

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
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KYLE MILTIMORE,
REBECCA BOUTIN &
DAVID KENNEDY,
Appellants

D1-19-270 (Miltimore)
D1-19-271 (Boutin)
D1-19-272 (Kennedy)

v.

WESTFIELD FIRE
COMMISSION,
Respondent

Appearance for Appellants:

Maurice M. Cahillane, Esq.
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Appearance for Respondents:

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Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Westfield Fire Commission terminated the Appellants (two Firefighters and a Fire Captain) based primarily on the conclusions contained in a report prepared by an outside investigator.

Upon appeal to the Civil Service Commission, following seven days of evidentiary hearings and after considering the sworn testimony of seventeen witnesses, the Commission voted to overturn the termination of the two firefighters and modify the discipline of the Fire Captain, concluding that:

- 1) The investigative report is riddled with examples of unsubstantiated “beliefs” instead of establishing “facts” along with inappropriate disparaging personality assessments which show that the investigation was tainted with bias and personal animus against the Appellants that discredit the conclusions of the investigator as they relate to the Appellants;

- 2) A fair and impartial review of the facts, together with the totality of the credible evidence, exonerate the Appellants of any wrongdoing, with the exception of one charge against the Fire Captain for making a false and damaging statement regarding the then-Deputy Fire Chief, which warrants a thirty-day suspension;
- 3) Undisputed acts of misconduct, along with allegations of other serious misconduct by the then-Deputy Fire Chief, have been largely ignored, glossed over or sanctioned by the Westfield Fire Commissioners, who voted to *promote* the Deputy Fire Chief to Fire Chief shortly after the termination of the Appellants, reinforcing the appropriateness of modifying the penalty of the Fire Captain and warranting the initiation of an investigation under Section 72 of the civil service law.

In sum, and for the reasons detailed in this decision, the appeals of Firefighters Kennedy and Miltimore are allowed and the decision of the Fire Commission is vacated; the appeal of Captain Boutin is allowed in part and the decision of the Westfield Fire Commission is modified from termination to a 30-day suspension; and, pursuant to Section 72 of the civil service law, the Westfield Fire Commission is ordered to conduct an independent review regarding the allegations of misconduct regarding the incumbent Fire Chief.

DECISION

On December 27, 2019, the Appellants, Kyle Miltimore (Miltimore or Firefighter Miltimore), Rebecca Boutin (Boutin or Captain Boutin) and David Kennedy (Kennedy or Firefighter Kennedy) (Appellants), pursuant to G.L. c. 31, § 43, filed appeals with the Civil Service Commission (Commission), contesting the decision of the Westfield Fire Commission (Fire Commission or Appointing Authority) to terminate their employment with the Westfield Fire Department. On January 22, 2020, a pre-hearing conference was held at the Springfield State Building in Springfield, MA. By agreement of the parties, the appeals were consolidated. A full hearing was held remotely via Webex videoconference¹ over seven (7) days between May 18, 2020 and September 1, 2020.² A stenographer produced the official record of the proceedings by

¹ This proceeding was among the first evidentiary hearings conducted remotely after the Commission adopted emergency procedures in March 2020 in response to the pandemic. Counsel for both parties and their staff are to be commended for their Herculean efforts and high degree of professionalism that allowed this matter to proceed smoothly.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 Code Mass. Regs. §§ 1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

agreement of the parties. The hearing was private and witnesses were sequestered. Following the close of the hearing, both parties submitted proposed decisions on December 7, 2020.

FINDINGS OF FACT

The following exhibits were entered into evidence electronically at the hearing: Respondent Exhibits 1-12, Appellants Exhibits 1-18, Joint Exhibits 1-8, Appellants' Chalk, Commission Exhibits 1-2 and Post-Hearing Exhibits 1-6. Based upon the documents admitted into evidence, the stipulated facts, and the testimony of:

Called by the Fire Commission:

- Andrew Hart, Deputy Chief, Westfield Fire Department
- Seth Ellis, Deputy Chief, Westfield Fire Department
- Charles Warren, Captain, Westfield Fire Department
- Keith Supinski, Captain, Westfield Fire Department
- Christine Humason, Firefighter, Westfield Fire Department
- Christopher Bard, Mechanic, Westfield Fire Department
- Christopher Genereux, Firefighter, Westfield Fire Department
- Niles Lavalley, Firefighter, Westfield Fire Department
- Jennifer Daley, Firefighter, Westfield Fire Department
- Jeffrey Siegel, Fire Commissioner, Westfield Fire Department
- Michael McNalley, Detective, Massachusetts State Police
- Dawn McDonald, Esq., Investigator

Called by the Appellants:

- Fire Captain Rebecca Boutin, Appellant
- Firefighter David Kennedy, Appellant

- Firefighter Kyle Miltimore, Appellant
- Firefighter Lee Kozikowski, Firefighter, Westfield Fire Department
- Christopher Dolan, Trooper, Massachusetts State Police

and taking administrative notice of all matters filed in the case and pertinent statutes, case law, regulations, policies and reasonable inferences drawn from the evidence, I make the following findings of facts:

Background

1. Located in Hampden County approximately eleven (11) miles west of Springfield, the City of Westfield (City) has a population of approximately 41,000.
<https://www.census.gov/quickfacts/fact/table/westfieldcitymassachusetts/PST045219>
2. The three (3)-member Westfield Fire Commission (Fire Commission), appointed by the City's Mayor, is the civil service appointing authority for the Westfield Fire Department. Siegel, Tr. Day 5, p. 71
3. As the appointing authority, the Fire Commission is responsible for making appointments, promotions and disciplinary decisions for all civil service employees in the Fire Department, from Fire Chief down to Firefighter. Siegel, Tr. Day 5, p. 71.
4. Appellant Rebecca Boutin joined the Fire Department as a firefighter / paramedic in 1999 and was promoted to Fire Captain in 2010. She served in that position until her termination in 2019. Captain Boutin also served on a regional technical rescue team as a training and safety trainer. Boutin, Tr. Day 6, p. 203.
5. Appellant David Kennedy joined the Fire Department on a temporary basis in 1989. He became a full-time firefighter in Westfield in 1992 and eventually became certified as an

EMT and paramedic. He served as a firefighter / paramedic until his termination in 2019. Kennedy, Tr. Day 5, p. 94.

6. Appellant Kyle Miltimore joined the Westfield Fire Department in April 2012 as a firefighter / paramedic. He served in that position until his termination in 2019. Miltimore, Tr. Day 6, pp. 98-99.
7. Firefighter Miltimore was also employed by the on-call, part-time Fire Department in Southamton, MA from 2009 until 2015. He started off as a firefighter and was promoted to Deputy Fire Chief. While employed in Southamton, Miltimore became concerned that employees were not keeping proper logs regarding the distribution of narcotics. He reported those concerns to the Medical Director of Cooley Dickinson Hospital and began taking pictures of the logs in question. Shortly thereafter, Miltimore took a 3-month leave of absence from Southamton because he “just didn’t feel supported by the Fire Chief.” During this time, the Town’s ambulance license was suspended due to a state investigation. Miltimore was later notified by the Town that he may be subject to disciplinary action. Miltimore and Southamton subsequently entered into a confidential separation agreement. Miltimore, Tr. Day 6, pp.136 - 142.
8. The Westfield Fire Department divides its firefighters into four (4) groups of firefighters, known as A Group, B Group, C Group, and D Group. Supinski, Tr. Day 2, p. 233-234.
9. Boutin, Kennedy and Miltimore were assigned to C Group. Ex. R1
10. Patrick Egloff (Egloff) was the Deputy Chief of C Group at all times relevant to this appeal. Ex. R1.
11. In a report that will be referenced later in these findings, an outside investigator made the following conclusions about Egloff:

“Egloff is generally liked by most of the department. Words used to describe him were ‘hard working’, ‘good, honest family man’ and ‘knowledgeable’ about the job. Egloff cares very much about the job and considers his co-workers to be his family ...

...

However, even those who like Egloff and respect him said that he is ‘volatile,’ ‘bombastic’, ... ‘has anger management problems’, and likes to joke around and be one of the guys, until the joke is on him.

...

I heard several stories about him attacking a soda machine that ate his money, kicking in the door to the building, tried to flip over a van when he got locked out as a joke, and many other stories, the theme of which was, that Egloff cannot take a joke and over reacts, sometimes by violently attacking inanimate objects and always by screaming. As a result, many of the people who like him and have no axe to grind with him do not believe he would make a good Chief ...” Ex. R1, p.22.

12. Miltimore has observed Egloff pulling Captain Boutin’s hair “multiple times”. Miltimore specifically recalled two (2) such incidents as follows:

“So, I can recall a couple incidents. One was in the hallway near the kitchen. She was standing there talking to a few individuals, it was around breakfast time, and he walked up from behind her and grabbed onto her ponytail and yanked her head back and he was pressing his hips into her back, and she yelled stop, don’t pull on my hair, my neck hurts, and he stopped and laughed and walked away. Another incident is very similar in the kitchen area. In fact, it was right around breakfast time, he walked in, did it in front of a group of people.”

Miltimore, Tr. Day 6, p. 105

The 2016 St. Patrick’s Day Parade and Egloff’s conduct regarding Ms. N

13. In March 2016, several members of the Department marched in uniform, representing the City of Westfield in the City of Holyoke’s annual St. Patrick’s Day Parade. (Supinski, Tr. Day 2, pp. 260-261; Ellis, Tr. Day 3, p. 38).
14. After the parade, several marchers from the Department as well as employees of Noble Hospital in Westfield, MA, joined together and celebrated at local Holyoke and Westfield bars. Many of these individuals became intoxicated, including Deputy Chief Egloff. (Humason, Tr. Day 2, pp. 71-72, 142; Bard, Tr. Day 2, pp. 204-205).

15. Transportation from bar to bar was provided by Chris Bard, the mechanic for the Department, in his personal truck. (Bard, Tr. Day 2, p. 202).
16. While Westfield Firefighter Niles Lavalley was sitting on the sidewalk outside the Clover Bar on High Street and Lyman Street in Holyoke, a nurse (Ms. N) from Noble hospital approached Lavalley and told him that Egloff had inappropriately touched her breast. Lavalley approached Egloff and told Egloff to “knock it off”. (Lavalley, Tr. Day 3, pp. 57, 73)
17. Later that day, while at the Waterfront Tavern in Holyoke, Ms. N approached Lavalley again and told Lavalley that Egloff had inappropriately touched her between her legs. Lavalley physically grabbed Egloff and told him to “cut the shit out”. (Lavalley, Tr. Day 3, pp. 58, 73)
18. Firefighter Chrissy Humason was standing next to Ms. N and Egloff outside the Clover Bar on the day of the parade. Humason, who describes herself as Ms. N’s best friend, saw Ms. N look at Egloff and say to Egloff, “Do that again and I’ll knock you the fuck out.” Humason heard Egloff say “sorry” to Ms. N and then saw Egloff walk away. After Egloff walked away, Ms. N told Humason that Egloff had just “palmed” her. Humason, Tr. Day 2, pp. 74, 76.
19. Seth Ellis is a Deputy Fire Chief in the Westfield Fire Department and he was at the St. Patrick’s Day Parade in Holyoke in 2016. Ellis saw Ms. N throughout the day and observed that Ms. N was “very outgoing, very happy” throughout the day. Toward the end of the day, however, Ellis and Ms. N were in the same vehicle being driven back to their own vehicles. Ellis observed that Ms. N was “obviously upset ... she was visibly agitated.” Sometime after the parade, Ellis asked Humason why Ms. N was upset while they were in the car. Humason told Ellis that there had been an “incident”. Ellis, Tr. Day 3, pp. 10-12.

20. Shortly after the St. Patrick's Day Parade in 2016, Humason told Captain Boutin that Egloff had "cupped" Ms. N after the parade that day. Boutin, Tr. Day 6, p. 204. During this same conversation, Humason also told Boutin that Egloff had touched her (Humason) "on the ass" on the day of the parade. Boutin, Tr. Day 6, p. 204.³
21. Sometime after the parade, Egloff told Humason that he wanted to apologize to Ms. N and did so in Humason's presence. Humason, Tr. Day 2, pp. 173-174.
22. Humason later told Boutin that Egloff and Ms. N had spoken, and there was no longer an issue between them. Boutin, Tr. Day 6, p. 205.

The January 2018 Revelations of 2016 Parade Events Concerning Ms. S

23. Lee Kozikowski is a Westfield Firefighter who, like the Appellants, was assigned to C Group. In January 2018, almost two (2) years after the 2016 St. Patrick's Day Parade, Kozikowski was on an ambulance run at Noble Hospital. While on the ambulance run, Kozikowski had a conversation with Ms. N. in the Noble Emergency Room. Kozikowski, Tr. Day 1, p. 190. Sometime during the conversation with Ms. N, another Noble Hospital employee, Ms. S, joined the conversation. Ms. S was among the Noble Hospital employees who had joined Westfield Fire Department employees at the 2016 parade, going to bars and travelling in Chris Bard's truck. In regard to the conversation between Kozikowski and Ms. N, there were statements made about the well-known comments by then-President Trump about "grabbing women by the pussy". Kozikowski, Tr. Day 1, pp. 190-191. Kozikowski

³ Humason adamantly denies that Egloff touched her inappropriately on the day of the parade. Humason, Tr. Day 2, p. 89. As referenced in future findings, it is highly relevant whether Humason made this allegation to Boutin. Humason is also a key witness in regard to conversations that she had with alleged victims. Because Humason's identify is critical to this appeal and because Humason denies that she was a victim of inappropriate touching that day, I have not used a pseudonym for Firefighter Humason.

commented to Ms. N that this had happened to her, a reference to Egloff and the 2016 St. Patrick's Day Parade. Kozikowski, Tr. Day 1, p. 191.

24. Ms. S then said: "No one ever talks about what happened to me." Ms. S told Kozikowski that Egloff "went down her [Ms. S's] pants and touched her vagina." Kozikowski, Tr. Day 1, p. 191. Ms. S told Kozikowski that she pushed Egloff away and he then "went up her shirt and attempted to touch her breasts" and she pushed him away again. During this conversation, Ms. S did not tell Kozikowski where these alleged acts occurred on the day of the parade (i.e. – at a bar, in a truck, car, etc.). Kozikowski, Tr. Day 1, p. 191.
25. While driving in the ambulance on the way back to the Westfield Fire Department that day, Kozikowski discussed the allegations made by Ms. S with his partner, Brian McEwan. Kozikowski, Tr. Day 1, p. 200, 201. McEwan, Tr. Day 3, p. 136.
26. When he returned to the Fire Department that day, Kozikowski told many people at work about his conversation with Ms. S. Kozikowski, Tr. Day 1, pp. 191-192. This included his Captain on that shift that day, Keith Supinski, who had asked Kozikowski what was going on. Kozikowski, Tr. Day 1, pp. 198; Supinski, Tr. Day 2, p. 246. Supinski specifically recalls Kozikowski stating that Ms. S. had been "digitally raped" by Egloff on the way to the Waterfront during the St. Patrick's Day Parade. Supinski, Tr. Day 2, p. 248. Supinski recalls telling Kozikowski that the allegation was "a lie" because he (Supinski) was in the truck that day. (Supinski, Tr. Day 2, p. 248) Supinski did not report the matter to anyone above him. (Supinski, Tr. Day 2, p. 257).
27. Among those who discovered the information about Ms. S were the Appellants: Kyle Miltimore, David Kennedy and Captain Boutin. Boutin learned about it from either Kozikowski or Miltimore. (Boutin, Tr. Day 6, pp. 204-205).

28. Miltimore heard of Ms. S's statements from Kozikowski. (Miltimore, Tr. Day 6, p. 100.
29. Kennedy also heard of Ms. S's statements from Kozikowski. Kennedy specifically recalls Kozikowski telling him that Ms. S told him that Egloff had "reached down her pants and inside her and up her shirt." Kennedy, Tr. Day 5, pp. 100-101.
30. Shortly after hearing this information from Kozikowski, Kennedy, while on an ambulance run at Noble Hospital, spoke directly to Ms. S. Ms. S "proceeded to relate the same incident, same description that ... Lee had told ... she was kind of crying." Kennedy, Tr. Day 6, p. 9.
31. Jennifer Daley has been a firefighter / paramedic for the Westfield Fire Department for the past twenty (20) years. Sometime shortly after Kozikowski's conversation with Ms. S., Firefighter Daley spoke directly with Ms. S at Noble Hospital. During that conversation, Ms. S "just said something that it happened to her too and couldn't figure why everybody was focused on [Ms. N]." Ms. S specifically told Firefighter Daley that "Eggy [Egloff] had groped her" at the 2016 St. Patrick's Day Parade. Daley, Tr. Day 3, p.156, 162.
32. At or around the same time that Ms. S. made the above-referenced allegations against Egloff, Miltimore had been counseled by Egloff for calling in sick the night before a civil service examination, after being denied the night off. Ex. R1, p.8. Also around this time, Egloff had counseled Boutin regarding not following the chain of command and/or keeping Egloff in the loop regarding two different matters. Ex. R1, p.6. Egloff had also counseled another firefighter (Chris Genereux) about allegedly being disruptive during a training session. Genereux, Tr. Day 2, p. 6.

The State Police Investigation

33. Sometime shortly after Ms. S made the allegations against Egloff to Firefighter Kozikowski, Appellants Kennedy and Miltimore, along with Kozikowski and Firefighter Genereux met at

Miltimore's house. Kozikowski, Tr. Day 1, p. 194; Genereux, Tr. Day 2., p. 19. At the meeting, they discussed a number of their own concerns with Egloff as well as what they had heard from Ms. N and Ms. S regarding Egloff's behavior at the St. Patrick's parade in 2016. Kozikowski, Tr. Day 1, p. 195; Genereux, Day 2, p. 16-17, 24; Kennedy, Tr. Day 6, pp.16-17, 65; Miltimore, Tr. Day 6, pp. 104-106.

34. At the meeting, attendees discussed what possible courses of action they had, but did not make a decision as to what to do. Kozikowski, Tr. Day 1, p. 195. At the meeting, firefighter Chris Genereux told the others that he had learned from another woman in a local town that Egloff had stalked and harassed her. Genereux, Tr. Day 2, p. 54. It was a topic that the woman raised with Genereux when he was performing work at her house. Genereux, Tr. Day 2, p. 55.

35. Before and after the meeting at Miltimore's house, David Kennedy had a series of text exchanges with Ms. S. Those texts provide as follows:

1/30/2018
11:14 a.m. D.K.: "Hey [Ms. S] this is David from Westfield fire.

Hope it's OK that I got your number and it's OK to text. We're discussing some things today at Kyle's house at 2 PM and wanted to know if you'd like to join us if you want to text me back or call either one is OK no pressure just wanted to extend the invitation.
But we'd love for you to join us.

1:23 p.m. Ms. S: Hey Dave I'm really sorry I can't make it today. Dads wound care nurse never showed so I have to take care of that and nap at some point for work tonight. I hope you guys come up with a plan. I hope you have a good day. And sorry again.

_____ D.K.: No problem at all, I understand. Hope your dad is doing better. Just want to make sure that you're still on board if we go forward.

_____ Ms. S: Yes just keep me in the loop.

_____ D.K.: Will do!

7:30 p.m. D.K.: Hey. So we met today and discuss some things about going forward but we thought it best to speak to you in person what time do you get out in the morning tomorrow? Or before you go into work tomorrow?

_____ D.K.: Hey. We have 4-5 guys who are willing to go forward with you to
7:20 a.m. personnel, Also a lawyer willing to meet and discuss your options. Just keeping you in the loop as you requested, but I need a response so I can let these people know if we're going over alone or with you? Ex. A9

Lee Kozikowski also had a series of text exchanges with Ms. S. These occurred on

February 1, 2018 through February 8, 2018. They provide as follow:

2/1/2018: L.K.: Hey Ms. S it's Lee. Give me a call, we have a lot to talk
1:41 p.m. about. It's all good, no Worries.

8:33 p.m. Ms. S: Hi Lee I'm so sorry I haven't gotten back to you sooner. Today was crazy! So how are things going?

8:35 p.m. L.K.: No problem, I assumed you sleep during the day anyway for work. I just want you to know with everything that's going on that I believe you and I support you. If you need anything at all or to just talk please let me know.

8:36 p.m. Ms. S: Ok thank you. We will talk more tomorrow.

8:36 p.m. L.K.: Ok call me if you want

8:37 p.m. Ms. S: I will tomorrow!

8:37 p.m. L.K.: Sounds good

2/2/18 Ms. S: Sorry making dinner

6:21 p.m. But I talked to Ms. N and state police were going to call her.

6:22 p.m. Ms. S: This is turning into a huge thing. It makes me completely uncomfortable. But we can talk about it.

6:26 p.m. L.K.: I don't want to make you uncomfortable, just calling to make sure you're ok with what's going on. What he did to you is absolutely inexcusable. I really just wanna touch base with you and make sure you know no matter what that I'm on your side. I think once a bunch of us heard exactly what Egloff actually did to you we realized how serious of an act it was. You shouldn't have had to go through that and dealt with it in silence.

- 6:33 p.m. Ms. S: It's not that I'm holding onto any kind of emotional baggage with this situation at all. It just kind of took me by surprise that after 3 years people were talking about it again. I thought that it would just kind of go away. I know [boyfriend] was pissed about it but and I had decided to just move on from it. So what is going to happen now? This guy Egloff what happens to him? I mean he shouldn't be in a role of authority at all but I don't think he should lose his job or anything of that nature. But he definitely shouldn't drink around the opposite sex lol. But then again none of us should in that case lol
- 6:51 p.m. L.K.: Well it's definitely not up to me to decide what his job status should be and I definitely don't want to be in charge of deciding that. All you can do is tell the truth and just remember this was done to you and he needs to deal with the consequences of his actions. I totally understand you trying to wish it away. I think the situation came up again because there's a number of people questioning his decision making and ability to lead. What he did shows terrifying judgement, drunk or not. I've been drunk around women I know well and have a history with and I would NEVER even think of doing those things. You didn't ask for any of this and I understand you being uncomfortable in the situation. I'm sorry for that. And I'm sorry he treated you and Ms. N that way. After you told me what he did I couldn't stop thinking about it personally, I was dumb founded.
- 6:59 p.m. Ms. S: I too wouldn't want the job of figuring all this mess out. When it happened it seemed uncomfortable and messy but as time went by it became just something else to move on from. I know I joke a lot so I can not make somethings so serious but this has bothered me for a long time. [Boyfriend] called me out on it last night saying that I haven't truly gotten over it and that he just wants me to be ok. I'm fine I don't know how many times or how many ways I can say it. I just don't ever want anything like this to ever happen to another female. It's stupid and really and in someways life altering. How ever [Ms. N] and I are very well rounded and go with the flow people so that's how we get through.
- 7:01 p.m. L.K: I know you guys are and you're good people. Nobody should take advantage of you. I'm sorry this happened to you.
- 7:02 p.m. Ms. S: Thanks Lee. I will talk to whoever you need me too. But I'd rather not talk to Egloff if that's ok. Never really met him except that day.
- 7:06 p.m. Ms. S: Lee could you keep the fact that [boyfriend] and I talked between us. I just don't want people talking about it.

- 7:08 p.m. L.K.: I wouldn't ask you to talk to him. You need to do what makes you ok is all. You deserve better and hope talking to the police helps. Just so you know where I'm coming from: I'm certainly not on Egloff's side at all. I'm only on the side of whatever helps you and Ms. N.
- 7:09 p.m. L.K.: No worries, I won't tell people your business.
- 7:13 p.m. Ms. S: Thank you. This is a really unfortunate incident. I can't tell you how much I truly appreciate the support that all of you guys have shown to both Ms. N and I. I don't think that we could have talked or gotten through this the way we have without you guys. Westfield fire will always be family regardless of some drunk ass.
- 7:16 p.m. L.K.: Good, we are not who he showed he can be. We joke all the time but what he did is no joke and we are a family.
- 7:18 p.m. Ms. S.: I completely agree! Thank you for talking to me about this. Do you know what's going to happen or if he even knows this is going on? Egloff that is.
- 7:19 p.m. Ms. S.: And what did you guys talk about when you had the meetings?
- 7:20 p.m. L.K.: Have no idea what going to happen or if he knows at this point. I assume they'll talk to him about it when they think it's appropriate.
- 7:21 p.m. Ms. S.: Oh ok. Just wasn't sure at all.
- 7:22 p.m. L.K.: I went to 1 meeting on Tuesday and we talked about how appalled we were to hear what happened to you. We were hoping to go to city hall with you to tell your story. We were hoping to move quickly so the city couldn't try to cover it up. Beyond that I think it got pushed to the state police because Kyle was asking his friend about it and I assume it took on a life of it's own now. I haven't been contacts by state police yet, not sure if I will be.
- 7:25 p.m. Ms. S: I know the Chief called Ms. N and told her that she didn't have any details but someone from the state police was going to be calling her and filling a report. No one had contacted me at all. I'd rather not go in front of a ton of people and talk about it. That would be mortifying. But I would do it for you guys.
- 7:26 p.m. Ms. S.: I truly hope that this was a isolated incident and that he hasn't done it before us.
- 7:28 p.m. Ms. S.: But promise me this doesn't change our relationship in anyway. The banter is needed.

7:33 p.m. L.K.: Hahaha you and I are friends, that's the big difference for me. He doesn't even know you, he crossed every line.
The fd chief called Ms. N

7:38 p.m. Ms. S: Yes.
Ms. N?
Yes

7:39 p.m. Ms. S: Okay good I would be more upset if you changed around me lol

7:45 p.m. L.K.: Hah no way! As long as you're ok with it obviously Mary is the chief but who knows lol

7:46 p.m. Ms. S.: Ok she said Beth something.

2/5/2018 Ms. S.: I just missed a call from a state trooper
10:47 a.m.

2/7/2018 L.K.: Hey did you decide to go today?
1:59 a.m.

2/8/2018 L.K.: Just teaching (sic) out to see how you're doing"
7:17 p.m.

Resp. Ex. 1B, pp. 4-19.

36. After the meeting at Kyle Miltimore's house, Miltimore decided to seek advice from a friend he attended church with. Miltimore, Tr. Day 6, pp. 108.
37. That friend was Massachusetts State Trooper Christopher Dolan. Miltimore, Tr. Day 6 p. 108.
38. On February 1, 2018, Miltimore called Dolan looking for advice, and informed him what he had been told about Egloff's behavior at the parade. Miltimore, Tr. Day. 6, pp. 108-109.
Dolan told Miltimore that Miltimore had a duty to act. Miltimore, Tr. Day 6, p. 108.

39. Shortly thereafter, Miltimore received a call from Trooper Michael McNally who asked to interview him. McNally and another Trooper, Jeffrey Burke (State Police investigators), met with Miltimore. Miltimore, Tr. Day 6, p. 110.
40. When McNally received the call from Dolan, Dolan told him it involved sexual assault allegations; a high-ranking individual in the WFD; and that the victims expressed concern about coming forward and didn't know where to turn. McNally, Tr. Day 4, p 17. McNally told Dolan "we could look into such a thing because there was a political nature to it." McNally, Tr. Day 4, p. 17. McNally then called his supervisor, Captain Wilcox, who assigned the case to McNally and Burke. McNally, Tr. Day 4, p. 18.
41. Miltimore met with McNally and Burke on February 1, 2018 at an ambulance company where he worked part time. McNally, Tr. Day 4, p. 120, Miltimore, Tr. Day 6, p. 109-110. McNally and Burke were investigators working for the Hampden County District Attorney's office. McNally, Tr. Day 4, pp. 6-7.
42. There is an audiotape of the 48-minute interview. During the interview, Miltimore told the State Police investigators the following:
 - A. He (Miltmore) was not involved in the St. Patrick's Day Parade and he was not a witness to what may have occurred between Egloff and any alleged victims.
 - B. Firefighter Kennedy had told Miltimore that he (Kennedy) had spoken to Ms. S at Noble Hospital and that Ms. S. told Kennedy that she had been sexually assaulted by Egloff at the St. Patrick's Day Parade in 2016; that Ms. S reported to Kennedy that she had been "pinned down" by Egloff; and that Ms. S. had told him (Egloff) to stop.

- C. Other females, including Ms. N and Firefighter Humason, had reported being assaulted by Egloff.
- D. The alleged victims had been talked out of coming forward because they are scared.
- E. He (Miltimore) reported this to his Captain (Captain Boutin) and, after touching base with some of the alleged victims, Boutin had confirmed to him that “something happened”.
- F. He (Miltimore) “felt the need to stick up for” the alleged victims.
- G. Miltimore, without attribution to anyone, then stated that he had heard that Ms. S. “was pinned down in the back of Chris Bard’s truck; he (Egloff) stuck his hand up Ms. S’s dress and inside of her and exposed her breasts while she was screaming.”
- H. He (Miltimore) was “sick” about what he had heard; he was losing sleep over it; and he wanted to make sure the alleged victims had a chance to be heard.
- I. Firefighters Rick Paul and Nyles Lavallee witnessed some of what happened.
- J. He (Miltimore) was nervous about going to Westfield Police since Chris Bard’s brother is a lieutenant with the Westfield Police Department.
- K. Miltimore, without attribution, then stated that he had heard that Egloff, while “grabbing Ms. N’s crotch”, stated, “you think you have power with this? I’m the Deputy Chief and I’ve got more power than you.” Miltimore then added, “She [Ms. N] pushed away, he went back at it a second time and did it again.”
- L. Egloff has been “retaliatory” to many employees, threatening to swap shifts.
- M. Egloff sat in his seat while at training as a prank and said, “I dare you to move me.” When Miltimore said “no”; Egloff threatened to move Miltimore to another

group. In response, Miltimore said to Egloff: “You can threaten me; I can threaten you right back. If you move me to another group, there’s gonna be more problems than that.”

- N. Egloff “wrote him up” for calling out sick when other firefighters had done the same thing. In response, Miltimore told Egloff that he [Miltimore] had “called the Attorney General’s Office.”
- O. Egloff has treated him and other firefighters “like crap” and now he realizes that Egloff was treating women outside the Department the same way.
- P. Miltimore provided the investigators with contact information for Ms. N, Ms. S., Firefighter Humason, Chris Bard, Dave Kennedy, Nyles Lavallee, Rick Paul, Patrick Egloff, Lee Kozikowski and Captain Boutin.
- Q. Miltimore recounted an alleged incident, allegedly witnessed by Lee Kozikowski, in which the Egloff made crude remarks about being under the [female] Fire Chief’s desk. (Res. Ex. 11B)

- 43. The State Police investigators wrote out a written statement for Miltimore to sign. (Resp. Ex. 11D)
- 44. The State Police investigators told Miltimore that they would need to gather more information before determining whether to pursue criminal charges; that it appears that they are within the window of the statute of limitation for the alleged crimes; but that it would be important to obtain corroborating witnesses and victims. (Resp. Ex. 11B)
- 45. Trooper McNally then called Boutin and asked her to come in for an interview. McNally, Tr. Day 4, p. 85.

46. There is an audio / video tape of Boutin's February 1, 2018 interview with McNally and Burke. (Resp. Ex. 11C)
47. Boutin met with McNally and Burke at 4:37 P.M. on February 1st at the District Attorney's Office. The following transpired during the recorded portion of the 27-minute interview:
 - A. The recorded portion of the interview starts with investigators referencing that a conversation took place before the recording started.
 - B. Investigators ask Boutin about her "earliest memory" regarding "sexually inappropriate activity in the Department involving one person".
 - C. Boutin asks investigators if they are talking about the St. Patrick's Day Parade.
 - D. Investigators respond by saying "tell us about the St. Patrick's Day Parade."
 - E. Boutin says: "I was not there."
 - F. Investigators then say: "What did you hear" about the St. Patrick's Day Parade?
 - G. Boutin then says that she heard that multiple women were groped by Egloff "in their private parts" and that some of the women had told this directly to Boutin.
 - H. Boutin told investigators that Firefighter Humason had told Boutin that she had been groped by Egloff at the parade; that she "told him off" and "that was the end of it."
 - I. Investigators then asked Boutin if she had heard about "any other" alleged victims.
 - J. Boutin responds by saying "I was told by [Ms. N] that she got it worse"; that she (Ms. N) was groped at the parade and that Firefighter Niles Lavalley had to intervene.
 - K. Boutin told investigators that she had been told that Ms. N "took care of it at the time."
 - L. Investigators than asked Boutin: "Have you spoken to them recently or encouraged them to come forward?"

M. Boutin responds by saying: “Yes, [but] as a woman it’s so hard to do that.” Boutin then explained that she and other firefighters had tried to encourage Ms. N to come forward but that Ms. N was fearful of this impacting her job and that Ms. N “doesn’t want to be involved in this.”

N. Investigators then asked Boutin about other alleged victims. Boutin replied by telling investigators that she had only heard “second hand rumors” about what happened with Ms. S.; that Egloff had possibly gotten more aggressive with Ms. S, including reaching under her clothes on the day of the parade.

O. Boutin then told investigators about Egloff’s alleged behavior at work, specifically referencing the following incidents:

a. An incident that happened a “couple days ago” while in a training class.

When the instructor talked about doing role playing, Egloff said: “Can we all wear leather and do our best sexual positions?”

b. An incident in which she overheard Egloff on the phone telling someone he was going to take his lunch break at the college to “check out the girls.”

c. Numerous incidents in which Egloff screamed at her, including screaming such things as: “Who the fuck do you think you are? You’re not in charge here. I’m in fucking charge.”

d. Numerous occasions in which Egloff grabbed her ponytail and pulled her neck back. On one occasion when Boutin objected and said that she had a neck injury, Egloff said “Oh, you have a neck injury?; I’ll remember that when I’m Chief.”

- P. Boutin explained that since being assigned to work for Egloff 1 ½ years ago, she hated going to work; and was constantly in tears at home in front of her son.
- Q. Investigators then asked Boutin: “How willing would you be to help us in getting [the alleged victims] to talk to us? You could sit in on the interviews.”
- R. Boutin told investigators that she had already spoken to Firefighter Humason about the issue, to which the investigators replied: “we’d like to get her story.”
- S. The investigators then left the room and returned two (2) minutes later.
- T. When the investigators returned, they told Boutin that they wanted to get a written statement from her.
- U. Boutin hesitated about providing certain details in a written report, including the incidents regarding the grabbing of her ponytail because Egloff would know where that information came from and would likely retaliate against her.
- V. The investigators said they understood, but stated that such information “could be used as evidence in a trial” and urged her to provide as many details as possible.
- W. Investigators told Boutin that she had “the backing of the Massachusetts State Police and the District Attorney”, specifically telling Boutin: “Don’t feel like you are alone ...the right thing eventually happens; it takes the right people to have courage” and that it was important to “be on the right side of history.”
- X. As they began working on Boutin’s written statement, the recording is shut off.

(Resp. Ex. 11C)

48. After the recording was off, investigators suggested that Boutin call Firefighter Humason and Ms. N from their office. Boutin declined and told investigators that she would feel more comfortable calling from home. Boutin, Tr. Day 6, p.210.

49. Investigators talked to Boutin about the serious nature of the allegations; that the matter could be going to Court and, if that happened, the alleged victims would need to testify in Court. Boutin, Tr. Day 6, p. 210⁴
50. Later that day, Boutin called Firefighter Humason, telling her she had talked to the State Police. Humason recanted her statement that she had been touched by Egloff. Boutin, Tr. Day 6, p. 213. Humason said she didn't want to be involved, that this would ruin her career and make female firefighters look bad. Boutin, Tr. Day 6, p. 213.
51. Boutin then called Ms. N who was "worried about her job", but "willing to tell the truth." Boutin, Tr. Day 6, p. 215. Ms. N said she would call Ms. S. Boutin did not know Ms. S and never did speak with her. Boutin, Tr. Day 6, p. 218.
52. Ms. N called Captain Boutin back and told her that Ms. S was willing to come forward. Boutin, Tr. Day 6, p. 219 Ms. N later called and said she (Ms. N) was afraid about coming forward and that she had talked to the CEO at her hospital about this matter. Boutin, Tr. Day , p. 219
53. Boutin called McNally back and told him that Ms. N and Ms. S were willing to come forward but not Humason. Boutin's phone records show that she had the following phone conversations after her meeting with the troopers:

| | | |
|---------|------------|---------|
| Feb. 1: | 5:48 p.m. | Humason |
| | 6:07 p.m. | Ms. N |
| | 6:10 p.m. | Ms. N |
| | 7:15 p.m. | McNally |
| Feb. 2: | 12:43 p.m. | Ms. N |

⁴ I listened carefully to Boutin's testimony on direct and cross and asked follow-up questions of my own. I don't credit her recollection that investigators told her, either as part of their interview, or at any other time, that: a) Egloff would have to go to court; and b) Egloff would be facing serious charges. After reviewing the entirety of Boutin's testimony, the testimony of the investigators, and after reviewing the recorded interview of Boutin (twice), I find it more likely than not that investigators told Boutin that allegations *could* result in serious charges and, *if* that happened, alleged victims and witnesses would need to testify in Court.

2:40 p.m. McNally
Feb 5: 10:15 a.m. McNally
Feb. 7: 1:16 p.m. McNally

(P.H. Ex. 5; Boutin, Tr. Day 7, pp. 10-12)

54. After Boutin’s phone calls to the alleged victims, Burke called the alleged victims on February 2, 2018. (Resp. Ex. 11A) He set up a tentative interview with Humason. (Resp. Ex. 11A; McNally, Tr. Day 4, p. 103) On February 5, 2018, McNally spoke with Ms. S who set up an interview for February 7, 2018, but then called back on February 6, 2018, leaving a message that she did not want to be interviewed: “I don’t want to go down that road and talk about it and really have anything to do with it. It happened two years ago and I’m quite content leaving it there.” (Resp. Ex. 11A) On February 5, 2018 at 11:45 A.M., McNally spoke with Humason who stated: “I don’t want to be involved. Nothing happened to me ... I feel this is a witch hunt going the wrong way”. (McNally, Tr. Day 4, p. 105; Resp. Ex. 11A) Later that day, Ms. N called and stated: “I’m torn. I don’t feel like I’m a victim” and said she was not interested in providing a statement at this time. (Res. Ex. 11A)
55. On February 6, 2018, Captain Boutin (who at this point was unaware that Ms. N and Ms. S had opted not to give a statement to the State Police) communicated with two fellow captains separately: Captain Charles Warren and Captain Keith Supinski. Boutin, Tr. Day 6, p. 225.
56. Captain Warren has been employed by the Westfield Fire Department since 1995 and has been a Fire Captain since 2009. Warren, Tr. Day 2, p. 284. Warren has known Egloff for many years, considers him a friend; and they “hang out together”. Warren, Tr. Day 2, pp. 298-299.
57. On February 6, 2018, Captain Warren had been attending a technical rescue drive with Boutin’s husband who is a Captain in the Chicopee Fire Department. After the two men

completed training, they returned to the Boutin home and Warren stopped in to use the bathroom. Warren, Tr. Day 2, p.285.

58. Warren recalls that, after stepping out of the bathroom and into the hall, Rebecca Boutin asked him: “Did you hear the news?” When Warren said “What news?”; Rebecca Boutin “kind of pulled [him] off to the side” and said that Egloff was “being arrested on Friday”. When Warren said “for what?”, Boutin said: “for rape”. Warren, Tr. Day 2, pp. 285-286.⁵
59. After his conversation with Boutin, Warren first called Curt Gezotis, a retired firefighter, informing him of his conversation with Boutin. Warren, Tr. Day 2, pp. 299-302. Gezotis was friends with Egloff. Warren, Tr. Day 2, p. 303.
60. Also, on February 6, 2018, Captain Boutin spoke with her co-captain in Group C, Keith Supinski. Boutin, Tr. Day 6, p. 271. Supinski says Boutin called him on February 5, (Supinski, Tr. Day 2, p. 276) but Boutin’s phone records show that Supinski called her on the 6th. (P.H. Ex. 5).
61. During the approximately 30-minute phone conversation, Boutin provided Supinski with some background information about the State Police investigation and then Boutin told Supinski that Egloff was being arrested for rape. Supinski, Tr. Day 2, p. 236.⁶
62. During this conversation, Supinski never told Boutin that he had already been told of the allegations against Egloff by Kozikowski; that he had been at the parade that day; or that he had been in Chris Bard’s truck with Egloff at the St. Patrick’s Day Parade. Supinski, Tr. Day 2, p. 239.

⁵ Boutin denies making this statement. Rather, she recalls telling Warren that Egloff was “facing serious charges”. (Boutin, Tr. Day 6, p. 210, 224). For reasons discussed in the analysis, I credit Warren’s testimony over Boutin’s

⁶ Similarly, Boutin denies making this statement to Supinski. Rather, she recalls telling Supinski the same thing she recalls telling Warren, that Egloff was “facing serious charges”. (Boutin, Tr. Day 6, p. 227). I credit Supinski’s testimony over Boutin’s.

63. On February 7, 2018, Egloff called Humason. (App. Ex. 10, pp. 2-3). Humason told Egloff that she and Ms. N and Ms. S had refused to talk to the State Police. (App. Ex. 10 pp. 2-3). Egloff places the conversation as prior to his trip to the State Police. (Resp. Ex. 1B, p. 27).
64. Around this time, Kennedy called Trooper McNally because Miltimore had said he wanted to talk to anyone with information. Kennedy said McNally was put off but Kennedy told him what he knew. (Kennedy, Tr. Day 6, p. 20). McNally then called Miltimore and complained about Miltimore giving his number to Kennedy. Miltimore, Tr. Day 6, p. 129.
65. On February 7, 2018, the State Police called Egloff and asked him to come in. (Resp. Ex.11A, pg. 4). Egloff did go to their office but refused to be recorded. (Resp. Ex.11A, pg. 4). Trooper McNally said he could not go forward on those terms and said that Egloff did not have to talk to them. (Resp. Ex.11A, pg. 4). Egloff demanded to know the charges and said he'd heard that Captain Boutin brought up the "R" word ("you know, rape"). (Resp. Ex.11A, pg. 4). Egloff also stated "what happened took place two years ago and it took place in front of numerous people from work" and further that he was not going to "incriminate" himself. (Resp. Ex.11A, pg. 5). McNally warned Egloff not to retaliate against perceived witnesses or victims. (Resp. Ex.11A, pg. 5).
66. The then Chief of the WFD, Mary Regan, did not testify in this hearing. She did provide a written statement to the investigator. (Resp. Ex. 1B, pp. 23-25). Regan wrote that she received a call from Gezotis, the retired firefighter and friend of Egloff, on February 8, 2018 to ask if she was investigating Egloff and that Gezotis said the City was doing an investigation. (Resp. Ex. 1B, pp. 23-25). Regan said she was unaware. (Resp. Ex. 1B, pp. 23-25). Gezotis told her that Egloff had "grabbed a nurse's ass" two years prior at the St. Patrick's Parade, but had apologized and it was now a dead issue. (Resp. Ex. 1B, pp. 23-25).

Gezotis told Regan that the DA's office was calling people and that there was an investigation of whether Egloff had penetrated a different nurse with his fingers. (Resp. Ex. 1B, pp. 23-25). He said that this was impossible because of witnesses being present and because she (presumably Ms. S) was a "fat girl". (Resp. Ex. 1B, pp. 23-25). Regan believed that Gezotis was trying to get her to stop the investigation. (Resp. Ex. 1B, pp. 23-25).

67. On February 11, 2008, Kozikowski spoke with Egloff who insisted that Supinski be present. (Kozikowski, Tr. Day 1, pp. 195-197). Kozikowski told him what Ms. N and Ms. S had told him and that if Egloff had done that, he deserved whatever bad things might happen to him, but that he felt bad that he had a hand in the police calling him. (Kozikowski, Tr. Day 1, p. 197). Egloff told him he knew that Kozikowski, Kennedy, Miltimore and Genereux had gone to a meeting. Kozikowski, Tr. Day 1, p. 207.

68. According to Regan's report, Egloff met with Chief Regan on February 13, 2018 and for the first time informed her about the State Police investigation. (Resp. Ex. 1B, pp. 23-25). Regan's reports states that: "At that time he [Egloff] had thought it was only about grabbing someone's ass to which he stated he had apologized and everything was over as she had accepted the apology." (Resp. Ex. 1B, pp. 23-25). Egloff accused (saying he "had been told") Boutin, Kennedy, Miltimore, Kozikowski and Genereux of calling and texting the "nurses" to go to the DA to say that they had been assaulted and stated that Miltimore had reported it to the State Police. (Resp. Ex. 1B, pp. 23-25). Egloff accused them of trying to get the nurses to "change their story". (Resp. Ex. 1B, pp. 23-25). Egloff said that Ms. N, Ms. S and Humason "will not talk to the DA office." (Resp. Ex. 1B, pp. 23-25).

69. Regan then called the Mayor to tell him what she had been told. Regan's notes state:
"I called the Mayor and went an (sic) informed him of what I had heard. I told him I don't think we need to start an investigation internal because no one has come forward with a[]

complaint. I believe we should wait and see if there are any changes to what we know at which time we can act on it. Everyone who has talked to me other than (sic) Egloff has been off the record. Mayor asked what do I want from him and I said nothing at this point until something official happens. This incident was not on duty and not in Westfield and at this time in the DA Office. I told him I don't believe the assault is true and that I believe it's a small group of people who have a personal issue with Egloff and want to prevent him from becoming Chief.”

(Resp. Ex. 1B, pp. 23-25).

70. On February 16, 2018, Humason visited Chief Regan and told her that at the parade, Egloff had “cupped” Ms. N. (Resp. Ex. 1B, pp. 23-25) and that Ms. S claimed Egloff had penetrated her with his finger, which Humason said wasn't possible because Humason was in the same vehicle as she was. (Resp. Ex. 1B, pp. 23-25). Humason also told Regan that Ms. S makes up stories. (Resp. Ex. 1B, pp. 23-25). Humason had not talked to Ms. S about the allegations at the time she talked to Chief Regan. Humason, Tr. Day 2, pp. 154-156.

The Anonymous Letter

71. On February 22, 2018, the following letter was sent to Westfield Personnel Director Jane Sakiewicz, signed as “Sincerely, Westfield Fire Fighters”. (Resp. Ex. 1B, p. 31).

“Dear Personnel Director Jane Sakiewicz,

We write to you with the hope to address a serious matter at the Westfield Fire Department. We have great concern regarding Deputy Chief Patrick Egloff. Over the past few years the vast majority of us fire fighters have been victimized in some form by Deputy Egloff. Most recently several fire fighters have been contacted by the Massachusetts State Police regarding a criminal investigation involving Deputy Egloff sexually assaulting several females, which there is concern it involves female fire fighters and hospital staff. Several fire fighters are in fear of retaliation from Deputy Egloff due to his malicious and violent behavior towards his subordinates. There have been countless occasions where he has acted in an unprofessional manner towards coworkers, and when someone tries to stand up to him he threatens them using his rank as a Deputy Chief. He has voiced in a room full of people on numerous occasions, that he has pull with the Chief and the Mayor; he has also mentioned he has been under the Fire Chiefs desk doing sexual favors. He has acted in gross sexual manners verbally and physical towards numerous employees, pulling their hair, making cruel comments, and the list goes on. This is

unprofessional, poor leadership, and just out right disgusting. He has bragged to groups of people on group C about his malicious plans toward other employees, such as with unfair schedule assignments, unfavorable duties, blocking health and wellness initiatives, discipline for sick time use. There have been several major events that occurred with Deputy Egloff, especially the thanksgiving (Pie Gate event); this will summarize his personality and unprofessional behavior. Our intentions are to notify you of the ongoing problems at the Fire Department, some of which may have been swept under the rug. We hope this is taken seriously and will be addressed.

Sincerely

Westfield fire fighters”

(Resp. Ex. 1B, p. 30)

72. Each of the Appellants denies having written the letter, together or separately and, to the extent that writing the letter would constitute misconduct, none of the Appellants have been charged with writing this letter. Kennedy, Tr. Day 6, pp. 28; Miltimore, Tr. Day 6, p. 130; Boutin, Day 6, p. 234; McDonald, Tr. Day 1, p. 181.
73. On February 26, 2018, Gezotis called Kyle Miltimore. (Miltimore, Tr. Day 6, pp. 120-121). Gezotis told Miltimore about the letter. (Miltimore, Tr. Day 6, p. 120-121). Gezotis said he was calling for his friend Egloff. Gezotis said he had discussed this with the Chief and the Mayor and City councilors and that this was coming up again because of the letter. (Miltimore, Tr. Day 6, pp. 120-121). Gezotis said he heard this from the Mayor, that he had just been at the Tavern Restaurant with some City Councilors, having had a meeting with them about this and he had given them Miltimore’s name as sending the letter. (Miltimore, Tr. Day 6, pp. 120-121). Gezotis told him numerous times he’d better keep his mouth shut, the Councilors would be coming after his job. Gezotis told Miltimore that he had previously squashed this with the mayor and the Chief. Miltimore, Tr. Day 6, p. 129.

74. On February 28, 2018, in the early morning hours, Humason recalls having a conversation with Ms. S. about the allegations against Egloff. According to Humason, she then received the following unsolicited text from Ms. S at 4:00 a.m. to Humason (the copy does not show the name of the sender of the text) that reads:

“Chrissy thank you so much for talking to me. Please extended my apologies for this all thing to forgive me I forgot his name Egeloft or something. I can't believe the stories are so out of control and far fetched. He'd have to be a midget to be able to do any of the things you were telling me. Again thanks for talking to me and if there is anything I can do please let me know. And I miss you! I'll call and talk to [name redacted] today.”
(Resp. Ex. 1B, p. 21)

75. On the same day, February 28, 2018, Trooper McNally closed the investigation, but said he was unaware of the text. (McNally, Tr. Day 4, p. 97). Despite closing the file because the victims didn't want to go forward, McNally “believed what [Boutin and Miltimore] told me to be true.” McNally, Tr. Day 4, pp. 62-63.

76. At some point in February, after talking to the State Police, Boutin tried to speak with Chief Regan about these matters but the Chief refused to do so, saying that she had been advised by a City Councilor and her own “personal representative” not to speak to her. Boutin, Tr. Day 6, pp. 229-230.

The City Opens an Investigation

77. After the receipt of the letter, the City, through the City Law Department, hired Attorney Dawn McDonald to conduct an investigation whose stated purpose was to determine the following:

- 1) Is there any merit to the allegations of misconduct against Deputy Chief Patrick Egloff as set forth in the Anonymous Letter?
- 2) Who wrote the Anonymous letter?

- 3) What was the purpose of sending the Anonymous Letter? Was it in fact sent because there was serious misconduct occurring at the fire department or was the letter sent in an effort to undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby derailing his promotion to Chief of the Westfield Fire Department?
- 4) If the sexual misconduct allegations were made, and the Anonymous Letter was sent, in an attempt to undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby derailing his promotion, what is the appropriate discipline for the person(s) involved?
- 5) In light of the allegations in the Anonymous Letter, should Deputy Chief Patrick Egloff be promoted to Chief of the Westfield Fire Department?
(Report, p. 2)

78. In conducting her interviews, McDonald began with Chief Regan (McDonald, Tr. Day 1, p. 27) who provided a written statement. (Resp. Ex. 1B, pp. 23-25). McDonald took notes of all of her interviews.

79. Next, she interviewed Egloff who provided a “timeline of events” from February 6, 2018 to February 26, 2018. (Resp. Ex. 1B, pp. 27-28). Egloff told McDonald he had learned of the State Police involvement from Gezotis who in turn had learned of it from Warren. (App. Ex. 10, p. 2). Egloff said he called Humason who gave her version of the State Police interaction. (App. Ex. 10, p. 2-3). McDonald reports that Egloff admitted to the assault on Ms. N (“grabbed her by the vagina”). Specifically, McDonald’s report states:

“At some point during the day, Deputy Egloff went up to [Ms. N] and grabbed her by the vagina. [Ms. N] immediately shoved him off and yelled at him, words to the effect that if he ever laid hands on her again, she would knock him out. He apologized, [Ms. N] accepted his apology and everyone continued with the festivities and having a good time. Egloff admits to this incident and further states that a few days later he again called [Ms. N] to profusely apologize for his conduct. He is embarrassed, ashamed and full of remorse at his behavior. [Ms. N] verifies this account and states that as far as she was concerned, it was one drunken incident, it was dealt with and over that day, and there was nothing further to apologize for.”
(Report p. 9; McDonald, Tr. Day 1, pp. 107-108).

80. McDonald next interviewed Kozikowski, Boutin, Kennedy, Miltimore and Genereux. (App. Ex. 10, pp. 14-30). McDonald believed that the order of the interviews was based on the convenience of the employees and the convenience of the Department. McDonald, Tr. Day 1, p. 115.⁷
81. McDonald completed and delivered her report to the City Solicitor in June of 2018. McDonald, Tr. Day 1, p. 25.
82. McDonald recommended that all three Appellants be terminated (Report pp. 23-28) and that Kozikowski and Genereux receive lesser discipline. (Report, pp. 29-31). She concluded that the five had engaged in a “conspiracy” to undermine Egloff and a “plot” to have him arrested for rape. (Report, p. 23).
83. In regard to Boutin, McDonald wrote in part:

“Boutin's conduct as it relates to the allegations of sexual misconduct against Egloff was **reprehensible**. Egloff was her deputy and she is a Captain. She spoke to Union President Niles LaValley multiple times about Egloff yelling at her and each time refused his advice that she file a grievance. Instead, she joined Miltimore and Kennedy in a **plot** to have Egloff arrested for rape. **A reaction so disproportionate** to anything that Egloff had ever done to her that **it defies credulity**. **She took great pleasure in**, and worked at, notifying people that he was a rapist and his arrest was imminent; both of which were completely false. **She defamed** her superior officer and took pleasure in doing it; was excited about it because it would "solve all her problems." When I confronted her with her **lack of conscience** and feeling toward ruining a man's life based on false allegations, she got nervous and upset and said that [Ms. S] said it was true. **The level of her immaturity is so great**, that she accused a man of rape, with absolutely no remorse, based solely on unsubstantiated gossip that she heard from Kozikowski and then, even when informed by the three alleged "victims" that it wasn't true and they had no intention of giving statements to the police, she put effort into trying to convince them to change their mind. **Boutin's biggest source of angst in what has occurred is that nobody will talk to her**, she has lost all her friends in the Department, and has also lost the friendship of Ms. N because they all think she wrote the Letter.” (Report, p. 23) (emphasis added)

⁷ It cannot be that people who obviously were the main target of the investigation just happened to come first. At the start, McDonald says that “they” suspected these five individuals. (McDonald, Tr. Day 1, p. 125). From this and numerous other aspects of the report noted below, it is clear that the investigation was focused on the Appellants and Kozikowski and Genereux.

84. McDonald went on to write:

“**Boutin put Egloff and his family through hell** by her conduct when all she had to do was file a grievance, speak to the Chief, or call the Personnel Director if she was truly having problems with Egloff. There are policies and procedures in place and she followed none of them. Boutin showed willful disregard for the welfare and safety of not just Egloff, but also non-municipal employees at Noble Hospital. She, more than any other, contributed to the horrible morale in the department and the productivity of the Department has been significantly impacted by her actions. That she is a Captain, makes her conduct that much worse.” (Report, p. 24) (emphasis added)

85. In regard to what rules were violated by Boutin, McDonald wrote:

“The following sections of the Employee Manual have been violated by Boutin:

Behavior: specifically, "Each employee should be aware that his/her actions on the job come under public scrutiny. Dereliction of duty of any form brings discredit not only on oneself but on fellow employees and Municipal government as a whole. Courtesy to the public and to one's superiors and fellow employees at all times is required. Employees must not work in a manner that willfully obstructs or hinders another employee from completing his or her assigned duties."

Cost Control: "strive to keep employees morale as high as possible."

Discipline and Schedule of Discipline: Insubordination, threatening or intimidating other employees, failure to maintain productivity standards, inability or unwillingness to work harmoniously with fellow employees

Insubordination: (requires no explanation)

Sexual Harassment: "sexually explicit language or gestures... an offensive overall environment, including the use of vulgar language, and the telling of sexual stories... "

Purpose #4 referenced above is: If the sexual misconduct allegations were made, and the Anonymous Letter was sent, in an attempt to undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby derailing his promotion, what is the appropriate discipline for the person(s) involved?

(Report, pp. 23-24)

86. In regard to Kennedy, McDonald wrote the following in her report:

“Kennedy involved himself and participated in accusing Egloff of rape. He **conspired** with Boutin, Miltimore, Genereux and Kozikowski to "do something about Egloff." He tried to **recruit** people to attend the **secret** meeting at Miltimore's house to gather support to **bring down** Egloff. When he learned of

the statements made by [Ms. S] **he began hounding her** by both text messages and in person every time he went to the hospital, to the point where the women were complaining to others that it was interfering with their work and was embarrassing. He disregarded the wishes of the women who made it clear they did not want to come forward and wanted to put any incidents related to the parade behind them. When the State Troopers closed the investigation and no action had been taken, he sought out the number of Trooper McNally, and called him to try to find out what was happening. The Troopers had never spoken to Kennedy previously. They told him they had nothing to say to him and not to call them again. Kennedy did all of these things, solely because **making complaints and getting people into trouble is what he likes to do.** He is certainly familiar with all of the procedures and avenues he could have taken if what he really wanted to do was correct a problem. He did not follow them. He claims his goal was only to help the women, yet he completely ignored their wishes and interfered with their employment, which he did while on the clock for the Fire Department delivering patients to the hospital.

...

Like Boutin, he had no qualms about accusing Egloff of rape. **He thought nothing of ruining a man's life, his family and his livelihood.** In his mind, justice must be done, but he has no realization that it is he that is being unjust in pursuing unsubstantiated allegations, **defaming** a superior, and making false accusations.”

Kennedy should be terminated for violating all of the foregoing policies. Kennedy, together with Boutin and Miltimore put Egloff and his family through hell by his conduct. Kennedy showed **willful disregard for the welfare and safety of not just Egloff, but also non-municipal employees at Noble Hospital.** If he had truly been concerned about righting a wrong, there were many, many other avenues to pursue.

Accusing someone of rape on behalf of another person, based on hearsay, is not one of them. He contributed to the horrible morale in the department and the productivity of the Department has been significantly impacted by his actions putting this juggernaut in motion. None of the allegations made by others against Egloff had anything to do with Kennedy. He simply jumped on the band wagon and he did it for his own enjoyment.”

McDonald added the following footnote regarding Kennedy:

“ ... While I am not a doctor and am not qualified to say so, **I believe that Kennedy is unstable and a danger to the department. He gets whipped into a frenzie (sic) over perceived wrongs and someday, I believe there could be harmful consequences of disregarding him and the threat he presents**”.

(Report, pp. 25-26) (emphasis added)

87. In regard to what rules Kennedy violated, McDonald wrote:

“The following sections of the Employee Manual have been violated by Kennedy:

Behavior: "Each employee should be aware that his/her actions on the job come under public scrutiny. Dereliction of duty of any form brings discredit not only on oneself but on fellow employees and Municipal government as a whole. Courtesy to the public and to one's superiors and fellow employees at all times is required. Employees must not work in a manner that willfully obstructs or hinders another employee from completing his or her assigned duties."

Cost Control: "strive to keep employees morale as high as possible."

Discipline and Schedule of Discipline: Insubordination, threatening or intimidating other employees, failure to maintain productivity standards, inability or unwillingness to work harmoniously with fellow employees

Insubordination: (requires no explanation)" (Report, p.26)

88. In regard to Miltimore, McDonald wrote:

Miltimore is the one that reported the rape allegation to the District Attorney. He denies it, but his **co-conspirators** said that he did it. The only Westfield Fire Department employees who were contacted were Miltimore, Boutin and Humason, in that order. There is literally no reason for the Mass State Police to call Miltimore unless he was the person who made the report. [Ms. S]'s first report (albeit false) was to Kozikowski, not Miltimore. Ms. N did not report it to him either. He was not at the Parade with relevant people, so had no personal knowledge. I believe Miltimore's motivation is completely different from the others, and more **sinister: I believe he is attempting to set up another lawsuit**, likely what he believes would be a whistleblower suit.

I base this opinion on what I have learned about him in this investigation, his past conduct and pattern of that conduct and my 18 years of experience in handling employment litigation with Plaintiffs like Miltimore. **He does not care about [Ms. S, Ms. N] or even his co-conspirators.** The theme of his interview was: I don't know what all the fuss is about. I don't know anything, I didn't do anything, and people are retaliating against me because I wanted to help them with their problems with Egloff, who is just strange.

Unfortunately, **Boutin, Kozikowski, Kennedy and Genereux, are not smart at all.** Even when I suggested to them that they had been **manipulated** by Miltimore, they each flatly denied it and asserted that they were acting on their own, **ignoring the life ring I was throwing them and drowning themselves further.** Miltimore needed support and witnesses favorable to him for any potential suit to materialize, so he **recruited** people that he knew had a problem with Egloff, or in Kennedy's case, just loved making complaints. Unfortunately, **Miltimore got a gift** when Curt Gezotis called him and intentionally threatened him with an admittedly false story. Adding fuel to the fire are Egloff and the Chief, who have **gathered up their minions** of support and have **perpetuated** Egloff's side of the story, getting much of the department to turn against

Miltimore and his **co-conspirators**. Miltimore is already saying that the Chief is retaliating against him for keeping him assigned to the substation and is not allowing him to rotate out. When Miltimore asked the Deputy Bishop why he wasn't being rotated, Bishop told him, "the Chief said you are there until the investigation is over." Bishop verified that this is what the Chief told him.

According to the Personnel Director, the Chief is not rotating anyone, but through perhaps poor choice of words, together with Gezotis's conduct, combined with an intelligent professional Plaintiff, **you have the makings of a retaliation claim**, which even if it is completely defensible is a costly proposition for the City. **Something Miltimore would be counting on in order to make money on a settlement.**

...

I believe Miltimore wrote the Letter with Kennedy. It is his style and he has a history of writing anonymous letters leading to lawsuits. He learned from his past mistakes, and I do not have the investigatory powers of the Massachusetts State Police, but I am as certain as I can be that he is responsible. I believe his motivation was to set up a lawsuit. He cannot be disciplined for writing the Letter, because as discussed above with respect to my recommendations on Egloff, **he left himself exposed** and there is enough truth to some of the allegations, that disciplining Miltimore for writing the Letter would play into his hands.

Miltimore must be terminated. As with Boutin and Kennedy, it is not the Letter writing that is of most concern. It is his serious and substantial conduct in making a false report of rape, harassing the women to come forward and interfering with their jobs, his **defaming** Egloff to the Department and to others out in the public, and the fact that **he is so feared and mistrusted by almost the all his co-workers that his mere presence endangers the whole Department.**" (Report, pp. 27-28)

89. In regard to what rules Miltimore violated, McDonald wrote:

The following sections of the Employee Manual have been violated by Miltimore:

Behavior: "Each employee should be aware that his/her actions on the job come under public scrutiny. Dereliction of duty of any form brings discredit not only on oneself but on fellow employees and Municipal government as a whole. Courtesy to the public and to one's superiors and fellow employees at all times is required. Employees must not work in a manner that willfully obstructs or hinders another employee from completing his or her assigned duties."

Cost Control: "strive to keep employees morale as high as possible."

Discipline and Schedule of Discipline: Insubordination, threatening or intimidating other employees, failure to maintain productivity standards, inability or unwillingness to work harmoniously with fellow employees

Insubordination: (requires no explanation)

(Report, p. 28)

90. After McDonald's report, the Appellant experienced incidents at work that they considered harassment. A photo that had been posted in one of the stations, that included Boutin and Miltimore with other firefighters had the heads of Boutin and Miltimore cut out. (Miltimore, Tr. Day 6, pp. 146, Boutin, Tr. Day 6, p. 236); (P.H. Ex. 1). Both Kennedy and Miltimore had items removed from their lockers. (P.H. Ex. 1); (Kennedy, Tr. Day 6, pp. 27, Miltimore, Tr. Day 6, pp. 83-89, 144). On another occasion in the winter of 2019, Kennedy and Miltimore were on the ice, during rescue training on a Westfield pond. While Miltimore and Kennedy were on the ice, the sled Kennedy was on (connected by rope to the others on shore) was pulled out and Kennedy suffered a fractured tailbone. (Kennedy, Tr. Day 6, p. 43). Miltimore was also injured (suffered a pinched nerve). (Miltimore, Tr. Day 6, 146).
91. After the report, the Appellants received notices on August 7, 2018, that the WFC was proposing they be terminated on the basis of the report. (Apps. Exs. 14, 15 and 16).
92. The notices were signed by Deputy Chief Seth Ellis (Apps. Exs. 14, 15, 16). Each of the notices states that "the undersigned supervisor/department head or designee has determined that your conduct as described, above, requires disciplinary action." (Apps. Exs. 14, 15, 16). The caption also provides that it comes "from" the WFC "acting by and through the Deputy Chief on duty, as directed." (Apps. Exs. 14, 15, 16). Deputy Chief Ellis didn't read the notices, did not know the content (and that it was not his recommendation), and he only signed because he was instructed to and/or ordered to by the City Solicitor or the Chief (then

Acting Chief Hart) as advised by the WFC. (Ellis, Tr. Day 3, pp. 20-27). Acting Chief Andrew Hart testified that he also had not seen the documents before they were sent out, had no input into their content, “didn’t want to know what was in it”, had “no part of that”, was told about them by the Law Department, and did not believe that even the WFC had seen the notices before they were sent out. (Hart, Tr. Day 3, pp. 88-91). As far as Hart knew, no one working in the Fire Department had any input into the decision. (Hart, Tr. Day 3, p. 90). Hart had not seen the McDonald report. Hart, Tr. Day 3, p. 91.

93. The Appellants believed, after reading the notices, that the WFC had held a meeting regarding the discipline of the Appellants in violation of the Open Meeting Law. The Appellants filed an action in Superior Court for a violation of the Open Meeting Law. (Apps. Exs. 1 and 2).
94. On August 23, 2018, Hart, acting on instruction from the Personnel Department directed Boutin to a “fitness for duty” examination by a Doctor Michael Rater, MD because Boutin had claimed work related emotional distress and “PTSD” by virtue of the harassment and retaliation she was facing. (App. Ex. 3). Rater filed a report on September 12, 2018 finding that Boutin had depression, anxiety and emotional distress related to her threatened termination and was thereby incapacitated temporarily. (App. Ex. 6). In a subsequent report, Rater said that Boutin was permanently incapacitated. (Apps. Ex. 8).
94. The Superior Court voided the terminations on August 29, 2018 and found that there was an intentional violation of the open meeting law (fining the WFC). After the Court’s August 29, 2018 decision, the WFC took no further action on the proposed terminations until December of 2019.

The Fire Commission Re-Opens the Matter in December 2019

95. Fire Commissioner Jeffrey Siegel was asked why this matter came back before the Fire Commission in December 2019. His testimony on cross-examination was as follows:

Counsel: Well, what prompted this matter to []come before the Fire Commission in December of 2019?

Siegel: My understanding was that there was a desire on the part of the Chairman of the Commission to bring the matter back on to the docket to have it resolved, hopefully before the end of the year and perhaps there might have been a change in the administration, but I couldn't cite what they were.

Counsel: So, it was your understanding that Chairman Mascriadelli wanted to get this resolved before the new Mayor took office in January of 2020.

Seigel: To try to get it before he got into, in my opinion it had been too long and we would try to get it in before the end of the year and the new administration.
(Siegel, Tr. Day 5, pp. 48-49)

96. On December 4, 2019, each of the Appellants were served with the Notices of Contemplated Action which were, in content, identical to the August 2018 notices. (Jt. Exs. 1, 2 and 3).

Each attached the summary portion of McDonald's report on the individual appellant.

97. On December 10, 2019, the WFC held a hearing regarding the proposed terminations. (Jt. Ex. 7). On December 18, 2019, the WFC met again to deliberate. The WFC members discussed their reasons, and then voted to accept, with only a few differences, the recommendations of McDonald report. (Jt. Ex. 8).

98. At their meeting, Commission member Siegel stated: "It appears to me there likely would not have [sic] any investigation of any kind of this had Kyle Miltimore not complained to his friend who happened to work for the state". (Jt. Ex. 8, p. 9). He also claimed that the Appellants had failed to file an "official, formal" complaint. Siegel, Tr. Day 5, p. 30.

99. Commission member C. Lee Bennett stated “you did cause an investigation by calling an acquaintance who was a state Trooper...” (Jt. Ex. 8, p. 13). She further stated that the Appellant were “wasting the investigator’s time.” (Jt. Ex. 8, p. 13). She made further references to other matters apparently blaming Kennedy of fabricating the ice incident. (Jt. Ex. 8, p. 15). She also found Miltimore not to be credible because he had been terminated for being a whistleblower from a part-time position in another town. (Jt. Ex. 8, p. 15).
100. Chairman Mascriadrelli stated that the Appellants did not “follow rules and policies of presenting any problems through their supervision.” (Jt. Ex. 8, p. 16). He otherwise adopted the statements of the other commissioners. (Jt. Ex. 8, pp. 16-17).
101. Commissioner Siegel’s basis for termination was that he believed Ms. McDonald (the investigator) was more “credible” than the Appellants. (Siegel, Tr. Day 5, pp. 10-13). He accused Kennedy of “coercing testimony” and Miltimore for “similar reasons” and for “riling up” people against Egloff. (Siegel, Tr. Day 5, pp. 10-13). He also cited his belief that the Appellants’ motive was to prevent Egloff from becoming Chief. (Siegel, Tr. Day 5, pp. 10-14). He acknowledged that his reference at the WFC hearing to Miltimore going to the State Police was “stirring the pot” and that this played a role in his decision. Siegel, Tr. Day 5, p. 19-20.
102. Siegel was “leery of these two women who may or may not have issues in this scenario” in reference to Ms. N and Ms. S. and questions whether their allegations were credible. Siegel, Tr. Day 5, p. 20.
103. Siegel could not identify the procedures he had stated that the Appellants should have followed. (Siegel, Tr. Day 5, pp. 21-24). He couldn’t recall if Boutin had even spoken to the

police. (Siegel, Tr. Day 5, p. 24-25), but he stated that speaking to the police was a correct and proper procedure. Siegel, Tr. Day 5, p. 28.

104. On December 19, 2019, the Fire Commission sent a notice of termination to Boutin stating in relevant part:

“ ... The Fire Commission finds that Captain Boutin failed in her duties as Captain, engaged in insubordination and subverted the chain of command as more specifically set forth in the Investigator's recommendation attached hereto and incorporated as Exhibit A. Policies and procedures exist inside the Fire Department or inside the City of Westfield to properly address concerns with a commanding officer. In a paramilitary organization such as a Fire Department, involvement in the creation or spread of inaccurate and harmful information as was done here has the potential to jeopardize efficient operations, did disrupt operations including the delay of the process to appoint the next Chief, eviscerated morale, and has the potential to result in physical and/or emotional harm - or worse - to employees and citizens alike.”

(Jt. Ex. 4)

105. The termination letter to Kennedy dated the same day stated in relevant part:

“The Fire Commission finds that Private Kennedy engaged in serious and substantial conduct including making a false report(s), insubordination and subverting the chain of command as more specifically set forth in the Investigator's recommendation attached hereto and incorporated as Exhibit A. Policies and procedures exist inside the Fire Department or inside the City of Westfield to properly address concerns with a commanding officer. In a paramilitary organization such as a Fire Department, involvement in the creation or spread of inaccurate and harmful information as was done here has the potential to jeopardize efficient operations, did disrupt operations including the delay of the process to appoint the next Chief, eviscerates moral, and has the potential to result in physical and/or emotional harm - or worse - to employees and citizens alike.”

(Jt. Ex. 5)

106. The termination letter to Miltimore stated:

“The Fire Commission finds that Private Miltimore engaged in serious and substantial conduct including making a false report(s), insubordination and subverting the chain of command as more specifically set forth in the Investigator 's recommendation attached hereto and incorporated as Exhibit A. Policies and procedures exist inside the Fire Department or inside the City of Westfield to properly address concerns with a commanding officer. In a paramilitary organization such as a Fire Department, involvement in the creation or spread of inaccurate and harmful information as was done here has the potential to jeopardize efficient operations, did disrupt operations including the delay of the process to appoint the next Chief, eviscerates moral, and has the

potential to result in physical and/or emotional harm - or worse - to employees and citizens alike.”

(Jt. Ex. 6)

107. On May 7, 2019, the Westfield Fire Commission voted unanimously to promote Patrick M. Egloff from Deputy Fire Chief to permanent, full-time Fire Chief. As of the issuance of this decision, Egloff remains in that position.

Applicable Law

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 [a tenured civil service employee] ... 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 the 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."

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). See also 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.

Analysis

The Westfield Fire Commission relied on the conclusions of an investigator to justify the termination of the three Appellants. Over a period of seven (7) days of hearing, I had the opportunity to: a) listen to the sworn testimony of and assess the credibility of over a dozen witnesses, including the testimony of a State Trooper that the investigator did not hear from; and b) review hundreds of pages of exhibits, including audio / video recordings of State Police interviews that the investigator was also not able to review. After reviewing (and re-reviewing) the relevant testimony and exhibits, my findings differ significantly from those of the investigator and the Fire Commission. The majority of the conclusions of the investigator, relied on by the Westfield Fire Commission to terminate the Appellants, either exonerate the Appellants from any wrongdoing or are not supported by a preponderance of the credible evidence. Further, the impetus behind the report, and the report itself, are riddled with examples of unsubstantiated "beliefs" instead of "facts" along with inappropriate disparaging personality assessments that I find tainted the investigation with bias and personal animus against the Appellants, and that further discredit the conclusions of the investigator as they relate to the Appellants.

In summary, a preponderance of the evidence does not support any of the charges cited by McDonald or the Westfield Fire Commission to justify disciplinary action against Kennedy or Miltimore. A preponderance of the evidence does not support the majority of charges cited by McDonald or the Westfield Fire Commission to justify disciplinary action against Boutin, with

the exception of her telling Warren and Supinski, falsely, that Egloff was about to be arrested for rape.

A. The Investigator Could Not Prove Who Wrote the Anonymous Letter

The task given to the investigator by the City's law department was to answer the following questions:

- 1) Is there any merit to the allegations of misconduct against Deputy Chief Patrick Egloff as set forth in the Anonymous Letter?
- 2) **Who wrote the Anonymous letter?**
- 3) **What was the purpose of sending the Anonymous Letter? Was it in fact sent because there was serious misconduct occurring at the fire department or was the letter sent in an effort to undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby derailing his promotion to Chief of the Westfield Fire Department?**
- 4) **If the sexual misconduct allegations were made, and the Anonymous Letter was sent, in an attempt to undermine, discredit and disgrace Deputy Chief Patrick Egloff, thereby derailing his promotion, what is the appropriate discipline for the person(s) involved?**
- 5) In light of the allegations in the Anonymous Letter, should Deputy Chief Patrick Egloff be promoted to Chief of the Westfield Fire Department?
(Report, p. 2)

Setting aside the peculiar wording of these questions for a moment, I first focus on the three (3) questions potentially related to the Appellants: 2, 3 and 4.

Question 2: Who wrote the Anonymous letter?

After reading the investigator's report, I was uncertain if she had firmly concluded whether any of the Appellants had written the anonymous letter referenced in the findings. Thus, I asked her for clarification during her sworn testimony before the Commission. My questions and the investigator's responses were as follows:

Commissioner: Okay. The second question, who wrote the anonymous letter. Did you ever reach any findings or conclusion in regard to whether or not Rebecca Boutin wrote the anonymous letter?

Investigator: Nothing that I could prove but I had a long conversation with her in the second interview about the anonymous letter, the allegation in the letter and how each of the, almost every allegation had to do with, it's similar things that had happened with her specifically. We had a long conversation about that, but I actually did not think that she wrote the letter. McDonald, Tr. Day 1, p.75.

Commissioner: Did you answer ... one way or another whether David Kennedy wrote the anonymous letter, which is number two under purpose?

Investigator: No. I can't prove that any of them wrote that letter. I can make an educated guess, but I cannot prove it. McDonald, Tr. Day 1, p.85

Questions 3 & 4

Given that the investigator had affirmatively concluded that Boutin did *not* write the letter, and that she "cannot prove" that Kennedy or Miltimore wrote the letter, I asked the investigator how questions 3 and 4, which relate to the "purpose" of the letter, were relevant to the Appellants. Her answers as they pertain to Boutin, referenced below, shed some light on the investigator's thinking regarding all three Appellants:

Commissioner: Okay. So, Rebecca Boutin, your finding is that she didn't write the letter. Now, question number three on the purpose, what is the purpose of sending the anonymous letter. If Rebecca Boutin didn't write the letter, does three apply?

Investigator: Well, she didn't write the letter but she certainly, I believe that she participated in this what I would call a ploy to prevent Deputy Egloff

from becoming Chief.

....

Investigator: I am inclined to believe, I believe she participated by supplying information for the letter. I cannot say that she sat in the room where it was written. I cannot say that she had a hand in actually writing it, but she almost certainly supplied the information that's contained in the letter because every allegation has to do with her.

Commissioner: Does question four apply to Rebecca Boutin?

Investigator: Yes ... I believe the letter was sent with an intent to undermine his credit and displace him and deny his promotion, and there is some evidence of that because when she told, it was either Chuck Warren or Keith Supinski, I don't recall which one, but she mentions to one or both of them that her problems would be over if he was arrested for rape.⁸

In short, although the investigator, according to her own sworn testimony, did not believe and/or could not prove that any of the Appellants wrote the anonymous letter, she "believed" that Boutin (and, according to her further testimony, the two other Appellants) had some role in preparing the letter and, thus, she deemed the "purpose" of the letter to be relevant to the Appellants, about whom the investigator went on to make findings and conclusions.

B. The Investigator had an insufficient basis on which to conclude that nothing happened to Ms. S.

An underpinning of the investigator's entire report starts with her conclusion that Ms. S. made false allegations about Egloff in regard to the St. Patrick's Day Parade in 2016. The investigator reaches this conclusion with a twisted and selective cherry-picking of the information she learned, writing:

"Several of the witnesses know [Ms. S.] All described her to be a nice girl who is insecure, easily influenced, with low self esteem and someone who makes up and/or exaggerates stories for attention; both positive and negative attention. I do believe that she told Kozikowski that Egloff did *something*. I am also equally certain that Egloff did nothing. There were too many people in the truck, meaning too many witnesses, all of whom say nothing happened. None of the people who were in the truck would have allowed Egloff to

⁸ Neither Warren nor Supinski testified to this.

get away with doing anything inappropriate and there is even photographic evidence showing all smiling faces. In addition, [Ms. S.] never told a soul anything about Egloff until January of 2018, years after the incident. Ms. N and Chrissy Humason who work with, and are friendly with her, say she never said anything of the kind to them ...”

It is troubling that an investigator quizzed dozens of Westfield firefighters, mostly male, about the character of an alleged female victim of sexual assault. It is equally troubling that the investigator dismissed her allegations based on debunked and cringeworthy assumptions regarding victims of sexual assault (i.e. – she was seen smiling in a photograph so it couldn’t have happened; she did not tell her friends and co-workers at the time so it couldn’t have happened; the largely male – and highly intoxicated – firefighters would have seen what happened and intervened.) Also troubling is that the investigator equated Ms. S’s refusal to talk with her as indicative that she was not a victim.

Most relevant to this appeal regarding the Appellants, however, is that the investigator reported that Ms. S did indeed make some sort of allegations against Egloff. I credit the testimony of Kozikowski, who swore before me, that Ms. S, in 2018, reported to him that Egloff, at some point during the 2016 St. Patrick Day Parade, “went down her [Ms. S’s] pants and touched her vagina.” that she pushed Egloff away and he then “went up her shirt and attempted to touch her breasts” and she pushed him away again.

When Appellant David Kennedy was told this information, he spoke directly to Ms. S. I credit his testimony that Ms. S. “proceeded to relate the same incident, same description that ... [Kozikowski] had told [him and others and] ... she was kind of crying.” The testimony of Kozikowski and Kennedy is consistent with the testimony of Firefighter Jennifer Daley, a witness who has no stake in the outcome of this appeal. She credibly testified that Ms. S. “just said something that it happened to her too and couldn’t figure why everybody was focused on

[Ms. N].” Ms. S specifically told Firefighter Daley that “Eggy [Egloff] had groped her” at the 2016 St. Patrick’s Day Parade.

C. The Appellants Did Not “Plot” to Have Egloff Arrested

The credible testimony contradicts the conclusion made by the investigator that:

“Boutin joined Miltimore and Kennedy in a plot to have Egloff arrested for rape”. The investigator singles out Kennedy in particular for “ ... accusing someone of rape on behalf of another person, based on hearsay.” In her testimony before the Commission, McDonald stated: The only information that [Miltimore] or any of them had about this came from Lee Kozikowski. I don’t believe Kyle Miltimore ever spoke to [Ms. S.] himself. I don’t recall that anyway. And so, these people just went off and decided that they were going to call the District Attorney’s Office and/or State Police who investigate for the District Attorney and they were accusing him of rape. They seemed to do that for the pettiest reasons ...”.

The Appellants did not concoct this story in an attempt to have Egloff arrested for rape. Rather, three separate witnesses offered credible testimony that Ms. S., during three separate conversations, made consistent statements regarding allegations against Egloff. When Kennedy heard this information second-hand (from Kozikowski), he did not rely on Kozikowski’s hearsay account of his conversation with Ms. S. Rather, Kennedy spoke directly with Ms. S, the alleged victim, who gave Kennedy her first-hand account of her allegations against Egloff. Interwoven into McDonald’s report is the premise that the Appellants should have reached the same conclusion that she (McDonald) did – that Ms. S’s allegations were purportedly fabricated, even though Kennedy had spoken personally to Ms. S and McDonald did not. As discussed in more detail below, the Appellants, when questioned, including two by State Troopers, explicitly stated that they were not present at the St. Patrick’s Day Parade; that they could not have witnessed any

alleged actions by Egloff; and that they were simply reporting what had been told to them. For all of the above reasons, the conclusion that the Appellants were “engaged in a plot” to have Egloff arrested for rape is not supported by a preponderance of the evidence.

D. The Investigator’s Charge that the Appellants were Insubordinate

The related charge included in the investigator’s report and adopted by the Fire Commission - insubordination - equally lacks merit. McDonald cites this charge against each of the Appellants with the explanation: “requires no explanation.” Based on the termination letters, I infer, but I am still not quite clear, that the charge of insubordination is for failing to refer these criminal allegations up the chain of command at the Fire Department before going to the State Police, although the rules and regulations regarding insubordination relate solely to actions taken at a fire scene. McDonald could not recall what the definition of insubordination was in the rules and regulations nor could she offer a cogent explanation of the actions that supported this charge, which the report, again, states: “requires no explanation”.

To the extent that “insubordination” does indeed relate to failing to follow the proper chain of command upon learning of the alleged criminal allegations against Egloff, that charge is undermined by the following facts. First, when Kozikowski returned to the Fire Department after speaking to Ms. S, he reported his conversation to Captain Supinski. Supinski specifically recalls being told by Kozikowski that Ms. S had allegedly been “digitally raped” by Egloff. Fire Commissioner Siegel, in his testimony before the Commission, stated that, upon Supinski learning this information, there should have been an “investigation”. Supinski, however, did nothing. Rather, he dismissed the charges as untrue (“a lie”) and failed to report this information to anyone further up the chain of command in the Fire Department. He has faced no disciplinary action for failing to do so. Second, at least one of the Appellants (Miltimore) did report the

allegation to his superior – Captain Boutin. Third, although it occurred after speaking to the State Police, Captain Boutin did attempt to talk to then-Chief Regan about the matter. Regan refused to talk to Boutin, purportedly on the advice of a City Councilor and her own personal counsel. Finally, Fire Commissioner Siegel, in his testimony before the Civil Service Commission, acknowledged that reporting a criminal allegation to the State Police was not necessarily inappropriate. For all of these reasons, including the failure of the Fire Commission’s own witnesses to adequately explain the basis of this charge, the conclusion of the investigator and the Fire Commission that the Appellants are guilty of insubordination is not supported by a preponderance of the evidence.

McDonald also cites Kennedy for misconduct based on the fact that he called State Police investigators after Ms. N and Ms. S. told investigators that they were no longer willing to come forward and be interviewed. The record here shows that Kennedy called Trooper McNally because Miltimore told him that they wanted to speak with anyone who had knowledge of the events and Kennedy had spoken directly with Ms. S. He informed McNally what he knew, although at that point, presumably after Ms. S and Ms. N had declined to come forward, McNally did not welcome the call. But Kennedy, like Miltimore and Boutin, had no way of knowing that the victims had declined to proceed. The call was so unremarkable to Investigator McNally that he doesn’t even remember it. For these reasons, the preponderance of evidence does not support McDonald’s conclusion that Kennedy’s phone call to State Police investigators was evidence of misconduct by Kennedy.

E. The Appellants’ “Secret Meetings” Were Nothing of the Sort

Following next in chronological order regarding the charges against the Appellants is the fact that four firefighters (Miltimore, Kennedy, Lavalley and Generoux) met at Kyle Miltimore’s

house. McDonald describes this gathering as a “ ... secret meeting at Miltimore's house to gather support to bring down Egloff.” A more objective description would be that four firefighters, three of whom felt personally aggrieved by Egloff, met to discuss their grievances against Egloff as well as the serious allegations that Ms. S had made against Egloff to three different members of the Westfield Fire Department. (Kozikowski, Kennedy and Jennifer Daley). As referenced above, Kozikowski had already reported Ms. S’s allegations up the chain of command to Captain Supinski, who dismissed them as a “lie” and took no action. I have carefully reviewed the list of rules and regulations cited by McDonald as having been violated by the Appellants. The meeting at Miltimore’s house, and the discussion that occurred, did not violate any of the rules cited. Rather, the credible testimony of the four meeting participants show that the four firefighters discussed their grievances related to Egloff and wrestled with what to do about the allegations by Ms. S, which had been personally communicated by Ms. S to two of the firefighters present (Kozikowski and Kennedy). No plan was designed to “bring down Egloff” nor was there even agreement about what, if any, next steps would be taken regarding the allegations made by Ms. S. In short, the preponderance of the evidence does not support any conclusion or implication that attending and participating in the meeting at Miltimore’s house constituted misconduct.

F. The Appellants Never “Harassed” Ms. S. or Ms. N.

Shortly before this meeting at Miltimore’s house, Kennedy had a text message exchange with Ms. S, following up on their one-on-one conversation at the hospital and inviting her to attend the meeting. McDonald, in her report, concluded that “ when [Kennedy] learned of the statements made by [Ms. S] he began hounding her by both text messages and in person every time he went to the hospital, to the point where the women [Ms. N and Ms. S] were complaining

to others that it was interfering with their work and was embarrassing. He disregarded the wishes of the women who made it clear they did not want to come forward and wanted to put any incidents related to the parade behind them.” First, as previously referenced, I credit the testimony of Kennedy that Ms. S tearfully explained to him what allegedly occurred at the St. Patrick’s Day Parade, allegations that were consistent with what Ms. S. had told to Kozikowski and, later, to Daley. The investigator’s conclusions appear to put Kennedy in a Catch-22 situation. If he reported what Kozikowski told him about his conversation with Ms. S. without hearing it directly from her, that would constitute misconduct by relying on “hearsay” allegations. However, when he spoke to Ms. S. and heard the allegations directly from her, he is now guilty of harassment. His conversation with Ms. S, by any objective standard did not constitute “hounding” or “harassing” Ms. S. In regard to the exchange of text messages between Kennedy and Ms. S., I printed the exchange in the findings which included the following:

Ms. S: Hey Dave I’m really sorry I can’t make it today. Dads wound care nurse never showed so I have to take care of that and nap at some point for work tonight. I hope you guys come up with a plan. I hope you have a good day. And sorry again.

_____ D.K.: No problem at all, I understand. Hope your dad is doing better. Just want to make sure that you’re still on board if we go forward.

_____ Ms. S: Yes just keep me in the loop.

_____ D.K.: Will do!

Again, by any objective standard, this simply does not equate to “harassment” or “hounding” of Ms. S. As referenced later in the findings, I also did not give any weight to the testimony of Firefighter Humason that, on February 28th, Ms. S. complained that certain firefighters “were always talking to her” about these allegations. Finally, there is no credible evidence that Kennedy ever harassed or hounded any other alleged victim. For all of these reasons,

McDonald's conclusion that Kennedy "harassed" or "hounded" the alleged victims is not supported by a preponderance of the evidence.⁹

As stated above, McDonald also concluded that Miltimore, similar to Kennedy, "harass[ed] the women to come forward and interfere[ed] with their jobs." First, there is no evidence that Miltimore ever spoke with Ms. N. As for Ms. S, there is only Firefighter Humason's hearsay testimony that Ms. S *once* stated, on February 28th, that Kozikowski, Kennedy and Miltimore always tried talking about it. That testimony by Humason, even if true, simply does not equate to "harassing the women to come forward and interfering with their jobs." For these reasons, the preponderance of evidence does not support McDonald's conclusion that Miltimore "harass[ed] the women to come forward and interfere[ed] with their job".

McDonald made similar conclusions about Boutin which are not supported by the evidence, including Boutin's recorded interview with State Police investigators. Specifically, McDonald concluded the following about Boutin:

"The level of her immaturity is so great, that she accused a man of rape, with absolutely no remorse, based solely on unsubstantiated gossip that she heard from Kozikowski and then, even when informed by the three alleged "victims" that it wasn't true and they had no intention of giving statements to the police, she put effort into trying to convince them to change their mind.

...

Boutin showed willful disregard for the welfare and safety of not just Egloff, but also non-municipal employees at Noble Hospital."

It appears that McDonald was either unaware of or disregarded the undisputed fact that Boutin did not initiate contact with State Police investigators. Rather, immediately after their interview with Miltimore, *State Police investigators contacted Boutin and asked her to come in*

⁹ I also gave no weight to the text message purportedly sent to Humason by Ms. S. I do not believe the text message was unsolicited, but, rather, was sent at the encouragement of Humason, who promptly notified Egloff of the contents of the text message.

for an interview. The findings provide a detailed summary of what Boutin said during that interview and what investigators asked her to do in regard to the alleged victims. First, similar to Miltimore, Boutin explicitly told State Police investigators that she was not a percipient witness to anything that may have occurred at the 2016 St. Patrick's Day Parade. Investigators then specifically asked Boutin to tell them what she had heard occurred at the Parade – and Boutin complied with their requests. Importantly, State Police investigators implored Boutin to assist them with getting cooperation from the alleged victims, telling her that she had the support of the State Police and the District Attorney's office. Their plea didn't stop there. State Police investigators spoke about “doing the right thing” and “being on the right side of history.” Further, I credit Boutin's testimony that State Police investigators, after the recorded interview was concluded, asked Boutin to call the alleged victims before leaving their office. Boutin declined. Contrary to McDonald's report, Boutin was not acting on her own initiative -- or pressuring any alleged victims. Rather, she was complying with a request by State Police investigators to get the assistance of three alleged victims of alleged sexual assault. In fact, Boutin, during her recorded interview, actually expressed some reluctance to State Police investigators, reminding them how difficult it is for alleged female victims to come forward and tell their story.

It is in this context that Boutin, after her interview with State Police investigators, reached out to Humason and Ms. N. Boutin never actually spoke with Ms. S but, rather, she asked Ms. N., Ms. S's colleague at Noble Hospital, to speak with her.

I credit Captain Boutin's testimony that, when she called Firefighter Humason, Humason retracted her prior statement that Egloff had made inappropriate physical contact with her at the 2016 Parade. Boutin's version of events is more plausible than Humason's account. Firefighter

Humason denies ever telling Captain Boutin that Egloff made inappropriate contact with her at the 2016 Parade. If true, Boutin would have no reason to share this information with State Police investigators, knowing that Humason would contradict her statement when she talked to investigators. Further, I listened (and re-listened) to Firefighter Humason's testimony. She repeatedly stated that she "declined comment" to State Police investigators. Her testimony appeared painfully geared toward exonerating Egloff of any wrongdoing, often ignoring questions put to her and, instead, repeating that Ms. N had "moved on" and that Ms. S was not credible, in part because Ms. S had failed to make a quilt she had promised her. The more plausible explanation is that, when Boutin told Firefighter Humason about her interview with State Police, Firefighter Humason chose to retract her prior statement about Egloff and to tell Egloff directly of her denial.

I also credit Captain Boutin's testimony regarding her conversation with Ms. N. While Ms. N. said that she and Ms. S would talk to investigators, Ms. N. also expressed concern about the consequences of doing so. That is exactly what Boutin conveyed to State Police investigators; and both Ms. N and Ms. S did indeed initially tell State Police investigators that each of them was willing to be interviewed – consistent with Boutin's version of events. There is no credible evidence that Boutin, after Ms. N and Ms. S canceled their appointments with investigators, sought to pressure them to change their mind. For all of these reasons, McDonald's conclusions that Boutin: a) "even when informed by the three alleged 'victims' that it wasn't true and they had no intention of giving statements to the police, she put effort into trying to convince them to change their mind" and b) that "Boutin showed willful disregard for the welfare and safety of not just Egloff, but also non-municipal employees at Noble Hospital," are not supported by a preponderance of the evidence.

G. Charges of Untruthfulness Against Miltimore Were Not Proved

Moving forward chronologically, McDonald concluded that Miltimore was untruthful during her investigation regarding what occurred next: Miltimore's contact with the State Police. It appears that McDonald was confused regarding the fact that *State Police investigators* reached out to Miltimore to get a statement from him, rather than Miltimore first contacting the investigators. As referenced in the findings, Miltimore decided to reach out to a member of his church who is a State Trooper (Trooper Dolan) for advice. I credit the testimony of Miltimore that the Trooper told Miltimore that he (Miltimore) had a duty to act. Miltimore did *not* then reach out to State Police investigators. Rather, within hours, *State Police investigators* contacted *Miltimore*, and asked to meet with him for an interview that day.¹⁰ Thus, any conclusion that Miltimore was untruthful on this point is not supported by a preponderance of the evidence.

The investigator also concluded that Miltimore “... [made] a false report of rape, harass[ed] the women to come forward and interfere[ed] with their jobs.” McDonald reached her conclusion about Miltimore making a false report of rape without having the opportunity to review the State Police investigators' recorded interview with Miltimore. I did. As stated in the findings, Miltimore, at the outset of the recorded interview, which was initiated by the State Police investigators, stated that he (Miltimore) *was not involved in the St. Patrick's Day Parade and he was not a witness to what may have occurred between Egloff and any alleged victims*. He then went on to tell investigators what he had been told by Kozikowski, who had spoken directly to Ms. S and what he had been told by Kennedy, who had also spoken directly to Ms. S. He went on to provide the names of two possible percipient witnesses (Firefighters Rick Paul and

¹⁰ I did not overlook the fact that Trooper Dolan testified that Miltimore only discussed general allegations of sexual harassment at the workplace. Dolan's testimony was inconsistent with the testimony of Miltimore and the testimony of Trooper McNally, one of the investigators, who specifically recalls Dolan telling him (McNally) about the allegations of alleged sexual assault raised by Miltimore during their conversation that day.

Nyles Lavalley) regarding Egloff's alleged behavior (toward Ms. N) at the St. Patrick's Day Parade -- who State Police investigators chose not to contact. Although Miltimore, at times, without attribution, reported that he had heard about specific, graphic details of what occurred regarding Ms. S, he never stated that he witnessed any such behavior and he made it clear that he was providing second-hand information to investigators. In summary, Miltimore did not, as part of that interview, "make a false report of rape" to State Police investigators.

Aside from his interview with State Police investigators, McDonald states in her report that Miltimore supposedly told "several" people that Egloff's arrest for rape was imminent. No witness testified before the Commission to this. McDonald's notes also do not support the allegation. They reference "No. 12" (A. Lafreniere) (App. Ex. 10, pp. 85-86, 145). Those notes do not state Miltimore told him Egloff would be arrested for rape; "No. 9" (D. Desilets) (App. Ex. 10, pp. 82-83) who he only supposedly told that Egloff was being *investigated* for rape; and "No. 72" (D. Pleshaw) (App. Ex. 10, p. 108), who doesn't say Miltimore said anything about an arrest or rape. That leaves only No. 56 (J. Greene) for whom McDonald's notes (App. Ex. 10, pp. 56-57) are illegible on this point, leaving it unclear who was saying what. None of these individuals were called as witnesses by the Fire Commission and thus, they never testified under oath; they were never cross-examined; and I never had an opportunity to assess their credibility. For all of the above reasons, McDonald's conclusion that Miltimore "[made] a false report of rape" against Egloff is not supported by a preponderance of the evidence.

H. Captain Boutin misrepresented that Egloff was about to be arrested for Rape

It remains a separate issue whether Captain Boutin falsely told Fire Department employees that Egloff was about to be arrested for rape. None of the McDonald notes clearly indicate that anyone other than two captains (Supinksi and Warren) said that Captain Boutin told them that

Egloff was to be imminently arrested for rape. Number 56 (J. Greene) (App. Ex. 10, pp. 56-57) may have claimed this, but the notes are unclear, and it appears there were four people in the conversation including Chris Genereux and any one of them could have said this. I did, however, hear live testimony from Fire Captains Warren and Supinski who both testified that Captain Boutin told them that Egloff was about to be arrested for rape.

I considered the following factors that could detract from Warren's testimony on this issue. First, Warren is friends with Egloff and has known him for 25 years, since high school. Second, despite a family friendship with the Boutins, I credit Miltimore's testimony (which Warren did not deny) that Warren spoke disparagingly about Boutin behind her back. Third, Warren only testified that he "believes" that's what Boutin said and that it had been "three years ago now" since the conversation in question. Fourth, Warren showed an animus toward Boutin, based on his (false) belief that Boutin and others were "investigating" Egloff on their own initiative.

Even after considering the above factors, I found Warren's testimony -- that Boutin told him that Egloff was about to be arrested for rape -- to be credible. Warren was genuinely shocked then, and now, about Boutin's statement. He underwent tough questioning during his sworn testimony and, ultimately, he did recall Boutin telling him that Egloff was going to be arrested for rape. His testimony stood in contrast to the more equivocal testimony by Boutin regarding their conversation. She wavered about important aspects of her conversation with Warren, including whether she told Warren that Egloff was "facing charges" or was about to be "charged". She also seemed to suggest that she may have used the word "arrest," suggesting that she found that to be interchangeable with "facing charges".

It is undisputed that Boutin then called Captain Supinski. Supinski had a vivid recollection of the conversation. Supinski recalls that he was taking vacation time and was at home when

Boutin called him and told him that Egloff was going to be arrested for rape. Having listened to the testimony of both Warren and Supinski- I do not believe that they conspired to perjure themselves before the Commission. I credit the testimony of both of them in regard to Boutin telling them Egloff was going to be arrested for rape, something that Boutin, by her own admission, had never actually been told. By making these statements, Boutin engaged in substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.

I. Allegations that the Appellants' Behavior Undermined Morale is Without Merit

McDonald's conclusion that the Appellants damaged the morale of the Westfield Fire Department is without merit and can be addressed summarily. As discussed in more detail below regarding disparate treatment, any purported poor morale in the Department cannot be traced back exclusively to the Appellants, but, rather, was attributable to many factors, including, in substantial part, the conduct of the individual who the Westfield Fire Commission has now chosen to lead the Department – Patrick Egloff.

J. Explanation for the Differences in My Findings from those of the Investigator and the WFC

The stark difference between my findings and those of the investigator appear to be attributable to two factors. First, the investigator did not have the opportunity to speak with the State Police investigators and nor did she have the opportunity to review the recorded interviews that the State Police investigators had with Miltimore and Boutin. Second, it appears that bias infected the overall investigation and the investigator's conclusions. McDonald effectively acknowledged that certain officials were guiding her to a pre-determined outcome, testifying that

then-Chief Regan told her that she “suspected” the Appellants and two others of misconduct. McDonald went on to testify that Regan “ ... absolutely attempted to direct the course of the investigation from the beginning.”

While McDonald insisted during her testimony that her investigation was fair and objective, it is clear that McDonald developed a bias and/or animus against the Appellants. During her approximately ninety (90) interviews of Westfield Fire Department employees, she allowed, if not openly encouraged, employees to share the same type of unfounded gossip that she ultimately accused the Appellants of. Some of these conversations were downright bizarre and not consistent with conducting an objective interview. As an example, McDonald entertained gossip – and repeated in her report -- allegations that an individual allegedly defecated in the middle of a classroom in high school. Her salacious conversations with male firefighters about Captain Boutin, whose title is *earned*, were particularly disturbing and went far beyond the scope of her investigation. The bias and personal animus that McDonald developed against the Appellants was also evident in her notes and final report. Between her notes and her final report, McDonald characterized individual Appellants as:

- a “lying sack of shit”
- “unstable”
- “jumpy and jittery”
- “unfit”
- “has issues”
- “only happy if creating conflict”
- “not smart at all”

McDonald then, referring to her interviews, stated that individual Appellants were referred to as:

- a “sociopath”
- a “psychopath”
- a person who would “go after their wives and children”.

While there is no statutory requirement that the investigator be fair and impartial, the personal animus the investigator developed against the Appellants appears to have influenced her findings and conclusions, most of which, as referenced above, are not supported by a preponderance of the evidence.

K. Modification of the Penalty Imposed on Captain Boutin

Since none of the charges against Kennedy or Miltimore are supported by a preponderance of the evidence, their two (2) appeals must be allowed.

In regard to Boutin, I have found that the preponderance of evidence shows that she did engage in one instance of misconduct. Having made that determination, I must determine whether the level of discipline (termination) against Boutin was warranted.

As stated by the SJC in Falmouth v. Civ. Serv. Comm’n, 447 Mass. 814, 823-825 (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], § 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).

“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 [appointing authority] 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 [appointing authority] on the basis of essentially similar fact finding without an adequate explanation.” Id. at 572. (citations omitted).

First, my findings of facts do differ significantly from the Westfield Fire Commission and the underlying findings of the investigator relied upon by the Fire Commission regarding the decision to terminate Captain Boutin. As detailed above, all but one of the charges against Boutin were not supported by a preponderance of the evidence. The charge that *was* supported by the preponderance of the evidence, however, involves a serious matter: Boutin falsely reporting that a person was about to be arrested for rape.

Second, I have found evidence of bias, including a personal bias by the investigator.

Finally, there is overwhelming evidence that the decision to terminate Captain Boutin was not consistent with the principle of uniformity and the need to ensure the equitable treatment of similarly situated individuals. The decision to terminate Captain Boutin, while almost simultaneously *promoting* Patrick Egloff to Fire Chief is one of the more egregious examples of disparate treatment that I have encountered during my decade and a half tenure on the Civil Service Commission.

While they *accepted* the investigator’s findings and conclusions to justify their decision to terminate Boutin, the Westfield Fire Commission *rejected* the same investigator’s findings and conclusions regarding Patrick Egloff. Specifically, McDonald found in relevant part that:

“For all of the ... reasons detailed in this report, I do not believe Deputy Egloff should be promoted to Chief. I recommend he be sent for immediate training including, but not limited to Sexual Harassment Training, Personnel management Training and Anger Management. If Deputy Egloff corrects his behavior, there is no reason why he should not remain a Deputy and re-apply for the Chiefs position the next time there is an opening”

Significant portions of Fire Commissioner Siegel’s testimony, listed below, illustrate the degree of disparate treatment that existed here.

Counsel: Okay, and the fact that Patrick Egloff had assaulted [Ms. N] was an undisputed fact, was it not?

Siegel: Yeah, I believe that’s true.

...

Commissioner: ... Are you aware that Deputy Chief Egloff allegedly made crude comments that he was under the desk of ... the Fire Chief, performing oral sex on her?

Siegel: I do recall that.

Commissioner: ... Are you aware of any statements by Rebecca Boutin that Deputy Egloff grabbed her ponytail?

Siegel: I do recall that.

Commissioner: ... Are you also aware of any allegations that Deputy Chief Egloff blew up emotionally, etc. went on a tirade ... ?

Siegel: Yeah, I do recall reading it.

Commissioner: ... Why did you not discipline ... Deputy Chief Egloff?

Siegel: In regard to the blowing up issue, I believe it was a little over the top but I do not believe it reached the level of discipline. In regard to pulling the pony tail, I mean, it’s an allegation but I was

very surprised that any kind of unwanted touching of any kind can be considered an assault and it was not reported formally or otherwise, so I think it's probably horseplay, for a lack of a better word, not appropriate, but I don't think it rose to the level of discipline. I think that answers your question.

Commissioner: Well, there's a couple more things in there. We have the Deputy Fire Chief apparently acknowledging that he made crude comments about performing oral sex on the female Fire Chief. How can that not warrant discipline?

Siegel: No, I do not believe that would warrant discipline.

Commissioner: Okay. How about the admitted misconduct about groping ... a female citizen while in uniform? Does that not warrant discipline?

Siegel: It might have, but my understanding is that [Ms. N] ... had spoken with Chief Egloff and in some way or another had satisfied herself, she had no desire to press any other charges. Perhaps it would have been appropriate to discipline him for that, but we chose not to.

Commissioner: Because?

Siegel: Primarily because we feel he was appointed commissioner, Fire Chief rather, and we were satisfied that he had assumed responsibility for a previous action and was prepared to change some of the ways he was doing with his people.

...

Commissioner: ... Tell me why it's not disparate treatment for there to be no discipline against [Egloff] and there's to be discipline against the Appellants ...

Siegel: Well, mainly because the Appellants' behavior involved naming other parties in an attempt to discredit and defame and prevent the appointment of Deputy Chief Egloff to Chief, whereas the others weren't, if you will, one-on-one type situations that either to my mind, had been resolved in some way, had credibility issues or it wasn't the level of discipline.

The main reason it is difficult to discern this inaccurate and sometime circular testimony is clear: there simply is no rational explanation for the Fire Commission's decision to terminate Captain Boutin, while taking no disciplinary action, and actually promoting, Patrick Egloff to Fire Chief.

For all of these reasons, a modification of the penalty against Captain Boutin is warranted. Her termination shall be modified from termination to a thirty (30)-day suspension.

Relief

The Westfield Fire Commission has not shown, by a preponderance of the evidence, that there was just cause for terminating the Appellants from their employment.

As referenced above, G.L. c. 31, § 43 states:

“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.” (emphasis added)

Therefore, the Appellants shall each be returned to their positions in the Westfield Fire Department without loss of compensation or other rights.¹¹

Further, the Appellants shall be entitled to all reimbursements required under G.L. c. 31, § 45 which states that:

“A tenured employee who has incurred expense in defending himself against an unwarranted discharge, removal, suspension, laying off, transfer, lowering in rank or compensation, or abolition of his position and who has engaged an attorney for such defense shall be reimbursed for such expense, but not to exceed two hundred dollars for attorney fees for each of the following: (1) a hearing by the appointing authority; (2) a hearing pursuant to section forty-two or forty-three; (3) a judicial review pursuant to section forty-four; and not to exceed one hundred dollars for each of the following: (1) summons of witnesses; (2) cost of stenographic transcript; (3) any other necessary expense incurred in such defense.

Any person seeking such reimbursement shall file with his appointing authority a written application therefor within thirty days after final disposition of his case. The appointing authority shall, within thirty days after receipt of such application, pay such reimbursement from the same

¹¹ I did not overlook the fact that Kennedy, effective one day after his termination retired from the Westfield Fire Department. Kennedy still has standing to appeal his termination even though he retired in order to receive benefits while pursuing his appeal. See Silvia v. Dep't of Correction, 20 MCSR 409 (2007).

source as that from which the salary of the person seeking the reimbursement is paid, but only upon receipt of satisfactory proof that such expenses were actually incurred for the purposes set forth in this section.”

Additional Relief warranted under G.L. c. 31. § 2(a) and Chapter 310 of the Acts of 1993

While Section 43 of the civil service law compels the reinstatement of all three Appellants, without loss of compensation or other benefits, this remedy, standing alone, would force the Appellants to return to a workplace in which their safety and well-being would be jeopardized for the following reasons. First, I credit the testimony of the Appellants that they have been subject to retaliatory actions including threats, theft of equipment and gear; and the real possibility that the actions of other firefighters at a training session resulted in serious injury to one of the Appellants. Second, the Appellants would be returning to a workplace headed by Patrick Egloff, whose own alleged behavior was the actual impetus for what occurred here. Third, any requests for intervention to the Fire Commission to prevent further retaliation would likely be futile, given the commissioners’ past and ongoing failure to ensure a safe work environment – ignoring even the undisputed behavior of Egloff at the St. Patrick’s Day Parade and deeming a male aggressively pulling the ponytail of a female subordinate to be nothing more than “horseplay”.

For these reasons, pursuant to its authority under Section 2(a) of Chapter 31 and Chapter 310 of the Acts of 1993¹², the Commission hereby opens an investigation into actions necessary to

¹² Chapter 310 of the Acts of 1993 states:

If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

ensure a safe working environment for the Appellants. Mandatory actions by the Westfield Fire Commission shall include, but not be limited to:

- A. Appropriate disciplinary action against Patrick Egloff for his admitted misconduct.
- B. Completion of a fair, objective, unbiased, independent investigation regarding any allegations of disputed misconduct by Patrick Egloff, followed by the imposition of discipline for any proven misconduct.
- C. Development and implementation of a comprehensive program to prevent and address sexual harassment in the Westfield Fire Department, including required sexual harassment training by a qualified outside expert to be completed by all WFD personnel and all Westfield Fire Commissioners.

Until these actions are taken to ensure the safety of the Appellants, any request by the Appellants to be placed on paid administrative leave shall be allowed by the Fire Commission.

SO ORDERED.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Camuso, Stein and Tivnan, Commissioners) on May 21, 2021.

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:
Maurice M. Cahillane, Esq. (for Appellants)
Timothy M. Netkovick, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
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KYLE MILTIMORE,
REBECCA BOUTIN &
DAVID KENNEDY,
Appellants

D1-19-270 (Miltimore)
D1-19-271 (Boutin)
D1-19-272 (Kennedy)

v.

WESTFIELD FIRE
COMMISSION,
Respondent

CONCURRING OPINION OF COMMISSIONER ITTLEMAN

While I concur with the majority's opinion, I respectfully submit that Ms. Boutin's modified discipline should be far less than 30 days. As was established by a preponderance of the evidence in this decision, Ms. Boutin told at least two (2) people that then-Deputy Fire Chief Egloff was going to be arrested for rape when there was no basis for that statement. Ms. Boutin's comments in that regard were wholly inappropriate and inexcusable, warranting suitable discipline. However, prior to making those comments, Ms. Boutin was also a victim of Chief Egloff's reprehensible conduct, which was undoubtedly a cause of the stress for which she sought and obtained leave. In Town of Brookline v Alston and Civil Service Commission, 487 Mass. 278 (2021), the Supreme Judicial Court recently affirmed this Commission's decision finding that Brookline's decision to fire Mr. Alston was the result of its own inappropriate actions after a superior member of the Brookline Fire Department used a racist epithet on a voicemail message received by Mr. Alston. So too here, given the stress that now-Chief Egloff's

conduct caused Ms. Boutin prior to her making the inappropriate comments about him, her discipline should be far less than a 30-day suspension as a matter of equity.

/s/ Cynthia A. Ittleman
May 21, 2021