COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

DAVID M. GOULD,
Appellant

v.

D1-17-025

TOWN OF NORTH ATTLEBOROUGH,
Respondent

Appearance for Appellant:

Leigh Panettiere, Esq.
Sandulli Grace, P.C.
44 School Street, Suite 1100
Boston, MA 02108

Appearance for Respondent:

Wendy Chu, Esq.
Brian Magner, Esq.[1]
Deutsch Williams Brooks DeRensis & Holland, P.C.
One Design Center Place, Suite 600
Boston, MA 02210

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Town has proven, by a preponderance of the evidence, that Sgt. Gould: a) engaged in domestic violence by striking his live-in girlfriend during a domestic dispute; and b) punched an off-duty police officer when he found him kissing his girlfriend. Sgt. Gould's serious misconduct falls far short of the high standards required of all police officers and justified the Town's decision to terminate his employment from the Police Department.

[1] Attorney Magner subsequently filed a notice of withdrawal of counsel as he obtained other employment subsequent to the full hearing.

DECISION

On February 3, 2017, Sgt. Gould, David M. Gould (Sgt. Gould), pursuant to G.L. c. 31, §§ 42 (Procedural Issues' Appeal) and 43 (Just Cause Appeal), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Town of North Attleborough (Town), to terminate him from his position as a Police Sergeant in the Town's Police Department (NAPD) effective January 27, 2017. The appeal was timely filed and I held a pre-hearing conference at the offices of the Commission on February 24, 2017. The first three days of the full hearing were held on May 1, 2017, May 2, 2017, and July12, 2017 at the Town's Department of Public Works (DPW), Public Meeting Room. The fourth day of the full hearing was held on July 30, 2017 at the offices of the Commission. The last day of the full hearing was held on August 29, 2017 at the DPW Public Meeting Room.[2] As no written notice was received from either party, the hearing was declared private and all witnesses were sequestered. A stenographer was present at all five days of the hearing and the parties agreed that the stenographic transcripts would serve as the official record of the proceedings. Following the close of the hearing, proposed decisions were submitted by both parties on November 14, 2017.

FINDINGS OF FACT

Fifty-five (55) exhibits were entered into evidence by the Appointing Authority (Appointing Authority Exhibits 1-55) and fifty-two (52) exhibits were entered into evidence by Sgt. Gould

[2] The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq*., apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

(Appellant Exhibits 1-4, 5(A)-5(D), 6(A)-6(F), 7(A)-7(J), 8-21(A)[3], 22-24, 25(A)-25(B), 26-34). Based on the records submitted and the testimony of the following witnesses[4]:

Called by the Town:

- Chief John Reilly, North Attleborough Police Department;
- Captain Joseph DiRenzo, North Attleborough Police Department;
- Detective, Plainville Police Department (Plainville Detective)
- Jane Doe's Sister;
- Police Officer, Plainville Police Department (Plainville Police Officer);
- Deputy Police Chief, Wrentham Police Department; (Wrentham Deputy Chief)
- Jane Doe's friend;

Called by Sgt. Gould:

- Local Union President, North Attleborough Police Department;
- Jane Doe's Ex-Husband;
- Selectman, Town of North Attleborough;
- David Gould, Appellant;
- Jane Doe, Mr. Gould's live-in girlfriend;

and taking administrative notice of all matters filed in the case, pertinent statutes, regulations, policies, stipulations and reasonable inferences from the credible evidence, a preponderance of the evidence establishes the following:

[3] The parties agreed that the document submitted by Sgt. Gould labeled "Exhibit 21(B)" is merely a chalk and is not an exhibit in these proceedings.

[4] To the extent possible, I have not used the names of the witnesses who testified before the Commission based, in part, to protect the privacy of Jane Doe notwithstanding the fact that published reports, submitted as exhibits in this proceeding, have opted to identify Jane Doe.

1. David Gould was a tenured civil service employee of the NAPD. He was terminated effective January 27, 2017. At the time of his termination, he had been employed by the NAPD for twenty-eight (28) years and held the rank of Police Sergeant. (Stipulated Facts; Testimony of Appellant; Appointing Authority Exhibit 2.)
2. Prior to his termination, Sgt. Gould had never been formally disciplined by the NAPD, but had received multiple "training letters".
3. Sgt. Gould's father previously served as the Town's Police Chief for many years. One of Sgt. Gould's brother is currently a lieutenant at the NAPD and another brother is a special police officer with the NAPD. (Testimony of Appellant)
4. Sgt. Gould has a romantic partnership and lives with Jane Doe, who is a Plainville police officer. They have lived together continuously in Ms. Doe's house in Wrentham since 2014, except for a brief period of time when Sgt. Gould moved out of the home around the time of the incident at issue herein. (Testimony of Appellant.)
5. On Thursday, July 28, 2016, Sgt. Gould and Ms. Doe had an argument during which Sgt. Gould asked Mr. Doe if she had another boyfriend. (Testimony of Appellant.)
6. The following day, Friday, July 29, 2016, Sgt. Gould and Ms. Doe both worked a 4:00 p.m. to midnight shift with their respective police departments. After completing his shift, Sgt. Gould returned home, but found that Ms. Doe was not there. By approximately 1:00 a.m., when she still had not come home, Sgt. Gould went out in search of Ms. Doe. Although she did not inform him of her whereabouts, Sgt. Gould correctly determined that Ms. Doe was at a "pub" (the pub) in Plainville, MA. (Testimony of Appellant.)
7. Sgt. Gould drove into the parking lot located behind the pub and found Ms. Doe's vehicle parked in the back. He did not enter the pub, but chose instead to exit the pub's parking lot,

drive down the road, and park in the parking lot of a pediatric dental office located on the other side of the street approximately 100 yards from the pub. There, he sat in his vehicle and watched for Ms. Doe to leave the pub. (Testimony of Appellant.)

8. After a period of time, Sgt. Gould observed Ms. Doe's vehicle exit the parking lot of the pub. Directly behind her vehicle was another vehicle driven by a Plainville Detective[5]. Sgt. Gould quickly realized that the second vehicle was following Ms. Doe out of the pub. Sgt. Gould then pulled out of the parking lot and followed the two cars at a bit of a distance. (Testimony of Appellant.)
9. Ms. Doe and the Plainville Detective drove down Route 1 (in Plainville), turned left at the intersection of Route 1 and Taunton Street, and then turned right onto Old Taunton Street. Sgt. Gould got stuck at the traffic light at the intersection of Route 1 and Taunton Street and did not see them take the right-hand turn onto Old Taunton Street. Sgt. Gould drove all the way down Taunton Street until just before the Wrentham Common, a distance of approximately three miles. He then turned around and drove on Taunton Street back towards Route 1. At some point during this drive, Sgt. Gould correctly determined that Ms. Doe and the Plainville Detective had turned down Old Taunton Street and he followed suit. When he came upon Ms. Doe and the Plainville Detective, his vehicle was facing their vehicles, which were pulled over on the side of the road. (Testimony of Appellant; Testimony of Plainville Detective; Testimony of Ms. Doe)
10. Sgt. Gould observed Ms. Doe and the Plainville Detective kissing one another when he arrived on Old Taunton Street. (Testimony of Appellant.)

[5] At that particular moment in time, Sgt. Gould did not know that it was the Plainville Detective driving the second vehicle. (Testimony of Appellant.)

11. Sgt. Gould stopped his vehicle and ran towards Ms. Doe and the Plainville Detective. He was visibly angry. He yelled obscenities at them and called the Plainville Detective a "fucking asshole" and Ms. Doe names such as "slut" and "whore." Sgt. Gould punched the Plainville Detective on the left side of his face. Thereafter, Ms. Doe drove off and Sgt. Gould got into his vehicle and followed her to their home in Wrentham. (Testimony of Appellant; Testimony of Plainville Detective; Testimony of Ms. Doe; Appointing Authority Exhibits 7, 8, 24.
12. When Sgt. Gould and Ms. Doe arrived at their home, Ms. Doe pulled into the garage. Sgt. Gould parked his truck in the driveway. Sgt. Gould entered the garage before Ms. Doe exited her vehicle. (Testimony of Appellant; Testimony of Ms. Doe; Appointing Authority Exhibits 7, 8)
13. Once inside the garage, Sgt. Gould immediately began yelling at Ms. Doe. Sgt. Gould resumed calling her names such as "slut" and "whore." (Testimony of Appellant and Ms. Doe)
14. The verbal argument continued as they proceeded from the garage into the breezeway connecting the garage to the house and from the breezeway into the kitchen. At some point, while Ms. Doe and Sgt. Gould were inside the kitchen, Sgt. Gould grabbed Ms. Doe's face with one hand, turned her face so she would be looking at him, and held her head in place while he continued to yell at her. After a few moments of this, Ms. Doe "walked through" Sgt. Gould into the living room. (Testimony of Ms. Doe)[6]

[6] "Ms. Doe: … I didn't want to listen to him anymore and he took my face and he made me listen to him scream all the things he had heard about me … I was looking away. I didn't want to listen to it. I said, 'I don't want to do this. Just get some things.' And he had my face and was making me listen to him calling me a slut, a whore." Transcript, Volume V, pp. 127-128.

"Counsel: Did you have any trouble moving your face away from his hand?

15. Shortly before 2:20 a.m., Sgt. Gould sent a text message to three officers of the Plainville Police Department (including "The Plainville Police Officer" who testified before the Commission) with words to the effect of "I just caught [Ms. Doe] fucking [the Plainville Police Detective]." Sgt. Gould told Ms. Doe that he had just sent the text message. (Testimony of Appellant)

16. The Plainville Police Officer who testified before the Commission was the only individual to reply to Sgt. Gould's message. Thereafter, Sgt. Gould called the Plainville Police Officer on the phone and they spoke until approximately 3:00 a.m. During this call, Sgt. Gould told the Plainville Police Officer that: (i) he had seen Ms. Doe kissing the Plainville Detective on Old Taunton Street, (ii) he had punched the Plainville Detective, but the Plainville Detective would not fight, (iii) the Plainville Detective was a "fucking pussy," (iv) he had fought with Ms. Doe and needed to find a new place to live, (v) Ms. Doe had a constant need to be the center of attention, and (vi) he had suspected her of cheating on him because she had received flowers at work. During the call, Sgt. Gould sounded upset and the Plainville Police Officer told Sgt. Gould not to do anything stupid. (Testimony of Appellant; Testimony of Plainville Police Officer.)

17. Sgt. Gould spent the rest of the night (morning) at his son's house. (Testimony of Appellant)

18. Between approximately 2:15 a.m. and 9:30 A.M. that morning (Saturday, July30th), Ms. Doe took several photographs of various locations in her home, including three (3) pictures that

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Ms. Doe: I don't remember trying to. I just remember letting him vent it out. On some level I felt I owed it to him to listen to it." Transcript, Volume V, p. 137.

In response to a question regarding whether alcohol impaired her memory, Ms. Doe stated: "Well, I don't think I was so drunk that I wouldn't remember if I was punched in the face, in the nose, to have my nose broken. If I remember, you know meeting [the Plainville Detective] across the street after that allegedly happened or Dave grabbing my face and recalling a lot of things he said, I would remember a punch to the face which would give me a broken nose. I didn't have a bloody nose. I didn't have any broken bones …." Transcript, Volume V, pp. 164-165.

show: a) a shelf lying on the floor, adjacent to a couple of couches; and b) framed photographs lying on the floor near the fallen shelf. (Testimony of Ms. Doe) The shelf shown in the photographs had previously been affixed to a wall in the living room on the first floor of the house. (Testimony of Appellant.)

19. At some point during the overnight hours of July 29-30, 2016, after Sgt. Gould had left the house, Ms. Doe met with the Plainville Detective in his vehicle and told him that Sgt. Gould had hit her and that she would be contacting her friend, the Wrentham Deputy Police Chief.[7] (Appointing Authority Exhibit 13)
20. On Saturday, July 30, 2016, between 8:28 a.m. and 8:38 a.m., Ms. Doe sent a text message to Sgt. Gould stating, in part, that she was planning on filing a police report with photographs. (Testimony of Appellant)
21. On Saturday, July 30, 2016, between 8:40 a.m. and 9:04 a.m., Ms. Doe sent a text message to the Wrentham Deputy Police Chief stating, in part, that she thought that Sgt. Gould may have broken her nose last night. (Testimony of Wrentham Deputy Police Chief)
22. On Saturday, July 30, 2016, between 10:02 a.m. and 10:12 a.m., Ms. Doe sent Sgt. Gould a text message stating in part, "you beat me last night. I seriously have a broken nose." (Testimony of Appellant)
23. On July 30, 2016, sometime in the late morning or early afternoon, Ms. Doe met face-to-face with the Wrentham Deputy Police Chief to discuss the events from the previous night. Ms. Doe told Deputy Chief McGrath that Sgt. Gould had punched the Plainville Detective when

[7] Ms. Doe testified that she likely used words like "brawl" and "big fight" when describing what had happened to the Plainville Detective. The Plainville Detective testified before the Commission that Ms. Doe told him there was an altercation and that something had happened between Ms. Doe and Sgt. Gould, but he could not recall her exact words. I reviewed the audio / video recording of the Plainville Detective's interview with Captain DiRenzo and the the State Trooper. During that interview, the Plainville Detective explicitly stated that Ms. Doe told him that Sgt. Gould had "hit" her. It is painfully clear to me that the Plainville Detective, during his sworn testimony before the Commission, was, once again, seeking to downplay what he heard or saw that night, despite having already acknowledged during his taped interview that Ms. Doe told him that Sgt. Gould had hit her that night.

he showed up at the location where Ms. Doe and the Plainville Detective were meeting; and, after Sgt. Gould and Ms. Doe returned home, Sgt. Gould "pulled her out of the car, was screaming at her and hit her." Ms. Doe told the Wrentham Deputy Police Chief that she thought her nose was broken and attributed it to her physical confrontation with Sgt. Gould. (Testimony of Wrentham Deputy Police Chief)

24. During their meeting in the late morning of July 30th, the Wrentham Deputy Police Chief didn't see any marks on Ms. Doe's nose, nor did he see any bruising or black eyes. (Testimony of Wrentham Deputy Police Chief)

25. During this meeting, the Wrentham Deputy Police Chief suggested that Ms. Doe get a restraining order, file a police report and have Sgt. Gould charged with domestic assault and battery. Ms. Doe stated that she didn't want Sgt. Gould to lose his job and declined his suggestions. The Wrentham Deputy Police Chief and Ms. Doe then discussed sending Sgt. Gould an "informal restraining order" to persuade Sgt. Gould to leave the house. (Testimony of Wrentham Deputy Police Chief)

26. Later that day (Saturday, July 30th), Sgt. Gould received a text message from Ms. Doe telling him, in part, that there was a report on file with photographs and that if he didn't come by the house and remove his things the next day (Sunday), she would file a complaint and request a restraining order. (Testimony of Appellant)

27. On the night of July 30, 2016, Ms. Doe spoke to her friend (Ms. Doe's Friend) and told her that Sgt. Gould had hit her; that she thought she had a broken nose, which Ms. Doe attributed to the physical fight with Sgt. Gould. Ms. Doe asked her friend how her nose appeared and her friend indicated that it appeared crooked. (Testimony of Ms. Doe's friend)

28. On Sunday, July 31, 2016 at 10:47 A.M., Ms. Doe sent a text message to Sgt. Gould stating: "Will you come away with us on the 14th to the 19th." (Appointing Authority Exhibit 24, p. 1115) That same day, with the permission of Ms. Doe, Sgt. Gould visited the house and removed some of his belongings. (Testimony of Appellant)
29. Also on July 31, 2016, between 11:49 a.m. and 12:23 p.m., Ms. Doe's sister received a text message from Ms. Doe stating in part that she and Sgt. Gould had "a huge fight, Dave actually broke my nose." (Testimony of Ms. Doe's Sister)
30. Sometime after the above-referenced text message exchange, Ms. Doe and her sister spoke on the telephone the same day. During this call, Ms. Doe told her sister that Sgt. Gould had put her in a choke hold, that there was "choking"; "struggling"; and "pulling" by Sgt. Gould. (Testimony of Ms. Doe's Sister)
31. Also on Sunday, July 31st, Ms. Doe's ex-husband, an Attleboro police detective, visited the home in Wrentham. Ms. Doe told her ex-husband about an argument she had with Sgt. Gould, but she did not say that Sgt. Gould hit or injured here. Ms. Doe's ex-husband did not observe any injuries on Ms. Doe at that time. (Testimony of Ms. Doe's ex-husband)
32. A few days after July 31, 2016, the Plainville Police Officer (who Sgt. Gould spoke with on the phone on July 30th) sent Ms. Doe a text message asking how she was doing. Ms. Doe's response was "I'm fine other than maybe a broken nose" or words to that effect. (Testimony of Plainville Police Officer; Appointing Authority Exhibit 9)
33. On Wednesday, August 3, 2016, Ms. Doe's brother, a Wrentham Police Sergeant, became aware of allegations that Sgt. Gould had hit his sister on July 30th. (Appointing Authority Exhibit 9) Ms. Doe and her brother exchanged text messages in which Ms. Doe's brother

stated that he wanted to report the allegations to the Wrentham Police Chief. Ms. Doe asked him not to contact anyone. (Appointing Authority Exhibits 7, 23)

34. Later on August 3rd, Ms. Doe's brother met with the Wrentham Deputy Police Chief who his sister (Ms. Doe) had met with on the morning of Saturday, July 30th. (Appointing Authority Exhibit 9)

35. That same day, the Wrentham Deputy Police Chief filed a report regarding his conversation with Ms. Doe on the morning of July 30th. The report stated that Ms. Doe had reported to him that Sgt. Gould had beat her and hit her in the face and that she believed her nose was broken. (Appointing Authority Exhibit 9 and Testimony of Wrentham Deputy Police Chief)

36. On August 4, 2016, a Plainville Police Lt. asked Ms. Doe, who is a Plainville Police Officer, to return to the station. (Appointing Authority Exhibit 9)

37. At or around the same time[8], Ms. Doe sent a text message to her sister stating: "Not a word of what I said to you about me and Dave or anyone else from this point on. I just got called into the lieutenants office …" (Appointing Authority Exhibit 19)

38. The lieutenant explained to Ms. Doe that he had become aware of allegations that Sgt. Gould had punched the Plainville Police Officer and Ms. Doe on or about July 30th. Ms. Doe told the Lt. that she did not want to discuss her personal life and denied seeing Sgt. Gould punch the Plainville Police Officer. The Lt.'s report states that he did not observe any signs of injury on Ms. Doe. (Appointing Authority Exhibit 9)

39. At or around the same time, Ms. Doe sent a text message to her sister stating: "I denied all of it." (Appointing Authority Exhibit 19)

[8] The extraction report in Exhibit 19 states that this text message was sent on August 3rd. I infer that either the August 3rd date is incorrect or the August 4th date in the Plainville Police Lt.'s report is incorrect.

40. On Monday, August 8, 2016, the Wrentham Police Chief contacted the NAPD to inform them of the report written by the Wrentham Deputy Police Chief (received five days earlier), which referenced allegations that Sgt. Gould (of the NAPD), had hit his girlfriend and a Plainville Police Officer on July 30th. (Appointing Authority Exhibit 8)
41. On Tuesday, August 9th, the North Attleborough Police Chief directed NAPD Police Captain Joseph DiRenzo to initiate an investigation. Sgt. Gould was placed on administrative leave the same day. (Appointing Authority Exhibit 7 and Testimony of Captain DiRenzo)
42. Also on August 9th, Chief Reilly suspended Sgt. Gould's license to carry a firearm (LTC) 2016, which Sgt. Gould failed to appeal. (Testimony of Chief Reilly; Appointing Authority Exhibit 55)
43. Over the next several weeks, Captain DiRenzo conducted an investigation, meeting with and/or interviewing: two (2) Police Chiefs; a Deputy Police Chief; Ms. Doe's sister; the Plainville Police Officer who Sgt. Gould called on July 30th; the Plainville Police Detective who was punched by Sgt. Gould; Ms. Doe's brother; Ms. Doe's friend; a former boyfriend of Ms. Doe; and two (2) other friends of Ms. Doe. (Appointing Authority Exhibit 7)
44. On August 11, 2016, the Wrentham Police Department filed a criminal complaint against Sgt. Gould for Domestic Assault and Battery. (Testimony of Appellant)
45. On August 12, 2016, Sgt. Gould appeared at the Wrentham Police Station; was arrested and brought to Wrentham District Court for arraignment. (Testimony of Appellant)
46. The Appellant's criminal counsel asked the District Court judge to "dismiss [the] complaint prior to arraignment and have the Wrentham Police Department take the proper avenues and set it up for a clerk's hearing." Based largely on the amount of time that had passed since

Ms. Doe first reported the matter to the Wrentham Deputy Police Chief, the District Court Judge dismissed the criminal complaint without prejudice. (Appellant Exhibit 7J)

47. A special prosecutor was appointed by the Norfolk County District Attorney's office and new criminal charges were filed against the Appellant for domestic assault and battery against Ms. Doe and assault and battery against the Plainville Police Officer and disorderly conduct. (Testimony of Chief Reilly and Appellant Exhibit 7F)
48. On September 14, 2016, a Clerk Magistrate's hearing was held in Dedham District Court and the Clerk Magistrate found probable cause regarding the criminal charges. (Appellant Exhibit 7F)
49. On September 28, 2016, Captain DiRinenzo completed his internal investigation, which was later amended after interviewing a neighbor who allegedly witnessed the incident on Old Taunton Road between Ms. Doe, the Plainville Detective and Sgt. Gould. (Appointing Authority Exhibit 7)
50. On September 30, 2016, NAPD Chief Reilly, based on the internal investigation completed by Captain DiRenzo, forwarded correspondence to the Town's Board of Selectmen recommending that the Board terminate Sgt. Gould's employment. The Police Chief's letter to the Board of Selectmen stated that: a) Sgt. Gould hit the Plainville Detective in the face; b) Sgt. Gould, after returning home, pulled Ms. Doe from the car, screamed at her and hit her repeatedly, inflicting bodily harm; and c) Sgt. Gould was facing criminal charges for these alleged acts. (Appointing Authority Exhibit 5)
51. On October 2, 2016, the Board of Selectmen sent Sgt. Gould a "Notice of Intent to Discharge and Appointing Authority Hearing" notifying him that they had designated a hearing officer

who would conduct a local hearing on October 21st, which, for logistical reasons, was moved to November 4th. (Appointing Authority Exhibit 4 and Appellant Exhibit 7D)

52. On November 2, 2016, counsel for Sgt. Gould filed a "motion for continuance" with the Board of Selectmen, asking the Board to continue the November 4th local hearing "for a sufficient amount of time to allow the accused employee to resolve the pending criminal case against him, so that he will feel free to testify in this matter without relinquishing his 5th Amendment Rights." The "motion" referenced that "Sgt. Gould has even offered to go off the payroll so that the delay does not burden the Town financially." (Appellant Exhibit 6D)
53. On November 3, 2016, the Board of Selectmen, at a regularly scheduled meeting, addressed the request for continuance. After a spirited conversation, the Board agreed to postpone the November 4th hearing to January 1, 2017 or the resolution of the pending criminal matters, *whichever came sooner*. (Appellant Exhibit 20) Per agreement of the parties, Sgt. Gould's paid leave was converted to unpaid leave during this period of time.
54. On November 23, 2016, the Board of Selectmen notified Sgt. Gould that the re-scheduled local hearing would take place on January 6, 2017. (Appellant Exhibit 8)
55. On December 5, 2016, as a result of Ms. Doe's refusal to cooperate with the prosecution, the Commonwealth entered a Nolle Prosequi in the domestic assault and battery case. (Appellant Exhibit 11)
56. On December 27, 2016, the Plainville Police Officer who was struck by Sgt. Gould signed an "Accord and Satisfaction" acknowledging that he received satisfaction for his alleged injuries and that he was seeking dismissal of the assault and battery charge against Sgt. Gould. (Appellant Exhibit 12)
57. On January 2, 2017, Sgt. Gould was placed back on paid leave. (Appellant Exhibit 8)

58. On January 3, 2017, counsel for Sgt. Gould filed a request to continue the January 6, 2017 hearing, noting that, although the criminal matters related to Ms. Doe had been dismissed, the case involving the Plainville Detective was scheduled for trial in April 2017. (Appellant Exhibit 6E)

59. On January 5, 2017, the Board of Selectmen denied the request for a continuance. (Appellant Exhibit 8)

60. On January 6, 2017, the Town's designated hearing officer conducted the local hearing pursuant to G.L. c. 31, § 41. Counsel for Sgt. Gould asked the hearing officer to continue the hearing until the criminal charges against Sgt. Gould were resolved. The hearing officer, after hearing argument from both counsel, denied the request to continue the hearing, writing that the Town's need to enforce the rules and regulations of the Police Department outweighed the reasons to delay the matter any further. (Appellant Exhibit 8 and Appointing Authority Exhibit 3)

61. Sgt. Gould did not testify at the local hearing on January 6th. The case was presented through exhibits and counsel statements only. Chief Reilly and Captain DiRenzo were present at the hearing to answer questions, but did not testify. (Appellant Exhibit 8 and Appointing Authority Exhibit 3)

62. The hearing officer left the record open for submission of various documents, including an Appellant submission of a "statutory declaration" from Ms. Doe, which was never received. (Appellant Exhibit 8 and Appointing Authority Exhibit 3)

63. Via a document dated January 19, 2017, the local hearing officer submitted his findings and recommendations to the Board of Selectmen. In his findings, the hearing officer stated in

part that: "It is relevant that [Ms. Doe] has not recanted her report that Gould beat her." (Appointing Authority Exhibit 3)

64. The local hearing officer further found in part that: a) "Sergeant Gould, in striking [the Plainville Detective], violated the law and the Police Department Rules and Regulations; specifically, Rule 4.02 – Conducting Unbecoming and Officer; and Rule 11.12 – Criminal Conduct;" and b) "Sergeant Gould, in beating [Ms. Doe] violated the law and the Police Department Rules and Regulations, specifically Rule 4.02 – Conduct Unbecoming an Officer; and Rule 11.12 – Criminal Conduct. The Domestic Violence by Police Officers Policy states, in pertinent part: 'It is the policy of this department: … not to retain employees that engage in domestic violence.'" (Appointing Authority Exhibit 3)

65. The local hearing officer concluded that Sgt. Gould's actions toward the Plainville Detective and Ms. Doe constituted just cause for his termination. (Appointing Authority Exhibit 3)

66. The NAPD's Rules and Regulations Manual addresses an officer's off-duty conduct as follows:

> The department will generally limit its inquiry into an employee's personal matters, off-duty conduct and outside employment, to situations impacting or reflecting upon the department or affecting the employee's ability or fitness for duty…. The department has a legitimate interest in preserving the public's trust and respect. An employee's off-duty personal relationships and conduct must not bring discredit to the officer or department, impact on the Department's operation, affect the employee's ability to perform his or her job, or result in poor job performance….
>
> Both on and off-duty conduct may subject an officer to a charge of conduct unbecoming an officer. Officers do not sever their relationship with the department at the end of their shift. An officer's off-duty conduct, especially where there is some nexus or connection to the department or where the officer's status as a police officer is or becomes known, may reflect unfavorably on both the officer and department….

(Appointing Authority Exhibit 27)

67. Rule 4.02 – Conduct Unbecoming an Officer, mandates that officers "not commit any specific act or acts of immoral, improper, unlawful, disorderly or intemperate conduct, whether on or off duty, which reflect(s) discredit or reflect(s) unfavorably upon the officer, upon other officers or upon the police department." The Rule defines "conduct unbecoming" as including "that which tends to indicate that the officer is unable or unfit to continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members." It also includes "off-duty conduct where there is a nexus or connection between the act or acts committed by the officer and that individual's continued fitness or ability to effectively perform his or her required duties and responsibilities and/or the impact or adverse effect said conduct may have on the operation, morale, integrity, reputation or effectiveness of the department and ability of the officers not involved in said act to effectively perform their required duties and responsibilities." (Appointing Authority Exhibit 27.)

68. Rule 11.12 – Criminal Conduct, mandates that officers shall "not commit any motor vehicle or criminal act (felony or misdemeanor), or violate the regulatory or criminal laws or statutes of the United States or of any state or local jurisdiction (by-law/ordinance), whether on or off duty." With regards to this rule, the Manual expressly notes that officers "may be guilty of violating this rule ***regardless of the outcome of any criminal court case***. Conviction for the violation of any law is prima facie evidence of a violation of this rule. However, even in the absence of a conviction (which requires proof beyond a reasonable doubt), an officer may still be disciplined under this rule for the conduct that was involved since a preponderance of the evidence is the quantity of proof required in such cases." (Appointing Authority Exhibit 27.) (Emphasis added)

69. NAPD Policy & Procedure No. 2.15 – Domestic Violence by Police Officers, states that "it is essential that police professionals hold themselves to an exemplary standard in the area of domestic violence. A pro-active approach must focus on victim safety. The touchstone must be a policy of 'zero tolerance' of acts of domestic violence by members of this department." The policy of the NAPD is, *inter alia*, "not to retain employees that engage in domestic violence, elder abuse, sexual assault, or stalking… [and] to take disciplinary and criminal action against department members where appropriate." The Policy defines "domestic violence" as "an act or pattern of violence perpetrated by a police officer upon his or her intimate partner not done in defense of self or others, including but not limited to the following: Bodily injury or threat of imminent bodily injury; Sexual battery; Physical restraint; Property crime directed at the victim; Stalking; Violation of a court order of protection or similar injunction; and death threats or death." An "intimate partner" includes someone who "[h]as or had a dating relationship with the police officer… [and/or] [i]s cohabitating or has cohabitated romantically with the police officer." NAPD Policy & Procedure No. 2.15 clearly states that the NAPD adheres to a zero-tolerance policy towards police officer domestic violence and that violation of the policy may result in disciplinary action "up to and including dismissal." (Appointing Authority Exhibit 28.)
70. On January 20, 2017, the Board of Selectmen notified Sgt. Gould that they would be meeting in Executive Session on January 26, 2017 to discuss the hearing officer's report and disciplinary action that may be taken against him. (Appointing Authority Exhibit 53)
71. On January 26, 2017, the Board of Selectmen met in Executive Session. Sgt. Gould was given an opportunity to make a statement but declined. The Selectmen voted to adopt the

findings and recommendation of the hearing officer and terminate Sgt. Gould's employment. (Appellant Exhibit 10)

72. On February 3, 2017, Sgt. Gould filed the instant appeal with the Commission. (Stipulated Fact)

73. On April 5, 2017, at the criminal trial on the charge of assault and battery on the Plainville Police Officer, the trial judge accepted the accord and satisfaction, and the assault and battery charges against Sgt. Gould were dismissed. After trial, Sgt. Gould was found not guilty of disturbing the peace. (Appellant Exhibit 17)

74. Over the course of five (5) days between May 1, 2017 and July 30, 2017, I held a hearing and heard from various witnesses, including Sgt. Gould and Ms. Doe, who both denied that Sgt. Gould ever hit Ms. Doe.

Applicable Civil Service Law

G.L. c. 31, § 41 states in part:

> "Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent if he has served as a tenured employee since prior to October fourteen, nineteen hundred and sixty-eight, lowered in rank or compensation without his written consent, nor his position be abolished. Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof, except that if the action contemplated is the separation of such employee from employment because of lack of work, lack of money, or abolition of position the appointing authority shall provide such employee with such notice at least seven days prior to the holding of the hearing and shall also include with such notice a copy of sections thirty-nine and forty. If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which

> shall state fully and specifically the reasons therefor. Any employee suspended pursuant to this paragraph shall automatically be reinstated at the end of the first period for which he was suspended. In the case of a second or subsequent suspension of such employee for a period of more than five days, reinstatement shall be subject to the approval of the administrator, and the notice of contemplated action given to such employee shall so state. If such approval is withheld or denied, such employee may appeal to the commission as provided in paragraph (b) of section two.

G.L. c. 31, § 42 states in part:

> Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights.

G.L. c. 31, § 43 provides:

> "If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law;" Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct

which adversely affects the public interest by impairing the efficiency of public service;" School Comm. v. Civil Service Comm'n, 43 Mass.App.Ct. 486, 488 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there;" Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

Under section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew;" Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. However, "[t]he commission's task.. .is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision'," which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority; Id., quoting internally from Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983) and cases cited.

Sgt. Gould's Section 42 (Procedural Claims) Appeal

Prior to terminating a tenured civil service employee, G.L. c. 31, § 41 requires that the employee be given: 1) a written notice by the appointing authority; and 2) a full hearing before the appointing authority or a hearing officer designated by the appointing authority. The written notice by the appointing authority must include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five.

If the Commission finds that the Appointing Authority failed to follow the above-referenced Section 41 procedural requirements and that the rights of said person have been prejudiced thereby, the Commission "shall order the Appointing Authority to restore said person to his employment immediately without loss of compensation or other rights." G.L. c. 31, § 42.

A review of the record shows that the Town complied with all of the procedural requirements of the civil service law. After the NAPD concluded its internal investigation into Sgt. Gould's actions on the night of July 29-30, 2016, the Town provided him with written notice that it was considering disciplinary action up to and including termination. The letter included a lengthy list of the specific reasons for the contemplated action. The last paragraph of the letter clearly stated that a pre-disciplinary hearing pursuant to G.L. c. 31, §41 would be held before a designated hearing officer. It is undisputed that a hearing before the hearing officer took place on January 6, 2017, and that Sgt. Gould and his attorney were present for the entire hearing. This was significantly more than the three days' prior notice required by the statute. The evidence also establishes that the hearing lasted from 10:00 a.m. until 1:45 p.m. and it is clear from the hearing officer's written report that the hearing addressed all of the reasons listed in the October 2, 2016 pre-termination notice.

As required by the statute, the hearing officer issued a written report of his findings to the Board of Selectmen on January 19, 2017 and the Board voted to terminate Sgt. Gould on January 26, 2017. Sgt. Gould received written notice of the Board's decision on January 27, 2017, which was within the statutory seven day requirement. The written notice from the Board notifying Sgt. Gould of his termination clearly stated that the decision to terminate was based on "the reasons set forth in the Hearing Officer's report," a copy of which had been provided to Sgt. Gould in advance of the January 26th meeting and then again with the termination notice.

As part of the proceedings before the Commission, there was considerable time spent on whether Sgt. Gould was entitled to a second hearing before the Board of Selectmen (the Appointing Authority) after the designated hearing officer submitted his findings and recommendations to the Board, based on comments made by individual members of the Board that Sgt. Gould would be given a "second bite of the apple" after the hearing officer's report was submitted.

First, there is nothing in the civil service law that requires a *second* hearing before the Appointing Authority after receiving the findings and recommendations of a designated hearing officer.

Second, Sgt. Gould, throughout these proceedings, including those conducted at the local level, was represented by counsel well versed in the civil service law, including the process of designating a hearing officer.

Third, I reviewed the entirety of the transcripts and audio / video recordings of each Board of Selectmen meeting related to Sgt. Gould's appeal. What emerged was a picture of one member of the five-member Board unsuccessfully attempting to create disorder and prevent any ruling or decision by the Board that could potentially result in the termination of Sgt. Gould. The Board's Chairman, however, ably navigated the Board's majority through the nuances of the Town's requirements under the civil service law -- and complied with all of these statutory requirements.

For these reasons, Sgt. Gould's procedural appeal under Section 42 is ***denied***.

Just Cause Appeal

The Commission is once again faced with a case involving allegations of domestic abuse, the seriousness of which cannot be understated. As the Commission recently stated in Torres v. City of Chicopee, 30 MCSR 467 (2017), citing Lavery v. North Attleborough, 30 MCSR 373 (2017):

"The Commonwealth's policies against domestic violence are evident across all three branches of government. The legislature has repeatedly enacted legislation to respond to domestic violence. Executive Order No. 563, "Re-Launching the Governor's Council to Address Sexual Assault and Domestic Violence", dated April 27, 2015, affirms and furthers the state's long-standing commitment to addressing domestic violence. It states, in pertinent part,

… Whereas, … the Governor's Office also acknowledges that sexual assault and domestic violence often go unreported …;
Whereas, acknowledging the progress made by previous administrations, important work remains to be done to improve safety in our homes and throughout the Commonwealth; …

Section 4. … the Council shall be charged with assessing the implementation of those parts of Chapter 260 of the Acts of 2014 that establish new programs and introduce training and education targeted at reducing sexual assault and domestic violence in the Commonwealth …

…4. Determine and report on the progress made by the Massachusetts District Attorneys' Association in commencing a course of training on the issues of domestic violence and sexual assault violence for all district attorneys and assistant district attorneys …;

5. determine and report on the progress made by the trial court department in implementing a training program on domestic violence and sexual violence for trial court employees ….
(Id.)

The Executive Office of Public Safety & Security (EOPSS) issued the revised "Domestic Violence Law Enforcement Guidelines" in 2017 pursuant to Chapter 260 of the Acts of 2014, An Act Relative to Domestic Violence[9]. http://www.mass.gov/eopss/docs/eops/2017-dv-law-enforcement-guidelines-final-07-06-2017.pdf These lengthy and detailed Guidelines provide, in pertinent part,

… anyone can be a victim; anyone can be an offender regardless of gender and/or sexual orientation. Always consider who is the dominant aggressor and make that determination based on the totality of the facts and circumstance, not on the victim/offender's gender, size etc. … **Many victims of domestic violence never file a report with law enforcement, get a restraining order/injunction, or connect with a domestic violence program. … Furthermore, many victims may regret calling 911 once they are thrust into the criminal justice system, which can bring increased financial burdens due to lost income, defense attorney fees, embarrassment for having to publicly testify to the abuse, and pressure to recant. …**

Be aware that trauma may influence a victim's interactions with law enforcement officers responding to domestic violence calls. Do not assume a victim is uncooperative ….
(Id. at pp. 16-17)(emphasis added)
…

[9] Pursuant to Chapter 260 of the Acts of 2014, all municipal police departments within Massachusetts are required to adopt the EOPSS DV Guidelines or establish and implement specific operational guidelines consistent with the EOPSS DV Guidelines.

On its website, the Massachusetts District Attorneys Association notes, in pertinent part,

Prosecutors who handle domestic violence cases know that very few go to trial. There are many obstacles that confront prosecutors trying domestic violence cases; including, trial delays, Fifth Amendment claims by the victim, and accord and satisfactions on the day of trial. …
http://www.mass.gov/mdaa/trainings-and-conferences/obstacles-in-trying-domestic-violence-cases.html (emphasis added)"

Here, the Town, adopting the findings and recommendations of their designated hearing officer, concluded that Sgt. Gould, in addition to "striking" the Plainville Detective, "beat" his live-in girlfriend, Ms. Doe, who is a Plainville Police Officer. The parties appear to agree that, if the charges related to Ms. Doe are true, the decision to terminate Sgt. Gould would be justified. The central factual dispute in this case, however, is whether the Town has *proven, by a preponderance of the evidence*, that Sgt. Gould actually hit Ms. Doe, which both he and Ms. Doe denied during their sworn testimony during the Commission.

As previously referenced, Ms. Doe, as part of her sworn testimony before the Commission, adamantly denied that Sgt. Gould hit her on July 30th. Ms. Doe went a step further in her testimony before the Commission, either denying or offering no plausible explanation[10] for the contemporaneous statements she made to multiple individuals stating that Sgt. Gould hit her on July30th. Standing alone, Ms. Doe's testimony that she never made or couldn't recall making such statements was not credible. Further, her testimony was contradicted by a series of text messages entered into evidence showing that such statements were made. Finally, and most importantly, Ms. Doe's testimony regarding whether she made these statements was contradicted by a series of witnesses who offered credible, detailed testimony before the Commission regarding the conversations they had with Ms. Doe on or shortly after July 30th. I listened

[10]Ms. Doe did acknowledge, in part, that she may have told her sister that she thought, at the time, that Sgt. Gould broke her nose:
"Commissioner: Did you tell her [your sister] that you thought Dave broke your nose?
Ms. Doe: I might have said something like that …" Transcript, Volume V, p. 187.

carefully to the testimony of these witnesses, reviewed their testimony again via the written transcript, and, when appropriate, compared their testimony against relevant exhibits. Based on this review, I have, as noted in the findings, credited the testimony of each of these witnesses in regard to statements that Ms. Doe made to them around this time period.

In summary, on July 30, 2016 and the days immediately thereafter, Ms. Doe sent multiple text messages to numerous people stating that Sgt. Gould hit her and she believed he had broken her nose as a result. She made similar statements to people in face-to-face meetings and phone conversations during this time. Most significantly, she reached out to the Wrentham Deputy Police Chief to report that Sgt. Gould hit her. Ms. Doe's statements to the Wrentham Deputy Police Chief were fairly consistent with a subsequent conversation she had with her sister. These two (2) conversations were the most in-depth statements she made to the group of individuals in whom she confided. In both cases, she described being hit repeatedly and severely by Sgt. Gould. Ms. Doe's statements to the Wrentham Deputy Police Chief and her sister are also consistent with her statements and texts to her friend, the Plainville Detective, the Plainville Police Officer and others that Sgt. Gould had hit her and that she believed her nose to be broken as a result. Having concluded that Ms. Doe did indeed make these statements, the issue before me, as it relates to the incident with Ms. Doe, is whether the Town has proven, by a preponderance of the evidence, that Sgt. Gould actually engaged in the behavior alleged by Ms. Doe in her statements (i.e. – did Sgt. Gould hit Ms. Doe?) The evidence supporting the Town's argument that Sgt. Gould did hit Ms. Doe includes the following:

- The relative consistency of Ms. Doe's contemporaneous statements and text messages regarding the incident. As noted above, Ms. Doe communicated with multiple people,

including her sister and longtime, trusted friend, that Sgt. Gould hit her and that she attributed the pain in her nose to him hitting her.

- As stated in the state's Guidelines on Domestic Violence, referenced above, it is not uncommon for victims of domestic abuse to recant their statements for various reasons, including financial reasons. Sgt. Gould provides financial support to Ms. Doe and assists her with her childcare responsibilities. Ms. Doe's dependence on Sgt. Gould arguably places even greater pressure on her to retract her earlier statements.
- Even Ms. Doe, whose testimony before the Commission appeared to be geared toward minimizing the level, if any, of physical violence committed by Sgt. Gould, acknowledged that Sgt. Gould "grabbed" her face and "held it" while he screamed at her.
- Photographs taken by Ms. Doe show various parts of the home in disarray immediately after the fight had ended. Sgt. Gould's testimony that the damage depicted in these photographs was caused by his forceful slamming of the door upon exiting the home was not credible. Even Ms. Doe could not corroborate this, choosing instead to claim she could not recall how her home was damaged other than to allude to the fight.
- Ms. Doe and Sgt. Gould both made a point of noting that this was the worst fight they had had to date. Ms. Doe also stated that she had never seen Sgt. Gould as angry as he was on that night. Also, it was the first time in their relationship where Ms. Doe had demanded that Sgt. Gould move out of the home and he complied.
- On previous occasions when they fought, Ms. Doe had never accused Sgt. Gould of physically assaulting her.
- The testimony of Ms. Doe and Sgt. Gould appeared, in large part to be rehearsed, or coordinated, right down to details regarding where, how (and for what reason) Sgt. Gould

placed his fingers on Ms. Doe's face on June 30th; (There was no mention of this occurrence at the pre-disciplinary hearing before the hearing officer on January 6, 2017 or in the statutory declarations they both submitted to the Board on January 26, 2017.)

- Sgt. Gould, at the time, never refuted Ms. Doe's allegations in writing despite his claim that they were entirely made up. There are three examples in the record of occasions when Ms. Doe sent Sgt. Gould a text message accusing him of physically assaulting her on the night in question including one in which Ms. Doe explicitly stated to Sgt. Gould: " … You beat on me last night. I seriously have a broken nose …"

Finally, I must consider that the Town was entitled to draw an adverse inference due to Sgt. Gould's refusal to testify at the local hearing. "The Commission is permitted, but not required, to draw an adverse inference against an appellant who fails to testify at the hearing before the appointing authority. Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006)." Clark v. Boston Housing Authority, 24 MCSR 193 (2011), Clark v. Boston Housing Authority, Suffolk Superior Court, C.A. No. SUCV2011-2554E, *aff'd* (Feb. 13, 2015). In a civil case, the Massachusetts courts have held that even a party asserting his or her rights against self-incrimination under the U.S. or Massachusetts Constitutions "may be the subject of a negative inference by a fact finder where the opposing party … has established a case adverse to the person invoking the privilege. Quintal v. Commissioner of the Dep't of Employment & Training, 418 Mass. 855, 861 (1994), quoting Custody of Two Minors, 396 Mass. 610, 616 (1986)." Town of Falmouth, at 826-27 (citations omitted). While the adverse inference may not be required, in Town of Falmouth, the Supreme Judicial Court found that the Commission erred when it failed to factor into its decision to reduce the Appellant's suspension from 180 days to 60 days that the Appellant failed to testify at the Town's hearing, invoking the privilege against self-

incrimination. Id. Finally, an adverse inference "cannot alone meet the plaintiff's burden. *See* McGinnis v. Aetna Life & Casualty Co., [398 Mass. 37, 39 (1986)]." Frizado v. Frizado, 420 Mass. 592, 596 (1995)(emphasis added).

I have carefully reviewed the parties' arguments regarding whether such an inference could be drawn from the Town, including whether Town of Falmouth is distinguishable from the instant appeal. I have: a) concluded that the Town was justified in drawing an adverse inference based on Sgt. Gould's failure to testify at the local hearing; and b) considered this adverse inference by the Town as part of the de novo hearing before the Commission. The Town (both the Appointing Authority and their designated hearing officer) carefully considered Sgt. Gould's request to continue the hearing and granted him a continuance until January 2017, approximately three (3) months from the initial hearing date set by the Town, and approximately five (5) months from the date of the alleged misconduct in July 2016. Faced with another request, in January 2017, to indefinitely postpone the local hearing until the criminal proceedings were concluded, the Town considered the need to enforce the Police Department's rules and regulations, the uncertainty of when the criminal proceedings would be concluded, and the ongoing financial burden to pay overtime for individuals covering Sgt. Gould's shifts. Ultimately, the Town decided to move forward with the local hearing, at which time the Town presented the hearing officer with the results of an internal investigation in which multiple individuals stated that Ms. Doe, shortly after July30th, had unequivocally told them that Sgt. Gould had hit her that night. Under these circumstances, the hearing officer was justified in drawing an adverse inference from Sgt. Gould's failure to testify, even though the criminal charges related to the alleged striking of the Plainville Detective were still pending.

I do not, however, read Town of Falmouth or any other cases cited, as requiring me to automatically disregard or give no weight to the testimony of an Appellant who, like Sgt. Gould, failed to testify at the local hearing and then chooses to testify before the Commission. Rather, I heard Sgt. Gould's testimony, assessed his credibility, and then, as part of my final review here, considered the fact that the Town was entitled to draw an adverse inference from his failure to offer this testimony at the local hearing.

I also considered the evidence that would support a conclusion that Sgt. Gould did not hit Ms. Doe, including the following:

- Ms. Doe testified before the Commission that she was not "hit" or "beaten" by Sgt. Gould.
- Sgt. Gould testified before the Commission that he never "hit" or "beat" Ms. Doe.
- The veracity of Ms. Doe's prior statements that she was indeed hit by Sgt. Gould are undercut by her untruthful denials during her sworn testimony before the Commission that she ever made most of these statements.
- There was no sign of physical injury to Ms. Doe. The Wrentham Deputy Police Chief saw no signs of injury on Ms. Doe hours after the incident. A Plainville Police Lieutenant who saw Ms. Doe on August 4th saw no signs of injury. Her ex-husband who saw Ms. Doe one day after the incident saw no signs of injury. While Ms. Doe's friend said she saw what appears to be a "crooked nose", that is not consistent with the credible testimony of others who saw no such thing shortly after the incident. Also, the contemporaneous pictures taken by Ms. Doe do not show signs of physical injury.
- Ms. Doe's statements regarding Sgt. Gould hitting her were made after she was admittedly (and justifiably) angry that Sgt. Gould had texted three (3) of her colleagues making what

Sgt. Gould admits were false allegations he caught Ms. Doe "fucking" the Plainville Police Detective.

- One (1) day after the incident, Ms. Doe texted Sgt. Gould and asked him to join her on a family vacation.

After weighing all of the evidence, I have concluded that Sgt. Gould and Ms. Doe, during their testimony before the Commission, understated the level of physical violence that occurred in Ms. Doe's home during the overnight hours of July 29-30, 2016. Specifically, I have concluded that it is more likely than not that Sgt. Gould did indeed hit Ms. Doe so badly that night that she believed that her nose was broken. During contemporaneous statements to others, including her sister and trusted friend, she provided an honest recollection of what occurred. Not long afterward, Ms. Doe, exhibiting behavior consistent with the victims of domestic violence, sought to recant her statements and encourage those who she spoke with not to take any action. Both personally and through counsel, she then sought to assist Sgt. Gould by failing to cooperate in the internal investigation, refusing to testify in the criminal cases against him and then submitting a written statement containing false statements to the Town's Board of Selectmen. Finally, Ms. Doe, in what appeared, in important parts, to be contrived, choreographed testimony before the Commission that was not persuasive, sought to recant, in part, her prior statements.

As referenced above, even Ms. Doe acknowledges, for the first time, that Sgt. Gould, in a fit of anger, grabbed and held her face while screaming at her that night. The photographs taken that night are consistent with an even more violent encounter, with furniture overturned and a shelf that had been screwed into the living room wall on the ground. While only one piece of evidence that I considered, it appeared that this was one of the few events that night for which Sgt. Gould and Ms. Doe had not coordinated their testimony. In that context, it was noteworthy

to me that Sgt. Gould's explanation for the shelf coming off the wall was that he slammed the kitchen door with such force upon exiting that the shelf easily fell to the ground. Ms. Doe was certain that Sgt. Gould, although angry, left the residence that night without incident (i.e. – no such slamming of the door causing a shelf to fall). For her part, Ms. Doe could not offer any reasonable explanation as to why the shelf came off the wall that night. Accepting the testimony of Ms. Doe that she did not observe Sgt. Gould slam the door upon his exit, the shelf, therefore, came off the wall for another reason. Commonsense argues that it likely came off the wall because of a violent struggle between Sgt. Gould and Ms. Doe.[11]

The Appellant's emphasis, during these proceedings, regarding Ms. Doe's subsequent medical diagnosis that would explain experiencing pain in her nose was an unfortunate, and unpersuasive, attempt at diversion. Regardless of whether Ms. Doe had the subsequent medical diagnosis, the point has always been that Ms. Doe, at the time, believed that Sgt. Gould struck her with such force, that she thought he broke her nose – at the time. The subsequent medical diagnosis does nothing to change that she attributed her pain, at the time, to Sgt. Gould hitting her that night.

I also gave significant weight to the fact that Sgt. Gould, when receiving a text message from Ms. Doe alleging that he broke her nose, failed to reply. The record shows repeated text messages between Sgt. Gould and Ms. Doe after the incident and Sgt. Gould was not hesitant to respond to the various, emotionally charged text messages that he was receiving from Ms. Doe. That one, however, stood out, for Sgt. Gould's failure to reply and his testimony regarding why he failed to respond was unpersuasive. Further, while listening to Sgt. Gould's testimony, and reviewing it later, it appeared to me that he attempted to offer contrived testimony stating that he

[11] Even, for the sake of argument, if the shelf did fall to the ground because of the slamming of the door, it would not change my final conclusion that Sgt. Gould did indeed hit Ms. Doe.

did challenge this text message days later while Ms. Doe was giving him a haircut. To me, it appeared that Sgt. Gould suspected that his failure to respond to that text message could be painting him in a bad light and that he needed to "fill in the blanks" with the alleged "haircut conversation." It didn't ring true to me – at all – and was yet another reason for me to question whether Sgt. Gould was being truthful about whether he hit Ms. Doe in her home on the night in question. In summary, even with the benefit of reviewing the testimony of Sgt. Gould and Ms. Doe, who did not testify at the local hearing, I reach the same conclusion that the local hearing officer did: it is more likely than not that Sgt. Gould did indeed hit Ms. Doe.

That leaves the issue of Sgt. Gould, earlier in the night, punching the Plainville Detective, which he does not deny. After reviewing all of the evidence, I have concluded that Sgt. Gould confronted the Plainville Detective on a public street in the middle of the night and punched him on the left side of his face. Sgt. Gould admits to assaulting the Plainville Detective, but he tries to minimize the impact of his actions by emphasizing that it was a single punch. He claims that he acted instinctively because the Plainville Detective had adopted a fighting stance and had his hands in fists. I don't believe that is what transpired. The Plainville Detective, who was travelling the roads of Plainville that night, was, by his own accounts, highly intoxicated and caught by complete surprise when Sgt. Gould ran toward him. Further, when the Plainville Detective was interviewed by Captain DiRenzo on August 9, 2016, which was shortly after the night in question, he never stated that he had adopted any type of stance prior to Sgt. Gould punching him. It was not until months later, on April 5, 2017, that the Plainville Detective indicated during the criminal trial on the domestic disturbance charge against Sgt. Gould that he had adopted a "defensive stance" prior to the punch. To me, this was simply an attempt by the Plainville Detective, who has made a formal apology to Sgt. Gould for kissing his girlfriend and

stated that he understood why Sgt. Gould punched him, to paint a picture more favorable to Sgt. Gould. In short, any suggestion that Sgt. Gould was somehow acting in self defense when he struck the Plainville Detective that night is absurd.

Collectively, the actions of Sgt. Gould, described above, provided the Town with just cause to discipline him for conduct unbecoming a police officer and violations of the rules and regulations of the Town's Police Department cited in the findings, including those related to domestic violence.

Just Cause for Termination

Having determined that Sgt. Gould did engage in the alleged misconduct, I must determine whether the level of discipline (termination) was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814 (2006):

> "After making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. [31], s. § 43 ('The commission may also modify any penalty imposed by the appointing authority.') Here the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." Id. citing Watertown v. Arria,16 Mass.App.Ct. 331, 334 (1983).
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> "Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the 'equitable treatment of similarly situated individuals.' citing Police Comm'r of Boston v. Civ. Serv. Comm'n, 39 Mass.App.Ct. 594, 600 (1996). However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system— 'to guard against political considerations, favoritism and bias in governmental employment decisions." Id. (citations omitted).
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> "Unless the commission's findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially

> the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation." Id. at 572. (citations omitted).

First, my findings do not differ significantly from those reported by the Town. Similar to the Town, I have found that Sgt. Gould punched the Plainville Detective in the face and that he hit Ms. Doe in a way that caused her to believe that her nose was broken. These actions constitute "substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Serv. Comm'n, 43 Mass. App. Ct. at 488.

Second, I reviewed Sgt. Gould's allegations that the Town's actions against him were driven, in part, by alleged animus against him related to grievances that he filed shortly before the incident in question and the ensuing internal affairs investigation. Based on a full review of the record, including the relatively inconsequential nature of the grievances and related issues, as well as the credible testimony of Captain DiRenzo, I have concluded that: a) there was no personal animus against Sgt. Gould; and b) the internal affairs investigation was undertaken and conducted with the sole intent of finding the facts and responding accordingly. As previously touched upon, I reviewed all of the exhibits submitted in this matter, including the audio / video taped interviews conducted in whole or in part by Captain DiRenzo. Each of those interviews was done in a thorough, professional manner, with an emphasis on pulling together all of the relevant facts. In short, the internal affairs investigation, and the thorough manner in which it was completed, was warranted by the seriousness of the charges.

Third, I considered that, with the exception of "training letters", which are not considered formal discipline, Sgt. Gould has no prior disciplinary history. While the Commission has long considered progressive discipline to be consistent with the basic merit principles of the civil service law, the seriousness of the conduct here justifies termination, even absent any prior

formal discipline. Given that NAPD officers respond to numerous domestic abuse calls, it would be antithetical to his duties and responsibilities as a Police Sergeant for Sgt. Gould to respond to such calls, having been the perpetrator of such abuse himself. See Patrick O'Brien v. City of Lowell, 28 MCSR 409, 413 (2015), concurring opinion of Commissioners Bowman and Stein ("The Commission, through a series of decisions, has firmly established that engaging in domestic violence is a valid reason for bypassing candidates – ***and disciplining incumbent civil service employees***.) In addition, Sgt. Gould's actions were widely reported in the local press after his arrest. In every article, he is identified as an officer of the NAPD and his victims are identified as local police officers. There is no doubt that the press reports of Sgt. Gould's actions have brought disrepute to the Town and the NAPD, further impairing Sgt. Gould's efficacy as a public safety officer.

"The Commission is mindful that 'police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.'" DeTerra v. New Bedford Police Dep't, 29 MCSR 502, 508 (2016), quoting Attorney Gen. v. McHatton, 428 Mass. 790, 793 (1999).

> Police officers must comport themselves in accordance with the laws that they are sworn to enforce ***and*** behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.

Police Comm'r of Boston v. Civil Serv. Comm'n, 22 Mass. App. Ct. 364, 371 (1986). (Emphasis in original.) Where the abuser is a police officer, it is particularly important for the

Commission to affirm a decision to terminate once there is a finding of domestic abuse because it makes clear that no one is above the law.[12]

Finally, I considered Sgt. Gould's argument that he was subjected to disparate treatment, pointing to a long-ago incident in which Captain DiRenzo was involved in a physical confrontation with a person who had been allegedly harassing Captain DiRenzo's wife at work. Ultimately, I didn't find those circumstances, for which Captain DiRenzo was not disciplined, comparable to Sgt. Gould's misconduct for many reasons, including the fact that Captain DiRenzo was not found to have engaged in domestic violence, as is the case here. The only situation presented by the parties which I find to be comparable to the facts of the present case is that of Glenn Lavery. Mr. Lavery was employed by the Town as a Firefighter until he was terminated in late 2015 for physically assaulting his former girlfriend. As Mr. Lavery's termination occurred relatively close in time to the termination of Sgt. Gould, it is relevant for purposes of determining disparate treatment. In addition, the misconduct was relatively similar, though Sgt. Gould's was arguably more egregious since he assaulted two individuals who were also police officers. In addition to Mr. Lavery, Chief Reilly testified about two other officers of the NAPD who had committed acts of domestic abuse, both of whom resigned in lieu of termination.

Conclusion

For all of the above reasons, the Town's decision to terminate Sgt. Gould's employment is affirmed and Sgt. Gould's appeal under Docket No. D1-17-025 is ***denied***.

[12] Although it did not factor into my decision here, it is worth noting that, in addition to the rule violations put forth by the Town, Sgt. Gould engaged in serious untruthfulness when he texted multiple colleagues of Ms. Doe, who is a Plainville Police Officer, and stated that he found her "fucking" one of her colleagues. Sgt. Gould admits that this was a lie that he told for the sole purpose of harming Ms. Doe's reputation. It is unclear to me why the Town did not take any action related to this acknowledged untruthfulness.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 7, 2018.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:
Leigh Panettiere, Esq. (for Appellant)
Wendy Chu, Esq. (for Respondent)