COMMONWEALTH OF MASSACHUSETS

BEFORE ARBITRATOR MARY ELLEN SHEA

In the matter of the arbitration between:	*
	*
TOWN OF MARBLEHEAD	*
-and-	*
CHRISTOPHER GALLO	*
	*

INTRODUCTION

A demand for arbitration was filed by Christopher Gallo pursuant to the parties' collective bargaining agreement. The parties jointly selected Mary Ellen Shea to act as single neutral arbitrator in the matter. Hearings were conducted on June 11, August 7, and September 26, 2024, in Marblehead, Massachusetts. By agreement of the parties, Arbitrator Deb Kolodny observed the hearings.

The Town of Marblehead (Town) was represented by Attorney Kate Feodoroff and Attorney Jane Medeiro Friedman. Appearing for the Town were Sergeant Sean Brady; Detective Theresa Gay Dulong; and Chief of Police, Dennis King. Also in attendance was Thatcher Kezer.

Christopher Gallo was represented by Attorney Gary G. Nolan. Christopher Gallo, the Grievant, and Officer Neil Comeau appeared and testified.

The parties submitted post-hearing briefs at which time the record was closed.

THE ISSUES

The parties stipulated to the following statement of the issues to be decided:

> Whether the Town had just cause to suspend Officer Christopher Gallo for 30 days in connection with its April 19, 2022, written notice of suspension; if not what shall be the remedy?
>
> Whether the Town had just cause to terminate Officer Christopher Gallo's employment in connection with its August 23, 2021, written notice of suspension; if not what shall be the remedy?

RELEVANT CONTRACT PROVISIONS

The parties' collective bargaining agreement contains the following pertinent provisions:

ARTICLE 2
MANAGEMENT RIGHTS

The Town retains the right to….
1. discipline or discharge for just cause…

ARTICLE 5
GRIEVANCE AND ARBITRATION PROCEDURES

STEP 3. …present said grievance in writing to the Board of Selectmen [who] shall meet …and render its decision thereon within ten (10) days after said meeting.

Suspension by the Chief
Subject to and in accordance with the provisions of M.G.L. Chapter 31, Section 41, the employee may appeal a suspension of the Chief to the Board of Selectmen and have a hearing before the Board or the Board's designee.

Action by the Board of Selectmen
An employee who feels aggrieved by a decision of the Board of Selectmen…may…pursue such employee's civil service remedies….In the alternative, the employee may request to have the Union appeal the decision…to arbitration…

DEPARTMENT RULES AND REGULATIONS

RULE 4.02
CONDUCT UNBECOMING AN OFFICER

Officers shall not commit any specific act or acts of immoral, improper, unlawful, disorderly, or intemperate conduct, whether on or off duty, which reflects discredit or reflects unfavorably upon the officer, upon other officers or upon the police department. Officers shall conduct themselves at all times, both on and off duty in such a manner as to reflect most favorably on the department and its members.

Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continuous a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members.

Conduct unbecoming an officer shall also include off-duty conduct where there is a nexus or connection between the act or acts committed by the officer and that individuals continued fitness or ability to effectively perform his or her required duties and responsibilities. Other factors include the impact or adverse effect such conduct may have on the operation, morale, integrity, reputation or effectiveness of

the department and ability of the officers not involved said act to effectively perform their required duties and responsibilities.

RULE 10.1 (f)
PROFESSIONAL IMAGE

Officers shall not act in a manner, which is not consistent with the image of a professional police officer, which shall include, but not necessarily limited to:

***

f. Taking excessively long meal breaks or refreshment break;

***

RULE 10.2
DEVOTION TO DUTY

Officers, while on duty, shall devote their full-time and attention to the service of the department and to the citizens of the community. They shall remain alert at all times while on duty. Recreational reading, watching television, or movies, playing games, using computers for personal or recreational purposes, and/or any other similar type activities, which would tend to detract from the proper performance of duty will not be permitted while on duty.

***

RULE 10.10
COOPERATION WITH INVESTIGATIONS

Officers shall answer questions truthfully, respond to lawful orders, and render material and relevant statements, in an internal department investigation when such orders, questions and statements are directly related to job responsibilities or fitness for duty. Nothing in the Section shall be contradictory of one's federal or state constitutional rights.

RULE 13.2
FALSIFYING RECORDS

Officers shall not knowingly enter or caused to be entered upon a police report or a police record, any inaccurate, false or improper information.

RULE 14.7
OFF DUTY USE OF ALCOHOL

Officers shall not use alcoholic beverages off duty to the extent that their conduct is obnoxious or offensive and discrete them or the department.

***

The two notices of suspension referenced in The Issues (above) are included here for reference:

April 19, 2022
To: Officer Christopher Gallo
From: Chief Dennis King
Subject: Marblehead Police Department Internal Investigation of I.G. Time Fraud Claims

On May 11, 2021, the Chief's office was notified by the Commonwealth of Massachusetts Office of the Inspector General (I.G.) that their office received an anonymous complaint regarding a member of the Marblehead Police Department. On June 11, 2021, the I.G. office provided a summary of their findings. Based on those initial findings, identified as time fraud, you were put on paid administrative leave, then suspended by then Chief Robert Picariello for five days. Additionally, the Board of Selectmen were provided the I.G.'s findings and asked for further determination if additional discipline should be imposed. I ordered the Marblehead Police Department independent investigation into this matter on February 7, 2022, to examine the evidence provided by the I.G., and determine if additional evidence that time fraud existed, and if any policies, procedures, rules, or regulations of the department were violated.

I have determined the violations you committed justify a five-day suspension, accompanied by a recommendation for the Board of Selectmen to have a hearing to review the investigation and potentially impose, greater discipline, action, up to and including termination. You will continue to be on administrative leave with pay until further notice.

Sergeant, Detective Sean Brady conducted the investigation, which I found to be detailed and comprehensive. Additionally, I agree with his findings that includes facts that support violations of several rules and regulations as described below.

Findings of Detective Sergeant Brady/Basis of suspension:

***

Officer Gallo admitted to taking breaks at his home while he was working as a patrol officer. The breaks were by his own statements, possibly up to an hour. The breaks and home visits were anywhere from 1 to 7 times during the shift. As a full-time Marblehead Police Officer, this showed poor judgment and reflected poorly on the reputation of the department as a whole.

Additionally, the I.G.'s report found that the evidence in its possession demonstrates that "Officer Gallo has on multiple occasions, remained at his residence in excess of an hour during a patrol shift. The amount of time he remained at his home exceeds what would be allowed for a meal break."

***

Officer Gallo admitted to taking breaks of up to an hour at his home while on duty. Based on the evidence provided, it is more likely than not on the nights

there were multiple photographs, Officer Gallo arrived at his home and did not leave the residence. On the occasions that Officer Gallo received a call, he responded to that call from his residence and then returned to his residence after the call was handled.

***.

As recommended by the I.G.'s office, this investigation also was ordered to determine if time fraud was committed. I have discussed the facts of these allegations with the Essex County District Attorney's Office and will share with them the outcome of our investigation. I do not believe the evidence supports criminal charges related to time fraud, but more appropriately should be sanctioned under department violations as outlined above.

In accordance with MGL Chapter 31, sections 41–45 (attached), you have the right to appeal this decision within 48 hours of receipt of this letter by filing a written request for a hearing on the question of whether there was just caused for the suspension.

Employer Exhibit O

August 23, 2021
To: Officer Christopher Gallo
From: Chief Dennis King
Subject: Notice of Suspension without pay

Pursuant to Mass. General Laws Chapter 31, section 41, I am suspending you from duty with the Marblehead Police Department without pay for a period of five (5) days. The suspension will be served from Tuesday, August 24 through Saturday, August 28, 2021. At the conclusion of this suspension, you will continue to be on administrative leave with pay until further notice. During this suspension, you will not be able to work as a police officer in any manner. Furthermore, I am forwarding my findings to the Board of Selectman for their consideration, if further disciplinary action up to an including termination should be imposed.

<u>The specific reason for this suspension is as follows:</u>

This discipline is pursuant to an investigation conducted by the Marblehead Police Department as it relates to an incident which occurred at your residence in Marblehead into allegations of domestic abuse on the night of July 26th, 2021…

Based on the investigative report provided to me by Sergeant Brady, and the separate reports created by Detective Gay, there is no evidence that you assaulted the female party as alleged. However, I do find that you violated several Marblehead Police Department rules and regulations by your actions on the day of the incident. Each violation is outlined below with the facts to support such from the investigation.

RULE 4.02, CONDUCT UNBECOMING AN OFFICER

Your decision to engage in activities with a person you know to suffer from a

substance use disorder that involves the substance in question, alcohol, with your children present, resulting in a violent, tumultuous incident at your residence is conduct unbecoming an officer. The police department you work for responded to a call for service where it was alleged to a dispatcher, and later responding officers that you assaulted your girlfriend. Additionally, a 51A was filed, due to this incident, where both your daughters were subject to emotional abuse by the female involved and the circumstances of the incident itself you partly created. Your actions affected your children's well-being and brought discredit to the police department.

Conduct unbecoming an officer shall include that which tends to indicate that the officer is unable or unfit to continue as a member of the department, or tends to impair the operation, morale, integrity, reputation or effectiveness of the department or its members.

Your decision to enable someone you know has a problem with alcohol to get to the point where that person loses control, becomes erratic, unpredictable, violent and disorderly, is conduct unbecoming and questions your fitness to be a police officer,

Specifically, your decision-making ability when faced with an individual whom you know becomes uncontrollable upon consuming alcohol; your decision to expose this person to your children while under the influence of alcohol; your decision to drink alcohol with this person and believe that “she was all right' until confronted by your teenage daughter; your decision to allow this person to operate a boat with your daughter in it while knowing that she was drinking alcohol and possibly on anti-alcohol medication; your decision to drive a boat, at night miles away to Gloucester, with a person you know to abuse alcohol and is unpredictable, to consume more alcohol; find finally to bring this person back to your residence and expose your children to her intoxicated and erratic behavior. You state several times to Sgt. Brady the female party seemed all right, yet upon returning home your daughters identify her as extremely intoxicated. Your inability to recognize the seriousness of the events leading up to the calling of the police is deeply concerning and I find you are not being truthful so as to diminish the seriousness of the situation.

Conduct unbecoming an officer shall also include off-duty conduct where there is a *nexus* or connection between the act or acts committed by the officer and that individual‘s continued fitness or ability to effectively perform his or her required duties and responsibilities. Other factors include the impact or adverse effect said conduct may have on the operation, morale, integrity, reputation or effectiveness of the department and ability of the officers not involved in said act to effectively perform their required duties and responsibilities.

As the aforementioned actions described affects the integrity, reputation and effectiveness of the department, I question your ability to effectively perform your duties and responsibilities as an officer.

RULE 10.10, COOPERATION WITH INVESTIGATIONS

You failed to fully cooperate with the investigation by omitting relevant facts that were brought to light by eye witnesses also present during the days event and incident at your residence. You were given notice of your obligation to be [sic] cooperate fully by the reading of the interview's ground rules by Sgt. Brady, "You are required to answer all questions asked of you honestly and truthfully and to the best of your knowledge, failure to do will result in disciplinary action up to and including dismissal. The intentional making of false statements or reports and/or the intentional omission of significant of pertinent facts is considered just cause to prove this violation."

Evidence supports the fact alcohol consumption was consistent throughout the day, a primary cause of the incident at your residence. I find inconsistencies that infer you omitted relevant facts during your interview. Specifically, you claim to have made the female party take Antabuse before going out. This is not plausible knowing the effects of Antabuse when consuming alcohol. You claim to have no alcohol o your boat, in an attempt to keep alcohol from the female party but were observed by a witness drinking with her on another boat. You stated you had no knowledge of where the female party went for a time in Gloucester, dismissing the possibility that she was getting further impaired. I feel you were not truthful, by omission of relevant facts, to mask your enabling of this situation to reach the point that it did. Also, your account of how your two daughters got home from the day boating trip was inconsistent with theirs. You stated your daughter drove your jeep home and returned to pick you up when you returned from Gloucester. Both of your daughters stated they walked home, and you returned home from boating on your own. These differing accounts puts into question your truthfulness when responding to Sgt Brady, and/or your own faculties. You have a selective memory, full of omissions and inconsistencies.

RULE 13.2, FALSIFYING RECORDS

I assigned Detective Sergeant Sean Brady to conduct an internal affairs investigation, tasked with providing me a report of his finding of facts and recommendations. He conducted an interview with you on August 12, 2021, at the station, of which his findings were reduced to a report. Your omissions, and inconsistent account of the day's events during your interview, amount to falsifying an official record.

RULE 14.7, OFF DUTY USE OF ALCOHOL

During this incident you consumed alcohol, and it effected your decision-making ability. Your inability to recognize the female party's incapacity due to her own alcohol consumption is deeply concerning io me and evidence supports that this could haye been a result of your own consumption.

RULE 11.11, CRIMINAL CONDUCT

Attention: Summary of the Law

***

Evidence does not support a crime was committed under the criminal court standard, or the discipline standard (which is much lower).
However, your interactions with the female party, and her statement alleging domestic abuse, both during, and after the incident, is concerning and puts into question your reputation, and that of the department's. This has become a pattern between yourself and the female party, of which involves violence and disorderly behavior.

In accordance with MGL Chapter 31, sections 41–45 (attached), you have the right to appeal this decision within 48 hours of receipt of this letter by filing a written request for a hearing on the question of whether there was just cause for the suspension.

Employer Exhibit W

TIMELINES

The events related to each of the two disciplinary actions did not unfold sequentially. For reference and clarity, separate timelines are provided for each issue, listing key facts related to each charge against Officer Gallo. Also included is a timeline of events that occurred before Officer Gallo was first disciplined, which he asserts should be considered as context.

Suspension for alleged time fraud

- On June 9, 2021, Chief Picariello received a letter from the Office of the Inspector General (Employer Exhibit E), indicating an anonymous complaint of alleged time fraud by Officer Gallo had been received along with photographs of Gallo's cruiser parked at his home during hours he was on duty.

- On June 16, 2021, Chief Picariello suspended Gallo for five days without pay to be followed by administrative leave while the Board of Selectmen considered additional discipline (Employer Exhibits I and J).

- On June 18, 2021, Attorney Nolan appealed the five-day suspension on Officer Gallo's behalf (Employer Exhibit K).

- On July 2, 2021, Chief Picariello retired and was replaced by Dennis King.

- On February 7, 2022, Chief King directed Sgt. Brady to conduct an internal investigation into the June 9, 2021, report from the Inspector General (Employer Exhibit L).

- On February 18, 2022, Sgt. Brady interviewed Officer Gallo with Attorney Gay Nolan present. The interview was recorded (Employer Exhibit M).

- On 3/11/22, Sgt. Brady submitted a report summarizing the investigation and his conclusion that Officer Gallo violated rules regarding Conduct Unbecoming an Officer, Professional Image, and Devotion to Duty (Employer Exhibit N).

- On April 18, 2022, Attorney Nolan filed a grievance on Gallo's behalf in which he alleged that Officer Gallo had been kept improperly on administrative leave for almost one year and that the Town failed to comply with its rules and policies requiring an internal investigation be conducted (Union Exhibit #17).

- On April 19, 2022, the Chief issued a 5-day suspension in connection with the OIG report alleging time fraud (Employer Exhibit O).

- Attorney Nolan filed an appeal the same day on Officer Gallo's behalf noting that Gallo had already been suspended for 5 days in June 2021 by former Chief Picariello (Employer Exhibit P).

- On April 20, 2022, the Chief wrote to the Board of Selectmen urging they consider additional discipline beyond the five days he had imposed (Employer Exhibit Q).

- On July 20, 2022, Attorney Nolan wrote to the Town Administrator, Thatcher Kezer, on behalf of Officer Gallo asserting certain claims pursuant to GL c. 258 and GL c. 149, Sec. 185, including the claim that the Town had kept Officer Gallo on administrative leave for more than a full year without responding to "multiple appeals, grievances and requests for hearings" (Union Exhibit #22).

- A two-day disciplinary hearing was conducted on March 29 and May 16, 2023. The hearing officer was Town Administrator Kezer.

- Attorneys for Officer Gallo and the Town filed post-hearing memos in September 2023 (Employer Attachments 1 and 2).

- On February 4, 2024, Mr. Kezer issued a report with findings and recommended the five-day suspension be upheld and that an additional suspension of 30 days be imposed (Employer Attachment D).

- On February 9, 2024, Town Administrator Thatcher Kezer sent a Notice of Contemplated Discipline (Employer Attachment C).

- A hearing before the Board of Selectmen was conducted on February 16, 2024.

- On February 23, 2024, Officer Gallo was notified that the Board of Selectmen adopted the Hearing Officer's recommendation and upheld the 5-day suspension and imposed an additional 30- day suspension of 30 (Employer Attachment A).

- An appeal to arbitration was sent on Officer Gallo's behalf (Employer Attachment B).

July 26, 2021, incident

- On July 26, 2021, the Marblehead Police Department responded to a 911 call from Gallo's girlfriend, alleging domestic violence at the home. The responding officers included Officer Andrew DiMare, assisted by Officer Sean Sweeney, Jr., as well as Officer Jason McDonald and Lt. Michael Everett.

- Children were present at the time of the alleged incident, and so a 51A was filed with the Department of Children and Families. The following day, Detective Theresa Dulong was assigned to interview family member witnesses.

- On July 29, 2021, Chief King ordered Sgt, Brady to investigate to "determine if there were any violations of the Rules and Regulations or Policies and Procedures of the Marblehead Police Department or laws of the Commonwealth" (Employer Exhibit T).

- On August 12, 2021, Sgt. Brady conducted an Internal Affairs interview with Officer Gallo, which was recorded (Employer Exhibit U).

- The same day, Sgt. Brady submitted his report to Chief King (Employer Exhibit V).

- On August 23, 2021, Chief King notified Gallo he was being suspended for five days without pay (Employer Exhibit W).

- On the same day, Chief King wrote to the Board of Selectmen urging they consider additional discipline beyond the five days he imposed (Employer Exhibit X).

- On August 25, 2021, Attorney Nolan filed an appeal of the suspension decision on Officer Gallo's behalf (Employer Exhibit Y).

- On July 20, 2022, Attorney Nolan wrote to the Town Administrator, Thatcher Kezer, on behalf of Officer Gallo asserting certain claims pursuant to GL c. 258 and GL c. 149, Sec. 185 (Union Exhibit #22).

- A two-day hearing was conducted on March 29 and May 16, 2023. The hearing officer was Town Administrator Thatcher Kezer.

- Attorneys for Officer Gallo and the Town filed post-hearing memoranda in September 2023 (Employer Attachments 1 and 2).

- On February 4, 2024, Mr. Kezer issued his findings and recommended the five-day suspension be upheld and that Officer Gallo's employment be terminated for the July 26, 2021, incident (Employer Attachment D).

- On February 9, 2024, Town Administrator Thatcher Kezer sent a Notice of Contemplated Discipline (Employer Attachment C).

- A hearing before the Board of Selectmen was conducted on February 16, 2024.

- On February 23, 2024, Officer Gallo was notified the Board of Selectmen denied his appeal and adopted the Hearing Officer's recommendation that he be terminated (Employer Attachment A).

- On February 16, 2024, an appeal to arbitration was filed on Officer Gallo's behalf (Employer Attachment B).

Preceding events

- On August 7, 2020, Chief Picariello suspended Officer Gallo for allegedly using excessive force in May 2020, when he and Officer Tufts responded to an incident.

- The charge of excessive force was resolved after a review of the officers' body camera footage revealed that Tufts, not Gallo, had a physical interaction with the citizen. "After a full review of this matter, Officer Gallo's use of excessive force and his being untruthful were not substantiated and, therefore, he is exonerated from such allegations" (Union Exhibit 6).

- Officer Gallo learned that an officer he knew had observed Officer Tufts scratch a swastika into the paint of an officer's car.

- Officer Gallo relayed the information to Union Attorney Gary Nolan who, in turn, relayed the information by email on November 13, 2020, to a Town Attorney.

- On or about December 14, 2020, Tufts resigned from the Marblehead Police Department.

- Tufts' resignation and the swastika incident were reported by several news outlets on or about December 16, 2020.

BACKGROUND

Christopher Gallo had been employed by the Marblehead Police Department for 27 years when he was terminated on February 23, 2024. Officer Gallo was the most senior patrol officer in the Department at the time of his termination. This case addresses two disciplinary actions: 1) a 30-day suspension for alleged time fraud and 2) his termination from employment for alleged rules violations related to an incident at the Grievant's home.

The time fraud allegedly occurred between December 2020 and April 2021 and was reported to the Office of the Inspector General (OIG). The Inspector General wrote to Chief Picariello on June 9, 2021, summarizing its review of the allegations of time fraud, which included cell phone photographs purportedly showing Officer Gallo's cruiser parked at his home while he was on duty. On June 16, 2021, the Chief suspended Officer Gallo for five days and placed him on administrative leave pending further action.[1] Officer Gallo appealed the suspension on June 21, 2021.

On July 2, 2021, Chief Picariello retired and was replaced by Chief Dennis King.

Then, on July 26, 2021, while Officer Gallo was still on administrative leave pending an investigation of the alleged time fraud, the Marblehead Police Department received a 911 call from Officer Gallo's girlfriend saying he was hurting her, the children and the dog. Several officers responded to Officer Gallo's home. The officers quickly determined that the report of domestic violence was false. The girlfriend recanted the allegation and the responding officers' interviews of the witnesses confirmed that Officer Gallo had not been violent, and it was the girlfriend who became angry and chased Gallo when he asked her to leave the house because she was so intoxicated.

[1] The Marblehead Police Chief may impose up to 5 days suspension. Discipline beyond a 5-day suspension is decided by the Board Selectmen.

Excerpts of an incident report filed by the officers who responded on July 27, 2021, (Officers McDonald, DiMare, and Sweeney, and Lt. Everett) follow:

> McDonald: "…the [girlfriend] then said she wanted to recant everything that she said earlier and that nothing happened."
>
> DiMare: "Gallo appeared to have been drinking this evening, however, did not appear to be intoxicated…After I asked [girlfriend] to be specific, she began to say how he strangled her and grabbed her … but then all of a sudden stated, "never mind" and stated Gallo is a "great guy" and would never do anything to hurt her. … I did not observe any marks or scratches on her person. I told [girlfriend] that I was confused about what she had said to a 911 dispatcher, she stated it was not true and that she made it up…Again I clarified with her…and confirmed she was recanting her statements about being assaulted…Throughout my interaction with her, she was extremely erratic, her demeanor would fluctuate between calm and collected …to pacing back and forth flailing her arms and yelling…I found it very hard to find truth in [the girlfriends'] initial statement. [The older daughter's] statement seemed to be the most accurate depiction of the events…."
>
> Employer Exhibit R

Because children were present during the incident (Gallo's daughters ages 15 and 17 and the girlfriend's younger son aged 9), a 51 A was filed with the Department of Children and Families (DCF) on July 26, 2021.[2] The next day, Chief King ordered Detective Dulong to follow up with DCF and to interview the witnesses. According to her report, Detective Dulong interviewed Officer Gallo's two teenage daughters. She reached out multiple times to Gallo's girlfriend for an interview, but she never responded. Detective Dulong also spoke with the girlfriend's mother, who had not witnessed the incident.[3] Detective Dulong completed her report for the Chief on or about August 2, 2021.

On July 29, 2021, Chief King ordered Sgt. Brady to conduct an Internal Affairs investigation "into the facts and circumstances surrounding this domestic incident…and determine if there were any violations of the Rules and Regulations or Policies and Procedures of the

[2] A 51A is a form titled, "Report of Children Alleged to be Suffering from Abuse or Neglect."
[3] When the girlfriend was told by the police she needed to leave Gallo's house, her mother came to get her. The mother told Detective Dulong that her daughter was very intoxicated that night and "at times didn't even know where she was" (Employer Exhibit S).

Marblehead Police Department or laws of the Commonwealth" (Employer Exhibit T). Sgt. Brady submitted his report to the Chief on August 12, 2021 (Employer Exhibit V).

Sgt. Brady did not have training or experience in preparing an IA report. His report to the Chief was a summary of his interview with Officer Gallo and did not include findings. The Chief testified that rather than return the report to Brady, he decided to review the evidence himself to determine whether any rules or regulations had been violated.

The Chief cleared Gallo of any domestic abuse or violence but advised that he was being suspended for alleged rules violations related to the July 29, 2021, incident. The suspension would be followed by administrative leave while the Board of Selectmen decided whether to impose additional discipline. The Chief's suspension notice stated, "…there is no evidence that you assaulted the female party as alleged, [but] I do find that you violated several Marblehead Police Department Rules and Regulations by your actions on the day of the incident." The suspension notice alleged that Officer Gallo violated department rules by enabling an alcoholic, by exposing his children to the alcoholic; and by bringing discredit upon the department.

On August 25, 2021, Attorney Nolan appealed the Chief's decision to suspend Officer Gallo. Thereafter, the Town did not act on the appeal or the alleged rules violations until the spring of 2023, when a disciplinary hearing was conducted on March 29 and May 16 to address both charges (alleged time fraud and the July 26, 2021, incident).

In the interim, on February 7, 2022, Chief King directed Sgt. Brady to conduct another investigation, this time into the earlier charge of time fraud. Sgt. Brady interviewed Officer Gallo and, on February 23, 2022, submitted a report including findings that Gallo violated departmental rules by taking excessively long breaks at his home while on duty (Employer Exhibit N).

On April 19, 2022, Chief King suspended Officer Gallo for five days – this time for the alleged time fraud (Employer Exhibit O). He also wrote to the Board of Selectmen urging that they

impose additional discipline. The same day, Officer Gallo filed an appeal noting that Chief Picariello had previously suspended him for five days for the same charge and had already placed him on administrative leave pending further action by the Selectmen (Employer Exhibit P). Thereafter, Officer Gallo remained on administrative leave and the Town took no action to address his appeals or either of the charges for 18 months.

On February 9, 2024, Gallo was sent a notice that a disciplinary hearing would be scheduled to address both cases. A two-day hearing was conducted on March 29 and May 16, 2023, before Town Manager Thatcher Kezer, acting as Hearing Officer. The Hearing Officer's report with findings and recommendations was issued nine months later on February 4, 2024. The Hearing Officer upheld the 5-day suspension for alleged time fraud and recommended the Board of Selectmen impose an additional 30-day suspension. The Hearing Officer also upheld the 5-day suspension for the alleged rules violations related to the July 29, 2021, incident and recommended the Board of Selectmen terminate Officer Gallo from employment (Employer Attachment D).

On February 23, 2024, Officer Gallo was notified that the Board of Selectmen decided to uphold the Hearing Officer's recommendations, and his employment was terminated the same day (Employer Attachment A).

Despite the parties' efforts, the matter remained unresolved and was submitted to arbitration in June 2024.

POSITIONS OF THE PARTIES

THE TOWN

The Town argues that it had just cause to suspend Christopher Gallo for 30 days in connection with its April 19, 2022, written notice of suspension and also had just cause to terminate Christopher Gallo's employment in connection with its August 23, 2021, written notice of suspension. According to the Town, Officer Gallo brought negative attention upon the

Marblehead Police Department and refused to accept any responsibility for his actions. Officer Gallo demonstrated a pattern of poor judgement, both on duty and off duty, resulting in Chief King's concern that Gallo was not suitable to serve as a Marblehead Police Officer.

First, over the course of several months, the evidence showed that Officer Gallo spent excessive periods of time at home while on duty. The anonymous complaint to the Inspector General's Office included photos showing Gallo's cruiser parked at his home while he was on duty. The Inspector General's office concluded:

> ….The evidence demonstrates that Officer Gallo has on multiple occasions, remained at his residence in excess of an hour during a patrol shift. The amount of time he remained at home exceeds what would be allowed for a meal break. There is no evidence he requested hours of being off duty. The office believes that further review is warranted to determine the extent to which Officer Gallo may have committed time fraud. Please inform the OIG within 30 days of what steps the Department is taking…
>
> Employer Exhibit E

Sgt. Brady compared the information from the OIG's office with the department's call logs and audio communications to confirm that Officer Gallo was on duty and not handling any calls during the same dates and times the complaint alleged he was at home. Officer Gallo knew that he was expected to devote his on-duty time and attention to patrolling the streets of Marblehead because Sgt. Brady had previously spoken to him about the issue.[4]

Rather than accept responsibility for his actions, Gallo claimed the anonymous complaint was made by Officer Tufts out of revenge and that the photos were inaccurate. Officer Gallo, however, offered no supporting evidence that the dates and times on the photos were not accurate. Gallo denied he was at home for extended periods of time, but the photographs contradict his claim because they show his cruiser in different positions in the driveway with different lighting and weather conditions over an extended period of time.

[4] Sgt. Brady testified that, at an earlier unspecified time, an officer complained that Officer Gallo was spending duty time at his mother's house after the officer found her garage door opener in the cruiser.

Chief King determined that Gallo's pattern of spending excessive amounts of time at his home while on duty, rather than patrolling the streets of Marblehead, violated Department Rule 4.01 Conduct Unbecoming an Officer; Department Rule 10.1(f) Professional Image; and Department Rule 10.2 Devotion to Duty.

At the arbitration hearing, Chief King testified that he reviewed the video of Gallo's recorded interview and read Sgt. Brady's report. Chief King noted that Officer Gallo did not deny being home on the alleged dates but disputed that he was home for the amounts of time alleged. Chief King also testified that, Officer Gallo's lengthy explanation about spending time at home doing online training was not credible because only one of the online training dates coincided with the many dates the photos showed he was at home while on duty. The Chief testified that he agreed with Sgt. Brady's findings that Gallo violated several Department Rules and Regulations. The Town concludes that testimony and evidence support its contention that there was just cause to impose the 30-day suspension in connection with the April 19, 2022, written notice of suspension.

Officer Gallo also failed to take any responsibility for his actions for the off-duty incident that occurred at his home, again blaming the events on everyone but himself. Officer Gallo acknowledged that, while his children were staying with him, his girlfriend was not supposed to drink but said she was an alcoholic and "there's nothing you can do." Even though he knew she had relapsed during a recent trip to Maine, he went ahead and planned a boat trip with her and his children. He became aware that his girlfriend was drinking during the outing. His children told him, and he admitted seeing her sneaking drinks. Despite the fact that he knew bad things occurred when she was drinking, Officer Gallo made no attempt to prevent her from continuing to drink or to get himself and his children out of the situation. In fact, he went so far as to buy her a beer while they were at a restaurant. When the situation did get out of hand, Officer Gallo took no responsibility adding, "with every fiber of my being I wish I hadn't asked her to leave."

The Town argues that the duty of a police officer to be truthful is one of their most serious obligations. For this reason, an appointing authority has just cause to discipline and/or terminate a police officer who repeatedly demonstrates a "willingness to fudge the truth," citing Falmouth v. Civil Service Comm'n., 61 Mass. App. Ct. 796, 801 (2004) citing City of Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 303-305, rev. Den., 428 Mass. 1102 (1997). The fact that a police officer has been disciplined for dishonesty must be disclosed through the mandatory criminal discovery process and may be used for the purposes of impeachment. Citing Comm. v. McFarlane, 202 N.E.3d 1273, 1283 (Mass. App. 2023), review granted in part, 210 N.E.3d 347 (Mass. 2023), and aff'd, 225 N.E.3d 812 (Mass. 2024) (internal citations omitted), the Town notes that the integrity and credibility of officers may become central issues in criminal matters in which they testify.

Chief King determined that Officer Gallo's record of prior discipline demonstrated that, despite concerted efforts by the department to correct his behavior, Gallo continued to violate the rules and regulations of the department, committing conduct unbecoming an officer and failing to devote sufficient effort to performing his duties. Specifically, Officer Gallo received 5 verbal warnings, 2 written reprimands, and was suspended a total of 8 days, in addition to being suspended another 6 days for incidents involving the same girlfriend.

As a result of his actions on July 26, 2021, Chief King found that Officer Gallo violated several Department Rules and Regulations including Rule 4.02 Conduct Unbecoming, Rule 10.10 Cooperation with Investigations, Rule 13.2 Falsifying Records, Rule 14.7 Off Duty Use of Alcohol. At the arbitration hearing, Chief King testified about each of his findings in detail.

The Chief testified that Officer Gallo knew that his girlfriend had a severe drinking problem and became aware that she was drinking alcohol during the boat trip with his children present. The Chief noted that while Gallo initially attempted to prevent her from drinking by making her take

Antabuse in the morning, he became aware of her drinking and enabled her when he bought her alcohol at a restaurant, which led to her being extremely intoxicated and led to the traumatic and violent incident involving the police that evening. Chief King testified it might have been "difficult to stop the [outing]," but Gallo made no attempt to even try to extricate himself or his children from the situation as it escalated.

After reviewing the factual findings of the incident, Chief King concluded that Officer Gallo's failure to prevent his girlfriend from drinking and, when that was not possible, his failure to extricate himself and the children from the situation led to his finding of misconduct by Gallo. The Chief testified,

> …I strongly believe that the decisions to enable all day led to that ending up being kind of the fuel for that fire at the end. And that's part of the decision-making that I'm talking about….They were all bad decisions and there were decisions that were made with foreseeable outcomes. Chris has been in a relationship with her for a long time. The girls had been around her for a long time. This was not a new thing. I believe that, again, knowing what your decisions are that led to this [is] what makes me question his fitness for duty….

Chief King found that the traumatic incident requiring a police response was fully foreseeable given Gallo's prior dealings with his girlfriend, which included an incident just weeks earlier when a family trip to Maine ended abruptly due to her drinking. The Chief considered Gallo's description of the girlfriend as "fine" or merely "goofy" to be an effort to minimize her condition. In doing so, Gallo omitted relevant but damaging facts which, for a police officer, is tantamount to untruthfulness. As a result of his actions on July 26, 2021, Chief King found that Officer Gallo violated several department rules and regulations.

More specifically, the Chief testified that Gallo exhibited poor decision making when he knew his girlfriend was drinking and did nothing to remove himself and the children from the situation, violating Rule 4.02 Conduct Unbecoming. The Chief found that Gallo was "not truthful by omission of relevant facts, to mask your enabling of this situation to reach the point that it did"

(Employer Exhibit W) in violation of Rule 10.10 Cooperation with Investigations. Chief King found these omissions also led to violations of Rule 13.2 Falsifying Records, because Gallo caused "to be entered upon police report or police record any inaccurate, false or improper information."

Finally, Chief King found that Gallo violated Rule 14.7 Off Duty Use of Alcohol, because "during the incident [he] consumed alcohol and it effected [sic] [his] decision-making ability… to recognize the female party's incapacity." The Town concludes that the testimony and evidence, coupled with a significant prior disciplinary record, establish that the Town had just cause to terminate Officer Gallo.

The Town argues that Gallo's due process claims are red herrings intended to distract from his proven misconduct. For example, Officer Gallo argued that he suffered duplicative discipline, but the record is clear that the first 5-day suspension issued by Chief Picariello was later reversed and Officer Gallo did not serve both 5-day suspensions nor did he suffer wage losses twice for the 5-day suspension related to the alleged time fraud.

The Town also argues that the record shows that the delay in getting to arbitration was for good cause. During the pendency of Gallo's cases, the Police Chief retired and was replaced by Chief King; the Town Administrator position was replaced three times, and Town Counsel was replaced. During that time, Officer Gallo remained on paid leave until the date of his termination.

In conclusion, the Town asserts there was just cause for the thirty-day suspension in connection with the April 19, 2022, notice, and there was just cause for the termination of employment in connection with the August 23, 2021, notice. The Town urges the arbitrator deny the grievance in its entirety.

CHRISTOPHER GALLO

Christopher Gallo argues the Town did not have just cause to discipline him in connection with either the April 19, 2022, suspension notice or the August 23, 2021, suspension notice.

According to Mr. Gallo, the Town has failed to establish each of Daugherty's seven tests of just cause.

While most cases that languish for years, do so for good reasons, Mr. Gallo argues there were none here. Gallo points out that he had been falsely accused of using excessive force by Officer Tufts who was liked by the administration. Eventually, Officer Gallo was cleared of the false accusation that he had used excessive force. But then after Gallo disclosed that Tufts had been the perpetrator of the "swastika incident," and was forced to resign, Tufts retaliated again, this time with false allegations of time fraud.

It was common knowledge that Tufts was angry with Gallo for reporting him and nearly everyone knew the "anonymous" complaint to the OIG was made by him. The department must have known that the new allegations could not be supported because the evidence had proven Tufts had made false accusations about Gallo before.

When Sgt. Brady was assigned to investigate the claims made to the OIG, he knew the cell phone picures could be altered to change the dates and times, but he was directed by Chief King not to question Tufts and not to analyze the photos. This directive of the Chief was not included in any reports or disciplinary notices. The Chief's directive was not revealed to the Grievant until the arbitration hearing. The Chief rationalized his directive, saying that state law meant the department could not contact a "whistleblower." Mr. Gallo contends the Chief's claim is not true and, in any event, the Whistleblower Law did not apply to Tufts.

Mr. Gallo argues the Town violated its own policies when it suspended Officer Gallo in June 2021, in connection with the OIG report because it failed to investigate the charges until eight months later in February 2022. In addition, Chief King hampered Sgt. Brady's ability to investigate by ordering that Brady not contact the officer suspected of making the false accusations.

Realizing they had evidentiary problems with the case, the Town proceeded to avoid

conducting the investigation; avoided holding a hearing; and repeatedly delayed the matter. The hearing was scheduled for March 2023, but prior to the hearing, Chief King released to the media, confidential, negative, and expunged information about Officer Gallo, resulting in the publication of negative stories about him just when he finally had an opportunity to be heard.

Mr. Gallo argues that the Town failed to comply with Gallo's contractual right to due process. Officer Gallo was issued suspensions on June 16, 2021, and August 23, 2021, which were promptly appealed. Under civil service law, GL c. 31, Sec. 41 (which is incorporated into the collective bargaining agreement), the Town had an obligation to hold a hearing within five (5) days of each appeal. The Town failed to give Gallo a hearing for two years.

During that time Gallo remained on administrative leave and was denied opportunities to earn overtime and detail pay; he was denied in-service training needed to maintain POST certification; and was subjected to negative media attention. The delay not only was a contractual violation but supports the inference that the Town intended to punish Gallo, while trying to avoid the appearance of retaliation.

Mr. Gallo argues the Town was not able to prove a rule violation because there was no rule against officers going home for breaks, and no requirement to notify the department when they do. Gallo admitted to going home, but denied he was ever home for more than the time allowed. The overnight shift is very quiet, and, during the pandemic, officers were urged to avoid unnecessary contact with people and to be more reactive than proactive. Sgt. Brady also confirmed that officers are allowed to go home for breaks (if they live in Marblehead) and that such breaks are not monitored and do not need to be reported. Gallo's occasional visits to his home while on duty were not inappropriate.

The photographs at issue were emailed screenshots. Town witnesses acknowledged that it is important to investigate whether an accusing witness is biased or has a motive to lie. Not only was

this not done, but the Chief also ordered Brady not to do it.

There is no question that the person suspected of sending the photographs to the OIG was biased and had a motive to lie about Officer Gallo. Tufts had falsely accused Gallo of excessive force and Gallo revealed him to be the guilty party in the "swastika incident," forcing his resignation.

The Town's Internal Affairs Policy requires that the department investigate an internal case with the same level of competency and professionalism as a criminal investigation. Sgt. Brady admitted that the Marblehead Police Department would not have handled a criminal investigation the way Gallo's investigation was handled.

The Town bears the burden of proving its allegations: Gallo has no such burden. The suspected source of the photos was not credible, and the investigation itself was not credible. The department's IA Policy required that an "investigation must be commenced immediately upon receipt of the complaint and must be completed within thirty (30) days," which was not done.

The investigation was deficient. Sgt. Brady did not interview other employees who worked the overnight shift with Gallo, never spoke to the shift supervisors, and never checked gas and mileage logs for Gallo's cruiser. Sgt. Brady did check the call log, but it was of limited value because it only tracks a fraction of an officer's actions while on duty. Sgt. Brady's investigation confirmed that Gallo never missed a call; that he was quick to respond to calls; and there were many instances when he was being proactive.

The fact that Sgt. Brady was prohibited from investigating whether bias and a motive to lie were factors in the complaint to the OIG, ignored the IA policy warning that, "Allegations of misconduct, even when unfounded, stigmatize the officer individually. Unfortunately, vindictive individuals know this and may file frivolous complaints to get back at officers whom they dislike."

Given this specific warning, the Town's undisclosed efforts to bury the accusing officer's involvement is alarming.

The Town did not have just cause for the second charge, essentially accusing Gallo of failing to prevent his alcoholic girlfriend from relapsing. The second investigation was also deficient. The resulting discipline was not based on the investigation conducted by Sgt. Brady and no one, including Gallo, was on notice that any of the alleged conduct might result in discipline. Detective Gay's and Sgt. Brady's investigations as well as the responding officers' reports all cleared Gallo of any wrongdoing.

The following examples demonstrate that the Town's treatment of Christopher Gallo represents the wrong way government should function.

- There were excessive procedural hearing delays violating Civil Service law and the collective bargaining agreement;
- The Town violated its own Internal Affairs Policy;
- The investigations were not reliable and there was tortious interference with both;
- Sgt. Brady's investigation cleared Gallo in the off duty boating incident, but Chief King made unsubstantiated and false findings to impose discipline;
- The lack of any investigation for about a year in the first case, violated the department's internal affairs policy;
- Chief King admitted that, months before Gallo's hearing, he knew that an allegation he made about untruthfulness (based on Detective Gay's report) was wrong, but he failed to correct the record until Detective Gay testified at arbitration that her report had been wrong. It is reasonable to infer that if this revelation was not made at arbitration, Chief King would have allowed the false accusation to stand;
- At hearing, Sgt. Brady and Chief King admitted that digital pictures could be altered, meaning they could not be relied upon as evidence in a court case.

Mr. Gallo urges the arbitrator consider the timing of events when evaluating Officer Gallo's claim of retaliation - a violation of the collective bargaining agreement. It is reasonable to infer that the actions taken against Gallo were retaliation for his having disclosed Tufts' involvement in the swastika incident. Gallo had been cleared of the earlier false allegation (excessive force) only to be subjected to more false charges by Tufts after Gallo reported his involvement in the swastika

incident, resulting in Tufts' forced resignation followed by widespread negative press for the Marblehead Police Department. Given the Town's actions with regard to Officer Gallo, it is reasonable to infer retaliation.

Mr. Gallo concludes the Town did not have just cause to suspend and terminate him for either charge and asks that the suspension and termination be reversed and that he be made whole for lost wages, overtime, and detail earnings, and other such relief deemed appropriate. In light of the due process violations, and the excessively long period of administrative leave, Gallo also asks that the make whole award include interest. Mr. Gallo asks that the arbitrator retain jurisdiction for purpose of resolving issues regarding the remedy.

DISCUSSION

The first question is whether the Town had just cause to suspend Christopher Gallo for 30 days in connection with its April 19, 2022, written notice of suspension. In a discipline case, the employer has the burden of proving the Grievant is guilty of the charges against them and that the discipline imposed is appropriate for the proven misconduct.

For the reasons discussed in greater detail below, I find the Town's testimony and evidence did not prove that Officer Gallo was guilty of time fraud/excessively long breaks as charged. For this reason, the Town did not have just cause to impose a 30-day suspension as discipline.

There is no question that the OIG report alleging time fraud raised suspicion about whether Officer Gallo - an officer with a prior disciplinary record - had engaged in serious misconduct. Adding to the concern, the department received the OIG report during a period of turmoil and negative publicity. The swastika incident had become public and Chief Picariello was about to retire. The combination of factors: suspicion of fraud, a less-than-stellar disciplinary record, and the need to limit further damage to the department's reputation, however, do not constitute proof of misconduct.

When the Town received the June 2021 referral from the OIG, Chief Picariello suspended Officer Gallo for five days, to be followed by an unspecified period of administrative leave (Employer Exhibits I). In the June 16, 2021, suspension notice, Chief Picariello relied on the OIG's "findings," rather than order an internal investigation, and he then referred the matter to the Board of Selectmen to determine whether further discipline should be imposed.[5]

Chief King replaced Chief Picariello on July 2, 2021. He testified that, prior to his appointment, he met with Picareillo and was brought up to speed about the OIG referral and Gallo's suspension. There was no testimony or evidence to explain why Chief King did not order the internal investigation of the alleged time fraud until 7 months later.

On February 7, 2022, Chief King directed Sgt. Brady to investigate the alleged time fraud and to "determine…if there were any violations of the Rules and Regulations, Policies and Procedures of the Marblehead Police Department, or laws of the Commonwealth" (Employer Exhibit L). Sgt. Brady's report of the investigation was submitted to the Chief on March 11, 2022.

On April 19, 2022, Chief King notified Officer Gallo that he would be suspended (again) for five days and would remain on administrative leave pending a decision by the Board of Selectmen about the possibility of additional discipline (Employer Exhibit O)[6]. Thereafter, the Town took no further action on this disciplinary matter or on any of Gallo's appeals (the April 18 and 19, 2022 grievances and a July 20, 2022, appeal) until a year later in March 2023 when Officer Gallo was first provided a hearing.

The Town's argument that the lengthy delays were for good cause because there had been multiple personnel changes is not persuasive. Chief King was appointed a month after the OIG

[5] The parties were unable to locate a complete version of the June 16, 2021, notice. The document in evidence does not have a signature and is missing the second page.

[6] This was the second 5-day suspension followed by administrative leave pending further action for the same alleged misconduct. The Town asserts Officer Gallo was not actually docked pay for both 5-day suspensions and notes that, at all times Officer Gallo was on paid administrative leave. Both 5-day suspensions, however, were reported to POST.

report was received and Mr. Kezer became Town Manager/Hearing Officer in June 2022 and, thereafter, they both remained in their positions. Despite this, Officer Gallo was not provided a hearing until March 29 and May 16, 2023. The hearing decision was not issued until February 9, 2024.[7]

It is true that the department faced a number of challenges during the pendancy of Gallo's case, but the extensive delays in initiating and completing an investigation into the OIG's referral were neither reasonable nor consistent with the Marblehead Police Department Internal Affairs Policy:

> 25.4.10 Complaints from Governmental Agencies
>
> When information is received or obtained from other governmental agencies, alleging specific acts of misconduct against a department employee, this information shall be recorded on a standard complaint or, if more expeditious, sent to the Chief, or his designated by electronic mail, and an investigation initiated in the usual manner.
>
> 25.5.3.5 Completion of Investigation
>
> Any internal affairs investigation must be commenced immediately upon receipt of the complaint and must be completed within 30 days. POST requires complaints of officer misconduct to be completed within one year. The time to do so may be extended by the POST upon showing of good cause....
>
> Union Exhibit #27

In addition, the delays in responding to Gallo's grievances were not reasonable or consistent with the parties' collective bargaining agreement at Article 5, Grievance and Arbitration Procedures, which provides for the prompt resolution of disputes:

> Any grievance which may arise between the parties hereto shall be presented in the following manner and order and within the time limits set forth herein…
>
> Suspension by the Chief.

[7] The independent investigator's report of the swastika incident was released on June 19, 2021, which prompted a need to conduct nearly department-wide internal investigations and a need to respond to the independent investigator's recommendations. When the report became public, the Chief was required to spend considerable time in public meetings and arranging for training of department employees.

> Subject to and in accordance with the provisions of M.G.L. Chapter 31, Section 41, the employee may appeal a suspension of the Chief to the Board of Selectman and have a hearing before the Board, or the Boards' designee.
>
> Step 3. ... shall present, said grievance, in writing, to the Board of Selectman… The Board of Selectman, within 14 days after receipt of said grievance shall meet with the grieving employee and/or union steward in an effort to resolve the matter and shall render its decision there on within 10 days after said meeting.
>
> Employer Exhibit A

The April 19, 2022, notice of suspension cited M.G.L. Chapter 31, Section 41, which required that Gallo be given a hearing in a timely fashion. The Town did not conduct a hearing until March 2023, nearly two years after Gallo's appeals were filed in June 2021 and April 2022:

> …file a written request for a hearing before the appointing authority on the question of whether there was just cause for the suspension. If such request is filed, he shall be given a hearing before the appointing authority or a hearing officer designated by the appointing authority within five days after receipt by the appointing authority of such request.

After Officer Gallo's hearing concluded in May 2023 (or September 2023 upon receipt of the post-hearing memoranda), a hearing decision was not issued within 5, 10, or 30 days, but five months later on February 4, 2024.

Chief King had directed Sgt. Brady to conduct an investigation of the alleged time fraud to "determine…if there were any violations of the Rules and Regulations, Policies and Procedures of the Marblehead Police Department, or laws of the Commonwealth" (Employer Exhibit L). The Town's argument that Sgt. Brady's investigation proved Officer Gallo had violated department rules and regulations is not supported by evidence.

In addition to an interview with Officer Gallo, Sgt. Brady's investigation included a review of the materials received from the OIG; a comparison of those materials with department records such as Officer Gallo's attendance record, duty rosters, cruiser assignments, dispatch and call logs, as well as online training records. After cross-referencing the dates and times of the cell phone images with department records, Sgt. Brady testified that he confirmed Officer Gallo was on duty

on the dates and at the times listed in the complaint to the OIG. Sgt. Brady acknowledged that, even with the cross-referenced materials, he could not confirm (or refute) the allegations that Officer Gallo was also at home between the times stamps shown on the photographs; or that he remained at home during an entire shift as alleged in the complaint. Despite this, Sgt. Brady's IA report concluded that, "…it is more likely than not that on nights where there were multiple photographs, Officer Gallo arrived at his home and did not leave the residence" (Employer Exhibit N).

There are problems with Brady's assumption. First, Sgt. Brady had no evidence or testimony to corroborate the claims that Officer Gallo remained at home between the times shown in the cell phone images. In addition, neither Brady nor the Town refuted Gallo's assertion that the dates and times on the cell phone pictures could easily be altered. Instead, the Town claimed it could not analyze the pictures because they did not have access to the device used to take them.

Sgt. Brady was asked, "So the only way to check would be to go back and ask the person who took them and look at their device?' Brady responded, "Correct." He added, "but I was told to take the photos as they were – by Chief King." Chief King confirmed the testimony saying he directed Brady not to contact Tufts, the person he believed had filed the complaint with the OIG.

This means the Town did not authenticate photos it knew 1) could be manipulated and 2) were likely taken by a person seeking revenge against Officer Gallo. Despite the decision not to authenticate the photos themselves, the Town also did not secure other evidence or testimony to separately corroborate the allegations that Gallo took excessively long breaks while on duty. For these reasons, it was not proper for the Town to rely on the cell phone photos as proof that Officer Gallo was guilty of the charges of time fraud/taking excessively long breaks.

The Town's argument that Brady did take steps to separately verify that Gallo spent excessive amounts of time at home is not persuasive. Sgt. Brady could have interviewed the

overnight shift supervisor, for example, the dispatcher, or other officers assigned to the same shift. In fact, Sgt. Brady listed both Chief Picariello and Chief King, the overnight shift supervisor, and three police officers as "witnesses" in his investigative report (Employer Exhibit N)." At hearing, however, Brady testified that he did not actually interview them.

In the recorded interview by Sgt. Brady, Officer Gallo acknowledged that he took breaks at his home while on duty (Employer Exhibit M). Sgt. Brady and Officer Gallo then discussed the challenges of working the night shift in a town where there are few, if any, businesses open at night, a challenge compounded by the COVID pandemic and the desire to avoid contact with others when possible.[8] Officer Gallo acknowledged that he would go home for various reasons: to use the bathroom (rather than going to the station) or to have a meal. Officer Gallo also acknowledged that sometimes he took multiple breaks during a single shift. In the recorded interview, Officer Gallo denied taking breaks that lasted longer than an hour.

Sgt. Brady did not then press Gallo for more details about how and when he went to his house while on duty. On the other hand, Sgt. Brady spent a considerable amount of time asking Officer Gallo about department-related online training because Gallo mentioned it as a reason he might go home while on duty. A lengthy conversation ensued about Gallo's problems trying to do online training from home. Before the interview ended, though, Officer Gallo had checked his own records and told Sgt. Brady that, there was only one day he did online training from home that corresponded to any of the dates listed in the OIG referral letter.

It is true that Officer Gallo said he would go home while on duty and he did say that sometimes he would go home multiple times during a shift, but he denied the breaks were for more than an hour. Without more information, however, these general admissions did not prove the allegations made to the OIG or that Gallo had violated a department rule by "taking excessively

[8] For example, the men discussed how roll call was conducted in the parking lot.

long breaks." I have reviewed the recording of the interview and find Brady did not press Gallo for more information. The most detailed questions Brady asked about how often and for how long Gallo went home during a shift are the following:

> Brady:
> "Yeah. So, my question is, on nights that you were working, whether it was midnight day shift or 4 to 12, would you on occasion go to your home for extended periods of time?" (10:48)
>
> Gallo:
> "No…. 'extended' is very vague." (10:58)
>
> Brady:
> "…over an hour at a time ?" (11:02)
>
> Gallo:
> "No" (11:07)
>
> Brady:
> "…the entire shift, depending on call volume?" (11:08)
>
> Gallo:
> "No." (11:10)

Sgt. Brady could have pressed Officer Gallo for more details about the days he took multiple breaks during a single shift to determine whether the time Gallo was at home amounted to "excessively long" breaks, but he did not. As a result, Sgt. Brady failed to obtain evidence to separately corroborate (authenticate) the admittedly unreliable photographic evidence. For these reasons, the investigation does not support Brady's findings that, "it is more likely than not on the nights there were multiple photographs, Officer Gallo arrived at his home and did not leave the residence" or that when "Officer Gallo received a call, he responded to that call from his residence and then returned to his residence after" (Employer Exhibit N).

In addition, it is noted there is no evidence of a rule, policy, or guideline explaining how many breaks an officer may take or how long a break may be. Sgt. Brady testified the practice was that Marblehead Police officers could take breaks as they needed them and were not required to

request permission beforehand and were not required to call dispatch or otherwise report when they did take a break. Brady also testified that the department did not keep track of officers' breaks.

Sgt. Brady reached conclusions and reported findings that are not supported by evidence. He relied on the pictures sent to the OIG, which he knew could have been altered or manipulated. While Officer Gallo acknowledged he would go to his home while on duty and sometimes went home multiple times during a single shift, Sgt. Brady did not then obtain enough information from Gallo (or from any other source) to establish how much time Officer Gallo spent at home: information that was necessary to prove he was guilty of time fraud/taking excessively long breaks.

At hearing, Sgt. Brady acknowledged that the investigation he conducted was not consistent with the following provisions of the department's IA policy (Union Exhibit #27)

> 25.1 General Considerations and Guidelines
> ....Allegations of misconduct, even when unfounded, stigmatize the officer individually. Unfortunately, vindictive individuals know this and may file frivolous complaints to get back at officers whom they dislike. This may adversely affect the officers career, his/her family and his/her ability to function most effectively as a member of the department. The department's community policing efforts may likewise be jeopardized.…
>
> 25.5.3.11 Appropriate Investigative Techniques
> In conducting investigations of alleged employee misconduct, all appropriate investigative techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused employee.
> i. An internal administrative investigation should be conducted with the same degree of professional competence as is devoted to a criminal investigation.
>
> 25.7.2 Notation of Reluctant Witnesses.
> Internal affairs investigators should note in their reports any instances where witnesses refused or were reluctant to speak with them unless they were assured that their statements would be kept confidential, at least to the extent legally allowed.

Sgt. Brady also testified that he (and others in the department) agreed the anonymous complaint to the OIG was likely made by Tufts who had to resign (or be terminated) after his involvement in the swastika incident was reported by Gallo. Brady also knew that Tufts previously had made false accusations about Officer Gallo.

It is noted that Tufts resigned on December 13, 2020, and the earliest of the allegations made in the OIG report is dated December 22, 2020, just eight days later. The proximity of these two events strongly suggests that the complaint to the OIG may have been retaliatory. For this reason, in accordance with the department's IA policy, the Town's investigation – at a minimum - should have addressed the possibility that the OIG complaint was retaliatory and likely was made by a person known to be dishonest. Nonetheless, Chief King directed Sgt. Brady not to contact Tufts, and to accept the cell phone images as they were.

The Town's assertion that whoever made the anonymous complaint to the OIG could not be questioned under Massachusetts whistleblower laws is not persuasive. First, it is noted that the original complaint to the OIG may not have been made anonymously. The June 9, 2021, letter from the OIG to the Marblehead Police Chief referred to the complaint several times but never indicated it was an "anonymous" complaint (Employer Exhibit E). If the initial report had been made anonymously, it seems likely the OIG would have said as much in the June 9, 2021, letter to Chief Picariello. And, if the original complaint had been made anonymously, there would have been no need for the "whistleblower" to later send the June 19, 2021, letter requesting anonymity "per the Massachusetts Whistleblower laws" (Employer Exhibit G). It is noted there is no testimony or evidence to explain how the Marblehead Police Department obtained the June 19, 2021, letter addressed to the OIG, since it was not included in the packet sent to Marblehead from the OIG.

Chief King acknowledged the Whistleblower Law protects Massachusetts public employees, and he had not checked whether the law even applied here because the person who likely made the complaint (Tufts) was no longer a public employee. Chief King testified, "That (Whistleblower law] may not be the applicable statute – maybe Tufts was entitled to protections based on some other statute." No evidence or testimony was offered to support the suggestion that

"some other statute" applied and prohibited the department from attempting to authenticate the cell phone pictures from the OIG.

When Gallo was accused of using excessive force, the Town employed a forensic videographer to analyze video footage of the incident. The results led to Officer Gallo being exonerated of that charge. When asked why the department did not employ a specialist to analyze the anonymous cell phone images from the OIG, Chief King said it "might defeat the purpose of the [Whistleblower Law]."

The Town also argued the Massachusetts Whistleblower law meant it was prohibited from reaching out to the person who made the complaint during the internal investigation. The Town did not offer evidence to support their position. Taking official notice, the arbitrator acknowledges (without ruling) that the Massachusetts Whistleblower Protection Act (M.G.L. c. 149, § 185) provides that whistleblowers may request (and expect) anonymity as a safeguard against retaliation. The Town has not established that the protection afforded a whistleblower also restricts a police department or other law enforcement agency from conducting a full and fair investigation.[9]

The Town suggested that, because the complaint had been made anonymously, they could not question an unknown person. During his testimony at hearing, however, Sgt. Brady confirmed that he and other officers were certain the complaint was made by Tufts who was forced to resign after Gallo reported his involvement in the swastika incident. Sgt. Brady added that Chief King specifically prohibited him from reaching out to or interviewing Tufts during the course of the investigation. It is noted that every mention of Tufts' name in the IA report was redacted even though all other officers' names remained unredacted.

[9] In its brief, the Town also cited the Massachusetts False Claims Act, which protects individuals who file suit, which is not the case here. The person who wrote the June 19, 2021, letter did not cite the False Claims Act.

These facts suggest the Town knew the report to the OIG was likely made by Tufts; that Tufts had falsely accused Gallo of misconduct in the past; and that Tufts had reason to be "vindictive" and likely wanted "to get back at [an officer]" and whose complaint may be "frivolous" (See Marblehead Internal Affairs Policy Section 25.1, Union Exhibit #27). The Town should have taken greater care to address these concerns, especially after Chief King ordered Brady not to contact Tufts and to accept the cell phone images as they were. There is no evidence, however, that the Town considered or addressed the possibilities that the complaint was biased or that some or all of the evidence may have been altered or manipulated.

According to the April 19, 2022, notice of suspension, Chief King concluded that Officer Gallo was guilty of violating the department rule against taking excessively long breaks while on duty. The Chief found this also violated the rule that officers devote full-time attention to their duties and that, together, these violations amounted to conduct unbecoming an officer. The Chief stated that his decision was based on Sgt. Brady's investigative report which, as discussed above, did not prove that Gallo was guilty of time fraud/taking excessively long breaks.

While it is possible to establish just cause for discipline even when there are problems with acase such as delays in the disciplinary process, it is not possible, to establish just cause when the evidence fails to prove the employee was guilty of the alleged misconduct.

In conclusion, the Town did not prove that Officer Gallo was guilty of the charges against him. Where the evidence failed to prove the charges of time fraud/taking excessively long breaks, the Town did not have just cause to suspend Officer Gallo for 30 days in connection with its April 19, 2022, notice of suspension.

July 26, 2021, incident:

The next question is whether the Town had just cause to terminate Christopher Gallo in connection with Chief King's August 23, 2021, written notice of suspension. In a discipline case, the employer has the burden of proving the Grievant is guilty of the charges against them and that the discipline imposed is appropriate for the proven misconduct. According to the notice of suspension, Gallo was terminated for several reasons including:

> …you violated several Marblehead Police Department rules and regulations by your actions on the day of the incident. Each violation is outlined below with the facts to support such from the investigation.
>
> Rule 4.02 Conduct Unbecoming an Officer: Your decision to engage in activities with a person you know to suffer from a substance use disorder that involves the substance in question, alcohol, with your children present, resulting in a violent, tumultuous incident at your residence is conduct unbecoming an officer.
>
> … Your actions affected your children's well-being and brought discredit to the police department.
>
> Your decision to enable someone you know has a problem with alcohol to get to the point where that person loses control, becomes erratic, unpredictable, violent and disorderly, is conduct unbecoming and questions your fitness to be a police officer.
>
> You state several times to Sgt. Brady the female party seemed all right, yet upon returning home your daughters identified her as extremely intoxicated. … I find you are not being truthful so as to diminish the seriousness of the situation.
>
> As the aforementioned actions described affects the integrity, reputation and effectiveness of the department, I question your ability to effectively perform your duties and responsibilities as an officer.
>
> Rule 10.10, Cooperation with Investigations: You failed to fully cooperate with the investigation by omitting relevant facts that were brought to light by eye witnesses also present during the day's event…The intentional making of false statements or reports and/or the intentional omission of significant or pertinent facts is considered just cause to prove this violation."
>
> … I find inconsistencies that infer you omitted relevant facts during your interview. Specifically, you claim to have made the female party take Antabuse before going out. This is not plausible knowing the effects of Antabuse when consuming alcohol. You claimed to have no alcohol on your boat, in an attempt to keep alcohol from the female party but were observed by a witness drinking with her on another boat. …I feel you were not truthful, by omission of relevant facts, to mask your enabling of this situation to reach the point that it did.

> ….your account of how your two daughters got home from the day boating trip was inconsistent with theirs….Both of your daughters stated they walked home, and you returned home from boating on your own. These differing accounts puts into question your truthfulness …, and/or your own faculties. You have a selective memory, full of omissions and inconsistencies.
>
> Rule 13.2, Falsifying Records: … Your omissions, and inconsistent account of the day's events during your interview, amount to falsifying an official record.
>
> Rule 14.7, Off Duty Use of Alcohol: During this incident you consumed alcohol, and it affected your decision-making ability. Your inability to recognize the female party's incapacity due to her own alcohol consumption is deeply concerning to me and evidence supports that this could haye been a result of your own consumption.
>
> ***
>
> Employer Exhibit W

The Town's decision to discharge Officer Gallo for his actions on July 26, 2021, was not for just cause. The Town did not establish that Officer Gallo's personal, off-duty decisions about a family member violated Rule 4.02, which prohibits engaging in conduct unbecoming an officer. The Town did not prove that Officer Gallo violated Rule 10.10 and Rule 13.2, which require officers to be cooperative and honest during an investigation. The Town did not prove that Officer Gallo violated Rule 14.7, which prohibits an officer from consuming alcohol "to the point of being obnoxious and discredits them or the department."

The Chief's assertion that Gallo failed to cooperate with Sgt. Brady's investigation by intentionally omitting information during his interview is not supported by evidence. A thorough review of the recorded interview establishes that Sgt. Brady began by reading a standard introduction explaining that Gallo should not intentionally make false statements or intentionally omit information, and telling Gallo he was "responsible to answer the questions asked of you" (10:18).

Sgt. Brady began the questioning by saying, "So Chris, I want to talk to you about that day, the 26th of July. If you can kind of take me through the day. I guess you were out on the boat. How'd the day start…if you can kind of start me off on that day and then I'll jump in with some

questions." (12:31). Gallo began to describe the plan for an afternoon boat outing. Thereafter, Sgt. Brady's interview consisted of a series of specific and narrow questions, such as:

- So, you were out on the boat. Are you grilling? (14:44)
- Are there any issues when you're out on the boat? (16:36)
- Okay. So, you go out to Gloucester, how long are you there for? (21:04)
- When you get to the dock, how's her condition? (19:01)

Gallo answered all of the questions asked of him. Brady did not ask open-ended questions or ask Gallo should tell him everything that happened that day. Rather, Sgt. Brady asked a series of specific questions, to which Gallo provided specific answers. Brady did not ask Gallo whether he had more to add or whether something happened that Brady did not know or ask about when he ended the interview saying, "I don't think I have any more questions…" (30:51). Attorney Nolan then asked for clarification, "Are we finished now?" Sgt Brady responded, "Yeah, I'm all set" (31:22). The assertion that Officer Gallo failed to fully cooperate with the investigative interview by being dishonest or intentionally omitting information is not supported.

Moreover, the Town did not establish that any of the cited rules prohibit a police officer from being in relationship with an alcoholic; or that any of the cited rules require an officer to be responsible for the other person's actions. There is no evidence that the cited rules required an off-duty officer to be responsible for limiting or controlling the behavior of an alcoholic or requiring them to limit how or when they and/or their family may keep company with an alcoholic member of the household. In addition, the assertion of a nexus between Gallo's personal, off-duty decisions and the reputation of the department was not persuasive.

The Town disciplined Officer Gallo for the alleged personal failing to make different decisions about how to deal with an alcoholic family member during an off-duty, summer outing.[10] While Officer Gallo might have made different decisions, which might have led to a different

[10] As of July 26, 2021, Officer Gallo was off duty because he was on administrative leave following the suspension in connection with the complaint to the OIG.

outcome, the Town failed to prove any department rule or regulation required that he make those decisions differently. The Town did not establish how Gallo's decisions regarding his private life raised "questions about [his] fitness to be a police officer" or his 'ability to effectively perform your duties and responsibilities as an officer" (Employer Exhibit W). Even if inept or ill-advised, Officer Gallo's personal decisions and actions on July 26, 2021, were not evidence of an officer engaged in punishable misconduct but reflected the unfortunate and distressing challenges facing a family affected by alcoholism.

The July 26, 2021, call to 911 from Officer Gallo's girlfriend triggered a series of events, an investigation, and the Town's decision to terminate Officer Gallo, despite the fact that officers responding to the 911 call all reported that the girlfriend was intoxicated and, within minutes of their arrival, had recanted her claims of abuse.

Officer Gallo cooperated with the responding officers and gave permission for his children to be questioned. The officers reported that witnesses confirmed Officer Gallo had not assaulted or hurt the girlfriend. In addition, Lieutenant Everett and Officer DiMare both reported that Officer Gallo did not appear to be intoxicated. The detailed incident report included statements by Officers McDonald, DiMare, and Sweeney and Lieutenant Everett. The report left no doubt that Gallo had been a victim, not a perpetrator.

Because children were present during the incident, a 51A was filed with DCF. There was no dispute at arbitration that Officer Gallo was cleared of any abuse or neglect, while the girlfriend's children were removed from her care and placed with a family member.

On July 29, 2021, Chief King ordered Sgt. Brady to conduct an Internal Affairs investigation "into the facts and circumstances surrounding this domestic incident…and determine if there were any violations of the Rules and Regulations or Policies and Procedures of the Marblehead Police Department or laws of the Commonwealth" (Employer Exhibit T).

Sgt. Brady testified about how he conducted the investigation. He testified that he did not inerview the responding officers or Detective Dulong during the course of his investigation, but did review their reports. Sgt. Brady testified that his report to the Chief was a summary of his interview with Officer Gallo. Sgt. Brady testified, "I did not review the rules to see whether there were any violations" and "I did not make findings," explaining he had no training or prior experience conducting a "full investigation."

Sgt. Brady testified he knew from Detective Dulong's report, that Officer Neil Comeau had socialized with Gallo and his girlfriend during the boat trip that day. Despite this, Sgt. Brady did not question Gallo about it and did not interview Comeau, a department employee who witnessed both Gallo and the girlfriend on the day in question.

Officer Comeau testified at arbitration that he was in his boat in the same area as Gallo that afternoon. Comeau testified the men pulled their boats alongside each other and Gallo and his girlfriend boarded Comeau's boat. He testified the men "had beer" and talked for about 45 minutes, before Gallo and the girlfriend returned to Gallo's boat. Comeau said he did not see the girlfriend drink and that she had been swimming off the back of the boat most of the time. Comeau testified that no one from the department interviewed him.

Sgt. Brady submitted his report to the Chief on or about August 12, 2021 (Employer Exhibit V). The Chief testified he had expected more, such as findings regarding any violations of rules and regulations. Rather than return the report to Brady, the Chief decided to complete it himself by reviewing the record and making his own findings.

According to his August 23, 2021, notice of suspension, the Chief found that Gallo demonstrated poor judgment by failing to limit the girlfriend's drinking or to remove himself and the children from her presence. The Chief attributed Gallo's failure to take such steps to an "inability to recognize the seriousness of the events" (Rule 4.01, Conduct Unbecoming); to Gallo's

lack of "truthfulness …and/or your own faculties" (Rule 10.10, Cooperation with Investigations and Rule 13.2 Falsifying Records); and to Gallo's consumption of alcohol, (Rule 14.7 Off Duty Use of Alcohol). The Chief's assertion that Officer Gallo could have predicted and should have known that the girlfriend would engage in extreme behavior - before she actually did - was speculative and not consistent with witness statements.

The recorded interviews with Officer Gallo and both daughters have been reviewed. The daughters reported they cared for Gallo's girlfriend, and both said they had a good relationship with her. Officer Gallo and both daughters reported that they could tell the girlfriend had started drinking sometime during the afternoon boat trip. All three noticed (or suspected) the girlfriend was drinking but none of them described her as being drunk or intoxicated - that is until about 10:00 p.m., when she came upstairs from the basement after being alone there for 45 minutes.

At that point, the older daughter described the girlfriend's behavior as "goofy" and said she appeared "hammered." The younger daughter described the girlfriend as "foolish and drunk." Both girls became annoyed "with her antics" and stormed off to the second floor. Officer Gallo followed them upstairs, but the younger daughter rebuffed his effort to comfort her, and the older daughter asked him to have the girlfriend leave. Officer Gallo then went downstairs and confronted the girlfriend, telling her she needed to leave the house, and she needed to leave right away.

The girlfriend seemed to snap, and her behavior escalated dramatically. She threw a plate of food on the floor, became loud and belligerent, and threatened to kill Officer Gallo. She chased after him as he ran to the second floor. She tried to grab him just as he managed to lock himself in a bedroom. As Officer Gallo and the children hid behind closed doors, they heard the girlfriend say loudly, "Watch this, Chris." They could hear her call 911 on speakerphone and say, "Chris Gallo is beating me, the children and the dog." Even if she had been drinking earlier in the day, the witness

reports of her behavior during the afternoon demonstrate that it was not reasonable for the Chief to find that Gallo should have (or could have) predicted such a short-fused outburst later that night.

The Chief's charge that Officer Gallo's personal decisions and/or the incident at his home brought discredit to the department is not supported. Officer Gallo was not on duty nor was he acting in his capacity as a police officer anytime on July 26, 2021. There is no evidence the incident became public or that the incident affected other officers or the department's reputation.

The Chief charged Gallo with intentionally making false statements and/or intentionally omitting pertinent facts during the investigatory interview. He claimed Gallo was untruthful when he described his girlfriend as being "all right," while his daughters reported she was "intoxicated" or "hammered." As discussed above, the recorded interviews establish that Officer Gallo's daughters did not describe the girlfriend as being very intoxicated or "hammered" until about 10:00 p.m. when she came up from the basement. In his recorded interview, Officer Gallo acknowledged the girlfriend had started drinking in the afternoon, but that her behavior seemed "all right" but agreed that when she came up from the basement, she was intoxicated. The evidence does not support the charge that Gallo made intentionally false statements when he said his girlfriend's behavior seemed "all right."

Alternately, the Chief suggested that Gallo's statement that the girlfriend was "all right" indicated his own "inability to recognize [her] incapacity due to your own alcohol consumption," which he found to be a violation of Rule 14.7. There is no evidence that Gallo had consumed alcohol "to the extent that [his conduct] was obnoxious or offensive and discredited the department" in violation of Rule 14.7. The Chief did not personally observe Gallo on July 26, 2021, and he offered no evidence to support his opinion that Gallo was impaired by alcohol. Moreover, Lieutenant Everett and Officer DiMare noted in their written reports on the day in question that Officer Gallo did not appear to be intoxicated (Employer Exhibit R).

In his notice of suspension to Gallo, Chief King added that the incident raised concerns about, "…your reputation and that of the department's… [because] this has become a pattern between yourself and the female party, of which involves violence and disorderly behavior". The Chief did not explain and offered no evidence to support the statement about a "pattern…of violence and disorderly behavior."

On January 3, 2023, the Chief responded to a request for information about Officer Gallo from a local news reporter. The documents provided to the reporter included the August 7, 2020, notice accusing Officer Gallo of using excessive force without also including the documents that cleared Gallo of the charge and exonerated him in writing (Union Exhibit #6). The documents provided to the reporter included a 2019 disciplinary notice that was supposed to have been expunged from the record in 2020 (Employer Exhibit KK). The information provided to the reporter also included documents that had not been properly redacted to protect Gallo's personal identifying information. There is no question that the Chief should have safeguarded Gallo's personal information and should not have released information about Gallo to the press that was known to be misleading or wrong.

The suspension notice also accused Gallo of dishonesty because "you stated your daughter drove your Jeep home…but both daughters stated they walked home" adding this "puts into question your truthfulness when responding to Sgt. Brady and/or your own faculties." It was explained at arbitration that this charge (that Gallo had been dishonest about how the kids got home) turned out to be based on incorrect information. Sometime before the disciplinary hearing, the Chief learned about an error in Detective Dulong's report, which he had relied upon when he accused Gallo of dishonesty. Despite the fact that the charge of dishonesty was unfounded and was based on incorrect information, both documents containing the erroneous information were not

corrected and remained part of the disciplinary record submitted at the Town Manager hearing and remained in the record sent to the Board of Selectmen.

Chief King testified that he explained the error to the Hearing Officer and, for that reason, he did not think it necessary to correct Detective Dulong's report or his August 23, 2021, notice of suspension even though both documents contained the same erroneous information.[11] It is troubling that Officer Gallo's record was not corrected before it went to the Board of Selectmen when they decided whether to terminate his employment. It is not clear from the record whether the Town Manager or the Board of Selectmen excluded the unfounded charge and the incorrect information when they made their decisions.

The Town's post-hearing Memorandum (Employer Attachment 1) indicates the Chief mentioned the documents with incorrect information only briefly during a lengthy explanation to the Hearing Officer about Gallo's alleged dishonesty and failure to cooperate with the investigation (Employer Attachment 1, page 14). The Hearing Officer's summary suggests the Chief's "explanation" was not clear or was overlooked. I have reviewed the Hearing Officer's report (Attachment D) and find no reference to any explanation that two documents related to the charges against Officer Gallo contained incorrect information.

Rather, the Hearing Officer's report quoted the incorrect information from both documents regarding Gallo's account about how the kids got home and went on to quote the Chief's finding that Gallo's account was a basis for charging him with being dishonest.

> 38. According to Detective Gay's report…After a few hours they returned to the dock and the kids walked home… (page 8)
>
> 42. Officer Gallo then testified that they went back to the Village Street dock and dropped the kids off. Gallo said that [daughter 1] drove the kids home in the Jeep.
>
> 45. On August 23, 2021, Chief King issued a Notice of Suspension….and laid "out the specific reasons for the suspension…[In violation of Rule 10.10 and

[11] Both documents were submitted into evidence at arbitration without correction or notation indicating they contained wrong information.

> 13.2]…your account of how your two daughters got home from the day boating trip was inconsistent with theirs. You state your daughters drove your Jeep home….Both your daughters stated they walked home…(page 12)

There is no indication the Hearing Officer excluded the Chief's erroneous finding that Gallo had been dishonest (about how the kids got back). Nor is there any evidence of any clarification that the alleged discrepancy between Gallo's testimony and his daughters' was incorrect. In fact, the Hearing Officer found, "the violations…had mostly to do with the Grievant's omission of key facts when compared to other witnesses…." (p. 15, Employer Attachment D). The Hearing Officer's report, along with the uncorrected documents, was then sent to the Board of Selectmen with the recommendation that:

> …the Select Board uphold the 5-day suspension issued by Police Chief Dennis King to Christopher Gallo on August 23, 2021, and terminate Officer Gallo from employment as a Marblehead Police Officer for the sustained violations.

On February 23, 2024, the Board of Selectmen issued its decision to terminate Officer Gallo, indicating its decision relied on the Hearing Officer's report:

> …after having reviewed the February 4, 2024, report of Hearing Officer Thatcher W. Kezer III and evidence found therein, the Board adopts the findings and recommendations set forth in the Hearing Officer's report…

To assure a fair process, the problems with the documentary record should have been made clear to the Hearing Officer and the Board of Selectmen before they issued their decisions. It is not clear from the Hearing Officer's report or the Board of Selectmen's termination letter that one of the serious charges of dishonesty against Officer Gallo was unfounded and was based on erroneous information.

In conclusion, the Town failed to prove that Officer Gallo's actions on July 26, 2021, violated any rules or regulations. Where the Town has not proven the charges against him, the Town did not have just cause to terminate Officer Gallo in connection with its April 19, 2022, notice of suspension.

REMEDY

The Town is hereby ordered to rescind both the suspension and the termination; to reinstate Officer Gallo to his position; and to remove any references to either disciplinary action from Officer Gallo's record.

If the Town has authority to separately retain records of the disciplinary actions, the Town is further ordered to include in them an explanation that Detective Dulong's report (Employer Exhibit S) and the August 23, 2021, notice of suspension (Employer Exhibit W) contain erroneous information, which led to an unfounded charge of dishonesty.

The make whole remedy requires the Town to restore Officer Gallo to the position he would have been in but for the wrongful suspension and termination actions. This means the Town must restore all wages, benefits, and seniority Officer Gallo would have received but for the wrongful disciplinary actions; and he must be paid an amount that approximates the overtime hours and details he would have worked but for the wrongful disciplinary actions. The make whole remedy may be reduced by the amount of income Officer Gallo would not have received but for the wrongful disciplinary actions.

There is no evidence the law or the collective bargaining agreement provide for the payment of interest on back pay. Officer Gallo's request for interest is denied.

The arbitrator will retain jurisdiction for 60 days for the limited purpose of resolving disputes about the implementation of the remedy.

AWARD

The Town did not have just cause to suspend Officer Christopher Gallo for 30 days in connection with its April 19, 2022, written notice of suspension.

The Town did not have just cause to terminate Officer Christopher Gallo's employment in connection with its August 23, 2021, written notice of suspension.

The Town is hereby ordered to rescind both the suspension and the termination; to reinstate Officer Gallo to his position; and to remove any references to either disciplinary action from Officer Gallo's record.

If the Town has authority to separately retain records of the disciplinary actions, the Town is further ordered to include in them an explanation that Detective Dulong's report (Employer Exhibit S) and the August 23, 2021, notice of suspension (Employer Exhibit W) contain erroneous information, which led to an unfounded charge of dishonesty.

The Town is hereby ordered to restore all wages, benefits, and seniority Officer Gallo would have received but for the wrongful disciplinary actions; and to pay him an amount that approximates the overtime hours and details he would have worked but for the wrongful disciplinary actions. The make whole remedy may be reduced by the amount of income Officer Gallo would not have received but for the wrongful disciplinary actions.

Officer Gallo's request for interest is denied.

The arbitrator will retain jurisdiction for 60 days for the limited purpose of resolving disputes about the implementation of the remedy.



Mary Ellen Shea, Arbitrator
February 12, 2025