COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

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In the Matter of

TOWN OF BLACKSTONE

and

BLACKSTONE POLICE UNION,
MCOP, LOCAL 442, AFL-CIO

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Case No. MUP-16-5329

Date Issued: February 23, 2018

Hearing Officer:

Margaret M. Sullivan, Esq.

Appearances:

Stephen C. Pfaff, Esq. - Representing the Town of Blackstone

Kareem A. Morgan, Esq. - Representing the Blackstone Police Union, MCOP, Local 442, AFL-CIO

HEARING OFFICER'S DECISION

SUMMARY

1 The issue in this case is whether the Town of Blackstone (Town or Employer) violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by discriminating against Blackstone Police Union, MCOP, Local 442, AFL-CIO (Union or MCOP) unit member Maxwell Hurwitz (Hurwitz) for engaging in concerted, protected activities. I find that the Town violated the Law in the manner alleged.
STATEMENT OF THE CASE

On June 28, 2016, the Union filed a charge of prohibited practice with the Department of Labor Relations (DLR), alleging that the Town violated Sections 10(a)(3) and (1) of the Law. A DLR hearing officer investigated the charge on July 26, 2016. On August 9, 2016, the investigator issued a complaint alleging that the Town violated Sections 10(a)(3) and, derivatively, Section 10(a)(1) by discriminating against Hurwitz for engaging in concerted, protected activities when it bypassed him for promotion to sergeant. The Town filed its answer on August 17, 2016.

I conducted a hearing on November 14 and November 16, 2016. Both parties had an opportunity to be heard, to call witnesses and to introduce evidence. The parties submitted their post-hearing briefs on January 17, 2017. Upon review of the entire record, including my observation of the demeanor of the witnesses, I make the following findings of fact and render the following opinion.

Findings of Fact

The Town’s Police Department currently includes patrol officers, sergeants, a lieutenant and a police chief. The patrol officers and the sergeants are unionized and are members of the same bargaining unit. In 2012 or 2013, MCOP succeeded AFSCME as the exclusive representative for that unit. The Town and MCOP have negotiated two collective bargaining agreements pertaining to the bargaining unit for the periods July 1, 2013 through June 30, 2016 (2013-2016 CBA) and July 1, 2016 through

1 The DLR provided copies of the electronic recording of the hearing to the parties at the close of the proceeding. After the parties submitted their post-hearing briefs, the DLR requested that Marsha Johnson of All-Write Transcription and Reporting Services produce a transcript of the electronic recording. The hearing officer used that transcript to write the decision.

2 The DLR's jurisdiction in this matter is uncontested.
June 30, 2019 (2016-2019 CBA). The Town has employed Hurwitz as a police officer since September 2010, and he is a member of MCOP's bargaining unit.

Hurwitz's Background Information

Hurwitz attended Champlain College in Burlington, Vermont from 2001 through 2005 and obtained a bachelor's degree in criminal justice.\(^3\) From 2002 through 2004, Hurwitz worked for the Chittenden County Sheriff's Office in Vermont as a deputy sheriff.\(^4\) Hurwitz then worked for the Shelburne, Vermont (Shelburne) Police Department as a patrol officer from 2004 through 2007.\(^5\) While still working several shifts per month at the Shelburne Police Department,\(^6\) Hurwitz also took a position as a campus police officer with Framingham State College (FSC) on October 16, 2006. Approximately three months later, in early 2007, Hurwitz also took a position in the Town of Berlin as a reserve police officer while continuing to work at FSC. Hurwitz subsequently resigned from the Shelburne Police Department. Thereafter, Berlin notified Hurwitz that it was going to send him to the Municipal Police Training

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\(^3\) While at Champlain College, Hurwitz joined the Army Reserve Officer Training Corps (ROTC) and concurrently the Vermont National Guard. The United States Army awarded him a full ROTC scholarship for college. The record does not indicate whether Hurwitz continued with the ROTC and/or the Vermont National Guard until his graduation.

\(^4\) While at the Chittenden County Sheriff's Office, Hurwitz was assigned to an interstate uniformed drug interdiction team.

\(^5\) Hurwitz's assignments included working as an elementary school police liaison and working with a local narcotics task force.

\(^6\) Hurwitz had grown up in Massachusetts and wanted to return there. The Shelburne police chief agreed to allow him to work several shifts per month, while he looked for a full-time police position in Massachusetts. Hurwitz continued to work part-time in Shelburne while he worked at FSC.
Committee Basic Training Course in Boylston (Boylston Academy). Hurwitz resigned from FSC on June 13, 2007. Hurwitz began the Boylston Academy in August 2007 and graduated in November 2007. Hurwitz then worked full-time until 2010 as a per diem Berlin police officer. Because Berlin, for fiscal reasons, was unable to offer Hurwitz a permanent position as a police officer, he searched online for a permanent, municipal police officer position in other communities.

**Employer's Hiring of Hurwitz**

In July 2010, Hurwitz applied for an opening for a patrol officer in the Employer's police department. He submitted a cover letter and a resume. The resume described his employment as the Chittenden County Sheriff's Office from 2002 to 2004, the Shelburne Police Department from 2004 to 2007, and the Berlin Police Department from 2006 to the present. He also listed his academic background, including his high school and college degrees, noting that since 2006 and continuing, he had taken classes at FSC towards a master's degree in public administration. Finally, he

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7 Hurwitz asserted that he left FSC because he wanted to work as a municipal police officer as he had done in Shelburne rather than in what he characterized as a security/unarmed police position.

8 While at Berlin, Hurwitz worked as a narcotics investigation officer.

9 The Employer did not have an employment application that it required potential hires to complete.

10 At hearing, Hurwitz acknowledged that the 2006 start date was erroneous, and that he commenced his employment with Berlin in 2007.
described his Army ROTC experience. However, Hurwitz's resume contained no reference to his employment at FSC.\textsuperscript{11}

On August 10, 2010, Hurwitz attended an interview with the Employer's Police Chief Ross Atstupenas (Atstupenas) and Lieutenant Gregory Gilmore (Gilmore). At the August 10, 2010 interview, Hurwitz mentioned that he previously worked at FSC\textsuperscript{12} and discussed the other prior employers that he had listed on his resume.

Thereafter, Chief Atstupenas chose Hurwitz as a finalist for the open position and requested that Gilmore conduct a full background check on Hurwitz.\textsuperscript{13} On August 14, 2010, Gilmore sent Atstupenas a memorandum that stated in pertinent part:

Please find the following information regarding Maxwell E. Hurwitz, candidate for PATROLMAN for the Blackstone Police Department

POLICE IN HOUSE CHECK-CHAMPLAIN COLLEGE

Champlain College Campus Security, Burlington VT [Emphasis in the original]: I called and spoke with an officer from the college who stated there were no records regarding the candidates that he had access to. He

\textsuperscript{11} At hearing, Hurwitz contended that he did not list his FSC work experience on his resume because a resume was a marketing tool to show his best attributes, and that he viewed his FSC position as a transitional job.

\textsuperscript{12} Atstupenas asserted that Hurwitz did not mention his employment at FSC during the interview. However, I credit Hurwitz's testimony on this point because Gilmore had to have known about FSC, when he contacted FSC, as well as Hurwitz's other prior employers, as part of Hurwitz's background investigation. When asked about the reference to FSC in the background investigation report, Atstupenas claimed that Hurwitz had noted in his resume that he was taking graduate courses at FSC, and that Gilmore merely had assumed that Hurwitz had worked for campus security as a student. Contrary to Atstupenas' claim, when Gilmore referenced Hurwitz's police-related training in the background investigation report, he noted that Hurwitz had held several different police officer positions, including at FSC campus security. He made no reference to student employment. Finally, Gilmore could not recall whether Hurwitz referenced his employment at FSC at the August 10, 2010 interview.

\textsuperscript{13} On August 11, 2010, Hurwitz executed a written authorization releasing his personnel files, disciplinary files, academy files and any other files to Gilmore.
suggested I request more information from the college staff. I emailed Ashley Mikell requesting any information on the candidate and she has yet to return my request.

POLICE IN-HOUSE CHECK-FRAMINGHAM STATE COLLEGE

Framingham State Campus Security: A check of the campus security in house records showed no adverse activity involving HURWITZ. A desk officer conducted the in-house check.

BERLIN POLICE DEPARTMENT

Chief Otto Rhodes: I called and left a message for Chief Rhodes on August 13, 2010. I was told he was on vacation and would be returning the week of the 23rd. On August 24, 2010 I called and spoke with the chief. He was very complimentary of the candidate, stating that he is knowledgeable, has good communication skills and is personable. The chief stated that HURWITZ has worked with many other officers outside of the Berlin, MA jurisdiction, mostly due to his narcotics training, and he is spoken of highly by the other officers he works with. The chief went on to explain that he is competent in court, will do whatever is asked of him, and performs his duties in an effective and professional manner. I inquired about any disciplinary actions taken toward the candidate while under the supervision of Chief Rhodes. The chief indicated that he has two (2) minor infractions in his file. The first is for being out of uniform during in-service training and the other is for leaving in-service training early. The chief considered this insignificant but wanted us to be aware of them since they do exist. Overall the chief gave a very strong recommendation for the candidate.

CHITTENDEN COUNTY SHERIFF'S OFFICE

Captain Major: I left an email message for Cpt. Major of the sheriff's office regarding the candidate. No return call or email has been sent.

SHELBURNE POLICE DEPARTMENT

Chief James Warden: I left an email message for Chief Warden of the Shelburne Police Department regarding the candidate. I followed up with a phone call message and on August 24, 2016 the chief returned my call. He confirmed the candidate's employment dates. He was complimentary of the officer, stating that he had no trouble getting along with other officers, would take orders without question or attitude, and overall had nothing adverse to say about HURWITZ. He stated there were no citizen complaints in his file and no negative items in his personnel records. He
indicated that the candidate left the department to seek employment in Massachusetts.

POLICE RELATED TRAINING

In August 2007, HURWITZ enrolled in the Boylston Municipal Police Academy. He successfully graduated from this academy in November 2007. Either prior to or after his full time academy training, HURWITZ has held several different police officer positions. He has worked for the Chittenden County Sheriff’s Office in Burlington, VT, the Shelburne Police Department in Shelburne, VT, the Framingham State College Campus Security (approx. 4 months), and currently with the Berlin Police Department in Berlin, MA ...

SUMMARY

This concludes the pre-employment background check of the subject Maxwell E. HURWITZ [Emphasis in original]. There appears to be no adverse information that was uncovered during the investigation to deduce the candidate will be unsuitable for the position of police officer.

End of Report.

On August 25, 2010, Hurwitz completed a four-page, new member enrollment form for the Worcester Regional Retirement System (WRRS), the retirement system to which the Employer belonged. On the first page of the form, Hurwitz answered affirmatively to the question whether he was ever a member of any other Massachusetts Retirement System. When asked to list his prior or current public retirement system membership and the dates of membership, Hurwitz recorded Berlin Police Department, 06 to 10, DYS [Department of Youth Services][14] 09 to 10 and Framingham State Coll. [FSC] 06 to 07. On page 2 of the form, when asked to list prior or current employment with the Commonwealth or one of its political subdivisions and the dates of employment, Hurwitz recorded Berlin Police Department, 06 to 10, DYS, 09 to 10 and Framingham

[14] Atstupenas was unaware that Hurwitz worked for DYS until that information came to light during the hearing.
State Coll. Police, 06 to 07. Although the Employer subsequently placed a copy of the form in Hurwitz's personnel file, Atstupenas did not read the form until it was brought to his attention in June 2017.

On September 7, 2010, the Employer hired Hurwitz as a patrol officer for the period ending on June 30, 2011. The Employer subsequently reappointed him each year. Hurwitz was a probationary employee for one year and was not eligible to become a union member until September 2011. Hurwitz originally worked on the second shift from 4:00 PM to 2:00 AM before transferring to the third shift.\(^{15}\) Then he returned back to the second shift, which he currently still works. As a patrol officer, Hurwitz conducted patrols, answered calls, performed traffic stops, issued citations and warnings, made arrests and performed what he characterized as "pro-active police work."

**Complaints and a Letter of Support from the Public about Hurwitz**

During Hurwitz’s six years of employment with the Town, he was the subject of complaints\(^{16}\) from members of the public about three incidents as well as the subject of a letter of support. On November 23, 2011, Hurwitz stopped, i.e. pulled over, a motor vehicle containing E.Z. the driver and J.B. the passenger. On November 28, 2011, both E.Z. and J.B. filed complaints against Hurwitz. Gilmore subsequently investigated the complaints. On December 7, 2011, he submitted a memorandum to Atstupenas that stated in pertinent part:

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\(^{15}\) The record does not reveal the hours of work of the third shift.

\(^{16}\) Atstupenas agreed on cross-examination that the complaints against Hurwitz ultimately were not substantiated. Atstupenas also acknowledged that he previously had been the subject of unsubstantiated complaints.
... As a result of this complaint, I called both parties on November 30, 2011. I spoke with both subjects asked if they wished to be heard in person or on the phone and they stated the phone was fine. Their account of the interaction with Officer Hurwitz was similar in all aspects to their written complaint. The basis of their complaint is that the officer was not courteous during his interaction with them. They also had concerns about why they were stopped as well as the fact that they were charged with certain crimes as a result of the stop. I assured them I would speak with the officer and determine any wrong doing on his part.

On December 7, 2011, I spoke with Officer Hurwitz. I explained the complaint. He was not surprised that they had filed a complaint due to the fact that he had interacted with both subjects before. That previous interaction led to the arrest of [J.B.]. The officer reminded me that I assisted him on that arrest and I did recall that. I asked him his reasoning for the stop and he explained that he observed what he felt based on his training and experience to be some sort of possible illegal activity involving drugs. He stated he stopped the car for two legitimate reasons ... but after observing in plain view drugs the stop took a turn toward that possible drug nexus. As it turned out, [E.Z.] was found to possess both marijuana and Class C pills and was fined and summoned. I asked if the officer ever explained to either party that they had been stopped for traffic violations and he stated he didn’t recall and that he might not have.

After the interview of the officer and after hearing the complaint I found the officer acted appropriately, save for not telling the subjects about the legitimate purpose for the stop. We both agreed that the complaining parties may have acted differently if they knew they had violated traffic laws. Without that knowledge it is fair to assume they thought they were being unfairly targeted. That along with the fact that the officer had dealt with both subjects previously and both subjects were found to be somewhat disorderly on that occasion, it is not surprising they filed this complaint. Officer Hurwitz stated that [E.Z.] again was very animated, discourteous and disrespectful. I recall that when the officer and I dealt with them previously ... she was very uncooperative and rude.

The meeting was ended by agreeing that the officer should continue to work hard in his drug interdiction but to make sure he uses proper authority for stopping vehicles and expresses this information to the occupants as they understand they are not being randomly stopped for no legitimate reason.

On or about August 22, 2012, a motorist called and complained about the manner in which Hurwitz operated his police cruiser. Thereafter, Gilmore investigated
the complaint. On September 5, 2012, Gilmore sent a memorandum to Atstupenas that
stated in pertinent part:

Please accept this follow up narrative in reference to the complaint received on August 22, 2012 regarding the operation of a police cruiser by Officer Hurwitz. As you know the officer was on extended time off and my follow up interview was delayed due to this. On September 4, 2012 I had the opportunity to speak with Officer Hurwitz. I asked him if he recalled a near collision on the date in question and he did recall it. I asked him to explain what happened.

Officer Hurwitz stated that he was merging onto Rt. 495 northbound and was in the far right lane (slow lane). He stated he then activated his directional and began to merge into the middle lane. As he did he looked over his shoulder and noticed there was a vehicle in his “blind spot.” He quickly adjusted his position in the roadway so as not to collide with the vehicle in question. He said the operator of that vehicle then pressed his horn for an extended period of time. Officer Hurwitz said he then entered the middle lane and waived his hand out the window, offering a sign of apology for his error. The officer stated he then continued on Rt. 495 and shortly thereafter exited the highway.

Officer Hurwitz freely admitted that he was in error by failing to use due caution when entering the middle travel lane. He said he did check the lane before completely entering it and by doing this he was able to avoid colliding with the complainants’ vehicle. He denied any malicious intent when he waving his hand out the window; he stated he was simply trying to let the other driver know he had made a mistake and was waving his apology.

Officer Hurwitz will be issued a warning for failure to use caution while operating a police cruiser.

Also, on September 5, 2012, Gilmore sent a memorandum to Hurwitz stating in pertinent part:

I have completed my inquiry into the near collision on Rt. 495 you experienced on August 22, 2012. As you know the department received a complaint about your actions on this date. As a result of the inquiry I am warning you to use caution while operating a police cruiser, especially in traffic conditions similar to the conditions that existed on that date. For a driver to take the time to call and make such a complaint is indicative of a serious incident that they felt was unacceptable.
The fact that you were able to avoid an actual collision is good, but in the future avoiding near collision is more preferable. Safe, uneventful cruiser operations will almost never lead to complaints.

On August 29, 2012, Hurwitz assisted a Millville police officer (S.K.) in performing a motor vehicle stop. An individual (D.L.) was operating the automobile and subsequently sent a complaint via email to the Employer about the motor vehicle stop. Gilmore then contacted D.L. about his complaint. On October 13, 2012, Gilmore sent a memorandum to Atstupenas stating in pertinent part:

As we discussed I spoke with [D.L.] in reference to a Millville car stop on August 29, 2012 (August 29, 2012 Millville motor vehicle stop). There was a question whether the officer in this case had properly identified himself. I spoke with Officer Hurwitz and he did not recall the subject asking for identification. Officer Hurwitz did recall a heated exchange between D.L. and the Millville Officer [S.K]. I spoke with [D.L.] and he agreed that there were tense moments between he and the Millville officer, including the Millville officer refusing to identify himself. D.L. claims that he also wanted Officer Hurwitz' information but was rejected. He stated he really had no issues with Officer Hurwitz other than wanting to subpoena him as a witness. I also spoke with Millville police officer S.K. He recalled the situation because of the attitude of D.L. Officer [S.K.] does not remember D.L. asking for Officer Hurwitz's information.

Also, on October 13, 2012, Gilmore issued Hurwitz a memorandum (October 13, 2012 memorandum) concerning a verbal warning for a failure to call out, which, in part, referenced the August 29, 2012 Millville motor vehicle stop. The October 13, 2012 memorandum stated in pertinent part:

This is to confirm your recent verbal warning for failing to call out of your cruiser. As we discuss[ed] when you were given your warning, it is the policy of this department to radio the dispatcher if you are exiting your cruiser. This is a safety issue for you and other officers. Secondly, although it is uncertain whether or not the complaining party on August 29, 2012 ... did in fact ask for your name or badge number, please be reminded that it is the policy of this department to identify yourself when asked by a citizen. This should be done by either stating your last name and/or your badge number.
On January 16, 2014, an individual came into the police station and reported that he had left his wallet at a local restaurant. When he went back for the wallet, he alleged that cash was missing from it. The Employer assigned Hurwitz to investigate the incident, which he did by going to the restaurant and speaking with two employees who found the wallet. Also, on January 16, 2014, a bystander named R.R. filed a complaint via email concerning Hurwitz's questioning of the two restaurant employees.

Gilmore subsequently investigated the complaint. On January 29, 2014, Gilmore compiled what was entitled "Narrative Entry", which related in pertinent in pertinent part:

... In the email, the complaining party, identified as R.R., wrote that he was in line at the ___ restaurant in Blackstone on January 16, 2014 when a Blackstone police officer approached the two girls working behind the counter and spoke with them (the officer was investigating a stolen wallet). He stated the officer "rudely" called over one of the girls to ask her questions and questioned the other girl outside away from the patrons with no jacket on. R.R. stated it appeared one of the girls was nearly about to cry. He felt the exchange was "distasteful and unacceptable". ...

The two girls involved in this incident were identified as K.B. and D.B. I called K.B. and spoke with her after receiving the email from R.R. She stated she was the first person the officer spoke with and she stated he eventually ended up speaking with her partner that night because D.B. was not working the night the wallet was stolen. She stated she was willing to come to the police station and speak with me about the incident. We scheduled a meeting for January 21, 2014 at 4 pm. She never arrived for the meeting and did not call to reschedule. On January 24, 2014 I spoke with D.B on the phone. I explained why I was calling and she told me she didn't need to speak with me in detail about the incident because she had no problem with what the officer did. She stated the only problem she had with the incident was that he was conducting the questioning during a busy time at the restaurant so she was concerned about the long line. She said "he was just doing his job". I asked her if the officer was respectful during his questioning and she said "yes".

I spoke with Officer Hurwitz about the complaint. He denied being rude or disrespectful to the girls. He stated that he was shocked that someone filed a complaint. He was confident that the girls would support his claim that he was not badgering them in any way. He opined that the reason the person filed the complaint was because it slowed down the line to order
sandwiches. The officer agreed that the timing of his questioning most likely interrupted the normal flow of business at the restaurant.

I sent several return emails to R.R. and asked him to contact me. He wrote back on one occasion and stated he works third shift so it would be inconvenient to discuss the matter outside of email. I wrote an apology on behalf of the department for anything the officer did that offended him and again made an offer for him to come to discuss the matter further. Referred to Chief Atstupenas for review.

The record does not show that Atstupenas took any further action on the matter.

On March 26, 2013, M.M., a Worcester attorney, sent a letter to Atstupenas praising Hurwitz. M.M. stated in pertinent part:

I am writing this letter in regard to Officer Maxwell Hurwitz. I have had the opportunity to work on cases in which he has been involved. I am writing this letter to simply let you know that I think he is a fine young officer who impresses me very much. He is an extremely capable young man. He handles himself well out on the street. I have talked to several clients who indicate that although he is firm he is a gentleman out on the street. I have dealt with him in court with him testifying against my clients. He is an extremely capable officer. He is always polite, courteous and everything that a police officer should be. He is true credit to your department. The people in Blackstone are lucky to have him as one of the officers in their town.

I don’t usually write letters like this but I am so impressed with him that I thought I should write this letter. I have been a lawyer for thirty-eight years, a former Mass. Defender and Assistant District Attorney. I have literally been trying cases for thirty-eight years and I can say with a great deal of experience that Officer Hurwitz is exceptional young man.\(^{17}\)

Hurwitz’s Protected Activity Prior to January 2016

Tenure as Local President

In 2013, Hurwitz became local union president for a bargaining unit of thirteen employees. On or about that time, unit members changed their exclusive bargaining representative from AFSCME to MCOP. Hurwitz took issue with how the prior Union

\(^{17}\) Atstupenas did not consider M.M.’s letter when deciding whether or not to promote Hurwitz.
leadership had handled the local's finances because the Union only had approximately
$800 in its treasury. Also, he disagreed with how the prior leadership represented the
bargaining unit members because he contended that the Employer had violated the
FLSA (Fair Labor Standards Act) and had failed to adhere its contractual obligations
concerning the use of time off and paid leave. Thereafter, Hurwitz and Atstupenas met
to discuss the alleged FLSA and contractual violations referenced above.

Retiree Health Insurance

Prior to Hurwitz becoming local union president, the Town did not provide health
insurance to its municipal retirees (retiree health insurance). Shortly after Hurwitz
became president, Hurwitz successfully advocated for the Town to provide retiree
health insurance. He spoke at Town Meeting urging residents to vote in favor of
adopting the necessary provisions of M.G.L. c.32B concerning retiree health insurance.

GPS Devices

Also, Hurwitz successfully opposed the Town's installation of GPS devices in
police cruisers. Atstupenas had requested an article at Town Meeting to allocate funds
for GPS devices. At Town Meeting, Hurwitz expressed the Union's opposition to the
Police Chief's request, and Atstupenas spoke in favor of it. Town Meeting members
ultimately denied the allocation request.

February 2014 Dispute over Compensatory Time

On or about early February of 2014, the Town paid Hurwitz four hours for
attendance at a training session. On February 6, 2014 at 4:27 PM, Hurwitz sent an
email message to Atstupenas stating in pertinent part:
You said that everyone was getting 5hr for this last training, prior to our meeting. How come I was only given four hours, and the other officers were given five?

Atstupenas responded via email that same date at 5:03 PM stating in pertinent part:

Did you work that night? And in the future I would appreciate a better email not one that has that tone. Just ask me.

Twenty-two minutes later at 5:25 PM, Hurwitz replied via email: “No tone at all intended, my apologies.” Seven minutes later at 5:32 PM, Atstupenas sent an email message stating: “Let me look into it.” On February 11, 2014, Hurwitz then went to see Atstupenas and informed him that he had not intended to have a tone in his email.

Atstupenas responded: “You can figure out if there’s a tone in your email while you are home on suspension.”  

Also, on February 11, 2014, Hurwitz completed an incident report to document to his correspondence with Atstupenas and their meeting. Hurwitz in the February 11, 2104 report noted in pertinent part:

On 2/10/14, I spoke with Chief Atstupenas in his office in reference to the email I sent him about my comp-time hours, where his response was referring to my “tone”. Chief immediately became defensive and accusatory, stating that I was insubordinate towards him in the email. I explained to him there was no intent of that, as was explained in my extensive response email at the time. He subsequently disagreed. And stated: “You can explain to me how there was no tone in your email while you["r"][e] home on a Suspension.”

I took this as overly aggressive and threatening towards a simple question that was asked, and following me taking the time to explain myself, due to the fact that he was overly upset from the email response. ...

Atstupenas subsequently did not discipline Hurwitz for his February 6, 2014 email.

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18 At hearing, Atstupenas could not recall the February 11, 2014 discussion with Hurwitz but, in response to a question from his own counsel, did confirm that he never threatened Hurwitz with a suspension during Hurwitz’s seven years of employment. However, I credit Hurwitz’s testimony on this point because it is supported by the incident report referenced above, which he wrote contemporaneously with the meeting.
1 Claims of Intimidation

2 Early in Hurwitz’s presidency, he and Atstupenas agreed to meet and try to
3 resolve any disputes that arose before the Union took any further action.¹⁹ Hurwitz and
4 Union local vice-president Greggory Haynes (Haynes) typically met with Atstupenas
5 once or twice per month to discuss any outstanding issues. At certain meetings,
6 Atstupenas became upset and commented that the Union could not tell him what to do.
7 Hurwitz perceived the Police Chief’s conduct at some of these meetings as intimidating
8 and opined at hearing that Atstupenas should not have treated him as a subordinate but
9 as an equal when Hurwitz acted on behalf of the Union.²⁰ On or about July 26, 2014,
10 Hurwitz sent a letter²¹ to Atstupenas with the subject line “Treatment towards Union
11 officials”. Hurwitz’s letter stated in pertinent part:

12 I would like to notify you that I will no longer be taking the time and effort
13 to notify you of any upcoming Union Business involving our Administration
14 in the future, as you requested by you at a previous meeting. This was
15 seen as a sign of our generous compliance for your request on this matter.
16
17 As the Union President, I will no longer be put in a position where Threats,
18 Intimidation and Retaliatory statements will be made in reference to non-
19 related issues other than the ones being addressed. When a Union action
20 is required to be taken, I am to feel free of the commonly used tactic of
21 engaging in these unrelated threats of Retaliation from you, and to
22 exercise the right to represent any of our men if they have been neglected
23 and/or treated unfairly in regards to any Labor Standards Set Forth.
24
25 I feel that it is the aforementioned type of responses by you, that will
26 further breakdown the attempts by our Union Officials to have a
27 Harmonious and Cooperative relationship with you and the Administration.

¹⁹ At hearing, Atstupenas pointed to this fact in support of his opinion that he and Hurwitz had a “good relationship.”

²⁰ The record does not contain specific details about these meetings, including the dates of the meetings and the topics that were discussed at those meetings.

²¹ Hurwitz’s letter was undated.
This has been thoroughly reported to our Primary Legal Counsel, and any responsible action to these situations from hereon will be their decision to make and dealt directly with Blackstone Town Counsel.

Hurwitz did not file a grievance or a prohibited practice charge as a follow-up to his July 26, 2014 letter. Instead, he requested that MCOP labor counsel Kareem Morgan (Morgan) schedule a meeting with Atstupenas and Town Administrator Daniel Keyes (Keyes). The meeting took place on November 12, 2014. Hurwitz, Haynes and Morgan attended on behalf of the Union, Atstupenas, Keyes and Town counsel Stephen Pfaff (Pfaff) attended on behalf of the Employer. The parties discussed several Step 1 grievances as well as certain other matters. On November 20, 2014, Morgan sent a letter (November 20, 2014 letter) to Hurwitz regarding the November 12, 2014 meeting, which stated in pertinent part:

On November 12, 2014, a meeting was held between Blackstone Police Patrolmen’s Association (BPPA), Chief of Police Ross A. Atstupenas, Town Administrator Daniel M. Keyes, and town counsel Stephen C. Pfaff. Present for the union was Max Hurwitz, Greg Haynes, and union counsel.

In addition to several step 1 grievances that were heard, the following is a summary of the items discussed and their status at the close of the hearing:

**Comp Time** (Emphasis in the original) With respect to the accrual, usage, and granting of comp time, the Town agreed that the federal regulations (Fair Labor Standards Act, or FLSA) control and will be followed. The mutual agreement and understanding between the parties is that, while the Town has not budgeted for wide-scale payouts of overtime (versus comp time), it will honor those occasions where an officer elects to receive overtime pay instead of accrued comp time. It is understood that the overtime vs. comp time issue will be revisited during negotiations for the next contract period.

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22 Although Hurwitz and Atstupenas referred to the November 12, 2014 meeting in their testimonies, they did not provide detailed descriptions of what took place at that meeting.
Another issue involving comp time is the contractual provision under Article XXXII which provides that "[The Union] and the Town of Blackstone hereby agree that each officer who does yearly gun range qualification will be awarded five (5) hours of compensation time." The Union took the position that this is a faulty provision—not only because a member should be entitled to overtime if s/he so chooses—but because it potentially caps him or her at less than they might otherwise be entitled (i.e. four hours overtime equates to six hours comp time). Again, relying on the FLSA, the Union took the position that this provision was illegal. The Town's initial response was that the Union agreed to it, to which the Union responded that parties cannot enter into an illegal agreement. The Town agreed to look into this and get back to the Union.

The last issue involving comp time that arose was the denial of the use of comp time. This involves a separate, but related issue—the Chief's ability to unilaterally create Mandatory Days On. The Union's position is clearly the contract only allows for mandatory days (i.e. no vacation leave) on Memorial Day (as per the contract), and in emergency situations. The Town's position is that this is a management right. Further legal action is currently being contemplated by the Union.

**Vacation/Time Off Requests** With respect to the issue of [the] Chief granting or denying requested time off, the Chief agreed that, pursuant to the terms of the contact (Art. IX), the Lieutenant could grant requests for vacation, etc. in the Chief's absence. In the event the vacation computer program is not functioning (and the Chief is not available), members should direct their requests to the Lieutenant.

**Threats of Retaliation to Union Action/Officials** This was a follow-up conversation of the letter given to the Chief (dated 7/26/14) by President Hurwitz regarding the hostile treatment and reaction to the Union for conducting Union business. While the Chief denied both retaliation against the Union and targeted reprimands of specific officers, the parties agreed as to the treatment of union officials moving forward.

**Annual In-Service Training** The parties mutually agreed that the current system for the yearly in-service training will remain in place. Training days will be "day for a day," meaning members will be compensated at their normal rates and cannot be forced into work, even if the training runs shorter than their regularly scheduled shift. All other training that is not required for annual certification will be treated as voluntary, which will be disbursed as comp time in accordance with past practices.

**Force List** Pursuant to Article XV, the Chief has agreed to honor the force list/order in list, whereby the five least senior officers eligible for overtime will be ordered in (on a rotating list) for whatever overtime if it cannot
otherwise be filled. For example, if a senior officer requests to take
Thanksgiving off three working days in advance, and there are no other
external reasons to deny the request, the Chief understands that he may
have to refer to the force list to fill the shift (assuming there are no other
volunteers to fill it).

Narcan Given the added duties and responsibilities of observing the
Department’s Narcan policy, the Union has requested an additional one
(1) year of the members’ base salary (in addition to the 2 percent clothing
allowance members already receive) as consideration for the Union’s
cooperation and compliance. The Town is considering the proposal and
will get back to the Union.

If you have any additional questions or need clarification of any of the
above-mentioned items, please feel free to contact me. ...

After the November 12, 2014 meeting, Hurwitz mostly communicated with
Atstupenas regarding labor relations matters via email. Hurwitz used email because he
wanted documentation of his communications, and because it was the most efficient
means of communication as he and Atstupenas worked different shifts.

Instances when Hurwitz and Atstupenas Reached Agreement

At certain times, Hurwitz and Atstupenas worked together in what Hurwitz
characterized as a professional and productive manner to resolve outstanding labor
issues. They negotiated the 2013-2016 CBA. Also, in September 2013, the Police
Chief agreed to provide a Keurig coffeemaker for the break room. In the Fall of 2013,
Atstupenas designated Hurwitz as the go-to-person for individuals who were found to
have drugs in their possession or had been arrested for drug possession. Also, in
December of 2013, the Police Chief agreed to Hurwitz’s request to attend specialized
training concerning sexual assault investigations and interrogation tactics. In April
2014, Atstupenas agreed to Hurwitz’s request to hang the new Union charter in the
break room. On or about June 4, 2014, Hurwitz and Atstupenas agreed to a procedure
that would be followed when a contractor wanted to use a civilian flag man rather than a police detail at a construction site. In July 2014, Hurwitz and Atstupenas agreed that the Town would pay compensatory time to unit members. On or about October 20, 2014, they reached an agreement regarding court time. In December 2014, Hurwitz did not receive the correct amount of compensatory time that he had earned and the Police Chief agreed to fix the error. In January 2015, Hurwitz and Atstupenas met to discuss the impacts on unit members of an expected blizzard. In May of 2015, they came to agreement regarding the issue of forced overtime. In June of 2015, Hurwitz and Atstupenas negotiated about how to fill outside details during the summer. On or about July 17, 2015, Atstupenas approved Hurwitz’s request to place a sign with the Union logo above the bulletin board. In December 2015 and January 2016, Atstupenas and Hurwitz agreed that unit members who went to a particular training would be paid a certain amount of overtime.

Hurwitz and Atstupenas also agreed in approximately six instances from 2013 through 2015 that the Employer would reduce or remove discipline that a unit member previously received. The surnames of the affected officers and the approximate dates of the agreements were: Hurwitz, in February 2013 and June 2015; Loether in November 2014, and on an unspecified date; and, Lungarini and Brodeur in November 2014.

**Bargaining over the Sergeant’s Promotional Process**

In November 2015, the sole police sergeant named Ryan retired. On or about that time, Atstupenas informed Hurwitz as Union president that not only did he intend to

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23 Hurwitz later asserted that Atstupenas failed to abide by that compensatory time agreement.
fill the vacant sergeant’s position, he also intended to appoint two additional sergeants.

A municipal bylaw, Blackstone, Massachusetts Bylaw, SS33-19 (amended 1989), addressed the Employer’s filling of the sergeant positions. The bylaw read as follows:

Sergeants: Only those who have served at least five years as a patrolperson would be eligible to take the qualifying written exam. All candidates must have a minimum of an associate’s degree in Law Enforcement or a related field. Promotion shall be made by the appointing authority based not only on the written exam results, but a thorough interview by three Police Chiefs. The Blackstone Police Chief will not be a part of the interview process but will submit an evaluation of the individual’s past performance. The appointing authority will make final selection.

The parties’ 2013-2016 CBA contained no language concerning the procedure to be used to fill sergeant vacancies.

On January 14, 2016, Atstupenas sent a memorandum (January 14, 2016 memorandum) to the Union’s officers, including Hurwitz, as well as the steward and the business agent, regarding the sergeants’ promotional process. The January 14, 2016 memorandum stated in pertinent part:

Attached is a copy of the proposed Sergeants’ promotional process for the Blackstone Police Department. As Chief of Police, it is my obligation to attempt to ensure that our department’s currently vacated Sergeants’ positions are filled and that such vacancies are filled by the most qualified candidates. I would welcome any input you or your membership might have concerning this promotional procedure.

If you feel that this procedure involves or impacts on a mandatory subject of bargaining and you want to engage in bargaining over it, please forward a request for bargaining to me by 01/22/2016 (or ask for more time by that date if necessary).

The attachment entitled Blackstone Police Department Sergeant’s Promotional Process described the following process by which the Employer anticipated filling the three vacant sergeant positions:
The process will involve the following two prongs in order to score each candidate for the position of Sergeant:

**ASSESSMENT CENTER** The Department will utilize the services of Public Safety Consultants, LLC to conduct the Assessment Center. The Assessment Center consists of trained assessors (Subject Matter Experts) who score each candidate in a series of individual and group exercises that simulate critical aspects of the target job. The exercises are developed and determined as a result of a Job Task Analysis developed specific to the Town of Blackstone. Trained assessors will observe each candidate’s performance and responses and evaluate exhibited behavior on predefined dimensions that relate to the specific job in question.

[Candidates may receive a maximum score of 70 points from the Assessment Center.]

**ORAL INTERVIEW PANEL:** The Department will also utilize an oral interview panel, consisting of three (3) chiefs of police from the Commonwealth of Massachusetts. While the Blackstone Police Department Chief of Police may sit on the oral interview panel to ask questions and observe the candidates, said individual will not award the candidates any points. The oral interview panel may be expected to ask candidates various questions and may grade each candidate’s respective cover letter and resume.

[Candidates may receive a maximum score of 30 points from the oral interview panel.]

The total possible points that a candidate may receive for the entire promotional process is **100 points**. (Emphasis in the original)

Top candidates must successfully complete/pass a background investigation and psychological examination.

Thereafter, the Union requested to bargain over the promotion process. On January 20, 2016, Hurwitz replied to the January 14, 2016 memorandum by stating:

These ... are the responses to me from our legal counsel. As my counsel has stated, maybe they happen to be oversights, but they have suggested that you and I put some thought into them. ...

**Sergeant’s Promotional Process**—Does Public Safety Consultants LLC, have the ability to provide a list of eligible or suggested Chiefs [t]o use

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24 The letter also made certain inquiries about the Employer’s proposed policy concerning the use of Narcan.
during Step Two of the process? A simple ‘Yes’ or ‘No’ response will be sufficient.

The Union and the Employer subsequently met four to six times to bargain over the promotional process with Hurwitz and Atstupenas both present at those meetings. The Union and the Employer communicated a number of times about the issue, with Haynes as the vice-president acting on behalf of the Union. Ultimately, the parties agreed upon a two-part process, which would take place over three days. The assessment center would take place on two days and the police chiefs’ interview panel (oral board) would take place on the third day. The candidates’ scores from the assessment center would comprise seventy percent of their total scores while their scores from the oral board would comprise the remaining thirty percent. The Employer also would conduct a background investigation\(^{25}\) and a psychological assessment on the top candidates.\(^{26}\) The Union and the Employer never agreed that the candidates’ with the top three scores would receive promotions.

**Successor Contract Negotiations**

In January and February 2016, the parties were engaged in negotiations for a successor collective bargaining agreement, which would take effect on July 1, 2016. On January 19, 2016, Hurwitz sent Atstupenas a Union proposal (January 19, 2016 proposal) to incorporate the language of SS-319 into Article 4, Job Posting and Bidding

\(^{25}\) Hurwitz’s understanding was that the background investigation would consist of a review of the candidates’ personnel files and certain performance statistics, including the number of traffic citations, traffic warnings, etc., that the candidates had issued.

\(^{26}\) The record does expand upon the phrase “top candidates”.
in the successor contract.\textsuperscript{27} The parties were scheduled to hold successor contract negotiations on February 3, 2016. Hurwitz requested to meet with Atstupenas a day in advance in order that they could unofficially discuss certain proposals, and Atstupenas agreed. At the February 3, 2016 bargaining session, the parties agreed upon a tentative successor collective bargaining agreement (tentative agreement). The Union then submitted the tentative successor contract to its unit members for a ratification vote. On February 9, 2016 at 7:25 PM, Hurwitz sent an email message to Atstupenas stating in pertinent part:

Everything has been voted on and ratified on our end. Long road, I’m exhausted!!!

In a reply sent via email three minutes later, Atstupenas commented:

Well I hope they appreciate everything you have done. I know what you have done and it has changed and I enjoy working with you.

Hurwitz responded via email one minute later stating:

That means a lot coming from you Chief. I very much appreciate it. See you at the office.

On April 7, 2016, the parties executed the 2016-2019 CBA, which included the language that the Union had sought in its January 19, 2016 proposal.

**Posting of the Sergeants’ Vacancies**

In February 2016, the Town posted the three vacancies for sergeant. Thereafter, six candidates, all of whom were internal candidates, applied for the vacancies. The

\textsuperscript{27} Below the language of SS-319, the Union’s proposal also sought to include the following paragraph:

In the event that the aforementioned language is to be changed or amended by a Town Meeting, then the change in the ... contract shall amend as such at the next contract negotiation.
candidates were: Hurwitz, Matthew Mantoni (Mantoni), Kevin Luis (Luis), Shawn Brodeur (Brodeur), Anthony Lungarini (Lungarini) and Haynes. The Employer did not have applications for the candidates to complete. Hurwitz submitted a letter of interest and a resume. Hurwitz's letter of interest stated in pertinent part:

My name is Officer Maxwell E. Hurwitz, and I have been serving the Town of Blackstone since September of 2010. I am presenting this letter to you with hopes of showing you as to why I am the most qualified candidate to achieve the Rank of Sergeant within the Blackstone Police Department.

I sit in front of you today with aspirations of furthering the duties and responsibilities that will inherently be placed on me in the event that I am bestowed with the Honor of becoming a Patrol Sergeant and leader within our Department.

My Law Enforcement career began in 2001 as a Deputy Sheriff with the Chittenden County Sheriff's Office in the State of Vermont. As a young "Nineteen Year Old" Deputy, I began to work patrol and was ultimately given the duty of working Uniformed Drug Interdiction throughout the County and State. I worked alongside members of the Drug Enforcement Administration (DEA), Alcohol Tobacco and Firearms (ATF), Federal Bureau of Investigation (FBI), Border Patrol & Customs (ICE), Vermont National Guard and numerous Departments of State, County and Local Police. Alongside these agencies, I was fortunate enough to participate in advanced investigations, which ultimately forged a foundation for the future of my career.

In 2004, I was offered a position with the Town of Shelburne, Vermont, where my advanced investigative work continued. For the first time, I began to participate in plain clothes operations alongside many of the same aforementioned agencies. The tasks demanded of me included drafting warrants, serving warrants, confidential informant management, undercover operations and Police asset management.

In 2006, I returned to Massachusetts and was hired by the Town of Berlin. After one year of service, I was given the opportunity and accepted the position of Narcotics Detective. I worked alongside Detectives from the Central Worcester County Drug Task Force, to which I was a member. I was fortunate enough to work numerous Narcotic investigations with the Worcester DEA Office. Also known as the "High Intensity Drug Trafficking Area Task Force" or 'HIDTA'. These investigations took me to many different areas throughout the Commonwealth and forged long lasting professional bonds and resources that I still use to this day.
In 2010, I was hired by the Town of Blackstone, where my professional career continued. During my years spent to this point in Blackstone, I have assisted in the apprehension of wanted inner-state fugitives, solved commercial and residential breaking and entering cases and conducted operations with federal agencies, etc. Although I feel my most important achievement to date, has been forging a strong and successful relationship with the Town and administration while serving as President to the Blackstone Police Patrolman’s Union for the past three years. …

Hurwitz also attached an updated version (2016 resume) of the resume that he used to apply for the patrol officer position in 2010 (2010 resume). Hurwitz had revised his 2016 resume to include his six years of employment with the Town. He noted that he was: a certified sexual assault investigator, a field training officer, and liquor enforcement agent for the state Alcohol Beverage and Control Commission. He pointed out that he was trained in taser use, Krav Maga Defensive Tactics, active shooter training, and FBI-LEOKA officer survival training. He also described how he been Union president since 2013. Similar to his 2010 resume, Hurwitz’s 2016 resume contained no reference to his prior employment with FSC.

On April 27, 2017, Atstupenas sent an email message to all of the Town’s police officers that stated in pertinent part:

I have attached a consent to background check [April 27, 2017 consent] for all officers who are taking the sergeants test. I need this filled out and handed back to me before the test date.

The April 27, 2017 consent read as follows:

I hereby authorize the Blackstone Police Department of Blackstone, Massachusetts and/or its agents to make investigation of my background, references, character, past employment, consumer reports, education, and criminal history, record information which may be in any state or local files, including those maintained by both public and private organizations, for the purpose of confirming the information contained on my application and/or obtaining other information which may be material to my qualification for employment. A telephone facsimile (fax) or xerographic copy of this consent shall be considered as valid as the original consent.
I hereby consent to the Blackstone Police Department’s verification of all
the information I have provided on my application form. I also agree to
execute as a condition of employment or condition of continued
employment any additional written authorization necessary for the
Blackstone Police Department to obtain access to and copies of records
pertaining to this information. I also hereby authorize the Blackstone
Police Department’s access to any medical histories or records pertaining
to me. With regard to the foregoing disclosures, I hereby agree to release
any person, company, agency or other entity from any and all causes of
action that otherwise might arise from supplying the Blackstone Police
Department with information it may request pursuant to this release. I
understand that any false answers or statements, or misrepresentations
by omission, made by me on this application or any related document, will
be sufficient for rejection of my application or for my immediate discharge
should such falsifications or misrepresentations be discovered after I am
employed.

On that same day, Hurwitz met with Atstupenas regarding the April 27, 2016
consent. Hurwitz informed Atstupenas that the April 27, 2016 consent was too
threatening and too invasive, and that he advised his unit members not to execute it.
Hurwitz perceived Atstupenas as being unhappy with Hurwitz’s comments. Atstupenas
responded that if employees did not want to sign the April 27, 2016 consent, they would
not be in the process. At the end of the meeting, Atstupenas had not agreed to any
changes to the April 27, 2016 consent. However, the next day, Atstupenas agreed to
an amended consent to background check. In an email message to Hurwitz dated
April 28, 2016 at 9:50 AM, Atstupenas stated in relevant part:

I have made changes per our conversation yesterday. I am letting you
know that the following is going to be sent out to all candidates for the

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Atstupenas contended that he had a second meeting with Hurwitz after he agreed to
amend the consent to background check. Atstupenas asserted that it was at the
second meeting where he made the comment that if employees did not want to sign the
consent, they would not be considered for promotion rather than at the April 27, 2016
meeting as Hurwitz had claimed. However, I credit Hurwitz’s testimony on this point as
it is consistent with the April 28, 2016 email messages that Atstupenas and Hurwitz
exchanged, which are reprinted subsequently in the text of the decision.
sergeants' test. Let me know if you have any concerns before this goes out.

Note to All Candidates for the Sergeant's Promotional Process:

Yesterday, I sent a Consent to Background Check form to all officers interested in participating in the upcoming Sergeant’s promotional process.

I was advised that there was some concern with certain portions of that form. In particular, there was concern that the background check would be used to obtain medical records. I spoke with your Union President to address this concern and have assured him that the form would not be used to obtain medical records. I have also removed any reference to medical records from the Consent to Background Check form to allay any further concerns. In particular, the following sentence was deleted from the form:

*I also hereby authorize the Blackstone Police Department's access to any medical histories or records pertaining to me.*

*Emphasis in the original.*

In addition, the Union President advised me that there was concern with respect to the last sentence of the form which read[s] as follows:

*I understand that any false answers or statements or misrepresentations by omission, made by me on this application or any related document, will be sufficient for rejection of my application or for my immediate discharge should such falsification or misrepresentation be discovered after I am employed.*

The last sentence has also been deleted.

I have attached a new Consent to Background Check form to this email. As I advised the Union President during our conversation, and as all candidates for the position of Sergeant have been previously advised, the requirement that all candidates for the position of Sergeant pass a background check was one of the bargained-for criteria in the promotional process. As a result, all officers interested in the Sergeant’s promotional process are advised that failure to fulfill the background check criteria, by signing and returning the attached form no later than the start of the written test on May 6, 2016, will result in the withdrawal of your consideration for the position of Sergeant.

Should you have any questions please do not hesitate to contact me.
Five minutes later, Hurwitz responded via email:\(^{29}\)

Absolutely perfect!!!! Thanks much Chief, I don’t expect any type of push back after that email, and I heavily thank you for that. If there is push back, the individual candidates will be on their own.

Thereafter, Hurwitz and the other five candidates signed the revised consent.

**Assessment Center**

On Thursday, May 6 and Friday, May 7, 2016, Hurwitz and the other five candidates for promotion participated in an Assessment Center, which the firm Public Safety Consultants conducted.\(^{30}\) The purpose of the assessment center was to appraise the candidates’ performance in various exercises that examined specific skills, knowledge and abilities. On May 6, the six candidates took a written exam concerning policy issues. The candidates then received a take home exam which involved a tactical exercise concerning a motor vehicle homicide. They submitted that exam at 7:30 AM on May 7, 2016. The candidates were asked to describe what supervisory tasks or tactics they would undertake within the first sixty minutes of arriving at the incident scene. On May 7, 2016, the candidates participated in two scenarios involving

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\(^{29}\) Hurwitz indicated at hearing that he had consulted with the other candidates before he sent his response.

\(^{30}\) Approximately three weeks earlier, Wayne Sampson (Sampson), the principal for Public Safety Consultants, met with Astupenas to finalize the topics on which Astupenas wanted the candidates to be evaluated. Sampson recommended a written exam, a tactical exercise, scenarios involving citizen complaints and employee counseling, and a panel interview, and Astupenas agreed.

On that same day, Sampson conducted an orientation for the six candidates where he explained the assessment center process. He explained that the assessors did not know any of them personally and would not know anything about them. He also handed out a list of fictitious names and each candidate selected a pseudonym. Because the candidates used those pseudonyms during the assessment center process, the assessors did not know the actual names of the candidates. Hurwitz used the pseudonym Sergeant Fox.
citizen complaints and employee counseling. Each candidate also attended a panel interview where they were presented with certain supervisory exercises and asked questions about those exercises.

Each of the exercises had three assessors evaluating the candidates and at the end of each candidate's participation in an exercise, the assessors graded the candidate. The assessors individually graded the candidate and then they started over, conferred and agreed upon a consensus score for each candidate. Then the scores from the five exercises were added together for a blended average score. On Monday, May 9, 2017, Sampson sent an email message to Atstupenas with the candidates' scores as follows: Mantoni was the highest scorer at 89; then Luis was second at 88, Brodeur and Hurwitz were tied for third at 87, Haynes was fifth at 81 and Lungarini was sixth at 79. Because those scores comprised seventy percent of the points that the candidates earned as part of the promotional process, Mantoni earned 63.3 points, Luis earned 61.6 points, Brodeur and Hurwitz each earned 60.9 points, Haynes earned 56.7 points, and Lungarini earned 55.3 points. Thereafter, Public Safety Consultants had no further role in the promotional process.

Police Chiefs' Oral Board

On Monday, May 9, 2016, the candidates participated in the second part of the promotional process, the oral board. Atstupenas had asked three police chiefs that he knew, Chief Sam Albert (Albert) of Westminster, Chief Larry Barnett (Barnett) of Ashburnham and Chief Steve Wojnar (Wojnar) of Dudley to participate on the board.

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31 The assessors graded a candidate at the end of each exercise in order to avoid confusion about how a candidate performed in a prior exercise or confusion among candidates.
Atstupenas provided the board members with the following written questions that he wanted them to ask:

1. Please tell us about yourself personally and professionally, include your short term and long term goals.\(^3^2\)

2. Explain what the role of a sergeant in the Blackstone Police Department should be.

3. As a sergeant, you will have to make decisions that your subordinates may not like or agree with. How would you handle this? Give examples.

4. Most supervisors think that subordinates feel free to communicate upwards to them when in fact most fear such communications. How would you overcome this communication barrier?

5. You have heard of pro-active and re-active police work. Explain the difference between a pro-active and re-active supervisor. Explain which role you will fit in and the benefit that this role will give the department?

6. Police and procedures are generally encompassed into a single document. What is the difference between the two terms? Is it ever appropriate to deviate from policies and procedures?

The individual panelists gave the candidates a score of zero to five\(^3^3\) on each of the five questions plus their resume and letter of intent with those six scores added together for a total score from each panelist. Those total scores were added together and multiplied by 30% for the total number of points that each candidate earned from the oral board. Atstupenas did not instruct the panelists to ask only the questions he provided or to feel free to ask any additional questions that they wanted.

The interviews took place at the Town's Public Library, and the candidates were scheduled to appear before the panel at half-hour intervals in the following order:

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\(^3^2\) The candidates did not receive any points for their answers to this question.

\(^3^3\) Five was the highest score. Ultimately, the candidates earned the following scores on the oral board: Luis-23.83, Mantoni-23.33, Hurwitz-17.00, Haynes-16.70, Brodeur-13.33, and Lungarini-12.67.
Brodeur at 8:30 AM, Luis at 9:00 AM, Lungarini at 9:30 AM, Hurwitz at 10:00 AM, Mantoni at 10:30 AM and Haynes at 11:00 AM. Atstupenas escorted each of the candidates into the interview room, introduced them to the panelists, gave the panelists copies of the candidates' resumes, and left the room. Atstupenas did not identify Hurwitz or Haynes as Union officers when he introduced them to the panelists.

Hurwitz gave Atstupenas his cellphone and keys to hold while he was interviewed. Towards the end of Hurwitz's interview, the middle panelist, whose name Hurwitz could not recall, asked Hurwitz if he would remain as Union president if he were promoted to sergeant. Hurwitz was shocked and surprised at the question. Hurwitz first responded that he took pride in being a union officer, that he had fallen into the position, and that the Union did a lot of community activism. He then stated that in the event that he was promoted, he would go to his union body. He would ask his members whether they were comfortable that he could still fulfill his job as president while being a supervisor, and if they did not feel that he could, he would consider stepping down.

After the oral board ended, Hurwitz retrieved his keys and cellphone from Atstupenas in the lobby. Atstupenas asked him how the oral board went. Hurwitz replied that it was a very good process, a fair process. Hurwitz did not inform Atstupenas about the middle panelist's question about whether he would remain Union president if he were promoted.34

34 The Employer in its post-hearing brief challenged whether Hurwitz actually was questioned about whether he would remain as Union president if promoted because he did not immediately bring the disputed question to Atstupenas' attention. The Employer argued that such conduct was inconsistent with Hurwitz's past behavior of raising issues with Atstupenas immediately. However, Hurwitz testified credibly about the question, and the Town did not call any of the three police chiefs, who sat on the oral board, to testify and potentially contradict Hurwitz's testimony.
Other Events in May 2016

FSC

At some point, prior to May 12, 2016, two unit members, Tappan and David Laudon (Laudon) informed Atstupenas about Hurwitz’s employment at FSC. They had learned about Hurwitz’s employment from an FSC campus police officer Christopher Hallisey (Hallisey).\(^{35}\) Atstupenas reviewed Hurwitz’s 2010 resume and his 2016 resume and observed that neither of the resumes referenced Hurwitz’s employment at FSC. Thereafter, Atstupenas contacted FSC\(^{36}\) seeking information about Hurwitz.\(^{37}\) Atstupenas did not require any of the candidates to undergo psychiatric examinations as part of the promotional process. Atstupenas reasoned that all of the candidates were internal candidates who underwent psychological examinations when the Town hired them.

On May 12, 2016, FSC responded with the dates that Hurwitz began and ended his employment with FSC. On May 16, 2016, Atstupenas sent a letter (May 16, 2016 letter) to Adelina Mora (Mora) of FSU’s Human Resources Office that stated in pertinent part:

> I received a faxed copy from you on a Maxwell Hurwitz dated 05/12/2016 in reference to his hire date and date he left.
>
> At the bottom you stated that he was hired on 10/16/2006 but under that you stated his resignation date was 06/26/15. I think that was in error.

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\(^{35}\) The record does not indicate when Hallisey told Tappan and Laudon about Hurwitz’s employment at FSC and when they informed Atstupenas about it.

\(^{36}\) The record does not reveal when Atstupenas made that request to FSC.

\(^{37}\) Atstupenas reviewed parts of the personnel files of all the candidates seeking promotion but did not conduct any further background investigations on any other candidate but Hurwitz.
Could you check your records for me and provide me with the last date he worked for Framingham State. I have paperwork stating it was in 2007. Also, instead of faxing, would you be able to email me the information. M[y] email is ___.

I have also attached your paperwork and also a release form again.

Mora responded on May 17, 2016 by hand writing the notation “Hire 10/16/2006” and “Resignation 06/13/2007” along with her signature and the date.

Notification to Keyes of Candidates Scores

On May 13, 2016, Atstupenas sent a memo to Keyes entitled “Candidates for Sergeant Ranking of Scores” containing the following names and scores: Mantonii-86.63, Luis-85.43, Hurwitz-77.9, Brodeur-74.23, Haynes 73.40 and Lungarini-67.97. At that time, the Employer had not notified the six candidates of their final scores and their ranking in the promotional process.

Hurwitz’s Resignation as Union President

On May 20, 2016, Hurwitz\(^{38}\) met with Atstupenas and informed him that he was resigning as Union president. Hurwitz stated that he was resigning because there had been a backlash from the Union membership due to the fact that he was a candidate for sergeant, and that some of the Union membership thought that he was too close to Atstupenas. Hurwitz did not inform Atstupenas about the other reasons for his resignation which were: the middle panelist’s question at the May 9, 2016 oral board as to whether he would remain Union president if he were promoted and his desire to have what he perceived as a fair shot for promotion. On May 21, 2016, he sent an email message to the Union membership stating:

\(^{38}\) Hurwitz still was unaware of his final score and ranking in the promotional process.
Gentlemen[:]

I am writing this email to inform you all that effective today, I am stepping down as Union President. Gregory Haynes is now the acting president, until an election is held. If anyone would like to know why I am stepping down, I suggest that you ask me directly.

Also, on that same date, he forwarded a copy of that email message to Atstupenas.

Events in June 2016

Hurwitz’s Placement on Administrative Leave

On June 6, 2017, while Hurwitz was on vacation, Atstupenas asked him to come to the police station. Hurwitz said that he could not do so because he was on Cape Cod. Atstupenas then informed him that he was placing him on administrative leave effective immediately because of FSC, that a hearing would take place on June 13, 2016, and that the notice placing him on administrative leave (administrative leave notice) would be placed in his mailbox at the police station. Hurwitz then called Laudon as the Union president and asked him to go to the police station and retrieve the administrative leave notice from Hurwitz’s mailbox. Laudon arrived at the police station ten or fifteen minutes later and retrieved it. The administrative leave notice stated in pertinent part:

Effective June 06, 2016, you are placed on administrative leave with pay pending an investigation regarding paperwork submitted by you to the Town of Blackstone for: a) employment as police officer and b) promotion to the position of sergeant.

Hurwitz testified that Atstupenas asked him if he worked at FSC, and he answered affirmatively. Alternatively, Atstupenas denied that he asked whether Hurwitz worked at FSC before he gave the reason for the administrative leave. However, I need not reconcile this contradictory testimony because it is not material to the outcome of the case.

The Town hired Laudon as a police officer in 2014. He became secretary-treasurer for the Union in 2015 and succeeded Hurwitz as Union president.
You are asked to appear in the office of the Town Administrator on June 13, 2016 at 10:00 am for questioning regarding this investigation. You are welcome to bring a union representative. ...  

Laudon’s Discussion with Atstupenas

After Laudon retrieved the administrative leave notice, he went to Atstupenas’ office and informed the Police Chief that Hurwitz had called him. Atstupenas, who knew that Laudon was a Union official, informed him that he intended to notify the candidates who were being promoted, that he was bypassing one of the top three candidates for promotion, and that everyone else was being promoted in succession. Laudon then asked whether Hurwitz was being bypassed, and Atstupenas responded affirmatively.

Laudon then gestured to the administrative leave notice and asked if that was the reason that Hurwitz had been bypassed, which Atstupenas confirmed. The meeting between Laudon and Atstupenas took approximately five minutes.

Shortly thereafter, Laudon then called Hurwitz and told him that he was being bypassed because of the administrative investigation. Laudon and Hurwitz subsequently spoke with their MCOP business agent and legal counsel.

Hurwitz’s Receipt of his Promotional Score

Approximately ninety minutes after Atstupenas spoke with Hurwitz, Hurwitz received an email message from the police chief stating in pertinent part:

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41 For reasons that are unclear, the copy of the administrative leave notice that was entered into the record as Charging Party Exhibit #6 was the amended notice and dated June 8, 2016.

42 Atstupenas denied that he discussed the promotional process with Laudon, which included referring to Hurwitz’s bypass and the administrative leave as the reason for the bypass. However, I credit Laudon’s testimony on this point because Laudon reported the conversation to Hurwitz and his MCOP representatives shortly thereafter. Hurwitz also credibly testified about being contacted by Laudon after Laudon’s conversation with Atstupenas. Moreover, Laudon’s version of events is plausible when viewed in the light of Morgan’s and Pfaff’s June 8, 2016 email messages, which are reprinted below.
Off. Hurwitz:

I know it's been a few weeks since you all took the Sergeants test. Because of the town meeting and the new budget, the Town Administrator wanted me to hold off just in case the budget didn't pass and also an administrative issue that needed to be addressed.

Here is your total score. 77.9% (emphasis in the original).

Atstupenas' Request for Additional Information from FSC

On June 7, 2016, Atstupenas sent the following letter to Mora at FSC:

On May 16, 2016 I requested information on the fire date of the following person Maxwell Hurwitz who worked for the college.

I want to thank you for the hire date that you sent me. I forgot to ask if he was part-time or a full-time employee.

Thank you in advance in reference to this matter and also I have attached a signed w[ai]ver from Maxwell Hurwitz.

On that same date, Mora responded that Hurwitz was a full-time employee.

Email Exchange between Counsels

On June 8, 2016, Morgan and Pfaff engaged in an email exchange regarding Hurwitz. In a 12:36 PM message, Pfaff stated:

Kareem-In response to your letter to the Chief of yesterday, please see attached. While not Hurwitz's complete personnel file, it contains the information you requested associated with his initial employment and his promotion material. The amended notice regarding next week's investigation is attached as well.

At 3:38 PM, Morgan responded:

Thanks for the prompt response. One question-you mentioned yesterday that the final decisions with respect to the sergeant's promotion have not been made? Just wanted to make sure that was accurate.

Seven minutes later, Pfaff replied: "That is what I understand, but I will check."

At 4:06 PM, Pfaff sent a message stating:

Correction ... they have been made. #1, 2 and 4 off the list were selected. Your guy was #3. But my guess is you probably already knew that ...
Pfaff’s 4:06 PM message was consistent with what Atstupenas described at hearing as “his thoughts” at that time that he would promote Mantoni and Luis, bypass Hurwitz, and promote Brodeur.

**Investigation Interview and the Outcome**

On June 13, 2016, Hurwitz, Morgan, Atstupenas, and Pfaff attended Hurwitz’s investigative interview. At that interview, the Union submitted a copy of the WRRS form, which Hurwitz had completed on August 25, 2010, that twice listed FSC as one of his prior public employers. The Union also pointed out that Gilmore’s August 14, 2010 memorandum referenced Hurwitz working for the FSC Campus Security. During that meeting, which was recorded, Atstupenas referred to Hurwitz as a “top performer.”

Also, at that meeting, Hurwitz discussed an incident that had taken place at FSC on June 7, 2007 in which he had gotten into a verbal dispute with his then shift supervisor Sergeant Kelley.

On June 16, 2016, Atstupenas issued a memorandum to Hurwitz stating:

> The investigation into paperwork submitted by you to the Town of Blackstone for: a) employment as a police officer, and b) promotion to the position of sergeant is at this time completed. I find no discipline warranted. Effective immediately, you are removed from administrative leave with pay, and are hereby ordered to return to duty today, June 16, 2016 for your 4pm shift.

As ordered, Hurwitz returned to work on that same date. At hearing, Atstupenas noted that if he had seen the WRRS form before June 16, 2016, he would not have placed Atstupenas on administrative leave. He also opined that Hurwitz was trying to hide his prior employment at FSC.

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43 It is unclear whether the Town or the Union had any other representatives at that meeting.
Documents from Hurwitz’s Personnel File at FSC

On or about June 13, 2016, the Town requested that Hurwitz sign a waiver allowing the Town to obtain information from his FSC personnel file. Hurwitz instead went to FSC and obtained a copy of his personnel file and Morgan provided copies of documents in the file to Pfaff. The documents that Morgan provided to Pfaff several days later included: a) a March 20, 2007 performance evaluation that Hurwitz received at FSC, b) a three page internal affairs investigation report from Lieutenant Pamela Curtis (Curtis) concerning the June 7, 2007 incident, and c) a June 18, 2007 memo from Sherrie Prairie of FSC’s Human Resources Office confirming Hurwitz’s resignation effective June 13, 2007. The March 20, 2007 evaluation, which was undertaken at the conclusion of Hurwitz’s three month probationary period, stated in pertinent part: 44

Comments of Departmental Supervisor-Hurwitz works best with supervision and needs to learn how to listen to fellow co-workers.

Supervisor’s Comments: Hurwitz is learning how to adapt from a municipal style police officer with wide jurisdiction. He has shown a willingness to learn Massachusetts Laws and the responsibilities of a police officer at Framingham State.

Comments of Intermediate Supervisor or Personnel Officer

Officer Hurwitz must learn to adapt to department policy and expectations without making his own personal adjustments to the same. Officer Hurwitz must learn to work with his co-workers and take their lead when they are attempting to assist him in learning the expected protocols handling calls in our community. Officer Hurwitz has a great deal of experience that will be helpful in handling police calls, but must make certain to operate within the guidelines set forth by the Administration and the College. 45

44 The name of the evaluator is unable to be determined from his/her signature.

45 The March 20, 2007 evaluation also contained a handwritten note stating that Hurwitz had declined to sign his evaluation at that time.
Curtis in her internal affairs investigation report (FSC IA report) stated in pertinent part:

On June 7, 2007 at approximately 7:12 am, I received a phone call on my police department issued NEXTEL from Officer Maxwell Hurwitz. Officer Hurwitz stated that he was contacting me as a result of an issue that he had with his immediate supervisor, Sergeant William Kelley. Officer Hurwitz stated that he had asked Sgt. Kelley to address the issue that he (Hurwitz) felt that the midnight shift had left prior to his being ready (dressed and seated at dispatch). Officer Hurwitz went on to tell me that he felt that Sgt. Kelley had responded to his request in a "condescending manner" and that he "could not work with someone who talked down to him." Officer Hurwitz stated that he and Sgt. Kelley had, "gotten into it" and also stated, "I can't work with him, that's why I changed out of my uniform and into street clothes and I'm calling you from personal vehicle in the parking lot."

Officer Hurwitz was asked if it was just he and Sgt. Kelley on duty at the time, to which time he replied that I was correct. I then specifically asked Officer Hurwitz if Sgt. Kelley was the only officer working on campus, to which he replied, "Yes, he's (Kelley) in the station and that's why I'm out here." I immediately informed Officer Hurwitz that it was inappropriate under any circumstances for a police officer to abandon their post (shift) knowingly and willingly as he had done. I strongly suggested that Officer Hurwitz immediately return to the police station and not leave the campus without appropriate police coverage. Officer Hurwitz was instructed to contact the chief of police as I was currently out of the state and expected to report to in-service training as well. I informed Officer Hurwitz that I would not be available to immediately respond to handle the matter personally and in a timely fashion. Officer Hurwitz was put on notice that abandonment of his position was absolutely unacceptable and that he would be facing serious disciplinary action, up to possible termination of employment for taking such action. Officer Hurwitz informed me that he would return to the station; get back in his uniform and contact the chief of police as directed.

Chief Medeiros contacted me a short while later and ordered me in to work to start an internal affairs investigation regarding Officer Hurwitz leaving his post and allegations that he had brought forth against Sgt. Kelley. ...

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46 The FSC IA report is undated.

47 Hurwitz on cross-examination denied that Curtis told him that he was facing serious disciplinary action. Curtis did not testify at the hearing.
CONCLUSION OF MY FINDINGS ARE AS SUCH:

I find that Officer Hurwitz’s actions of abandoning his shift knowingly and willing (the act of removing himself from his assigned duties, changing out of his uniform into street clothes, departing the police station) is absolutely unacceptable. Officer Hurwitz has shown that he lacks the capability of handling/resolving conflict in an appropriate manner. Officer Hurwitz was insubordinate in showing complete lack of respect for Sgt. Kelley’s rank as well as for that of our community by walking off the job. Officer Hurwitz’s actions on 06/07/07 mirror the repetitive cycle in which he continues to question rank and challenge policy and procedures, showing a lack of respect that he verbally demands from others.

Officer Hurwitz has been reprimanded on previous occasions both verbally and in writing for infractions of policy and procedures. He often shows improvement for a short period of time and then falls back into his old ways.

Officer Hurwitz’s actions of leaving his post/shift left the campus defenseless and endangered the safety and welfare of everyone within our community. I believe his actions on the morning of 06/07/07 speak volumes as to his lack of respect for the department, the job and our community.

Per AFSCME Contract 2005-2008, Article 28; Section 2, I find that Officer Hurwitz, by walking off the job, acted in a manner in which [he] showed "willful neglect or non-performance of duties." He also "demonstrated behavior that seriously interfered with normal operations," as Sgt. Kelley was left alone for a period of time, unable to respond to calls as he was left to mind dispatch upon Officer Hurwitz’s departure, as well as my being pulled from mandatory training to report for duty because of the incident. Officer Hurwitz was also "insubordinate" showing a complete lack of respect for our department’s mission in abandoning his shift, therefore leaving the campus virtually unprotected.

Curtis’s report also had a handwritten post-it note attached to it. The post-it note stated:

This form has not been served to Maxwell Hurwitz-nor has the formal I.A. investigation.

Just so you have a copy of what he will be served with on Wed. 07/13/07 upon his return from days off. He stated that he was unable to come in tomorrow and meet with me.

Lt. Curtis
Hurwitz had not seen Curtis’ report prior to retrieving it from his personnel file at FSC in June 2017. He had returned from a previously scheduled vacation on June 13, 2007 and tendered his resignation to FSC that day.\footnote{The record is silent about the discrepancy between the date of July 13, 2017 on the post-it note and the June 13, 2017 date of Hurwitz’s resignation.}

At hearing, Atstupenas commented that he could not discipline Hurwitz for his actions at FSC, but he probably would not have hired him if he had known about the incident involving Kelley. He also noted that he had not tried to contact Curtis to speak with her about the report.

\textit{Gilmore’s Recommendation}

Atstupenas contended that he sent Gilmore\footnote{Gilmore had worked for the Employer’s police department for seventeen years and had been promoted from patrol officer to lieutenant in 2005.} an email on or about June 18, 2016 asking whether he should promote Hurwitz or Brodeur. Atstupenas claimed that he wanted to make sure that he was selecting the right candidate, and that Gilmore previously had worked with both employees on the night shift.\footnote{On cross-examination, Gilmore reviewed a printout of data compiled by the Town’s Records Management System and acknowledged that it showed that Hurwitz had made many more arrests and issued many more traffic citations and warnings than Brodeur had.} Gilmore did not review either employee’s personnel file before he made his recommendation. Gilmore recommended Brodeur because Brodeur had: a) no citizen complaints filed against him, b) fewer letters of verbal warning\footnote{The record does not reveal how many, if any, letters of verbal warning that Brodeur had received or whether he had received any other forms of discipline.} than Hurwitz, c) an outstanding record on the drug
task force,\textsuperscript{52} d) better interpersonal skills than Hurwitz, and e) longer tenure with the
Employer's police department than Hurwitz. Gilmore related how Hurwitz came off as
arrogant and rubbed people the wrong way although he provided no examples of
Hurwitz's behavior.

\textit{Atstupenas' Recommendation to the Town Administrator}

On or about June 20, 2016, Atstupenas informed the Town Administrator that he
was recommending Mantoni, Luis and Brodeur for promotion to sergeant because they
were the best candidates.\textsuperscript{53} Atstupenas indicated at hearing that he looked at
everything when he decided which candidates to promote. When asked various times
by both counsels why he bypassed Hurwitz in favor of Brodeur, Atstupenas cited: a)
Hurwitz's lack of growth, b) citizen complaints against Hurwitz, c) Hurwitz's interactions
with other officers and members of the public,\textsuperscript{54} d) the administrative investigation into
Hurwitz's failure to disclose his prior employment at FSC when he was hired by the
Town, e) Gilmore's recommendation, f) Brodeur's greater seniority with the Employer's

\textsuperscript{52} The record does not show how long Brodeur was a member of or any details about
his service on the drug task force.

\textsuperscript{53} Atstupenas also informally notified Mantoni, Luis and Brodeur of his recommendation
that they be promoted although the record does not reveal when that notification
occurred.

\textsuperscript{54} Atstupenas did not provide details about these undocumented interactions with the
public and other officers and described them as not having been documented.
police department,\textsuperscript{55} and g) the FSC IA report and evaluation of Hurwitz. Atstupenas denied that he bypassed Hurwitz for promotion in order to discipline him for not including his employment at FSC on his 2007 and upgraded resumes.

\textit{Union’s Inquiry about the Status of the Promotional Process}

On June 20, 2016, Morgan sent a letter via email to Atstupenas at 1:29 PM with copies to Pfaff and Hurwitz that stated:

By letter dated June 16, 2016, Officer Hurwitz was informed that the administrative investigation regarding his employment and promotion to the position of sergeant is complete. He was further notified that no discipline is warranted. Thank you for the update.

I am also requesting an update with respect to Officer Hurwitz’s promotion to sergeant within the Blackstone Police Department. Given the unsubstantiated investigation where he was cleared of any wrongdoing, as well as his score on the recent sergeant’s exam, it is my understanding that Officer Hurwitz is eligible and entitled to become a sergeant. You in fact referred to Officer Hurwitz as a top performer at our June 13 interview. Therefore, I am respectfully requesting his immediate promotion to sergeant.

Please let me know if you have any questions. Thank you in advance for your cooperation.

On 4:54 PM on that same date, Pfaff responded that:

I am replying to your email to Chief Atstupenas of today re: letter regarding Officer Hurwitz. The hiring process for Sergeant is now closed, and it is the Chief’s discretion to select a person(s) for the position. Officer Hurwitz was not selected for a Sergeant’s position this time, but is invited and encouraged to apply for any future opening for the position of sergeant.

Kindly inquire with me if there are any questions regarding this issue.

\textsuperscript{55} Atstupenas acknowledged that he only considered Brodeur and Hurwitz’s length of service with the Town’s police department and did not consider the fact that Hurwitz had more overall law enforcement experience than Brodeur. Atstupenas also acknowledged that Luis also had less seniority than Brodeur because he was hired only one day before Hurwitz but indicated that Luis’s second-place score was more significant than his seniority date.
On or about, June 22, 2016, Keyes notified the five-member Board of Selectmen that Atstupenas had recommended the promotions of Mantoni, Luis and Brodeur to the rank of sergeant. Pursuant to the Town's Charter, the Board of Selectmen is the appointing authority for the police department's sergeants.\footnote{Also, pursuant to the Town Charter, the town administrator appoints the police chief, and the police chief appoints the lieutenant.} On June 23, 2016, Morgan sent a letter to the Board of Selectmen stating in pertinent part:

The undersigned is counsel to the Blackstone Police Union, Local 442, Massachusetts Coalition of Police, AFL-CIO. It is in that regard that I write you. On behalf of Officer Maxwell Hurwitz, I am formally requesting a meeting with the Select Board to discuss his recent bypass for promotion to sergeant with the Blackstone Police Department. I make this request pursuant to Blackstone bylaw §33-19 and Article 4 of the collective bargaining agreement between the Town of Blackstone and the Blackstone Police Union.

I was notified on June 20, 2016, through counsel, that Officer Hurwitz was not being selected for one of the three sergeant's positions, despite his third place performance on the sergeant's exam and a recent administrative investigation which was unsubstantiated. Furthermore, it was during this administrative investigation where Chief Atstupenas stated on the record that Officer Hurwitz was a "top performer" in the department. Given that, we are understandably confused and distraught over the decision to bypass Officer Hurwitz with respect to the third Sergeant's position.

Pursuant to §33-19 and Article 4 of the CBA, we are inquiring into the Appointing Authority's decision and rationale not to promote Officer Hurwitz to sergeant. We are respectfully requesting a meeting to hold this discussion. Furthermore, I am requesting the Board stay the official swearing-in ceremony for the promoted sergeants, which as I understand it, is currently scheduled for June 28, 2016.

Lastly, please be on notice that Officer Hurwitz and the Blackstone Police Union fully intends to seek appropriate legal action, including but not limited to claims under M.G.L. c.150E, Blackstone bylaw § 33-19, Article 4 of the CBA, and personal tort if this matter cannot be resolved.

Please let me know if you have any questions. Thank you in advance for your cooperation.
On June 27, 2016, Pfaff sent a letter to Morgan stating:

Please accept this letter as a response to your June 23, 2016 letter to the Board of Selectmen. Kindly direct all communications regarding this issue to me in the future.

As indicated in my previous communications with you via e-mail and telephone, the process for hiring sergeants with the Blackstone Police Department has been completed. The Chief has recommended three patrolmen for the position, and the Board of Selectmen, as Appointing Authority for the Town of Blackstone, is meeting on June 28, 2016 to vote on Chief Atstupenas’ recommendations. Officer Hurwitz was not selected for a sergeant’s position at this time, but is invited and encouraged to apply for any future opening for the position of sergeant.

Please be advised that there is no provision in Town of Blackstone By-law § 33-19 nor Article IV of the Collective Bargaining Agreement between the Town of Blackstone and the Blackstone Police Union providing for a meeting with the Board of Selectmen.

Please let me know if you have any questions. I thank you in advance for your cooperation.

Board of Selectmen’s Meeting

On June 28, 2016, the Board of Selectmen meeting took place. As was their usual practice, the Board of Selectmen held what Chairman Robert Dubois (Dubois)\(^\text{57}\) characterized as its “workshop” to discuss pending issues at 7:00 PM. At 7:30 PM, a local cable television began to broadcast the proceedings. As part of the workshop, Atstupenas informed the selectmen about his recommendation for the sergeant promotions. The only reference to Hurwitz occurred when a selectman asked about

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\(^{57}\) Dubois had been a selectman for an aggregate of twenty-seven years and had been chairman fourteen or fifteen times.
Morgan’s June 23, 2016 letter. Atstupenas explained that he had selected Brodeur, who scored fourth in the promotional process, to fill the third promotional vacancy rather than Hurwitz who had scored third. The selectmen deferred to Atstupenas and approved his recommendation without reviewing any further information about the candidates. At 7:30 PM, the selectmen swore in Mantoni, Luis and Brodeur, whose families were present for the ceremony, as sergeants for one-year terms.

Opinion

A public employer that retaliates or discriminates against an employee for engaging in activity protected by Section 2 of the Law violates Section 10(a)(3) of the Law. Southern Reg. Voc. School District v. Labor Relations Commission, 388 Mass. 414 (1982); School Committee of Boston v. Labor Relations Commission, 40 Mass. App. Ct. 327 (1996). To establish a prima facie case of discrimination, a charging party must show that: 1) an employee was engaged in activity protected by Section 2 of the Law; 2) the employer knew of that conduct; 3) the employer took adverse action against the employee; and 4) the employer took the adverse action to discourage the protected activity. Quincy School Committee, 27 MLC 83, 92, MUP-1986 (December 29, 2000); Town of Clinton, 12 MLC 1361, 1365, MUP-5859 (November 9, 1985).

Protected Activity and Employer Knowledge

Here, it is undisputed that Hurwitz engaged in protected, concerted activities, and that the Employer had knowledge of those activities. Hurwitz was an active Union

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58 Atstupenas testified that he explained the reasons why he had bypassed Hurwitz to the Board of Selectmen. However, I credit Dubois’ testimony that Atstupenas only gave his recommendation without any reasons because it is more likely that Dubois, as the chairman who was responsible for running the meeting, would have recalled specifically what Atstupenas said that evening.

59 Many years had passed since the Town had promoted a sergeant.
president who spoke out at Town Meeting on matters that pertained to unit members’
terms and conditions of employment, including the installation of GPS devices in police
 cruisers. He also negotiated with the Employer over issues concerning compensatory
leave, the impacts on unit members of requiring them to carry Narcan, and in six
instances to reduce or remove discipline that a unit member previously incurred.

Further, Hurwitz was involved in concerted, protected activity in the months prior
to the Employer’s decision to bypass him for promotion. See Sheriff’s Office of Plymouth
County, 39 MLC 41, 55, MUP-05-4475 (September 10, 2012) (finding that a
discriminatee was involved in concerted, protected activities in the months prior to his
unlawful demotion). He represented the Union in successor contract negotiations with
the Employer’s agent Atstupenas in January and February 2016, which resulted in the
2016-2019 CBA. Beginning in January 2016, Hurwitz also attended the four to six
meetings in which the Employer and the Union successfully negotiated over the two-
part promotional process to fill the three vacancies for sergeant. Additionally, Hurwitz
met with Atstupenas to protest the April 27, 2016 consent, which Atstupenas proposed
that unit members execute as part of the promotional process. Hurwitz characterized
the April 27, 2016 consent as too threatening and too invasive and informed Atstupenas
that he had advised his unit members not to execute it.

Adverse Action

The Commonwealth Employment Relations Board (CERB) has consistently
defined adverse action as an adverse personnel action, such as a suspension,
 discharge, involuntary transfer or reduction in supervisory authority, City of Boston, 35
MLC 289, 291, MUP-04-4077 (May 20, 2009). The Union contends that the Employer’s
bypass of Hurwitz for promotion to sergeant constitutes an adverse action. Conversely, the Employer argues that Hurwitz suffered no adverse impact because his terms and conditions of employment remained the same. He received no discipline, no reduction of authority, or no loss of wages.

An adverse employment action must materially disadvantage the affected employee in some way. City of Boston, 35 MLC at 91. Material disadvantage arises when objective aspects of the work environment are affected. See King v. City of Boston, 71 Mass. App. Ct. 460, 468 (2008) (failing to provide female superior officers with rank-specific locker rooms rises to the level of an adverse action). Because there must be real harm, subjective feelings of disappointment and disillusionment will not suffice. See MacCormack v. Boston Edison Co., 423 Mass. 652, 663-664 (1996) (former employee's claims of adverse action were based upon subjective feelings of disappointment and disillusionment rather than objective evidence that he had been disadvantaged in terms of conditions of employment); see also City of Holyoke, 35 MLC 153, 156, MUP-05-4503 (January 9, 2009) (co-workers' subjective opinions and office banter do not render as adverse a previously requested transfer). Even in the absence of discipline and other changes to Hurwitz's terms and conditions of employment, bypassing him for promotion to sergeant adversely affected his employment. See Town of Mashpee, 36 MLC 163, 171, MUP-02-3653 (April 15, 2010) (failing to promote a patrol officer to the rank of sergeant was an adverse action).

Animus

A charging party may proffer direct or indirect evidence of discrimination in support of its claim. See Town of Brookfield, 28 MLC 320, 327-328, MUP-2538 (May 1,
2002), aff'd sub nom. Town of Brookfield v. Labor Relations Commission, 443 Mass. 315 (2005). Direct evidence is evidence that, "if believed, results in an inescapable or at least highly probable inference that a forbidden bias was present in the workplace." Wynn v. Wynn, P.C. v. Massachusetts Commission Against Discrimination, 431 Mass. 655, 667 (2000) (citing Johansen v. NCR Comten, Inc., 30 Mass. App. Ct, 294, 300 (1991)). Stray remarks in the workplace, statements by people without the power to make employment decisions, and statements made by decision makers unrelated to the decisional process do not suffice to satisfy a charging party's threshold burden. Id. at 667 (citing Price Waterhouse v. Hopkins, 490 U.S. 228, 277 (1989)). Here, the Union cites to: a) Atstupenas' remarks at the April 27, 2016 meeting with Hurwitz that if employees did not want to sign the April 27, 2016 consent, they would not be in the process; and b) the May 9, 2016 question during the promotional process from the unidentified middle board member as to whether Hurwitz would remain as Union president if he were promoted to sergeant as direct evidence of animus. However, I do not need to decide whether the cited comments constitute direct evidence of animus towards Hurwitz's protected activity, because, as more fully discussed below, even if I apply the higher burden of proof set forth in Trustees of Forbes Library v. Labor Relations Commission (Trustees of Forbes Library), 384 Mass. 559 (1981), I find that the Union has met its burden of establishing that, but for Hurwitz's concerted, protected activity, the Town would not have bypassed him for promotion to sergeant.

Absent direct evidence of unlawful motivation, unlawful motivation may be established through circumstantial evidence and reasonable inferences drawn from that evidence. Suffolk County Sheriff's Department, 27 MLC 155, 159, MUP-1498 (June 4,
2001). Circumstantial factors may include: shifting and inconsistent reasons for an employer’s action, *Everett Housing Authority*, 13 MLC 1001, 1006, MUP-565 (June 4, 1986); the insubstantiality of the reasons given for the adverse action, *Commonwealth of Massachusetts*, 14 MLC 1743, 1749, SUP-3081 (May 19, 1988); the timing of the adverse action in relation to the protected activity, *Town of Somerset*, 15 MLC 1523, 1529, MUP-6404 (March 9, 1989); and the employer’s divergence from longstanding practices, *Town of Mashpee*, 36 MLC at 171.

Atstupenas first announced that he was bypassing Hurwitz for promotion during his June 6, 2016 conversation with Laudon, which was approximately five weeks after Hurwitz protested the April 27, 2016 consent. Although the Town claims that it is not credible that Atstupenas made those comments, for the reasons referenced in footnote 42, I have credited Laudon’s testimony on this point. Further, Atstupenas told Laudon that he was bypassing Hurwitz because of the administrative investigation into whether Hurwitz failed to disclose his prior employment at FSC when he was hired by the Town.

However, at hearing, Atstupenas gave seven reasons why he bypassed Hurwitz in favor of Brodeur, only one of which was the administrative investigation. Further, Atstupenas on cross-examination explicitly denied that he bypassed Hurwitz for promotion to discipline him for not including his FSC employment on his 2010 and 2016 resumes. The close timing of the promotional bypass to Hurwitz’s concerted, protected activity coupled with the inconsistent and shifting reasons that the Employer gave as the reasons for Hurwitz’s bypass leads me to conclude that the Employer’s decision to suspend Hurwitz was motivated by animus towards his protected activity. *See Everett Housing Authority*, 13 MLC at 1006-1007 (inferring animus when shifting and
inconsistent reasons were coupled with timing). Thus, the Union has established the
four elements of its prima facie case.

Employer's Burden of Production

Under the three-part Trustees of Forbes Library analysis, once a charging party
establishes a prima facie case of retaliation, it is the employer's burden to produce a
legitimate, non-discriminatory reason for taking the adverse action. The employer's
burden to produce a legitimate, non-discriminatory reason for taking the adverse action
is more than simply stating an unsubstantiated allegation. Commonwealth of
Massachusetts, 25 MLC 44, 46, SUP-4128 (August 24, 1998). The employer must
state a lawful reason for its decision and produce supporting facts indicating that the
lawful reason was actually a motive in the decision. Trustees of Forbes Library, 384
Mass. at 566; Quincy School Committee, 27 MLC at 92; Commonwealth of
Massachusetts, 25 MLC at 46. Here, Atstupenas cited: a) Hurwitz's lack of growth, b)
citizen complaints against Hurwitz, c) Hurwitz's interactions with other officers and
members of the public, d) Hurwitz's placement on administrative leave while the Town
investigated his failure to disclose his prior employment at FSC, e) Gilmore's
recommendation, f) Brodeur's greater seniority with the Employer's police department,
and g) the FSC IA report and evaluation of Hurwitz. I turn to consider those factors in
seriatim.

First, although Atstupenas made the broad statement that Hurwitz had shown a
lack of growth, he provided no examples in support of his claim. Boston School
Committee, MUP-9067 (slip op. March 2, 1994), aff'd sub nom. School Committee of
produce budgetary data showing that prevailing conditions actually motivated its
decision to lay off employees rather than anti-union animus). Moreover, Atstupenas
referred to Hurwitz as a top performer during the June 13, 2016 investigative interview.
Also, Hurwitz's ranking as the third highest scorer out of the six candidates based upon
the results from the assessment center and the oral board undercuts the Employer's
claim about Hurwitz's lack of professional growth.

Next, although Atstupenas referred to citizen complaints that had been filed
against Hurwitz, he also acknowledged that those complaints were found to be
unsubstantiated. The Employer cannot rely upon complaints, which it previously
dismissed as unfounded, as a legitimate reason for a promotional bypass. See Town of
Brookfield, 28 MLC at 329 (discounting an employer's reasons for discharge when it
relied on a discriminatee's domicile, where the employee had listed his domicile on tax
forms that the employer previously received).

Third, although Atstupenas made the bare claim that Hurwitz's interactions with
other officers and members of the public was a reason why Hurwitz was not promoted,
he provided no details in support of his claim. Further, he acknowledged that those
interactions were not documented. In the absence of any information about the
identities of the individuals whom Hurwitz allegedly interacted, the nature of his dealings
with them, and when those interactions allegedly took place, I do not find the cited claim
to be a legitimate reason for Hurwitz's bypass.

Additionally, Atstupenas cited to Hurwitz's placement on administrative leave
while the Town investigated Hurwitz's failure to disclose his prior employment at FSC
when he was hired by the Town as a reason for Hurwitz's bypass. However,
Atstupenas admitted that if he had looked at the WRRS form in Hurwitz’s personnel file, where Hurwitz twice referenced his prior employment at FSC, that he would not have placed him on administrative leave. Further, Atstupenas noted in his June 16, 2016 memorandum to Hurwitz that the investigation revealed that no discipline was warranted.

Next, Atstupenas contended that he relied upon Gilmore’s recommendation that the Town promote Brodeur rather than Hurwitz. While explaining his recommendation at hearing, Gilmore made broad and conclusory statements that Brodeur had: a) no citizen complaints filed against him; b) fewer letters of verbal warning than Hurwitz; c) an outstanding record on the drug task force, d) better interpersonal skills than Hurwitz, and e) longer tenure with the Town’s police department. First, Gilmore made no attempt to reconcile his statement about Brodeur’s lack of citizen complaints and the fact that the citizen complaints filed against Hurwitz were unsubstantiated. Also, although he claimed that Brodeur had fewer letters of verbal warning than Hurwitz, he did not explain the source of his knowledge, as he admittedly did not review either employee’s personnel file before he made his recommendation. Also, Gilmore did not provide any information about how many letters of warning that Brodeur had actually received, when he received those his verbal warnings, and whether Brodeur had received any other forms of discipline. Although Gilmore cited Brodeur’s outstanding record on the drug task force, he provided no rationale for that assertion, especially in light of the fact that he did not review Brodeur’s personnel file. Also, although Gilmore claimed that Brodeur had better interpersonal skills and that Hurwitz came off as arrogant and rubbed people the wrong way, he provided no specific information in
support of either those statements. Finally, although Gilmore cited to the fact that
Brodeur had greater departmental seniority than Hurwitz as a basis for his
recommendation, he never contended that he recommended Brodeur solely because of
his seniority. Therefore, I do not find that Gilmore’s recommendation was a legitimate
reason for Atstupenas to bypass Hurwitz for promotion.

Despite concluding that the five above-referenced rationales were not legitimate
reasons for Hurwitz’s bypass, I find that the other two reasons that Atstupenas cited for
Hurwitz’s bypass, namely Brodeur’s greater seniority and the FSC IA report and
evaluation, were legitimate reasons. It is undisputed that Brodeur had the longer tenure
with the Town’s police department, although Hurwitz had greater overall police
experience. Also, Atstupenas pointed to the FSC IA report and evaluation as a basis for
his decision, even though he also noted that he could not dismiss Hurwitz for events
that took place at FSC. However, he also stated that he probably would not have hired
Hurwitz if he been aware of the FSC IA report and evaluation. Consequently, the City
has met its burden of production.

"But For" Analysis

Once an employer produces evidence of a legitimate, non-discriminatory reason
for taking the adverse action, the case becomes one of "mixed motives." Under the
Trustees of Forbes Library analysis, the CERB considers whether the employer would
have taken the adverse action but for the employee’s protected activities. Suffolk
County Sheriff’s Department, 27 MLC at 160; Quincy School Committee, 27 MLC at 92.
The charging party bears the burden of proving that, but for the protected activity, the
employer would not have taken the adverse action. Athol-Royalston Regional School
Committee, 28 MLC 204, 214, MUP-2279 (January 14, 2002); Town of Athol, 25 MLC 208, 211, MUP-1448 (June 11, 1999).

As the Town points out in its post-hearing brief, Atstupenas and Hurwitz at times had a positive and productive relationship, including on or about January and February of 2016, when they negotiated the 2016-2019 CBA. However, Atstupenas learned of Hurwitz's prior employment at FSC, employment which Atstupenas believed Hurwitz deliberately had concealed from the Town, on or about the time that Hurwitz was engaging in concerted, protected activity as Union president by protesting the consent to background check. Thus, a so-called perfect storm was created when Hurwitz engaged in concerted, protected activity about an issue; i.e., information about the promotional candidates' backgrounds, over which he already had raised the Police Chief's ire. For the following reasons, I find that the Town would not have bypassed Hurwitz for promotion if he had not engaged in concerted, protected activity.

Although the Town relied upon Brodeur's longer tenure with the Town as a reason for bypassing Hurwitz, the Town also promoted Luis, who only had one more day of seniority than Hurwitz. When asked on cross-examination about Luis' promotion, Atstupenas indicated that Luis' second place score was more significant than his seniority date. However, the Town failed to explain why Hurwitz's third place score, 3.67 points ahead of Brodeur, was not more significant than Hurwitz's seniority date, especially in light of the fact that it was nearly identical to Luis' seniority date. Furthermore, Atstupenas did not address the fact that although Brodeur and Hurwitz were tied after the assessment center, Brodeur scored several points lower at the oral board.
Furthermore, although the Town has contended that the FSC IA report and evaluation were additional reasons for bypassing Hurwitz, those documents were not the reason for the bypass. As of June 6, 2016, Atstupenas already had decided to bypass Hurwitz for promotion, more than a week before the Union turned over those documents to the Employer. Laudon's testimony and the exchange of emails between the parties' attorneys confirmed that the decision had been made on or about that date. Atstupenas contended that he had second thoughts and asked Gilmore for his recommendation, but, as was discussed above, I have discounted that recommendation as not being made for legitimate reasons. Thus, Atstupenas made his decision to bypass Hurwitz on or about June 6, 2016, and the FSC IA report and evaluation could not have played a role in that decision because Atstupenas was unaware of the existence of those documents at that time.60

**CONCLUSION**

Based on the record and for the reasons stated above, I conclude that the Town violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of the Law by discriminating against Hurwitz for engaging in concerted, protected activities.

**ORDER**

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Town shall:

1. Cease and desist from:

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60 The Board of Selectmen deferred to Atstupenas' recommendation and voted to appoint Mantoni, Luis and Brodeur as sergeants thereby bypassing Hurwitz. See Trustees of Forbes Library, 384 Mass. at 569 (where decision makers relied on the recommendation of supervisors, the motives of the supervisors should be treated as the motives for the decision).
a. Discriminating against Hurwitz for engaging in concerted, protected activities.

b. In any like manner, interfering with, restraining and coercing its employees in any right guaranteed under the Law.

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

a. Offer Hurwitz the position of sergeant in the Town’s police department, which position he shall be deemed in terms of seniority, benefits, and all rights and privileges to have been held since the day the vacancies for sergeant were filled on June 28, 2016.

b. Make Hurwitz whole for all economic losses he suffered, if any, as a result of the discriminatory denial of his promotion. He shall be paid a sum equal to the difference between what he would have earned as a sergeant and his salary as a patrol officer from the date of June 28, 2016 to the date of compliance with this order, plus interest on all sums owed at the rate specified in M.G.L. c.231, Section 61, compounded quarterly.

c. Post immediately in all conspicuous places where members of the patrol officers’ bargaining unit usually congregate or where notices are usually posted, including electronically, if the Town customarily communicates with these unit members via intranet or email and display for a period of thirty (30) days thereafter, signed copies of the attached Notice to Employees.

d. Notify the DLR in writing of steps taken to comply with this decision within then (10) days of receipt of this decision.

SO ORDERED.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF LABOR RELATIONS

MARGARET M. SULLIVAN
HEARING OFFICER

APPEAL RIGHTS

The parties are advised of their right, pursuant to M.G.L. c.150E, Section 11 and 456 CMR 13.19, to request a review of this decision by the Commonwealth Employment Relations Board by filing a Notice of Appeal with the Executive Secretary of the Department of Labor Relations not later than ten days after receiving notice of this
decision. If a Notice of Appeal is not filed within ten days, this decision shall become final and binding on the parties.
NOTICE TO EMPLOYEES
POSTED BY ORDER OF A HEARING OFFICER OF
THE MASSACHUSETTS DEPARTMENT OF LABOR RELATIONS
AN AGENCY OF THE COMMONWEALTH OF MASSACHUSETTS

A hearing officer of the Massachusetts Department of Labor Relations (DLR) has held that the Town of Blackstone (Town) violated Section 10(a)(3) and, derivatively, Section 10(a)(1) of Massachusetts General Laws, Chapter 150E (the Law) by discriminating against Blackstone Police Union, MCOP, Local 442, AFL-CIO unit member Maxwell Hurwitz (Hurwitz) for engaging in concerted activities protected by Section 2 of the Law when it bypassed him for promotion to sergeant.

Section 2 of M.G.L. Chapter 150E gives public employees the following rights:

  to engage in self-organization to form, join or assist any union; to bargain collectively through representatives of their own choosing; to act together for the purpose of collective bargaining or other mutual aid or protection; and to refrain from all of the above.

WE WILL NOT discriminate against Hurwitz for engaging in concerted, protected activities;

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

WE WILL take the following affirmative action that will effectuate the purpose of the Law:

  • Offer Hurwitz the position of sergeant in the Town’s police department, which position he shall be deemed in terms of seniority, benefits, and all rights and privileges to have held since the day the vacancies for sergeant were filled on June 28, 2016.

  • Make Hurwitz whole for all economic losses he suffered, if any, as a result of the discriminatory denial of his promotion, paying him a sum equal to the difference between what he would have earned as a sergeant and his salary as a patrol officer from the date of June 28, 2016 to the date of compliance with the order, plus interest on all sums owed at the rate specified in M.G.L. c.231, Section 61, compounded quarterly.

Town of Blackstone                Date

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED OR REMOVED
This notice must remain posted for 30 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Department of Labor Relations, 19 Staniford Street, 1st Floor, Boston, MA 02114 (Telephone: (617) 626-7132).