

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

**One Ashburton Place - Room 503
Boston, MA 02108
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JOSEPH SOLOMON,
Appellant

v.

CITY OF METHUEN,
Respondent

**CASE NOS: D-07-159
D1-08-114**

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Commissioner:

Paul M. Stein

DECISION

The Appellant, Joseph Solomon ("Solomon" or "Chief Solomon"), acting pursuant to G.L.c.31,§41-§43, appealed to the Civil Service Commission ("Commission") from decisions of the Mayor of the City of Methuen ("Methuen"), the Appointing Authority, suspending, and, ultimately, discharging him as Methuen's Police Chief. The Commission held nineteen days of evidentiary hearings from October 10, 2008 through April 9, 2009, for which a stenographic transcript is the official record. Save for one witness, the hearings were declared public at the parties' joint request. Witnesses were sequestered. Methuen called eleven witnesses and proffered 113 exhibits. Solomon testified on his own behalf, called fifteen witnesses, and proffered 66 exhibits. The Commission received the parties' post-hearing submissions on July 31, 2009.

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I. OVERVIEW OF THE DECISION

Chief Solomon and Mayor William M. Manzi, III, both long-time Methuen residents, came to this dispute after years of personal friendship and professional accomplishment for which they and Methuen may be proud. In the unfolding breakdown of that relationship, personal animus and political ambition took control, at the expense of basic merit principles of the Civil Service Law. Mayor Manzi was entitled to hold Chief Solomon accountable for errors made in the administration of the Methuen Police Department (MPD), but by over-reacting to politically-charged events, rather than seek the truth dispassionately and objectively, and piling on charges of no substantial merit, Mayor Manzi violated his obligations as an Appointing Authority and terminated Chief Solomon without just cause. The Commission sustains the discipline imposed on Chief Solomon, in part, and allows his appeal in part, modifying his discharge to a suspension.

II. SYNOPSIS OF THE DISPUTE

These appeals arise from two disciplinary proceedings commenced by the City of Methuen against its Police Chief.

The first appeal (D-07-159) involves a three-day suspension of Chief Solomon by Mayor Manzi, in April 2007, for mistakes in administering the Homeland Security Overtime Program (HSOP) grant awarded to the MPD by the Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS), also called the COPS grant, which obliged Methuen to repay the DOJ approximately \$23,000 in municipal funds. The Commission concludes that Methuen met its burden of proof to establish, through sufficient and credible evidence, that this three-day suspension was justified.

The second appeal (D1-08-114) resulted from Mayor Manzi's May 7, 2008 discharge of Chief Solomon, after placing him on paid administrative leave in September 2007, on

a variety of charges within four broadly defined areas: (1) abuse of his office for personal advantage (Charges One, Two, Three, Four, Six & Seven); (2) fiscal mismanagement of another federal grant known as the “Weed & Seed” Program, resulting in a claim for reimbursement by the DOJ of more than \$170,000 (Charge Eight); (3) mismanagement of command duties and responsibilities, resulting in a deterioration of officer morale within the MPD (Charge Five); and (4) an irretrievable breakdown in the relationship between the Police Chief, the MPD and other Methuen officials causing irreparable damage to the reputation of the MPD in the law enforcement community and loss of confidence in the MPD among the elected officials and citizens of Methuen (Charge Nine). The substantial and credible evidence proved a portion of three charges; all other charges are without merit. Moreover, undue personal bias and political considerations improperly tainted the entire disciplinary process and Mayoral level decision. Accordingly, Chief Solomon’s second appeal is allowed, in part, and, applying basic merit principles of civil service law, the discharge is set aside and modified to a suspension of 12 months as appropriate remedial discipline for the charges that were actually proved.

III. FINDINGS OF FACT

Giving appropriate weight to the relevant documents and testimony found credible, and reasonable inferences from the evidence, I make the following findings of fact:

A. The City of Methuen

1. The City of Methuen (Methuen) is a community of approximately 45,000 residents located on the Merrimack River in Essex County, Massachusetts, approximately 25 miles north of Boston. It borders Salem, New Hampshire to the north, Haverhill and North Andover to the east and Lawrence and Andover to the south. (*Exh.AA25, AA72, APP60; Tr. 184-185 [Manzi]; Administrative Notice, DHCD Community Profile, www.mass.gov*)

2. Methuen established its current form of government in 1993, reverting from a town government to a Mayor-City Council charter government. In 1994, Methuen elected its first Mayor since 1921. Under the terms of Methuen's municipal charter, mayors are limited to three two-year terms. Nine city councilors are also elected biennially, three at-large, and two each from East, Central and West districts. Methuen operates with an annual municipal budget of approximately \$125 million (*Exhs.APP60, APP62A [Index to Charter & Ordinance]; Exh. APP62B [Home Rule Charter Art.3], AA71, AA72; Tr. 183-185 [Manzi],Tr. 1941-1942[Pollard]*)

3. The municipal ordinances enacted by the City Council are codified in the Municipal Code of Methuen which includes, among other provisions, chapters of general application to all municipal departments that are relevant to these appeals, which have been in effect in their present form since 2000 or earlier, except as noted below. The relevant provisions of the Municipal Code of Methuen include:

- Charter Article 3 – Executive Branch; Police Department
- Chapter 4 – Code of Ethics
- Chapter 4A – Additional Conflict of Interest
- Chapter 7 – Municipal Contracts (last amended April 2003)
- Chapter 7A – Other Contracts
- Chapter 7B - Purchase Agreements

(Exh. APP62A, APP62B)

B. Methuen Police Department

4. In the period leading up to the present appeal, the Police Chief of the Methuen Police Department (MPD) managed a department of approximately 100 full-time and part-time sworn officers, along with civilian dispatchers and other administrative personnel. (*Tr.2957-2958[Solomon]; Exh.AA25*)

5. The MPD Police Chief was a tenured civil service position, appointed by the Mayor of Methuen as the Appointing Authority under G.L.c.31, and confirmed by the Methuen City Council. The Mayor similarly appointed, subject to City Council confirmation, all Superior Officers of the rank of Sergeant and above. (*Tr.2957-2958 [Solomon]; Exh.AA25, Exh.APP62A [Charter & Ordinances §3-15]*)

6. The MPD management then consisted of a Deputy Chief, a non-civil service mayoral appointment, and four bureaus or divisions, each headed by a Police Captain:

- An Operations Bureau ran four shifts or “platoons” of approximately eight officers, supervised by a Lieutenant and one or two Sergeants, and patrolled the city’s seven “sectors”. A separate Marine Unit, established in 1997, patrolled the Merrimack River with MPD watercraft during the summer months.
- A Support Services Division, responsible for court liaison, payroll, training and other support services, included a Captain, Lieutenant and a Sergeant;
- A Criminal Investigations Division included a Captain, a Lieutenant, and two Sergeants, one supervising detectives and one supervising activities involving drugs, gangs and homeland security; and
- A Neighborhood Services Bureau included a Captain, a Lieutenant and Sergeants for the School Services, the Neighborhood Services Unit and Traffic.

(*Exh.APP60;Tr.2836-2838; Tr.2163-2164[Havey]; Tr.1225[McQuillan]; Tr.2957-2958, 3050,3104-3105[Solomon]*)

7. The MPD operated under a set of comprehensive Policies and Procedures, which included a series of Rules and Regulations (effective March 2000), that established standards of professional, ethical and operational conduct expected of all members of the MPD, including the Police Chief. These standards include the following specific rules that have been asserted to be relevant to the matters involved in these appeals:

- Law Enforcement Code of Ethics (Rule 3.0);
- Professional Conduct and Responsibilities (Rule 4.0), including, among other things, Conduct Unbecoming an Employee (4.01, 4.1), Conflict of Interest (4.02, 4.2), Undue Influence (4.4), Misuse of Department Correspondence (4.6), Interfering With Course of Justice (4.8), Private Benefit From Departmental Association (4.9), Political Activity (4.11) , Testimonials and Presents (4.13), and Use of Official Position (4.15);

- Neglect of Duty (Rule 5.0, 5.1) and Incompetence (5.2)
- Public Statements and Free Speech (Rule 6.0), including, among other things, Courtesy (6.2), Recommending Private Services (6.3), Dissemination of Official Information (6.6), Truthfulness (6.8), Statements Concerning Liability (6.9);
- Unlawful Orders (Rule 7.0, 7.1)

(Exh.AA103)

C. Summary of Witnesses

Methuen Municipal Officials

8. The present Mayor of Methuen, William M. Manzi, III, was elected to his first term as Mayor in November 2005, and assumed office in January 2006. Prior to becoming Mayor, he served as a city councilor and as City Council Chair. He was re-elected to a second term as Mayor in November 2007, opposed in that election by Kathleen Corey Rahme, then a member of the Methuen City Council, and one of the two city council members to testify before the Commission. His family owns a liquor store in Methuen Square. Mayor Manzi is a man of commanding stature, nuanced, loquacious and colorful speaking skills, and a mildly brusque demeanor, an acumen that certainly is consistent with survival in the “robust” political environment of Methuen, as Mayor Manzi, among others, described it. *(Tr.183-375[Manzi];Tr.2586-2654[Rahme]; Exh.APP43ID[Rahme/Manzi Debate], AA93 & AA94, AA104 thru AA107)*

9. Mayor Manzi’s predecessor, Sharon Pollard, served three terms as Mayor from January 2000 to January 2006. She also represented Methuen in the Massachusetts Senate from 1976 to 1982. She displayed a good memory for events dating back to her tenure as Mayor and credibly testified only to what she recalled. *(Tr. 186 [Manzi],Tr.1937-1998[Pollard])*

10. The other city councilor to testify before the Commission was Deborah Quinn, elected to serve the West District in 2004. Councilor Quinn served as Methuen City

Council Vice-Chair and recently had been elected Chair. She appeared under subpoena requested by the Appellant. Given her prior good relationship with Solomon and her current responsibilities as City Council Chair, her testimony came across mostly, and understandably, as reluctant yet candid. (*Tr.2240-2242[Quinn]; Exhs. APP55, APP56*)¹

11. Peter J. McQuillan is Methuen's City Solicitor, an appointee of the Methuen City Council. He was appointed in February 2005 on an interim basis and permanently appointed in June 2005. The City Solicitor is Methuen's chief legal officer, whose responsibilities include representing Methuen in litigation, providing legal advice to department heads, officials and employees regarding official business, and conducting investigations and rendering legal opinions upon request. (*Tr.1026-1028[McQuillan]; Tr.1817 [Kelly]*).²

12. Thomas J. Kelly has been Methuen's City Accountant, aka City Auditor, since 1990. Prior to 1990, he held other administrative posts for the (then) Town of Methuen. The City Auditor, also appointed by the Methuen City Council, supervises Methuen's financial operations, including "budgeting, financial forecasting, revenue projections [and] handling all grants" to assure that expenditures comply with Methuen's municipal procedures as well as all laws regarding appropriation, purchasing and expenditure of municipal funds, including the conflict of interest and bidding laws, G.Lc.30B and

¹ The evidence also included newspaper accounts and city council records describing positions taken by other councilors as events unfolded, including former City Council Chairperson Stephen Zanni and Councilors John Cronin, Robert Andrew, Larry Giordano, Phil Lahey, Ken Willette and Joseph Leone. In November 2007, Jennifer Kannan and Jeanne Pappalardo were elected, replacing Councilors Andrew and Rahme. (*Exhs.APP17, APP45, AA71*) None of these officials appeared personally to testify before the Commission.

² City Solicitor McQuillan appeared both as Methuen's co-counsel in these appeals as well as a percipient witness to certain disputed matters as to which he gave oral testimony. In colloquy with the parties concerning this issue, this Commissioner was assured that all necessary ethical disclosures and assent had been made to enable Mr. McQuillan to serve in this dual capacity. (*Tr.95-100*)

G.L.c.268A. The City Auditor oversees daily operation of the Purchasing Department, but the staff of the Purchasing Department, including the Purchasing Agent, are hired by and directly responsible to the Mayor. (*Tr.1814-1818,1855,1916, 1926[Kelly]*)

13. Joanne Ouellette is Methuen's Purchasing Agent, a position she has held for approximately ten years. (*Tr.982-983[Ouellette], Tr.1815-1818[Kelly]*)

Methuen Police Department Personnel

14. Joseph Aiello – 15 year MPD Police Officer who also served as President of the Methuen Patrol Officers' Association from December 2006 until January 2009. Officer Aiello holds a Masters Degree in Criminal Justice. He appeared over a span of two days with a personal attorney present. He was quite nervous initially but calmer by the second day. Despite efforts to impeach his testimony with a prior misdemeanor conviction and an alleged bias due to a rocky relationship with Mayor Manzi and others (among other things, he had a civil suit pending against the Mayor and other Methuen officials), his testimony generally rang true as to his conversations with Mayor Manzi. He was more equivocal about other events, reluctant to confirm or deny evidence offered by others that would take sides or implicate him or his fellow patrol officers in any misconduct. (*Tr.2739-2818,2842-2942 [Aiello]*)

15. Angelo Michael "Mike" Alaimo – Retired MPD lieutenant who now runs Eagle Investigation Services, a private investigation business. He is a highly credible, professional law enforcement officer who took pride in having maintained good relations with "all the men I worked with", including long-standing friendships with both Mayor Manzi and Solomon. Lt. Wnek (see ¶28 below) said both he and Solomon "would go through brick walls for Mike Alaimo." The fact that members of Mike Alaimo's family had careers with Methuen (among them, his son [Joseph Alaimo] as Deputy Police Chief,

and daughter-in-law [Lisa Alaimo], as the Mayor's administrative assistant), and the history of his own contractual relationship with the Methuen School Department, made his testimony (not all of which was favorable or flattering to either Solomon or Mayor Manzi) all the more credible. (*Tr.2012-2099 [M.Alaimo]; Tr.745[Wnek]*)

16. Joseph D. Alaimo – Retired Deputy Police Chief, son of Lt. Mike Alaimo (¶15 above). He began as a patrol officer and worked his way up the ranks to become Deputy Chief in 2002, appointed by former Mayor Pollard. His interests, in many ways, were closely allied with Chief Solomon. I have weighed Joseph Alaimo's testimony with this in mind. Substantial other evidence that corroborated much of his testimony leads me to find those parts of it credible. (*Tr.1706-1807[J.Alaimo]*)

17. Timothy Bolduc – MPD Dispatcher since July 2006. A percipient witness who gave specific, but brief and limited testimony about certain events relevant to alleged misconduct by Chief Solomon on August 24, 2007. (*Tr.937-971[Bolduc]*)

18. Richard Christopher Cesarz – MPD Police Officer appointed in June 2005. He had no stake in the outcome of the dispute. He gave credible, percipient testimony limited to property checks made for MPD family members. (*Tr.2366-2377 [Cesarz]*)

19. Walter Gus Flanagan – a 33-year veteran of the MPD, of which 20 was spent as a detective, most recently assigned as MPD liaison to the New England High Intensity Drug Trafficking Area (HIDTA) federal task force. He has been employed with HIDTA on a contract basis since retiring from the MPD. Mr. Flanagan's credibility is principally addressed later in the context of the conflicting evidence involved in his testimony. It is noted, here, however, that Mr. Flanagan did not hide his disdain for some of his superiors at the MPD, including Chief Solomon and Deputy Chief Alaimo. ("I really didn't like the

way he [Solomon] conducted himself” when he first joined the MPD. As to Deputy Chief Alaimo: “He didn’t like me and I didn’t like him.”) He implied Solomon and Alaimo tried to frame him and have him fired because “they’re desperate people”. In 2005 or 2006, after leaving the MPD and, again in November 2007, “when they were moving forward to fire the chief”, he told the City Solicitor he would be willing to be a witness against Chief Solomon and the “ongoings of the police department.” (Tr. 399-512[Flanagan])

20. Walter J. Fleming – 16-year MPD police officer whose precise testimony on a range of topics was consistently responsive and showed good memory for events. (Tr.2378-2429 [Fleming])

21. James Gunther – 10.5 years on the MPD, made Sergeant in May 2007. Vice President (2001-2002) and President (2003-2004) of the Methuen Patrol Officers Union. An impressive, soft-spoken man who is a knowledgeable and dedicated law enforcement professional, well-dressed and groomed, with an alert military bearing and a convincing demeanor. (Tr.2100-2149[Gunther])

22. Randy Haggar – MPD Captain with 15-years of service on the MPD. Another dedicated, knowledgeable and impressive law enforcement professional. He is a credible witness with a good memory. His rapid rise through the ranks (taking the civil service test for captain as a sergeant and scoring first on the list) is consistent with his convincing demeanor as a witness before the Commission (sincere, good eye contact and responsive). (Tr.2655-2737[Haggar])

23. Michael Havey – 23-year MPD officer, Sergeant since 2002. He testified cautiously, and often took time to think when answering questions. He is a blood cousin to Samuel Kalil whose spouse [Mary Ellen Kalil] is Solomon’s sister and has had official

contact with the Kalils, who operate Merrimac Marine, a company that does business with the MPD Marine Division. He was circumspect when questioned about the COPS grant in which he played a role, and that diminished the weight given that portion of his testimony. As to other facts, he had a good memory and gave credible, percipient testimony about the MPD Marine Unit, as well as about a key conversation he had with a family friend (Michael Neve) about Mayor Manzi and Chief Solomon (testimony that was not flattering to his friend, the Mayor or Chief Solomon), to be discussed later. (*Tr.2150-2233[Havey]; Tr.2515-2556[Kalil]*)

24. Kara Lapidas – MPD Dispatcher for five years, just appointed a reserve police officer as well. She is a pleasant, somewhat demure, young woman who found herself a figure in certain disputed events involved in Chief Solomon’s termination. Her demeanor was focused, but a bit uncomfortable, and genuinely sad, as she related, in very sincere and convincing fashion, how she came to lodge a harassment complaint about a superior officer’s behavior [Sgt. Phillips] in August 2007 which prompted Chief Solomon to order an investigation for which others later criticized him. She is a credible witness who stuck strictly to the facts as she recalled them. (*Tr.2303-2365,2431-2439[Lapides]*)

25. Katherine Lavigne – 19-year MPD officer. Roughly a contemporary of Joseph Solomon, she held the rank of Captain, assigned to the detective bureau, when Chief Solomon’s career began to unravel in 2007. Mayor Manzi designated her “Acting Chief”³ (over Deputy Chief Alaimo and a senior Captain [Guy]) during Chief Solomon’s three-day suspension (April 2007); he made her “Acting Chief” again when he put Chief Solomon on administrative leave (September 2007). She became a permanent Chief after

³ The Civil Service Law does not specifically provide for “acting” appointments. The actual status of a civil service employee serving in a higher title is either a “temporary” or “provisional” appointment. See G.L.c.31, § 8, 15.

Chief Solomon was discharged and a home rule petition had been enacted removing the position of Police Chief from civil service. She had a soft-spoken, low-key demeanor and kept her answers discrete, crisp and to the point, as expected of a highly professional and experienced superior officer. (*Tr.1565-1703 [Lavigne]*)

26. Thomas McMenamon – 10-year MPD police officer and fiancée to Kara Lapidés. A percipient witness who showed good memory of the incident between Sgt. Phillips and Disp. Lapidés. His demeanor and attentiveness to questions on direct and cross-examination made his testimony highly credible. (*Tr.2444-2502 [McMenamon]*)

27. Larry J. Phillips – 24-year MPD officer and Sergeant since 1990. He expressly denied animosity toward Solomon and said he “had a lot of faith in him” when first appointed Chief; yet he freely recalled an episode in the 1980s, when he said he had to come to the aid of then rookie patrol officer Solomon “screaming and out of control and swearing” at a subject on a walking beat. This gratuitous back-handed compliment, along with other derogatory remarks (e.g., saying that Chief Solomon’s disciplinary action against him (Phillips) would come back to bite Solomon), and what seems too much a self-serving tendency to dismiss his critics’ behavior as over-reactive and “shocking”, compels discounting much of Sgt. Phillips’ testimony, especially after weighing it with subsequent credible and contradictory testimony by others. (*Tr.514-617,624-695 [Phillips]; See Exh.APP.61; Tr. 2666-2673[Haggar]Tr.2380-2382 [Fleming]*)

28. Michael J. Wnek – 20 year MPD officer and contemporary of Joseph Solomon, who made Lieutenant in 2000. Moved from platoon commander in the patrol division to commander of Criminal Investigation Division in 2002 and moved back to platoon commander in January 2007, which was his current assignment. He presented as a

forceful, well-spoken man of unquestioned training and skill as a superior officer. He described a strong personal friendship with Solomon over the years which he said deteriorated when Solomon became Police Chief in 2002. He was a key figure in the highly disputed events of August 24, 2007 (and was targeted for discipline by Chief Solomon, along with Sgt. Phillips and two other officers). Lt. Wnek's version of those events, in which he had a clear self-interest, is impeached by inconsistencies in his testimony as well as by other evidence in the record that appears more credible, as discussed elsewhere in this Decision. (*Tr.697-805,811-895[Wnek]*)

Joseph Solomon

29. Solomon has resided in Methuen since his early childhood. He was educated in the Methuen public schools and holds a Bachelors Degree in Business Management (1983), with a concentration in accounting, and a Masters Degree in Criminal Justice (1995). He began his law enforcement career in 1986 as a Methuen reserve police officer, and became a full time officer in 1987 after completing the police academy at the top of his class. He was promoted to Sergeant in 1993, to Lieutenant in 1995, and to Captain in 2000, topping the promotional list each time. Mayor Pollard appointed him "Acting Chief" in September 2002. He passed the civil service exam for Police Chief in May 2003 and became permanent Chief. He held that position until his discharge in May 2008. (*Exh. AA100; Tr.2954-2956, 3375-3378 [Solomon]*)

30. In 1989, then Officer Solomon received the MPD Officer of the year award. In 1997, then Lieutenant Solomon became one of two law enforcement officers in the United States recognized by the International Association of Chiefs of Police with the National Shared Vision Award, for successfully directing a community policing initiative in Methuen's crime-plagued Arlington neighborhood. (*Exh. AA100; Tr.2956 [Solomon]*)

31. Solomon has been married twice and has raised four children. The inference is drawn that his first marriage ended in divorce some time before he became Chief. His first marriage is relevant only in that one of the charges against him concerns an alleged ethical violation involving the husband [referred to as J.Ca.] of his ex-wife's sister, i.e. his ex-brother-in-law. (*Tr.2954, 3031-3039 [Solomon]; See also Exh. AA2,pp.20*)

32. As noted above, Solomon's sister, Mary Ellen, married Samuel Kalil, and they together own and operate Merrimac Marine, a business that figures into one of the charges of abuse of office. A second sister is married to another MPD Police Officer. (*Tr. 3103-3107[Solomon]; Tr. 2511-2515, 2556 [Kalil]*)

33. Solomon was present throughout the hearing and testified over the final two days. He is a polite, highly focused and passionate man of medium height and build. He carries much pride about his career, his law enforcement colleagues, and his record of service with Methuen. As a party with a huge stake in the outcome of these appeals, his testimony necessarily must be scrutinized together with the other evidence in the record, both consistent and contradictory, and with his potential bias in mind. Overall, his responsiveness to questions on direct and cross-examination and by this Commissioner, and his demeanor, as witness and observer, appeared sincere and truthful. He acknowledged he had made mistakes and, in hindsight, would have done things differently. Despite the pressure of his career on the line, he was calm, courteous and respectful. He never displayed animus against those who opposed him or criticized him during the hearings, including during some tough cross-examination. (*Tr.2954-3213,3223-3481[Solomon]*)

Other Witnesses

34. Sam Kalil – Sam Kalil is a lifelong Methuen resident, married to Solomon’s sister. In 1998, the Kalils bought a dilapidated farmhouse on nine acres at 38 Bearmeadow Street, a relatively lightly populated section of southeast Methuen. After major renovations, they moved in almost two years later. (*Exh.APP57; Tr.2521-2525[Kalil]*)

35. The Kalils own and operate Merrimac Marine, a family business since the 1950s which Sam Kalil took over from his father in 1992. Merrimac Marine began doing business with Methuen in the 1960s, when it supplied Methuen with lawnmowers and tractors, and continued that relationship until the 1980s when the business phased out of the tractor business and began to concentrate on marine boat sales and service. The business relationship with Methuen was renewed in or about 1997, when the MPD began to use Merrimac Marine to service the boat it had recently purchased (elsewhere) for the newly-established MPD Marine Unit. (*Tr. 2511-2516,2555-2556[Kalil]; Tr.2167-2169[Havey]*)

36. Mr. Kalil’s demeanor was very convincing. He maintained good eye contact and came across as sincere, both in direct testimony and cross. He demonstrated very good powers of observation and a clear memory for many events. Nothing about his testimony suggested that he gave it any slant because of his personal relationship with the Solomon family, or his business relationship with the MPD. (*Tr.2511-2585[Kalil]*)

37. Michael Neve – A middle-aged man who worked as a cook in his father’s restaurant, the Casa Vecchia, at 38 Hampshire Street in Methuen Square, next door to the Manzis’ liquor store. In November 2007, he took a job as manager of a D’Angelo’s sub shop for about six months, then lived in Florida until August 2008 when he returned to

Methuen. In the interim, his father sold the Casa Vecchia. When he testified, he was unemployed. He claims friendships with both Solomon and Mayor Manzi. He helped in Mayor Manzi's campaigns. Mr. Neve was extremely nervous throughout his testimony, which spanned two days, and covered controversial claims about an alleged bribe involving Mayor Manzi and, also, giving support to one of Mayor Manzi's political opponents.⁴ My assessment of Mr. Neve's credibility is covered in the subsequent findings on those subjects. (*Tr.909-913,1315-1319[Neve]*)

38. Melanson Heath & Company (MH&Co)—A ten member CPA firm that regularly audited Methuen, performed a “single audit” covering all of Methuen's federal grants in 2005, and conducted a special “review” of the “Weed & Seed” grant in 2006. Two MH&Co principals of its Municipal Services Department testified as experts in municipal audit services and governmental accounting: John J. Sullivan, department head, and Scott C. McIntire, partner. Their credentials were not challenged. (*Exhs.AA.57,AA58,AA81, AA83; Tr.1386-1440,1445-1521[Sullivan]; Tr.1521-1559 [McIntire]*)

D. Methuen's Weed & Seed Grant (2001-2006)

39. Under Mayor Pollard, Methuen became one of many communities awarded federal funding through a nationwide crime-prevention initiative known as the Weed & Seed (W/S) Program, part of the DOJ's Office of Justice Programs (OJP). The W/S Program is named for its dual objectives – first, to fund targeted law enforcement activities, in partnership with community groups, in specific high-crime neighborhoods to “weed” out the criminal elements, and, second, to “seed” the area with appropriate programs that would solidify the neighborhood and discourage criminal elements from

⁴ Mr. Neve appeared with counsel, and because of the nature of the testimony, which referenced Mr. Neve's statement to a Grand Jury, the hearing of his testimony was made subject to certain restrictions and declared private, over the objection of the press who were covering the hearing. (*Tr.898-909, 1259-1313*)

regaining a foothold. DOJ funded the W/S Program in Methuen through three grants totaling some \$1.25 million over five-years, beginning in October 2001 and concluding in September 2006, nine months into Mayor Manzi's administration. (*Exhs.AA45,AA46,AAA47,AA51;Tr.1728-1730[J.Alaimo];Tr.1959-1961 [Pollard]*)⁵

40. Methuen used W/S funds to enhance on-going initiatives in the crime-plagued Arlington neighborhood, under the direction of (then) Capt. Solomon, who was in charge of the Neighborhood Services Bureau and had spend much of his career working in the Arlington area. Capt. Solomon was designated the "Weed and Seed Coordinator". Then Lt. Joseph Alaimo was named "Weed Coordinator", in overall charge of specific police activity in the W/S area. Patricia Giarrusso, Chief McDougall's civilian executive assistant, was named "Program Assistant." One of the neighborhood groups, Methuen Arlington Neighborhood, Inc. (MAN Inc.), provided the "Seed Coordinator". (*Exhs.AA45, AA46, AA47, A51; Tr.1729-1737[J.Alaimo]; Tr.3133-3140[Solomon]*)

41. In October, 2002, when Solomon became "Acting Chief", Captain Kristopher McCarthy replaced him as "Weed and Seed Coordinator"; in December 2002, Sgt. Havey became "Weed Coordinator" in place of newly appointed Deputy Chief Alaimo; and, in October 2002, Lt. Kevin Mahoney succeeded Sgt. Havey as "Weed Coordinator". (*Exhs.AA45 ,AA46,AA47,A51;Tr.1729-1737[J.Alaimo],Tr.3133-3140[Solomon]*)

42. Although primarily an MPD operation as implemented, the Methuen W/S Program initially envisioned a total makeover of the Arlington area that would be the overall responsibility of Methuen's community development group. A steering committee

⁵ The official municipal signatory on the W&S Program grant documents was Mayor Pollard, who is also designated as the ""Grantee Official Point of Contact"; unlike some grants (the 2003-2004 federal COPS grants and state-funded Community Policing Grants) as to which Chief Solomon was a required signatory, no MPD official was a required signatory to W/S Program grants. (*Compare Exhs.AA45 thru AA47 with Exh.AA24 thru AA30, AA70*)

of numerous local and state officials, along with representatives of neighbor non-profits and community groups was formed. Capt. Solomon and several other MPD personnel served on the Steering Committee. The initial W/S grant proposal was presented to, vetted with, and approved by the Steering Committee, which served as an oversight board during the grant administration, and received quarterly reports on grant expenditures and progress. (*Exhs. AA45,AA46,AA47,A51;Tr.3133-3140[Solomon]*)

43. Methuen used W/S funds to saturate the Arlington area with extra overtime patrols and sting operations to “weed” out gang and drug activities, and to establish a spectrum of “seed” programs, centered around a “Safe Haven” (also known as 1 Broadway) – essentially a police substation and neighborhood center with after-school programs that brought youth together with volunteers to mentor them in homework, computer skills and personal growth, as well as programs for seniors and other outreach activities. Mayor Pollard called the “Save Haven” a “stellar” success. (*Exhs.AA45, AA46,AA47, AA51, APP21; Tr.1959-1961[Pollard]; See also Tr.1731-1732 [J.Alaimo]*)

44. Approximately 16% of W/S grant money (\$192,000 through the life of the grant) was allotted to pay 4 hours of overtime per week to the Weed & Seed Coordinator and Weed Coordinator, respectively, and 8 hours of overtime to the Program Assistant. The grant application clearly presumed that W/S coordinators would need to spend more than the allotted 4 hours each week to manage W/S activities, but stated that “all other time required by [the position] will be considered part of the [individual’s] current position in the City and therefore included in the individual’s existing annual salary with the City.” I infer these arrangements were the result of a decision made by then Chief Bruce McDougall. Joseph Alaimo said, as to the four-hour overtime limit: “we did more work”

and put in “many hours that I wasn’t compensated”; of Solomon, he said: “The man lived down there . . . 18 hours a day easily.” Solomon made substantially the same point. This testimony might seem mere hyperbole, but for the fact that both men showed genuine pride for the W/S Program that came through clearly in their testimony and demeanor; I have no doubt they chose to work many hours on W/S for which they received no MPD or W/S grant pay. (*Exh.AA51;AA56;Tr.1732-1736,1766-1768[J.Alaimo]; Tr.3140,3144-1346,3150-3151,3173-3176,3394[Solomon]; see also Tr.1481-1482[Sullivan]*)

45. The MPD uses a computerized record-keeping software system called “PRO-IV” to handle payroll data as well as incident reporting, dispatching and report writing. Although presumably state-of-the-art when acquired in the late 1990s, PRO-IV has one notable drawback from the system it replaced (called “Team Up”). The “Team Up” system allotted up to five lines of narrative text detailing an officer’s daily activities, stops made, tickets issued, meetings attended, etc. Under PRO-IV, the system keyed on “codes”, such as E18, WSP, etc, created in conjunction with the City Auditor’s office and pre-programmed to generate appropriate accounting data (payroll account, pay rate, etc), but allowed only a one-line field for narrative detail of operational activity. Due to this limitation, (then) Lt. Solomon asked to be allowed to continue using Team Up to track operations in the field, but was told that further use of Team Up was not authorized. (*Exhs.AA20[Team Up reports],AA73,AA74,AA77-AA80[PRO-IV reports]; Tr.1389-1391, 1475,1501-1503[Sullivan]; Tr.1858,1890-1891,2003-2005[Kelly]; Tr.2123 [Gunther]; Tr.2695[Haggart]; Tr.3154,3155,3460-3462 [Solomon]*)

46. During his tenure as the officer in charge of Community Policing (1995-1998), Lt. Solomon was assigned grant management and grant writing responsibility on a number of

state-funded Community Policing grants (which are to be distinguished from the subsequent federal W/S grants and federal COPS grants). In connection with this assignment, Lt. Solomon created a departmental form called the “Activity Sheet” as a management tool to monitor patrol officer productivity in completing grant-related tasks, to show that the MPD was meeting the performance goals of the grant in required periodic reporting and new grant reapplications, and to provide metrics of individual performance that would incentivize officers to compete to achieve higher levels of productivity. When he was assigned as Weed & Seed Coordinator, (then) Capt. Solomon adapted this form for similarly tracking daily assignments and productivity of officers assigned W/S field duty. These operational forms were independent of the PRO-IV system and not intended for payroll accounting purposes. (*Exhs.AA20,AA48,AA51,AA70, APP22; Tr.1476-1477[Sullivan]; Tr.3142-3149 [Solomon]*)

47. For many years, under both the Team Up system and PRO-IV, the MPD followed substantially the same procedure for entering payroll data. Supervisors (Sergeants and up) were authorized to enter the daily time worked by the officers under their command as well as their own. This function was password protected. Only supervisors could access and enter payroll data. PRO-IV produced a weekly payroll report distributed for review and approval by the Captains of each bureau, and then forwarded to the City Auditor’s office, which input the data into Methuen’s city accounting system to generate the actual payroll, lagged two weeks behind the PRO-IV week-ending report.(*Exhs.APP19,APP20, AA73, AA74, AA77-AA8, AA91; Tr.1466-1468[Sullivan]; Tr.1913,1998-2005 [Kelly]; Tr.2049-2057[A.Alaimo]; Tr.2694-2696 [Haggart]; Tr.3172-3173,3385-3386[Solomon]*)

48. The parties offered conflicting testimony as to whether or not a supervisor could remotely access the PRO-IV system. CPAs John Sullivan and Scott McIntire of MH&Co. said remote access was not possible, according to sources they initially identified as “the IT person within the City of Methuen” and a person called “Gerry” at Microsystems, the owner of the PRO-IV software package. This testimony was contradicted by Solomon and Capt. Haggar, both of whom testified on personal knowledge that such remote access was not only possible, but they both had laptop computers that enabled them to do so. Weighing the conflicting hearsay testimony with the direct testimony, noting that Capt. Haggar was considered, in effect, the “go-to” person for PRO-IV at the MPD, and also noting that the use of remote access is a common business tool (indeed, this Commission employs virtual private networks (VPNs) to remotely access its own secure Commonwealth of Massachusetts servers), the clear weight of the evidence leads me to credit the direct testimony of Capt. Haggar and Solomon on this point. (*Tr.1466-1468, 1473-1475[Sullivan]; Tr.1524,1530,1534 [McIntire]; Tr.2696-2698 [Haggar]; Tr.3234, 3475-3477[Solomon]*)

49. Under the long-standing and well-known practice at the MPD, senior superior officers, whose day-to-day responsibilities mainly involved management functions, were not required to make detailed reports of their daily work in planning, scheduling, attending staff meetings and external conferences, taking phone calls, etc. Although some officers did enter limited descriptive data in the one line field available in the PRO-IV system, there was no rule that required it, and the practice varied from officer to officer. Most superior officers routinely entered their own supervisory time once each week, using the one line block to report the payroll week during which the work was performed

and indicate the code for the particular program to be charged, but without any further breakdown or detail. Solomon strongly supported this practice, testifying he would be insulted by any suggestion that one of his “high level” command staff “can’t be trusted” to “put their hours in” and take seriously their duty to “sign off on the [weekly] payroll.” The MPD’s practice of using what is, in effect, an honor system for superior officers’ timekeeping, was described by CPA Sullivan as not surprising, as it was the generally expected norm throughout the law enforcement community (as well as other municipal agencies) because a supervisor’s duties “might range from a ten-minute phone call one day to a one-and-a-half hour meeting another day, and, you know, different times, so its more difficult for the superior officers to keep track of their individual time than it is the patrol officers. . .and, as a result, we see more often that superior officers are not keeping the kind of detailed records [as] other officers . . .” (*Exhs.APP19, AA73, AA77 thru AA81; Tr.1416,1478-1481[Sullivan]; Tr.1913[Kelly]; Tr.3145-3154,3388 [Solomon]*)

50. The W/S Program, as typical of any federal grant, is managed at the federal level by an OJP program manager assigned to oversee Methuen’s performance of the conditions of the grant. Methuen’s first program manager was based in the US Attorney’s office in Boston, but her successors were all based in Washington, D.C. Among the conditions of the grant, was an obligation to maintain “adequate documentation” and appropriate “internal controls” to support the “time and effort” charged to the grant, which were subject to audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), as specified in rules and regulations promulgated by the federal Office of Management and Budget (OMB) under the Single Audit Act of 1984. The standards the federal government looks for with regard to back-up material for a

grant can differ from what is generally acceptable for a municipality to use for internal accounting purposes. The federal rules and regulations are partially codified in 2 CFR Part 225 and 28 CFR Part 66, in an uncodified OMB Circular A-133, as well as in a OJP “Financial Guide” specific to the OJP grants such as W&S. Some of the OMB materials, along with an example of a “generally accepted auditing standard” for testing the sufficiency of “General Computer Controls”, were introduced in evidence; the Financial Guide was not. (*Exhs. APP63, APP64, AA27, AA45-AA47, AA82, AA56; Tr.1415-1416, 1448-1455, 1466, 1483-1484, 1504-1506[Sullivan]; Tr.1544-1546[McIntire]; Tr.3468-3469[Solomon]; Administrative Notice of Code of Federal Regulations and OJP website, www.ojp.usdoj.gov/financial_guide(visited 5/21/2010)*)

51. There was some evidence of “numerous training programs” that “multiple people from the City of Methuen” attended (including “several people in the department [presumably meaning MPD]. . .put on by Weed and Seed.” Solomon could not recall attending any of them, but he said he might have. Some hearsay evidence (Exhibit AA51) suggests he probably received “basic” W/S “application” training. No evidence described the curriculum of such programs or whether they focused just on pre-award application procedures or post-award grant administration as well, or if they covered financial accounting and reporting issues at all. Weighing Solomon’s credible testimony against the dearth of concrete evidence on point, I infer that neither Solomon, nor any other MPD personnel, received specific training in federal grant fiscal management or provided instructions about OMB’s or DOJ’s many regulations, circulars and guidebooks. (*Exh.AA51 [Interview of Solomon]; Tr.1482 [Sullivan]; Tr.3375-3376 [Solomon]*)

52. Methuen's regular auditors, MH&Co, led by partner Scott McIntire, performed a "single audit" covering all of Methuen's federal grants for the Fiscal Year ended June 30, 2005, including the W/S grant, and issued a two-part report entitled "Independent Auditor's Reports Pursuant to Government Auditing Standards and the Single Audit Act Amendments of 1996". The first report, dated October 20, 2005 was a "Report on Internal Controls Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards." The second report, dated May 22, 2006 was a "Report on Compliance with Requirements Applicable to Each Major Program and on Internal Control over Compliance in Accordance with OMB Circular A-133". (*Exh.AA57,AA83; Tr.1460[Sullivan];Tr.1525,1541-1542[McIntire];Tr.1355-1356[Solomon]*)

53. Ms. Alina Korzak, an MH&Co. CPA, performed site work for the FY2005 "single audit". She interviewed Chief Solomon, made an "in depth" review of MPD W/S source documents and performed tests for compliance with federal audit requirements, which prescribe that testing must cover "at least 50% of the federal expenditures in each fiscal year." Ms. Korziak "spent a lot of time going through individual payroll records and warrants". (*Tr.1460-1461[Sullivan]; Tr.1532-1533[McIntire]; Tr.3155-3161[Solomon]*).

54. The MH&Co audit found the Methuen School Department out-of-compliance with federal grant requirements but ***found no compliance issues with the MPD or the W/S grant.*** The October 20, 2005 report stated, applicable to the W/S Program:

- "[W]e considered the City's internal control over financial reporting in order to determine our auditing procedures for the purpose of our opinions on the financial statements. . . . ***We noted no matters involving the internal control over financial reporting and its operation that we consider to be material weaknesses*** [i.e. a condition in which the design or operation of one or more internal control components does not reduce to a relatively low level the risk that misstatements

caused by error or fraud in amounts that would be material to the financial statements being audited may occur and not be detected within a timely period].”

- “As part of obtaining reasonable assurance about whether the City’s financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, non-compliance with which could have a direct and material effect on the determination of financial statement amounts. . . [O]ur tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.”

MH&Co’s May 22, 2006 report, made after further audit in accordance with OMB

Circular A-133, reaffirmed its findings and gave its **unqualified professional opinion**:

- “In our opinion, except for the noncompliance [of the School Department], the City complied, in in all material respects, with the requirements referred to above [i.e., laws, regulations, contracts, and grants] that are applicable to each of its major federal programs of the year ended June 30, 2005.”
- We noted no matters involving the internal control over compliance and its operation that we consider to be material weaknesses.
- “The accompanying schedule of expenditures of federal awards [including \$191,962 in W&S expenditures] is presented for purposes of additional analysis as required by OMB Circular A-133 Such information has been subjected to the auditing procedures applied in the audit of basic financial statements and, in our opinion, is fairly stated, in all material respects, in relation to the basic financial statements taken as a whole.”

(Exh.AA57[emphasis added]; see also Tr.1525[McIntire]; Tr.3155-3161[Solomon])

55. On June 29, 2006, City Auditor wrote to Chief Solomon, as follows:

“. . . I just left the exit conference with our auditing firm Melanson, Heath & Company . . . I was handed the Single Audit on the three grants School Lunch, CDBG and the Weed and Seed. There were no audit findings on the Weed and Seed Program. The auditors were very impressed with your records and backup information you provided them and they thought Patricia Giarrusso was extremely helpful and very professional. Nice job!!! . . . wish I could say the same for the School Lunch and CDBG. . . TK”

(Exh.APP52 [emphasis in original]; See also TR.1818-1823[Kelly])

56. In or about September 2006, a federal Grand Jury subpoenaed the City Auditor to appear with records of all Methuen’s federal grants from 2001 thorough 2006. The DOJ Office of Inspector General (OIG) initiated its own investigation of Methuen’s federal

grants, including the W/S grant. These investigations concluded without any finding of fraud, but DOJ did find that Methuen failed to submit “adequate documentation” for \$170,000 in overtime payments to the W/S grant to MPD personnel who worked as Weed and Seed Coordinator (Capts. Solomon and McCarthy), Weed Coordinator (Lt. Alaimo, Lt. Mahoney & Sgt. Havey) and Program Assistant (Patricia Giarrusso). Further details of these investigations, and the response made by Chief Solomon and others, are addressed below (Findings of Fact, ¶75, ¶88 et seq., ¶168-172) together with other related developments. (*Exhs. AA49-AA57; Tr. 1484,1492[Sullivan]*)

E. Other Events Arising During The Pollard Administration (2002-2006)

57. Upon retirement of Chief Bruce McDougall, Mayor Pollard appointed Capt. Solomon “Acting Police Chief” (September 2002) and permanent Police Chief (May 2003). The appointment was well-received and supported by the City Council. During the Pollard Administration (which ended in January 2006, due to the three-term limit), Chief Solomon and Mayor Pollard maintained a good working relationship based on mutual respect. Mayor Pollard complimented Chief Solomon on his personnel management ability and the good rapport he had established within the MPD. The only negative comments about Chief Solomon’s performance during this time, voiced by two of his critics, fail to impeach the prevailing view expressed by Mayor Pollard. (*Tr.716-71,745-747 [Wnek], Tr.438-446,453-495 [Flanagan], Tr.1942-1948 [Pollard]*)

58. In addition to the W/S Program, certain other events occurred while Mayor Pollard was in office, described below in roughly chronological order, that would later be used as the basis for charges made by Mayor Manzi against Chief Solomon.

Counterfeiting Investigation

59. According to Walter Flanagan, in June 2002, he was called to a meeting with Chief Solomon, Dep. Chief Joseph Alaimo, retired Lt. Mike Alaimo (then working as a private investigator), and Lt. Wnek (then commanding officer of the Detective Division). At this meeting Dep. Chief Alaimo allegedly ordered Flanagan – with Chief Solomon and Lt. Wnek just “sitting there” and “saying nothing” – to tell Dep. Chief Alaimo’s father (Mike Alaimo) “everything” he knew about a certain counterfeiting investigation Flanagan had conducted in January 2001. Flanagan said he was “in shock” as he “never heard” anyone at the MPD being asked to provide such information to a private investigator. He said he felt as if he “was being interrogated as a criminal”. Flanagan said that, after this “ambush”, he spoke to the Secret Service and, then, turned over the one piece of evidence he had kept in his desk, a videotape showing the suspects passing the money. (*Exh AA92; Tr. 401-426 460-47,502-505 [Flanagan]; Tr.2017-2019[M.Alaimo]*)

60. Mr. Flanagan’s version of the incident was impeached on cross-examination and by a preponderance of other credible evidence. Neither Chief Solomon nor Dep. Chief Alaimo held those positions until late 2002. There were, in fact, multiple meetings with Mike Alaimo in 2002 to get access to the videotape, set up through channels with Lt. Wnek; and none involved substantive participation by Chief Solomon. In November 2002 a court ordered the evidence produced, as it might exculpate the defendant N.M., for whom Mike Alaimo was retained, on a defense of mistaken identity.⁶ I infer that no such order would have been needed if Flanagan had already turned the evidence over in

⁶ The female suspect A.S. had previously dated N.M., and her new boyfriend, defendant Z.W., apparently bore some resemblance to N.M. Det. Flanagan had a family connection to A.S., whose father and he were childhood acquaintances and knew all four suspects. He interviewed all except N.M. While I do not find that Flanagan was “playing favorites”, the circumstances clearly support Mike Alaimo’s hunch that the videotape was key to N.M.’s defense (*Tr.409-410,462-465[Flanagan]; Tr.2028-2030 [M.Alimo]*)

June 2002 as he said he did. Giving evidence to a private investigator, especially under court order, was not uncommon in the MPD or other police departments. (*Exhs.APP36, APP37, APP47, APP54, AA92; Tr.423-424,471,485-486[Flanagan]; Tr.744-761[Wnek]; Tr.2017-2040,2058-2067[M.Alaimo]; Tr.3123-3125[Solomon]*)

61. The charges against N.M. were dismissed for lack of prosecution. The reasons for dismissal were disputed. I credit Mike Alaimo's testimony that it was, more likely than not, because the videotape was not turned over and/or, perhaps, because it confirmed the defense of mistaken identity. (*Exh.APP36,APP37,APP47;Tr.485-486[Flanagan]; Tr.744-761 [Wnek]; Tr.2020-2040,2058-2067 [M.Alaimo] ; Tr.3123-3125[Solomon]*)

62. Mr. Flanagan also related other meetings preceding his retirement in 2005, in which Chief Solomon, Dep. Chief Alaimo and others accused him of other misconduct, from neglect of duty to insubordination. Flanagan's version of these meetings was not credibly corroborated, and none of them were part of the charges against Chief Solomon. In fact, it was Chief Solomon who overruled the requests of certain of his command staff who did ask to have Flanagan fired. This collateral evidence was taken for what it was worth, and, when the record is viewed as a whole, it is more probative of Walter Flanagan's animus against Chief Solomon and Dep. Chief Alaimo, than vice-versa.⁷ (*Tr.441-448, 488-495[Flanagan]; Tr.745-747[Wnek]; Tr.2103-2108 [Gunther]*)

MPD Marine Unit

63. When the MPD established a Marine Unit in the late 1990s, Chief McDougall, initially approached Sam Kalil, but Merrimac Marine did not have a suitable boat and Kalil referred him to other dealers. Kalil indicated that, as a Mercury dealer, he could

⁷ Walter Flanagan claims that he has told "hundreds of people" about "what happened to me" at the MPD. This includes approaching City Solicitor McQuillian in 2005 and 2007 and volunteering to provide evidence to support the case for firing Chief Solomon. (*Tr.454-459,487-488[Flanagan]*)

service any boat wherever purchased if equipped with Mercury engines. The MPD acquired such a boat from Russo Marine in Medford, and serviced it there initially. Eventually, to avoid the time and risk of towing the boat to and from Medford, Merrimac Marine began to service it. The arrangement was mutually beneficial – Kalil told his staff to treat the MPD boat as his own; it got priority; technicians went to the river for repairs and service; some services were without charge. In 2000, Merrimac Marine replaced the original twin engines with one, larger Mercury engine for \$10,920. (*Ex.AA9; Tr.2513-2517,2558-2562[Kalil]; Tr.2163-2169 [Havey]; Tr.3103-3106 [Solomon]*)

64. Prior to becoming “Acting Chief”, Solomon had no responsibility over the Marine Unit and had no dealings with Merrimac Marine. Shortly thereafter, a purchase order for Merrimac Marine crossed his desk. He immediately called Sam Kalil and told him to stop work on the Marine Unit boat pending further notice. Chief Solomon’s concern was that, now that he was Chief, and his sister co-owned Merrimac Marine, he needed to be sure there would be no conflict of interest for the MPD to continue to do business with Merrimac Marine. Several weeks later, Chief Solomon contacted Kalil and told him he could go ahead and resume service. (*Tr.3018[Solomon];Tr.2519-2520 [Kalil]*)

65. In the interim, on October 10, 2002, Solomon contacted the State Ethics Commission and spoke to the “Attorney of the Day” Stephen P. Fauteaux.⁸ Attorney Fauteau referred him to the State Ethics Commission website, www.mass.gov/ethics and to a form he needed to submit to Mayor Pollard disclosing his relationship with Merrimac Marine. Attorney Fauteaux advised Chief Solomon that, if the Mayor granted a waiver, he could continue “materially participating”, which meant that he could “sign RFPs and send

⁸ According to the State Ethics Commission personnel directory on its website, of which this Commission will take administrative notice, Mr. Fauteau currently serves as the Chief of the Enforcement Division of the State Ethics Commission. See “Contact Us” at www.mass.gov/ethics (visited 5/21/2010).

work there and do all that as long as it was approved by the appointing authority.” Chief Solomon prepared the disclosure form and presented it to Mayor Pollard. (*Exh.APP.35, AA8; Tr.1955-1956[Pollard];Tr.3108-3113[Solomon]*)

66. Mayor Pollard already knew of the relationship between Methuen and Merrimac Marine; she knew it predated her tenure as Mayor and Solomon as Chief. She contacted the City Auditor’s office and reviewed prior purchase orders – including the \$10,920 purchase of the new motor in 2000 (the largest, which occurred during the first year of her administration) – to refresh her recollection about the relationship, and, after further discussion, approved the disclosure form. She told Chief Solomon, however, in her view, he should not be directly involved in dealing with Merrimac Marine, and it would be best to delegate that authority to the Deputy Chief or the Captain in charge of the Marine Unit. Chief Solomon followed that procedure and Dep.Chief Alaimo became the point of contact for all decisions involving Merrimac Marine. (*Exh.AA9;1779-1783,1803-1804 [J.Alaimo]; Tr.1956-1958,1983-1988[Pollard]; Tr.3110-3113[Solomon]*)

COPS/HSOP Grant

67. In May 2003, Mayor Pollard informed Chief Solomon to expect a call from Crest Associates, then known to her (and to him) as a reputable firm, headed by Richard St. Louis, a former high ranking official in the Massachusetts Office of Public Safety, that assisted municipalities, including Methuen, and police departments throughout the Commonwealth, to get and manage grants. The initial focus was to help obtain a \$50,000 COPS/HSOP grant, a time sensitive matter since the deadline to apply was imminent. (*Tr.1961-1965, 1977-1978 [Pollard];Tr.2959-2966[Solomon]*)

68. In late June 2003, Mayor Pollard executed two consulting agreements with Crest Associates, one covering the remainder of the FY2003 fiscal year and another covering

FY2004, for which Crest was paid, up front, \$34,960. The contractual arrangement was handled entirely by Mayor Pollard; Chief Solomon was not involved. (*Exhs.AA34, AA35; Tr.1961-1965,1974-1975[Pollard]; Tr.2968-2969,3456-3457 [Solomon]*)⁹

69. The COPS/HSOP grant's purpose was to fund overtime for "non-supervisory" patrols designed to enhance Methuen's homeland security efforts. With Crest Associates' assistance, Methuen submitted a grant application for that purpose that proposed additional motorcycle, foot, bicycle and marine patrols to increase police visibility at all critical infrastructure sites, such as municipal buildings and water treatment facilities and support for additional SWAT training. (*Exhs.AA25; Tr.2969-2972[Solomon]*)

70. On or about June 11, 2003, Chief Solomon and Mayor Pollard co-signed and submitted the COPS/HSOP application, agreeing to be the "individuals who will have ultimate financial and programmatic authority for this grant". Initial approval came on or about October 8, 2003 and was reissued November 4, 2003, because Chief Solomon noticed that the award paperwork required him (and Mayor Pollard) to attest that they would "abide by the Conditions of Grant award found on the reverse side," but there was nothing on the reverse side of the first award document they received. (*Exhs.AA27, AA27A, AA32; Tr.2972,3178-3189[Solomon]; Tr.,3221-3222*)¹⁰

⁹ Methuen proffered evidence to suggest some irregularities in the Crest Associates contracting process, as well as the allegedly excessive payment it received. These issues, however, did not form the basis for any of the subsequent charges against Chief Solomon for alleged mismanagement of the COPS grant and the Commission makes no specific findings on this point. I note, however, that it is reasonable to infer that Crest Associates was expected to assist with all MPD grants, not just COPS, which would have included the on-going W/S grant, as well as any state-funded Community Policing grants, among others. (*Exhs.AA34,AA35; Tr.1963-1965[Pollard]; Tr.3200-3201[Solomon]*)

¹⁰The colloquy with Solomon on direct and cross-examination about the COPS/HSOP award documentation illustrated an excellent memory for detail. He was sure the grant award conditions were not part of the original award notice he received, despite being shown documentary evidence that appeared to contradict him. His position was eventually corroborated by the subsequent receipt of further documents from DOJ, which proved his memory accurate. (*Compare Exh.AA26-AA27 with Exh.AA27A*)

71. When Chief Solomon received the COPS/HSOP “Grant Conditions” page, he noticed, for the first time, that the grant was subject to the following condition:

“The funding under this project is for the payment of overtime hourly rate and fringe benefits expended for **non-supervisory personnel**. . . . The positions listed in your application and approved by the COPS Office are assumed to be **non-supervisory sworn personnel** *by nature of their rank and not defined by their current task*. As noted in the grant application, the additional overtime hours funded under HSOP are intended to reimburse non-supervisory sworn officer ranks. Therefore, *grantees should not reimburse for overtime expenses for personnel that hold a rank of a supervisory nature even if the person is not currently supervising a staff* or if the grantee agrees to pay the difference in hourly rates.”

(Exh.AA27A)(**emphasis in original**) (*emphasis added*)

72. Chief Solomon found this paragraph troubling, because the grant application was prepared under the assumption that all MPD officers, not just patrol officers, would be eligible for COPS/HSOP overtime duty. For this reason, the grant application listed the overtime rates for Officers, Sergeants, Lieutenants and Captains. The ability to assign superior officers to the COPS/HSOP program was key to performing the grant, because, for example, it was critical to give supervisors the same SWAT homeland security training that their officers received; there also were issues unique to the Marine Unit, an integral piece of the grant work, because only two officers were qualified to run the personal watercraft (Jet-Ski) equipment, and one of them was a sergeant. Chief Solomon asked Richard St. Louis about this discrepancy and, based on his advice, proceeded to assign supervisory personnel to COPS/HSOP grant “non-supervisory” work. Another Crest Associates employee also confirmed that it was proper to do so. Chief Solomon received follow-up documents from DOJ that showed the approved grant amount used overtime rates for all ranks. Chief Solomon did not ask Richard St. Louis or anyone at DOJ for written confirmation that superior officers could work the COPS/HSOP grant.

(Exhs.APP1,APP2;Tr.2225-2226[Havey];Tr.2972-2980,3195,3199-3201 [Solomon])

73. Soon thereafter, Richard St. Louis came under federal investigation for alleged wrongdoing in handling of federal grants. In February 2004, St. Louis took his own life and Crest Associates went out of business. Methuen's COPS/HSOP files at Crest Associates were sent to the MPD and MPD took over full responsibility for all grant management and reporting. Solomon said that St. Louis' death, Crest Associates demise, and the fact that he had nothing in writing to confirm the manner in which he continued to authorize overtime payments under COPS/HSOP, raised no "concern". (*Tr.2980-2981,3193-3202[Solomon]; see also Exh.APP17[3/22/07 Eagle-Tribune Article]*).¹¹

74. The COPS/HSOP grant was funded from September 1, 2003 through February 28, 2005. The \$50,000 in federal funds was required to be matched by \$16,000 in Methuen appropriations. These monies were spent for "non-supervisory" work, mostly by 29 patrol officers (1,028 overtime hours); the balance by 12 superior officers assigned to perform patrol officer's duties (603 overtime hours). There was no serious claim that any of the overtime paid was not actually performed on COPS/HSOP related training or patrol duty. (*Exhs.AA38 thru AA40;APP3 thru APP7; Tr.2182-2185,2207-2223[Havey]; Tr.2677, 2705-2709[Haggart]*)

75. Nothing relevant to the COPS/HSOP grant occurred until late 2006, after the MPD's COPS/HSOP records were subpoenaed, along with W/S records, as part of the fraud investigation referred to above. (Finding of Fact ¶56). That investigation is addressed below together with the other related events leading to Chief Solomon's three day suspension in April 2007. (See Findings of Fact ¶¶88 et seq.)

¹¹Exhibit APP17 is a compendious of newspaper articles accepted in evidence, *de bene*, on the first day of the hearings, subject to a motion to strike any portions that either party contended did not represent an accurate report of what had been said or done. No such objections were made and the articles, albeit hearsay, are considered sufficiently reliable to be weighed along with all of the other creditable supporting (or, if it were the case, contradictory) evidence. (*See Tr.26-31; see also Tr.356-357[Manzi]*)

Bearmeadow Street Surveillance

76. Methuen proffered evidence, principally through Sgt. Phillips and MPD PRO-IV incident reports, that in 2004 and 2005, some 280 “property checks” were logged by MPD officers to 38 Bearmeadow Street, the residence of Chief Solomon’s sister, Mary Ellen, and her husband, Sam Kalil. Also, for about a month in January 2004, an MPD surveillance camera was installed in the Kalil driveway and hooked to a video-recorder placed in the Kalil home. These circumstances were said to be highly irregular. (*Exhs. AA7; AA19 [last page, NESPIN Form]; Tr.549-558,660-664[Phillips]*)

77. Although, initially, this evidence appeared to raise an eyebrow, after hearing from all of the witnesses with percipient knowledge of the events, and reviewing the PRO-IV records carefully, I infer that MPD patrol and surveillance activities in the vicinity of 38 Bearmeadow Street were nothing other than appropriate law enforcement responses to clearly-documented issues of proper concern to the public safety of residents in that area. The preponderance of evidence established that these legitimate, routine activities were not improperly orchestrated at the behest of Chief Solomon. (*Exhs.APP5, APP58, AA7, AA19[NESPIN]; Tr.549-558, 660-664[Phillips]; Tr.2138-2142[Gunther]; Tr.2364-2377 [Cesarz]; Tr.2383-2429[Fleming]; Tr.2431-2439[Lapides]; Tr.2531, 2548, 2557-2558, 2564-2582[Kalil]; Tr.2683-2695, 2725-2728[Haggar]; Tr.3078- 3103 [Solomon]*)

78. As to the property checks, Solomon provided convincing proof that Methuen significantly overstated the number and nature of the activities. Although the Bearmeadow area was not a crime-haven as were other parts of Methuen – e.g. the Arlington area – it was known for so-called “beep and meet” drug deals, illegal dumping and coyote sightings and, as the PRO-IV records reflect, calls included responses due to

vandalism, motor vehicle violations, medical emergencies, and other typical complaints. The Kalil residence had been a magnet for illegal activity in its earlier dilapidated state and Sam Kalil, and others, testified about many specific police calls made to the vicinity. The MPD consistently provided extra property checks as a public service to any resident on request, before Chief Solomon and after, under Chief Lavigne. (*Exhs.APP39,APP40, APP57, APP58; Tr.2138-2142[Gunther]; Tr.2383-2429[Fleming]; Tr.2531-2548,2557-2558, 2564-2582[Kalil]; Tr.2683-2695,2725-2728[Haggar]; Tr.3078-3103[Solomon]*)

79. Moreover, when a police call is logged to 38 Bearmeadow, that fact, alone does not mean the call came from, or the police responded to, that specific address. The common MPD practice was to record a house address to pin-point a patrol officer's location, for record-keeping purposes, when the officer actually was patrolling the general area; in fact many PRO-IV entries indicate that the officer was simply doing such an "area check". Indeed, it would be logical to use 38 Bearmeadow, roughly half way along this long, rural-like, winding street, as a locator point. Moreover, the approximately 150 (not 280) calls assigned to 38 Bearmeadow in the 2004-2005 period, are a fraction of all calls logged to Bearmeadow Street and statistically comparable to the number of calls logged to 2 Bearmeadow, located at one end of the street, whose owner has no known relationship to the MPD or any known significant pattern of criminal behavior. Thus, even if there were direct evidence that Chief Solomon had a personal hand in any of these patrol assignments (and none was proffered), these data warrant no inference that something untoward was afoot. (*Exhs.APP57,APP58,AA7;Tr.549-558,660-664[Phillips]; Tr.2364-2377[Cesarz]; Tr.2383-2429[Fleming]; Tr.2430-2439[Lapides]; Tr.2531-2548, 2564-2582 [Kalil]; Tr.2683-2695 , 2725-2728[Haggar]; Tr.3078-3103 [Solomon]*)

80. As to the surveillance camera, the substantial credible evidence showed that, whatever the reason, Chief Solomon had nothing to do with the installation. The documentary record shows the camera was ordered by John Cushing, approved by “DFK”, and installed by Sgt. Phillips and Officer Fleming on or about January 9, 2004. Chief Solomon only learned of it after the fact, on a visit to the Kalil residence. Moreover, the camera was a cost-free loaner from NESPIN, a non-profit agency to which MPD was a member, borrowed in January 2004 for one-month and returned. The MPD has also used surveillance cameras at other locations on several other occasions. (*Exhs. APP57, PP58, AA19; Tr.549-558, 660-66 [Phillips]; Tr.2383-2430 [Fleming]; Tr.2531-2548, 2564-2582 [Kalil]; Tr.3078-3103 [Solomon]*)

F. Events Preceding The Three-Day Suspension (2006-2007)

Purchase of Second Marine Unit Boat

81. Mayor Manzi took office in January 2006. For most of that first year, save for the clean bill of health on the W/S grant received in June 2006 (Finding of Fact ¶¶52-55), the only evidence that would later be relevant to the charges against Chief Solomon relates to the MPD’s purchase of a second marine patrol boat from Merrimac Marine. This purchase crossed Mayor Manzi’s desk in March 2006, was duly approved by his executive assistant, Lisa Alaimo (wife of Dep.Chief Alaimo) and routinely processed by the Purchasing Agent and the City Auditor’s office. The boat was a smaller 16-foot aluminum vessel with a 25 HP motor, to be used to access shallow waters on the Merrimac River that existing marine equipment could not navigate. The purchase was completed in June 2006 at a total cost of \$6,770.00, including the boat (\$4,290), a motor (\$1,700) and miscellaneous supplies (\$780). No bids were obtained from any vendors other than Merrimac Marine. It appears that the MPD may have used state Community

Policing funds to pay for the boat. (*Exhs.APP41,AA9-AA14, AA70; Tr.183,274-276 [Manzi]; Tr.994-995 [Ouellette]; Tr.1209-1217 [McQuillan]; Tr.1849-1855 [Kelly]; Tr. 2174- 2182 [Havey]; Tr.2519 2520 [Kalil]; Tr.3114-3117[Solomon]*)

82. The parties dispute whether Chief Solomon played a role, direct or indirect, in the purchase. The weight of credible evidence is that he did not. Contacts with all Marine Unit vendors (HK Power Sports in Hooksett, NH; Riverfront Marine in Salisbury, and Merrimac Marine) were handled by Marine Unit officers, most recently, through Sgt. Havey (who also happens to be related to Sam Kalil) and Capt. McCarthy, Marine Unit supervisor. Capt. McCarthy and Dep.Chief Alaimo, handled the paperwork and approvals for the new boat, as evidenced by their signatures on all relevant documents. None of these officers had contact with Chief Solomon about the purchase. The only evidence to the contrary is (1) a Purchase Order prepared by the Purchasing Agent, with Chief Solomon's name typed in the "ORDERED BY" block, most likely a scrivener's error; and (2) two documents prepared by Capt. McCarthy (which Chief Solomon would have seen) that reference the proposed purchase, but do not mention a vendor. This circumstantial evidence does not outweigh the substantial, consistent oral testimony to the contrary from three police officers, the City Solicitor, and Mr. Kalil. (*Exhs.APP41, AA10-AA14, AA69 AA70; Tr.994-995[Ouellette]; Tr.1172-1180,1211-1212[McQuillan]; Tr.1713-1719,1803-1804 [J.Alaimo]; Tr.2174-2182 [Havey]; Tr.2519-2520,2549-2557, 2582-2585 [Kalil]; Tr.3110-3117 [Solomon]*)¹²

¹²Methuen also points to Solomon's acknowledgement on cross-examination that it was "pretty obvious" that the boat prices that appeared in the Community Policing application came from Merrimac Marine's quote, but that evidence does not sway me. (*Tr.3324-3335*). Solomon's testimony clearly was given in the context of the present, i.e., being asked to compare the application and the purchase order side-by-side, Solomon agreed they looked to be connected. That evidence does not impeach his testimony that he did not make that connection at any earlier time. Indeed, the colloquy speaks more to Solomon's candor than to any alleged prevarication.

83. Methuen also proffered evidence that Chief Solomon submitted no ethics disclosure to Mayor Manzi regarding his relationship with Merrimac Marine prior to the boat purchase. According to City Solicitor McQuillan, the “particular matter” disclosed in the document filed with Mayor Pollard only mentioned “service and maintenance of the Public Safety Marine Unit boat” and did not encompass purchase of a second boat. He also opined that delegation to a subordinate does not resolve the conflict. There is no dispute that Chief Solomon’s October 2002 disclosure to Mayor Pollard was the only one he made. (Finding of Fact ¶¶65-66). Mayor Manzi did not review this or any of the previously filed ethics disclosures on file upon taking office and “had not given . . . any thought” to whether to make an independent review of previously filed disclosures. He recalled no person advising him to do so. Mayor Pollard testified to essentially the same effect. (*Exh.AA8;Tr.277-278[Manzi];Tr.1149-1160 [McQuillan]; Tr.1959[Pollard]*)

84. Evidence was proffered that Methuen procurement procedures, as well as applicable state procurement law, required that purchases over \$5,000 could not be “sole sourced” but required the prior solicitation of bids from three different vendors in order to be approved. The parties disputed who had responsibility to obtain the bids – the MPD or the Purchasing Agent – and whether bids needed to be in writing. The Purchasing Agent, Joan Ouellette, though it might be proper to process separate purchase orders for the boat, the motor and the other supplies, none of which, individually, exceeded \$5,000. City Auditor Kelly, the official with primary responsibility for compliance with state bidding laws, called Methuen’s failure to obtain and document multiple bids “a minor informality”. (*Exhs.APP26, APP53, AA66; Tr.987-993,1000-1009,1017-1023[Ouellette]; Tr.1840-1842,1844-1846,1919-1920,1926,1930-1936[Kelly]; see also Tr.1988[Pollard]*)

85. In 2004, the City Auditor issued a memo to department heads which squarely put responsibility to secure written documentation of bids on the Purchasing Agent. Ms. Ouellette confirmed her understanding that, under state law, as Methuen's "Procurement Officer", the responsibility was hers, unless delegated to another person in writing. The City Auditor's subsequent e-mail exchange with Chief Solomon about this memo expressed complete satisfaction with the MPD's procurement practices; Kelly said that his memo was directed at other departments. The MPD issued an internal memorandum that reiterated the requirement stated in the City Auditor's memo. Apparently, however, unbeknownst to City Auditor Kelly or to Ms. Ouellette's direct boss, Mayor Manzi, she continued to leave bid solicitation to the departments. She got involved only if asked, although she agreed no written delegation authorized this. Mr. Kelly only learned these facts when Ms. Ouellette testified to them before the Commission. (*Exh.APP26, APP.56; Tr.1000-1009[Ouellette];Tr.1841-1842,1915 [Kelley]; see also G.L.c.30B, §§4 & 19*)

86. Ms. Ouellette did offer a plausible explanation for why she left bid solicitation to the departments, as the department – except in the case of common staple items – would know better how to answer vendors' questions about specifications, etc. Neither she nor the City Auditor, however, provided a satisfactory explanation as to why she did not even check to be sure that the necessary MPD bids were documented and placed in the file to confirm that the purchase complied with these procurement requirements. I note that, in addition to review by the Procurement Officer, each purchase is reviewed at three or more levels in the City Auditor's department, including the City Auditor, and possibly the Mayor's office as well, so this alleged material omission appears to have slipped past them all. (*Tr.993,1000-1003 [Ouellette];Tr.1841-1842,1846-1849,1932 [Kelly]*)

87. In a further effort to explain why the MPD boat purchase slipped by without compliance with the bidding requirements, Ms. Ouellette testified that Mayor Pollard had told her “to stay out of the police [department]”. Former Mayor Pollard strenuously denied making such an inappropriate statement. The City Auditor testified that he knew nothing of that directive until he heard Ms. Ouellette testify to it before the Commission. I find Ms. Ouellette’s newly-minted statements in this regard unpersuasive to explain why she would persist in following such a directive in June 2006, long after Mayor Pollard left office. (*Tr.995-996[Ouellette];Tr.1914-1915[Kelly];Tr.1953-1954[Pollard]*)

DOJ Grant Investigations

88. In August and September, 2006, federal Grand Jury subpoenas were issued through the U.S. Attorney in Boston (AUSA Vien) and served on Methuen officials (including the City Auditor and Chief Solomon), referencing a criminal investigation of undisclosed target(s) and seeking voluminous documentation regarding all of Methuen’s federal grants from 2001 to 2006. City Solicitor McQuillan described a “frenzy” of activity involving the City Auditor and Chief Solomon associated with preparing responses to the subpoenas. Chief Solomon also consulted his private attorney, Tom Kiley of Boston, for guidance and Attorney Kiley spoke with AUSA Vien. At some point, City Solicitor McQuillan got wind of Attorney Kiley’s involvement.¹³ On October 3, 2006, the three lawyers had what he described as a heated three-way telephone conversation that, apparently, ended Attorney Kiley’s participation in the matter,

¹³ City Solicitor McQuillan testified he first knew of Attorney Kiley’s involvement in October, 2006 when he e-mailed Chief Solomon to ask about the status of documents and got a response that “his attorney” was reviewing them. There actually is an earlier e-mail on September 20, 2006, from Chief Solomon about getting his attorney’s advice. Mayor Manzi knew Chief Solomon had retained counsel and had given his blessing to rely on them for advice. Chief Solomon’s consultations with private counsel were made part of the initial charges against him, but were found unsupported by the hearing officer at the Mayoral level hearing and were not pressed before the Commission. (See *ExhsAA2,AA3,AA67, APP46ID [9/20/06 e-mail trail; Tr.347-348 [Manzi]; Tr.2991-2992,3075-3078, 3425-3432,3435-3436 [Solomon]*)

although he continued to advise Chief Solomon, personally, on issues involving his employment. Chief Solomon's Grand Jury appearance was cancelled in mid-October. (Exhs.AA67, AA68, AA90, APP46ID [e-mail trail 9/14/06-10/2/06]; Tr.261-263, 287-288, 347-348[Manzi];Tr.1032-1046, 1078-1080, 1105-1108 [McQuillan]; Tr.1827-1830, 1873-1876 [Kelly]; Tr. 3077-3078, 3223-3224, 3434-3436 [Solomon])

89. On or about October 29, 2006, Chief Solomon received another subpoena, this one from DOJ's Office of the Inspector General (OIG), issued by David R. Glendinning, Special Agent in Charge of the Fraud Detection Office, seeking production of documents to justify overtime paid to MPD personnel under the COPS grant and the W&S grants "in connection with an investigation into allegations of misconduct" involving those grants. Chief Solomon, City Solicitor McQuillan, City Auditor Kelly and their staffs worked many hours over the next several months to pull together the documentation that Special Agent Glendinning wanted. The task was complicated by the facts that the federal fiscal year runs from 10/1 thru 9/30, while the Methuen fiscal year runs from 7/1 thru 6/30, and that MPD's PRO-IV "time and attendance" payroll records needed to be matched up to the City Auditor's payroll dates of payment. When the last batches of documents were produced around the middle of February 2007, City Auditor Kelly said he thought "this would completely satisfy the OIG request" and "we would be done with it." (Exh.AA49,AA50,APP9,APP23 APP24,APP25, APP30, APP46ID [correspondence & e-mail trail 11/2/06-3/1/07]; Tr.1046-1053, 1078-1081, 1118-1130 [McQuillan]; Tr.1832-1839, 1881-1895[Kelly]; Tr.3162-3165, 3423-3438[Solomon])

90. As Methuen was bringing closure to the OIG subpoena requests described above, Chief Solomon received a letter (fax dated 2/5/06) from a staff attorney in the DOJ's

COPS Office Legal Division. The letter: (1) put Chief Solomon on notice that the COPS Office had identified approximately \$40,000 paid for unallowable “supervisory officer overtime” that must be repaid to the COPS Office; and (2) requested further documentation to justify certain other questioned costs. (*Exh.AA22 [Exhibit B]*)

91. At a meeting with Mayor Manzi, Chief Solomon, City Auditor Kelly and City Solicitor McQuillan, Chief Solomon was tasked (over McQuillan’s objection) to respond to the COPS letter, after review by Mayor Manzi. In Chief Solomon’s response, dated February 22, 2007, he explained that assigned officers performed patrol duties and did no supervision, as he had been advised was permitted by the grant. He also provided supporting documentation regarding the specifics of the other questioned discrepancies. Thereafter, City Solicitor McQuillan took over responsibility for communications with the COPS Office. (*Exh.AA22[Exhibit C], AA23, APP8, APP46ID [e-mail 2/27/07, 3/1/07]; Tr.1055-106,1131-1132 [McQuillan],TR.2982-2991[Solomon]*)¹⁴

92. On March 13, 2007, City Solicitor McQuillan received the COPS Office “Notice of Findings & Request for Repayment”.¹⁵ The notice stated that, based on the new information in Chief Solomon’s February 22nd letter, “we determined that the previously identified questioned costs related to non-supervisory officers are allowable under the

¹⁴ During the hearing, Methuen produced e-mails between Chief Solomon and Attorney Kiley regarding the February 22, 2007 response, among other things. (*See Exhs.AA98ID thru AA102ID; Tr.3226-3241*). Due a claim of attorney/client privilege, admissibility of the e-mails was taken under advisement. I now sustain the objection to their admission. Solomon testified that he used a personal e-mail account to transmit these messages, which the documents appear to corroborate. While it appears that the messages did, somehow, make their way into the MPD electronic mail data base as well, I am not satisfied that the MPD internet policy is sufficiently explicit, and the circumstances under which retrieval was enabled is sufficiently clear, to infer waiver of attorney client privilege. See In Re: Reorganization of Electric.Mut.Liab. Ins. Co. Ltd., 425 Mass. 419 (1997); National Economic Research Assoc., Inc., 21 Mass.L.Rptr. 337, 2006 WL 244008 (Sup.Ct., Gants, J.) (no waiver where, unbeknownst to the employee, e-mails, even messages sent thru a non-company provider, were automatically copied to the company computer used to send them)

¹⁵ For unexplained reasons, the March 13, 2006 letter was reissued by letter, dated May 23, 2007 on the cover page (but May 9, 2007 on all other pages), and with additional attachments. Also, inexplicably, the May 2006 letter bears a Methuen date stamp of March 19, 2006. (*Compare AA22[Exhibit D] with AA39*)

HSOP program”. Accordingly, the COPS Office reduced its \$40,000 claim of disallowed costs to \$29,976. (*Exh.AA22[Exhibit D];Tr.1061[McQuillan]*)

93. On March 29, 2007, with input from Chief Solomon, City Solicitor McQuillan again appealed this determination, explaining that the COPS Office still had overstated the “non-supervisory” overtime by counting time legitimately worked by patrol officers prior to their promotions to Sergeant (the PRO-IV print-out automatically reported their current rank, not the rank they held when they worked the HSOP overtime). On April 5, 2007, City Solicitor McQuillan supplied documents supporting this claim, and reasserted the claim to “supervisory officer” overtime, although, as to the latter, he believed the chances of success was “minimal to non-existent”. On May 23, 2007, a senior level attorney in the COPS Office Legal Division responded, rejecting the “supervisory officer” theories, but accepting the point about overtime paid to patrol officers prior to their promotions, and, thus, further reducing the demand for reimbursement to \$23,096.39. Methuen promptly paid this amount without further protest or appeal. (*Exhs.AA36, AA37, AA38, AA40, AA41, APP10, APP46ID [4/3/07-4/4/07]; Tr.1061-1078 [McQuillan]; Tr.2990[Solomon]*)

First Disciplinary Proceeding.

94. On March 15, 2007, Mayor Manzi issued a Notice of Hearing to Chief Solomon, citing the March 13, 2007 COPS Office letter, and charging him with “Mismanagement/Misapplication of Federal Grant Funds” and “Negligence”. (*Exh.AA22,AA44*)

95. Solomon testified that, on March 30, 2007, the Friday before his disciplinary hearing, Attorney Kiley called to relay a message from Mayor Manzi who requested a meeting at the Casa Vecchia Restaurant. Solomon recalled this meeting in vivid detail.

Mayor Manzi said “this was an election year” and he was “not taking the hit for” the COPS grant fiasco; he offered a deal: if Chief Solomon would agree either to fire his Executive Assistant, Patricia Giarrusso, or discipline Capt. Guy, the Mayor would drop the pending COPS grant disciplinary charges; alternatively, the Chief could take a five-day suspension and Mayor Manzi would issue a press release that put a positive spin on it. Solomon said he was “blown away” and left the restaurant. The next day, Saturday, Dep. Chief Alaimo called Chief Solomon and brought him to another meeting with Mayor Manzi. At this meeting, Mayor Manzi reiterated the Chief’s options. At this time, Chief Solomon turned the Mayor down, refusing to take any action against his subordinates and told the Mayor to “do what you have to do”, meaning, go ahead with the disciplinary hearing. Mayor Manzi denies the proposal made at these meetings but he has general recollections that tend to corroborate the substance of what Solomon said. Mayor Manzi made media statements which explicitly refer to such a proposition. While I find that the conversations began sooner than Chief Solomon recalled and that Solomon was acting on (presumably legal) advice not to agree to anything if it did not bring total closure to both W/S and COPS grant issues, most of Solomon’s testimony on this subject rings far closer to the truth than Mayor Manzi’s. (*Tr.336-342[Manzi];Tr.2991-2995,3447-3449[Solomon];see also Exhs.AA112ID, APP17 [4/6/07 Eagle-Tribune (“Police Chief Joseph Solomon could have avoided discipline if he had meted out punishment for[those] responsible . . .said Mayor William Manzi”], APP43[CD,Rahme-Manzi Debate @15:56-15:59(“Chief could have disciplined someone but chose not to”)*)

96. A public hearing was held on April 2, 2007 before Attorney Michael J. Marks, a former Massachusetts Assistant Attorney General from Lynn, whom Mayor Manzi

designated as hearing officer. City Solicitor McQuillan presented Methuen's case through documents; Chief Solomon, represented by Attorney Gambaccini, testified as did Patricia Giarrusso. On April 5, 2007, Attorney Marks issued a report to Mayor Manzi, finding just cause for "misapplication of funds" and recommending a three-day suspension. On April 11, 2007, Mayor Manzi adopted the findings of the hearing officer:

"[I]t is clear that you mismanaged the administration of the HSOP grant . . . by paying overtime to supervisory personnel in violation of specific grant conditions (Condition #2) and that your efforts to deflect that responsibility to an independent agency is without merit. You as the chief officer and department head of the Methuen Police Department, are ultimately responsible for any and all business transacted by and through the department. It was your duty to insure that compliance with each of the grant conditions was achieved. In fact, you testified under cross-examination that you were the person ultimately responsible for the administration of this grant. Unfortunately, it is the citizens of the City of Methuen who will ultimately be held responsible and bear the burden of your failure to do so."

(Exh.AA3)

97. Chief Solomon served his three-day suspension commencing April 16, 2007. Capt. Lavigne covered as "Acting Chief" during the suspension, although she was junior in rank and service to Dep. Chief Alaimo and Administrative Capt. Guy. *(Exh.AA42; Tr.1652[Lavigne] ; see also APP17[4/13/07Eagle-Tribune])*

98. Chief Solomon's suspension was reported by local media and by the Boston Globe. Chief Solomon had been the target of sporadic attacks prior to his suspension, but the COPS/HSOP discipline begat heightened political and public scrutiny that would, itself, become a part of the story. Councilor Cronin introduced a resolution of "No Confidence" in Chief Solomon, adopted May 21, 2007 by 5-3-1 vote (Councilors Quinn, Rahme and Leone voting "No" and Chairman Zanni voting "Present"). Councilor Cronin also tried to replace the Police Chief with a Police Commissioner appointed by the Mayor and City Council. On May 31, 2007, NEPBA Local 17, the superior officers union "of Sergeants, Lieutenants and Captains. . . entrusted with the supervision and management of

[Methuen's] police services" took issue with these actions, writing to "express to City Council, the Mayor, and the citizens of the City of Methuen our confidence in Joseph F. Solomon to perform his duties as the Chief of Police. . ." (Compare *Exhs.APP33, APP34, APP55* and *Exhs.APP16,APP17*[3/22/07,4/6/07,4/18/07,5/9/07(*Eagle-Tribune*), 4/13/07, 5/10/07 (*Boston Globe*)], *APP44*; *Tr.1224*[*McQuillan*]; *Tr.2242-2262*[*Quinn*]; *Tr.2587-2589, 2628* [*Rahme*]; see also *Exh.AA110;APP44;Tr.191-200*[*Manzi*];*Tr.898-909, 1257-1314, 2839-2842, 2953* [*Commission Orders Addressing Media Coverage of Hearing*]

G. Events Preceding The September 28, 2007 Administrative Leave

Special Agent Glendinning's OIG Report.

99. On or about March 23, 2007, with no response having been received from OIG after the last batch of W/S documents was sent out, Chief Solomon called Special Agent Glendinning to inquire about the status. Glendinning called City Solicitor McQuillan, who knew nothing of Chief Solomon's call, and explained that he wanted to meet, in private, with Chief Solomon (and Patricia Giarrusso). Interviews were arranged to take place in City Solicitor McQuillan's office (but not in his presence) on March 29, 2007. Glendinning was accompanied by a Forensic Auditor with the OIJ Fraud Detection Office. John Vigliotti, Chief Solomon's attorney also attended. Solomon testified that he talked with Mayor Manzi about his meeting with Glendinning in advance. As it would turn out, these interviews were the final step in Glendinning's investigation. (*Exhs. APP31,AA51;Tr.1084-1091,1147-1149*[*McQuillan*];*Tr.3166-1372,3408-3411*[*Solomon*])

100. On April 4, 2007, Special Agent Glendinning issued an internal report of his investigation of Methuen's W/S grants. The report states the investigation was initiated based on "allegations" that Chief Solomon had "knowingly" violated the terms of multiple DOJ grants, causing money to be "improperly expended". The report did not

identify the source of the “allegations” and did not conclude that the allegations were true. The report did find Methuen’s W/S grant “was not properly managed by OJP” and stated that it found “no support for W/S overtime expenditures amounting to \$170,472.82.” Specifically, as to the MPD, the Glendinning report states:

During the period November 2006 through February 2007 . . . with most MPD patrol officers’ overtime payments, there existed sufficient source documentation to support expenditures, consisting of activity reports showing dates and hours the individuals performed work on the grants. . . . [A]s to W/S superior officers and the MPD Executive Assistant . . . \$170,472.82 was not supported by any adequate source documentation; only secondary accounting records consisting of computerized pay statements . . . The amounts that were supported were backed by an individual activity report that detailed hours worked on a specific day and so were deemed of sufficient reliability to constitute an original source document, per the OJP Financial Guide. The remaining hours were deemed not supported because there was no source document to compare against the computerized accounting entry and so there was no basis for ensuring that the claimed work was actually performed.

“Regarding the lack of original supporting documentation for . . . supervisory personnel and Giarrusso, Solomon said that although he had created a specific form to capture W/S overtime activities and hours worked by patrol officers, he did not use the form for supervisors or Giarrusso. He said the form was designed not to be a time reporting mechanism but to capture activities of the officers for use in preparing required W/S reports. Solomon said he had no knowledge of a specific requirement to maintain timesheets in addition to his computerized record system. Solomon believed that the MPD’s computerized payroll reports were sufficient “source” documents because each printout had a cover page that was circulated and signed by all pertinent MPD supervisors attesting to its correctness. Solomon did acknowledge, however, that for most of the overtime claimed by supervisors, the determination was based solely on a review of work schedules, calendars, and/or recollections by the overtime claimant’s supervisor as opposed to a specific submission by the claimant. . . .

[W]e conclude that there is no support for W/S overtime expenditures amounting to \$170,472.82. . . . [I]t is impossible to confirm if W/S hours were actually worked by MPD supervisors and Ms. Giarrusso. This is a significant material deficiency. . . .

The Glendinning OIG report did make explicit findings about the mismanagement of Methuen’s W/S grant by OJP program officials:

[W]e found that the administration of this series of W/S grants was not properly managed by OJP. Specifically, in two significant areas, it appears that OJP officials failed to note and approved unallowable budget items: one for Giarrusso’s stipends and for her as the W/S program assistant. OJP personnel told OIG that both were improper. That stipends are prohibited as supplementation of salary and that when there is only a single W/s site no program assistant is permitted. We view these as serious oversights by OJP personnel and managers.”

(Exh. AA51) (emphasis added)

101. No definitive evidence shows when Methuen first saw the Glendinning OIG report. City Solicitor McQuillan believed he did not see the report until sometime in February 2008, and I so infer. This testimony is consistent with the lack of detail in any of the correspondence between OJP and Methuen, the press reports prior to that point and other evidence as described below. (Findings of Fact, ¶¶102-103, ¶¶168-171)

102. On or about May 18, 2007, Methuen did learn the general tenor of the OIG report. Mayor Manzi received a letter from the Assistant Deputy Controller in the Grant Financial Management Division of OJP. The letter informed Mayor Manzi that the investigation of Methuen's OJP grants had identified \$170,742 in "questioned costs" for which there were "no supporting records documenting the hours reportedly worked" and stated that "existing payroll policies and procedures need to be enhanced to ensure the safeguard of federal grant funds".

"The City should provide the ['original supporting documentation'] needed to support these questioned costs. If adequate supporting documentation can not be provided, the questioned costs revert to disallowed costs.

Please provide the supporting documentation for the questioned costs or return the funds . . . within 30 days."

Not having any specifics, Mayor Manzi answered on or about June 19, 2007 with an appropriate, good faith response, enclosing the MPD's PRO IV software guide and the documents describing revisions Chief Solomon had ordered into effect on July 1, 2007, including a new three-part form to be completed by all personnel that will supplement the computer system with a hard-copy record of all overtime, which form was to be reviewed by the claimant's supervisor, and no overtime paid unless the form is properly completed and so approved. On or about July 26, 2007, Mayor Manzi received a second letter, which, again, contained no specifics, but stated the "June 14 [sic] 2007 letter was

insufficient to support the overtime charged . . .the City must return \$170,472 . . .to OJP”.

The second OJP letter prompted City Solicitor McQuillan to reply:

“Methuen objects to your request for payment. . .of alleged unsupported costs. . . . Request is hereby made for a referenced authority . . . and substantiation . . . either by way of documentation or other supporting materials in the form of factual findings to justify said payment. It would be imprudent and irresponsible for the City on behalf of its citizens to summarily expend a sum of this significance without the benefit if the same. . . . Further . . . Methuen hereby requests a hearing or any other available administrative proceeding to which the City of Methuen is entitled under the provisions of same.”

City Solicitor McQuillan wrote a follow-up on November 27, 2007. He received OJP’s response on December 13, 2007. (Findings of Fact, ¶170) (*Exhs.AA52-AA56; see APP17 [6/4/07,6/24/07,6/30/07,8/20/07,9/25/07,11/17/07,1/20/08(Eagle-Tribune),6/7/07 (Boston Globe);Tr.1089-1093[McQuillan;Tr.3394-3408,3414-3422[Solomon]*)

103. The initial press coverage of this period reported the reaction of Mayor Manzi and Chief Solomon to the OJP reimbursement demand as non-judgmental, responsible and collaborative. On June 24, 2007, Mayor Manzi is quoted: “I haven’t had any evidence presented that leads me to believe, on the issue of grant overtime, that anyone did anything wrong. No one is alleging abuse in grant overtime not being worked.” On July 30, 2007, after the second OJP letter, Mayor Manzi said “this time he will fight the order and will not seek disciplinary action against Chief Solomon” because “[t]here have been no allegations to me that there have been any improprieties or violations of grant procedures other than paperwork”. The July 30, 2007 article quoted Chief Solomon:

“The heat belongs to me. I take responsibility . . . I ask people to look realistically and objectively. So far they’re not saying anything is wrong. Let’s get the details and address it point by point. If there is definitely something not right, we’ll take appropriate action.”

These reports jibe with Solomon’s memory of his perception of good standing with Mayor Manzi through most of the summer of 2007. (*APP17[6/24/07,7/30/07,8/20/07 (Eagle-Tribune); Tr.2996-3004, 3264-3265, 3268, 3274-3275, 3452-3454 [Solomon]*)

August 24, 2007 Police Station Incidents

104. Considerable hearing time – perhaps more than on any other subject – was devoted to events at MPD headquarters during the “C” shift (4:30pm-12:30am) of Platoon 3 on August 24, 2007, and the ensuing investigation of those events. (*Exhs.AA4, AA5, AA15-AA19, AA65, AA84-AA87, APP17[8/28/07,8/29/07,9/10/07(Eagle-Tribune)], APP38, APP48, APP50, APP51, APP61, APP66; Tr.205-219,349-351 [Manzi]; Tr.517-549,561-577,583-612,631-648,668-694 [Phillips]; Tr.704-833,867-895 [Wnek]; Tr.939-971[Bolduc]; Tr.1567-1590,1610-1646,1668,1674,1680-1698[Lavigne]; Tr.1785-1789, 1795-1797[J.Alaimo]; Tr.2303-2365[Lapides]; Tr.2379-2382[Fleming]; Tr.2444-2495 [McMenamon];Tr.2666-2677,2712-2721[Hagggar];Tr.2946-2948[Hagggar Exh.] Tr.2749-2760,2849-2851, 2928-2934[Aiello]; Tr. 3043-3075,3337-3374,3454-3456[Solomon]*¹⁶

105. I infer the following facts from substantially undisputed evidence:

- Platoon 3’s “C” shift roster for August 24, 2007 lists the following personnel on duty: Lt. Wnek, Officer in Charge (OIC); Sgt. Phillips (Patrol Supervisor); Officers Dzioba, Delano, Moore, Bistany & Rynne (Cruisers); Officer Stacy (Walking Beat); Dispatchers Bolduc & Flannigan; Detectives Gallant & Blanchette; and Officers Brouck & McMenamon (Traffic) and Officer Torrisi (Rapid Response). In addition, Officer Abraham (Traffic) worked that night, as did three officers working “grant” overtime (one being Officer Frost), and five officers working overtime “details” (one being Officer Fleming). (*Exh.AA19; Tr.563[Phillips]; Tr.873-880[Wnek]; Tr.2379[Fleming]; Tr.2445[McMenamon]*)
- Sgt. Phillips was not scheduled to work the August 24, 2007 “C” shift; he was asked by Lt. Wnek that day or the day before to fill in for the regularly assigned Sgt. Himmer, who took the day off. (*Exh. AA19; Tr. 530-531[Phillips]*)
- At approximately 7:00 PM, Sgt. Phillips returned to MPD headquarters to stand in for Lt. Wnek as OIC, at which time he had an interaction with Disp.Lapidas. Lt. Wnek returned to his post about 8:00 PM, made a “loop” around the building and returned to the OIC office. Sgt. Phillips did not return to patrol until about 9:00PM, after the “roll call” room confrontation with Chief Solomon (*Tr.589-590,599,602,669-670[Phillips]; Tr.707,762-774[Wnek]; Tr.2307[Lapides]*)

¹⁶ Exhibit APP61ID and other hearsay regarding Sgt. Phillips was admitted for the limited purpose of consideration for whatever weight it deserved in resolving direct evidence concerning motives and state of mind the parties to the August 24, 2007 events and investigation.. (*Tr.2666-2677,2712-2721,2946-2948*)

- *At approximately 8:00 PM*, Officer McMenamon came to MPD headquarters, spoke with Disp.Lapides, and then met with Officer Aiello (then off-duty) to discuss police union business; they remained at the station for some time after the “roll call” room incident. (Tr.2312-2314,2352-2354[Lapides]; Tr.2447-2454 [McMenamon]; Tr. 2749-2757[Aiello])

The August 24, 2007 MPD PRO-IV Daily Log, and the recorded interviews conducted by Capt. Levine, show the following relevant entries:

- *At 6:00 PM*, Officer Dzioba was dispatched back to MPD headquarters for a “walk-in” complaint. He did not return to patrol until after the confrontation with Chief Solomon approximately three hours later.
- *At 7:19 PM*, Officer Abraham returned to MPD headquarters with a prisoner and remained until *8:30 PM* while the prisoner was booked by Sgt. Phillips.
- *At 8:04 PM*, Disp.Flanagan contacted Officer Bistany “on his portable” (meaning Bistany was out of his cruiser) and dispatched him to a medical 911 medical emergency. Officer Bistany asked Officer Dzioba to take the call for him so he could eat his sandwich which just arrived at the station (ordered in advance and brought by Officer Rynne). Officer Dzioba momentarily forgot the call, then checked with the Methuen Fire Department and learned the call was resolved, so he verbally told dispatch, which cleared the call at *8:12 PM*.
- At the end of “C” shift (*12:00 AM - 12:30 AM*), Sgt. Phillips returned to MPD headquarters where he had an interaction with Officers Frost and McMenamon, during which Sgt. Phillips “gave [them] the finger”.

(Exh.AA19, AA65, AA84, APP51; Tr.763-764[Wnek];Tr.949,967[Bolduc]; Tr.646-649 [Phillips]; Tr.2352-2354[Lapides]; Tr.2458-2459[McMenamon])

106. Friday evenings in August had been relatively active shifts for the MPD. Solomon recalled armed robberies on two or three previous Fridays that month. Officer Aiello, patrol officers’ union president, had urged Chief Solomon, earlier that very week, to assign additional manpower to patrol duty, given the “uptick” in the level of criminal activity being reported. These undisputed facts framed the perception Chief Solomon brought to the scene when he arrived at MPD headquarters that evening. (Tr.2757-2758[Aiello];Tr.2454-2455[McMenamon]; Tr.2674-2676 [Haggart] Tr.3043 [Solomon])

107. Chief Solomon had just returned from two consecutive days of training in Andover, MA. He did not know Sgt. Phillips had replaced Sgt. Himmer on the “C” shift

prior to seeing Sgt. Phillips at the MPD station that evening. (*Exh.AAP38; Tr. 3044-3045, 3050-3051[Solomon]*)

108. Chief Solomon drove past MPD headquarters at approximately 8:45 PM, on his way home from a personal errand. He noticed multiple police cruisers parked “topside” (in front of the building) as opposed to the back where MPD personnel normally park. The front area is reserved for officers arriving with prisoners to be booked, so it would be unusual to see that many cruisers there, save for a major incident (such as another armed robbery) and multiple arrests. Not having learned of any such incidents, Chief Solomon stopped to find out what had happened. He entered the front of the building, noticing Sgt. Phillips and Lt. Wnek in the OIC room. He heard a football game in the background. Chief Solomon looked in the booking area where he saw nothing (as the PRO-IV log reflects, Officer Abraham brought in the only prisoner that night and he had cleared the station at 8:30 PM). He proceeded to the “roll call” room, the most likely place for officers to be gathered, and found five patrol officers present (Bistany, DeLeon, Dzioba, Moore & Rynne) and the TV tuned to a New England Patriots football game. (*Exh.AA15-AA19,APP51;Tr.970[Bolduc]; Tr.2327[Lapides]; Tr.2447-2457,2464-2465, 2485-2487[McMenamon]; Tr.3045-3049 [Solomon]*)

109. Witnesses to the ensuing five-minute encounter gave somewhat different versions of what occurred. I find Chief Solomon’s testimony is a plausible, thorough, and consistent recollection of events; the versions given by Lt. Wnek and Sgt. Phillips and unsworn hearsay statements of the five officers (none of whom testified before the Commission), suffer from selective memory and inconsistency. Similarly, I discount Officer Aiello’s selective memory of events that I infer is a natural result of his interest as

union president to steer clear of statements that put a member in jeopardy of discipline or undermine his own credibility for earlier asking for more patrol manpower.(*Exhs.AA15-AA19, AA65, APP48, APP66; Tr.532-541,561-567,586-612,631-648,668-694[Phillips]; Tr.704-805,810-833,867-895[Wnek]; Tr.939-97[Bolduc]; Tr.1632-1643[Lavigne]; Tr.1785-1789 1795-1797 [J.Alaimo]; Tr.2446-2457[McMenamon]; Tr. 2749-2760, 2849-2814, 2928-2934[Aiello]; Tr.3043-3063, 3337-3365, 3454-3456[Solomon]*)

110. In sum, I find the substantial, credible evidence established the following facts:

- At various times during the “C” shift on August 24, 2007, as many as eight officers of the ten officers on the roster assigned to patrol and traffic duty that night (Phillips, Abraham, Bistany, DeLeon, Dziabo, McMenamon, Moore, Rhyne) were present simultaneously for an extended period at the MPD headquarters with their cruisers parked either “topside” or in back.
- This means that, when Chief Solomon arrived at the station, the MPD patrol coverage of Methuen that evening then consisted of a single officer on a walking beat, one patrol officer in cruiser (Delano), a rapid response officer (Torrison) and one other officer (Abraham) who had just returned to traffic duty ten or fifteen minutes earlier after having been at the station from 7:20 PM to 8:30 PM.
- Neither Lt. Wnek nor Sgt. Phillips knew the whereabouts of the officers under their command for extended periods of time during the shift.
- In particular, most of the officers who were present at the station when Chief Solomon arrived, must have arranged to arrive for a “14” (i.e. supper) after Lt. Wnek left his post to go home for dinner; it is not credible that Lt Wnek authorized all of these officers to take their “14s” together as he stated, when he, himself, had been out of the station having supper at home.
- Lt. Wnek, being out of the station, also would not have known that officer Abraham had come off the road to book a prisoner, nor that Officer McMenamon had arranged to return to the station to meet with Officer Aiello.
- The PRO-IV log places the patrol officers found by Chief Solomon at the station for periods from nearly three hours (Dzioba) to at least 30 to 45 minutes (Officers Bistany, Rhyne). Sgt. Phillips had been at the station for nearly two hours. There is no convincing evidence that any of the officers were still eating or were about to return to patrol any time soon.
- Chief Solomon honestly believed Lt. Wnek and Sgt. Phillips used poor judgment in managing the personnel under their command, and that the officers he found in the “roll call” room should have been in their cruisers and patrolling the streets of Methuen. His orders to them to write truthful reports (“you better not lie”) was a lawful and justified order.

- In expressing his disgust, Chief Solomon did momentarily lose his composure, and this is unbecoming an officer, especially the Chief of Police. It is unjustified, however, to characterize his behavior as “out of control”. The evidence does not warrant the inference that his state of mind reflects any bias against the officers he was swearing at; it was, rather, a generalized, momentary frustration and anger at those present for what he perceived as a serious dereliction of duty.

(Exhs.AA15-AA19, AA65, APP48, APP66; Tr.532-541, 561-567, 586-612, 631-648, 668-694[Phillips]; Tr.704-805,810-833,867-895[Wnek]; Tr.939-971[Bolduc]; Tr.1632-1643 [Lavigne]; Tr.1785-1789,1795-1797[J.Alaimo]; Tr.2446-2457[McMenamon]; Tr. 2749-2760, 2847-2849, 2928-2934 [Aiello]; Tr.3043-3063,3337-3365,3454-3456 [Solomon])

111. Lt. Wnek followed Chief Solomon out of the building and tried to accost him, but Chief Solomon chose not to engage in further conversation. Later that night, Lt. Wnek admitted to Officer McMenamon that “the chief had come in and caught all the guys in the back room watching television and was upset about it and yelled at the guys and then ordered them to do to-frogs on why they were there”. (Tr.711-713,798-801[Wnek]; Tr.2457 [McMenamon]; Tr.3064-3065 [Solomon])

112. Sgt. Phillips’ “finger” given to Officers McMenamon & Frost was discourteous and unbecoming behavior for a superior officer. The banter over the exchange, however, infers that both patrol officers brushed it off as harmless. Had Sgt. Phillips engaged in no other questionable behavior that night, his rudeness, alone, probably would have been overlooked. (Exhs. AA19, AA84; Tr.2456-2459,2474-2476,2494-2497 [McMenamon]; Tr.2666-2677, 2712-2721 [Haggar]; Tr.2946-2948 [Haggar Exh])

113. As ordered, Lt. Wnek, Sgt. Phillips and the five officers wrote “to/from” reports, mostly a few sentences in length. Among the statements in these reports:

- Lt. Wnek – “Platoon 3 had been busy for the first few hours. At approximately 2000 hours [8:00pm] the volume of calls diminished. Officers had requested 14’s. I subsequently authorized all 14’s. . .with the understanding that in the event of a

call for service, officers shall promptly respond. . . .This is not a standard practice of mine nor is it even possible because of the volume of calls for service.¹⁷

- **Sgt. Phillips** – “At about 2040 hours [8:40pm] I was . . . in the CO’s office speaking with you [Lt. Wnek] after having finished my dinner. Chief Solomon then called us both to the back room questioning why there were several officers . . . watching television. As you are aware, these officers had been cleared for their 10-14’s. . . I have observed it to be a fairly common practice for . . . officers from all shifts to have their 14’s together at the station, with the understanding that if a call for service comes in, they will be expected to respond.”
- **Officer DeLeon** – “We understand that if taking a 14 we shall exit the building as soon as our meal is finished. I will ensure that this will never take place again”
- **Officer Rynne** – “I was in the station because I had picked up food for the Officers and dispatch on the evening shift. We had just finished eating and were watching the television when Chief Solomon walked in.”
- **Officer Bistany** – “I took my lunch break in the roll call room, beginning at approximately 20:15 [8:15pm] and lasting thirty minutes.”¹⁸
- **Officer Moore** – “I was in the back room and had earlier completed a 10-14. This is not a frequent occurrence due to the level of activity of our shift.”
- **Officer Dzioba** – “I was in the station working on two reports. I finished up my reports around 20:00 hours [8:00pm]. Once I was done my reports I sat in the back room watching television for about 40 minutes.”

(Exh. AA19) (*emphasis added*)

114. Officers Bistany, DeLeon and Moore also wrote “unofficial” memoranda focusing mainly on critiques of Chief Solomon during the “roll call” encounter which Lt. Wnek said they were afraid to include in an official report sent through the chain of command. None of these three officers testified before the Commission, and Chief Solomon did not see these memoranda in the ordinary course. They appear to have been forwarded to the City Solicitor, possibly before Chief Solomon was placed on administrative leave in late September 2007, and first came to Chief Solomon’s attention in the course of the Mayoral level hearing on his termination in February 2008. I am not convinced that the uncorroborated hearsay opinions and conclusions in these officers’

¹⁷ Lt. Wnek’s statement is at variance with his subsequent testimony and with the reports of Officers Moore and Phillips described in the text. (Exh.APP48, AA19; Tr. 645[Phillips]; Tr.768,802-805[Wnek])

¹⁸ As noted in Finding of Fact ¶105, Officer Bistany’s statement is at odds with the PRO-IV and other evidence that put him at the station at 8:04, eating, when he is asked to respond to a 911 call. It is also at odds with his subsequent written report and recorded statement given to Capt.Lavigne. (Exh. APP51)

unofficial statements, which have never been subjected to cross-examination, have sufficient indicia of reliability to be worthy of independent weight. (*Exh.AA15- AA17; Tr.570-571[Phillips]; Tr.730-731,812 [Wnek]; Tr.3357-3358[Solomon]*)

115. Later in the evening of August 24, 2007, Chief Solomon spoke with Officer Aiello. They discussed the “roll call” room incident. Aiello was embarrassed; as patrol officers’ union president, his men had been caught in the station watching television after his recent plea to the Chief for additional manpower. He advocated, however, if the men had been given permission, the responsibility should fall on the supervisors, not the officers. Chief Solomon said he would look into that issue. During this conversation, Officer Aiello relayed what he had learned about Sgt. Phillips’ encounters with Disp. Lapedes and Officers Frost and McMenamon, of which Chief Solomon had not yet been informed. That night or the next day, Chief Solomon contacted Captain Haggar and ordered him to remove the TVs from the roll call room and the OIC room, which Haggar attended to. (*Tr.2757-2760[Aiello]; Tr.2680-2682[Haggar]; Tr.3065-3067[Solomon]*)

116. Mayor Manzi gave his support to Chief Solomon’s decisions, and was quoted to say “I leave it to the chief. He has to run the department. . . . He raised his voice. If they were supposed to be on the street then the chief is correct. He came in, he perceived an error, he attempted to correct it. . . .I’m not here to tell you anyone is perfect. Certainly, there are divisions in the Police Department. To a large extent you could probably find division in any police department.” (*Exh.APP17 [8/29/07(Eagle-Tribune)]*)

Investigation of the August 24, 2007 Incidents.

117. After processing the information he had acquired, Chief Solomon’s most pressing concern was “from knowing Sgt. Phillips all these years that he . . . was at the blow point” and may need time away from work to “cool him down.” Chief Solomon

called Captain Guy, who was someone he trusted to be frank, whether or not they shared the same opinion (which they often did not). Chief Solomon sounded him out on whether it made sense to put Sgt. Phillips on administrative leave. Captain Guy agreed that was a good idea, and suggested that Sgt Phillips also be sent for a fitness for duty examination. After further discussion, they both agreed to that course of action. Chief Solomon immediately ordered Sgt. Phillips on administrative leave and officers were dispatched to his home to retrieve his badge and firearm. He was sent for evaluation by Jeffery Zeizel, LICSW, whom the MPD used in the past. Mr. Zeizel reported on September 19, 2007 that he found Sgt. Phillips to come across sometimes as being “sarcastic”, “aggressive” and “intimidating” and that he “receive some outpatient counseling as well as psycho-educational services”. On September 20, 2007, on Chief Solomon’s order, Sgt. Phillips was returned to full unrestricted duty with the requirement to obtain counseling, in accordance with Zeizel’s recommendations, as determined by Ziezel. (*Exh.AA19,AA85; Tr.544-549,580-581,656-658[Phillips]; Tr.3068-3072.3242-3246,3262-3264 [Solomon]*)

118. Chief Solomon assigned Capt. Lavigne to conduct an internal affairs investigation regarding Sgt. Phillips, giving it high priority. He wanted Sgt. Phillips evaluated by Jeff Ziezel as soon as possible. On Monday, August 27, 2007, Capt. Lavigne interviewed Disp. Lapidés and took her written statement. In that statement, Disp. Lapidés wrote that Sgt. Phillips told her she must be one of those “special people” who “do stuff to get overtime in this place.” Capt. Lavigne told Disp. Lapidés that Sgt. Phillips has “always been like this” and “she knew exactly what I was going through because she used to have to deal with the same stuff.” At Capt. Lavigne’s request, Disp.Lapidés spoke to Jeff Ziezel and “let him know what happened.” Capt. Lavigne also

obtained written “To/From” reports from Officers Frost and McMenammon that she forwarded to Jeff Ziezel. Lt. Pappalardo was dispatched to follow up with the Salem NH Police, due to information about domestic disturbance complaints in which Sgt. Phillips may have been involved there (which turned out to be unfounded). In her “To/From” report to Chief Solomon dated August 28, 2007, Capt. Lavigne stated:

“[A]lthough Dispatcher Lapides did not hesitate to tell me what had occurred Friday evening she was hesitant to reduce this information to writing. She did ask, “will he see this.” . . . referring to . . . Sgt. Phillips. When asked this question she appeared to be nervous. When the interview was about to end . . . she asked whether or not he would be coming to work for his shift. Once again she appeared to be nervous. . . . “In my opinion, Dispatcher Lapides showed signs of being intimidated by Sgt. Phillips. . . . based on Dispatcher Lapides body language, hesitation and apparent fear of Sgt. Phillips.”

(Exhs. APP50, AA19, AA84, AA85; Tr.1567-1578, 1624-1625[Lavigne]; Tr.2315-2322[Lapides]; Tr.3072, 3042-3043[Solomon])

119. The August 24, 2007 incidents were not isolated events in which Sgt. Phillips’ interpersonal behavior was called into question. Disp.Lapides testified to examples of other discourteous and intimidating behavior, including sarcastic remarks about Chief Solomon, to the point that she consciously avoided him at the MPD. She was “relieved” to learn that he was on administrative leave. A few months after Sgt. Phillips was returned to duty – by which time Chief Solomon was put on administrative leave and Capt. Lavigne named as “Acting Chief” – Disp.Lapides requested and obtained permission to park “topside” rather than in the back, so she would not have to walk past Sgt. Phillips’ coming and leaving the building. Capt. Haggar confirmed this testimony and described his own personal knowledge of ongoing problems he had with Sgt. Phillips as well complaints brought to him by other officers. Officer McMenammon testified that Sgt. Phillips was a “bully”. Chief Lavigne testified Sgt. Phillips had been “tough” on her and “didn’t like the way I acted” as a patrol officer. *(Tr.1621-1622,1680-1681[Lavigne];*

Tr.2324-2328[Lapides] ;Tr.2380-2382[Fleming]; Tr.2459[McMemamon]; Tr.2673-2677, 2712-2721[Hagggar]; Tr. 2946-2948 [Hagggar Exh.]

120. On September 25, 2007, Capt. Lavigne submitted a report to Chief Solomon on Sgt. Phillips' behavior toward Disp.Lapides and Officers Frost and McMemamon. She suggested Sgt. Phillips had violated the following Rules and Regulations:

- Rule 4.1 Conduct Unbecoming an Employee
- Rule 6.2 Courtesy
- Rule 9.1 Professional Image

(Exh. AA84)

121. In the course of investigating the August 24, 2007 incident, the "missed" 911 call assigned to Officer Bistany came to light. (See Findings of Fact, ¶¶104-105). Capt. Lavigne took recorded statements from Disp.Bolduc, Disp.Flanagan and written and recorded statements from Officers Bistany and Dzioba, the latter with their union representative present. On September 18, 2007 Capt. Lavigne submitted a "To/From" report on this subject to Chief Solomon, through Dep.Chief Alaimo, including the statements and transcripts of her interviews. Capt. Lavigne's report concluded that "the following Rules and Regulations have been violated" by Officers Bistany and Dzioba:

- Rule 5.1 Neglect of Duty
- Rule 7.0 Orders
- Rule 7.4 Instructions from Dispatchers
- Rule 7.6. Insubordination
- Rule 9.1 Professional Image
- Rule 12.2 Falsifying Records

(Exhs.APP51, APP66; Tr.1625-1646 [Lavigne]; Tr.3073-3074[Solomon])

122. Chief Solomon involved himself directly in the investigation of the "roll call" room incident, and particularly, whether principal blame belonged with Lt. Wnek, as the OIC, as previously suggested by the patrol officer's union president Aiello, or upon one or with more of the patrol officers. Chief Solomon received Lt. Wnek's "To/From" which

stated that all the officers had been approved to take their “14’s”. Chief Solomon said he reviewed dispatch tapes and found no substantiation for this claim. This suspicion was confirmed by Officer Dzioba’s statement which makes no mention of getting Lt. Wnek’s approval to “sit in the back room watching television for about 40 minutes”, and his recorded statement taken by Capt. Lavigne [Q: “Who okayed your taking a 14?” A: “Nobody”. Dzioba also said he didn’t eat that night but took it upon himself to “sit for half an hour and relax” and “clear my mind”.] Officer Bistany’s recorded statement to Capt. Lavigne was to the same effect. (Bistany said he had not called in for his 14 but just “rolled up”). (*Exhs. APP51, AA19; Tr. 719-720 [Wnek]; Tr.3455-3456[Solomon]*)

123. Chief Solomon reasonably concluded that Lt. Wnek’s report was untruthful. He confronted Lt. Wnek and offered to let him resubmit the report and “shred” the untruthful one. Wnek stood by his report, stating he had to “take the heat” for the incident. Dep. Chief Alaimo, who was present, testified that Lt. Wnek’s body language showed he was not being candid, which Alaimo assumed was because Lt. Wnek and the officers who misbehaved shared political connections and Lt. Wnek would not be the one to betray them. These conclusions square with the other substantial evidence, and I credit that testimony. (See Findings of Fact, ¶¶104-105,109-114). In fact, Lt. Wnek had been in direct contact with Mayor Manzi and other prominent political figures in Methuen within days of the August 24, 2007 incidents to explain his “version”, telling them it “happens quite a bit”, “the officers were entitled to a break” and Chief Solomon was being “unfair”. Chief Solomon eventually decided to impose a one-day suspension on Lt. Wnek for his part in the incidents. (*Exh.APP17[(9/14/07 Eagle Tribune)], AA19; Tr.216-219 [Manzi];Tr.718-726,813-825 [Wnek]; Tr. 1720-1727[J.Alaimo];Tr.3455-3456[Solomon]*)

124. On September 24, 2007, Chief Solomon wrote to Mayor Manzi to inform him of the results of the investigation involving Sgt. Phillips and Officers Bistany and Dzioba. He recommended termination of Officers Bistany and Dzioba. (The Chief had authority to impose discipline only up to five day suspensions, and more severe discipline required a prior Appointing Authority level hearing before the Mayor or his designee. See G.L.c.31,§41,¶¶1-2.) He made no recommendation regarding Sgt. Phillips, but expressly recused himself, based on information he had learned after initiating the investigation, that Sgt. Phillips may have given testimony against Chief Solomon to a Grand Jury, as described below (Finding of Fact, ¶¶125-126). There were no requests for discipline of any of the five officers found in the “roll call” room. As explained below (Findings of Fact, ¶¶148-149), Chief Solomon correctly assumed his recommendations would not sit well with Mayor Manzi, and, therefore, copied them to his private counsel, hoping (unwisely, it would turn out) that it would have a deterrent effect and keep Mayor Manzi from overreacting. (*Exhs.AA4, AA5; Tr.3038-3043,3281-3282,3449-3452[Solomon]*)¹⁹

Conflict Of Interest - Sgt. Phillips Grand Jury Testimony

125. Sgt. Phillips had been assigned to investigate a 2006-2007 criminal case involving stolen construction equipment in which J.Ca., the husband of Chief Solomon’s ex-wife (i.e. his ex-brother-in-law), was implicated as an accessory, along with the perpetrator, one R.F. The Essex District Attorney’s Office, after reviewing the initial investigation, determined there was sufficient evidence to charge only R.F., not J.Ca. Sgt. Phillips’ asserted that he was told to keep J.Ca. out of the investigation, presumably at the behest of Chief Solomon. This was never proved and the matter was dropped after

¹⁹ Chief Solomon’s September 24, 2007 letter also recommended discipline in another pending matter involving an Intermittent Police Officer, the substance of which was not explained, but which had nothing to do with the August 24, 2007 incidents. (*Exh.AA5*)

the Mayoral level appointing authority hearing. (*Exh.AA2; Tr.515-526 [Phillips]*); *Tr.3262,3038,3289-3290, 3299-3311 [Solomon]*)

126. On August 24, 2007, or perhaps a day or two earlier, Sgt. Phillips received a subpoena to testify before a Grand Jury. J.Ca. was also subpoenaed. Chief Solomon learned of J.Ca.'s subpoena when he returned home following the “roll call” room incident. He learned of Sgt. Phillips' subpoena the following Monday, after Sgt. Phillips reported it to his superior officer (Capt. Fram), who relayed to Dep. Chief Alaimo and Chief Solomon. The specific focus of the Grand Jury inquiry is unknown, but Chief Solomon initially thought J.Ca. was being subpoenaed relative to the underlying criminal case. On August 30, 2007, however, Chief Solomon came to learn that the Grand Jury may have taken evidence about Chief Solomon's role in the investigation, including testimony from Sgt. Phillips, which could be reasonably inferred to be adverse to Chief Solomon. There was no evidence that anything came of this inquiry although J.Ca. was later charged with an undisclosed offense at some point in 2008. (*Exh.98ID²⁰; Tr.526-530,652-656[Phillips]; Tr.3032-3041,3260-3262 [Solomon]; See also Tr.2325-2326 [Lapides]; 2380-2382 [Fleming]*)

Contract/Pay Cut Dispute.

127. In 2004, under Mayor Pollard, Chief Solomon and Dep.Chief Alaimo entered into three-year employment contracts which fixed their annual pay and benefits. Solomon testified, and was not contradicted or impeached, that, in the summer of 2007, Mayor

²⁰ Exhibit 98ID is an e-mail from Chief Solomon to his private attorney offered by Methuen. Solomon objected on grounds of attorney-client privilege. The objection was taken under advisement and now is sustained, as explained previously. (Finding of Fact ¶91, footnote 14). The Commission's findings rely solely on Exhibit 98ID to infer the fact of a communication with counsel and the information that Chief Solomon learned from third parties as mentioned in the document, which would not fall within the scope of the privilege, if any, and which it is presumed Chief Solomon would not deny he came to learn, if asked.

Manzi offered to keep him at his current pay if Chief Solomon agreed to defer seeking a new contract until after the November municipal elections.²¹ However, in August 2007, upon request of the Methuen City Council, City Solicitor McQuillan opined that the contracts “no longer had any legal force or effect” and that, under applicable civil service law and Methuen ordinances, Chief Solomon’s pay and benefits should be reduced about \$25,000 (from \$158,000 to \$132,000) and Dep. Chief Alaimo’s pay and benefits should be reduced \$14,000 (from \$136,000 to \$122,000). On September 5, 2007, the City Council ordered City Auditor Kelly to implement these cuts. Mayor Manzi, in the presence of City Auditor Kelly, advised Chief Solomon to take the matter to court. City Councilor Quinn wanted to keep it out of court, and was quoted to say: “Past practice is that we continue the contract until a new contract is negotiated. . . . It’s touchy. We’ve never done this before. My question is why are we doing it now?” (*Exh.APP17 [9/9/07(Eagle-Tribune),9/9/07(BostonGlobe)];Tr..287-290[Manzi];Tr.1103[McQuillan]; Tr.2258-2259[Quinn];Tr.2603-2604[Rahme]; Tr.3003-3005[Solomon]*)

128. On Wednesday, September 19, 2007, private counsel filed a civil lawsuit on behalf of Chief Solomon and Dep.Chief Alaimo to enjoin the pay cut, naming the City of Methuen, as well as City Auditor Kelly and City Council President Zanni, as necessary parties. The defendants received notice of the lawsuit through service on Friday, September 21st and Monday, September 24th. Mayor Manzi testified that, when he told Chief Solomon to file suit, he had not thought about who might actually be named as defendants. The injunction hearing was scheduled for the following Wednesday

²¹ Mayor Manzi said he never promised Chief Solomon a “favorable” new contract, but that was not Solomon’s point. Mayor Manzi’s words do not lead me to discredit Solomon’s testimony that Manzi agreed not to take action himself to decrease Solomon’s pay, so long as Solomon postponed “negotiation” over a new contract, which is what Solomon said. In fact, the Mayor held his part of that bargain until the City Council interceded and took the matter out of the Mayor’s hands. (*Tr.207-211[Manzi]*)

afternoon, September 26, 2007. This action was uniformly criticized by the City Council, which unanimously joined in a resolution offering their “full, unwavering support” to Chairman Zanni (who recused himself from the vote) and City Auditor Kelly. Councilors, Quinn, Rahme and Leone, who had opposed the earlier “no confidence vote” taken in May, joined in supporting the resolution. It also prompted a new proposal to seek special home rule legislation to exempt the position of Methuen’s Police Chief from civil service law (which had to have been placed on the agenda no later than September 27, 2007). The City Council approved the resolution on October 1, 2007 by 7-2 vote (Councilor Rahme opposed, because civil service protected the Police Chief from “undue political influence”; Councilor Andrew called it a “knee-jerk” reaction to Chief Solomon’s being put on administrative leave). (*Exhs. AA17 [9/25/07 9/26/07(Eagle-Tribune)], AA71, APP45, APP45-APP45C, APP59; Tr.288[Manzi]; Tr.1219-1224 [McQuillan]; Tr.2291-2294 [Quinn]; Tr. 2588- 2591[Rahme]; Tr.3005-3006,3265-3267[Solomon]*)

129. The legislature enacted Methuen’s home rule petition on June 20, 2008. Chief Lavigne has been Methuen’s permanent non-civil-service Police Chief since that time. (*Administrative Notice [Ch. 141 of the Acts of 2008]; See Tr.1663,1699-1700[Lavigne]*)

Filming In Methuen Square

130. On Sunday, September 16, 2007, Mayor Manzi went to Methuen Square, where his family owns a liquor store, and discovered that the MPD had blocked the streets into the square because a film company was shooting scenes for a movie inside the Neves’s Casa Vecchia restaurant and into the street. Mayor Manzi testified “[t]here was no permit” and “we had a very angry business owner [presumably from another nearby business, The Country Kitchen] who had not been notified, as city ordinance required”. He summonsed Chief Solomon to the scene, ordered the Chief to open the street, which

he did, and Mayor Manzi left. Mayor Manzi said he was told Chief Solomon re-closed the street which made him “quite angry” with Chief Solomon and the Neves and told Mr. Neve so “in no uncertain terms.” Mayor Manzi testified that this was one of the incidents that lead him to lose confidence in Chief Solomon. After his initial conversation with Chief Solomon at Methuen Square, Mayor Manzi “never spoke to the Chief again.” *(Tr.239-24,320-324 [Manzi];Tr.912-913{Neve}; Tr.2663[Haggar])*

131. Capt. Haggar was present throughout the filming. He gave clear and credible testimony that showed Mayor Manzi was mistaken about what happened. Capt. Haggar’s substantially uncontested testimony proved that he, and the filmmaker, Darrell Silver, had attended Methuen High School together, after which, Silver started a small production company in California called The Silver Screen. Silver wanted to use Methuen as the setting for a movie that used local police officers as extras. Haggar said Silver had met Mayor Manzi and explained what he was going to do. Haggar put Silver in touch with Chief Solomon to set the ground rules, which included picking a time (mid-day Sunday) that would have the least impact on the three local businesses open at that time. The road re-closure was the result of Silver asking Capt. Haggar for one brief, final shot, which took place long after Chief Solomon left. Chief Solomon had no role and knew nothing of this. *(Tr.2658-2666[Haggar]; See also Tr.321-323[Manzi])*

132. After Chief Solomon was put on administrative leave, then “Acting Chief” Lavigne asked Capt. Haggar for a “To/From” regarding the Methuen Square incident, saying it was “one of the grievances the Mayor had regarding the chief at that time.” His detailed report, dated October 17, 2007 is consistent with his testimony. No disciplinary action was taken or initiated against Capt. Haggar or anyone else. *(Exh.AA64)*

Neve/Manzi Matter.

133. Whether by coincidence or not, on September 16, 2007, Chief Solomon also met privately with Michael Neve, who asked to come to see Chief Solomon at his home. This conversation took place “late” in the day, after Chief Solomon had been to Methuen Square. The two men sat in Mr. Neve’s car for about two-hours. Mr. Neve was very nervous. He told Chief Solomon about an upcoming variance hearing before the Methuen zoning board of appeals (ZBA) and that Mayor Manzi had said “he needed to pay him \$15,000 for a favorable vote”, Neve asked Chief Solomon, is it “illegal” and “can I pay him the money?” Chief Solomon was flabbergasted. He had known Michael Neve for many years; he, Neve and Mayor Manzi were all friends; he also knew he had a general responsibility as a law enforcement officer to report the sort of information he had just learned to the appropriate authorities. He needed time to think about what to do and sought the advice of his attorney. (*Tr.913-914,935-936[Neve]; Tr.3010-3019[Solomon]*)

134. The following weekend, Chief Solomon spoke to the Chief of Detectives at the Essex County District Attorney’s Office, whom he knew well. A meeting was set up for Monday, September 24, 2007. Capt. Lavigne and Lt. Pappalardo accompanied Chief Solomon to the meeting. Thereafter, a message was relayed through Capt. Lavigne that the matter would be handled by the U.S. Attorney’s Office. The next day, Chief Solomon met with FBI Special Agent Peter King and King’s supervisor. At Chief Solomon’s request, Capt. Lavigne wrote a “To/From” report to document these events. Over the next several days, there were further meetings; the FBI wanted Mr. Neve to wear a “wire” but he refused. Eventually, on or about September 27, 2007, a subpoena was issued to Michael Neve to appear before a federal Grand Jury on October 9, 2007. Mr. Neve gave a written statement but did not testify. Chief Solomon also was subpoenaed but his

appearance was postponed and then cancelled. Mr. Neve recalls these events generally, but lacked the ability to distinguish one conversation from another or to hold to a coherent time line. (*Exh.AA49ID[Confidential Exhibit], AA88, AA89; Tr.926-936, 1315-1382[Neve]; Tr.1590-1600[Lavigne]; Tr.3015-3019,3223-3224[Solomon]*)

135. Certain parts of Mr. Neve's story are not disputed. He originally sought the zoning variance in or about 2002, intending to sub-divide a parcel owned by his parents to accommodate two residential structures for the family's use. He discussed this matter with Mayor Manzi. The variance was denied due to protests by the neighbors. On his second attempt, neighbors did not object and the Methuen ZBA approved the variance, which, based on the credible timeline established by Chief Solomon's testimony, would have been September 19, 2007, the Wednesday after Chief Solomon and Mr. Neve first spoke about the matter and prior to any contact by Chief Solomon with his attorney or the FBI. (*Tr.221-226.364[Manzi]; Tr.909-919[Neve]; Tr.3011-3015[Solomon]*)

136. Mr. Neve testified to a conversation with Mayor Manzi (then City Council President) after the first variance petition was denied. "I asked him what do I do now. And I offered the money. \$15,000, if he could help me get a variance and he replied to me I can't do nothing right now. Let's wait until – you need to wait two years or so, and by that time, who knows what I'll be, and we'll take it at that point." Mr. Neve reaffirmed this testimony on cross-examination. His testimony is consistent with what Chief Solomon said Neve told him on September 16, 2007, what Capt. Lavigne recalls was reported to the FBI, and what Sgt. Havey, another a long-time friend of Mr. Neve, remembered of a conversation with him in early October 2007. (*Exhs.AA88,AA89; Tr.911-912,1330-1331[Neve]; Tr.1590-1600 [Lavigne]; Tr. 2151-2163[Havey]*)

137. Mr. Neve also testified that he spoke to Mayor Manzi again, just before the second ZBA variance hearing. Mr. Neve said he saw Mayor Manzi driving alone and followed him for a couple of miles until he stopped in front of a newly built credit union.

“[T]he parking lot was empty because it wasn’t open yet. I says how are you doing, Mayor. And he says good. I said the meeting is coming up pretty soon. And he says I know it is. And I said did you do all your homework. And he says yeah. Did you do yours, and I said yeah. . . . He meant did you appease the neighbors. . . . My question to him did you do your homework was meant he had a lot of contacts in the town. If he could have said to somebody if you could please give this variance some consideration, if possible. . . . So then after that he gets back in his car, rolls the windows down, the black, tinted windows and he says to me don’t forget the satchel. He smirked. He rolled the window back up, and he took off.”

Mr. Neve said the “satchel” part was a joke, but “It could have been interpreted as a bribe”. He never paid any money. (*Tr.917-920,1335-1338[Neve]; Tr.2160-2161[Havey]*)

138. Mayor Manzi emphatically stated that “I have never solicited, nor ever received any consideration from Mr. Neve, Michael or his family for any actions related to that zoning variance request” and, as to neither the first or second petitions “did I speak to or try to influence any member of the ZBA.” In response to this Commissioner’s direct question: “Is it your testimony that at no time . . . with either of the Neves . . . did the subject of an exchange of money for any purpose ever come up?” Mayor Manzi stated: “That’s my testimony.” He also testified that he did not recall ever having a conversation with Michael Neve at the Jean D’Arc Credit Union. (*Tr.226-227,298,362-363 [Manzi]*)

139. When Mr. Neve met Sgt. Havey in October 2007, he told Sgt. Havey he was “joking with Chief Solomon about Mayor Manzi wanting a bribe” and now the FBI was involved. Sgt. Havey told him that didn’t make sense; they both knew Solomon wouldn’t go to the FBI over a joke. Sgt. Havey testified:

“[H]e then changed his story and said well, you know, I don’t know, maybe I wasn’t joking, but . . . they want me to wear a wire when I meet with Manzi . . . I wouldn’t do that because wearing a wire would make me a rat. . . . It almost appeared that each time he would bring up a different scenario, if I didn’t agree with him, he would recant on that,

and then come up with another version. I kind of felt after the conversation was over that he was trying to use me as almost like a litmus test to see what would pass with this upcoming thing that he thought he was going to have with the FBI.”

(Tr.2156-2158[Havey]; See also Exh.APP49[Confidential Exhibit]; Tr.1363[Neve])

140. I am persuaded that Sgt. Havey’s instincts are sound. I find Mr. Neve’s original story, as told to Chief Solomon, was not conveyed as a joke. Neve’s subsequent efforts to portray it that way smack of post-hoc rationalization. While no clear proof that a bribe was “solicited by” or “paid to” Mayor Manzi was forthcoming, what Mr. Neve initially described was a sufficiently troubling story to warrant Chief Solomon taking it seriously, as did the FBI. I would not be surprised, however, if Mr. Neve’s demeanor, his rambling style and far too many inconsistencies in his story, eventually led the FBI (or the US Attorney) to conclude, as do I, that Mr. Neve would have made a poor witness for the prosecution, no matter how carefully coached. *(Exh.49ID [Confidential Exhibit]; Tr. 909-936,1315-1382[Neve]; Tr. 2151-2163[Havey])*

141. That said, the issue before the Commission is not whether Neve’s story is true, but whether or not Chief Solomon, without the benefit of hindsight, acted on the information from Mr. Neve out of an honest belief, supported by advice from counsel, that he had the duty to do so. Solomon was not otherwise impeached or seriously questioned on his testimony that he went to the FBI believing it was his right and duty, and I so find. *(Tr.926-930[Neve]; Tr.3011-3018, 3178-3436 [Solomon])*

142. The final factual issue in the Neve/Manzi Matter is Chief Solomon’s testimony that Mayor Manzi knew about the FBI investigation when he made the decision to put Solomon on administrative leave, citing sources in the FBI, as well as other evidence of Mayor Manzi’s behavior. Mayor Manzi claims that he knew nothing of the investigation until he was asked about it by a FOX News reporter in February 2008. Although I find

that a reasonable person could believe there was a causal connection, Chief Solomon's contentions are based entirely on hearsay and circumstantial evidence susceptible of other plausible explanations.²² I draw no inference that Chief Solomon's report to the FBI was a factor at the time of the decision to place him on administrative leave. (*Exhs.AA59, AA60, AA110; Tr.191-194[Manzi];Tr.1601-1603[Lavigne];Tr.3024-3030 [Solomon]*)

Chief Solomon Put On Administrative Leave

143. By Executive Order executed September 28, 2007 (but pre-dated September 27, 2007), Mayor Manzi placed Chief Solomon on paid administrative leave, effective immediately "pending the outcome of my investigation into matters regarding your conduct as the Chief of Police that may have affected your fitness to continue to serve in that position. . . It is my determination after having consulted with the city solicitor that a full and fair investigation could not be obtained if you remained in your position. . . ." Chief Solomon was ordered to stay away from the MPD, surrender all MPD property and contact MPD personnel only through counsel on notice to the City Solicitor. The order stated these measures were necessary "to ensure efficiency of the Police Department and should not be considered disciplinary in nature." (*Exh.APP18, APP27*)

144. City Solicitor McQuillan explained Mayor Manzi's action:

"The investigation is to determine the causes leading to the breakdown of the department infrastructure dividing rank and file; the causes for a significant fragmentation and misdirection in loyalties and purpose; cause for the precipitous breakdown in communications and relations, on all levels, with the local government and the alienation and isolation of the department from the general government resulting in lack of scrutiny and accountability." (*Exh.APP28*)

²² Mr. Neve's encounter with Mayor Manzi at City Hall on September 26, 2007 was one such proffer of circumstantial evidence that Mayor Manzi knew that Neve's story had been reported to the FBI. It is undisputed that Mayor Manzi called Mr. Neve and, according to Neve, Manzi asked if he had "done something bad" and suggested they take a ride from which he "might not come back". Neve panicked and fled. Mayor Manzi said he simply was upset with Neve and Solomon leaking the names of his contributors to his opponent, Councilor Rahme; he denied saying or intending anything sinister. On balance, I find the evidence probative of Neve's worried state of mind but little else. (*Tr.228-229,294-305 [Manzi];Tr.921-925,1347-1354[Neve]; Tr.2608-2609,2639-2644[Rahme]; Tr.3008-3009 [Solomon]*)

145. Mayor Manzi testified that his decision to put Chief Solomon on leave was an “evolving process. . .from day one of my administration” and “I put him out because . . . the best interest of the citizens of Methuen would be served by new leadership in the police department, and that we needed to turn the page . . . management wise.” He testified that he had “lost confidence in the ability of Chief Solomon to lead the Methuen Police Department”, which had become “dysfunctional” and “was not well thought of by outside law enforcement agencies”. He said that he had concluded Chief Solomon had “fundamentally mismanaged two grants” had made “representations to me in private about the grants that ended up being totally false”, “was resistant to management changes” and “had no further credibility”. (*Tr.200-204, 233-235[Manzi]*)

146. I infer that Mayor Manzi had made his decision on or before September 24, 2007, the date he was interviewed by The Eagle-Tribune’s Board of Editors as reported in the paper’s story that ran the next day. Mayor Manzi also had a telephone conversation with Councilor Quinn on September 24, 2007 that caused her to warn Chief Solomon that “he’s talking about firing you”. Chief Lavigne testified that Mayor Manzi told her Chief Solomon was being removed several days to a week in advance. On September 21, 2007, the Boston Globe reported that Mayor Manzi had said changes at the MPD would be announced in the coming weeks. (*Exh.APP17,APP56,APP56A[9/25/07(Eagle-Tribune)]*); *Tr.199-200[Manzi];Tr.1674-1680[Lavigne];Tr.2263-2270[Quinn]*)

147. As noted above, September 24, 2007 was the day that Chief Solomon met with the Essex District Attorney’s Office on the Neve/Manzi Matter, as well as the day he submitted his letters to Mayor Manzi regarding the investigation of the August 24, 2007 incidents. (See Findings of Fact, ¶¶124,134) Thus, given the timing of these events, even

if knowledge of the FBI matter was leaked to Mayor Manzi, it must have been after the decision to take action against Chief Solomon for other reasons had already been made.

148. As to the September 24, 2007 letters, the evidence strongly infers they did factor into the timing of Mayor Manzi's decision to remove Chief Solomon from office. These letters recommended the Mayor convene a disciplinary hearing (before the Mayor or his designee) to consider termination of Officers Dzioba and Bistany, stating:

"I write this letter as a follow-up to our meeting on Thursday September 13, 2007, which was held in your office at 1:30 pm to discuss the various outstanding professional standards investigations. At this meeting you informed me that you did not want any disciplinary actions taken before the election due to your feeling that it would negatively impact your re-election bid. You further stated you needed peace and quiet for two months and then after the election I could take whatever actions were justified and you would then support my decisions.

"Regardless of the above, I cannot ignore my responsibility as Chief of Police to investigate allegations of wrongdoing. The officers who have allegations against them have the right to know the outcome of the investigations once they are completed, which is outlined in our professional standard policy. Additionally, these types of investigations wear on officers' minds and delaying the outcome only causes more stress.

"Therefore, the following professional standards investigations have been completed and submitted to me. I have just concluded my review of the findings and thus am required to take appropriate action or report the findings and/or forward the investigations to your office for action."

(Exh. AA5)

149. Mayor Manzi was furious to receive these letters. Dep.Chief Alaimo spoke by telephone with Mayor Manzi on September 26, 2007, two days before Chief Solomon was put on leave. Alaimo had just learned that Mayor Manzi had ordered Chief Solomon to turn in his city-leased vehicle by noon that day.²³ Alaimo asked why that was done suddenly without going through him or notifying him. Mayor Manzi responded by "yelling and screaming" and repeating that "I hate Joe Solomon, and he hates me."

²³ The vehicle, a 2005 Mercury Mountaineer was under lease to the city through January 2008 and had a \$19,630 Purchase Option. The vehicle was reassigned to the Recreation Department. Mayor Manzi was quoted to have said this move was unrelated to the administrative leave decision, but the proximity of the two events, and the demeanor of Mayor Manzi as related in the text by Dep. Chief Alaimo, makes that testimony incredible. *(Exh.AA111; APP17[9/27/07(Eagle-Tribune); Tr.249-252,284-287[Manzi])*

Alaimo said Mayor Manzi was “off his rocker”. During this conversation, Mayor Manzi, brought up the September 24, 2007 letter and told Dep.Chief Alaimo: “ ‘He [Solomon] tried to screw me’, his exact words, and I don’t want to – ‘he tried to F me by sending me that letter. I’m not stupid. I know what he was doing.’ ” (*Tr.1756-1760 [J.Alaimo]*)

150. Mayor Manzi agreed that he had a meeting on September 13, 2007 with Chief Solomon to discuss the “incident that happened inside the police department”, but he said: “I never asked him to defer discipline. And I never in context of discipline referenced the election or anything like that. That’s a complete falsehood.” Mayor Manzi’s testimony, in which he chooses to “paraphrase” the letter and gives a selective recollection that covers only what he said, does not persuade me to disbelieve Solomon’s very specific, plausible version of the overall substance of the discussion between them. Solomon said he asked to “pass off the responsibility” for discipline to Mayor Manzi, who told him to “sit on everything till after the election” to which Chief Solomon replied “that would be a problem” and “didn’t think it was fair.” Although Mayor Manzi testified that Chief Solomon’s letter was a “complete falsehood”, and a “blackmail” attempt, he also (curiously) ruled out including this extremely serious claim of alleged untruthfulness as one of the charges against Chief Solomon being prepared by City Solicitor McQuillan; if the charge were true, it would be powerful evidence of misconduct far more probative of Chief Solomon’s current fitness to serve than most of the other stale and enigmatic claims eventually asserted against him. (See Ultimate Findings of Fact and Conclusion, pp. 99-117, *infra*) Cross-examination of Mayor Manzi confirmed the inconsistency of his position on this subject. (*Exh.AA5; Tr.206, 214-215 281-283[Manzi]; Tr.1756-1760[J.Alaimo]; Tr.3038-3042, 3267-3282[Solomon]*)

151. Chief Solomon's removal had immediate consequences. On September 28, 2007, his website was taken down, as was the official MPD website, the latter replaced by a notice that it was under construction. The MPD site returned October 4, 2007 with all references to Chief Solomon removed, including the Personnel Directory (a blank appeared where his name had been). Chief Solomon's counsel asserted that he had been constructively terminated under Massachusetts Civil Service Law, and appealed to the Commission to protect his rights. (*Exhs.APP18, AA17[9/29/07(Eagle-Tribune)]; Administrative Notice, Commission Docket No. D-07-351*)

152. Capt. Lavigne promptly was named "Acting Chief" and three other officers received temporary promotions. When Dep.Chief Aliamo queried Mayor Manzi about why, as Deputy Chief, he wasn't given the responsibility of Acting Chief, Mayor Manzi replied "You're poison, the council won't go for you" (meaning he was viewed as tainted as Chief Solomon himself) but told him to "just keep your head down", and his job would be safe. Dep.Chief Alaimo retired in March 2008. (*Exh.APP17[10/1/07(Eagle-Tribune)]; Tr.1752-1753[J.Alaimo]; Tr.1679[Lavigne]*)

153. On October 15, 2007, Acting Chief Lavigne closed out the pending disciplinary issues involving Officers Bistany and Dzioba, executing a mutual agreement under which they would each serve two 8-hour tours of punishment duty (no compensation) and a letter placed in their files for six months and then expunged. At Lt. Wnek's request, the Sgt. Phillips harassment complaint was dropped; Sgt. Phillips was excused from further counseling sessions, but his claim for compensation for time on administrative leave was denied. After Lt. Wnek's attorney and his union president met with Mayor Manzi, Lt. Wnek was "exonerated of all charges" without a hearing, and never served his

suspension. Patricia Giarrusso, Chief Solomon's executive assistant, resigned in November. (*Exhs.AA17[2/17/08(Eagle-Tribune)];AA19,AA86,AA87;Tr.216-219[Manzi]; Tr.569,659[Phillips]; Tr.727-729[Wnek]; Tr.1589-1590,1668-1670 [Lavigne]*)

H. Methuen's 2007 Municipal Elections

154. Methuen's regular biennial municipal elections took place in 2007. The preliminary election was September 18, 2007. The final election was November 6, 2007. (*Exh. APP17 [11/7/07(Eagle-Tribune);Administrative Notice [9/17/07(Eagle-Tribune)]*)

155. In his bid for a second term, Mayor Manzi faced Councilor Rahme who launched her campaign in June 2007. Through most of the summer, Councilor John Cronin, described as a "staunch opponent of Solomon", made Chief Solomon the "#1 issue". Councilor Cronin topped the ticket in his preliminary city council district race, which he attributed to his stand against Chief Solomon. Initially a supporter of Chief Solomon, Mayor Manzi switched his position in late September and joined Councilor Cronin's camp as a strong critic. His opponent, Councilor Rahme, repeatedly took issue with Mayor Manzi's changed position, and stood by Chief Solomon throughout the election. Newspaper accounts consistently featured the controversy over Chief Solomon in the election coverage. Upon winning the general election over Councilor Rahme, Mayor Manzi said it represented a "mandate" to follow through with his plan for "new leadership" of the MPD. (*Exhs. APP17, AA93, AA94, AA104-AA107, APP43, AP59; Tr.199[Manzi];Tr.2591-25993,2622-2625,2630-2636[Rahme]; Tr.3453-3454[Solomon]*)

156. At the Commission hearing, Solomon's counsel had the following colloquy with Mayor Manzi on this subject during cross-examination:

Q. Do you believe that the issues involving Joe Solomon had any impact on that [November 2007] election?

- A. It's hard to say. I know that's certainly one of the issues that we talked about. And what the - - what impact, if any, it had is not for me to say but, certainly, I think it's fair to say it was - - an issue.
- Q. Was it a significant issue in the campaign?
- A. I - - I think that it was an issue. How significant vis-à-vis taxes, vis-à-vis other issues, again, I leave it to others, but I'd say that - - that it was talked about frequently. It was something that was definitely an issue that came up in my debate. So it was an issue. What value that issue had or how extensive that was, again, I would leave to others to say.
- Q. Do you believe that placing Joseph Solomon on administrative leave in September 2007 impacted the election in any way?
- A. It may have. Um, but I think that you have to understand, um, that the reason that it's not an easy answer to give is, um - - well, let me just say that I think in some fashion it did impact the election.

(Tr.279-280 [Manzi])

157. In a break from customary practice, the MPD Patrol Officers Association, headed by Joseph Aiello, voted unanimously on October 1, 2007 to give no endorsement to either mayoral candidate. According to Officer Aiello, Mayor Manzi was counting on that endorsement and was upset he didn't get it. When the union and Methuen inked a new collective bargaining agreement, Officer Aiello was called into Mayor Manzi's office. The Mayor inquired about the union's endorsement, to which Aiello replied that he did not know the mood of the union as far as supporting anyone because the department had "been through a lot". Aiello says that, at that point, Mayor Manzi turned to him and recounted a scene from the movie "The Godfather", which Aiello took as a threat to retaliate if Aiello didn't deliver. On October 1, 2007, after the "no endorsement" decision was taken, Officer Aiello spoke on the phone with Mayor Manzi, who used profanity and blamed Aiello for the decision, saying "he [Manzi] wanted to meet me behind the Searles Building [City Hall]" and words to the effect that "when I shoot at or come after someone, I get them between the eyes." *(Tr. 2898-2915[Aiello])*

158. Earlier that same day, Officer Aiello had met with agents of the FBI (the same Agent Peter King and others who then also were looking into the Neve/Manzi Matter,

apparently arranged previously through Chief Solomon. When the October 1, 2007 phone conversation with Mayor Manzi took place, Officer Aiello was sitting in an FBI vehicle with a recording device attached to the phone. Officer Aiello testified that the FBI also recorded a second conversation he had with Mayor Manzi. Officer Aiello was represented at the hearing by counsel. I find no reason to disbelieve Officer Aiello's thorough, detailed and consistent testimony on direct and cross-examination about his conversations with Mayor Manzi. (*Tr.2761-2804, 2883-2887,2897-2935-2938[Aiello]*)²⁴

159. It is uncertain how long the FBI continued its inquiries about Mayor Manzi.. Sufficient evidence infers they were active at least through the election and, perhaps, longer, and I so infer. Mayor Manzi and Acting Chief Lavigne recall her telling him about the Manzi/Neve inquiry at some point, and Agent King interviewed Mayor Manzi, both of which, by Manzi's testimony, had to have been February 2008 or later, which is when he said he first heard about it from a FOX News reporter. (*Exhs.APP17 [2/12/2008 (Eagle-Tribune)], AA62, AA63, AA110; Tr.191-196, 306-307, 293-294, 365-367[Manzi]; Tr.1649-1650, 1656-1658[Lavigne]; Tr.2802, 2912[Aiello]*)

160. As noted above (Finding of Fact, ¶155), Councilor Joseph Cronin, first elected in 2005, also was running for re-election in 2007 and topped the ticket in the preliminary City Council district election on September 18, 2007. (*Exh.AA17[4/18/07,5/9/07, 8/20/07, 8/28/07; Administrative Notice [9/19/07(Eagle-Tribune)]*)

²⁴ Officer Aiello has a civil lawsuit pending against Mayor Manzi, Acting Chief Levigne and MPD Capt. Fram, claiming that his demotion was retaliatory for his cooperating with the FBI. Mayor Manzi called that lawsuit "baseless and frivolous" and instigated by Chief Solomon. Methuen also proffered undisputed evidence of Aiello's 2005 misdemeanor conviction (tampering with a public document) said to raise credibility issues with his ability to be a detective. Officer Aiello countered that the conviction only came up once in court and was never raised again. Officer Aiello also complained about Mayor Manzi to the State Ethics Commission which declined any action. (*Exh. Exhs.AA95,96,APP17 [4/15/08, 4/16/08 (Eagle-Tribune); Tr.2766-2768 [Aiello]; Tr.2876; Administrative Notice [U.S. Dist.Ct.(Mass.), Docket No. 1:08-cv-10635-RBC]*) I make no findings on the merits of these collateral matters, but have considered them and the conviction, in weighing the credibility of the testimony given by Officer Aiello before the Commission.

161. Councilor Cronin's son, Shaun, was an MPD Patrol Officer until 2003. In March 2006, he sued Chief Solomon and Dep. Chief Alaimo, and the MPD, accusing them of forcing him to resign and then lying about him to potential employers, preventing him from getting another job. On October 6, 2008, summary judgment was entered in that suit in favor of Chief Solomon and Dep. Chief Alaimo; all claims against them were dismissed. Three weeks earlier, on September 15, 2008, the City Council voted to use Methuen's reserve funds to rehire Shaun Cronin. Mayor Manzi said: "[T]he young man [age 45] deserves a chance and it's my intention to give it to him." (*Exh.APP17 [5/10/07, 9/21/07 (Boston Globe); 8/28/0, 9/28/07, 9/29/0, 10/2/07, 9/16/2007 (Eagle-Tribune); Administrative Notice [Essex Sup.Ct. Docket ESCV2006-00549C]*)

162. On Friday, November 2, 2007, Mike Alaimo and Mayor Manzi had a telephone exchange. Mayor Manzi testified that Mike Alaimo called him in advance of a "rally" that Chief Solomon had scheduled, to relay a proposition, "supposedly" from the Chief.

"[H]e said . . . I ought to consider signing a reinstatement for Chief Solomon within one hour of the phone call, and failure to do so would mean that the Chief, as he described it, was going to give Speech B, I believe, he said, rather than Speech A at the rally that night. And when I asked Mr. Alaimo what the contents were in Speech B that I ought to be afraid of, he indicated to me that while there was nothing specific, there were allegations of some sexual improprieties on my part that could be brought forward at the rally by the Chief should I chose not to sign the reinstatement. And then [he] offered to call me back within a half hour or so to get my answer to the proposition, so to speak. I informed Mr. Alaimo that I didn't need any additional time to respond. I asked him if he was going to transmit my response directly to Chief Solomon, or whether there would be an intermediary. And he said that he was going to transmit it directly to Chief Solomon. And so I gave him my response . . . It was a profanity. Um, I don't know that you want me to say what the profanity was, but, um, it was a pretty good one."

Mayor Manzi linked this conversation to a phone conversation earlier with Councilor Quinn, whom he said told him that two men she did not recognize approached her earlier that same day. He testified she said one man came up to her at the library, said the Mayor had committed sexual improprieties and, if she went to Chief Solomon's rally they would

come out. He testified she said another man approached her at Target, and asked if she knew Mayor Manzi had committed financial improprieties that Chief Solomon would be talking about at his rally. Councilor Quinn confirmed that she had these encounters. She did not testify that the men mentioned the rally, but said that the improprieties were “going to come out”. (Tr.265-269,351-353[Manzi]; Tr.2283-2286[Quinn])

163. Mike Alaimo had a very different memory of his exchange with Mayor Manzi. Mr. Alaimo recalled two telephone conversations with Mayor Manzi the day of Chief Solomon’s rally. He said the first conversation began with a call from Mayor Manzi to him, in which Mayor Manzi brought up the subject of the Chief’s rally and urged Mike Alaimo not to go because “I’ve drawn a line in the sand . . . Whoever goes is his friend, not mine.” Mike Alaimo said he told Mayor Manzi how hard it was to take sides between two mutual friends, and asked “why can’t you two get together” and make a deal. Mayor Manzi responded “What kind of a deal?” and the conversation turned to what a compromise might look like. Mayor Manzi threw out a figure of \$50,000, and Alaimo said he would talk with Chief Solomon (who then knew nothing of this phone call). As he hung up, being a private detective, Alaimo took a photo of his cell phone – he would have e-mailed the information to himself if he had known how – showing Mayor Manzi’s phone number and the date, time and duration of the call, on which he wrote the words: “MANZI CALLED – LINE IN THE SAND.” This photograph was put into evidence. (Exh.APP42; Tr.351-353[Manzi]; Tr.2041-2049, 2075-2096[Alaimo])

164. Mike Alaimo reached Chief Solomon and told him what Mayor Manzi had said. Chief Solomon said he would call his attorney and get back, which he did, indicating \$50,000 was not enough; the right number was in the \$500,000 range (along with support

in getting another job). It was during this second conversation with Chief Solomon, that Mr. Alaimo came up with the “Speech A” and “Speech B” language. He said he assumed that the rally would have to go ahead either way, and, his idea was, if there was no settlement, Chief Solomon could give his pre-planned speech – Speech A – but if there was an agreement, he could give Speech B – that the parties had agreed to get together with the lawyers to try to work out a compromise. (*Tr.2041-2049,2075-2096[Alaimo]*)

165. Mike Alaimo called Mayor Manzi back, described the counter-offer and the “Speech A” and “Speech B” idea. According to Alaimo, Mayor Manzi then launched into a profanity-laced response in which he introduced the issue of sexual misconduct:

“[H] can give his f-in speech, B or Speech A. What the hell is Speech A supposed to be, what is this bull . . . what does he think, he’s going to talk about my sexual exploits . . . if he wants to use my sexual exploits, he can use them because my wife don’t give a shit, and I don’t give a shit: I’m just human. I’m just a normal man.” Mayor Manzi told Mr. Alaimo to give Chief Solomon a message: “f- u-.”

Mayor Manzi and Mike Alaimo met for lunch a few weeks later when the matter came up again. Mayor Manzi, in the presence of others, said very calmly “I just simply don’t have that kind of money. . . The City just can’t afford that kind of money”. Neither party produced any evidence of what actually took place at the “rally”. There was no evidence that Mayor Manzi engaged in any sexual exploits or financial improprieties or that the issue was ever mentioned by anyone again. (*Tr.2041-2049, 2075-2096[Alaimo]*)

166. I have carefully weighed the conflicting versions of these events. I credit Mike Alaimo’s testimony, which he gave with all the indicia of truthfulness. His demeanor, and what others said to vouch for him, persuades me he would not play the dirty tricks that Methuen invites me to infer here. Moreover, Mike Alaimo’s picture of his cell phone, made to record, as he said, the “line in the sand” statement by Mayor Manzi, is most logically consistent with Alaimo’s version of the two conversations. It is improbable that

Mike Alaimo would document a phone call he made to Mayor Manzi for the purpose of blackmailing him. Councilor Quinn's encounter with the mystery men may well have happened, but I heard no credible evidence at any time during this very lengthy hearing to connect those men to Chief Solomon, to the "rally", or to the phone call between Mike Alaimo and Mayor Manzi. It is also curious that Mayor Manzi never revealed these events until he appeared before the Commission. As with the alleged September 24, 2007 "blackmail" letter, failure to explain the omission of this serious charge at the Mayoral level proceedings also raises doubt as to its veracity.

I. Chief Solomon's Termination

167. In October 2007, City Solicitor McQuillan was instructed to begin investigation of mismanagement at the MPD. This surprised him because discipline was "inevitable given the circumstances", and he thought immediate and "more strident" measures needed to be taken against Chief Solomon. The relationship between City Solicitor McQuillan and Chief Solomon was contentious. Whether the investigation should be conducted by the City Solicitor or by an outside party was an issue that divided the two 2007 mayoral candidates. (*Exhs.AA6, AA21, APP17[10/2/07,10/24/07,10/25/07(Eagle-Tribune) APP27, APP28, APP43, APP59; Tr.1035-1044, 1108-1118, 1142-1146, 1187-1190, 1203-1206 [McQuillan]; Tr.3165-3172 3266-3267 [Solomon]*)

168. On November 17, 2007, Mayor Manzi announced that he was "tired of waiting for [DOJ] to tell him how the police department misspent \$170,000 in grant money. . . . Myself and citizens are asking did something happen and why? Waiting is not an option to see what a third party finds. We'll do it ourselves." Manzi described the audit as separate from the case he was building against Chief Solomon, whom Manzi said he did not intend to bring back as Chief. (*Exh.AA17[11/17/07(Eagle-Tribune)]*)

169. Over the next three months, MH&Co, led by CPA John Sullivan, the partner in charge of the firm’s Municipal Services Department, with over thirty years of experience in fraud and forensic auditing for municipal governmental clients, including two others involving police departments, reviewed the W/S grant documentation, payroll records and other supporting documentation earlier provided to the DOJ. They interviewed “key” MPD officers (including Dep.Chief Alaimo, Capt. McCarthy, Sgt. Havey, and Linda Soucy, a non-MPD employee), reviewed the Glendinning Report and contacted the DOJ. Chief Solomon was not contacted. The time frame and hours expended by MH&Co on this engagement was not stated. I infer that most of the interviews took place in February 2008, and the total accounting fees paid to MH&Co. for this work was in the \$10,000 to \$15,000 range. (*Exhs.APP17[1/11/2008,1/20/08,2/17/08(Eagle-Tribune)], AA58, AA81; Tr.1386-1521[Sullivan]*)

170. On December 13, 2007, DOJ finally responded to City Solicitor McQuillan’s July 31, 2007 letter. That letter was the first detailed description of the basis for the OIG’s conclusion that MPD failed to submit “adequate documentation” to back-up its W/S expenditures. For the first time, DOJ provided Methuen with a numerical breakdown of the alleged deficiently supported costs, which were limited to the time charged to the W/S grant by MPD personnel acting as Weed & Seed Coordinator, Weed Coordinator and Program Assistant as follows:

<u>Amount Claimed</u>	<u>Amount Supported</u>	<u>Amount Unsupported</u>	
Chief Solomon	\$ 10,652.68	\$ 248.97	\$ 10,403.71
Dep.Chief Alaimo	12,810.98	206.05	12,604.93
Capt. McCarthy	44,824.19	569.36	44,254.83
Sgt. Havey	42,370.22	10,348.29	32,021.93
Lt. Mahoney	35,846.96	10,366.90	25,480.06
Exec.Asst. Giarrusso	<u>45,934.00</u>	<u>0.00</u>	<u>45,934.00</u>
TOTAL	\$ <u>192,439.03</u>	\$ <u>21,739.57</u>	\$ <u>170,699.46</u>

The DOJ letter instructed:

“Methuen has never submitted either activity reports or some other appropriate documentation to refute the conclusion . . . that the MPD based charges to the grant for these [six] employees’ overtime costs solely on budgeted costs. Please forward any such documentation to OJP’s Office of the General Counsel. . . At this point, we still view this matter as under discussion. As no final enforcement action has been initiated, your request for a hearing is premature.”

(Exh.AA56)(emphasis added)

171. The DOJ’s December 13, 2007 letter was obtained by the Lawrence Eagle-Tribune and made public on or about January 20, 2008. Chief Solomon did not see the Glendinning OIG report or (obviously) MH&Co.’s subsequent analysis of it, referred to below, prior to the disciplinary hearing leading to his termination (that began on February 18, 2008). *(Exh.APP17 [1/20/2008 Eagle-Tribune]); Tr.3412-3413[Solomon])*

172. By letter dated February 19, 2008, MH& Co reported the results of its “review” of the W/S grant. The February 19, 2008 letter expressed two areas of concern: (1) the lack of proper internal accounting controls over the entry of overtime and (2) lack of documentation to verify that time charged was actually devoted to work on the W/S grant as opposed to something else. As to the first concern, MH&Co. described how the MPD officers they interviewed said they entered time charges to the W& S grant:

- “The Police Department stated that the procedures used to document time for the grant was based on entries into the Department’s Pro IV time system. Key controls as explained to us were that a Supervisor would enter the time of the individuals under their watch and that based on observation, review of schedules, calendars or other information the time was input. No individual is supposed to enter their own time. . . . In addition, weekly time reports are reviewed and approved by the Department Head . . .”
- For the positions of Weed and Seed Coordinator, Weed Coordinator and Weed and Seed Program Assistant overtime was limited to four hours per week. All other time was to be included in the employees existing annual salary. In the second year of the grant, the description was changed to salaries stipends for the three positions. In the third year of the grant the descriptions went back to four hours overtime for the Weed and Seed Coordinator and the Weed Coordinator but remained a stipend for the Weed and Seed Program Assistant.”

- “The Superior Officers . . . confirmed the procedure, indicating that the four hours per week charged . . . was a limitation because their responsibilities required more than four hours per week and that they had to ‘eat the excess time themselves.’ The also indicated that the supervisors entered the time of the staff they supervised with the exception of the Weed and Seed Coordinator who entered his own time as he was the top level employee of the Department.”

The MH&Co. letter then noted the following “observations” as to who, in fact, entered W&S overtime into the Pro-IV system:

- As W&S Coordinator [2001-2002], Captain Solomon’s time was entered by himself, and, also, on an unspecified number of occasions, by Lt. Joseph Alaimo [Weed Coordinator 2001-2002] or “others”.
- As Weed Coordinator [2001-2002], Lt. Alaimo’s time was entered by himself and, also, on an unspecified number of occasions, by his superiors, Capts. Solomon and McCarthy, as well as by Lt. Lavigne.
- As W&S Coordinator [2002-2006] Capt. McCarthy entered his own time “almost exclusively”
- As Weed Coordinator [2002-2004], Sgt. Havey’s time was entered by his superior Capt. McCarthy and “often” by Sgt. Havey himself.
- As Weed Coordinator [(2004-2006)], Lt. Mahoney time was entered by his superior Capt. McCarthy and “occasionally” by Lt. Mahoney himself.
- As W&S Program Assistant, Ms. Giarrusso’s time was entered by her superiors, Capt. McCarthy, Sgt. Havey and others. “Late in the grant”, Ms. Giarrusso did enter some of her own time. . . .[S]he did not enter any time for her superiors in prior to 2003 and did so only “sporadically” thereafter.
- The Pro IV system logs in the person who enters the time including date and time entered. Our testing revealed that the person entering overtime, was at times either on vacation or on a trip for educational purposes. Based on our understanding of the Pro IV System, the only way that entry could be made when an individual was out of the office was by access to the password of another individual.

MH&Co. concluded:

“A key control that time is entered by a Supervisor with knowledge of the activities of the subordinate is violated when the time is entered by the employee himself. This issue is compounded by a belief that the entries of a Superior Officer . . . was, at times entered by someone other than the Superior Officer [whose password was used to make the entry].”

As to the second concern, MH&Co.’s February 19, 2008 stated:

“Officers interviewed claimed that they worked more than the required hours but were not compensated for the additional time. Our review of activity in the data base raises questions about this claim.”

“The PRO-V System has space for a description line. That space could have been used more extensively to document the activities for which the overtime was claimed. It was used sparingly most often to state for the week ended and a date.

“In the case of the Weed and Seed Program Assistant, we found that additional time was worked by a one hour extension of the workday and two hours on the weekend. However, there was also additional compensation paid out of the Community Policing Grant. There is no documentation to support that the hours worked benefited the Weed and Seed program specifically.

“Based on these findings, there is doubt as to the reliance that can be placed on the Supervisor’s assurance that the hours were actually worked. . . . [W]e cannot provide assurance to DOJ that sufficient controls were in place to assure that work claimed is supported by time actually worked.”

(Exh.AA58)

173. During the hearing before the Commission, MH&Co. partners John Sullivan and Scott McIntire elaborated on the work MH&Co. performed on Methuen’s W/S grant. Their testimony, the documentary evidence they produced and the testimony of the witnesses who served as W/S supervisors (Joseph Solomon, Joseph Alaimo, Sgt. Havey), and testimony from Capt. Haggar and City Auditor Kelly, established the following facts:

- Password Sharing. *Only one “Superior Officer”, Capt. McCarthy, was identified to have shared his PRO-IV password on one occasion, in March 2005, when he was in Atlanta, attending a W/S conference with Chief Solomon, Lt. Mahoney and Patricia Giarrusso.* The travel expenses (in excess of \$4,000) for that conference were charged to and paid from the W/S grant and have never been questioned by DOJ. The overtime entries in question appear otherwise fully documented and easily confirmed: (a) 2 hours W/S overtime for Sgt. Havey for \$169.82 for a W/S “Arlington Patrol”; (b) 2 hours Community Policing (i.e., non-W/S) overtime for Sgt. Havey for \$169.82 to take the marine “boat to welder”; and (c) three entries for 16 hours of regular (i.e., non-W&S) overtime for Capt. Haggar and Lt. Mahoney for \$679.27, in the aggregate, to attend meetings and training. MH&Co. interviewed

Capt. McCarthy but never asked him about any of these entries. As noted above, MH&Co assumed that Capt. McCarthy could not make PRO-IV time entries remotely but this assumption was persuasively rebutted by testimony of percipient witnesses to the contrary. (See Finding of Fact, ¶48) There is no other evidence of password sharing on any other occasion and the issue was not mentioned in the OIG Glendinning Report.

- Overtime While Out Sick Leave Or On Vacation. Except for the Atlanta conference described above, MH&Co. identified no specific time entries to support the statement in its February 19, 2008 letter that officers were paid overtime when they were out for “vacation, Weed and Seed training, sick and personal leave”. As to the Atlanta conference, as noted, DOJ did not question these costs, and CPA Sullivan agreed that a claim for overtime payments under the W/S grant could be appropriate, as such conferences often extend beyond a normal working day.
- Supervisory Time-Keeping. The PRO-IV logs and the testimony shows with near certainty that most W/S supervisors (Capt. Solomon, Capt. McCarthy, Lt. Mahoney, Lt. Alaimo & Sgt. Havey), did enter their own supervisory time into the PRO-IV system, along with the time of subordinates, both W/S overtime and non-W/S time. This procedure was in place prior to Chief Solomon’s tenure. According to CPA Sullivan: “I have not seen anything in the [federal grant rules and regulations] that would specifically state that an employee could not enter their own time.” The PRO-IV logs in evidence (primarily from 2005) were the same data which was the subject of the initial MH&Co. single audit in 2006, and clearly show that Capt. McCarthy entered virtually all his own W/S overtime during that period and Lt.

Mahoney entered his own time at least 24 times. Although MH&Co's letter stated Sgt. Havey "often" entered his own time, the logs do not support that conclusion.

- Supervisory Time Codes. Overtime by officers acting as W/S Coordinator and Weed Coordinator was entered under PRO-IV Category "E19" and Code "WASP". The typical time entry was a four hour block with a descriptive entry stating the week the overtime was worked. The Category and Code numbers were assigned by the City Auditor's office. The documents show that Category "E19" was used for more than one grant, but W/S entries can be distinguished by a discrete "WASP" Code used only for W/S supervisory overtime (e.g., rank & file W/S overtime used Code "WAS" and Community Policing used a Code "CP").
- Supervisory Time-Keeping. *In CPA Sullivan's experience, police supervisors are known not to keep time records with the accounting details expected by grant conditions, a common occurrence since "the 1980's . . ."* [n]o different that the issues that we're talking about today" He testified:

[W]e see more often that superior officers are not keeping the kind of detailed records that other officers . . . are . . . [I]t's much more difficult to get them to keep track of their time . . . So what I am saying is when we're writing findings, noncompliance findings, we frequently will see that level of administrative [timekeeping] more frequently in the cost findings than we would the people that are working more specifically blocks of time on the grant"

CPA Sullivan explained that the problem with a lack of adequate documentation at supervisory levels has now been cured by other municipalities, because "a lot of cities and towns . . . use indirect cost allocation formulas that are pre-approved by the funding agencies . . . so you don't see as many administrative level . . . positions being charged directly in to the grant."

- Giarrusso Time Records. The administrative time spent by Patricia Giarrusso was assigned to Category “E18”. The Code for Program Assistant work was “WSP”, which changed to “WSP1” in October 2002 and, in October 2005 was changed to two Codes: “WSTR” (W&S Program Asst Straight Time) and “WSTO” (W&S Program Asst Overtime Code). A few of her time entries in the first year of the grant contain some descriptive entries that identify the task performed, but virtually all of the other entries simply show a “Week of ...” entry in the description block. Throughout most of the grant, Ms. Giarrusso was on (an OJP erroneously approved) “stipend”, which led her to believe that no specific time-keeping records were necessary. This is apparently a common misconception among grant recipients, also well-known to CPA Sullivan:

“[W]e have a lot of problems with governmental entities tracking the hours on . . . stipends because they just look at it as I’m just getting a fixed amount of money . . . so a lot of these stipends end up hidden [sic] question costs, we have lost of problems with those.”

The Glendinning OIG report also describes a problem with Ms. Giarrusso’s time records, namely that, in addition to pay she received for W/S administrative time, she also was paid a stipend on another grant, and the total combined hours she was supposed to work did not equal the hours she claimed to work. This “triple dipping” issue was not substantiated at the Mayoral level hearing and Methuen did not press this point before the Commission.

- Adequate Documentation. According to CPA Sullivan, in the “volumes and volumes . . . of material and related cost principles” related to federal grants, none of the regulation and financial guides actually spell out what type of supporting records DOJ considers to be “adequate documentation” of time and effort charged to a

grant.²⁵ CPA Sullivan said date and task specific entries in MPD's computerized payroll records (PRO-IV) would qualify (if the system's internal controls were adequate), as well as expense reports (i.e., the conference vouchers mentioned earlier), and presumably such other documents as MPD platoon and shift rosters, and appointment records. The problem with relying on other sources is they require "doing a huge amount of work" and it may be "not possible" to retrieve them. Solomon testified there would be such documents to verify the bulk of the W/S supervisory overtime, but agreed the task would be "daunting", which is why, in June 2007, once informed that the MPD's current system was problematic, he created a new "overtime" form to back-up and account for ALL future overtime.²⁶

- Inadequate Program Administration by DOJ. Considerable evidence was produced to suggest that DOJ program administrators have been cited for widespread and systemic deficiencies in managing DOJ grants. In its 2005 annual report entitled "Top Management and Performance Challenges in the Department of Justice – 2005", the DOJ's Office of Inspector General (OIG) characterized DOJ's grant

²⁵ For example, DOJ's grant administration regulations contain only a generic description of what DOJ will accept as "source documentation", which makes no mention of the level of detail now being demanded of Methuen by OJP: "Accounting records must be supported by such source documentation as . . . payrolls, time and attendance records . . . etc." 28 CFR 66.20(b)(4) (*emphasis added*) Similarly, the OJP Financial Guide states that salaries and wages may be "based on payrolls documented in accordance with the generally accepted practice of the organization" and approved by a responsible official(s) of the organization "and allows monthly "after-the-fact" distribution of actual activity of each employee so long as they are "reviewed and approved on a regular basis by a supervisory official" having first-hand knowledge of the work performed." See "Compensation for Personal Services", Ch. 7, OJP Financial Guide, www.ojp.usdoj.gov/financial_guide (*emphasis added*)

²⁶ The Commission is not in a position to evaluate the OJP's claim on the merits. However, perusal of the PRO-IV logs does suggest that the data show more potential "supported" time than OIG or MH&Co. gave Methuen credit for and that further "discussion" as offered in OJP's December 13, 2007 letter, perhaps, even now, might prove fruitful. (*Exh.AA56, AA58;Tr.1396-1397[Sullivan]*). For example, the OIG report allowed \$248 of Capt. Solomon's time, but there are 21 entries totaling \$5,529 with specific descriptions that may be satisfactory or lead to other documents that could prove satisfactory. Similarly, \$569 of Capt. McCarthy's time was allowed in the OJP report, but 15 log entries totaling \$3,401 show supporting descriptions; a minimum of \$13,059 in Lt. Mahoney's entries (as opposed to \$10,366 in the OJP report) seem potentially sufficient; and \$26,936 (as opposed to \$10,348 in the OJP report) of Sgt. Havey's time.

management as a “long-standing challenge”, citing OJP and COPS programs specifically, because they lack “clear, timely, and unambiguous guidance on the specific criteria under which grantees will be held accountable. The myriad of policy guidance cited in ‘boilerplate’ application and award documents (OJP Financial Guide and COPS User Manual) can often be confusing and contradictory, increasing the risk that grantees will be less likely to satisfy their fiduciary responsibility to safeguard grant funds and ensure funds are used solely for the purposes for which they were awarded.” Similar concerns are stated in the OIG’s 2006 and 2007 annual reports, as well its February 2009 report entitled “Improving the Grant Management Process.” CPA Sullivan was not aware of these reports, but agreed that, in substance, they were consistent with his own personal observations.

(Exhs. AA51, AA57-AA58, AA73-AA83, APP11-APP15, APP63, APP64, APP65ID; Tr.1384-1521[Sullivan];Tr.1521-1557[McIntire];Tr.1768-1771[J.Alaimo];Tr.1908-1909 [Kelly];Tr.2122-2123[Gunther];Tr.2694-2698[Haggard];Tr.3142-3176,3379-3413,3459-3477[Solomon]

174. On January 2, 2008, at the request of City Solicitor McQuillan, a memorandum was circulated to all MPD “Police Sworn” personnel, requesting “any member of the Methuen Police Department with any information relative to Joseph Solomon” to contact the City Solicitor’s Office, promising any discussions “will be held in strict confidence.” According to City Solicitor McQuillan, when he circulated this memorandum, his investigation was about “95 percent there” and he was drafting formal notice of charges. He sought information, both positive and negative, to “vet what he had . . . to determine their accuracy, their inaccuracy, their falsehood, their truth.” He testified that he did, in

fact, receive both positive and negative information about Chief Solomon. None of the information received as a result of this solicitation added to the charges or altered the substance of the charges ultimately lodged. (*Exh.APP29; Tr.1115-1118[McQuillan]*)

175. On January 31, 2008, pursuant to Massachusetts Civil Service Law, as the Appointing Authority, Mayor Manzi issued a Notice of Hearing to Chief Solomon, to be held on February 19, 2008, for the purpose of determining whether there was just cause to take disciplinary action against him. The notice listed nine charges, which included a total of 16 specifications of misconduct. (*Exh.AAI*)

176. On the eve of his disciplinary hearing, a supporter of Chief Solomon issued a press release, which I infer was done with his knowledge (the release quotes Chief Solomon's counsel). The release claimed that pending disciplinary action was taken in retaliation for Chief Solomon instigating the September 2007 FBI investigation of Mayor Manzi just prior to his administrative leave. As explained above (Findings of Fact, ¶¶142, ¶¶146-147), the nexus between the administrative leave decision and the FBI investigation, although possible, was not established; Mayor Manzi's decision most likely was made prior to when a "leak" of the FBI investigation, if any, came to his attention. I note, however, that the press release, prompted Mayor Manzi to make the following statement to the press: "At no point has any agency, be it federal, state or local, either informally or formally, notified me that I was the subject of a probe. . . .I want to be clear . . . There's been nothing." (*emphasis added*) These carefully parsed words illustrate Mayor Manzi's skill at verbal gymnastics. Acting Chief Lavigne almost certainly had told him of the FBI probe by that time. Further, it is likely that Mayor Manzi's "voluntary" interview with Special Agent King may also have occurred prior to this

statement to the press. (*Exhs.AA59, AA60, APP17 [2/29/08 (Eagle-Tribune)]; Tr.191-196, 306-307, 293-294, 365-367 [Manzi]; Tr.1649-1650, 1656-1658 [Lavigne]*)

177. Attorney Michael Marks (who presided over the April 2007 disciplinary hearing on the COPS grant issues – see Findings of Fact, ¶96) – conducted seven days of hearings, between February 19, 2008 and April 14, 2008. Methuen introduced 58 exhibits and Chief Solomon 25 exhibits; Methuen called nine witnesses; Joseph Solomon, and four others, testified on his behalf. (*Exhs.AA2 APP17(4/15/08 [Eagle-Tribune]*)

178. On May 5, 2008, Attorney Marks submitted his Hearing Recommendation to Mayor Manzi. Of the original nine charges, Methuen abandoned two during the hearing. Attorney Marks found two of the seven remaining charges had been proved fully; three proved, in part; and two not proved. Attorney Marks recommended that Chief Solomon be terminated from employment. (*Exh.AA2*)

179. Two days later, on May 7, 2008, Mayor Manzi issued his Notice of Decision. He adopted Attorney Marks' findings and recommendations as to all charges, save for Charge Six, as to which Attorney Marks found the conflicting evidence insufficient to satisfy him that the alleged misconduct had occurred. Mayor Manzi rejected that finding and made his own finding that the testimony of Walter "Gus" Flanagan and Lt. Wnek was sufficient to establish that Flanagan's allegations had been proved as charged. Mayor Manzi explained his decision to overrule Attorney Mark's recommendation was based on review of all the testimony and because he had known Gus Flanagan for more than 20 years and he was a "straight shooter" whom he had never known to do anything but "get up and tell the truth." Mayor Manzi ordered that Chief Solomon be discharged from his duties as MPD Chief of Police, effective immediately. (*Exh.AA3;Tr.255-257[Manzi]*)

IV. Ultimate Findings and Conclusion

A. Applicable Standard of Review

Under G.L.c.31,§43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority (the Mayor of Methuen in this case) made pursuant to G.L.c.31,§41, may appeal to the Commission. The Commission has the duty to determine, under a “preponderance of the evidence” test, whether the appointing authority met its burden of proof that “there was just cause” for the action taken. G.L.c.31,§43. See, e.g., Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, (2006); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass App.Ct.473,477 (1995); Town of Watertown v. Arria, 16 Mass.App Ct. 331,334, rev.den.,390 Mass. 1102, (1983).

In performing this function “the commission does not view a snapshot of what was before the appointing authority.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726,727, rev.den., 440 Mass. 1108 (2003) Rather, the Commission must “conduct a de novo hearing for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. See Villare v. Town of North Reading, 8 MCSR 44, reconsid’d, 8 MCSR53 (1995) (discussing requirement for de novo hearing before a “disinterested” Commissioner in context of procedural due process). See also Bielawski v. Personnel Admin’r, 422 Mass. 459, 466 (1996) (bypass appeal)

An action is "justified" if "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300,

304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983) The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.'" Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. It is also a basic tenet of the "merit principle" which governs Civil Service Law that discipline must be remedial, not punitive, designed to "correct inadequate performance" and "separating employees whose inadequate performance cannot be corrected." G.L.c.31,§1.

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65 (2001) It is the function of the hearing officer to determine

the credibility of the testimony presented through the witnesses who appear before the Commission. See Covell v. Department of Social Services, 439 Mass 766, 787 (2003); Doherty v. Retirement Bd. , 425 Mass. 130, 141 (1997); Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988)

G.L.c.31, Section 43 also vests the Commission with the authority to affirm, vacate or modify the penalty imposed by the appointing authority. “The commission’s task, however, is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether if “the circumstances found by the commission” vary from those upon which the appointing authority relied, there is still reasonable justification for the penalty selected by the appointing authority. “The ‘power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded to the appointing authority.” Falmouth v. Civil Service Comm’n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission’s findings of fact differ significantly from those of the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to ‘substitute its judgment’ for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.” E.g., Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, (2006). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334 rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983) and cases cited; Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 602 (1996); Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982).

B. Summary of the Conclusion

I conclude that Methuen had just cause to discipline Chief Solomon for poor judgment in the administration of the COPS grant, and the appeal from his three-day suspension is dismissed. As to the discharge, I find partial merit in only three charges, as noted below, none of which, individually or in combination, justify a discharge from his duties under basic merit principles. The proximate cause of his discharge was a political and personal bias, driven in part by public pressure generated in the 2007 mayoral campaign, which improperly influenced the decision-making process to his prejudice.

	<u>Hearing Officer</u>	<u>Mayor Manzi</u>	<u>Commission</u>
<u>Charge One (Ethics Violations)</u>			
Conflict of Interest - Sgt. Phillips	Proved	Proved	Proved In Part
Interference w/Criminal Investigation	Not Proved	Dropped	---
Disclosures to Private Attorneys	Proved	Proved	Proved In Part
Bearmeadow Street Surveillance	Proved	Proved	Not Proved
<u>Charge Two (Merrimac Marine)</u>			
Conflict re: Maintenance/Repairs	Proved	Proved	Not Proved
Conflict re: Second Marine Unit Boat	Proved	Proved	Not Proved
<u>Charge Three (Duplicate of Charge One)</u>	Dropped	---	---
<u>Charge Four (Misuse of MPD Property)</u>	Dropped	---	---
<u>Charge Five (Abusive Behavior)</u>			
August 24, 2007 Incident	Proved	Proved	Not Proved
November 17, 2006 Incident	Dropped	---	---
<u>Charge Six (Flanagan Investigation)</u>	Not Proved	Proved	Not Proved
<u>Charge Seven (Hiring Private Counsel)</u>	Not Proved	Dropped	---
<u>Charge Eight (Grant Mismanagement)</u>			
Weed & Seed Grant – Overtime Records	Proved	Proved	Proved In Part
COPS Grant (Duplicates 3-day discipline)	Dropped	---	---
Weed & Seed Grant – Triple Dipping	Not Proved	Dropped	---
<u>Charge Nine (Loss of Confidence)</u>	Proved	Proved	Not Proved

C. Three-Day Suspension (Mismanagement of COPS/HSOP Grant)

Most facts surrounding the COPS/HSOP grant mismanagement charge are not disputed. The DOJ interprets its boilerplate in the COPS/HSOP grant conditions to limit use of grant funds to pay overtime for “non-supervisory” officers only; payment to a ranking officer, whether working as a supervisor or not, is prohibited. The COPS/HSOP grant documents, do contain some ambiguity on this issue; even CPA John Sullivan, an

expert in grant management and auditing, when shown the grant documents, initially seemed to agree with Chief Solomon's contention that the documents do allow supervisory personnel to work a COP/HSOP grant overtime shift, so long as they performed regular patrol officer duty. The undisputed evidence also showed Methuen's experience with ambiguous and confusing grant conditions and poor communication of grant requirement by the DOJ program officers was not unique; this issue was cited by DOJ's Inspector General as a major agency challenge for many years running.

I accept Solomon's testimony that the utility of the COPS/HSOP program to Methuen would have diminished, perhaps to little or no value, without the option to assign supervisors to fill overtime slots under the grant. Finding a patrol officer willing to take on those assignments was not always easy. In some cases, i.e., in the Marine Unit, only two officers could perform certain duties, one patrol officer and one sergeant. I also credit the evidence that, when the ambiguity first came to his attention, Chief Solomon was proactive and consulted with Methuen's grant advisor, Crest Associates, and was assured that the grant permitted payment to supervisors performing patrol officer duties.

Had nothing else happened, this issue may not have come back to haunt Methuen. However, Richard St. Louis' suicide under a cloud of corruption, and his firm's collapse, were obvious red flags that raised, or reasonably should have raised, doubt about the credibility of Crest Associates advice, especially to a career police officer. In contrast to the situation that later arose with the W/S grant, this problem was a simple question of what the ambiguous contract words meant by limiting payments to "non-supervisory" personnel, which appear on the face of the grant documents. Moreover, Chief Solomon, himself, flagged the point before agreeing to sign the grant documents as one of the two

parties with legal responsibility for proper use of grant funds. In sum, once Chief Solomon was on notice of the ambiguity in the grant documents, Methuen was justified to expect him to stay on top of that issue, so critical to the MPD mission under the grant.

Methuen is also justified to fault Chief Solomon's failure to take the simple and prudent step of documenting advice from Crest Associates (which, even if it did not go out of business, still might have denied giving bad advice if called into question). A law enforcement officer with Chief Solomon's training and experience must have known, or should have known, the importance of making that paper trail. Moreover, with Crest Associates out of the picture, common sense suggests that this important point should have been reconfirmed directly and in writing with the DOJ.

By doing neither, Chief Solomon failed to exercise the degree of oversight that Methuen could reasonably expect of him. Methuen had just cause to discipline him for that. There is no reason to modify the 3-day suspension, which reflects a small financial sacrifice relative to the amount of grant funds that Methuen repaid to DOJ.

D. The Grounds for Discharge

1. Abuse of Office

Conflict of Interest re: Sgt. Phillips.

Solomon is correct that state ethics law does not define "immediate family" to include an ex-brother in law. See G.L.c.268A,§1(e) That said, however, Civil Service case law imposes special obligations upon police officers, and especially a Police Chief, to comport themselves in an exemplary fashion when it come to complying with the law:

"[P]olice officers voluntarily undertake to adhere to a higher standard of conduct . . . [to] comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct."

Attorney General v. McHatton, 428 Mass. 790, 793-74 (1999) and cases cited. See also,

Falmouth v. Civil Service Commission, 61 Mass.App.Ct. 796, 801-802 (2004).

Chief Solomon clearly recognized this duty, when he took himself out of the decision-making process in the original investigation of his ex-wife's husband. To be sure, he did not know the matter was again about to rear its head when he confronted Sgt. Phillips on August 24, 2007 and put him on administrative leave pending a psychological fitness for duty examination. He did know, or should have known, that Sgt. Phillips could be contentious. Presumably, it was Chief Solomon's desire to be objective in his decision-making that led him to consult with Capt. Guy. However, by August 30, 2007, Chief Solomon likely knew all the facts that prompted his recusal and he would have been prudent to distance himself from the Sgt. Phillips investigation sooner than he did.

Chief Solomon's briefly delayed recusal, however, in this one unique and isolated situation, falls far short of proving the purported level of serious ethical misconduct upon which Methuen based its decision to discharge Chief Solomon. Indeed, as noted below, as to every other alleged ethical impropriety lodged against him, Chief Solomon fully acquitted himself and credibly showed himself to be a person who, in fact, took his ethical responsibilities seriously and, save for this one slip, hewed to them consistently.

Moreover, all decisions by Solomon with respect to Sgt. Phillips prior to September 24, 2007 were taken in good faith and were made on the sound advice of two other consummate professionals – Capt. Guy and psychologist Jeff Ziezel. His involvement was limited to directing the assembly of information to be sent to Jeff Ziezel and to issuing a conditional return to duty order, subject to further counseling that Mr. Ziezel recommended. The evidence presented to the Commission established that all of Chief Solomon's actions were taken on the advice of two professionals, and were reasonable

and objectively sensible measures intended to protect a victim of alleged harassment. I also find it significant that, within a few months after Chief Solomon was removed and Sgt. Phillips was relieved of discipline and excused from attending counseling, the problem returned; Disp. Lapidés was obliged to seek “topside” parking accommodations from Capt. Haggar to avoid further harassing contact with Sgt. Phillips.

Disclosure of Confidential Information To Personal Attorneys.

Methuen alleges that Chief Solomon violated privacy laws, Methuen ordinances and MPD rules and regulations by copying his private counsel on his September 24, 2007 letters recommending discipline of MPD officers. The basic facts supporting this charge are not in dispute. Copies of these letters were sent to attorneys whom Chief Solomon had retained to represent and advise him as to his civil service rights, his pending civil lawsuit, and his role in the DOJ grant investigation. Methuen erroneously assumed that Chief Solomon included copies of MPD personnel and investigative files; the substantial evidence established that the letters, and the letters alone, were what Chief Solomon sent to his attorneys. Nevertheless, there is sufficient sensitive personnel information in the letters themselves to make these disclosures problematic.

Chief Solomon credibly acknowledged his mistake and promised he would “recalibrate” his decision and not repeat the error in the future. Moreover, Chief Solomon’s actions were clearly a reaction to the unique political forces inside and outside the MPD that were then plotting his imminent removal. The fact that the only recipients of the information were legal counsel, with whom Chief Solomon had attorney-client relationships that required them to keep the information confidential, is a key distinction here. Thus, I view the disclosure as materially different from sharing information with a politician or member of the general public. Indeed, as to Attorney Minasian, set to appear

in Essex Superior Court on September 26, 2007 to argue for an injunction on Chief Solomon's behalf to stay the City Council's ordered pay cut, one might reasonably argue it was important to his representation of Chief Solomon to know about these letters. Finally, the evidence showed that Mayor Manzi gave Chief Solomon his blessing to share information with Attorney Kiley in the past.

Preferred Surveillance Of A Relative's Home.

Methuen's claim that Chief Solomon provided preferential security details and equipment to his sister Mary Ellen Kalil and her husband is without merit. Once illuminated as to the proper interpretation of the PRO-IV records, the activities allegedly focused on the Kalil residence were clearly not that at all. They reflected a variety of calls for assistance by residents in the area as well as routine area checks of locations all along Bearmeadow Street. As to the surveillance camera, the evidence established that the idea (which cost Methuen nothing and lasted only a month) came from others in the MPD. Chief Solomon had nothing to do with ordering it, installing it or removing it. In sum, the activity on Bearmeadow Street was nothing other than routine police work. Moreover, this unsubstantiated charge was based upon events that had occurred during Chief Solomon's tenure in the Pollard Administration, years before he was summarily placed on leave. The Commission has been clear that it frowns on an appointing authority's deliberate attempt to justify discipline by "piling on" marginal charges, such as this one. See Harrington v. Town of Winchendon, 20 MCSR 452 (2007).

Ethics/Procurement Violations re: Marine Unit.

Methuen charged Chief Solomon with two violations of ethics rules and procurement laws concerning the business relationship between the MPD and Merrimac Marine, which is owned by his sister and brother-in-law, Mary Ellen and Sam Kalil.

The first claim was that Chief Solomon “endorsed and authorized warrants for the payment of monies” to Merrimac Marine. The Commission took no evidence that remotely supports this claim. To the contrary, the evidence clearly established that, upon becoming Police Chief, Solomon was proactive in disclosing the family relationship with Merrimac Marine, and fully complied with the ethics laws by obtaining Mayor Pollard’s approval to continue the MPD’s relationship with Merrimac Marine. Further, although not ethically required, he took himself out of the loop by delegating all future business dealings with Merrimac Marine to Dep. Chief Alaimo, including the purchase of the second Marine Unit boat. Methuen alleges that such a delegation was unlawful, but has cited no authority for that proposition and the Commission’s research of the published decisions of the State Ethics Commission has disclosed none.

The second claim – that Chief Solomon violated both ethics and procurement law when the MPD purchased a second marine boat from Merrimac Marine in 2006 – is also unsubstantiated. As to the ethics violation, Methuen asserts that Chief Solomon was obliged to re-file his ethics disclosure and renew the approval to deal with Merrimac Marine when Mayor Manzi took office. The evidence produced no indication that anyone in Methuen believed that such a requirement existed before it was raised here. Methuen also alleges that, even if a second ethics disclosure generally was not required, in this particular case, the original 2004 disclosure was limited to “maintenance” of the Marine Unit boat and did not cover “purchasing” a second boat, which was a different “particular matter” under G.Lc.268A. Again, the Commission has been directed to no authority that supports the proposition that the state ethics laws are intended to be construed that way.

The Commission is not vested with authority to enforce or interpret state ethics laws. That responsibility lies with the State Ethics Commission. Except for obvious violations – embezzlement, bribery, undue influence in hiring an immediate family member, etc – the Commission is not inclined to enforce discipline based on alleged ethics violations in the absence of a prior adjudication or advisory opinion from the State Ethics Commission on point. The State Ethics Commission staff is empowered to render opinions to public employees and public employers regarding issues. The fact that Methuen chose to take no steps to obtain such an opinion in this case, especially on issues of first impression, further discredits its claim. See Erickson v. Town of Oxford, 22 MCSR 14 (2009)²⁷

Methuen also alleges that the purchase of the second Marine Unit boat violated state and municipal procurement law and Chief Solomon shoulders responsibility for these violations. As noted above, Chief Solomon did not personally participate in the procurement process involving the second Marine Unit boat, which was handled entirely by Dep. Chief Alaimo, Capt. McCarthy and Sgt. Havey. While complete and effective delegation of the matter may relieve Chief Solomon of conflict of interest problems, he could, in theory, still be held responsible for wrongdoing by a subordinate acting pursuant to that delegation. Here, however, I find no wrongdoing has been proved on the part of any of the MPD superior officers involved in the purchase, much less vicarious liability on Chief Solomon's part for any alleged procurement errors or omissions.

The crux of Methuen's procurement law claim is that the cost of a second marine boat (minus the miscellaneous accessories) was \$5,990, which put it over the \$5,000 threshold

²⁷At the Mayoral level hearing, Methuen claimed Chief Solomon should have consulted the City Solicitor regarding potential conflicts, which the hearing officer rejected. This point was not seriously argued to the Commission. Solomon's contention does appear correct; consultation with the City Solicitor on ethics issues was voluntary, not mandatory. (*Exh.APP62A[MMC Section 4A-6]*). See also G.L.c.268A,§22.

that required obtaining bids from three different vendors. There is no documentary evidence that more than one bid was obtained. These undisputed facts clearly present a prima facie violation of the state procurement law, G.L.c.30A, as well as Methuen's own procurement regulations. The difficulty with Methuen's argument, however, is that legal responsibility for procuring these three bids, as well as documenting them, rests with the City Auditor's Office, not the MPD. Although the Commission has no jurisdiction over the City Auditor's Office, I can, and do find that it offends basic merit principles to impose discipline on Chief Solomon for alleged vicarious liability of one of his subordinates by applying, in effect, a higher standard on the MPD than Methuen applied to the City Procurement Officer and City Auditor, the municipal officials assigned the primary legal responsibility to procure and document the missing bids, none of whom were disciplined and who called their own violations a "minor informality". In other words, there is no justification to discipline Chief Solomon for indirect failure to enforce a "minor informality" in the procurement law overlooked by all municipal officials with the express statutory and direct supervisory responsibility to oversee and enforce those laws.

Interference with Criminal Investigation re: Detective Flanagan.

This charge is another example of Methuen's questionably motivated "piling on" a stale and dubious claim, this one dating back to June 2002, which pre-dates Solomon's tenure as Police Chief, even as Acting Chief, which he did not assume until October 2002. The charge – that Chief Solomon ordered (then) Det. Walter "Gus" Flanagan to compromise a criminal investigation by turning over investigatory materials to former MPD Lt. Mike Alamo (then a private detective working for a defense attorney) – is based primarily on the testimony of Mr. Flanagan, now retired from the MPD, and Lt. Wnek,

both of whom demonstrated clear disdain for Chief Solomon dating back quite a while. The substantial credible evidence of all other witnesses, corroborated by official court records, disproves Mr. Flanagan's version of the events. This charge is without merit.

Detective Flanagan was ordered to turn over a certain videotape he obtained during an investigation that showed suspects passing counterfeit bills. The defendant for whom Mike Alaimo was a court-approved private investigator had asserted a claim of mistaken identity. Thus, the videotape was highly probative as potentially exculpatory evidence which, by law, the prosecution was obliged to provide to defense counsel. Apparently, Detective Flanagan closed his investigation and turned over all other evidence to the district attorney but, for some reason, said he kept the videotape in his desk. When initial requests for the tape did not get a response, a court order was obtained to compel its production. When that order was not complied with, the case against the defendant in question was dismissed. I draw no inference that Detective Flanagan would willfully flout a court order. The more likely inference to explain his conduct is that the videotape was exculpatory, or, perhaps, Detective Flanagan had misplaced the tape in the interim.

2. Abuse and Intimidation of Police Officers.

Methuen's charges against Chief Solomon for alleged abuse and intimidation of officers under his command have missed the mark. The Commission has oft remarked that public safety organizations are considered to be "para-military" in nature, in which chain of command principles and compliance with lawful orders from superior officers are essential components to performing the mission of the organization. See Rios v. Chelsea, 22 MCSR 705 (2009); Leary v. Town of South Hadley, 22 MCSR 366(2009); Murphy v. Salem Police Dep't, 20 MCSR 218 (2007); Murphy v. Chelmsford Police Dep't, 19 MCSR 322 (2006) In military parlance, a subordinate who leaves his or her

post unguarded without permission, or who seeks to undermine the lawful orders of a superior officer or rebels or tries to remove them by force from power, commits among the most serious (sometime capital) offenses found in the code of military justice. See generally UNIFORM CODE OF MILITARY JUSTICE, 10 U.S.C. §885 et. seq. There is also a well-established principle in public employment and labor relations law that defiance of a lawful order is grounds for discipline; the proper response to a disputed order is to “obey and grieve”. See Leary v. Town of South Hadley, 22 MCSR 366 (2009); Ouellette v. City of Cambridge, 19 MCSR 299 (2006). As more fully described below, the evidence suggests that what Methuen attempts to characterize as Chief Solomon’s abuse and intimidation of his officers is, for the most part, their resistance to the lawful orders and recommendations of a commander made in good faith for the purpose of maintaining order and discipline among those under his command. An officer who claims unjust discipline may bring that dispute to collective bargaining arbitration and/or appeal to this Commission. Rather than pursue those remedies, however, the officers in question here took it upon themselves to plead their case privately to Mayor Manzi and other elected officials, and to use the toxic atmosphere created by Chief Solomon’s political critics to undermine his authority, remove him from office and overturn his disciplinary recommendations against them.

This behavior has many trappings of a civilian counterpart to the serious military offenses described above. The merits of the charges of misconduct against these officers are not before the Commission and Chief Solomon’s actions in regard to them may fairly be contested. What is clear, however, is that no just cause can be found to discharge a commander for *initiating* lawful professional standards investigations into serious

misconduct observed by or reported to him (harassment, untruthfulness, false reports, abandonment of patrol, etc) or for recommending to an appointing authority that prompt and strict discipline be meted out for these violations. Indeed, such a result would invite travelling a slippery slope, in which political operatives and private agendas supplant merit principles and plenary hearings as the driving force in civil service disciplinary decisions and undermine the good order and discipline required for effective public safety operations. See generally Murphy v. Salem Police Dep't, 20 MCSR 218 (2007)

The Roll Call Room Incident.

In a nutshell, I am persuaded that Chief Solomon fully acquitted himself for his actions upon finding substantially all of the officers assigned to the August 24, 2007 Friday night patrol duty, including their patrol supervisor, gathered at MPD headquarters, with the television tuned to a football game. Some of these officers had been at the station for hours. Lt. Wnek, the OIC, himself had left the station for an hour or so between 7:00 pm. and 8:00 pm. and clearly was not in control of the situation during that time, when officers “just rolled up” to have dinner together and then stayed at the station to watch television. The missed 911 call, which Officer Bistany passed off to Officer Dzioba and which Officer Dzioba forgot about, and then reported he had “cleared” when he never even responded, fortunately, did not result in harm to any member of the public. Outcome alone, however, does not automatically excuse those officers’ poor judgment or cover-up of a neglect of duty. It will be impossible ever to know how many suspicious activities or motor vehicle infractions in Methuen went unnoticed due to the lack of patrol coverage on August 24, 2007. Whatever legitimate differences may be argued as to the appropriate level of discipline, Chief Solomon had reason to take prompt and strong

remedial measures upon finding these serious alleged infractions. He cannot, himself, be disciplined for taking these legitimate and fully justified procedural steps.

Lt. Wnek's point that officers need time to meet for "esprit d'corps" is not without merit, but it was Chief Solomon's call, not his, as to whether the dilution of the patrol force came at the expense of ensuring Methuen's proper patrol coverage that night during a critical period for public safety protection. After hearing all of the evidence on this subject, I conclude that Chief Solomon, and to some extent Officer Aiello – who pleaded earlier that week to add more officers to patrol – were the two witnesses who showed genuine concern for the interests and safety of the citizens of Methuen. The other officers and their supervisors (Lt. Wnek and Sgt. Phillips) who participated in the dubious episode, on the other hand, spent more time grousing to Mayor Manzi and other politically connected individuals about the intrusion on their right to take a "14" (meal break) than acknowledging their poor judgment in the premises.

I agree that Chief Solomon did not conduct himself at all times on the night in question with the composure and decorum expected of a superior officer, and especially a Chief of Police. His behavior immediately after the incident and during the ensuing days, however, exhibited a keen sense of duty and command of the situation. His momentary loss of composure, while unbecoming, must be viewed in the context of the entire episode. The evidence of finger-pointing, using profanity and admonishing all present to "tell the truth", fell short of credible proof of any behavior that did, or reasonably could be expected to, physically or emotionally intimidate a sworn patrol officer, none of whom gave testimony before the Commission. Indeed, based on credible testimony from several witnesses who described Mayor Manzi's own profanity-laced, innuendo style of

expression on far less provocation, for him to charge Chief Solomon with losing his cool upon discovering a potentially serious neglect of duty, seems akin to the pot calling the kettle black. (See Findings of Fact, ¶¶95,130,149, 157,165). Methuen has not proved that Chief Solomon was abusive or intimidating as charged or otherwise deserves discipline for his handling of the “roll call” room incident.

Discipline of Sergeant Phillips.

Kara Lapides credibly persuaded Capt. Lavigne (and Officers McMenamon and Aiello), as well as this Commissioner, that she was, indeed, “intimidated” and placed in “fear” of Sgt. Phillips, as a result of his conduct on August 24, 2007, and at other times. That information, alone, would have been sufficient to initiate an investigation that, depending on how the facts developed, very likely could have led to stiff discipline. Sgt. Phillips reputation as a “bully” added credence to Chief Solomon’s concern that action needed to be taken to protect one of his employees from unlawful harassment (which could become a source of liability to the MPD and Methuen). Putting Sgt. Phillips on administrative leave does seem somewhat precipitous, but I am not about to second-guess Chief Solomon’s sense of the urgency of the situation, especially when his judgment was confirmed by Capt. Guy and, eventually, by psychologist Jeff Zeizel, who recommended further counseling of Sgt. Phillip for anger management. While the Commission does not have the merits of the misconduct before it, and will not take sides on the underlying controversy, Methuen’s position that Chief Solomon should be disciplined for abusing a perpetrator of alleged harassment, rather than support his decision to take measures to protect the rights of the alleged victim, or event conduct a plenary hearing, is hard to square with basic merit principles.

3. Mismanagement of “Weed & Seed” Grant

The first opportunity for extensive scrutiny of these highly technical matters came in the hearing before the Commission, and I have carefully perused the evidence with that in mind. To be sure, Chief Solomon shares some degree of responsibility for his supervisory oversight that resulted in the OJP’s asserted claim to recoup a significant amount of W/S grant funds. Unlike his responsibility under the COPS/HSOP grant, however, where the Police Chief and Mayor assumed joint legal responsibility for ensuring compliance with all grant conditions, the W/S grant placed that obligation solely upon the Mayor of Methuen. Also, unlike the COPS/HSOP grant, Chief Solomon had no reason to know that the PRO-IV accounting system that he inherited, which had been established long-before he became Chief, was deficient with respect to the unique accounting rules applicable to federal grants. Chief Solomon took immediate action to remedy the deficiencies once they were called to his attention. Under these circumstances, analysis of Chief Solomon’s role in management of the W/S grant stands on a materially different footing than does his role with the COPS/HSOP grant.

To begin with, certain problems with the W/S grant were clearly beyond Chief Solomon’s control. For example, he cannot be faulted because W/S Program Assistant (Patricia Giarrusso) was paid by stipend and was led to believe that she did not need to record the hours she spent working on the grant in the way that sworn officers did. This structure was established at grant inception, under Chief McDougall, prior to Chief Solomon becoming Chief and assuming authority over the MPD payroll. The structure was routinely approved by multiple OJP program officers. The evidence failed to show that Chief Solomon ever knew, or reasonably could have known, until long after the work had been performed, that the OJP program officers acted improperly and, in fact,

knowingly approved Methuen's stipend for a Program Assistant, although it ran a "single site" program, for which no such Program Assistant was authorized.

Similarly, unlike the COPS/HSOP grant, in which the contract interpretation issue was clearly flagged for Chief Solomon in time to have taken action, the alleged deficiencies in MPD's procedures to account for overtime charged to the W/S grant, were not of Chief Solomon's making, but existed long before Chief Solomon's tenure and remained latent (even to Methuen's accounting professionals) until first flagged after most, if not all, of the work under the grant had been completed. Also, unlike the COPS/HSOP grant, Chief Solomon, as Weed & Seed Coordinator and later as Chief, was not the municipal official with legal or managerial responsibility to monitor compliance with grant conditions. For W/S, the Mayor of Methuen, alone, had that responsibility.

Chief Solomon, by his training and experience, is a law enforcement professional. Although his duties as Chief of Police include responsibility as the chief executive officer of the MPD, he is a manager, who – despite having studied accounting in college and, perhaps, having attended one or more rudimentary W&S grant training sessions – does not hold himself out to have, and does not have, any expertise in the technical fields of accounting, auditing or federal grant administration rules and regulations. These fields are the purview of others, including Methuen's City Auditor and Methuen's regular accounting firm, MH&Co. Both Chief Solomon and Mayor Manzi are equally entitled to rely on the expertise and advice of Methuen's accounting and auditing experts for guidance and instruction on the unique and complex requirements needed to meet federal grant auditing standards. (See generally, Findings of Fact, ¶¶49-54, 169-173)

In the case of the W/S grant, it was mainly these experts (as well as mismanagement by the OJP program office), not Chief Solomon, who let both Mayor Manzi and Chief Solomon down. Indeed, under applicable federal grant auditing regulations, the federal government looks to the grantee's auditor (MH&Co.) to make the reasonable and necessary inquiries to assure that the grantee (Methuen) has put into place the accounting records, internal controls, cash management and other techniques required to comply with all "laws, regulations, contracts and grants" and to opine that, in the auditor's professional opinion, the grantee has done so. As a general rule, and in the case of Methuen, this opinion must be based on an examination that encompasses at least 50% of the expenditures under the grant in any federal fiscal year being audited. MH&Co.'s single audit of Methuen's FY2005 W/S grant was no exception.

Substantially all W/S evidence presented to the Commission came from the same 2005 data that MH&Co had previously audited and opined was in full compliance with all "laws, regulation, contracts and grant" requirements and, in particular, that no "material weaknesses" were discovered after tests of internal controls. It defies rational explanation, and none was proffered, why the original FY2005 "audit" (of roughly half the expenditures) by an expert accountant failed to disclose any sign of the same "material" deficiencies that MH&Co claimed to have first found in its February 2008 "review", putting the conclusions of that review at odds with its prior audit opinion.

Moreover, some of MH&Co.'s February 2008 conclusions simply were not supported by the evidence presented to the Commission. In particular, the "due diligence" MH&Co made before assuming that the MPD compromised its internal control by allowing officers to share passwords did not include asking the only officer who was suspected of

sharing his password – on only one known occasion – to confirm or deny it. The credible evidence refuted the assumption. In addition, the fact that superior, supervisory-level officers often entered their own time was not prohibited by federal grant regulations. The credible evidence fails to prove that DOJ would consider use of this widespread and common practice grounds to reject the integrity of the entire MPD payroll system. But even if these questioned accounting flaws are the critical deficiencies that MH&Co makes them out to be, every single one of them was apparent, on the face of every payroll record, to any auditor who examined them, including MH&Co's site auditor in 2006 and the City Auditor's Office who received these documents every two weeks in the ordinary course of business throughout the life of the grant (2001-2006) in order to make payroll.

The point, here, is the same one described above concerning the discipline imposed on Chief Solomon for purportedly violating state and municipal procurement law. The Commission cannot sit in judgment upon the professional competence of Methuen's non-civil service City Auditor or its outside professional accounting firm, MH&Co. I can, and do, conclude that, under Civil Service Law, it is unfair, arbitrary and capricious to discipline Chief Solomon, for alleged violation of federal accounting rules of which he had no personal knowledge, by holding him vicariously liable, in effect, to a higher standard of financial acumen than applied to the accounting professionals with the training, expertise and express statutory and regulatory responsibility for protecting the public fisc from unlawful expenditure of grant funds prohibited by those complex and daunting accounting rules.

Although not necessary to this Decision, I take the occasion to note that I find no substantial evidence that any officers who received overtime pay under the W/S grant did

not fully perform the work required to earn it. The evidence actually infers that many officers gave Methuen numerous hours of time for which they were not paid. Based on the evidence presented to the Commission, any further innuendo to the contrary would be a disservice to those men and women of the MPD who continue to protect and serve the citizens of Methuen with distinction every day.

There is one legitimate criticism of Chief Solomon's performance with regard to the W/S grant. He did, appropriately and immediately, rectify the lack of documentation for superior officer overtime on a prospective basis, once it came to his attention in 2006. He was less effective, however, in marshalling the case for overturning the \$170,000 demand for reimbursement and can be held accountable for taking, at times, an overly-personal, defensive approach to the on-going investigation, presumably out of concern for his own self-preservation and potential personal liability. This critique can only go so far, as the "robust" political climate in Methuen was not primarily of his making, it was not conducive to fully-collaborative and trusting working relationship with other Methuen officials, some of whom were openly hostile to him, and who had marginalized him long before the details behind OJP's claim became fully known. Indeed, of all the officials who testified, Solomon stood out as having the best knowledge of W/S operations, as well as the "can do" zeal, to strenuously defend Methuen against OJP's claims. Had he remained on duty, and received support from the necessary accounting and legal resources, instead of having been ostracized on administrative leave, that may well have put Methuen and MH&Co. in a far better position to make the case to OJP than they were able to muster without him.

In sum, while some remedial discipline can be justified here to reinforce a standard of collaborative conduct to which all public employees should aspire, the substantial evidence did not establish that Chief Solomon was ever untruthful or willfully insubordinate or otherwise compromised the interests of the MPD or Methuen in favor of his own. Nothing about this particular critique of his performance supports a charge that he “fundamentally mismanaged” the grant itself, or that possibly justified his summary removal from office or discharge from public service under basic merit principles.

4. Loss of Confidence.

I give short shrift to this charge, which both parties called a “catch-all.” The independent evidence of the charge consisted mainly of Mayor Manzi’s contention that he lost confidence in Chief Solomon through an “evolving process”, cumulating in the Methuen Square incident (as to which Mayor Manzi’s criticism of Chief Solomon was mistaken) and certain alleged falsehoods and “blackmail” attempts (some left unspecified and those that were addressed at all were not properly proved). He also claimed to have come to learn that, under Chief Solomon, the MPD had a poor reputation with other law enforcement agencies. Finally, there was testimony from three witnesses (Lt. Wnek, Sgt. Phillips and former Det. Flanagan), who disparaged Chief Solomon’s ability.

No outside law enforcement officials testified and no specific evidence of a problem with other law enforcement agencies was proffered (save, perhaps, the 2002 incident mentioned previously, in which Det. Flanagan actions may be questioned). Arrayed against this slim evidence is the resounding formal endorsement of the MPD superior officers’ union (sergeants, lieutenants and captains), as well as testimony of numerous other current and former MPD officers, of all ranks, the gist of which was that most members just “want to do their jobs” and it was, rather, the intrusion of politicians into

the affairs of the MPD that “split” the department. I conclude that it was not Chief Solomon’s performance that led to a “loss of confidence”, but, rather, his failure to bend to the prevailing political winds of those who were already pre-disposed against him.

E. Evidence of Improper And Undue Influence

I also conclude that two extraneous factors unfairly affected Mayor Manzi’s decision to terminate Chief Solomon without just cause. These factors stand as independent reasons that his discharge was unlawful: (1) the 2007 municipal election cycle and the extraordinary public focus on him; and (2) the inappropriate access and influence of “off-the-record” private conversations between Mayor Manzi and his detractors.

The evidence before the Commission strongly infers that, but for the twists and turns of the 2007 Methuen municipal election cycle, Mayor Manzi would not have taken the decision to put Chief Solomon on administrative leave when he did and, having done so, would not have been forced to discharge Chief Solomon thereafter.

Mayor Manzi had his re-election strategy before him throughout most of 2007. That agenda was clearly in his mind when he and Chief Solomon discussed the COPS/HSOP grant issues early that year. Three significant points come from the COPS/HSOP grant matter: (1) Mayor Manzi had no qualms asking Chief Solomon to take disciplinary action against subordinate MPD employees in order to save his (Solomon’s) own skin, which Chief Solomon declined to do; (2) Mayor Manzi was not completely comfortable with taking disciplinary action against Chief Solomon at the time but, having to choose between “taking the heat” himself and shifting blame, the Mayor chose the politically expedient solution; and (3) Mayor Manzi honestly believed that by appealing the COPS/HSOP discipline, Chief Solomon acted against his own better interests by letting

the MPD issues fester rather than die quietly, not appreciating that Mayor Manzi would stand by Chief Solomon if, and only if, Chief Solomon stood by him.

On the merits of the COPS/HSOP issue, as noted, Mayor Manzi was justified in taking the limited, restrained action that he chose. He was not justified, however, to hold it against Chief Solomon that he chose to exercise his right to appeal his discipline to the Commission. That state of mind, confirmed in the evidence, was a serious interference with Chief Solomon's civil service rights. I find that attitude lingered for months and was reinforced when Chief Solomon took legal action to enjoin the City Council's pay cut. This retaliatory animus assuredly contributed to the decisions taken against Chief Solomon (in September 2007 and January and May 2008) culminating in his discharge.

Also influential was the criticism directed against Chief Solomon by politicians (other than Mayor Manzi), most notably Councilor John Cronin. Given his son's on-going personal lawsuit against Chief Solomon and others in the MPD, Councilor Cronin was less than impartial when it came to these issues. His participation in City Council debate directed against Chief Solomon, not to mention his sponsorship of multiple adverse resolutions, is certainly not the cleanest of positions, ethically.

I could dismiss Councilor Cronin's vendetta as he was not a decision-maker in the discipline or dismissal of Chief Solomon, but for the fact that his agenda took on a life of its own. Councilor Cronin took the intense media coverage of MPD issues and parlayed it into a winning political strategy. When he topped the ticket in the preliminary City Council election on September 18, 2007, he claimed it was because he had made his attacks on Chief Solomon the main issue in his campaign.

The evidence strongly points to the timeframe of the preliminary election as a likely turning point in Mayor Manzi's attitude toward Chief Solomon. Previously, Mayor Manzi had been a vocal supporter of Chief Solomon and defended him with respect to the W/S grant, the "roll call" room incident, and even siding with him over City Solicitor McQuillian in the turf battle between them. The preliminary election results, however, could not have escaped Mayor Manzi's notice. Then, upon learning Chief Solomon and Michael Neve has supplied information to his opponent, and having notice of Chief Solomon's lawsuit and September 24, 2007 letters, both plainly rejecting the notion that everything could lie until after the election, the choice became clear. Mayor Manzi drew his "line in the sand", committing to a strategy he believed best assured his re-election.

I have no illusion that this decision came easily for Mayor Manzi. To be sure, he preferred, and tried to deliver the message to Chief Solomon on more than one occasion, that if Solomon would just "lay low", Mayor Manzi would downplay the problems with the MPD until after the election. Given the dearth of relevant new information, however, I have no doubt that Mayor Manzi's abrupt decision to shift from supporter to adversary was primarily, if not exclusively, a political judgment call made without regard to any objective reassessment of Chief Solomon's ability to continue to serve as Police Chief.

Once his choice was made, however, there was no turning back, especially, after the November election results which Mayor Manzi called a "mandate" to follow through with his campaign promise to remove Chief Solomon from office and bring in "new leadership." Once Mayor Manzi took that pledge, preparation of charges and holding a hearing were largely a hollow formality. Moreover, Mayor Manzi further tainted the process by allowing Chief Solomon's critics (Lt. Wnek, Gus Flanagan, Sgt. Phillips, and

perhaps others) to lobby him behind Chief Solomon's back. This is evidenced, for example, by Mayor Manzi's decision to overrule Attorney Marks and substitute his own credibility assessment about Gus Flanagan and Lt. Wnek, which Mayor Manzi used to reinforce his reasons for dismissing Chief Solomon in May 2008.

In sum, I conclude that Mayor Manzi's personal ambition and politically biased state-of-mind were a significant and proximate cause that improperly contributed to his decision to put Chief Solomon on administrative leave and, later, to discharge him.

V. Relief to Be Granted

The Appeal of the Appellant, Joseph Solomon, in CSC Case No. D-07-159 is hereby *dismissed*. The Appeal of the Appellant, Joseph Solomon, in CSC Case No. D1-08-114, is *allowed, in part*, and the discipline shall be modified for the reasons and on the basis further explained below.

Of the numerous charges Methuen asserted against Chief Solomon as grounds for discharge, almost all of them were proved to be wholly without merit. The only three charges with partial merit include (1) failing to transfer Sgt. Phillips' disciplinary review to someone else more promptly; (2) deciding, as protection against the gathering storm of criticism against him, to copy private attorneys on a letter to Mayor Manzi that contained MPD personnel information; and (3) succumbing to forces arrayed against him that distracted him (and Methuen) from the collaborative effort needed to effectively address the W/S investigation. None of these mistakes were willful misconduct or entirely of his own making, and all of them arose largely because of the toxic political atmosphere in which he was placed by those within and outside the MPD who were actively seeking to remove him.

The Commission has a long history of deciding discipline appeals involving public safety personnel, from patrol officers to police chiefs. No other case comes to mind, and the parties have called the Commission's attention to none, that compares to the present one. The discharge of Chief Solomon, given the facts and circumstances that have been proved in this case, and the political factors that were in play, would be unprecedented and wholly inconsistent with basic merit principles of civil service law.

This appeal does not implicate the level of flagrant contumacy or other serious dereliction in the performance of a police officer's official duties that have been found to render him or her unqualifiedly unfit to hold that office, such that modification of the discipline to a penalty short of a discharge has been held to be unjustified. See, e.g., Mayor of Newton v. Civil Service Comm'n, 333 Mass. 340 (1955) (termination of police officer convicted for OUI while off-duty); Triplett v. Town of Oxford, 54 Mass.App.Ct. 1115, rev.den., 437 Mass. 1105 (2002) (unpublished) (police chief engaged in ethical violations involving multiple conflicts of interest for which the State Ethics Commission fined him \$2000); Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594 (1996) (police officer with a long history of prior discipline discharged for being intoxicated, losing his firearm, verbally abusing an other officer, and insubordination); Police Comm'r v. Civil Service Comm'n, 22 Mass.App.Ct. 364, rev.den., 398 Mass. 1103 (1986) (consuming alcohol and engaging in sexual intercourse with a person taken into protective custody). Cf. Faria v. Third Bristol Div. of the Dist. Ct., 14 Mass.App.Ct. 985, rev.den., 387 Mass. 1103 (1982) (remanded to Commission for more specific finding on the facts and circumstances on which the Commission relied to modify the penalty imposed on officer who had "requested [a second officer] to commit perjury on

his behalf”, from discharge to 18-month suspension); Harrington v. Town of Winchendon, 20 MCSR 452 (2007) (police chief’s discharge modified by Commission to demotion to patrol officer for conduct including untruthfulness and insubordinate conduct toward Selectmen).

The Commission is well aware that, in the position of Police Chief, Joseph Solomon carries a special responsibility to set an example of the qualities that the public and the officers under his command rightly may expect from their police chief. For the most part, Chief Solomon did largely carry out his core duties as Police Chief in an exemplary fashion, for which he has been given recognition by his peers, both locally and nationally. Based on my assessment of him during the hearings, however, he knows that, in some areas, he can, and must do better. While I found that he, alone, is not responsible for what went awry in Methuen, his future as commander of its municipal police force depends on how seriously he recognizes the need to work on the weaknesses in some of his relational skills, which can lead to the kind of problems that produced the backlash against him in this case. He also must know that his effectiveness requires not just using the operational and organizational skills of a commander that he clearly possesses, but also the ability to recognize and adapt to the limitations that he (as does anyone) also brings to the table.

Under the G.L.c.31, §43, the Commission has been delegated with “considerable discretion”, albeit “not without bounds”, to modify a penalty imposed by the appointing authority, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. E.g., Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594,600 (1996) and cases cited.

“It is well to remember that the power to modify is at its core the authority to review and, when appropriate, to temper, balance, and amend. The power to

modify penalties permits the furtherance of uniformity and equitable treatment of similarly situated individuals. *It must be used to further, and not to frustrate, the purpose of civil service legislation, i.e., 'to protect efficient public employees from partisan political control' . . . and 'the removal of those who have proved to be incompetent or unworthy to continue in the public service'.*"

Id., 39 Mass.App.Ct. at 600. (*emphasis added*). Compare Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, (2006) (minor, immaterial differences in factual findings by Commission and appointing authority did not justify a modification of 180 day-suspension to 60 days); Town of Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796 (2004) (same; modification of 10-day suspension to 5 days unsupported by material difference in facts or finding of political influence); Commissioner of MDC v. Civil Service Comm'n, 13 Mass.App.Ct. 20 (1982) (same; discharge improperly modified to 20-month suspension) *with* School Committee v. Civil Service Comm'n, 43 Mass.App.Ct. 486, *rev.den.*, 426 Mass. 1104 (1997) (modification of discharge to one-year suspension upheld); Dedham v. Civil Service Comm'n 21 Mass.App.Ct. 904 (1985) (modification of discharge to 18-months suspension upheld); Trustees of the State Library v. Civil Service Comm'n, 3 Mass.App.Ct. 724 (1975) (modification of discharge to 4-month suspension upheld)

With the foregoing in mind, I conclude that the Commission is justified to exercise its authority to set aside the discharge of Chief Solomon and to modify the discipline to an appropriate remedial sanction, which is determined to be a suspension for a period of 12 months, measured from the date of his discharge in May 2008. Save for this period of suspension, Chief Solomon shall be fully reinstated to his position as Methuen's full-time tenured Police Chief without loss of any other pay or benefits.

This modification takes into account Methuen's own prior selection of a 3-day suspension imposed by Mayor Manzi for poor judgment in administration of the

COPS/HSOP grant, as well as all of the facts as found from the evidence presented to the Commission, including without, limitation, the findings about the narrow scope of Chief Solomon's personal responsibility and other relevant facts concerning the W/S grant; the findings about Chief Solomon's only other two isolated instances of poor judgment, involving what were principally procedural errors in his handling of discipline arising out of the August 24, 2007 incidents. It has considered Methuen's improper overreaching, by "piling on" a number of dubious and stale charges without merit which Solomon was obliged to defend, and which prolonged the appeal, as well as the overarching undue and improper influence that political and personal motives played in every facet of this case, especially in Chief Solomon's unjustified summary removal from office and subsequent decision to discharge him. The modification is also specifically designed to represent a meaningful, remedial level of discipline that reinforces, to Solomon and to all other similarly situated civil service personnel in high office, the importance of maintaining an exemplary standard of public service commensurate with that high station, as well as to give assurance to Methuen and its citizens that Solomon will strive with all his being to deliver on this obligation upon his return to duty. This discipline is, as the civil service law intends, remedial. Just as Methuen must take care to comply with its obligations under civil service law in the future, Solomon must see his reinstatement as admonition to "correct [his] inadequate performance", on pain of further discipline in the future.

Finally, in light of the fact that two years has elapsed since Methuen discharged Chief Solomon, and in view of the unusual complexity of these appeals and the potential implementation issues that may arise, the effective date of the Decision in Appeal No. D1-08-114 shall be October 1, 2010, giving Methuen and Solomon one last opportunity

to reach a settlement agreement. Should the parties reach a mutual settlement agreement before October 1, 2010, they shall notify the Commission and Appeal No. D1-08-114 shall be dismissed. In the absence of such a settlement agreement, the decision in Appeal No. D1-08-114 shall become effective on October 1, 2010.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

To Dismiss Appeal No.D-07-159: By vote of the Civil Service Commission (Bowman, Chairman [YES]; Henderson [YES], Marquis [YES], McDowell [YES] & Stein [YES], Commissioners) on July 29, 2010.

To Allow in Part Appeal No.D1-08-114 and Modify the Discipline to a One-Year Suspension: By vote of the Civil Service Commission (Bowman, Chairman [YES]; Henderson [NO*], Marquis [YES], McDowell [YES] & Stein [YES], Commissioners) on July 29, 2010.

* Commissioner Henderson concurs in the Decision except that he concluded that the Modified Discipline should be a 30-day suspension.

A True Record. Attest:

/s/ Christopher C. Bowman

Commissioner

Either party may file a motion for reconsideration of this Decision within ten days of its receipt. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice to:

Andrew J. Gambaccini, Esq. (for Appellant)
John K. Vigliotti, Esq. (for Appellant)
David F. Grunebaum, Esq. (for Appointing Authority)
Peter J. McQuillan, Esq. (for Appointing Authority)