

Gregory O`Brien
Continued deposition

LEONARD MAZZOLA v. ANTHONY TOGLIATTI, et al.

October 20, 2020



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EXHIBIT
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEONARD MAZZOLA,)
)
Plaintiff,)
vs.) Case No. 19-CV-02519
)
ANTHONY TOGLIATTI, ET AL.,)
)
Defendants.)

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CONTINUED VIDEOTAPE DEPOSITION OF GREGORY O'BRIEN
TUESDAY, OCTOBER 20, 2020
- - - - -

The continued deposition of GREGORY O'BRIEN,
called by the Plaintiff for examination pursuant
to the Federal Rules of Civil Procedure, taken
before me, the undersigned, Aimee N. Szinte,
Notary Public in and for the State of Ohio, taken
via Zoom, commencing at 1:12 p.m., the day and date
above set forth.

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APPEARANCES:

On behalf of the Plaintiff:

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ALSO PRESENT:

Leonard Mazzola, Plaintiff
Anthony Togliatti, Defendant
Alex Cook, Videographer

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1 communication? I was aware generally of
2 communications.

3 You're asking me did I review, was I
4 aware at the last deposition regarding this
5 specific e-mail. And I'm telling you I was
6 aware of communications I had with
7 Mr. Phillips. I do not recall reviewing
8 documents that were not produced in this case
9 because of attorney/client privilege because,
10 in my thought process going into that last
11 deposition, you wanted to know to me, as a
12 Defendant in the case, my involvement in the
13 case but for attorney/client privilege.

14 I didn't believe that you could delve
15 into attorney/client privilege, so I'm just
16 telling you what I recall as I'm sitting here
17 today. I don't recall going over any documents
18 that were not produced in this case because --

19 Q Mr. O'Brien, I'm literally not asking you about
20 review. I am not asking you about review. I
21 am asking you about awareness of the existence
22 of a document memorializing the discussion, not
23 your review of it.

24 A Okay.

25 Q I mean I'm asking you for a yes or no.

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1 Q Now, does this e-mail dated March 25, 2019 and
2 authored by you accurately describe the content
3 of your conversation with Bob Phillips on that
4 day?

5 A This e-mail accurately generally describes
6 my conversation with Bob Phillips on March 25,
7 2019, yes.

8 Q And would you agree that the facts that you
9 say in this e-mail that you communicated to
10 Bob Phillips as reflected in the e-mail are
11 true?

12 A Well, no. I wouldn't believe I communicated
13 them. This is -- this involves Bob
14 communicating stuff to me. This is me
15 providing a quick, brief, general outline of my
16 conversation back and forth with Bob Phillips
17 on the 25th.

18 Q And that's not my question. My question is
19 only about those facts that in the e-mail you
20 relayed to your colleagues that you
21 communicated to Bob Phillips. I'm only talking
22 about the things that you say to your
23 colleagues that you said to him.

24 And my question is, are the facts that
25 you say in this e-mail that you communicated to

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1 Bob Phillips true?

2 A And I'm saying to you that the amount of
3 questions that you've asked me on this one
4 document is probably twice as long as it took
5 me to write this e-mail.

6 And number two is, I'm saying generally,
7 the general content of this e-mail is true.
8 The general content, whether it was
9 communicated by Bob to me and I inartfully put
10 forth my prose, but this is a general
11 discussion or general description of my
12 conversation with Bob Phillips on that day,
13 yes.

14 Q All right. So let's then go to specifics.

15 A Okay.

16 Q Look at paragraph 2 of the e-mail dated
17 March 25, 2019. Did you, in fact, "Inform Bob
18 the City would not be seeking Mr. Mazzola's
19 termination and provided that we would demote
20 Lenny to patrol officer."

21 A I don't know if I -- I'm trying to get down to
22 paragraph 2. Mine is locked. You're in
23 paragraph 1? Okay.

24 Q It's actually the second paragraph after,
25 "Chief."

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1 A Yes. In our discussion Bob brought up that he
2 sees no reason how the City would be able to
3 terminate Mr. Mazzola. And I remember telling
4 Bob you're assuming that there would be
5 termination or a request for termination of
6 Mr. Mazzola by the City.

7 And you have to understand, Mr. Chandra,
8 my involvement with this case involved a -- I
9 was not involved in the investigation. I did
10 not know the underlying facts. I was summoned
11 out to the Mayor's office the Friday before,
12 because I believe this was a Monday, because I
13 want to make sure my facts are right when I
14 looked at this today, and for the first time I
15 was informed of what the investigation of
16 Mr. Mazzola entailed.

17 And I was asked to -- or I offered, I
18 don't know who asked or offered, but I agreed
19 to approach Bob Phillips and see what he had to
20 say about this whole matter. So that is the
21 purpose of my communication with Bob Phillips
22 and this is a general description of that
23 communication.

24 Q So I'm going to ask the court reporter to read
25 you the particular yes/no question I asked and

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1 ask you to answer it.

2 (Record read.)

3 Q It's a yes or no. Did you, in fact, do that as
4 memorialized in this e-mail?

5 A Not specifically as represented by that
6 sentence, no.

7 We talked about demotion, amongst other
8 things, because Bob was doing what Bob does
9 about wanting to discuss the case, and I felt
10 very unprepared because I didn't know anything
11 about the investigation other than what I had
12 learned the Friday before.

13 Q So when you say, "Not specifically", I would
14 really like you to please explain to me what
15 about that single sentence that was read to you
16 in this e-mail is false?

17 A There's nothing word-wise that's false. You're
18 characterizing it as one thing and I'm telling
19 you that in the rush to send out an e-mail, it
20 doesn't take and encompass the whole
21 conversation that Bob and I had regarding that
22 issue. That's all.

23 Q Is there anything you can identify in that
24 sentence that is false?

25 MR. STRANG: Objection.

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1 still in paragraph 2, the last sentence. Did
2 you and Bob Phillips then, "Discuss the viable
3 alternative of Lenny retiring at his current
4 grade without Bill Evans' report being
5 created"?

6 A Yes, we discussed that.

7 Q Okay. And then paragraph 3, did you discuss
8 with Bob Phillips, "An arbitration that
9 included, in part, dishonesty disqualifiers"?

10 A Yes. Bob mentioned dishonesty disqualifiers
11 and we discussed how I felt that whatever
12 discipline the City eventually when it decided
13 what those charges would be, it would
14 ultimately end up in an arbitration. So we
15 talked about what may be involved in
16 arbitration, yes.

17 Q Also in paragraph 3 did you take the position
18 to Bob Phillips that, "Brady disqualifiers
19 included arbitration over dishonesty"?

20 A Yes. As you can see with it being in quotes,
21 I'm trying to -- my intention, I guess, was at
22 the time to try and say that this was something
23 Bob raised, Brady disqualifiers, so I'm trying
24 to communicate that to my client, yes.

25 Q So it's your sworn testimony today that you

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1 arbitration in my opinion."

2 Now, first of all, the first question,
3 the "that" that you're referring to is the
4 concept of a Brady disqualifier, correct?

5 A Yeah. I assume so.

6 Q And then it's true then that you took the
7 position in the conversation with Bob Phillips
8 that Brady disqualifiers included arbitration
9 over dishonesty, correct?

10 A I mean I believe we're saying the same thing;
11 that I believe that if the City did come up and
12 formulate charges, that it would involve
13 dishonesty and that would be included in the
14 arbitration that would obviously follow because
15 of the Collective Bargaining Agreement, yes.

16 Our focus really was on the Collective
17 Bargaining Agreement and what rights and how we
18 saw that playing out, given because I started
19 my career with Bob.

20 Q All right. So also in paragraph 3, did you
21 tell Bob Phillips that, "If after an
22 arbitration it was found that Lenny could not
23 serve as a witness, then at that point the City
24 may take the position he cannot serve an
25 essential function of his position which could

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1 affect Lenny's employment."

2 A Yeah. Again --

3 Q It's a yes or no question, Director.

4 MR. STRANG: Objection.

5 A Well, first of all, please quit calling me
6 Director. You can call me Mr. O'Brien. I'll
7 call you Mr. Chandra.

8 If you're asking me what that sentence
9 was, then of course that sentence speaks for
10 itself and that's what it says. If you want to
11 know the context and the background behind it,
12 I can tell you that as well. But if you want
13 me to say that's what that sentence says,
14 that's what that sentence says, but that's not
15 what was meant by that sentence.

16 Q Mr. O'Brien, I'm going to ask the court
17 reporter to read you back the question and ask
18 you to answer that question and no other.
19 Okay? Go ahead.

20 (Record read.)

21 A Yes. If after the arbitration the City may,
22 but I didn't know what the City was
23 contemplating or not.

24 I was talking to Bob as far as a
25 hypothetical, and that's what we went round and

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1 for me to write it, is Bob telling me the
2 things that he knew, which were far greater
3 than I knew, okay.

4 And I don't recall who said what and what
5 was said. I'm trying to communicate in a very
6 short period of time my conversation to my
7 client in this regard.

8 Q Is the answer to my question no, that you did
9 not assume that Mr. Phillips would convey this
10 to his client or to Leonard Mazzola?

11 A I assumed Bob would have a conversation with
12 Mr. Mazzola about our conversation, yes.

13 Q Okay. Now, next question. If you could take a
14 look at paragraph 5. Did Bob Phillips ask you
15 to "Provide him bullet points of the possible
16 charges so that he can sit down with Lenny"?

17 A That's what he said, yes.

18 Q All right.

19 A Again, bullet points in quotes because that's
20 the term that Bob used.

21 Q Okay. Now, again, and you can take a minute to
22 review the e-mail again if you need to, but are
23 the facts that you wrote in this e-mail true to
24 the best of your knowledge as you sit here
25 testifying under oath today?

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1 MR. STRANG: Objection. Asked
2 and answered.

3 A I don't know what you mean by facts, but the
4 topics and the subject matter of our discussion
5 generally, yes, it's true, of course. I
6 wouldn't communicate subject matter topics to
7 my client that's not true.

8 Q Okay. So it is true then that the City
9 intended to demote Leonard Mazzola from
10 lieutenant to patrol officer, as you told
11 Bob Phillips, correct?

12 A No. That is not true.

13 Like I said, the subject matter -- I
14 knew the City was contemplating disciplining
15 Mr. Mazzola. I was not part of any discussion
16 of what that discipline would look like or what
17 was the result. I wasn't even aware of the
18 underlying facts leading to any future actual
19 charges, if those actually were decided upon or
20 finalized or whatever your word.

21 But no. That is a bad, unintended word
22 that you're focusing on here. No.

23 Q Mr. O'Brien, I am doing my level best to ask
24 you yes or no questions. And I would
25 appreciate it if you could just sort of focus

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1 on the particular question I'm asking and
2 just answer that question if it's susceptible
3 to a yes or no. If there's some other further
4 explanation that I need for the answer, I'll
5 ask you for it.

6 But, as you know, the Court has allotted
7 us only 90 minutes to conduct this deposition.
8 And I've been asking a series of yes or no
9 questions and I've been getting these long,
10 narrative responses.

11 So I'm going to ask -- I'm going to --
12 the subsequent questions I'm going to ask I
13 believe are susceptible to yes or no or true
14 or false. Okay? So here is the next one.

15 MR. STRANG: Objection.

16 Q Is it true that the City intended to subject
17 Leonard Mazzola to an arbitration that would
18 render him disqualified as a witness because of
19 dishonesty, as you told Bob Phillips?

20 A No.

21 Q Okay. Now, the next question. Is it true that
22 the City planned to have Mr. Mazzola added to
23 the Brady Giglio list?

24 A Is it true that the City intended to have him
25 added to the list?

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1 Q Yes.

2 A If given that specific question, the answer is
3 no.

4 Q Okay. Is it true that the City planned to take
5 the position that Leonard Mazzola should be
6 terminated if he had been demoted and added to
7 the Brady Giglio list?

8 A No. That is not accurate.

9 Q And is it true that you provided the list
10 of bullet points of possible charges to
11 Bob Phillips that he requested so he could
12 sit down with Lenny to discuss his options?

13 A No. That's not true.

14 Q So what part of that question is not true?

15 A Bob called me up and told me before I sent the
16 bullet points to Bob that Lenny had decided to
17 retire. And I distinctly remember well, Bob,
18 you don't need me to put together those bullet
19 points you requested. And he said yes. So I
20 sent them after being notified that Mr. Mazzola
21 had already retired.

22 So I think I testified last time I don't
23 know why Bob would have to sit down with him
24 after I've already been informed that he wanted
25 to retire to answer your question.

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1 City officials and department staff, what it
2 was referring to?

3 A No. It does not refresh my memory.

4 Q Okay. So as you sit here today testifying
5 under oath, you have no idea one way or the
6 other whether that's referring to Mr. Mazzola
7 talking to then Mayor Togliatti in late
8 February of 2019, correct?

9 A Whether I came to that understanding through
10 reading this or came to that understanding in
11 that meeting on that Friday, I don't recall.
12 But I knew that there was an issue or at least
13 a past issue of an occasion for Lieutenant
14 Mazzola to usurp the Chief and go directly to
15 Mayor Togliatti. And one occasion, at least it
16 was communicated the facts I have, that
17 Lieutenant Mazzola said something that was
18 untrue.

19 Q Well, but specifically encompassed in
20 Mr. Mazzola going to then Mayor Togliatti you
21 understood before Mr. Mazzola submitted his
22 retirement, it included speaking with Mayor
23 Togliatti about the City's traffic quota or
24 performance standard, whatever you want to call
25 it, correct?

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1 A I believe the issue was Lieutenant Mazzola's
2 performance standard metrics policy versus the
3 Chief's policy. Yes, I believe that was the
4 purpose of him going to see Mayor Togliatti.

5 Q Okay. And now also in the fifth paragraph of
6 Exhibit 23, the e-mail from Letitia Linker
7 dated March 27, 2019, that paragraph also
8 states that one issue was Mr. Mazzola,
9 "Violating order regarding communication of
10 police matters."

11 Did I read that correctly?

12 A That's what it says, yes.

13 Q Yeah. And you understood that that referred to
14 Mr. Mazzola supposedly providing information
15 and documents to the media, correct?

16 A No. I didn't understand -- at the time of
17 receiving this -- I don't even recall receiving
18 this. But I don't know what that -- this was
19 -- I believe, this is going on memory here, is
20 I sent the e-mail that we went over a few
21 minutes ago that Bob wanted bullet points,
22 Mr. Phillips wanted bullet points, and I
23 copied, in addition to Chief Kilbane, Letitia
24 Linker, and I believe this is her sending this
25 to me as a result of that e-mail.

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1 I don't recall having any communication
2 with Ms. Linker on this document or delving
3 into what this document said because of facts
4 that I received elsewhere other than this
5 document.

6 Q Well, when did Ms. Linker send you this e-mail,
7 to the best of your recollection, in relation
8 to you sending an e-mail to Bob Phillips laying
9 out potential charges? Did this come before or
10 after that?

11 A Oh, I don't recall. This is not the only
12 e-mail I received in response to my request.

13 Q In response to which request? I'm sorry.

14 A The facts -- the bullet points. Because,
15 remember, I want to make sure that you're
16 clear, I didn't have the underlying facts of
17 any investigation. I wasn't part of any
18 investigation. I wasn't part of any
19 discussion. I didn't delve into any reports
20 or any findings or anything.

21 So when Bob asked for bullet points,
22 again, he seemed more knowledgeable about it,
23 I reached out to the various individuals at
24 the City to acquire information to satisfy
25 his request.

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1 ultimately would be if the City decided to
2 pursue them.

3 Q Is it your professional habit to want to have
4 knowledge of all relevant facts before you wind
5 up counseling your clients about how to
6 proceed?

7 A Sure. But I wasn't the only lawyer
8 representing the City in this matter.

9 Q Okay. Let's turn to topic D from the Court's
10 order. Actually, I'm sorry. I'm going to go
11 back to the previous topics A and B.

12 The fifth paragraph of the March 27, 2019
13 e-mail from Letitia Linker with the attachment,
14 the fifth paragraph of the attachment states
15 that, "One issue was Mr. Mazzola's dishonesty
16 while participating in an investigation
17 conducted by a third-party as evidenced by
18 failure of a polygraph."

19 Did I read that correctly?

20 A That's what it says, yes.

21 Q Okay. And then that paragraph also says that,
22 "Mr. Mazzola was creating and implementing
23 performance standards inconsistent with the
24 Chief's directive and without his knowledge or
25 approval." Correct? That's from the quote.

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1 A Yes.

2 Q So, now, that's referring to Mr. Mazzola's
3 attempts to return to his point system instead
4 of using the minimum ticket standard, correct?

5 A I don't know what it's referring to, but I have
6 facts and understanding that one of the issues
7 involving Lieutenant Mazzola was a conversation
8 he had with Mayor Togliatti about his point
9 system versus the point system that the police
10 department wanted to implement. And that he
11 represented that the Chief was in agreement
12 with Lieutenant Mazzola's point system. That's
13 how it was communicated -- that's the facts
14 that I have and my understanding of that
15 particular interaction.

16 Q Okay. Just one second here.

17 Just to sort of nail down the sequence of
18 events here, this pre-disciplinary draft from
19 Letitia Linker was sent to you a day before you
20 e-mailed the bullet points to Mr. Phillips,
21 correct?

22 A I mean if you say so. I don't have the bullet
23 points, but that sounds correct.

24 I know I received a communication from
25 the City. I don't recall receiving that one,

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1 but I know I received communication from the
2 City regarding responding to Mr. Phillips'
3 request.

4 Q Yeah. And is it fair to say that you relied,
5 at least in part, on this document from
6 Letitia Linker in what you then subsequently
7 communicated to Mr. Phillips?

8 A No. As I sit here today, I don't recall
9 receiving that e-mail. And I just saw it
10 today. If I did receive it -- I mean I'm sure
11 I received it, but I don't recall reviewing
12 it, and that is not the facts that I used to
13 formulate materially my response to
14 Mr. Phillips.

15 Q Okay. Well, let's do this. Let's turn to
16 Defendant's Exhibit 56 which is going to be
17 brought up now. And we're now going to be
18 talking about topic D from the Court's order,
19 the factual basis for the disciplinary charges
20 listed in your March 28, 2019 e-mail to
21 Fraternal Order of Police attorney Robert
22 Phillips.

23 A Yes.

24 Q And so -- I think we have some background noise
25 on the Zoom call.

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1 MR. STRANG: It remedied itself
2 from our standpoint.

3 MR. CHANDRA: Okay.

4 Q Could you please explain what the factual basis
5 is for the purported dishonesty charges?

6 A I'm sorry. What number is this you're on?

7 Q Defendant's Exhibit 56. And you see the
8 section, the bullet point that says,
9 "Dishonesty" with a number of sub bullet
10 points. It's an e-mail from you to Bob
11 Phillips dated Thursday, March 28, 2019 at
12 11:57 a.m., correct?

13 A The facts leading to all of the bullet points
14 on there are based upon communications that I
15 had directly with Chief Kilbane.

16 Q Right. And so the question is what's the
17 factual basis for these purported dishonesty
18 charges?

19 A I don't recall the factual basis. I recall
20 communications from Chief Kilbane, again, this
21 is -- from Chief Kilbane to me providing
22 information, the sum and substance is on that
23 sheet of paper.

24 Q So I'm not asking you about the communications.
25 I'm asking you as the Law Director, as a

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1 Defendant in this case, if you look, for
2 example, under dishonesty at sub bullet point
3 number 1, "Lying during a formal internal
4 investigation on the unauthorized dissemination
5 of departmental documents." Okay?

6 Did I read that correctly, first of all?

7 A Yes.

8 Q Okay. As to that sub bullet point, can we
9 agree that the factual basis for that
10 contention, it is your understanding that the
11 factual basis for that was a allegation that
12 Mr. Mazzola had lied during the investigation
13 on whether departmental documents were given to
14 reporter Ed Gallek. You understood that,
15 correct?

16 A Yes.

17 Q Okay. And now on the other sub bullet point,
18 "Lying as to whether he discussed the internal
19 investigation with another City employee,
20 despite and contrary to an order by his
21 superior not to do so."

22 Okay. That is referring to what? What's
23 that referring to?

24 A The facts as I know them, whether developed
25 at the time or throughout this case, was a

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1 conversation that Mr. -- or Lieutenant Mazzola
2 had with Rich Crane at his house.

3 Q And this is discussing the internal
4 investigation with Rich Crane, despite and
5 contrary to an order by a superior not to do
6 so.

7 Who is the superior being referred to
8 there?

9 A I'm presuming it was Chief Kilbane.

10 Q Okay. Next sub bullet point, "Lying to the
11 Mayor regarding performance measurement
12 standards allegedly approved by the Chief."

13 Okay. And, again, can we agree that that
14 is referring to Mr. Mazzola's discussion with
15 Mayor Togliatti about the traffic performance
16 standards issue, correct?

17 A Yes. That's what we talked about earlier where
18 Mr. Mazzola had his own way of -- his own
19 policy and the police department had a policy
20 and represented, purportedly, it's my
21 understanding of the facts, disingenuously that
22 the Chief had approved using Mazzola's or
23 something to that metrics.

24 Q All right. Now let's take a look at the
25 insubordination charges in the other major

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1 bullet in Defendant's Exhibit 56, the e-mail
2 dated Thursday, March 28, 2019 at 11:57 a.m.
3 from you to Bob Phillips.

4 There's one sub bullet point there. It
5 says, "Intentionally ignoring a previous
6 departmental order. Ten incidents of usurping
7 his superiors to directly communicate with City
8 officials and employees regarding departmental
9 staffing, training and policies and
10 procedures."

11 Did I read that correctly?

12 A Yes.

13 Q Okay. And was that -- what was the factual
14 basis for that insubordination charge?

15 A Other than that statement, the only facts that
16 I could recall were incidents where Mr. Mazzola
17 was going around Chief Kilbane and speaking
18 specifically to Letitia Linker and/or the
19 Mayor.

20 Q And that was specifically discussions with the
21 two of them about the traffic ticket quota or
22 performance standard, correct?

23 A That's correct as to the Mayor, as best as
24 I can recall. It's not correct regarding
25 Ms. Linker.

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1 Q Well, were you aware that Mr. Mazzola had
2 spoken to her about his concerns about the
3 traffic ticket policy?

4 A No. I was not aware about traffic ticket
5 policy discussions with Ms. Linker. I was
6 aware of other concerns Mr. Mazzola had.

7 Q So what did you believe that Mr. -- what
8 conversation did you believe that Mr. Mazzola
9 had with Letitia Linker that would merit a
10 charge of insubordination for having had that
11 conversation?

12 A I recall one prior to March, not within the
13 time frame that you said I'm supposed to stay
14 within, where there were facts where
15 Mr. Mazzola didn't like dealing directly with
16 the Chief and was going around the Chief and
17 trying to get a different decision or
18 commitments or what have you from Letitia
19 Linker and she felt that she was in the middle
20 of the whole thing and very uncomfortable.

21 Q About what? About what topic?

22 A The fact that Lieutenant Mazzola -- I think it
23 had to do something with training, either
24 off-site or something about a previous
25 disciplinary action that Mr. Mazzola had to

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1 Mr. Mazzola was just retiring, correct?

2 A Yes.

3 Q And I think you further testified you might
4 ordinarily want a release or waiver of claims
5 upon an employee's departure, but you decided
6 not to get one here, correct?

7 A I think it's accurate to say that I asked for
8 one. Bob said he was retiring and he's going
9 to be treated like every other retiring
10 officer. And I had no reason to believe that
11 this was anything other than a retirement, yes.

12 Q Okay. So I'm going to show you now an e-mail
13 marked as Exhibit 25. And this document, once
14 we get it up, I'll read the Bates number into
15 the record.

16 Could you please identify what this
17 document is from the top of it?

18 MR. CHANDRA: Expand it a little
19 bit, please.

20 Q This is an e-mail from Letitia Linker to you
21 and it's cc'd to Mayor Togliatti. I'm sorry.
22 It's an e-mail to you and to Chief Kilbane,
23 cc'd to Mayor Togliatti, dated March 28, 2019,
24 3:52 p.m. regarding Lieutenant Mazzola,
25 correct?

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October 20, 2020

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1 A Based upon his discussion with Lieutenant
2 Mazzola, he, Lieutenant Mazzola, decided to
3 retire, yes.

4 Q Okay. And you don't believe that the, "Based
5 upon that discussion" is a reference to your
6 discussion with Bob?

7 A No, I don't after listening to Bob's testimony.
8 I don't believe he even said he discussed it
9 with him, but I don't know what Bob spoke to
10 his client. We would have to refer to his
11 testimony.

12 Q All right. Let's look at -- you also wrote,
13 "I still need to send Bob the e-mail below as
14 he wants to share the information with
15 Lieutenant Mazzola to support their discussion
16 and his decision to retire." Correct?

17 A Yes. That's generally because I did ask him
18 like, "Bob, if he decided to retire, why would
19 you still need those bullet points?" He said,
20 "Well, you know, I would like to have them to
21 discuss them with Lieutenant Mazzola."

22 Q Okay.

23 A Which this turned out not to be accurate.

24 Q Well, again, this is what Bob Phillips told
25 you, correct?

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October 20, 2020

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1 A At the time, yes, generally.

2 Q And Bob asked you for an e-mail explaining what
3 disciplinary charges the City intended to
4 pursue against Lieutenant Mazzola to support
5 their discussion, correct?

6 A Bob asked me for support of whatever discipline
7 action the City may pursue against Lieutenant
8 Mazzola and that's the reason for the bullet
9 points, yes.

10 Q Now, to support their discussion, meaning
11 support the discussion he was having with
12 Lieutenant Mazzola, correct? That's what you
13 reflected he said, correct?

14 A Yeah. Yep, I guess.

15 Q Okay. Now, Bob had asked you for communication
16 by the City that Lieutenant Mazzola is retiring
17 and that we wish him well, right?

18 A That's what it says, yes.

19 Q All right. Let's jump to Exhibit 26, and this
20 is an e-mail --

21 MR. CHANDRA: Zoom in it, please.

22 Q You ask Chief Kilbane, Letitia Linker,
23 Maggie Osysko and Anthony Togliatti to have a
24 call about Lieutenant Mazzola's retirement on
25 the morning of Friday, March 29, 2019, correct?

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1 cc to Mayor Togliatti, correct?

2 A Yes.

3 Q And the subject is, "Robert Phillips."

4 Correct?

5 A Yes.

6 Q And the e-mail reads, "Message delivered to
7 Bob. He will mention it to Lenny about going
8 quietly into the night." Correct?

9 A Yes.

10 Q And what message did you deliver to Bob about
11 Lenny going quietly into the night?

12 A I communicated to Bob there was a concern that
13 Lenny would actively -- after his retirement
14 actively go out of his way to contact police
15 officers to disrupt the organization and
16 procedures of the City. And what he does as a
17 private citizen is fine, but wanted to make
18 sure that he didn't actively try to have the
19 officers in the police department, you know,
20 cause a ruckus. That was the concern there.

21 It was a 15-second phone call with Bob.
22 Bob said he's not going to do that. He's going
23 to go retire.

24 Q Let's take a look at Exhibit 6, Plaintiff's
25 Exhibit 6 from your original deposition. And

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1 Q And so you were there listening as both a named
2 Defendant as the Law Director of the City of
3 Independence, correct?

4 A Yes.

5 Q All right. Now, Mr. McLandrich was asking you
6 questions about the retirement.

7 Who decided to place the time restriction
8 of 5:00 p.m. on Friday on the retirement?

9 MR. STRANG: Objection.

10 A I don't remember a specific, you know, ultimate
11 deadline. I do remember a conversation with
12 Bob and I, like, "Bob, if he's decided to
13 retire, let's get that communication over to
14 the city. I think that's appropriate."

15 Q So you gave him a 5:00 p.m. deadline, right?

16 A Well, it was the end of the month. You know,
17 just naturally --

18 Q Is the answer yes?

19 A Yes.

20 Q Now I'm going to quote from you, and I'm just
21 going to ask you to accept my representation
22 given the time limitations here, from Mayor
23 Togliatti's deposition and I may have questions
24 for you. All right?

25 The first quote. This is from Mayor

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October 20, 2020

1 THE STATE OF OHIO,) SS:
2 COUNTY OF CUYAHOGA.)

3 I, Aimee N. Szinte, a Notary Public within and
4 for the State of Ohio, duly commissioned and
5 qualified, do hereby certify that GREGORY O'BRIEN
6 was first duly sworn to testify the truth, the
7 whole truth and nothing but the truth in the cause
8 aforesaid; that the testimony then given by him was
9 by me reduced to stenotypy in the presence of said
10 witness, afterwards transcribed on a
11 computer/printer, and that the foregoing is a true
12 and correct transcript of the testimony so given by
13 him as aforesaid.

14 I do further certify that this deposition
15 was taken at the time and place in the foregoing
16 caption specified, that I am not a relative,
17 counsel or attorney of either party, or otherwise
18 interested in the events of this action.

19 IN WITNESS WHEREOF, I have hereunto set my
20 hand and affixed my seal of office at Cleveland,
21 Ohio, on this 22nd day of October, 2020.
22

23 *Aimee Szinte*



24 Aimee N. Szinte, Notary Public
25 within and for the State of Ohio
My Commission expires July 15, 2023.

CADY REPORTING SERVICES, INC.

Message

From: O'Brien, Gregory J. [gobrien@taftlaw.com]
Sent: 3/25/2019 2:41:59 PM
To: Michael Kilbane [/o=First Organization/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=kilbanem]
CC: Letitia Linker [/o=First Organization/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbf42ee5c35d4b09ba2f9364ad3b3203-Letit]; Anthony Togliatti [/o=First Organization/ou=First Administrative Group/cn=Recipients/cn=togliattia]
Subject: Telephone Conference with Robert Phillips

Chief,

I spoke with Bob Phillips and below is a recap (in general) of our discussion which was pleasant.

We discussed the areas that a pre-disciplinary hearing would cover: (1) circumventing the chain of command, (2) overt disregard for directives of a superior officer; and (3) lying/dishonesty. On the lying/dishonesty, Bob kept reverting back to the fact that all the incidents of dishonesty are "internal" (assuming them to be true). I explained I do not appreciate the difference between an "internal" versus "external" statement of dishonesty. If a person lies to their employer as a police officer it should not matter what context the lie was made. Bob said the City would never get an arbitrator to agree to a termination of an officer with 26 years of service. I informed Bob the City would not be seeking his termination and provided that we would demote Lenny to patrol officer. I think Bob understood the City's position and strategy. We discussed the viable alternative of Lenny retiring at his current grade without Bill Evans report being created.

We discussed generally an arbitration that included, in part, dishonesty disqualifiers. Bob is taking the position that a "Brady Disqualifier" only occurs when there has been adjudication of the officer's deception. I reminded Bob that would include an arbitration in my opinion. I informed Bob that the City would be left with whether Lenny could serve as a police officer if he was disqualified as a witness because of dishonesty. Bob stated as a Lieutenant, Lenny would never be called to testify in any cases. I disagreed with that position. Also, he stated that Prosecutor O'Malley has recalled his letter directing all police departments to submit names of police officers who have been deemed dishonest. I told Bob if, after an arbitration, it was found that Lenny could not serve as a witness than at that point the City may take the position he cannot serve an essential function of his position which could affect Lenny's employment.

Bob kept on saying that in Lenny's mind this all boils down to Lenny being accused of leaking to the press an ineffective policy. Bob believes that is what he is dealing with up to this point unless he can get specifics to review and discuss with Lenny. I informed Bob that regardless of what Lenny may believe on a policy, it is his duty to implement a policy that City has

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decided to pursue and it is Lenny's actions (the three areas of the pre-disciplinary conference above) that is the reason for Lenny's current position.

Bob asked that I provide him "bullet points" of the possible charges so that he can sit down with Lenny. I informed Bob that I may not be able to provide those to him if that in some way the bullet points would limit the City with its actual charges against Lenny and evidence should the matter proceed to arbitration. I told him that I would call him back after speaking with you.

Greg
Taft /

Gregory J. O'Brien / Partner
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To: Greg O'Brien[gobrien@taftlaw.com]; Michael Kilbane[kilbanem@independenceohio.org]
From: Letitia Linker
Sent: Wed 03/27/2019 12:25:38 PM UTC
Subject: hearing notice
Received: Wed 03/27/2019 12:25:39 PM UTC
[Mazzola pre-d.docx](#)

Here is something to consider.

Letitia Linker
Human Resources Director, City of Independence
6800 Brecksville Road, Independence, OH 44131
216.524.4131 x 2240

CELEBRATE / FIND / DISCOVER / EXPLORE
your INDEPENDENCE

A pre-disciplinary conference was held on September 4, 2018, which included charges under:

GENERAL ORDER: 502 Uniform Standards of Conduct

12. Displaying Competent Performance and Achieving Competent Performance Results.

16. Insubordination

17. Knowing, Observing, and Obeying All Directives, Rules, Policies, Procedures, Practices and Traditions

The Chief issued the disposition on September 18, 2018, to Lt. Mazzola and Bob Phillips. No grievance was filed, making the disposition and the matters discussed therein final. The disposition documents specific expectations and requirements, and states that disciplinary action was held in abeyance, provided that Lt. Mazzola continued to monitor and maintain productivity, performance and professionalism.

The final paragraph of the disposition states:

“You are a valued member of my management team within the police department, and as such you are expected to support and positively advance the goals and standards that are set. While I certainly do not expect the members of my management staff to agree with every decision I make, after appropriate conversation, you are obligated to carry out those decisions in a positive professional manner.”

As the result of Lt. Mazzola’s performance and actions, a pre-disciplinary conference is scheduled for _____ . The meeting will address charges under:

GENERAL ORDER: 502 Uniform Standards of Conduct

11. Dishonesty or Untruthfulness

12. Displaying Competent Performance and Achieving Competent Performance Results.

16. Insubordination

17. Knowing, Observing, and Obeying All Directives, Rules, Policies, Procedures, Practices and Traditions

GENERAL ORDER: 601: Records Security and Privacy

GENERAL ORDER: 108: Media Relations

At issue is Lt. Mazzola’s repeated failure to follow department regulations as well as orders and direction of the Chief, including but not limited to: creating and implementing performance standards inconsistent with the Chief’s directive and without his knowledge or approval; communicating police operational matters not known to the Chief with City officials and department staff; violating order regarding communication of police matters; dishonesty while participating in an investigation conducted by a third party as evidenced by failure of a polygraph; and failure to follow operational directives.

Message

From: Letitia Linker [/O=FIRST ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=FBF42EE5C35D4B09BA2F9364AD3B3203-LETIT]
Sent: 3/28/2019 3:42:43 PM
To: Greg O'Brien [/o=First Organization/ou=First Administrative Group/cn=Recipients/cn=GregO'Brien]; Michael Kilbane [/o=First Organization/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=kilbanem]
CC: Anthony Togliatti [/o=First Organization/ou=First Administrative Group/cn=Recipients/cn=togliattia]
Subject: RE: Lt. Mazzola

Thank you - I think this is a good resolution.

Administratively....it's important to get this documented and signed quickly, and I support the notes regarding terms of the separation so far. Our benefits terminate at the end of the month, so if the termination date were April 1, for example, coverage extends through April 30. Options for last day worked depend on risk to the organization of the employee being onsite, including access to information and potential for disruption. He may appreciate being removed of his responsibility fairly quickly, as he will have to explain his decision to a lot of people a lot of times if he's present. Best option is for him to take vacation or accrued time through April 1 to give him the month of benefits – he's been calling off the last few days so this seems workable. I don't think taking sick time is a good option unless medical documentation is received.

In the terms, it think it would be prudent to explicitly address what city information he can take with him, access or copy, including "the binder." It would be nice if he received guidance from you and/or Bob with regard to how he describes his decision and what he shares, and notice that If disruption occurs we will address it. If he would like to craft an announcement, we could assist with communication across the organization to take the edge off those conversations.

We also will need to receive notice from OP&F that he has retired to substantiate the payouts. Payouts will be made pursuant to the CBA, and Maggie is the contact there for details.

Thanks again.

Letitia Linker
Human Resources Director, City of Independence
6800 Brecksville Road, Independence, OH 44131
216.524.4131 x 2240

CELEBRATE / FIND / DISCOVER / EXPLORE
yourINDEPENDENCE

From: O'Brien, Gregory J. [mailto:gobrien@taftlaw.com]
Sent: Thursday, March 28, 2019 9:29 AM
To: Michael Kilbane
Cc: Anthony Togliatti; Letitia Linker
Subject: RE: Lt. Mazzola
Importance: High

Chief:

After I hit "sent" to the email below, I subsequently received a call from Bob Phillips. Bob explained that he took good notes from our previous discussion and met with Lt. Mazzola. Based upon that discussion, Bob informed me that Lt. Mazzola has decided to retire. I still need to send Bob the email below as he wants share the information with Lt. Mazzola to support their discussion and his decision to retire. Lt. Mazzola and Bob request

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that the written resolution and finalizing of Lt. Mazzola's retirement be handled by me personally. I told Bob I would handle it. We still need to finalize all "terms" but some of them discussed are as follows:

- Lt. Mazzola needs up to 30 days to transition on to his wife's health care. He would be willing to come into the office, or can use sick leave or other leave he has accrued. That will be your decision; and
- Lt. Mazzola will receive all accrued, but unpaid benefits, he is entitled to under the CBA and/or City policy at Lt. rank;
- Communication by the City that Lt. Mazzola is retiring and that we wish him well. Also, (and this is something that I believe is important) is a retirement presentation by City Council and the Mayor along the lines we have done in the past for other retiring police officers. This will allow him to leave the City with his "head held high" and allow his family the opportunity, should they so choose, to participate. I think it would be good for the other officers in the department to see how Lt. Mazzola is treated by the City despite the recent past issues.

I would like to get the "bullet points" over to Bob so he can share with Lt. Mazzola while this matter is still at the forefront of everyone's mind.

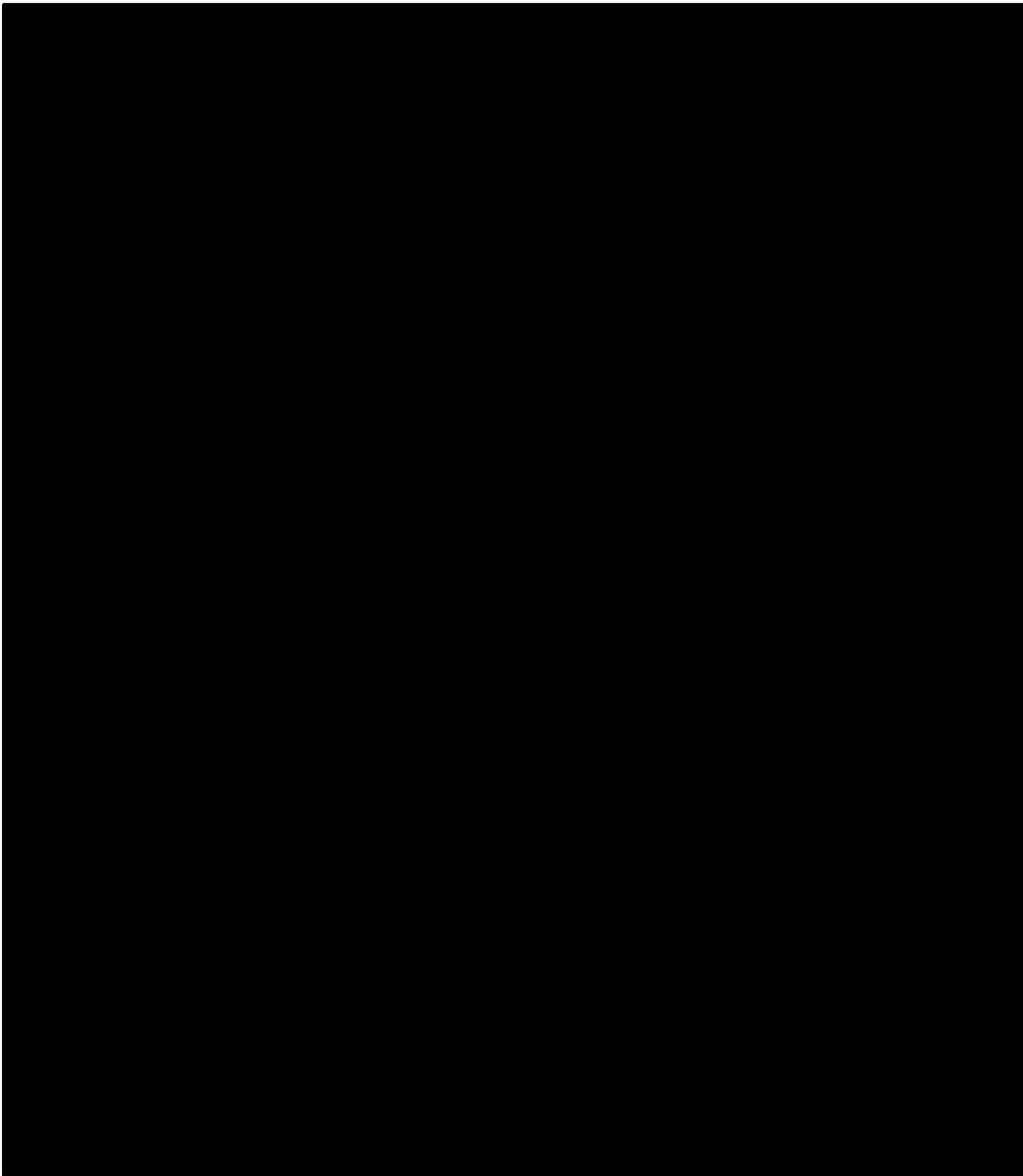
Greg

Taft /

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Message

From: O'Brien, Gregory J. [gobrien@taftlaw.com]
Sent: 3/29/2019 7:19:25 PM
To: Michael Kilbane [/o=First Organization/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=kilbanem]; Letitia Linker [/o=First Organization/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fbf42ee5c35d4b09ba2f9364ad3b3203-Letit]
CC: Anthony Togliatti [/o=First Organization/ou=First Administrative Group/cn=Recipients/cn=togliattia]
Subject: Robert Phillips

Message delivered to Bob. He will mention it to Lenny about going quietly into the night.

Taft /

Gregory J. O'Brien / Partner
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O'Brien, Gregory J.

From: O'Brien, Gregory J.
Sent: Thursday, March 28, 2019 11:57 AM
To: Phillips@fhplaw.com
Subject: Lt. Mazzola

Bob,

Prior to our telephone call today informing me Lt. Mazzola has decided to retire at his current rank and benefits, you requested some detail of the allegations the City intended to bring against Lt. Mazzola prior to the commencement of formal proceedings by the City. In this regard, the City intended on pursuing disciplinary action against Lt. Mazzola for the following:

- **Dishonesty**
 - Lying during a formal internal investigation on the unauthorized dissemination of departmental documents;
 - Lying as to whether he discussed the internal investigation with another city employee despite and contrary to an order by his superior not to do so; and
 - Lying to the Mayor regarding performance measurement standards allegedly approved by the Chief.

- **Insubordination**
 - Intentionally ignoring a previous departmental order, ten (10) incidents of usurping his superiors to directly communicate with City officials and employees regarding departmental staffing, training, and policies and procedures.

- **Unauthorized Release of internal personnel files and investigations/Unauthorized copying of police department records.**
 - The release of departmental documents outside of the police department; and
 - Unauthorized copying and retention for personal use of departmental documents.

Based upon our phone call today, please provide me with Lt. Mazzola's items of concern regarding retirement and, assuming the City is in agreement or once we can mutually agree to those items of concern, we can memorialize them in a separation agreement. I would appreciate finalizing any agreement with you by the end of next week. Thank you for your assistance in this matter as I think this is a beneficial resolution for Lt. Mazzola and the City.

Regards,

