

## Approved

### Public Minutes Monday April 18, 2011

---

A public session was held on Monday April 18, 2011 at the Hooksett Town Hall. Present were Chairperson Joanne McHugh, Commissioner Clark Karolian, Chief Stephen Agrafiotis, Attorney LeFevre, Officer Jason Defina

#### **Call to Order**

#### **Pledge of Allegiance**

#### **Proof of Posting**

**Chairperson McHugh:** Purpose of this meeting is to address personnel matters grievance hearing for Officer Jason Defina. Before get started like to go over some general guide lines and rules these are basically the same rules as the last time we met and had a hearing. We have not set any dead line to as what time this meeting will end. If the hour gets too late we will recess and have a meeting at a later date and I just wanted people to be aware of that. If the hour is late we will have to do that. I just went through the fact of asking the employee if he still wanted this meeting in public. I did question him if he wanted the meeting in non public and after asking the question the grievant did say he wanted this meeting in public. So this meeting will be held in public. Since this is a grievance hearing it involves rights or specific parties and the decisions made of result of this meeting must be based on the record developed of the hearing. I also want people to know that the Commission reserves the right to recess the grievance hearing if the commission needs to confer with our council. As far as rules of behavior I aspect that everyone to maintain a sense of decorum and if that does not happen I will ask the party to leave the room. I would also ask that the public would refrain from any comments during the hearing and only those people who are taking part of the proceedings will be allowed to speak. As far as the rules for the hearing it self although the hearing does not follow the rules of evidence procedure, the hearing will be based on offers of proof of both sides.

#### **Personnel Issues NH RSA 91-A:3,II(a) & (c)**

#### **Grievance #09-06**

**Officer Defina:** Before the meeting started I put a couple of packets on your chairs. I would ask that the Commission to take a look at those first, I would appreciate it.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Officer Defina, this is your explanation?

**Officer Defina:** Yes.

**Commissioner Karolian:** This is your explanation of your rebuttal of charges brought against you. Is that what you are saying?

**Officer Defina:** It is my recollection of evidence that took place around the incident with the write up.

**Chairperson McHugh:** Why don't you start off and explaining where you are going with this besides the information that you handed to us. Okay?

**Officer Defina:** I could read it for the record if that would make it easier for you.

**Chairperson McHugh:** I don't think it is necessary, why don't you give us what you want to say with regards to your defense.

**Officer Defina:** Okay. I wrote it out so I could

**Chairperson McHugh:** Right I know you wrote it out but we are going to have to recess to read this.

**Commissioner Karolian:** I have a question for the chief. On this grievance report that he is grieving about the change of personnel records entry form that was changed, he is disputing is saying it was changed from a two days suspension and then crossed off and corrected to non disciplinary verbal reprimand. My question is what was he charged with chief. So far as this grievance, it is numbered 09/06 by the way which I think is a type error I believe there are two others prior to this date um... meaning July 15<sup>th</sup>. There are 2 other reports grievances that were submitted with the same number. So I am assuming that 09/06 and 09/07 are older grievances that were runned through and that these are the newer ones.

**Chief Agrafiotis:** Commissioner I believe you are correct about that, as we talked at one of our last meeting there may have been some duplicates of some numbers. To answer you question that part of the paperwork to present to the commission tonight was a copy of the personnel records entry form and supporting documentation for both the grievances in question tonight for the Commissioners for you to read that lay out what the departments reasoning was for the ultimate discipline that was given. So to be honest I thought we could hand out ours. I know you may have a lot of reading to do but I think you would need to read rather than us read it all. You would need to read through what is from the personnel file as far as the records that made it into the file and the supporting documents. What I have has been redacted as far as juvenile information and other information that be used to reverse engineer the situation both these grievances involved Officer Defina in his role as school resource officer. So with

Public Minutes Monday April 18, 2011

all that said to answer your question, I guess I would have to hand out the information also and you would probably have to read it all and try to disgust that and go from there.

**Chairperson McHugh:** Well why don't you give us that. But before we get started Chief, did I hear you say that the numbers are not accurate. That it is not 09/06 and it is not 09/07. Is that what you are saying?

**Chief Agrafiotis:** Well we talked about this if you remember Commissioner the other night. The paperwork we were given said 09/06 & 09/07, so I think we just stuck with those numbers that we identified the other night the two situations and what I have pulled out of the personnel; the employee's files are those two situations. So that we would not be having any more discussion from the other night as far as the numbers, but if you remember we made it clear what the two situations were. So I reviewed the entire file and pulled out the two situations in question.

**Commissioner Karolian:** What I am concerned about is what is it that the Officer. What are the charges that the officer was being charged, that he was grieving when he got charged. What were those charges for this particular one that was gone from a two day suspension, crossed off and changed to a corrective non disciplinary verbal reprimand? What is the charge that the department was charging him to grieve?

**Chief Agrafiotis:** Again I would like to hand these out to you again. But just briefly from the body of the content of the personnel entry form, it was found that Officer Defina had committed a direct rules and regulations, section seven prohibited conduct ,so, paragraph 2-B & C incompetence and the ah, this was written by Lt. Cline who initially recommended a two day suspension of this violation.

**Commissioner Karolian:** So it was for incompetence and what else? Was that it just incompetence.

**Chief Agrafiotis:** Prohibited conduct, and I think incompetence. Yes. Again I have the, at some point I would like to give you these to you that you could read the story that leads up to the conclusion that the Lt. came to.

**Chairperson McHugh:** What was the actual incident that you are saying that there was both incompetence and prohibited conduct. What is the incident you are referring to?

**Chief Agrafiotis:** Would you like me to read it or would like me to hand it to you.

**Chairperson McHugh:** I would just like you to state what it is to begin with and then we will.

**Chief Agrafiotis:** In summary Det. Sgt Dupuis had received a case from an incident that happened at the Cawley School, he returned that to Officer Defina to do more work on it. Sgt Dupuis quotes were "he got the impression that Officer Defina does not know

Public Minutes Monday April 18, 2011

how to work an investigation". Then again there are all kinds of back ups with the report that came in a memo from Sgt Dupuis as far as his concern. So that is just a quick summary on this. Again you would have to read this.

**Chairperson McHugh:** I guess though it's not clear to me other than what you said that it was a case that happened at the Cawley School. What was it that caused you or the department to put on there that it was prohibited conduct and incompetence? What was it?

**Chief Agrafiotis:** Basically to sum it up is, Officer Defina not handling the situation that was reported to him and what we feel is in a proper manner.

**Commissioner Karolian:** What would the prohibited conduct be?

**Chief Agrafiotis:** I think that is a title of a section. The sub paragraph is incompetence. Prohibited conduct I believe in our rules has a number of different sub sections.

**Commissioner Karolian:** So he was being charge with incompetence.

**Chief Agrafiotis:** Yes, that is what I get from this paperwork. Yes.

**Commissioner Karolian:** That is because it is alleged from the department that he did not know how to conduct an investigation.

**Chief Agrafiotis:** Yes. Again there is more to that but that is the very short jiff of it.

**Commissioner Karolian:** Was he was assigned to patrol at that time or detectives

**Chief Agrafiotis:** He was a school resource officer.

**Commissioner Karolian:** Ok, so he wasn't assigned detective.

**Chief Agrafiotis:** No.

**Commissioner Karolian:** Do you know if he was sent to any detective school above and beyond the basic patrol.

**Chief Agrafiotis:** Off hand I can't remember.

**Commissioner Karolian:** Were you sent to an investigator school?

**Officer Defina:** I don't recall. No.

**Chairperson McHugh:** Is there something specific or particular if you are a school resource officer with regard how you conduct things as opposed to regular

Public Minutes Monday April 18, 2011

investigations. Is there anything in particular because you are a school resource officer or is this just the fact that you do investigations you should know whether or not being a school resource officer or you are being an officer some place else.

**Chief Agrafiotis:** In reviewing the back up which I would like to give you at some point. The feeling from the department was that any officer should have been able to do basic investigation into the situation that was reported regardless of their assignment. So it would not necessarily require, someone to have specific detective training it would be basically, basic work that we would expect any officer to do regardless of their assignment.

**Chairperson McHugh:** How about the fact that we are talking about minors specifically this level of the school, Cawley School those are middle school students. Is there anything particular to the investigation when you are dealing with students of that age group?

**Chief Agrafiotis:** I don't believe so. If we did not have a school resource officer position in the school, and the school called us or today if the school resource officer called in sick and the school called us, we would send a patrol officer to the location and ask him to take a report just like if they took a report from somewhere else. We would expect any patrol officer to do a certain level of investigation and documentation. Again that is what Sgt. Dupuis here in the back up referred to as what he felt was the problem when he reviewed the case.

**Chairperson McHugh:** Now as far as a school resource officer is there any specific training you get.

**Chief Agrafiotis:** Yes. There is a basic and advance school resource officer course.

**Chairperson McHugh:** And did that officer go.

**Chief Agrafiotis:** I believe he has gone to both courses, to the advance and the basic.

**Chairperson McHugh:** Ok. Thank you.

**Commissioner Karolian:** Is Det Sgt Dupuis here.

**Chief Agrafiotis:** Yes. Yes he is. If I could, would it be possible to hand these to you so you will have at least some idea of what we are saying.

Chief Agrafiotis handed Commission papers.

**Chief Agrafiotis:** If I could I would request the Commission to at least read the first page which is the personnel entry form, and that's what I tried to summarize for you a moment again and I think you could go from there. Please.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Det Sgt Dupuis just a quick question, did you tell Officer Defina what you wanted followed up; give him specifics of what was in the report or what was lacking in the report or his investigation or what you wanted him to continue with.

**Det. Sgt. Dupuis:** Yes I did I had a conversation with him in the patrol room advising him what he needed to look into.

**Commissioner Karolian:** And what are those things you told him to look into.

**Det. Sgt. Dupuis:** Look into the RSA statues in order to perform investigation of the schools. (Remainder in audible)

**Commissioner Karolian:** Ok. Thank you.

**Chairperson McHugh:** This memo officer I mean Sgt Dupuis, I apologize, this is the memo you prepared.

**Det. Sgt. Dupuis:** Yes.

**Commissioner Karolian:** The personnel entry form.

**Det. Sgt. Dupuis:** No.

**Chairperson McHugh:** But this is not what you rendition of what happened in this memo. This is the Lt.'s I believe. It is not yours I believe. Is it?

**Det. Sgt. Dupuis:** I am not sure on what page you are looking at.

**Chairperson McHugh:** Chief would you show him.

**Chief Agrafiotis:** The third page in the packet you have is a memo to Lt. Troy Cline from Det. Sgt Dupuis and it laid out to Lt. Cline, and I will let Sgt. Dupuis answer for his concerns in the situation.

**Commissioner Karolian:** On the third page the first redaction. That is because of a person's name.

**Chief Agrafiotis:** I believe it is the situation, the type of situation.

**Det. Sgt. Dupuis:** Yes that involves what the actual crime was at the time of the situation that was going on at the school.

**Commissioner Karolian:** Ok. Why was that redacted?

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** When I did the redaction my understanding with dealing with past issues not only with juvenile names and obviously the information be redacted but information about a situation which could lead to reverse engineering that if you heard the detail of the case minus the names you would still be able to figure out who was involved. What we have done for you tonight is, I did have Captain Daigle bring the originals from the file which of course is not redacted if the Commission would so chose to read those at some point, if the redactions cause you concern or you want to see what exactly was redacted then you would have the originals to compare those to.

**Chairperson McHugh:** Det. Sgt. Dupuis can I ask you this. Is it as far as the report that was done by Officer Defina you are questioning how he went about putting together the report or are you questioning his ultimate conclusion that no crime had been committed. Which is it? Was it the report itself or was it the fact there was or wasn't a crime committed.

**Det. Sgt. Dupuis:** I believe it was a combo of both at the time. It was his conclusion at the time of no crime being committed and the way he handled it as well. I wrote a memo to address this to his supervisor.

**Commissioner Karolian:** So for the fact that he felt there had been no crime committed based on his investigation, the department had a different view or you had a different view on that.

**Det. Sgt. Dupuis:** I had a different view on that, with the knowledge of the drug statues.

**Commissioner Karolian:** You might have it because he had a different opinion and that would make him incompetent.

**Det. Sgt. Dupuis:** I did not suggest incompetence. I wrote a memo saying his supervisor needed to address it.

**Commissioner Karolian:** Ok. Chief would that be the basis of incompetent on the opinion of the Department.

**Chief Agrafiotis:** Well when I read, when you read Officer Sgt. Det. Dupuis memo, I think that spelled out Lt. Cline's mind and ultimately in mine that Officer Defina had not done the minimum that we would have expected in that case. If you will note that you noted on the front that I changed the recommended discipline, I did not feel there was an issue at hand, but not to the level of the initial discipline recommended.

**Chairperson McHugh:** I don't want to get into this to deeply. Something that troubles me once again Det. Sgt. Dupuis was your conclusion based on the fact of what had happened prior with the student. Is that what you were basing your conclusion on or were you basing it on there was a difference of opinion from what the officer had concluded on that information that you had information that you knew there were prior

Public Minutes Monday April 18, 2011

incidents and that is why you came to that conclusion or reading the report that Officer Defina had put together that you saw indeed that it did rise to that level of being a crime.

**Det. Sgt Dupuis:** My responsibility at the Police Department is to review all the reports.

**Chairperson McHugh:** Okay.

**Det. Sgt. Dupuis:** So when I looked at the reports and my job is to make sure the reports are done correctly.

**Commissioner Karolian:** Did the officer actually depict the situation that had occurred that he investigated it.

**Det. Sgt. Dupuis:** I would have to reread the report. I would not have addressed something if I thought he had done the reports the way he should of.

**Chairperson McHugh:** One other thing in regard to the conclusion that you came to. Was there anything or any change to the law per say that occurred that would lead you or someone to conclude that a crime was committed and if you didn't know the law or up to speed on the law that you might conclude otherwise.

**Det. Sgt. Dupuis:** I would have to re look at the statues and see when the laws were changed. But I don't believe there was any recent change.

**Chairperson McHugh:** So there was nothing to that.

**Det. Sgt. Dupuis:** For me when I read the report quick searches of the statues that pertain to resulted at what my conclusions was.

**Commissioner Karolian:** Did you explain to him what you wanted done, above and beyond what he had already done.

**Det. Sgt Dupuis:** I believe in the end I explained. Yes, there was some discussion as to my memorandum was written there was some discussion to try to get him to do his follow ups. In fact there was an issue when one of the officers in the patrol room at the time when our discussion got heated the same statue.

**Commissioner Karolian:** It got heated.

**Det. Sgt. Dupuis:** It did not break to that extinct but I walked away and came back. I know at that point there was an officer in the room. I don't know who it was that brought up the statues that said you should look at this.

**Commissioner Karolian:** Chief is it the policy of your Hooksett Police Department that there is zero tolerance when it comes to crimes in the Town of Hooksett.



Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** I would not say it is a zero tolerance we look at every situation. Obviously issues in the schools are very serious but I think there always potential litigating circumstances so from patrol point of view the officers expected to take immediate and proper actions when they deal with issues or situations. As the reports make there way through review process at that point depending on follow up either with detectives or review of prosecution there may or may not be litigating factors that may change the charge or the department's position. But from the officer's point of view, expected to go to every call, document everything and handle it to the level of the trained.

**Chairperson McHugh:** The date of the incident was?

**Chief Agrafiotis:** The date and time of the personnel records entry form in front of you July 3, 2009 at thirteen hundred hours, which is 1pm?

**Chairperson McHugh:** That's when the crime was committed?

**Chief Agrafiotis:** That would be, we use that block for the time where we estimate where in this case the officer allege failed to do something they should of done.

**Chairperson McHugh:** The date of the crime?

**Chief Agrafiotis:** That's all further in the packet you have.

**Chairperson McHugh:** Can you tell me specifically the date.

**Chief Agrafiotis:** If you go through the packet, safe school, there is a copy of the police report. If I'm reading this correctly it looks like May 8, 2009. I believe again if you go further into the packet, you will see initially Officer Defina's report, what he was doing that day, and follow up reports. Again I think you need to read through the whole thing to get the jiffs of how things were flowing.

**Chairperson McHugh:** Chief can you go over at least for me, so I can understand it more clearly in my mind; with regard to the change and you can correct me if the way I repeat it back to you is incorrect. Originally because for that incident he was given a two day suspension is that correct.

**Chief Agrafiotis:** Lt. Cline recommended a two day suspension.

**Chairperson McHugh:** A two day suspension is that correct.

**Chief Agrafiotis:** Yes, that is what Lt. Cline and countered signed by Captain Cecilio had recommended.

**Chairperson McHugh:** And Captain Cecilio recommended along with him.

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** His signature and initials and his signature are below that.

**Chairperson McHugh:** Ok and I can see that Lt. Cline initialized it right next to it. He X'd the 2 day suspension. There is nothing there that Captain Cecilio was in agreeable with. But you are saying that he was in agreeable with it.

**Chief Agrafiotis:** Lt. Cline just informed me that detail of why the two day request suggested is crossed out and his initial by the verbal reprimand. I would ask if we could have him explain that change.

**Chairperson McHugh:** Before we go there and I will certainly entertain what Lt. Cline has to say. Just for my understanding and I'm having a little difficulty with this, originally it was Lt. Cline recommending the two day suspension along with Captain Cecilio, is that correct.

**Chief Agrafiotis:** Captain Cecilio initials and number are below Lt. Cline's signature. I would say that you would have to ask Lt. Cline why he initially put the two days and exactly what Captain Cecilio's feelings were. Lt. Cline just informed me as far as the sequence of events the change in his mind from the recommended suspension to a verbal reprimand.

**Commissioner Karolian:** So you asked Lt. Cline why it's getting changed. You asked what his reason was for changing it, if I understand you correctly just now, that we ask him.

**Chief Agrafiotis:** He reminded me that he was the one that changed it to a verbal reprimand from his initial recommendation for a two day suspension.

**Commissioner Karolian:** I thought it was your recommendation to change it.

**Chief Agrafiotis:** No his initials are next to that. And that is what he just reminded me of what the sequence of events of why he went from the fact of why he went from initially checking off the box to suspend for two days changing his mind to change it to a verbal reprimand.

**Chairperson McHugh:** Don't you have to be in agreement with it. When someone makes a recommendation don't they bring it to you and discuss it with you to see whether or not you are in agreement or not. Or if you feel there is either insufficient circumstances or something else to be considered. Did you agree with this two day suspension or were you not even part of it. That is where I am having some difficulty here. Like I say I don't quite understand and I thought originally and this is where I am mistaken, originally he was given a two day suspension recommended by both Lt. Cline and Captain Cecilio. Later on down the road it was changed to a verbal reprimand and that Lt. Cline did then agree on that and signed off that. But I can see heads shaken. So I can see that is incorrect.

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** If I could just in general speak of how the process works is if one form is done in appropriate level of supervision and it moves up in the chain of command. It is generally not discussed at each level as far as a recommendation. So when I get them I have the pack of information to review. Sometimes there is an internal investigation component, sometimes there is not, and I review what the final recommendation has been from the supervisor that has done this. I review all the supporting documents, something will talk about at the other grievance and I can ultimately change it as Lt Cline just reminded me he had changed this before it reached me and I agreed what his final recommendation was.

**Commissioner Karolian:** Are you maintaining that, you tell us that you did not have a conversation with Lt. Cline upon final reviewing this personnel entry records form.

**Chief Agrafiotis:** I don't remember from July of 2009, If I had a conversation with him but I know I signed off on it ultimately on the verbal reprimand as in my mind being the best solution for the situation.

**Chairperson McHugh:** Why don't we bring up both Lt. Cline and Captain Cecilio. Would you mind please? We will start off with Lt. Cline because that is the chain of command is that not right. Why don't you tell us Captain Lt. Cline, I apologize?

**Commissioner Karolian.** Why did you change it?

**Lt. Cline:** Because we were coming up to the 10 day window where we should have been addressing it with discipline. I am not even sure why we are discussing this. This is corrective non action disciplinary and is not covered under the CBA. Because under discipline and unjust discipline; at the sight of discipline at your discharge; this is not discipline. It is not discipline.

**Commissioner Karolian:** Is that why it was changed.

**Lt. Cline:** No. I changed it because of coming up to the window period and after speaking to the officer.

**Commissioner Karolian:** What time window are you talking about sir?

**Lt. Cline:** There is a certain time frame that we need to address when issuing out the paperwork. Any discipline. I chose to drop that down after conversation with Officer Defina and realizing we were closing in on this window, so I chose to drop this down.

**Commissioner Karolian:** But the window would not apply if what you are saying it was not a disciplinary action then the window of ten days would not apply.

**Lt. Cline:** No he would have still received the paperwork but it would have been different.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Even within that ten day period.

**Lt. Cline:** What's that?

**Commissioner Karolian:** Would it have to be within that ten day period.

**Lt. Cline:** It is in the ten day period. It was exactly ten days. But I gave him the benefit of doubt and dropped it down.

**Commissioner Karolian:** What if it was eleven days

**Lt. Cline:** If it was eleven days over then I probably when I issued it, it would been a verbal reprimand. It would not of matter in the end what happens is I would of issued it as a verbal reprimand if I would of gone by that eleven days because that is all I could do by the rules.

**Commissioner Karolian:** So why was it changed from a two day suspension to a verbal reprimand.

**Lt. Cline:** Because after my conversation with Officer Defina as I stated a moment ago, listening to his version of the events and knowing we were right on the hub of the window I leaned toward his direction and dropped it down to a non-disciplinary action.

**Commissioner Karolian:** Did you have a conversation with him before giving him the two days suspension.

**Lt. Cline:** That is when I changed it. We were sitting in the same room at the same table.

**Commissioner Karolian:** At that last day.

**Lt. Cline:** We were all discussing it. On the thirteenth it was issued.

**Commissioner Karolian:** That was the last day.

**Lt. Cline:** It was the ten days, yes.

**Commissioner Karolian:** But if it was a verbal reprimand which you say is non-disciplinary, the ten day window would not apply.

**Lt. Cline:** It does not apply.

**Commissioner Karolian:** But you changed it on the last day.

**Lt. Cline:** And I am still not sure why we are discussing it because it is non disciplinary action.

Public Minutes Monday April 18, 2011

**Karolian:** We are discussing it because the police commission decided we were going to discuss it.

**Lt. Cline:** That is contrary to the CBA as my understanding, so I was just curious about that.

**Chairperson McHugh:** I think the other reason we are discussing it is doesn't or hasn't it been part of his personnel file.

**Lt. Cline:** Down to a verbal reprimand non disciplinary. Yes ma'am.

**Chairperson McHugh:** I think that is part of the issue here that we are considering.

**Lt. Cline:** Understood.

**Chairperson McHugh:** Ok. Thank you. I just wanted to make that clear when you said that. Thank you. Captain Cecilio if you would follow up from there according to what the Chief said earlier that it was Lt. Cline's recommendation and that you agreed with it.

**Captain Cecilio:** Yes commissioner, after it was issued it came through. I was on vacation.

**Chairperson McHugh:** Wait a minute can we break up when it was issued and came through, are you talking about the suspension.

**Captain Cecilio:** There was no suspension

**Chairperson McHugh:** When you discussed the suspension or thinking about the suspension you never got into that conversation with regards to the suspension only the conversation about the reprimand.

**Captain Cecilio:** Initially when he came to me on the suspension I advised him, because they have been waiting, on this issue as I was trying to explain. I was in North Carolina from June 26- July 12. My first day returning to work was July 13<sup>th</sup>, that is the day of this issue. They approached me, Lt. Cline approached me prior to going to Officer Defina and I advised him if it was such a grievance thing that we were asking for a suspension that they should not of waited until I returned. Then he went and had his conversation with Officer Defina and listened to what Jason had to say and came back to me with where it stands right now which is the non disciplinary. And that is when I initialed the form on the thirteenth. There never was a suspension.

**Chairperson McHugh:** I guess from what I am understanding that the fact that because of the date that you were arriving at that tenth day, you didn't have any more time to deal with this because you needed to meet that window, that was the only thing

Public Minutes Monday April 18, 2011

you felt they could do and not the suspension. Or you told me you were not in consideration of the suspension.

**Captain Cecilio:** There was no suspension. He was never given a suspension. It was changed prior to it being issued. He was never suspended.

**Chairperson McHugh:** You say he was never given; I have a sheet where it is crossed out here. There was some consideration according to both the Chief and Lt. Cline that originally it was going to be a suspension. However, when he had a discussion with Officer Defina and he spoke with him he said after a conversation with him he had it explained to him where he was coming from and he changed it to the verbal reprimand. Is that not correct.

**Captain Cecilio:** That is correct. And from there it would go to me and if Jason wanted to have a sit down with me the next person in the command as you pointed out he would come to me or request to meet with me and then we would go from there. I never had a meeting with Jason.

**Chairperson McHugh:** I guess I was just looking at to me and maybe I am not correct at how I look at this to me there is a definite difference for when you suspend someone and a verbal reprimand and I guess it just seems strange that there was discussion about suspension and it changed to a verbal reprimand.

**Commissioner Karolian:** I don't know if you want to respond and I apologize.

**Chief Agrafiotis:** No I am all set Commissioner.

**Commissioner Karolian:** I wanted to give you the benefit of the doubt. Can you hear me ok. Where is this ten day window that we are talking about? Where is that? Is it a SOP?

**Captain Cecilio:** It is in the rules and regulations. And I believe it is five and not ten. But I am not to sure. If you were going to get a two day suspension I would think it would have to be quicker rather than wait till the last day of that window.

**Commissioner Karolian:** So it would be in the rules and regulation manual. It is not in the bargaining and collective bargaining agreement.

**Captain Cecilio:** There is some other guide lines under the collective bargaining as to how long they have to file for grievances. But that is a totally different issue.

**Commissioner Karolian:** Right the time element of the grievant to move forward if they don't like the first one and then moves to step two, and so on.

**Captain Cecilio:** Correct.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Under article 18, the Lt. brought up the CBA under article 18 disciplines and discharge, there is no reference. I don't want to bore anybody but for everybody's regulation the police department agrees that it shall only discipline the discharge members of the bargaining unit for just cause for the purpose of this agreement just cause for discipline or discharge should be deemed to be unsatisfactory performance or misconduct has been determined by the chief of police provided however the term discharge shall not include termination of employment directly caused by departmental reduction or reconstructing. That leads me to the next question that I have is the personnel entry records form and on that entry form we have and bare with me I know you know what it is, the officers name, the date and time of event, type of action. It also includes recognition as well as training as well as non corrective disciplinary and corrective disciplinary. Then it goes on to the just the date and there is a narrative by the supervisor as to why that individual is receiving the recommendation. My question is if the verbal reprimand is considered non disciplinary in nature why is it documented on such a sheet that goes into the personnel file.

**Captain Cecilio:** That is something that is in the rules and regulations. And they can change it at anytime but that's what the rules and regulations for our SOP say.

**Chairperson McHugh:** So you can certainly supply us with that information.

**Captain Cecilio:** It is in you AOM's Commissioner.

**Chairperson McHugh:** We could get a copy, is that correct.

**Captain Cecilio:** Correct

**Chairperson McHugh:** The other one I wanted clarified that I don't know if it was you that said it earlier where I heard two different things one from Lt. Cline and one from yourself as far as the window. You said five days and he said ten days. Which is it, five or ten days?

**Captain Cecilio:** I would have to look it up.

**Chairperson McHugh:** Ok. Could you also get us a copy of that also?

**Captain Cecilio:** You would like copy of that. It is also in AOM.

**Chairperson McHugh:** Yes we would like a copy of that.

**Captain Cecilio:** Would you like me to leave to go get it.

**Chairperson McHugh:** Well we are going to need it at some point so.

**Captain Cecilio:** Okay.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** As far as I am concerned I would like to see it tonight.

**Chairperson McHugh:** This evening if you would. Both of those items please.

**Commissioner Karolian:** So Chief the window is in the rules and regulations that govern the police department, and it includes verbal reprimands to be documented.

**Chief Agrafiotis:** Yes. All the training I had is that you document everything even a verbal reprimand.

**Commissioner Karolian:** Ok. Will this verbal reprimand that carries on into the officer's personnel file.

**Chief Agrafiotis:** Yes. Any time these forms are done you could have a supervisor tonight where a supervisor a verbal reprimand and a supervisor decides not to do this type of form however they also can decide to do a verbal reprimand and complete the form. If the form is completed then it comes through the chain of command and ultimately if it is up held it becomes part of the officer's personnel file, as these have.

**Commissioner Karolian:** If I heard it correctly the suspension for two days was given recommended but yet because it was on the cut of the time frame set by the operating manual by the Hooksett Police Department that is was dropped down to a verbal reprimand and therefore believed by the department that it would be non-grieved under the CBA.

**Chief Agrafiotis:** My understanding after listening to Lt. Cline was that while the time frame was an issue he also had a discussion with the officer which is our policy and after the officer explained his side of it the Lt. decided that a verbal reprimand was a more appropriate action to take then the initially two day suspension that the Lt. contemplated.

**Commissioner Karolian:** Could the two day suspension stand on his recommendation even though it was the last day of the tenth day of the rules and regulations. Couldn't it of stood and gone forward with the two day suspension or would that of caused a problem.

**Chief Agrafiotis:** I would have to look at the regulations I could not tell you right now. If I can though I think the Lt.'s point was in this case the process worked and that you had a concern from the detective sergeant and he wrote a memo you have a copy there um, the Lt. based on the memo initially had some serious concerns initially but once he talked to the officer and they had whatever dialog, the Lt. determined that a more appropriate way to resolve the issue and to move forward was a verbal reprimand and that's what he ended up recommending.



Public Minutes Monday April 18, 2011

**Commissioner Karolian:** If I understand it correctly when the Lt. (come up here Lt) when you recommended the suspension of two days on this form for the officer did you have a conversation with him about the situation back then.

**Lt Cline:** When I sat down with him with the paperwork.

**Commissioner Karolian:** No. When you made the initial personnel records entry form entry. When you made this up this was on the 13<sup>th</sup> of July, is that correct.

**Lt. Cline:** Yes sir

**Commissioner Karolian:** Prior to that there was no discussion with him.

**Lt. Cline:** No sir. It is not required to have a discussion with prior without taking all the evidence into consideration. When I sit down with him in May, that is when I had that discussion with him, it is a frank discussion as to here's what I see and what I feel and this is what I am recommending. Can you tell me what you version of this is. We had that discussion. Part of that discussion caused me to change this, not just being on the cause that was partial but also the discussion with Officer Defina.

**Commissioner Karolian:** Are you saying that prior to that sitting down with him you already decided you were going to recommend suspension for two days.

**Lt. Cline:** Nothing is decided till I sit down with the employee. I put that in there yes.

**Commissioner Karolian:** So if you don't decide before you sit down with the employee, why is it on the form you must of decided prior to this that you recommended two days

**Lt. Cline:** I had decided that and that is why I put it on the form but what I am trying to explain to you is once I have a conversation with the employee I can change that form at any time it has not been entered into his record.

**Commissioner Karolian:** I am aware of that. Let me try to rephrase it. Prior to sitting with him you completed this form. You made a recommendation. Then you sat with him and then had a discussion with him and decided to change it.

**Lt. Cline:** Yes sir

**Commissioner Karolian:** Why didn't you have a discussion with him prior to putting on a two day suspension recommendation?

**Lt. Cline:** There was more involved then just this case.

**Commissioner Karolian:** Well this is all we have.

Public Minutes Monday April 18, 2011

**Lt. Cline** : And we can not get into it without going into non public.

**Commissioner Karolian**: No but this is what I am going to ask you right now this is what we have relating to this grievance. Are you purposing to this commission now that you have other information that would sway your decision about giving discipline on this particular grievance?

**Lt. Cline**: I think it is clearly written out in this report. What's happened then. It is clearly written out in my documenting the personnel entry form what I did on 7/13 given all the information that was then provided to me I felt that it was a serious enough offence with Det Sgt Dupuis having to talk to the officer and the officer reluctant to change even though he was notified of proper RSA's. Even though it wasn't a matter of opinion it was a matter that any officer should have seen it. And especially the senior officer in the department would have expected to see that. With all that information that is when the two day suspension but after I had the conversation with him he explained away what his thought process was I dropped it down but I was not going to let it go completely

**Commissioner Karolian**: So those allegations that you are making or your thought process about what to give him for discipline you took into account but yet when you sat with him he explained the way and you understood his explanation. And you agreed that his explanation was ok and those things were explained away and therefore you lowered from two days to a written.

**Lt. Cline**: I dropped it down after talking to him yes. Because I did not feel it was necessary to suspend him on that.

**Chairperson McHugh**: Lt. Cline will you explain something to me. I see the report that or the memo you have at the bottom of this personnel records entry form and as Commissioner Karolian said it does say what you first had intended to have a two day suspension for this violation but the thing I am wondering is why is there not in this packet of information anything that speaks to the fact that why you changed it to a verbal reprimand and what are the circumstances surrounding it that lead you to that. There is nothing in here that speaks to it. It is just the fact that it is crossed out your initials and you come over to corrective non disciplinary box and you check off verbal reprimand and you sign your initials and why isn't there anything to support that and I find that very very strange why you would not do that. Because it seems as so and I am listening to both you and the Chief about how the department makes it a point that not only making sure that they follow the dates, window of when you can do something and when you can't. You would not have included something like that where you have a change of heart so to speak and you only decide to give him a verbal reprimand. Why wouldn't you have something in there that prodded you to change your mind so to speak? And there is nothing in here that says that and if I go through it and read what Det. Sgt. Kris Dupuis has to say. He states that he almost metrical about every thing he is pointing out however you have a memo for the recommendation for the due date two

Public Minutes Monday April 18, 2011

day suspension but there is not anything to support why there is only a verbal recommend. Why wouldn't you put another memo on to that effect on?

**Lt. Cline:** I never have ma'am. If I chose to change it I change it. I don't always go back in and imitate well because of these reasons why I changed it. If that is going to be a new requirement by the commission by all means I will do that. I never have in any of these and I brought numerous of things up dealing with officers after conversations with them I brought those things with different officers as well and I never initiated on the bottom of why I dropped it. It has been understood between the officer and I ok I see it is not at the level I thought it was initially so we dropped it back down.

**Commissioner Karolian:** Don't you think you should be documented because only one part is being documented and that is the first part about why you are giving it but there is nothing to say why you dropped it down.

**Lt. Cline:** I guess it is a matter of an opinion. I don't know. It is a matter of an opinion.

**Commissioner Karolian:** It's a fact it is not in here.

**Chairperson McHugh:** I don't think it is a matter of opinion. I think it is more of a matter of having the records complete.

**Commissioner Karolian:** Not to beat a dead horse but this goes to follow under the ten day (5-10 day thing the SOP comes up to be. Right you try to get that within that time frame. My question is if it becomes a verbal reprimand why it is included. If it is a non disciplinary action you drop it to a non-disciplinary action that would lead me to believe that you would not have to follow that ten day rule because now it becomes non disciplinary.

**Lt. Cline:** Yes sir I think I get what you are saying.

**Commissioner Karolian:** Well if we have a five or ten day window. We will say ten day because that is what you talked about if you have a ten day window and you wanted to get this in because it was on the last day and you wanted to get this in and follow the rules and regulations and make it within the 10 day period right? But you are saying it is a non disciplinary issue. Right you dropped it down to a non disciplinary, this is a verbal reprimand that you are pertaining is a non-disciplinary then why would you have to follow the rule if it is non disciplinary issue.

**Lt. Cline:** It doesn't have to in my opinion.

**Commissioner Karolian:** Then why did you insist that it had to .

**Lt. Cline:** I dropped it down because initially it was a disciplinary issue, when I went through it initially, after my conversation with the employee Officer Defina it became a not disciplinary issue I dropped it down.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** And that was on the tenth day or what you thought was the last day.

**Lt. Cline:** I think I aired in that ten days responded waiting for the officer that is the CBA. I do believe that Captains rights are five days.

**(Changed side of tape)**

**Commissioner Karolian:** Beyond the five days anyway.

**Lt. Cline:** Because it was written prior to.

**Commissioner Karolian:** When was this written up because I have a date of 7/13.

**Chief Agrafiotis:** If I can if you look at the sheet of the 13<sup>th</sup> it says employee notified of action on and there is a date and a time. So that is when the employee that is when we sit down with the employee in a situation explain to them what is going on and what we have for information so far. That's when in every situation we then the employee the chance to tell us anything they want. Sometimes the employees tell us and don't say anything and sometimes they tell us that litigates the initially thought of the discipline based on what we have for information sometimes the employees tell us information and we take it into consideration and decide that the information does not litigate the information.

**Commissioner Karolian:** So this took place on the third. Lt. Cline wrote this up on July 3, 2009. Day and time of event, but yet it was not discussed with the employee until the thirteenth, ten days later. So that is well beyond the five day period. So I need to be clear on what rules we are following. Because maintains we don't follow it has nothing to do with the CBA, it has to do with the rules and regulations, but yet if you look at the rules and regulations those were not followed either from what I am hearing. So was it done outside the rules and regulations timeline?

**Lt. Cline:** No

**Commissioner Karolian:** It was done within.

**Lt. Cline:** It was done within. But when I actually sat down with him it was beyond what the rules and regulations timeline would be. But it was written on 7/3 the day I got the memo.

**Commissioner Karolian:** Does the rules and regulations require anything to come down within the five days for discipline to hand out discipline. That is my understanding what I am getting from you.

Public Minutes Monday April 18, 2011

**Lt. Cline:** Right from also five days immediately from this is what I believe. If it is something further or it is going to be a lot more involved like a mutual affairs investigation or something it would be much more.

**Commissioner Karolian:** Okay so on July 3<sup>rd</sup> at 10'clock you decided a suspension of two days was warranted based on the information you had. You didn't sit with the employee until ten days later.

**Lt. Cline:** Yes sir

**Commissioner Karolian:** Then you got the employees version and decided that it did not warrant suspension warranted a verbal reprimand.

**Lt. Cline:** Yes sir

**Commissioner Karolian:** So the information he was given you over road the information that you were given from his supervisor.

**Lt. Cline:** The information I was getting from the Det. Sgt. I didn't think it rose to the level after his explanation I did not feel it rose to level where he needed a two day suspension.

**Commissioner Karolian:** But you have done that prior to the talk so that was your recommendation after talking to the Det. Sgt. about what transpired.

**Lt. Cline:** Correct

**Commissioner Karolian:** So you made that recommendation based on what the Det. Sgt. Gave you for information. Would that be accurate?

**Lt. Cline:** Yes Sir. That would be accurate.

**Commissioner Karolian:** And after talking with the officer you decided that the information wasn't bad so you decided to drop it down to a verbal.

**Lt.Cline:** Yes sir.

**Chairperson McHugh:** Can we go back to the not only the change from the suspension but from what you understood from Officer Defina that changed your mind. If we read through Det. Sgt. Dupuis memo it sounds like or it reads like it is a pretty significant crime and it also if I read it and understand it correctly that what the officer didn't do was fairly serious and it just does not seem why all this and I'm not going to say it all goes away because it is still in his file but it just does not seem to make any sense and I guess I would like you to see if you can develop this a little more for me so we could have an understanding. When you spoke with him what was it, was it the fact that he did not understand something or was it just the ten days so the five days you are

Public Minutes Monday April 18, 2011

going beyond it said I can't put this down you know it is not going to stand the test. Can you explain that again Lt. Cline I 'am sorry I did address who I was speaking to.

**Lt. Cline:** All I can by is my personnel recollection and I said what I recalled that I had a conversation with Officer Defina. I don't remember the details of that conversation. All I know was it was enough to sway my judgment that I dropped it down to a verbal reprimand in addition to and combined with the time requirement. So you take those two items and put those together I took all that into consideration when I determined to drop it down to a verbal reprimand. I don't recall a specific argument, I don't recall and we are talking July 2009 I didn't take focus notes. I guess I don't sit down and take focus notes with that, I have a frank conversation with the employee and with that I make a decision and that I push the recommendation up to my chain of command. But ma'am I can't tell you the exact dialog.

**Chairperson McHugh:** But wouldn't you have to when you are referring it up to your chain of command wouldn't you have to answer some of those questions why you changed it. Wouldn't they who ever your supervisor is wouldn't they need to know why. Because I think and it has been said to me before that it is the Chief that makes the ultimate decision in the end whether or not he is going to go with the recommendation. So you say you bring it to the captain because that is your supervisor is that correct. And he reviews it with you, I guess I don't understand why there is not more to that effect in these reports and something to substantiate why your recommendation was changing from a two day suspension to a verbal reprimand. I just think that it seems odd to me. And I will leave it there unless you have something to add and I guess the only question I have there are four boxes at the top does it mean in all these boxes does it mean that if someone goes for remedial training that it is all included in their personnel file. But you don't have anything to add wouldn't you have a conversation with Captain Cecilio why you were changing it and wouldn't Captain Cecilio of brought it to the Chief because that is his supervisor and have a discussion whether or not because the Chief it does make the ultimate decision in the end doesn't he.

**Lt. Cline:** Yes he does

**Chairperson McHugh:** There is nothing there that speaks to that. Just wondering

**Lt. Cline:** I would think they would have some confidence in my judgment. I obviously explained and I determined to drop it down and I don't need the Captain or the Chief to override my decision they can and they have the power to but I have not had a decision over ridden yet.

**Commissioner Karolian:** Did you have a conversation with the captain or the chief about changing this.

**Lt. Cline:** I don't recall a conversation with the chief but I know I talked to the Captain and explained to him why I changed it

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** And I agree with Chairman McHugh, the evidence that is presented to us you have five paragraphs outlining the problems or the issues as to why this type of discipline is going to be handed forward, and the allegations of incompetence. You changed it to a verbal reprimand and you maintaining he is still incompetent or that he is not incompetent and based on the events that he told you in his explanation that it comes down to a verbal reprimand because he is not incompetent because when we look at this is not one sided but it's one you got five paragraphs saying why you were going with the two day suspension and that is understood and that should be documented but also there should be some documentation equal and if this is going to go into the personnel file of your findings of why you are moving it from a two day suspension down to a verbal reprimand in all fairness to an employee I would think if you have this information saying what a bad employee he is or making allegations and this is why you recommended suspension there should also be something followed up with this saying after reviewing it with the officer and this A,B,C and D whatever the situation is these are the reasons given I changed my mind and made a recommendation for a verbal reprimand wouldn't that be in all fairness for all sides involved.

**Lt. Cline:** If that is the way you want to do it from now on most definitely I will make sure they do it that way.

**Commissioner Karolian:** But wouldn't that be fair.

**Lt. Cline:** Yes. But I would also direct you attention to the incompetence in the rules and regulations, sub section 11, and it says that employees shall maintain sufficient confidence and perform his duties and to assume responsibilities of his or her position in the following manners.

**Commissioner Karolian:** You need to speak up

**Lt. Cline:** Incompetence may be demonstrated in the following manners. A. lack of knowledge in the application of the rules required in force, B. a willingness to perform a task he was arguing with Det. Sgt. on whether he thought he had to change this, C. failure to perform work standards as status as employees rank or position, D. doesn't really apply needs to be demonstrated. So what I was saying AB&C , all three of those I did not feel it was a degree where I needed to give him a suspension however all those things apply in my opinion.

**Commissioner Karolian:** But it did not rise to a two day suspension.

**Lt. Cline:** No

**Chairperson McHugh:** Officer Defina while we were speaking or we questioning you had your hand raised was there something that you wanted to add.

Public Minutes Monday April 18, 2011

**Officer Defina:** I did. Yes there is if you could, if you could bear with me I guess again I would like to ask the commission to take a look at the packet that I submitted.

**Chairperson McHugh:** We will certainly take that time.

**Officer Defina:** Thank you very much. Some of the issues I have just with what was said here today, I think the commission hit on it but I just would like to make sure we are on the same page here. Although this is a verbal reprimand it still calls me incompetent and it still goes in my permanent file. So for someone to say I don't know why we are even here today this is because it has a negative effect on my file.

**Commissioner Karolian:** I am going to ask you to reserve your comments whether they be editorial or not for your closing if you will but if you have evidence that you want to present because I think I already questioned that and it was actually answered about the personnel records form put in. So if you have comments about what is transpiring or what has transpired I would ask you to save that for your closing but if you have stuff you want to bring forward that maybe you believe was said incorrectly or was not placed in evidence or was not given to the Commission for consideration please feel free.

**Officer Defina:** Thank you. First I would like to know how Lt. Cline just read from a packet of papers; I did not see anywhere submitted with what the Chief gave you. So I don't know what he just reading from. It sounded like rules and regulations

**Commissioner Karolian:** That is what it sounded like to me.

**Officer Defina:** I would like to know what submitted.

**Chairperson McHugh:** Could you repeat that again

**Lt. Cline:** 240907 which is the next one you have in front of you. All it is a copy of the rules and regulations.

**Officer Defina:** I am asking what was submitted for 09/06 that is what the Chief handed in we are not on 09/07 yet. I looked through with 09/06 that was submitted.

**Chairperson McHugh:** Sorry this is the only thing we got from the chief we did not get that.

**Lt. Cline:** But this is the exact item that I am referring to.

**Chairperson McHugh:** Just as I asked Captain Cecilio earlier would you also provide us a copy of that. I would appreciate that.

**Lt. Cline:** What you have is 09/07

**Commissioner Karolian:** We didn't get that right Chief



Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** If I can I think what Lt. Cline was trying to say that in this packet you have a copy of the rule and regulation that he cited there is not a copy in this particular write up packet.

**Chairperson McHugh:** And that is why I asked him for a copy.

**Chief Agrafiotis:** Many times we put it in and it doesn't have to be in because if someone wants to know what it is they could go to the rules and regulations and read that. It is sometimes included so I believe what he is saying I don't want to put words in his mouth in the next grievance that we will talk about there is a copy of that particular section but there was not a photocopy of that rule and regulation attached to that packet.

**Commissioner Karolian:** Is the one labeled 07 is that in the packet that you gave us.

**Chief Agrafiotis:** No. I have not given you that yet. No.

**Commissioner Karolian:** This is the only packet you gave us right, the one that is redacted.

**Chief Agrafiotis:** Yes

**Chairperson McHugh:** This is 09/06 that you gave us chief. Correct

**Chief Agrafiotis:** Yes

**Chairperson McHugh:** We are still with Officer Defina. Did you have another question?

**Officer Defina:** Based on the testimony while you were questioning Lt. Cline as far as I guess why he had changed that from a two day suspension to the verbal reprimand, can I get some clarification on what he meant that there is more involved in this then just this case. That seemed to bother me I thought we were dealing directly with this case and now if there is more I would like to see documentation or understand what the more was involved with this case. What does that mean?

**Commissioner Karolian:** I agree. And Lt. you said that you would have to go into non public

**Officer Defina:** I believe that is what he said.

**Commissioner Karolian:** To give us information specific this incident here or about other

**Lt. Cline:** If I needed to explain something to you it would have to be in non-public

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Ok. My question is what you have to offer in non-public is narrowly related to this particular grievance. Or are you going to give me other information about other things he has done.

**Lt. Cline:** It would probably be other things leading up to this.

**Commissioner Karolian:** So it would not have anything to do with this. So why would you even bring it in. Why would you even enlighten us about other things that he had done when we are talking about this grievance here.

**Lt. Cline:** This information is in the packet and I eluded to there was some issues that had come up

**Commissioner Karolian:** But we are specifically talking about he is grieving a particular item a reprimand a written reprimand he is grieving that you changed it from a two day suspension to a verbal reprimand. And it involved a particular case that he was called incompetent and he did not do a proper investigation. Why are you bringing forward now saying you would talk to us in non-public about his prior performance about other things.

**Lt. Cline:** I think there is more information than just this, leading up to this.

**Commissioner Karolian:** If that is the case and that is in your mind was I giving out suspension or reprimands you are taking that into consideration I imagine, an employee's prior history.

**Lt. Cline:** What I am looking at this is when I make a recommendation it is based on this alone and I recommended a two day suspension based on the fact that the employee had messed up this case so bad. So when I look at this and the Det. Sgt. as the commission stated he identifies the necessarily issue here and I go through it and I determine I am going to recommend the two day suspension initially and then I have a conversation with the employee and I determine I am going to drop it down. That is what the recommendation is for what is contained in this document.

**Commissioner Karolian:** Ok. And what is contained in this document is nothing that has happened prior so why would you tell us that you would want to talk to us in non-public about more information. Why don't you explain that to me.

**Lt. Cline:** I can't discuss it in public sir.

**Commissioner Karolian:** By telling us, by telling me that there is other information outside of this grievance by telling me that it leads me to believe that you want me to take that into consideration in my deciding for the grievant or against the grievant.

Public Minutes Monday April 18, 2011

**Lt. Cline:** That was I can't get into discussion with that I am trying to very carefully go around this because I do not want to infringe on the officer

**Commissioner Karolian:** I agree with you and we are not going to go there. We want just this here

**Lt. Cline:** That is what you are going to consider and I have no problem with that. We had this discussion and I think it was a very frank discussion and again I initially I went into this with a two day suspension because I felt it was that strong of a situation after a conversation with the officer and I am repeating myself. After speaking with the officer he convinced me that it is not to the degree you think it is. And that is why I dropped it down to a verbal reprimand, understanding that sir.

**Chairperson McHugh:** What you seem to be saying and correct me if I am wrong that you are saying that if we had some more information than this that we would clearly understand your reasoning behind it or was it because the case was able to be brought or wasn't able to be brought because of what happened or wasn't done. Is that what you are saying?

**Lt. Cline:** This case is not able to brought

**Chairperson McHugh:** That is where I thought you were going with you saying that. I wish you would have said that and I wished you would have said that it would have saved us some time. Thank you.

**Chief Agrafiotis:** If I could commissioners, if you look on page 4 of the packet I gave you which is the last page of Sgt. Dupuis memo to Lt. Cline, Sgt. Dupuis lays out what I believe the Lt. was trying to tell you.

**Commissioner Karolian:** Isn't there a such thing as prosecute sir- real discretion.

**Chief Agrafiotis:** Yes

**Commissioner Karolian:** This note here from the sergeant is indicating and that is where I ask you about zero tolerance that the criminal charges could not be brought forth is that right. Which would lead me to believe that would have been brought forward period.

**Chief Agrafiotis:** I would say you would have to ask Sgt. Dupuis if you have any questions about that paragraph I am reading that paragraph like you are and I obviously read it in the past and you see what his words are there you probably would have to ask him that specific question.

**Commissioner Karolian:** Did you have a conversation with Sgt. Dupuis about this case.

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** I don't recall that I did. It is possible but I don't recall.

**Commissioner Karolian:** But you would ultimately sign off on a discipline.

**Chief Agrafiotis:** Correct.

**Commissioner Karolian:** And this memo is Sgt. Dupuis understanding of what occurred and what his opinion about the actions taken by Officer Defina were.

**Chief Agrafiotis:** I would say yes it is addressed to Lt. Cline from Sgt. Dupuis and it lays out in almost two pages what the sergeant what his concerns were and the questions on the case.

**Commissioner Karolian:** And the Lt. spoke to Officer Dupuis on this.

**Chief Agrafiotis:** I can't answer that.

**Commissioner Karolian:** Lt. you spoke with Officer Dupuis about this.

**Lt. Cline:** Yes I spoke with Officer Dupuis

**Commissioner Karolian:** There is some pretty strong allegations in here is it not.

**Lt. Cline:** Yes sir

**Commissioner Karolian:** But yet you still decided to bring it down to a written. But your reasoning is not documented.

**Lt. Cline:** No sir

**Commissioner Karolian:** Other than it was the last day.

**Lt. Cline:** The conversation that we had and the fact that recalled doing that right in front of other officers

**Commissioner Karolian:** So other than saying based on your conversation with Officer Defina that was your reasoning for dropping it down.

**Lt. Cline:** That and the chain connection as I told you before with the time limit, because there was a specific time limit.

**Commissioner Karolian:** So if it was within the time limit you would of stuck with the two day suspension.

**Lt. Cline:** No

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** So that has nothing to do with it.

**Lt. Cline:** I took that into consideration as well; I don't want to leave that out. I dropped it down.

**Commissioner Karolian:** I am sorry Officer Defina I believe you had the floor.

**Officer Defina:** Thank you. Again I just have a question on the comments that were brought forward. I thank the commission that they are going to review the packet, we are almost to twenty times where the chief has been able to point out to items in the packet four members have gotten up to speak in regards to the packet he supplied. My packet goes into detail explaining all of this. Lt. Cline gets to say that I apparently messed this case up so bad and that the charges can't be brought forward because of my involvement of the case, everyone is using the word crime, no crime had taken place. I still stand by that. I was right they were wrong in the RSA. That is absolutely correct. I would like to get that on the record before everybody thinks that I messed something up or did something wrong and did something so bad. It clearly explains that in my packet and I would just like for the record to state that. And this packet was prepared two weeks ago, so the fact that there is some other information floating out there that was not added to this, that Lt. Cline and he does remember certain things that changed it down. I question what he could remember that wasn't documented in the original packet to bring forward in the non-public.

**Commissioner Karolian:** I am going to ask you to keep your closing for the closing. Ok. But Det. Sgt. Dupuis I have a question for you. Why wasn't this individual charged, why the detectives didn't do a follow up on the charge?

**Det. Sgt. Dupuis:** Because the SRO decided to follow this

**Commissioner Karolian:** Why didn't the detectives follow up if he is incompetent why the detective division didn't follow up on this under your command?

**Det. Sgt. Dupuis:** I believe it was the rules.

**Commissioner Karolian:** You don't remember why it was not followed up.

**Det. Sgt. Dupuis:** No

**Commissioner Karolian:** But back then you must of.

**Det. Sgt. Dupuis:** Yes sir

**Officer Defina:** I did follow up the orders I was given to do a follow up. And there is a follow up within the packet the chief supplied.

**Chairperson McHugh:** Can you direct us to the page.

Public Minutes Monday April 18, 2011

**Offier Defina:** It is on page 8. I did submit a follow up with direction actually to the specifics of the case and I submitted a report based on that.

**Chairperson McHugh:** Is that the 5/11 date.

**Officer Defina:** Under the report date right there yes.

**Chairperson McHugh:** I just want to make sure we are talking about the same one. Thank you I appreciate it.

**Officer Defina:** For the record the original report was submitted to my supervisor who is Lt. Cline. He found no issues with the report and he handed back to me for my immediate supervisor for follow up he passed it through the system being a completed report. It was only when Det. Sgt. Dupuis found issues or Captain Cecilio that is was handed back for follow up. And I completed that follow up.

**Chairperson McHugh:** Can you repeat that again you said that when you handed to Lt. Cline he found nothing.

**Officer Defina:** He found nothing. There was no conversation, he did not hand it to me for a follow up, and there was nothing on his part. As my immediate supervisor he would be the one reviewing my reports and this report was sent up the system as a completed report not needing follow up. If it needed it he would of handed it back.

**Commissioner Karolian:** Chief is it the departments policy when an officer submits a report it gets reviewed.

**Chief Agrafiotis:** Yes.

**Commissioner Karolian:** And do they initial it or do they sign off on it how do we know that it got reviewed.

**Chief Agrafiotis:** I believe they know where to sign off on it. There are times when it is possible a report comes in to the system and the supervisor that day does not have a chance to see the reports that will sometimes happen there may be times when a supervisor may be away at school and the report may be kicked up through the system right up to the detectives without supervision, without the first line supervisor looking at the report.

**Chief Agrafiotis:** Preferable practice is the first line supervisor preferably that evening or the next shifts review every report but there are circumstances where that sometimes does not happen.

**Commissioner Karolian:** So this was not done in this time would there be a reason why there was no review and just got slipped through.

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** I cannot answer what happened with this one, but again it is possible if you have a busy day or a supervisor is gone and the officer puts the report in we try not to slow the paperwork process down because of staffing issues and there is times when a report will come through and an officer will do a report the first line supervisor may not see it that shift and it goes to the detectives for a review.

**Commissioner Karlian:** What would happen if an officer was busy for various reasons and could not complete a report and perhaps done it a few days later

**Chief Agrafitois:** The officer would have had to explain it to the supervisor why the report could not be done that shift and the supervisor would have to give permission for the report to be done the next day the officer came in or there are times depending on the situation where the officer there where we have to pay overtime and we have them stay if they are going on a few days off or if it is an arrest or something.

**Commissioner Karolian:** They would get into trouble if they did that. Would they get discipline for not completing a report on time for not submitting when they should?

**Chief Agrafiotis:** They could yeah. The point is the supervisors need to know depending on if it is the first time an officer did it or if it was an ongoing issue with that officer. So it would be up to the supervisor once they found out that a report wasn't turned in on time why that happened. There could be many reasons.

**Commissioner Karolian:** So it could go through not only supervisors but up to detectives they would sit and review the police reports of the officers in the field

**Chief Agrafiotis:** That is possible yes.

**Commissioner Karolian:** Lt. did you review that report that Officer Defina submitted

**Lt. Cline:** Yes I did

**Commissioner Karolian:** Did you sign off it

**Lt. Cline:** Yes I did. On May 11th.

**Commissioner Karolian:** I take it you had no problem with it.

**Lt. Cline:** I just went through it initially. No issues initially.

**Officer Defina:** If you look at the bottom of the original report you could see Lt. Cline's signature, he did sign off on the original report.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** So if the officer did not do what he was supposed to do allegedly to cause this not to go forward with police action and someone above him in rank and reviewed would they both be reliable.

**Chief Agrafiotis:** To some extent it depends on what the case is and we have an officer goes to a case today that is a very complicated case the supervisor may very well look at that case and as far as they can tell it looks ok to go through and it goes through detectives that have certain training in an area may very well pick up that there is a problem.

**Commissioner Karolian:** My question would be if that particular supervisor would to review it and see no problems with it and it goes up the line and goes to detectives and they find that there is a problem with it and they kick it back and then the department finds that individual that took the initial report was incompetent and brought it up on the initial investigation made a recommendation and lowered it to verbal. Where does that leave the supervisor does the supervisor get in trouble for not doing. Not reviewing or missing something like the officer.

**Chief Agrafiotis:** In a hypothetical case the supervisor may be a patrol Sgt. and never spent any time as detectives they would be given some training also. As Sgt. Dupuis pointed out in this situation there was the back and forth with him so in regardless of what Lt. Cline believed when he read the report or not I think the way I understand it the jiff of Sgt. Dupuis memo is that was when received by the detective that followed up. The detectives as a division had a problem and went back to the officer and reluctant with the officer to move forward on what detectives thought needed to be moved forward with this case.

**Commissioner Karolian:** Initially it was a recommendation that got Det. Sgt. Dupuis to take action against Officer Defina.

**Chief Agrafiotis:** You would have to read it. I believe that Lt. Cline the memo I would have to read through it and it shouldn't be done.

**Commissioner Karolian:** I will read it then. I have attached Officer Defina's original and supplemental reports to this memo. This memo only pertains to Officer Defina's recommendation as to the outcome for the particular case number. Please take any appropriate action on this point we cannot proceed with the prosecution on this matter due to Officer Defina's failure to conduct initial follow up investigation. It is not ensured that it was Officer Defina's lack of knowledge of the implacable statues of his unwillingness to properly proceed with this as a criminal investigation. Officer Defina has already compromised any action the department might take in this case with respect with the serious offences. So he is the one that initially wanted disciplinary action taken. Correct.

**Chief Agrafiotis:** It says please take appropriate action so Sgt. is writing a memo to the Lt. and it is up to the Lt. to proceed with it in any way he should or not.



Public Minutes Monday April 18, 2011

**Commissioner Karolian:** But the Lt. didn't think there was a proven with it because he signed off on it.

**Chief Agrafiotis:** You would have to ask the Lt.

**Commissioner Karolian:** I did and he said he signed off on it.

**Chairperson McHugh:** Commissioner Karolian I believe that Lt. Cline has his hand raised. I didn't know if you wanted to recognize it.

**Lt. Cline:** There is a reason why there is check and balances in place. At the time this report was done I reviewed every report that comes into the station. If I missed something I missed something that's why the detective's sergeant reviews it again to insure that he does the final check off. He does the same thing as I do, for my explanation.

**Commissioner Karolian:** You are higher rank than he is.

**Lt. Cline:** Yes sir. But I am in the patrol section he is in charge of the detectives division

**Commissioner Karolian:** And if there is a crisis and you were both at the same scene who would be in charge.

**Lt. Cline:** The crisis I would. Be initially in charge. It is a shared responsibility

**Officer Defina:** It may make it easier if we have a copy of the job description of the Lt. as far as how the reports and what duties are supposed to be done. As far as reviewing reports it may clarify things.

**Commissioner Karolian:** I think it has been clarified by the chief and the Lt. that of all the reports goes to him every piece of paper goes to him and he reviews it. And if he makes a mistake it is picked up by the detective sergeant and kicked back down. And so that begs to question if the officer makes a mistake and they have the same opportunity provided to them or not chief.

**Chief Agrafiotis:** The opportunity of explaining himself. I am not sure of your question sure

**Commissioner Karolian:** The opportunity of not getting any disciplinary action taken against them.

**Chief Agrafiotis:** It would depend what it was. It is possible that theatrical that a supervisor could review a report and send it through and it is possible they could receive discipline to totally miss something that a supervisor should. Again I go back

Public Minutes Monday April 18, 2011

and what I am reading here from Sgt. Dupuis is it is a combination in this issue not only what happened by Officer Defina's response to the request when it came back down that's how I read the memo.

**Commissioner Karolian:** Wasn't he asking for clarification he felt that it is my understanding of what I heard so far or seen so far that it was his understanding that he had done it correctly that he was looking for he was asking the Det. Sgt. I believe as to what it is he needs to do.

**Chief Agrafiotis:** At some point it became somewhat heated. I obviously wasn't there and I think the 3<sup>rd</sup> paragraph on Sgt. Dupuis memo on the last line it says regardless he still needed to do a follow up on the case. Regardless on their discussion in each side saying their piece the officer was aware regardless of whatever his impression was or opinion he needed to do something more.

**Commissioner Karolian:** On that same note when I read that third paragraph you are talking about. The Det. Sgt. said I finally became frustrated with speaking to Officer Defina and told him that if he had issues with doing his job he needed to speak with his supervisor Lt. Cline about this case. If he is Det. Sgt. and he is having conversation with the officer about doing a follow up and he has the impression the officer does not know how to do the work, or he did not want to conduct the investigation who is his supervisor at the time is it Det. Sgt. Dupuis or Lt. Cline it appears to me by his note from Det. Dupuis that he is not his supervisor that he needs to check with his supervisor Lt. Cline so I am little confused.

**Chief Agrafiotis:** It is shared in a theatrical case when a report goes through a patrol division and gets to the detectives and the detectives decides something more needs to be done with that case they do have the right to direct that the extra investigation or whatever action to be taken there are times depending on what that request is that there is discussion between the patrol commander and the detective commander as far as to who is going to do what and why. Just like when we have crime scene the officer go to the crime scene ultimately the detectives gets on the scene the detective regardless of the rank of the patrol people.

**Commissioner Karolian:** Sgt. Dupuis why didn't you to do it and be done with it and why are you referring him to his Lt.

**Det. Sgt. Dupuis:** He is not in my division

**Commissioner Karolian:** So you don't have the authority to tell him what to do.

**Det. Sgt. Dupuis:** Not at that time. No sir. So I made the recommendation that he does follow up

**Commissioner Karolian:** But you do have the authority to kick back the report to do the follow up.

Public Minutes Monday April 18, 2011

**Det. Sgt. Dupuis:** No he is not in my department.

**Commissioner Karolian:** So how can you tell him to do a follow up if he is not in your patrol?

**Det. Sgt Dupuis:** Because I review all the reports. When the reports come up I review them.

**Commissioner Karolian:** I understand that but how can you tell him what to do if he is not in your division.

**Det.Sgt Dupuis:** Because that is the way it works.

**Commissioner Karolian:** That is not an explanation. It is not good enough, because I don't understand that. How is it if you are detective sergeant and he is being incompetent and that you want him to do the follow up and why aren't you giving him the order to do the follow up and if he disobeys him you follow through to him that has more rank than you?

**Det. Sgt. Dupuis:** Because I can't write him up.

**Commissioner Karolian:** You can't write him up a patrol officer you can't tell the officer to stop a car. So why can't you tell him a directive to do a follow up.

**Det. Sgt. Dupuis:** I believe I did.

**Commissioner Karolian:** You can't write him up

**Det. Sgt. Dupuis:** I haven't done it before because it is not my division.

**Commissioner Karolian:** Chief you wanted to say something

**Chief Agrafiotis:** I was going to say in a theatrical situation when a report makes its way up to detectives and they find there is some issue with it. Normally the way it works the detective would talk to the officer and explain the technicalities if you will or the specifics or what may be missing. If that officer understands that then the officer does that follow through whatever if that officer is to refuse or otherwise give the detective that the officer was not going to follow up then that point the detective would notify the patrol supervisor or that officer that supervisor to deal with that officer. It goes back to the Lt. made as far as shared responsibility that it very well be a theatrical case that comes up where the officer of the patrol Sgt. may not have picked up nuance about a situation and detectives pick it up and the officers are asked to explain to the people what needs to be done. And they work together as far as getting it done. If the officer again if the officer does not get it done. Then it would go back to the patrol person to deal with the person within the division.

Public Minutes Monday April 18, 2011

**Chairperson McHugh:** Can we look into Officer Dupuis memo a little further. Sgt. Dupuis it says that I got the impression that Officer Defina does not know how to work an investigation or that he did not want to conduct the investigation. I am going to ask you, you did not feel that he had the ability or that he was incompetent to the point of it and not wanting to do it.

**Det Sgt Dupis:** Two years ago he did not want anything to do with the investigation.

**Chairperson McHugh:** He did not want to do it.

**Det Sgt. Dupuis:** He did not want to do it or understand why he needed to do it.

**Chairperson McHugh:** There is a big difference between the two and I saw that and I just wanted to be clear. You did not come to the conclusion of whether or not he had the ability to do it or he just plain didn't want to do it. It was either one of those and that is what you put into the memo.

**Det. Sgt. Dupuis:** I believe if you read my memo at some point I got frustrated

**Chairperson McHugh:** So it was a point of frustration. I guess getting back to Officer Defina if I were to ask you today giving the facts of the case you were working on do you feel you would of come to the same conclusion.

**Officer Defina:** The original follow up report

**Chairperson McHugh:** The initial report and the follow up report

**Officer Defina:** Yes absolutely. I still maintain that there was no crime involved that no crime took place. I would like to point out that you brought light to what Det. Sgt. Dupuis said that if I need to speak to and if I had questions I could speak to Lt. Cline that didn't have any questions or follow up for me initially. I did for the record do the follow up.

**Chairperson McHugh:** One other question for you in regard to Sgt. Dupuis memo was this discussed among the officers in the patrol room about that particular crime

**Officer Defina:** Not the particular crimes with the case no

**Chairperson McHugh:** A scenario that meets the level of it being a crime

**Officer Defina:** It was a brief conversation about the drugs in general and that is when other officer's started piping in.

**Chairperson McHugh:** And was everyone in agreement or were there difference of opinion

Public Minutes Monday April 18, 2011

**Officer Defina:** It was still the difference of opinion mine opinion and what I was trying to get across to Det. Sgt. Dupuis. Obviously I just didn't communicate to him correctly or he just did not understand what I was trying to say. But it is very clear in the case there was no crime at all. I believe the issue was Det. Sgt. Dupuis wasn't the one asking me to do the follow up. He was just the one putting the follow ups in our bins and when I had initially questioned him on it he said Captain Cecilio just wants us to do follow ups, hand these back for follow ups so I believe that is the original issues and I was asking him specifically what he wanted to do for a follow up and it wasn't him that was doing the follow ups. He was just putting them back in our bins and when I questioned him what was this that is when it turned into this is follow ups. So I was like ok what do I need to do for a follow up.

**Commissioner Karolian:** Sgt. Dupuis did you review his report about that incident.

**Det. Sgt. Dupuis:** Yes I did.

**Commissioner Karolian:** And based on what you read it was your soul discretion that it needed a follow up. You were not asked by Captain Cecilio that was not brought to your attention. It was something you came up on your own.

**Det. Sgt. Dupuis:** Sir I review the reports and initial it. I also read the report so they can go into the file.

**Commissioner Karolian:** What page is that on?

**Det. Sgt. Dupuis:** Page 7

**Commissioner Karolian:** Is that the one that starts out with line 58

**Det. Sgt. Dupuis:** Yes sir

**Commissioner Karolian:** Is this the one you reviewed.

**Det. Sgt. Dupuis:** One of them

**Commissioner Karolian:** Based on this, this is why you decided to kick it back

**Det. Sgt. Dupuis:** Yes

**Commissioner Karolian:** And where does it show here that needs you want it followed up

**Det. Sgt. Dupuis:** It says other factors. It is written in there detective/sro

**Commissioner Karolian:** Is says Detective/SRO

Public Minutes Monday April 18, 2011

**Det. Sgt. Dupuis:** Yes sir. The SRO having to sign out cases and I thought it needed to go back to the SRO division and his investigation

**Commissioner Karolian:** So why is there a detective in there?

**Det. Sgt. Dupuis:** Because I write down the detectives the person copying it and stuff the original goes into the file, and the detective so it come back to my division.

**Commissioner Karolian:** So the Detective/ SRO mean that a copy is going to go to the detectives.

**Det. Sgt. Dupuis:** Then I bring it down to the SRO to hand in.

**Commissioner Karolian:** Do the copy not usually go to detectives.

**Det. Sgt. Dupuis:** Yes. It has to come back to me.

**Commissioner Karolian:** I probably don't understanding how our process works. I want you to understand how the system works. An initial report is it still labeled by the state as a UCR101.

**Det. Sgt. Dupuis:** No sir.

**Commissioner Karolian:** Is there a uniform crime report 101 still being taken by officers in the station.

**Det. Sgt. Dupuis:** It is what we use for our reports.

**Commissioner Karolian:** So there is an initial report taken by Officer Defina.

**Det. Sgt. Dupuis:** Yes sir. A copy transpired into the system and that is what was printed up.

**Commissioner Karolian:** So you would get copy of these automatically to review.

**Det. Sgt. Dupuis:** Yes sir.

**Commissioner Karolian:** First it goes to Lt. Cline.

**Det. Sgt. Dupuis:** Transcribed copy comes to me and I review that.

**Commissioner Karolian:** Let me go slower, an initial UCR101 is generated by the officer taken the report. That UCR 101 goes into is it a hard copy or goes into the computer.

Public Minutes Monday April 18, 2011

**Det. Sgt. Dupuis:** It is a hard copy 101.

**Commissioner Karolian:** 102 is a narrative. That goes to Lt. Cline and he gets that.

**Det. Sgt. Dupuis:** It goes to Sgt. first and he reviews it and it goes to my door. I review it and then I send it up and a transcription copy is what the Sgt. gets.

**Commissioner Karolian:** On every single report, every report that is generated or just ones that need attention of detectives. So not only is it reviewed by the Lt. but prior to the Lt. there is a section of reviewing it.

Det. Sgt. Dupuis: The normal flow for this specific case it went straight to me.

**Commissioner Karolian:** The computer generated after it is gets transcribed by the employees it gets sent up to the detectives. That is the one you found that needed follow up.

**Det. Sgt. Dupuis:** Yes sir

**Commissioner Karolian:** Who is K.D. on the bottom of the report reviewed by

**Chairperson McHugh:** That is Kris Dupuis.

**Commissioner Karolian:** Follow up the SRO and the detectives. You just wanted it kicked to detectives. Why is it detectives/SRO

**Det. Sgt. Dupuis:** All transcribed copies come to me and goes into a file. If I need something followed up on I responsible for issuing it for where ever it is supposed to go. Whether it is SRO, detectives, patrol. At this time I felt it needed to be assigned to the SRO. In order to do that I needed a copy back. So I have to write to the transcription to have a copy sent back. That is what the thing the detective said. For them to bring it back to me.

**Commissioner Karolian:** A report is taken it gets transcribed into this computer generated form. It goes to the Lt. on the original. 101 goes to Lt. the transcribed copy goes to the detectives. So you already have the original copy.

**-Tape Changed-**

Dupuis: that is what I have been told the original report is the transcribe copy of what we do. That is what is filed downstairs in the file cabinet.

**Commissioner Karolian:** So this one gets filed.

**Det. Sgt. Dupuis:** Yes sir. And I had a copy made to bring back to me. The whole thing, 101 and 102 is attached to that transcribed and all get filed away.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Chief why is that being done.

**Chief Agrafiotis:** That is the system that has been in place since the mid 80's when the computer system that we have went into place. As you know we recently went on line with the cruisers laptops in the car, should take an extra step out of that.

**Commissioner Karolian:** What happens to the original 101? The officer hand writes it, what do you do.

**Det. Sgt. Dupuis:** It gets typed up. It gets saved on a thumb drive. Is the print out like this or state generated UCR 101. The print up is actually the state forms you see in the back.

**Commissioner Karolian:** This is the original report. It is transcribed after you read it Lt. Cline.

**Lt. Cline:** Once I read it I give it to transcription. They transcribe it into the electronic version and they print it out to the computer version, because it goes to the detective sergeant.

**Commissioner Karolian:** When people ask for a copy of the report sheet do they get the original or do they computer generated second copy.

**Chief Agrafiotis:** If someone puts in a right to know they are going to get a copy from the files downstairs. My understanding from what the sergeant was saying is that they get an extra copy so they have a work copy so they are not working with the original so the original does not get lost in transition.

**Commissioner Karolian:** You were not told to do it, you came upon it yourself sergeant. Captain did not say hey by the way you want this followed up. You decided on your own based on what you were looking at that it needed to be followed up.

**Lt. Cline:** No sir

**Break at 7:45pm**

**Back at 7:55pm**

**Chairperson McHugh:** Where we left off it was with you Officer Defina. If you have anything you want to add but let me caution you we are not going to sit and you to question about someone who made a statement you can question them but if you have any information about this evening plus about the information we received from both sides that we are going to take some time and sit down and read. Please present it if you would. I would really appreciate that.

**Officer Defina:** Yes ma'am. Just to understand if conversations made I cannot question them.



Public Minutes Monday April 18, 2011

**Chairperson McHugh:** You can make your comment to rebut but we are not going to have you asking Sgt. Dupuis something or questioning him. So if you would please go ahead.

**Officer Defina:** I would just like to make note for the record that twice now the chief has mentioned that it was because of back and forth reluctant based on Det. Sgt. Dupuis memo. I just need to make point if it was because of the back and forth reluctant I think I would have been written up on the discordancy instead of the incompetence and it seems like people are adding it in. The fact it was back and forth in reluctant. If part of the factor of was the way we communicated in the patrol room I think the charge would have been different not incompetence but actually a discordancy if he felt that I was being discordancy in any way in the back and forth that we had. Another comment that

I need to clarify what commissioner K asked about who his supervisor was at the point the chief said is shared that is not correct at the basics of the organization you have one supervisor the roles may switch at different times but it's not shared I don't go to two supervisors I have one direct supervisor just want to make that point clear and that was Lt. Cline while I was in the SRO program. I also like to touch on the fact Captain Cecilio mentioned that captain cline came to him on the suspension on the issue before it was an issue to me so it was already conversation between Lt. Cline and Captain Cecilio about the two day suspension before Lt. Cline sat down with me. Then Captain Cecilio said if I wanted to go to him to discuss it I could have. He's already in an agreement with Lt. Cline on the two day suspension what's the fairness of me going to see Captain Cecilio if they've already discussed it before anyone's talked to me about any of the issues and they're already in agreement about the discipline I don't seem to understand that. I'm still a little confused as far as this 5 day or 10 window I've been in the police department for quite some time are they saying if the discipline isn't issued to the officer within the 5 day window does that make it a void or are they unable to hand that to the officer this is the first time I'm hearing that there is actually a window of when an incident occurred and when they have to hand it to an officer if that's the case I'd like to review if I think that all officers would like to view to make sure the 5 day window was of help throughout

**Commissioner Karolian:** Captain Cecilio can you clarify that for me please?

**Captain Cecilio** You have two copies of the p250 the first copy on the top is from 2006 you'll see the other copy behind it which is the one that was in affect at that time I believe the new one has been issued now is p250 is March 15, 2011 so the new ones been issued already so I had to go back to the record and attempt to come back with our old policy that was in effect. Highlight area 3 all the areas are highlighted and gives you the time frames for different things as you can see down here under article 2 it comes to and if you go to page nine time frames are under two sections a and section b the Lt. says that I have 10 days I have the 5 working days that regard suspensions I can't and you'll have to read the sections in 2006,

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** January 2006 it wasn't affective at that time

**Captain Cecilio:** As far as I could do it with researching back that is the one that went into effect. This is what we have to consider at the time. Now this says the formal reprimand all the time that I go by. The verbal reprimands should be issued within 5 working days from the date so if it is outside that window you should not be

**Chief Agrafiotis:** Commissioner Karolian with all do point to the language says should be issued not shall. Should not necessarily why you could have many reasons not to.

**Commissioner Karolian:** Is that discretion changed in the new one.

**Chief Agrafiotis:** No. The new one has some changes but the new one has no changes.

**Commissioner Karolian:** This has the verbal reprimand should be issued and if it is not, isn't that pretty straight forward it should be issued.

**Chief Agrafiotis:** I think if it says shall then I think you have a drop dead time. With should it leave you the lei way so I don't believe it locks you into that 5 days.

**Commissioner Karolian:** Would the better word be could. When he went into the room with a 2 day suspension it was lowered. So the suspension says within 10 working days. We already heard evidence that it changed down partly because of the time limit.

**Lt. Cline:** My explanation was not the soul for my lowering it. If you look up the write up for July 7<sup>th</sup> to July 13<sup>th</sup> is exactly 10 days. It was a part with a conversation I had with Officer Defina.

**Chairperson McHugh:** What did you learn in that conversation?

**Lt. Cline:** Commissioner I already told you that I don't remember but it was strong enough. I have dropped the discipline to the non-discipline. I hear what you are saying that I should have put something on the bottom of the write up. I understand that you made your point. What I am saying to you that after speaking with Officer Defina that I felt strong enough to drop it down. He obviously convinced me. I dropped down several things that were done initially and I can also take it up depending on the conversation with the employee.

**Chairperson McHugh:** Officer Defina do you recall. What you said to Lt. Cline. Do you recall that incident at all.

**Officer Defina:** I recalled speaking with Lt. Cline in his office I explained the incident as I have to you to the commission took the time to listen to the explanation it is crystal

Public Minutes Monday April 18, 2011

clear that is what we had in his office that day. I was able to explain myself and discuss it with him. For the record should is the past tense of shall. I don't know that is part of dictionary.com.

**Commissioner Karolian:** You were in the 10 day window though.

**Lt. Cline:** Yes I was. I was on the tenth day. I could of very easily kept the 2 day suspension

**Commissioner Karolian:** The way I understood it u were pass the deadline. That is one of your reasons why you decided to bring it down. That is why I find it a little confusing. I think when I asked you and you explained it further that is when you brought in some other things. Did I miss understand you when you said that you were right on the edge and that is why you brought it down.

**Lt. Cline:** I said that. I was at the ten day mark. If I go to the eleven day mark I can't issue the suspension and when I had the discussion a good majority of that discussion.

**Commissioner Karolian:** If that was one of your major factors why did you not document that? You go from a 2 day suspension down to a verbal reprimand and then you well I don't know why we are even here discussing this verbal reprimand is not part of discipline and therefore should not go forward. Why wouldn't you document it if he gave you information? You are maintaining now that was a big part of your decision. Why wouldn't it be documented in the personnel entry form. I don't understand that.

**Lt. Cline:** It is not required to be documented and number two I chose to drop it down with regards to the conversation with the officer. I would take that into consideration in the future.

**Commissioner Karolian:** Is it required to document the problems as to why you are doing a positive entry. There is no requirement for you to do a narrative because you changed your mind.

**Lt. Cline:** There is no requirement if I am going up rather than down then yes. I mean it is to the employees benefit. I dropped it down lower.

**Chief Agrafiotis:** Commissioner if I could just follow up on that. In issues I have handled over the years there is nothing extra put in. because the person making the decision the event took place all they are doing is deciding the level of discipline should be reduced.

**Commissioner Karolian:** The p250 should be issued within the 5 days from the time it became known.

**Lt. Cline:** No.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** This says it is within the 5 working days for a verbal. Ten days for the suspension.

**Chairperson McHugh:** Once you go from verbal as opposed to the written the clock starts clicking.

**Lt. Cline:** I went from the original ten days and discussing with the employee I chose to drop it down which starts that five days all over again.

**Commissioner Karolian:** This says 5 days from when you drop it down.

**Chairperson McHugh:** Let's finish with Officer Defina. Officer Defina if you would finish with all the information you would like us to have because we would like to proceed on to the second one. But if you feel there is any additional information that you think we should have.

**Officer Defina:** Touch on p250 since it was just handed over. On the second page it talks about corrective disciplines. When you read Lt. Clines write up of his understanding of Det. Sgt. Dupuis memo. There is a lot of talk on whether or not I can conduct an investigation properly and there impression of what is an improper investigation. To this day I have not been sent to any investigation schools or any measures have been taken to better train me with measures of what p250. It also states the departments policy must be consistently applied and uniformly. Just would like to bring that to the commissioner's attention.

**Chairperson McHugh:** Like I said before you gave us a packet and we are certainly going to need to take the time and sit down and read it very carefully. And that applies to both sides.

**Officer Defina:** The importance of having the packet while we are going through this we can see how many times we referred to their write up and there memos and there descriptions of the events. Dozens of times we have referred back to Det. Sgt. Dupuis memos, Lt. Clines memos and we have dissected it and gone over and over. I would like for the next one if it helps to read it beforehand there are a lot of questions and I said it in here the impression is they still act like I don't know how I do my job. And I did something wrong.

**Chairperson McHugh:** Do you have something that we need to look at; we need to have that information. We both each have a copy of the packet you both gave us this evening. I see your follow up memo we will read over along with grievance 09/06 along with all the supporting documents. We will take the time to look over the report and the grievance number 09/06 and the jiffs of what you put in there.

**Officer Defina:** Last thing I would like to say in reference to the actual charge I still stand by there was no crime. Portraying fake drugs as fake drugs is not a crime

Public Minutes Monday April 18, 2011

specially when there was no sale of those drugs and they had not been portrayed to be sold. .

**Commissioner Karolian:** Is there any more evidence that either side would like to present to pertaining to facts.

**Chairperson McHugh:** All information we got this evening we will take into advice along with the notes and the discussion we heard this evening. Giving the time we will not have any opinion tonight. We are going to proceed into the grievance 09/07. After reviewing the case if we have any questions we will then.

### **Grievance 09/07**

**Commissioner Karolian:** Chief I take it this an internal investigation.

**Chief Agrafiotis:** Yes. Personnel records entry form was the result on an internal 080901 that was conducted. What I provided you with a copy of the records entry form which is currently in the personnel file just the conclusion page of the internal investigation. Tonight I have Captain Daigle here he has the IA if some reason you want to go into nonpublic for specific questions that came out it. This unlike the other one write up was prompted by the results of the IA.

**Commissioner Karolian:** This first sheet given is the results

**Chief Agrafiotis:** That is the conclusion report by the investigators of the IA.

**Commissioner Karolian:** This fails to indicate who made the allegations.

**Chief Agrafiotis:** That is correct. That is contained in the body of the ia.

**Commissioner Karolian:** Officer Defina have you received a copy of the IA 09-01

**Officer Defina:** No. I have not and it is the first time I am seeing the conclusion page also. The only thing I have ever seen is the actually write up itself packet.

**Commissioner Karolian:** And you are just getting that right now.

**Officer Defina:** Right now

**Chairperson McHugh:** Is that customary chief for officers to not get a copy but is made aware of the IA

**Chief Agrafiotis:** Normally as you remember from recently we have had some request from employees for IA and we have denied them. In this case you are looking at the conclusion page we felt that you should have that so you would have some idea where this write of documentation was coming from. Again if we were in a non-public session

Public Minutes Monday April 18, 2011

obviously everything in the IA could be discussed but since we are in public session I needed to give you some idea how this write initiated but oh course without disclosing the IA investigation

**Chairperson McHugh:** That is not the question I asked. The question that I was asking was I believe you said that a copy of the IA is not given to the individual but do you discuss what is included in the IA or only for the department and those people that were involved in the interview process or the internal investigation only for their eyes and their eyes only and not for the person investigated..

**Chief Agrafiotis:** What is in the conclusion page basically is what gets transferred to the write up. So if the employee and they are reading the write up if that is what comes about they are basically reading in here what we understand from the conclusion page and from the whole body of the IA. So if you will the IA they don't see the IA they see the results by what is in the personnel record entry form.

**Chairperson McHugh:** Many of the sections that are written would have been in the form or listed or discussed to some degree.

**Chief Agrafiotis:** They would be discussed to some degree.

**Chairperson McHugh:** Just too some degree of what is included. That is why you would not have seen it.

**Chief Agrafiotis:** Depends when I look at an internal investigation I read the conclusion page and the whole entire internal investigation. As you know the investigators do not decided discipline they just say whether an item is sustained or not sustained I review those and as in this case I find there is an issue that the issues are then turned into the body of the personnel records entry form.

**Chairperson McHugh:** Ok, thank you. Chief why don't u go down through this because based on the IA conclusion and what is written in that report and based on the personnel records entry form it would not lead someone to come to the same conclusion as what is written here. So explain to me the difference and how you arrived at that

**Chief Agrafiotis:** In my opinion it does. If you read the conclusion page and again you don't have the details of the internal investigation but as you see on the conclusion page a number of issues were deemed sustained by the employees that conducting the investigation and that was turned into the body of the personnel records entry form.

**Chairperson McHugh:** I can appreciate but given what you have for the IA conclusion the report so to speak, and what they are reporting to you and what ultimately the corrective action which is written reprimand and remedial training one doesn't seem to go along with the other that is one thing. And the other thing is that really has me a

Public Minutes Monday April 18, 2011

little concerned is the incident occurred in December 08, how does it take till July of 09. How does it take that long?

**Chief Agrafiotis:** To answer your first question if you have just the conclusion page and you try to square that with the body of personnel records entry form you are going to be missing pieces. How I got to that point is taking conclusions and information of the body of the investigation combination of the two that is the conclusion and that gets turned into the body of the personnel records entry form. I see what you're saying. But to understand the differences of what you are missing you would have to read the body of the investigation and then you would understand where we were coming from of the report here the internal plus the conclusion gets you this. You don't have right now the internal investigation to read. You are correct it is hard for you to look at this and how does this make this. I got to that point by taken the body of the personnel record form. To understand the difference of what is missing u would have to read the body.

**Chairperson McHugh:** Tell us what made you decide to go for written reprimand and remedial training, giving what this report says. Tell us what you were thinking and the reason behind it. The other thing I need to know if the incident happened in 08 why it took until 09.

**Chief Agrafiotis:** To answer your question honestly I don't remember I would ask Captain Daigle, to see if they remember the sequence of events.

**Captain Daigle:** Can u ask the question again

**Chairperson McHugh:** One of the questions I was asking the Chief was the events happened in December 18, 2008. The employee action did not occur to July 15, 2009. Quite a few months went by and I was just wondering what took so long to arrive at that conclusion.

**Captain Daigle:** The internal investigation that I was assigned with to assist with kicked off in January. The first initial interviews were conducted January 21. There was quite a number of employees that came in. I believe it was 6 or 7 employees that had to be done. They started January 21. Officer Defina was interviewed on February 13. It had been previously scheduled earlier however there were some conflicts. I cannot recall if it was with Officer Defina or the union attorney. So it was pushed back to February 13. After he was interviewed on February 13, all the tapes were taken to the individual that we have transcribing for us. There was so many of them so it took a couple of weeks before those came back. When those came back they were reviewed and we came up with our conclusions and as you will see on that conclusion page it was dated April 23. That would have been the date those were forwarded to the chief. So to answer I cannot answer for you why from April 23 to the July date. That would be out of my hands at that point.

**Chairperson McHugh:** Chief would you explain from what Captain Daigle said from April 23 until your decision which was July 15<sup>th</sup>.

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** To the best of my recollection we were dealing with a number of issues. Attorney Bailey was the attorney assigned to work with the department, we were working with a number of issues. I can't tell you what the time frame was or what the other issues whether there was discussions going on with the union or there was other issue. I can't tell you that.

**Commissioner Karolian:** How did it come about to start an IA

**Captain Daigle:** The process is (I don't start an IA) there was a couple of memorandums that were typed up and given to the chief. One memo was from Captain Cecilio and Lt. Cline.

**Commissioner Karlian:** Are they in our packet Chief?

**Chief Agrafiotis:** No they are in IA file.

**Captain Daigle:** They were outlining what they felt were some discrepancies and issues with a report, safe school report generated on December 11, 2008. They had some issues and discrepancies that they felt needed to be clarified and some information that they thought might not of been correct that was given by SRO Defina. Those were written by those two individuals and forwarded to the chief.

**Commissioner Karolian:** Are you saying the report was done on December 11, 2008 by Officer Defina.

**Captain Daigle:** No the report was not done on that date. That was an incident that happened at the school and the incident was reported to Officer Defina on the eleventh.

**Commissioner Karolian:** Do u know who reported it.

**Captain Daigle:** Cawley School. That was the report of the safe school report.

**Commissioner Karolian:** How was the initially report how was that information relayed to the captain and the lt. did they get a report from the school

**Captain Daigle:** A report was generated by Officer Defina. The two memos were given to the Chief outlining some discrepancies and issues with that report and that situation from December 11<sup>th</sup>. I was then given those from the chief to review, after review of those two memorandums and looking at the report that was submitted and the discrepancies. I felt there was some items on there that not needed to be further explained and that it should go forward with the investigation to clarify those issues. I did a memo to Chief Agrafiotis with regards to that and it was then issued back for an internal investigation.



Public Minutes Monday April 18, 2011

**Chairperson McHugh:** That was basically the part you played in and how the investigation was done.

**Captain Daigle:** Yes to my recollection.

**Chairperson McHugh:** When you say there were some things that were not done correctly can you expand a little bit on what was not done correctly or what happened.

**Captain Daigle:** A safe school report that was done about an assault that happened at Cawley middle school was given to SRO Defina at the end of the day. I believe it was from the principal. Part of the issue was Lt. Cline was not notified that a safe school report had been generated or turned in. Lt. Cline was not aware of that report until December 19<sup>th</sup> when the report was turned in by SRO Defina.

**Commissioner Karolian:** When u talk about a safe school report. That is what a school is supposed to fill out.

**Captain Daigle:** It is a form they fill out outlining the incident and those involved. If they have a SRO then they give it to him or if not then a police officer is sent down.

**Chairperson McHugh:** Is that a state form

**Captain Daigle:** I could not tell you if it was a state form requirement. I have not looked at other schools.

**Chairperson McHugh:** You said it was given by the principal.

**Captain Daigle:** It was given at the end of day. It was given in hand to Officer Defina on December 11<sup>th</sup>. There are some protocols in place and suppose to have case numbers pulled and dispatched supervisor would be notified. I understand from the memo was not done on this. The report from Officer Defina was completed on 12/19. He turned in a report that was done on December 11<sup>th</sup> but turned in on December 19<sup>th</sup>. Elsewhere on the report is a date of the 16<sup>th</sup>. So there were questions on what was done on what date.

**Chairperson McHugh:** You said it was done in a hurry fashion. Do you know what Officer Defina did with it? Did he just put it with his things for out of sight out of mind, or did he notify the dept.

**Captain Daigle:** No he did not do anything until December 19<sup>th</sup>, when he turned it in

**Chairperson McHugh:** When did the department become aware of it?

**Captain Daigle:** December 16<sup>th</sup> there was another report at the Cawley School involving 2 juveniles from the same report that was reported on December 11<sup>th</sup>. December 11<sup>th</sup> report was an assault report. The report from December 16<sup>th</sup> was

Public Minutes Monday April 18, 2011

reported to us as a hate crime. The victim of that hate crime was the victim of the assault. The suspect in the assault was the suspect on the assault. So it was the same individuals. When detectives were sent to follow up on the hate crime report they learned from the school that the suspect of that report was the suspect from the hate crime was not at the school he was on out of school suspension for the December 11<sup>th</sup> event. The detectives were unaware that there was an event on December 11<sup>th</sup>. They could not find a report from the December 11<sup>th</sup> incident. So at that point on December 16<sup>th</sup> involving the same individuals was generated by the school and turned in on the 11<sup>th</sup> however they could not a developmental report that would have been completed on that incident.

**Chairperson McHugh:** What happened as a result when the detective found out that no report was filed until the 19<sup>th</sup>? What happened? What was said basically?

**Captain Daigle:** Lt. Cline would have to respond to that. He was the supervisor that did get handed into Lt. Cline. I believe there was some discussion on that later on. I did interview Officer Defina.

**Chairperson McHugh:** Lt. Cline would u come forward. You found out through what detective

**Lt. Cline:** I don't recall what detective was on scene that day. Somehow the information got back to me as far as safe schools information got relayed back to me that information did not get relayed back to me.

**Chairperson McHugh:** Did u have a conversation with Officer Defina.

**Lt. Cline:** I believe it was the December 17<sup>th</sup>

**Commissioner Karolian:** It is not documented anywhere.

(tape changed)

**Break to confirm with attorney at 8:54pm**

**Back from break at 9:11pm**

**Commissioner Karolian:** Chief I just wanted to make sure of something here. The second grievance he had been charged with 4 different items conduct unbecoming, incompetence, submitting a report and truthfulness. Is that correct

**Chairperson McHugh:** Anything else u wanted to add Captain Daigle?

**Captain Daigle:** I wanted to correct something from earlier. The report came to light on the 17<sup>th</sup>. It was not December 16<sup>th</sup> but the 17<sup>th</sup>.

Public Minutes Monday April 18, 2011

**Chairperson McHugh:** Ok. Thank you.

**Commissioner Karolian:** Chief I just wanted to make sure of something here. The second grievance he had been charged with 4 different items conduct unbecoming, incompetence, submitting a report and truthfulness. Is that correct

**Chief Agrafiotis:** On the bottom of the page are 4 bullet points and that is what he was being charged with.

**Commissioner Karolian:** I want to understand what he is being charged with. So I also know what he is grieving.

**Chief Agrafiotis:** Starts on the bottom of page 3 and continues onto page 4

**Commissioner Karolian:** The charges on last paragraph of page 3 and top of page 4. on the personnel record entry form. Those are the charges against the employee. I am assuming the department is relying on the form for the untruthfulness.

**Chief Agrafiotis:** It is the date changes and if you go further into the same packet. Three pages from the end you will see a memo to Captain Ceilio from the prosecuting Attorney Kimberly Chabot, last 2 pages of this packet are documents from the new Hampshire judicial reference of juvenile division issue that related to this issue.

**Commissioner Karolian:** Let's start with the date changes. Where are these changes? I am looking at incident arrest report the one that you provided that is redacted case number 365 on the upper left. .

**Chief Agrafiotis:** You need to look at doc page that is dated 12/19/18 which is located on page 8. You would have to ask the investigators if those are the dates that they are referring to.

**Commissioner Karolian:** Who would talk to about this.

**Lt. Cline:** I I gave a copy of the report with the astro- marks.

**Commissioner Karolian:** How did you become aware of it.

**Lt. Cline:** I received it on the 19<sup>th</sup>.

**Commissioner Karolian:** The first page with the astromarks on it. What does that represent?

**Lt. Cline:** That is the first day I got the report.

**Commissioner Karolian:** This computer log report how is it generated.

Public Minutes Monday April 18, 2011

**Captain Daigle:** The log report that you referring to showing 12/19, it is generated by dispatch after being notified by Officer Defina that he needed a case number pulled for safe school report that took place on 12/11 log report.

**Commissioner Karolian:** On December 19<sup>th</sup>, 2008 Defina called in or requested case number for an incident that happened on 12/11.

**Chairperson McHugh:** Did he say it was for the December 11th. Or did he say on 12/19 that I am generating a report for an incident that had happened. What exactly did he say?

**Captain Daigle:** Good point. He called dispatch on 12/19 by phone and requested a case number for juvenile offence. He did not tell them it happened on the 11<sup>th</sup> but it did happen on the 11<sup>th</sup>

**Commissioner Karolian:** On the 19<sup>th</sup> he calls in for the juvenile officer. There is a case number (same numb) he uses the same why is there is there an \* mark with a number 2. He says the incident happened on the 11<sup>th</sup>. Box 7 indicates on December 11, 2008 14:25 hours that he pulled the case number. What is the purpose of \* 1 highlighting 12/19, \*2 highlighting 12/11. What is the purpose?

**Captain Daigle:** On the log report \* with a #1, number 2 on the next page. There are 2 separate documents

**Commissioner Karolian:** What is the purpose of putting an astro #1 on the log report.

**Captain Daigle:** Lt. Cline

**Commissioner Karolian:** What is the purpose of putting an \* 1 on the report 12/19/08

**Lt. Cline:** The officer saying that the date and time of his report is 12/11, but he did not pull the case report until the 19<sup>th</sup>. How can that be the same?

**Commissioner Karolian:** When the officer does the report box 6 is the date of the report they are writing.

**Lt. Cline:** The date reported to them. Did not pull a case num until he realized it got back to me.

**Commissioner Karolian:** He is being charged with untruthful is this where we are getting that from?

**Lt. Cline:** He back dated a report to the 11<sup>th</sup>. He did not pull a report till the 19<sup>th</sup>.

Public Minutes Monday April 18, 2011

**Chairperson McHugh:** I don't understand that someone back dated and when he just didn't report it until the 19<sup>th</sup>. . Could u clarify the dates for me?

**Lt. Cline:** He submits it on the 19<sup>th</sup> back dates it prior to the 19<sup>th</sup>. numeral 2 signs under 109 and dates it 12/19

**Commissioner Karolian:** Report here and he signs it 12/19/08. That is when submitted and that is when he moved forwarded. Then he correctly identifies 12/11/08. I am asking the date of the report. He makes that report. He generates a case number according to the log. He fills out report and signs it on the 19<sup>th</sup> as well.

**Lt. Cline:** He dates it for the 16<sup>th</sup> and signs it on the 19<sup>th</sup>

:

**Chairperson McHugh:** The assist principal did the form

**Commissioner Karolian:** Officer Defina \* #1 on the log report 12/19, u requested generate report 365784 for incident on 12/11. 101 same case number time and date reported 12/11/08 at 16:00. It that the time it is reported to you

**Officer Defina:** It is reported to me. That is when the school reported the incident to me.

**Commissioner Karolian:** Lt. Cline when we look at that page 12/11/08 at 16:00. Would that be a correct time that it is reported to the officer?

**Lt. Cline:** The date it is reported to him. Why would there b to different dates

**Commissioner Karolian:** Could it be possible that he reported the incident to him and the date and time occurred and happened on the 11<sup>th</sup>.

**Lt. Cline:** Yes sir

**Commissioner Karolian:** We are not saying that he is lying or being untruthful.

**Chief Agrafiotis:** Look at page 3 personnel records form 3<sup>rd</sup> paragraph. (Chief read from the paragraph)

**Commissioner Karolian:** Did he say why he included a inaccurate date

**Chief Agrafiotis:** Ask the investigator

**Commissioner Karolian:** What did he say

**Captain Daigle:** I want to tread lightly on this. There is a lot more that goes into the process. The interview was 68 pages transcribed a great portion with the dates.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Did he give u a reason why he did that.

**Captain Daigle:** Yes

**Commissioner Karolian:** Chief do u have more u wanted to tell me

**Chief Agrafiotis:** Again just wanted to say 2,3,4 pages on the packet on this issue highlight in what was in the conclusion and what was in the body of the IA. I understand where u r going with the questions it talks about the dates, prosecution of the case. Not getting into the details of the IA itself covers many steps.

**Chairperson McHugh:** Just paragraph that u pointed out to us chief. Explain a little more that Officer Defina purposely included inaccurately dates.

**Chief Agrafiotis:** I think you would have to ask Officer Defina to explain that.

**Chairperson McHugh:** I am asking you because it is something you wrote and stated.

**Chief Agrafiotis:** It was information that was in the internal investigation. I don't do the investigation. I only see the conclusion.

**Chairperson McHugh:** What does the first day he could of? What was stopping him from completing those forms?

**Captain Daigle:** I would have to pull it out of the book it is contained in the transcription.

**Commissioner Karolian:** There is another page. I assume it Officer Defina's signature, with the same case number. Officer Defina draws attention to entry page 12/19 /08, Case number 365784. Next page 101 box 5 date/time reported, 12/11, seconded page dated report 12/19/08 signed off of it.

**Officer Defina:** When I submitted the report

**Commissioner Karolian:** Why are all these dated differently? If they are all one report why do they have different dates?

**Officer Defina:** There are 3 dates involved. When I was completing the reports there were 3 separate dates involved in this, 12/19, 11<sup>th</sup>, and the 16<sup>th</sup>.

**Commissioner Karolian:** On your narrative it was dated on the 16<sup>th</sup> and the date of the report on the 16<sup>th</sup>. So is this the 16<sup>th</sup> referring 365296

**Officer Defina:** Regarding case number 365784 I did the report on the 16<sup>th</sup>. It was the first day I was allowed back into the schools. I was ordered out of the schools by Det. Sgt. Pinardi.

Public Minutes Monday April 18, 2011

**Chairperson McHugh:** Was Det. Pinardi your supervisor?

**Officer Defina:** No It Cline was. Was told no overtime was involved for the SRO. Was at school dealing with multiple suspects and I was able to get a hold of Sgt. Pinardi.

**Commissioner Karolian:** Do we have any reports with regards to Det. Pinardi.

**Chief Agrafiotis:** He was interviewed

**Commissioner Karolian:** What happened after that

**Officer Defina:** Had quite a few conversations with phone call, Salem contacted to deal with how Cawley School was going to deal with the incident.

**Commissioner Karolian:** Confused with dates. When did you generate on the report.

**Officer Defina:** Entire report was done on the 12/19/08

**Commissioner Karolian:** Why was it signed with a dated for 12/16/08

**Officer Defina:** The only way I could get the dates was to date the first page the 11<sup>th</sup>, 2<sup>nd</sup> page 16<sup>th</sup>, the last page the 19<sup>th</sup>

**Commissioner Karolian:** Why could u not put in the body of the narrative that this was what happened on December 16<sup>th</sup>, and December 11<sup>th</sup>. I don't understand why you had why you would have to generate the way you did.

**Officer Defina:** It was submitted the way it was because I was unable to get back into the schools until the 16<sup>th</sup>.

**Commissioner Karolian:** Why didn't you generate a report with the correct date saying I could not get back into the schools until the 16<sup>th</sup>? But have it dated the 19<sup>th</sup> when you generated the report.

**Officer Defina:** I guess that would have been an option to explain it out in the body of the report I don't think that would have been accepted.

**Commissioner Karolian:** It wouldn't have been accepted

**Officer Defina:** No. It wouldn't of been excepted.

**Commissioner Kaolian:** So you are telling us you generated the report on the 19<sup>th</sup> but you signed off on it saying you generated it on the 16<sup>th</sup>.

Public Minutes Monday April 18, 2011

**Officer Defina:** As I submitted it as a whole. The case number I pulled on the 19<sup>th</sup> I turned it on the 19<sup>th</sup>. I signed and dated it on the 19<sup>th</sup>. As a whole the packet was done on the 19<sup>th</sup>.

**Chairperson McHugh:** The form that says continuation investigation report says the 16<sup>th</sup>. Now I heard you say before that it was the first day back in the school. Is this a follow up from what happened on the 11<sup>th</sup>? Is as a result of you being back in the school and you just wanted to update.

**Officer Defina:** No it was a separate report. On the 16<sup>th</sup> when I was back in the schools and I reviewed the memorandum of understanding I decided there was not going to be a report. After speaking with the principal the situation had been handled 5 days earlier and he agreed what they had done was fine and they were not going to go ahead with a report. It was not until after Detective Pinardi later on in the week with other things that were happening why this came to be. Based on the memorandum and the facts of the case there was no report that needed to be generated.

**Chairperson McHugh:** So what you are saying based on what u understood with what happened and what had been done based on the school you did not feel a report needed to be required

**Officer Defina:** Correct. But it was not until I received a phone call from Det. Pinardi on the 17<sup>th</sup> that I am first questioned if there was a fight incident. When the Det. had come to the school for the supposed hate crime on the 17<sup>th</sup>, I was the one who told the Det about the fight on the 11<sup>th</sup>, that the school had told me there was not going to be a report generated I filled them in on that. When they got back to the station the det where the one who told Lt. Cline, Det. Pinardi called me on the 17<sup>th</sup> to find out if a report was being generated and I told him reviewed him there didn't need to be one. Then I get a call from Pinardi after work hours and he had said that Lt. Cline knew about the report on the 17<sup>th</sup> and he had not called me if he wished for me to do a report or anything. But Det. Pinardi told me on the 17<sup>th</sup> he got Lt. Cline and Captain Cecilio conspiring on how they were going to use the failure of the report against me

**Commissioner Karolian:** The realities of what we are looking at are the dates on the reports and I sympathize with u with you on how the sequence went. But the fact of the matter is that you submitted a packet of 3 different pages. What I don't understand is why you felt compel on why you would put a different date on the report as opposed to the when the report was actual generated. Looking at this report it is very clear the date of the report is 12/16/08, you signed off on it saying it was 12/16/08. But in reality this was generated on the 19<sup>th</sup>.

**Officer Defina:** The whole entire report was the generated on the 19<sup>th</sup>.

**Commissioner Karolian:** I understand you generate on the 19<sup>th</sup> and you put in there that you generated it on the 19<sup>th</sup>. You wrote the entire report on the 19<sup>th</sup>. There is a



Public Minutes Monday April 18, 2011

narrative that was dated for the 16<sup>th</sup>. Why was it dated the 16<sup>th</sup> if you wrote it on the 19<sup>th</sup>.

**Officer Defina:** if I labeled the pages the 19<sup>th</sup> the report would of shown that the incident happened on the 11<sup>th</sup>. And that the report was written on the 11<sup>th</sup>. But there is no mention on the 16<sup>th</sup>. And why there was 5 days until I was back into the schools and what happened with the incident.

**Chairperson McHugh:** Why were not back in the schools until the 16<sup>th</sup>.

**Officer Defina:** There was an ice storm after the first day I was ordered out on the 11<sup>th</sup>. The first day I actually got back into the schools was the 16<sup>th</sup>. For me to complete the report was on the 16<sup>th</sup>. So from the 16<sup>th</sup> to the 19<sup>th</sup> it would have been 3 days instead of the 8 days.

**Chairperson McHugh:** The page it says continuation of investigation which is the 16<sup>th</sup> and I am reading the memorandum, talking about safe school report. It says that is already been assigned a number. Did you feel why you didn't need a report? What was so different in compare to why you did not feel you needed a report?

**Officer Defina:** The packet I submitted there is a memorandum of understanding, if you look at memo understanding under simple assault. (Read from the memorandum he gave the commission) by New Hampshire RSA's it was not a crime that happened between the two juveniles.

**Chairperson McHugh:** That was your determination

**Officer Defina:** Yes. It was not until I was told from Det. Pinardi about the captain and the Lt. trying to purposely \*\*\*\* me over. Lt Cline had no clue what the report was when I handed it in. he knew on the 17<sup>th</sup> that an incident had happened. I did everything within the school that I should have done. And the only reason I submitted a report was because of Det. Pinardi and what was happening.

**Commissioner Karolian:** You were not ordered to do a report on the 12/19. Lt Cline did u order him to do a report.

**Lt. Cline:** No

**Commissioner Karolian:** Chief do u know anyone that ordered him to do a report.

**Chief Agrafiotis:** No

**Commissioner Karolian:** I would agree that would with the 3 dates. I don't agree with the report that you generated a date for one date and have another date.

**(Tape changed)**

Public Minutes Monday April 18, 2011

**Officer Defina:** I thought it was important to have all 3 dates. I felt it would get swept under the carpet

**Commissioner Karolian:** So you thought it would get swept under the carpet

**Officer Defina:** Yes I did

**Chairperson McHugh:** We were waiting to get information from Captain Daigle

**Captain Daigle:** (read from a report that was transcribed) At one point SRO Defina says I did not get back until the sixteenth as far as my SRO duties in the schools. And that was the first day I was back. And that week was extremely busy. Every day that week was extremely busy. I think the nineteenth was the only or pretty much the only day where I actually completed all my reports. Maybe with the exception of the my space because they wanted that. Tuesday was the day I was back in the SRO role and Friday was basically a free day and that's when I worked on a few reports that day. So that's the day I actually got to complete the fight report on the nineteenth.

**Commissioner Karolian:** He admitted to u that he done on the 19<sup>th</sup>. He does not deny doing it on the 19<sup>th</sup>.

**Chairperson McHugh:** Read to us what Det. Sgt. Pinardi. Do you have any of his statements on what he had said?

**Captain Daigle:** I would question whether or not I can say that. He is not here to do a release. (Continued reading from transcription) on the sixteenth report it says again the first day I had was the sixteenth and that's what I put here because as much as I tried to explain this the Lt. might still try to suspend me because it was eight days and is like I am only responsible for the three days. I don't know how to better explain it to you. I said to him I understand that in the time the report was filed from the school with you and you were advised on the eleventh and turning it in on the nineteenth to Lt. Cline at any point in time did you go to your supervisor which I understand is Lt. Cline and say I need time to complete this report and other reports you had backed up. He starts off by saying I know on Friday and then the union attorney interrupted and I had a conversation with him about his interruption. He did not finish the statement at that point. Prior to the nineteenth when this was turned in did you go to him and say this is an outstanding report and I need time to do it or I need overtime to complete it. His response was no.

**Officer Defina:** At no time did the Lt. contact me. At no time was I told to do a report.

**Commissioner Karolian:** What you are saying is the chg of the timeless of u doing the report

Public Minutes Monday April 18, 2011

**Officer Defina:** Make it a point did they contact me to get the report in. If they knew there was a report out there. It is your job for submitting a report; on there is actually submitting a report. This would be the second time for submitting a report. I was suspended for 5 days. It is basically double jeopardy.

**Commissioner Karolian:** Is that where your justification would be for not submitting it.

**Officer Defina:** I would think so. If they knew there was a report out there and they never said anything about it. I am thinking it would be pretty important and if they are going to write me up for not handing it in on time, you would think that it is the supervisor's job to make sure you hand it on time. As far as submitting reports go the personnel records entry form that you have and the charges that are listed. On there is actually submitting reports. On December 23<sup>rd</sup> I was given another a write up and found to be in violation so this would be the second time that I have been found for not submitting reports for the same exact incident. I was suspended for 5 days; so for them to put in submitting reports when I already served my time it is like double jeopardy.

**Commissioner Karolian:** You were charged with not submitting reports.

**Officer Defina:** December 23, 2008. I was giving a 5 day suspension for turning it in late.

**Commissioner Karolian:** Did you grieve that or did you take the 5 days suspension.

**Officer Defina:** You have to take the 5 days suspension, and then you can grieve it.

**Commissioner Karolian:** Did you grieve it.

**Officer Defina:** I did grieve it.

**Commissioner Karolian:** What was the outcome of that?

**Officer Defina:** It was one of my public grievance hearings. There was a couple things being grieved and the commission came back 2.5 days total.

**Commissioner Karolian:** This one you are grieving you were charged twice.

**Chairperson McHugh:** Or are they two different charges.

**Officer Defina:** One of the charges is submitting reports.

**Commissioner Karolian:** You are maintaining that you were charged for this same report. It was heard by the commission and discipline was handed down.

**Officer Defina:** 6 months later were addressed the issue because it went to internal and now based on that I was written up again for submitting reports.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Captain Daigle he says he was written up for the same issues for the same reports and he has been charged twice for that, is that accurate or inaccurate.

**Captain Daigle:** From what I know that is inaccurate. If he is referring to rules and regulations submitting reports I believe from what I know of why it is mentioned in the one we are talking about is that it says submitting reports promptly and accurately complete. So I believe in this instance that we are talking about because we are disputing the accurately portion. He was written up for the promptness for a separate report.

**Commissioner Karolian:** It is the same report.

**Captain Daigle:** I believe so. But for this one we were not looking at the promptness, we were looking at the accurately completing and there was some other information that came out in that report.

**Commissioner Karolian:** Was the IA done before or after the first discipline handed out

**Officer Defina:** After. So I get the 5 days suspension almost a couple of days after I turned the report in.

**Commissioner Karolian:** This is not new to the department for the, I don't know for what he was written up for. It is the same report.

**Chief Agrafiotis:** I don't know of any double jeopardy incident.

**Commissioner Karolian:** What I am asking you the discipline he got the first time around and the discipline he is getting the second time around for the same incident the same reports.

**Chief Agrafiotis:** Not that I am aware of I would have to go back and look at the reports. But not that I am aware of

**Commissioner Karolian:** Is anybody from the police department aware

**Chairperson McHugh:** You must be able to clarify it chief.

**Chief Agrafiotis:** Not without going back and looking at the paperwork

**Captain Cecilio:** That is the issue of the hate crime this incident is issue of the assault that took place prior to the hate crime.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** So this was all made aware to the department that is a week apart, one on the 11<sup>th</sup> and 16<sup>th</sup> involve the same person.

**Captain Cecilio:** They needed to go forth with the information as a assistance to the other case. There are 2 separate cases. One is a hate crime and this was a charge for an assault.

**Commissioner Karolian:** But wasn't the department aware from the same reports given by Officer Defina. Didn't this involve these 2 incidents one was on the 11<sup>th</sup> and the other on the 16<sup>th</sup>?

**Captain Cecilio:** They did constipate them in the courts.

**Commissioner Karolian:** Well not only in the courts didn't they intermingle in the department.

**Captain Cecilio:** You asked for some clarification on the matter from what he brought up in the past.

**Officer Daigle:** It says right here on the second page he neglected to report the assault in a timely manner it is indirect violation and goes more into it.

**Commissioner Karolian:** This is the assault on the 11<sup>th</sup>.

**Officer Defina:** It was the assault on the 11<sup>th</sup> which is the report we are talking about today. The pages are exactly the same they are just not redacted. Because this came out of my personnel file

**Commissioner Karolian:** They are exactly the same as what.

**Officer Defina:** Personnel records form and the written reprimands. If you go through it you will see the reports that we are talking about here.

**Five minute break at 10:29pm**

**Restart meeting at 10:45pm**

**Commissioner Karolian:** Officer Defina that charge that you just brought up what were the charges against you.

**Officer Defina:** required conduct, truthfulness, neglect of duty, submitting reports

**Commissioner Karolian:** Currently Chief what is he being charged

**Chief Agrafiotis:** Conduct unbecoming

**Commissioner Karolian:** Is that the same as required conduct

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** On page 3&4 on hand out I gave you

**Commissioner Karolian:** Prohibited conduct is that the same as required conduct

**Chief Agrafiotis:** Under rules and regulation section 7 is titled prohibited conduct sub section 2 unbecoming and sub section c incompetence. So section 4 required conduct sub section 16 submitting reports of subsection 17 untruthfulness. Page 3 and 4 of the hand out I gave you.

**Commissioner Karolian:** Prohibited conduct is that the same as required conduct.

**Chief Agrafiotis:** Under rules and regulations chapter 1 required conduct and prohibiting conduct are 2 separate sections. Required conduct is section roman 6 and prohibited conduct is roman 7.

**Commissioner Karolian:** And what do they say. Can you read it?

**Chief Agrafiotis:** Roman 6 required conduct there is a number of different sub sections.

**Commissioner Karolian:** Officer Defina on the required conduct one what is the violation numbers

**Officer Defina:** It says sub paragraph A16 submitting reports.

**Commissioner Karolian:** And prohibiting conduct is what chief.

**Chief Agrafiotis:** Roman numeral 7

**Commissioner Karolian:** And the truthfulness where is that.

**Officer Defina:** Sub section 17

**Commissioner Karolian:** And he is being charged with

**Chief Agrafiotis:** Charge of being able to truthful states the facts on reports and forms that are sustained.

**Commissioner Karolian:** And that refers to the same report

**Chief Agrafiotis:** I don't know I would have to look at the reports

**Commissioner Karolian:** Same do you know the case number chief

**Chief Agrafiotis:** I don't know.

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** Someone does because you are bringing charges against him so you need to find out right now.

**Chairperson McHugh:** I see that Lt. Cline has his hand raised. Lt. Cline would you come forward to assist the chief

**Lt. Cline:** The write that he received on 12/23 after I done an investigation and identified some problems it is the same report. However part of my concern was the untruthfulness portion about it. Therefore I wrote a memorandum regarding it and sent it forward to my chain of command. It is one of the same but I was looking at 2 different issues at that point. Initially I was looking at the timelessness of the report.

**Commissioner Karolian:** And would that of been untruthfulness timeless of the report what I see is two different reports. One is December 23<sup>rd</sup> and the 11<sup>th</sup>. The 23<sup>rd</sup> is for truthfulness and the 11<sup>th</sup> is for truthfulness. You heard that the 23<sup>rd</sup> went forward and went in front of the commission. That one was taking care of. But now this one again is for truthfulness on the same report

**Lt. Cline:** It is the way it was written up on my original report.

**Commissioner Karolian:** Untruthfulness that was for the same things alleged in both.

**Lt. Cline:** I believe so

**Commissioner Karolian:** So you are charging him a second time for the same thing.

**Lt. Cline:** I already dealt with that phrase of it.

**Commissioner Karolian:** The same issues you dealt with on the 23<sup>rd</sup> for the untruthfulness in the reports is the same thing you are presenting for the 11<sup>th</sup> for the new charges

**Lt. Cline:** From what I am looking at right now has the same or similar paperwork attached to it.

**Captain Daigle:** Part of IA that I was task to doing had to do with a statement with SRO Defina to Lt. cline. That he stated that it had nothing to do with the dates on the reports. It was the facts that he told him when he submitted the reports on the 19<sup>th</sup> that the reason why it was submitted on that date was he had been working on that report.

**Commissioner Karolian:** That is not listed in the summary or the conclusion of the report. It is listed as facts in the personnel records form. Correct me if I am wrong.

**Captain Daigle:** Commissioner you don't have the two memos that was kicked off by Lt. Cline and Captain Cecilio and that would be referenced in there. I am just advising

Public Minutes Monday April 18, 2011

you of what I was given and specifically what I was looking into was a statement made I was working on that report and that was why I was late and later to say that I did not generate it until the 19<sup>th</sup>. Doesn't jive the fact as you say I was working on a report and that is why it would have been on that late date as to oppose I did not do until the 19<sup>th</sup> and that is when I turned it in.

**Officer Defina:** Commissioners if I could

**Chairperson McHugh:** Before u go there. Are u referring to the 2 documents that the Chief sent to me.

**Captain Daigle:** I have no knowledge of the documents the chief sent to you.

**Chairperson McHugh:** It was written you and the other by the prosecutor

**Captain Daigle:** I am not referring to that no. are you talking about memorandums that were done on June 8<sup>th</sup> by myself and the prosecutor. No I was not talking about that.

**Chairperson McHugh:** What were you referring to? The reports you were talking about were you referring to those in the packet.

**Captain Daigle:** You don't have those because they were part of the IA.

**Commissioner Karolian:** It is not referenced in the conclusion in the personnel records entry form.

**Captain Daigle:** I believe that it is. The untruthfulness issue is in the conclusion that was signed by myself and investigator Rich Dale. It is reference to what was said about the reports not the dates of the reports.

**Commissioner Karolian:** Was that information used and the charge of 12/08

**Captain Daigle:** I did not have anything to do with that write up. I could not answer that.

**Commissioner Karolian:** Chief do you know if that information was used in the charges against him on December 23, 2008

**Chief Agrafiotis:** I do not know at this point

**Officer Defina:** The only thing I rec'd from the actual right up that I grieved was the personnel record entry form. I did not get the conclusion. If you look at the dates it looks like 6 months go by and the conclusion and the jiffs of the write up they mention they reviewed everything AOM, CVA's, internals, memos. But if look at the conclusion it does not talk about the other things. I think that after having all that information for months if there was more and there was more detail that it would have been in there.



Public Minutes Monday April 18, 2011

But it was not. To go back now and say there was more detail listed in a write up I got 2 years ago.

**Commissioner Karolian:** Chief why did it take 7 months to hand down your decision about discipline.

**Chief Agrafiotis:** I believe Captain Daigle answered part of that as far as the timeline and I know was working with Attorney Bailey on certain issues with regards to Officer Defina.

**Chairperson McHugh:** I believe you got Captain Daigle information on 4/23. From April 23<sup>rd</sup> to July 15<sup>th</sup> why did it take so long?

**Chief Agrafiotis:** Off hand, I can't remember. I would have to go back to what Attorney Bailey has with the work she was doing with us.

**Chairperson McHugh:** What was Attorney Bailey doing?

**Chief Agrafiotis:** We had numerous of issues with Officer Defina that the union and the department were working through

**Chairperson McHugh:** Why would Attorney Bailey be working on this particular one if indeed Captain Daigle give you a report on the 23<sup>rd</sup> of April and normally I think and you can explain it to me but you normally take the time to go through and read them and you make your decision from . April till July

**Chief Agrafiotis:** Again without going back to the timeline with Atty. Bailey I can't remember off hand the time frame.

**Commissioner Karolian:** Does the 10 day or the 5 day come into play it was well in the excessive of 10 days

**Chief Agrafiotis:** I think we said the word should is in there so I guess it depends on your definition of the word should.

**Commissioner Karolian:** From the time you got the info back till the time the charges were brought out it is a well of the excessive of the 10 days.

**Officer Defina:** if I could commissioners P250 that was presented earlier I am not aware of the section development of discipline that you are supposed to hand your stuff over to the attorneys and wait several months as an employee I don' see where that is in there.

**Chairperson McHugh:** I see the Atty. Chabot. You have had your hand up several times. Did you have something you wanted to add?

Public Minutes Monday April 18, 2011

**Atty. Chabot:** There has been a lot of conversation as to the delay and completion of internal and the chief's decision. There is an additional dimension that is part of the second grievance that wasn't part in partial of the actual thing; the actual thing with the report writing. But it played out in the actual case that I ended up handling in court involving those juveniles from the fight and the hate crime incident. I was not aware of the internal to be quite frank and that is probably how it should be. I brought a part ion against a juvenile alleging witness tampering; based on Officer Definas report and the investigation into the hate crime incident and into the simple assault. And I alleged against a part ion against a juvenile that because of official proceeding with respect to an investigation had been instituted that retaliation had been repeated upon another juvenile. I relied on the date December 16<sup>th</sup> in Officer Definas report in actually going and doing that part ion. It was not until I was in the middle of witnesses at the trial that a detective who happened to be involved in the hate crime incident said that an investigation had not begun before December 17<sup>th</sup> by the SRO. And that is what ultimately led to a finding of not true because that played out in the course of testimony because I was relying on an officers report. So when you see in this packet of information I did a memo on June 8<sup>th</sup> now this is certainly pass the time that Officer Defina said he received for this report. Also post the IA. But if you look at my memo dated June 8<sup>th</sup> 2009 the judiciary hearing that I did spanned 2 days. It started on April 9<sup>th</sup> and finished on May 14<sup>th</sup> because they could not get us all in under the same day. I did not introduce Officer Definas testimony on the first instance because of the other disciplines. I did not attend those hearings and I don't know what the meats of the hearings were. But the bottom line is the judge considered the testimony and found that because the Hooksett Police Department did not initiate a proper investigation when I believed they had and that is why they found the juvenile not true. After he had gone onto my space more or less calling someone out for a fight and calling him a stance. That was an additional demission that I think that said in my mind and the chief that we need to address the accuracy of report writing because everyone is relying on the nature of these reports and that is the point that I wanted to make.

**Commissioner Karolian:** Chief is the reason why u did not hand down the discipline until that July date based on what we just heard from Attorney Chabot.

**Chief Agrafiotis:** To be honest I can't remember but the time frame certainly works out.

**Chairperson McHugh:** I am having some difficulty this evening with the fact that there is not to much that you can recall. This is information that you presented to us. And I am sure before you gave it to us you had the opportunity to make sure what you wanted included in the packet was in the packet. Judging from Attorney Chabot just said she made it quite clear what she thought but then when the question is opposed to you again and most of the evening you have not been able to answer the question because your either not quite clear. This is something you presented and I guess I don't understand that.

Public Minutes Monday April 18, 2011

**Chief Agrafiotis:** What I presented you was I made copies of what was in the personnel file. So I didn't pick and choose what was the packet number one. Number two, I would say you heard there were a lot of dynamics going on years ago. Number three, if I don't 100% remember I am not going to say I remember.

**Commissioner Karolian:** This is all that was in his personnel file

Chief Agrafiotis: Yes. The 2 grievances that are being talked about tonight were in his personnel file.

**Chief Agrafiotis:** What I am hearing from different staff members involved that it may be the same report but different issue

**Commissioner Karolian:** Don't you need to identify those different issues are that make it different from the other charges against him for the same report.

**Chief Agrafiotis:** It could always be clearer

**Commissioner Karolian:** Yes it could. I agree with you. It should be made clear so we could have an understanding what makes this charge different than a previous charge. If the department can't make that clear then we have to go by evidence that is presented.

**Officer Defina:** Prosecutor Chabot touched upon some forms. The personnel personal record is all I have to go on with this grievance. I found it strange the court a document she was talking about is attached to the back of my grievance itself. She mentioned she went forward and it was the 16<sup>th</sup> that caused problems. I would like to know why Attorney Chabot's failed attempt to prosecute a case is attached to my personnel records entry form. It is not my job to prosecute a case. My report clearly states that the school clearly handled the case without my assistance. Why they would go forward with witness tampering against the students that the police did not have involvement with is against me. Why is turned around to be my fault I don't know why. I don't know why charges would bring forward when it clearly states in my report that the police had no involvement in this. Why is it my fault, I did not bring charges against the kids for witness tampering in any involvement. It attached to my personnel file and it affects me negatively. I had nothing to do with the prosecution in that case. And to use that why we went from April 23 to July 15 had nothing to do with me.

**Commissioner Karolian:** Atty. Chabot do you have a response to that

**Atty. Chabot:** I am almost speechless that Officer Defina would dictate in his roles of SRO what matters the police department would take to enforce the law. But to determine that an assault was minor without taking statements or any of that is of concern. But the additional concern is the retaliation nature of the allegation of the hate crime derived from the simple assault that he felt was very minor and more or less pushes it off as the school having dealt with it. His actions required under the safe

Public Minutes Monday April 18, 2011

schools the action taken to ensure the safety of the students and that is the role of the school resource officer. So I respectfully disagree with Officer Defina's exercise of degree that there is no case here and I am not going to just take a report. I think we have a duty better than that as a public service to ensure the safety of the students and to enforce the law. I respect an officer's opinion and input but to have that be the final word and say as too much to not generate a report and to say I had nothing to do with the prosecution. The officer is a witness for the prosecution; the officer is not the one to dictate to go forward whether or not to go forward with a report.

**Officer Defina:** Based on the officer's report I had no involvement. So the question was not answered why the prosecution went forward when it clearly states that I had no involvement with this. It clearly states that the school made sure the students were safe. So again I don't know why the prosecution went forward. How could there be witness tampering if there were no witnesses.

**Commissioner Karolian:** Where did you get the information?

**Atty. Chabot:** My recollection of the incident and I reviewed it before today. I also got the information from the officers involved in the case

**Commissioner Karolian:** You got that info from the officers and investigation reports.

**Atty. Chabot:** Yes

**Commissioner Karolian:** What about the memorandums of understanding between the school district and the Hooksett police department engaged in a long with Dr. Littlefield?

**Atty. Chabot:** I am not intimately into that document. I am not part of the individuals that negotiate between the police department and the schools. But my reading of the safe schools act I am familiar with that.

**Commissioner Karolian:** The discretion under the safe school act that it could be handled by the school or by the police department isn't there in the safe school act that the school has the opinion to handle it internally without it going forward.

**Atty. Chabot:** The date is what was deceiving in terms of some of these reports. I see allege assault that occurred on the 11<sup>th</sup>, Officer Defina generating a report on the 16<sup>th</sup>. So I believed that the official investigation is ongoing. This my space where there is a photograph taking of a young man and calling him a stince. That led me to believe that witness tampering had occurred. Calling him out that he was going to be sorry

**Commissioner Karolian:** Did you talk to the officers involved that there was an investigation going on.

**Atty. Chabot:** I relied on the police reports in preparing the part in going forward.

Public Minutes Monday April 18, 2011

**Chairperson McHugh:** You just said that right along you saw what was on the Facebook and you heard different things. So you say that you relied on the report when at the same time you say that you have this other information getting from Facebook and you go into court and you can't prosecute this because he didn't follow suit. Yet you knew enough information where you could of.

**Atty. Chabot:** I found that after the fact. I assumed and relied on the 16<sup>th</sup>, if I relied on December 16<sup>th</sup> with him writing the report from a continuation from the 11<sup>th</sup>. Then what happened on the 17<sup>th</sup> from the my space page was clearly retaliatory. When in fact the police report was done and no official action was taken until the 19<sup>th</sup> then no there was not witness tampering. That is the point I am trying to make. I relied on the date that he put in there.

**Officer Defina:** My question would be aren't u suppose to review the report in the entirely. Everyone keeps talking about the 16<sup>th</sup> is different than the 11<sup>th</sup>. Clearly in the report it says I had no involvement in the incident that the school took upon themselves to handle it. Now this incident came in if you look at the face sheet that the report came in the middle of the day. I did not find out about it until two hours later. The students were taken care, discipline was handled, and the students were released to their parents. Clearly in my report it states that. So why do you keep going back to a date, you are supposed to read the report in his entirely.

**Commissioner Karolian:** Atty. Chabot when I look at the date generated on the 16<sup>th</sup>. It indicates that it was handled by the school.

**Atty. Chabot:** I never brought a part ion for the simple assault.

**Commissioner Karolian:** We know that it was generated on the 16<sup>th</sup>. He is not untruthful in the body so how do you base going forward or not going forward based on what he wrote in his report.

**Atty. Chabot:** When he dates a report.

**Commissioner Karolian:** When did you know that he dated his report for the 16<sup>th</sup>?

**Atty. Chabot:** When I was preparing my case for the witness tampering. When I look at this narrative and it says the 16<sup>th</sup>. The 16<sup>th</sup> says to me that there is an ongoing investigation.

**Commissioner Karolian:** This does not say anything about an ongoing investigation. It says the school handled it and after they were done with the safe school report they notified him of it. How do u get from this that there is a police report.

**Atty. Chabot:** From the police report

Public Minutes Monday April 18, 2011

**Commissioner Karolian:** That it is in the narrative. Would that be accurate or inaccurate?

**Atty. Chabot:** After I was done with the safe school report. I was under the impression that an SRO when given a safe school report generated a report because it has to be reported to the police department anyway.

**Commissioner Karolian:** I understand that but you were basing all your information what written by Officer Defina on the 16<sup>th</sup> but yet the report clearly states he did not have any involvement with it. It was not a police matter and it was handled by the school

**Chairperson McHugh:** This agreement does say that the principal will consider the disciplinary policy when making determination whether or not to file a safe school zone report.

**Commissioner Karolian:** It is not only the officer required but by the school as well.

**Captain Daigle:** You are 100% correct on this. There is permanent info on this. When the safe school report and memorandum comes up I don't believe u have the full understanding of the memorandum. Upon conversation with Officer Defina he states that if he had read further in the report he probably would of taken a report. The memorandum you are correct states that they have the discretion you have discussed. However attached to the memorandum of understanding that we have with the Hooksett School District is the Hooksett response plan for criminal incidents is attached to the memorandum of understanding to us. There is a section in there that I brought up that shows assault. Assault is unprivileged physical contact with another, now this is the schools response plan. Assault is a misdemeanor unless physical injury results. Response guidelines assault will be brought to the schools administration. If the assaulting results to the victim needing medical assistance then the police communication will always be contacted by the schools administration. Misdemeanor assaults (no serious injury) principal shall contact immediately in cases where assault one or more of the following, a strike to the head, groin or any other sensitive area. Now says the communication area will be immediately called for an assault involving one or more of the following. A punch to the head, that assault report that was done by the school, on December 11<sup>th</sup>, in reference to two punches to the face, I believe the face is the head. The school had to contact the police department.

**(Tape changed)**

**Commissioner Karolian:** They did not contact the dispatch center,

**Captain Daigle:** That is correct

**Commissioner Karolian:** They were in violation

Public Minutes Monday April 18, 2011

**Captain Daigle:** I believe so.

**Officer Defina:** There would be a difference between the misdemeanors

**Chairperson McHugh:** This is not a policy this is procedure

**Commissioner Karolian:** The officer is not obligated to follow it, the school district is supposed to.

**Captain Daigle:** What I am saying is the school is supposed to report it to us. so when you talk about assault in there it says they are supposed to report it to us. My issue with that, when it came up initially in the investigation yes you can pull one section of the understanding

**Commissioner Karolian:** My question is if that's the agreement Hooksett police department had with the school why is it not incorporated and signed off in the end. Why both signatures on the third page and not on the sixteenth or nineteenth page at the end of their agreement. I understand that the dept can attach the schools response plan along with the 102 but it clearly states that it is the school response plan the officer or anyone from the Hooksett Police Department would not be able to follow the directions as to what the school follows. Or should they get in trouble for not following it unless this included in the SOP or the AOM.

**Chairperson McHugh:** Is it included in it

**Captain Daigle:** Is it part of the AOM. Yes. You will see the AOM at the bottom of it.

**Chairperson McHugh:** If I would to go into the binder the department gave me I would find it

**Captain Daigle:** Yes.

**Commissioner Karolian:** I think we got the answer to what u were talking about and what Atty. Chabot was talking about. So we are still talking about the same charge for one incident to the next.

**Chairperson McHugh:** Officer Defina was that all u had

**Officer Defina:** I just want to touch upon last order from family division. In the grievance I have been called incompetent saying that I did not know the understanding and the statues involved. In family division letter it clearly states that the defendant was clearly retaliating against the witness informant however after saying that because an internal school investigation is not an official preceding the statue was not violated. Again it states that in my report. Again I have been called incompetent and my understanding of the laws or not it sounds here if the laws were reviewed a little more this official proceeding would have been crystal clear. Why they are attached to my

Public Minutes Monday April 18, 2011

personnel file I still don't know why. As far as what was said about the reporting crimes and reporting laws when I became the SRO I had a lot of training. I had discussions with captain Cecilio and attorney Chabot it is different room with working in the schools. We had conversations with assaults. Training that I had with the department is to not take a report with every issue. They are middle schooler's they assault each other every day in the hall ways. You can't be in the hall way without these kids pushing one another. It is not to report this every time. It is only when it rises to a certain level. So I just want to make it clear. It is not to take a report every time. The school has the discretion on how they handle it. I just want to get that across. In the schools there are different things that come into play. Certain things that come into play and others that don't I just want to get that across.

**Commissioner Karolian:** Any more evidence.

**Chairperson McHugh:** Chief do you have anything more to add.

**Chief Agrafiotis:** I think to understand where we are coming from you would need to look at the internal investigation that was done by my staff and that I ultimately read. I don't know if you can do that as part of your deliberation obviously you have heard a number of issues that came about that there is more information in here that we cannot give you. It may not change anything but it will let you see what we see and the answers that were asked and all the questions that were asked and how they interrelate to everything you heard.

**Officer Defina:** This is what is in my file. It stats in here the information they had a chance to review for 7 months. This is what I was grieving. I have not seen the internal investigation until now. This is the first time I am seeing the conclusion. This is a combination of what the IA is and what came out of it. What they have. This is 2 years old to address it like this and open it open I have not had the opportunity.

**Commissioner Karolian:** Chief I would like to ask you a question. He was written up on December 23, 2008 and was disciplined was 5 days suspension and it went through the commission to two and half days suspension.

**Chief Agrafiotis:** That is my understanding but I would need to go back through the paperwork.

**Commissioner Karolian:** If that is the case and that is one of the things against him for the truthfulness, it begs to question that if he was given that back then and you alleging him untruthfulness on his part. Why would he be given a written reprimand not for just untruthfulness, but for conduct unbecoming, incompetence and submitting reports?

**Chief Agrafiotis:** Ultimately the reason that the write up is what you see. There was much confusion apparently on Officer Definas part as far as the dates on the reports he thought he should do whatever influence he had on him Sgt. Pinardi after reviewing



Public Minutes Monday April 18, 2011

everything in the IA felt that at that point and time that there was enough confusion on his part even though he did acknowledge in the IA that he purposely indicated in accurately dates and that he had a reason for what he did and all the years and effort that we put into this officers training that this write up was to in our mind to hold him accountable and if you look at the last paragraph it basically put him on notice to the remedial training. To make sure everyone was on the same page. I think if you will in conclusion that as bad as the write up sounds that we were giving him a lot of lei way to get back in line with everyone else and move forward.

Commissioner Karolian: Why was he not giving the same lei way as before

**Chief Agrafiotis:** I would have to review the paperwork to what happened with that one. Again we are at a point to draw a line in the sand. That is why it was written the way it was, the confusion that he relayed to us and his time with us.

**Commissioner Karolian:** First time you are untruthful with us and doing the other stuff that was alleged on December 23, 2008, that we will give u 5 days suspension but 2<sup>nd</sup> time around we are doing similar thing we are going to give substantial less.

**Chief Agrafiotis:** I don't believe the conclusion in the IA, that he knowingly did not tell the truth. He was confused at what he was supposed to be doing. But if you read that whole IA and I did more than once, I think we were trying to be decent toward Officer Defina as far as not doing anything larger than discipline than we did.

**Chairperson McHugh:** Normally it has been my experience it works differently than what it did here. Usually you get less time the first time but the second time you get more.

**Chief Agrafiotis:** It is similar to what Lt. Cline said in the first grievance if you look at these issues the department has certain concerns. But after talking to the officer that there may have been some misunderstanding on the officer's part on what he supposed to be doing. That made him act like he did.

**Chairperson McHugh:** Would u consider that perhaps that u should go back and look at the one that you gave him the five day suspension and the commission turned around and gave him back two days.

**Chief Agrafiotis:** That is not up to me to do

**Chairperson McHugh:** Given the fact that you explained it.

**Chief Agrafiotis:** If the current commission wanted to go back and look at it.

**Officer Defina:** Based on what you just said. Again since the p250 presented here the department provides that discipline be applied constantly. The policy actually states

Public Minutes Monday April 18, 2011

how it is supposed to happen. Attorney Chabot states that she wants to address the issues with me as a training issue and meet with me.

**Chief Agrafiotis:** Just to follow up on that I believe as one of the intents of one of the write ups was that Officer Defina be put into a retraining program. So that was intent that he was put into a program as you remember it was a determination before the program was over.

**Chairperson McHugh:** I guess where we are at the conclusion of this part of the hearing. As I explained earlier we have been given packets that have reading materials in it regarding this hearing. We need to go through and read and it is going to take some time. I can't tell you this evening when we will be able to arrive at a decision however I can tell you that we are going to try to do it in a timely fashion. We have to read it all so that we can understand it. I want to make sure that is understood. The commission will re reconvening at a later date to finalize this and to come to a decision. We have to deliberate it in public.

Commissioner Karolian made a motion to adjourn at 114:45PM. Motion was seconded by Chairperson McHugh.

Drafted by Dawn McDonald, Recording Clerk  
Amended by Dawn McDonald, Recording Clerk