





1 filed a request for review of the partial dismissal with the Commonwealth Employment  
2 Relations Board (CERB). On August 27, 2020, the City filed its Answer to the  
3 Consolidated Complaint. On October 28, 2020, the CERB affirmed the Investigator's  
4 partial dismissal.

5 On February 11, March 3, March 17, April 8, and April 15, 2021, I conducted a  
6 hearing by video conference during which the parties received a full opportunity to be  
7 heard, to examine and cross-examine witnesses, and to introduce evidence. On June 11,  
8 2021, the parties filed post-hearing briefs.<sup>4</sup> Based on my review of the record, including  
9 my observation of the demeanor of the witnesses, I make the following findings of fact  
10 and render the following opinion.

11 STIPULATIONS OF FACT

- 12 1. The City is a public employer within the meaning of Section 1 of the Law.  
13  
14 2. The Union is an employee organization within the meaning of Section 1 of the  
15 Law.  
16  
17 3. The Union is the exclusive bargaining representative for all uniformed fire  
18 fighters who are employed in the City's Fire Department including paramedics  
19 and EMT's but excluding the Chief, Deputy Chiefs and non-uniformed clerical  
20 employees.  
21  
22 4. At all relevant times, David Kennedy (Kennedy) was a member of the  
23 bargaining unit referenced in paragraph 3, and the City employed him as a  
24 uniformed firefighter.  
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<sup>4</sup> In this case, the Union agreed that counsel for Boutin, Miltimore, and Kennedy would present the Charging Parties' case in chief and cross-examine the City's witnesses. The Union supported and agreed with the Charging Parties' arguments and assertions in the case. The Union and the Charging Parties submitted a joint post-hearing brief.

- 1       5.     At all relevant times, Kyle Miltimore (Miltimore) was a member of the bargaining  
2           unit referenced in paragraph 3, and the City employed him as a uniformed  
3           firefighter.  
4
- 5       6.     At all relevant times, Rebecca Boutin (Boutin) was a member of the bargaining  
6           unit referenced in paragraph 3, and the City employed [her] as a uniformed  
7           firefighter.  
8
- 9       7.     On or about February 22, 2018, an anonymous letter was sent to [the City's]  
10          Personnel Director [Jane] Sakiewicz signed only by "Westfield Firefighters".  
11
- 12      8.     On or about March 18, 2018, the City hired Dawn D. MacDonald, Esq.  
13          (MacDonald) to investigate the allegations raised in the anonymous letter  
14          referenced in paragraph (7).  
15
- 16      9.     Pursuant to the investigation referenced in paragraph (8), MacDonald  
17          conducted 91 interviews with 88 individuals, including Kennedy, Miltimore  
18          and Boutin between April 2, 2018 and June 5, 2018.  
19
- 20      10.    [Lee] Kozikowski, Miltimore and Kennedy attended a meeting at Miltimore's  
21          house. Others they believed had issues with [Patrick] Egloff were invited,  
22          including Boutin (who was unavailable) and firefighter, Chris Generoux.  
23
- 24      11.    At the meeting, [the] attendees discuss[ed] what possible courses of action  
25          they had, but did not make a decision as to what to do.  
26
- 27      12.    Before and after the meeting at Miltimore's house, David Kennedy had a  
28          series of text exchanges with Ms. S.  
29
- 30      13.    After the meeting, Kyle Miltimore called a friend.  
31
- 32      14.    That friend was Massachusetts State Trooper Christopher Dolan.  
33
- 34      15.    Shortly thereafter, Miltimore received a call from Trooper Michael McNally  
35          [(McNally)] who asked to interview him. McNally and another Trooper,  
36          Jeffrey Burke [(Burke)], met with Miltimore.  
37
- 38      16.    Miltimore met with McNally and Burke on February 1, 2018 at Action  
39          Ambulance where [Miltimore] worked part time. McNally and Burke were  
40          investigators working for the Hampden County District Attorney's office.  
41
- 42      17.    Miltimore and Boutin both met with the State Police and gave taped  
43          interviews.

- 1  
2 18. On February 22, 2018, [the same letter referenced in paragraph 7] was sent  
3 to Westfield Personnel Director Jane Sakiewicz, signed as "Sincerely,  
4 Westfield Fire Fighters".  
5  
6 19. MacDonald recommended that all three Appellants be terminated and that  
7 others receive lesser discipline.<sup>[5]</sup>  
8  
9 20. The Appellants received Notices of Contemplated Action of Discharge from  
10 Employment on August 7, 2018.  
11  
12 21. After the Court's August 29, 2018 decision, the WFC took no further action  
13 on the proposed terminations until December of 2019.<sup>[6]</sup>  
14  
15 22. On December 4, 2019, each of the Appellants were served with Notices of  
16 Contemplated Action which were, in content, identical to the August 2018  
17 notices.  
18  
19 23. On December 10, 2019, the WFC held a hearing regarding the proposed  
20 terminations.  
21  
22 24. On December 18, 2019, the WFC met again to deliberate. The WFC  
23 members discussed their reasons, and then voted to accept, with only a few  
24 differences, the recommendations of MacDonald[’s] report.  
25  
26 25. [Patrick] Egloff was promoted to Interim [Fire] Chief and later to [Fire] Chief.  
27

28 FINDINGS OF FACT

29 Background

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<sup>5</sup> The term “Appellants” refers to Boutin, Kennedy, and Miltimore.

<sup>6</sup> After receiving their 2018 Notices of Termination, Boutin, Kennedy, and Miltimore filed a claim in Massachusetts Superior Court alleging that the City violated the Open Meeting Law when the Westfield Fire Commission (WFC or Fire Commission) voted to terminate the three firefighters. The Court agreed with Boutin, Kennedy, and Miltimore and overturned the City’s 2018 termination on the basis that it had violated the Open Meeting Law. The WFC refers to the Westfield Fire Commission which is the body of government responsible for voting to take disciplinary actions against firefighters employed by the City.

1           The Union is the exclusive bargaining agent for all uniformed fire fighters who are  
2 employed in the City's Fire Department, including paramedics and EMTs, but excluding  
3 the Chief, Deputy Chiefs and non-uniformed clerical employees.<sup>7</sup> In September of 1999,  
4 the City hired Boutin as a firefighter and paramedic. On or about 2012, the City promoted  
5 Boutin to Captain. In 1989, the City hired Kennedy as a reserve firefighter and as a full-  
6 time firefighter in 1992. In April of 2012, the City hired Miltimore as a firefighter/paramedic.  
7 On or about 2010, the City hired Niles LaValley (LaValley) as a firefighter.<sup>8</sup> On or about  
8 1992, the City hired Chris Generoux (Generoux) as firefighter. On or about 2011, the City  
9 hired Lee Kozikowski as a firefighter. On or about 2005, the City hired Christy Humason  
10 (Humason) as a firefighter. Additionally, Humason works as a nursing supervisor for the  
11 Noble Hospital.

12           From at least 2016 to 2018, Patrick Egloff (Egloff) was a Deputy Chief of the  
13 Westfield Fire Department. As the Deputy Chief, Egloff was a member of management  
14 and the direct supervisor of Boutin. In 2019, the City made Egloff the interim Fire Chief  
15 for the Department. Later on in 2019, the WFC voted to promote Egloff to Fire Chief.

16 Charging Parties' Miscellaneous Grievances and Complaints

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<sup>7</sup> Within the City's Fire Department, the ranks are firefighter, captain, deputy chief, and chief.

<sup>8</sup> In early 2019, LaValley became the Union president for the bargaining unit of firefighters in Westfield.

1           On or about January 12, 2018, the City issued Kennedy a Verbal Warning for being  
2 absent from a continuing education class. On or about January 17, 2018, Kennedy filed  
3 a grievance appealing the verbal warning.<sup>9</sup>

4           On or about June 11, 2018, the City issued Boutin a verbal warning for failing to  
5 transfer essential equipment assigned to the engine apparatus during the operational  
6 shift. On the same day, Boutin filed a grievance on the discipline. The Fire Commission  
7 pushed the grievance hearing back each month and it was never heard. In late 2018,  
8 Boutin spoke with LaValley and Chris Kane (Kane), the Union's vice president, about  
9 being harassed in the workplace by Egloff.<sup>10</sup> Specifically, Boutin informed LaValley and  
10 Kane that Egloff had a habit of pulling Boutin's ponytail and a tendency to scream at her.<sup>11</sup>  
11 LaValley and Kane suggested that Boutin file a grievance with the City about Egloff's  
12 behavior. Boutin explained to LaValley and Kane that she was scared that Egloff would  
13 retaliate against her if she filed a grievance.

14           On or about January 16, 2019, someone in the Fire Department posted a picture  
15 in the station of Boutin and Miltimore in which their heads were cut out of the picture.

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<sup>9</sup> Article IX, Section 4 of the City and Union's collective bargaining agreement explains the grievance process. The first step of the grievance process is between the employee and the Chief of the Department. If no settlement is reached at Step 1, then the grievance may be submitted to the WFC.

<sup>10</sup> In December of 2017, Boutin had scheduled a yoga instructor to come to the station to teach a class for the firefighters. However, Boutin had not cleared the yoga session with Egloff and a CPR training was scheduled for the same day. Egloff instructed Boutin to cancel the yoga class.

<sup>11</sup> I find that Egloff had pulled Boutin's ponytail on occasion. Egloff did not testify to refute the allegation, and Kennedy testified that he had witnessed Egloff on several occasions pull Boutin's ponytail.

1 Later that day, Boutin and Miltimore filed grievances over the incident. After Boutin and  
2 Miltimore filed the grievances, the City conducted an investigation. By letter dated  
3 January 28, 2019, Egloff, as the Interim Fire Chief, denied Boutin's grievance citing  
4 insufficient information. Similarly, by letter dated January 28, 2019, Egloff denied  
5 Miltimore's grievance.<sup>12</sup>

6 By email dated January 29, 2019, Boutin filed a formal complaint with Jane  
7 Sakiewicz (Sakiewicz) of the City's Personnel Department. In the email, Boutin explained  
8 that she had reported harassment in the workplace on four separate occasions and an  
9 investigation was never conducted. Boutin informed Sakiewicz that a firefighter had  
10 posted a picture of her in the common area of the fire department, and Boutin's head had  
11 been cut out of the photograph. Boutin claimed that she had been informed that Egloff  
12 was informing firefighters in the Department that he would be accepting the Fire Chief  
13 position, and that he would make sure that "we" get fired. Boutin requested a formal  
14 investigation into the harassment.

15 Sakiewicz requested Evelyn Rivera-Riffenberg (Rivera), the Director of the Human  
16 Resources for the Chicopee Public Schools, to take part in the investigation of the picture  
17 incident. On February 11, 2019, Rivera issued an investigation report concluding that

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<sup>12</sup> In 2014, Miltimore worked part-time for the Southampton Fire Department. While working at Southampton, Miltimore noticed that individuals were not signing the narcotic logs so he addressed the issue with the Southampton Fire Chief, but the issue persisted. Miltimore then informed the Medical Director of the Cooley Dickinson Hospital and as a result, the Commonwealth began an investigation. During the Commonwealth's investigation, Southampton's ambulance service license was suspended. The Commonwealth found that Southampton was not following the policies regarding narcotic logs and ordered the employees to attend remedial training.



1 there was no basis for a harassment claim. On April 1, 2019, City's Personnel Director,  
2 Joanne Lemelin (Lemelin) issued a letter stating that all grievances regarding the picture  
3 incident were denied, and that there was no evidence that any harassment or a  
4 contractual violation occurred. Afterwards, the City denied the grievance.<sup>13</sup>

5 Allegations of Sexual Misconduct by Egloff

6 In 2016, the Westfield Fire Department participated in a neighboring town's St.  
7 Patricks' Day parade. Several members of the Department attended the parade in  
8 uniform, including Egloff.<sup>14</sup> In January of 2018, Kozikowski and the Nurse<sup>15</sup> were at the  
9 Noble Hospital (Hospital) talking about Donald Trump's comments regarding grabbing  
10 women "by their p\*\*sies."<sup>16</sup> The Nurse told Kozikowski that Trump's comments were

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<sup>13</sup> The City argued that the Fire Commissioners were unaware of any of the Charging Parties' prior grievances. However, MacDonald's investigation report, which is discussed below, mentions the Charging Parties' past grievances. Additionally, the Union provided minutes from a Fire Commission meeting where grievances filed by the Charging Parties were discussed. Finally, Step 2 of the grievance process in the collective bargaining agreement states the grievances will be submitted to the Board of Fire Commissioners. As such, I do not find the City's assertion that the Fire Commissioners did not know of the Charging Parties' past grievances to be credible.

<sup>14</sup> To protect the identities of the women involved in the sexual misconduct allegations, the parties agreed to refer to one of the women as the Nurse and the other as the Secretary. Neither the Nurse nor the Secretary were employees of the City.

<sup>15</sup> At a local bar in Holyoke after the parade, the Nurse informed LaValley that Egloff had touched her breast that day. LaValley had witnessed Egloff touch the Nurse's breast earlier and told Egloff to "knock it off." The group of Westfield firefighters, including Egloff and LaValley, moved on to another Holyoke bar called the Waterfront. At the Waterfront, the Nurse informed LaValley that Egloff had also touched her vagina. Although LaValley did not witness the second incident, he confronted Egloff and again told him to "knock it off." Additionally at the Waterfront, Humason, overheard the Nurse tell Egloff to "knock it off or she would kick his a\*\*."

<sup>16</sup> The Westfield Fire Department handles ambulatory care for the City. As such, the firefighters in the Department are often at the Noble Hospital in the course of their duties and interact with hospital staff frequently.

1 similar to what happened to her at the St. Patrick's Day parade in 2016.<sup>17</sup> The Nurse told  
2 Kozikowski that Egloff had grabbed her in between her legs. Kennedy overheard the  
3 conversation between the Nurse and Kozikowski and asked the Nurse if that really  
4 happened because he had heard rumors about the incident in the past.<sup>18</sup> The Nurse  
5 confirmed that Egloff had grabbed her at the parade.<sup>19</sup> After the conversation with the  
6 Nurse, Kozikowski informed Kennedy that Egloff had behaved similarly to the Secretary  
7 at the parade by forcefully putting his hands down her pants and up her shirt.<sup>20</sup>

8 After learning of the incidents between the Secretary and Egloff, the next time  
9 Kennedy saw the Secretary he told her what he had heard about the allegations and  
10 asked if she was ok. The Secretary asked if they could speak in another room. Once they  
11 were in a more private setting, the Secretary informed Kennedy that in 2016, at the  
12 parade, Egloff had grabbed her, put his hands down her pants and up her shirt. By the  
13 end of the conversation, the Secretary was upset and crying. Kozikowski and Kennedy  
14 returned to the fire station where several of the firefighters were discussing the rumors  
15 about Egloff at the 2016 St. Patrick's Day Parade.

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<sup>17</sup> Boutin learned about the parade incident from Humason.

<sup>18</sup> In 2016, Kennedy heard rumors in the Department that an incident occurred with the Nurse and Egloff at the St. Patrick Day's parade.

<sup>19</sup> Kozikowski told Miltimore about the St. Patrick Day's parade incident with the Nurse and Egloff.

<sup>20</sup> Kozikowski informed several firefighters in the Department about the allegations against Egloff regarding the Nurse and the Secretary.

1           Subsequent to the conversations about the Secretary, the rumors in the Fire  
2 Department about Egloff's behavior at the parade in 2016 started up again. Several of the  
3 firefighters discussed the possibility of setting up a meeting for the firefighters to discuss  
4 Egloff's alleged sexual misconduct and harassing behavior including an incident they  
5 referred to as the "pie gate incident."<sup>21</sup> Miltimore volunteered to host the meeting.

6 February 2018 Meeting

7           On or about February 1, 2018, Miltimore hosted a meeting at his home with  
8 Kennedy, Generoux and Kozikowski. Prior to the meeting, Kennedy texted the Secretary  
9 the following message: "Hey Secretary this is David from Westfield [F]ire. Hope it's OK  
10 that I got your number and it's OK to text. We're discussing some things today at Kyle's  
11 house at 2PM and wanted to know if you[d] like to join us if you want text me back or call  
12 either one is OK no pressure just wanted to extend the invitation. But we'd love for you to  
13 join us." The Secretary responded: "Hey Dave, I'm really sorry I can't make it today. ... I  
14 hope you guys come up with a plan. I hope you have a good day. And sorry again."  
15 Kennedy responded: "No problem at all, I understand... Just want to make sure that you're  
16 still on board if we go forward. Secretary responded: "yes just keep [me] in the loop."

17           Additionally, Kozikowski texted Secretary on February 1 stating: "Hey Secretary.  
18 It's Lee. Give me a call, we have a lot to talk about. It's all good, no worries." Secretary  
19 replied: "Hi Lee[.] I'm so sorry I haven't gotten back sooner. Today was crazy! So how are  
20 things going?" Kozikowski replied: "No problem, I assumed you sleep during the day

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<sup>21</sup> In November of 2017, Egloff yelled at Boutin on the phone about giving away extra thanksgiving meals. Several firefighters witnessed Egloff yell at Boutin on the phone over the pies. The Westfield firefighters began to refer to the incident as "pie gate".

1 anyway for work. I just want you to know with everything that's going on that I believe you  
2 and I support you. If you need anything at all or to just talk please let me know."<sup>22</sup>

3 At the meeting, the members discussed statements that Egloff had made to  
4 Miltimore on or about December of 2017 about being careful of how he used his sick time.  
5 Generoux mentioned that Egloff had berated him in front of other firefighters at a  
6 meeting.<sup>23</sup> Additionally, the attendees discussed Egloff's behavior in the "pie-gate"  
7 incident, and the allegations of Egloff's sexual misconduct towards the Nurse and the  
8 Secretary.

9 After the meeting, Kennedy texted Secretary stating: "Hey. So we met today and  
10 discuss[ed] some things about going forward but we thought it best to speak to you in  
11 person[.] what time do you get out in the morning tomorrow? Or before you go into work  
12 tomorrow?" The next day, Kennedy texted Secretary again stating: "Hey. We have 4-5  
13 guys who are willing [to go to] personnel[.] Also, a lawyer willing to meet and discuss your  
14 options. Just keeping you in the loop as you requested, but I need a response so I can  
15 let these people know if we're going over alone or with you?"<sup>24</sup>

16 On or about February 2, 2018, Miltimore called his friend from church, State  
17 Trooper Christopher Dolan (Dolan), to ask advice about the sexual misconduct  
18 allegations against Egloff. Dolan explained to Miltimore that he found the allegations to

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<sup>22</sup> After this text, Secretary told Kozikowski they would talk the next day, and Kozikowski told her to call him if she wanted.

<sup>23</sup> Generoux had witnessed Egloff, when he was a deputy chief, make comments about being under Fire Chief Reagan's desk performing sexual favors for her during a meeting.

<sup>24</sup> At the meeting, Generoux offered to put the group in contact with his personal attorney.

1 be serious in nature and planned to call in the State Police Department about the next  
2 steps.<sup>25</sup> Shortly thereafter, State Trooper McNally (McNally) and State Trooper Mark  
3 Burke (Burke) called Miltmore to explain that Dolan had mentioned that he had  
4 information on a potential crime. Later that day, McNally and Burke met in person with  
5 Miltmore.

6 Also, on February 2, 2018, Secretary texted Kozikowski that: "This is turning into  
7 a huge thing. It makes me completely uncomfortable. But we can talk about it." Kozikowski  
8 replied that: "I don't want to make you uncomfortable, just calling to make sure you're ok  
9 with what's going on. What he did to you is absolutely inexcusable. I really just wan[t to]  
10 touch base with you and make sure you know that I'm on your side. I think once a bunch  
11 of us heard exactly what Egloff actually did to you, we realized how serious of an act it  
12 was. You shouldn't have had to go through that and deal[] with it in silence." The  
13 Secretary responded: "This guy Egloff, what happens to him? I mean he shouldn't be in  
14 a role of authority at all, but I don't think he should lose his job or anything of that nature."

15 Kozikowski replied: "Well it's definitely not up to me to decide what his job status  
16 should be and I definitely don't want to be in charge of deciding that. All you can do is tell  
17 the truth and just remember this was done to you and he needs to deal with the  
18 consequences of his actions. I totally understand you trying to wish it away. I think the

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<sup>25</sup> Dolan contacted McNally to ask for advice about information he received from Miltmore about potential sexual misconduct allegations in the Westfield Fire Department. Thereafter, McNally contacted his supervisor, Captain Wilcox, in the Detective Unit. Wilcox assigned McNally and Burke to investigate the allegations. McNally and Burke were State Police investigators working for the Hampden County District Attorney's Office.

1 Nurse situation came up again because there [are] a number of people questioning his  
2 decision making and ability to lead. What he did shows terrifying judgment, drunk or not.  
3 I've been drunk around women I know well and have a history with and I would never  
4 even think of doing those things. You didn't ask for any of this and I understand you being  
5 uncomfortable in the situation. I'm sorry for that. After you told me what he did I couldn't  
6 stop thinking about it personally I was dumb founded."

7 Kozikowski then said that he hoped talking to the police helped, and that he was  
8 "not on Egloff's side."<sup>26</sup> Secretary thanked Kozikowski and stated that she appreciated all  
9 the support "you guys" have shown her and the Nurse. Secretary asked Kozikowski if  
10 "Egloff knows" and what would happen next. Kozikowski responded that he was not sure  
11 if Egloff knew of the investigation or what would happen next. Kozikowski posited that the  
12 police would likely speak to Egloff at some point. Kozikowski mentioned that the incident  
13 was discussed at the February meeting at Miltimore's house, and they hoped to go to City  
14 Hall with Secretary to explain the allegations. Kozikowski explained that Miltimore spoke  
15 with his friend who worked for the State Police, but that the State Police had not contacted  
16 Kozikowski at that point. The Secretary explained to Kozikowski that no one had spoken  
17 to her about the incident. Also, the Secretary stated that she would be willing to speak  
18 with people about the Egloff incident, but she would be mortified to "go in front of a ton of  
19 people."<sup>27</sup>

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<sup>26</sup> Shortly after speaking with Secretary, Kozikowski had a meeting with Egloff and his other supervisor, Captain Keith Supinski (Supinski), about Egloff allegedly harassing the Nurse and Secretary.

<sup>27</sup> On February 5, 2018, Secretary texted Kozikowski that she had a missed call from a state trooper. On February 7, Kozikowski asked Secretary if she decided to see the state trooper yet. Secretary did not reply.

1 State Police Investigation

2 On or about February 2, 2018, McNally, Burke and Miltimore met in person to  
3 discuss the allegations against Egloff.<sup>28</sup> As Boutin was Miltimore's direct supervisor, he  
4 provided McNally with her name and contact information. On or about February 2, 2018,  
5 McNally contacted Boutin about the sexual misconduct allegations regarding Egloff.  
6 McNally requested Boutin come to the State Police barracks for an interview, and he and  
7 Burke interviewed Boutin later that day<sup>29</sup> about what happened with Egloff and the Nurse  
8 during the St. Patrick's Day Parade.<sup>30</sup> Boutin informed McNally that she was not at the  
9 parade, and she only had secondhand knowledge.<sup>31</sup> Boutin informed McNally that Egloff  
10 had allegedly grabbed Humason, a firefighter with the City, "by the ass."<sup>32</sup>

11 Also, Boutin informed McNally that Humason informed her that Egloff had cupped  
12 the Nurse's vagina, grabbed onto her, and made vulgar comments. Boutin stated that the  
13 Nurse pushed Egloff off of her and told him to get his "f\*cking hands off of her." In addition  
14 to informing McNally of Egloff's assault on the Nurse and Humason, Boutin informed them

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<sup>28</sup> During his interview with the State Police, Miltimore made it clear that he had not witnessed any of the alleged incidents and was just passing along information that he had heard second hand. McNally had handwritten a statement summarizing the interview, and Miltimore signed it.

<sup>29</sup> Neither McNally nor Burke informed Boutin, Miltimore, or Kennedy that Egloff would be arrested for rape.

<sup>30</sup> McNally recorded parts of his interview with Boutin. Additionally, Boutin signed a statement summarizing her interview with McNally.

<sup>31</sup> At the time, Egloff was Deputy Chief and Boutin's immediate supervisor.

<sup>32</sup> Humason denies that Egloff touched her inappropriately.

1 that Egloff had pulled her ponytail at work.<sup>33</sup> Also, Boutin described Egloff's "outrageous  
2 outbursts" at work when he lost his temper.<sup>34</sup>

3 During the interview, LaValley requested Boutin to contact Humason and the  
4 Nurse and explain that the State Police wanted to speak with them about Egloff. Although  
5 Boutin was hesitant to comply with the request, Boutin called Humason and the Nurse.  
6 During the phone conversation with the Nurse, Boutin informed her that everyone was  
7 coming forward to speak about Egloff's behavior, and the Nurse responded that she did  
8 not have problem coming forward about the harassment. The Nurse informed Boutin that  
9 she would speak with the Secretary about reaching out to the State Police.

10 Kennedy learned that Miltimore had spoken with the State Police and that they  
11 were looking for any information on the allegations regarding Egloff. Miltimore gave  
12 Kennedy McNally's phone number. Kennedy called McNally and relayed the information  
13 he had learned about the allegation from the Secretary.<sup>35</sup>

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<sup>33</sup> On several occasions, Boutin attempted to speak with then Fire Chief Reagan about Egloff's temper, the hair pulling, and the allegations spreading through the Department about Egloff inappropriately touching females at the 2016 St. Patrick's Day Parade. However, Reagan refused to listen to Boutin's concerns.

<sup>34</sup> In February of 2018, Captain Charles Warren (Warren), a firefighter with the Westfield Fire Department, went to Boutin's house after a tech fire rescue drill. At her house, Boutin asked Warren if he had heard the news, and he responded that he didn't know what she was referring to. Boutin told Warren that Egloff was going to be arrested for rape. Also, in February of 2018, Boutin informed Supinski that Egloff was going to be arrested for rape. Boutin denied informing Warren that Egloff was going to be arrested for rape. However, I credit Warren's testimony on the subject.

<sup>35</sup> At some point during the State Police investigation, City firefighter David Ritchie (Ritchie) told Boutin, Miltimore, Kennedy, and Generoux that they should not have gone to the State Police, and that the City Councilors were coming after their jobs.



1 By letter dated February 28, 2018, McNally informed State Police Captain Michael  
2 Lyver (Lyver) that he had interviewed several Westfield Firefighters, including Boutin,  
3 Egloff, and Miltimore. McNally explained that Egloff refused to be recorded and kept  
4 demanding to know who was making allegations against him. McNally refused to provide  
5 him with any information and the interview concluded. McNally asked Lyver to close the  
6 investigation pending any additional information that warranted further investigation.

7 Anonymous Letter

8 On or about February 22, 2018, Sakeiwicz received an anonymous letter (letter)  
9 signed by the "Westfield fire fighters."<sup>36</sup> The letter stated:

10 We write to you with the hope to address a serious matter at the  
11 Westfield Fire Department. We have great concern regarding Deputy  
12 Chief Patrick Egloff. Over the past few years the vast majority of us fire  
13 fighters have been victimized in some form by Deputy Egloff. Most  
14 recently several fire fighters have been contacted by the Massachusetts  
15 State Police regarding a criminal investigation involving Deputy Egloff  
16 sexually assaulting several females, which is concern[ing as] it involves  
17 female fire fighters and hospital staff. Several fire fighters are in fear of  
18 retaliation from Deputy Egloff due to his malicious and violent behavior  
19 towards his subordinates. There have been countless occasions where  
20 he has acted in an unprofessional manner towards coworkers, and  
21 when someone tries to stand up to him he threatens them using his rank  
22 as a Deputy Chief. He has voiced in a room full of people on numerous  
23 occasions that he has pull with the Chief and the Mayor; he has also  
24 mentioned he has been under [the] Fire Chief[']s desk doing sexual  
25 favors. He has acted in [a] gross sexual manner verbally and physically  
26 towards numerous employees, pulling their hair, making cruel  
27 comments, and the list goes on. This is unprofessional, poor leadership,  
28 and just out right disgusting. He has bragged to groups of people on  
29 group C about his malicious plans toward other employees, such as  
30 with unfair schedule assignments, unfavorable duties, blocking health  
31 and wellness initiatives, [and] discipline for sick time use. There have  
32 been several major events that occurred with Deputy Egloff, especially  
33 the thanksgiving (pie gate event); this will summarize his personality

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<sup>36</sup> The anonymous letter was sent to a local news outlet by an unknown source, but it was never published.

1 and unprofessional behavior. Our intentions are to notify you of the  
2 ongoing problems at the Fire Department, some of which may have  
3 been swept under the rug. We hope this is taken seriously and will be  
4 addressed.  
5

6 Shortly thereafter, the City hired Dawn MacDonald (MacDonald), a private employment  
7 law attorney, to investigate the letter.<sup>37</sup>

#### 8 MacDonald's Investigation and the Investigation Report

9 Between April 2 and June 5, 2018, MacDonald conducted 91 interviews with 88  
10 individuals, including Egloff, Boutin, Kennedy, and Miltimore.<sup>38 39</sup> On or about April 3 and  
11 26, 2018, MacDonald conducted two interviews with Boutin. During each interview,  
12 MacDonald asked Boutin if she knew who wrote the anonymous letter. Boutin said that  
13 she did not know who wrote the letter, but did not see the problem with someone writing  
14 the letter.<sup>40</sup> MacDonald responded that the letter was a form of insubordination.  
15 MacDonald informed Boutin that she would give her a week to think about whether she

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<sup>37</sup> At the onset of the investigation, the City's Law Department informed MacDonald of the anonymous letter, that Egloff was most likely the next Fire Chief, and that the letter raised concerns about his imminent promotion.

<sup>38</sup> After the anonymous letter was sent to the City, Humason asked the Secretary if she knew that there were rumors she had been raped. Secretary informed Humason that she was never raped.

<sup>39</sup> In the investigation report, MacDonald stated that Miltimore, Generoux, and Boutin began to complain to others in their group that Egloff treated them poorly, and it did not take much to gain the "frenzied support of Dave Kennedy who lives to file grievances and create upset and conflict in the department."

<sup>40</sup> Prior to her interview on April 26, 2018, Boutin sent written notice to then Fire Chief Reagan that Boutin was now represented by Maurice Cahillane, Esq. (Cahillane). At all relevant times, neither Kennedy nor Miltimore retained private counsel. Also prior to the April 26, 2018 interview, MacDonald and LaValley both informed Boutin that she did not require Union representation because her participation in the interview would not result in discipline.

1 wanted to provide any more information on Miltimore and Kennedy. Additionally, Boutin  
2 informed MacDonald of Egloff's troubling behavior, such as yelling at her at various times  
3 and pulling her ponytail.<sup>41</sup>

4 During her interview with Kennedy, MacDonald repeatedly asked him questions  
5 about the grievances he filed.<sup>42 43</sup> At her interview with Miltimore, MacDonald was hostile  
6 and was quick to talk over Miltimore. MacDonald accused Miltimore of informing others  
7 in the Fire Department that Egloff was a rapist, and that he wrote the anonymous letter.  
8 Miltimore denied both accusations.

9 In the Findings of Fact Section of the Investigation report, MacDonald wrote that  
10 on the day of the 2016 St. Patrick's Day Parade, "Egloff went up to Nurse and grabbed  
11 her by the vagina. Nurse immediately shoved him off and yelled at him [or] words to that  
12 effect, that if he ever laid hands on her again, she would knock him out. He apologized,  
13 Nurse accepted his apology[,] and everyone continued with the festivities and having a  
14 good time. Egloff admits to this incident and further states that a few days later he again  
15 called Nurse to profusely apologize for his conduct." MacDonald interviewed the Nurse

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<sup>41</sup> MacDonald testified that she believed Boutin was telling the truth about her interactions with Egloff.

<sup>42</sup> MacDonald found that Kennedy knew about the allegations in the anonymous letter, but did not file any grievances about the issues even though he would "file grievances about everything." Additionally, MacDonald took notes during her interviews and wrote that Kennedy was a "lying sack of shit." At the hearing, MacDonald could not remember what exactly she thought Kennedy was lying about during the interview, but stated she thought Kennedy was a "lying sack of shit."

<sup>43</sup> In the investigation report, MacDonald stated that Generoux deeply regretted his role in disparaging a senior officer. However, Generoux testified that he did not make such a statement and that MacDonald "turned his words around." At the hearing, MacDonald testified that she believed that Generoux was truthful during his interview.

1 during the investigation, and MacDonald wrote in the report that the Nurse verified Egloff's  
2 account of the incident and that all the other firefighters who witnessed the incident  
3 verified Egloff's account of what happen between him and the Nurse as well.

4 On or around August 7, 2018, MacDonald issued her investigative report. In the  
5 report, MacDonald stated that the purpose of the investigation was to determine the  
6 following: 1) Is there any merit to the allegations of misconduct against Deputy Chief  
7 Patrick Egloff as set forth in the Anonymous Letter?, 2) Who wrote the Anonymous  
8 Letter?, 3) What was the purpose of sending the Anonymous Letter? Was it sent because  
9 there was serious misconduct occurring at the Fire Department or was the letter sent in  
10 an effort to undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby  
11 derailing his promotion to Chief of the Westfield Fire Department?, 4) If the sexual  
12 misconduct allegations were made, and the Anonymous Letter was sent in an attempt to  
13 undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby derailing his  
14 promotion, what is the appropriate discipline for the person(s) involved?, 5) In light of the  
15 legislation in the Anonymous Letter, should Deputy Chief Egloff be promoted to Chief of  
16 the Westfield Fire Department?<sup>44</sup>

17 MacDonald made the following conclusions regarding each allegation in the  
18 anonymous letter:

19 1.) *Egloff sexually assaulted several females.* MacDonald concluded that  
20 "all the female firefighters, including Boutin, denied ever being either  
21 assaulted or sexually assaulted by Egloff." MacDonald wrote that "all  
22 the witnesses had heard about the criminal investigation, but all  
23 except the 5 and Chrissy Humason who had actually been called by

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<sup>44</sup> MacDonald surmised that if an individual knew of all the allegations in the anonymous letter, that person likely wrote the letter.

1 police, had the details wrong indicating they only knew about it  
2 through the rumors.”<sup>45</sup>

3  
4 2.) *Several firefighters are in fear of retaliation from Deputy Egloff due to*  
5 *his malicious and violent behavior towards subordinates.* MacDonald  
6 wrote that Boutin feared retaliation, but denied the characterization  
7 that Egloff was malicious and violent. Generoux, Miltimore and  
8 Kennedy are the only firefighters who said that this allegation was  
9 true. Generoux complained about getting kicked out of training.  
10 Miltimore talked about Egloff stealing his seat in a class, and then  
11 when Miltimore went back to the seat, Egloff told him ‘if you touch me  
12 I’m going to move you to A Group.’ When I asked him if Egloff was  
13 violent or malicious when he did that or was he joking, Miltimore  
14 responded that he just didn’t understand and thought he was strange.  
15 Kennedy said that Egloff pulled people’s hair, grabbed people and  
16 pretended to hump them, and put his hands on people’s backs. I  
17 asked him who and the only name he could come up with was Mike  
18 Albert. Mike Albert stated that he and Egloff have a great relationship  
19 and he has never been upset or offended by anything that he has  
20 done, it is all joking in good fun. Nobody else in the department said  
21 that Egloff was malicious and violent toward subordinates. One  
22 person responded, ‘not towards subordinates, but he is violent with  
23 inanimate objects’ referring to Egloff’s attack on a soda machine.

24  
25 3.) *He has acted in an unprofessional manner towards coworkers, and*  
26 *when someone tries to stand up to him he threatened them using his*  
27 *rank as a Deputy Chief.* MacDonald wrote that witnesses stated that  
28 Egloff does like to throw his rank around, although most did not agree  
29 with the characterization of the word ‘threatens.’ Egloff does behave  
30 in an unprofessional manner. Even those who liked [Egloff], and  
31 respected him said that he is “volatile”, “bombastic”, “has little man  
32 syndrome,” [and] “has anger management problems.” He likes to joke  
33 around and be one of the guys, until the joke is on him and then he  
34 has an “Egsplosion” a term that the firefighters have for when he loses  
35 his temper, which is apparently often. As a result of this behavior,  
36 those who genuinely like him, feel a need to “poke the tiger”. They  
37 play practical jokes on him, all during work hours in an effort to see if  
38 they can cause an “Egsplosion.” I heard several stories about him  
39 attacking a soda machine that ate his money, kicking in the door to  
40 the building, tried to flip over a van when he got locked out as a joke,

---

<sup>45</sup> The report does not explicitly identify the “5” individuals who MacDonald is referring to in this section of the report. However, based on the overall context of the report, I conclude MacDonald was referring to the five firefighters who were disciplined as a result of the report: Boutin, Kennedy, Miltimore, Kozikowski, and Generoux.

1 and many other stories, the theme[] of which was, that Egloff cannot  
2 take a joke and overreacts, sometimes by violently attacking  
3 inanimate objects (not subordinates) and always by screaming.  
4

5 4.) *He has voiced in a room full of people that he has pull with the Chief*  
6 *and the Mayor.* MacDonald wrote that this is true according to many  
7 witnesses although some of them say it is a joke. #76 laughed and  
8 said, “he doesn’t have pull with the Chief and the Mayor! I do!”<sup>46</sup> Other  
9 than what Boutin, Miltimore, Kennedy, Generoux and Kozowski said,  
10 none of the other witnesses said this statement was used as a threat  
11 or anything other than Egloff being “bombastic.”  
12

13 5.) *He has mentioned he was under the Fire Chief’s desk doing sexual*  
14 *favors.* MacDonald wrote that this allegation is true. Egloff has been  
15 meeting with the Chief. When he came out of her office and went into  
16 the kitchen, someone asked him where he had been. He responded  
17 that he had been under the Chief’s desk, made a “V” with his fingers  
18 and wiggled his tongue between the “V”. He did this in front of all of  
19 C Group who were present in the kitchen at headquarters.  
20

21 6.) *He has acted in a gross sexual manner towards numerous*  
22 *employees.* MacDonald wrote that only Kennedy and Generoux  
23 agreed this was true. Generoux referred back to the Nurse and the  
24 Secretary and when I reminded him they weren’t employees, he said  
25 [Egloff] assaulted Humason. However, MacDonald had concluded  
26 that Humason was not assaulted by Egloff.  
27

28 7.) *Pulling people[’s] hair.* MacDonald wrote that Boutin claimed Egloff  
29 pulled her hair “all the time.” She said that when she got back from  
30 her neck injury leave, he pulled her ponytail. Kennedy, Generoux, and  
31 Miltimore agreed that he pulled Boutin’s hair frequently. When I asked  
32 all of the other firefighters this question, with one exception (#13),  
33 they all said they had never seen him pull Boutin’s hair, but most had  
34 seen or heard of him pulling Mike Albert’s hair, with one person  
35 testifying that “I think Mike’s ponytail is getting the best of Egloff.” By  
36 all accounts, including Mike Albert’s, Egloff is joking around with him  
37 and it does not bother him in the least. #13 said he saw Egloff give  
38 Boutin’s ponytail a quick little tug, but he was not being mean or  
39 violent and Boutin did not object.  
40

41 8.) *Making cruel comments.* MacDonald wrote that most witnesses said  
42 [that] Egloff did not make “cruel” comments. Most said that he yells

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<sup>46</sup> MacDonald interviewed over 80 individuals in the investigation and refers to most of the interviewees by number in the investigation report.

1 and swears and has “Egsplosions” but that he was not cruel. Kennedy  
2 repeated what he said previously about Mike Albert and mentioned  
3 “Pie Gate.” Miltimore and Generoux said he was cruel to Boutin;  
4 always yelling at her.  
5

6 9.) *He has bragged about his malicious plans toward other employees*  
7 *such as with unfair schedule assignments.* MacDonald wrote in the  
8 report that “5 conspirators are referring to Egloff’s frequent statement  
9 that if someone displeases him, or doesn’t do their job, he will assign  
10 them to “Med40”, the busiest ambulance assignment, that apparently  
11 nobody likes. Once again, this has been completely twisted and  
12 mischaracterized. Egloff does say this, however[,] [he] has never  
13 followed through. Those witnesses who had heard him say this, say  
14 that it is a joke and that if anything, Egloff struggles to keep all  
15 assignments as fair as possible and give everyone equal time at  
16 “Med40.”  
17

18 10.) *Blocking health and wellness initiatives.* MacDonald concluded  
19 that this referenced the yoga incident when Boutin did not check with  
20 Egloff before she scheduled a yoga instructor to come in, and it  
21 conflicted with CPR training so Egloff made her reschedule. Boutin  
22 rescheduled the yoga session. Only the 5 said that he “blocked health  
23 and wellness initiatives.” Nobody else knew what I was talking about.  
24

25 11.) *Discipline for use of sick time.* MacDonald wrote that this was  
26 Miltimore’s issue referring to when Egloff spoke to him about calling  
27 out sick the night before the Captain[’s] exam after Egloff denied his  
28 request for the night off. Miltimore was not disciplined; Egloff just  
29 spoke to him and sent him an email. Nobody else knew anything  
30 about this allegation.  
31

32 12.) *There have been several major events that have occurred with*  
33 *Deputy Egloff, especially the Thanksgiving Pie Gate Event.*  
34 MacDonald wrote that everyone knew about this, and everyone said  
35 that Egloff completely overreacted, and this was just another example  
36 of what he does when he loses his temper. Most were sympathetic to  
37 Boutin because of how badly he reacted. Most were also mortified  
38 that ‘Pie Gate’ had been public and was the subject of an  
39 investigation.  
40

41 In addition to the conclusions noted above regarding the allegations listed in the  
42 anonymous letter, MacDonald’s investigative report included several other statements

1 about the five firefighters who were disciplined, including the three Charging Parties. For  
2 example, in the report, MacDonald mentions Miltimore's decision to report Southampton  
3 for not properly logging drugs because "it does reveal a pattern of conduct by Miltimore,  
4 who is by most accounts of the department, always at the center of controversy involving  
5 lawyers and legal authorities." Additionally, MacDonald wrote that she heard from several  
6 individuals that Miltimore has, among other things, instigated bar fights and then sued the  
7 bars as a result, and [that he] set up the Southampton Fire Chief and others in the  
8 department, filed a lawsuit and then was paid a settlement.<sup>47</sup>

9 Investigation Report's Conclusions and Recommendations

10 Egloff

11 MacDonald concluded that the allegations against Egloff regarding the Nurse were  
12 true. However, MacDonald concluded that Egloff did not assault the Secretary after the  
13 parade. MacDonald based that conclusion on the interviews she conducted with  
14 firefighters who were present in a vehicle that transported the Secretary and Egloff from  
15 the parade to the Waterfront Tavern. MacDonald wrote that "there was no doubt that  
16 Boutin, Miltimore, Kennedy, Generoux and Kozikowski accused Egloff of rape and  
17 conspired to ruin his life, and even though the allegations in the letter are exaggerated,  
18 twisted and blown out of proportion, he made very poor choices in managing his people  
19 and left himself exposed to this kind of attack." MacDonald concluded that Egloff should

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<sup>47</sup> MacDonald also wrote that her conclusions did not result from any prior incidents involving Miltimore, however[,] she continued that "the witness statements on this point were so numerous, and affect the environment in the Department, that it has to be mentioned."



1 not be promoted to Fire Chief. MacDonald recommended that Egloff be sent for  
2 immediate training, including but not limited to, Sexual Harassment Training, Personnel  
3 Management Training, and Anger Management.

4 Boutin

5 In the report, MacDonald wrote that she had no doubt that Boutin was a terrible  
6 Captain and had engaged in deplorable conduct and behavior. MacDonald stated that  
7 Boutin took great pleasure in spreading false rumors about Egloff's imminent arrest for  
8 rape. During the interviews, MacDonald asked Boutin if she felt any remorse for "ruining  
9 a man's life based on false allegations." Boutin responded that the Secretary said the  
10 allegations were true. MacDonald concluded that when the plot to accuse Egloff of rape  
11 failed, Boutin provided Miltimore and Kennedy with information to put in the anonymous  
12 letter. MacDonald noted that most of the allegations in the anonymous letter dealt with  
13 Boutin's complaints in the Department. MacDonald stated that her recommendations as  
14 to Boutin were based on Boutin's conduct in January and February of 2018 that related  
15 to the accusation of sexual misconduct against Egloff that Boutin made to the State  
16 Police. MacDonald strongly recommended that Boutin be terminated.<sup>48</sup>

17 Kennedy

18 For Kennedy, MacDonald concluded that his behavior caused her grave concern  
19 because he presented as unstable. MacDonald wrote that his excitement when talking  
20 about his grievances and the allegations against Egloff was disturbing. MacDonald

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<sup>48</sup> MacDonald wrote that "all of the 'good' firefighters told her they were concerned that if there were no consequences for Boutin and the others, they would deem themselves untouchable and anarchy would reign in the Fire Department."

1 concluded that Kennedy conspired with others to “do something about Egloff” and tried  
2 to recruit people to attend the meeting at Miltimore’s house. Also, MacDonald concluded  
3 that Kennedy was harassing the Secretary by text and in person.<sup>49</sup> MacDonald  
4 recommended that Kennedy be terminated.<sup>50</sup>

5 Miltimore

6 MacDonald concluded that Miltimore was the individual who reported the rape  
7 allegation to the State Police investigators who worked for the District Attorney’s Office  
8 (DA). MacDonald believed that Miltimore was attempting to set up another lawsuit, likely  
9 what he believed to be a whistleblower suit. Concerning the anonymous letter,  
10 MacDonald concluded that Miltimore and Kennedy wrote it, despite the fact that Kennedy  
11 and Miltimore denied writing the letter and knowing who wrote it.<sup>51</sup> MacDonald  
12 recommended that Miltimore be disciplined, not because of the letter, but because  
13 Miltimore falsely reported a rape; harassed women to come forward and interfered with  
14 their jobs, defamed Egloff to the Department and to others out in the public, and also,  
15 because Miltimore was so feared and mistrusted by almost all his co-workers that his

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<sup>49</sup> MacDonald included in her report that one firefighter commented that if Kennedy spent as much time doing his actual job as he did filing grievances, he might be a good firefighter.

<sup>50</sup> MacDonald wrote in her report that she was not a doctor but “I believe that Kennedy is unstable and a danger to the department. He gets whipped into a frenzy over perceived wrongs and someday, I believe there would be harmful consequences of disregarding him and the threat he presents.”

<sup>51</sup> In the report, MacDonald wrote that Miltimore could not be disciplined for writing the Letter because Egloff “left himself exposed and there was enough truth to some of the allegations that disciplining Miltimore for writing the letter would play into [Miltimore’s] hands.”

1 mere presence endangers the whole Department. MacDonald recommended that  
2 Miltimore be terminated.

3 Kozikowski

4 MacDonald concluded that Kozikowski acted as an instigator when he  
5 disseminated the information the Secretary told him about Egloff. MacDonald believed  
6 that Kozikowski knew about Miltimore reporting a rape allegation and about the  
7 anonymous letter, but did not participate in any sort of plan to further those agendas. As  
8 such, MacDonald recommended that he receive a suspension.

9 Generoux

10 MacDonald concluded that Generoux regretted going to the meeting at Miltimore's  
11 house and his limited involvement in accusing Egloff of sexual harassment. MacDonald  
12 recommended that Generoux receive a verbal reprimand.

13 2018 Notice of Intent to Terminate

14 On or about August 7, 2018, Deputy Chief Seth Ellis (Ellis) sent Miltimore, Boutin  
15 and Kennedy each an Administrative Leave letter.<sup>52</sup> The City informed each of them that  
16 they would be placed on leave effective August 8, 2018. Additionally, on August 7, 2018,  
17 the City sent each of the Charging Parties a Notice of Intent to Terminate (Notice).<sup>53</sup> In  
18 the Notice, the City alleged that Miltimore, Boutin and Kennedy engaged in serious and

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<sup>52</sup> On January 31, 2001, the City hired Ellis as a firefighter for the Department. In or about 2014, the City promoted Ellis to a Captain, and subsequently promoted him to Deputy Chief.

<sup>53</sup> At the time, Andrew Hart (Hart) was the interim chief for the Department, and he testified that he had no say in issuing the Notice of Termination.

1 substantial misconduct warranting their termination. According to the City, it was  
2 discovered that the Charging Parties had violated several Department policies including:  
3 dereliction of duty, cost contract violations, insubordination, threatening or intimidating  
4 other employees, failure to maintain productivity standards, instability or unwillingness to  
5 work harmoniously with fellow employees, sexual harassment, and substantial  
6 misconduct which adversely affects the public interest by impairing the efficiency of the  
7 public service.

8 In the description of the incident section of the Notice of Intent to Terminate for  
9 each Charging Party, the City stated that it received a letter dated February 22, 2018, that  
10 was signed by the "Westfield Fire Fighters." The February 22 letter alleged that Egloff had  
11 engaged in criminal misconduct. The letter further described that the City hired an  
12 investigator to investigate the allegations, and that the Investigator found that the  
13 allegations against Egloff were unfounded and were created as part of a conspiracy to  
14 discredit and harm his reputation of Egloff and block his promotion to Fire Chief. The letter  
15 stated that the Investigator found that Miltmore was the lone author or one of the co-  
16 authors of the February 22 letter and was likely the mastermind behind the conspiracy to  
17 harm Egloff. The City stated that based on the results of the investigation, the City had  
18 no choice but to terminate the Charging Parties' employment.<sup>54</sup>

19 On or about August 7, 2018, the Charging Parties each filed grievances on the  
20 terminations. Additionally, the Charging Parties successfully challenged their terminations

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<sup>54</sup> The Investigator's recommendations for each charging party were attached to each of their Notices of Intent to Terminate.

1 on the basis that the City had terminated their employment in violation of the  
2 Commonwealth's Open Meeting law.<sup>55</sup>

3 2019 Terminations

4 By letter dated November 18, 2019, Deputy Chief Hart notified the City's Fire  
5 Commissioners, Albert Masciadrelli (Masciadrelli), C. Lee Bennett (Bennett), and Jeffrey  
6 Siegel (Siegel) that the City had recommended the termination of Boutin, Kennedy, and  
7 Miltimore from the Department based on MacDonald's investigative report.<sup>56</sup> In that letter,  
8 Hart also requested that the WFC conduct a hearing pursuant to G.L. c. 31, sec. 41  
9 because "the recommended discipline exceeds the Chief's authority." By individual letters  
10 dated November 21, 2019, the City informed Boutin, Kennedy, and Miltimore that the  
11 WFC had scheduled a "Special Meeting" and executive session. On November 25, 2019,  
12 the WFC held its Special Meeting and decided to schedule a G.L. c. 31, sec. 41 hearing  
13 pursuant to Hart's November 18, 2019 request. By individual letters dated December 4,  
14 2019, Deputy Chief Patrick Kane, Jr. (Kane), "acting under the direction of  
15 the...Commission," informed Boutin, Kennedy, and Miltimore that the WFC would hold a  
16 hearing pursuant to G.L. c. 31, sec. 41.

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<sup>55</sup> In February of 2020, Boutin filed a motion for a preliminary injunction in Superior Court against the City which sought reinstatement of her benefits. By order issued on June 9, 2020, the judge granted her motion.

<sup>56</sup> On or about 1990, the City hired Hart as a reserve firefighter. Since approximately 2010, Hart has held a Deputy Chief position in the City's Fire Department. From July 2018 until January 2019, Hart held the Fire Department's Interim Fire Chief position.

1           On December 10 and 18, 2019, the WFC conducted two days of hearing regarding  
2 the City's recommendations to terminate Boutin, Kennedy, and Miltimore.<sup>57</sup> At the  
3 hearing, the City called MacDonald to testify about her investigation and findings.<sup>58</sup> On  
4 December 18, 2019, Siegel informed the Charging Parties that the Fire Commission  
5 found that MacDonald's report was credible and encompassed a fair and accurate  
6 overview of the facts. Siegel stated that he found that the Charging Parties had  
7 aggressively trafficked innuendo, fueled the flames of gossip and half-truths, and  
8 repeated second and third hand accusations in an attempt to discredit and harm Egloff's  
9 reputation.<sup>59</sup>

10           At the close of the hearing, each Commissioner deliberated on the charges against  
11 Boutin, Kennedy, and Miltimore. Siegel stated that he read MacDonald's report and that  
12 he found it to be thorough and credible.<sup>60</sup> Siegel stated that: "I believe that in

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<sup>57</sup> In early 2019, Siegel was appointed by the Mayor to the Fire Commission. When Siegel joined the WFC, the Law Department provided him with a copy of MacDonald's report and advised him to familiarize himself with it. Siegel read the report.

<sup>58</sup> MacDonald informed the Fire Commission at the December 2019 hearing that she was not able to speak with the Secretary during her investigation. Additionally, MacDonald informed the Fire Commission that Boutin had told some 11 firefighters that Egloff was going to be arrested for rape, but such details or findings were not included in her investigation report.

<sup>59</sup> At the hearing in this case, Siegel testified that he knew other firefighters in the Department were talking about the rumors surrounding sexual assault allegations against Egloff.

<sup>60</sup> At the WFC's termination hearing for the Charging Parties, Siegel stated that the parties in their testimony tried to "portray themselves as whistleblowers, as victim rights' advocates or good Samaritans motivated by the desire for exposing wrong. However, I find that their failure to file any official means of doing so, including but not limited to filing a formal complaint with the Fire Department, filing a formal complaint with the City of Westfield, filing of a grievance with the Union or even filing separate litigation on their behalf in Courts shows they had no such intention."

1 disseminating secondhand information regarding alleged events that occurred years  
2 before, and then making efforts to ensure those allegations were amplified and spread on  
3 the part of these three firefighters displays not just poor judgment. It shows an attempt to  
4 discredit a fellow employee in a manner that was discourteous to a fellow employee and  
5 which they knew or should have known would have been a blow to employee morale.”

6 At the hearing, Commissioner Bennett stated that: “It doesn’t matter to me who  
7 wrote the letter. What I find reprehensible is that you continued to complain and disparage  
8 the Department and your fellow firefighters after it was clear that the facts that you  
9 continued to portray them have turned out to be false and you continued with each  
10 opportunity to fabricate additional allegations....To consistently go outside the realm of  
11 normal protocol and procedures in a paramilitary organization is one of the most  
12 disruptive and demoralizing actions an employee can take. The incident you purport to  
13 be whistleblowers of occurred two years prior to your illegal actions. It was something that  
14 one of you testified was common knowledge in the Department. It was an incident you  
15 had no direct knowledge of and yet you did cause an investigation by calling an  
16 acquaintance who was a State Trooper who wisely followed protocol and passed it on to  
17 an impartial investigator.”<sup>61</sup> At the end of the hearing, the Fire Commissioners each voted  
18 to substantiate the charges against the Charging Parties and moved to discharge Boutin,  
19 Kennedy, and Miltimore.

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<sup>61</sup> Bennett also mentioned reading MacDonald’s report. Additionally, Bennett stated that he was going along with the recommendations stated in MacDonald report.

1           On December 19, 2019, the City terminated the employment of Boutin, Kennedy,  
2 and Miltimore. In part, the Fire Commission found that the Charging Parties had engaged  
3 in serious and substantial conduct, including making false statements.<sup>62</sup> The Fire  
4 Commission also believed that Miltimore had instigated the State Police investigation.<sup>63</sup>  
5 The Fire Commission concluded that Miltimore, Kennedy and Boutin knew that the  
6 allegations against Egloff were false based on their lack of credibility as outlined in  
7 MacDonald's investigative report.<sup>64</sup> By individual memoranda dated December 19, 2019,  
8 the Commission notified Boutin, Kennedy, and Miltimore that the City had just cause to  
9 terminate their employment, effective immediately.<sup>65</sup>

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<sup>62</sup> Siegel acknowledged that rumors about Egloff and the sexual assault allegations were discussed by many employees in the Fire Department, not just the Charging Parties, and he opined that it was acceptable and unavoidable that firefighters would gossip about the sexual assault allegations. However, Siegel concluded it was unacceptable for Boutin to gossip about the Secretary's allegations to other firefighters as she was a Captain. Siegel distinguished the gossip between the Nurse's allegations and the Secretary's allegations because Egloff admitted to assaulting the Nurse.

<sup>63</sup> Siegel explained that the WFC understood that the Charging Parties had an obligation to answer questions that the State Police had asked during its investigation.

<sup>64</sup> Although Siegel testified that he was not aware of the Charging Parties' grievances at the time of the 2019 termination hearing, he had read the investigative report which referenced Kennedy filing grievances. Also, Siegel was present at the termination hearing where MacDonald testified about her investigation. Additionally, Siegel was present at a June 3, 2019 Fire Commission meeting, where the Union asked to table the Charging Parties' grievances from the 2018 Notice of Terminations. Siegel made the Motion to table the grievances.

<sup>65</sup> Although Kennedy and Miltimore informed Boutin, their supervisor, of the Egloff sexual assault allegations, and Boutin attempted to inform then Fire Chief Reagan of the assault allegations, the Fire Commission terminated the Charging Parties in part for failing to follow the chain of command. The Fire Commission concluded that the Charging Parties failed to follow the chain of command when they contacted a private attorney and attempted to gather information to come forward with a Complaint as a group.



1 Other Discipline

2 As result of MacDonald's investigation, the City issued Kozikowski a three-day  
3 suspension based on policy violations related to the investigation of allegations made  
4 against Egloff.<sup>66</sup> Additionally, the City issued Generoux a verbal warning for conspiring to  
5 harm the reputation of a senior officer. However, the City did not pursue disciplinary  
6 charges against Egloff for admitting to inappropriately touching the Nurse at the  
7 Waterfront Tavern while in uniform and surrounded by his subordinates and co-workers.  
8 Additionally, the Fire Commission did not pursue disciplinary charges against Egloff for  
9 any of the allegations of aggressive behavior towards his subordinates that MacDonald  
10 found to be true. In 2019, the Fire Commission voted to promote Egloff to Fire Chief.

11 Opinion12 **Prima Facie Case**

13 A public employer that retaliates or discriminates against an employee for  
14 engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the  
15 Law. Southern Worcester Reg. Voc. School District v. Labor Relations Commission, 388  
16 Mass. 414 (1982); School Committee of Boston v. Labor Relations Commission, 40 Mass.  
17 App. Ct. 327 (1996). To establish a prima facie case of discrimination, a charging party  
18 must show that: 1) an employee was engaged in activity protected by Section 2 of the  
19 Law; 2) the employer knew of that conduct; 3) the employer took adverse action against

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<sup>66</sup> The City alleged that Kozikowski committed the following violations: dereliction of duty, cost control violations, insubordination, threatening or intimidating other employees, failure to maintain productivity standards, inability or unwillingness to work harmoniously with fellow employees, sexual harassment, and substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.

1 the employee; and 4) the employer took the adverse action to discourage the protected  
2 activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000);  
3 Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (November 9, 1985).

#### 4 **Protected Activity**

5 The Commonwealth Employment Relations Board (CERB) has decided that an  
6 employee's activity is protected if it focuses on generally applicable terms and conditions  
7 of employment that impact the collective bargaining unit as a whole. City of Boston, 8  
8 MLC 1872, 1875, MUP-3994 (February 25, 1982); Town of Shrewsbury, 5 MLC 1519,  
9 1523, MUP-2999 (December 22, 1978). To be concerted, the evidence must demonstrate  
10 that the employee is acting with other employees, or on the authority of other employees,  
11 rather than acting out of self-interest. Town of Southborough, 21 MLC 1242, 1249, MUP-  
12 8521 (August 29, 1994)(citing Meyers Industries, 268 NLRB 493, 115 LRRM 1025  
13 (1984)). Compare Commonwealth of Massachusetts, 14 MLC 1743, 1747, SUP-3081  
14 (May 19, 1988)(probationary employee's complaints with other employees about  
15 unhealthy working conditions constituted concerted activity) with Town of Athol, 25 MLC  
16 208, 211, MUP-1448 (June 11, 1999)(employee's safety and work break complaints did  
17 not constitute concerted activity, because the employee was acting alone and without the  
18 authority of other employees); Higher Education Coordinating Council, 24 MLC 97,102,  
19 SUP-4095, 4096, 4098, 4099 (April 27, 1998)(without evidence that the employee was  
20 acting with other employees or acting on their authority, the filing of a sexual harassment  
21 complaint is not concerted activity).

1           The Charging Parties demonstrated that Boutin, Kennedy, and Miltimore engaged  
2 in acts protected by Section 2 of the Law by filing various grievances, including when they  
3 filed grievances on their terminations.<sup>67</sup>

4           Additionally, Kennedy and Miltimore engaged in protected, concerted activity by  
5 attending the February 2018 meeting at Miltimore's house.<sup>68</sup> The City argues that the  
6 February 2018 meeting at Miltimore's house is not protected, concerted activity because  
7 it was only attended by four bargaining unit members. However, the City did not provide  
8 any case law that required a certain number of bargaining unit members to attend a  
9 meeting for that gathering to be considered protected, concerted activity. Moreover, the  
10 number of meeting attendees does not detract from the purpose of the meeting. In this  
11 case, the purpose of the February meeting was for bargaining unit members to gather  
12 and discuss their working conditions and concerns about Egloff.

13           Next, the City argues that the February 2018 meeting was not protected, concerted  
14 activity because the purpose of the meeting was to "stop Egloff" from becoming Fire Chief.  
15 The City argues that everyone in the Department knew that Egloff was going to become

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<sup>67</sup> As the February 2018 letter was unsigned, I do not make a finding as to whether the letter constituted concerted, protected activity.

<sup>68</sup> The Charging Parties argued that Boutin, Kennedy, and Miltimore engaged in concerted, protected activity when they respectively filed a charge with the Massachusetts Commission Against Discrimination (MCAD). However, the Charging Parties did not demonstrate that they were acting on behalf of their fellow unit members when they filed complaints at the MCAD. Higher Education Coordinating Council, 24 MLC 97, 102, SUP-4095, 4096, 4098, 4099 (April 27, 1998)(without evidence that the employee was acting with other employees or acting on their authority, the filing of a sexual harassment complaint is not concerted activity).

1 Fire Chief imminently, and that the purpose of the February meeting was to strategize on  
2 how to prevent Egloff from becoming Chief. I disagree.

3 First, the record clearly demonstrates that the four attendees discussed multiple  
4 topics about their working conditions including, but not limited to, issues Miltimore had  
5 with sick time. Since the four members gathered to discuss their working conditions, the  
6 February meeting constitutes concerted, protected activity. However, even if the purpose  
7 of the February meeting was to discuss concerns about Egloff becoming Chief and help  
8 the Secretary come forward about her allegations against Egloff, the meeting would still  
9 constitute concerted, protected activity.<sup>69</sup>

10 It is clear from the record that several firefighters, including the Charging Parties,  
11 had concerns about Egloff becoming Fire Chief. Specifically, the Charging Parties had  
12 concerns that the City would promote Egloff to Chief when he had allegedly sexually  
13 assaulted several females at the 2016 St. Patrick's Day parade.<sup>70</sup> At the time of the  
14 February meeting, Miltimore, Generoux, Kozikowski, and Kennedy had valid reasons to

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<sup>69</sup> In this case, it does not matter that the Secretary was not a City employee. The focus of the meeting was the unit members' concerns about Egloff's ability to lead the Department as the Fire Chief in light of the sexual assault allegations. The fact that the Secretary did not work for the Fire Department does not detract from the unit members' reasonable concerns about Egloff's promotion to Fire Chief and its impacts on their terms and conditions of employment.

<sup>70</sup> The Charging Parties argued that Boutin engaged in concerted, protected activity when she discussed the sexual misconduct allegations against Egloff with Warren and Supinski. However, Boutin informed Warren and Supinski that Egloff was being arrested for rape. Boutin's decision to spread false rumors about Egloff being arrested for rape does not fall within the scope of concerted, protected activity. City of Boston, 6 MLC 1096, MUP-2878 (May 23, 1979).

1 believe that Egloff had allegedly assaulted Humason, the Secretary, and the Nurse.<sup>71</sup>  
2 Employees have a right to discuss among themselves their sexual harassment concerns  
3 and complaints. All American Gourmet, 292 NLRB 1111 (1989).

4 In addition to the employees' concerns that Egloff's assaults against women  
5 demonstrated an inability to lead or represent the Fire Department as Chief, the sexual  
6 assault allegations against Egloff raised concerns about the firefighters' health and safety;  
7 particularly for female members of the Fire Department. At the time of the meeting,  
8 Kennedy, Generoux, Miltimore, and Kozikowski believed that Egloff had sexually  
9 assaulted females while in uniform, at a work-related event and in the presence of his  
10 subordinates. As such, the alleged assaults, combined with the surrounding  
11 circumstances of Egloff being in uniform, may reasonably lead a firefighter to fear that  
12 Egloff may engage in similar behavior with them or a co-worker.

13 In MacDonald's investigation report, she concluded that Egloff had never sexually  
14 assaulted any of the female firefighters. However, Egloff did not have to sexually assault  
15 one of the firefighters for his conduct to be a concern to bargaining unit members, or for  
16 his conduct to potentially impact their health and safety. Although the assault occurred off  
17 City property and the victim was not a City employee, the fact that Egloff's actions took  
18 place during a work event and in uniform, as noted above, still would have inspired  
19 reasonable concern from bargaining unit members about their safety.

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<sup>71</sup> Miltimore, Generoux, Kozikowski, and Kennedy's belief that Egloff had sexually assaulted the Secretary was reasonable because she told several of the firefighters that Egloff had touched her inappropriately. The Secretary gave the firefighters no reason to doubt her allegation.

1 Employees are entitled to be protected against threats of physical violence, and  
2 the harassment of a fellow employee created a difficult condition of employment. NLRB  
3 v. Leslie Metal Arts, 509 F.2d 811, 814 (6<sup>th</sup> Cir. 1975) as cited in NLRB v. Downslope  
4 Indus., 676 F2d. 1114, 1118 (6<sup>th</sup> Cir. 1982). Under such circumstances, the Charging  
5 Parties could legitimately protest by concerted activity the failure of the employer to take  
6 appropriate action to correct or alleviate the situation. Id. In this case, Kennedy, Miltimore,  
7 Generoux, and Kozikowski believed that Egloff's alleged sexual assault of several  
8 females would further exasperate the difficult working conditions if the City promoted him  
9 to Chief. Thus, given the circumstances of the alleged sexual assaults, Egloff's imminent  
10 promotion to Chief, and the resulting concerns about his promotion, the conversation  
11 between Kennedy, Miltimore, Generoux, and Kozikowski at the February 2018 meeting  
12 constitutes concerted, protected activity.

13 Additionally, Boutin engaged in protected, concerted activity when she complained  
14 to Chief Reagan about Egloff's sexual misconduct allegations. Kennedy and Miltimore  
15 informed Boutin – as their supervisor – of Egloff's alleged sexual misconduct. Boutin was  
16 not acting solely on her own behalf, but with Kennedy, Generoux, Kozikowski, and  
17 Miltimore when she raised these concerns to Reagan. She, too, had legitimate concerns  
18 about Egloff becoming Chief, and thus her attempts to inform former Chief Reagan about  
19 those concerns constitutes concerted, protected activity.

20 Next, the Charging Parties engaged in protected, concerted activity when they  
21 spoke with the State Police who were investigating the sexual assault allegations against  
22 Egloff. The City has argued that Miltimore's decision to involve the State Police was not  
23 concerted, protected activity because he did not consult Kennedy and the other meeting

1 attendees about his decision. However, the group of unit members decided together to  
2 find a way to address the sexual assault allegations against Egloff and support the  
3 Secretary. Although Miltimore did not expressly seek approval from the group before  
4 calling his friend on the State Police force, his actions were consistent with the group's  
5 collective efforts.

6 Miltimore spoke with his friend at the State Police about sexual assault allegations  
7 against Egloff out of concern for not only himself but all unit members. Miltimore's decision  
8 to speak with his friend was a natural extension of the unit members' February meeting  
9 when they collectively decided to address their concerns about Egloff's promotion in light  
10 of the sexual assault allegations. The City did not provide any case law to suggest that  
11 unit members could not obtain counsel from third parties about how to address their  
12 concerns regarding matters that impact their terms and conditions of employment. The  
13 City failed to explain how Miltimore's decision to seek guidance from his friend at the State  
14 Police was different from a unit member's decision to seek guidance from a friend who  
15 happened to be an attorney. As such, I find that Miltimore's decision to ask his friend from  
16 the State Police for advice on how to address the sexual assault allegations against Egloff  
17 is concerted, protected activity.<sup>72</sup>

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<sup>72</sup> The Union argued that the Charging Parties' decision not to file a grievance over their concerns regarding the sexual assault allegations involving Egloff was protected, concerted activity. The Union did not provide any caselaw to suggest that the CERB has held that a unit member's decision not to engage in the grievance process is concerted, protected activity. In the Union's cited two cases, the respective union had filed grievances. See Generally Athol-Royalston Regional School District, 25 MLC 28, MUP-1506 (August 12, 1998) and Town of Dracut, 25 MLC 131, MUP-1397 (February 17, 1999).

1           Next, the Charging Parties argue that their interactions with the State Police,  
2 including providing statements, were all concerted, protected activity. I agree. Once  
3 Miltimore informed his friend of the sexual assault allegations, the State Police decided  
4 to open an investigation and requested an interview with Boutin and Miltimore.  
5 Additionally, Kennedy decided to contact the State Police to provide information on the  
6 sexual assault allegations against Egloff.

7           The Charging Parties' statements to the State Police were an extension of  
8 Miltimore's decision to seek guidance from his friend and more importantly, the unit  
9 members' decision to address their concerns about Egloff becoming Chief, thus the  
10 Charging Parties' interactions with the State Police constituted concerted, protected  
11 activity. As discussed above, the Charging Parties' concerns about Egloff's imminent  
12 promotion to Fire Chief in light of the sexual assault allegations impacted their terms and  
13 conditions of employment.

14           However, in certain circumstances, a unit member's concerted actions, even if they  
15 pertain to terms and of employment, may lose the veil of protection under the Law. Thus,  
16 I consider whether the Charging Parties' communications about their concerns regarding  
17 Egloff to the State Police constitutes protected activity or lost its protected status.

18           The National Labor Relations Board (NLRB) has repeatedly held that employees  
19 may, with the protection of Section 7, communicate with third parties about matters  
20 relating to an ongoing labor dispute. See The Sacramento Union, 291 NLRB 540, 1988  
21 WL 214195 (1998), and cases cited therein, Emarco, Inc., 284 NLRB 832, 1987 WL  
22 89746 (1987), and Cordura Publications Inc., 289 NLRB 230, 1986 WL 538993 (1986)  
23 (employees' communications with respondent's parent company were protected). The



1 caveat in these cases is that the communication not be so disloyal or maliciously false as  
2 to remove the employees from the protection of the National Labor Relations Act.  
3 Compuware Corp., 134 F.3d at 1291 (1998). “An employee's appeal to a third party or ...  
4 a client only loses its protected status if the appeal does not relate to the labor practices  
5 of the employer or [is] maliciously false.” Id. In this case, the record demonstrates that  
6 certain unit members, including the Charging Parties, had ongoing issues with Egloff's  
7 behavior and the information the Charging Parties provided to the State Police regarding  
8 Egloff clearly related to their terms and conditions of employment.

9         Next, the NLRB has held that statements are maliciously untrue and unprotected  
10 if they are made with knowledge of their falsity. See TNT Logistics North America, Inc.,  
11 347 NLRB 568, 569 (2006), rev'd. sub nom. Jolliff v. NLRB, 513 F.3d 600 (6<sup>th</sup> Cir. 2008)  
12 as cited in MasTec Advanced Technologies, a Division of MasTec, Inc., 12-CA-025055  
13 (July 21, 2011). However, the mere fact that statements are false, misleading or  
14 inaccurate is insufficient to demonstrate that they are maliciously untrue. See generally  
15 Sprint/United Management Co., 339 NLRB 1012, 1018 (2003). In this case, Egloff  
16 admitted to MacDonald that the sexual assault allegations regarding the Nurse were true.  
17 As for the allegations relating to the Secretary, the Charging Parties did not know they  
18 were false as the Secretary had informed the unit members of the allegations. As such,  
19 the Charging Parties did not make maliciously untrue statements to the State Police about  
20 Egloff.

21         Additionally, the Charging Parties' statements to the State Police were not disloyal.  
22 As stated above, the Charging Parties believed that Egloff had allegedly sexually  
23 assaulted several females at the St. Patrick's Day parade in 2016, and they had concerns

1 about those allegations because of his imminent promotion to Fire Chief. Also, the  
2 Charging Parties advised the State Police that they did not have firsthand knowledge of  
3 the alleged incidents and were merely passing on information that they had heard from  
4 others.

5 Next, the Charging Parties did not go to the press or make a statement to the public  
6 about the sexual assault allegations against Egloff. Instead, Miltimore discreetly called  
7 his friend at the State Police, and then the Charging Parties provided information to  
8 McNally.

9 Finally, Boutin had tried to communicate her concerns about Egloff and the sexual  
10 assault allegations to Chief Reagan, but Chief Reagan refused to listen. Given the unique  
11 and sensitive nature of the allegations, and the fact that Boutin had tried to speak with  
12 Reagan about the matter, the Charging Parties' decision to speak with the State Police  
13 about their concerns was not reckless or disloyal. Therefore, the Charging Parties'  
14 communications with the State Police do not fall outside the realm of protection, and thus  
15 constitute concerted, protected activity.

#### 16 **Employer Knowledge**

17 The Charging Parties demonstrated that the City was aware of their concerted,  
18 protected activity. It is undisputed that the City knew about the February 2018 meeting,  
19 Boutin's attempts to speak with Chief Reagan about the sexual assault allegations,  
20 Miltimore's decision to reach out to his friend at the State Police, and the Charging Parties  
21 involvement in the subsequent State Police investigation.

22 Also, the City knew about the Charging Parties' grievances. The City argued  
23 unpersuasively that the Fire Commission was not aware of the Charging Parties' previous

1 grievances when it decided to terminate the Charging Parties in 2019. However, the  
2 record does not support the City's argument. Even though most of the Charging Parties'  
3 grievances were filed after MacDonald issued her report, all three Fire Commissioners  
4 read MacDonald's investigation report before they decided to terminate the Charging  
5 Parties, and the report mentions Kennedy filing grievances. Moreover, per the CBA, when  
6 the union or a member files a grievance, it is eventually moved before the Fire  
7 Commission. In fact, the Charging Parties produced the minutes of a Fire Commission  
8 meeting where Siegel moved to put the Charging Parties' 2018 termination grievances in  
9 abeyance. Thus, the WFC's contention that the Commissioners did not know about the  
10 Charging Parties' grievances in 2019 when they decided to terminate the Charging  
11 Parties is not credible.

## 12 **Adverse Actions**

13 It is undisputed that the City took adverse action against Boutin, Miltimore, and  
14 Kennedy when it terminated their employment in 2019. The Fire Commission's decision  
15 to terminate Boutin, Kennedy, and Miltimore ended their employment with the City and  
16 therefore was an adverse action under the Law. City of Holyoke, 35 MLC 153, 156, MUP-  
17 05-4503 (2009) (citing Town of Dracut, 25 MLC 131, 133, MUP-1397 (February 17,  
18 1999)).

## 19 **Unlawful Motivation**

20 To support a claim of unlawful motivation, the last element of a prima facie case,  
21 a charging party may proffer direct or indirect evidence of discrimination. Lawrence  
22 School Committee, 33 MLC 90, 97, MUP-02-3631 (December 13, 2006) (citing Town of  
23 Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1, 2002), aff'd sub nom. Town of

1 Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005)). Direct evidence is  
2 evidence that, "if believed, results in an inescapable, or at least a highly probable  
3 inference that a forbidden bias was present in the workplace." Wynn & Wynn, P.C. v.  
4 Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (quoting  
5 Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991)).

6 Unlawful motivation also may be established through circumstantial, or indirect,  
7 evidence and reasonable inferences drawn from that evidence. Town of Carver, 35 MLC  
8 29, 48, MUP-03-3894 (June 30, 2008) (citing Town of Brookfield, 28 MLC at 327-  
9 328). Several factors may suggest unlawful motivation, including: the timing of the  
10 alleged discriminatory act in relation to the protected activity; triviality of reasons, or  
11 shifting and inconsistent reasons given by the employer; disparate treatment; an  
12 employer's deviation from past practices; or expressions of animus or hostility towards a  
13 union or the protected activity. Town of Carver, 35 MLC at 48 (citing Melrose School  
14 Committee, 33 MLC 61, 69, MUP-02-3549 (September 27, 2006)); Lawrence School  
15 Committee, 33 MLC 90, MUP-02-3631 (December 13, 2006); Cape Cod Regional  
16 Technical High School District Committee, 28 MLC 332, 335, MUP-2541 (May 15, 2002).

### 17 Anti-Union Animus

18 The Charging Parties argue that MacDonald expressed animosity towards the  
19 Charging Parties and their engagement in concerted, protected activity in her  
20 investigation report. According to the Charging Parties, MacDonald's comments in the  
21 investigation report are evidence of retaliation because the Fire Commission relied  
22 heavily on her findings and recommendations when deciding to terminate them. I agree

1 with the Charging Parties that MacDonald made statements in her investigation report  
2 that criticized or commented negatively about the Charging Parties' protected, concerted  
3 activity. MacDonald was hyper critical of the Charging Parties for engaging in concerted,  
4 protected activity such as complaining about Egloff's aggressive behavior, and  
5 participating in the State Police investigation. Also, MacDonald criticized the Charging  
6 Parties for filing grievances.<sup>73</sup> Thus, the Charging Parties have demonstrated that  
7 MacDonald had an animosity toward employees exercising their rights under the Law.

8 Stray remarks in the workplace, statements by people without the power to make  
9 employment decisions, and statements made by decision makers unrelated to the  
10 decisional process itself do not suffice to satisfy a charging party's threshold burden. Id.  
11 at 667 (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989)). In this case, the  
12 Charging Parties have not provided any evidence that MacDonald had the power to make  
13 employment decisions in the Fire Department. However, the Charging Parties established  
14 that MacDonald was involved in a meaningful way with the decision-making process and  
15 influenced the Fire Commission's decision to terminate Boutin, Kennedy, and Miltimore.  
16 The Fire Commission is the governmental body that decided to terminate the Charging  
17 Parties. The Fire Commission read MacDonald's report, and MacDonald testified at the  
18 hearing. In fact, since the City's post-hearing brief states that the Fire Commission's

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<sup>73</sup> In the investigation report, MacDonald made the following comments: 1) Kennedy showed his "Frenzied support" because he "lives to filing grievances and create upset and conflict in the Department," 2) Kennedy jumped on the bandwagon because he loves to complain and tilt the windmills, and 3) Miltimore is always at the center of controversy involving lawyers and legal authorities." She also criticized Kennedy over his "excitement when he was talking about his grievances."

1 decision to terminate the Charging Parties was based solely on MacDonald's  
2 investigation report, it is clear that the Fire Commission did not consider the Charging  
3 Parties' testimonies at the WFC termination hearing. Also, the Fire Commission copied  
4 and pasted large sections of MacDonald's report in the 2018 and 2019 termination  
5 notices. As such, the Charging Parties established that MacDonald's report and opinions  
6 infected the Fire Commission's decision with the anti-union animus that MacDonald  
7 harbored.

8         The CERB has found that in cases where the decision-maker does not make an  
9 independent review of the facts and bases the decision to act on the evaluations and  
10 recommendations of other supervisors, the motives of the supervisors in a discrimination  
11 case will be imputed to the decision-maker. Board of Regents, 12 MLC 1315, 1335. SUP-  
12 2758 (October 25, 1985); see Trustees of Forbes Library, 384 Mass. 559, 569-70 (1981).  
13 Although MacDonald does not supervise any of the Charging Parties, the record clearly  
14 shows that the Fire Commission based its decision to terminate Boutin, Miltimore and  
15 Kennedy on MacDonald's evaluations and opinions of them.

16         Additionally, during the termination hearing, the Fire Commission criticized Boutin,  
17 Kennedy, and Miltimore for their attempts to shine a light onto Egloff's sexual assault  
18 allegations and other concerning behavior. Siegel criticized the Charging Parties for  
19 reporting Egloff's alleged sexual misconduct to the State Police. They also stated that the  
20 Charging Parties, "in disseminating secondhand information regarding alleged events  
21 that occurred years before, and then making efforts to ensure those allegations were  
22 amplified and spread on the part of these three firefighters, displays not just poor  
23 judgment. It shows an attempt to discredit a fellow employee in a manner that was

1 discourteous to a fellow employee and which they knew or should have known would  
2 have been a blow to employee morale.”

3         The City argued that it did not terminate Boutin, Kennedy, and Miltimore because  
4 of their engagement in protected, concerted activity. The City asserts that many of the  
5 Charging Parties’ grievances were filed after the MacDonald report was completed, and  
6 the entire basis for the Fire Commission’s termination vote was MacDonald’s report. As  
7 such, the City argues that it could not have terminated Boutin, Kennedy, and Miltimore  
8 for challenging their terminations in court, or for any of the other grievances that were  
9 filed thereafter. In part, I agree with the City. Considering that the City first unsuccessfully  
10 attempted to terminate the Charging Parties in 2018, and then initiated the termination  
11 process again in 2019 for the same reasons, the City clearly did not terminate the  
12 Charging Parties based on any of the grievances or complaints filed after the first  
13 termination proceedings.

14         However, as noted, the City admitted in its brief that the Fire Commission based  
15 its decision to terminate the Charging Parties on MacDonald’s report. As explained above,  
16 MacDonald’s report is filed with animosity for the Charging Parties’ protected, concerted  
17 activity such as filing past grievances, Boutin’s attempt to speak with Reagan about  
18 Egloff, the February 2018 meeting, and the Charging Parties’ participation in the State  
19 Police investigation. Moreover, the Fire Commission’s testimony at the 2019 disciplinary  
20 hearing, and wording of the termination notices clearly show that the Commission  
21 terminated the Charging Parties in an effort to discipline and discourage firefighters from  
22 criticizing Egloff and illuminating concerns about his promotion by attending meetings to  
23 discuss the sexual assault allegations and speaking with the State Police about the sexual

1 assault allegations.<sup>74</sup> In sum, the Charging Parties demonstrated that the Fire  
2 Commission's decision to terminate Boutin, Miltimore, and Kennedy was motivated by a  
3 desire to penalize or discourage protected activity. Thus, the Charging Parties have  
4 satisfied the fourth element of the prima facie case of retaliation.

5 **Legitimate, Non-Discriminatory Motive**

6 As the Charging Parties have established a prima facie case of retaliation, the City  
7 may produce evidence that it had a legitimate, non-discriminatory motive for taking the  
8 adverse action. Higher Education Coordinating Council, 23 MLC 90, 93, SUP-4090  
9 (September 17, 1996); Town of Clinton, 12 MLC 1361, 1365, MUP-5659 (November 9,  
10 1985) (citing Trustees of Forbes Library, 364 Mass. at 563). The City argued that the Fire  
11 Commission voted to terminate Boutin, Miltimore, and Kennedy based on the information,  
12 findings, and recommendations contained in MacDonald's report, and acting on the  
13 recommendations of an outside investigator is a legitimate, non-discriminatory reason for  
14 the vote of termination. As the City has not offered any other argument for how its actions  
15 were legitimate and non-discriminatory, I will examine the reasons the City provided in  
16 Termination Notices that included sections of the investigation report.

17 In each Termination Notice, the City states that MacDonald's investigation  
18 uncovered that the charges listed on the anonymous letter related to the sexual assault  
19 allegations against Egloff were unfounded and were created as part of a conspiracy to  
20 discredit and harm Egloff's reputation. First, the City's reasoning does not ring true

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<sup>74</sup> The City argued that the Charging Parties should have filed a grievance if they wanted to address concerns about Egloff's sexual assault allegations, but never provided which article of the CBA that the Charging Parties should have cited.



1 because Egloff admitted to assaulting the Nurse, therefore some of the sexual assault  
2 allegations referenced in the anonymous letter clearly were true. Second, the City failed  
3 to prove that Boutin, Miltimore, or Kennedy wrote the anonymous letter. Moreover, the  
4 City failed to demonstrate that Boutin, Kennedy, or Kennedy were part of a conspiracy to  
5 discredit or harm Egloff's reputation. Rather, the record shows that the Charging Parties  
6 took actions to address concerns about sexual assault allegations against Egloff in light  
7 of his imminent promotion to Chief.

8         MacDonald found that Boutin conspired with others to have Egloff arrested for  
9 rape. However, the City has not provided any evidence to suggest that Boutin was  
10 engaged in a plot to effectuate Egloff's arrest.<sup>75</sup> MacDonald also found that Boutin aided  
11 in sending the anonymous letter to the City by providing information to Miltimore and  
12 Kennedy. Again, the City did not provide sufficient evidence to establish that Boutin had  
13 sent the anonymous letter or aided others in sending the letter. However, even if the City  
14 had proven that Boutin was involved in sending the letter, it would not demonstrate that it  
15 had legitimate, non-discriminatory reasons for terminating Boutin. Throughout the  
16 hearing, the City has argued that the Charging Parties should have filed a grievance or a  
17 complaint with the personnel director if they had concerns about the sexual assault  
18 allegations against Egloff. The anonymous letter described several concerns about Egloff

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<sup>75</sup> Although Boutin did inform two-unit members that Egloff was going to be arrested for rape, she did not inform the State Police that Egloff had allegedly raped anyone. The City did not provide any evidence to establish that Boutin as an individual or working with others spoke with the State Police or attempted to speak with Reagan with the goal in mind to have Egloff arrested for rape. The record is clear that Boutin and the other Charging Parties spoke to the State Police because they had reasonable concerns about their terms and conditions of employment in light of the sexual assault allegations and Egloff's imminent promotion to Fire Chief.

1 becoming the Fire Chief, including the sexual assault allegations, and it was addressed  
2 to the Personal Director. Thus, the City both disciplined the Charging Parties for not  
3 informing the Personnel Director of their concerns, and criticized them for allegedly  
4 informing the Personal Director of their concerns through an anonymous letter.

5         MacDonald found that Miltimore made a false report of rape to the State Police.  
6 However, Miltimore did not make a report of rape. In fact, Miltimore repeatedly told the  
7 State Police that he had no firsthand knowledge about any of the sexual assault  
8 allegations and only conveyed what he had heard from others. MacDonald accused  
9 Miltimore of harassing the Nurse and Secretary to come forward with their allegations.  
10 However, the City failed to establish that Miltimore harassed anyone, including the Nurse  
11 and Secretary. Finally, MacDonald accused Miltimore of defaming Egloff to others in the  
12 Department and the public. As discussed above, Miltimore exercised his rights under the  
13 Law when he gathered unit members to discuss concerns about Egloff's promotion to  
14 Chief in light of the sexual assault allegations, when he reached out for guidance on the  
15 situation from his friend at the State Police, and when he complied with the State Police  
16 and provided a statement for the investigation. Consequently, the City failed to establish  
17 that Miltimore defamed Egloff to others in the Department and public.

18         In the investigation report, MacDonald found that Kennedy was involved in with  
19 accusing Egloff of rape. Again, the City has not provided any evidence to show that  
20 Kennedy had accused Egloff of rape. Also, MacDonald found that Kennedy harassed the  
21 Secretary and Nurse. However, I find that the text messages included in MacDonald's  
22 investigation report between Kennedy and others, do not indicate that he was harassing  
23 or annoying anyone. MacDonald accuses Kennedy of plotting against Egloff by citing his

1 involvement in the February meeting and his attempts at recruiting other firefighters to  
2 attend the meeting. Neither Kennedy's participation in the February gathering of unit  
3 members to discuss concerns about a supervisor, nor his attempts to have other unit  
4 members attend the meeting constitutes a plot to accuse Egloff of rape.<sup>76</sup>

5 For the aforementioned reasons, the City has not satisfied its burden to produce  
6 credible evidence that it had reasonable and legitimate reasons for terminating Boutin,  
7 Kennedy, and Miltimore. Accordingly, I conclude that the City failed to satisfy its burden  
8 of production and did not demonstrate that legitimate, non-discriminatory reasons  
9 motivated its adverse action against Boutin, Kennedy, and Miltimore.

10 **But for Test**

11 Finally, even if the City had demonstrated that legitimate reasons motivated its  
12 adverse action, which it did not, the Charging Parties proved that but for the protected  
13 activity, the City would not have terminated Boutin, Miltimore, and Kennedy. Egloff  
14 admitted to sexually assaulting the Nurse, the Fire Commission knew of the admission,  
15 and the Fire Commission chose not to discipline Egloff for the assault. Rather, the Fire  
16 Commission chose to promote Egloff to Fire Chief despite the assault, the other anger  
17 management issues discovered by MacDonald, and MacDonald's recommendation that  
18 Egloff not receive the promotion. The City followed the recommendations in MacDonald's  
19 report to terminate the Charging Parties and discipline Generoux and Kozlowski, but  
20 ignored MacDonald's recommendation that Egloff not be promoted to Chief. The City's

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<sup>76</sup> In the investigation report and the termination notices for each Charging Party, the City lists that Boutin, Kennedy, and Miltimore violated several sections of the Employee Manual. However, the investigation report does not clearly explain how each Charging Party violated each section of the Employee Manual listed.

1 double standard of executing the disciplinary recommendations for the unit members that  
2 engaged in concerted, protected activity, but ignoring the recommendations for Egloff  
3 demonstrates that but for the Charging Parties' concerted, protected activity, the City  
4 would not have terminated them.

5 Further, the City argued that it disciplined the Charging Parties because they lied  
6 and participated in a plot to accuse Egloff of rape in an attempt to derail his promotion.  
7 However, an employee reporting allegations that their supervisor had allegedly sexually  
8 assaulted women, when they reasonably believed the allegations to be true, is not the  
9 same as lying. Even if the sexual assault allegations against Egloff were not true, it would  
10 not mean that the Charging Parties lied. As explained above, the Charging Parties had  
11 ample reason to believe that Egloff had sexually assaulted Humason, the Nurse, and the  
12 Secretary.

13 In addition to alleging that the Charging Parties participated in a plot to derail  
14 Egloff's promotion, the City asserted that it terminated Boutin for spreading rumors. I  
15 agree that Boutin was wrong when she falsely informed fellow unit members that Egloff  
16 was going to be arrested for rape. However, the City cannot credibly assert that it  
17 terminated the Charging Parties for engaging in egregious acts, such as allegedly  
18 participating in a plot to have Egloff arrested for rape and spreading rumors about that  
19 arrest, when it not only failed to address Egloff's admission that he had sexually assaulted  
20 the Nurse, but then promoted him to Chief.

21 Moreover, the City terminated the Charging Parties for spreading rumors about the  
22 sexual assault allegations. However, the record is clear that many firefighters were

1 gossiping about the sexual assault allegations, yet the City only choose to discipline those  
2 unit members that engaged in the protected, concerted activities described above.

3 Finally, the City argues that Egloff's assault of the Nurse happened outside the  
4 City limits when he was technically off duty. However, the Charging Parties held the  
5 February 2018 meeting and spoke to the State Police outside of work and on their own  
6 time. The City's double standards for disciplining its employees for off duty and egregious  
7 conduct illustrates that but for the Charging Parties' concerted, protected activity, it would  
8 not have terminated Boutin, Kennedy, and Miltimore.

9 CONCLUSION

10 Based on the record and for the reasons explained above, I find that the City  
11 terminated Boutin, Kennedy, and Miltimore in retaliation for their protected, concerted  
12 activity in violation of Section 10(a)(3), and derivatively Section 10(a)(1) of the Law.

13 ORDER

14 WHEREFORE, based upon the foregoing, it is hereby ordered that the City shall:

15  
16 1. Cease and desist from:

- 17  
18 a) Disciplining unit members in retaliation for their protected, concerted  
19 activity;  
20  
21 b) In any like manner, interfering with, restraining and coercing its  
22 employees in any right guaranteed under the Law.  
23

24 2. Take the following action that will effectuate the purposes of the Law:

- 25  
26 a) Rescind the termination letters issued to Boutin, Kennedy, and  
27 Miltimore;  
28

- 1           b) Immediately reinstate Boutin, Kennedy, and Miltimore to their  
2           positions and make them whole for any loss of benefits and wages  
3           from the date of their termination to the date of compliance with this  
4           order, plus interest on all sums owed at the rate specified in M.G.L.  
5           c. 231, Section 6I, compounded quarterly;  
6  
7           c) Post immediately in all conspicuous places where members of the  
8           Union's bargaining unit usually congregate, or where notices are  
9           usually posted, including electronically, if the City customarily  
10          communicates with these unit members via intranet or email and  
11          display for a period of thirty (30) days thereafter, signed copies of the  
12          attached Notice to Employees;  
13  
14          d) Notify the DLR in writing of the steps taken to comply with this  
15          decision within ten (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF LABOR RELATIONS



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MEGHAN VENTRELLA, ESQ.

SO ORDERED.

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Department of Labor Relations not later than ten days after receiving notice of this decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.



# NOTICE TO EMPLOYEES

POSTED BY ORDER OF A HEARING OFFICER OF  
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS  
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the City of Westfield (City) violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by terminating Kyle Miltimore (Miltimore), Rebecca Boutin (Boutin), and David Kennedy (Kennedy) in retaliation for engaging in concerted, protected activity.

Chapter 150E gives public employees the right to form, join or assist a union; to participate in proceedings at the DLR; to act together with other employees for the purpose of collective bargaining or other mutual aid or protection; and, to choose not to engage in any of these protected activities.

WE WILL NOT retaliate against Boutin, Miltimore, or Kennedy for engaging in concerted, protected activities.

WE WILL NOT in any like manner, interfere with, restrain and coerce any employees in the exercise of their rights guaranteed under the Law.

WE WILL immediately offer to reinstate Boutin, Kennedy, and Miltimore to their positions and make them whole for any loss of benefits and wages from the date of their termination to the date of compliance with this order, plus interest on all sums owed at the rate specified in M.G.L. c. 231, Section 6I, compounded quarterly.

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City of Westfield

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Patrick Egloff

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED**

This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 2 Avenue de Lafayette, Boston MA 02111 (Telephone: (617- 626-7132).