agreement, the Appellant’s conduct was egregious. First he submitted incorrect information on his grant activity reports in the Click it or Ticket program. Then he coerced a Department witness to reveal information during the ensuing Department investigation, in violation of the Chief’s June 7, 2012 Order not to discuss the matter with anyone. He then used that information during the second day of the Section 41 hearing.<sup>4</sup>

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<sup>4</sup> I wrote in the May 1, 2014 Tentative Decision:

At this point, the Appellant had been a police officer for eleven years, and it was incumbent upon him to obey orders from his chief. In fact, on the second day of his §41 hearing, he admitted that he had made a “terrible mistake” in disobeying the chief’s Order not to contact witnesses or discuss the matter except with his Union representative or his attorney.

The Appellant complained that he received disparate treatment in comparison to other police officers who submitted inaccurate grant activity reports or broke other Department rules or regulations. I had precluded some of the Appellant’s exhibits from the first evidentiary hearing because they involved police officers who had never been disciplined. I admitted those exhibits, Exhibits 40-44, in the hearing upon remand.

A comparison of the officers in those exhibits reveal that the Appellant was assuredly the only police officer who had had previous discipline. As the only officer with previous discipline, he was the only one subject to a Last Chance Agreement. Officers Collins, LaPanna and Dees cooperated fully with the Department investigations of their conduct. The Board of Selectmen found unique circumstances in the situation of Sgt. R.

The Town’s new exhibits shed further light upon the circumstances surrounding the negotiation of the LCA, Mr. Leveque’s termination and his Board of Selectmen hearing. I regret that the Town had not offered them in the first hearing. That information may have made the previous administrative record more helpful to the court.

Mr. Levesque submitted incorrect information on the grant activity reports of the Click it or Ticket Program; was untruthful during the ensuing investigation; tampered with a witness in direct violation of Chief Gates’ order; and lied under oath at the Board of Selectmen hearing, using the information he had gleaned from the witness tampering. I find

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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

that Mr. Levesque's conduct showed a pattern of dishonesty in sharp distinction from the behavior of the other disciplined officers, and warranted termination independently of the Agreement. Further, I find that there was a valid Last Chance Agreement (LCA) in effect which would have triggered his termination.

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:

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investigators that he had traveled to the Appellant's home via Plymouth Street that day.  
(Findings of Fact 25 and 34.)