

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

In the Matter of

INTERNATIONAL BROTHERHOOD OF
POLICE OFFICERS, LOCAL 364

and

STEVEN VIGNEAULT

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Case No.: MUPL-17-5778

Date Issued: February 13, 2020

Hearing Officer:

Kathleen Goodberlet, Esq.

Appearances:

Shawn Allyn, Esq. - Representing Stephen Vigneault

Michael Manning, Esq. - Representing the International Brotherhood of
Police Officers, Local 364

HEARING OFFICER'S DECISION

SUMMARY

The issues in this case are whether the International Brotherhood of Police Officers, Local 364 (Union) violated Section 10(b)(1) of Massachusetts General Laws, Chapter 150E (the Law) by interfering, restraining and coercing Steven Vigneault (Vigneault) in the exercise of his rights guaranteed under Section 5 of the Law by providing him with false information on August 10, 2016, and failing to properly represent him after the City of Springfield (City) charged him on June 16, 2016 with the use of excessive force during the February 27, 2016 arrest of a juvenile. For the following reasons, I find that the Union did not violate the Law as alleged.

STATEMENT OF THE CASECharge

On February 1, 2017, Vigneault filed a Charge of Prohibited Practice (Charge) with the Department of Labor Relations (DLR) alleging that the Union had engaged in prohibited practices within the meaning of Sections 10(a)(1), (2), (3), (4), (5), and (6) of Massachusetts General Laws, Chapter 150E (the Law). On February 22, 2017, Vigneault filed an Amended Charge, alleging that the Union had engaged in prohibited practices within the meaning of Sections 10(b)(1) and 10(b)(3) of the Law. A DLR investigator conducted an in-person investigation on May 19, 2017 and issued a Complaint of Prohibited Practice (Complaint) and Partial Order of Dismissal (Partial Dismissal) on August 24, 2017. On September 5, 2017, the Union filed an Answer to the Complaint.

Complaint

The August 24, 2017 Complaint alleges that Union President Joseph Gentile (Gentile) and Union Attorney Kevin Coyle (Coyle) provided Springfield Police Department (SPD) Narcotics Unit Officer Vigneault with false information on August 10, 2016, thereby interfering, restraining, and coercing Vigneault in the exercise of his rights guaranteed under Section 5 of the Law, in violation of Section 10(b)(1) of the Law. The Complaint specifically alleges that:

- Coyle and Gentile falsely told Vigneault that Town of Wilbraham (Wilbraham) Police Officer Christopher Rogers (Rogers) would testify before the City of Springfield Citizen Police Hearing Board (CPHB)¹ on August 11, 2016 and

¹ The August 24, 2017 Complaint, witness testimony, and the parties' briefs variously refer to the "Citizen Police Hearing Board", the "Civilian Police Hearings Review Board," and the "Community Police Review Board." For the purposes of this decision I use the term Citizen Police Hearing Board or CPHB.

1 identify Vigneault as the officer who kicked a juvenile during a February 26 or 27
2 2016 arrest in the Town of Palmer (Palmer);
3

- 4 • Coyle and Gentile falsely told Vigneault that Police Commissioner John Barbieri
5 (Barbieri) told them that he (Vigneault) should submit his resignation in writing by
6 11:00 a.m. on August 11, 2016, or that he would be terminated at the August 11,
7 2016 CPHB hearing; and
8
- 9 • Gentile falsely advised Vigneault that if he failed to resign, he would face criminal
10 prosecution.
11

12 The Union denied all of these allegations in its September 5, 2017 Answer.

13 Partial Dismissal

14 The DLR Investigator dismissed Vigneault's allegations that the Union violated
15 Section 10(b)(1) of the Law by failing to disclose an alleged conflict of interest by Coyle
16 in representing Vigneault and other bargaining unit members. The Investigator also
17 dismissed Vigneault's allegations that the Union violated Section 10(b)(3) of the Law by
18 refusing to participate in an August 11, 2016 disciplinary hearing. On August 30, 2017,
19 Vigneault filed a Request for Review of the Partial Dismissal with the Commonwealth
20 Employment Relations Board (CERB or Board). The Union filed its response to
21 Vigneault's Request for Review on September 6, 2017. On January 26, 2018, the CERB
22 issued a ruling affirming the Investigator's Partial Dismissal. The same day, Vigneault
23 filed a Notice of Appeal pursuant to M.G.L. c. 150E, § 11 regarding the CERB's
24 affirmation of the Investigator's Partial Dismissal. The appeal is pending.

25 Hearing

26 I conducted a hearing on February 1, February 2, March 9, and August 27, 2018,
27 at which both parties had the opportunity to be heard, to examine witnesses and to

1 introduce evidence.² Both parties filed post-hearing briefs on December 28, 2018.³
2 Based on the record, which includes witness testimony, my observation of the
3 witnesses' demeanor, stipulations of fact, and documentary exhibits, and in
4 consideration of the parties' arguments, I make findings of fact and render the opinion
5 below.

6 Motions

7 Below is a list of motions that arose before and during the hearing that are
8 relevant to the scope of this decision.

- 9 • On January 10, 2018, the Union filed a Motion to Bifurcate, and Vigneault filed an
10 Opposition to the Motion to Bifurcate. On January 30, 2018, I allowed the Union's
11 motion, and Vigneault immediately filed an Objection to the Ruling on Bifurcation
12 and Request to Continue the Hearing. I denied this motion on January 31, 2018.
13
- 14 • On January 17, 2018, Vigneault filed a Motion to Introduce Evidence of
15 Representative's Conflict as to the Unlawful Motivation Evidence Notwithstanding
16 Pending DLR Appeal (Motion to Introduce Conflict of Interest Evidence). The

² Pursuant to its Regulation, 456 CMR 13.12, the DLR created audio recordings as the official record of the hearing. Over the course of the hearing, the City, not a party to the case, requested copies of the DLR recordings, and had transcripts of the first three days of the hearing produced by Roxanne C. Costigan, Accurate Court Reporting, 1500 Main Street, Suite 222, Springfield, MA. I notified the parties by email on May 2, 2018 that I believed the City had transcripts, and subsequently requested the transcripts. The City provided the transcripts to the DLR on June 15, 2016. At the hearing on August 27, 2018, I told the parties that the City had provided the DLR with transcripts. On August 29, 2018, the Charging Party made a public records request of the DLR for the transcripts, and on September 4, 2018 the DLR mailed copies of the transcripts to the Charging Party. The audio recordings remain the official record of the hearing at this time because neither party requested that the transcripts be designated as the official record of the proceedings pursuant to the procedure required by 456 CMR 13.12.

³ Before the hearing, it appeared that a decision in this case could include an order to the Union to attempt to remedy the harm to Vigneault by taking the steps necessary to pursue a grievance on his behalf. Therefore, I concluded that questions concerning the Union's potential liability to Vigneault should be decided after a determination of whether the Union breached its duty of fair representation. Consequently, during the hearing the Union did not present evidence on the merits of any potential grievance regarding Vigneault because on January 30, 2018, I allowed the Union's January 10, 2018 motion to bifurcate the case.

1 Union filed its opposition on January 24, 2018. I denied this motion on January
2 26, 2018.

- 3
- 4 • On January 25, 2018, Vigneault filed a Motion for IBPO to Produce Conflict of
5 Interest Waivers of Attorney Kevin Coyle, IBPO's Representative (Motion for
6 Conflict of Interest Waivers). I denied this motion on January 26, 2018.
 - 7
 - 8 • On January 26, 2018, Vigneault filed a Motion to Continue the Hearing on Partial
9 Charge Until Judicial Review Occurs on the Full Charge and Due to Witnesses'
10 Unavailability. I denied this motion on January 26, 2018.
 - 11
 - 12 • On January 29, 2018, Vigneault filed an Objection to Ruling on the Denial of His
13 Motion to Introduce Evidence of Conflict and Unlawful Motivation. This document
14 required no DLR response because it did not comply with any DLR Regulation.
 - 15
 - 16 • On January 30, 2018, Vigneault filed a Motion to Treat the Respondent-
17 Witnesses, Agents and Employees as Adverse When Called by the Charging
18 Party. At the February 1, 2018 hearing, Vigneault clarified on the record that the
19 motion was to treat Gentile, Coyle, and SPD Officers Gregg Bigda (Bigda), Luke
20 Cournoyer (Cournoyer), and Gail Gethins (Gethins) as adversary witnesses. I
21 allowed the motion.
 - 22
 - 23 • On February 1, 2018, Vigneault filed motions for interlocutory appeal relative to
24 my two January 26, 2018 rulings regarding a conflict of interest and unlawful
25 motivation evidence, and an appeal to the CERB of the CERB's January 26,
26 2018 ruling affirming the investigator's Partial Dismissal. The CERB issued a
27 ruling denying these three motions on February 28, 2018.
 - 28
 - 29 • On April 3, 2018, Vigneault filed a Motion to Exclude Gethins' Testimony,
30 Gentile's Testimony and for Sanctions as to Gentile's Overt Violation of the
31 Sequestration Order Issued by the DLR and Request for Hearing. I denied this
32 motion in its entirety on the record at the August 27, 2018 hearing but allowed
33 Vigneault to question witnesses about the issues raised in the motion and raise
34 related arguments his post-hearing brief.
 - 35

36 Procedural Issues

37 Sequestration

38 On February 1, 2018, the first day of hearing in this case, I imposed a
39 sequestration order on all witnesses, but allowed each party to select one individual to
40 represent the party in the proceeding and, if necessary one other individual deemed
41 essential to the presentation and management of the case. The Charging Party selected

1 Vigneault and the Union selected Gentile. Although Vigneault does not argue explicitly
2 in his post-hearing brief that Gentile's or Gethins' testimony should be excluded for a
3 violation of the sequestration order, he asserts that "Gentile communicated material
4 information to Gethins prior to her testimony." This allegation is factually unsupported by
5 the record. Therefore, I have not excluded Gentile's or Gethins' testimony.

6 During the course of the DLR hearing, Gentile exchanged several text messages
7 with Gethins.⁴ In each instance, Gethins, a bargaining unit member, initiated contact
8 with Gentile. As the Union President, Gentile felt obliged to respond.⁵ The first text from
9 Gethins to Gentile concerned a settlement agreement between Vigneault and Coyle in a
10 pending civil case. Gethins texted Gentile asking, "did Coyle settle?" Gentile responded
11 "yes, where did you hear that?" Gethins responded with words to the effect that "Bigda
12 had been talking about it." There is no connection between Vigneault's civil action
13 against Coyle and this DLR case, although both Vigneault and Coyle testified in the
14 DLR case. In a second text message to Gentile, Gethins requested Gentile pick up a
15 sick leave note from her because she was unable to attend a particular DLR hearing
16 date. In the course of picking up the note from Gethins, Gentile did not discuss Gethins'
17 testimony, his testimony, or any testimony. In a third text message to Gentile on March
18 8, 2016, Gethins asked Gentile to give her a call when he had a chance. When he

⁴ Prior to the start of the hearing, Gethins texted Gentile on January 30, 2018 asking him to call her. Gentile did not know why Gethins had contacted him. When Gentile called her, she asked why Attorney Shawn Allyn (Allyn) called her as a witness at the DLR hearing because Allyn knew she would testify that Vigneault told her that he kicked the juvenile. Gentile did not ask Gethins what her testimony would be or otherwise discuss her testimony beyond what she had said to him.

⁵ Gentile understood that the sequestration order meant that he could not discuss witness testimony, either his or others, in a case. He did not interpret the order as a complete ban on talking to any other witness in the case.

1 called, she asked him why she had been subpoenaed by a grand jury on issues related
2 to the kicking of a juvenile. Gentile told her he thought she should respond to the
3 subpoena. Gethins did not have any other questions and did not discuss her testimony.

4 Fifth Amendment

5 At the DLR hearing on February 1-2, 2018, Bigda and Cournoyer invoked their
6 rights under the Fifth Amendment of the Constitution of the United States and Article 12
7 of the Massachusetts Declaration of Rights in response to every question asked of them
8 during their testimony. On February 2, 2018 I ruled that I would consider taking an
9 adverse inference against Bigda or the Union from his refusal to testify. The Charging
10 Party argues in its post-hearing brief that an adverse inference should be drawn against
11 the Union for the failure of Bigda and Cournoyer to testify. I have analyzed the factual
12 and legal arguments on this point below. The Charging Party also argues in its brief that
13 by "refusing to answer by pleading their Fifth Amendment rights as to questions related
14 to the charge, all testimony previously provided by each . . . should be stricken." The
15 meaning of "testimony previously provided by each" is unclear. Bigda and Cournoyer
16 did not provide any other testimony aside from their responses to questions in which
17 they invoked their rights. Therefore, there is no testimony "previously provided by each"
18 to be stricken.

19 STIPULATED FACTS
20

21 The parties agreed to the following stipulations of fact:⁶
22

- 23 1. The City is a public employer within the meaning of Section 1 of the
24 Law.

⁶ I have made minor technical edits to the parties' stipulations for consistency and clarity.

- 1 2. The Union is an employee organization within the meaning of Section 1
- 2 of the Law.
- 3
- 4 3. The Union is the exclusive bargaining representative for police officers
- 5 employed by the City in its Police Department as patrol officers.
- 6
- 7 4. In the Spring of 2016, the City conducted an internal investigation
- 8 concerning the conduct of Officers Bigda, Gethins, and Vigneault.
- 9
- 10 5. On June 2, 2016, Bigda, Vigneault, and Gethins received from Barbieri
- 11 the same Notice of Inter-Departmental Disciplinary Charges, individually
- 12 addressed to each of them.⁷
- 13
- 14 6. On June 14, 2016, Vigneault submitted a report to Sergeant William
- 15 Andrew (Andrew) that is included in Andrew's June 16, 2016 Special
- 16 Report to Police Commissioner Barbieri.
- 17
- 18 7. The City issued identical letters entitled "Notice of Hearing" dated July
- 19 5, 2016 to Vigneault and Bigda.
- 20
- 21 8. The only discipline that resulted from the July 5, 2016 Notice of Hearing
- 22 was a 10-day suspension of Bigda.
- 23
- 24 9. The City issued identical letters regarding the June 16, 2016 Notice of
- 25 Inter-Departmental Disciplinary Charges from Commissioner Barbieri to
- 26 Officers Vigneault, Bigda, Cournoyer, Matthew Rief (Rief), Juan
- 27 Rodriguez (Rodriguez) and Jose Roblais (Roblais).
- 28
- 29 10. The City issued identical letters regarding the July 20, 2016 Notice of
- 30 Hearing from Barbieri to Vigneault, Bigda, Cournoyer, Rief, Rodriguez,
- 31 and Roblais.
- 32
- 33

FACTUAL FINDINGS

Background

34 In March of 2015, Vigneault began working at the SPD as a patrol officer. After

35

36 working as a patrol officer for a few months, he temporarily left for a few months to

⁷ I consolidated three separate stipulations into this one sentence. The Union stipulated, without objection from Vigneault, that Gethins received the June 2, 2016 Notice of Inter-Departmental Disciplinary Charges from Barbieri. Both parties stipulated that Vigneault and Bigda received the same June 2, 2016 notice that Gethins received, individually addressed.

1 serve overseas with the Air National Guard. Upon returning to the SPD, Vigneault
2 resumed working as a patrol officer. Shortly thereafter, the City transferred Vigneault to
3 work in the Narcotics Unit as an undercover officer.⁸

4 As of July of 2018, Union President Gentile had been employed with the SPD for
5 24 years. He works 8:00 a.m. to 4:00 p.m. in the SPD property room. By June 1, 2018,
6 Gentile had been Union President for four years. He previously had served as a Union
7 Steward for two years. Prior to the DLR hearing on March 9, 2018, he had known
8 Vigneault for 26 years and Bigda for 24 years. Gentile and Vigneault worked at the
9 Hampden County Sheriff's Department at the same time for a couple of years. Gentile
10 met Bigda at the Massachusetts Police Academy. Gentile does not typically socialize
11 with Bigda, but over the course of the last 24 years, he and Bigda have attended the
12 same non-work events several times. Bigda has never held a Union position, been a
13 Union employee, or otherwise been an agent of the Union.

14 Overview of Disciplinary Process

15 The City and the Union are parties to a collective bargaining agreement for the
16 period July 1, 2009 through June 30, 2012 (2009-2012 Agreement). The relevant

⁸ Vigneault's testimony about his work history, the dates that he served overseas after being hired as an SPD patrol officer, and the date of his transfer to the SPD Narcotics Unit is vague and conflicts with other evidence in the record. In terms of his prior experience, Vigneault testified on direct examination that he sought his associate's degree "right after high school" and "finish[ed] up in 2005." He also testified that "[a]fter college I got a job at the Hampden County Sheriff's Department. I was there for 14 years. Then I was teaching in Springfield, in Springfield for three years then I was working at loss prevention [for Stop and Shop and CVS]." Vigneault further testified that he "was on as a patrolman for about eight months and [then] did a tour of duty overseas with the Air Force for six months. As soon as I got back I got transferred into narcotics." I need not resolve discrepancies in Vigneault's testimony about his work history because they are not material to my decision. However, I find that Vigneault's inability to testify with precision about personal information undermines his overall credibility.

1 portions of the 2009-2012 Agreement remained in effect during the time period at issue
2 in this case. Article 5 sets forth the grievance arbitration process and Article 6 sets forth
3 disciplinary procedures.

4 ARTICLE 5.

5
6 GRIEVANCE PROCEDURE:

7
8 5.01 Any grievance which may arise between the parties concerning the
9 application or interpretation of this Agreement, unless specifically
10 excluded by this Agreement, shall be settled in the following manner.

11
12 Step One. An aggrieved employee, or a Union representative acting on
13 his/her behalf, shall reduce the grievance to writing and present it to the
14 Captain in charge, or in the absence of the Captain, to the next superior
15 officer in charge within ten (10) days of the date of the grievance or his
16 knowledge of its occurrence.

17
18 The written grievance shall contain a statement of the grievance and the
19 facts involved; the provisions of the Agreement alleged to be violated; and
20 the remedy requested. The Captain (or the next superior officer in charge)
21 shall acknowledge in writing the date of receipt of the grievance.

22
23 In no case shall the officer in charge receiving the grievance be the officer
24 involved in the grievance. In the event that the grievance involves the
25 officer in charge, it shall be submitted to the officer next superior.

26
27 The Captain in charge, or in the absence of the Captain, to the next
28 superior officer in charge, shall issue a written response within ten (10)
29 days of the date of receipt of the grievance.

30
31 Step Two. If the grievance has not been resolved, the grievant, and/or
32 his Union representative, shall submit the grievance in writing to the
33 Police Commissioner, by service to his/her office within five (5) days from
34 the receipt of a decision from the Captain (or the next superior officer)
35 designee, or the expiration of the time when such decision was due,
36 whichever is later. If the aggrieved employee, and/or his Union
37 representative, desires to have a meeting with the Police Commissioner,
38 or his/her designated representative, concerning the grievance, the
39 aggrieved employee and/or his Union representative shall so notify the
40 Police Commissioner, or his designated representative, at the time of
41 submission of the written grievance. If a hearing is requested under this
42 step, the Police Commissioner, his designated representative, shall meet
43 with the grievant, and/or his Union representative, within fourteen (14)

1 days after receipt of the grievance. The Police Commissioner, or his
2 designated representative, shall render a decision in writing, stating the
3 basis for such decision, within seven (7) days from the date of such
4 meeting, or if no meeting was requested, within fourteen (14) days of
5 receipt of the grievance.
6

7 Step Three. Within ten (10) days after receipt of the decision of the
8 Police Commissioner or the expiration of the time fixed for such decision,
9 whichever is later, if the grievance remains unresolved, the Union, but not
10 any individual police officer, may submit the grievance to arbitration
11 before the permanently appointed impartial arbitrator(s). The Union
12 shall notify the Police Commissioner in writing within the aforementioned
13 time period in its intent to submit the grievance to arbitration.
14

15 * * *

16
17 5.03 The decision and award of the arbitrator shall be in writing and shall
18 state his/her findings of fact, reasoning and conclusion. The award shall
19 be final and binding upon the City and the Union, provided, however, that
20 the arbitrator shall be without the power to alter, amend, add to or subtract
21 from the provisions of this Agreement. Nothing contained herein shall be
22 construed to forbid either party from resorting to court for relief from, or to
23 enforce rights under any arbitration award.
24

25 5.04 Choice of Remedy In the event of a disciplinary action involving a
26 suspension, dismissal, removal or termination, and subsequent to a
27 hearing before the Police Commissioner, the Union, on behalf of an
28 employee may, within ten (10) days of the receipt of said disciplinary
29 decision, elect to appeal said action by initiating an arbitration proceeding
30 in accordance with Section 5.01 above. Such appeal shall be the
31 exclusive remedy pursuant to the provisions of G.L. c. 150E, Section 8, as
32 amended. In the event that such an election is made under this paragraph,
33 the arbitrator may affirm, modify, or amend the action of the Police
34 Commissioner if it finds that such action was justified. Otherwise the
35 arbitrator may reverse such action and the person concerned shall be
36 returned to his position without loss of compensation or other rights.
37

38 5.05 Any grievance not processed within the time limitation provided
39 herein shall be deemed to have been waived unless the aggrieved
40 employee was precluded from compliance therewith by reason of
41 physical or mental "incapacity or such time limitations have been
42 waived or extended by written agreement of the parties. In computing
43 time limits set forth above, Saturdays, Sundays, and Holidays shall be
44 excluded.
45

46 5.06 The Union shall be entitled to submit grievances in the name of the

1 Union in the same manner as provided herein for employees, such
2 submission to commence at STEP TWO of 5.01 of this Article. Moreover,
3 where the subject matter of a grievance cannot reasonably be expected to
4 be resolved by a Captain (or next superior officer), the grievance
5 submission shall be commenced at STEP TWO of Section 5.01 of the
6 Article.

7
8 5.07 The Union may be represented by a Grievance Committee of not
9 more than three individuals to be designated by its Executive Board, one
10 of whom shall be the chief steward concerned. Said Grievance Committee
11 and/or the grievant may attend any meeting or hearing provided for herein.
12 The Union shall have the right to be represented by counsel of its
13 selection during the entire grievance procedure. The Union shall notify the
14 Police Commissioner of the names of Grievance Committee members in
15 writing, and any changes of members forthwith.

16
17 5.08 The three (3) members of the Union's grievance committee and the
18 grievant shall suffer no loss of pay for reasonable time spent by them
19 during their regular working hours in attendance at the meeting provided in
20 STEP TWO of Section 5.01 of the Article.

21
22 5.09 No member of the bargaining unit shall leave his job during
23 working hours to present, discuss or investigate a grievance without first
24 obtaining the consent of his commanding officer, which consent shall not
25 be unreasonably denied.

26
27 5.10 Matters which are subject to adjudication pursuant to G.L. c. 31, and
28 G.L. c. 32, except as provided by Paragraph 5.04, shall not be subject to
29 the grievance procedure.

30 31 ARTICLE 6.

32 33 DISCIPLINARY ACTION

34
35 6.01 No employee shall be removed, dismissed, discharged, suspended,
36 or disciplined except for just cause as provided by law.

37
38 6.02 If a superior officer has reason to orally reprimand an employee, he
39 shall do so in a manner that will not unduly embarrass the employee
40 before the public or his fellow workers.

41
42 6.03 Any employee who is requested to submit a special report which
43 may tend to incriminate him in a criminal proceeding shall have the right to
44 consult an attorney and/ or Union representative before submitting such
45 report.

1 6.04 All interdepartmental charges against a unit member shall be
2 initiated no later than ninety (90) days following the alleged offense or the
3 date the City became aware of the alleged offense whichever is later, and
4 a hearing on said charges shall be held within sixty (60) days thereafter,
5 unless a later date is mutually agreed upon by the parties.
6

7 6.05 Upon request a reprimand will be removed from personnel files and
8 not considered in any personnel action three (3) years from date of
9 issuance.
10

11 6.06 When an officer is assigned inside duty without a firearm, as a result
12 of an investigation of the officer, such investigation will be completed as
13 quickly as the situation allows so that officer may return to regular duty.
14 After ten working days of such inside duty without a firearm as a
15 result of an investigation, and no administrative or criminal charges have
16 been initiated, the officer will be provided weekly inside overtime
17 opportunities equal to the average hours of court time, overtime and
18 outside details which the officer worked in the six month period
19 immediately preceding the assignment to inside duty without a firearm. If
20 administrative or criminal charges are initiated against such officer, no
21 further overtime assignments shall be afforded pursuant to this section,
22 but if the officer is not found guilty of such charges, the parties shall meet
23 and discuss the issue of compensation lost because of said charges.
24

25 The disciplinary process may begin with a citizen complaint or an administrative
26 complaint. Pursuant to Article 6.04 of the Agreement, after an offense occurs or the City
27 learns that an offense has occurred, it has 90 days to initiate interdepartmental charges
28 against a bargaining unit member. Citizen complaints such as those for rudeness are
29 referred to a commanding officer to handle. The SPD IIU handles more serious
30 complaints. The City typically uses the 90-day timeframe pursuant to Article 6.04 of the
31 Agreement to conduct an IIU investigation.

32 After a case is assigned to an IIU investigator, the investigator writes a report on
33 the complaint and works with the City's Labor Relations Division to formulate a notice of

1 inter-departmental disciplinary charges to an officer based on the IIU report.⁹ The
2 Commissioner then signs off on the packet of both the notice of charges and the IIU
3 report to be delivered to the officer involved. The City's policy is to issue an officer a
4 notice of inter-departmental disciplinary charges together with the relevant IIU report.¹⁰
5 The City's notices of inter-departmental disciplinary charges typically cite every rule that
6 possibly could have been violated by all of the conduct during the incident at issue. It is
7 generally difficult to understand exactly what is at issue from a charge letter. However,
8 the attached IIU report explains how an officer might be implicated in the complaint.
9 Therefore, a notice of inter-departmental disciplinary charges must be read in
10 conjunction with the attached IIU report to be understood.

11 The City issues notices of disciplinary charges to any officer who is connected in
12 any way with an incident in which there is alleged misconduct, even if an IIU report does
13 not establish that an officer has violated any rules, policies, or procedures. Although the
14 City does not send the Union notices of discipline or IIU reports, the officers involved
15 typically give copies of the documents to Union President Gentile. Gentile then passes
16 the notices of discipline and corresponding IIU reports onto Union Attorney Coyle as
17 quickly as possible.

18 After initiating inter-departmental disciplinary charges against a bargaining unit
19 member, the City has sixty (60) days pursuant to Article 6.04 of the Agreement to hold a
20 hearing. An IIU case may be referred to a commanding officer or deputy chief for an

⁹ A notice of inter-departmental disciplinary charges is also referred to as a charge letter.

¹⁰ Gentile testified on direct examination that it is the SPD's policy to include a copy of an IIU report with a disciplinary notice. Barbieri also testified on direct examination that an IIU report is part of a "packet" issued with a charge letter to an officer.

1 administrative hearing. However, if the IIU report concerns a major issue or an external
2 complaint, it is referred to the CPHB. In hearings held before the CPHB, the IIU and the
3 CPHB call witnesses. The Union may also call witnesses. During the relevant time
4 period in this case, the CPHB had the authority to implement discipline.¹¹

5 With respect to the Union's internal case handling process during this 60-day
6 time period, President Gentile will contact Union Attorney Coyle to let him know about
7 the pending disciplinary issue. Although Gentile represents the Union in all respects,
8 Coyle provides legal representation to the Union.¹²

9 February of 2016 Events

10 February 26, 2016

11 On February 26, 2016, six officers were working the SPD Narcotics Unit 4:00
12 p.m. - 12:00 a.m. shift: Vigneault, Bigda, Cournoyer, Roblais, Rodriguez, and Rief.
13 Captain Rupert Daniels (Daniels), Lieutenant Alberto Ayala (Ayala) and Detectives
14 Edwin Hernandez (Hernandez) and Edward Kalish (Kalish) were also on duty. Ayala is
15 the Narcotics Unit supervisor. Early in the shift, the Narcotics Unit conducted a raid.
16 Later, while officers were tagging evidence and processing the people arrested during
17 the raid, Detective Kalish asked Vigneault to go to Primo's Pizza in Springfield to pick
18 up dinner for the Narcotics Unit. At 10:30 p.m. Vigneault drove an SPD vehicle, an
19 unmarked blue 2002 Chevy Trailblazer SUV, to Primo's. At Primo's, Vigneault left the

¹¹ The record contains no additional details regarding the CPHB's authority and the manner in which it typically imposed discipline during the relevant time period.

¹² By February of 2018, Coyle had been representing employees in union-related matters for 38 years.

1 vehicle running and went inside to pick up the order. As he stood inside the lobby of
2 Primo's, he saw the vehicle driving away at a high rate of speed.

3 Vigneault informed dispatch of the incident and the SPD generated a BOLO¹³ for
4 the vehicle.¹⁴ Vigneault then called the Narcotics Unit. Bigda answered the phone, and
5 then drove to Primo's Pizza to pick up Vigneault. When Vigneault got into the car, Bigda
6 was upset. The two officers drove around the immediate area looking for the vehicle but
7 were unable to locate it. Upon returning to the Narcotics Unit, Vigneault entered into the
8 SPD Records Management System Incident #16-2355-OF, which is a February 26,
9 2016 General Report to Commissioner Barbieri regarding the stolen vehicle. It stated, in
10 relevant part:

11 On 02/26/2016 at approximately 2200 Hrs I, Officer Steven
12 Vigneault drove a department vehicle a Blue Chevy Trailblazer Ma
13 [sic] tag (1CFP80). I parked in front of 824 Worthington Street
14 Springfield, MA (Primos Pizzeria) to pick up dinner for the Narcotics
15 Unit. As I was arrived [sic] at Primos I observed what appeared to
16 be our order on the counter. I assumed I would be in and out of the
17 restaurant quickly. As I stood inside the lobby I observed the
18 vehicle drive away at a high rate of speed down Worthington Street.
19 The vehicle traveled west towards Main Street. At this time I, [sic]
20 informed dispatch of said incident. A BOLO was generated and put
21 out to all patrols. Be advised this vehicle is not equipped with a
22 police radio, or scanner. A stolen car report was submitted. End of
23 statement.

24
25 February 27, 2016

26 In the early morning hours of February 27, 2016, the MSP, Palmer Police,
27 Wilbraham Police, Monson Police, and SPD Narcotics Officers were involved in a
28 search for the stolen vehicle and suspects. At about 3:00 a.m. on February 27, Captain

¹³ BOLO is a law enforcement acronym that stands for "be on the lookout."

¹⁴ Calls for service indicate that Vigneault reported the vehicle stolen at about 11:28 p.m.

1 Daniels came into the SPD Narcotics Unit and said that he heard over the Western
2 Massachusetts Law Enforcement Channel (WMLEC)¹⁵ that the stolen vehicle had been
3 located. He told the Narcotics Unit Officers to go get the truck, stating "you're on your
4 own time, you guys got to own it." According to Vigneault, the Narcotics Unit Officers
5 then "shot out to Palmer." Bigda drove Vigneault. Roblais, Rodriguez, Rief, and
6 Cournoyer took another vehicle. Vigneault was "all excited to go and get the truck."

7 Based on WMLEC reports, the Narcotics Unit Officers learned that the vehicle
8 had been left with flat tires on Main Street in Palmer after Palmer Police deployed "stop
9 sticks." The suspects had fled, leaving the doors to the vehicle open. When Bigda and
10 Vigneault arrived at the scene, Vigneault saw clothes and loose change in the vehicle.
11 Bigda and Vigneault then drove further up Main Street, parked at an auto place, and
12 started walking across the street towards the train tracks.

13 About 100-200 yards up the street from where he and Bigda were crossing,
14 Vigneault heard barking and screaming.¹⁶ Vigneault and Bigda immediately ran up the
15 street to assist with the arrests of three juveniles: DR, AP, and JT.¹⁷ Wilbraham Officer
16 Rogers, assisted by Vigneault, arrested DR. Massachusetts State Police (MSP) K9
17 Officer Matthew Baird (Baird), an MSP K9, Bigda, Vigneault, and Rogers all were

¹⁵ WMLEC is a shared area radio channel between different towns.

¹⁶ In a June 14, 2016 report, Vigneault wrote that "[t]he noise was coming from the middle of the street a good distance away. We then ran to the location which was about 200 yards away from us." During the hearing, Vigneault testified that the barking and screaming was about 100 yards away.

¹⁷ For the purposes of this decision, I refer only to the juveniles by their initials.

1 involved in AP's arrest.¹⁸ Bigda arrested JT. The arrests occurred in close physical
2 proximity and in rapid succession.¹⁹ Vigneault never saw anyone else touch DR while
3 he and Rogers had their hands on him, and Vigneault never saw anyone assault DR
4 during his arrest. However, Vigneault heard Bigda yelling "welcome to the white man's
5 world" during AP's and DR's arrests, heard Bigda spit, and saw him kicking AP before
6 AP was in handcuffs.²⁰ The MSP K9 also bit AP in the course his arrest.

7 Following the arrests, Palmer Ambulance transported AP to Wing Memorial
8 Hospital, and Monson Police transported DR and JT to the Palmer Police Department
9 where Palmer Police took custody of the juveniles. Vigneault and other officers
10 searched for the remaining suspect between about 3:30 and 4:30 a.m. Sometime after
11 4:30 a.m., Bigda had the SPD officers drive to the Palmer Police Department where

¹⁸ There is conflicting information in the record about whether Vigneault or Bigda handcuffed AP. I need not resolve this issue because it is not material to my decision.

¹⁹ Vigneault testified on direct examination that after Rogers handcuffed DR, Vigneault "turned to" Bigda who was struggling with AP. He further testified on direct examination that during the arrests, DR and AP were "right next to each other . . . [l]ess than eight feet apart." Vigneault did not include these details in his February 27, 2016 arrest report or his June 14, 2016 report to Andrew. Nor did he explain these details to Gentile or Coyle before he decided to resign on August 11, 2016.

²⁰ Vigneault testified on direct examination that he Bigda "yelled . . . welcome to the white man's world, he spit, [and] he kicked." On cross-examination Vigneault initially testified that he did not see Bigda kick anyone and that it only "sounded" and "appeared" like Bigda spit on somebody. He then testified that Bigda and AP were fighting and "it looked like" Bigda kicked AP. Later in his testimony on cross-examination when asked whether he "saw someone kick someone" Vigneault testified that "[i]t looked like [Bigda and AP] were fighting and kicking was going on. When you're trying to put handcuffs on somebody who's getting bit by a dog, its crazy." When asked whether he saw anyone assault anyone that night he testified only that AP "was not secured when he was getting hit and struck" by Bigda.

1 Bigda and Cournoyer interrogated DR and JT.²¹ Palmer Police recorded the
2 interrogations by video, with audio.

3 At Bigda's direction, Vigneault, Roblais, Rief and Rodriguez sat for about an hour
4 in the foyer of the Palmer Police Department, in an area where an officer typically sits
5 and receives public complaints. They were not involved directly in the interrogations but
6 could see the interrogations on camera.²² At about 5:30 a.m., Cournoyer and Vigneault
7 left the Palmer Police Department and drove DR and JT to the juvenile lockup on
8 Mulberry Street in Springfield. Bigda was in a second vehicle with Roblais, Rief and
9 Rodriguez.

10 After dropping off DR and JT, Vigneault and the other Narcotics Unit officers
11 returned to the SPD. Vigneault began drafting an arrest report in Arrest #16-647-AR for
12 Lieutenant Ayala. It is standard protocol for an officer to draft an arrest report and for
13 their supervisor to approve it. Vigneault did not finish writing the arrest report before
14 leaving work, even though he had that night off from work. Nor did he report to anyone
15 that he saw Bigda kicking AP, spitting on AP, or yelling racial slurs at AP and DR. He

²¹ There is conflicting information in the record about whether Bigda also interrogated AP at the Palmer Police Department. I need not resolve this point because it is not material to this decision.

²² Vigneault testified on direct examination that while sitting in the foyer area he "had no idea what was going on" with respect to the interrogations. I do not credit him on this point. The record contains a newspaper article in which Vigneault reported that he "remained in the booking area while Bigda browbeat the boys, and watched through a camera there." See Stephanie Barry, *Former Springfield detective says he was 'bluffed' into resigning after incidents involving stolen police vehicle, restraining order*, Masslive (Oct. 28, 2016), https://www.masslive.com/news/index.ssf/2016/10/springfield_detective_shares_story.html.

1 explained during his testimony on cross-examination that he "definitely didn't report it to
2 anyone" because his theory was "[y]ou go along to get along."

3 While Vigneault was at a concert the night of February 27, Ayala called him
4 asking for his password to the computer system so that Cournoyer could finish writing
5 the arrest report under Vigneault's name. Vigneault never asked later to review or edit
6 the narrative in Arrest #16-647-AR. Consequently, the arrest report contains a narrative
7 that Vigneault did not write.²³ The narrative indicates that Vigneault entered it on
8 February 27, 2016 at 11:36 p.m. and that Ayala approved it one minute later, at 11:37
9 p.m. It states, in relevant part:

10 On Today's date [sic] members of the SPD Narcotics Bureau
11 responded to the area of Flamingo Motor Sports (2 Wilbraham St,
12 Palmer, MA 01069) for the recovery of a previously reported stolen
13 SPD vehicle. Palmer PD had disabled this vehicle via the stop-stick
14 method after Wilbraham, MA PD had engaged it in a brief high
15 speed pursuit. Information given over WMLEC (western mass law
16 enforcement channel) [sic] was that 4 occupants of this vehicle had
17 fled on foot into the surrounding wooded areas after the vehicle had
18 been stopped. Upon our arrival a perimeter was set by Officers on
19 scene. MSP Tpr. Matt Baird and his K9 "Caber" then began a track
20 from the disabled vehicle. After a brief search K9 Caber and Tpr.
21 Baird located a H/M later identified as [AP] . . . hiding a porch on
22 the south side of Wilbraham St. Once detected [AP] attempted to
23 flee. After a brief chase he was quickly placed into custody by all
24 three of the aforementioned Officers. During his attempted escape
25 from apprehension [AP] sustained abrasions to the left side of his
26 face, and bites to his leg and forearm from K9 "Caber".
27 Subsequently Palmer Ambulance responded to treat [AP] for his
28 injuries, after which he was then transported to Baystate Wing
29 Hospital for further treatment. As a result of this apprehension two
30 other H/Ms identified as [JT] . . . and [DR] . . . revealed their
31 presence from where they were hiding and were quickly placed into
32 custody by Det. Bigda and I [sic]. This left one subject outstanding.
33 The search utilizing the K9 track continued with negative results.

²³ Although Vigneault did not write the narrative in the arrest report, I refer to it as Vigneault's arrest report in this decision because during the events at issue Vigneault never told Union officials that he did not write the report.

1 The subjects were then transported to Palmer P.D. to be courtesy
2 booked. After courtesy booking was completed all three males were
3 transported to the Springfield Police Juvenile lock-up. The
4 recovered SPD vehicle was towed by CJ's to 130 Pearl Street.
5

6 On February 27, 2016, Wilbraham Police Officer Rogers also entered an arrest
7 report, Arrest #16-109-AR, into the Wilbraham Police Department Records
8 Management System. It states, in relevant part:

9 8) MSP K9 Trooper Baird arrived on scene and began the
10 track of the suspects. Officer Rogers backed up the Trooper and
11 followed along with the track. The K9 track led the officers
12 eastbound on North Main Street along the railroad tracks on the
13 south side of the road. Officer Florindo remained with the suspect
14 vehicle.
15

16 9) The K9 unit tracked to the front porch of a residence at
17 #1548 North Main Street in Palmer where immediately Officer
18 Rogers and K9 Trooper Baird spotted three black males running
19 away. K9 Officer Baird yelled repeatedly for the suspects to "stop or
20 you're going to get bit." The suspects kept running and the K9 was
21 deployed.
22

23 10) One suspect identified as [AP] was bit by the K9 in the
24 leg and buttocks as he attempted to run away. Trooper Baird and a
25 Springfield Police narcotics officer attempted to place [AP] in
26 handcuffs. At this time Officer Rogers saw the other suspect
27 identified as [DR] standing in the street, Officer Rogers ordered
28 [DR] to the ground and placed him in handcuffs without incident.
29 Officer Rogers then assisted in handcuffing [AP]. At the time [AP]
30 was handcuffed, he was bleeding from the nose and mouth. Officer
31 Rogers did not observe [AP] fall to the ground or how his injuries
32 occurred because his attention was drawn to placing [DR] in
33 handcuffs. Officer Rogers assisted the Springfield officer in
34 handcuffing [AP] because Trooper Baird was unable to assist due
35 to his K9.
36

37 11) After [AP] was place[d] into custody, Officer Rogers
38 noticed an amount of blood on his uniform shirt and pants along
39 with a small laceration to his left middle finger. It is assumed that
40 Officer Rogers received this blood transfer on his uniform due to
41 being in close proximity with [AP] at the time of his arrest. The third
42 suspect identified as [JT] was placed under arrest without incident
43 by Springfield officers.

1 In their February 27, 2016 arrest reports, neither Vigneault nor Rogers reported the use
2 of excessive force during any of the arrests.

3 March of 2016 Events

4 March 1, 2016

5 On March 1, 2016, Lieutenant Ayala submitted a Special Report to Barbieri.
6 Ayala explained in the report that: Vigneault's SPD vehicle was stolen while he was
7 retrieving a food order; Wilbraham Police spotted the vehicle; Palmer Police disabled
8 the vehicle with stop sticks and notified the SPD for assistance and retrieval of the
9 vehicle; and the SPD Narcotic Unit responded and assisted in tracking three of the
10 suspects and recovered the vehicle. Ayala's March 1, 2016 report to Barbieri did not
11 mention that Bigda and Cournoyer had interrogated the juveniles at the Palmer Police
12 Department.

13 March 2, 2016

14 On March 2, 2016, Wilbraham Officer Rogers authored a supplemental narrative
15 to his February 27, 2016 arrest report alleging the excessive use of force during DR's
16 arrest by a plain clothed SPD officer (the Rogers Report). It states, in relevant part:²⁴

17 1.) [Referencing paragraph 10 of Rogers' February 27, 2016
18 arrest report] Officer Rogers placed [DR] in handcuffs without
19 incident. While [DR] was still on the ground in handcuffs Officer
20 Rogers began to search [DR] for weapons. At this time a plain
21 clothes Springfield Police Officer came up from Officer Rogers left
22 side and kicked [DR] in the face. Officer Rogers then stood [DR] up
23 and had him sit on the curb on the side of the road. Officer Rogers
24 did not know the identity of the Springfield officer.

25
26 2.) After securing [DR], Officer Rogers assisted in handcuffing
27 [AP]. A noticeable amount of blood was seen on [AP]'s mouth and

²⁴ Rogers refers to himself in the third person.

1 nose. Officer Rogers did not witness how the injuries to [AP]'s face
2 occurred.

3
4 3.) Officer Rogers was never alone with the suspects.
5 Springfield police officers were on scene as well as Palmer Officer
6 Eric Raymond and Monson Officer Paul Mayo. Officer Rogers was
7 with the suspects in custody for approximately 5 minutes before
8 being called to assist K9 Officer Brewer with tracking the 4th
9 suspect. The suspects were left in the custody of Palmer Officer
10 Raymond and Monson Officer Mayo along with several Springfield
11 plain clothes officers.
12

13 Wilbraham Police Chief Roger Tucker (Tucker) subsequently notified Hampden District
14 Attorney Anthony Gulluni (Gulluni) of Rogers' excessive force allegations. Shortly
15 thereafter, Barbieri learned about the Rogers Report from Assistant District Attorney
16 Jennifer Fitzgerald (Fitzgerald).

17 Also, on March 2, 2016, Captain Daniel filed a Superior Officers Report with
18 Barbieri recommending that Vigneault be disciplined for failing to secure SPD
19 equipment. It states, in relevant part:

20 On 2/26/16 at about 10:20pm Officer Vigneault failed to properly
21 secure a department motor vehicle. This failure resulted in the theft
22 of the department's 2002 Trailblazer SUV. The vehicle was
23 recovered in Palmer and three subjects were arrested. I have
24 reviewed the reports and spoke to the officers [sic] immediate
25 supervisor, I recommended that an oral reprimand be issued to
26 Officer Steven Vigneault for failing to properly secure and take care
27 of department issued equipment.
28

29 March 12-14, 2016

30 On March 12, 2016, at 2:00 a.m., Vigneault was at the house of SPD K9 Officer
31 Gethins²⁵ in East Longmeadow when Bigda, intoxicated, entered Gethins' house

²⁵ As of February 2, 2018, Gethins had been working for the SPD for about 10 years. Gethins and Vigneault were in a relationship between about March and August of 2016. They ceased communicating in December of 2016.

1 uninvited through a closed, unlocked door.²⁶ Bigda had been in a relationship with
2 Gethins that ended in October or November of 2014. In March of 2016, Vigneault was in
3 a relationship with Gethins. Bigda screamed and yelled at Gethins and Vigneault,
4 threatening to destroy them. He told Vigneault "you might as well kill yourself." Vigneault
5 interpreted Bigda's remarks as threats to destroy his career. Gethins interpreted Bigda's
6 remarks as threats to not only destroy her career, but also to physically harm her. Bigda
7 left Gethins' house after about 10 minutes. He subsequently returned and, uninvited, re-
8 entered Gethins' house. When Gethins approached Bigda to assist him out of her
9 house, Bigda lost his balance and fell to the floor causing Gethins to fall as well.
10 Vigneault subsequently talked Bigda into leaving. Over the course of that evening,
11 Bigda texted Gethins an extensive string of obscene and abusive messages reiterating
12 his earlier threats to destroy her and Vigneault.

13 When Vigneault reported to work later in the day on March 12, 2016, he reported
14 the East Longmeadow incident to his supervisor, Lieutenant Ayala. Ayala told Vigneault,
15 "[Bigda] is like a brother to everybody in the Unit, [you are] like a cousin. People are
16 going to side with [Bigda]."²⁷ At the time, Bigda had about 17 years of seniority in the
17 SPD over Vigneault. Ayala called Vigneault the following day and told him to file a letter
18 requesting a transfer out of the Narcotics Unit back to a patrol officer position before he
19 got kicked out of the Narcotics Unit. Ayala also recommended that Vigneault take a few
20 days off from work.

²⁶ Whether Bigda was wearing a personal firearm is disputed.

²⁷ There is no evidence in the record establishing that Ayala had any role within the Union.

1 On Monday, March 14, 2016, Vigneault went to see Deputy Chief Mark Anthony
2 (Anthony) about Bigda. Anthony told him that Bigda had a lot of friends in the station
3 after working there for 20 years.²⁸ He told Vigneault to take some time and get away. At
4 some point on March 14, Vigneault also accompanied Gethins to Palmer District Court
5 for an Abuse Restraining Order against Bigda, which the court granted.²⁹ Later on
6 March 14, Barbieri issued Special Order #16-032 requiring an Internal Investigation Unit
7 (IIU) investigation into the restraining order against Bigda (the East Longmeadow
8 incident).³⁰ Also on March 14, 2016, Barbieri issued Vigneault an oral reprimand for
9 failing to properly secure and take care of department issued equipment on February
10 27, 2016.³¹ Vigneault agreed to the oral reprimand.³²

²⁸ Anthony was not a friend of Bigda's. On August 9, 2016, he sent an email to Barbieri expressing his disdain for Bigda.

²⁹ On March 23, 2016, the court declined to extend the March 14 restraining order against Bigda but later reinstated it with certain amendments on March 30, 2016. Bigda also faced criminal charges. On March 16, East Longmeadow Police Department Officer Denis Sheehan (Sheehan) filed an Application for Criminal Complaint listing Gethins as the victim against Bigda for alleged violations of M.G.L. Chapter 266, Section 16A, Breaking and Entering to commit a Misdemeanor (2 counts) and Chapter 266, Section 120, Trespass (1 count).

³⁰ Special Order #16-032 specifically states "[t]he I.I.U. will conduct an investigation into the restraining order from [the] Wilbraham Police Department involving Officer Gregg Bigda and submit a report to the Commissioner's office." Vigneault learned of the IIU investigation into the East Longmeadow incident through Gethins.

³¹ Although Vigneault had previously faced discipline while employed at the Hampden County Sheriff's Department, this was the first time since being hired in March of 2015 that he was disciplined at the SPD.

³² Vigneault called Gentile on March 14, 2016 but there is no further information in the record about this call.

1 On March 15, 2016, Vigneault decided to resign from the Narcotics Unit, request
2 a transfer back to the position of patrol officer, and use a week of vacation time.³³
3 During his week of vacation, Vigneault received military orders and reported to Barnes
4 Air Force Base (Barnes). Shortly thereafter, Sergeant Richard Pelchar (Pelchar)
5 delivered to Vigneault, at Barnes, Barbieri's March 14, 2016 oral reprimand regarding
6 Vigneault's February 27, 2016 failure to properly secure and take care of department
7 issued equipment. After reporting to Barnes, Vigneault began to regret his decision to
8 request a transfer out of the Narcotics Unit. According to Vigneault, he talked to other
9 Narcotics Unit Officers and he felt that "they knew" he had done nothing wrong. In this
10 context, Vigneault testified unequivocally at the DLR hearing that he did not feel that
11 other bargaining unit members were working to his disadvantage or trying to arrange his
12 termination.

13 At unidentified points in time prior to his March 15, 2016 request to transfer out of
14 the Narcotics Unit, Vigneault complained in separate conversations to Lieutenants Kent
15 and Ayala, and Sergeant Hitus that other narcotics officers were showing up drunk to
16 shifts and drinking alcohol during and after shifts.³⁴ Vigneault also drank alcohol on duty
17 because he wanted "to go along to get along." He told Kent that he felt unsafe doing

³³ Vigneault claims in his post-hearing brief that he was ordered to transfer out of the Narcotics Unit. This portion of the brief is factually unsupported by the hearing record.

³⁴ According to Vigneault, the entire Narcotics Unit drank alcohol on the job, except for Sergeant Hitus, who drank iced tea. Vigneault and Kent hid beer under Kent's desk. Vigneault would unlock the soda machine in the Narcotics Unit and "stuff beer in it so the beer would stay cold." Bigda, who Vigneault considered to be "our best narcotics officer" drank hard liquor. Vigneault testified that when Bigda drank "more than normal" it hampered raids, stating Bigda was "our leader, you know what I mean, like everybody looked up to him and he was a real good officer, so when he wasn't at his best, the whole unit struggled."

1 drug raids. There is no further information about the details of Vigneault's conversations
2 with Ayala and Hitus, other than that he talked to Ayala in the field and Hitus in the
3 office. There is no evidence that Kent, Ayala, or Hitus took any immediate action
4 regarding Vigneault's complaints.³⁵ There is no evidence that they reported the issue
5 within the SPD and no evidence that they reported the issue to Union leadership.

6 March 15-22, 2016

7 On March 15, 2016, Barbieri issued Special Order #16-035, requiring an IIU
8 investigation into Rogers' March 2, 2016 allegations of excessive force during DR's
9 February 27, 2016 arrest in Palmer (the Palmer incident). Sergeant Andrew from the
10 SPD IIU immediately commenced an investigation. Barbieri also contacted Palmer
11 Police Chief John J. Janulewicz (Janulewicz) and requested a criminal investigation of
12 the excessive force allegations. Janulewicz declined. Barbieri then asked District
13 Attorney Gulluni to have the MSP assigned to the District Attorney's Office conduct a
14 criminal investigation. Gulluni said he would consider it.³⁶ Shortly thereafter, on March
15 22, 2016, Assistant District Attorney Fitzgerald emailed Barbieri the Rogers' Report
16 alleging excessive force by an SPD officer. Union President Gentile learned about the
17 Rogers Report sometime in April of 2016.

18 May - June of 2016 Events

19 May 20, 2016

20 On May 20, 2016 Sergeant Andrew interviewed Officer Rogers as part of the
21 SPD IIU investigation into the use of excessive force during DR's February 27, 2016

³⁵ The SPD began an internal investigation regarding alcohol consumption in the Narcotics Unit after Vigneault's August 11, 2016 resignation.

³⁶ The District Attorney's Office began a criminal investigation in July of 2016, and subsequently referred the matter to the U.S. Attorney's Office.

1 arrest. Andrew's report of the interview, included in his January 16, 2016 IIU Report
2 states, in relevant part:

3 Officer Rogers stated that when he reported for the
4 beginning of his shift he heard about an undercover Springfield
5 Police Department cruiser that had been stolen earlier.

6 Officer Rogers stated that he saw a vehicle matching the
7 description of the stolen undercover cruiser so he checked the plate
8 number and found that the matching vehicle was in fact the stolen
9 motor vehicle. Officer Rogers stated that he told Wilbraham Police
10 Department's Dispatch then pursued the stolen vehicle.

11 Officer Rogers stated that he pursued the stolen vehicle into
12 the Town of Palmer MA. Officer Rogers stated that became aware
13 that the Palmer Police Department was going to deploy spike strips
14 to aid in ending the pursuit. Officer Rogers stated that he began to
15 "Back-off," so that he did not accidentally puncture the tires on the
16 cruiser that he was operating. Officer Rogers stated that when he
17 closed the distance with the stolen Springfield cruiser he saw that it
18 was stopped. Officer Rogers stated that as he exited his cruiser
19 and approached the Springfield cruiser he saw that it was empty.

20 Officer Rogers stated that a Massachusetts State Police K9
21 Trooper [Baird] arrived on the scene so he assisted K9 Trooper
22 Baird with a track.

23 Officer Rogers stated that as they were tracking they saw
24 two subjects ([DR] and [AP]) on a porch hiding. Officer Rogers
25 stated that [DR] and [AP] started to flee. Officer Rogers stated that
26 Trooper Baird ordered [DR] and [AP] to stop, but they did not.
27 Officer Rogers stated that Trooper Baird warned them that if they
28 did not stop he would release the K9. Officer Rogers stated that
29 [DR] and [AP] continued to flee.

30 Officer Rogers stated that Trooper [Baird] released the K9
31 and the K9 seized [AP] and pulled him down to the ground and in
32 doing so [AP] received injuries from the K9's teeth. Officer Rogers
33 stated that [DR] stopped to watch as the K9 seized [AP] and while
34 [DR] watched [Rogers] seized [DR]. Officer Rogers stated that as
35 he seized [DR] they fell to the ground.

36 Officer Rogers stated that he managed to place handcuffs
37 on [DR] then he started to search him. Officer Rogers stated that as
38 he was searching [DR] he saw that several plain clothes officers
39 had arrived (Officer Rogers was not sure how many plain clothes
40 officers there were but he estimated around three) and one of the
41 officers kicked [DR] in the face. Officer Rogers stated that [DR]'s
42 body recoiled from the kick.

43 Officer Rogers stated that after [DR] was secured he
44 assisted K9 Trooper Baird and another plain clothes Officer (Officer

Gregg Bigda) with handcuffing [AP]. Officer Rogers stated that after [AP] was secured he [Officer Rogers] noticed that there was a noticeable amount of blood coming from [AP] but he does not know how [AP] received his injuries.

Officer Rogers stated that [DR], [AP], and [JT] (the third subject arrested from the stolen Springfield cruiser) were transported to Palmer Police Department.

Officer Rogers was shown a photographic array, generated from the Department of Transportation Registry of Motor Vehicles, of the officers who were present on the morning of February 27, 2016. Officer Rogers could not identify the officer who kicked [DR]. Officer Rogers stated that outside of the Wilbraham officers and the Palmer officers, who he already knew, he could not recognize any of the other officer[s] in the photographic array. Officer Rogers added that he could not even tell if any of the other officers were on scene or not. Officer Rogers stated that the lighting conditions at the scene were very dark and he could not determine the race of the officer who kicked [DR].

Officer Rogers stated that he did not speak with [DR] about the kick and he did not hear any other officer speaking to [DR] about the kick.

May 24, 2016

On May 24, 2016, Andrew interviewed Bigda as part of the IIU investigation into the use of excessive force during DR's February 27, 2016 arrest. Bigda also submitted a report to Andrew on May 24, 2016 that Andrew found "similar in nature and corroborative in content with the interview." Bigda's May 24 report to Andrew states, in relevant part:

In regards to Officers Vigneault's cruiser being stolen and the subsequent arrests in Palmer, MA. [sic] On 02/26/2016 Officer Vigneault responded to Primo's pizza to pick up food for the office. Several minutes later Officer Vigneault called me to state that his vehicle had been stolen and that he had chased it down the street on foot. He also stated that there was cruiser behind it but was unable to make contact with the cruiser. I then responded to [P]rimos to retrieve Officer Vigneault and notified dispatch of the stolen SPD vehicle. Officers then played [sic] the area and various parts of the City in an attempt to locate the police vehicle with no results. Officers then returned to the station to finish the arrests that we had made earlier.

1 During processing of these prisoners I was made aware that
2 Wilbraham and Palmer PD were involved with our stolen police
3 vehicle and that it had been "stop stuck" in the vicinity of Flamingo
4 Motor [S]ports on Rt. 20 in Palmer. It was then determined that
5 myself and a team of Narcotics detectives would respond to Palmer
6 to assist with the search. Officers Cournoyer, Robles, Rodriguez,
7 and Rief responded in one vehicle and myself and Officer Vigneault
8 responded in a second. Upon reaching Palmer I spoke with Sgt.
9 White at our stolen, disabled vehicle at the intersection of Rt. 181
10 and Rt 20, next to Flamingo Motor sports. Sgt. White informed me
11 that the 4 subjects had fled south into the woods toward the railroad
12 tracks and that a K9 and several officers were in pursuit. I am
13 familiar with this area and knew that the only way out of this area is
14 back North toward Main St. due to the river that runs along the train
15 tracks. Officer Vigneault and I then drove to the Oreilly's auto parts
16 [sic] a short distance East of our location in an attempt to secure a
17 perimeter. Upon exiting our vehicle Officer Vigneault and [I] crossed
18 Main St. onto the South side of the street and began to walk East.

19 A short time later I observed several subjects including a K9
20 run from the woods a short distance East of my location. Officer
21 Vigneault and I then ran East toward the subjects. It is extremely
22 dark in this area with limited lighting and at this time I was only able
23 to tell that it was police officers chasing subjects but could not
24 distinguish who was who at this time. I was a short distance in front
25 of Officer Vigneault as we ran and I immediately went to assist the
26 K9 officer, later determined to be a State Trooper, whose K9 was
27 actively engaged with a suspect near the center of the street, this
28 suspect was later identified as [AP]. A second Officer, later
29 determined to be Officer Rogers from Wilbraham, was a short
30 distance to the North of me near the sidewalk engaged with another
31 subject, this suspect was later identified as [DR].

32 Upon reaching [AP] I dropped down to the ground kneeling
33 on his shoulder and back area to control him and pulled his right
34 arm up behind him in a cuffing maneuver. I was on the West side of
35 [AP] who's [sic] head was facing South. Officer Rogers then
36 assisted me with [AP]'s left arm and he was handcuffed. I had
37 observed a third subject, [JT], who had exited the woods and
38 immediately attempted to hide on the porches on the South side of
39 the street. I immediately responded to this subject and with the
40 assistance of another officer placed him into handcuffs, I am unsure
41 of who this officer was at this time. I then returned this subject to
42 the area of the driveway and stairs of Maryinski Florist in an attempt
43 to locate a fourth subject that was still outstanding. [JT] gave me a
44 first name of . . . and the route which he had exited Main St. from. I
45 then walked a short distance East on Main St. to where [DR] was
46 seated with several other Officers. I pruned out [sic] [JT] and then

1 organized a search party to assist the State Police K9 to track to
2 4th subject. It was at this time that I realized that I had a substantial
3 quantity of blood on me from [AP] who had sustained numerous
4 injuries from his fight and subsequent apprehension by the K9.
5 Officer Brewer then supplied me with a quantity of hand sanitizer to
6 remove some of the blood from my hands and arms. I then
7 responded into the green house area and woods with Officers
8 Cournoyer, Rief and the State Police K9. After a lengthy search of
9 this area we were unable to locate the 4th subject. I then
10 responded Palmer PD, with other Springfield officers. [AP] had
11 been transported to Wing Memorial Hospital for treatment of his
12 injuries and the second two subjects had been brought to Palmer
13 PD, for processing. I was informed by other officers that a
14 substantial amount of stolen items had been recovered from our
15 stolen police vehicle.

16 At this time I asked Sgt. White if could interview the
17 prisoners in the cell block in an attempt to locate the areas that the
18 stolen items had come from. Officer Cournoyer and I then
19 interviewed all three subjects, [AP] had returned from the hospital
20 at this time. This was the first direct contact I had with [DR]. At this
21 time officers gained limited information from these subjects and
22 Officer Vigneault could ID the suspects for the larceny in Springfield
23 and all three were transported back to Youth Aid in Springfield by
24 Officers Cournoyer and Vigneault in the Durango. After these
25 subjects were dropped off at Mulberry St. I returned to 130 Pearl St.
26 to go home as it was approx. 8am.

27 I do not know Officer Vigneault's location after I engaged
28 [AP] in the middle of the road. At no time did I see any Officer kick
29 anyone nor did I kick anyone during any point of these arrests.
30

31 May 30, 2016

32 On May 30, 2016, Sergeant Pelchar interviewed Vigneault as part of the IIU
33 investigation into the East Longmeadow incident. The same day Vigneault submitted a

1 report to Pelchar regarding the events that occurred on March 12, 2016.³⁷ Later that
2 day, Pelchar submitted an IIU Report on the East Longmeadow incident to Barbieri in
3 compliance with Special Order #16-032.

4 June 2, 2016

5 By letter dated June 2, 2016, Barbieri issued Bigda, Gethins, and Vigneault a
6 Notice of Inter-Departmental Disciplinary Charges in SO#16-032, relative to the East
7 Longmeadow incident. Attached to the June 2, 2016 Notice of Inter-Departmental
8 Disciplinary Charges was a May 30, 2016 Special Report to Barbieri from (the May 30,
9 2016 IIU Report). All three officers received the same letter informing them that the SPD
10 had information regarding their alleged improper conduct on March 12 and April 3,
11 2016. The letter stated, in relevant part:

12 Please be advised that the Springfield Police has received
13 information regarding your alleged improper conduct on or about
14 March 12, 2016 and April 3, 2016. The investigation is attached
15 hereto and is incorporated as Addendum A. The information
16 contained in Addendum A, if true, support[s] the initiation of Inter-
17 Departmental charges against you for violations of the following
18 Rules and Regulations of the Springfield Police Department:
19

20 * * *

21
22 In accordance with Massachusetts General Laws, Chapter
23 31, the Springfield Police Department will hold a hearing to
24 contemplate the issuance of discipline, up to and including the
25 termination of your employment. You will be notified in writing of the
26 hearing date, time and location. Pursuant to the Collective

³⁷ Vigneault initially denied participating in the internal investigation on the East Longmeadow incident before subsequently confirming in response to a leading question on direct examination that he did remember talking to an IIU officer about an event at Gethins' house and that he did participate in the May 30, 2016 IIU Report on the East Longmeadow incident. Although Vigneault's participation in the IIU on the East Longmeadow is not a material fact in the case before me, his inability to initially remember his participation in either the interview or in writing the report undermines his overall credibility.

1 Bargaining Agreement between the City of Springfield and the
2 International Brotherhood of Police Officers, Local #364, a hearing
3 must be scheduled within sixty (60) days of the issuance of this
4 letter. If you desire to waive the sixty (60) day time limit for a
5 hearing on this matter, you may provide, in writing, a waiver of the
6 sixty (60) days, to the Office of the Police Commissioner,
7 Springfield Police Department 130 Pearl Street, Springfield,
8 Massachusetts, 01105.

9
10 Copies of Massachusetts General Laws Chapter 31,
11 Sections 41 through 45 are attached and incorporated as
12 Addendum B and explain your rights under Civil Service law.

13
14 Vigneault received the June 2, 2016 Notice of Inter-Departmental Disciplinary
15 Charges and the attached IIU Report³⁸ while he was living at Barnes.³⁹

16 June 13-14, 2016

17 On June 13, 2016, Sergeant Andrew interviewed Vigneault regarding the SPD's
18 internal investigation of the Rogers excessive force allegations. By that point, Vigneault
19 was aware that Rogers had alleged that an SPD plain clothed officer had kicked DR

³⁸ Vigneault admitted on direct examination that he received the June 2, 2016 Notice of Inter-Departmental Disciplinary Charges but denied receiving the May 30 IIU Report. On cross-examination, he testified that he did not remember receiving the June 2, 2016 charge letter or seeing May 30 IIU Report. I find that Vigneault received the June 2 Notice of Inter-Departmental Disciplinary Charges and the attached IIU Report because the SPD attached IIU reports to notices of disciplinary charges as a matter of policy. Moreover, Vigneault admitted receiving the charge letter on direct examination and clarified on cross-examination only that he did not remember receiving the June 2, 2016 IIU Report.

³⁹ When asked on cross-examination where he was living in early June, Vigneault first testified that he was living with Gethins, then testified that he didn't know if he was living with Gethins or at his own home elsewhere, and then testified that by June 16, 2016 he was living at Barnes. I find that he was living at Barnes in early June of 2016 based on his earlier testimony that he reported to Barnes in March.

1 during his February 27, 2016 arrest.⁴⁰ During the interview, Andrew asked whether
2 Vigneault "knew or saw somebody kick a juvenile and spit."⁴¹ Vigneault told Andrew that
3 "at no time did he use unnecessary force by kicking or punching either subject and he
4 never saw any officers use any unnecessary force." Vigneault did not tell Andrew that
5 he saw Bigda kick AP and heard him spit because Andrew did not ask specifically
6 whether Vigneault saw Bigda kick or spit on a juvenile. Nor did Vigneault tell Andrew
7 that he heard Bigda yelling "welcome to the white man's world" during the arrests of AP
8 and DR.⁴²

⁴⁰ Vigneault offered conflicting information about when he learned about the March 2, 2016 Rogers Report. Vigneault initially denied on cross-examination that he knew at all about the March 2, 2016 Rogers Report. When asked again on cross-examination how he learned about Rogers' kicking allegations, Vigneault testified that he was "working" which would mean that he learned about the allegations before he left the SPD for Barnes in March. He then testified that he learned about it when Andrew interviewed him for the IIU investigation in June. In other testimony, he claimed that he did not learn about Rogers' accusations until September of 2016. I find that Vigneault's testimony on this point to be inconsistent and evasive. I conclude that Vigneault knew about the Rogers Report when Andrew conducted Vigneault's June 13, 2016 IIU interview.

⁴¹ Vigneault initially testified that Andrew asked whether he "knew or saw somebody kick a juvenile or spit." He later testified on cross-examination that during the interview Andrew "didn't ask about anybody else. [T]he IIU was about me." In light of Vigneault's initial testimony and Vigneault's June 13, 2016 statement to Andrew that "at no time did he use unnecessary force by kicking or punching either subject and he never saw any officers use any unnecessary force," as included in the June 16, 2016 IIU Report, I find that Andrew asked generally whether Vigneault had seen anyone kick a juvenile or spit.

⁴² According to Vigneault, Andrew told him during a July interview about the recorded interrogations of the juveniles in Palmer on February 27, 2016. However, Andrew interviewed Vigneault in June, not July. Vigneault provided no additional information on this point.

1 Vigneault submitted a report to Andrew on June 14, 2016 that Andrew found
2 "similar in nature and corroborative in content" with Vigneault's interview.⁴³ Vigneault's
3 June 14, 2016 report, included in the June 16, 2016 IIU Report states, in relevant part:

4 This report is being generated by Ofc. Steven Vigneault Emp
5 # 101487. I am writing this report in response to a meeting that I
6 had with Sergeant Andrews [sic] on June 13/2016 [sic] the incident
7 involving members of the Narcotics [U]nit and a stolen undercover
8 vehicle. This took place on February 27th 2016 at approximately
9 0300 Hrs. At or around this time members of the Narcotics unit
10 were processing a drug seizure and arrest within 130 Pearl Street.
11 While officers were completing the processing Captain [Daniels]
12 entered the Narcotic office and stated that the car was located over
13 WMLAC. At this time all the officers got up and proceeded outside
14 to their respective vehicles. On our way out of the office Captain
15 [Daniels] informed us all that we were on our own time and that we
16 owned it.

17 At this time I got into an unmarked cruiser with Detective
18 Bigda, and Detective Robles, Rief, Rodriguez, and Cournoyer
19 drove in the other vehicle.

20 We made our way to Palmer Mass, once we arrived in
21 Palmer we could see the vehicle that was stolen in the middle of
22 the street[.] I believe the street we were on was Main Street. I
23 quickly went through the vehicle and located items of clothing and a
24 lot of loose change. We were informed that the subjects fled on foot
25 towards the train tracks. I am not familiar with the [T]own of Palmer
26 so I had a hard time with any location. Detective Bigda and I then
27 got back into our cruiser and parked about halfway up the street in
28 the parking lot of a business. We then got on foot to search for the
29 subjects. As we crossed the street and approached the wood line
30 we heard a male screaming and a dog barking. The noise was
31 coming from the middle of the street a good distance away. We
32 then ran to the location which was about 200 yards away from us.
33 As we approached we could see two subjects struggling in the
34 street not cooperating. Both subjects were on the ground one had a
35 Uniform Officer on him, his name or affiliation was unknown at this
36 time. He was to gain control of the subject to secure him with his
37 hand cuffs [sic] as I approached I gave multiple verbal instructions

⁴³ While Vigneault told Andrew in his June 13, 2016 interview that "at no time did he use unnecessary force by kicking or punching either subject and he never saw any officers use any unnecessary force," his choice of words in his June 14, 2016 report to Andrew omits the phrase that "he never saw any officers use any unnecessary force." Vigneault did not address this discrepancy in his testimony at the DLR hearing.

1 to stay calm and to put his hands behind his back which he
2 complied. [sic] I assisted this Officer using the minimal amount of
3 force necessary in order to secure handcuffs behind his back. Once
4 the subject was controlled I then assisted Detective Bigda who was
5 struggling with his subject. Detective Bigda and myself gave
6 multiple verbal commands to the subject however this subject
7 refused to cooperate. Once the subject's hands were behind his
8 back I applied my handcuffs behind his back using the minimal
9 amount of force necessary to maintain the subject's disadvantage
10 while maintaining our advantage. This was the subject that was
11 subsequently bit by the State Police Canine. Prior to Springfield
12 Police Officers arriving on scene. [sic] After the second subject was
13 secured I stood the subject up and had him sit on the side of the
14 road on the curbing next to the first subject. A third subject was also
15 then located across the street next to a house. This subject was
16 cooperative and was taken into custody by Detective Bigda. While
17 apprehending the three subjects the visibility was poor due [to] the
18 darkness, and poor lighting conditions. At no time did I use
19 unnecessary force by kicking or punching either subject. I also
20 never spit or laughed at any of the subject at any time the only
21 verbal communication I had was instructing them to calm down and
22 place their hands behind their back. [sic] One subject did ask if I
23 could find his cellphone at which time I replied "I'm not going to look
24 for your cellphone". [sic]

25 At the conclusion of the securing the subjects they were
26 transported by Palmer P.D. to the Palmer Police Department and
27 curtesy [sic] booked. The one subject that was bit by the canine
28 was taken by ambulance to Wing memorial hospital to be treated
29 for a dog bite and later released to our custody. The other two
30 subjects refused medical attention and did not report any injuries.

31 Once all the subjects were at the Palmer Police [S]tation
32 Officers Bigda and Cournoyer interviewed each subject in each
33 holding cell individually. Once this was completed Officer Bigda
34 contacted Lt. Ayala and informed Lt. Ayala that we had three
35 subjects in custody and that they were all minors. At this time I was
36 told by Det. Bigda that Lt. Ayala instructed us to transport the
37 subjects to the youth facility located on Mulberry Street in
38 Springfield for processing.

39 Once we arrived at Mulberry Street, I remained with the
40 prisoners and assisted with the booking process.

41
42 June 16, 2016

43 On June 16, 2016, Sergeant Andrew submitted a 34-page IIU Special Report
44 (the June 16, 2016 IIU Report) to Barbieri regarding Rogers' allegations of excessive

1 force during DR's arrest. The June 16, 2016 IIU Report contains, in relevant part:
2 Rogers' and Vigneault's February 27, 2016 arrest reports; Rogers' March 2, 2016
3 supplemental narrative alleging an excessive use of force during DR's arrest; Andrew's
4 May 20, 2016 report on his interview of Rogers; a summary of Bigda's interview with
5 Andrew and his May 24, 2016 report to Andrew; a summary of Vigneault's June 13,
6 2016 interview with Andrew and Vigneault's June 14, 2016 report to Andrew; reports
7 from numerous other police officers; and reports on citizen interviews; reports of contact
8 with attorneys for the juveniles; and reports on documents and other information relative
9 to the night of February 26, 2016 from several police departments. In the June 16, 2016
10 IIU Report, Vigneault was the only officer to report that he had been with Rogers during
11 DR's arrest.

12 Based on Andrew's June 16, 2016 IIU Report, Barbieri immediately issued a
13 Notice of Inter-Departmental Disciplinary Charges, SO#16-035 for improper conduct to
14 Vigneault, Bigda, Cournoyer, Robles, Rief, and Rodriguez that stated in relevant part:

15 Please be advised that the Springfield Police [Department] has
16 received information regarding your alleged improper conduct on or about
17 February 27, 2016. The investigation is attached hereto and is
18 incorporated as Addendum A. The information contained in Addendum A,
19 if true, support the initiation of Inter-Departmental charges against you for
20 violations of the following Rules and Regulations of the Springfield Police
21 Department:
22

23 Rule 15: SECTION 18. When it becomes necessary for an officer to
24 make an arrest, he shall do so as quietly as possible. He may use any
25 force necessary that is reasonable and proper to overcome any resistance
26 offered in making arrests; although in arresting a person, no more force
27 shall be used than is absolutely necessary for the safe custody of the
28 prisoner or for overcoming any resistance that may be offered. Any abuse
29 of prisoners, either by word or act, will be severely punished. If an officer
30 finds his personal efforts insufficient to effect an arrest, or if he has reason
31 to anticipate that resistance will be made, he may, in the name of the
32 Commonwealth of Massachusetts, demand the aid of any person present.

1
2 Rule 29: CONDUCT: Employees shall conduct themselves at all
3 times, both on and off duty, in such a manner as to reflect most favorably
4 on the Department. Conduct unbecoming an employee shall include that
5 which tends to indicate that the employee is unable at unfit to continue as
6 a member of the Department or tends to impair the operation of the
7 Department or its employees.
8

9 Rule 29: DIRECTIVES AND ORDERS: Employees shall obey and
10 comply with all rules, orders and other directives of the Department
11 whether transmitted verbally or in writing. Employees shall obey all orders
12 of a Superior Officer, Officer of Rank, or Supervisor.
13

14 Rule 29: SECTION 1: All members of the Department shall obey
15 the Rules and Regulations as set forth herein, the Ordinances of the City
16 of Springfield, the laws of the Commonwealth of Massachusetts and of the
17 United States of America, and shall perform their duties with silent
18 courage, discretion, placing the safety and welfare of the City of
19 Springfield and its citizens first at all times.
20

21 Rule 29: SECTION 2. Coolness and firmness are expected of every
22 member of the Department. In time of peril, emergency, or danger,
23 members of the Department shall assist each other and act together as far
24 as possible. Any cowardice or shirking of duty in the face of danger or
25 emergency shall be cause [for] disciplinary action which may include
26 dismissal.
27

28 Every member of the Department shall be quiet, civil, and orderly in
29 the performance of his duty; shall be attentive and zealous exercising
30 patience and forbearance and at all times, even under provocation; and
31 shall refrain from harsh, violent, coarse or profane language.
32

33 Rule 29: SECTION 42. Whenever any matter comes to the
34 attention of any member of the Department which indicates that another
35 member of the Department may have been involved in the violation of any
36 law, the Rules and Regulations of this Department or the written orders
37 issued by the Chief of Police, the member to whose attention such matter
38 comes shall immediately report it in writing before the end of his tour of
39 duty (or if the information is received while he is off duty, during his next
40 tour of duty) to his Superior Officer, who shall forthwith transmit it with his
41 written endorsement through the chain of command to the Chief of Police.
42 Upon receipt of such a report by the Chief of Police, he shall immediately
43 notify the Board of Police Commissioners of the existence of the report,
44 and he shall refer it for investigation. When the investigation has been
45 completed, a report of the same shall be presented to said Board by the
46 Chief at their next meeting. This section shall not diminish authority of the

1 Chief or of [sic] said Board to take such disciplinary or other action as
2 either deems appropriate at any stage of the matter.

3
4 Rule 29: SECTION 30. All members of the Department, regardless
5 of assignment or rank, are expected to enforce and take proper action in
6 regard to all laws of the Commonwealth and Ordinances of the City at all
7 times.

8
9 Rule 29: SECTION 32. DEPARTMENTAL REPORTS-
10 TRUTHFULNESS: Employees shall submit all necessary reports on time
11 and in accordance with established Departmental procedures. Reports
12 submitted by employees shall be truthful and complete. No employee shall
13 knowingly enter, or cause to be entered, any inaccurate, false or improper
14 information.

15
16 Rule 29: SECTION 34. ABUSE OF PROCESS-WITHOLDING
17 EVIDENCE: Officers shall not intentionally manufacture, tamper with,
18 falsify, destroy, or withhold evidence or information nor make false
19 accusations of a criminal charge or seek to influence the outcome of any
20 investigation.

21
22 Rule 32: SECTION 2: Any member of the Department may be
23 punished by the Board of Police Commissioners by reprimand, forfeiture
24 of pay, or required to serve extra tours of duty without pay, suspension
25 from duty without pay, reduction in rank or grade or dismissal from the
26 Department, as provided in the City Ordinances and the Laws of the
27 Commonwealth of Massachusetts, on conviction of any of the offenses
28 listed herein, to wit,

29
30 Ignorance of the Rules and Regulations of the Department

31 Any [I]llegal Offense

32 Conduct Unbecoming an Officer

33 Neglect or Disobedience of Orders

34 Any Act of Abusive Conduct or Oppression

35 Conduct Injurious to the Public Peace or Welfare

36 False Statements

37 Any Act Contrary to the Good Order and Discipline of the Department

38 Violation of any Rule Contained Herein

39
40 In accordance with Massachusetts General Laws, Chapter 31, the
41 Springfield Police Department will hold a hearing to contemplate the
42 issuance of discipline, up to and including the termination of your
43 employment. You will be notified in writing of the hearing date, time and
44 location. Pursuant to the Collective Bargaining Agreement between the
45 City of Springfield and the International Brotherhood of Police Officers,
46 Local #364, a hearing must be scheduled within sixty (60) days of the

1 issuance of this letter. If you desire to waive the sixty (60) day time limit for
2 a hearing on this matter, you may provide, in writing, a waiver of the sixty
3 (60) days, to the Office of the Police Commissioner, Springfield Police
4 Department 130 Pearl Street, Springfield, Massachusetts, 01105.

5
6 Copies of Massachusetts General Laws [C]hapter 31, [S]ections 41
7 through 45 are attached and incorporated as Addendum B and explain
8 your rights under Civil Service law.
9

10 Barbieri attached the June 16, 2016 IIU Report to the June 16, 2016 Notice of
11 Inter-Departmental Disciplinary Charges that he sent to the six officers.

12 Although Barbieri issued the June 16, 2016 charge letter and IIU Report to all six
13 officers who responded to Palmer on February 27, 2016, he believed that only one of
14 the six officers had delivered a kick that night. Vigneault received the Notice and the IIU
15 Report while he was at Barnes.⁴⁴ Sometime after Vigneault received the June 16 Notice
16 of Inter-Departmental Disciplinary Charges and the attached June 16, 2016 IIU Report,
17 he called Gentile. Gentile was "supportive, looking to help" and told Vigneault that Coyle
18 was his attorney in the case.

19 Gentile received a copy of the June 16, 2016 Notice of Inter-Departmental
20 Disciplinary Charges and the IIU Report from one of the officers involved and shared it
21 with Coyle who he had asked to represent all six officers. Gentile understood the

⁴⁴ Vigneault testified on direct examination that he received the June 16, 2016 Notice of Inter-Departmental Disciplinary Charges while he was at Barnes, but not the IIU Report. On cross-examination Vigneault denied receiving both items, claiming that he did not receive any SPD mail while at Barnes. For the following reasons, as well as Vigneault's demeanor, I find that he received the June 16, 2016 charge letter and IIU Report while at Barnes. First, the SPD attaches IIU reports to notices of interdepartmental disciplinary charges as a matter of policy. Second, Vigneault admitted receiving other correspondence at Barnes. Third, Vigneault's testimony on this point appeared particularly calculated in light of his earlier shifting testimony about whether he received the June 2, 2016 charge letter and the attached May 30, 2016 IIU Report. Fourth, Vigneault's overall hearing testimony showed poor recollection, which undermines his testimony on this point.

1 essence of the allegations to be excessive force during DR's arrest. Based on his
2 review of the material, Gentile concluded that there might be information in the June 16,
3 2016 IIU Report establishing that Vigneault violated SPD policies and procedures.
4 However, he did not infer from the June 16, 2016 IIU Report that Bigda, Cournoyer,
5 Rief, Rodriguez, or Robles had committed any infraction of rules, policies or procedures.
6 Likewise, after reading the charge letter and the IIU Report, Coyle concluded that the
7 kicking charges were specifically focused on Vigneault because Vigneault's own
8 statements in the IIU Report positioned him as the only person who could have kicked
9 DR.⁴⁵

10 July of 2016 Events

11 July 5, 2016

12 By letter dated July 5, 2016, Barbieri informed Bigda, Gethins, and Vigneault that
13 the SPD would hold a hearing on the East Longmeadow incident on July 28, 2016 "to
14 contemplate the issuance of discipline, up to and including the termination of your
15 employment." Although individually addressed, each letter was identical. The July 5,
16 2016 Notice of Hearing explained that: 1) the basis for the hearing and the alleged
17 charges were detailed in the June 2, 2016 Notice of Inter-Departmental Disciplinary
18 Charges; 2) Barbieri would appoint a hearing officer to conduct an evidentiary hearing;
19 3) the officer charged could appear and be represented by a Union Representative; 4)
20 that following the hearing, the hearing officer would make a recommendation whether
21 "just cause" existed to support the charges; and 5) that if Barbieri found just cause to

⁴⁵ At an unidentified point in time, Coyle had a conversation with Andrew about the June 16, 2016 IIU Report.

1 support the charges he would contemplate imposing discipline, up to and including the
2 termination of employment.

3 After receiving the June 5, 2016 Notice of Hearing, Gethins contacted Coyle. As
4 Coyle represented Bigda in the East Longmeadow matter scheduled for a July 28
5 hearing, he referred Gethins to Union Attorney Karen Betournay (Betournay).⁴⁶
6 Betournay agreed to Gethins' request to meet with both her and Vigneault before the
7 July 28, 2016 hearing.⁴⁷ In July, Betournay met with Gethins and Vigneault for about 20-
8 30 minutes and had a conversation about the East Longmeadow incident. They talked
9 about how intoxicated Bigda had been. Betournay found the charges against Gethins
10 and Vigneault to be "baseless," and that they had been the victims in the incident.

11 July 20, 2016

12 By letters dated July 20, 2016, Barbieri informed Vigneault, Bigda, Cournoyer,
13 Robles, Rief, and Rodriguez that the SPD would hold a hearing on August 11, 2016 "to
14 contemplate the issuance of discipline, up to and including the termination of your
15 employment."⁴⁸ Although individually addressed, each letter was identical. The July 20,
16 2016 Notice of Hearing explained that: 1) the basis for the hearing and the alleged

⁴⁶ Betournay has been representing employees and unions since about 2014. Her practice previously consisted of representing employers. She works in the same building as Coyle.

⁴⁷ Betournay believed Coyle also had asked her to represent Vigneault but testified that she could not be sure. Regardless, she testified that "to the extent that [Vigneault] was together with Gethins during the incident" she was representing him. She typically calls clients to let them know that she is representing them, but in this case she did not formally contact Vigneault before she met with him and Gethins.

⁴⁸ The July 20, 2016 Notice of Hearing does not specifically state that Commissioner Barbieri, Deputy Chief Anthony, and Captain Daniel had all recommended that the excessive force charges be referred to the CPHB for a hearing.

1 charges were detailed in the June 16, 2016 Notice of Inter-Departmental Disciplinary
2 Charges; 2) Barbieri would appoint a hearing officer to conduct an evidentiary hearing;
3 3) the officer charged could appear and be represented by a Union Representative; 4)
4 following the hearing, the hearing officer would make a recommendation regarding
5 whether "just cause" existed to support the charges; and 5) if Barbieri found just cause
6 to support the charges he would contemplate imposing discipline, up to and including
7 the termination of employment.⁴⁹ Vigneault received the July 20, 2016 Notice of Hearing
8 while he was at Barnes. Gentile or Coyle contacted him shortly thereafter.⁵⁰

9 On the advice of the City's Labor Relations Department, Barbieri had issued
10 Notices of Hearing in the Palmer matter to all six officers who potentially could have
11 been involved in Rogers' excessive force allegation. He also personally wanted to issue
12 the Notices of Hearing to all six officers who went to Palmer on February 27, 2016
13 because he thought it was possible that the officers may not have been truthful in their
14 reports. Barbieri believed that either Vigneault had lied in his report, or that another
15 officer could be identified as the kicker.⁵¹ At the time, Barbieri knew from the June 16,
16 2016 IIU Report that Bigda had been with MSP Trooper Baird during AP's arrest, and
17 that a witness, Tyler Merceri (Merceri), though uncooperative with the IIU investigation,

⁴⁹ Vigneault testified on direct examination that the June 16, 2016 IIU Report was not attached to the July 20, 2016 Notice of Hearing. However, there is no evidence that the City routinely attaches IIU reports to hearing notices. For reasons described above, I have determined that the City attached the June 16, 2016 IIU Report to the June 16, 2016 Notice of Inter-Departmental Disciplinary Charges.

⁵⁰ Vigneault testified on direct examination that he did not remember whether Gentile or Coyle contacted him first regarding the August hearing.

⁵¹ In light of Barbieri's testimony about his reasons for issuing the July 20, 2016 Notice of Hearing to all six officers, I do not credit Vigneault's testimony on cross-examination that he was summoned to the August 11, 2016 hearing merely "to be the scapegoat."

1 had reported on social media that he saw “state police. . . brutally beating this kid in the
2 face” and that after the juvenile was handcuffed, “[o]ne cop came up and fully swung his
3 leg back to release on[e] of the hardest kicks to the face I’ve ever seen.”

4 July 23, 2016

5 The District Attorney Office began a criminal investigation into Rogers’ excessive
6 force allegations in July of 2016. Additionally, District Attorney Gulluni told Barbieri on
7 July 23, 2016 that the Palmer Police Department had recordings of Bigda interrogating
8 the juveniles on February 27, 2016.⁵² At Barbieri’s request, the District Attorney sent
9 dvds from the Palmer Police Department to Barbieri. Barbieri immediately called City
10 Labor Relations Division Attorney William Mahoney (Mahoney) and Law Department
11 Attorney Edward Pikula (Pikula). Barbieri, Mahoney, Pikula, and Deputy Chief Robert
12 Cheetham (Cheetham), the Administrative Deputy Chief in charge of internal
13 investigations, all watched the dvds a couple of days later.

14 In the interrogation video, JT and DR are in separate cells. Bigda and Cournoyer
15 first enter the cell in which JT is held. After interrogating JT, they interrogate DR. They
16 then finish the interrogation session with DR. A uniformed Palmer Police Officer can be
17 seen in a doorway to the cells observing Bigda and Cournoyer conduct portions of the
18 interrogations. Most of Bigda’s questions concern who was in the stolen vehicle, who

⁵² During their testimony at hearing, Barbieri and Gentile refer to “dvds.” The DLR hearing record contains one digital 32-minute video and audio recording of Bigda and Cournoyer interrogating two juveniles. The video has been edited to completely obscure the juveniles’ faces and portions of the audio have been edited to silence names and addresses. Based on the evidence before me in this hearing, I conclude that the juvenile in the video described by Bigda as having an eye injury is DR and the other juvenile is JT. Although Bigda states in his May 24, 2016 report to Andrew that he interviewed all three juveniles in Palmer, AP’s interrogation is not part of the DLR hearing record.

1 was driving the vehicle, and whether the juveniles stole rolls of quarters from a person
2 or a business before or after they had the vehicle. Cournoyer stands during the
3 interrogations and says little.

4 During the interrogations, Bigda generally speaks in a level voice, but at times he
5 whispers or shouts. His language is replete with profanity. He makes overtly racist
6 statements.⁵³ His demeanor swings from angry, sarcastic and sneering, to calm and
7 sincere. He mostly sits next to the juveniles on a bench but stands occasionally. He
8 leans his face towards the juveniles from time to time. Bigda does not physically touch
9 or make any motion to touch the juveniles, but he repeatedly threatens to physically
10 harm them in the future.⁵⁴ Although Bigda points to blood on his own boot in JT's
11 interrogation⁵⁵ and observes that DR's eye has been beaten in DR's interrogation,⁵⁶
12 Bigda never explicitly states that he harmed the juveniles during the arrests. It is not
13 clear whether it is AP's or DR's blood on Bigda's boot. Nor is it clear whether the blood

⁵³ Over the course of DR's interrogation, Bigda states: "do you know how many f— Angels there are in Springfield? There's f— 4 million" and I'll tell you what, I'll give you the Angel, because that's f— not out of the ordinary, you f— heads don't even know who you father is" Well into JT's interrogation, which has been conducted entirely in English, Bigda asks, in relevant part: "You speak English?"

⁵⁴ In JT's interrogation, Bigda says it will be JT's blood on Bigda's boot if Bigda finds out JT is lying and that he is going to kick JT in the face and "bloody" his body as soon as they cross the Springfield line. Bigda tells DR during his interrogation that he will take him for a hospital trip and that he could "crush [DR's] skull . . . and f— get away with it."

⁵⁵ Bigda states during JT's interrogation, in relevant part: "All right boss, here's your opportunity, who's the kid at the hospital who thought – Oh look at that. You know what that is? [Bigda, tying his boot, points to his boot.] . . . That's his motherf— blood, right?" While it appears that Bigda is talking to JT about AP, in context of the overall interrogation session Bigda could also be referring to DR.

⁵⁶ During DR's interrogation, Bigda states, in relevant part: "Do you see this f—? His eye f— beat, everything."

1 on Bigda's boot is from kicking one of the juveniles, or from struggling with AP who was
2 getting bitten by the MSP K9 during his arrest.

3 After viewing the dvds, Barbieri was as upset about the content of the recordings
4 as he was about the failure of the SPD IIU to bring it to his attention. Barbieri knew that
5 any effort to discipline Bigda for his conduct during the interrogations would be
6 complicated by the fact that the SPD already had been in possession of the dvds
7 beyond the 90-day timeframe required for discipline pursuant to Article 6.04 of the
8 Agreement. He later learned that Sergeant Andrew had the interrogation dvds during his
9 IIU investigation of Roger's excessive force allegation, but did not did not notify the
10 Commissioner or Deputy Chiefs that the recordings existed or make any detailed
11 reference them in the June 16, 2016 IIU Report due to an unspecified
12 "miscommunication" between Andrew and Captain Brown.⁵⁷ Consequently, Barbieri
13 understood the June 16, 2016 IIU Report to be focused "exclusively on the kick."

14 Nevertheless, the City's Labor Relations Department attorneys decided to bring
15 charges against Bigda and Cournoyer for their conduct in the February 27, 2016
16 interrogations of the juveniles. The City's attorneys decided that the City would present
17 the interrogation video at the August 11, 2016 hearing on Rogers' excessive force
18 allegations. The City planned to take the position that it had issued the June 16, 2016
19 charge letters to Bigda and Cournoyer regarding February 27, 2016 events, and that the
20 interrogations were part of the overall incidents that occurred that night. The City's

⁵⁷ There is a paragraph in the June 16, 2016 IIU Report on the "Booking Video from Palmer Police Department dated February 27, 2016 for [DR]." It states that Andrew submitted a booking video on dvd with the June 16, 2016 IIU Report and that DR rubs his face during "the booking process" with Palmer Police Officer Eric Raymond. Nevertheless, the record contains no testimony or other evidence establishing that the booking video and the interrogation dvds are the same items.

1 Labor Relations attorneys told Barbieri that they would deal later with the issues of
2 whether the June 16, 2016 Notice of Inter-Departmental Discipline was sufficient to
3 support the interrogation allegations and whether combining the interrogation and
4 excessive force allegations was consistent with M.G.L. Chapter 31, Civil Service. At an
5 unidentified point in time, Barbieri had a brief, informal conversation with Gentile to let
6 him know about the interrogations.⁵⁸

7 July 28-30, 2016

8 East Longmeadow Incident Settlement

9 Prior to the scheduled July 28, 2016 hearing in the East Longmeadow incident,
10 the Union and the City negotiated an agreement to resolve the matter and cancelled the
11 hearing. The agreement required Bigda to serve a 10-day, unpaid suspension on dates
12 to be determined by Barbieri and imposed no discipline on Gethins and Vigneault.
13 Gentile negotiated the agreement. Based on Gentile's negotiations, Coyle drafted the
14 agreement. On July 28, 2016 Gentile, on behalf of the Union, and Bigda signed the
15 settlement agreement with the City. The following day Deputy Chief Anthony signed the
16 agreement on behalf of the City.

⁵⁸ There is conflicting testimony about where Barbieri and Gentile had this conversation. Barbieri testified that he went to the property room where Gentile works to explain that "the video was coming." He further testified that he "unintentionally" ran into Gentile on the matter. Gentile testified that the only time Barbieri ever came to talk to him about a labor issue in the property room was on the afternoon of August 10, 2016. For the following reasons, as well as the demeanor of Gentile and Barbieri, I do not credit this aspect of Barbieri's testimony. Gentile he was certain that the only time Barbieri ever came to talk to him about a labor issue in the property room was on the afternoon of August 10, 2016. In contrast, over the course of his testimony generally about meetings with Gentile, Barbieri expressed doubt about his memory stating "bear with me, it was a while ago" and "it was just some time ago."

1 During settlement negotiations with the City about the East Longmeadow matter,
2 Gentile communicated with Bigda, Vigneault, and Gethins about various proposals.
3 Vigneault and Gethins told Gentile that they would not agree to any non-disciplinary
4 resolution that required them to participate in retraining.⁵⁹ Consequently, Gentile
5 proposed and Barbieri agreed to create a non-disciplinary resolution for Vigneault and
6 Gethins that the City had never before used.

7 Although Coyle wrote the settlement agreement for Gentile, he was not directly
8 involved in the negotiations and did not advise Bigda about whether to accept the 10-
9 day suspension. Betournay also was not involved at all in the negotiations, but Coyle let
10 her know that the case had settled. She did not contact Vigneault to discuss the
11 settlement with him. However, there was no need for her to do so because Gethins and
12 Vigneault had been communicating directly with Gentile during settlement negotiations.

13 Palmer Interrogation DVDs

14 Later in the afternoon on July 28, 2016, as Gentile was walking towards
15 Barbieri's office, Deputy Chief Cheetham and Captain Larry Brown (Brown) asked
16 Gentile to follow them to Cheetham's office. There, they gave Gentile a stack of dvds
17 with recordings of Bigda's and Cournoyer's interrogation of the juveniles in Palmer on
18 February 27, 2016. Cheetham and Brown told Gentile to get the dvds to Coyle, pointing
19 to one in particular and telling Gentile to pay close attention to it.

20 Gentile immediately called Coyle and went to Coyle's office where they watched
21 the dvds. Gentile found the material very concerning. The dvds did not change Gentile's
22 assessment of Vigneault's liability relative to Rogers' allegation of excessive force

⁵⁹ Normally, when there is a non-disciplinary resolution of a case against an officer, the City requires the officer to participate in mandatory retraining.

1 during DR's arrest. However, the dvds did change his initial assessment, based only on
2 the June 16, 2016 IIU Report, that Bigda and Cournoyer had not committed any
3 infraction of rules, policies and procedures on February 27, 2016. Notwithstanding his
4 concerns, Gentile did not consider the June 16, 2016 Notice of Inter-Departmental
5 Discipline and IIU Report to encompass any potential allegations against Bigda and
6 Cournoyer for the juveniles' interrogations. Similarly, Coyle found the June 16, 2016 IIU
7 Report had "absolutely nothing. . . that would implicate anything to do with the
8 interrogation." Coyle considered the omission of detailed references to the videotaped
9 interrogations in the June 16, 2016 IIU Report to be significant because of the
10 contractual limitations on when the City must initiate charges based on its knowledge of
11 alleged misconduct. Ultimately, Coyle and Gentile concluded that the City had
12 exceeded the 90-day limit to bring charges against Bigda and Cournoyer for the
13 interrogations pursuant to Article 6.4 of the Agreement. Coyle and Gentile also
14 concluded that, from a procedural standpoint, the City had not provided notice of the
15 charges against Bigda and Cournoyer for the interrogations pursuant to Civil Service
16 statutes, particularly M.G.L. Chapter 31, Section 41. They did not consider the City's
17 charges against the officers for allegedly kicking the juvenile to have the same
18 procedural defects.

19 On July 29, 2016, Coyle learned from an unidentified person from the City's
20 Labor Relations Department that the City would present the interrogation video at the
21 August 11, 2016 hearing and bring charges against Bigda and Cournoyer for their
22 conduct during February 27, 2016 interrogations. Gentile told Cheetham on July 30,
23 2016, that the Union did not consider the June 16, 2016 Notice of Inter-Departmental

1 Disciplinary Charges and IIU Report to encompass the potential allegations that the
2 interrogation video presented. Cheetham disagreed and argued that the June 16, 2016
3 IIU Report did reference the interrogation videos. Gentile was not surprised by
4 Cheetham's response because in Gentile's experience, the City has never agreed with
5 him when he has raised the 90-day rule in disciplinary cases.

6 Gentile and Coyle did not want Barbieri to play the interrogation recordings at the
7 August 11, 2016 hearing as the City had planned. At an unspecified time, Coyle or
8 Gentile asked Bigda to come to Coyle's office to review the interrogation dvds and one
9 of them had a conversation with Bigda about how to proceed. Gentile and Coyle
10 explained that it was in the Union's and Bigda's best interest to try to resolve the
11 possible discipline with respect to the interrogations before the August 11, 2016
12 hearing. Bigda admitted wrongdoing and wanted to find a way to deal with it short of
13 going to a hearing. Gentile decided to ask whether the City would discuss resolving
14 potential disciplinary action against Bigda regarding the interrogations. He wanted to
15 find out whether the City would accept discipline short of a hearing and potential
16 termination. However, before Gentile had a chance to follow up with Cheetham on that
17 proposal, Gentile went on vacation.

18 August of 2016

19 August 2, 2016

20 At some point prior to August 2, 2016, Coyle learned from the City's Labor
21 Relations Department that the City planned to dismiss the June 16, 2016 charges
22 against Cournoyer, Robles, Rief, and Rodriguez because they were not at or near the

1 scene of DR's arrest and had no personal knowledge of the events that transpired.⁶⁰
2 Consequently, Coyle met with Cournoyer, Robles, Rief, and Rodriguez in their office on
3 August 2, 2016 to tell them that the City planned to withdraw the June 16, 2016
4 excessive force charges against them. Bigda was at the meeting as well. Vigneault had
5 been invited to attend but did not because he was at Barnes. During the August 2, 2016
6 meeting, Coyle did not discuss how he planned to defend the officers at the hearing
7 because the point of the meeting was to discuss the fact that the City planned to
8 dismiss the charges against Cournoyer, Robles, Rief, and Rodriguez.

9 I decline to infer that Coyle or any other person at the August 2, 2016 meeting
10 discussed Bigda's or Vigneault's February 27, 2016 conduct, or made plans to have
11 Vigneault blamed or prosecuted for kicking the juvenile. Coyle's testimony about the
12 August 2, 2016 meeting revealed that the reason for the meeting was to inform
13 Cournoyer, Robles, Rief, and Rodriguez that the City planned to withdraw the charges

⁶⁰ The Charging Party claims in the post-hearing brief that Coyle testified "that Gentile informed him that everyone except Vigneault and Bigda would be alleviated from the kicking charge." This is only partially accurate. Coyle testified on direct examination that "[t]he charges against the four officers who were not at the scene . . . were going to be dismissed at the beginning of the hearing." He further testified that he couldn't remember which City attorney told him the charges were specifically focused on Vigneault, and that he may have learned this information through Gentile. However, Gentile denied on direct examination that he passed this information on to Coyle. Barbieri also testified that he did not have a conversation with Gentile or Coyle that would have led them to believe that all of the officers except Vigneault and Bigda would be relieved of the kicking charges, but thought that Gentile could have had a conversation with the City's Labor Relations Department. Based on Coyle's overall credibility and the totality of the hearing testimony, I infer that Coyle learned of the City's plan to dismiss the June 16, 2016 charges against Cournoyer, Robles, Rief, and Rodriguez through conversations that he had with the City's attorneys.

1 against them.⁶¹ As a practical matter, Cournoyer, Robles, Rief, and Rodriguez were not
2 at the scene of DR's arrest and knew that the City planned to dismiss the charges
3 against them. Therefore, they had no clear motive to have Vigneault blamed or
4 prosecuted for kicking the juvenile.

5 Even assuming that Bigda wanted Vigneault blamed or prosecuted for kicking the
6 juvenile, by August 2, 2016, he didn't need to conjure up a narrative. Bigda claimed in
7 his May 24, 2016 statement to Andrew that he was running just ahead of Vigneault
8 when he stopped to assist Baird with AP's arrest in the middle of the street, while
9 Vigneault ran a short distance past him to assist Rogers near the sidewalk with DR's
10 arrest. Additionally, in Vigneault's June 13, 2016 IIU interview with Andrew and his June
11 14, 2016 report to Andrew, Vigneault placed himself as the only officer assisting Rogers
12 with DR's arrest and indicated that Bigda was occupied with AP during the entire period
13 of time that Vigneault was assisting Rogers with DR's arrest.

⁶¹ The Charging Party called Coyle as a witness for direct examination over the course of two days of hearing. On the first day of hearing on February 1, 2016, Coyle refused to answer certain questions about the substance of his August 2, 2016 meeting with the officers, claiming that such information was privileged based on his attorney/client relationship with them. On the second day of hearing on February 2, 2018, I ruled that none of Coyle's conversations with bargaining unit members were privileged and that I would take an adverse inference if he did not testify about his communications with bargaining unit members. Consequently, Coyle appeared at the third day of hearing on March 9, 2018 to resume his testimony on direct examination and testified that the "substance" of the August 2, 2016 meeting was to inform Cournoyer, Robles, Rief, and Rodriguez that the City planned to withdraw the charges against them. The remainder of Coyle's March 9, 2018 testimony on direct examination did not reveal any other information about the August 2, 2016 meeting, not because Coyle refused to testify, but because the Charging Party did not ask Coyle to respond to precisely the same questions about the August 2 meeting that Coyle had declined to answer at the February 1, 2018 hearing. The Union conducted no direct or cross-examination of Coyle. Therefore, Coyle's testimony does not establish that anyone at the August 2, 2016 meeting discussed Bigda's or Vigneault's February 27, 2016 conduct, or made plans to have Vigneault blamed or prosecuted for kicking the juvenile.

1 I also decline to take an adverse inference from Bigda's and Cournoyer's refusal
2 to testify about the August 2, 2016 meeting. The Charging Party asked Bigda on direct
3 examination whether he indicated during the August 2, 2016 meeting with Coyle and the
4 other officers that "he would have Vigneault blamed for kicking the juvenile in the face."
5 The Charging Party asked Cournoyer on direct examination whether he told Coyle on
6 August 2, 2016 that Bigda kicked a juvenile in the face and whether Coyle or Gentile
7 developed a plan during the August 2, 2016 meeting to tell Vigneault that he would be
8 prosecuted for kicking DR if he did not resign. Bigda and Cournoyer refused to testify,
9 invoking their rights under the Fifth Amendment of the Constitution of the United States
10 and Article 12 of the Massachusetts Declaration of Rights. Gentile did not instruct Bigda
11 to take the Fifth Amendment at any time or attempt to influence his decision to do so.
12 Gentile believed that it would have been better for the Union if Bigda did not invoke his
13 privileges.

14 It is well-established that an adverse inference may be drawn against a party
15 who invokes the Fifth Amendment privilege against self-incrimination. Town of Falmouth
16 v. Civil Serv. Comm'n, 447 Mass. 814, 826 (2006); Lentz v. Metro Prop. & Cas. Ins. Co.,
17 437 Mass. 23, 26 (2002). The rule also allows a reasonable inference "to be drawn
18 against an organization whose officers invoked the privilege, where the officers had
19 specific knowledge of actions taken on behalf of the organization in connection with the
20 underlying claim." Lentz, 437 Mass. at 26-27 (citing Labor Relations Commission v. Fall
21 River Educators' Association, 382 Mass. 465, 471-472, (1981)). Four nonexclusive
22 factors are to be considered in determining whether to admit a nonparty, nonemployee's
23 invocation of privilege substantively:

1 (1) the nature of the relevant relationship, i.e., whether the relationship is
2 such that the witness would be inclined to invoke the privilege on behalf of
3 the party; (2) the degree of control of the party over the witness asserting
4 the privilege, i.e., whether the party's control over the witness regarding
5 the facts and subject matter of the litigation warrant treating the witness's
6 invocation as a vicarious admission; (3) whether the party and the
7 witnesses have compatible interests in the witness's assertion of the
8 privilege; and (4) the witness's role in the litigation.
9

10 Lentz, 437 Mass. at 28. Any adverse inference must be "reasonable, reliable, relevant
11 to the dispute and *fairly* advanced against a party." Lentz, 437 Mass. at 28 (emphasis in
12 original). An inference should not be drawn if the witness invoked the privilege for
13 reasons unrelated to the case at issue. Lentz, 437 Mass. at 31-32.

14 In view of the Lentz factors for consideration, I am not persuaded to draw any
15 inference against the Union for Bigda's and Cournoyer's failure to answer questions
16 regarding the August 2, 2016 meeting. With respect to the first factor, the nature of the
17 relevant relationship does not establish that either Bigda or Cournoyer invoked their
18 privileges on behalf of the Union. At the time of their testimony, the only relationship
19 between the Union and Bigda, or the Union and Cournoyer, was simply that of a Union
20 and a bargaining unit member. They were not members of the Union's executive board.
21 Further, Bigda and Cournoyer had no partnership or employment relationship with the
22 Union. Thus, they cannot be considered agents of the Union.

23 As for the second factor, there is no evidence that the Union controlled Bigda's
24 and Cournoyer's decisions to invoke their privileges. In the absence of any relationship
25 other than that of Union and bargaining unit member, I do not find that the Union could
26 order Bigda or Cournoyer to testify at the DLR hearing. Moreover, the two bargaining
27 unit members faced potential criminal and civil litigation regarding their conduct on
28 February 27, 2016. Thus, I find that they asserted "mere personal invocations of their

1 right not to testify.” Compare Lentz, 437 Mass. at 29 (finding no personal invocation of a
2 right to testify where a party and witnesses were engaged in a joint venture and acting
3 as each other's agents).

4 Regarding the fourth factor, Bigda's and Cournoyer's roles in the DLR case are
5 limited because they were not members of the Union's leadership team and had no
6 decision-making role in the Union's representation of Vigneault at any point in time.
7 Because the DLR case concerns the Union's representation of Vigneault, the focus of
8 the case is on Union President Gentile's and Union Attorney Coyle's conduct and their
9 decisions and actions regarding Vigneault. Although Bigda and Cournoyer may have
10 provided relevant testimony about the August 2, 2016 meeting, they were only two of six
11 meeting attendees. Consequently, they did not hold information on any “subject
12 peculiarly within their knowledge and responsibility.” Compare Labor Relations
13 Commission, 382 Mass. at 472 (finding inferences against a union to be “reasonably
14 warranted” when union officers refused to testify on a subject peculiarly within their
15 knowledge and responsibility).

16 Finally, I find that any compatible interests that the Union shared with Bigda and
17 Cournoyer were coincidental. It is possible that Bigda and Cournoyer invoked their
18 privileges to avoid testifying to facts as incriminating to the Union as to themselves.
19 However, Bigda and Cournoyer were not Union executive board members, had no
20 leadership role in the Union's decision-making process of Vigneault's representation,
21 and had no partnership or employment relationship with the Union. As two of six
22 meeting attendees on August 2, 2016, they held no unique information. Moreover, they
23 invoked their privileges in view of other potential criminal and civil litigation. Therefore, I

1 conclude that the inferences sought are not reasonable, reliable or relevant to the issue
2 of whether the Union violated its duty of fair representation to Vigneault.

3 August 3, 2016

4 Coyle met with Vigneault on August 3, 2016 after Vigneault appeared at Coyle's
5 office without an appointment to discuss the Palmer case. Coyle did not believe there
6 was any conflict in him representing Vigneault and the other officers in the Palmer
7 matter.⁶² However, because Coyle had represented Bigda in an adverse posture to
8 Vigneault and Gethins in the East Longmeadow case, he invited Vigneault to use
9 Betournay again as his attorney in the Palmer case.⁶³ He told Vigneault that he wanted
10 to avoid any residual hard feelings from the East Longmeadow case. Coyle also told
11 Vigneault that he represented Bigda at the time in another unrelated pending federal
12 court case (the Douglas case).⁶⁴ Coyle explained that his representation of Bigda in the

⁶² Coyle did not know that Vigneault previously had complained to his superiors about Narcotics Officers drinking at work. Vigneault never personally raised the issue with Coyle. There is no evidence that at this point Gentile was aware of Vigneault's alcohol-related complaints either.

⁶³ There is conflicting testimony on this point. Coyle testified that during the August 3, 2016 meeting, he suggested that Vigneault use Betournay as his attorney in the Palmer matter and indicated that he represented Bigda in other cases. According to Vigneault on direct examination, Coyle never told him to call another IBPO attorney. Vigneault further denied on direct examination that he even knew Betournay. On cross-examination Vigneault denied that Coyle mentioned Betournay's name during the meeting. On redirect examination Vigneault testified that during his August 3, 2016 meeting Coyle never got into the details of his relationship with Bigda. For the following reasons, as well as the demeanor of Coyle and Vigneault, I do not credit these portions of Vigneault's testimony. First, in light of Betournay's testimony that she met with Gethins and Vigneault in July of 2016, I find that Vigneault knew Betournay. Second, Coyle's testimony about the August 3, 2016 meeting was far more detailed than Vigneault's testimony, and Coyle's demeanor while testifying exhibited a clear recollection of the event.

⁶⁴ Coyle's representation of Bigda in the East Longmeadow, Douglas, and Palmer cases were all a function of his role as Union attorney. He was not Bigda's private attorney.

1 other cases had nothing to do with the excessive force allegations and he didn't believe
2 that there was any conflict of interest in representing both Bigda and Vigneault in the
3 Palmer case, but that Vigneault could use Betournay as his attorney in the Palmer case
4 for his own peace of mind.⁶⁵ Nevertheless, Vigneault insisted on using Coyle as his
5 Union attorney. He believed Coyle would act in his best interests.

6 During their August 3, 2016 meeting, Coyle discussed at length with Vigneault
7 the charges against him, the IIU Report, and the problems that Vigneault's own June
8 14, 2016 report as contained in the June 16, 2016 IIU Report, caused in defending him
9 at a hearing.⁶⁶ Coyle specifically reviewed with Vigneault that Rogers' statement made it
10 clear that there was only one officer assisting him with DR, and that Vigneault's own

⁶⁵ Coyle later told Betournay about the situation.

⁶⁶ There is conflicting testimony about the nature of the August 3, 2016 meeting. Coyle testified that he discussed the charges at length with Vigneault, the IIU Report, and the problems that Vigneault's June 14, 2016 statement in the IIU Report caused in defending him at hearing. In contrast, Vigneault testified on direct examination that his meeting with Coyle was "laid back," "really informal" and lasted 10 minutes. He reiterated on cross-examination that the meeting was "real quick." According to Vigneault on cross-examination, Coyle "was very light about [the hearing]" and told him "you should be all set, don't worry about it." For the following reasons, as well as the demeanor of Coyle and Vigneault, I do not credit Vigneault on any of these points. First, Coyle's initial assessment of the June 16, 2016 IIU Report had been that the SPD's excessive force charges were specifically focused on Vigneault based on his own statements in the IIU Report. Second, in light of Coyle's assessment of the charges and his more than 35 years of representing employees in union-related matters, it is implausible that he would have told Vigneault not to worry about his situation or that he was "all set." Third, Coyle testified on two separate days of hearing. Nothing whatsoever about his demeanor at the hearing suggested that in a professional setting he is "laid back" or "really informal."

1 statement put him as the only one assisting Rogers in handcuffing DR.⁶⁷ Vigneault
2 denied kicking DR. But he did not tell Coyle that during the arrests, DR and AP were
3 "right next to each other" "[l]ess than eight feet apart." Nor did he tell Coyle that he
4 heard Bigda yelling "welcome to the white man's world" during AP's and DR's arrests,
5 heard Bigda spit, and saw him kicking AP before AP was in handcuffs. He also did not
6 tell Coyle that after assisting Rogers he "turned right around" to help Bigda. Rather,
7 Vigneault said that after assisting Rogers, he "went over" to where Bigda and MSP
8 Trooper Baird were still struggling with AP.⁶⁸ For Coyle, this reinforced his belief based
9 on Vigneault's statement in the June 16, 2016 IIU Report that Bigda could not have
10 been over kicking DR if he was struggling with AP. Based on his August 3, 2016
11 conversation with Vigneault, Coyle concluded that Vigneault and Bigda had been some
12 distance apart.

⁶⁷ There is conflicting testimony about whether Coyle explained the City's evidence against Vigneault. Coyle testified on direct examination that he reviewed with Vigneault the fact that his own statement put him as the only one assisting Rogers in handcuffing DR and that Rogers statement made it clear that there was only one officer assisting him with DR. Vigneault testified on re-cross examination that during the August 3, 2016 meeting, Coyle didn't explain the nature of the evidence against him or show him the June 16, 2016 IIU Report. For the following reasons, as well as the demeanor of Coyle and Vigneault, I do not credit Vigneault on this point. First, Vigneault admitted on cross-examination that Coyle discussed the hearing, who would be there, and what was going to happen during the proceedings. Second, Vigneault did not deny specifically that Coyle raised Vigneault's statement in the June 16 IIU Report as material that would be used against him at the hearing. Third, whether Coyle showed Vigneault the June 16, 2016 IIU Report during the August 3, 2016 meeting is immaterial because Vigneault already had the document.

⁶⁸ Vigneault testified on direct examination that after Rogers handcuffed DR, he "turned to" Bigda who was struggling with AP. He further testified on direct examination that during the arrests, DR and AP were "right next to each other" "[l]ess than eight feet apart." However, Vigneault had not included these details in his February 27, 2016 arrest report, his June 13, 2016 IIU interview with Andrew, or his June 14, 2016 report to Andrew for the June 16, 2016 IIU Report.

1 Although Vigneault denied kicking DR, Coyle explained that if the CPHB believed
2 the juvenile was in fact kicked, it seemed very likely that they were going to find that
3 Vigneault was the one who kicked DR. Vigneault did not ask Coyle about his collective
4 bargaining rights. Coyle knew that Vigneault was entitled to a just cause standard
5 pursuant to the collective bargaining agreement but did not review this point with
6 Vigneault during this particular meeting.

7 Coyle further discussed the CPHB hearing in terms of who would be there and
8 how the hearing would proceed. He told Vigneault that they would go to the hearing and
9 listen to the witnesses. Coyle said he did not know if DR or Rogers would attend the
10 hearing. Coyle also discussed the additional charges that the City intended to bring
11 against Bigda and Cournoyer regarding the interrogations of the juveniles. Coyle did not
12 tell Vigneault that presenting the video of Bigda's interrogations of the juveniles was a
13 viable defense for Vigneault because Coyle thought that the video made it less likely
14 that the CPHB would find Bigda to be the officer who kicked DR.

15 August 8, 2016

16 On August 8, 2016, Gentile returned to work from vacation. He met with Deputy
17 Chief Cheetham, who was his primary labor relations contact at the time, and proposed
18 an agreement whereby the Union and Bigda would accept a 30-day suspension to
19 resolve any potential disciplinary issues that the February 27, 2016 interrogations
20 raised.⁶⁹ Gentile did not ask Cheetham how the disciplinary issues arising from the
21 excessive force allegations could be resolved. Cheetham said he would bring the 30-

⁶⁹ There is conflicting testimony from Gentile and Barbieri about the evolution of settlement discussions regarding the interrogations. For reasons discussed in detail below, I credit Gentile's testimony on these points.

1 day suspension proposal to Barbieri. After consulting with the City's Labor Relations
2 Department, Barbieri subsequently proposed a 60-day suspension for Bigda. Cheetham
3 passed the proposal on to Gentile. Gentile either passed that proposal on to Coyle who
4 told Bigda, or Gentile told Bigda about the 60-day suspension proposal himself.

5 In later conversations, Bigda told Coyle that he did not want to accept a 60-day
6 suspension. Gentile also knew Bigda was wavering and having conversations with other
7 people to make his decision about whether to accept the 60-day suspension. Coyle
8 suggested to Gentile that he find out what discipline Barbieri would impose in the
9 absence of a settlement agreement regarding the February 27, 2016 interrogations.
10 Barbieri told Gentile that he would terminate Bigda, information that Gentile then relayed
11 to Coyle and Bigda. Bigda subsequently agreed to the 60-day suspension.

12 August 10, 2016

13 August 10, 2016 - Morning Status of the Potential Interrogation Allegations

14 On the morning of August 10, 2016, the Union and the City settled potential
15 allegations against Bigda and Cournoyer arising from the February 27, 2016
16 interrogation of the juveniles. Gentile told Cheetham that the Union and Bigda would
17 accept a 60-day suspension for potential charges against him. Shortly thereafter,
18 Gentile and Cheetham reached an agreement resolving the disciplinary issues that
19 Cournoyer potentially faced as a result of his role in the interrogations as well.
20 Consequently, on the morning of August 10, 2016, Gentile understood that the hearing
21 the following day involved only Roger's excessive force allegations.

1 August 10, 2016 - Morning Status of the Excessive Force Allegations

2 As of the morning of August 10, 2016, the hearing on the excessive force
3 allegations against all six officers was still scheduled to go forward the following day.
4 Gentile had not made any settlement proposals to the City regarding the June 16, 2016
5 charges of excessive force, and Coyle had not asked Gentile to find out if the City had
6 any flexibility in terms of imposing the potential discipline for the excessive force
7 allegations. Of the six officers facing the excessive force allegations at the August 11,
8 2016 hearing, Gentile and Coyle believed Vigneault faced the most exposure. Coyle
9 understood from his previous conversations with City attorneys that the City planned to
10 dismiss the charges against Cournoyer, Robles, Rief, and Rodriguez at the beginning of
11 the August 11, 2016 hearing because they had been nowhere near the scene of DR's
12 arrest. While Bigda was at the scene of DR's arrest, Vigneault had admitted in the June
13 16, 2016 IIU Report being the only officer that assisted Rogers with DR's arrest and had
14 reported that he never saw any officers use any unnecessary force.

15 Although Gentile understood that Vigneault was in trouble for the excessive force
16 charges, he had not talked to the City about settlement for several reasons. Whereas
17 Bigda admitted wrongdoing to Gentile and wanted to find a way to deal with that short of
18 going to a hearing, Vigneault denied kicking DR and never asked the Union to try to
19 settle the case. Without an admission of wrongdoing from Vigneault, Gentile believed
20 that there was nothing for him to propose for the purposes of settlement with the City.
21 Moreover, Gentile didn't know what the Union could offer as a settlement proposal to
22 the City in light of the fact that a juvenile allegedly had been kicked while lying

1 handcuffed on the ground. Gentile believed that the kicking of any handcuffed suspect
2 lying on the ground should result in termination.

3 Consequently, on the morning of August 10, 2016, Gentile was prepared to go to
4 hearing the next day on the excessive force allegations. Gentile and Coyle had decided
5 that Vigneault's defense would be that Rogers either made up the story about someone
6 kicking DR or that Rogers himself had delivered the kick and had written his
7 supplemental arrest report alleging excessive force by an plain clothed SPD officer to
8 deflect guilt from himself. Gentile knew that there were no pending complaints of
9 excessive force from any of the juveniles arrested on February 27, 2016, and that
10 Rogers had already indicated that he could not identify who kicked DR. Gentile did not
11 seek to interview potential witnesses for the August 11, 2016 hearing because he relies
12 on Coyle for legal representation at hearings.

13 To prepare for the August 11, 2016 hearing, Coyle had met with Vigneault on
14 August 3, 2016 and had a long conversation with him about how the hearing would
15 proceed and what Coyle's opinions were on the outcome.⁷⁰ In terms of potential
16 witnesses, Coyle contacted MSP Trooper Baird, but Baird didn't respond. Coyle did not
17 conclude that Baird did not want to talk because he himself kicked DR. In Coyle's
18 experience, MSP Troopers will not become involved with other police departments'
19 internal investigations without a subpoena. With respect to the other potential
20 witnesses, Coyle did not contact Officer Rogers or the civilian witness, Merceri, prior to
21 the August 11, 2016 hearing.

⁷⁰ The Charging Party claims in its post-hearing brief that Coyle "did not prepare for any hearing." I dismiss this portion of the argument as it is factually unsupported by the record.

1 Coyle did not interview Merceri for two reasons. First, Merceri had not been
2 cooperative with the SPD IIU investigation. Second, based on the information in the
3 June 16, 2016 IIU Report, Coyle did not believe that Merceri would be a helpful witness
4 to call on Vigneault's behalf. In fact, Coyle did not even want Merceri to know that there
5 was a hearing for fear that he would be a hostile witness for Vigneault. Coyle knew that
6 Merceri had claimed in a social media posting that an MSP Trooper kicked AP, spit on
7 him, and laughed and bragged, and that Bigda had been with MSP Trooper Baird.
8 However, Coyle did not believe that Bigda was the only person that Merceri could have
9 identified as having kicked the juvenile. He thought Merceri could have also identified
10 Vigneault, MSP Trooper Baird, a Monson or Wilbraham officer, or Rogers as having
11 kicked the juvenile.

12 Coyle had seen the interrogation video of Bigda pointing to his bloody boot and
13 threatening to physically harm the juveniles, but he had not tried to determine whether
14 DR had been kicked by someone wearing boots. He had not asked Vigneault what kind
15 of shoes he was wearing February 27, 2016. Coyle acknowledged during his hearing
16 testimony that had Vigneault gone to the hearing, presenting the interrogation video
17 evidence could have been "viable," but he personally did not think it was a viable
18 defense for Vigneault to point out that Bigda was on video threatening to kick a juvenile.
19 Coyle thought that the interrogation video made it less likely that the CPHB would find
20 Bigda had kicked DR. Therefore, he never offered to use the video to defend Vigneault
21 during the hearing.

August 10, 2016 - Afternoon Meeting Between Barbieri and Gentile

In the afternoon on August 10, 2016, after the City and the Union had resolved the Bigda and Cournoyer interrogation disciplinary issues, Barbieri personally sought out Gentile to discuss the excessive force hearing scheduled for the following day. Although at the time Deputy Chief Cheetham was Gentile's primary labor relations contact, Barbieri came into the property room at the SPD where Gentile works to talk about the hearing. Barbieri told Gentile that he specifically had asked Chief Tucker to order Rogers to attend the hearing the following day and to tell the truth. Barbieri explained that he would personally meet Rogers in the lobby of the police station before Rogers testified and tell Rogers that his testimony was important, that being truthful was important, that he believed Rogers could identify the person who kicked the juvenile, and that Barbieri would talk to Tucker if he didn't feel that Rogers was being completely honest. Barbieri told Gentile that he was going to have a conversation with Rogers about telling the truth because he found it hard to believe that he couldn't identify who kicked the juvenile. According to Barbieri, it "strained the bounds of credibility" that Rogers could not identify the SPD officer who he alleged kicked DR.

Barbieri did not tell Gentile that Rogers would identify the person who had delivered the kick or that he would identify Vigneault as the kicker. However, he told Gentile that he thought it was reasonable that Rogers might be able to identify the officer who kicked the juvenile. Gentile asked what would happen if Rogers did identify an officer. Barbieri told Gentile "if there's an identification there would be a termination." Barbieri stated further that Vigneault could resign that day, but if he went to the hearing and was found responsible for kicking the juvenile, he would be terminated. Barbieri did

1 not say simply that Vigneault should resign or be fired, but he used similar words.
2 Barbieri did not tell Gentile that Vigneault would be subject to prosecution for the use of
3 excessive force. Based on the available information regarding the excessive force
4 allegations as contained in the June 16, 2016 IIU Report, Barbieri and Gentile did not
5 discuss Bigda during this conversation.

6 Barbieri did not give Gentile a timeframe as to when Vigneault had to hand in his
7 resignation. Gentile did not ask Barbieri to postpone the hearing because, pursuant to
8 Article 6.04 of the Agreement, the City is required to hold a hearing on a disciplinary
9 matter within 60 days after imposing interdepartmental charges, and at this point, the
10 City was already over 50 days. Gentile said he would get back to Barbieri.

11 Credibility Determinations Relative to the August 10, 2016 Meeting Between
12 Barbieri and Gentile

13 Barbieri and Gentile offered conflicting testimony about the timing, nature and
14 substance of the August 10, 2016 meeting.⁷¹ Barbieri testified, in summary that:

15 a) during an August 10, 2016 meeting involving him, the Deputy Chiefs, and
16 Gentile to discuss the excessive force charges, Gentile proposed a 30-day
17 suspension for Bigda regarding the interrogations;
18

19 b) during a second meeting on August 10, 2016 he told Gentile that the City's
20 Labor Relations Department would accept a 60-day suspension for Bigda in lieu
21 of a hearing on the interrogations;
22

23 c) in response to Barbieri's 60-day suspension proposal Gentile asked whether
24 there still had to be an August 11, 2016 hearing because Gentile believed
25 Rogers would not identify an officer;
26

27 d) during a third meeting with Gentile on August 10, 2016, they discussed the
28 hearing scheduled for the following day and Barbieri told Gentile that "if there's
29 an identification there would be a termination." Barbieri did not mention Vigneault
30 by name but believed that they were both talking about Vigneault because

⁷¹ The Complaint alleges that on August 10, 2016, Gentile and Coyle met with Barbieri to discuss the August 11, 2016 hearing. However, it is undisputed that Coyle did not meet with Barbieri.

1 Vigneault was the only officer who placed himself at the location of the kicking in
2 the June 16, 2016 IIU Report.

3
4 e) Gentile came to Barbieri later in the day asked if he would accept Vigneault's
5 resignation, without discussing any benefit of Vigneault's resignation to Vigneault
6 or the Union.

7
8 Gentile testified, in summary, that:

9
10 a) on August 8, 2016 he proposed to Cheetham, his primary labor relations
11 contact a 30-day suspension for Bigda and later that day Cheetham relayed that
12 the City would accept a 60-day suspension for Bigda regarding the
13 interrogations;

14
15 b) in the morning on August 10, 2016 Gentile told Cheetham that Bigda would
16 accept the 60-day suspension and they worked out a settlement for Cournoyer
17 as well;

18
19 c) after the interrogation issue settled in the morning on August 10, 2016,
20 Barbieri alone sought Gentile out in the afternoon, in the property room where
21 Gentile worked, to discuss the hearing on the excessive force allegations
22 scheduled for the following day;

23
24 d) during the conversation in the property room, Barbieri stated that it was
25 reasonable that Rogers might be able to identify the officer who kicked the
26 juvenile, and that Vigneault could resign that day, but if he went to hearing and
27 was found responsible for kicking the juvenile, he would be terminated.

28
29 Gentile further testified that it was "very out of the ordinary" for Barbieri to seek
30 him out in the property room on August 10, 2016 to discuss the hearing the following
31 day because Deputy Cheetham was Gentile's primary labor contact at the time.
32 Moreover, Barbieri is five levels above Gentile in the chain of command.

33 Gentile admitted during his testimony on direct for the Charging Party that when
34 newspaper reporter Stephanie Barry (Barry) indicated to him in the Fall of 2016 that
35 Barbieri had denied using Vigneault's name, Gentile told Barry that he was "not
36 positive." Gentile stated during his testimony that while he is quoted by Barry in an
37 October 28, 2016 article as having said "the Commissioner may not have named

1 Vigneault specifically," he that he was still "comfortable" with that statement. However,
2 Gentile repeatedly and consistently testified at hearing that he believed Barbieri referred
3 to Vigneault by name when he told Gentile that if Vigneault was found responsible for
4 kicking the juvenile, he would be terminated, but that he had an opportunity to resign
5 before the hearing.

6 For the following reasons, as well as Gentile's and Barbieri's demeanor, I do not
7 credit Barbieri's testimony about his August 10, 2016 discussions with Gentile. First,
8 because Gentile did not seek settlement of the excessive force charges, it implausible
9 that Barbieri would have held an August 10, 2016 meeting with the Deputy Chiefs and
10 Gentile on the matter. Second, in light of the fact that Gentile and Coyle prioritized
11 settling the interrogation related issues just before Gentile went on vacation, it is likely
12 that Gentile would have tried to settle those charges as soon as he returned from
13 vacation on August 8, 2016 rather than waiting until August 10, 2016, the day before the
14 hearing. Third, in light of the fact that Cheetham was Gentile's primary labor contact, it
15 is more plausible that on August 8, 2016, Gentile proposed to Cheetham, not Barbieri,
16 the 30-day suspension for Bigda and that Cheetham got back to Gentile on August 10,
17 2016 to propose the 60-day suspension. I also credit Gentile's testimony because over
18 the course of Barbieri's testimony, he expressed doubt about his memory, stating, "bear
19 with me it was a while ago" and "it was just some time ago."

20 For the following reasons, as well as Gentile's and Barbieri's demeanor, I also
21 credit Gentile's testimony that Barbieri sought him out in the property room on August
22 10, 2016 to discuss the hearing the following day, and that Barbieri told Gentile that that
23 if Vigneault was found responsible for kicking the juvenile, he would be terminated, but

1 that Vigneault could resign before the hearing. First, Barbieri's visit to Gentile in the
2 property room is likely to have been a highly memorable event for Gentile because of
3 Barbieri's rank, because Barbieri had never before sought out Gentile in the property
4 room, and because Barbieri was not Gentile's primary labor contact at the time. Second,
5 Barbieri's testimony that, although he had never mentioned Vigneault's name, Gentile
6 came to him and proposed that Vigneault resign without asking for any benefits in return
7 for Vigneault or the Union, is implausible. Third, over the course of his testimony about
8 his version of the meetings with Gentile, Barbieri expressed doubts about his memory,
9 stating "to the best of my recollection," "I don't know how many meetings," "I don't know
10 how many conversations," and "it was just some time ago." While Gentile was unsure if
11 Barbieri referred to Vigneault by his first, last, or full name, he consistently testified that
12 Barbieri had referred to Vigneault by name. Gentile acknowledged during his testimony
13 that his recollection of events differed from Barbieri's testimony, but respectfully
14 expressed confidence in his own recollection of events.

15 Finally, although Gentile admitted making statements in the Fall of 2016 to Barry
16 that Barbieri may not have mentioned Vigneault by name in their conversation about the
17 consequences of the hearing, I find that Gentile's statements at the time were merely
18 diplomatic public remarks offered to maintain a working labor-management relationship
19 during a difficult period of time. I also find that Gentile's statements to the media must
20 be viewed in light of the vast difference in rank between him and Barbieri. Gentile
21 publicly disagreed with Barbieri as delicately as possible.

1 August 10, 2016 - Afternoon Telephone Call from Gentile to Coyle

2 Gentile called Coyle almost immediately after talking to Barbieri. He told Coyle
3 that Barbieri personally had delivered a message to him that if the hearing were held the
4 next day, Vigneault would be terminated, but that he had an opportunity to resign before
5 the hearing. Gentile did not merely tell Coyle that Vigneault could resign or be fired but
6 conveyed everything that Barbieri had told him. He did not tell Coyle that Rogers was
7 going to testify at the hearing and identify Vigneault as the person who kicked DR.

8 Coyle understood from his conversation with Gentile that if the CPHB found that
9 Vigneault had kicked the handcuffed DR, then termination would have to be the
10 outcome. Coyle never understood Vigneault's options as simply "resign or be fired." He
11 understood that it was all conditioned on whether the CPHB found him to be guilty.
12 Coyle did not talk to Barbieri himself before calling Vigneault, nor did he contact the City
13 to ask for more time for Vigneault to make a decision about whether to resign. After
14 speaking with Coyle, Gentile followed up with either Barbieri or Cheetham and asked
15 when they needed an answer by on the resignation.

16 August 10, 2016 Afternoon Telephone Call from Coyle to Vigneault

17 On August 10, 2016, Coyle texted Vigneault at about noon asking Vigneault to
18 call him right away on an important matter. Vigneault called Coyle immediately. Coyle
19 explained to Vigneault that Barbieri had told Gentile that Vigneault had the option to

1 resign before the hearing, otherwise he could face termination.⁷² Coyle did not tell
2 Vigneault to "resign or be fired,"⁷³ that he would be terminated at the August 11, 2016
3 hearing, that he would lose his pension⁷⁴ or that he was being investigated by the CPAC
4 Unit⁷⁵ and could be prosecuted.⁷⁶

⁷² Vigneault testified on direct examination that Coyle told him that he could either resign or get terminated and that Coyle further stated, "you know, you must have pissed somebody off. They could've saved your job but they decided not to." I do not credit this portion of Vigneault's testimony, not only because it was accompanied by an unconvincing demeanor, but also because his assertion is highly inconsistent with Coyle's demeanor and manner of speaking as displayed over the course of two days of testimony. Vigneault's assertion is also too vague to be considered plausible absent identification of the individuals who purportedly could have saved his job.

⁷³ Vigneault testified on direct examination that Coyle told him "resign or be fired." He further claims in his post-hearing brief that "Coyle admits that he ultimately conveyed to Vigneault . . . that Vigneault must resign or be fired." Vigneault also claims in his post-hearing brief that while Coyle initially denied telling Vigneault "resign or be fired" during his hearing testimony, he "ultimately recanted." For the following reasons, as well as Coyle's and Vigneault's demeanor, I do not credit Vigneault's testimony. I also find Vigneault's post-hearing brief claims to be factually unsupported. First, Coyle merely answered affirmatively in response to a vague leading question on direct examination that "it was directed at Mr. Vigneault to resign or be fired, correct?" Second, Coyle repeatedly denied over the course of his testimony that he personally told Vigneault "resign or be fired" and recalled in detail his conversation with Vigneault, explanations to Vigneault and his reasoning for those explanations. In contrast, Vigneault's recollections were acutely limited to his allegations that Coyle called and told him that Rogers would identify him the following day and that his options were to resign or be fired.

⁷⁴ Vigneault alleges in his post-hearing brief that Coyle told him that he could lose his pension. For the following reasons, as well as Coyle's and Vigneault's demeanor, I do not credit Vigneault on this point. First, Vigneault testified on direct examination that Gentile, not Coyle told him that he would lose his pension. Second, Coyle denied telling Vigneault that he could lose his pension and explained that under 32B, Section 19, Vigneault would have lost his right to participate in group health insurance as a retiree. He further explained that while Vigneault was close to being able to collect his pension, he would have only been eligible for a pension if he worked for a couple of more years under Chapter 32B. In view of Coyle's understanding that Vigneault was not yet eligible for a pension, I credit his testimony that he did not advise Vigneault that he was going to lose his pension.

⁷⁵ CPAC is an MSP Unit assigned to the District Attorney's Office.

1 Coyle also did not tell Vigneault that Rogers would attend the August 11, 2016
2 hearing and identify him as the one who kicked DR.⁷⁷ Rather, Coyle explained to
3 Vigneault that he was "concerned" that Rogers "might" identify Vigneault as the kicker
4 "because the circumstances of the hearing are very suggestive with somebody sitting at
5 a table with their lawyer." Coyle explained to Vigneault that everyone was "skeptical" of
6 Rogers' claim that he couldn't identify the officer who kicked DR, and Coyle was
7 concerned that Rogers would have a "revelation" at the hearing and identify Vigneault
8 as the kicker. As he had on August 3, 2016, Coyle also reviewed with Vigneault the
9 evidence that established that of the six officers charged, Vigneault was most likely to
10 be the one found guilty of having kicked DR. Coyle told Vigneault that Rogers'
11 statement made it very clear that there was only one other officer with him while he was
12 dealing with DR, and by Vigneault's own statements in the June 16, 2016 IIU Report,

⁷⁶ Vigneault alleges in his post-hearing brief that Coyle testified that he told Vigneault that he was being investigated by CPAC Unit and could be prosecuted. However, Coyle only testified that he could not recall whether prosecution was one of the considerations he helped Vigneault to weigh in his decision about whether to resign. Vigneault testified on direct examination only that Gentile told him that being investigated by CPAC Unit and could be prosecuted. Therefore, I find this post-hearing brief assertion to be factually unsupported.

⁷⁷ There is conflicting testimony about whether Coyle told Vigneault that Rogers would identify Vigneault as the officer who kicked DR. Vigneault testified on direct examination that Coyle said Rogers would identify him at the August 11, 2016 hearing as the one who kicked DR. Coyle denied on direct examination telling Vigneault that Rogers was going to identify him as the kicker and provided detailed testimony about his conversation with Vigneault. For the following reasons, as well as Coyle's and Vigneault's demeanor, I do not credit Vigneault's testimony on this point. First, Coyle offered far more detailed testimony about his interactions with Vigneault generally, and about his August 10, 2016 conversation with Vigneault, than did Vigneault. Second, Vigneault's subsequent conduct belies his claim. Immediately after speaking with Coyle, Vigneault talked to Gentile but never said that Coyle just had told him that Rogers would identify Vigneault at the hearing.

1 that one person was him. Coyle further explained that although Rogers said in the IIU
2 Report that he didn't know who kicked DR, Vigneault's statement in the IIU Report
3 placed him as the only SPD officer in a position to kick DR.⁷⁸

4 Vigneault again denied to Coyle that he kicked DR. However, Vigneault did not
5 tell Coyle that during the arrests, DR and AP were "right next to each other" "[l]ess than
6 eight feet apart." Nor did Vigneault tell Coyle that he heard Bigda yelling "welcome to
7 the white man's world" during AP's and DR's arrests, heard Bigda spit, and saw him
8 kicking AP before AP was in handcuffs.

9 Coyle knew that Vigneault was entitled to a just cause standard for discipline
10 pursuant to the Agreement and explained Vigneault's appeal rights "in detail."⁷⁹ He did
11 not advise Vigneault to relinquish his collective bargaining rights.⁸⁰ Although Coyle
12 discussed Vigneault's option to resign and brought up all of the above-referenced
13 factors for Vigneault to consider, Coyle made clear that it was Vigneault's choice about

⁷⁸ Vigneault testified on recross-examination that he didn't know Officer Rogers' name until he talked to Coyle on August 10, 2016 because he was up at Barnes and out of the loop. For reasons discussed in footnote 41, I find that Vigneault certainly knew Rogers' name when Andrew interviewed Vigneault for the IIU investigation on June 13, 2016.

⁷⁹ There is conflicting testimony on this point. Vigneault denied on direct examination that Coyle explained what rights he had under the collective bargaining agreement. Coyle testified on direct examination that he explained Vigneault's appeal rights "in detail." For the following reasons, as well as Coyle's and Vigneault's demeanor, I do not credit Vigneault on this point. First, Coyle offered far more detailed testimony about the conversation than Vigneault and his demeanor while testifying exhibited a clear recollection of the event. Second, in light of the fact that Coyle had been representing employees in union-related matters for more than 35 years, I find it highly unlikely that he would not have reviewed Vigneault's appeal rights.

⁸⁰ Vigneault claims in his post-hearing brief that Coyle "advised" him to "to relinquish his rights." There is no factual support for this portion of Vigneault's post-hearing brief.

1 whether to resign.⁸¹ Vigneault was devastated. Coyle said Vigneault had a couple of
2 hours to decide whether to resign. Vigneault never talked to Coyle again.

3 During Coyle's conversation with Vigneault, he did not: offer to investigate what
4 Barbieri had told Coyle; go over the Bigda interrogation video with Vigneault; tell
5 Vigneault that the Union would interview witnesses; or tell Vigneault that he was entitled
6 to call witnesses. There is no evidence in the record that Vigneault asked Coyle to talk
7 to Barbieri, asked Coyle questions about the Bigda or the interrogation video, or asked
8 about interviewing other witnesses. Coyle believed at the time that as a police officer
9 who had worked in law enforcement for 18 years, that Vigneault certainly knew he could
10 call witnesses.

11 August 10, 2016 - Afternoon Telephone Call from Vigneault to Gentile

12 After talking to Coyle, Vigneault called Gentile immediately.⁸² They had a
13 fourteen-minute phone call.⁸³ Vigneault asked if it was true that Barbieri had told Gentile
14 that Vigneault could resign or be fired. Gentile said yes, Barbieri had suggested that
15 Vigneault could resign, or he would be terminated if he was found responsible. Gentile
16 let Vigneault know exactly what Barbieri said. Gentile did not tell Vigneault to "resign or
17 be fired," that he would be terminated at the hearing, or that he was being investigated

⁸¹ Vigneault claims in his post-hearing brief that Coyle "advised" him to resign. However, Vigneault did not testify on this point and Coyle flatly denied during his testimony on direct examination that he ever gave Vigneault advice on whether to accept the option to resign. Therefore, there is no factual support for this portion of Vigneault's post-hearing brief.

⁸² According to Gentile, Vigneault called him sometime between noon and 2:00 p.m.

⁸³ Gentile had talked to Vigneault fourteen times between Feb 27 and August 10, 2016.

1 by the CPAC Unit and could be prosecuted.⁸⁴ Gentile did not tell Vigneault that Barbieri
2 had indicated that Rogers was going to identify Vigneault as the one who kicked DR or
3 that he had the impression that Rogers would name an assailant.⁸⁵

4 Vigneault told Gentile he was devastated, asked how this could be happening,
5 and said that being an SPD officer was the job he always wanted. Vigneault asked
6 Gentile what he should do because Rogers could identify Vigneault at the hearing for
7 the sake of identifying any officer, and Vigneault didn't want to get terminated because
8 he wouldn't be able to work at another police station. Although he denied kicking DR,
9 Vigneault did not tell Gentile that during the arrests, DR and AP were "right next to each
10 other" "[l]ess than eight feet apart." Nor did he tell Gentile that he heard Bigda yelling
11 "welcome to the white man's world" during AP's and DR's arrests, heard Bigda spit, and
12 saw him kicking AP before AP was in handcuffs.

⁸⁴ There is conflicting testimony on this point. Vigneault testified that Gentile told him that the CPAC unit was investigating and he could be prosecuted. However, Gentile denied using the words CPAC Unit to Vigneault or telling him that he could be subject to prosecution. I credit Gentile's testimony on this point based on his demeanor and overall credibility.

⁸⁵ There is conflicting testimony on this point. Vigneault testified on direct examination that Gentile said that Barbieri had "relayed" that morning that "Rogers was going to go to the hearing [and] identify [Vigneault] as the one who kicked the juvenile." Gentile flatly denied on direct and cross-examination telling Vigneault that either Barbieri had indicated that Rogers was going to identify Vigneault as the kicker or that it was his impression that Rogers was ready to name an assailant. For the following reasons, as well as Gentile's and Vigneault's demeanor, I do not credit Vigneault's testimony on this point. First, Gentile recalled his telephone conversation with Vigneault in far greater detail than did Vigneault. Second, throughout the hearing, Vigneault exhibited a selective recollection about key events.

1 Although Gentile discussed Vigneault's pension and retirement issues, he did not
2 specifically tell Vigneault that he would lose his pension.⁸⁶ Gentile, who had known
3 Vigneault from working together with him at the Sheriff's Department in the early 1990's
4 believed that Vigneault had over 20 years of service already. Vigneault clarified that he
5 had only 15 years of service there, and then a couple of more years at the SPD. Gentile
6 said that 17 years was a significant amount of time and that made Vigneault's decision
7 harder. While not an expert on retirement, Gentile knew that there was some
8 significance to 10 years and 20 years of service. Gentile explained that he personally
9 would go to the hearing if he had only 2 years of service for the SPD, but that if he had
10 17 years of prior service, the situation would be different.

11 Gentile did not recommend that Vigneault "resign or be terminated." he
12 considered it to be Vigneault's decision as to whether to resign before the August 11,
13 2016 CPHB hearing. He did his best to be empathetic. He truly felt bad for Vigneault,
14 knew it was a horrible position to be in, and wished that Vigneault wasn't in it. But
15 Gentile felt that he couldn't stop the situation from unfolding as it had in terms of
16 Barbieri's message.

17 Vigneault did not asked Gentile about the interrogation video or request that the
18 Union interview witnesses. Nor did Vigneault ask about the possibility of a lengthy
19 suspension or any other potential settlement proposal. Gentile did not offer to review the

⁸⁶ There is conflicting testimony on this point. Vigneault testified on direct examination that Gentile told him that he "would" or "could" lose his pension. Gentile testified on direct examination for the Respondent that he discussed Vigneault's pension and retirement issues, but he did not state that he told Vigneault that he would lose his pension. For the following reasons, as well as Gentile's and Vigneault's demeanor, I do not credit Vigneault's testimony on this point. First, Vigneault provided no further details about this aspect of his conversation. Second, Vigneault's testimony about this aspect of the conversation with Gentile is exceedingly sparse.

1 interrogation video with Vigneault or tell Vigneault that the Union would interview
2 witnesses. Gentile also did not raise the possibility of a lengthy suspension with
3 Vigneault because Barbieri had been very clear about what the options were, Gentile
4 did not believe that Barbieri was open to alternatives, and Vigneault had never asked for
5 the Union to seek alternative options.

6 At the conclusion of their conversation, Vigneault did not indicate that he would
7 resign. Gentile told Vigneault to take "a couple [of] hours to think about it."⁸⁷ Vigneault
8 did not ask for more time to consider his options, and Gentile did not offer to find out
9 whether the hearing could be postponed.⁸⁸

10 August 10, 2016 Afternoon - Gentile's Second Telephone Call to Vigneault

11 On August 10, 2016, at about 3:00 p.m. Gentile called Vigneault to tell him that
12 he needed to make a decision so that the Union could let the City know whether there
13 would be a hearing the next day. It was a six-minute call. Vigneault said he would

⁸⁷ After speaking with Gentile, Vigneault called Gethins to discuss his situation. There is conflicting testimony about whether Vigneault told Gethins that he kicked DR. I need not resolve this issue for the following reasons. First, Gethins was not a Union official. Second, there no evidence that during the time period relevant to this case she told Gentile or Coyle about her conversations with Vigneault.

⁸⁸ Vigneault claims in his post-hearing brief that the Union gave him less than 12 hours to resign or be fired. This allegation is factually unsupported by the record. In fact, the June 16, 2016, Notice of Inter-Disciplinary Charges explicitly stated that the SPD would "hold a hearing up to and including the termination of your employment," and the July 20, 2016, Notice of Hearing stated that if Barbieri found just cause to support the charges he would contemplate imposing discipline, up to and including the termination of employment. Additionally, it was Barbieri who told Gentile in the afternoon on August 10, 2016 that Vigneault could resign that day, but if he went to the hearing and was found responsible for kicking the juvenile, he would be terminated. The hearing was scheduled for the following morning. Gentile and Coyle conveyed Barbieri's message in a timely manner. Vigneault never told the Union that he needed more time to make a decision about whether to resign or go forward with the hearing.

1 resign. Gentile and Vigneault agreed on a place and time to meet so that Vigneault
2 wouldn't have to go to the station to hand in his resignation letter.

3 After speaking with Vigneault, Gentile went to Deputy Cheetham to let him know
4 that Vigneault had agreed to resign and would meet Gentile the following morning with
5 his resignation letter, his badge, firearm, and identification. Cheetham told Gentile that
6 everything had to be turned in by 10:00 a.m. so that CPHB members could be notified
7 that the hearing would be cancelled. Cheetham did not cancel the hearing until after
8 Vigneault resigned.

9 In the context of testifying about the events of August 10, 2016, Vigneault stated
10 that there was never any animosity between him and Gentile, that he trusted Gentile,
11 and that he never had a bad interaction with Gentile. He further testified that Gentile
12 was "helpful." In the same context, he testified that there was never any ill will or ill
13 feelings between him and Coyle. He testified that throughout the process he did not
14 think that Gentile or Coyle were working to his disadvantage to arrange his resignation.
15 When asked in the course of his testimony whether he had any information that Gentile
16 and Coyle manipulated the situation regarding the August 11, 2016 CPHB hearing to his
17 detriment and to Bigda's advantage, Vigneault stated merely that "it felt like it because. .
18 . . [Bigda] got ten days." Vigneault did not explain the connection between Bigda's 10-
19 day suspension for the East Longmeadow incident and the Palmer incident.

20 August 11, 2016

21 On August 11, 2016, Vigneault resigned from the SPD. At about 10:00 a.m. that
22 day, he met with Gentile at a previously agreed-to location and handed Gentile his
23 resignation letter, badge, service weapon, and identification. Vigneault's resignation

1 letter, addressed to Barbieri, stated: "It comes with great remorse that I, Steven
2 Vigneault am requesting my resignation as a Police Officer for the City of Springfield,
3 Massachusetts. My resignation will be effective as of 08/11/2016." Barbieri read and
4 accepted the resignation letter on August 11, 2016. The City cancelled the hearing.
5 Between February 27, 2016 and August 11, 2016, Gentile and Vigneault had 15 phone
6 calls. After resigning on August 11, 2016, Vigneault "continued his relationship" with
7 Gentile, who assisted Vigneault in accessing his police folder.

8 August 12, 2016

9 On August 12, 2016, the Department, the Union, and Bigda signed a
10 Memorandum of Agreement (August 12, 2016 MOA) relative to the Palmer
11 interrogations that states, in relevant part:

12
13 The Springfield Police Department (the "Department"), Officer Gregg
14 Bigda and International Brotherhood of Police Officers Local #364 (the
15 "Union") hereby agree that the following terms and conditions constitute
16 the resolution of the disciplinary matter regarding Officer Gregg Bigda
17 related to Officer Bigda's conduct on or about February 27, 2016 during
18 the interrogation of a minor at the Palmer Police Department.

- 19
20 1. Effective September 8, 2016, Officer Bigda shall begin a sixty (60)
21 working tours unpaid suspension.
22
23 2. The Union, and the Employee agree to withdraw, with prejudice,
24 any pending grievance related to the imposition of disciplinary
25 action for the incident described above. The Union and the
26 Employee agree to waive any and all rights to seek a remedy of this
27 matter in any other forum and further agree that there is just cause
28 for this disciplinary action.
29

30 By letter dated August 12, 2016, Barbieri suspended Bigda for 10 days without
31 pay for his conduct in the East Longmeadow incident, stating, in relevant part:

32 On July 29, 2016 you entered into a mutually agreed upon disposition, of a
33 ten (10) day suspension without pay, for violating the rules and regulations
34 of the Springfield Police Department.

1 This ten (10) day suspension shall be a final resolution of any and all
2 disciplinary charges which were or could have been initiated against you
3 as a result of your conduct which was the subject of Special Order 16-032.
4

5 The days of suspension are [certain August-September dates].
6

7 Fall of 2016
8

9 In October or November of 2016, the SPD conducted an internal investigation
10 into alcohol consumption by Narcotics Unit officers.⁸⁹ Sergeant Pelchar contacted
11 Vigneault regarding the investigation. Vigneault told Pelchar that he was no longer
12 working at the SPD and "didn't need to answer any questions." Vigneault ended the
13 conversation with Pelchar by saying that "everybody knows everybody drinks in the
14 Narcotics Unit." Pelchar said, "I know, but I have to do this." Also, in the fall of 2016, the
15 U.S. Attorney's Office began conducting a civil rights investigation of February 27, 2016
16 events.
17

18 OPINION

19 I. Complaint

20 The Complaint in the case at issue alleges that the Union interfered, restrained
21 and coerced Vigneault in the exercise of his rights guaranteed under Section 5 of the
22 Law, in violation of Section 10(b)(1) of the Law. The Complaint specifically alleges that:

- 23 1) on August 10, 2016, Coyle and Gentile contacted Vigneault and falsely told him
24 that Rogers was going to testify at the August 11, 2016 hearing and identify
25 Vigneault as the officer who kicked the juvenile;
- 26 2) Coyle and Gentile falsely told Vigneault that Barbieri had stated that Vigneault
27 should submit his resignation in writing by 11:00 a.m. on August 11, 2016 or he
28 would be terminated at the hearing;

⁸⁹ Vigneault argues in his post-hearing brief that the six Narcotics Unit officers charged with kicking the juvenile were simultaneously subjected to an IIU investigation relative to the use of alcohol. This assertion is contrary to the evidence in the record, including Vigneault's own testimony on the matter.

1
2 3) Gentile falsely advised Vigneault that if he failed to resign, he would face criminal
3 prosecution.
4

5 I dismiss all of the allegations in the Complaint because they are factually
6 unsupported by the hearing record. With respect to the first allegation, neither Coyle nor
7 Gentile told Vigneault that Rogers was going to testify at the August 11, 2016 hearing
8 and identify him as the officer who kicked the juvenile. Coyle explained to Vigneault on
9 August 10, 2016, that he was "concerned" that Rogers "might" identify Vigneault as the
10 kicker "because the circumstances of the hearing are very suggestive." Coyle also told
11 Vigneault that everyone was "skeptical" of Rogers claim that he couldn't identify the
12 kicker, and that Coyle was concerned that Rogers would have a "revelation" at the
13 hearing and identify Vigneault as the kicker. In short, Coyle told Vigneault that Rogers
14 was unpredictable and presented certain risks for Vigneault. Consequently, it was
15 Vigneault who subsequently called Gentile and said he (Vigneault) was worried that
16 Rogers was going to identify him for the sake of identifying any officer. Gentile did not
17 tell Vigneault that he had the impression Rogers would name an assailant, or that
18 Barbieri had indicated that Rogers was going to identify Vigneault as the one who
19 kicked DR.

20 Regarding the second allegation, there is no evidence in the record that anyone
21 told Vigneault he would literally be terminated at the August 11, 2016 hearing.
22 Moreover, Coyle and Gentile accurately communicated to Vigneault on August 10, 2016
23 Barbieri's message that Vigneault could resign before the hearing that was scheduled
24 for the following morning or he would face termination if he was found responsible for
25 kicking DR. Although Coyle and Gentile discussed Vigneault's option to resign and

1 brought up factors that Vigneault should consider, they both explicitly told him that it
2 was his decision about whether to resign. Both told Vigneault that he had a couple of
3 hours to decide whether to resign because the hearing was the following morning.
4 Accordingly, Coyle and Gentile provided Vigneault with accurate information.

5 Finally, the third allegation in the Complaint is factually unsupported by the
6 record. There is no evidence that Gentile told Vigneault that if Vigneault failed to resign,
7 he would face criminal prosecution. For all of the reasons stated above, I dismiss the
8 Complaint in its entirety.

9 II. Other Allegations

10 A. Section 10(b)(1) of the Law

11 Once a union acquires the right to act for and to negotiate agreements on behalf
12 of employees in a bargaining unit, Section 5 of the Law imposes on that union an
13 obligation to represent all bargaining unit members without discrimination and without
14 regard to employee organization membership. A union breaches its statutory
15 responsibility to bargaining unit members if its actions towards an employee, during the
16 performance of its duties as the exclusive collective bargaining representative, are
17 unlawfully motivated, arbitrary, perfunctory, or reflective of inexcusable neglect. Quincy
18 City Employees Union, H.L.P.E. and Nina Pattison, 15 MLC 1340, 1355, MUPL-2883
19 (January 24, 1989), aff'd sub nom., Pattison v. Labor Relations Commission, 30 Mass.
20 App. Ct. 9 (September 13, 1991), further rev. den'd, 409 Mass. 1104 (1991). If the facts
21 support a finding that an exclusive bargaining representative has breached its duty of
22 fair representation, the CERB concludes that the union has violated Section 10(b)(1) of
23 the Law.

1 Unions are permitted a wide range of reasonableness in fulfilling their statutory
2 obligations, subject to good faith and honesty in the exercise of their discretion. Tringue
3 v. Mount Wachusett Community College Faculty Association, 14 Mass. App. Ct. 191,
4 199 (1992) (citations omitted). "Consequently, an aggrieved employee, notwithstanding
5 the possible merits of his claim is subject to a union's discretionary power to pursue,
6 settle, or abandon a grievance, so long as its conduct is not improperly motivated,
7 arbitrary, perfunctory or demonstrative of inexcusable neglect." Baker v. Local 2977,
8 State Council 93, American Federation of State, County & Municipal Employees, 25
9 Mass. App. Ct. 439, 441 (1988) (citations omitted). See also National Association of
10 Government Employees v. Labor Relations Commission, 38 Mass. App. Ct. 611, 613
11 (1995) (stating that a union has considerable discretion in determining whether to file a
12 grievance and whether to pursue it through all levels of contractual grievance-arbitration
13 procedure).

14 A union's action is arbitrary if it is without a rational basis, unfair and unrelated to
15 legitimate union interests. International Brotherhood of Police Officers, Local 338 and
16 Michael Ciccolini, 28 MLC 285, 288, MUPL-4225 (March 15, 2002) (citing Peterson v.
17 Kennedy, 771 F.2d. 1244, 1254 (1985)). A good faith error in judgment does not
18 constitute arbitrary conduct. National Association of Government Employees and Jessie
19 Murray, 34 MLC 30, 38, MUPL-03-4445 (October 3, 2007) (citing Somerville Fire
20 Fighters Association Local 1240 I.A.F.F. and Joseph Crowley, 27 MLC 45, 47, MUPL-
21 4172 (November 16, 2000)).

22 A union's action is perfunctory if it is done as a matter of routine and for form's
23 sake, without interest or zeal. Somerville Fire Fighters Association, Local 1240 and

1 Crowley, 27 MLC at 47. For instance, if a union ignores a grievance, inexplicably fails to
2 take some required step, or gives the grievance merely cursory attention, it has
3 breached the duty of fair representation by its perfunctory handling of an employee's
4 grievance. Independent Public Employees Association, Local 195 and Elizabeth P.
5 Clarke, 12 MLC 1558, 1565, MUPL-2633 (January 22, 1986) (quoting Harris v.
6 Schwerman Trucking Co., 668 F.2d 1204 (11th Cir. 1982)). Similarly, if a union fails to
7 investigate, evaluate, or pursue an arguably meritorious grievance without explanation,
8 it has breached its duty of fair representation by its gross or inexcusable negligence.
9 NAGE and Herbert Moshkovitz, 20 MLC 1105, 1113, SUPL-2522 (August 9, 1993), aff'd
10 sub nom., National Association of Government Employees v. Labor Relations
11 Commission, 38 Mass. App. Ct. 611 (1995).

12 Ordinary or simple negligence, standing alone, does not constitute a breach of
13 the duty of fair representation. Pattison v. Labor Relations Commission, 30 Mass. App.
14 Ct. at 16 (citations omitted). However, there is a line to be drawn "between honest
15 mistaken conduct . . . and deliberate and severely hostile and irrational treatment."
16 Baker v. Local 2977, State Council 93, AFSCME, 25 Mass. App. Ct. at 441-442 (quoting
17 Motor Coach Employees v. Lockridge, 403 U.S. 274, 301 (1971)). A breach of the duty
18 of fair representation occurs where there is "substantial evidence of bad faith that is
19 intentional, severe, and unrelated to legitimate union objectives." Graham v. Quincy
20 Food Service Employees Association, 407 Mass. 601, 609 (1990) (citations omitted).
21 See also American Federation of State County and Municipal Employees, Council 93,
22 Local 24 and Kathleen Burns, 18 MLC 1125, 1141 SUPL-2490 (H.O. September 24,

1 1991) (stating that flawed, foolish, or inept union conduct is not per se unlawful, so
2 long as the union has reached a reasoned decision free from personal hostility).

3 When the CERB reviews the actions and decisions of a union, it does not
4 determine whether the action was sound or substitute its' judgment for that of the
5 union. NAGE and Mario Longo, 26 MLC 57, 58, SUPL-2650 (November
6 9,1999). Rather, the CERB examines the union's motives and reviews the union's
7 decision-making procedures to ensure that it acted within the scope of its duty of fair
8 representation. Fitchburg School Committee, 9 MLC 1399, 1415, MUPL-2447
9 (September 1, 1982). The CERB will not infer arbitrariness or bad faith in the union's
10 decision-making process, Teamsters, Local 437 and James L. Serratore, 10 MLC 1467,
11 1477, MUPL-2566 (March 21,1984), or substitute its judgement for that of the union
12 even if the CERB disagrees with the union's ultimate decision or the union's decision is
13 inartful, unskilled, or mistaken. International Brotherhood of Police Officers, Local 338
14 and Michael Ciccolini, 28 MLC at 288.

15 B. Vigneault's Arguments

16 In his post-hearing brief, Vigneault requests that the DLR examine the Union's
17 investigation and evaluation of the merits of his situation. He insists that the Union's
18 conduct was "arbitrary, perfunctory, inexcusable in light of the facts of this case, and
19 unlawfully motivated." Vigneault's numerous allegations can be summarized as follows:
20 1) the outcome for him in this situation would have been "dramatically different" had the
21 Union provided him with the same attention, skill, and negotiation efforts that it provided
22 to Bigda; 2) Gentile's and Coyle's conduct towards him on August 10, 2016 "amounted
23 to" a recommendation that Vigneault "give up all his rights and resign his employment;"

1 3) the Union exhibited a lack of due diligence in preparing for the August 11, 2016
2 hearing; and 4) the Union's representation of him was crucially affected by personal
3 antipathy. I dismiss all of Vigneault's post-hearing brief allegations for the reasons
4 discussed below.

5 C. Analysis

6 1. Bigda Interrogation-Related Settlement Negotiations

7 Vigneault alleges that the outcome for him with respect to the excessive force
8 allegations would have been dramatically different had the Union provided him with the
9 same negotiation efforts that it provided to Bigda for the potential interrogation charges.
10 Vigneault argues that Gentile met three times with Barbieri to negotiate about Bigda's
11 situation with respect to his role in the juveniles' interrogations and was not focused on
12 Vigneault or the other five police officers who had been charged with kicking a juvenile. I
13 dismiss these allegations for the following reasons.

14 As a threshold matter, Vigneault's claim that Gentile met three times with Barbieri
15 to negotiate about Bigda's role in the Palmer interrogations is unsupported by the facts.
16 The evidence establishes the following sequence of events. Coyle learned on July 29,
17 2016, that the City would present the interrogation video at the August 11, 2016 hearing
18 and bring additional charges against Bigda and Cournoyer for their conduct during
19 February 27, 2016 interrogations. Gentile subsequently told Cheetham on July 30, 2016
20 that the City's plan to impose additional charges based on the interrogations would be
21 raised improperly at the August 11, 2016 hearing. Then, on August 8, 2016, Gentile
22 proposed to Cheetham a 30-day suspension to resolve the potential interrogation
23 charges against Bigda. Sometime between August 8 and August 9, 2016, Cheetham

1 conveyed Barbieri's 60-day suspension proposal to Gentile and, later during that time
2 period, told Gentile that Barbieri would terminate Bigda in the absence of a settlement
3 agreement. Finally, on August 10, 2016, Gentile informed Cheetham that the Union and
4 Bigda accepted the 60-day suspension. Shortly thereafter, Gentile and Cheetham also
5 reached an agreement resolving the disciplinary issues that Cournoyer potentially faced
6 as a result of his role in the interrogations. On August 12, 2016, the SPD, the Union and
7 Bigda signed a MOA relative to the Palmer interrogations requiring that Bigda serve a
8 60-day unpaid suspension effective September 8, 2016.

9 Vigneault's allegation that his situation could have been dramatically different if
10 the Union had advocated more strenuously for him misconstrues the legal standard
11 applied to unions in the performance of their duties as the exclusive collective
12 bargaining representative. The central issue to be decided with respect to this allegation
13 is whether the Union's actions in deciding to prioritize settlement of the potential
14 interrogation charges over the pending excessive force charges were unlawfully
15 motivated, arbitrary, perfunctory, or reflective of inexcusable neglect. See Quincy City
16 Employees Union, H.L.P.E. and Nina Pattison, 15 MLC at 1355. The fact that the Union
17 may have approached the interrogation and excessive force charges differently,
18 standing alone, is not a violation of the duty of fair representation. In the discharge of a
19 union's duty there is room for discretion and consideration of the interest of the over-all
20 union membership in relation to that of the individual aggrieved member. National
21 Association of Government Employees v. Labor Relations Commission, 38 Mass. App.
22 Ct. at 611. Conflicts between employees or groups of employees within a bargaining
23 unit are common, and unions cannot be expected to completely satisfy all members.

1 International Brotherhood of Police Officers, Local 338 and Michael Ciccolini, 28 MLC at
2 288 (citing Humphrey v. Moore, 375 U.S. 335, 350 (1964) and Ford Motor Co. v.
3 Huffman, 345 U.S. 330, 338 (1953)).

4 Here, the Union's actions in prioritizing and pursuing settlement of the potential
5 interrogation charges before the excessive force allegations were not arbitrary. The
6 Union had at least three rational reasons for taking such actions. First, Gentile and
7 Coyle did not consider the excessive force charges to have the same procedural
8 defects as the potential interrogation charges. They concluded that the June 16, 2016
9 Notice of Inter-Departmental Discipline and IIU Report did not encompass any potential
10 allegations against Bigda and Cournoyer for the juveniles' interrogations, an omission
11 that was significant because of the contractual limitations on when the City must initiate
12 charges based on its knowledge of alleged misconduct. They understood that the City
13 had exceeded the 90-day limit to bring charges against Bigda and Cournoyer for the
14 interrogations pursuant to Article 6.4 of the Agreement. They also understood that, from
15 a procedural standpoint, the City had not provided notice of the charges against Bigda
16 and Cournoyer for the interrogations pursuant to Civil Service statutes, particularly
17 M.G.L. Chapter 31, Section 41. Thus, Gentile and Coyle thought that the Union could
18 not only win on the technical aspects of a potential interrogation-related case but use
19 the timeliness issue as leverage to settle potential charges against Bigda and
20 Cournoyer.

21 Second, whereas Bigda admitted wrongdoing and wanted to find a way to deal
22 with that short of going to a hearing, Vigneault denied wrongdoing and never asked the
23 Union to seek an alternative option to the hearing. Gentile believed that without an

1 admission of wrongdoing from Vigneault, he had nothing to offer as a settlement
2 proposal to the City. Gentile was not averse to settling the excessive force charges, but
3 he didn't know what the Union could offer as a settlement proposal to the City in light of
4 the fact that a juvenile allegedly had been kicked while lying handcuffed on the ground.
5 Moreover, in contrast to the East Longmeadow case where Vigneault actively
6 participated in developing the Union's settlement proposals, Vigneault never requested
7 that Gentile bring a settlement proposal to the City for the excessive force charges.

8 Third, Gentile understood that Barbieri had a very narrow view of Vigneault's
9 options. His conclusions in this regard were based on his August 10, 2016 conversation
10 with Barbieri. Barbieri told Gentile that if Rogers identified an officer, there would be a
11 termination. Barbieri further stated that if Vigneault went to the hearing and was found
12 responsible for kicking the juvenile, he would be terminated, but that he had an
13 opportunity to resign before the hearing. Thus, Gentile did not believe that Barbieri was
14 open to any alternatives to going forward with the hearing, aside from Vigneault's
15 resignation before the hearing. Even assuming that Gentile was mistaken in his belief
16 that the Union had nothing to offer as a settlement proposal to the City without an
17 admission of wrongdoing from Vigneault, or that Barbieri would have accepted an
18 alternative to Vigneault's resignation, a good faith error in judgment does not constitute
19 arbitrary conduct. National Association of Government Employees and Jessie Murray,
20 34 MLC at 38.

21 I also conclude that the Union's decision to prioritize and pursue settlement of the
22 potential interrogation charges before the excessive force charges was not done in a
23 perfunctory manner and did not exhibit gross or inexcusable negligence. The evidence

1 establishes that Coyle and Gentile thoroughly analyzed the excessive force allegations
2 by reading and discussing the June 16, 2016 IIU Report and discussing the report with
3 Vigneault. The June 16, 2016 IIU Report, including Vigneault's own reports, established
4 that Vigneault was the only other officer with Rogers during DR's arrest. Coyle and
5 Gentile also considered the excessive force allegations in light of the interrogation
6 recordings. For Gentile, the interrogation recordings did not change his initial
7 assessment of Vigneault's liability relative to Rogers' excessive force allegations. Coyle
8 further concluded that the interrogation recordings made it less likely that the CPHB
9 would find Bigda had been the officer that kicked DR. Coyle also met with Vigneault
10 about the excessive force charges, as he did with Bigda about the potential
11 interrogation charges. Whereas Bigda requested that the Union find a way to deal with
12 the potential interrogation charges without going to a hearing, Vigneault did not request
13 that the Union pursue settlement of the excessive force charges on his behalf. Thus,
14 this is not a case in which an employee requests a union to take certain reasonable
15 action and the union unreasonably refuses. Boston Teachers Union and Georgia H.
16 Clark, 12 MLC 1577, 1586, MUPL-2699 (January 31, 1986). Notably, Vigneault was not
17 unfamiliar with the concept of settling disciplinary charges. In the East Longmeadow
18 matter, Vigneault made certain demands that Gentile in turn proposed to the City. I also
19 find no evidence of unlawful motivation for reasons discussed in detail below.
20 Accordingly, I dismiss this portion of Vigneault's allegations.

1 2. Vigneault's Resignation

2 Vigneault alleges that Gentile's and Coyle's conduct towards him on August 10,
3 2016 "amounted to" a recommendation that Vigneault "give up all his rights and resign
4 his employment." In particular, he complains that Coyle never spoke directly with
5 Barbieri about his situation and relied only on the information that Gentile conveyed to
6 him. He also complains that neither explained to him his rights. I dismiss all of these
7 allegations for the reasons discussed below.

8 As a threshold matter, Vigneault's allegations are factually unsupported by the
9 record. Neither Gentile nor Coyle recommended that Vigneault give up his rights and
10 resign his employment. Both explicitly told Vigneault that it was his decision about
11 whether to resign or whether to go forward with the hearing. Neither told him that
12 Rogers would attend the hearing and identify him as the officer who kicked the juvenile,
13 that he would lose his pension, or that he would be prosecuted. Rather, Coyle and
14 Gentile took time to review with Vigneault factors to consider in deciding whether to go
15 forward with the CPHB hearing or to resign. Coyle explained the problems that
16 Vigneault's own statements in the IIU Report presented, as well as the risk that Rogers
17 would identify Vigneault at the hearing as the officer who kicked DR. The Union owed
18 Vigneault no special duty to inform him of the terms of the collective bargaining
19 agreement. Boston Teachers Union and Georgia H. Clark, 12 MLC at 1585 (finding that
20 a union fulfills its duty to inform employees of the terms of a collective bargaining
21 agreement when it makes copies available to employees). However, Coyle also
22 explained Vigneault's appeal rights in detail. When Gentile spoke with Vigneault, he
23 sympathized with Vigneault and observed that Vigneault faced a difficult decision

1 because he had spent most of his career in public service. Nevertheless, it was
2 ultimately Vigneault's decision about whether to resign.

3 I also cannot conclude that the Union's conduct towards Vigneault amounted to a
4 recommendation that he give up all of his rights in view of the fact that Vigneault
5 withheld crucial information from Gentile and Coyle. Vigneault never told Gentile or
6 Coyle that during the arrests, DR and AP were "right next to each other" "[l]ess than
7 eight feet apart," or that he heard Bigda yelling "welcome to the white man's world"
8 during AP's and DR's arrests, heard Bigda spit, and saw him kicking AP before AP was
9 in handcuffs. In fact, Vigneault decided that he would "go along to get along" and not
10 even report this information in his February 27, 2016 arrest report, in his June 13, 2016
11 IIU investigation interview with Andrew, or in his June 14, 2016 report to Andrew. SPD
12 Rule 29, Section 32 requires officers to submit "truthful and complete" reports. SPD
13 Rule 29, Section 42 requires officers to immediately report any matter indicating that
14 another officer may have been involved in the violation of any law or SPD Rule or
15 Regulation. If Vigneault had performed his duties and complied with SPD Rule 29 in the
16 first place, or later shared the additional details with Gentile or Coyle, the Union could
17 have handled the excessive force charges against Vigneault differently. However,
18 Vigneault made the critical decision not to report crucial information to the Union.

19 The Union's conduct towards Vigneault on August 10, 2016 was not arbitrary.
20 Coyle had a rational basis for telling Vigneault that of the six officers charged, Vigneault
21 was most likely to be the one found guilty of having kicked DR because, as he told
22 Vigneault, Rogers' statement made it very clear that there was only one other officer
23 with him while he was dealing with DR, and by Vigneault's own statement in the June

1 16, 2016 IIU Report, that one person was him. Likewise, Gentile had a rational basis for
2 telling Vigneault that he faced an difficult decision because having more than 10 years
3 but less than 20 years in the retirement system is a significant amount of time.

4 The Union's conduct towards Vigneault on August 10, 2016 also cannot be
5 considered perfunctory or an exhibition of gross or inexcusable negligence. The Union
6 communicated timely information to Vigneault. Gentile conveyed accurate information
7 from Barbieri to Coyle and Coyle conveyed that information accurately to Vigneault. The
8 fact that Coyle never spoke with Barbieri to confirm Gentile's conversation is immaterial
9 in the absence of evidence that Coyle deviated from any practice or procedure, or that
10 he was otherwise obliged to call Barbieri. Coyle and Gentile also reviewed with
11 Vigneault factors to consider in deciding whether to go forward with the CPHB hearing
12 or to resign. In the Union's August 10, 2016 discussions with Vigneault, it is evident that
13 Coyle and Gentile emphasized the hazards of proceeding with the CPHB hearing.
14 However, the record discloses no basis for doubting the accuracy of those opinions. In
15 discussing the likelihood of success on the merits of a case with a bargaining unit
16 member, the Law does not require union officials to be clairvoyant. Boston Teachers
17 Union and Georgia H. Clark, 12 MLC at 1587 (finding that the union did not act in either
18 an inexcusably negligent or perfunctory manner by communicating its opinions
19 regarding potential termination appeal outcomes). Finally, the Law does not place
20 unions and employees in an attorney-client relationship. Id. at 1588. Therefore, the
21 Union was not required to represent or advise Vigneault in the same manner that a trial
22 lawyer would represent a client.

1 3. Hearing Preparation

2 In alleging that the Union exhibited a lack of due diligence in upholding its duties
3 with respect to preparing for the hearing, Vigneault argues that: neither Coyle nor
4 Gentile nor Coyle “interviewed a single witness;” reviewed the interrogation video with
5 him; or properly evaluated his situation in light of the fact that he denied kicking the
6 juvenile, and Bigda was on video threatening violence against the juveniles, including
7 kicking them.⁹⁰ I dismiss all of these allegations. Vigneault suggests that the Union
8 could not have represented him adequately at the CPHB hearing because of these
9 shortcomings. However, because Vigneault chose not to proceed to the CPHB hearing,
10 it is impossible to know how well the Union would have represented him. For the
11 purposes of this decision, “it is sufficient to note that unions, even when represented by
12 attorneys, are not required by [the Law] to represent [employees] as attorneys would
13 represent clients.” Id. at 1588.

14 i. Witness Interviews

15 The Union’s decision to not interview witnesses prior to the CPHB hearing was
16 not unlawfully motivated, arbitrary, perfunctory, or reflective of inexcusable neglect.
17 Gentile did not seek to interview potential witnesses for the August 11, 2016 hearing
18 because he relied on Coyle for legal representation at hearings. Coyle did not seek to
19 interview MSP Trooper Baird because in his experience MSP Troopers will not become
20 involved with other police departments’ internal investigations without a subpoena.
21 Coyle did not interview Merceri for two reasons. First, Merceri had not been cooperative
22 with the SPD IIU investigation. Second, based on the information in the June 16, 2016

⁹⁰ Vigneault also alleges that the Union failed to review “other data” with Vigneault. I dismiss this allegation because it lacks specificity.

1 IIU Report, Coyle did not believe that Merceri would be a helpful witness to call on
2 Vigneault's behalf. In fact, Coyle did not even want Merceri to know that there was a
3 hearing for fear that he would be a hostile witness for Vigneault. Therefore, Gentile and
4 Coyle had rational reasons for not interviewing certain witnesses. Nor did Coyle make
5 witness-related decisions with a lack of interest or zeal, or in the absence of careful
6 evaluations. Finally, Coyle's witness-related decisions concern the Union's overall
7 litigation strategy. Coyle told Vigneault on August 2, 2016 that they would go to the
8 CPHB hearing and listen to the witnesses. There was no guarantee that Rogers or any
9 of the juveniles would attend the CPHB hearing. I conclude that Coyle's decisions about
10 whether to interview witnesses prior to the CPHB hearing were judgmental decisions
11 about the best method of protecting Vigneault's interests. A possible "judgmental error"
12 is not "the equivalent of arbitrary, bad faith, or discriminatory representation." Trinique v.
13 Mount Wachusett Community College Faculty Association, 14 Mass. App. Ct. 191, 199
14 (citing Berman v. Drake Motor Lines, Inc., 6 Mass. App. Ct. 438, 445-446 (1978)).
15 Therefore, I dismiss Vigneault's allegation that Gentile and Coyle improperly failed to
16 interview witnesses.

17 ii. Interrogation Video

18 I also dismiss Vigneault's allegation that Gentile and Coyle improperly failed to
19 review the interrogation video with him. Gentile relied on Coyle for legal representation
20 at hearings. Coyle did not think it was a viable defense for Vigneault to point out that
21 Bigda was on video threatening to kick a juvenile because he believed that the video made
22 it less likely that the CPHB would find Bigda had kicked DR. I conclude that Coyle's
23 decisions about whether the interrogation video was a viable defense for Vigneault to

1 use at the CPHB hearing was also a judgmental decision about the best method of
2 protecting Vigneault's interests. To the extent that Coyle's decision about the video was
3 in error, a judgmental error does not equate to arbitrary, bad faith, or discriminatory
4 representation. Id. Also, in light of the fact that Coyle and Gentile reviewed the
5 interrogation video themselves, I do not conclude that Coyle's failure to review the video
6 with Vigneault constitutes gross negligence.

7 iii. Case Evaluation
8

9 Vigneault further alleges that Gentile and Coyle failed to properly evaluate his
10 situation in light of the fact that he denied kicking DR, and Bigda was on video
11 threatening violence against the juveniles, including kicking them. While employees
12 undoubtedly prefer a union representative who is supportive to one who is merely
13 objective, the Law does not mandate that unions embrace the views of a unit member in
14 order to represent them fairly. Boston Teachers Union and Georgia H. Clark, 12 MLC at
15 1587. Here, the union conducted an investigation that was sufficient for it make
16 reasoned judgments in deciding how to prepare for the CPHB hearing and how to help
17 Vigneault weigh his decision about whether to go forward with the hearing or resign.

18 Based on the June 16, 2016 IIU Report Gentile concluded that Vigneault might
19 have violated SPD policies and procedures. Likewise, after reading the June 16, 2016
20 charge letter and the IIU Report, Coyle concluded that the excessive force charges
21 were specifically focused on Vigneault. Coyle found that Vigneault's own statements in
22 the IIU Report positioned him as the only person who could have kicked DR. The videos
23 of Bigda's conduct during his interrogation of the juveniles did not change Gentile's or
24 Coyle's initial assessments of Vigneault's liability relative to Rogers' allegation of

1 excessive force during DR's arrest. While Bigda points to blood on his own boot in JT's
2 interrogation, observes that DR's eye has been beaten in DR's interrogation, and
3 threatens to harm both juveniles in the future, Bigda never explicitly states that he is
4 responsible for harming the juveniles during their arrests. Although Vigneault denied to
5 Coyle and Gentile that he kicked DR, he did not tell either one of them at any point in
6 time prior to his August 12, 2016 resignation that during the arrests, DR and AP were
7 "right next to each other" "[l]ess than eight feet apart." He also did not tell Gentile or
8 Coyle that he heard Bigda yelling "welcome to the white man's world" during AP's and
9 DR's arrests, heard Bigda spit, and saw him kicking AP before AP was in handcuffs.
10 This information would have helped the Union to understand Bigda's threats to harm the
11 juveniles on the interrogation videos in connection with his conduct during their earlier
12 arrests. A union's actions are arbitrary only if, in light of the factual and legal landscape
13 at the time of the union's actions, the union's behavior is so far outside a "wide range of
14 reasonableness," as to be irrational. Airline Pilots v. O'Neill, 499 U.S. 65 (1991). Here, I
15 conclude that Gentile and Coyle had rational reasons for evaluating Vigneault's situation
16 as they did in July and August of 2016, even in light of the interrogation video.

17 The Union's conduct in evaluating Vigneault's situation was not perfunctory or
18 demonstrative of inexcusable neglect. The Union treated Vigneault's representation with
19 a level of interest and zeal commensurate with the fact that the CPHB hearing was one
20 step in an overall process. In evaluating Vigneault's situation, the Union did not fail to
21 follow any procedures set forth in the collective bargaining agreement or any other
22 established practice. It did not miss any deadlines. It responded promptly to his
23 communications. Coyle and Gentile kept Vigneault informed regarding the status of the

1 charges against him, discussed the merits of his situation, and listened to his concerns.
2 At the CPHB hearing, Vigneault and Coyle would have had an opportunity to confront
3 Rogers and present Vigneault's arguments. The CPHB may or may not have found
4 Vigneault to be responsible for kicking the juvenile. The Union could have pursued a
5 grievance on behalf of Vigneault if he was terminated. If that was denied, the Union
6 could have pursued arbitration.

7 4. Unlawful Motivation

8 Vigneault also alleges that the Union's representation of him was crucially
9 affected by personal antipathy. He maintains that the Union's decision on how to handle
10 his situation was based on "an assessment entirely derived from an investigation that
11 was flawed by invidious dislike" of him. According to Vigneault, the Union wanted to
12 secure his resignation to resolve matters for the benefit of the other five officers charged
13 with kicking the juvenile, particularly Bigda. Vigneault argues that he was an "outsider"
14 in relation to other bargaining unit members for two reasons. The first reason arises
15 from his physical absence from the SPD during a critical time period as he was
16 stationed at Barnes. The second reason is two-fold: he had complained about on duty
17 drinking by other bargaining unit members, and he had supported Gethins in allegations
18 resulting in criminal charges against Bigda. Vigneault maintains that the kicking
19 allegations exacerbated his outsider status and left Gentile and Coyle to handle
20 Vigneault's allegations against other bargaining unit members at the same time it was
21 representing him in the Palmer matter. As a result, Vigneault insists that the Union
22 improperly focused on negotiating on behalf of Bigda between late July and early
23 August of 2016 and developed a plan and strategy to Vigneault's disadvantage.

1 Vigneault also argues that the Union's failure to appreciate the strong merits of his
2 defenses in the Palmer matter is further evidence of personal antipathy. He maintains
3 that the Union never considered mitigating factors such as his "unblemished
4 employment record." Nor did the Union consider "facial factual discrepancies in the
5 Employer's accusations" including the conclusion that "somehow all the evidence
6 pointed to [him] as the kicker" despite Bigda's interrogation video.

7 In order to establish a breach of the duty of fair representation, "[t]here must be
8 substantial evidence of bad faith that is intentional, severe, and unrelated to legitimate
9 union objectives." Graham v. Quincy Food Service Employees Association, 407 Mass.
10 at 609. In the case at issue, there is no direct evidence of hostility and animosity by
11 Union officials towards Vigneault. Compare Graham v. Quincy Food Service Employees
12 Association, 407 Mass. at 609 (when the plaintiff requested union assistance, the union
13 president responded, "[d]on't hold your breath"). I also do not find circumstantial
14 evidence establishing that the Union officials' decision-making process was motivated
15 by hostility and animosity towards Vigneault. Compare American Federation of State
16 County and Municipal Employees, Council 93, Local 24 and Kathleen Burns, 18 MLC at
17 1146 (finding that circumstantial factors revealed invidious considerations had
18 influenced the union's decision-making process).

19 There is no dispute that Vigneault was physically outside of the SPD working at
20 Barnes after March 15, 2016. However, there is no evidence that Vigneault's physical
21 location influenced Gentile's or Coyle's representation of him in the Palmer matter. For
22 instance, Vigneault had routine access to Gentile and Coyle by phone and in-person
23 regarding the case. After Vigneault received the June 16, 2016 Notice of inter-

1 Disciplinary charges and the attached June 16, 2016 IIU Report, he called Gentile.
2 According to Vigneault, Gentile was "supportive, looking to help" and told Vigneault that
3 Coyle was his attorney in the case. Gentile or Coyle also contacted Vigneault after he
4 received the July 20, 2016 Notice of Hearing. After Vigneault was invited but unable to
5 attend Coyle's August 2, 2016 meeting with other bargaining unit members, Coyle held
6 a lengthy meeting with Vigneault the following day.

7 I do not find any other circumstantial factors establishing that Vigneault was an
8 "outsider" in relation to Union leadership. Vigneault's arguments that he was an
9 "outsider" because of his complaints about on-duty drinking by other bargaining unit
10 members are unsupported by the record. Prior to Vigneault's resignation in August of
11 2016, the SPD did not conduct any internal investigation of on-duty alcohol consumption
12 and Gentile and Coyle did not handle any alcohol-related allegation by Vigneault
13 against any other bargaining unit member. While it is true that at some point before
14 March 15, 2016, Vigneault complained to Lieutenants Kent and Ayala, and Sergeant
15 Hitus that other narcotics officers were showing up drunk to shifts and drinking alcohol
16 during and after shifts, there is no evidence establishing that Kent, Ayala, or Hitus took
17 any action regarding Vigneault's complaints. There is no evidence that they reported the
18 issue within the SPD and no evidence that they reported the issue to Union leadership.
19 There is no evidence that Kent, Ayala, or Hitus hold any Union leadership positions.
20 Furthermore, there is no evidence that in August of 2016, either Gentile or Coyle knew
21 that Vigneault had complained to his superiors about other Narcotics Officers drinking at
22 work. The SPD began an internal investigation regarding alcohol consumption in the
23 Narcotics Unit after Vigneault's August 11, 2016 resignation.

1 Vigneault's arguments that he was an "outsider" because of his support for
2 Gethins in criminal charges against Bigda are also unsupported by the record. There
3 was some overlap in the July-August of 2016 time period that the East Longmeadow
4 and Palmer cases were pending.⁹¹ However, in July of 2016 Gentile was in close
5 contact with Vigneault regarding the East Longmeadow matter. During settlement
6 discussions, Gentile communicated with Vigneault about various proposals and, after
7 learning that Vigneault would not agree to any non-disciplinary resolution that required
8 retraining, Gentile sought from the City a non-disciplinary resolution of the case for
9 Vigneault. Gentile's efforts on behalf of Vigneault were successful and the Union and
10 the City signed a settlement agreement favorable to Vigneault on July 28, 2016.

11 I dismiss Vigneault's arguments that the Union improperly focused on negotiating
12 on behalf of Bigda between late July and early August of 2016 and developed a plan
13 and strategy to Vigneault's disadvantage. For reasons discussed in detail above, the
14 Union could pursue settlement of the potential interrogation charges in a way that it
15 could not for the excessive force charges because the City had a timeliness issue with
16 respect to the interrogation charges. Moreover, Vigneault's arguments that the Union
17 developed a plan and strategy to his disadvantage are factually unsupported by the
18 record. Therefore, I do not find circumstantial evidence of animosity in the Union's
19 decision to seek settlement of Bigda's and Cournoyer's potential discipline for the
20 interrogations.

⁹¹ Barbieri issued the East Longmeadow charge letter to Bigda, Gethins, and Vigneault on June 2, 2016 and the Palmer charge letter to Vigneault and the five other Narcotics Unit Officers on June 16, 2016. On July 5, 2016, Barbieri issued the East Longmeadow Notice of Hearing for July 28, 2016. On July 20, 2016, Barbieri issued the Palmer Notice of Hearing for August 11, 2016.

1 Vigneault argues that the Union failed to appreciate the strong merits of his
2 defenses in the Palmer matter, lacked consideration for his "unblemished employment
3 record," and lacked consideration for "facial factual discrepancies in the Employer's
4 accusations" including the conclusion that "somehow all the evidence pointed to [him]
5 as the kicker" despite Bigda's interrogation video. Nevertheless, all of these arguments
6 concern the Union's judgmental decisions. Even assuming that the Union was in error
7 on any of these points, judgmental errors are not the equivalent of discriminatory
8 representation. Trinque v. Mount Wachusett Community College Faculty Association,
9 14 Mass. App. Ct. at 199. Therefore, I dismiss these arguments.

10 I dismiss Vigneault's argument that the Union wanted to secure his resignation to
11 resolve matters for the benefit of the other five officers charged with kicking the juvenile,
12 particularly Bigda. This argument ignores the fact that the Union explicitly told Vigneault
13 that it was his choice about whether to resign or go forward with the CPHB hearing, and
14 the fact that that Vigneault voluntarily tendered his resignation. Throughout their
15 involvement with Vigneault with respect to the excessive force allegations, Gentile and
16 Coyle made themselves available to discuss the matter with Vigneault. Coyle had a
17 lengthy discussion with Vigneault about the hearing on August 3, 2016. Coyle and
18 Gentile spoke again with Vigneault on August 10, 2016, to explain his options to either
19 go forward with the hearing or to resign. They highlighted factors for Vigneault to
20 consider and offered Vigneault their opinions, but made clear that it was Vigneault's
21 decision about how to handle his situation.

22 Finally, I dismiss Vigneault's argument that the Union's decision on how to
23 handle his situation was based on "an assessment entirely derived from an investigation

1 that was flawed by invidious dislike” of him. In Graham v. Quincy Food Service
2 Employees Association, 407 Mass. 601 (1990) the court found a history of hostility and
3 animosity between an employee and union officials. The employee had strongly and
4 vocally opposed the union, testified against the union, raised questions about union
5 finances, and been removed from the union’s grievance committee. Id. at 609. Here, in
6 the context of testifying about the events of August 10, 2016, Vigneault stated that there
7 was never any animosity between him and Gentile, that he trusted Gentile, and that he
8 never had a bad interaction with Gentile. He also testified that Gentile he was “helpful”
9 and that there was never any ill will or ill feelings between him and Coyle. Vigneault
10 further testified that throughout the process he did not think that Gentile or Coyle were
11 working to his disadvantage to arrange his resignation. When asked on cross-
12 examination whether he had any information that Gentile and Coyle manipulated the
13 situation regarding the August 11, 2016 hearing to his detriment and to Bigda’s benefit,
14 Vigneault did not say “yes.” He stated only vaguely that “it felt like it because. . . .
15 [Bigda] got ten days,” without explaining how Bigda’s 10-day suspension for the East
16 Longmeadow incident impacted the Union’s representation of him in the Palmer matter.
17 In fact, Gentile settled the East Longmeadow matter in Vigneault’s favor. Finally, with
18 respect to other bargaining unit members, Vigneault testified unequivocally during the
19 hearing that he did not feel that the Union was working to his disadvantage or trying to
20 arrange his termination. In light of Vigneault’s testimony on these points, and all of the
21 issues addressed in this opinion, I do not conclude that the Union’s assessment of
22 Vigneault’s situation regarding the excessive force charges or its conduct was driven by
23 personal antipathy towards Vigneault.

1 III. Fifth Amendment Issue

2 Vigneault argues that based on Bigda's and Cournoyer's assertion of the Fifth
3 Amendment "an inference should be drawn against [the Union] and [its] representatives
4 relative to the perfunctory and unlawful conduct engaged in by its representatives." I
5 decline to do so. Most of the questions presented to Bigda and Cournoyer to which they
6 invoked their privileges against self-incrimination merely asked them to confirm the
7 existence of evidence that was already contained in the hearing record, such as what
8 Bigda said on the interrogation video, or asked them for information that is immaterial to
9 this decision, such as where they live. For reasons discussed in detail in my factual
10 findings above, I declined to take any adverse inference against Bigda, Cournoyer, or
11 the Union for Bigda's or Cournoyer's refusal to answer questions about the substance of
12 the August 2, 2016 meeting. There is no other basis on which to draw an adverse
13 inference against the Union and find that its representatives engaged in perfunctory and
14 unlawful conduct. Accordingly, I dismiss this portion of Vigneault's argument.

15 IV. Other Arguments

16 The Union argues that it is immaterial whether the Union breached its duty of fair
17 representation because Vigneault's voluntary resignation was a supervening cause of
18 his alleged injury. In light of my decision I need not address this issue. However, I
19 conclude that Vigneault's predicament with respect to the excessive force charges was
20 the result of his own choices. Vigneault chose to withhold critical details about Bigda's
21 conduct with respect to the arrest of the juveniles that could have fundamentally
22 changed how the City and the Union addressed the excessive force charges. He chose
23 not to comply with SPD Rule 29 by submitting "truthful and complete" reports and

1 reporting any matter indicating that another officer may have been involved in the
2 violation of any law or SPD Rule or Regulation. He also chose not to share critical
3 details about Bigda's conduct during the arrests of the juveniles with Gentile or Coyle.

4 Furthermore, Vigneault chose not to ask the Union for assistance at critical
5 junctures. On August 3, 2016, Coyle explained Vigneault's predicament based on the
6 June 16, 2016 IIU Report. Although Vigneault denied kicking the juvenile, he did not ask
7 the Union for assistance in settling the excessive force allegations against him. On
8 August 10, 2016, Vigneault did not tell Coyle or Gentile that he needed more time to
9 consider his situation. Nor did he request that the Union seek postponement of the
10 CPHB hearing scheduled for the following morning.

11 Finally, it was Vigneault's decision alone to voluntarily tender his resignation. The
12 Union had a duty to represent Vigneault fairly before he resigned and, for reasons
13 described in detail above, it fulfilled that duty. In hindsight, the Union's conduct may not
14 have been ideal, but the Union's conduct must be assessed in light of the facts known
15 to it in July and August of 2016. Goncalves v. Labor Relations Commission, 43 Mass.
16 App. Ct. 289, 295 (1997). Likewise, Vigneault may have preferred that the Union
17 approached his situation more creatively or comprehensively. However, a union's failure
18 to conceive of the best resolution for a problem does not constitute an unlawful act.
19 Boston Teachers Union and Georgia H. Clark, 12 MLC at 1586.

20 CONCLUSION

21 Based on the record, and for the reasons stated above, I conclude that the Union
22 has not violated Section 10(b)(1) of Law.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS



KATHLEEN GOODBERLET, ESQ.
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c. 150E, Section 11, 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 Executive Secretary of 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 the ten days, this decision shall become final and binding on the parties.