

NEPBA GRIEVANCE COMPLAINT FORM

DATE: March 19, 2016

NAME: Lt. Michael 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:

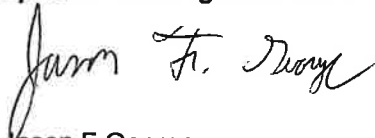
Violation of the agreement between the Town of Dracut and NEPBA Local 4B, Article 11 entitled "ARBITRATION AND GRIEVANCE PROCEDURE", and all other pertinent articles.

On March 13, 2016 an article was published in the Lowell Sun entitled "Who Polices the Police?". In this article Deputy Chief Chartrand is quoted several times. These quotes are of an extremely damaging nature to Lt. Fleury and are currently a part of an open and ongoing grievance involving Lt. Fleury. This information release to the Lowell Sun also violates the Dracut Police Department Policies and Procedures, specifically policy number 200 "Internal Affairs", section 6 "Confidentiality of Internal Affairs."

The grievance procedure under article 11 has yet to be completed and releasing information pertaining to this open and ongoing process is a clear violation of this article.

REQUESTED REMEDY:

Immediately request a retraction from the Lowell Sun, *print an apology in the Lowell Sun, open an investigation into the violations by the Deputy Chief*, and abide by the contract.



Jason F George
President
NEPBA Local 4B



Town of Dracut

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James A Duggan
Town Manager

May 11, 2016

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

RE: STEP 2 CONFERENCE FINDINGS AND DECISION OF NEPBA GRIEVANCE DATED MARCH 19, 2016

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 and their counsel on May 5, 2016, at 1:30 pm in the 2nd Floor Conference Room, Dracut Town Hall.

Present were: James A, Duggan, Town Manager;
Special Labor Counsel, Peter J. McQuillan;
Chief Kevin M. Richardson, DPD;
Deputy Chief David A. Chartrand, DPD;
Lt. Michael D. Fleury, DPD
Andrew J. Gambaccini, Esq., Reardon, Joyce & Akerson;
Martin Conway, President, NEPBA;
Sgt. Jason George, President, Local 4B;
Meghan C. Cooper, Esq., Nolan, Perroni & Harrington

This conference was held regarding a grievance filed by the Union on behalf of its member Lieutenant Michael Fleury ("lieutenant") of the Dracut Police Department ("DPD") dated March 19, 2016. The relief sought is a retraction from the Lowell Sun regarding publication of an article on March 13, 2016, entitled "Who Polices the Police?"; an apology regarding its release and publication of a portion of its contents and an investigation into "violations of the Deputy Chief." The publication, as it applied to the DPD, was primarily based upon a certain correspondence from Deputy Chief Chartrand to Lt. Michael Fleury dated October 14, 2015, ("subject letter") provided to the Lowell Sun by the deputy chief in response to a Freedom of Information Act ("FOIA") request dated November 11, 2015.

The subject letter was the subject of an earlier grievance filed by the NEPBA for which a Step 2 conference was held on April 28, 2016. My comments regarding the subject letter resulting from that conference are incorporated herein and made a part hereof. The immediate grievance was denied in writing by the chief on March 23, 2016.

Discussion

The above-referenced FOIA request from the Lowell Sun to the deputy chief was specific in that it called for “all internal investigation reports from Nov. 1 2014, to Nov. 1, 2015.”

The important questions are: 1) Did the circumstances that existed and upon which the subject letter was issued, rise to the level of an IA investigation? And, if so, 2) Why weren't established procedures (DPD Policies and Procedures s. 200 et seq.) for such an investigation followed? VI, A. 1, 2.

I have reviewed the provisions of DPD Policy and Procedure – 200, IV. A. 1. (Categories of Complaints which provide that:

1. “The Department has established guidelines regarding which categories of complaints will be handled and investigated by the Internal Affairs Section and which by a shift supervisor, as part of routine discipline. The criteria for determining the categories of complaints to be investigated by Internal Affairs include, but are not limited to, allegations of: a. corruption; b. brutality; c. use of excessive force, d. violation of civil rights; and e. criminal misconduct.
2. Criteria for the assignment of an investigation to a shift supervisor may include such offenses as: a. alleged rudeness; b. tardiness; and c. insubordination.”

The section goes on to state some cases not of a serious nature can be immediately resolved; i. e.; those arising from a misunderstanding or lack of knowledge of the law or the limitation of a police officer's authority.

I am hard-pressed to conclude that the asserted violation of an unwritten policy, known as the “16 hour rule”, would warrant an IA investigation based on DPD policies and procedures regarding these underlying circumstances. I also base this on the definition of an “IA investigation” in the *Worcester Telegram* so readily cited by the DPD in support of its response to the FOIA response to the Lowell Sun, being:

“An internal affairs investigation is a formalized citizen complaint procedure, separate and independent from an ordinary employment evaluation and assessment. Unlike other evaluations and assessments, the internal affairs process exists specifically to address complaints of police corruption (theft, bribery, acceptance of gratuities), misconduct (verbal and physical abuse, unlawful arrest, harassment), and other criminal acts that would undermine the relationship of trust and confidence between the police and the citizenry that is essential to law enforcement. The internal affairs procedure fosters the public's trust and confidence in the integrity of the police department, its employees, and its processes for investigating complaints because the department has the integrity to discipline itself. A citizenry's full and fair assessment of a police department's internal investigation of its officer's actions promotes the core value of trust between citizens and police essential to law enforcement and the protection of constitutional rights. Disciplinary action is but one possible outcome; exoneration and protection of the officer and the department from unwarranted criticism is another.”

I am also concerned regarding statements made by the Deputy Chief during both conferences that 1) any matter of inquiry, regardless of the degree, in which the possible outcome could result in discipline warrants an internal affairs investigation, and that; 2) Policies and Procedures are not relevant as to how “we” operate.

This concern is reinforced by a finding in the "MRI Risk Assessment Study Report" Dracut Police Department October 2015, being: "There is no formalized internal affairs investigative program within the department, nor a responsible supervisor charged with the administration of such a program." *MRI Report*, p. 50, October 2015.

I believe that this matter regarding the violation of the 16 hour rule should have been resolved administratively and should never have rose to the level of inquiry required for a valid internal affairs investigation.

Based upon the premise that the circumstances surrounding the writing of the subject letter did not warrant an IA investigation, it is unfortunate that given such a classification, the deputy chief released the subject letter and subjected its contents to publication.

Finally, the Union suggests the subject letter was, arguably, a "disciplinary report" and as such being exempt under the Public Records Law and the *Worcester Telegram* decision from disclosure. This is legal question I will refer to the special labor counsel for an opinion.

Disposition

The relief sought by the Union is:

1. A retraction from the Lowell Sun regarding publication of an article on March 13, 2016, entitled "Who Polices the Police?";
2. An apology regarding its publication, and;
3. An investigation into "violations of the Deputy Chief."

It is safe to conclude the Lowell Sun will not retract the article and any noted references to the contents of the subject letter. The letter was provided voluntarily and under the presumption, whether mistaken or not, of a required response under MGL. C. 66, 10. Further an apology is a personal consideration, of which I would defer to the deputy chief. Although, given the personalized language of the subject letter, I believe an apology would be in order. Finally, serious questions arise regarding the categorization of the initial inquiry regarding the 16 hour rule as warranting an internal affairs investigation, the lack of compliance with the policies and procedures regarding such an investigation and the contents and release of the subject letter. These considerations merit further inquiry.



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