

**REPORT OF INVESTIGATION OF ALLEGATIONS OF
HARASSMENT, HOSTILE WORK ENVIRONMENT AND RETALIATION
IN THE WILLIAMSTOWN POLICE DEPARTMENT**

August 10, 2021

Submitted by:

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Table of Contents

	Page
I. EXECUTIVE SUMMARY	1
II. CONDUCT OF INVESTIGATION.....	2
A. Scope of Investigation	2
B. Summary of Allegations	4
C. Persons Interviewed	4
D. Documents and Other Information Reviewed	5
E. Pertinent Police Department and Town Policies	5
III. SUMMARY OF FINDINGS	6
IV. DISCUSSION OF INVESTIGATIVE FINDINGS.....	10
A. Background.....	10
B. Sexual Harassment and Hostile Environment.....	14
1. Chief Johnson initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.....	14
2. Sgt. McGowan initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.....	19
C. Racial Harassment and Hostile Environment.....	22
1. Chief Johnson initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.....	22
2. Sgt. McGowan initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.....	27

D.	Harassment Based on Disability.....	29
1.	A former dispatcher with a disability does not believe Johnson attempted to pull the telephone receiver from his grasp based on any type of discriminatory animus concerning physical handicap.....	29
E.	Retaliation.....	30
1.	Based on the factual record, Town Manager Hoch and Chief Johnson did not retaliate against McGowan for his opposition to unlawful practices based on sexual harassment, racial hostility and union activity.....	30

I. EXECUTIVE SUMMARY

The Town of Williamstown Select Board retained my services in February 2021 as an independent, outside investigator to investigate facts underlying claims of harassment, hostile work environment and retaliation Sergeant Scott McGowan (“McGowan”) alleged in a complaint he filed in federal court in August 2020 against the Town; Town Manager, Jason Hoch; and Police Chief, Kyle Johnson. On about March 1, 2021, the full-time officers of the Williamstown Police Department submitted a letter to the Town Manager and the Select Board containing allegations about McGowan’s official conduct and communicating a unanimous vote of no confidence in him as a sergeant and police officer.

The Select Board, thereafter, retained the services of Co-Investigator, Paul L’Italien, to conduct an independent investigation into allegations contained in the Officers’ Letter. Because two paragraphs of the Officers’ Letter contain allegations related to McGowan’s Federal Court Complaint allegations, Select Board member, Andrew Hogeland, Mr. L’Italien and I agreed that I would be responsible for investigating the allegations contained in those two paragraphs, and Mr. L’Italien would investigate the remaining allegations contained in the Officers’ Letter.¹

Summary of Allegations. McGowan made the following principal allegations² in his Federal Court Complaint.

1. Chief Johnson initiated, participated in and tolerated sexual harassment, sexual assault and sexually demeaning conduct within the Department.
2. Chief Johnson created and tolerated a racially hostile environment within the Department.
3. Chief Johnson injured a disabled dispatcher while the dispatcher was working.
4. Chief Johnson and Town Manager Hoch retaliated against McGowan for his continued opposition to unlawful practices within the Department based on sex, race and disability.

The Department’s full-time officers³ made the following principal allegations in two paragraphs of their Letter concerning McGowan’s conduct as a sergeant and officer:

1. Sgt. McGowan initiated, participated in and condoned sexual harassment, sexual assault and sexually demeaning conduct within the Department as much as anyone.
2. Sgt. McGowan participated in and tolerated racism in the Department as much as anyone.

¹ Mr. L’Italien has submitted his report to the Town separately.

² Numerous subsidiary allegations are discussed in Section IV. Discussion of Investigative Findings.

³ Excluding then Acting Chief/Lieutenant (now Interim Chief/Lieutenant), Michael Ziemba.

Conduct of Investigation. I interviewed twelve (12) witnesses, three more than once; reviewed the transcripts of an additional twelve (12) witnesses Co-Investigator L'Italien interviewed and listened to Mr. L'Italien's interview of one witness via Zoom. Additionally, I reviewed voluminous documents. Finally, I participated in a site visit of the old and new Police Department headquarters.

Summary of Findings. Based on my review of all the credible evidence and drawing all reasonable inferences from that evidence, I summarize my principal findings below:⁴

Sexual Harassment and Hostile Environment:

1. Chief Johnson initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.
2. Sgt. McGowan initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.

Racial Harassment and Hostile Environment:

3. Chief Johnson initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.
4. Sgt. McGowan initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.

Harassment Based on Disability:

5. Chief Johnson did not harass a former dispatcher based on his disability.

Retaliation:

6. Based on the factual record, Town Manager Hoch and Chief Johnson did not retaliate against McGowan for his opposition to unlawful practices based on sexual harassment, racial hostility and/or union activity.

II. CONDUCT OF INVESTIGATION

A. Scope of Investigation

The Town of Williamstown ("Town") Select Board retained my services in February 2021 as an independent, outside investigator to investigate facts underlying claims of harassment, hostile work environment and retaliation alleged in a twenty-two page complaint

⁴ Findings about subsidiary allegations are discussed in the Report in Section III. Summary of Findings and Section IV. Discussion of Investigative Findings.

Sergeant Scott McGowan (“McGowan”) filed in federal court on about August 12, 2020 against the Town; Town Manager, Jason Hoch; and Police Chief, Kyle Johnson.⁵ (“McGowan Complaint” or “Federal Court Complaint,” copy attached as **Exhibit A**). McGowan voluntarily dismissed the Federal Court Complaint on about December 15, 2020. The Select Board, nonetheless, requested that I determine the validity of facts concerning the conduct alleged in that Complaint, to the extent possible, given that many of the allegations date back more than sixteen years.⁶

On about March 1, 2021, the full-time officers of the Williamstown Police Department (“Department” or “WPD”) submitted a six-page, unsigned letter to the Town Manager and the Select Board containing allegations about McGowan’s official conduct and expressing a unanimous vote of no confidence in him as a sergeant and police officer (“Officers’ Letter”).⁷ The Select Board, thereafter, retained the services of co-investigator, Paul L’Italien, a Detective Captain (Retired) of the Massachusetts State Police, to conduct an independent investigation into the allegations contained in the Officers’ Letter. Because two paragraphs of the Officers’ Letter⁸ contain allegations related to McGowan’s Federal Court Complaint allegations, which I am responsible for investigating, Select Board member, Andrew Hogeland, Investigator L’Italien and I agreed that I also would be responsible for investigating the factual allegations contained in those two paragraphs, and Co-Investigator L’Italien would investigate the remaining factual allegations contained in the Officers’ Letter.⁹ Thus, as of March 2021, the scope of my investigatory work expanded to include responsibility for investigating two paragraphs of the Officers’ Letter. (The text of those two paragraphs is attached as **Exhibit B**).

⁵McGowan first filed a complaint, containing essentially the same claims, with the Massachusetts Commission Against Discrimination (“MCAD”) on about November 12, 2019 (“MCAD Complaint”). State anti-discrimination law, G.L. c. 151B, § 9, provides that before filing a civil action in court for monetary damages and/or injunctive relief under that law, a plaintiff such as McGowan must file a charge with the MCAD and then withdraw it ninety or more days later. McGowan withdrew his MCAD complaint on about August 5, 2020. The scope of my investigation covers the principal claims contained in both the MCAD and Federal Court Complaints, although for convenience I refer only to the Federal Court Complaint throughout this document.

⁶ The scope of my work does not include reaching conclusions of law or of possible Department or Town policy violations. Additionally, my role as an independent investigator does not include providing legal advice or representation, and my work is not subject to attorney-client privilege or the work product doctrine.

⁷ Several officers stated they had been advised not to proceed with their claims earlier while McGowan’s Federal Court Complaint was pending.

⁸ Paragraphs 9 and 13.

⁹ Mr. L’Italien has submitted his report to the Town separately.

B. Summary of Allegations

McGowan has made the following principal allegations in his Federal Court Complaint:

1. Chief Johnson initiated, participated in and tolerated sexual harassment, sexual assault and sexually demeaning conduct within the Department.
2. Chief Johnson created and tolerated a racially hostile environment within the Department.
3. Chief Johnson injured a disabled dispatcher while the dispatcher was working.
4. Chief Johnson and Town Manager Hoch retaliated against McGowan for his continued opposition to unlawful practices within the Department based on sex, race and disability.

The Department's full-time officers¹⁰ have made the following principal allegations in their Letter (paragraphs 9 and 13) concerning McGowan's conduct as a sergeant and officer:

1. Sgt. McGowan initiated, participated in and condoned sexual harassment, sexual assault and sexually demeaning conduct within the Department as much as anyone.
2. Sgt. McGowan participated in and tolerated racism in the Department as much as anyone.

The above allegations form the basis of my investigation and findings.¹¹

C. Persons Interviewed

I interviewed twelve (12) witnesses, including Sgt. McGowan as both a complainant and a respondent, former Town Manager Jason Hoch and former Chief Kyle Johnson. I interviewed three of those witnesses on more than one day. I also reviewed the transcripts of twelve (12) witnesses Co-Investigator L'Italien interviewed and listened to the interview of another witness via Zoom. A list of witnesses is attached as **Exhibit C**.¹²

¹⁰ Excluding then Acting Chief/Lieutenant (now Interim Chief/Lieutenant), Michael Ziemba.

¹¹ Numerous subsidiary allegations and findings are discussed below in Section II. Summary of Findings and Section IV. Discussion of Investigative Findings.

¹² Several witnesses expressed concern about possible retaliation for bringing their claims and/or for participating in this investigation. They were advised that state and federal law, as well as Town and Department policies, expressly prohibit any such retaliation and authorize discipline for retaliatory conduct. The Town/Department should enforce those provisions if necessary.

D. Documents and Other Information Reviewed

A list of the documents and other information I reviewed is attached as **Exhibit D**. Additionally, I participated in a site visit to the old and new Williamstown Police Department Headquarters led by Interim Chief/Lieutenant Michael Ziemba on April 21, 2021.

E. Pertinent Police Department and Town Policies

1. Police Department Sexual Harassment Policy

The Police Department's Sexual Harassment Policy ("SH Policy"), issued on March 3, 2005, is included as Administrative Order No. ADM 4.02 in the Police Department Policies and Procedures. This Policy appears to have been effective at the times of the conduct alleged in both McGowan's Complaint and the Officers' Letter.¹³

The SH Policy states in pertinent part:

It is the goal of the Town of Williamstown to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings in which employees may find themselves in connection with their employment is unlawful and will not be tolerated by this organization. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees. . . .

Please note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment. The Williamstown Police Department adopts and operates under the Town of Williamstown Sexual Harassment Policy. . . .

IE. Policy. This policy shall be provided *annually* to all Department employees and all new employees at the *time of their employment*.¹⁴ (emph. added).

¹³ A review of Department and Town policies is beyond the scope of this investigation, as is a determination about whether any policies were violated. The policies are mentioned here to provide context for the following Discussion of Investigative Findings.

¹⁴ Additionally, G.L. c. 151B, § 3A(e), encourages employers to conduct a training program for new employees within one year of their commencement of employment and additional training for new supervisory and managerial employees within one year of their appointment.

2. Town Equal Employment Opportunity/Affirmative Action Policy.

The Town's Personnel Policy Manual ("PPM")¹⁵ contains an Equal Employment Opportunity/Affirmative Action Policy, which provides in pertinent part:

The Town recognizes the right of individuals to work and advance on the basis of merit, ability and potential without regard to race, color, national origin, ancestry, religion, genetic information, sex, sexual orientation gender identity, disability or age. Non-discrimination and equal opportunity are the policy of the Town in all of its hiring and employment programs and activities. . . .

PPM, Recruitment, B. p. 3. This Policy expressly prohibits harassment based on the protected categories listed above. Further, the Policy states that anyone who believes they have been discriminated against under this Policy may file a grievance in accordance with procedures discussed in Subsection 4 below. PPM, e, p.4.

3. Town Americans with Disabilities Act Policy.

The PPM also contains an Americans with Disabilities Act ("ADA") Policy. PPM, C., pp. 5-7. The Policy states that it "applies to all employees of the Town . . ." with one exclusion not relevant here. PPM, p. 5. It further provides that the Town will not discriminate against people with disabilities in any employment practices or in terms, conditions or privileges of employment. Id.

4. Town Discrimination Grievance Procedure.

The PPM further includes a Discrimination Grievance Procedure that was established to meet the requirements of the ADA. PPM, D., pp. 7-9. This Procedure provides that anyone who believes they have been discriminated against in employment based on a protected class may file a grievance. Id., p. 8.

III. SUMMARY OF FINDINGS

A. Sexual Harassment and Discrimination

1. Chief Johnson initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.
 - a. Johnson rubbed his clothed genitals against McGowan and other male Department members during the summer of 2007 and against a civilian female Department member during the summer of 2010. (Summers 2007 and 2010)

¹⁵ The date of the PPM is not certain but appears to be September 2017.

- b. An off-duty officer's sexual assault of a Town resident was resolved by means of a Last Chance Agreement signed by the Officer,¹⁶ the Town and McGowan, as President of the Union. (February 2011)
 - c. Johnson (and other Department members including McGowan) referred to a female dispatcher¹⁷ by "Nicknames," "Bae" and "Baby Girl". (2014-2016)
 - d. Johnson did not speak in a degrading manner about the prospect of potentially having to promote a female officer of Puerto Rican heritage under the Civil Service System. The female officer¹⁸ testified that she does not believe Johnson spoke disparagingly about her. (undated)
- 2. Sgt. McGowan initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.
 - a. McGowan pressed his clothed genitals against male officers and dispatchers. (Summer 2007)
 - b. The investigation is inconclusive as to whether McGowan straddled the Department canine and pretended to have sex with her. (2014-2015)
 - c. The investigation is inconclusive about whether McGowan watched and laughed as a male officer¹⁹ touched a female officer's breasts, given the former officer's failure to testify. However, the female officer's detailed testimony and other credible sexually-charged incidents in the Department tend to lend credence to this allegation. (before November 2016)
 - d. McGowan pantomimed sexual intercourse while standing behind a female officer²⁰ and pretending to slap her buttocks. (2016-2018)

B. Racial Harassment and Hostile Environment

- 1. Chief Johnson initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.
 - a. The Town's promotion to Sergeants of two long-term white officers with supervisory experience rather than a three-year African-American

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officer²¹ without supervisory experience complied with Civil Service requirements. (2005)

b. Johnson's Treatment of an African-American patrol officer.²²
(2002-2016)

i. The investigation was inconclusive as to whether Johnson circled newspaper photos of persons of color, wrote an African-American officer's initials on the pictures and placed the pictures in the officer's mailbox, given the officer's failure to testify. However, the detailed nature of McGowan's account and Johnson's failure to deny or affirm the incident lend credence to these allegations. (undated)

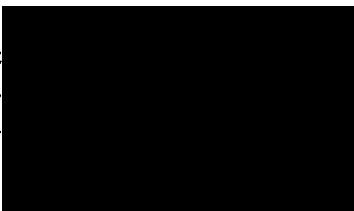
ii. When Johnson saw a person of color entering the station or appearing on television, in the presence of an African-American officer, Johnson would rub his eyes, look back and forth between the officer and the other person of color and appear confused. (undated)

c. Johnson removed a part-time dispatcher²³ from assignments for two weeks after the dispatcher shouted the N-word upon entering the Department for his shift. (2012)

d. The investigation is inconclusive about whether an African-American Officer²⁴ requested a transfer to a different police department because of a "negative environment" and racial hostility in the WPD, given his failure to testify. However, credible testimony about other racially charged incidents in the Department lends credence to this allegation. (2015-2016)

e. The investigation is inconclusive as to whether Johnson knew before 2019 about a photo of Hitler posted for almost twenty years inside an Officer's²⁵ closet/locker and failed to investigate and address the matter. However, given the length of time the photo was posted and the small size of the Department, it seems improbable that Johnson would not have heard about it and if he did hear about it, he failed to investigate or act otherwise. (aprox. 2000-2019).

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2. Sgt. McGowan initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.
 - a. Despite being a Sergeant with supervisory responsibilities and claiming to be personally offended by a Hitler photo posted inside an officer's closet/locker, McGowan took no steps to have the photo removed and photographed it for use in his lawsuit. (2000-2019)
 - b. At least two Department members heard McGowan use the N-word to refer to his African-American roommate, a WPD Officer.²⁶ (2002-2005)
 - c. The investigation is inconclusive as to whether McGowan taunted a dispatcher²⁷ who had been disciplined for using the N-word based on the lack of corroborating or rebuttal testimony from witnesses other than the dispatcher and McGowan. However, the dispatcher's detailed account lends credence to his allegations. (2012)
 - d. McGowan frequently commented that a female officer of Puerto Rican descent²⁸ "Came Over on a Rubber Tube, Saw the Statue of Liberty and Said, 'I Made it to America.'" (undated)

C. Harassment Based on Disability:

1. Chief Johnson did not harass a dispatcher²⁹ based on his disability. The former dispatcher testified he does not believe Johnson treated him in a harassing or discriminatory manner.

D. Retaliation

1. Based on the factual record, Town Manager Hoch and Chief Johnson did not retaliate against McGowan for his opposition to unlawful practices based on sexual harassment, racial hostility and union activity.
 - a. Johnson had legitimate, non-discriminatory reasons for placing McGowan on paid administrative leave in January 2019. (January 2019)
 - b. The Town Manager promoted Officer Ziemba to lieutenant rather than Sgt. McGowan based strictly on the results of an Assessment Center

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Promotional Test administered by a trained, neutral third-party Panel.
(July/August 2019)

IV. DISCUSSION OF INVESTIGATIVE FINDINGS

Based on my review of all the credible evidence and drawing all reasonable inferences from that evidence, I find as follows.³⁰

A. Background

Town Governance and the Police Department. The Town Manager is the appointing authority for the Police Department, as well as for many other Town Departments. As such, the Town Manager is responsible for appointments and removals of the Police Chief and other rank officers, as well as other Department members. The elected Select Board appoints the Town Manager.

During the time periods alleged in McGowan's Complaint and the Officers' Letter (2004-2021), the Town Managers and their respective years of service were Peter Fohlin, 2000-April 26, 2015 and Jason Hoch, September 8, 2015-May 31, 2021. The Police Chiefs and their respective years of service during that same time period were Chief Michael John Kennedy, July 14, 1989-March 1, 2000; Chief Arthur Parker, July 1, 2000-July 1, 2004; and Chief Kyle Johnson (Acting), July 1, 2004-December 14, 2020.

The Williamstown Police Department is and has been historically a small force. The Department currently has twelve full-time officers (including the Interim Chief/Lieutenant, two sergeants and eight patrol officers); two part-time, reserve officers; and six full-time dispatchers (two of whom also serve as the part-time reserve officers).³¹ The Police Department was located in small, cramped physical quarters -- a converted former college fraternity house -- until moving to its new headquarters in July 2019.

³⁰ In doing so, I applied the pertinent preponderance of the evidence standard, under which the evidence must establish that a factual finding is more likely than not true. Stated differently, the evidence must establish that there is more than fifty percent likelihood that a finding is true.

³¹ The Department's size and promotional opportunities have been largely stagnant over the past sixteen years. Openings for full-time officers had not been available until about October 2020, with the retirement of one sergeant. Additionally, no promotional opportunities had been available from 2005 until 2019, when a new lieutenant position was created. The Department currently has one full-time female officer, who has served on the force since January 1996, and four full-time female dispatchers. The Department employed a female Animal Control Officer from about January 1999 until July 2015, when she transferred to a different Town Department. Two or three of the Department's current officers are believed to be multicultural, with one officer being multilingual. The Department employed one full-time African-American officer from about 2004 until 2016. From about 1972 until 2013 (with a few short breaks), the Department employed one person who identified as being handicapped.

Kyle Johnson began work for the WPD as a part-time/special officer in July 1993. He was appointed a full-time officer sometime in 1998. Town Manager Fohlin appointed Johnson Sergeant in April 2002. Slightly more than two years later, in July 2004, Fohlin promoted Johnson, then thirty-three (33) years old, to become Acting Chief to succeed retiring Chief Parker. At some point, Johnson was promoted to permanent Chief and served in that position for about sixteen and a half (16.5) years, until his resignation in December 2020.

Scott McGowan began work for the WPD as a dispatcher in approximately 1994.³² The Town/WPD terminated his employment on about April 11, 1997. In a letter to McGowan on that date, Chief Kennedy explained that he was terminating McGowan's employment because of his "ongoing off-duty antics, driving to endanger, operating under the influence, damaging people's property and providing alcohol to minors." Sometime in 1998, the Town apparently rehired McGowan, this time as a part-time reserve officer.

On June 3, 1999, McGowan was arrested for a domestic abuse assault and battery in North Adams. Because of that arrest and several other incidents of misconduct that Chief Kennedy detailed in a memorandum to then Town Manager Stephen Patch, Kennedy sought McGowan's permanent termination, saying he could "no longer accept responsibility for McGowan's immature behavior and abuse of power that are entrusted to police officers." According to Kennedy, McGowan's father, then the Williamstown Fire Chief, asked Kennedy to meet with him and his son, Scott, at the fire station to discuss the June 3rd arrest. Kennedy did so and stated that Fire Chief McGowan cut the meeting short. A Town Employment Status Notification shows termination of McGowan as a reserve police officer, signed by Chief Kennedy on June 3, 1999 and Town Manager Patch on June 7, 1999.

After the June meeting among Police Chief Kennedy, Fire Chief McGowan and Scott McGowan, McGowan retained a prominent area attorney to represent him in the criminal matter. Chief Kennedy retired on about March 1, 2000 and Chief Parker succeeded him on about July 1, 2000. On July 19, 2000, McGowan admitted to sufficient facts upon which a jury could find him guilty. The court case was continued without a guilty finding until January 19, 2001, while McGowan was placed on probation with a condition that he receive private counseling.

According to Parker, McGowan worked as a dispatcher for the Adams Police Department while the criminal case was pending. Parker stated to Mr. L'Italien that soon after McGowan's six-month continuance had passed in January 2001, McGowan approached Parker and asked if he could return to work in Williamstown. Parker told him to return in a few months, and he would consider the request. McGowan apparently returned sometime in the spring of 2001 to repeat his request. Parker allowed him to return as a reserve officer sometime thereafter.³³ Sometime in about November or December 2001, Parker apparently recommended to Fohlin that he hire McGowan as a full-time officer conditioned on his successful completion of the Police

³² Several Town/Department personnel records appear to be incomplete and/or missing information making it difficult to determine precise dates and personnel sequences.

³³ Parker said that having reviewed the incident report for McGowan's June 3, 1999 arrest and spoken with the North Adams Public Safety Commissioner, he believed that "mitigating circumstances" existed and that McGowan's girlfriend had been the aggressor.

Academy. McGowan was appointed a full-time officer on December 17, 2001 and graduated from the Police Academy on May 10, 2002.³⁴

About two years later, in April 2004, Chief Parker recommended that Town Manager Fohlin promote McGowan to sergeant after he passed the Civil Service promotional examination. Johnson and McGowan served together as sergeants for a short period of time until Johnson was promoted to Acting Chief in July 2004. In approximately 2007, Johnson named McGowan the Department's designated investigator, including for sexual assaults, as McGowan had requested.³⁵

Chief Johnson's Tenure. Soon after Johnson was appointed Chief in 2004, a work culture developed within the Department that several members³⁶ described as including "inappropriate horseplay," "unprofessional conduct," "juvenile locker room behavior," "stupid" and "immature" behavior.³⁷ Johnson, a relatively young, in-house Chief, described the Department members as his friends and took pride in creating a "jovial," friendly atmosphere within the Department in contrast to what he perceived as the more austere administrations of his predecessor chiefs. Similarly, at least at the beginning of Johnson's tenure, several Department members referred to and perceived their Department colleagues as "good friends." Those friendships appeared often to facilitate a culture of covering up for one another, including for sometimes inappropriate behavior and misconduct. Over time, however, conduct that once may have been perceived or tolerated as "inappropriate horseplay" or "immature", eventually became objectionable, intolerable and/or worse when left unaddressed, and cliques began to develop, some based upon particular shifts Department members worked.³⁸

At some point, certain Department members began to express reservations, concerns and/or dissatisfaction with Johnson's leadership, at least among themselves. From about 2014 to 2016, McGowan became especially vocal and public about his criticisms of Johnson. Department members testified that McGowan frequently belittled Johnson and called him incompetent, an idiot and other derogatory names behind his back. In defending against his criticisms of the Chief, which McGowan does not deny making, he states that a vast majority of Department members were critical of Johnson's leadership. McGowan, however, appears to be the only one to have made it "loud and clear" that he would try to take the Chief out of the Chief's position and become the next chief himself. Johnson himself testified that "people used to tell me that in my absence he [McGowan] would, you know weekends or days off or whatever, he was very vocal to the shift mates that when he took me out and he was chief things would be done

³⁴ Parker stated to Mr. L'Italien that he had not seen or been aware of Chief Kennedy's termination letter and termination memorandum about McGowan. Chief Kennedy stated that he had given McGowan's file to Chief Parker before he retired.

³⁵ McGowan told Johnson around this time that [REDACTED], which he said was one of the reasons he wanted to be designated the sexual assault investigator.

³⁶ [REDACTED]

³⁷ Quoted words and phrases are taken from either interview transcripts, the Federal Court Complaint or the Officers' Letter.

³⁸ The Department has three shifts: First (7:00a.m.-3:00p.m.); Second (3:00 p.m.-11:00p.m.) and Third (11:00p.m.-7:00a.m.). Johnson and McGowan each worked the first shift primarily.

different.” McGowan denies saying he wanted to become Chief. Nonetheless, the number and variety of Department members who testified about such statements by McGowan suggest that it is more likely than not true that he made such comments. Further, McGowan was heard saying that if he was not promoted to Chief, he would go to the media.³⁹

In 2018, McGowan resigned as President of the Williamstown Police Association (“WPA” or “Union”) because of a disagreement between him and the union membership over certain of his communications to the Town Manager on their behalf but without their vote, according to the members. Although a Sergeant with supervisory responsibilities, McGowan virtually stopped communicating with other members of Department at that time, including his assigned patrol partner, except when absolutely necessary. Several Department members testified that this lack of communication lasted for more than a year and was intensified when the Department moved to its new headquarters in July 2019.

Johnson was mindful of this communications problem by McGowan, although he did not address it head-on. Additionally, Johnson believed that McGowan wanted to replace him as Chief and was not a team player. Thus, sometime in 2018, in the course of discussing the possible creation of a new lieutenant position, Johnson told McGowan he would likely choose another officer over McGowan if the decision were left to him.⁴⁰ Johnson’s statement upset and angered McGowan, who had advocated for creation of the position and intended to apply for it, which was widely known throughout the Department.

Developments: 2019-2020. In January 2019, Johnson placed McGowan on paid administrative leave (“PAL”), pending results of a fit-for-duty examination, based on an email McGowan sent to Johnson in which, among other things, McGowan expressed concerns about [REDACTED] because of alleged silent punishment and bias by Johnson. McGowan returned to work in February 2019 after passing the examinations, one of which included certain recommendations. In May 2019, Town Meeting approved an operating budget to fund a lieutenant position. On about June 6, 2019, McGowan filed with the state Department of Labor Relations (“DLR”) a charge of prohibited practice under the collective bargaining agreement, based on his placement on PAL. In that charge, McGowan alleged a pattern of discrimination and retaliation against him. This charge was filed about three weeks before the anticipated posting for the newly-created lieutenant position, which occurred on about June 26, 2020.

McGowan and twenty (20)-year veteran officer, Michael Ziemba, were the only two applicants for the lieutenant position. They each participated in an independent Assessment Center Test for the promotion, which was devised and administered by a trained, third-party panel of independent active and retired police and fire personnel and included simulated

³⁹ [REDACTED]

⁴⁰ Johnson testified that McGowan asked him explicitly if Johnson would recommend the appointment of him or Officer Michael Ziemba if a new lieutenant position were created. McGowan denies asking that question.

hypothetical situations.⁴¹ Town Manager Hoch, aware of tension between Johnson and McGowan, decided that the successful candidate would be the highest scorer on the Assessment Center Test, eliminating Chief Johnson's discretionary input into the decision. Both McGowan and Officer Ziemba scored above average on the Test. Ziemba, however, was the highest scorer in each category and for the final total score. Based on that result, the Town Manager appointed Ziemba lieutenant in mid-August 2019.

McGowan filed his MCAD complaint in mid-November 2019. In early April 2020, the DLR issued a decision, finding no violation under the collective bargaining agreement and failure by McGowan to establish that Johnson's conduct in placing him on PAL was unlawfully motivated. Although McGowan argued that Johnson silently punished him because of his critiques of the Department and his role as a former Union President, the DLR concluded that the Town had presented substantial evidence that Johnson had a legitimate, non-discriminatory motive for his conduct.

In early August 2020, McGowan withdrew his MCAD complaint, paving the way for him to file essentially the same complaint in federal court on August 12, 2020. Johnson resigned as Chief on about December 14, 2020. The next day, December 15, 2020, McGowan dismissed his Federal Court Complaint. The full-time members of the Department submitted their Letter concerning McGowan on about March 1, 2021.⁴²

B. Sexual Harassment and Hostile Environment

1. Chief Johnson initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.

a. Johnson rubbed his clothed genitals against McGowan and other male Department members during the summer of 2007 and against a female civilian Department member during the summer of 2010. (Summers 2007 and 2010)

Male Department Members. McGowan alleges that on four occasions during June and July 2007, Johnson sexually assaulted him in the police station by "rubbing his clothed penis" against McGowan's right arm twice, his left arm once and his right hand once.

Interviews confirmed that these incidents occurred while McGowan was sitting at a computer table writing reports, with his elbows placed on the table, in the first-floor squad room, also known as the sergeants' room, located next to the Chief's office. McGowan described these contacts by Johnson as "quick glances," lasting not more than two seconds each. McGowan did not consider the Chief sexually deviant though he considered these contacts as sexual assaults

⁴¹ By this time, the Department had left the Civil Service System, so an alternative means of conducting Department promotions had to be developed.

⁴² Throughout interviews, several Department members expressed commitment and dedication to their work and communicated a strong desire to be able to re-focus their attention and energies on doing their jobs.

and testified he would have arrested someone else for similar activity. McGowan claims he said to Johnson “what are you doing – knock it off.” He did not report the conduct to the Town Manager.

Johnson does not deny, and was observed by other Department members,⁴³ rubbing his groin against McGowan during the relevant time period. Johnson described his own conduct as follows:

“... if somebody was sitting at a desk typing or something, their elbow sticking out, you walk by and you bump them and they scream out and laugh and you just go on your, you go on your way. It's not like there was these deviant sexual advances happening throughout the department. It wasn't a regular thing in that it was done all day every day. But when there was an opportunity like that, that's, that's what happened, unfortunately.”

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Johnson committed similar groin-rubbing conduct with at least four other Department members.⁴⁵ After each person told Johnson, essentially, to “knock it off,” the behavior apparently stopped as to most individuals. However, when the behavior did not stop as to one dispatcher, he wrote a letter to Johnson in May 2007 to make an “official complaint” about the Chief’s groin-rubbing of the dispatcher’s arm as well as other conduct.⁴⁶ The dispatcher testified that he received no response to this letter, and the investigation did not uncover any such documentation.

On August 6, 2007, the same dispatcher wrote a “To/From” memo and letter to the Chief.⁴⁷ The subject line read, “Sexual Harassment, Mental and Physical Abuse.” The memo stated, “more than one time you rubbed up against my arm or elbow with your clothed penis. I also told you more than once I was uncomfortable with this action and not to do this....” The memo further stated that the conduct violated the Town’s rules and regulations and the state anti-discrimination law, M.G.L. c. 151B. The dispatcher expressed another concern about, “when you physically attack me with rubber bands, hitting me in various parts of my body including my genitals. Your response to this was a laugh and ‘wow what a shot.’” The memo noted, “lately the sexual harassment has diminished but the physical attacks with the rubber bands are still a problem.” In concluding, the letter said, “I am bringing these issues up [REDACTED]

[REDACTED].” In his letter, the dispatcher asked the Chief to contact him.

43 [REDACTED]

44 Johnson disputes that he sexually assaulted McGowan.

45 [REDACTED]

46 [REDACTED]

⁴⁷ Under the Department’s Professional Standards and Internal Investigations Policy, ADM 4.01 (“IA Policy”), a “To/From” letter submitted to the Internal Investigations Officer is the means to initiate a formal Departmental complaint against a Departmental employee. It is unclear if any Department member had been designated an Internal Investigations Officer during this time period.

The dispatcher, who worked the second shift (3:00 p.m.-11:00 p.m.), left a copy of his letter on Johnson's desk on August 6, 2007, as well as on Sergeant McGowan's investigations desk located on the second floor, because the dispatcher believed McGowan to be the number one sergeant at the time. Both Johnson and McGowan worked the first shift (7:00 a.m.-3:00 p.m.). The dispatcher did not give a copy of the letter to the Town Manager or anyone else because he thought the situation would improve after his letter.

Johnson met with the dispatcher after receiving his letter. The dispatcher asked that Johnson place a copy of his letter in Johnson's personnel file. Johnson did so, where the letter remains currently. Johnson says he and the dispatcher "basically never talked about it again."

While the genital rubbing and rubber band shooting by the Chief improved after the dispatcher's letter, he says the Chief's degrading comments about him became worse, and he was moved to the third shift (11:00 p.m. to 7:00 a.m.). The dispatcher says he complained to all three sergeants, including McGowan, about why no investigation of his complaint took place. One of the sergeants, other than McGowan, did speak with the Chief at some point and advised him to "knock off" the genital-rubbing behavior before he was looking at a lawsuit or other serious consequences.⁴⁸ According to the sergeant, Johnson did not appear to take the caution seriously. Johnson apparently discontinued his groin-rubbing conduct as to the male officers and dispatchers sometime after he received the dispatcher's letter.

McGowan did not speak with the dispatcher about his letter at the time it was written in 2007 or at any time during the remainder of the dispatcher's tenure with the Department, which lasted until about 2016. Neither did McGowan take any action regarding the dispatcher's letter. Sometime in about 2018 or 2019, after the dispatcher had left the Department, and when he and McGowan ran into each other on the street, McGowan asked the dispatcher for another copy of his 2007 letter, saying vaguely that he was having some problems at work and needed to recap some things. The dispatcher gave McGowan another copy of the August 6, 2007 letter.

Female Department Member. One afternoon in about July 2010, the Department's [REDACTED] ⁴⁹ was in the Department's first floor squad room, near the back cabinets, where [REDACTED] had pulled out a folder in order to revise a report. The folder was placed on the table in front of [REDACTED], where [REDACTED] was standing and looking down at the report. [REDACTED] heard someone enter the room behind [REDACTED]. [REDACTED] suddenly felt a body pressing against [REDACTED] backside. Shocked, [REDACTED] turned around, saw Chief Johnson and exclaimed, "What are you doing?!" He laughed and walked out.

Johnson did not acknowledge the incident at the time or after and carried on as if nothing had happened.⁵⁰ The [REDACTED] did not report or press the matter because [REDACTED] did not feel comfortable doing so and did not want to talk about it. About three years later, [REDACTED] [REDACTED] about the incident. [REDACTED] did not tell him sooner because [REDACTED] feared he might do something he would regret.

48 [REDACTED]

49 [REDACTED]

⁵⁰ Johnson testified he did not recall this incident or behavior.

b. An off-duty officer's sexual assault of a Town resident was resolved by means of a Last Chance Agreement signed by the Officer, the Town and McGowan, as Union President. (February 2011)

McGowan alleges, essentially, that Johnson should have terminated an officer⁵¹ involved in an off-duty sexual assault of a female town resident, as McGowan claims to have advocated for Johnson to do.

In February 2011, McGowan reported to Johnson that an off-duty WPD police officer allegedly had committed an assault and battery on a female resident of Williamstown. The woman was a long-time friend of McGowan, who was the sexual assault investigator at the time, and an acquaintance of the accused officer. McGowan alleges Johnson should have terminated the officer, as McGowan claims he "advocated for" Johnson to do. Johnson and a shift mate of the accused Officer, who was on duty the night of the incident and spoke with McGowan soon after,⁵² each deny that McGowan advocated for the officer's termination. The shift mate testified that McGowan told him the victim simply wanted the accused officer to get help. Moreover, as noted below, McGowan signed a Last Chance Agreement resolving the matter on behalf of the WPA, for which he served as President at the time.

Johnson immediately placed the accused officer on paid administrative leave and contacted the Massachusetts State Police Crime Prevention and Control ("CPAC") Unit assigned to the District Attorney's Office to investigate. In their report, [REDACTED]
[REDACTED] The State Police further noted that they would provide a copy of their report to the District Attorney for further consideration.

As for administrative Department action concerning the matter, Johnson contacted counsel for the Massachusetts Police Chiefs Association about the general scenario, without disclosing identifying specifics. Counsel sent the Chief a boiler plate Last Chance Agreement, which Johnson and then Town Manager Fohlin "tweaked" to address their immediate situation. The Agreement, dated April 4, 2011, was signed by the Officer, the Town Manager and McGowan for the WPA. The Agreement described itself as a "mutually agreeable form of discipline . . . in lieu of a disciplinary hearing" and included "numerous strict conditions in lieu of termination" based on the citizen's complaint. Per the Agreement, the Officer's termination was suspended subject to successful strict compliance by the Officer with each condition set forth in the Agreement. One requirement was a one-year probationary period, which the Officer successfully completed. Additionally, the Agreement provides that for the balance of the officer's employment as a WPD officer, "he will be terminated for any offenses similar to any of those for which this discipline is imposed." The Officer currently remains on the WPD force. Thus, Johnson did not terminate the Officer in accordance with the terms of an Agreement signed by the Town, the Officer and McGowan on behalf of the WPA.

⁵¹ [REDACTED]

⁵² [REDACTED]

c. Johnson (and other Department members including McGowan) referred to a female dispatcher by “Nicknames,” “Bae” and “Baby Girl”. (2014-2016)

McGowan alleged, essentially, that Johnson belittled a female dispatcher by calling her “Bae” and “Baby Girl.”

Beginning during the tenure of one of Johnson’s predecessor chiefs, the giving of nicknames to Department members became commonplace and was perpetuated throughout different administrations. In April 2014, the Department hired a woman to work as a full-time dispatcher.⁵³ Several Department members testified that this dispatcher’s “nicknames” became “bae” or “baby girl,” although it is unclear where or how those nicknames originated. One officer testified that the dispatcher said she liked being referred to by those names.⁵⁴ Other officers believed the female dispatcher “liked” or “appreciated” the nicknames as friendly ones.⁵⁵

Johnson frequently called the dispatcher “bae” or “baby girl.” The two were known to have a good work relationship, which McGowan confirmed. McGowan’s opinion, however, was that Johnson used those nicknames to belittle the dispatcher. Yet, McGowan himself referred to the dispatcher as “bae” or “baby girl,” although he claims that he and other members of the Department only did so when “mocking” Chief Johnson.

It is undisputed that Johnson, McGowan and perhaps other members of the Department called the dispatcher “bae” or “baby girl.” However, the investigation is inconclusive as to whether she regarded those terms as unwelcome and belittling or “friendly”, given that she declined to be interviewed for this investigation. In any event, use of those terms by the Chief, a Sergeant and perhaps other members of the Department, even if as a “nickname” or even if said in a “mocking” manner, was inappropriate, lacked leadership and judgment and contributed to fostering a sexually charged workplace environment.

d. Johnson did not speak in a degrading manner about the prospect of potentially having to promote a female officer of Puerto Rican heritage under the Civil Service System. The female officer testified that she does not believe Johnson spoke disparagingly about her. (undated)

McGowan alleged that Johnson spoke disparagingly about the prospect of potentially having to promote a female officer of color under the Civil Service System.

⁵³ [REDACTED]

⁵⁴ [REDACTED]

⁵⁵ [REDACTED]

In approximately January 2018, Johnson and McGowan were having discussions about whether or not the Department should leave the Civil Service System. During those conversations, McGowan alleges Johnson said words to the effect, “Can you imagine if Officer [X] passed the [Civil Service] promotional exam and was number one on the list and I had to promote her?” McGowan believes Johnson made that statement disparagingly because the officer is a female and a person of color and because Johnson believes the officer is not suited to a supervisory role.

Johnson acknowledges saying words similar to the ones McGowan alleges but states the reason was that he believes the officer is not interested in a supervisory role within the Department based on her own comments to him. Further, Johnson testified that the comment had nothing to do with the officer’s Puerto Rican heritage.

For her part, the officer⁵⁶ testified that she objects to being called a person of color and has often communicated this to McGowan and other Department members. Rather, the officer regards herself as an American, having been born in New York City, whose parents happen to be of Puerto Rican descent. The officer does not believe Johnson made the comment about not promoting her for any reason other than he knew that, “I was not ready to be in that position. And I had made it clear that I wasn’t applying for the position, and I wasn’t ready to be supervisor material, or do that kind of work”. The officer does not believe that Johnson’s comment was said in a belittling or derogatory manner.

2. Sgt. McGowan initiated, participated in and tolerated sexually charged and offensive comments and conduct within the Department.

a. McGowan pressed his clothed genitals against male officers and dispatchers. (Summer 2007)

The Officers’ Letter alleges and several Department members testified credibly that McGowan had rubbed his clothed genitals against them during the 2007 time period.⁵⁷ When McGowan rubbed against at least one officer,⁵⁸ McGowan said words to the effect, “can you feel my ‘big ball’?”⁵⁹ Other members of the Department heard him speak at the station about his “big ball” or “big nut”.⁶⁰ This conduct usually occurred in the first-floor squad room or in the dispatch area where officers often stood and completed reports while leaning on the dispatch counter, and dispatchers sat handling their calls.

Certain officers testified that similar groin-rubbing behavior was fairly widespread among first shift members during 2007.⁶¹ Sometime soon after the dispatcher’s August 2007

⁵⁶ [REDACTED]

⁵⁷ [REDACTED]

⁵⁸ [REDACTED]

⁵⁹ McGowan denied using these terms. He testified that he did discuss at the station a medical condition he had which required surgery.

⁶⁰ [REDACTED]

⁶¹ [REDACTED]

letter, the groin-rubbing conduct appears to have ceased throughout the Department, with the apparent exception of the incident involving Johnson and the Department's Officer in approximately 2010. (see discussion in Subsection B.1b above).

b. The investigation is inconclusive as to whether McGowan straddled the Department canine and pretended to have sex with her. (2014-2015)

The Officers' Letter alleges that McGowan straddled the Department canine on the floor and pretended to have sex with her while lying on top of her.

A dispatcher testified to having witnessed this behavior, which McGowan denies having committed.⁶² No other witnesses recalled having seen this behavior, and the investigation did not uncover any other corroborating or rebuttal information. Therefore, the investigation was inconclusive as to this allegation.

c. The investigation is inconclusive about whether McGowan watched and laughed as a male officer touched a female officer's breasts. However, the female officer's detailed testimony and other credible sexually charged incidents in the Department lend credence to this allegation. (before November 2016)

The Officers' Letter alleges that McGowan watched and laughed as a male officer touched a female officer's breasts in the second-floor closet/locker area.

The female officer⁶³ testified that sometime prior to November 2016, she and a male officer⁶⁴ were in the changing area that housed officers' closets/lockers located on the second floor of the old building.⁶⁵ A male officer with a nearby closet reached out and touched the breast area of the female officer, who was wearing a tee-shirt. The female officer told the male officer to "knock it off" or she would hit him with a clothes hanger. When the male officer again touched her breast, the female officer hit him with the hanger, as promised. The female officer further testified that McGowan, who was a friend of the alleged offending officer, was present throughout the incident and simply watched and laughed. The female officer did not report the incident because she believed she "took care of it" by hitting the offending officer, and this particular behavior stopped thereafter.⁶⁶

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⁶⁵ Female members of the Department did not have a separate changing room in the old Department building. They sometimes used a bathroom. The new Department building has separate women's lockers and bathrooms.

⁶⁶ This type of "self-help" approach appeared to be characteristic of the way many Department members addressed or attempted to address internal Department problems. Such approaches seemed to work for a while, until the work environment became more toxic and aggressive beginning in around 2016 and worsening thereafter (after McGowan resigned as President of the

The alleged offending officer, who left the Department in approximately 2016 for a job in another police department, did not respond to multiple requests to be interviewed for this investigation. McGowan denied the allegations of this incident. He did confirm that he and the officer had attended the police academy together, joined the WPD at the same time and had been roommates for about three years and good friends throughout the duration of the officer's tenure in the WPD.

Based on these circumstances, the investigation is inconclusive as to whether and how this incident occurred, although the female officer's detailed account⁶⁷ and the sexually charged environment within the Department, confirmed based on other incidents discussed in this report, lend credence to these allegations.⁶⁸

d. McGowan pantomimed sexual intercourse while standing behind a female officer and pretending to slap her buttocks. (2016-2018)

Sometime most likely between 2016 and 2018, a female officer⁶⁹ was standing in front of a file cabinet in the dispatch area facing the dispatch counter, with her back turned to the cabinets. People began laughing, so she turned around to discover McGowan standing behind her. She was told by people who witnessed the incident that McGowan had been pantomiming sexual intercourse and pretending to slap her on the buttocks. Other Department members⁷⁰ observed this same behavior by McGowan on multiple occasions when the female officer was not aware of his actions. McGowan denied this behavior.

WPA in 2018 because of a disagreement with the union membership). Beginning in 2016, the environment in the Department became so stressful to the full-time female officer (including for work reasons beyond those discussed in this report), that she spent as much time as possible working outside the station, stopped participating in "inappropriate horseplay" within the Department, and

⁶⁷ The Officer was a credible witness based on her detailed oral and written accounts and her demeanor, among other things.

⁶⁸ Chief Kennedy and Chief Johnson each testified that they asked the female officer on different occasions if she would like to file a complaint about various issues, which she declined to do because she believed she could handle the issues on her own, at least up until 2016. Increasingly thereafter, she and other members of the Department claimed to fear retaliation for making complaints, which remains a current concern. Neither Johnson nor McGowan, despite their ranks, and leadership and supervisory responsibilities, appeared to initiate any complaints or investigations about misconduct or violations of Department rules, regulations and/or policies.

⁶⁹ [REDACTED]

⁷⁰ [REDACTED]

C. Racial Harassment and Hostile Environment

The Department employed one full-time African-American officer⁷¹ from approximately 2002 until 2016, when he transferred to a different police department. The former WPD officer declined several requests to be interviewed as part of this investigation. Thus, the investigation was unable to confirm or deny several allegations relating to this officer and the Department.

1. Chief Johnson initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.

a. The Town's promotion to sergeants of two long-term white officers with supervisory experience rather than a three-year African-American officer without supervisory experience complied with Civil Service requirements. (2005)

McGowan alleges, in essence, that Johnson's recommendation for promotion to sergeants of two white officers rather than an African-American officer was an example of Johnson's racial hostility.

The WPD had two open sergeant positions in 2005. Nine patrol officers took the Civil Service Promotional examination that was administered in mid-October 2004. The three top scorers on the examination from highest to lowest were an African-American patrol officer and two white patrol officers. Civil Service procedure at the time allowed the appointing authority (the Town Manager) to make the first appointment from among the three highest scorers and to make the second appointment from among the top five scorers. Town Manager Peter Fohlin appointed two white officers, one of whom had 27 years' of police experience with the Town and the second of whom had 17 years' police experience working with the Town.

In his supporting letters for appointments submitted to the State Human Resources Department, Fohlin noted, among other reasons, that each officer had lengthy periods of service with the Town, experience serving as an Officer in Charge ("OIC") of numerous shifts and had demonstrated leadership ability. The African-American patrol officer had served in the WPD for three years at the time and had not had an opportunity to gain supervisory experience. Johnson, the Chief at the time, did not have authority to make appointments. He did, however, make recommendations for appointments to the Town Manager, including to appoint the two individuals with the longest service to the Town at the time. Those appointments were made in accordance with Civil Service requirements.

b. Johnson's Treatment of an African-American Patrol Officer (2002-2016)

- i. The investigation was inconclusive as to whether Johnson circled newspaper photos of persons of color, wrote an African-American officer's initials on the pictures and placed

⁷¹ [REDACTED]

the pictures in the officer's mailbox given the officer's failure to testify. However, the detailed nature of McGowan's account and Johnson's failure to deny or affirm the incident lend credence to these allegations. (undated)

Johnson did not affirm or deny that, as McGowan alleges, Johnson had circled newspaper photos of persons of color, wrote an African-American officer's initials on the pictures and placed the pictures in the officer's mailbox. Instead, Johnson testified that he had no memory of such conduct. McGowan testified that he saw Johnson engage in this type of conduct on one occasion. The officer who was the subject of this alleged conduct has left the Department and declined requests for an interview. Under these circumstances, and considering the potential bias of each of Johnson and McGowan and the lack of corroborating or rebuttal evidence, the investigation is inconclusive as to this allegation. However, the detailed nature of McGowan's account, Johnson's failure to deny the incident and credible testimony about other racially hostile incidents in the Department, lend credence to these allegations.

- ii. When Johnson saw a person of color entering the station or appearing on television, in the presence of an African-American officer, Johnson would rub his eyes, look back and forth between the officer and the other person of color and appear confused. (undated)

The investigation confirmed McGowan's allegation that on at least one or two occasions, when Johnson saw a person of color entering the police station or appearing on television in the dispatch area, in the presence of an African-American officer, Johnson would rub his eyes, look back and forth between the officer and the other person of color, and appear confused. Johnson would then say words to the effect, "is this [officer's nickname]?"⁷² Johnson did not affirm or deny this conduct but rather testified that he had no memory of such behavior.

c. Johnson removed a part-time dispatcher from assignments for two weeks after the dispatcher shouted the N-word upon entering the Department for his shift. (2012)

McGowan alleges, in essence, that an example of Johnson's tolerance for racial hostility within the Department was Johnson's failure to terminate the employment of a dispatcher who shouted the N-word upon entering the station, as McGowan claims he advocated for Johnson to do.

One weekend evening in May 2012, a dispatcher⁷³ reported to work for the third shift, which was scheduled to begin at 11:00 p.m. He entered the station where one or two officers were present and said, "'Hey, what's up my n - - - a?" As soon as the dispatcher said the N-word, he heard a female voice downstairs in the cellblock area. The woman was a Williams College student taking a tour of the station with one of the officers who was reporting to work

72 [REDACTED]

73 [REDACTED]

for the third shift that evening. Both the officer and the student are African-American. The dispatcher was surprised to learn that anyone was downstairs in the cellblock area at the time he entered the building and used the N-word.

The African-American officer leading the tour in the cellblock area heard the N-word called out, although it is unclear if he knew who said it and, further, whether the student heard the word. That night, the officer orally reported use of the N-word to the second shift Sergeant on duty at the change of shifts.⁷⁴ The dispatcher admitted to the Sergeant that he had used the N-word. He expressed regret for his words, said he had never done anything similar before, said his words were not targeted to anyone and, “it wasn’t meant in any hateful or derogatory whatever, it was just a slang that’s said millions of times. It’s just something in songs and everything else.”

The Sergeant, in turn, reported the incident to Johnson, who was not on duty. The next day the Sergeant called the dispatcher to communicate Johnson’s instruction that the dispatcher not report for his third shift work that evening. The Chief and the dispatcher subsequently spoke by phone, at which time the Chief removed the dispatcher from scheduled assignments for two weeks. The dispatcher was a part-time employee at the time of the incident. The incident and its consequences were handled orally; nothing written was placed in the dispatcher’s personnel file. No follow up education or training for the individual or Department-wide appeared to take place.⁷⁵

McGowan was not present when the incident occurred and was not the person who reported the incident to the Chief, contrary to his allegation. No credible evidence supported McGowan’s allegation that he advocated for the dispatcher’s termination.

- d. The investigation is inconclusive as to whether an African-American officer requested a transfer to a different police department because of a “negative environment” and racial hostility in the WPD given his failure to testify. However, credible testimony about other racially-charged incidents in the Department lends credence to this allegation that a racially hostile environment may have been at least a contributing factor for the officer’s requested transfer. (2015-2016)**

McGowan alleges that an African-American officer, a long-time friend of his, sought a transfer because he was tired of the “negative environment” in the Department. Town Manager Hoch, the officer’s appointing authority, and McGowan each testified that McGowan did not tell Hoch reasons the officer wanted to transfer when McGowan discussed the issue with the Town Manager in an effort to assist the officer.

The transferring officer did not speak personally with Hoch or Johnson at the time he requested a transfer. Both Hoch and Johnson thought the officer’s transfer was motivated by personal considerations including child care and other family reasons and the fact that the officer

⁷⁴ Sgt. Lemieux. The third shift did not have an assigned sergeant at this time.

⁷⁵ The dispatcher resigned in about October 2020 because of certain of his social media posts that he shared with others and were reported to Johnson as being racially hostile.

preferred not to work the third shift (11:00 p.m. to 7:00 a.m.) given that he had a young child at the time.

At some point, after a delay in approving the requested transfer, McGowan, then President of the WPA, went to Johnson and told him that if the officer's transfer was not approved quickly, the officer would go to the press to discuss racism in the Department. Johnson testified that McGowan said the officer had called the Chief a racist. When Johnson asked McGowan for examples of Johnson's alleged racism, Johnson says McGowan didn't have any. McGowan testified that that he said words to the effect, "one example is right back there," motioning to an officer's closet/locker displaying a photo of Adolph Hitler inside. (see discussion in the following subsection). Johnson denies that McGowan ever referenced a Hitler photo. McGowan also told Johnson at some point that the officer seeking a transfer found Johnson to be "unprofessional, incompetent, not capable of carrying out his duties as a police chief." Johnson never spoke directly with the African-American officer about his reasons for requesting a transfer or the veracity of McGowan's statement that the officer would go to the press and discuss the Department's alleged racial hostility if the transfer was not approved.

Almost immediately following Johnson's conversation with McGowan, Johnson went to Town Manager Hoch, and Hoch agreed to approve the transfer, in part to avoid negative publicity and in part because Johnson did not want to work with a person who allegedly considered him a racist. However, Johnson did not discuss the issue directly with the transferring officer to learn if he had actually made those comments about the Chief. Hoch did not make any inquiries about or investigate the allegations before or after the officer left the Department.

The investigation is inconclusive about the reasons the African-American officer asked to transfer to a different police department in 2016, given his failure to respond to multiple requests for an interview and the lack of corroborating or rebuttal information. However, credible testimony about other racially-charged incidents in the Department lends credence to the allegation that a racially hostile environment may have been at least a contributing factor for the officer's requested transfer.

- e. The investigation is inconclusive as to whether Johnson knew before 2019 about a photo of Hitler posted for almost twenty years inside an officer's closet/locker and failed to investigate and address the matter. However, given the length of time the photo was posted and the small size of the Department, it seems improbable that Johnson would not have heard about it and if he did hear about it, he failed to investigate or take any other action. (aprox. 2000-2019)**

McGowan alleges, in essence, that Johnson knew about and failed to investigate and act concerning a photograph of Adolph Hitler posted in an officer's closet/locker.

Sometime in late 1999 or early 2000, a young, new patrol officer⁷⁶ shared a locker with his more senior night shift partner. The patrol officer has worked the night shift (11:00 p.m. until 7:00 a.m.) throughout his tenure at the WPD. The shared locker was a cabinet with two doors and a lock located in the basement of the old Department building, behind the lock-up area, where the general public and most dispatchers would not go. (See **Exhibit E-1** attached). The more senior officer, who had a mustache and distinctive part in his hair, was nicknamed "Little Adolph" or "Little Hitler" by a few officers, one of whom gave the senior officer a photo of Hitler as a "joke." The photo was placed on the outside of the cabinet locker shared by the two officers for some period of time. Upon the senior officer's retirement from the Department, he left the photograph, which the junior officer placed inside the lower portion of the metal locker. He is of German ancestry, has relatives named Adolph and considered the reference as a funny inside "joke".

At some point, officers' gun lockers were moved to the second floor of the old building, into an area referred to as the "changing room" or "squad room," which was equipped with six walk-in closets and two computers. The only other rooms located on the second floor were a bathroom to the right at the top of the stairs and Sergeant McGowan's investigations office at the top of the stairs to the left. Straight ahead was a door leading to the changing room. The general public did not enter this area and dispatchers entered it only occasionally.

The second-floor walk-in closets had standard shelving and wall space and were used as single or shared lockers by several officers. The junior officer in possession of the Hitler photo was assigned a single walk-in closet in the left-hand corner of the second-floor changing room, next to a window overlooking a motel. (See **Exhibit E-2** attached) When he changed lockers, he took the Hitler photo with him and placed it on the inside right-hand wall of his assigned closet, along with other photos, bumper stickers and cartoons. The Hitler photo remained there until the summer of 2019, when the Department moved into its new headquarters. At that time, the officer cleaned his closet and destroyed the Hitler photo along with other items he had hung on the closet's inside wall.

The officer possessing the Hitler photo had a padlock with a combination on the door of his second-floor closet, in which he kept his duty weapon and gear. It was typically locked, except when he worked his night shift (11:00p.m.-7:00am), usually shutting the door but leaving the padlock open. Generally, no one else was on duty during the night shift except the officer, his partner and sometimes a night shift sergeant.

At most, McGowan claims to have briefly mentioned the Hitler photo's existence to Johnson once in 2016, in the course of discussing with Johnson his officer/friend's requested transfer to another department and as an example of alleged racism motivating the officer's transfer. Johnson denies that McGowan ever mentioned the photo's existence and denies being aware of the photo until McGowan filed his MCAD Complaint in November 2019. McGowan acknowledges that he never again mentioned the photo to Johnson. Thus, the investigation is inconclusive as to whether Johnson was aware of the photo's existence before 2019 and failed to investigate and address it. However, given the approximately 20-year time period the photo

⁷⁶ [REDACTED]

existed in the Department, the Department's small size and Johnson's leadership role, it seems improbable that Johnson had not at least heard about the photo.

McGowan acknowledges that he never told Town Manager Hoch about the Hitler photo. Hoch, who began work with the Town in 2015, testified credibly that he was unaware of the existence of the photo until the MCAD complaint was filed in 2019, by which time the photo had been destroyed. The Town Manager did not initiate an investigation at that time.

Several officers testified that they had never seen the Hitler photo, and a few stated they had seen it but simply regarded it as a long-running "joke" or "story" they had heard. McGowan's claim in his Complaint that the "workforce" had to see the "photo posted prominently" appears to be overstated at best. It appears that to see the photo, an officer or other person likely would have had to look or walk into the officer's closet, which typically was locked except from about 11:00 p.m. until 7:00 a.m., when the door was generally closed but unlocked.

None of these circumstances justifies the unprofessional conduct and poor judgment demonstrated by displaying for almost twenty years a racially and ethnically offensive photo, which many people regard as a symbol of hate, including moving it from a basement locker to a walk-in closet/locker located on the second floor. Similarly, the fact that some officers who saw the photo may have regarded it simply as a "joke" or "story" underscores the gravity of the issue. (See also discussion in subsection 2.a below)

2 Sgt. McGowan initiated, participated in and tolerated racially charged and offensive comments and conduct within the Department.

a. Despite being a Sergeant with supervisory responsibilities and claiming to be personally offended by a Hitler photo posted inside an officer's closet/locker, McGowan took no steps to have the photo removed, photographed it and used it in his lawsuit. (2000-2019)

The Officer's allege that McGowan knew the story behind the Hitler photograph, never objected to its being kept in the officer's closet/locker and, as a Sergeant, took no action to have it removed.

McGowan acknowledges that in 2018, he took about ten photographs of the Hitler photo posted inside the officer's walk-in closet. He did not discuss the photograph with the officer, did not ask Johnson or the Town Manager to investigate the matter and did not initiate an investigation on his own. He claims to have feared retaliation if he had done so. McGowan did not do anything with his own photographs until August 2020, when he filed his Court Complaint and attached one of his photographs as an exhibit. (See **Exhibit F** attached). By McGowan's own admission, the most he may have done was to mention the Hitler photo to Johnson in passing when discussing one of the reasons his officer/friend allegedly wanted to transfer to another police department. Johnson denies McGowan mentioned the photograph to him.

b. At least two Department members heard McGowan use the N-word to refer to his African-American roommate, a WPD Officer. (2002-2005)

The Officers allege that McGowan referred to an African-American officer using the N-word. McGowan denies this allegation.

McGowan and the African-American officer were roommates from approximately the time they were appointed full-time WPD patrol officers in 2002, after attending the Police Academy together, until approximately 2005. On at least one occasion during those years, McGowan was heard in the dispatch area referring to his roommate by the N-word and justifying his use of the word because the two lived together and were “buds.”⁷⁷

c. The Investigation inconclusive as to whether McGowan taunted a dispatcher who had been disciplined for using the N-word based on the lack of corroborating or rebuttal testimony from witnesses other than the dispatcher and McGowan. However, the dispatcher’s detailed account lends credence to his allegations. (2012).

The Officers’ allege that after a dispatcher⁷⁸ had been removed from assignments for two weeks for having shouted the N-word upon entering the station (see discussion in Subsection C.1.c above), McGowan taunted him upon his return to work by saying words to the effect, “Hey, did you hang out with any of your N-word friends while you were out?” McGowan allegedly used the N-word two more times, at which point the dispatcher says he “snapped,” swore at McGowan and told him if he used the derogatory word again, the dispatcher would tell the Chief. According to the dispatcher, McGowan stopped using the N-word that day and for a while after. However, randomly over the following years, when McGowan saw the dispatcher, he would say, “Hey ‘N---r’, you need anything N---r” and repeated the N-word about 25 or 30 times over the years. The dispatcher believes McGowan did so because “he knows I got in trouble for it, so that’s his way of teasing or picking on you type thing.” McGowan denies that he ever used the N-word when addressing the dispatcher.

The investigation is inconclusive as to this allegation, as no witnesses with first-hand knowledge of these incidents were identified or interviewed and no other corroborating or rebuttal information was uncovered. However, the dispatcher’s detailed account lends credence to his allegations.

⁷⁷ [REDACTED]

⁷⁸ [REDACTED]

d. McGowan frequently commented that a female officer of Puerto Rican descent “came over on a rubber tube, saw the Statue of Liberty and said, ‘I Made it to America.’” (undated)

On multiple occasions, McGowan commented to members of the Department that a female officer⁷⁹ had “come over on a rubber tube and when she saw the Statue of Liberty, she said, ‘I made it to America.’”⁸⁰ The female officer repeatedly told McGowan that she had been born in New York City. She testified, McGowan “made the story up about me,” and he would often change it, sometimes saying she came from “Puerto Rico, Mexico or other places.” When McGowan told the “made up story” to a person outside the Department, the officer became especially upset, repeated to McGowan that she had been born in New York City, told him his comments were embarrassing and demanded that he not repeat the comments or “made up story.” After the latter incident, the officer stated McGowan ceased making these comments. McGowan denied ever making these comments.

D. Harassment Based on Disability

1. A former dispatcher with a disability does not believe Johnson attempted to pull the telephone receiver from his grasp based on any type of discriminatory animus concerning physical handicap. (before 2013)

A former dispatcher⁸¹ with a physical handicap confirmed that some time before 2013, while he was working, Johnson approached him from behind and attempted to pull the telephone from the dispatcher’s grasp while the dispatcher was handling a call on the business line. The dispatcher was intent on not letting go of the phone so as to ensure proper handling of the call. Johnson let go of his end of the phone, causing it to hit the dispatcher’s ear. As a result, the dispatcher experienced pain and swelling to his ear that lasted a couple of days.

The next morning the dispatcher went to Johnson’s office to tell him privately that his behavior was unacceptable and that the dispatcher expected an apology, which Johnson provided. Johnson never repeated similar conduct with this dispatcher. The dispatcher stated he:

“do[es] not believe for one moment that [Johnson] had any hidden negative agenda toward handicapped or handicapable people. I don’t think for one instance that what he did was intended to take advantage of my handicap status in any sense of the term or to make my life any more difficult than it already was. There’s no doubt in my mind about that. . . I guarantee you, he doesn’t have a discriminatory bone in his body relative to a physical handicap.”

Johnson confirmed the dispatcher’s account of the incident, saying:

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“Again, it's totally unjustified, uncalled for, but it was, it was a very jovial behavior in the station around in that block of time. It was practical jokes to and fro. That was the mood in the station. . . . He's one of my best friends. . . . Because at the time none of this was a big deal, you know it was just, that was the culture I guess for a lack of a better word, yeah in the station.”

Johnson similarly had pulled the telephone receiver away from two other dispatchers while they were handling business phone calls. Again, when Johnson let go, the phone hit each dispatcher's ear or head. One dispatcher commented that Johnson was doing this in a “joking way” and as “horseplay” and was not trying to hurt anyone.⁸² The other dispatcher⁸³ said that the behavior was “annoying” and “joking,” so long as not done on an emergency call. This dispatcher described Johnson as a “child.”

E. Retaliation

- 1. Based on the factual record, Town Manager Hoch and Chief Johnson did not retaliate against McGowan for his opposition to unlawful practices based on sexual harassment, racial hostility and union activity.**
- a. Johnson had legitimate, non-discriminatory reasons for placing McGowan on paid administrative leave in January 2019. (January 2019)**

McGowan alleges that Johnson's placement of him on paid administrative leave (“PAL”) in January 2019 was in retaliation for his opposition to unlawful practices in the Department based on sex, race and union activity.

On December 31, 2018, Johnson sent a three-sentence email to the Department's three sergeants. The first sentence read, “With the start of the new year, I would like to see some numbers on your activity sheets between “Calls For Service” and “Parking.”⁸⁴ Because it is a small department, the Chief and three sergeants share responsibility for performing certain patrol functions. According to Johnson, his email was intended to encourage the sergeants to assume more patrol duty functions with the beginning of a new year. McGowan believed that the email was intended to criticize and undermine his performance record prior to the anticipated creation of a new lieutenant position, which the Chief expected McGowan to apply for.

On January 4, 2019, McGowan responded to Johnson's email with a two-page, single-spaced email in which he provided statistics representing his activity for the years 2016 through 2018, together with a detailed explanation of circumstances that impacted his department activity numbers, and he requested a meeting with Johnson. McGowan also stated in his email that he would like to discuss:

⁸² [REDACTED]

⁸³ [REDACTED]

⁸⁴ The last two sentences of the email were addressed to “S3” [third shift Sergeant] concerning a specific incident.

“ . . . a repetitive pattern [over 12 years] where I have been the victim of silent punishment from you based on my outspoken critiques of the following, but not limited to, employee competency, remedial training for specific officers who continue to lack satisfactory performance standards, promotional/department restructuring, harassment of me and my family by off-duty officers and my role in protected union activities as former president of the Williamstown Police Association. ”

(emph. added). Notably, the lengthy list of McGowan’s critiques of the Department for which he believes Johnson was punishing him did not include ones about sexual harassment or racial hostility.

In his closing paragraph, McGowan also said he wanted to discuss, [REDACTED]

[REDACTED]

McGowan’s email caused Johnson concern about McGowan’s health and safety, and fitness for duty to serve as an officer.⁸⁵ Accordingly, Johnson consulted with Town Manager Hoch, counsel for the Massachusetts Chiefs of Police Association and the Town’s labor counsel about an appropriate response. Hoch suggested that Johnson meet with McGowan to learn more about his [REDACTED] among other things. Thus, Johnson met with McGowan on January 16, 2019. Thereafter, based on McGowan’s email and his statements at the meeting, Johnson placed McGowan on PAL and told him that he could return after passing a physical and psychological evaluation to determine his fitness for duty.

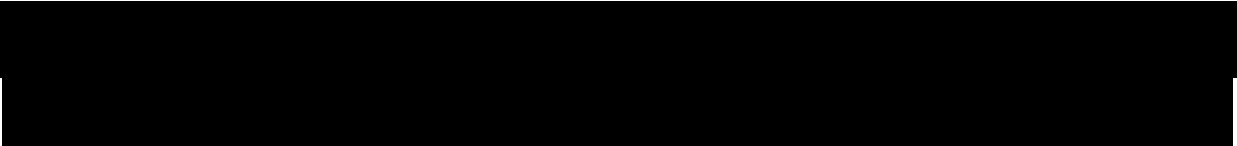
That same day Johnson sent a brief email to the Department members saying in part, “Sgt. McGowan will be out for an undetermined length of time on paid Administrative Leave. This is health & wellness related and not punitive.” Johnson testified credibly, in essence, that because the Department is so small and people would notice someone missing, especially the Department investigator, he wanted to “beat the rumor mill to the punch.” Therefore, he sent the email. He did so without consulting with anyone about medical, personnel or other information. He acknowledged that in trying to “thwart off problems”, he apparently “created a bunch of problems.” No credible evidence was produced to establish that Johnson’s email was sent for retaliatory reasons.

In about mid-February 2019, McGowan passed the examinations and returned to work full-time.⁸⁶ [REDACTED]

[REDACTED]

⁸⁵ Rule 14.0 of the Department’s Rules & Regulations provides, in relevant part, “Requiring that an officer submit to an ordinary physical or psychological examination in order to determine the officer’s fitness for duty does not constitute an unwarranted invasion of personal privacy or a violation of due process.”

⁸⁶ While McGowan was out on leave, he received his full salary and compensation for overtime shifts that he likely would have worked if he had been eligible.



On June 6, 2019, almost six months after McGowan had been placed on PAL and just weeks before an internal posting on June 26, 2019 for a new lieutenant position, he filed a charge with the Massachusetts Department of Labor Relations (DLR) claiming that his placement on PAL was a prohibited practice under the Collective Bargaining Agreement between the Town and the WPA (“Collective Bargaining Agreement”). Following an in-person investigation, the DLR investigator on about April 2, 2020 found no probable cause to believe the Town had violated the Agreement and dismissed the charge.

In the decision, the DLR investigator noted that McGowan had:

. . . failed to establish that Johnson’s conduct was unlawfully motivated . . . Although McGowan argues that Johnson silently punished him because of his critiques of the Department and his role as a former Union President, the Town presented substantial evidence that Johnson had a legitimate, non-discriminatory motive for his conduct . . . the Town showed that it placed McGowan on [PAL] out of concern for his health and safety and based on his own statements made in an email and verbally to Johnson.

MUP-19-7380, p. 4. McGowan did not appeal the dismissal of his charge. This investigation did not reveal any other credible evidence to support a claim that Johnson placed McGowan on PAL in retaliation for his critiques of sexual harassment or racial hostility within the Department or because of his union activity.

b. The Town Manager promoted Officer Ziemba to Lieutenant rather than Sgt. McGowan based strictly on the results of an Assessment Center Promotional Test administered by a trained, neutral third-party panel. (July/August 2019)

McGowan also alleges that the Town further retaliated against him by passing him over for promotion to lieutenant.

From 2005 until August 2019, the Department’s force included the Chief, three sergeants, and eight patrol officers, for a total of 12 full-time officers. In about 2018, McGowan began advocating for the creation of a lieutenant position, which Johnson initially opposed. Nonetheless, Johnson discussed the idea with Town Manager Hoch, who favored establishing a lieutenant position based on his experience working in other towns, each of which had a second-in-command or deputy chief structure. Sometime thereafter, Johnson came to support creating a lieutenant position. The new position would present the first promotional opportunity within the Department since two additional sergeant positions had been established in about 2005.

In February 2019, the Town's Finance Committee accepted the Town Manager's budget recommendation to fund a new lieutenant position, and Town Meeting subsequently approved an operating budget in May 2019 that included funds for this item. The Department posted the lieutenant position internally on June 26, 2019.

As of September 2018, at the Town's request, the Massachusetts Legislature had passed special legislation allowing the Town to withdraw from the Civil Service system, which for years had governed Department promotional appointments. Thus, the Town had to identify an alternative process to govern the appointment to the newly-approved lieutenant position. Town Manager Hoch, the lieutenant's appointing authority, suggested using an independent, third party consultant to conduct an Assessment Center Test of all the applicants. Aware of strain between Johnson and McGowan, the Town Manager testified, "it was important to me to have an independent, third-party set of eyes on the skills and capacity of whoever was seeking the promotion, rather than at the outset, bring any internal behavior bias, anything else towards this."

Assessment Center Tests have come to be regarded among law enforcement professionals throughout Massachusetts and the country as a highly effective tool, particularly for making higher rank police promotions. Rather than relying primarily on written, multiple-choice questions and submission of a written statement of education and experience, as the Civil Service Test did historically, an Assessment Center Test typically uses a series of simulated on-the-job challenges to gauge a candidate's ability to perform a particular job. Johnson consulted with the North Adams Police Chief, who had recently used an Assessment Center Test, and also with former counsel to the Massachusetts Chiefs Association, who recommended Integrity Testing, LLC (Integrity Testing) to conduct such a promotional test. Integrity Testing was founded by two retired Massachusetts Police Chiefs and is staffed by assessment-trained, retired and active police and fire chiefs. The town hired Integrity Testing to devise and conduct the Test.

The Town Manager has authority and discretion to accept or reject any candidate for promotion. The Town Manager determined that the highest scorer from the Assessment Center Test would be the candidate the Chief would recommend as the next Lieutenant. He said, "I basically just cut out the chief's authority within his own department to make the recommendation to me and said, 'I'll make the decision entirely.'" The internal posting for the Lieutenant position stated, "the assessment center ranking will serve fully as the promotional scoring for the promotion." The Assessment Center forwarded to the Town Manager the rankings of all candidates, along with all supporting documents (cover letters, resumes and letters of support).

The only two applicants for the lieutenant position were McGowan and Officer Michael Ziemba, a 20-year veteran of the Department who had assumed numerous informal advisory and support roles at Johnson's request.⁸⁷ Prior to the interview and assessment process, Integrity Testing provided each candidate with an orientation package, including an outline of the process

⁸⁷ For example, one of McGowan's assigned patrol partners asked Johnson for permission to bypass McGowan if they had questions and instead to ask the Chief or Officer Ziemba, which Johnson approved. Other officers informally looked to Officer Ziemba for guidance and support.

and areas of review. Integrity Testing devised tests that included role playing and other exercises, an oral presentation and a community panel exercise. No one from the Town communicated with anyone from Integrity Testing about either candidate.

Integrity Testing administered the test on July 31, 2019. On August 1, 2021, it issued its final report, which included each candidate's rankings in five different categories⁸⁸ and an overall final score. Both candidates scored above average on the test. Officer Ziemba, however, scored higher in each category with a final score higher than McGowan's.

On August 12, 2019, based on the final Assessment Center Test scores, as stated in the job posting, Johnson recommended to the Town Manager that Officer Ziemba be promoted to lieutenant. The Town Manager promoted Officer Ziemba to Lieutenant on August 15, 2019.

McGowan alleges that the Assessment Center process was a sham because Town Manager Hoch and Chief Johnson misled the Town community into leaving the Civil Service system in 2018; Johnson said in a 2018 discussion with McGowan about Civil Service, words to the effect that that he would promote Officer Ziemba to Lieutenant over McGowan if the decision were left to him; McGowan believes the Assessment Center Test categories were inappropriately subjective; and he believes his answers to several hypothetical questions were better than Officer Ziemba's answers based on his discussions with Officer Ziemba after the Assessment Center Test.⁸⁹

Credible evidence was not produced to support a finding that Integrity Testing's Assessment Center process was a sham or that the Town Manager's promotion of Officer Ziemba to Lieutenant was in retaliation for McGowan's past conduct critiquing sexual harassment or racial hostility within the Department or for McGowan's union activity. Further, no credible evidence was produced to establish that Hoch or Johnson had otherwise retaliated against McGowan for opposing allegedly unlawful conduct based on sex, race or his union activity.

Respectfully submitted,



Judy A. Levenson

Dated: August 10, 2021

⁸⁸ The categories were role play, structured interview, community meeting, staff meeting and in basket.

⁸⁹ McGowan testified multiple times that his critiques of the promotion process were not intended to be disrespectful of or derogatory toward Officer Ziemba, who he believes has been a good Lieutenant and with whom he believes he has a good work relationship. That testimony lends further credence to now Interim Chief Ziemba's testimony noted throughout this report.