

## NEPBA GRIEVANCE COMPLAINT FORM

**DATE:** January 26, 2016

**NAME:** Michael D. Fleury

**ADDRESS:** 110 Loon Hill Road Dracut, MA 01826

**TELEPHONE:** 978-957-2123

**DEPARTMENT:** Dracut (Local 4B)

**RANK:** Lieutenant

**SHIFT:** 1600-0000

**NATURE OF COMPLAINT:**

Violation of the agreement between the Town of Dracut and NEPBA Local 4B, Article 3 entitled "Management's Rights", and all other pertinent articles there under: "to suspend, demote, discharge, or take disciplinary action against employees for just cause"...

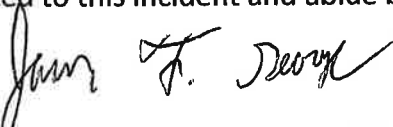
On September 25, 2015 Lt. Fleury received correspondence from Deputy Chief Chartrand directing him to submit a letter of explanation regarding a recent decision made by Lt. Fleury to work an overtime(s) and detail(s) within a certain time frame which Deputy Chartrand suggested was in violation of a Dracut Police Department Policy which prohibits an officer from working more than sixteen hours in a twenty four hour period.

Lt. Fleury submitted the requested letter, and was subsequently advised by Local 4B President Jason George that Deputy Chartrand had indicated that if Lt. Fleury were to submit a letter to Deputy Chartrand seeking clarification regarding a sixteen hour rule, the incident would be resolved. Lt. Fleury submitted this letter and received a response from Deputy Chartrand which indicated that if not for the ambiguity of a sixteen hour rule, his actions would have constituted disciplinary action up to and including suspension without pay.

Lt. Fleury recently learned that Deputy Chartrand will be placing the aforementioned correspondence in his permanent file and Lt. Fleury would be allowed to submit a rebuttal if he chooses. Placing these letters in Lt. Fleury's file constitutes a form of discipline without just cause, for there was no department policy in place at the time of this incident.

**REQUESTED REMEDY:**

Remove the aforementioned letter referencing wrong doing and any/all correspondence related to this incident and abide by the contract.

  
Jason George      President NEPBA Local 4B



# Town of Dracut

TOWN HALL  
62 ARLINGTON STREET  
DRACUT, MASSACHUSETTS 01826

Office of the Town Manager  
(978) 452-1227  
Fax: (978) 452-7924  
Email: [townmanager@dracut-ma.us](mailto:townmanager@dracut-ma.us)

James A Duggan  
Town Manager

May 5, 2016

Martin Conway, President of NEPBA  
7 Technology Drive  
SIMUCAD Building  
Chelmsford, MA 01863

## RE: STEP 2 CONFERENCE FINDINGS AND DECISION

### Procedural background

Pursuant to the provisions of Article 11, (2) of the collective bargaining agreement between the Town of Dracut ("Town") and the NEPBA ("Union") a Step 2 conference was held by the Town Manager with representatives of the respective parties on April 28, 2016, at 10:00 am in the 2<sup>nd</sup> Floor Conference Room, Dracut Town Hall.

Present: James A, Duggan, Dracut Town Manager  
Attorney Peter J. McQuillan, Special Labor Counsel  
David A. Chartrand, Deputy Police Chief of the Dracut Police Department;  
Martin Conway, President of NEPBA  
Sargent Jason George, President, Local 4B  
Grievant: Lt. Michael D. Fleury, DPD

This conference was regarding a grievance filed by the Union on behalf of its member Lieutenant Michael Fleury ("lieutenant") of the Dracut Police Department ("DPD") dated January 26, 2016. The relief sought is the extraction of a certain piece of correspondence authored by David A. Chartrand, Deputy Chief of the Dracut Police Department ("deputy chief") to the lieutenant, dated October 14, 2015 ("subject letter") regarding an alleged violation of the so-called "16 hour" rule by the lieutenant from an internal affairs investigative file. The grievance was denied in writing by the deputy chief on March 23, 2016. Based upon representations at the conference by the Union, its primary objections to the subject letter are the tone and contents of the same.

### Discussion

The deputy chief stated during the course of the conference that the subject letter was not part of the member's personnel file, but was kept in an internal affairs investigation file, said files being maintained separately from traditional personnel files of the DPD. I find that the relief requested is sought under the provisions of M.G.L. c. 149, § 52C which provides that a "Personnel record" is "

"[A] record kept by an employer that identifies an employee, to the extent that the record is used or has been used, or may affect or be used relative to that employee's qualifications for employment, promotion, transfer, additional compensation or disciplinary action..."

For the purposes herein I find the internal affairs investigative file regarding this matter is a “personnel file” under the stated statute.

The statute further provides that an employee may seek removal of any record:

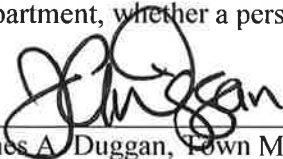
“[i]f there is a disagreement with any information contained in the personnel record, removal or correction of such information may be mutually agreed upon by the employer and the employee. If an agreement is not reached, the employee may submit a written statement explaining the employee’s position which shall thereupon be contained therein and shall become part of such employee’s personnel record. ... If an employer places in a personnel record any information such employer knew or should have known to be false, then the employee shall have remedy through the collective bargaining agreement....”

The issue first arose in initial correspondence between the Deputy Chief and Lt. Fleury dated September 25, 2015, respectively. First the deputy chief advised the lieutenant that based upon information received, he believed the same constituted a violation of the “16 hour rule” and requested a response letter with a “detailed explanation” to which the lieutenant provided, with attachments, that same day. Subsequent thereto, the lieutenant wrote a letter to the deputy chief, dated October 5, 2015, requesting what specific written rule or regulation of the DPD contained the 16 hour rule for future reference and compliance. On October 6, 2015, the Deputy Chief responded by email stating essentially that the issue was discussed with presidents of both police unions, there was no codified rule but that same would soon be formally incorporated into the Rules and Regulations Manual of the DPD. It appeared then that the issue seemingly had been addressed and the matter for all intents and purposes considered closed. However, on October 14, 2015, the subject letter was unilaterally sent by the Deputy Chief to Lt. Fleury.

After review of the subject letter I find that the same is inundated with language that strongly suggests a personal hostility of the author toward the recipient. It contains assertions, among other things, of greed, passive/aggressive behavior at the expense of public safety and other clearly personal statements that are demeaning and disparaging. It is an audacious, personalized, subjective statement I consider inappropriate and outside the context of intra-departmental communications between a supervisory officer and a subordinate officer.

### **Disposition**

Based upon the forgoing, the representations of both parties during the course of the conference, all documents submitted as well as all written submissions of the parties I conclude that the relief sought by the Union to extract the subject letter from the files of the member maintained by the Dracut Police Department, whether a personnel or internal affairs investigative file, is *Allowed*.



James A. Duggan, Town Manager

Cc: Peter McQuillan, Special Labor Counsel  
Kevin M. Richardson, Chief, Dracut Police Department  
David Chartrand, Deputy Chief, Dracut Police Department