

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 727-2293

MICHAEL MILANOSKI and
MEG ROSS,
Appellants,

v.

D1-09-416 (MILANOSKI)
D1-09-417 (ROSS)

ATTLEBORO REDEVELOPMENT
AUTHORITY,
Respondent.

Appellants' Attorney:

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Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 43 and G.L. c. 121B, § 52, the Appellants, Michael Milanoski and Meg Ross (hereinafter "Appellants") are appealing the October 13, 2009 decision of the Attleboro Redevelopment Authority (hereinafter "ARA") to eliminate their positions as Executive Director and Chief Financial Officer of the ARA, respectively, effective November 13, 2009.

The Appellants filed a timely appeal with the Civil Service Commission (hereinafter "Commission") on November 24, 2009. A full hearing was conducted over six days on

June 28, 2010 in Boston and then on July 8th, August 4th, August 6th, September 8th and September 24th, 2010 in Attleboro.¹ Both parties submitted post-hearing briefs to the Commission on December 28, 2010.

FINDINGS OF FACT:

The following exhibits were entered into evidence: Appellants' Exhibits 1-88 (Exhibit A1 to A88); and Respondents' (ARA) Exhibits 1-104 (Exhibit R1 to R104). Based upon these exhibits and the testimony of the following witnesses:

For the ARA:

- Judith H. Robbins, Chair, ARA;
- Kevin J. Dumas, Mayor, City of Attleboro;
- Barry LaCasse, Director of Budget and Administration, City of Attleboro;

For the Appellants:

- Michael Milanoski, Appellant;
- Max Volterra, former Board Member of the ARA.

I make the following findings of fact:

The City and the ARA

1. The City of Attleboro ("the City") operates under the provisions of a Home Rule Charter with a Mayor-Municipal Council form of government. Executive functions are performed by an elected mayor, who appoints members of his administration, subject to confirmation by the Municipal Council. (Testimony of Dumas) Legislative functions are performed by an elected Municipal Council, consisting of eleven members – six elected from Wards, and five elected at-large. The Mayor and each of

¹ The ability to complete this fact-rich hearing in only six (6) days was largely attributable to the cooperation, efficiency and professionalism shown by counsel for both parties in this matter.

the Municipal Councilors stand for election every two years. (Testimony of Dumas, LaCasse and Volterra)

2. On September 7, 1965, the ARA, a Massachusetts Redevelopment Authority, was established by vote of the City's Municipal Council and approved by the City's Mayor on September 13, 1965, pursuant to the provisions of Chapter 121B of the General Laws in order to oversee and implement major redevelopment projects within the City. (Exhibit A45)
3. The ARA is governed by a five (5) member Board of Directors (hereinafter sometimes referred to as "the Board"), four (4) of whom are appointed directly by the City's Mayor and one (1) of whom is appointed by the Governor. (G.L. c. 121B § 5) All members of the Board serve staggered five (5) year terms regardless of their appointment date. (G.L. c. 121B § 5.) Aside from the Mayor's powers of appointment and nomination, the ARA is designed to be an independent body politic that has broad powers and is supposed to remain separate and apart from the City. The ARA's statutory ability includes the power to sue and be sued, to take by eminent domain any property that is necessary to carry out its statutory purposes and to receive loans, grants and other contributions from the federal government or any other source. (Exhibit A45)
4. Under Chapter 121B, redevelopment authorities are permitted to request assistance from the municipality where it operates. (Testimony of Robbins, Dumas, Milanoski) "So far as practicable" redevelopment authorities "shall make use of the services of the agencies, officers and employees of the city or town in which such

authority is organized” and the city or town “shall, if requested, make available such services.” G.L. c. 121B, § 7. (Exhibit R6)

5. Central to this appeal is whether the City, through its Mayor, improperly orchestrated the removal of the Appellants from their positions at the ARA. While the ARA acknowledges that the City’s Mayor publicly called for the removal of Mr. Milanoski as Executive Director, they argue that its decision to abolish the Appellants’ positions was based solely on its good faith determination that there was a lack of funds at the ARA. The Appellants argue that the City’s Mayor harbored a personal animus toward Mr. Milanoski and that his ouster, and that of Ms. Ross, was the singular focus of the Mayor long before any determination that there was a lack of funds. Even if there was a lack of funds, the Appellants argue that this was largely attributable to the Mayor’s actions to starve the ARA of funding until Mr. Milanoski was removed from his position as Executive Director.

Witnesses

6. Meg Ross was hired as the ARA’s Chief Financial Officer on October 1, 2005. She continued to work in that capacity until her position was officially eliminated by vote of the ARA’s Board of Directors on October 13, 2009 which was effective as of November 13, 2009. (Testimony of Milanoski) Although she attended all six days of hearings, she did not testify and effectively deferred to Milanoski’s testimony. (Exhibit A88)
7. Ross graduated from Bridgewater State College in 1994 with a Bachelor’s degree in Management Science and a concentration in Accounting. From 1995 – 2005, Ross worked for the City of Worcester as the City’s Finance Manager for Grants

Administration and she also worked for the City of Worcester Redevelopment Authority as its Chief Accountant. (Exhibit A88)

8. Milanoski was hired in 2002 by Judith Robbins who was, at that time, the City's Mayor, to serve in the dual role as the City's Director of Economic Development and the Executive Director of the ARA. He eventually began working solely as the Executive Director of the ARA. (Testimony of Milanoski)
9. Milanoski received his Bachelor's Degree in Architectural and Environmental Planning and Design from the University of Massachusetts at Amherst in 1992 and his Master's Degree in Regional Planning – Economic Development and Community Planning, also from the University of Massachusetts at Amherst in 1994. (Exhibit A87) Milanoski went on to work for fifteen (15) years in the public and private sector in the field of economic development and planning. (Testimony of Milanoski and Exhibit A87) Milanoski was also elected to serve as the President of the Massachusetts Economic Development Council in 2008. (Testimony of Milanoski and Exhibit A87)
10. Milanoski was a quiet but active participant throughout the six days of hearing. He has a serious demeanor and was usually the first to appear at the hearing location in Attleboro, seated at the hearing table reviewing his notes and ensuring that documents requested on a prior day of hearing were available for all parties. He took copious notes and appeared to have a methodical approach to accomplishing tasks. Throughout the proceedings, he demonstrated a genuinely cordial and respectful relationship with Ms. Robbins, the primary witness for the ARA, and the person who ultimately voted to abolish his position. (Testimony, demeanor of Milanoski)

11. During his testimony, Milanoski demonstrated a rich knowledge of the subject matter, including the various projects that were under his control as Executive Director of the ARA. Setting aside the implication by the ARA that some of his actions ultimately contributed to the purported lack of funds at the agency, there is no doubt that Milanoski possessed the most detailed knowledge of the intricacies involved with the various projects that were under his control. He appeared to be a person comfortable in his own skin who takes pride in his professional and personal accomplishments. Notwithstanding his strong command of operational details, however, Milanoski's testimony regarding certain financial issues related to the ARA was not as strong. (Testimony, demeanor of Milanoski)
12. Based on my observations of Milanoski, it appears that his personal and professional relationships (including the former ARA Board members who supported him) have been built more through his long-term working relationships, not through his somewhat sober personality. (Testimony, demeanor of Milanoski)
13. I found Milanoski to be a credible witness, offering responsive, plausible answers during direct testimony and cross examination as well as to questions posed by this Commissioner. Generally, his answers struck me as objective and informative, absent of any attempt to state the facts in a manner that would portray him or Ms. Ross in the most favorable light. I considered him a good witness. (Testimony, demeanor of Milanoski)
14. Former Mayor Robbins has a long history in Attleboro politics, having served on the Municipal Council for sixteen (16) years and then as the City's Mayor for twelve (12) years from 1992 – 2004 before being defeated by current Mayor Michael Dumas.

She also previously served on the Attleboro Planning Board and Charter Commission. Ms. Robbins has resided in Attleboro for 48 years. Ms. Robbins holds a Bachelor's Degree, Phi Beta Kappa, from Stanford University. She also holds a Masters Degree in Public Administration (MPA) from Suffolk University. In addition to her elective service, Ms. Robbins has an extensive record of public service, including eight years on the MBTA Board of Directors; service as a member of the Joint Labor Management Committee; 1½ years of service as Interim Town Administrator for the Town of North Attleborough; consultant to the Massachusetts Municipal Association; and as staff to the Massachusetts Legislature's Special Joint Committee on Equal Employment Opportunity. (Testimony of Robbins).

15. As discussed in more detail later in this decision, after a nearly five (5) year hiatus from City politics, Mayor Dumas approached Robbins to gauge whether she would be interested in serving on the ARA's Board of Directors in January, 2009 after she had spoken in favor of a plan by Mayor Dumas to eliminate Milanoski's autonomous Executive Director position by bringing the position back under the City's control during a public meeting. She was eventually appointed to the Board by Governor Patrick and served as Chair at the time Milanoski and Ross' positions were abolished.

(Testimony of Dumas and Robbins)

16. Ms. Robbins' testimony stretched over a 2-day period. She faced tough questions during cross examination - and from this Commissioner. She was present for all six days of hearing, actively participating in the proceedings by assisting counsel for the ARA.

17. Ms. Robbins' deep connection and affection for Attleboro was palpable. She has dedicated most of her adult life to serving the people of Attleboro and it appears she served with great distinction. She is deservedly proud of the mark she left on the City, noting with a smile at one point that her name was affixed to a plaque at the entrance of the water department facility where the majority of these hearings took place.

(Testimony, demeanor of Robbins)

18. With a few exceptions, Robbins offered a relatively unvarnished recollection of events. She took her sworn testimony seriously and answered truthfully, even when the answers could potentially portray her in a less than favorable light. (Testimony, demeanor of Robbins)

19. There are portions of Robbins' testimony, however, that I gave less weight to than others. While the reasons for this are stated in more detail in the findings and conclusions that follow, I generally gave less weight to certain portions of her testimony related to the financial condition of the ARA – for two reasons. First, although I credit Robbins' testimony that her motivation was rooted in what she believed was good public policy (returning Milanoski's position back to a duel role serving both the City and the ARA), I find that she was predisposed to abolishing Milanoski's position upon joining the ARA Board of Directors. Her financial review of the ARA was at least partly tainted by this predisposition. Thus, it is difficult to accept some of her conclusions regarding the financial solvency of the ARA as objective or even-handed. Second, although Robbins has a long history in municipal government, I was not sufficiently persuaded that she possessed the necessary

qualifications to assess the financial condition of the ARA. (Testimony, demeanor of Robbins)

20. Max Volterra testified on behalf of the Appellant. Mr. Volterra also has a long and distinguished professional and political career with public service dating back to the 1960's. He graduated from Brown University and attended George Washington Law School. He served on the Attleboro Municipal Council from 1965 to 1967. He then served as Attleboro's City Solicitor from 1967 – 1970 and was subsequently elected as one of Attleboro's State Representatives for four (4) terms from 1970 – 1978. He was also Chief Legal Counsel to Governor Michael Dukakis in 1978. (Testimony of Volterra and Exhibit A89.)
21. Volterra has also maintained his own law practice in the City of Attleboro since 1982. He served continuously on the ARA's Board of Directors for eleven years until his resignation on October 20, 2009 after the Board's October 13, 2009 vote to eliminate all four (4) full-time permanent staff positions including those of Milanoski and Ross. (Exhibit A63 and Volterra Testimony.) During his tenure on the ARA's Board of Directors, Volterra served at various times as the Board's Chairperson and its Treasurer. (Testimony of Volterra and Exhibit A89.)
22. Mr. Volterra was a good witness and I credit the entirety of his testimony, some of which is pivotal to those findings and conclusions related to the actions of Mayor Dumas. Volterra appeared to be a somewhat reluctant witness but he didn't pull any punches. He struck me as a genuinely decent, fair-minded person who was taken aback by what he saw as troubling actions by Mayor Dumas, whose candidacy he supported financially and otherwise, that were solely designed to remove Milanoski

as Executive Director of the ARA. Volterra ultimately resigned from the ARA Board based on what he perceived as an unwarranted attack on Milanoski. (Testimony, demeanor of Volterra)

23. Barry LaCasse has served as the Director of Budget and Administration for the City since 2008. In this role, his primary responsibilities include assisting with the preparation of the budgets for the City and two enterprise accounts. Prior to serving in this position, LaCasse served for eight years on the Attleboro Municipal Council, five of those years serving as Council President. For an additional nine years prior to that, LaCasse held appointed positions in City government, including as a member of the Planning Board and as a member of the Municipal Building Commission. LaCasse is an attorney licensed to practice in the Commonwealth. (Testimony of LaCasse; Exhibit R100).

24. Although LaCasse also took his sworn testimony before the Commission seriously, I do not credit two key portions of his testimony. As discussed in findings below, LaCasse denies make any quid-pro-quo-like statement to Volterra that tied further City funding for the ARA to Milanoski's removal. On balance, I found Volterra's recollection of that conversation more believable and I credit the testimony of Volterra. I also do not credit LaCasse's testimony related to statements he made regarding "indirect costs" at an ARA meeting, discussed later in this decision. (Testimony, demeanor of LaCasse)

25. Kevin Dumas began serving as the City's Mayor in January 2004 after defeating then-incumbent Mayor Judith Robbins. (Testimony of Dumas and Robbins)

26. Mayor Dumas earned a Bachelor's degree in Political Science and Business. During his studies at college, he interned at the State House for then Senator Matt Morello (Grafton). After college, he worked in banking at Fleet National Bank and State Street Bank where he worked in the financial sector pricing stocks, bonds, and mutual funds. According to his online biography, "while at State Street Bank, he was responsible for their largest client, General Motors, with over 10 billion in retirement assets." In November of 2003, Mayor Dumas was the youngest mayor elected in City history.

27. Mayor Dumas testified over two days of hearing. Generally, I found him to be an energetic, focused and tenacious individual with a high degree of political acumen – all traits that should serve someone in his position well. I was troubled, however, by portions of Mayor Dumas' testimony that appeared more self-serving than candid. The credible testimony of others and documentary evidence paints a convincing picture of a Mayor who used every tool available to him to oust Milanoski from the ARA while simultaneously ensuring that he had plausible deniability in the event that his actions were ever subject to review, as they were during this hearing. (Testimony, demeanor of Dumas)

General Summary of ARA Projects

28. In 2009, the ARA was involved in two major development initiatives in Attleboro: the Industrial Business Park ("IBP") and the Intermodal Transportation Center ("ITC").
29. The IBP is made up of a tract of vacant land in Attleboro, some originally owned by the City and some owned by private parties and taken by eminent domain. The land

was developed pursuant to an Urban Renewal Plan finalized on November 4, 2002 (Exhibit R22) and approved by the Municipal Council on or about November 18, 2002 (Exhibit R23) for the purpose of developing a new industrial/business part on a parcel of approximately 190 acres near the I-95 interchange in South Attleboro. (Exhibit R22 at p. 1 and Testimony of Robbins, Dumas, LaCasse, Milanoski)

30. At the time the IBP was approved, the ARA was directed by then-Mayor Robbins to develop a comprehensive financial plan to raise \$14 million for the cost of the IBP and “to finance the complete design and development of this project that does not require City bonding or borrowing.” (Exhibit R22 at p. 30) The ARA noted that “[i]n an effort to meet that directive, the Authority has devised a funding program that could provide the project funding entirely from grants, land sales and loans leveraged by the City-owned 85 acres.” (Exhibit R22 and Testimony of Robbins, Dumas, LaCasse)
31. Due to financial difficulties more fully set forth below, (including outstanding obligations of approximately \$3.5 million), the day-to-day operation of the IBP was transferred from the ARA to the City, pursuant to a Memorandum of Agreement (MOA) between the two parties dated July 16, 2009, whereby the City would meet and negotiate with creditors, supervise construction of internal roadways, and market lots within the IBP for sale. The Memorandum of Agreement provided that the City would not be responsible for the liabilities of the ARA. (Exhibit R28 at I(D)and Testimony of Robbins, Dumas, Milanoski, LaCasse). Such transfer of operations is authorized by the provisions of G.L. c. 121B, § 50. (Exhibit R28) LaCasse testified

that he has been personally involved in all of these activities for the benefit of the IBP under the terms of the MOA. (Testimony of LaCasse).

32. The ITC project represents the proposed development of a parcel of land in downtown Attleboro adjacent to railroad tracks and an existing commuter rail station, intended to accomplish a number of goals, including: the development of an intermodal transportation center for buses, trains and parking; realignment of Wall Street; the demolition of certain structures; the remediation of site contamination; the possible creation of parcels for private development; and the relocation of the City's DPW Yard. (Testimony of Robbins, Dumas; Exhibit R29 "Downtown Urban Renewal Plan (URP)).
33. The financial plan for the Downtown URP consisted of a wide range of grant sources from both federal and state sources, as well as a local contribution by means of an Urban Renewal Bond ("URB"). (Exhibit R29 at pp. 44-46) The project was divided into a series of "phase". At the time of this hearing, the project had not proceeded beyond Phase 1A in the so-called "Riverfront District." (Exhibit R29) There was significant testimony at the hearing regarding the funding for Phase 1A and the funding Pro Forma for this phase, which is referred to as "Appendix C." (Testimony of Robbins, Dumas, Milanoski, LaCasse and Exhibit A5, last page)
34. During Milanoski's tenure, he was also involved in a third project somewhat less relevant to the instant appeal, the "Swank-Cookson" project. The Swank-Cookson project consisted of the purchase and redevelopment of a six (6) acre Brownfield site with an old three (3) story 200,000 square foot mill building in downtown Attleboro as part of the overall and much larger Downtown Urban Renewal Plan. Milanoski, on

behalf of the ARA, negotiated a public/private partnership with two (2) publicly traded companies, including an international conglomerate, in order to complete the work on the project which yielded several hundred new manufacturing jobs in downtown Attleboro and over \$10,000,000 of investment into the abandoned facility. The ARA realized a profit of approximately \$1 million from this project which was then invested directly into the IBP. (Testimony of Milanoski)

35. It is difficult to bifurcate the issues regarding the financial solvency of the ARA (and whether there was a legitimate lack of funds to justify the abolishment of the Appellants' positions) with the allegations of impermissible political and personal motivations. However, for simplicity, and to provide a thorough understanding of the issues addressed at the Commission hearing, the remainder of these findings are generally divided into two categories: 1) a chronology of events leading up to the abolishment of the Appellants' positions (with only brief references, as necessary, to the intertwined financial issues occurring at the time); and 2) the parties disputed take on the financial solvency of the ARA, which is largely focused on a review conducted by Ms. Robbins in or around October 2009.

Chronology of Events (2002 – 2009)

36. In March 2002, Milanoski was hired by then-Mayor Robbins to serve in the dual role as the City's Director of Economic Development and the Executive Director of the ARA. (Testimony of Milanoski)

37. In November 2004, Mayor Robbins was defeated by Kevin Dumas, who has served as the City's Mayor and been re-elected ever since. (Testimony of Dumas)

38. In April 2005, the ARA's Board of Directors initiated a request to Mayor Dumas for Milanoski to become ARA's full-time Executive Director so he could devote all of his time on the ARA's projects. Mayor Dumas agreed with the ARA's request and Milanoski began serving in that capacity exclusively in April of 2005. (Testimony of Milanoski and Volterra)
39. During his testimony, Mayor Dumas stated that, "Mr. Milanoski wanted to *make more money*; it was well beyond the pay grade of the City of Attleboro; it was actually above that of his direct report ... he only wanted to serve one person and *make more money*." (Testimony of Dumas)
40. In October 2005, Ross was hired as the ARA's Chief Financial Officer and she continued to work in that capacity until her position was officially eliminated by vote of the ARA's newly-constituted Board of Directors on October 13, 2009 which was effective as of November 13, 2009. (Testimony of Milanoski)
41. In November 2005, planning for the Downtown ITC began in earnest and there were approximately thirty (30) to forty (40) public meetings during which details about the Downtown ITC project were presented by Milanoski on behalf of the ARA to members of the public and other local government agencies including the City's Planning Board and the Municipal Council. (Testimony of Milanoski)
42. In January 2007, after eighteen (18) months of working with ARA's staff members, Milanoski presented the Urban Renewal Plan for the Downtown ITC project to the ARA's Board of Directors pursuant to the review and approval procedure that is set forth in Chapter 121B § 48 of the General Laws. (Testimony of Milanoski and Exhibits A3D and R29)

43. Also in January 2007, the ARA's Board of Directors approved the Downtown URP and then submitted it to the Municipal Council for public hearing on February 20, 2007. (Testimony of Milanoski and Exhibit A3A.)
44. In March 2007, the City's Planning Board and Mayor Dumas approved the URP.
45. In June 2007, the URP was approved by the Commonwealth's Department of Housing and Community Development pursuant to the provisions of G.L. c. 121B § 48. (Testimony of Milanoski and Exhibit A3A – A3D)
46. Overall, the Downtown ITC project was expected to take almost ten (10) years to complete at an overall cost of approximately \$69.9 million. (Testimony of Milanoski) The Downtown ITC project consisted of five (5) individual redevelopment districts throughout downtown Attleboro, including the Downtown Commercial District and the Riverfront Development District. (Exhibits A3D and R29, p. 3 – 5.) For financing and planning purposes, the project was broken down into phases, with Phase IA being most relevant to the instant proceeding since work on that Phase was scheduled to begin in late 2007 and a Downtown Urban Renewal Bond in the amount of \$2.5 million needed to be issued by the City in order to fund a portion of that Phase which consisted of the City's "local match." (Testimony of Milanoski)
47. The City retained Bond Counsel in order to help walk the City and the ARA through the legal steps that were required to obtain the Urban Renewal Bond under Chapter 121B. (Testimony of Milanoski) One of those nine (9) requirements was the negotiation and preparation of a Memorandum of Agreement between the ARA and the City which would set forth the roles and responsibilities of both the City and the

ARA with respect to the Downtown ITC and the utilization of the Urban Renewal Bond for the project. (Exhibit A2, p. 3)

48. In August 2007, the ARA and the City entered into the Memorandum of Agreement for the Downtown ITC. (Exhibit A5, hereinafter referred to as “the Downtown MOA.”) Milanoski was personally involved in the negotiation and preparation of the Downtown MOA in his capacity as the ARA’s Executive Director. (Testimony of Milanoski)

49. On page 1 of the Downtown MOA, the “Downtown Urban Renewal Bond” was defined as follows: the two million five hundred and thirty-nine thousand dollars (\$2,539,000) as appropriated by the City under M.G.L. c. 121B, § 20 for defraying all or a portion of the development, acquisition, relocation, bonding expenses, and other direct costs of Phase IA of the Riverfront District in the Downtown URP as further defined in appendix C of the Downtown URP. (Exhibit A5, p. 1)

50. There was considerable testimony regarding the definition of “direct costs” as it has a bearing on whether the ARA ultimately had sufficient funds available to operate, and, in turn, pay the salaries of those positions that were eventually abolished. Although this is discussed in more detail in findings below, Mayor Dumas’ view was that “direct costs” did not include salaries for the ARA staff. (Testimony of Dumas and Lacasse) Citing a Federal Office of Management and Budget Circular, Milanoski strongly disagreed. (Testimony of Milanoski, Exhibit A86, p.6)

51. Starting in August 2007, upon the execution of the Downtown MOA, Milanoski and Mayor Dumas continued working together on behalf of the ARA and the City

respectively to insure that the Urban Renewal Bond proceeds were issued.

(Testimony of Milanoski)

52. On August 9, 2007, Milanoski submitted all of the information and documentation

that Bond Counsel had requested to the City Treasurer. (Exhibit A2)

53. Also on August 9, 2007, Mayor Dumas wrote a letter to the Greater Attleboro

Taunton Regional Transit Authority (GATRA) Administrator informing GATRA

officially that the ARA was the Lead Agency that would be responsible for the

overall management of the Downtown ITC project. (Exhibit A6)

54. On September 25, 2007, Milanoski and Mayor Dumas submitted a letter to Bond

Counsel in which they confirmed the Phase IA budget as set forth in Appendix C of

the Downtown MOA. (Exhibit A7)

55. On October 24, 2007, Bond Counsel subsequently informed the City that the Urban

Renewal Bond had been approved (Exhibit A8) and the ARA continued working on

both the IBP and Downtown ITC projects with the relative cooperation of the City.

(Testimony of Milanoski)

56. In December 2007, while LaCasse was still serving as President of the City Council,

Mayor Dumas mentioned to LaCasse that he was in great need of a Director of

Budget and Administration and that LaCasse should consider applying for the

position. This mayoral appointment, which is subject to confirmation by the City

Council, is for a three-year term. (Testimony of LaCasse)

57. LaCasse equivocated when I asked him if Mayor Dumas had any discussion with him

about Milanoski in December 2007 while they were discussing LaCasse's potential

appointment as Director of Budget and Administration. "I can't say for sure. If it

was it was probably about, you know, I don't understand, with all these things going on with the ARA, I can't believe the (ARA) Board isn't doing something about it."

(Testimony of LaCasse)

58. I found LaCasse's testimony regarding conversations he had with Mayor Dumas in or around December 2007 less than forthcoming. First, his testimony seemed geared toward showing that he did not have any substantive conversations with Mayor Dumas about being appointed as Director of Budget and Administration while he was still serving as President of the City Council.² Second, his equivocal answer regarding whether Milanoski was a topic of discussion between the two of them in December 2007, did not ring true to me. I make the reasonable inference that Mayor Dumas and LaCasse, as part of substantive conversations about LaCasse's appointment in December 2007, discussed Milanoski's future as the ARA's Executive Director. Further, based on the testimony of Milanoski and reasonable inferences, I find that, as of December 2007, Milanoski had no inkling that Mayor Dumas had drawn negative conclusions about him and/or his stewardship of the ARA. (Testimony, demeanor, reasonable inferences)

59. On January 7, 2008, the FTA submitted a funding commitment letter to the ARA with the Downtown ITC project budget that had been approved as part of the

² G.L. c. 268A, § 20 states in part: "This section shall not prohibit an employee of a municipality with a city or town council form of government from holding the elected office of councillor in such municipality, nor in any way prohibit such an employee from performing the duties of or receiving the compensation provided for such office; provided, however, that no such councillor may vote or act on any matter which is within the purview of the agency by which he is employed or over which he has official responsibility; and provided, further, that no councillor shall be eligible for appointment to such additional position while a member of said council or for six months thereafter. Any violation of the provisions of this paragraph which has substantially influenced the action taken by a municipal agency in any matter shall be grounds for avoiding, rescinding or cancelling such action on such terms as the interest of the municipality and innocent third parties require. No such elected councillor shall receive compensation for more than one office or position held in a municipality, but shall have the right to choose which compensation he shall receive." (emphasis added)

Downtown URP and the Downtown MOA (Appendix C) attached thereto.

(Testimony of Milanoski and Exhibit A10.)

60. Sometime in January 2008, Mayor Dumas appointed LaCasse as the City's Director of Budget and Administration after his term on the City Council came to an end.

(Testimony of Dumas and LaCasse)

61. On February 25, 2008, Mayor Dumas wrote a letter to the MBTA in which he expressed his support for the Downtown ITC project as approved in the Downtown URP in response to the MBTA's request for the ARA to redesign the commuter rail parking garage component of the overall project. (Testimony of Milanoski and Exhibit A11.)

62. In late March or early April 2008, the first public signs of discord between the ARA and Mayor Dumas became apparent, shortly after the Mayor had appointed LaCasse to serve as his Director of Budget and Administration in or about January of 2008.

(Testimony of Milanoski) Up until that time, Mayor Dumas had fulfilled his commitment under Paragraph 3I of the Downtown MOA to meet monthly with Milanoski and he had indicated public support for both the Downtown ITC and the IBP projects. (Testimony of Milanoski and Exhibit A5, p. 6.)

63. Shortly after LaCasse's appointment, Mayor Dumas indicated that he was unavailable to meet with Milanoski monthly in accordance with Paragraph 3I of the Downtown MOA and he instead designated LaCasse to do so. (Testimony of Milanoski and Exhibit A5, p. 6.) Despite the monthly meeting requirement, LaCasse only met with Milanoski twice thereafter. (Testimony of Milanoski)

64. In early March, 2008, Milanoski submitted a request to the City on behalf of the ARA that was similar to the requests that had been made in the past for the City to continue its commitment to provide the ARA with federal Community Development Block Grant (“CDBG”) funding in the amount of \$175,000 which represented approximately one-third (1/3) of the ARA’s \$589,000 total operating budget and nearly one-half (1/2) of the ARA’s salary budget. (Testimony of Milanoski and Exhibit A13, p. 7.) The ARA had received \$95,000 in CDBG funding in 2007 and had averaged around \$170,000 a year in such funding for the previous four (4) years. (Testimony of Milanoski and Volterra and Exhibits A12 and A13, p. 6 – 7.)

65. According to Milanoski, the CDBG funding was essential to the ARA’s continued work on the IBP project since the grants that had been procured for that project could not be utilized to fund the salaries of ARA staff members when they performed work related to that project. In other words, whenever ARA staff members worked on the IBP, they drew their salaries from the CDBG funds and not from any other source. Accordingly, if the CDBG funding was discontinued, the ARA’s staff members could no longer perform any work on the IBP project. Moreover, the City’s CDBG money was also utilized to pay incidental costs associated with the IBP, including the monthly interest payments on the ARA’s mortgages, rent for its office as well as the substantial legal and expert witness fees associated with the ongoing eminent domain litigation that had been instituted against the ARA. (Testimony of Milanoski and Volterra)

66. By the spring of 2008, work on the IBP had reached a critical juncture. Because of the general economic downturn and the floundering real estate market, sales of

parcels in the IBP were not taking place as had been anticipated. Furthermore, the failure to properly assess the values of parcels in the IBP had led to problems and legal issues with property holders, some of whom had filed lawsuits challenging the amounts that the ARA had paid for their land through eminent domain takings.

(Testimony of Milanoski and Volterra)

67. The necessary work that needed to be performed at that time was the construction of a major road leading into the IBP and the connection of water and sewer lines within the IBP which would enable the ARA to start selling parcels, the proceeds from which could then be utilized by the ARA in order to start paying off the mortgage debt that had already accrued as well as the eminent domain judgments that were about to accrue. (Testimony of Milanoski and Volterra)
68. However, without the continued CDBG funding from the City, the ARA's work on the IBP could not be funded. (Testimony of Milanoski and Volterra)
69. Mayor Dumas acknowledged that he and other City officials knew that his decision to cut off the ARA's CDBG funding would have a negative impact upon the ARA's ability to continue the IBP project. (Testimony of Dumas)
70. The City's Director of Community Development, Salvadore Pina (hereinafter "Pina"), presented a proposal to the Municipal Council on behalf of the Mayor at the Council's April 1, 2008 meeting which contained no CDBG allocation for the ARA. This came as a shock to Milanoski and the ARA Board of Directors. (Testimony of Milanoski and Volterra and Exhibit A13.)
71. The Minutes of the April 1, 2008 meeting of the Municipal Council indicate that one Councilor (Bowles) was "disappointed, as the strategy seems to have changed 100%

since last year.” Milanoski stated that “this is the first that he has heard that ARA has not been funded.” (Testimony of Milanoski and Exhibit A13, p. 7.) Mayor Dumas confirmed that neither he nor any other member of his Administration had informed either the ARA or Milanoski that the CDBG funding would be cut off, but indicated that no other parties seeking CDBG funding were informed either. (Testimony of Dumas and Exhibit A16.)

72. The CDBG funding issue was debated publicly over the course of the next month and it became the primary topic at Municipal Council and ARA meetings alike. (Testimony of Milanoski and Volterra and Exhibits A14 – A21.)

73. During an April 7, 2008 meeting of the ARA, City Officials, including Mayor Dumas and LaCasse, charged that Milanoski had “ruffled feathers” of “key players” on the ongoing ARA projects. (Exhibit A16.) LaCasse stated that he had allegedly been asked by Mayor Dumas to smooth over problems several times that had been initiated by Milanoski with state agencies, utility companies, lawmakers and others. Published reports at the time indicated that LaCasse stated to the Council that “[Milanoski] is an epidemic, and we all know what we’re talking about here. If we’re going to move forward, we need to move forward and solve that problem as well.” (Exhibit A16)

74. During their testimony before the Commission, neither Mayor Dumas nor LaCasse were able to cite to any concrete example of Milanoski “ruffling feathers” or otherwise acting inappropriately in his capacity as the ARA’s Executive Director. (Testimony of Dumas and LaCasse) While Mayor Dumas testified that he had been notified about an issue that Milanoski had with a utility company, he could not recall any specifics and the ARA’s Board of Directors never cited Milanoski for any

inappropriate conduct or even attempted to initiate disciplinary proceedings against him. (Testimony of Dumas, LaCasse and Volterra)

75. Volterra testified that, from the spring of 2008 to the fall of 2009, he had repeatedly asked Mayor Dumas to forward any complaints that the City had allegedly received regarding Milanoski's conduct to his attention so that the ARA's Board of Directors could investigate any alleged improprieties, but that no such complaints were ever provided. (Testimony of Volterra)

76. Two (2) weeks after Pina had publicly notified the Municipal Council, the ARA and the public about the Mayor's decision to cut off the ARA's CDBG funding, the United States Department of Housing and Urban Development (hereinafter "HUD") notified the City by means of a letter dated April 14, 2008 that it questioned whether the CDBG funding that the City had been utilizing for Economic Development (both ARA and non-ARA-related items) in the past were appropriate expenditures in view of the number of jobs that had been created. (Exhibits A20, R68 and Testimony of Milanoski, Volterra and Dumas) The issue was that HUD had the misunderstanding that the IBP would create over 6,000 jobs which was an inaccurately overinflated figure based on figures and information that the City had supplied in its capacity as the manager of the CDBG funds. (Testimony of Milanoski)

77. In short, HUD ordered the City to demonstrate that it had complied with the CDBG funding guidelines and notified the City that no CDBG funding could be utilized for economic development purposes which effectively meant that CDBG funding could not be allocated to the ARA at that time. (Exhibits A20A, R68, Testimony of Milanoski and Volterra)

78. The ARA thought this matter could be cleared up within a couple of months and offered whatever assistance the City needed to deal with the issue. (Testimony of Volterra)
79. A compromise solution was brokered by the Municipal Council pursuant to which the Council voted to approve the CDBG Budget as proposed by the Mayor but to also recommend that the Mayor allocate anywhere from \$75,000 to \$125,000 to the ARA from other sources in order to supplement the ARA's budget. The Mayor never provided the recommended City funding to the ARA. (Testimony of Milanoski and Volterra)
80. In April 2008, nearly a year after the Downtown MOA was signed on August 8, 2007 and, almost a year and a half before the ARA voted to terminate Milanoski and Ross on October 13, 2009, Barry LaCasse attended a meeting of the ARA. (Testimony of Lacasse and Milanoski and Exhibit A21)
81. At this meeting, Lacasse attempted to convey his thoughts on how the ARA could save money within its budget within the context of the CDBG funding dispute. In so doing, the ARA's Minutes of that meeting indicate that LaCasse stated that there is no cap/restriction on the use of bond funds from the Bond for Phase IA [of the Downtown ITC project] and that it could possibly be used for the ARA's operational budget. (Exhibit A21.)
82. During his testimony before the Commission, LaCasse questioned whether he actually made that statement (as referenced in the minutes) regarding the use of bond funds for operational costs. For reasons discussed in more detail in the findings

related to the ARA's financial solvency, I find it more likely than not that he did tell the ARA that bond funds could be used for operational costs.

83. During the Spring and Summer of 2008, the ARA's staff stopped performing work on the IBP project because the ARA did not have the funding to cover the cost of their salaries now that the Mayor had refused to allocate any additional City money to the ARA. (Exhibit A20 and Testimony of Milanoski)
84. On or about August 11, 2008, the Superior Court entered a Judgment against the ARA in the amount of \$1.046 million in the Anderson eminent domain case that had been pending for some time.
85. In August 2008, Mayor Dumas formed an "IBP Task Force" which Mayor Dumas testified consisted of "independent" members who were charged with investigating what had gone wrong with the IBP project. (Testimony of Dumas)
86. The ARA's Board of Directors was concerned about the composition of this Task Force since three (3) of the five (5) members, as well as LaCasse, had direct and strong ties to the Dumas Administration. (Testimony of Dumas and Volterra and Exhibit R21.) Absent from the Task Force were any members of the ARA. In addition, although Milanoski, Volterra and other members of the ARA's Board of Directors requested to attend the Task Force's six (6) meetings from September – November, 2008, they were not officially invited by the Task Force to do so and, even when they did attend the meetings on their own, they were not permitted to participate in the Task Force's deliberations which apparently took place in executive session. (Exhibit R21, Testimony of Volterra and Milanoski)

87. In the aftermath of the Mayor's refusal to allocate either CDBG or other City funds to the ARA, the ARA's Board of Directors submitted a written request to the Mayor on September 17, 2008 for the Mayor to provide the City's services to the ARA (including the City Solicitor's legal services). However, notwithstanding the City's obligations both under the applicable law as well as Paragraph 3K of the Downtown MOA, Mayor Dumas never responded to this written request and never provided the assistance that the ARA had requested. (Exhibit A5, p. 6 Testimony of Milanoski)
88. On September 29, 2008, the ARA attempted to comply with a request for information that had been submitted by the Task Force on September 22 by providing documents to the Task Force along with a responsive cover letter in which the ARA invited the members of the Task Force to meet with the ARA's Board of Directors to discuss the IBP project. (Exhibit A25) No such meeting was ever held. (Testimony of Milanoski)
89. Having received no response to its September 17, 2008 request for assistance, the ARA wrote a second letter to Mayor Dumas on October 29, 2008, again requesting the assistance that the City is statutorily mandated to provide pursuant to Chapter 121B, Sections 7 and 50. (Exhibit A27)
90. Mayor Dumas never responded to this written request and never provided the assistance that the ARA had requested. (Testimony of Dumas, Milanoski and Volterra)
91. The composition of the ARA's Board of Directors at this point in time supported Milanoski in the growing yet unexplained dispute that had developed with Mayor Dumas. (Testimony of Volterra) Volterra, Pret Stevenson (hereinafter "Stevenson")

and Don Smyth (hereinafter “Smyth”) were all long-time members of the Board who had first been appointed by then-Mayor Robbins and were subsequently reappointed by Mayor Dumas. (Testimony of Milanoski) Ms. Maguire Heath had been appointed by the Governor and her term was set to expire in the winter of 2009. (Milanoski Testimony.) All four (4) of the aforementioned members of the Board were seen as supporters of Milanoski and the ARA’s projects at all times pertinent to this proceeding. (Testimony of Milanoski and Volterra) The fifth member of the Board was Benton Keene (hereinafter “Keene”) who had been appointed by Mayor Dumas and who, for the most part, still supported Milanoski and the ARA’s projects up through that point in time. (Testimony of Milanoski)

92. On November 8, 2008, eleven (11) days prior to the issuance of the Task Force report, Mayor Dumas met with Volterra for lunch at the Briggs Pizzeria in Attleboro (Testimony of Volterra) Mayor Dumas told Volterra that he was unhappy with Milanoski and that he had someone in mind to replace Milanoski as the ARA’s Executive Director – namely, Volterra’s personal friend, Brenda Reed (hereinafter “Reed”). (Testimony of Volterra)

93. As he had done in the past, Volterra asked the Mayor to provide the ARA’s Board of Directors with specific complaints that had been levied against Milanoski so the Board could investigate them but the Mayor failed to do so. (Testimony of Volterra)

94. Volterra was surprised by the fact that Mayor Dumas had mentioned Reed as a possible replacement for Milanoski as the ARA’s Executive Director since she had no prior redevelopment experience and was not qualified to hold the position, particularly in view of the complexity of the projects that were ongoing at the time.

(Testimony of Volterra) Volterra's impression was that the Mayor only mentioned Reed as a possible candidate in an effort to influence him by suggesting a candidate for the Executive Director position who the Mayor thought Volterra would support.

(Testimony of Volterra)

95. The Mayor did not inform Volterra of any plan to reorganize the ARA's Executive Director position by creating a Director of Economic Development for the City who would also serve in the dual role as the ARA's Executive Director. (Testimony of Volterra) Volterra did not hear about this "reorganization" plan until at least two (2) weeks after the Task Force Report had issued and the Mayor had publicly called for Milanoski's resignation. (Testimony of Volterra)

96. During the above referenced meeting, the Mayor never mentioned any financial problems with the ARA. Instead, the focus of the meeting was exclusively upon the Mayor's desire to replace Milanoski as the ARA's Executive Director. (Testimony of Volterra) Also, there was never any mention of any of the other three (3) ARA staff members during the Mayor's meeting with Volterra. (Testimony of Volterra)

97. On November 19, 2008, the Task Force publicly released its report. (Exhibit R21.) Milanoski and the ARA's Board of Directors immediately requested a face-to-face meeting with the Mayor and the Task Force to discuss the findings in the Report and they started working on a detailed written response. (Testimony of Milanoski) City Solicitor Mangiaratti informed Volterra that Mayor Dumas had disbanded the Task Force and that the ARA therefore could not meet with the members of the Task Force to discuss the Report. (Testimony of Volterra)

98. On November 25, 2008, the ARA submitted its written response to the Task Force Report in which the ARA disputed a number of the financial figures and conclusions that had been reached in the Report. (Exhibit A29.)
99. Sometime shortly after the Task Force Report issued, Mayor Dumas provided copies of the Report to all of the federal, state and local agencies upon which the ARA was relying for continued grant funding in connection with the Downtown ITC project, including the FTA, the EOT, the MBTA and GATRA, as well as HUD, which was continuing its audit into the CDBG funds that the ARA had utilized in connection with the IBP project. (Testimony of Dumas)
100. On November 25, 2008, Mayor Dumas attended the Municipal Council's meeting and gave a speech calling for the removal of Milanoski as Executive Director of the ARA. (Exhibit A30.)
101. The Mayor had no authority to terminate Milanoski's employment for just cause (See G.L. c. 121B § 52) and he was aware that the Board of Directors in place at the time supported Milanoski's continued employment. (Testimony of Volterra)
102. On page 2 of his speech, the Mayor cited to "a serious pattern of strained, and in some cases broken, relationships between the Executive Director and business owners, local, state, and federal agencies, including elected officials and their staff". To date, neither the Mayor nor the ARA have ever cited to a single case alleging any inappropriate conduct by Milanoski beyond an isolated and unconfirmed issue with an electric utility company. (Testimony of Dumas, Milanoski and Volterra)
103. On page 3 of his speech, Mayor Dumas concluded that: "Based upon the findings of the Task Force as I mentioned earlier, it is my belief that the Executive Director of

the ARA has failed in his responsibilities to the Board of Directors...Therefore, this evening, I am calling on the ARA Board of Directors to demand the immediate resignation of its Executive Director." (Exhibit A30, p 3.)

104. The Mayor then proposed to initiate the hiring process for the City's Director of Economic Development, who would also serve as the Executive Director of the ARA as Milanoski had in the past. The Mayor indicated that he would soon submit a request that the existing ordinance for that position be amended to place the Economic Development Director under the direct supervision and control of the Mayor's Office. (Exhibit A30, p. 3.)

105. Mayor Dumas publicly promised that he would provide whatever staff assistance the ARA needed in the event that the Board of Directors demanded Milanoski's resignation and Milanoski did, in fact, resign. (Exhibit A30, p. 3.)

106. Privately, in subsequent conversations and email communications with Volterra that transpired in December and early January of 2009, both Mayor Dumas and members of the Municipal Council made it clear that the City would also provide the ARA with the funding that it needed in order to assist the ARA if Milanoski resigned. (Testimony of Volterra and Exhibit A37.)

107. The public call for Milanoski's resignation in order to bring the Executive Director position under the control of the Mayor's Office had actually begun days earlier when Council President Frank Cook (hereinafter "Cook") prepared his November 22, 2008 "Comments & Suggestions Regarding the ARA and the IBP." (Exhibit A28.) In that document, Cook offered the following public comments regarding Milanoski: "It is quite clear that the ARA has a serious public relations

problem and that Executive Director Mike Milanoski lacks credibility.” (Exhibit A28, p. 1.) “The ARA has to be brought back under the control of the Administration. All ARA activities need to be coordinated out of the Mayor’s Office.” (Exhibit A28, p. 2.) “The ARA Executive Director position must report directly to the Mayor. If this arrangement is untenable to the current director [Milanoski], then he must decide whether or not to remain in this position or be removed.” (Exhibit A28, p. 2.)

108. Councilor Kimberly Allard (hereinafter “Allard”) posted the Mayor’s full speech on her website on November 26, 2008. (Exhibit A31) Then, in response to a blog comment, Allard wrote: ‘The ARA is governed by MGL 121B which has kept them completely untouchable by the City. Making the changes the Mayor has suggested will bring it back under the Mayor’s office where we have control. If the Board decides not to ask for the Directors resignation then we have to follow legal means to remove Board members before we can get to the Director’s position. Again, putting this position under the Mayor would prevent this in the future” (Exhibit A31, p. 4 – 5, underlining supplied for emphasis.)

109. On December 2, 2008, at its next meeting after the Mayor’s public demand for Milanoski’s resignation, the Municipal Council officially supported the Mayor by passing a resolution that also demanded Milanoski’s resignation and essentially adopted the other elements of the Mayor’s plan. (Exhibit A32.)

110. Two weeks later, on December 16, 2008, the Mayor submitted a revised Ordinance to the Municipal Council in order to bring the City’s Economic Development Director position under the jurisdiction of the Mayor’s Office and to

specify that the individual who holds that position would also serve as the ARA's Executive Director. (Exhibit A33.) The Municipal Council would later approve the revised Ordinance in early 2009. (Testimony of Dumas)

111. In addition to the Mayor's November 8, 2008 meeting with Volterra, Mayor Dumas also either personally called or met with Volterra, and Board Members Maguire Heath, Smyth and Stevenson at various times in late November and early December in an effort to personally lobby them to support the plan that he had publicly laid out during the November 25, 2008 Council meeting. However, each one of them refused to support the Mayor's request for the Board of Directors to demand Milanoski's resignation. (Testimony of Dumas)

112. Mayor Dumas also sent an email to Board Member Keene, who up to that point, had still supported Milanoski, in which he similarly attempted to lobby Keene to support his plan. At that point in time, Keene also refused to support the Mayor's request for the Board of Directors to demand Milanoski's resignation. (Exhibit A33 and Dumas Testimony.)

113. In late December, 2008, the ARA's Board of Directors, the *Attleboro Sun-Chronicle* and the Chamber of Commerce scheduled a public forum to be held at the Attleboro Campus of Bristol Community College on January 10, 2009, in order to discuss the IBP project in view of the Task Force Report and to hopefully work out a solution with the City. (Testimony of Milanoski and Volterra and Exhibit A35.)

114. During a Municipal Council meeting that was held on December 30, 2008, Councilor Allard stated that unless the ARA's Board of Directors was willing to

terminate Milanoski, “there’s nothing to talk about.” (Exhibit A35 and Testimony of Milanoski)

115. On Tuesday, January 6, 2009, Mayor Dumas called and invited Milanoski to lunch at a restaurant in Wrentham outside of the City. (Testimony of Dumas and Milanoski) During that lunch meeting, Mayor Dumas offered to allow Milanoski to resign with a positive recommendation along with a six (6) month transition period during which Milanoski would remain employed in order to train the new Director of Economic Development/ARA Executive Director. (Testimony of Dumas and Milanoski Testimony and Exhibit A76)

116. Sometime in December, 2008, Volterra sent an email to Mayor Dumas in which he conveyed a detailed, ten (10) point plan in response to the Mayor’s November 25, 2008 demand for Milanoski’s resignation pursuant to which Milanoski would remain the ARA’s Executive Director. (Testimony of Volterra and Exhibit A37.) Having received no response from Mayor Dumas personally, in early January, 2009, Volterra sent that same email to Councilor Brian Kirby (hereinafter “Kirby”). (Testimony of Volterra and Exhibit A37.) Kirby then sent Volterra a detailed response on January 7, 2009 which appeared within the body of Volterra’s original email.

117. Relevant sections of that email exchange include:

Volterra: We agree to put aside our differences for 12 months while we work to take best advantage of the above stimulus monies.

Kirby: Max, I agree to put aside differences, with the exception of the resignation of the executive director [Milanoski] and bringing the ARA back under the control of City Hall.

Volterra: The City assigns \$125,000 to the ARA to help pay for staff work [on the IBP project] for the next 12 months.

Kirby: I'm sorry, I don't see it happening.

Volterra: The ARA agrees to have [City Planner] Gary Ayrassian attend all or some of ARA meetings, as he desires, to coordinate development plans of the City and the ARA, and keep the Chief Executive and the Council fully informed of ARA activities.

Kirby: Again, the Mayor has requested a new Economic Development Director to fill this role. I believe that that person fills this need and reports directly to the Mayor. This person would work jointly with the current Executive Director in a transition plan.

Volterra: We issue a joint statement to the public that due to this extraordinary situation, we have agreed to work together as outlined above, for the good of the City.

Kirby: YES! With the resignation [of Milanoski], or an announced date of a resignation of the executive director. You want help from the City, the City needs a good will offering from the ARA. With the resignation, many things become negotiable.

(Exhibit A37, underlining supplied for emphasis.)

118. On Friday, January 9, 2009, the Mayor met with Milanoski at his office in City Hall in order to discuss the offer that he had conveyed to Milanoski during their lunch meeting on January 6, 2009. (Testimony of Dumas and Milanoski, Exhibit A76.)

119. During that meeting, the Mayor reiterated his proposal and asked Milanoski to cancel the public meeting at BCC that had been scheduled for the next day (January 10, 2009). (Testimony of Milanoski) Milanoski sent the Mayor an email later that

day in which he rejected the Mayor's proposal and asked for the Mayor's cooperation and assistance in obtaining federal stimulus and grant funding over the course of the coming months. (Testimony of Milanoski and Exhibit A76.)

120. The Mayor never mentioned the ARA's financial situation as a justification to remove Milanoski during his conversations with him (or Volterra). Further, Mayor Dumas never mentioned the elimination of any other staff position of the ARA due to an alleged lack of funds, including the Chief Financial Officer (Ross), the Administrative Assistant (Cruff) or the Project Manager (Dubuc). (Testimony of Dumas and Milanoski and Volterra)

121. On January 10, 2009, the public meeting was held at Bristol Community College as planned and the City and the ARA were unable to resolve their differences. However, one significant event transpired during that public meeting – namely, former Mayor Judith Robbins spoke in favor of the Mayor's proposal to have a Director of Economic Development in the Mayor's Office also serve as the Executive Director of the ARA. (Testimony of Dumas and Robbins)

122. At some point subsequent to the January 10, 2009 public meeting, Mayor Dumas met with Robbins in order to gauge her interest in becoming the Governor's appointee to the ARA's Board of Directors. The incumbent Governor's appointment, Maguire Heath, had made it clear that she did not support either the Mayor's plan in general or his demand for Milanoski's resignation in particular when the Mayor had approached her back in November or December of 2008. (Testimony of Dumas and Exhibit A42.)

123. Robbins indicated that she would be willing to serve on the ARA's Board of Directors. (Testimony of Robbins)

124. On January 27, 2009, a meeting that was attended by the Mayor, LaCasse, the

City Auditor, Volterra, Keene and Stevenson was held at the Mayor's Office.

According to a Guest Column that Volterra and Stevenson wrote that appeared in the March 2, 2009 edition of the *Sun Chronicle* and was later confirmed by Volterra's testimony before the Commission, the following transpired during that meeting:

In a meeting held at his office on Jan. 27, the mayor, through his finance director [LaCasse] in the presence of the Mayor, told ARA members that once our director was gone, the ARA would have all the money we needed. There was no mention of a cooperation agreement or accountability and no suggestions of how to improve collaboration.

The Mayor appears to have a personal dislike for one man, our director [Milanoski], and is risking the downfall of the IBP for strictly personal reasons.

We believe that he is playing a dangerous game, because the city is at risk of losing both the IBP and perhaps also the Intermodal Transportation Center, all because of his perceived feelings of disrespect. His actions are dividing the City, as his politics have become very personal.

At that Jan. 27 meeting the mayor made no suggestions as to how we could resolve the IBP situation, except to say that once we fired our director [Milanoski], the money would flow to us.

(Exhibit A40, underlining supplied for emphasis.)

125. Volterra confirmed his written account of what transpired during the January 27, 2009 meeting during his testimony before the Commission. LaCasse denied that either he or the Mayor ever made the statements that Volterra had attributed to them –

namely those statements in the underlined portion of the newspaper article above concerning the fact that the City would provide the ARA with whatever funding it needed if Milanoski were to resign. (Testimony of LaCasse) After carefully reviewing the testimony of Volterra and LaCasse, I credit Volterra's testimony regarding this issue (Testimony, demeanor of Volterra and LaCasse)

126. On February 10, 2009, Milanoski and the ARA's Board of Directors submitted a draft Memorandum of Agreement to Mayor Dumas in order to reach an agreement with respect to the continued implementation of the IBP project. (Exhibit A39.) Under the terms of that proposal, the ARA would remain the Lead Agency for the IBP project, but the City would commit to assist the ARA in various ways consistent with its legal obligations pursuant to Chapter 121B, Sections 7 and 50 of the General Laws. (Exhibit A39, p. 6.) The Mayor rejected this Memorandum of Agreement primarily because Milanoski would be retained as the ARA's Executive Director. (Testimony of Volterra)

127. On March 24, 2009, Mayor Dumas submitted his own draft "Memorandum of Cooperation" to the ARA along with a cover letter in which he stated, in pertinent part, that,

Therefore, I have enclosed a draft Memorandum of Cooperation. This Memorandum of Cooperation would take effect upon the vacancy of the current Executive Director's position, and reflects the terms and conditions of the reorganization plan I outlined to the Municipal Council in November 25, 2008, the Resolution passed by the Municipal Council on December 2, 2008, the position I restated at the January 10, 2009 BCC meeting, as well as during our follow up meeting on January 27, 2009.

(Exhibit A43, cover letter. See also Paragraph IIA on page 4 confirming that the MOC would take effect upon Milanoski's resignation or termination from employment.)

128. Volterra testified that the Mayor's draft Memorandum of Cooperation was unacceptable to the ARA's Board of Directors since it was still conditioned upon Milanoski's resignation. (Testimony of Volterra.) Volterra reiterated that the Board of Directors, as constituted in the spring of 2009 (with Volterra, Keene, Maguire Heath, Smyth and Stevenson), still fully supported Milanoski and saw no reason to either call for his resignation or move to terminate his employment. (Testimony of Volterra) Further, according to Volterra, the Mayor's Memorandum of Cooperation constituted an illegal agreement since it stripped away all of the ARA's meaningful statutory powers under Chapter 121B and vested them with the City, an assertion that was corroborated in an opinion letter from the ARA's legal counsel, Edward Casey (hereinafter, "Attorney Casey"). (Exhibit A45.)

129. During the spring of 2009, Milanoski learned that the FTA was going to conduct a Financial Management Oversight (FMO) review. Milanoski cooperated with the outside consultant that the FTA had hired to conduct the FMO Audit to the greatest extent possible by supplying whatever information was requested. (Testimony of Milanoski) Milanoski testified that his objective was to cooperate with the FTA to the greatest extent possible in order to satisfy any concerns that they may have. (Testimony of Milanoski) Specifically, with respect to the FTA's letter dated May 12, 2009 (Exhibit R39), Milanoski started working on a revised Pro-Forma for the Downtown ITC project which he submitted to the FTA by email dated June 15, 2009. (Testimony of Milanoski, Exhibit A50.)

130. On June 4, 2009, the ARA's Board of Directors completed and approved Milanoski's performance evaluation for the two (2) year time period from 2007 – 2009 which contained ratings of either met or exceeded expectations in every category. (Exhibit A46.)

131. Also on June 4, 2009, the ARA's Board of Directors voted to transfer the IBP project only to the City and to submit a revised draft Memorandum of Cooperation to the Mayor for his review and approval. (Exhibit A47.) The Memorandum of Cooperation dated June 5, 2009 was transmitted by means of a cover letter to Mayor Dumas from Stevenson on June 8, 2009 which stated, in pertinent part, as follows:

The progress of the [IBP] project was hampered by two major events. In 2005, the ARA was required to take several parcels by eminent domain. The financial implication of the litigation as a result of the taking incurred legal and other costs in the amount of over \$3,050,000 that was not identified until 2008 following a jury award. Although the Attleboro Redevelopment Authority was able to absorb approximately \$1,000,000 of this amount, the remainder has placed a severe burden on the finances of the IBP.³

The second event occurred in April 2008 when the City of Attleboro redirected Community Development Block Grant funds (CDBG) formerly awarded to the ARA for the IBP project to other projects in the City that included streetscape, façade improvements and small business loans. This shift in priorities resulted in a lack of funds for project management and administration of the IBP. Without a funding commitment as obligated in the City's Urban Renewal Plan, the progress of the project was severely hampered.

³ It should be noted that, even through June of 2009, the financial difficulty that the ARA faced was limited to the IBP project. While federal and state grant funding agencies had required minor modifications to the Downtown ITC project with revised funding projections and commitments, there was no question that the Downtown ITC was a viable project with funds to continue for the foreseeable future in terms of years, not months. (Milanoski Testimony.)

The ARA repeatedly requested both privately then publicly for financial and in-kind assistance from the City to implement the City's project to no avail. Warnings that the lack of assistance from the City would have a significant negative impact on the project were ignored. Requests in writing were not responded to. Given these circumstances, the ARA has no other option but to transfer the [IBP] project to the Office of the Mayor as requested.

(Exhibit A48.)

132. On July 16, 2009, the final version of the Memorandum of Agreement for the transfer of the IBP project to the City was signed. (Exhibit A49.) This final version of the IBP Memorandum of Agreement did not require Milanoski's resignation or termination from employment. (Exhibit A49.)

133. In July 2009, Robbins was finally confirmed by Governor Patrick to replace Maguire Heath, who had been a supporter of Milanoski and had refused to go along with the Mayor's plan even after the Mayor had personally approached her.

(Testimony of Milanoski and Volterra)

134. Shortly after July 16, 2009, the necessary work on the access roadway and the water and sewer infrastructure that the ARA had wanted to manage and implement back in April of 2008 began in earnest. (Testimony of Robbins)

135. By sometime in August, 2009, the City accepted an offer on a five and one-half (5 ½) acre parcel in the IBP from MAR Seafood, a Rhode Island company, and a Purchase and Sale Agreement in the amount of \$350,000 was executed in either late August or early September, 2009. (Testimony of Robbins and Exhibit A83.)

136. The sale of one parcel in the amount of \$350,000 did not eliminate the approximately \$3 million in debt that the ARA had accrued on the IBP project.

Rather, it only enabled the ARA to start paying off its creditors on that project.

(Testimony of Milanoski and Robbins)

137. In regard to the Downtown ITC project which was the only active project that the ARA was implementing after the IBP project had been transferred to the Mayor on July 16, 2009, Milanoski continued his efforts to work with all “Stakeholders” including the FTA, the EOT, the MBTA, GATRA, the City’s Federal and State Legislative Delegations as well as Mayor Dumas (hereinafter “the Stakeholders”) in order to keep the Downtown ITC project on track. (Testimony of Milanoski)

138. The FTA had submitted a letter to Milanoski on May 12, 2009 in which it approved a grant reimbursement request in the amount of \$29,719.66, but asked the ARA to address the following items before the next request for reimbursement would be approved: 1) confirm the source of the local match; 2) update the financial plan; and 3) submit the revised scope and schedule for the project. (Exhibit R39.)

139. In response to this communication from the FTA as well as the numerous in person and telephone discussions that Milanoski had with the FTA, Milanoski developed a revised Pro-Forma dated June 15, 2009 (Exhibit A50) that was within the scope of the original Pro-Forma that had previously been approved as part of the Downtown URP back in 2007. (Exhibit A5, Appendix C.)

140. Milanoski then organized a meeting of all Stakeholders (hereinafter “the Stakeholders Meeting”) in order to discuss the revised Pro-Forma that he had developed (Exhibit A50) which was held on August 3, 2009 at Congressman James McGovern’s Office and was attended by Milanoski, the Congressman himself, his Chief of Staff, Chris Philbin, his assistant, Lisa Nelson (hereinafter, “Nelson”), three

(3) representatives from the FTA, including Regional Administrator Doyle, a representative from the EOT, two representatives from the MBTA, Mayor Dumas and ARA Members Stevenson and Smyth. (Exhibit A51.) Nelson took detailed notes of the Stakeholders Meeting and submitted them to the Stakeholders on August 12, 2009. (Exhibit A51.)

141. During the August 3, 2009 Stakeholders' meeting, Milanoski presented two alternative plans that fell within the scope of the original Downtown URP. (Exhibit A51.) One plan was a "highly scaled back version" that would cost an estimated \$13.5 million and the other was a "moderately scaled back version" that would cost an estimated \$18.5 million and was similar to the revised Pro-Forma (Exhibit A50) that Milanoski had previously prepared on June 15, 2009. (Testimony of Milanoski and Exhibit A51.) Both versions of the plan included an upgrade to the construction of the GATRA Bus Terminal.

142. Mayor Dumas expressed his preference for the moderately scaled back version since it was the alternative that included the relocation of the City's DPW yard and the partial riverfront road. (Testimony of Dumas and Milanoski and Exhibit A51.) Mayor Dumas also stressed the importance of identifying the funding stream for the estimated \$18.5 million cost of the revised project. (Testimony of Dumas and Exhibit A51.)

143. The issue of "matching funds" was discussed during the meeting since certain of the FTA's federal funding required a 20% local match from either a state or local agency, including the City. (Exhibit A51.) The EOT was one of the sources of the local match that the ARA had utilized in the past and planned to utilize moving

forward since the EOT had entered into a contract with the ARA to provide matching funds in the amount of \$1,667,483, \$575,387 of which had already been released, leaving a balance of nearly \$1.1 million in EOT matching funds potentially available. (Exhibit A51.)

144. However, EOT was having difficulty satisfying its existing approved contracts and was in the process of establishing a reapplication process that could enable funds to be released by December of 2009. EOT stressed that any project would need to show strong local support. (Exhibit A51)

145. In addition to the EOT's matching funds, the Stakeholders discussed other sources for the local match which included potential grant money from the Massachusetts Bay Transportation Authority (MBTA), GATRA as well as the Urban Renewal Bond, which was issued as the City's "local match" contribution for the Downtown ITC project. (Testimony of Milanoski) According to Nelson's notes of the meeting, the FTA specifically mentioned CMAC, TIGER and GATRA grants, all of which could be utilized as a local match for the Downtown ITC project. (Exhibit A51.) The Stakeholders then discussed the recent state and federal audits of the Downtown ITC project. (Exhibit A51.) The EOT indicated that no major findings had been uncovered by its audit and the FTA had provided a letter to the ARA with preliminary results of the FMO Audit with a response letter from the ARA expected by the end of August. (Exhibit A51.)

146. The Stakeholders Meeting concluded with an action plan that was agreed upon by everyone who attended the meeting to: 1) Continue to publicly promote local consensus for the project; 2) Finalize the revised Phase I plan for the Intermodal

Transportation Center including the upgrade to the GATRA bus shelter; 3) Revise the estimated cost of Phase I based on the new plan; and 4) Identify and secure funding sources for Phase I. (Exhibit A51)

147. It was suggested that a follow-up meeting be hosted by the Congressman in Boston in September to which the state's Secretary of Transportation would be invited as well as attendees of the August 3, 2009 meeting. (Exhibit A51)

148. As referenced above, Robbins had finally been confirmed by Governor Patrick sometime in July of 2009. In addition, long-time Board Member and Milanoski supporter Don Smyth resigned from the Board in August of 2009. (Testimony of Volterra) Volterra credibly testified that he spoke to Smyth about his resignation at that time and that Smyth expressed concern about being the subject of litigation and his wife's continued employment with the City of Attleboro's Public Library, which, although governed by a Board of Trustees, had its budget subject to review and appropriation by the City. (Testimony of Volterra)

149. With Smyth's post vacant, Dumas picked Richard Correia, (hereinafter "Correia"), a former Chairman of the City's School Committee, who had no prior experience with the ARA or its projects, to serve on the ARA's Board of Directors. (Testimony of Volterra) Correia's appointment to the ARA's Board of Directors was confirmed by the Municipal Council during a Council meeting that was held sometime in the middle of September, 2009. (Testimony of Dumas and Exhibit A56, p. 5.) Dumas testified that he had approached Correia with the offer to serve on the Board and that Correia indicated that he had followed what had gone on with the

ARA over the past year and a half, was upset with what had transpired and wanted to help the Mayor. (Testimony of Dumas)

150. As of the middle of August, 2009, only two (2) supporters of Milanoski – Stevenson and Volterra – remained on the ARA’s Board of Directors. (Testimony of Volterra)

151. Milanoski continued to work on the action items that were agreed upon at the conclusion of the August 3, 2009 Stakeholders Meeting. (Testimony of Milanoski) One of the first things he did was to contact Frank Gay (hereinafter “Gay”), who was the Administrator of GATRA, in order to request a meeting with him in view of the fact that the FTA had specifically identified a \$3 million GATRA grant as one possible source of the 20% local match that was necessary for certain FTA grant funds that had already been committed to the Downtown ITC project.⁴ (Milonoski Testimony.)

152. Gay responded to Milanoski’s request by sending him an email on August 11, 2009, with copies to Mayor Dumas and representatives from the MBTA and the FTA in which he indicated as follows: “This is in response to your request to have a meeting concerning the ITC project. In order for this to be a productive meeting, we require that representatives from the City and the MBTA attend. We also suggest that you invite a representative from FTA. Please get back to me with the details including day and time.”(Exhibit A52, p. 2.)

153. On August 12, 2009, Milanoski replied by email proposing three (3) different meeting dates within the next week. (Exhibit A52, p. 1, second email.)

⁴ It is important to reemphasize that the Mayors of the Cities of Attleboro and Taunton, as the two major constituencies that are served by GATRA, alternate terms as GATRA Chair and Vice Chair. Therefore, Mayor Dumas has a certain degree of influence over that agency. (Milonoski Testimony.)

154. Mayor Dumas responded by declining to meet with GATRA until Milanoski had prepared a response to his August 7, 2009 letter in which he sought more detailed information about the Downtown ITC project in the aftermath of the Stakeholders Meeting. (Exhibit A52, p. 1, first email.)

155. On August 13, 2009, Mayor Dumas sent a second letter to the ARA in which he sought further information concerning the Downtown ITC project. (Exhibit A53.) In that letter, the Mayor alleged that there was a “negative delta” of \$9,324,306 going forward. (Exhibit A53.)

156. Milanoski started gathering the requested information upon receipt of the Mayor’s two (2) letters and continued working on the revised Pro Forma pursuant to the arrangements that were made during the Stakeholders Meeting. (Testimony of Milanoski)

157. On August 14, 2009, Milanoski sent Mayor Dumas a detailed email response to his August 13, 2009 letter. (Exhibit A55, starting on the bottom of the 4th page)

158. On Tuesday, August 18, 2009, Milanoski sent Mayor Dumas another email in which he stated as follows: “We will be presenting the new phase one proforma at the ARA meeting tomorrow for their board approval to release this policy document. Would you like to meet with me before the public meeting to discuss the finances – I think the meeting would be helpful to clarify the finances and fill in a few financial gaps [City Planner] Gary [Ayrissian] was stating last week. I have met with FTA and EOT each twice since the [August 3] decision makers meeting as well as discussions with someone from MBTA to advance the project. I cannot stress enough that they want to see Mayor Dumas and the ARA speaking as one to advance the project.

Therefore, would you be available to meet with me in the afternoon either at my office or we can go off-site if you prefer. (Exhibit A55, p. 3 middle.)

159. That same day, on August 19, 2009, Mayor Dumas responded to Milanoski's offer to meet in order to review the revised Pro-Forma with the following email in which he reiterated his request for responses to the August 7 and 13, 2009 letters that he had submitted to Milanoski writing: "Please forward me the pro-forma. I will inform you of any questions that I may have. Also, when can I expect a response to my letters dated August 7th and August 13th? (Exhibit A55, p. 3, top.)

160. Later the same day, Milanoski responded to the Mayor by email in which he indicated as follows: "I'm sorry but I am unable to send it to you till after the board meeting as it will be an ARA policy document they will approve for dissemination and to revise Phase I. What I had hoped to do was to discuss the information with you before it went public – this document will answer the questions to your letters dated the 7th and 13th and was intended to provided the path forward with this project that has buy-in from some of our transit partners. But I understand if you do not want to meet to discuss the finances of the ITC project. However, given the action the council took last night, I expect that action will put the city of Attleboro in a negative light for the foreseeable future at least from a perception standpoint." (Exhibit A55, bottom of p. 2 and top of p. 3.)

161. The Municipal Council action to which Milanoski was referring in his August 19, 2009 email to Mayor Dumas was the Council's August 18, 2009 motion to form a "Special Investigative Committee of the Attleboro Redevelopment Authority," purportedly in order to investigate whether any evidence existed to dismiss members

of the ARA's Board of Directors pursuant to Chapter 121B, Section 6 of the General Laws. This "Special Investigative Committee" would eventually issue a Report on May 4, 2010 in which there were no specific findings of criminal conduct or other malfeasance on the part of any member of either the ARA's Board of Directors or its staff, including Milanoski and Ross. (Exhibit R1)

162. On August 20, 2009, Milanoski emailed the revised Pro-Forma for Phase I along with a document that spelled out the Downtown ITC in three (3) separate funding categories to the ARA's Board of Directors. (Exhibit A77)

163. Milanoski also emailed the same documents to all of the Stakeholders, including the Mayor, GATRA, the MBTA, the EOT, the FTA and Nelson from Congressman McGovern's Office. (Exhibit A78.)

164. On August 21, 2009, Ned Codd from the EOT sent Milanoski an email stating: "Thank you for sending this along. As we discussed, please send us information on the deadline and minimum funding that would be required for a contract to prevent rescission of FTA funding, until ARA can apply for funding through the EOT's revamped ITC program." (Exhibit A78.)

165. Two more emails were then exchanged between Mayor Dumas and Milanoski on August 25, 2009. In the Mayor's email to Milanoski, he accused Milanoski of failing to adequately respond to the Mayor's letters dated August 7 and 13, 2009 and requested a meeting be held on Friday, August 28, 2009. (Exhibit A55, bottom of p. 1.) In Milanoski's response, he attached the revised Pro-Forma (Exhibit A55, p. 10 - 11) and indicated, in pertinent part, as follows: "I look forward to meeting next week with the Chairman to hear where our proforma may be inadequate from your

perspective if I understand your comments correctly. However, for a project of this scale, assuming all transit partners honor their commitments, then this project has more than adequate funding to implement the revised Phase I. This also assumes that everyone honors the MOA for this project without delay as discussed...at the congressman's meeting. (Exhibit A55, p. 1.)

166. On September 13, 2009, the next meeting of the ARA's Board of Directors was held and, although the revised Pro-Forma that Milanoski had developed (Exhibit A55, p. 10 and 11) was discussed at length during the meeting, it was not voted upon at that time. (Exhibit A56, p. 5.)

167. As of the September 13, 2009 meeting, Board Members Stevenson and Volterra still supported Milanoski and his continued efforts to move the Downtown ITC project forward. (Volterra Testimony.) However, for the first time since the very public dispute with Mayor Dumas had begun back in the spring of 2008, Milanoski had lost his majority of support on the Board of Directors. (Volterra Testimony) Robbins, who had publicly supported Mayor Dumas' plan with respect to Milanoski's removal, was attending her first meeting as a Member of the Board after having been confirmed by the Governor in July. (Testimony of Robbins)⁵

168. Correia, who the Mayor had recently appointed to replace Smyth after his resignation on August 19, 2009, was about to have his appointment confirmed by the Municipal Council. (Testimony of Volterra and Exhibit A56, p. 5.) Together with Keene, who was not present for the September 13, 2009 Board Meeting, Robbins and Correia constituted the new majority that the Mayor needed in order to implement the plan that he had been aggressively pushing for since at least the fall of 2008 –

⁵ The ARA's Board of Directors did not have a meeting in August, 2009. (Robbins Testimony.)

namely, for the ARA's Board of Directors to terminate Milanoski's employment.

(Testimony of Volterra)

169. On September 30, 2009, then Chairman Stevenson prepared a letter to Mayor Dumas dated September 30, 2009 in which he attempted to answer the questions that the Mayor had raised concerning the funding for the project and provided another revised Pro-Forma for Phase IA only that Milanoski had prepared which was within the scope of the original Downtown URP that had been approved in 2007. (Exhibit 57 and Testimony of Milanoski)

170. On October 7, 2009, Milanoski received a letter from the FTA which was similar to the two prior letters dated May 12, 2009 and September 11, 2009 (Exhibits R39 and R40) that he had received and stated, in pertinent part as follows: "We know that you have been working hard to get all the stakeholders to approve a revised scope and budget, but as stated previously we cannot continue to progress with this project unless we are confident that the funding will be available. Until there is a revised scope and schedule and the financial plan reflects actual cost along with guaranteed local match, FTA will not allow the draw down of federal funds, and any work that does occur might not be eligible for reimbursement." (Exhibit A58.)

171. On October 8, 2009, the City's Conservation Commission approved the Order of Conditions for the realignment of Wall Street so that the work on that component of the project, which was funded by a state "MORE" Grant, could now move forward. (Exhibit A79 and Testimony of Milanoski)

172. On October 9, 2009, Milanoski sent an email to Laurie Fucini (hereinafter "Fucini") of the FTA, with whom he had been working in order to develop the

revised Pro-Forma as a result of the Stakeholders' Meeting, in which he indicated that, "We had a two hour meeting with former Mayor Judy Robbins today and have been revising her plan. She is going to be meeting with Mayor Dumas today and we will be having a board meeting on Tuesday. At this point I think we may have a plan that the City will officially support. Will keep you updated, have a nice weekend."(Exhibit A84.)

173. Less than a week after the FTA's October 7, 2009 letter, on October 13, 2009, the ARA's newly-constituted Board of Directors held the first meeting that was attended by all three (3) members of the Mayor's majority in their official capacities since the two (2) newest members – namely Robbins and Correia – had been officially appointed to the Board.

174. Mayor Dumas and LaCasse attended the meeting along with Municipal Councilors Ross and Kirby as well as City Planner Ayrassiasan, all of whom had been vocal detractors of Milanoski since the spring of 2008. (Exhibit A59 and Testimony of Milanoski) Volterra did not attend the meeting since he had injured himself in a fall from a ladder. (Testimony of Volterra)

175. Rather remarkably, Mayor Dumas initially testified before the Commission that he could not remember if he attended this meeting. For reasons discussed more fully below, it is apparent that Mayor Dumas was fully aware that the Board, in a carefully choreographed and pre-arranged move that was supported by the City Solicitor, was about to take the final steps in carrying out Dumas' wishes to oust Milanoski. I find his testimony regarding whether or not he attended this meeting not credible. (Testimony, demeanor of Dumas)

176. At the outset of that meeting, Milanoski, unaware that a vote to effectively oust him had been pre-arranged, presented a further revised Pro-Forma (Exhibit A80) which was based upon the first revised Pro-Forma that he had developed as a result of the August 3, 2009 Stakeholder's Meeting. (Exhibit A55, p. 10 and 11.)

177. After Milanoski presented and explained the revised Pro-Forma, Stevenson made a motion to approve the revised Pro-Forma as amended which was not seconded. (Exhibit A59, p. 3.)

178. The Minutes of the Meeting reflect the fact that Mayor Dumas and LaCasse left the meeting at 5:20 p.m. at the end of new business on the agenda. (Dumas Testimony and Exhibit A59, p. 6.)

179. Only minutes after Mayor Dumas and LaCasse left, Keene made the following Motion as reflected in the Minutes of the Meeting which ultimately led to the institution of this proceeding against the ARA:

Motion by Benton Keene to move that, in view of the current financial conditions of the Attleboro Redevelopment Authority, the full-time, permanent positions of Executive Director, Chief Financial Officer, Project Manager and Administrative Assistant be abolished; further, that the Authority promptly institute proceedings as required under MGL 121B to terminate the employment of the persons currently holding those positions; and further, that the Authority ask the Mayor for immediate assistance from the City Solicitor for advice about notice and hearing rights of the employees whose positions are being abolished. Motion seconded by Judith Robbins with request for a roll call vote.

Roll Call Vote: Judith Robbins, Benton Keene and Richard Correia voted in the affirmative. Preston Stevenson voted in the negative. Max Volterra was absent.

(Exhibit A59, p. 6.)

180. Robbins, the ARA's only witness regarding the ARA's financial solvency at the time didn't review a detailed analysis of the ARA's actual cash flow prior to her vote to approve the motion to terminate the Appellants' employment on October 13, 2009. She did not request an actual written cash flow analysis from either Milanoski or Ross until October 19, 2009, six (6) days after the October 13, 2009 vote to abolish the Appellants' positions was taken, when she sent an email to that effect to Ross. She did not actually review an ARA cash flow analysis until October 26, 2009 when she met with Ross. October 27, 2009 was the first time that she had seen an ARA cash flow analysis in writing when Ross emailed her that document. (Testimony of Robbins)

181. After the Motion was approved by all three (3) members of the new majority that Mayor Dumas had orchestrated, the following additional events occurred before the meeting adjourned at 5:55 p.m., just over a half-hour after Mayor Dumas and LaCasse had left the meeting: 1) The Motion that Robbins made for the ARA to move its operations from its current location at 8 North Main Street into City owned space as previously proposed by the Mayor was approved; 2) Stevenson submitted his resignation to the Board; and 3) Keene moved to elect Robbins as Chair of the ARA.(Exhibit A59, p. 7.)

182. Prior to the Board's October 13, 2009 meeting, the By-Laws of the ARA did not permit the Governor's appointment (Robbins) to serve as the Chairperson of the ARA. However, just prior to the Board's vote to eliminate all four (4) permanent full-time staff positions of the ARA and without any discussion whatsoever, Robbins

made a Motion that was passed by the Board to permit the Governor's appointee to serve as Chairperson for the first time. (Exhibit A59, top of p. 6.)

183. Robbins acknowledged that she spoke to Mayor Dumas within days prior to the October 13, 2009 meeting of the ARA's Board of Directors and that she verbally requested the assistance of the City Solicitor in connection with the termination of the ARA's four (4) staff members. (Robbins Testimony.)

184. Robbins submitted her request for City Solicitor Mangiaratti's assistance verbally and Mayor Dumas agreed to provide it, no questions asked, even though he had failed to respond to two (2) written requests for assistance that had been submitted by the ARA's Board of Directors in the fall of 2008 and he never provided any such assistance in the past despite his obligation to do so pursuant to Chapter 121B, Sections 7 and 50. (Testimony of Milanoski, Exhibits A24 and A27.)

185. Robbins also testified that, during this or perhaps another meeting with the Mayor, he had informed her that he would suspend any further disbursements from the Urban Renewal Bond, thereby eliminating a source of the ARA's "local match" for grant funding. (Testimony of Robbins)

186. While Mayor Dumas verified that he had authorized the City Solicitor to assist Robbins, he could not recall anything specific with respect to the nature of the assistance the City Solicitor was authorized to provide. (Testimony of Dumas)

187. With respect to the three (3) Motions that City Solicitor Mangiaratti prepared before the October 13, 2009 ARA Board Meeting, Mayor Dumas claimed that he did not know that City Solicitor Mangiaratti had prepared the Motions either in advance of the October 13, 2009 meeting or at any time during the meeting, that he did not

know that any of those Motions would be made during the October 13, 2009 meeting, notwithstanding the fact that he and LaCasse had attended that meeting for an hour and twenty minutes and left just before the Motion to terminate all four (4) staff members, including Milanoski and Ross was made; and that he had no discussions with any of the three (3) Board Members who voted for the Motion to terminate the four (4) staff members at any time before the October 13, 2009 meeting in connection with that issue. (Testimony of Dumas)

188. When asked whether the Mayor knew that the three (3) Motions would be made during the October 13, 2009 Board meeting, Robbins stated that it was very likely, since they had been written by his City Solicitor. (Testimony of Robbins)

189. In addition, as noted in the preceding paragraph, all three (3) Motions that were made at the conclusion of the October 13, 2009 meeting of the Board of Directors were actually prepared in writing by the City Solicitor at the request of Robbins at least one (1) day in advance of that meeting. (Testimony of Robbins)

190. Robbins testified during the hearing that she, Correia and Keene reviewed the written Motion to terminate the employment of all four (4) ARA staff members the day before the October 13, 2009 Board meeting and that the three (3) of them had agreed that they would vote in favor of that Motion. (Testimony of Robbins)

191. Robbins was asked during cross-examination if she, Correia and Keene agreed that they were going to vote in favor of the Motion to terminate all four (4) staff members of ARA before the October 13, 2009 Board meeting. (Robbins Testimony.) Robbins' initial response was "is that illegal?" before she responded "yes" to the question posed. I then asked Robbins to repeat her answer and she responded by

restating the question – “did we agree we were going to vote on the Motion” – and answering “yes.” I then asked Robbins when the three (3) Board members had agreed to vote in favor of the Motion and Chair Robbins responded “probably the day before when Mr. Keene had the words [Motion]. Mr. Keene asked if this is a Motion I would be willing to support.” She further testified that she also spoke with Correia around that time and that Keene also spoke with Correia to confirm his support of the Motion. (Testimony of Robbins)

192. The Board of Directors voted to abolish the positions of ARA’s four (4) staff members on October 13, 2009. (Testimony of Robbins and Exhibit R4) Neither of the Appellants was asked to respond to the motion to abolish their positions at the October 13th meeting. (Testimony of Robbins)

Issues Regarding Financial Solvency of the ARA

193. Following the ARA’s vote on October 13, 2009 to eliminate all full-time permanent employee positions due to a lack of funds, the Appellants were then given written notice advising them that their positions, along with all full-time permanent employee positions at the ARA, were being eliminated “due to a lack of money, and to maximize the efficiency and economy of [ARA] operations.” The Appellants were also notified of their statutory rights and of the convening of a hearing before the Appointing Authority pursuant to G.L. c. 31, § 41. (Testimony of Robbins; Exs. R4 and R103)

194. On November 6, 2009, a hearing was held before Janice Silverman, Esq., a personnel consultant who performs human resource functions for the City. (Testimony of Robbins, Milanoski; ExhibitR5, A65).

195. At the hearing on November 6, 2009, Robbins testified and presented documents regarding her analysis of the financial condition of the ARA as of that date. (Testimony of Robbins; Exs. R5, R8 to R10, R21, R35 to R41). The Appellants were present at this hearing, represented by counsel. (Testimony of Milanoski; R5). Neither of the Appellants testified at that hearing. (Testimony of Milanoski; ExhibitR5).

196. Following the hearing on November 6, 2009, Ms. Silverman essentially accepted the entirety of Robbins testimony and analysis and concluded that: “[w]ith a negative cash balance, no revenue stream and no saleable assets it would be imprudent and financially irresponsible for the ARA to continue to operate in its present manner.” (ExhibitR5). Accordingly, Ms. Silverman recommended that the ARA affirm its vote of October 13, 2009, abolish all full-time permanent employee positions at the ARA, and terminate the employment of the individuals holding those positions. (Exhibit R5; not dated or signed)

197. On November 12, 2009, the ARA Board accepted Ms. Silverman’s recommendation and affirmed its decision to eliminate all full-time permanent employee positions, effective November 13, 2009.

198. The other two (2) permanent, full-time staff positions that the ARA’s Board of Directors voted to eliminate on October 13, 2009 were its Administrative Assistant, Bonnie Cruff, and its Project Manager, Ron Dubuc. While neither Cruff nor Dubuc filed appeals to protest the elimination of their positions, Dubuc was hired by the City to occupy an Assistant Superintendent position within the City’s Department of Public Works within months after his ARA Project Manager position had been

eliminated. In that capacity, he continued working on the ARA projects that he had worked on prior to the elimination of his position. (Testimony of Dumas) During the hearing, the ARA claimed that this Assistant Superintendent position had been posted and filled as an existing vacancy. (Testimony of Robbins and Dumas) However, the Appellants requested a copy of the posting for the position at the outset of the second day of the hearing which was never provided by the ARA.

199. As referenced in prior findings, due to financial difficulties, including outstanding obligations of approximately \$3.5 Million dollars, the day to day operation of the IBP was transferred from the ARA to the City, pursuant to a Memorandum of Agreement between the two parties dated July 16, 2009, (Exhibit R28), whereby the City would meet and negotiate with creditors, supervise construction of internal roadways, market lots within the IBP for sale. The project that remained with the ARA was the ITC / Downtown URP. The financial plan for the Downtown URP consisted of a wide range of grant sources from both federal and state sources, as well as a local contribution by means of an Urban Renewal Bond (“URB”). (Exhibit R29 at pp. 44-

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200. Robbins prepared an analysis of the ARA’s cash on hand as of November 2, 2009, four days prior to the hearing before the Appointing Authority’s hearing on November 6, 2009 before Ms. Silverman. (Testimony of Robbins, Exhibit R10).

201. According to Robbins’ analysis, the ARA had \$50,909.70 cash in the bank, and pending receivables totaling \$20,510.67. The ARA was also due reimbursements totaling \$115,107.00. Of these reimbursements, \$92,194.30 was due from the FTA. For reasons alluded to in prior findings and discussed in more detail below, the FTA

was holding reimbursements due to the ARA. I credit Ms. Robbins' testimony that as of November 2, 2009, (and through the date of her testimony before the Commission), she was uncertain when such reimbursements would be made by FTA. Based on the foregoing numbers, the ARA, according to Ms. Robbins, had available/anticipated cash on November 2, 2009 in an amount between \$94,333.07 and \$186,527.37, depending upon the eventual result of FTA reimbursements. (Testimony of Robbins, Exhibit R10).

202. Robbins' November 2, 2009 Analysis showed that the ARA had "actual and reasonably anticipated liabilities" totaling \$248,970.51 as of that date. These amounts include \$28,258.39 of pending bills for administrative expenses such as rent, utilities, audits, and attorneys fees; \$46,636.35 of unpaid invoices due and payable for work on ARA projects; \$108,967.26 for expenses (e.g., legal fees, witness fees) relating to two eminent domain judgments (discussed in more detail below).⁶ (Testimony of Robbins, Exhibit R10)

203. In addition, Ms. Robbins' liability calculation included \$65,108.51 relating to personnel expenses, reimbursements, and payment of accrued vacation/comp time that would be due through November 13, 2009 *if the four employees of the ARA were laid off.* (the anticipated termination date of the employees). (Testimony of Robbins Exhibit R10).

204. I questioned Ms. Robbins on whether it was proper to include termination-related expenses in a calculation undertaken for the purpose of demonstrating the ability of the Appointing Authority to continue to pay its staff and thus, whether the

⁶ These expenses relating to the eminent domain judgments do not include the amounts of the judgments themselves, approximately \$1.2 Million dollars.

terminations should actually occur. Ms. Robbins did not provide a reasonable basis for using an accrual-based method here and including this \$65,000 in expenses in her calculations. In short, Robbins was engaging in a form of circular reasoning by effectively arguing that the ARA had to abolish the positions because of the related termination expenses that would result from the abolition. Thus, I do not credit Ms. Robbins' consideration of such expenses for the purposes of determining whether the ARA had sufficient funds to meet weekly payroll and other expenses. (Testimony of Robbins, Exhibit R10)

205. During the hearing, Ms. Robbins provided an updated statement of the ARA's cash status as of June 25, 2010. (Testimony of Robbins; Exhibit R11). The June 2010 Cash Status information prepared by Ms. Robbins demonstrates that the ARA had outstanding liabilities that exceeded cash on hand and receivables. Ms. Robbins' calculations show cash in the bank of \$66,811.16 and pending receivables of \$20,078.38. She testified that \$15,800.85 of the pending receivables represented rent due on property owned by the ARA, and that the tenant in question was significantly in arrears on those payments. Ms. Robbins further testified that such amount, if ever recovered, was due to the FTA as repayment for grant monies because the property being leased by the ARA was purchased with FTA grant funds. (Testimony of Robbins). In addition to this obligation, listed as a liability, Ms. Robbins also listed \$9,480.51 due to the FTA for rent already collected on this property; approximately \$45,000 due for expenses already incurred in connection with unemployment and retirement payments for the former employees; and \$20,400 due to the City as a "draw" on the Urban Renewal Bond ("URB"). (Testimony of Robbins) By Ms.

Robbins' calculations, the ARA's liabilities exceeded available cash and receivables by approximately \$4,300.00 on June 25, 2010. (Testimony of Robbins, Exhibit R11). In addition, Ms. Robbins also noted on her worksheet an anticipated expense of approximately \$25,000 for FY2009 audit and approximately \$48,000 *in additional unemployment payments* that would become due through December 2010. (Testimony of Robbins, Exhibit R11). Given the scope of this case, I decided to consider the information, but I give it little or no weight to the conclusions drawn by Robbins from this information for the following reasons. First, Robbins continues to justify the financial plight of the ARA by citing expenses (i.e. – unemployment benefits) that would not have materialized if the positions had not been abolished. Moreover, this “post-termination” analysis highlighted another troubling aspect of what occurred here. While the ARA insisted that no City funds were available for the ARA to use for operating expenses, the City, as referenced above, hired one of the other four individuals laid off and had him continue working on ARA projects that he had worked on prior to the elimination of his position. Effectively, the City was now providing the ARA with the financial assistance it had previously refused by employing Mr. Dubuc and having him perform-ARA related duties. Thus, I do not credit Robbins apples to oranges analysis here, tainted by what appears to be duplicitous behavior on behalf of the City and the ARA. (Testimony of Robbins)

206. Robbins also testified about the ARA's checking account register for the period 7/1/2009 through 6/30/2010, (Exhibit R75). According to Robbins, the ARA frequently ran a negative balance on the cash register and checks approved by the

ARA Board were frequently held pending receipt of grant fund reimbursement to cover the checks issued by the ARA. (Testimony of Robbins)

207. There was dispute among the witnesses (Robbins, Milanoski, Volterra) as to the nature of this practice, (e.g., whether and when checks were signed and sent), and what specific ARA Board members did or did not know respecting these practices, but there was no dispute that the practice occurred, and that the ARA was frequently and consistently in the position of having to await receipt of funds to cover checks that had already been approved and/or processed to cover pending expenses. (Testimony of Robbins, Milanoski, Volterra).

208. Milanoski acknowledged that the ARA frequently had what he termed “cash flow” issues. He also acknowledged – while noting that the ARA had never failed to meet payroll – that there had been situations during his tenure, and as recently as July 2009, where the ability to meet current payroll was in question. (Testimony of Milanoski).

209. The Appellants introduced the Annual Reports prepared by outside auditors. See Exhibit A70 (year ending June 30, 2006); A71 (year ending June 30, 2007); and R9 (year ending June 30, 2008). The report for FY 2008 (Exhibit R9) represents the most recent audited Annual Report of ARA finances that had been completed as of the date of the hearing.

210. A review of the most recent audited Annual Report (FY 2008/year ended June 30, 2008; Exhibit R9) shows total net assets of approximately \$7.6 million. The vast majority of assets attributed to the ARA – in excess of \$10.4 million – consisted of “capital assets and investments in property.” (Exhibit R9 at p. 5).

211. It is undisputed that the ARA owed, at the time of this hearing, over \$2 million to Bristol County Savings Bank (“BCSB”) for loans associated with the IBP project. These loans are secured by a property interest. (Testimony of Robbins, Milanoski, Dumas and LaCasse and Exhibits R25 and 27). It is also undisputed that these loans have, on one or more occasions in the years 2008 and 2009, either been in default or been at least 90 days in arrears and in risk of default. (Testimony of Robbins, Milanoski, LaCasse). Following the sale of one parcel of land in the IBP (MAR Seafood), an agreement was reached whereby one year of interest was prepaid and the loans were renegotiated with BCSB to ensure that the bank would take no adverse action for a period of at least one year. (Testimony of LaCasse; Exhibits R. 24 and 26).

212. It is also undisputed that the ARA owed a balance of over \$1.2 Million dollars for two eminent domain judgments (Anderson and Ebert) relating to ARA land takings in the IBP. (Testimony of Robbins, Milanoski, LaCasse, Volterra; Exhibits R78 and R79). While one of the judgment creditors (Anderson) has to date been amenable to efforts to disburse land sale proceeds for the MAR Seafood sale on a pro rata basis, the other judgment creditor (Ebert) has not been willing to participate in such discussions and has actively pursued litigation against the ARA in an attempt to secure immediate and full payment of his judgment. (Testimony of Robbins, LaCasse).

213. Milanoski testified that once the ARA demonstrated an ability to start paying off its various debts again, the ARA’s creditors, particularly the banks that held mortgages on some of the parcels in the IBP, indicated a willingness to work out a

flexible payment schedule with the ARA which included the possibility that proceeds from land sales could be utilized for project management and administrative costs associated with the project. (Testimony of Milanoski)

214. With the ARA seeking and receiving approximately \$100,000 per buildable acre in the IBP and the site consisting of approximately 70 – 75 buildable acres, plus another 100 acres of excess land, Milanoski testified that the value of the land in the IBP is well over \$7 - \$7.5 million which he insists would be more than enough to eventually pay off the approximately \$3 million in debt that the project had accrued. The issue, according to Milanoski, since the spring of 2008 was a lack of steady cash flow for debt service and the fact that the Mayor had unilaterally eliminated City funding for this City sponsored project which accounted for approximately 30% of ARA's operational budget. (Testimony of Milanoski)

215. Robbins testified that the vast majority of this property is located in the IBP and cannot be liquidated at this time or at any foreseeable date in the future. (Testimony of Robbins)

216. The above-referenced Annual Report contains notes and cautions with respect to the ARA's sources of grant funding and the perils associated with a loss of such funding. The report identifies some of the significant grant funding that had already been lost or was in serious jeopardy as of the date of the document's issuance (July 16, 2009): the suspension of "MORE Grants" in the IBP; requested repayment by HUD of over \$700,000 in Community Development Block Grants ("CDBG"); the MBTA's decision to not renew its two-year commitment to provide a 20% match to FTA funding. Additionally, the Annual Report notes in detail the substantial pending

liabilities in the IBP, (i.e., \$2 million in loans secured by property in the IBP), and under the heading “general administration,” references the fact that “[a]s of July 1, 2008, the [ARA] has funded operations on a monthly basis due to insufficient resources to the operations for a full year.” (Exhibit R9 at Note 16 pp. 24-25)

217. In addition to the BCSB loans and the two eminent domain judgments (totaling approximately \$3.2M), the ARA owed additional sums of money to various creditors who were involved in the eminent domain litigation, (e.g., appraisers, engineers and attorneys), and to the City for improvements that it has made in the IBP since assuming operational control of the IBP in July 2009 pursuant to the MOA (Exhibit R28). These improvements were undertaken to facilitate sale of lots in the IBP. (Testimony of Robbins, LaCasse, Dumas). The ARA owed over \$100,000.00 to the creditors – and such sums had been reduced to Promissory Notes between the ARA and each creditor, following negotiations conducted by the City pursuant to the MOA. (Testimony of Robbins, LaCasse; Exhibits R17, R18 and R19). The ARA also owes a sum of approximately \$250,000.00 to the City for the improvements it has made to facilitate sale of lots. (Testimony of Robbins, Dumas, LaCasse; Exhibit R16). In total, the ARA owed in excess of \$3.5 million on the IBP.

218. The ITC project was dependent upon grant funding from sources outside of the ARA.

FTA Funds

219. Although there was significant disagreement at the hearing as to the effective date of the FTA’s decision to suspend funding to the ITC project, there is no dispute that the funding had indeed been suspended by October 6, 2009. The ARA maintains that

the FTA indicated its unwillingness to reimburse future expenditures on May 12, 2009 (Exhibit 39), and reaffirmed this position on September 11, 2009 (Exhibit R40) and October 7, 2009 (Exhibit R41 and Testimony of Robbins). Based upon my review of the correspondence, and in the absence of any concrete evidence put forward by the Appellants to the contrary, I credit this conclusion.

220. The above-referenced letters also make it clear that FTA funding will be suspended until FTA receives satisfactory information from the ARA detailing: (1) confirmation of the local match [i.e., 20% local match required for federal grant]; (2) an updated financial plan; and (3) a revised scope and schedule for the project. (Exhibits R39-R41)

221. It is also undisputed that the FTA conducted a comprehensive Financial Management Oversight Review (“FMO” audit) during the period running from approximately April 2009 through November 13, 2009. (Testimony of Robbins, Milanoski; Exhibit R30). As a result of the FMO audit, the FTA initially sought repayment of approximately \$1.2 million of reimbursed ARA expenses from the ITC project that it deemed ineligible, potentially ineligible or questionable. (Testimony of Robbins; Exhibits R30, R43). In succeeding months, Ms. Robbins negotiated with FTA on behalf of the ARA. (Testimony of Robbins, Exhibit R44). As a result of these negotiations, the FTA agreed to accept reimbursement of a lesser amount, \$843,239.60. (Exhibit R47). Robbins testified that the FTA subsequently demanded payment of the sum on May 13, 2010, (Exhibit R48), and an agreement was reached to pay that money by agreeing to a reduction of future obligated earmarks. (Testimony of Robbins; Exhibit R49).

222. Although there was much testimony (and dispute) at the hearing about the efforts taken (or not taken) to comply with these requests and the efforts taken (or not taken) by various actors to get funding reinitiated, there is no dispute concerning the fact that funding had not resumed prior to the Appellants' last day of employment, November 13, 2009, nor through and including the date of the hearing. (Testimony of Robbins, Milanoski)

223. The Appellants acknowledge that grant funds were suspended by the FTA as of October 6, 2010. (Testimony of Milanoski; Exhibit R41). Milanoski acknowledges that he directed ARA employees to stop working on the project as of that date, and sent an e-mail to ARA Board Members to that effect that afternoon ("...until we have a board meeting I will be authorizing staff not to conduct any more activity on implementing the ITC project ...") (Testimony of Milanoski; Exhibit A72).

224. In response to Mr. Milanoski's e-mail, ARA Board Member Robbins responded asking Mr. Milanoski: "How can you keep paying salaries? What other funds do you have?" (Testimony of Robbins; Exhibit A72). Mr. Milanoski responded that: "[Appellant] Meg [Ross] is running the numbers and will have an answer tomorrow on this issue." (Exhibit A72). Although Mr. Milanoski testified that funds were available and that the issue was addressed at the ARA Board Meeting on October 13, 2009, he acknowledged that a response was not tendered to Ms. Robbins or other ARA Board members the next day. (Testimony of Milanoski).

EOT Funds

225. On February 6, 2009, the Massachusetts Executive Office of Transportation (EOT) informed the ARA, by letter to Milanoski, that it had initiated an incurred cost

audit relative to the ITC and another project receiving state (PWED) funding, and conveyed its request that “no additional charges be incurred to this project.” (Exhibit R35). This position was reiterated in subsequent letters from EOT to Milanoski on April 6, 2009 (Exhibit R36) “we will not be reimbursing any costs that were incurred after you received my original letter of February 6, 2009” and again on September 28, 2010 (Exhibit R37) “...you were to cease spending immediately on the project...”

226. The September 28, 2009 correspondence from EOT makes it clear that the agency is revamping the ITC funding program and that “future ITC program funding will be targeted narrowly at expenditures that are directly related to intermodal transportation improvements.” (Exhibit R37).

227. There was no funding at the time of the hearing in this matter, and there was no commitment from EOT for future funding. The final letter states that the ARA is “encouraged to pursue” funding through a revised ITC program which, (as of the September 28, 2009 date of the letter), EOT was “revamping” and “finalizing the revised ITC program guidelines and application materials.” (Exhibit R37).

MBTA Funds

228. On April 14, 2009, Daniel A. Grabauskas, General Manager of the MBTA, notified then-ARA Chairman Benton Keene, that the MBTA was not renewing its two-year Interagency Funding Agreement with the ARA to provide a 20% local match to FTA funds for the ITC. (Testimony of Robbins; Exhibit R38).

229. In reaching this determination, the MBTA cited a number of factors, including lack of any work on the design of a new parking facility, and the ARA's request to defer the 30% design work for implementation to a start date in 2014. (Exhibit R38).

230. Millanoski testified that while certain grant funds from EOT, the MBTA and FTA had been temporarily suspended, he continued to work on the action items that were identified during the August 3, 2009 Stakeholders Meeting. According to Millanoski, all of the stakeholders, including the ARA's Board of Directors and Mayor Dumas, were fully aware that this temporary suspension would be lifted as soon as the Mayor provided the FTA, the EOT and the MBTA with confirmation that he and the ARA's Board of Directors had approved the revised Pro-Forma that he had prepared. (Testimony of Millanoski)

GATRA Funds

231. In an October 21, 2009 letter, GATRA Administrator Gay noted in part that: "There is no funding commitment from GATRA that has been approved in any FTA funded grants because there has been no further development of the concept plan for the [ITC] project. There are no funds even programmed in the Transportation Improvement Program (TIP). Therefore GATRA has no funds committed for the [ITC] project at this time." (Exhibit R50).

232. Millanoski testified that GATRA funds in the amount of \$3 million was readily available to fund salaries for work on the Downtown ITC project if Millanoski and the ARA had been permitted to meet with GATRA in order to reconfirm its previously provided funding commitment as per the arrangements that were made during the August 3, 2009 Stakeholders Meeting. (Testimony of Millanoski) However,

according to Milanoski, had refused to participate in any such meeting with GATRA and the ARA was therefore unable to secure GATRA's commitment prior to the October 13, 2009 Board meeting. (Testimony of Milanoski)

Mantrose-Haesur Funds

233. Robbins testified that a "Supplemental Environmental Projects" grant in the amount of \$150,000.00 was provided to the ARA pursuant to the terms of a Settlement Agreement in the matter of *Commonwealth of Massachusetts v. Mantrose-Haeuser Co., Inc., et. al.*, Suffolk Sup. Crt. C.A. No. 08-4778A (filed 10/28/2008). (Testimony of Robbins; Exhibit R55 at pp. 29-30) The Settlement Agreement provides that the funds are "... to be used by the ARA solely for the design, engineering, permitting and implementation of said restoration project along the Ten Mile River." (Testimony of Robbins)

234. The Settlement Agreement further requires that the ARA hold such funds in a "dedicated bank account and shall be used by the ARA solely for the intended purposes ..." Finally, the Settlement Agreement provides that if the ARA does not use the funds within eighteen months of receipt, they shall be returned to the Commonwealth. (Exhibit R55)

235. Robbins testified that the ARA currently holds these funds in separate bank accounts at BCSB (Exhibits R56 and R57), and that when the ARA was unable to utilize the funds within the eighteen month time frame set forth in the Settlement Agreement, it requested and received an extension from the Attorney General's Office and the State DEP in which to do so. (Testimony of Robbins; Exhibits R57 and R58).

236. Robbins testified that the funds could not be used for staff salaries but could, if appropriate, be used for specific project management expenses by consultants hired for the project. (Testimony of Robbins).

237. Milanoski testified that the settlement proceeds in the amount of \$150,000 were still available for work associated with the design, engineering, permitting and implementation of the environmental restoration project along the Ten Mile River, *all of which would cover the salaries of ARA staff members for work on that component of the Downtown ITC project.* (Exhibit A68, and Testimony of Milanoski)

238. In dispute here is whether it would ultimately be legal to use such funds, in whole or in part, for ARA salary expenses. While it is not the role of the Commission to substitute its judgment about a reasonable exercise of the ARA's power and discretion to use these funds as it determines appropriate, I find that the decision not to use these funds to cover salaries was not based on sound, independent judgment or legal advice, but largely influenced by a desire by Robbins and other members of the Board to show that no funds were available to fund the Appellants' salaries.

MORE Funds

239. Robbins testified regarding a Massachusetts Opportunity Relocation and Expansion (MORE) Jobs Program grant for environmental remediation on the Wall Street site comprising part of the ITC. The grant at issue was left over from a prior ARA project, the "Cookson-Swank" Project. While the grant originally related to access to the Cookson-Swank site, the buildings and parcel of land at issue (Automatic Machine) were located on Wall Street and within the geographic boundary of the ITC project. (Testimony of Robbins).

240. The MORE Grant had an original expiration date of December 31, 2009 that was extended at the request of both Robbins and Mayor Dumas. (Testimony of Robbins, Dumas; Exhibit R59). On December 16, 2009, the grant was extended to June 30, 2010. (Testimony of Robbins; Exhibit R60). Subsequently, a new MOU and Contract were executed by Robbins on behalf of the ARA. (Testimony of Robbins; Exhibits R64 and R65).

241. Robbins sought and obtained the permission of the FTA to undertake the demolition of Automatic Machine. Ms. Robbins testified that FTA permission was required because the land at issue was purchased with 80% FTA funds. (Testimony of Robbins; Exhibit R44). By letter dated January 27, 2010, the FTA approved the demolition. (Exhibit R45). By e-mail dated April 28, 2010, the ARA was again reminded of the time-limited nature of the funding, and the impending deadline (6/30/2010) by which the money had to be expended or returned to the state. (Exhibit R63).

242. The FY 2010 allocation on the MORE Grant was \$534,862.60. (Testimony of Robbins; Exhibit R62).

243. Robbins testified that the ARA developed plans to expend the entire balance of the MORE Grant for the purposes of demolition and remediation at the Automatic Machine site. (Testimony of Robbins; Exhibits R61 and R66). Ms. Robbins testified that there was no remaining balance of funds to be used for any other purpose, including salaries. (Testimony of Robbins).

244. Ms. Robbins testified that the MORE funds could not be used for staff salaries. (Testimony of Robbins).

245. Milanoski testified that the \$534,863 MORE Grant was readily available for the soft cost, design, engineering, project management and legal work associated with the realignment of Wall Street and could be utilized to pay salaries of the staff members for work performed on that component of the project. (Exhibits A67 and A69 and Testimony of Milanoski)

246. The Memorandum of Understanding between the ARA and the state's Executive Office of Economic Development supports the testimony of Milanoski. It explicitly states that "soft cost" and "project management" costs are a permissible use of the grant and there is no language that prohibits using a portion of the funds for salaries. (Exhibit A69)

247. Milanoski offered credible testimony that MORE funds were not used in the past for salaries because other funds were available for salaries. Similar to the ARA's decision regarding the Mantrose-Haesur funds, I find that the ARA's unilateral decision not to use MORE funds for administrative costs was influenced by a desire to show that no funds were available to fund the salaries of the Appellants. Further, at the time of the extension, the ARA had already abolished the positions of the Appellants and transferred ARA-related project management duties to a former ARA employee now employed by the City. (Testimony of Milanoski)

CDBG Funds

248. The parties devoted significant time during the hearing to addressing the ARA's ability to access and use monies disbursed to the City by the U.S. Department of Housing and Urban Development ("HUD") under the Community Development Block Grant Program ("CDBG").

249. The Appellants argue that Mayor Dumas intentionally withheld his support for continued CDBG funding for ARA in an attempt to leverage the ARA board of Directors into terminating Milanoski. (Testimony of Milanoski)

250. For many of the reasons cited in the findings contained in the chronology section of this decision, I credit the testimony of Milanoski and Volterra on this issue and find that Mayor Dumas' decision to cut off CDBG funding and/or provide other City funds that were recommended by the City Council was part of Mayor Dumas' attempt to force the termination of Milanoski.

Urban Renewal Bond funds

251. As with CDBG funding, the parties devoted significant time during the hearing to addressing the ARA's ability to access funding under the Urban Renewal Bond (URB) authorized by the City, and the permissible uses of such monies.

252. Milanoski testified that there was still a balance of \$1,724,375.77 in the Urban Renewal Bond that was specifically allocated for work associated with the Downtown ITC project. (Exhibit R13.)

253. The evidence that was submitted at the hearing clearly and unequivocally established that the Urban Renewal Bond could have been used to fund the salaries of ARA staff members while they performed work on the Downtown ITC project. While Mayor Dumas and LaCasse testified that the City did not want to authorize proceeds from the Urban Renewal Bond to fund salaries of ARA Staff Members, they each admitted that this was a separate issue from the question of whether proceeds from the Urban Renewal Bond could have been utilized to fund ARA staff salaries. (Testimony of Dumas and LaCasse)

254. Bond funds could have been used and City was aware of this because: On page 1 of the Downtown MOA, the “Downtown Urban Renewal Bond” was defined as follows:

the two million five hundred and thirty-nine thousand dollars (\$2,539,000) as appropriated by the City under M.G.L. c. 121B, § 20 for defraying all or a portion of the development, acquisition, relocation, bonding expenses, and other direct costs of Phase IA of the Riverfront District in the Downtown URP as further defined in appendix C of the Downtown URP.

(Exhibit A5, p. 1, underlining supplied for emphasis. Again, note that Appendix C was attached to both the Downtown URP (Exhibits A3D and R29) as well as the Downtown MOA (Exhibit A5).)

255. This definition of the Urban Renewal Bond is significant because both Mayor Dumas and LaCasse testified during the hearing that the Mayor had relied upon this provision of the Downtown MOA when he determined that proceeds from the Bond could not be used to fund the salaries of the ARA’s staff positions after the ARA’s Board of Directors had voted on October 13, 2009 to eliminate those positions, including the positions held by Milanoski and Ross. (Testimony of Dumas) In Mayor Dumas’ view, the Urban Renewal Bond could only be utilized for “direct costs” and, in his opinion, salaries for the ARA’s staff were indirect, rather than direct costs. (Testimony of Dumas)

256. However, Mayor Dumas did not have an accurate understanding of the meaning of the term “direct costs” since employee salaries and compensation are direct costs pursuant to both the industry standard in economic redevelopment as well as the Federal Office of Management and Budget’s Circular No. A-87 (Cost Principles for

State, Local and Indian Tribal Governments). (Exhibit A86, p. 6 and Testimony of Milanoski)

257. Paragraph 4H of the Downtown MOA specifically incorporates the Federal Office of Management and Budget's Circular No. A-87 into that agreement by stating as follows:

The ARA shall comply with all applicable federal, state and local regulations, including compliance with Urban Renewal Bond authorization requirements for Phase IA, and including but not limited to the Federal Office of Management and Budget's Circular No. A-87 (Cost Principles for State, Local and Indian Tribal Governments).

(Exhibit A5, p. 8.)

258. Circular No. A-87 defines "direct costs," in pertinent part, as follows:

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.
2. Application. Typical direct costs chargeable to Federal awards are:
 1. Compensation of employees for the time devoted and identified specifically to the performance of those awards. (emphasis added)

(Exhibit A86, p. 6.)

259. Further, as referenced in previous findings, LaCasse attended a meeting of the ARA that was held on April 25, 2008 during which, according to the minutes, which I have found are an accurate reflection of his comments, "stated that there is no cap/restriction on the Bond for Phase IA [of the Downtown ITC project] and that it could possibly be used for the ARA's operational budget." (Exhibit A21)

260. Similar to the decision regarding the Mantrose-Haesur fund, the CDBG funding and the MORE fund decision, I find that the ARA and/or City's decisions to prohibit use of ITC Bond funds for ARA salaries was part of a larger effort to force the resignation, or justification for, the termination of Milanoski.

CONCLUSION

The Commission's authority in this matter is drawn from G.L. c. 121B, § 52 which provides, in relevant part, that:

No person permanently employed by a redevelopment authority, who is not classified under chapter thirty-one, shall, after having actually performed the duties of his office or position for a period of six months, be discharged, removed, suspended, laid off ... nor shall his office be abolished, except for just cause and in the manner provided by sections forty-one to forty-five, inclusive, of chapter thirty-one.

G.L. c. 121B, § 52.

The Commission's role in hearing cases under such a "just cause" standard is well-established. In adjudicating such matters, the Commission looks to see if "the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 304 (1997). A "reasonable justification" means that the appointing authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and correct rules of law.

Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971).

Where the Commission finds by a preponderance of the evidence that there was just cause for the action taken by the appointing authority, the Commission shall affirm the

appointing authority. Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796, 800 (2004). While it is the role of the Commission to “guard against political considerations, favoritism, and bias in governmental employment decisions … [i]t is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. at 800, quoting City of Cambridge, 43 Mass.App.Ct. at 304.

The Supreme Judicial Court has cautioned the Commission that its proper role in applying the “just cause” standard in matters involving the abolition of a position for reasons of economics and efficiency are limited, and indeed more “narrow” than the scope of review to be applied in disciplinary actions. See School Comm. of Salem v. Civil Service Comm'n, 348 Mass. 696, 699 (1965). See also Shaw v. Board of Selectmen of Marshfield, 36 Mass.App.Ct. 924, 925 (1994) (“terminations of these sorts are not subject to the statutory procedures customarily provided for cases where an appointing authority intends to terminate an employee for what amounts to job performance”).

It is well-settled that lack of money constitutes “just cause” for the elimination of a position. Debnam v. Belmont, 388 Mass. 632, 634-36 (1983). The SJC noted that: “a municipality may abolish a civil service position when, in the judgment of appropriate municipal officials, the position is no longer needed or economical.” Debnam, 388 Mass. at 635-36 citing, et. al., Commissioners of Civil Service v. Municipal Court of the City of Boston, 369 Mass. 84, 88 (1975). In reaching this determination, the Court noted century-old precedent establishing the fundamental premise that:

The abolition of an unnecessary position made in good faith plainly is the duty of an executive or administrative officer. One holding such a position, though

efficient in the performance of his duties, may be removed simply because the position is no longer necessary, provided the removal is made in good faith, and the recital of that reason is not made the cover for some other unjustifiable motive.

Gardner v. Lowell, 221 Mass. 150, 154 (1915) citing Garvey v. Lowell, 199 Mass. 47, 49 (1908).

The Court further noted that a “lack of funds” exists where the appointing authority determines that its actual or anticipated revenues are or will be inadequate to pay the salary of the employee(s) in question, as well as to meet other, more pressing needs of the appointing authority. Gloucester, 408 Mass. at 301 citing Debnam v. Belmont, 388 Mass. at 636. Notably, evaluating the actions of the appointing authority under this standard, the Commission will only consider whether the appointing authority exercised its “best judgment” in making such a determination. See School Comm. of Salem, supra, 348 Mass. 696. Whether the appellants or the Commission personally agree with the authority’s conclusion is not dispositive. Id. Similarly, the ultimate accuracy of this conclusion is also not at issue. Id. Stated simply, the elimination of a position as part of a good faith effort to achieve economy and effectiveness of operations does not violate civil service protections. Commissioner of Health and Hospitals of Boston v. Civil Service Comm’n, 23 Mass.App.Ct. 410, 413 (1987) citing Gardner v. Lowell, 221 Mass. at 154; McNeil v. Mayor of Peabody, 297 Mass. 499, 504 (1937); Dooling v. Fire Commr. of Malden, 309 Mass. 156, 162 (1941).

The layoff of employees is not justified if the proffered reason for their dismissal was pretextual and their discharge was the product of improper motivations. City of Cambridge Housing Authority v. Civil Service Comm’n, 7 Mass.App.Ct. 586, 589 (1979); see also, Raymond v. Civil Service Commission and Athol Fire Department,

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(12/9/08) hereinafter “the Athol case,” p. 11. Furthermore the Court in the City of

Cambridge Housing Authority case reiterated the long established doctrine under the

Civil Service Law dating back to the early 1900’s which provides that,

There is a real and fundamental distinction between the laudable abolition of an unnecessary position and the discharge of a faithful employee in violation of the rights secured to him by statute; and the latter can neither be concealed nor protected by a pretense that it was an exercise of the former right. City of Cambridge Housing Authority, 7 Mass.App.Ct. at 590 – 591, quoting, Garvey v. Lowell, 199 Mass. 47, 50 (1908).

And even if the evidence would have warranted a finding by the [hearing] officer that the removal was for ‘proper cause’ the removal should be reversed if it appeared affirmatively that it was made ‘in bad faith’ as would be the case if this case was a ‘mere pretext or device to get rid of’ the employee for some other and improper cause. City of Cambridge Housing Authority, 7 Mass. App. Ct. at 590 – 591, citing Mayor of Somerville v. District Court of Somerville, 317 Mass. 106, 121 (1944).

All of the judicial decisions cited above reference the Commission’s authority – and duty - to determine whether a layoff was made in good faith. Here, the overwhelming evidence shows that the decision to terminate Milanoski and Ross was the result of bad faith by Mayor Dumas and members of the ARA Board of Directors.

As a threshold matter, the ARA, citing a series of judicial decisions, argues that since the ARA and the City are two separate entities, the Commission is limited to assessing the actions of the ARA Board of Directors. I disagree.

The ARA argues, unsuccessfully, that the instant appeals are distinguishable from a relatively recent decision in the Athol case referenced above. In Athol, the Superior Court rejected the claim that the Town’s Fire Chief, who was not the Appointing

Authority, was legally distinct from the appointing authority (the Board of Selectmen) and that his bad faith should not be imputed to it stating: “[t]he problem with this analysis is that it supposes an artificial barrier between [the chief] and all the other Town Officials. This is an unreasonable approach because the entire town based its decision on [the chief’s] proposal of the budget.”

Here, as in Athol, the overwhelming evidence shows that any purported barrier between the Mayor and the ARA was indeed artificial. Even more troubling, however, is that, unlike the facts in Athol, the ARA Board of Directors was fully aware of the Mayor’s motivations and, with the Mayor literally watching over them at one meeting, orchestrated an appalling, pre-determined vote to abolish the positions of the Appellants. The majority of the ARA took this vote: 1) after already discussing the motions (drafted by the City Solicitor) prior to the public meeting; 2) without offering the Appellants an opportunity to respond; and 3) without first reviewing the financial documents that would *later* be used to justify their vote before a local hearing officer and this Commission. Rather than fulfilling their fiduciary responsibilities as stewards of the “independent” ARA, they themselves acted in bad faith.

Evidence of Mayor Dumas and ARA Acting in Bad Faith

The record is brimming with acts that demonstrate the bad faith of Mayor Dumas and the ARA Board of Directors, dating as far back as 2007. The following is a summary of those acts.

As cited in the findings, I conclude that Mayor Dumas and LaCasse, as part of substantive conversations about LaCasse’s possible appointment as Director of Budget

and Administration in December 2007, discussed Milanoski's future as the ARA's Executive Director.

Although Mayor Dumas was under no legal obligation in the spring of 2008 to continue providing the ARA with the approximately \$170,000 in CDBG funding that the City had provided to the ARA over a four (4) year period from 2003 – 2007, he made the calculated choice to discontinue this funding and failed to provide other City funds recommended by the City Council, knowing full well that it would hamper the ARA's ability to implement the IBP project as he had been cautioned by both Milanoski and the Members of the ARA's Board of Directors.

Mayor Dumas also began lobbying behind the scenes against Milanoski by requesting to meet with Volterra for lunch at the Briggs Pizzeria in Attleboro on November 8, 2008. During that lunch meeting, Mayor Dumas told Volterra that he was unhappy with Milanoski's performance as the ARA's Executive Director and that he wanted Volterra's personal friend Reed to replace Milanoski. I reach the reasonable conclusion that Mayor Dumas specifically mentioned Reed as Milanoski's replacement in an effort to garner Volterra's support since he knew that Volterra and Reed were friends.

Significantly, Mayor Dumas never informed Volterra that he had a plan to reorganize the ARA's Executive Director position by creating a Director of Economic Development for the City who would also serve in the dual role as the ARA's Executive Director. In fact, Volterra did not hear about the Mayor's reorganization plan until at least two (2) weeks after the Task Force Report had issued and the Mayor had publicly called for Milanoski's resignation. Not once during the meeting did the Mayor mention that there was a financial problem at the ARA or with either of the ARA's two (2) major projects,

the IBP or the Downtown ITC. Instead, the focus of the entire meeting was exclusively upon the Mayor's desire to remove Milanoski. Similarly, there was never any mention of any of the other three (3) ARA staff members during Mayor Dumas' meeting with Volterra, including Ross.

When Mayor Dumas' effort to convince Volterra to support Milanoski's removal as the Executive Director of the ARA failed, the Mayor stepped up his efforts against Milanoski by going before the City Council and effectively laying out what he preceied as "just cause" reasons to remove Milanoski, even though he had no authority to do so. On page 2 of his speech, the Mayor cited to "a serious pattern of strained, and in some cases broken, relationships between the Executive Director and business owners, local, state, and federal agencies, including elected officials and their staff" without ever providing a shred of evidence to support any of his claims. Despite ample opportunity to do so, he also failed to provide any credible evidence of this claim to the Commission.

Mayor Dumas, as part of his speech, then proposed to initiate the hiring process for the City's Director of Economic Development, who would also serve as the Executive Director of the ARA as Milanoski had done in the past. This provided a glimpse of his motivation - namely, removing Milanoski and replacing him with someone who would be under the direct supervision and control of the Mayor's Office. Remarkably, after having moved to cut off funds for the ARA only months earlier, Mayor Dumas, in his speech, publicly promised that he would provide whatever staff assistance the ARA needed in the event that the Board of Directors demanded Milanoski's resignation and Milanoski did, in fact, resign.

Mayor Dumas went even further in subsequent conversations and email communications with Volterra that transpired in December and early January of 2009 when both he and members of the Municipal Council made it clear to the ARA that the City would also provide the ARA with whatever funding that it needed in order to assist the ARA with the IBP if Milanoski resigned.

In addition to Mayor Dumas' personal and public demand for Milanoski's removal, I reach the reasonable conclusion that Mayor Dumas also worked in tandem with members of the Municipal Council both before and after his November 25, 2008 speech in an effort to exert political pressure upon both the ARA's Board of Directors and Milanoski.

For example, Council President Cook prepared his "Comments & Suggestions Regarding the ARA and the IBP" on November 22, 2008 with recommendations that were remarkably similar to the Mayor's speech to the Municipal Council which was rendered three (3) days later.

Councilor Allard was also heavily involved on behalf of the Mayor. First, she posted the Mayor's speech on her website on November 26, 2008 and reiterated the Mayor's overall strategy in an online response to one of her constituents in a manner that foreshadowed the events that would play out during the following year in the event that Milanoski refused to step down as the ARA's Executive Director:

The ARA is governed by MGL 121B which has kept them completely untouchable by the City. Making the changes the Mayor has suggested will bring it back under the Mayor's office where we have control. If the Board decides not to ask for the Directors resignation then we have to follow legal means to remove Board members before we can get to the Director's position. Again, putting

this position under the Mayor would prevent this in the future.

Then, during a meeting of the Municipal Council that was held on December 30, 2008, Allard stated that unless the ARA's Board of Directors was willing to terminate Milanoski's employment, "there's nothing to talk about" in reference to the January 10, 2009 public forum at BCC that had been scheduled in an effort to bring the Mayor and the ARA together to save the IBP project.

In addition to Allard's efforts, Councilor Kirby's actions also suggest that Mayor Dumas worked in tandem with members of the Municipal Council in his efforts to remove Milanoski during that same time period. Volterra had sent a detailed email to the Mayor in December of 2008 in an effort to convey a ten (10) point plan pursuant to which the IBP project could move forward with the City's financial and political support and included Milanoski's continuing to serve as the Executive Director of the ARA. The most significant aspect of Kirby's January 7, 2009 response to Volterra is the fact that he confirmed that the City would cooperate with the ARA and would also provide the ARA with whatever funding it needed to stay on track with the IBP project if Milanoski agreed to resign.

Despite the ARA's argument that it acted independent of Mayor Dumas to terminate the Appellants, Mayor Dumas acknowledges that he personally met with Milanoski twice on January 6 and again on January 9, 2009 in an effort to convince him to resign voluntarily in exchange for a letter of recommendation and continued employment during a six (6) month transition period during which Milanoski would train the City's new Director of Economic Development/ARA Executive Director.

Having failed in securing Milanoski's resignation, the Mayor continued to tie the resumption of the critical City funding that the ARA needed in order to continue implementing the IBP project upon the removal of Milanoski as the ARA's Executive Director. On January 27, 2009, a meeting that was attended by the Mayor, LaCasse, the City Auditor, Volterra, Keene and Stevenson was held at the Mayor's Office. At that meeting, LaCasse, in the presence of Mayor Dumas, told ARA members that once Milanoski was gone, the ARA would have all the money they needed.

Mayor Dumas' public and private efforts to exert political pressure upon the ARA, reveal that Mayor Dumas had a predetermined plan that was designed to remove Milanoski from his position at all costs, a plan that he ultimately saw through to fruition once he realized that Milanoski would not resign voluntarily and that the ARA's Board of Directors, as constituted, would not move to terminate Milanoski.

Despite Mayor Dumas' efforts to remove him, the ARA's Board of Directors still maintained their full support for Milanoski throughout the winter and spring of 2009. In fact, in early June of 2009, the ARA's Board of Directors gave Milanoski an positive performance evaluation for the time period 2007 – 2009 which reiterated that support.

By August 2009, the composition of the ARA's Board of Directors was finally in the process of undergoing the kind of major changes that Mayor Dumas needed to see his plan through to fruition. For after nearly six (6) months after the Mayor had nominated her to become the Governor's appointment to the Board, Robbins had finally been confirmed by Governor Patrick sometime in July of 2009 to replace Maguire Heath who was a supporter of Milanoski and had refused to go along with the Mayor's plan even after the Mayor had personally approached her to lobby for her support. In addition,

long-time Board Member and Milanoski supporter Don Smyth resigned from the Board in August of 2009 primarily as a result of his concern, expressed to Volterra, about his wife's employment with the Attleboro Public Library. Mayor Dumas then appointed Mr. Correia to the Board, a former Chairman of the School Committee, whom the Mayor knew was supportive of his efforts in regard to the ARA.

Thus, only two (2) consistent supporters of Milanoski – Stevenson and Volterra – remained on the ARA's Board of Directors. Accordingly, once Correia was confirmed by the Municipal Council as Smyth's successor in the middle of September, 2009, the Mayor now had the three (3) member majority of the ARA's Board of Directors that he needed in order to terminate Milanoski's employment.

The actions of the newly-constituted majority of the ARA Board of Directors were equally troubling, as they showed a disturbing disregard for due process and their overall responsibility to act as independent stewards of the ARA.

The decision to abolish the positions at the ARA had already been unlawfully predetermined by the Mayor and the Board's new three (3) member majority consisting of Correia, Keene and Robbins in the days leading up to that meeting. After Milanoski made a financial presentation regarding the ITC to the Board, the Board of Directors, without any notice to ARA employees, including Milanoski and Ross, voted to eliminate all four (4) full time staff positions, including those of Milanoski and Ross, near the conclusion of the October 13, 2009 Board meeting for an alleged lack of funds.

The vote to eliminate Milanoski's and Ross' positions was taken at the very first meeting that was attended by the Mayor's new three (3) member majority of Correia, Keene and Robbins in their official capacities as members of the ARA's Board of

Directors and those three (3) members of the Board took that vote for the proffered reason of “lack of funds” without ever undertaking the kind of thorough review of the ARA’s economic situation that would have been necessary to make a good faith determination that the ARA lacked the funds to pay their salaries.

Robbins admitted that she spoke to Mayor Dumas within days prior to the October 13, 2009 meeting of the ARA’s Board of Directors, that she verbally requested the assistance of the City Solicitor.

All three (3) Motions that were made at the conclusion of the October 13, 2009 meeting of the Board of Directors were actually prepared in writing by the City Solicitor at the request of Robbins at least one (1) day in advance of that meeting.

Robbins acknowledged that she then spoke with Correia and Keene about the Motion to terminate the employment of all four (4) ARA staff members the day before the October 13, 2009 Board meeting and all three (3) of them agreed that they would vote in favor of that Motion.

Prior to the Board’s October 13, 2009 meeting, the By-Laws of the ARA did not permit the Governor’s appointee (Robbins) to serve as the Chairperson of the ARA. However, just prior to the Board’s vote to eliminate all four (4) permanent full-time staff positions of the ARA and without any discussion whatsoever, Robbins made a Motion that was passed by the Board to permit the Governor’s appointee to serve as Chairperson for the first time.

Mayor Dumas, LaCasse and other City officials attended the October 13, 2009 meeting. I reach the reasonable conclusion that they attended for the purpose of insuring that the ARA’s Board of Directors carried out the Mayor’s predetermined plan to

eliminate the four (4) staff positions regardless of anything that Milanoski might say in support of the revised Pro-Forma that he presented for the Board's consideration and approval at the outset of the meeting. The fact that Mayor Dumas and LaCasse left without any viable explanation just minutes before the predetermined Motion was made further supports this conclusion.

As referenced above, the Motion to eliminate the four (4) staff positions at issue was made and then approved without any discussion and without asking the Appellants or other employees to provide any response.

Finally, only a few short months after abolishing the Appellants' positions, the City, in a position which they were unable to show was ever posted, hired one of the laid off employees to work on ARA project-related matters.

Taken together, the above-referenced actions demonstrate that Mayor Dumas and the ARA Board of Directors acted in bad faith when they terminated Mr. Milanoski and Ms. Ross.

Lack of Funds Issue

Although there is a virtual mountain of disturbing evidence to show that Mayor Dumas and the ARA acted in bad faith here, the issue regarding whether there was a lack of funds justifying the abolition of the Appellant's positions (notwithstanding the acts of bad faith) is a closer call. I listened carefully to Ms. Robbins' testimony and reviewed all of the documents submitted by both parties.

Parts of Robbins' testimony and relevant financial documents do paint a picture of any agency facing extraordinary financial challenges. It is undisputed that the FTA had suspended all grant funding for the ITC project, subject to the ARA's production of

satisfactory information. It was uncertain at the time if or when the FTA funding will would ever resume for the ITC project. Significantly, as stated in the FTA letters, before any FTA funding could resume, the ARA needed to locate a source for a required 20% “local match.” Given that EOT has permanently terminated its funding due to a shift in agency priorities, MBTA decided not to renew prior contracts with the ARA relating to the ITC, and GATRA made clear that it had never committed funding to the ITC project, it was highly uncertain if or when FTA funding would be reinstated.

Other parts of the relevant testimony, however, either 1) do not show, as argued by the ARA, that there was a lack of fund or in some cases, showed the opposite; or 2) show that ulterior motives by Mayor Dumas were the cause of the purported lack of funds.

Settlement proceeds in the amount of \$150,000 in the matter of Commonwealth of Massachusetts v. Mantrose-Haeuser Co., Inc., et. al., Suffolk Sup. Crt. C.A. No. 08-4778A (filed 10/28/2008) were still available for work associated with the design, engineering, permitting and implementation of the environmental restoration project along the Ten Mile River, all of which would cover the salaries of ARA staff members for work on that component of the Downtown ITC project. the decision not to use these funds to cover salaries was largely influenced by a desire by Robbins and other members of the Board to show that no funds were available to fund the Appellants’ salaries.

A portion of the \$534,862 in Massachusetts Opportunity Relocation and Expansion (MORE) Jobs Program grant for environmental remediation on the Wall Street site comprising part of the ITC was also available for the payment of salaries. The Memorandum of Understanding between the ARA and the state’s Executive Office of Economic Development regarding these MORE funds explicitly stated that “soft cost”

and “project management” costs were a permissible use of the grant and there was no language that prohibited using a portion of the funds for salaries.

The evidence that was submitted at the hearing also clearly and unequivocally established that the bond funds from the Urban Renewal Bond could have been used to fund the salaries of ARA staff members while they performed work on the Downtown ITC project. In all of these instances, the ARA witnesses were just plain wrong when they testified that none of these funds could be used for salaries. More troubling, however, as cited in the findings, is that many of these funding decisions were part of a larger effort by the City to financially starve the ARA as it existed in order to justify Mayor Dumas’ plan to terminate Milanoski and bring his functions back under the control of the City. That is equally true in regard to the use and/or availability of CDBG funds. Even if I were to accept Mayor Dumas’ testimony that the decision to stop providing CDBG funds was based solely on limited resources, he never explained why he failed to implement a recommendation by the City Council to provide a reduced amount through other City funds. Generally, however, almost of these decisions were consistent with the ominous comments of LaCasse to Volterra in the presence of Mayor Dumas and others that no funds would be available until Milanoski was removed as Executive Director.

Finally, although I credited those portions of Robbins’ testimony that could be supported by reasonable explanations and documentary evidence, I did not credit portions of her testimony regarding a financial analysis that showed, in her opinion, that the ARA was unable to meet its payroll expenses. Robbins was unable to show why she used an accrual based accounting method in her analysis that included, in part, termination

expenses of the four employees, that would only be paid if the Appellants and two other were actually terminated. This circular reasoning is not sufficient to show that the ARA had a lack of funds to justify the termination of the Appellants.

Summary

Mayor Dumas and the ARA Board of Directors acted in bad faith in terminating the Appellants. The overwhelming evidence shows that the actions of the Mayor and the ARA were a pretext to oust Milanoski for reasons unrelated to basic merit principles. Further, the ARA has failed to sufficiently show that there was a lack of funds to justify their termination.

For all of the reasons cited above, the Appellants' Appeals under Docket Numbers D1-09-416 and D1-09-417 are hereby *allowed*. Michael Milanoski and Meg Ross are hereby ordered reinstated to their respective positions as the ARA's Executive Director and Chief Financial Officer retroactively to November 13, 2009, the date upon which their employment was actually terminated, with full back pay and a restoration of all benefits to which they are entitled.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Stein and McDowell, Commissioners [Marquis – Absent]) on June 2, 2011.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in 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:

Colin R. Confoey, Esq. (for the Appellants)

Thomas W. Colomb, Esq. (for the ARA)