

REPORT OF HEARING OFFICER
TO THE
TOWN OF TOWNSEND BOARD OF SELECTMEN

In the Matter Of
Police Lieutenant Mark Giancotti
And
The Town of Townsend, Massachusetts

Appearance for Lieutenant Giancotti:	Michael J. Akerson, Esq. Reardon, Joyce & Akerson 4 Lancaster Terrace Worcester, Massachusetts 01609
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Appearance for Town of Townsend:	Brian Maser, Esq. K P Law 101 Arch Street, 11th Floor Boston, Massachusetts 012110
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Hearing Officer:	Gerard J. Hayes
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The Town of Townsend appointed the undersigned as Hearing Officer to provide a hearing for Lieutenant Mark Giancotti regarding possible disciplinary actions up to and including termination being considered against him by the Board of Selectmen for reasons spelled out in a letter to Lieutenant Giancotti dated March 22, 2017 from James Kriedler, Town Administrator. The reasons stated for possible disciplinary action were:

1. On or about November 10, 2015, while being interviewed by Attorney Deborah Ecker concerning a complaint filed by a Police Department employee, you were questioned regarding the issue of disparate disciplinary treatment to Department employees. At that time, you told Attorney Ecker that Department employee David Mazza was not counseled in connection with his leaving a high powered magazine in a Department vehicle. The statement made to Attorney Ecker was false.

2. In connection with the same incident, on November 13, 2015 you sent an e-mail to Selectman Carolyn Smart and Interim Police Chief DeMoura and explained the incident. At that time, you advised that "Officer Mazza received a verbal counseling and the matter was documented." This statement was false as any counseling was not documented.
3. Starting in April 2016, you were assigned to attend training in Hartford, Connecticut presented by the University of Louisville Southern Police Institute (SPI). After your enrollment in that program, expense reimbursement limitations were placed on you by Interim Chief Barrieau. Thereafter, you sought reimbursement for non-reimbursable expenses through newly appointed Police Chief Robert Eaton. You willfully withheld from Chief Eaton the fact that prior limits on expense reimbursement had been imposed on you.
4. On or about January 22, 2016, you disclosed the contents of a MCAD complaint to Sergeant Johnson and Dispatcher Borneman. Neither employee had any legitimate police related reason to receive the information.

The hearing in this matter was originally scheduled for April 3, 2017. Counsel for Lieutenant Giancotti requested a short postponement and the hearing was rescheduled to April 18, 2017 and it proceeded on that date starting at 10:00 A.M. Briefs/closing arguments were scheduled for submission on April 26, 2017.

BACKGROUND

James Kriedler was appointed as the Interim Town Administrator for the Town of Townsend on December 15, 2015. Prior to his appointment, the Board of Selectmen voted to direct the incoming Town Administrator to investigate certain matters. By the end of six months of service, Mr. Kriedler had developed concerns about some 14 issues concerning Lieutenant Mark Giancotti, the second in command of the Police Department. He advised Chief Eaton by memo dated July 13, 2016 that he wanted an internal review by someone with deeper law enforcement background than his (Kriedler's) to determine if any of the matters were at a level of concern requiring action. Ultimately Billingsgate Associates LLC was selected to perform an administrative investigation. Billingsgate Associates is located in Wellfleet, Massachusetts and is headed by Chief Arthur A. Parker Jr. (Ret). The investigation report (The Parker Report) was submitted by Chief Parker on February 26, 2017. Of the 14 concerns submitted for investigation, only four were found to possibly require action. None of the other eleven matters were so found. The matters found to be possibly actionable by Chief Parker resulted in the current charges against Lieutenant Giancotti. Extracts from Chief Parker's report pertaining to the four issues were submitted as exhibits in this case. The full Parker Report was not submitted. The Hearing Officer has not seen the full Parker Report.

Lieutenant Giancotti is a 22 year veteran of the police department who was promoted to Sergeant in 2002 and to Lieutenant in 2015. He holds a bachelor and master degree

and completed the well regarded 10 week University of Louisville Southern Police Institute Command Officer Development Course when it was offered in West Hartford CT in 2016. He has not received prior discipline. The lieutenant is second in command of the department and supervises all subordinate personnel. The department sworn personnel, other than the chief and lieutenant, consists of 3 sergeants, 7 patrol officers and some number of reserve officers. The lieutenant also supervises dispatch and clerical personnel. The lieutenant assumes all the chief's duties, powers and responsibilities in his/her absence.

The previous long term chief retired in September of 2015. Two interim chiefs, each serving only a matter of months, served until Chief Eaton began work in May of 2016. Lieutenant Giancotti was essentially the acting chief after February, 2015 when there was not an interim or permanent chief on duty. The Town Administrator position was also in flux during this period. The town administrator in office when Lieutenant Giancotti was appointed resigned soon afterwards and a replacement was appointed in December, 2015. It is likely that Townsend, like almost all Massachusetts cities and towns, underinvests in training employees to assume management positions. It must be recognized, then, that for all of the above reasons Lieutenant Giancotti had his hands full indeed and was without significant management assistance for much of the period in which the issues leading to the charges against him occurred. The job of Lieutenant, the second in command of the department, is substantially different from that of Sergeant. There is a steep learning curve. The issues and work load involved in working for multiple chiefs over a short time undoubtedly made the process more difficult for Lieutenant Giancotti.

Procedural Issues

Lieutenant Giancotti, by letter dated April 18, 2017 to the Hearing Officer from his counsel, requested that the hearing be held in open session. The Town raised the issue of the need to do so given the administrative nature of the hearing. Following a brief private discussion with the parties, the Hearing Officer ruled that Lieutenant Giancotti's request be granted. Prior to the 10:00 A.M. start of the hearing a large group of people had gathered in Town Hall to observe the hearing. The room initially scheduled for the hearing was too small to accommodate the size of the group and the Town immediately moved the hearing location to the Great Hall which was more than adequate in size. Prior to commencing the hearing, the Hearing Officer reminded attendees of their right to observe and listen, but not to speak or in any way disturb the hearing. Counsel for Lieutenant Giancotti, by his prior suggestion and Hearing Officer agreement, reinforced the Hearing Officer's comments to the audience.

Some Town exhibits were copies of documents where many names had been redacted and where the originals had been underlined in certain areas thereby causing the copies to be shaded in those areas. Counsel for Lieutenant Giancotti commented that the exhibits were difficult to read and suggested that the hearing be postponed. The Hearing Officer noted that the shaded areas could be read, although not as easily as the unshaded areas, and denied the request. Underlying this ruling was the Hearing

Officer's belief that the names that had been redacted were almost assuredly well known to Lieutenant Giancotti and therefore to his attorney. On the next day, while reviewing the documents, the Hearing Officer determined that it would greatly facilitate use thereof if new copies were provided without redaction and underlining and requested Counsel for the Town to provide the same. These were provided to the hearing officer electronically within several hours and copies were forwarded by the Hearing Officer to Counsel for Lieutenant Giancotti that evening. The issue of the employee's request for unredacted copies of the full Parker report is not within the scope of this report.

The issue of the time lapse from the date of the incidents and the resulting charges was raised by Lieutenant Giancotti's counsel. It was suggested that the investigation by Chief Parker and the resulting charges were retribution by a Selectman for an investigation by Lieutenant Giancotti of an on the job interaction by the selectman's wife, a civilian employee of the police department, with another civilian employee. The "after this, therefore because of this" argument is not useful by itself. There are many reasons that could have resulted in the delay in bringing this action including the general "stickiness" of business in many local governments and, in this case, by the the turnover in the chief and town administrator positions. In any case, the events either happened or didn't and can be addressed.

The non renewal of Lieutenant Giancotti's employment contract is not relevant here. The Board of Selectmen was advised that there is no statutory authority for such a contract for the lieutenant position and is searching for a solution. A draft MOU presented to the Board by Lieutenant Giancotti contained, according to his testimony, several new benefits. The proposed benefits were not specified, but it would not be unusual for a request for new benefits to cause a significant delay in consideration of the MOU, even in normal conditions, until costs as well as possible impacts of new benefits on bargaining unit and other personnel were determined and considered. In the meantime, the Board voted to hold Lieutenant Giancotti "economically harmless until a Memorandum of Agreement can be reached."

EXHIBITS

The following exhibits were offered and accepted without objection.

Joint Exhibits:

1. Letter dated April 18, 2017 from Attorney Michael Akerson to Gerard Hayes, Hearing Officer, requesting that the hearing be held in open session.

Employer Exhibits:

1. Notice of Disciplinary Hearing Opportunity dated March 22, 2017 from Town Administrator James Kriedler to Lieutenant Mark Giancotti

2. Excerpts from the Parker Report, specifically pages 85 through 95 and pages 98 through 102.
3. Letter dated July 13, 2016 from Town Administrator James Kriedler to Chief Robert Eaton outlining concerns regarding certain actions by Lieutenant Giancotti and requesting an investigation of the concerns.
4. A packet of documents pertaining to charge number 8 consisting of page 104 of the Parker report, an e-mail dated November 13, 2015 from Lieutenant Giancotti to Ms Smart, subj: Incident Townsend, an e-mail dated November 14, 2015 from Ms. Smart to Lieutenant Giancotti, Subj: Townsend Incident, an extract (page 6) of a report to the Town dated November 29, 2015 by Attorney Deborah Ecker in connection with an investigation of possible disparate treatment in discipline cases in the department, and an Affidavit of Deborah Ecker dated April 14, 2017.
5. A packet of documents pertaining to charge number 3 above consisting of pg 105 of the Parker Report, a report of the Town Administrator to the Board of Selectmen dated February 23, 2016 with updates on health insurance costs and the Police Department Budget, a letter dated February 26, 2017 from Lieutenant Giancotti to the Board of Selectmen, Subj: Appreciation, an e-mail dated May 8, 2016 from Lieutenant Giancotti to Chief Eaton, Subj Lodging, an e-mail dated May 24, 2016 from Jodie Deschenes to Robert Eaton regarding reimbursements of Lieutenant Giancotti's hotel costs which was forwarded to Town Administrator Kriedler by Robert Eaton on May 25, 2016, an e-mail dated June 3, 2016 from Lieutenant Giancotti to Chief Eaton regarding status of requested lodging reimbursements, minutes of an executive session of the Board of Selectmen held on June 28, 2016 regarding Lieutenant Giancotti's contract and training cost reimbursements, the employment contract between the Town of Townsend and Lieutenant Giancotti dated 2/6/2015
6. A packet of documents pertaining to charge number 4 consisting of pages 106 and 107 of the Parker Report, and a letter dated December 23, 2016 from Samantha Parker to Mr. Parker augmenting information provided in her earlier interview.
7. A document titled "Workplace Rues Referenced" with regard to the Police Lieutenant job description. (Pages 108 - 110 of the Parker Report)
8. A document titled "Workplace Rule Violations Found - Sustained Concerns" . (Pages 111 - 115 of the Parker Report.)
9. The Town of Townsend position description for the Police Lieutenant position
10. A memo dated November 17, 2016 from Arthur Parker to Chief Robert Eaton, Subj: Scope of Administrative Investigation
11. A memo dated December 13, 2016 from Arthur Parker to Lieutenant Giancotti subject, Administrative Review.
12. The complete Contract of Employment for the period February 3, 2015 to June 30, 2016 between the Town of Townsend and Lieutenant Giancotti.
13. A copy of the Town of Townsend Personnel Policies and Procedures Manual.

Employee Exhibits:

1. An extract from the Town of Townsend Personnel Policies and Procedures pertaining to hearings in employee disciplinary matters.
2. A packet of 4 e-mails from Attorney Akerson to Attorneys David Jenkins and

- Meryum Khan of KP Law requesting numerous documents
3. An exchange of two e-mails dated March 23, 2016 between James Kreidler and Lieutenant Giancotti in which Giancotti requests a hearing in connection with the charges brought against him and James Kriedler's acknowledgement of the request and notification that he will confirm the date and time shortly.
 4. An e-mail dated March 22, 2017 from James Kreidler to Mark Giancotti ,subj: Parker Report and Attachments which was forwarded to Michael Akerson on March 23, 2017
 5. An e-mail dated November 4, 2015 from Mark Giancotti to Deborah Ecker, Subj: Clark Investigation (without attachments)
 6. A memorandum dated November 16, 2014 from Chief Robert DeMoura to then Town Administrator Andy Sheehan, Subj: Response of correspondence from Selectwoman Smart
 7. Affidavit of Robert DeMoura dated April 17, 2017
 8. Affidavit of Robert M. Eaton, Jr. dated April 17, 2017

WITNESSES

The case was presented primarily through exhibits and counsel statements. Lieutenant Giancotti was the only witness. Affidavits were presented as exhibits by both counsel for the employee and counsel for the Town.

SUMMARY OF RELEVANT FACTS PERTAINING TO CHARGES

- Charge 1: False Statement to Attorney Ecker regarding not counselling Mazza, and
Charge 2: False Statement in an e-mail to Selectwoman Smart and Chief DeMoura regarding counseling Mazza and documentation thereof

A member of the Board of Selectmen was informed by a civilian employee of the police department that the employee was going to file a complaint with the MCAD regarding a disciplinary matter. The Kopleman and Paige Law firm was requested to investigate the complaint and Attorney Deborah Ecker was assigned to the investigation. Ms. Ecker reported her findings in a report dated November 28, 2015. One issue raised by the employee concerned possible disparate treatment in disciplinary cases in the Townsend Police Department. An example given by the complainant involved treatment of an employee who in September or early October of 2015 brought a department vehicle to a body shop in Townsend to be detailed, but failed to remove a high powered ammunition clip that was in the back seat pocket of the vehicle. Body shop personnel made prompt reports of finding the clip and it was retrieved by an officer. Lieutenant Giancotti, the supervisor of the employee who brought the vehicle to the body shop, was interviewed on November 10th by Attorney Ecker. In her report Attorney Ecker reported that Lieutenant Giancotti stated that "it was a mistake that the ammunition ... was left in the car when it was brought to be detailed, but that at most such a mistake would warrant counseling the officer who left it in the cruiser." Attorney Ecker reported that "the

Lieutenant did not counsel Mr. Mazza.” In an Affidavit dated April 17, 2017, Attorney Ecker states “I recall Lieutenant Giancotti telling me that in this case the officer knew about it (that the ammunition had mistakenly been left in the vehicle) and so he did not counsel Mr. Mazza.” In his testimony, Lieutenant Giancotti stated that he doesn’t recall Attorney Ecker asking a question concerning counseling of Mazza. He states that he did not tell her that he did not counsel Mazza because he had done so at a meeting on October 15, 2015. Counsel for Lieutenant Giancotti suggested that Attorney Ecker perhaps slipped up on her notes as she interviewed several other police employees on the same day as Lieutenant Giancotti.

On November 13, 2015 there was a series of e-mails between Selectman Smart, Chief DeMoura, and Lieutenant Giancotti regarding the ammunition clip matter. In a reply to one e-mail from Ms. Smart, Lieutenant Giancotti stated that “Officer Mazza ...took full responsibility... . Officer Mazza received a verbal counseling and the matter was documented.” In testimony regarding his e-mail to Ms. Smart, Lieutenant Giancotti commented that the Board of Selectmen is not in the (police department) chain of command.

On November 16, 2015 Chief DeMoura sent a letter to then Town Administrator Sheehan addressing two issues, one of which was the ammunition clip issue. In his letter Chief DeMoura states: “This incident was handled by Lt. Giancotti where discipline was given to an employee”. Chief DeMoura also provided an Affidavit dated April 17, 2017 in which he states: “I also was aware that Lt. Giancotti verbally counseled reserve police officer David Mazza regarding an item left in a cruiser.”

Mr. Mazza was interviewed as part of the investigation by Chief Parker. Chief Parker, following the interview of Mazza, reported “Mazza said Giancotti counseled him for ten to fifteen minutes about his oversight and considered what Giancotti said a counselling session. Mazza said that he thought that happened on the same day as the incident. Mazza said that he felt Giancotti’s reprimand was a form of discipline for his mistake. Mazza said if documentation about the matter was placed in his personnel file he was not aware of it and never told of such.

When Chief Parker interviewed Lieutenant Giancotti about the Mazza incident, Giancotti told him that he counseled Mazza but did not document it.

Chief Eaton was requested by Chief Parker to review Mazza’s personnel file and reported that there was no documentation in Mazza’s file about the magazine and no report of counseling.

When asked by the Hearing Officer about documentation of the Mazza counseling, Lieutenant Giancotti replied that the matter was documented in the November 13, e-mail to Ms. Smart.

The Townsend Personnel Policies and Procedures Manual provides in Article 13 - Discipline that in cases of Oral Reprimands, a written record of the oral reprimand is

kept in the employee's personnel folder. Copies of the Manual had been provided to town employees. Lieutenant Giancotti, as a supervisor, had a responsibility to be aware of disciplinary action procedures and to follow them. During his testimony Lieutenant Giancotti stated that "he never documented a verbal before".

Both Chiefs DeMoura and Eaton state in their affidavits that they found Lieutenant Giancotti to be truthful. Chief DeMoura stated in his affidavit: " In my involvement with him (Lt Giancotti), I have found him to be truthful and a competent police officer."

Charge 3 - Failure to Communicate Prior Training Expense Reimbursement Provision Established By Chief DeMoura When Seeking Increased Reimbursements From Chief Eaton.

Lieutenant Giancotti, who has both Bachelor and Master degrees, became aware of a Command Officer Development Course to be conducted in West Hartford, Connecticut by the University of Louisville, KY Southern Police Institute in 5 two week periods scheduled over the period April 4 - August 19, 2016. Officers would attend the program for two weeks, return to their departments for two weeks , and repeat the cycle until 10 weeks of class were completed. Lieutenant Giancotti requested Interim Chief Barrieau for permission to attend the program. The Chief agreed to pursue the matter because he was concerned that the Lieutenant had not been sent for command training since his promotion almost a year ago. Attendance at the program would fill this training gap as well as help prepare Lieutenant Giancotti for higher positions in the Townsend Police Department or elsewhere.

Chief Barrieau had previously identified a large deficit in the police department budget that had occurred prior to his employment. Nonetheless, he met with Town Administrator Kriedler to request \$1,500.00 for tuition. Full tuition for the program was normally \$3500.00, but grants from various organizations served to reduce student cost. Town Administrator Kriedler agreed with the proposal and a request was made to the Board of Selectmen for the \$1,500.00. The proposal was brought to the Board by Mr. Kriedler and it was approved, but it was noted in discussion that "... he is on his own for lodging. We'll pay the fee, he is on his own for lodging." Chief Barrieau reported to Chief Parker that he never had a personal conversation with the Board of Selectmen regarding food or lodging reimbursement. He viewed those costs as within his discretion. Subsequently Chief Barrieau was able to locate sufficient funds to pay \$55.00 per night for lodging and explained to Lieutenant Giancotti that anything over \$55.00 per night would be borne by him. Lieutenant Giancotti was also allowed full use of his cruiser during the period.

Lieutenant Giancotti, according to Chief Barrieau, was able to locate lodging at \$55.00 per night and started the program. The Town prepaid the hotel for the first two weeks. It turned out that the hotel was unacceptable for several reasons and Lieutenant Giancotti located another hotel. This hotel also proved to be unacceptable for numerous reasons and Lieutenant Giancotti moved, for a third time, to the hotel that had been

recommended by the University of Louisville. Each successive hotel was somewhat more expensive than the earlier one.

On May 8, 2016 Lieutenant Giancotti sent an e-mail to Chief Eaton, who had just started his employment with the Town, notifying him that his lodging costs had gone up, asking him if he had any issues or concerns, and advising him that he had submitted the paid invoice as well as an invoice for the coming week.

On June 3, 2016 Lieutenant Giancotti apparently had not heard back from Chief Eaton and sent an e-mail to him requesting the status of his request regarding hotel reimbursement as well as future payments. In the e-mail he states: "As I stated to you on Wednesday, the training, including lodging, was approved by Chief Barrieau and the town paid for the first two weeks of hotel stay." Chief Eaton at some point did authorize the Lieutenant to spend up to \$119.00 per night which he felt was within his legal authority to do as Chief of Police.

At no time did Lieutenant Giancotti advise Chief Eaton regarding the \$55.00 per night lodging expense cap established by Chief Barrieau. When asked by Chief Parker why he didn't, the reply was that "it never came up". Chief Eaton first learned that Chief Barrieau had imposed the limit in a June 28, 2016 Executive Session meeting with the Board of Selectmen when the Board expressed concern about Lieutenant Giancotti receiving higher reimbursements than had been approved. Chief Eaton had regarded the limit as a Board of Selectmen proposal. Chief Eaton later learned that Chief Barrieau felt that Lieutenant Giancotti needed to show some commitment to attend the training by bearing some of the costs of the lodging.

Chief Eaton, in an affidavit dated April 17, 2017, stated that, in his opinion, "if we (the Town) cannot afford to send police officers to training and put them up, we should not send them". He further stated: "It was irrelevant to me if there was a lodging cap as the Lt. was already in the training. He told me that the prior hotels were in unsafe, drug areas, and unclear. His safety and well-being was paramount", and he further states: "It was more important that the Lt. be in a safe and comfortable place so that he could get the most out of the training. I do not feel that the Lt. improperly withheld information from me or tried in any way to deceive me."

Charge 4 - Disclosure of Contents of a MCAD complaint to Sergeant Johnson and Dispatcher Borneman, neither of whom had any legitimate police related reason to receive the information.

On January 22, 2015 the Police Department received a copy of an MCAD complaint filed by Patty Clark, a civilian employee of the Police Department. Lieutenant Giancotti was in the office as Executive Administrative Assistant Samantha Morris was opening the mail, and he observed that mail had been received from the MCAD. He took it and read it in Ms. Morris' presence and returned it to her. No copies were made. Ms Clark subsequently placed the complaint in the Chief's locked office where it remained until

the following Monday at which time the Chief forwarded it to the Town Administrator without reading it.

Later on the day the complaint was received, Lieutenant Giancotti was in the dispatch area along with Sergeant Johnson, Dispatcher Borneman, and Ms. Morris. All of them were named in the Clark complaint. Ms. Morris had some discussion about the complaint with Ms. Borneman after being asked why she was so visibly upset. She explained that she was named in the complaint and was upset about being involved. There was additional discussion regarding the complaint which was apparently limited to Lieutenant Giancotti advising that it had been received and that the individuals were named in it. This occurred before the Chief, the Town Administrator, and the Selectmen were aware that the complaint had actually been received. Maintenance Supervisor Mercurio was in the Dispatch area at the time and later told Selectman Clark during a social event that personnel in the dispatch office were talking politics and not attending to police business, but Mr. Clark did not recall that Mr. Mercurio mentioned anything concerning Mrs. Clark's MCAD complaint. Lieutenant Giancotti advised Chief Parker that the reason he confirmed the receipt of the complaint to the individuals was that they were named in the complaint. The news that the complaint had been received was placed on Facebook later that day, perhaps by political opponents of Selectman Clark. Chief Barrieau was advised by Sergeant Johnson when the chief was looking into the matter, that he (Johnson) had heard about the charge on the Wednesday prior to the the MCAD complaint being received. The Chief was of the opinion that other people in the community were aware that a charge had been filed before the department received a mailed copy from the MCAD.

FINDINGS

Charges one and two:

Attorney Ecker interviewed Lieutenant Giancotti about the ammunition magazine issue on November 10, 2015 and submitted a report dated November 29, 2015 to Town Administrator Sheehan in which she summarized the interview and other matters. She reported that Lieutenant Giancotti, when discussing the issue of ammunition left in the cruiser, stated that "it was a mistake ...but that at most such a mistake would warrant counseling the officer...". It would be beyond reason to accept that she did not then ask a question as to whether or not Lieutenant Giancotti counseled Officer Mazza and to accurately report the answer she was given. One of the purposes for the interview was to examine disciplinary actions and possible disparate treatment of employees. I find that Attorney Ecker's report was correct and that Lieutenant Giancotti did say to her that he did not counsel Officer Mazza. The reasons for the statement at that time are not clear.

Lieutenant Giancotti had no reason to lie to Attorney Ecker and state he had not counseled Mazza if he had verbally counseled Mazza. Once a misunderstanding/error by Attorney Ecker is ruled out, as I have, there are few possible explanations for the statement. Perhaps Lieutenant Giancotti misunderstood the question, had a notion of

"counseling" that would involve a more formal discussion than occurred , or misspoke in his answer. It seems more likely that Lieutenant Giancotti and Mazza had some brief, informal conversation and Lieutenant Giancotti considered the matter as concluded. Mazza took responsibility and was very unlikely to repeat the mistake. Giancotti told Attorney Ecker that " at most the leaving the ammunition clip in the cruiser would warrant counseling the officer." This suggests that formal counseling might not have been required in his opinion. It seems likely that Lieutenant Giancotti did not believe that the incident was a serious one and didn't warrant formal counseling. Mazza's comment to Chief Parker that he considered what Giancotti said as a counseling session, not that he was counseled, suggests an informal discussion in which he was not advised that he was being counseled. However, it also seems likely that Lieutenant Giancotti later decided to re-label whatever communication occurred between Mazza and him as a counseling session. This is not Lieutenant Giancotti's explanation. Perhaps it is not what happened. However, based on the available information I do not find that Lieutenant Giancotti's statement was a lie.

Lieutenant Giancotti testified at hearing that his counseling of Mazza was documented by virtue of his statement in his e-mail to Selectman Smart and Chief DeMoura. His counsel suggests that this was documentation, albeit in a very non traditional form. Perhaps what communication occurred with Mazza was not of a level that required documentation or that practice in the department, notwithstanding Town policy, had been to forgo documentation of low level discipline. The statement by Lieutenant Giancotti that the Selectmen are not in the chain of command suggests that he may resent or misunderstand the Selectmen's role in the department. It is possible that he sent a quick "school solution" response to Ms. Smart in an attempt to minimize further questions from her. If so, his reply was improper and unprofessional. It is unknown if all or any of the e-mails regarding this issue were filed in Mazza's personnel file or were waiting to be filed. If so, this could be considered as "documentation". Certainly, as a minimum, there was incomplete follow up on administrative actions. Lieutenant Giancotti must accept that the Board of Selectmen are the Chief Executive of the Town. While once they appoint a Chief of Police their authority regarding day to day operations of the department is somewhat limited by statute, they remain responsible for oversight of the department and are entitled, as is the Town Administrator on their behalf, to correct and full answers to any questions they may have absent any legal impediments. While Lieutenant Giancotti's statement was imprecise and perhaps misleading, I do not find that he was deliberately untruthful.

Charge 3 :

Lieutenant Giancotti and Chief Barrieau reached an understanding that he would attend the Southern Police Institute training program. The Board of Selectmen agreed to fund the necessary \$1,500 tuition but not lodging and meal expenses. Chief Barrieau later agreed to pay \$55.00 per night from the police department budget for lodging as he believed that this was within his discretion. This amount was arrived at in view of the department budget shortfall and the chief's belief that Lieutenant Giancotti should invest

in his own future. Lieutenant Giancotti was not restricted as to where he could stay, but only to the amount the Town would reimburse him. Lieutenant Giancotti apparently decided to minimize his out of pocket expense by first selecting two budget hotels before moving to the hotel that the University had recommended for attendees. This was his choice and his decision and, based on his report, probably a sound one. In May of 2016 he advised Chief Eaton that his cost of lodging had gone up, asked if he had any issues or concerns, and advised that he had submitted invoices at the higher amount for payment. In a follow up e-mail to Chief Eaton dated June 3, 2016 Lieutenant Giancotti wrote: "As I stated to you on Wednesday, the training, including lodging, was approved by Chief Barrieau and the Town paid for the first two weeks of hotel stay." Lieutenant Giancotti knew that the Board of Selectmen did not agree to pay for lodging in part because they considered such payment to be beyond benefits provided in his employment contract. Lieutenant Giancotti did not advise Chief Eaton of the limitation he had reached with Chief Barrieau. Chief Eaton approved a reimbursement of \$119.00 per night without knowledge of Chief Barrieau's arrangement. If he had been advised, it is probable that Chief Eaton would have approved the higher amount in any case. In his affidavit dated April 17, 2017 Chief Eaton stated: "I do not feel that the LT improperly withheld information from me or tried in any way to deceive me."

Lieutenant Giancotti's failure to inform Chief Eaton of the arrangement he had made with Chief Barrieau showed poor judgment. He should have been more forthright. The arrangement was not with Barrieau personally so that it expired when he left. It was with Barrieau as an agent of the department and the town. Lieutenant Giancotti's omission could have put the new chief in a very awkward situation with the Board of Selectmen early in his career with the Town. Additionally, Lieutenant Giancotti's statements in his June 3 e-mail to Chief Eaton that "... the training, including lodging, was approved by Chief Barrieau and that the Town paid for the first two weeks of hotel stay" was misleading. Chief Barrieau had only approved a reimbursement of \$55.00 per night for lodging with any balance to be the responsibility of Lieutenant Giancotti. If the Town fully paid for the first two weeks of lodging, it is only because Lieutenant Giancotti used a hotel where the reimbursement rate covered the charges. Lieutenant Giancotti had every right to request an increase in reimbursement for lodging. He had an obligation to advise Chief Eaton of the prior limit and he failed to do so.

I find that Lieutenant Giancotti was unprofessional and not forthcoming with Chief Eaton in failing to advise him of the agreement with Chief Barrieau and that this showed poor judgement as well as a lack of respect for his superior officer. Moreover, I find that Lieutenant Giancotti was misleading by stating in his June 3 e-mail to Chief Eaton that lodging had been approved by Chief Barrieau without mentioning the reimbursement limit. I do not find that he lied in this matter.

Charge 4

Lieutenant Giancotti should have reported the receipt of the MCAD charge to Chief Eaton, by telephone if necessary, or to the Town Administrator when it arrived. It was a sensitive matter in Town and officials should have been advised of its receipt before the

weekend. There was no explanation of why he did not do so. However, it seems that it was known in the station that the complaint had arrived and that Ms. Morris was upset by it. Lieutenant Giancotti's discussion seems to have been limited to confirmation that the complaint had been received and that the employees he was speaking with were named in it. There was no evidence that Lieutenant Giancotti disclosed the details of the complaint. His discussion with the employees does not seem unreasonable under the circumstances.

DISCIPLINE/ CORRECTIVE ACTION

There is just cause for discipline/corrective action in this case. The question of what is appropriate is often a difficult one. There could be relevant circumstances not known to the hearing officer that will make some think any recommended discipline is too "light", while others will think it too "heavy." The past record of the employee as well as the offense(s) are all relevant along with extenuating circumstances such as the actual state of administrative practices in the department, the comings and goings of chiefs, and the relative inexperience of Lieutenant Giancotti in all the administrative matters in his new position.

It is clear as reported above, however, that there were numerous instances where Lieutenant Giancotti was misleading, not forthcoming, unprofessional, and showed poor judgement. He was not faultless. Lieutenant Giancotti must accept responsibility for his own part in these matters. It was not clear at hearing that he does.

In view of all of the circumstances in this case, I recommend that Lieutenant Giancotti be suspended without pay for not more than one week.

Respectfully submitted:



Gerard J. Hayes
Hearing Officer
May 3, 2017