



DEPARTMENT OF HOMELAND SECURITY
BUREAU OF CUSTOMS AND BORDER PROTECTION
U.S. BORDER PATROL

1. DOCUMENT IDENTIFICATION NUMBER

PROPERTY TRANSFER ACTION

5238, P & PM

DURATION OF TRANSFER

IF TEMPORARY, LOAN EXPIRATION DATE:

☒ Permanent

☐ Temporary (Loan)

3. TRANSFERRED FROM

ORGANIZATION NAME AND ADDRESS

U.S. Border Patrol
5165 State Route 11
Burke, New York 12917

4. TRANSFERRED TO

ORGANIZATION NAME AND ADDRESS

Chief of Police
Malone Village Police Department
2 Park Place
Malone, New York 12953

ORGANIZATION CODE

PHONE NUMBER

ORGANIZATION CODE 7

PHONE NUMBER

5. PROPERTY ID NO.

6. QUANTITY

7. ITEM NAME AND DESCRIPTION

8. CONDITION CODE

1
1
1

CCM 10 speed bicycle color blue
Sears Freestyle 600 10 speed bicycle color black
Peugeot 10 speed bicycle color green

USBP

PAT Murphy - Agent in Charge

9. REMARKS Unclaimed alien property donated to Malone Village Police Department

10. LOSING LOCAL PROPERTY OFFICER'S SIGNATURE AND DATE
Bruce J. Wilson Senior Patrol Agent 06/14/2005

Bruce J. Wilson

11. GAINING LOCAL PROPERTY OFFICER'S SIGNATURE AND DATE

Pd. Scott Ambrose
6/14/2005

12. DELIVERY METHOD AND DATE (Indicate UPS/FedEx/Trucking/Postal/Hand Carried)

UPS/FedEx/Trucking/Postal/Hand Carried

PART 1 (White)- Transferor

PART 2 (Yellow)- Shipping

PART 3 (Pink)- Transferee

PREVIOUS EDITIONS ARE OBSOLETE.

CUSTOMS FORM 33 (02/01)

Chief Reyome

9/27/05

A check of Ptl. Mulverhill's UTT Reductions shows that as of this date there is a total of 13 request in the folder and nine of them are his. I contacted six of the nine people and found the following:

Stephen Lindberg	-	told by Greg Patterson
Jenna L. Burke	-	friend of hers got a ticket and told Jenna about the form
Bryan C. Fefee	-	a kid in Malone told him about it
Diane F. French	-	friend in the Village told her about it, she laughed when I mentioned how she lives in Norfolk and responded she has a place on Chateaugay Lake.
Thomas Larock	-	heard from different people around town
Tina Debyah	-	friend told her about it

I was unable to contact or find listings for the other three people.

DJF

① STEPHEN LINDBERG

- MESS. LEFT

- GREG PATTERSON
TOLD HIM ABOUT IT

13 REQUEST
IN FOLDER

② JEWEL BRYANT

- MESS. LEFT

- FRIEND OF MINE GOT A TICKET
SHE TOLD ME

③ PAUL R. BORDEAUX

- NO LISTING

④ BRYAN C. FEFEE

NOT IN SERVICE

MESS. LEFT.

- KID IN MALONE
TOLD HIM ABOUT IT

⑤ DIANE F. FRENCH

NORFOLK - NY

- FRIEND IN THE VILLAGE TOLD ME
ABOUT IT

- CHUCKLED WHEN I SAID HOW SHE LIVES
IN NORFOLK

⑥ THOMAS LAROCK

- HEARD FROM DIFF. PEOPLE AROUND TOWN

⑦ JEFFREY J. NEWMAN

- NO LISTING

⑧ LAWRENCE A. PELKEY

⑨ TINA DEBYAH

215 ELM

- FRIEND TOLD ME

Next Day

Pulled into Burns Discovery

Talked to Cathy -

Corey Rovito - [→] works at Price Chopper

Contamination Price Chopper while Scott was working

Ashley
Told her

→ Sane Russell - 529-6061 (CH)



Joselyn Galloway - works at Price Chopper

Interrogation

Gave him shit, told him when he got out they would meet Go our BACK settle our Differences. If he even did anything to Ashley - he would TAKE Worst Beating

Between you + me I told him I would Kill him.

Interview Scott Davis

① BCI Captain Robert LA Fontaine

Hearing OFFICER?

Ed TROTTER - 500 + 600 A

DAVE McKEE

Fail TO ANSWER my questions Insubordination

Burdick vs. Crawford - Case law

J

9-27-05 Cathy Heading Smith Probation officer for
Josh Wolz.

CONTACTED August 2nd
Fling with Josh for ABOUT A week
Cut her off

August 31st.

Said he was investigating Josh about endangering
Giving beer Joe LaRocque.

Sept 6

Mary Kay called Scott

Sept 9th

Called and Left Message just to thank
me for moving so ~~etc~~ fast on violating Josh.

DAY Tree fell on Tom Burrows

Alaska
Reynolds -

Ashley
Rice

- 11-18-88

58 Cedar St

12

Palmer - since 8th grade

Know - Josh Wolt was w/ him when he called
many times.

they would meet at golf course.

2/3 weeks
in June
2 wks before
school got
out Friday

I stayed in Braintree at my boy friends ~~house~~
Ashley spent the night at Scotts. She picked me
up ~~late~~ in her pajamas. She had her other clothes
w/ her but forgot pants and we went back to
get her pants. Scott ~~is~~ was gone to work
when we got there. She would go to Scotts
when he was working and wait for him.

She used to tell her mother she would be spending
the night at my house; but she would go to Scotts.
Sometimes she would come to the house and call
her mom from there, then leave and go to Scotts,
we would hang out or go to dinner before she
would leave.

I was w/ her.

1st time I saw Scott & Ashley she was talking to
him about a ticket (Speeding). He talked to her
then asked if he could talk to her later. Next
night when I was w/ Ashley - Scott took us

~~XXXXXXXXXX~~

Mar. home - behind house -

No one will ever find it.

- Remote only - not in working anywhere

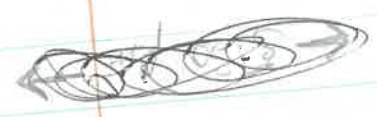
Scott in back yard asking Arky -
who was talking to Breanna.

Josh no visitors -

9/20 ? brought \$10.00 in dropped
same ~~off~~ only



phone
call



I said you like
~~girls~~ jacking seen and young
girls

He really wants to fight co/ma

Matt W. Brak
Matt Steenburger } Fat Joker
Justin Geller

He told my probation officer I was in
a bar (Fat Joker as he was there)

Kathy Healy Smith

Maple Fields

He asked me over
asking me when
coming home...

I was going on
a couple times
never ask to
search me or my car -
never asked me about
Ashley.

7:20 pm

Ocelyn Gaduway
7-31-88

10-2-05

315 Co. RT 25
483-4594

started hearing rumors - in July, asked Ashley
snubbed it off - do believe everything you hear
it's over with

at. End of August at Price chopper
Cory talking to Ashley out pushing carts
Scott pulled up to Cory + Ashley
talking to them.

A my mom's friend -

S you can't hear in your ho, friend

John Scott kept coming back - driving
looking at Cory - this is from Cory,

- left around labor day - Aug -

- Adam Hardy. -

607-753

5545 Ext 80199

Jeep Liberty - Silver

civilian clothes
~~was~~
didn't know
who he was at
time - thought
step father

- Ashley called him. -

He pulled up started Ashley -

said something about me

He was yelling at me and looked
pissed. I didn't pay attention
to him.

Texico.

I went to a friend's house

I called Ashley she said

some people showed up at her

mother's office. She said some

guys showed up.

CHIEF,

10-07-05

Here is the info requested on Reduction Forms:

Ptl Premo:	1. Speed in Zone	04-09-05
Ptl C. Stone:	1. Disobey Traffic Control Device	09-09-05
	2. Speed in Zone	09-16-05
Ptl Crawford:	1. Disobey Traffic Control Device	07-11-05
	2. Speed in Zone	07-21-05
	3. Speed in Zone	09-23-05
Ptl Kemp:	1. Fail to Yield to Right of Way	08-26-05
Ptl Russell:	1. Speed in Zone	09-02-05
Ptl Miller:	1. Speed in Zone	08-21-05
	2. Speed in Zone	08-23-05
	3. Speed in Zone	09-13-05
Ptl Mulverhill:	1. Disobey Traffic Control Device	09-01-05
	2. Speed in Zone	09-01-05
	3. Speed in Zone	09-07-05
	4. Pass Red Light	09-07-05
	5. Speed in Zone	09-11-05
	6. More Than Three People in the Front Seat	09-11-05
	7. Speed in Zone	09-11-05
	8. Speed in Zone	09-12-05
	9. Pass Red light	09-12-05
	10. Speed in Zone	09-12-05
	11. Disobey Traffic Control Device	09-19-05
	12. Speed in Zone	09-12-05
	13. Pass Red Light	09-20-05

Total: 24


Ptl Kemp

6.2.3. obey lawful order
Tucker Joe Dingle - Sept 20th RED light.

~~Charge~~. Aug 31, 2005 - TOLD By me TO STAY AWAY FROM Ashley
Told me that he was NOT seeing her
They were just friends and she keeps
calling him.

Failed To

6.2.1. Know AND Conform To Department Rules +
Regulations orders + procedures.

6.2.3. obey All lawful orders.

6.2.12.

Receive, Record and service immediately all
Complaints + Requests for Service

10.1.1 Conduct which brings discredit upon the Department

10.1.3 Disobedience of an order.

10.1.4 Insubordination or disrespect toward a Superior Officer

10.1.5 Inattention to Duty

10.1.14 Violation of any duly constituted law

10.1.16 Immoral Conduct

10.1.17 Using Coarse, profane or insolent language to any person

10.1.18 Failure to treat any person civilly & respectfully

10.1.19 Willful maltreatment of any person

~~factors~~

10.1.64. Interviewing, questioning or interrogating an person in a cell.

10.1.65 Entering any police lock-up except on official police business

10.1.82 A member violating any of the provisions of this article shall be subject to Disciplinary as provided by law.

Sept 20th, 2005 -

* 6.2.3. - Joe Dingle - Reduction Form

August 31, 2005 -

* 6.2.3. Ordered to stay away from Ashley

* 10.1.4. - Insubordination + Disrespect

Lied about to Chief about Ashley

Sept 23, 2005

* 6.2.12. Failed to respond immediately to all complaints

Sept 10, 2005 at 9:00pm

* 6.2.34 - obey laws -

Criminal Trespass at Mary Kay House

Sept 14, 2005

★ 10.1.18 - Failure to treat any person civilly + Respectfully

★ 10.1.19 - Willful Maltreatment of a person
Disobey lawful order

★ March 28th, 2005

10.1.29 Failure to pay just indebtedness
within a reasonable time. Asset Acceptance
LLC AS Assignee of Provident Bank

★ ~~12th~~ Dec 16th 2004

10.1.31. Failure to seize, record - property

★ 10.1.31
Several dates from 1994 thru 2004 -

Failed to return property to owner

Oct 4, 2005

Interview Ashley Palmer

Ticket May 17th

June 10th

Got Buair the end of June -

Went to house once or twice before I got Buair.

Went to my house a couple of times

met him in Patrol Car - several different times with But & Bryan.

Met him by to Aldi's one time.

30 DAYS - ^{DAYS} ~~Working on 30 Days Straight~~

Need to set Hearing Date

Rehab - ?

~~Immoral Conduct~~

Do we give STATEMENTS? - No

USE JANE DOE!

Charge with Riding PATROL

10/9/83	Counsel for Abusive sick Time	
8-4-05	ARTICLE 6.2.4.	Letter Reprimand
	Article 10.1.7	10 Day Suspension
	Article 10.1.13	Substance Abuse Treatment
2-4-97	10.1.7	Letter Reprimand
	10.1.1	5 Day Suspension
		MANDATORY Alcohol Counseling
11-25-201	6.2.34	Letter Reprimand
	10.1.1	10 Day Susp
		2 weeks loss of vacation
		Hunting Privileges - 3 yrs
7-11-05	Letter Concern Past Due Debt	

21/01/2013
I can't
Just
hang up
She's
Crying

Get application
For Ashley
@ Courthouse
For Nursinghome

Isaiah Preme
(10-11-88)

Andrew Sheffield
(10-5-88)

Taylor, Wesley

J

8-03-80

CALL 3138

Jim Mandish Landlord -
Barnardville

Blows - ~~Fans~~ Ray Rd - left
200 yds.

Tip Trumbley

Ashley Rice - (16) } & (Bucke)
Jesse - (15 at the time) } (Sharon Payne niece)
(Terry Palmer)



3603

Nathan
Payne

Kyle Babbies - House - Lake Titussee

Cabin from Muzzie Road

1:00 -

Burgandy Martin - 7 Area - 4 Door

~~CX # 1154~~

CX # 3117

Ashley -

MARY KAY

- Ashley

1055 AM - Ashley called and STATED she knew
that man had the car. (BRIANNA)

Detect Champagne -

Scott's Cell Phone

Lt. Chuck Potter



4419

Article 75

Chief:

9-29-05

- Derek called for you,
stated that he was out of his
office, and to try to call him
back later.

DITROPAN XL®

DITROPAN XL®

(oxybutynin chloride) Extended-release
tablets 5, 10, 15 mg

P/R Denise

1:52 Line 2

10/11/05

the telegram
needs to speak

01

3:18

9/29/05

1-888-395-1232
www.DitropanXL.com

June 2001 • 0009415-3

**In the Matter of Arbitration between
The Village of Malone,**

- and -

CLOSING ARGUMENT

The New York State Union of Police Associations

**SUBMITTED BY NORTH COUNTRY LABOR RELATIONS ASSOCIATES, INC.
ON BEHALF OF THE VILLAGE OF MALONE**

TABLE OF CONTENTS

	Page
BACKGROUND	1
POINT ONE – DISCIPLINE IS LIMITED TO ADVERSE WRITTEN DOCUMENTS UNDER THE TERMS OF THE CONTRACT	2
POINT TWO – NYSUPA/PBA SOUGHT ARBITRATION OF DISCIPLINE ACTIONS AND FAILED IN ITS EFFORTS	4
POINT THREE – LONG STANDING PAST PRACTICE SUPPORTS THE VILLAGE’S POSITION	5
POINT FOUR- NYSUPA HAS FAILED TO MEET ITS BURDEN OF PROOF	7
SUMMATION	9

BACKGROUND

The Malone Police Benevolent Association (PBA) has been affiliated with the New York State Union of Police Associations (NYSUPA) since February, 1994 (Exhibit V- 2). According to the testimony of Police Chief Ronald Reome, the local unit of police officers was represented by the United Federation of Police Officers (UFPO) from May of 1991 up to February of 1994. The state contact for UFPO was Anthony Solfaro and he remained as such when NYSUPA became PBA's state affiliate as the result of Solfaro leaving UFPO and going to work for NYSUPA.

On or about December of 1999, John Crotty was employed by NYSUPA and was assigned as a consultant for the PBA shortly after being employed. Solfaro also continued as a contact person with NYSUPA. (Crotty and Reome testimony).

On or about October 11, 2005, the Village of Malone (Village) filed Section 75 charges against Police Officer Scott Mulverhill alleging numerous acts of misconduct. Thereafter, NYSUPA, on behalf of Officer Mulverhill and all other bargaining unit employees, filed a demand for arbitration claiming that bargaining unit employees were entitled to arbitration under the grievance procedure, at the employees' option. A grievance on the same issue was also filed by the PBA concerning the Village's action.

Following the issuance of the charges, NYSUPA sought and obtained a temporary restraining order in Franklin County Court staying the Village from proceeding. Following that, the parties reached agreement to arbitrate the issue of contract interpretation over what rights, if any, an employee has to process disciplinary charges through the grievance procedure. The return date for Court was therefore adjourned.

The arbitration was held on December 2, 2005, with PBA's state affiliate, NYSUPA, presenting the case on behalf of the bargaining unit. The Village was represented by Village Attorney Nathan Race and Daniel C. McKillip of North Country Labor Relations Associates.

In this instant case, the PBA is seeking to establish that the language of Article Three provides that any and all disciplinary actions taken by the employer against a member of the bargaining unit may proceed either under the contractual grievance procedure or under Section 75 of the Civil Service Law (CSL), at the employee's option.

At the outset of the hearing, the Village and NYSUPA were unable to agree to the issue to be placed before the arbitrator and as a result, the parties agreed to proceed allowing the arbitrator to decide the issue.

POINT ONE - DISCIPLINE IS LIMITED TO ADVERSE WRITTEN DOCUMENTS PLACED IN AN EMPLOYEE'S FILE UNDER THE TERMS OF THE CONTRACTUAL GRIEVANCE PROCEDURE

The New York State legislature, in its wisdom, has seen fit to specifically identify the meaning of discipline in terms of penalties insofar as certain eligible public employees are concerned (See Section 75.3 of the CSL). Under Section 75.3, a public employer is prohibited from unilaterally imposing certain disciplinary penalties against eligible public employees but instead must first bring charges in writing, provide the charged employee with an opportunity to respond and then conduct a hearing where the charged employee is entitled to have representation with the burden of proof on the employer to prove said charges. Only after the employee has been accorded these rights can an employer impose disciplinary penalties provided under Section 75 unless another procedure has been agreed to in a collective bargaining agreement (See Section 75.2). Disciplinary penalties, as spelled out in the law, is any one of the following:

1. Reprimand¹
2. A fine not to exceed one hundred dollars ... etc
3. Demotion in rank
4. Suspension without pay for a period not to exceed two months
5. Dismissal from service

Any adverse action taken by an employer that doesn't meet any of the five enumerated examples may be imposed without going through the procedures spelled out in Section 75. Examples of adverse actions include what's known as counseling letters or written warning notices². These examples are consistent with the theory of progressive discipline that is universally recognized in labor relations as a proper procedure in dealing with employees on disciplinary matters. Also, it is commonly accepted in the public sector that demotions in rank, fines up to \$100.00, suspensions and terminations are not referred to as "*adverse written documents*". To suggest that the words "... *adverse written documents*..." as set forth under Section 2 of Article Three of the CBA was intended to include demotions, fines, suspensions and terminations would be contrary to the common lexicon used in public sector labor relations in New York State in describing penalties.

In analyzing Article Three of the CBA, Section 1, inter alia, refers to grievances under the General Municipal Law and we ask that the arbitrator take judicial notice that the law very specifically excludes disciplinary matters from the grievance procedure. However, Section 2 of the CBA modifies the exclusion to allow certain adverse documents to be placed in an employee's file that can be challenged under the grievance procedure in the CBA. Based on Chief Reome's testimony, since the language went into the contract in 1988, written adverse documents such as counseling letters and/or warning notices have consistently been placed in employees' files without filing charges under Section 75. In the

¹ A reprimand is a written document issued against an employee that has determined the employee has engaged in misconduct.

² By the language of Section 2 it would appear that a written reprimand could also be issued without going through the provisions of Section 75

absence of such language, an employee would have no recourse against such adverse documents being placed in one's personnel file.

Based on the facts submitted into the record, as well as the unchallenged testimony offered by Chief Reome, it is clear that the parties never intended to provide disciplinary actions greater than written adverse documents to be reviewed under the grievance procedure in the CBA.

Finally, it is of no small significance that for at least 14 years the Village has consistently applied the imposition of discipline by making a distinction between adverse written documents being placed in an employee's file and actions taken to either suspend or terminate employees by filing charges under Section 75 of the CSL.

POINT TWO – NYSUPA/PBA PROPOSED ARBITRATION OF DISCIPLINE ACTIONS AND FAILED IN ITS EFFORTS

The Village does not dispute Mr. Crotty's characterization of the negotiating session held on April 22, 2004, whereby he (Crotty) described it as a 'tirade' on his part. However, his passion is not evidence nor should it be considered as such. It is abundantly clear that Mr. Crotty does not like that part of Section 75 that allows the employer to select a hearing officer whose only power is to make a recommendation to the appointing authority after holding a hearing on charges brought against a police officer. However, his battle is with the New York State Legislature, not the Village of Malone. The fact is that at the end of his tirade, he submitted a proposal that to this day has not been agreed to by the parties (V –4). The fact is, he again submitted another proposal to obtain arbitration on disciplinary matters in his June 29, 2004 letter, that to this day has not been agreed to by the parties (V – 5).

While Mr. Crotty might argue that he was merely trying to make the language clear, it is well established in contract negotiations that if a party submitting a proposal to obtain something in a contract and fails in its efforts, that same party cannot claim to have achieved it. Tirades do not a contract make.

POINT THREE – LONG STANDING PAST PRACTICE SUPPORTS THE VILLAGE’S POSITION

According to Elkouri and Elkouri’s seminal book on **HOW ARBITRATION WORKS**, “Unquestionably custom and past practice constitute one of the most significant factors in labor-management arbitration. Evidence of custom and past practice may be introduced for any of the following major purposes: (1) to provide the basis of rules governing matters not included in the written contract, (2) to indicate the proper interpretation of ambiguous contract language, or (3) to support allegations that clear language of the written contract has been amended by mutual action... etc” (See Chapter 12, Page 630 of the Fifth Edition of **HOW ARBITRATION WORKS**).

Although both parties to the contract believe the language is clear, they disagree as to the meaning of Article Three. In such a circumstance, the logical approach is to examine how the language has been applied to determine if a consistent past practice exists. The past practice of the Village, at least since 1991, has been to file Section 75 charges in seeking to impose discipline greater than that of adverse written documents. In fact at least nine Section 75 charges have been filed, all in the same format as the last one brought against Officer Scott Mulverhill on October 11, 2005, where the accused was charged under Section 75 of the CSL and was notified that a hearing officer would be appointed to conduct a hearing under Section 75 . The record establishes that neither NYSUPA nor its predecessor UFPO ever challenged the procedure the Village followed until a month after a settlement had been reached in the Pickreign case in April of 2004 (See footnote # 1 in reference to POINT ONE). To buttress the Village’s position, Chief Reome testified without contradiction that UFPO’s own attorney, Thomas Halley, represented Officer Nichols in a Section 75 hearing after the local unit affiliated with NYSUPA in 1994. To conclude that the officer opted to proceed under Section 75 instead of the arbitration provision in the contract without any evidence whatsoever to support such an assertion would be a nonsensical conclusion.

In the Chapter titled **Role of Custom and Practice in Interpretation of Ambiguous Language** in the Elkouris’ book **HOW ARBITRATION WORKS**, the writers cite various arbitrators’ views on past practice with statements such as:

Indeed, use of past practice to give meaning to ambiguous contract language is so common that no citation of arbitral (sic) authority is necessary

---stated that he had “a context of practices, usages and rule of thumb interpretations by which the parties themselves” had gradually given substance to the disputed term.

Where practice has established a meaning for language contained in past contracts and continued by the parties in a new agreement, the language will

be presumed to have the meaning given it by that practice.

However, continued failure of one party to object to the other party's interpretation is sometimes held to constitute acceptance of such interpretation so as, in effect, to make it mutual

Thus, a party may be "assumed" to know what is transpiring, or it may be held that a party "knew or should have reasonably known" of the asserted practice. Even successor unions sometimes are charged with knowledge of practice under the same contract language as administered by the company and the predecessor union.

Another important factor to be considered in determining the weight to be given to past practice is how well it is established .

... "the practice must be of sufficient generality and duration to imply acceptance of it as an authentic construction of the contract. "

All of the citations above give meaning to the facts surrounding this case. There can be no question that the long-standing past practice in applying Article Three is for disciplinary actions greater than the placement of adverse documents into employees' file to be adjudicated under Section 75 of the CSL.

POINT FOUR - NYSUPA HAS FAILED TO MEET ITS BURDEN OF PROOF

It is a well-established principle in labor relations that the burden of proof over the interpretation of language contained in a collective bargaining agreement (CBA), except for disciplinary actions, rests with the party alleging the violation of the contract.

The only witness called by NYSUPA to support its claim was John Crotty whose testimony was focused on his opinion (as opposed to direct evidence) of the meaning of the contractual language under the terms of the grievance procedure (Exhibit J-1). This opinion was asserted by NYSUPA despite the fact that the language had been negotiated into the contract in 1988 (Reome testimony) far before Crotty became a consultant to the PBA. In terms of the language in Section 2, but for the second sentence that defines the meaning of the word "discipline", NYSUPA's claim would have merit. However, the second sentence, without question, modifies the first sentence and clearly limits discipline to "*adverse written documents*". To try and stretch that meaning to cover all aspects of discipline would, in effect, be going back to the meaning of the first sentence had it been left alone. However, the parties didn't do that. By adding the second sentence the parties limited the meaning of discipline for purposes of the contract grievance procedure. If the parties desired to have all discipline come under the grievance procedure, they would not have added the second sentence. To conclude otherwise would be a torturous interpretation of what the parties to the contract obviously meant by adding the second sentence.

When asked in cross examination about the numerous prior Section 75 cases that had been filed by the Village since 1991, Mr. Crotty's response was that the Pickreign case was the first one that came up since he was assigned in December of 1999. However, the uncontroverted testimony by Chief Reome established that Section 75 charges had been filed against Officer Mulverhill in 2002 without challenge from either NYSUPA or the PBA. According to the testimony of Chief Reome, Section 75 charges were again filed against Mulverhill in August of 2005 that went unchallenged by NYSUPA or the PBA. In fact, the record shows that it was not until after the Pickreign matter had been settled for at least a month³ after the charges had been filed, that the PBA (NYSUPA) decided to file a grievance over the meaning of Article Three that was never pursued to its conclusion (See V - 3).

Although NYSUPA claimed in its opening statement that the language was clear and unambiguous that any discipline action taken by the employer could be subject to the grievance procedure⁴, including arbitration, it failed to produce a single PBA witness to testify in support of its claim. According to Village records, at least nine Section 75 charges had been issued since Anthony Solfaro became the PBA's state union contact and at least three of those charges had been filed without challenge since Mr. Crotty came on board in 1999 without any claim by the union of a right to proceed under the grievance procedure.

³ Testimony of Chief Reome established that the charges filed against Pickreign occurred on or about March 5, 2004.

⁴ Despite any direct evidence to support its claim, NYSUPA's position is that it's at the option of the employee to proceed either under Section 75 or the grievance procedure when disciplinary charges are filed against a member of the bargaining unit.

It is simply inconceivable that any respectable union would sit idly by for almost 14 years without a single claim that a charged employee was entitled to proceed under the grievance procedure at his/her option, especially when the charging papers made it clear that the Village was filing charges under Section 75 of the Civil Service Law (CSL) and that a hearing officer would be named by the Village to conduct a hearing. Also included in the charging papers were the possible penalties if the person was found guilty of any of the charges (Reome testimony re format used for filing charges).

What becomes obvious in reviewing the facts is that neither the PBA nor Anthony Solfaro, the PBA's state union contact for 14 years, ever believed the bargaining unit members had the right to arbitration under the terms of the contract. This would explain why the union never challenged the Village's filing of Section 75 charges for almost 14 years.

NYSUPA/PBA has failed to meet its burden of proof.

SUMMATION

In the Village's opening statement, it was pointed out that but for the second sentence in Section 2 of Article Three, there would be no need to be at arbitration. However, Section 2 of Article Three defined the meaning of the word "discipline" insofar as the contract is concerned. Thus, the issue for the arbitration is, what's the meaning of that sentence? The Village's position was that it would offer evidence to show that the language of Article Three had been in the contract since at least 1988 and that on disciplinary matters greater than adverse written documents being placed in an officer's file, the charges had consistently been adjudicated by filing Section 75 charges to be heard by a hearing officer appointed by the Village. The Village further asserted that the parties never intended to supplant those provisions in Section 75 where the employer names a hearing officer and acts on his/her recommendations.

Additionally, the Village's representative said in the opening statement:

For anyone to conclude that the language of Article Three; Section 2 provides what NYSUPA claims it does would also have to conclude (1) that the Village's elected officials have deliberately reneged on an agreement reached with the PBA; (2) that the language means something other than what the words mean; (3) that consistent past practice means nothing; (4) that PBA's state affiliate's retained attorney did not know what he was doing when he represented a member of the bargaining unit in a Section 75 hearing and (5) that NYSUPA's absolute insistence that any successor agreement must contain language modifying Section 75 by taking away the right of the employer to select the hearing officer and further insisting the hearing officer become the final arbitrator rather than making a recommendation to the Village Board for action, is to ignore long-standing standards of contract interpretation. It is well established that when a party to negotiations places a proposal on the bargaining table and does not achieve it, then that party thereafter cannot claim the benefits of that proposal.

The fact is, NYSUPA did not meet its burden of proof. The Village, although without any burden to do so, through the introduction of documents and the testimony of witnesses, proved beyond any reasonable doubt that NYSUPA's interpretation of Article Three of the CBA has no basis in fact. The claim of NYSUPA should be dismissed in all respects.

Respectfully submitted

Daniel C. McKillip, Executive Director

**NORTH COUNTRY
LABOR RELATIONS ASSOCIATES, INC.**

PO Box 96

Lake Placid, New York 12946

ph. (518) 523-7862; fax (518) 523-7862

email: nclra@adelphia.net

Date: 1/20/06

To: NATHAN RACE, BRENT STEWART
ROW PEOPLE

From: Daniel C. McKillip, NCLRA

Re: ARBITRATION AWARD

Total number of pages including cover: 4

NOTES:

I Can't believe the ruling.
The arbitrator totally ignored
the past practice.

THE CONTENTS OF THIS FACSIMILE ARE CONFIDENTIAL AND INTENDED SOLELY FOR
THE ADDRESSEE. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE
PHONE THE ABOVE NUMBER IMMEDIATELY

In the Matter of the Arbitration between

THE VILLAGE OF MALONE

DECISION

-And-

THE MALONE POLICE BENEVOLENT ASSOCIATION

Affiliated with

THE NEW YORK STATE UNION OF POLICE BENEVOLENT
ASSOCIATIONS, INC.

This is a proceeding conducted pursuant to a direct appointment by the above-captioned parties. A hearing was held on December 2, 2005 at the Malone Police Department. Because of the need for expedition in the resolution of this matter the Arbitrator's Decision is rendered in summary fashion.

The parties were unable to stipulate to an Issue and each submitted its own version with the understanding that the Arbitrator would decide between them. I conclude that the PBA's version is the more appropriate. It is as follows:

Did the Village violate the collective bargaining agreement when it refused Officer Scott Mulverhill's and the PBA's demand for a hearing before a mutually selected Arbitrator on the disciplinary charges that have been preferred against him?

If so, what is the appropriate remedy?

The Village and the PBA are parties to a 2003-05 Agreement (J.1). Article Three thereof is entitled "Grievance Procedure." Section 1 of Article Three provides that for purposes of the agreement, "a grievance shall be defined as a dispute or controversy between an individual officer, more than one officer, or the PBA and the Village arising out of the application or interpretation of this Agreement, or a grievance as defined by Sec. 682 - Subdivision 4 of Article 15c of the General Municipal Law."

The provision directly at issue here is Article Three Section 2. Sentence 1 thereof provides that "Any officer other than a probationary officer will have the right to grieve a disciplinary action through the grievance procedure." Sentence 2 provides that "Discipline shall be defined as any adverse written document which an officer receives which is to be placed in his/her personnel file." This language entered the parties' contract in 1988 and has remained there unchanged to the present.

Article Three, Section 3 sets forth the Grievance steps in the dispute resolution procedure and Section 4 sets forth the Arbitration Procedure.

In October 2005 Scott Mulverhill, a non-probationary Police Officer who is a member of the bargaining unit represented by the PBA, was issued disciplinary charges by the Village pursuant to Section 75 of the New York Civil Service Law. After the Village refused demands made by Officer Mulverhill and the PBA on his behalf for the appointment of a neutral arbitrator to hear and decide those charges, the PBA filed a grievance against the Village. Before a second stage grievance determination was rendered, the parties agreed to submit the grievance directly to arbitration.

The PBA contends that Article Three, Section 2 of the Agreement *clearly* grants a non-probationary unit member who is served with disciplinary charges the right to have such charges heard and finally decided by a mutually selected Arbitrator under the contractual grievance arbitration procedure, rather than by a Section 75 Hearing Officer who is appointed unilaterally by the Village. I agree with the PBA's ultimate contention, though the matter is not quite so clear as the PBA would have one believe. Had it been that clear, the parties would obviously have resolved the matter on their own. Nonetheless having considered the language of the Agreement, the documentary evidence and testimony presented at the hearing and the many arguments in the parties' post-hearing briefs, I conclude that the Village violated Article Three, Section 2 of the Agreement. The remedy in the attached Award is designed to redress that violation.

THOMAS J. MARONEY

In the Matter of the Arbitration between

THE VILLAGE OF MALONE

-And-

THE MALONE POLICE BENEVOLENT ASSOCIATION

Affiliated with

THE NEW YORK STATE UNION OF POLICE BENEVOLENT
ASSOCIATIONS, INC.

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the Arbitration Agreement entered into by the above-named parties, dated June 1, 2003, and having been duly sworn and having duly heard the proofs and allegations of the parties, AWARDS as follows:

1. The Village violated Article Three, Section 2 of the Collective Bargaining Agreement when it refused Officer Scott Mulverhill's and the PBA's demand for a hearing before a mutually selected Arbitrator on the disciplinary charges that have been preferred against Officer Mulverhill.
2. The Village is directed to rescind the appointment of the Civil Service Law Section 75 Hearing Officer immediately and retroactively to the date of the original disciplinary charges against Officer Mulverhill.
3. The Village is directed to proceed to arbitration before the parties' mutually selected arbitrator if the Village continues in whole or part with prosecution of the disciplinary charges against Officer Mulverhill.
4. The Village is directed to cease and desist from refusing demands made hereafter by or on behalf of non-probationary unit members for arbitration of any disciplinary charges preferred by the Village against such unit members and to prosecute such charges before an arbitrator if the affected unit member demands arbitration.

STATE OF NEW YORK
COUNTY OF ONONDAGA

I, THOMAS J. MARONEY, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this Instrument, which is my Award.

Jan. 19, 2006

Thomas J. Maroney

**NORTH COUNTRY
LABOR RELATIONS ASSOCIATES, INC.**

PO Box 96

Lake Placid, New York 12946

ph. (518) 523-7862; fax (518) 523-7862

email: nclra@adelphia.net

Date: 1/6/06
To: CHIEF BEYOME 483-2426
From: Daniel C. McKillip, NCLRA
Re: PBA's BRIEF

Total number of pages including cover: 15

NOTES:

A good portion of their argument is based on what they thought our position was as opposed to what we presented at the hearing.

PS - Get me know as soon as Mulverhill resigns

THE CONTENTS OF THIS FACSIMILE ARE CONFIDENTIAL AND INTENDED SOLELY FOR THE ADDRESSEE. IF YOU HAVE RECEIVED THIS FACSIMILE IN ERROR, PLEASE PHONE THE ABOVE NUMBER IMMEDIATELY

CONCLUSION


The grievance should be sustained. The Arbitrator should conclude that the Village violated the CBA when it refused the demands made by Officer Mulverhill and by the PBA on his behalf for a hearing and determination of the disciplinary charges by an arbitrator appointed under the contractual procedures. As a remedy for this violation the Arbitrator should issue an award incorporating the following features:

1. An order requiring the Village to rescind the appointment of the CSL § 75 hearing officer immediately and retroactively to the date of the original disciplinary charges against Officer Mulverhill.
2. An order requiring the Village to proceed to arbitration before the parties' mutually selected arbitrator if the Village continues in whole or part with the prosecution of the disciplinary charges against Officer Mulverhill.
3. An order requiring the Village to cease and desist from refusing demands made hereafter by or on behalf of non-probationary unit employees for arbitration of any disciplinary charges preferred by the Village against such unit employees and to prosecute such charges before an arbitrator if the affected unit employee demands arbitration.

The Arbitrator should award such further relief as may be necessary or appropriate.

Dated: December 16, 2005
Newburgh, New York

Respectfully submitted,


Marilyn D. Berson
Attorney for Union
1 Spring Square Business Park
Newburgh, NY 12550
845-566-5526

This Arbitrator surely knows full well that it is common for the parties to a bargaining relationship to either replace the CSL § 75 system entirely or to modify one or more of its features in a collective bargaining agreement. There is nothing at all unusual in an employer recognizing that it is fair to give a tenured employee a right to have disciplinary charges heard and determined by a neutral arbitrator. The Arbitrator, however, need not speculate as to the reasons why the Village agreed to Article III Section 2. The fact is that it did and the language plainly and unquestionably means what the PBA claims it means.

The Village must not be allowed to ignore the parties' bargain in an unconscionable attempt to steal the job of a veteran police officer through a sham hearing run by the Village's handpicked hearing officer whom the Village need not even listen to, even if Mulverhill were found not guilty or not fired. Even if the PBA prevails in this arbitration, Officer Mulverhill will have to account for the accusations against him, but the accounting will be done before and by a mutually selected, neutral arbitrator. That is the bargain the parties struck and the PBA asks only for the benefit of that bargain.

The Village has opted in bad faith to ignore the CBA and it pretends that the language means exactly the opposite of what it says because it does not like what it says. The Village claims that no discipline is arbitrable unless it chooses to make arbitration available through the artifice of document placement or, under its most recent argument, if only bad words about an employee are put in writing. The CBA, however, makes all discipline, even counselings and warnings that would not otherwise constitute discipline under law, arbitrable at the option of the affected employee. The rights belong to the employee, not the Village. By denying Mulverhill's demands for arbitration, the Village has trampled Mulverhill's and all unit employees' rights. The Village's actions are the embodiment of bad faith and constitute a repudiation of the CBA that the Arbitrator must recognize and remedy swiftly and once and for all before Officer Mulverhill is further victimized or others become victims.

fair hearing of and determination upon disciplinary charges that can result in severe penalties including termination from employment.

Additionally, since it is clear that any and all non-probationary employees are given arbitration rights with respect to any disciplinary action, it would be irrational to conclude that the parties intended to give the words "personnel file" anything but a common-sense interpretation. A file or record kept about an employee's employment is a "personnel file" within the fair and reasonable meaning of that contract term. These parties surely could not have intended a result under which the Village need only label a file something other than a "personnel file" and all rights to arbitrate disciplinary actions and discipline then disappear. An employee's right to arbitrate discipline so clearly established under the contract language would become a nullity on such an interpretation.

To give a "personnel file" the bizarre meaning sought by the Village would eviscerate the clear intent to give employees a meaningful right to protect their employment. Again, it simply cannot be that these parties agreed that the employee's right of arbitration would exist only if and when the Village chose to give it to them by putting disciplinary charges into some file it labeled "personnel file." Therefore, no matter how strictly the second sentence of Article III, Section 2 is read, employees hold the plain and clear right to elect to have disciplinary charges lodged against them heard and finally decided by an arbitrator.

The Village may suggest that it would be illogical for the Arbitrator to agree with the PBA's interpretation of the language because it never would have bargained away the benefits of the "kangaroo court" that is the CSL § 75 system. Under that system, the Village gets to select the judge unilaterally and the Village remains free to accept or reject that hearing officer's recommendations as to guilt or innocence and penalty. But this suggestion implies that it is unusual for an employer and a union to agree to disciplinary systems in collective bargaining agreements that are different from the statutory system. That assertion, like the Village's strained and differing interpretations of the contractual language, is incorrect and nonsensical.

record kept by an employer about an employee. There can be more than one such record and they can be kept in more than one location and often are.

The Court of Appeals has observed that it is the true character of a document that determines what it is, not how it is labeled by an employer or where it is kept. In *Prisoners' Legal Services of New York v. NYS Department of Correctional Services*, 73 N.Y. 2d 26 (1988), petitioners sought access to inmate grievances against corrections officers and the dispositions of those grievances. The question before the Court was whether such documents were "personnel" records within the meaning of Civil Rights Law (CRL) § 50-a.

Just as under these parties' CBA, the CRL does not give any definition of what is covered by the term "personnel record." Notwithstanding the State's strong policy under the Freedom of Information Law (FOIL) favoring public disclosure of all government records, the Court concluded that: "documents pertaining to misconduct or rules violations ... which could well be used in various ways against officers" were personnel records that were exempt from disclosure under FOIL (at 31). Quite logically, the Court concluded:

Whether a document qualifies as a personnel record ... depends upon its nature and its use in evaluating an officer's performance — not its physical location or its particular custodian (at 31).

Therefore, that the Chief or other Village agent may keep these disciplinary charges in some file or files not labeled "Mulverhill Personnel File" is immaterial. The charges themselves unquestionably constitute a part of Officer Mulverhill's "personnel file" under any reasonable interpretation of that phrase. As per the Court of Appeals decision in *Prisoners Legal Services, supra*, the disciplinary charges against Officer Mulverhill would be exempt from public disclosure under CRL § 50-a because they are a part of his personnel records. The reason for nondisclosure is to protect the employee's interests in the confidentiality of those sensitive documents.

Just as the concept of a personnel record or file has received a broad construction by the Courts, so should and must the Arbitrator give the contractual phrase an equally broad interpretation. This is the only way of protecting an employee's compelling interest in having a

However, as the Village is not able to make up its mind about what it thinks the language means, the PBA is constrained to comment further on the chance the Village's first argument will be resurrected in its brief.

The Village in making this argument actually does not rely on the entirety of the second sentence in Article III Section 2, only a small part of it. Written disciplinary charges clearly are documents adverse to the employee who receives them. Those charges, by definition, accuse the employee of misconduct and/or incompetency. These disciplinary charges have actually been received by Officer Mulverhill. Therefore, all but the very last part of the second sentence has been unquestionably satisfied.

Nonetheless, the Village has claimed that Mulverhill cannot arbitrate the charges because it has not yet placed and will not place the charges into his "personnel file." The Village is wrong in this regard as well because the CBA does not require that disciplinary charges be placed into the employee's personnel file for the right to arbitration to attach. Rather, it refers to documents "to be placed in the file." The language covers current placement and possibly future placement of charges. It is, therefore, inconsequential to Mulverhill's arbitration right that the Village did not put his disciplinary charges into his file at the start of the disciplinary process. It is enough, even on the Village's absurd construction of the language, that the charges could be placed into his file.

CSL § 75 (3) requires upon any finding of guilt that a "copy of the charges" and "the determination" upon those charges, "be filed in the office of the department or agency in which he has been employed" as well as with the civil service department. In his October 26 letter to the § 75 hearing officer, Mr. McKillip claims that these required filings need not be in the employee's "personnel file" (Union Exhibit ____). Therefore, according to the Village, if it never places the charges and disposition into the employee's "personnel file" labeled as such, there is never any right to arbitration.

This is once again an absolutely tortured and bad faith interpretation of the contract language. Nothing in the CBA defines a "personnel file." At its simplest, a personnel file is any

The right to arbitrate attaches to a "disciplinary action." As a matter of law under CSL § 75, a disciplinary action includes the bringing of charges as well as the imposition of the disciplinary penalties listed in the statute, i.e., a letter of reprimand, monetary fine, unpaid suspension, demotion or dismissal from service. To argue that an employee cannot arbitrate charges sealing any of these proposed penalties, but only actions that do not constitute discipline under law is, without need for further comment, plain nonsense. The Village's new interpretation of Article III twists the language and turns it completely upside down as much as its first argument that arbitration exists but only if the Village chooses to give it to an employee.

Moreover, far from nullifying the first sentence, the second sentence in Article III, Section 2 reinforces the breadth of the right secured by what precedes it. Indeed, the Agreement expands traditional notions of discipline that would exclude writings falling short of a letter of reprimand. A true counseling memorandum or warning letter does not constitute discipline.⁶

In the dissenting opinions in *Webutuck, supra*, the judges argued that the adverse writings that were issued to employees did constitute "discipline" that entitled them to a hearing before an arbitrator. It is not a mere coincidence that in 1988, seven years after *Webutuck*, that these parties expanded the traditional concept of discipline to include within their notion of "discipline" adverse writings that the dissent in *Webutuck* had already considered to be discipline. In context, what is already clear from the contract language becomes manifest. These parties expanded the arbitration of "discipline" to include the adverse writings spoken about in *Webutuck*, which by 1988 was well known to labor relations practitioners. It is simply ridiculous to believe that these parties intended to make arbitration available to what is not traditionally seen as discipline but simultaneously intended to deny arbitration in all traditional disciplinary actions.

As the Village now appears to have abandoned its original argument that an employee's right to arbitration hinges upon the Village's decision to place or not place charges into an employee's personnel file, there is a temptation to avoid further comment about that argument.

⁶ E.g., *Holt v Bd. of Educ. of the Webutuck Cent. Sch. Dist.*, 52 N.Y. 2d 625 (1981) (hereafter *Webutuck*).

interview. This testimony was entirely un rebutted even though Mr. McKillip, who heard the tirade at negotiations, was present at the arbitration hearing and did not deny Mr. Crotty's description of the meeting.

It is not necessary, however, for the Arbitrator to decide this credibility issue. The Village's same position was set forth by Mr. McKillip in a letter to the CSL § 75 hearing officer as late as October 26, 2005 (PBA Exhibit 2)⁵. In that letter, Mr. McKillip, in responding to the merits of the PBA's and Mulverhill's demand for arbitration, states as the only reason why there is no right to arbitration that the Village had not and would not place the disciplinary charges into Officer Mulverhill's personnel file. For the reasons previously discussed, that assertion is ludicrous on its face.

No reasonable reading of this Agreement can result in the conclusion that an employee may opt for arbitration according to whether or not the Village elects to place the disciplinary charges into the employee's file before, during or after the hearing on the charges. The right belongs to any and all non-probationary unit employees equally. The Village is not privileged to reward certain officers with arbitration and deny it to others. Employee rights do not hinge on the caprice of the Chief of Police or any other Village official or agent.

Realizing the silliness of the only argument it has made all along, the Village now argues that the parties only intended by Article III to give an employee a right to arbitrate counseling memoranda or other negative writings that do not constitute a letter of reprimand. That new argument rests on nothing but wishful thinking and its acceptance would produce another result completely at odds with the contract language and common sense.

If the parties had only intended to bestow upon an employee some extraordinarily narrow and, frankly, unheard of right to arbitrate writings falling short of a letter of reprimand, and nothing more, that could easily have been stated. The parties did not do that. Instead, they wrote the unit employees' right to arbitrate "disciplinary actions" in sweeping and unrestricted terms excluding only probationary officers.

⁵ This exhibit is submitted with the Closing Argument

A right admittedly and unqualifiedly established by one part of a clause cannot reasonably be rendered forfeit by the interpretation of another part of the same clause.³ As set forth in Elkouri:

It is axiomatic in contract construction that an interpretation that tends to nullify or render meaningless any part of the contract should be avoided because of the general presumption that the parties do not write into a solemnly negotiated agreement words intended to have no effect.⁴

There is, thus, simply no way to read the second sentence in the manner suggested by the Village because it nullifies the meaning of the first sentence, a result admitted by the Village itself.

It became clear during the hearing that the Village has just been making up one ridiculous interpretation of the CBA after another as it goes along in a desperate attempt to deny Officer Mulverhill his contractual right to have these disciplinary charges heard and decided by a neutral arbitrator. Until its efforts were stayed by court order, the Village wanted to rush Mulverhill to a hearing before a unilaterally selected hearing officer in the hope he would be fired in Judge Roy Bean style before the PBA or Mulverhill could do anything about it.

The Village's interpretations of the CBA have been inconsistent and just plain stupid. Throughout the situation involving Officer Pickreign, and again with Officer Mulverhill, the Village asserted that there was a right to arbitrate disciplinary charges, but only if it decided to place the disciplinary charges into the charged employee's personnel file. That was the position taken by the Chief and adopted by the Village regarding Pickreign.

Although the Chief denied that the conversation described by Mr. Crotty during his testimony took place, Mr. Crotty's detailed recollection of their conversation was far more credible than was the Chief's denial. Indeed, Mr. Crotty's testimony was that he opened the first bargaining session with the Village, following his meeting with the Chief, with a "tirade" that included a vivid description of what the Chief had told him at the end of Pickreign's disciplinary

³ Elkouri at 482-483.

⁴ Elkouri at 464.

employee his "right" to a hearing before a neutral arbitrator by utilizing the service of the CSL § 75 hearing officer.

Third, grieving is merely the mechanism by which the right to arbitration of the disciplinary charges is invoked. The contractual grievance procedure consists of three steps: a determination by the Chief, a review by Village representatives, and a hearing and binding decision by an arbitrator. The parties obviously could not have intended for there to be a grievance presented and processed through the first two stages of the grievance procedure in disciplinary cases because the Chief and Village have preferred the disciplinary charges against the officer. Going before those same persons to ask them to undo what they had just done would be utterly futile. This is the one question on which the PBA and Village agree. The Village has never argued that access to arbitration of disciplinary charges is conditioned upon the submission of a grievance through the preliminary steps of the grievance procedure. The Village just denies the existence of the right to arbitration of disciplinary charges.

Fourth, a "disciplinary action" indisputably embraces the preferment of disciplinary charges. Indeed, CSL § 75's caption refers to "disciplinary action" and CSL § 75 includes the bringing of disciplinary charges. Disciplinary penalties are addressed separately in the CSL. As CSL § 75 has been in effect since at least the late 1950s, the parties to this contract surely knew what CSL § 75 encompassed when in 1988 they added the at-issue clause. Therefore, the only reasonable conclusion to be drawn is that they intended to give an employee a contractual right to elect to have the "disciplinary action" that exists as a matter of law in the preferment of disciplinary charges heard and finally determined by a mutually selected arbitrator appointed under the contractual grievance procedure.

The Village concedes that if there were only the first sentence, an employee would unquestionably hold a right to have disciplinary charges heard and decided by an arbitrator. Despite having made that admission, however, the Village still advances the ludicrous argument that the second sentence nullifies the first. Although the PBA believes that the first sentence in Article III, Section 2 is dispositive of this grievance, the result is no different even if the Arbitrator should read the first sentence in light of the second sentence in that clause.

to whether that was voluntary or involuntary, whether or not the officer demanded arbitration, whether the Village refused a demand for arbitration or anything else of arguable relevance to this grievance.

As an employee must exercise the right to have a hearing before an arbitrator on disciplinary charges, proof that one officer twice underwent a hearing before a CSL § 75 hearing officer proves nothing. The CBA is not violated unless the Village has denied a demand for a hearing before an arbitrator. There is simply no evidence that the Village has ever done that except with respect to Pickreign and Mulverhill. Each time the PBA took action to protect these members' right to elect arbitration.

This returns the Arbitrator to the basic question of what the contract language reasonably means. To begin, the grievance can and should be decided on the basis of the first sentence in Article III, Section 2. That sentence provides clearly and unequivocally that "any" non-probationary employee has a "right" to "grieve" a "disciplinary action." Giving those words their normal meaning reveals several material conclusions.

First, what is secured by the language is an employee "right." Nothing in that sentence affords the Village any rights whatever. Therefore, for that single reason alone, the Village's initial contention to the PBA, that it gets to control which employees may proceed to arbitration by its decision to either place or not place disciplinary charges into an employee's personnel file, is preposterous. The arbitration right belongs to any non-probationary employee, not the Village and the Village may not take that right away from them or subordinate it to the Village's whim.

Second, an employee must avail himself/herself of the right to grieve discipline to obtain arbitration of disciplinary charges. Therefore, unless and until an employee invokes the right to arbitrate disciplinary actions, the Village may proceed under the CSL § 75 hearing procedure. However, the Village should not appoint a CSL § 75 hearing officer without first ascertaining the employee's choice of CSL § 75 hearing or arbitration. Thus, once the PBA demanded arbitration on Mulverhill's behalf and when Mulverhill himself demanded arbitration, the Village denied the

ridiculous and varying interpretations of the at-issue clause. Mr. Crotty's unrebutted testimony makes that purpose crystal clear.

The PBA has maintained the consistent position that a unit employee who is served with disciplinary charges has the right under the current language to have those charges heard and decided by an arbitrator selected mutually under the contractual grievance arbitration procedure, rather than by a CSL § 75 hearing officer. In such circumstances, the PBA's decision, thus far, to leave the existing language unaltered does not constitute an admission by the PBA that the right it claims to exist under the current contract actually does not. As stated in Elkouri:

[t]he withdrawal or rejection during contract negotiations of a proposed clause spelling out a right has been held not to be an admission that the right would not exist without the clause, where the proponent stated at the time that it would stand firm on the position that the right existed even without the proposed clause (citations omitted)².

Third, the Village relies on the history of processing disciplinary charges against unit employees to prove that the parties understood that there could never be any arbitration of disciplinary charges. As it turns out, there is not any real history and what very little may be deemed to exist is entirely consistent with the PBA's interpretation of the CBA.

Of the nine CSL § 75 disciplinary charges the Chief mentioned during his testimony, all but two were settled without any hearing. As to those seven settled matters, the issue of whether a hearing would be before a CSL § 75 hearing officer or an arbitrator never came up except in context of the charges against Officer Pickreign. As to him, the PBA clearly and repeatedly told the Village representatives that he, just like Mulverhill, had a right to arbitration of his disciplinary charges, but his resignation from service essentially mooted that particular dispute.

The two CSL § 75 charges that were heard at some undisclosed point between 1991 and the date of the arbitration hearing involved the same police officer. The record establishes only that the officer underwent a hearing before a CSL § 75 hearing officer. There is no evidence as

² Elkouri at 455.

Such other few facts as may be relevant to a disposition of this grievance are set forth in the argument that follows.

ARGUMENT

POINT I

MULVERHILL IS ENTITLED TO ARBITRATION OF THE DISCIPLINARY CHARGES THE VILLAGE HAS FILED AGAINST HIM

This is a contract interpretation case. As in all such cases, certain universally accepted principles of contract construction govern.

The Arbitrator's basic task is to ascertain from the contract language what the parties' reasonably intended avoiding interpretations of language that are unreasonable, illogical or absurd in light of all relevant circumstances.¹

Before turning to what the words in the CBA mean, a few preliminary observations should be made.

First, there is no proof concerning any bargaining history contemporaneous with the first inclusion of the clause in issue in 1988.

Second, the Village's proof that the PBA, during the negotiations for the 2003-2005 contract, and again in the negotiations for a successor agreement that are still in progress, sought to modify the at-issue language is meaningless. Throughout those negotiations, and in all other relevant contexts, the PBA has made it abundantly clear to every Village representative that the proposals were intended to clarify existing rights, not to create a new right. The proposals made by the PBA were for the purpose of stripping the Village of any future opportunity to assert its

See generally Elkouri and Elkouri, How Arbitration Works (BNA 6th ed. 2003) at 470-471 (hereafter Elkouri).

The Village would have the Arbitrator decide the following:

Does Article Three, Section 2 of the collective bargaining agreement supplant the provisions under Section 75 of the Civil Service Law that allow the appointing authority to name a hearing officer and to impose a penalty following a Section 75 hearing?

The PBA's issue should be accepted by the Arbitrator because it is presented in traditional form, it reflects the grievance as filed and the facts that gave rise to the grievance. The Village's issue statement has none of the same characteristics. Moreover, the Village's issue misstates and misrepresents the nature of the parties' dispute. The PBA has never claimed that the CBA supplants CSL § 75. The Village has the right to take disciplinary actions against employees pursuant to CSL § 75 except insofar as the Agreement modifies that statutory system. In that regard, the PBA's only contention is and has been that the CBA affords an employee a right to have disciplinary charges heard and finally determined by an arbitrator if he/she invokes that right. The violation of contract arises upon the Village's refusal of the demand for arbitration of the disciplinary charges made by Mulverhill personally and by the PBA on his behalf. Therefore, the PBA's issue squarely presents the basic question to be decided and, of course, the question of remedy if a violation is found.

RELEVANT CONTRACT PROVISIONS

ARTICLE THREE – Grievance Procedure

2. Any officer other than a probationary officer will have the right to grieve a disciplinary action through the grievance procedure. Discipline shall be defined as any adverse written document an officer receives which is to be placed in his/her personnel file.

FACTS

The parties stipulated that Officer Mulverhill was issued disciplinary charges pursuant to CSL § 75 in October 2005. They further stipulated that the Village has refused demands made by Officer Mulverhill and the PBA for the selection of an arbitrator to hear and determine the charges instead of the CSL § 75 hearing officer who was appointed unilaterally by the Village.

PRELIMINARY STATEMENT

In October 2005, Scott Mulverhill, a non-probationary police officer who is in the bargaining unit represented by the Village of Malone Police Benevolent Association (PBA or Union), was issued disciplinary charges by the Village of Malone (Village or Employer) pursuant to Civil Service Law (CSL) § 75. After the Village refused demands made by Mulverhill and the PBA on his behalf for the appointment of a neutral arbitrator to hear and decide those charges, the PBA filed a grievance against the Village (Joint Exhibit 2). Before a second stage grievance determination was rendered, the parties agreed to submit the grievance directly to arbitration.

This brief is submitted in support of the PBA's contention that Article III of the parties' collective bargaining agreement (CBA or Agreement) clearly grants non-probationary unit employees a right to have disciplinary charges heard and finally decided by a mutually selected arbitrator instead of being subject to the recommendations of a CSL § 75 hearing officer who is appointed unilaterally by the Village. The Village's different and inconsistent interpretations of the CBA are absurdly contrary to the contractual language and must be rejected.


ISSUE

The parties did not stipulate an issue.

The PBA framed the issue as follows:

Did the Village violate the collective bargaining agreement when it refused Officer Mulverhill's and the PBA's demand for a hearing before a mutually selected arbitrator on the disciplinary charges that have been preferred against him?

If so, what is the appropriate remedy?

Name of Firm or Agency <i>Malone Village Police</i>		Type of Business or Function of Agency <i>Law Enforcement</i>		Date <i>1-24-07</i>	
EMPLOYED: From	To	Part Time Full Time	Title or Duty	Average Weekly Salary	Social Security Number
<i>06/29/90</i>	<i>02/16/06</i>	<i>Full</i>	<i>Patrol Officer</i>	<i>845.²⁰</i>	

If not presently employed by you, indicate manner of leaving your employ

Form EIU-19R

(Check One)

☒ RESIGNED VOLUNTARILY (state reason given) *Resigned while suspended pending department charges*

☐ REQUESTED to RESIGN (state Reason) _____

☐ DISCHARGED/TERMINATED _____

☐ LAID OFF SPECIFY _____

☐ OTHER REASON _____

CANDIDATE'S EMPLOYMENT RECORD (Check yes or no. If you desire to elaborate, do so in "details.")

HONEST <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	AMENABLE TO ORDERS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EXCESSIVELY LATE <input type="checkbox"/> YES* <input checked="" type="checkbox"/> NO	WAS HE/SHE EVER DISCIPLINED <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
SOBER <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	ABLE TO GET ALONG WITH OTHERS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	EXCESSIVELY ABSENT <input type="checkbox"/> YES* <input checked="" type="checkbox"/> NO	INJURED OR GIVEN FIRST AID <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

*DETAILS WOULD BE PARTICULARLY APPRECIATED

WOULD YOU REHIRE SUBJECT?

☐ YES

☒ NO

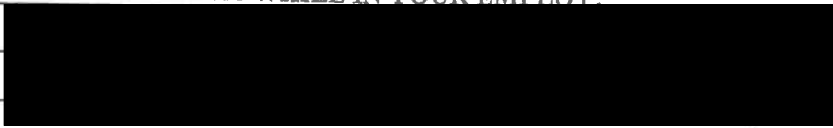
WOULD YOU PREFER A PHONE
CALL TO DISCUSS CANDIDATE?

☒ YES ☐ NO

Details or Additional Comments:

Mulverhill showed signs of alcohol abuse problems. Was sent for evaluation and counseling but resigned before completion of services.

RESIDENCE ADDRESSES WHILE IN YOUR EMPLOY:

NAMES AND ADDRESSES OF PREVIOUS EMPLOYERS

<i>Saranac Lake Village Police Dept.</i>	<i>1 Main St</i>	<i>Saranac Lake NY 12983</i>
<i>Pizza Hut</i>	<i>3397 State Hwy 11</i>	<i>Malone NY 12953</i>
<i>A + M Beverage</i>	<i>386 East Main St</i>	<i>Malone NY 12953</i>
Signature <i>Stephen J. Stone</i>	Title of Your Position <i>Chief of Police</i>	Your Business Telephone Number <i>518-483-2424</i>
Print <i>Stephen J. Stone</i>		



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS
1220-WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

AUTHORIZATION FOR RELEASE OF INFORMATION AGREEMENT

TO WHOM IT MAY CONCERN: I am an applicant for a position with the New York State Department of Corrections. The department needs to thoroughly investigate my employment background and personal history to evaluate my qualifications to hold the position for which I applied. It is in the public's interest that all relevant information concerning my personal and employment history be disclosed to the above department.

I hereby authorize any representative of the Corrections Department bearing this release to obtain any information in your files pertaining to my employment records and I hereby direct you to release such information upon request of the bearer. I do hereby authorize a review of and full disclosure of all records, or any part thereof concerning myself by and to any duly authorized agent of the Corrections Department, whether said records are of public, private, or confidential nature. The intent of this authorization is to give my consent for full and complete disclosure. I reiterate and emphasize that the intent of this authorization is to provide full and free access to the background and history of my personal life, for the specific purpose of pursuing a background investigation that may provide pertinent data for the Department of Corrections to consider in determining my suitability for employment in that department. It is my specific intent to provide access to personnel information, however personal or confidential it may appear to be.

I consent to your release of any and all public and private information that you may have concerning me, my work record, my background and reputation, my military service records, educational records, my financial status, my criminal history record, including any arrest records, any information contained in investigatory files, efficiency ratings, complaints or grievances filed by or against me, the records or recollections of attorneys at law, or other counsel, whether representing me or another person in any case, either criminal or civil, in which I presently have, or have had and files which are deemed to be confidential, and/or sealed.

I hereby release you, your organization, and all others from liability or damages that may result from furnishing the information requested, including any liability or damage pursuant to any state or federal laws. I hereby release you, as the custodian of such records, including its officers, employees, or related personnel, both individual and collectively, from any and all liability for damages of whatever kind which may at any time result to me, my heirs, family, or associates because of compliance with this authorization and request to release information or any attempt to comply with it. I direct you to release such information upon request of the duly accredited representative of the New York State Department of Correctional Services regardless of any agreement I may have made with you previously to the contrary.

For and in consideration of the New York State Department of Correctional Services acceptance and processing of my application for employment, I agree to hold agents and employees harmless from any and all claims and liability associated with my application for employment or in any way connected with the decision whether or not to employ me with the NYSDOCS. I understand that should information of a serious criminal nature surface as a result of this investigation, such information may be turned over to the proper authorities.

I understand my rights under title 5, United States code, Section 552a. the Privacy Act of 1974, with regard to access and to disclosure of records, and I waive those rights with the understanding that information furnished will be used by the New York State Department of Correctional Services in conjunction with employment procedures.

A photocopy or FAX copy of this release form will be valid as an original thereof, even though the said photocopy or FAX copy does not contain an original writing of my signature.

- A) This waiver is valid for a period of (two) 2-years from the date of my signature.
- B) Should there be any questions as to the validity of this release, you may contact me at the address listed on this form.
- C) I agree to pay any and all charges or fees concerning this request and can be billed for such charges at the address listed on this form.
- D) I agree to indemnify and hold harmless the person to whom this request is presented and his agents and employees from and against all claims, damages, losses and expenses, including reasonable attorney's fees, arising out of or by reason of complying with this request.

MULVERHILL
Print Last Name

SCOTT
First Name

M
MI

Scott M. Mulverhill
Signature

01/03/2007
Date

Scott K Apple
Investigator

1-16-07
Date

Supporting Deposition (CPL-100.20)

New York State Police

State of New York
Local Criminal CourtCounty of Franklin
Town of Burke

THE PEOPLE OF THE STATE OF NEW YORK

-vs.

SUPPORTING DEPOSITION

SCOTT M. MULVERHILL (D [REDACTED])

(Defendant)

State of New York
County of Franklin
Town of MaloneOn 02/23/06 at 3:10 p.m. [REDACTED]
an [REDACTED] m [REDACTED]

State the following:

On evening of Friday, February 17, 2006, I was hanging out at my trailer with my brother, MICHAEL (ELI) HARMON, MATTHEW J. LAVOIE, JULIE VANDERWIEL (ELI's Girl friend), MATT EMOND, and ASHLEY PALMER. Sometime between 1:30 a.m. and 2:00 a.m. someone knocked at the door. I answered the door and a guy asked me if this was where CHRIS BURDASH lived. I told him no and the guy left. The guy that came to the door is slightly shorter than I am, he was approximately five feet, nine inches tall with brown hair. He was wearing a baseball style hat, blue coat and blue jeans. I shut the door and sat down. I heard a male voice screaming that ASHLEY was a whore and other obscenities. I opened the door and saw a lighter colored Ford Explorer. I heard a male voice coming from the explorer which I believe to have been SCOTT MULVERHILL's. I have spoken to SCOTT in the past and know his voice. SCOTT just kept repeating obscenities about ASHLEY. ASHLEY stood near me in the doorway and I told him to leave. The whole time the hollering was happening the driver's side door would keep opening and shutting. As the explorer started to back out of the driveway, JULIE walked past me towards the vehicle. The vehicle drove approximately thirty feet down the road and stopped. I heard SCOTT holler more obscenities and said that he was going to go and tell her mother. The explorer then drove away. M.H.

NOTICE:

(Penal Law - 210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class "A" Misdemeanor. M.H.

Affirmed under penalty of perjury
this 23 th day of February, 2006

Mark Hanson

(Signature of Deponent)

- or -

*Subscribed and Sworn to before me

(Witness)

this _____ day of _____,

INV. GARY L. BROWN

[Person taking depo]

Time ended: 3:30 p.m.

Inv. Gary L. Brown
02/23/06

3:33 p.m.

Supporting Deposition (CPL-100.20)

New York State Police

State of New York
Local Criminal CourtCounty of Franklin
Town of Burke

THE PEOPLE OF THE STATE OF NEW YORK

-vs.

SUPPORTING DEPOSITION

SCOTT M. MULVERHILL [REDACTED]

(Defendant)

State of New York
County of Franklin
Town of MaloneOn 02/23/06 at 2:50 p.m. [REDACTED]
[REDACTED]

State the following:

On Friday, February 17, 2006, at approximately 11:45 p.m., I, MATTHEW J. LAVOIE, walked to Owls Nest and meet my friend, ELI HARMON. I rode with ELI to his trailer on the Finney Road, Burke, New York. When we got there JULIE VANDERWIEL (ELI's Girl friend), MARK HARMON, and ASHLEY PALMER were there. A short time after ELI and I got to the trailer, MATT EMOND showed up. We played cards and hung out for awhile. At approximately 1:30 a.m. (02/18/06), someone knocked at the door. MARK answered the door. MARK opened the door and I could see a short male subject standing at the door. MARK blocked most of my view, so I did not get a good look at him. I could hear the guy talking and he asked MARK if a CHRIS BURDASH was there. MARK told him he had never heard of CHRIS BURDASH. MARK told the guy check the other trailers up the road. The guy left and as MARK was shutting the door ASHLEY walked towards the door to see who it was. As MARK was shutting the door a male voice came from the vehicle in the driveway and said that ASHLEY was a whore and slut. This male voice was a different voice than that of the guy who came to the door. After a few seconds MARK opened the door back up and hollered for the vehicle to leave. JULIE walked out of the door and I could still hear the male voice hollering. A short time passed and JULIE came back in and said she saw SCOTT MULVERHILL hollering from the vehicle.

Matthew J. Lavoie

NOTICE:

(Penal Law - 210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class "A" Misdemeanor. *MJL*

Affirmed under penalty of perjury
this 23 th day of February, 2006

Matthew J. Malone

(Signature of Deponent)

- or -

*Subscribed and Sworn to before me

(Witness)

this _____ day of _____,

INV. GARY L. BROWN

[Person taking depo]

Time ended: 3:00 p.m.*Inv Gary L Brown**02/23/06**3:05
p.m.*

Supporting Deposition (CPL-100.20)

New York State Police

State of New York
Local Criminal CourtCounty of Franklin
Town of Burke

THE PEOPLE OF THE STATE OF NEW YORK

-vs.

SUPPORTING DEPOSITION

SCOTT M. MULVERHILL [REDACTED]

(Defendant)

State of New York
County of Franklin
Town of Malone

On 02/23/06 at 2:30 p.m., I [REDACTED]

State the following:

On Friday, February 17, 2006, at approximately 11:30 p.m., I, MATTHEW G. EMOND, went to ELI HARMON's trailer on the Finney Road, Burke, New York. When I got there ELI HARMON, JULIE VANDERWIEL (ELI's Girl friend), MARK HARMON, MATT LAVOIE and ASHLEY PALMER were there. We played cards and talked for awhile. At approximately 1:30 a.m. (02/18/06), someone knocked at the door. MARK answered the door. The guy whom I could hear speaking, but I could not see, asked MARK if a CHRIS BURDASH was there. MARK told him not there but he could check the other trailers up the road. The guy left and MARK shut the door. A few seconds after MARK shut the door I could hear a male voice hollering outside. The person was hollering ASHLEY's name and was asking if she was inside. MARK opened the door and asked them to leave the property. JULIE walked outside and then I looked out the window. I saw a bluish colored, newer model, Ford Explorer in the driveway. I could see that the driver's side door was open and I could hear someone hollering. One of the things I heard the male voice saying was that he was going to go to tell her (ASHLEY's) mother. It lasted a few more seconds and then the Explorer backed out of the driveway and left.

MGE

Eric Paul Brown

Page 1

NOTICE:

(Penal Law - 210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class "A" Misdemeanor. *ML*

Affirmed under penalty of perjury
this 23 th day of February, 2006

Matthew G. Emery

(Signature of Deponent)

- or -

*Subscribed and Sworn to before me

(Witness)

this _____ day of _____

INV. GARY L. BROWN

[Person taking depo]

Time ended: 2:40 p.m.

Cw Gary L. Brown
02/23/06
2:40 p.m.

SUPPORTING DEPOSITION (CPL Sec.100.20) GENL-4 REV 01/98E
STATE OF NEW YORK

New York State Police

LOCAL CRIMINAL COURT

COUNTY OF FRANKLIN

TOWN of BURKE

THE PEOPLE OF THE STATE OF NEW YORK)

--VS.--)

SCOTT M. MULVERHILL)

(Defendant)

SUPPORTING DEPOSITION

STATE OF NEW YORK)
COUNTY OF FRANKLIN)

TOWN of MALONE)

SS.

On DATE 02/23/06 at TIME STARTED 9:20 am I, FULL NAME ASHLEY MARIE PALMER

state the following: On February 17th, 2006, at approximately 9:00 p.m., I, ASHLEY M. PALMER, drove my 1995 Maroon Mercury Tracer to MARK and ELI HARMON's trailer on the Finney Road, Burke, New York. My friend, JULIE VANDERWIEL, was also with me. JULIE dates ELI. When we first got there no one was there. We just went inside and hung out. After awhile ELI came home. During the course of the night MARK HARMOND, MATT EMOND and two other people whom I do not know their names, were also there. At approximately 12:30 a.m., (02/18/06), a guy came to the trailer door and asked if a BURDASH lived there. I believe it was MARK that spoke with the guy and told him that no one was there by the name of BURDASH. I did not see the guy doing the talking, I only heard him. The guy left and got into a larger dark colored SUV. The vehicle started to back up and then pulled back into the driveway and kept the horn on and flashing the headlights. MARK opened the door and started to walk out. The car started to back up and MARK came back into the trailer. As MARK was walking back into the trailer I heard a male voice that I know is SCOTT MULVERHILL's. SCOTT kept yelling my name and said that he had a gun in there. SCOTT said that I should come out, and he did not care if he had to hurt someone. SCOTT said I swear to God if you do not come out I am going to call the cops or your mother and tell them what you are doing. The vehicle stopped backing up and pulled back into the driveway. JULIE walked out of the trailer and up to the vehicle. I was holding the door open and watching what was going on. I could hear SCOTT hollering at JULIE, SCOTT said tell that fucking whore to come out here. SCOTT called JULIE some names and then he finally left. As SCOTT was leaving he hollered that he was going to call my mom. As the vehicle pulled away SCOTT stuck his head partially out the driver's side window and hollered something else. When he did this I actually saw him.

On 02/18/06, at approximately 10:30 p.m., I began to back my car up in JULIE's driveway when a dark colored Blazer or Jimmy type vehicle pulled into the driveway behind me. The vehicle flashed the headlights and I got out of my car. I thought it was KYLE BABBIE. The front driver's side window of the vehicle was rolled down and I saw SCOTT. SCOTT called me a f-in whore and asked who I was sleeping with tonight. SCOTT

NOTICE

(Penal Law Sec.210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 23rd day of February, YR 06

-- OR --

*Subscribed and Sworn to before me

this day of , YR

Ashley Palmer
(SIGNATURE OF DEPONENT)

Inv. GARY L. BROWN (WITNESS)
(NAME OF PERSON TAKING DEPOSITION)

TIME ENDED
() am
() pm

SUPPORTING DEPOSITION CONTINUATION SHEET

PEOPLE vs. SCOTT M. MULVERHILL

asked who's there. I told him to get out of there. SCOTT left and I backed out of the driveway. I turned left from Cedar Street onto Raymond Street and then I saw SCOTT due a U-turn on Raymond Street, near Collins Feed, and he started following me. I turned right onto Main Street and SCOTT continued to follow me. SCOTT got real close to my rear bumper and flashed his lights and beeped his horn. I turned near the court house and SCOTT kept going. When I got to my boyfriend's house I told him what had just happened. My boyfriend is JAMES TROMBLEY ^{Q2}

NOTICE

(Penal Law Sec.210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor ^{Q2}

Affirmed under penalty of perjury

this 23rd day of February, YR 06

-- OR --

*Subscribed and Sworn to before me

this _____ day of _____, YR _____

Ashley Palmer
(SIGNATURE OF DEPONENT)

Gary L. Brown (WITNESS)
INV. GARY L. BROWN
(NAME OF PERSON TAKING DEPOSITION)

TIME ENDED 10 : 10 am pm

Supporting Deposition (CPL-100.20)

New York State Police

State of New York
Local Criminal CourtCounty of Franklin
Town of Burke

THE PEOPLE OF THE STATE OF NEW YORK

-vs.

SUPPORTING DEPOSITION

SCOTT M. MULVERHILL ([REDACTED])

(Defendant)

State of New York
County of Franklin
Town of MaloneOn 02/23/06 at 1:20 p.m., I, JULIE ANNE VANDERWIEL, [REDACTED]
[REDACTED]

State the following:

I, JULIE A. VANDERWIEL, have known ASHLEY PALMER for the past couple of years, but did not actually hang out with her. Approximately two weeks ago we became to get closer as friends and started hanging out. ASHLEY and I had planned, that on Friday, February 17, 2005, she would spend the night at my house. ASHLEY came over and we visited for awhile and then we decided to go to my boyfriend's house. My boyfriend is ELI HARMON and he lives on the Finney Road Burke, New York. ASHLEY said she would drive. ASHLEY and I got into her red Mercury Tracer and we got to ELI's trailer at approximately 9:00 p.m. Other people that were there were: MARK HARMON (ELI's brother), MATT LAVOIE and MATT EMOND. At approximately 1:30 a.m., a guy whom I did not recognize showed up at ELI's and asked if CHRIS BURDASH was there. MARK talked to him and told him he had the wrong house. The guy went back to the vehicle in the driveway. The door of the trailer was open and so I stepped out of the door. I saw that the driver's side door of the vehicle was open and walked towards it. The dome light of the vehicle was on and I could see a guy behind the driver's steering wheel. The guy was saying that ASHLEY was a whore and a slut and that he was going to call her mother. I walked closer to the vehicle and I could see the guy driving. The guy driving was also the one doing the hollering. I got close enough to see that this guy was SCOTT MULVERHILL. I got two about three feet from his door and then he backed out JV

of the driveway and drove away. MARK was standing on the porch and saw me walk towards the vehicle. The vehicle SCOTT was driving was either a Ford Explorer or Ford Expedition. The color was either silver or light blue. JV

NOTICE:

(Penal Law - 210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class "A" Misdemeanor. JV

Affirmed under penalty of perjury
this 23 th day of February, 2006

John V. Anderson
(Signature of Deponent)

- or -

*Subscribed and Sworn to before me

this _____ day of _____,

Time ended: 1:45 p.m.

(Witness)
Inv. Gary L. Brown
INV. GARY L. BROWN
[Person taking depo]
02/23/06
1:45
p.m.

STATE OF NEW YORK
COUNTY OF FRANKLIN

In the matter of the Charges proffered pursuant
to §75 of the NYS Civil Service Law by:

Village of Malone

Charging Party,

**Amended
Charges**

- against -

Scott Mulverhill,

Respondent.

Ptl. Scott Mulverhill:

In accordance with the provisions of Section 75 of the Civil Service Law of the State of New York, you are hereby notified that the following amended charges are in reference to the original charges issued to you on or about October 11, 2005, and are in addition to said charges heretofore preferred against you for specific instances of misconduct:

AMEND CHARGE 3 – YOU HAVE VIOLATED THE CODE OF ETHICS OF THE VILLAGE OF MALONE’S POLICE DEPARTMENT BOTH ON AND OFF DUTY AND FURTHER HAVE ENGAGED IN CONDUCT UNBECOMING A POLICE OFFICER

Specification 1. During the months of July, August and September, 2005, on several different occasions both on and off duty you met with Jane Doe (hereinafter Jane Doe, a 17 year old female.). You brought her and her 13 year old sister and 15 year old brother to your residence, **telling them to not divulge information** to their parents about your relationship with their sister. On at least one of these occasions you brought Jane Doe along with her 13 year old sister to your residence and went upstairs to your bedroom and had sex with Jane Doe, while you left the 13 year old downstairs. **The 13 year believes you had sex with her sister at that time based on what she heard at the time.**

Specification 2. On or about August 24, 2005, you were directed by Jane Doe’s mother, Mary Kay LaChance, to stay away from her daughter Jane Doe. In that conversation you falsely stated to Mary Kay LaChance that you did not have a romantic relationship with her daughter Jane Doe.

Specification 3. On or about September 17, 2005, you falsely stated to Jane Doe’s father, in words or substance, that you did not have a romantic relationship with his daughter Jane Doe and further falsely stated that he had not been with her in a

movie theater in Plattsburgh, New York on September 9, 2005, and that he had not had her in his truck going back from Plattsburgh to the Malone, New York area. This all took place after Jane Doe's mother had warned you to stay away from her daughter. In that same conversation, Jane Doe's father, in words or substance, directed you to not have any further contact with his daughter Jane Doe yet you continued to do so.

Specification 4. On September 10, 2005 you went to the residence of Mary Kay LaChance and unlawfully entered said residence for the purpose of meeting with Jane Doe without the knowledge or permission from Mary Kay LaChance after being directed by Ms. LaChance not to have any contact with her daughter, Jane Doe, and to stay away from her.

Specification 5. On September 24th and 25th 2005 you were with Jane Doe. You were aware that Jane Doe was reported as a runaway and that the New York State Police were looking for her. You switched vehicles with your brother to try and avoid detection. You also hid Jane Doe at your sister's residence and were hiding with her when the State Police showed up at the residence. This would constitute the crime of Obstructing Governmental Administration in the second degree.

AMEND CHARGE 5 - YOU HAVE VIOLATED ARTICLE 10 OF THE DEPARTMENT RULES OF CONDUCT, SPECIFICALLY ARTICLE 10.1.3. AND ARTICLE 10.1.4 BY FAILING TO COMPLY WITH AN ORDER FROM YOUR SUPERIOR AND BY BEING INSUBORDINATE AND DISRESPECTFUL TOWARDS A SUPERIOR OFFICER.

Specification 1. On or about August 24, 2005, Mary Kay Chance, the mother of Jane Doe, phoned Chief Ronald Reyome to inform him of a conversation she just had with the Respondent which, inter alia, she directed the Respondent to stay way from her daughter.

Specification 2. After being informed of the Ms. LaChance's directive to the Respondent, on August 31, 2005, you were ordered to stay away from Jane Doe by the Chief Ronald Reyome. You failed to follow this order and continued to have personal contact, both on and off duty through the month of September, 2005.

Specification 3. On August 31, 2005, you gave false information to Chief Ronald Reyome. When an inquiry was made about your association with Jane Doe you told Chief Reyome that nothing was going on between you and Jane Doe and that the only thing that took place were phone calls hat you were not having a relationship. You did this knowing that you were lying to a Superior Officer and were in fact seeing Jane Doe on a regular basis, both while you were on duty as a police officer and at your personal residence.

CHARGE 7 – delete Specification 2 and place as Specification 2 in Charge 8.

AMEND CHARGE 8 – YOU HAVE VIOLATED ARTICLE 6 OF THE DEPARTMENT RULES OF CONDUCT, SPECIFICALLY ARTICLE 6.2.12. RECEIVE, RECORD AND SERVICE IMMEDIATELY ALL COMPLAINTS AND REQUESTS FOR SERVICE. REFER AND TRANSFER COMPLAINTS AND REQUESTS ONLY IN ACCORDANCE WITH DEPARTMENT ORDERS.

Specification 1. On September 23, 2005 at **approximately 7:05am**, while assigned to general patrol duties, you hid the Department vehicle behind the storage buildings off Boyer Ave. while you were **with Jane**. You did this to avoid being seen with Jane Doe.

Specification 2. On September 23, 2005 at around 7:05 am, **while on duty**, you were dispatched to **handle an open door** complaint. You failed to respond immediately to the call **because you were with Jane Dow** parked behind the storage buildings off Boyer Avenue.

NEW CHARGE 18 – YOUR BEHAVIOR AS A KNOWN AND RECOGNIZED POLICE OFFICER FOR THE MALONE POLICE DEPARTMENT SINCE ON OR ABOUT JULY OF 2005 UP TO AND INCLUDING YOUR RECENT ARREST AS REPORTED IN LOCAL PAPERS FOR MISCONDUCT, SECOND DEGREE CRIMINAL TRESPASS, SECOND DEGREE OBSTRUCTION OF GOVERNMENTAL JUSTICE FOLLOWING AN INVESTIGATION OF YOUR INVOLVEMENT WITH A 17 YEAR OLD HIGH SCHOOL STUDENT AND THE PUBLICITY RELATED THERETO HAS BECOME A TOPIC OF PUBLIC CONVERSATION THAT HAS CAUSED THE MALONE POLICE DEPARTMENT TO BE VIEWED WITH DISREPUTE.

NEW CHARGE 19 YOU HAVE VIOLATED ARTICLE 10 OF THE DEPARTMENT RULES OF CONDUCT, SPECIFICALLY ARTICLE 10.1.3. DISOBEDIENCE OF AN ORDER.

Specification 1. On September 24th and 25th, 2005 you failed to follow the Department's directive of handling 16 and 17 year old runaways. You were with Jane Doe and you were made aware that Jane Doe was reported as a runaway by her parents and you failed to return her to her parents or bring her to the station to be picked up. This is in direct contrast to the Department Directive dated March 8, 2004.

AMEND CHARGE 18 to Charge 20 – YOU HAVE ENGAGED IN A CONTINUING PATTERN OF MISCONDUCT OVER AN EXTENDED PERIOD OF TIME AS EVIDENCED BY A WRITTEN RECORD CONTAINED IN YOUR PERSONNEL FILE THAT IS IN ADDITION TO THE ALLEGATIONS SET FORTH HEREIN; TO WIT:

Specification 1. February 6, 1997
Violated of Article 10.1.7 and 10.1.1 of the Department Rules of Conduct.

- Specification 2.** September 28, 2001
Counseling Memorandum for speaking publicly about an officer from an outside agency.
- Specification 3.** November 25, 2002
Violated Article 6.2.34 and 10.1.1 of the Department Rules of Conduct
- Specification 4.** October 26, 2000
Counseling Memorandum for failure to submit requested Supporting Deposition
- Specification 5.** October 9, 2003
Verbal Counseling for abusive sick time
- Specification 6.** July 11, 2005
Letter concerning payment of past due debt
- Specification 7.** August 4, 2005
Violated Articles 6.2.4, 10.1.7 and 10.1.13 of the Department Rules of Conduct

Any and all other Charges contained in the original Charges issued on October 21, 2005, shall remain in full force and effect except as modified by these amended Charges.

You are allowed until **November 5, 2005**, to file your answer to these **CHARGES** and it is to be in writing and presented to or sent to Police Chief Ronald Reyome at the Malone Village Police Department, 2 Police Plaza, Malone, New York and **must be received no later than 4:00 pm on said date.**

A Hearing will commence on **November 7, 2005**, before Hearing Officer Edwin A. Trathen **at 10:00 am at the Malone Village Offices**, located at 14 Elm Street, Malone, New York.

You have the right to be represented by a duly authorized representative of your certified bargaining agent. You may bring witnesses to the hearing to testify on your behalf.

If you are found guilty of any or all of the **CHARGES and SPECIFICATIONS** listed above, any of the following penalties may be imposed:

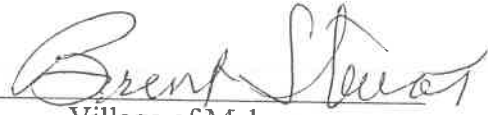
1. Dismissal;
2. Demotion in title or grade;

3. Suspension without pay not to exceed sixty (60) days;
4. Fine not to exceed \$100;
5. Written reprimand

Further notices and communications addressed to you in connection with these charges will be sent to you at the address at the address on record for you with this agency, which is P.O. Box 603, Malone, New York unless you request in writing that such notices and communications be sent elsewhere.

Pursuant to Section 75.3 of the New York State Civil Service Law, you are hereby suspended from work without pay effective on the 12th day of October 2005, and shall remain on suspension without pay until further notified.

BY:


Village of Malone

Date:

10/27/05



POLICE DEPARTMENT
Village of Malone
2 Police Plaza
Malone, New York 12953-1601

(518) 483-2424
fax (518) 483-2426

Ronald Reyome
Chief of Police

October 11, 2005

Scott M. Mulverhill
P.O. Box 603
Malone, NY 12953

RE: Disciplinary Charges

Ptl. Scott Mulverhill,

In accordance with the provisions of Section 75 of the Civil Service Law of the State of New York, you are hereby notified that the following charges are preferred against you for specific instances of **misconduct**:

CHARGES

Charge 1

You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.31. by your Failure to seize, record, process and dispose of recovered or prisoner's property in conformance with Department orders and Procedure.

Specification 1

On December 16, 2004 you received a purse from a larceny complaint which was suppose to be dusted and logged into evidence. You failed to complete the evidence tag on such purse or turn same over to a Supervisor or the Detective. The purse was located in your locker on September 25th, 2005.

Specification 2

On January 22, 1999 you obtained a money bag and tagged as evidence in a larceny complaint that was filed from the Yankee dollars store. On December 18, 1999 you obtained several stolen items involving a larceny from K-Mart. The items totaled \$105.36. On January 10, 2004 you obtained several stolen items involving a larceny complaint from Kinney Drugs. In all of the above cases the items were turned back over to you to return them to the complainants. You failed to do this as all of the items were located in your Locker on September 25, 2005.

Charge 2

You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.29. by your failure to pay just indebtedness within a reasonable time.

Specification 1 On March 28th, 2005 and Income Execution was assigned against you by N.Y.S. Supreme Court in Franklin County for and amount of \$1,492.77 plus interest from such date. The creditor was Asset Acceptance LLC as assignee of Providian Bank.

Charge 3 You have violated the Code of Ethics of the Village of Malone's Police Departments both on and off duty and further have engaged in conduct unbecoming a police officer.

Specification 1 During the months of July, August and September, 2005, on several different occasions both on and off duty you met with a 17 year old female. **(hereinafter Jane Doe, a 17 year old female.)** You brought her and her 13 year old sister and 15 year old brother to your residence, asking them to lie to their parents about your relationship with their sister. On at least one of these occasions you brought Jane Doe along with her 13 year old sister to your residence and went upstairs to your bedroom and had sex with Jane Doe, while you left the 13 year old downstairs. The 13 year old could hear you having sex with her sister.

Specification 2 On September 10, 2005 you went to the residence of the mother of Jane Doe after being told by her not to have any contact with her daughter, Jane Doe, and to stay away from her residence.

Specification 3 On September 24th and 25th 2005 you were with Jane Doe. You were aware that Jane Doe was reported as a runaway and that the New York State Police were looking for her. You switched vehicles with your brother to try and avoid detection. You also hid Jane Doe at your sister's residence and were hiding with her when the State Police showed up at the residence. This would constitute the crime of Obstructing Governmental Administration in the second degree.

Charge 4 You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances, which you are is obligated to enforce.

Specification 1 On August 31, 2005 you issued two uniform traffic tickets to a Joshua Wolz for registration not affixed and illegal windshield (tinted). These tickets were written prior to stopping Mr. Wolz and in retaliation for Wolz talking to Jane Doe at Maplefields. This would constitute the crime of Official Misconduct.

Specification 2

On September 30, 2005, you were pulled over for speeding in the Town of Antwerp, NY, by the New York State Police. You advised the Trooper that you were "on the job" and worked for the Malone Village Police Department in an attempt to get out of a speeding ticket. You did this knowing that you were suspended from the Department and your badge and ID had been taken from you.

Charge 5

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. and article 10.1.4 by failing to comply with an order from your superior and by being insubordinate and disrespectful towards a superior officer.

Specification 1

On August 31, 2005, you were ordered to stay away from Jane Doe by the Chief Ronald Reyome. This was done after the mother of Jane Doe requested same. You failed to follow this order continued to have personal contact, both on and off duty through the month of September, 2005.

Specification 2

On August 31, 2005, you gave false information to Chief Ronald Reyome. When an inquiry was made about your association with Jane Doe you advised Chief Reyome that nothing was going on between you and Jane Doe and that the only thing that took place were phone calls. That you were not having a relationship. You did this knowing that you were lying to a Superior Officer and were in fact seeing Jane Doe on a Regular basis, both while you were on duty and off duty at your personal residence.

Charge 6

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.46. Operating a Department vehicle out of the Village except in immediate pursuit of law violators or when on official police business authorized by the Chief of Police or his immediate Supervisor.

Specification 1

During the middle to late part of August 2005, while on duty, you drove the Departments vehicle outside the Village limits to Aldi's parking lot to meet Jane Doe and her 15 year old brother. You did this without proper authorization and were not on official police business.

Charge 7

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.42. Failure to keep the Department vehicle in public view while assigned to general patrol duty except when authorized by a Superior Officer.

Specification 1

During the months of June, July, August and September, 2005 while on duty and assigned to general patrol duties, you repeatedly hid the Department vehicle behind the storage building off of Boyer Ave and behind trees off Finney Blvd. You did this to avoid being seen with Jane Doe. On several of those occasions Jane Doe would be with her 13 year old sister or her 15 year old brother.

Specification 2

On September 23, 2005 at around 7:05am while assigned to general patrol duties you hid the Department vehicle behind the storage buildings off of Boyer Ave. You did this to avoid being seen with Jane Doe.

Charge 8

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.12. Receive, record and service immediately all complaints and requests for service. Refer and transfer complaints and requests only in accordance with Department orders.

Specification 1

On September 23, 2005 at around 7:05am you were dispatched open/unlocked door complaint. You failed to respond immediately to the call.

Charge 9

You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.18 and 10.1.19 by your failure to treat any person civilly and respectfully and by willful maltreatment of a person.

Specification 1

On September 14, 2005 you requested to talk to prisoner, Joshua Wolz. Wolz was at the Franklin County Jail and you were on duty at the time. He was brought into a room where you threaten physical harm to Wolz. and advised him that if he was anywhere near Jane Doe he would take an even worse beating. You also threatened to kill him.

Charge 10

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. Disobedience of an order.

Specification 1

On September 20, 2005 you issued a traffic ticket to a Joseph Dingle for running a red light. At the same time that you issued the ticket

and without inquiry from Mr. Dingle you advised him that he could get a reduction form and that you would grant him the reduction. This was in direct contrast with Chief Reyome's written directive dated August 23, 2005. "When a traffic stop has been made and a ticket issued the Officer **will not** volunteer to the individual that reduction forms are available."

Charge 11

You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.3. Disobedience of an order.

Specification 1

On September 12, 2005, you issued a traffic ticket to a Danny Hollis for Speeding. At the same time that you issued the ticket and without inquiry from Mr. Hollis you advised him that he could get a reduction form. This was in direct contrast with Chief Reyome's written directive date August 23, 2005. "When a traffic stop has been made and a ticket issued, the officer **will not** volunteer to the individual that reduction forms are available."

Charge 12

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.78. No member or members of the Department shall initially contact the Board of Trustees on a police problems except through regular channels or by permission of the Chief of Police.

Specification 1

On October 5, 2005, you bypassed the chain of command and directly contacted Mayor Brent Stewart and complained about the fact that Chief Ronald Reyome gave you a letter. You did this without going through regular channels and without permission of the Chief of Police.

Charge 13

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.20 and Article 10.1.27 by knowingly making a false report, written or oral and by publicly criticizing the official actions of a Department member.

Specification 1

On October 5, 2005, you contacted Mayor Brent Stewart and falsely reported that you witnessed Chief Ronald Reyome in an apparent intoxicated condition at the Malone Country Club.

Specification 2

On October 6, 2005 while outside the Sunoco store located on East Main Street in the Village of Malone, you criticized Chief Ronald Reyome for giving you a letter in regards to official action that is being taken by the Department. You told this to Officer David Merrick and Officer Steven Kemp while in the view and in hearing distance of civilians that were at the store.

Charge 14

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.20. Knowingly make a false report, written or oral.

Specification 1

On October 6, 2005, while outside the Sunoco Store located on East Main Street you falsely reported to Officer David Merrick and Officer Steven Kemp that Chief Ronald Reyome was intoxicated on the night of October 5, 2005 while he was at the Malone Country Club.

Charge 15

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.4. Insubordination or disrespect toward a Superior Officer.

Specification 1

On October 6, 2005 you were insubordinate and disrespectful towards Chief Ronald Reyome, by telling his subordinates, Officer David Merrick and Officer Steven Kemp, that Chief Reyome was in an intoxicated condition on October 5, 2005. These allegations were false and you tried to tarnish Chief's Reyome reputation with his subordinate officers.

Charge 16

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances which he is obligated to enforce.

Specification 1

On or about the first week of June 2005, you gave Jane Doe, who is under the age of 21, a wine cooler. This would constitute the crime of Unlawfully Dealing with a Child.

Charge 17

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.44. Permitting any person not on official business to ride in a Department Vehicle unless specifically authorized.

Specification 1 On September 23, 2005 and on several prior dates you allowed Jane Doe and her 15 year old brother sit in the Department's marked Patrol vehicle.

Charge 18

You have engaged in a continuing pattern of misconduct over an extended period of time as evidenced by a written record contained in your personnel file that is in addition to the allegations set forth herein; to wit:

Specification 1 February 6, 1997
Violated of Article 10.1.7 and 10.1.1 of the Department Rules of Conduct.

Specification 2 September 28, 2001
Counseling Memorandum for speaking publicly about an officer from an outside agency.

Specification 3 November 25, 2001 ~~2001~~ ²⁰⁰²
Violated Article 6.2.34 and 10.1.1 of the Department Rules of Conduct

Specification 4 October 26, ~~2002~~ ²⁰⁰⁰
Counseling Memorandum for failure to submit requested Supporting Deposition

Specification 5 October 9, 2003
Counseling Memorandum for abusive sick time

Specification 6 July 11, 2005
Letter concerning payment of past due debt

Specification 7 August 5, 2005
Violated Articles 6.2.4, 10.1.7 and 10.1.13 of the Department Rules of Conduct



POLICE DEPARTMENT
Village of Malone
2 Police Plaza
Malone, New York 12953-1601

(518) 483-2424
fax (518) 483-2426

Ronald Reyome
Chief of Police

You are allowed until October 19th, 2005, to file our answer to these **CHARGES** and **SPECIFICATIONS**. Your answer is to be in writing and presented to or sent to Police Chief Ronald Reyome at the Malone Village Police Department, 2 Police Plaza, Malone, New York and must be received no later than 4:00p.m. on said date. Failure to provide an answer to these charges in the manner prescribed herein may deemed as an admission to said **CHARGES** and **SPECIFICATIONS**.

Hearings will be commence on October 20, 2005, before Hearing Officer Edwin A. Trathen at 10:00 a.m. at the Malone Village Offices, located at 14 Elm Street, Malone, New York.

You have the right to be represented by a duly authorized representative of your certified bargaining agent. You may bring witnesses to the hearing to testify on your behalf.

If you are found guilty of any or all of the **CHARGES and SPECIFICATIONS** listed above, any of the following penalties may be imposed:

1. Dismissal;
2. Demotion in title or grade;
3. Suspension without pay not to exceed sixty (60) days;
4. Fine not to exceed \$100;
5. Written reprimand

All further notices and communications addressed to you in connection with these charges will be sent to you at the address at the address on record for you with this agency, which is P.O. Box 603, Malone, New York unless you request in writing that such notices and communications be sent elsewhere.

Pursuant to Section 75.3 of the New York State Civil Service Law, you are hereby suspended from work without pay effective on the 12th day of October 2005, and shall remain on suspension without pay until further notified.

BY: Mayer Brunkl Steiner
Village of Malone

Date: 10-11, 2005



POLICE DEPARTMENT
Village of Malone
2 Police Plaza
Malone, New York 12953-1601

(518) 483-2424
fax (518) 483-2426

Ronald Reyome
Chief of Police

October 27, 2005

John M. Crotty, Esq
1 Spring Square
Business Park
Newburgh, New York 12550

Re: Amended Charges on Scott Mulverhill

Mr. Crotty,

Enclosed you will find the Amended Charges on Scott Mulverhill. I believe copies of the charges were faxed to John Grant.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald E. Reyome".

Ronald E. Reyome
Chief of Police



POLICE DEPARTMENT
Village of Malone
2 Police Plaza
Malone, New York 12953-1601

(518) 483-2424
fax (518) 483-2426

Ronald Reyome
Chief of Police

October 11, 2005

Scott M. Mulverhill
P.O. Box 603
Malone, NY 12953

RE: Disciplinary Charges

Ptl. Scott Mulverhill,

In accordance with the provisions of Section 75 of the Civil Service Law of the State of New York, you are hereby notified that the following charges are preferred against you for specific instances of **misconduct**:

CHARGES

Charge 1

You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.31. by your Failure to seize, record, process and dispose of recovered or prisoner's property in conformance with Department orders and Procedure.

Specification 1 On December 16, 2004 you received a purse from a larceny complaint which was suppose to be dusted and logged into evidence. You failed to complete the evidence tag on such purse or turn same over to a Supervisor or the Detective. The purse was located in your locker on September 25th, 2005.

Specification 2 On January 22, 1999 you obtained a money bag and tagged as evidence in a larceny complaint that was filed from the Yankee dollars store. On December 18, 1999 you obtained several stolen items involving a larceny from K-Mart. The items totaled \$105.36. On January 10, 2004 you obtained several stolen items involving a larceny complaint from Kinney Drugs. In all of the above cases the items were turned back over to you to return them to the complainants. You failed to do this as all of the items were located in your Locker on September 25, 2005.

Charge 2

You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.29. by your failure to pay just indebtedness within a reasonable time.

Specification 1 On September 23, 2005 and on several dates prior to you allowed Jane Doe and her 15 year old brother sit in the Department's marked Patrol vehicle.

Charge 18 You have engaged in a continuing pattern of misconduct over an Extended period of time as evidence by a written record contained in Your personnel file that is in addition to the allegations set forth herein;
To wit:

Specification 26 (a) February 6, 1997
Violated of Article 10.1.7 and 10.1.1 of the Department Rules of Conduct.

Specification 26 (b) September 28, 2001
Counseling Memorandum for speaking publicly about an officer from an outside agency.

Specification 26 (c) November 25, 2001
Violated Article 6.2.34 and 10.1.1 of the Department Rules of Conduct

Specification 26 (d) October 26, 2002
Counseling Memorandum for failure to submit requested Supporting Deposition

Specification 26 (e) October 9, 2003
Counseling Memorandum for abusive sick time

Specification 26 (f) July 11, 2005
Letter concerning payment of past due debt

Specification 26 (g) August 5, 2005
Violated Articles 6.2.4, 10.1.7 and 10.1.13 of the Department Rules of Conduct

Specification 1 On March 28th, 2005 and Income Execution was assigned against you by N. Y. S. Supreme Court in Franklin County for and amount of \$1,492.77 plus interest from such date. The creditor was Asset Acceptance LLC as assignee of Providian Bank.

Charge 3

You have violated the Code of Ethics of the Village of Malone's Police Departments both on and off duty and further have engaged in conduct unbecoming a police officer.

Specification 1 During the months of July, August and September, 2005, on several different occasions both on and off duty you met with Jane Doe. (hereinafter Jane Doe, a 17 year old female.) You brought her and her 13 year old sister and 15 year old brother to your residence, asking them to lie to their parents about your relationship with their sister. On at least one of these occasions you brought Jane Doe along with her 13 year old sister to your residence and went upstairs to your bedroom and had sex with Jane Doe, while you left the 13 year old downstairs. The 13 year old could hear you having sex with her sister.

Specification 2 On September 10, 2005 you went to the residence of Mary Kay LaChance after being told by Ms. LaChance not to have any contact with her daughter, Jane Doe, and to stay away from her residence.

Specification 3 On September 24th and 25th, 2005 you were with Jane Doe. You were aware that Jane Doe was reported as a runaway and that the New York State Police were looking for her. You switched vehicles with your brother to try and avoid detection. You also hid Jane Doe at your sister's residence and were hiding with her when the State Police showed up at the residence. This would constitute the crime of Obstructing Governmental Administration in the second degree.

Charge 4

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances, which you are obligated to enforce.

Specification 1 On August 31, 2005 you issued two uniform traffic tickets to a Joshua Wolz for registration not affixed and illegal windshield (tinted). These tickets were written prior to stopping Mr. Wolz and in retaliation for Wolz talking to Jane Doe at Maplefields. This would constitute the crime of Official Misconduct.

Specification 2 On September 30, 2005, you were pulled over for speeding in the Town of Antwerp, NY, by the New York State Police. You advised the Trooper that you were "on the job" and worked for the Malone Village Police Department in an attempt to get out of a speeding ticket. You did this knowing that you were suspended from the Department and your badge and ID had been taken from you.

Charge 5 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. and article 10.1.4 by failing to comply with an order from your superior and by being insubordinate and disrespectful towards a superior officer.

Specification 1 On August 31, 2005, you were ordered to stay away from Jane Doe by the Chief Ronald Reyome. This was done after the mother of Jane Doe requested same. You failed to follow this order continued to have personal contact, both on and off duty through the month of September, 2005.

Specification 2 On August 31, 2005, you gave false information to Chief Ronald Reyome. When an inquiry was made about your association with Jane Doe you advised Chief Reyome that nothing was going on between you and Jane Doe and that the only thing that took place were phone calls. That you were not having a relationship. You did this knowing that you were lying to a Superior Officer and were in fact seeing Jane Doe on a Regular basis, both while you were working and at your personal Residence.

off duty

on duty

Charge 6 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.46. Operating a Department vehicle out of the Village except in immediate pursuit of law violators or when on official police business authorized by the Chief of Police or his immediate Supervisor.

Specification 1 During the middle to late part of August 2005, while on duty, you drove the Departments vehicle outside the Village limits to Aldi's parking lot to meet Jane Doe and her 15 year old brother. You did this without proper authorization and were not on official police business.

Charge 7

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.42. Failure to keep the Department vehicle in public view while assigned to general patrol duty except when authorized by a Superior Officer.

Specification 1

During the months of June, July, August and September, 2005 while Assigned to general patrol duties, you repeatedly hid the Department Vehicle behind the storage building off of Boyer Ave and behind trees off of Finney Blvd. You did this to avoid being seen with Jane Doe. On several of those occasions Jane Doe would be with her 13 year old sister or her 15 year old brother.

on duty and

Specification 2

On September 23, 2005 at around 7:05am while assigned to general patrol duties you hid the Department vehicle behind the storage buildings off of Boyer Ave. You did this to avoid being seen with Jane Doe.

on duty and

Charge 8

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.12. Receive, record and service immediately all complaints and requests for service. Refer and transfer complaints and requests only in accordance with Department orders.

Specification 1

On September 23, 2005 at around 7:05am you were dispatched open/ Unlocked door complaint. You failed to respond immediately to the call.

Charge 9

You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.18 and 10.1.19 by your failure to treat any person civilly and respectfully and by willful maltreatment of a person.

Specification 1

On September 14, 2005 you requested to talk to prisoner, Joshua Wolz. Wolz was at the Franklin County Jail and you were on duty at the time. He was brought into a room where you threaten physical harm to Wolz. and advised him that if he was anywhere near Jane Doe he would take an even worse beating. You also threatened to kill him.

Charge 10

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. Disobedience of an order.

Specification 1

On September 20, 2005 you issued a traffic ticket to a Joseph Dingle for running a red light. At the same time that you issued the ticket

and without inquiry from Mr. Dingle you advised him that he could get a reduction form and that you would grant him the reduction. This was in direct contrast with Chief Reyome's written directive dated August 23, 2005. "When a traffic stop has been made and a ticket issued the Officer **will not** volunteer to the individual that reduction forms are available."

Charge 11

You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.3. Disobedience of an order.

Specification 1

On September 12, 2005, you issued a traffic ticket to a Danny Hollis for Speeding. At the same time that you issued the ticket and without inquiry from Mr. Hollis you advised him that he could get a reduction form. This was in direct contrast with Chief Reyome's written directive dated August 23, 2005. "When a traffic stop has been made and a ticket issued, the officer **will not** volunteer to the individual that reduction forms are available."

Charge 12

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.78. No member or members of the Department shall initially contact the Board of Trustees on a police problems except through regular channels or by permission of the Chief of Police.

Specification 1

On October 5, 2005, you bypassed the chain of command and directly contacted Mayor Brent Stewart and complained about the fact that Chief Ronald Reyome gave you a letter. You did this without going through regular channels and without permission of the Chief of Police.

Charge 13

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.20 and Article 10.1.27 by knowingly making a false report, written or oral and by publicly criticizing the official actions of a Department member.

Specification 1

On October 5, 2005, you contacted Mayor Brent Stewart and falsely reported that you witnessed Chief Ronald Reyome in an apparent intoxicated condition at the Malone Country Club.

Specification 2 On October 6, 2005 while outside the Sunoco store located on East Main Street in the Village of Malone, you criticized Chief Ronald Reyome for giving you a letter in regards to official action that is being taken by the Department. You told this to Officer David Merrick and Officer Steven Kemp while in the view and in hearing distance of civilians that were at the store.

Charge 14 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.20. Knowingly make a false report, written or oral.

Specification 1 On October 6, 2005, while outside the Sunoco Store located on East Main Street you falsely reported to Officer David Merrick and Officer Steven Kemp that Chief Ronald Reyome was intoxicated on the night of October 5, 2005 while he was at the Malone Country Club.

Charge 15 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.4. Insubordination or disrespect toward a Superior Officer.

Specification 1 On October 6, 2005 you were insubordinate and disrespectful towards Chief Ronald Reyome, by telling his subordinates, Officer David Merrick and Officer Steven Kemp, that Chief Reyome was in an intoxicated condition on October 5, 2005. These allegations were false and you tried to tarnish Chief's Reyome reputation with his subordinate officers.

Charge 16 You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances which he is obligated to enforce.

Specification 1 On or about the first week of June 2005, you gave Jane Doe, who is under the age of 21, a wine cooler. This would constitute the crime of Unlawfully Dealing with a Child.

Charge 17 You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.44. Permitting any person not on official Business to ride in a Department Vehicle unless specifically Authorized.



POLICE DEPARTMENT
Village of Malone
2 Police Plaza
Malone, New York 12953-1601

(518) 483-2424
fax (518) 483-2426

Ronald Reyome
Chief of Police

October 11, 2005

Scott M. Mulverhill
P.O. Box 603
Malone, NY 12953

RE: Disciplinary Charges

Ptl. Scott Mulverhill,

In accordance with the provisions of Section 75 of the Civil Service Law of the State of New York, you are hereby notified that the following charges are preferred against you for specific instances of **misconduct**:

CHARGES

Charge 1 You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.31. **by your failure** to seize, record, process and dispose of recovered or prisoner's property in conformance with Department orders and Procedure.

Specification 1 On December 16, 2004 you received a purse from a larceny complaint which was suppose to be dusted and logged into evidence. You failed to complete the evidence tag on such purse or turn same over to a Supervisor or the Detective. The purse was located in your locker on September 25th, 2005.

~~**Charge 2** You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.31 Failure to seize, record, process and dispose of recovered or prisoner's property in conformance with the Department orders and Procedure.~~

Specification 2 On January 22, 1999 you obtained a money bag and tagged as evidence in a larceny complaint that was filed from the Yankee dollars store. On December 18, 1999 you obtained several stolen items involving a larceny from K-Mart. The items totaled \$105.36. On January 10, 2004 you obtained several stolen items involving a larceny complaint from Kinney Drugs. In all of the above cases the items were turned back over to you to return them to the complainants. You failed to do this as all of the items were located in your Locker on September 25, 2005.

Charge 2 You have violated Article 10 of the Department's Rules of Conduct, specifically Article 10.1.29. **by your failure to pay just indebtedness within a reasonable time.**

Specification 1 On March 28th, 2005 and Income Execution was assigned against you by N.Y.S. Supreme Court in Franklin County for and amount of \$1,492.77 plus interest from such date. The creditor was Asset Acceptance LLC as assignee of Providian Bank.

**** NOTE **** ~~(Hereinafter Jane Doe will refer to a 17 year old female.)~~

Charge 3 You have violated **the Code of Ethics of the Village of Malone's Police Department both on and off duty and further have engaged in conduct unbecoming a police officer** ~~Article 6 of the Department's Rules of Conduct, specifically Article 6.2.34 by failing to obey the laws and ordinances which you are obligated to enforce..~~

Specification 1 During the months of July, August and September, 2005, on several different occasions **both on and off duty** you met with Jane Doe **(hereinafter Jane Doe, a 17 year old female.)**. You brought her and her 13 year old sister and 15 year old brother to your residence, asking them to lie to their parents about your relationship with their sister. On at least one of these occasions you brought Jane Doe along with her 13 year old sister to your residence and went upstairs to your bedroom and had sex with Jane Doe, while you left the 13 year old downstairs. The 13 year old ~~could~~ heard you having sex with her sister.
~~This may constitute the crime of Endanger the Welfare of a Child.~~

~~Charge 5~~ ~~You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances, which you are obligated to enforce.~~

Specification 2 On September 10, 2005 you went to the residence of Mary Kay LaChance after being told by Ms. LaChance not to have any contact with her daughter, Jane Doe, and to stay away from her residence. ~~This would constitute the crime of Criminal Trespass.~~

~~Charge 6~~ ~~You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances, which you are obligated to enforce.~~

Specification 3 On September 24th and 25th, 2005 you were with Jane Doe. You were aware that Jane Doe was reported as a runaway and that the New York State Police were looking for her. You switched vehicles with your brother to try and avoid detection. You also hid Jane Doe at your sister's residence and were hiding with her when the State Police showed

up at the residence. This would constitute the crime of Obstructing Governmental Administration in the second degree.

Charge 4

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances, which **you are obligated to enforce.**

Specification 1

On August 31, 2005 you issued two uniform traffic tickets to a Joshua Wolz for registration not affixed and illegal windshield (tinted). These tickets were written prior to stopping Mr. Wolz and in retaliation for Wolz talking to Jane Doe at Maplefields. This would constitute the crime of Official Misconduct.

~~Charge 8~~

~~You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances, which he is obligated to enforce.~~

Specification 2

On September 30, 2005, you were pulled over for speeding in the Town of Antwerp, NY, by the New York State Police. You advised the Trooper that you were "on the job" and worked for the Malone Village Police Department in an attempt to get out of a speeding ticket. You did this knowing that you were suspended from the Department and your badge and ID had been taken from you.

Charge 5

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. **and Disobedience of Article 10.1.4 by failing to comply with an order from your superior and by being insubordinate and disrespectful towards a superior officer.**

Specification 1

On August 31, 2005, you were ordered to stay away from Jane Doe by the Chief Ronald Reyome. This was done after the mother of Jane Doe requested same. You failed to follow this order continued to have personal contact, both on and off duty through the month of September, 2005.

~~Charge 10~~

~~You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.4. Insubordination or disrespect towards a Superior Officer.~~

Specification 2

On August 31, 2005, you gave false information to Chief Ronald Reyome. When an inquiry was made about your association with Jane Doe you advised Chief Reyome that nothing was going on between you and Jane Doe and that the only thing that took place were phone calls hat you were not having a relationship. You did this knowing that you were lying to a Superior Officer and were in fact seeing Jane Doe

on a Regular basis, both while you were working and at your personal Residence.

Charge 6

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.46. Operating a Department vehicle out of the Village except in immediate pursuit of law violators or when on official police business authorized by the Chief of Police or his immediate Supervisor.

Specification 1

During the middle to late part of August 2005, while on duty, you drove the Departments vehicle outside the Village limits to Aldi's parking lot to meet Jane Doe and her 15 year old brother. You did this without proper authorization and were not on official police business.

Charge 7

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.42. Failure to keep the Department vehicle in public view while assigned to general patrol duty except when authorized by a Superior Officer.

Specification 1

During the months of June, July, August and September, 2005 while Assigned to general patrol duties, you repeatedly hid the Department Vehicle behind the storage building off of Boyer Ave and behind trees off Finney Blvd. You did this to avoid being seen with Jane Doe. On several of those occasions Jane Doe would be with her 13 year old sister or her 15 year old brother.

Charge 13

~~You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.42. Failure to keep Departmental vehicle in Public view while assigned to general patrol duty except when Authorized by a Superior Officer.~~

Specification 2

On September 23, 2005 at around 7:05am, while assigned to general patrol duties, you hid the Department vehicle behind the storage buildings off of Boyer Ave. You did this to avoid being seen with Jane Doe.

Charge 8

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.12. Receive, record and service immediately all complaints and requests for service. Refer and transfer complaints and requests only in accordance with Department orders.

Specification 1

On September 23, 2005 at around 7:05 am you were dispatched open/unlocked door complaint. You failed to respond immediately to the call.

Charge 9

You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.18 and 10.1.19 **by you failure to treat any person civilly and respectfully and by willful maltreatment of a person.**

Specification 1

On September 14, 2005 you requested to talk to prisoner, Joshua Wolz. Wolz was at the Franklin County Jail and you were on duty at the time. He was brought into a room where you threatened physical harm to Wolz. and advised him that if he was anywhere near Jane Doe he would take an even worse beating. You also threatened to kill him.

Charge 16

~~You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.19. Willful maltreatment of any person.~~

Charge 10

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. Disobedience of an order.

Specification 1

On September 20, 2005 you issued a traffic ticket to a Joseph Dingle for running a red light. At the same time that you issued the ticket, and without inquiry from Mr. Dingle, you advised him that he could get a reduction form and that you would grant him the reduction. This was in direct contrast with Chief Reyome's written directive dated August 23, 2005. "When a traffic stop has been made and a ticket issued the Officer **will not** volunteer to the individual that reduction forms are available."

Charge 11

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.3. Disobedience of an order.

Specification 1

On September 12, 2005, you issued a traffic ticket to a Danny Hollis for Speeding. At the same time that you issued the ticket and without inquiry from Mr. Hollis you advised him that he could get a reduction form. This was in direct contrast with Chief Reyome's written directive date August 23, 2005. " When a traffic stop has been made and a ticket issued, the officer **will not** volunteer to the individual that reduction forms are available."

Charge 12

You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.78. No member or members of the Department shall initially contact the Board of Trustees on a police problems except through regular channels or by permission of the Chief of Police.

Specification 1 On October 5, 2005, you **bypassed the chain of command and directly** contacted Mayor Brent Stewart and complained about the fact that Chief Ronald Reyome gave you a letter. You did this without going through regular channels and without permission of the Chief of Police.

Charge 13 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.20. **and** Article 10.1.27. **by knowingly making a** false report, written or oral **and by** publicly criticizing the official actions of a Department member.

Specification 1 On October 5, 2005, you contacted Mayor Brent Stewart and falsely reported that you witnessed Chief Ronald Reyome **in an apparent** intoxicated **condition** ~~while Chief Reyome was~~ at the Malone Country Club.

Specification 2 On October 6, 2005 while outside the Sunoco store located on East Main Street in the Village of Malone, you criticized Chief Ronald Reyome for giving you a letter in regards to official action that is being taken by the Department. You told this to Officer David Merrick and Officer Steven Kemp while in the view and in hearing distance of civilians that were at the store.

~~Charge 21 You have violated Article 10 of the Department Rules of Conduct,~~
~~specifically~~

Charge 14 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.20. Knowingly make a false report, written or oral.

Specification 1 On October 6, 2005, while outside the Sunoco Store located on East Main Street you falsely reported to Officer David Merrick and Officer Steven Kemp that Chief Ronald Reyome was intoxicated on the night of October 5, 2005 while he was at the Malone Country Club.

Charge 15 You have violated Article 10 of the Department Rules of Conduct, specifically Article 10.1.4. Insubordination or disrespect toward a Superior Officer.

Specification 1 On October 6, 2005 you were insubordinate and disrespectful towards Chief Ronald Reyome, by telling his subordinates, Officer David Merrick

and Officer Steven Kemp, that Chief Reyome was in an intoxicated condition on October 5, 2005. These allegations were false and you tried to tarnish Chief's Reyome reputation with his subordinate officers.

Charge 16

You have violated Article 6 of the Department Rules of Conduct, specifically Article 6.2.34. Obey the laws and ordinances which he is obligated to enforce.

Specification 1

~~Sometime around~~ **On or about** the first week of June 2005, you gave Jane Doe, **who is under the age of 21**, a wine cooler. This would constitute the crime of Unlawfully Dealing with a Child.

Charge 17

You have violated Article 10 of the Department Rules of Conduct, Specifically Article 10.1.44. Permitting any person not on official Business to ride in a Department Vehicle unless specifically Authorized.

Specification 1

On September 23, 2005 and on several dates prior to you allowed Jane Doe and her 15 year old brother sit in the Department's marked Patrol vehicle.

Charge 18

You have engaged in a continuing pattern of misconduct over an extended period of time as evidenced by a written record contained in your personnel file **that is in addition to the allegations set forth herein; to wit:**

Specification 1

February 6, 1997
Violated of Article 10.1.7 and 10.1.1 of the Department Rules of Conduct.

Specification 2

September 28, 2001
Counseling Memorandum for speaking publicly about an officer from an outside agency.

Specification 3

November 25, 2001
Violated Article 6.2.34 and 10.1.1 of the Department Rules of Conduct

Specification 4

October 26, 2002
Counseling Memorandum for failure to submit requested Supporting Deposition

Specification 5

October 9, 2003

Counseling Memorandum for abusive sick time

- Specification 6 July 11, 2005
Letter concerning payment of past due debt
- Specification 7 August 5, 2005
Violated Articles 6.2.4, 10.1.7 and 10.1.13 of the Department Rules of Conduct

You are allowed until October 19, 2005, to file your answer to these **CHARGES** and it is to be in writing and presented to or sent to Police Chief Ronald Reyome at the Malone Village Police Department, 2 Police Plaza, Malone, New York and must be received no later than 4:00p.m. on said date. Failure to provide an answer to these charges in the manner prescribed herein may deemed as an admission to said **CHARGES** and **SPECIFICATIONS**.

A Hearing will ~~be held~~ **commence on October 20, 2005**, before Hearing Officer Edwin A. Trathen ~~and said hearing will take place starting~~ at 10:00 a.m. at the Malone Village Offices, located at 14 Elm Street, Malone, New York.

You have the right to be represented by a duly authorized representative of your certified bargaining agent. You may bring witnesses to the hearing to testify on your behalf.

If you are found guilty of any or all of the **CHARGES and SPECIFICATIONS** listed above, any of the following penalties may be imposed:

1. Dismissal;
2. Demotion in title or grade;
3. Suspension without pay not to exceed sixty (60) days;
4. Fine not to exceed \$100;
5. Written reprimand

Further notices and communications addressed to you in connection with these charges will be sent to you at the address at the address on record for you with this agency, which is P.O. Box 603, Malone, New York unless you request in writing that such notices and communications be sent elsewhere.

Pursuant to Section 75.3 of the New York State Civil Service Law, you are hereby suspended from work without pay effective on the 12th day of October 2005, and shall remain on suspension without pay until further notified.

BY: _____
Village of Malone

Date: _____