

MINUTES

SPECIAL MEETING OF THE HUMAN RESOURCES BOARD
TUESDAY, JULY 18, 2017, 5:30 P.M.
22 S. BEACH STREET, ORMOND BEACH, FLORIDA 32174

Those present were: Mr. Ryan Ochipa, HR Board Chair; Mr. Matt Coleman, HR Board Vice Chair; Mr. Jeffrey Berman, HR Board Member; Ms. Linda Bradley, HR Board Member; Mr. Clark Rohmer, HR Board Member; Ms. Claire Whitley, Human Resources Director; Ms. Heather Kidd, HR Generalist; Ms. Quinn Wichlei, HR Generalist and Recording Secretary; Ms. Ann-Margret Emery, Deputy City Attorney; Mr. Mark Levitt, Outside Counsel for City; Ms. Juanita Garza, Police Records Clerk and Appellant; Ms. Sandra Michaels, NAGE Counsel for Ms. Juanita Garza; Mr. Joey Acuff, NAGE Representative for Ms. Juanita Garza; Police Chief Jesse Godfrey; Police Captain Chris Roos; Police Lieutenant Jim Doggett; Police Sergeant Tom Elkins; and Police Officer Dan Piccola.

The meeting was called to order at 5:35 PM.

A quorum was established.

The minutes from the May 9, 2017 meeting were approved.

All potential witnesses were sworn in as a group. This group included Police Chief Jesse Godfrey; Police Lieutenant Jim Doggett; Police Sergeant Tom Elkins; and Police Officer Dan Piccola. All potential witnesses were sequestered outside the room unless or until called to the witness stand, with the exception of Police Chief Jesse Godfrey, who remained in the room as a representative for the City.

Mr. Levitt reminded everyone that the entire meeting would be audiotaped.

Following is a partially paraphrased summary of the hearing.

Ms. Michaels: Good evening. I'm Sandra Michaels. I'm Of Counsel to the National Association of Government Employees, NAGE, union. And I represent Ms. Juanita Garza, who is a 20-plus-year Records department employee with the Ormond Beach Police Department. She works in the Records department, meaning she's not a sworn officer. The reason why we're here is because she received a three-day suspension for not being polite, or being rude, to a fellow co-worker, who is Officer Dan Piccola.

The evidence is going to be that Officer Piccola has been with the department for 10 years and has known Ms. Garza for the entire 10 years he's been there. And they go way back and are considered friends. They socialize outside of work. They socialize in work. They have a bantering relationship. And if any of you are familiar with law enforcement departments, you will know that often times, there's a lot of back and forth between employees, joshing and ribbing and that sort of thing. And Ms. Garza is a veteran employee. She's not a cupcake, and she can give as good as she gets, and so can Officer Piccola. And it ranges from teasing each

other about work quality or work duties. Officer Piccola has been known to say things about Ms. Garza's Mexican heritage. But they move on. They go on. They squabble.

And you're going to hear from Sergeant Elkins who was their supervisor, and has been Ms. Garza's supervisor for the last year, that that is the way they deal with each other in the department, that it's the atmosphere of the department. The other employee in the Records department is Ms. Stefanie Henson, and she has been there for three years. Officer Piccola just happens to be in the Records department because he's on light duty. He cannot perform as a law enforcement officer at this moment because of an injury. And so since he already knew Ms. Garza, he's been-- he was in the department I think about -- I think he said December, some time at the end of December, beginning of January. On December 27th, the two claims that they're lodging against Ms. Garza are related to conversations she had with Officer Piccola.

Our contention is that they have a long-standing relationship, and that Officer Piccola did not take offense to anything she said. In fact, Officer Piccola told Sergeant Gaden he did not take offense, told Sergeant Elkins that he did not take offense, and did not want anything to happen. The main thing he wanted was to get out of Records. It was "not fun." He said Ms. Garza sometimes has a sharp tongue, sometimes she, I want to make sure I'm using his correct words, she has ups, she has downs. She gets frustrated at work. She gets frustrated at her workload, but he never takes it personally.

Officer Piccola, and I'm saying this, the reason why I know what they say is, you all probably already know this, but Investigator Doggett interviewed all the parties involved and taped all of the interviews, and as you know with law enforcement officers, when they're interviewed by Internal Affairs, they have to sign documents to say that they know they're being interviewed and that if anything they say is not truthful, they could be held on untruthful charges and charged with perjury. So each one of the witnesses gave a statement, recorded, and signed that they were under oath, these are under oath, and gave a statement that they were going to tell the truth because they understood the penalty if they didn't. So all that's documented.

So the two incidents involve Ms. Garza, Officer Piccola, and tangentially, Ms. Henson, because somehow she gets into the mix. Because I will tell you that as an outsider, and no offense to Ms. Garza, a lot of this seems very high school-ish. A lot of high school-ish type she said - he said. You're mad at me. I'm mad at you. Don't talk to me. You don't talk to me. I'm not going to go out to lunch with you later. It's very high school-ish, but it's not funny because Ms. Garza got a three-day suspension over something that's been going on in the department for years, and that is our objection to her receiving the three-day suspension. Because under your rules, section five, the rules of

the procedures is it has to be appropriate under the circumstances. And the circumstances, in this case, is a long-standing relationship between Officer Piccola and Ms. Garza, and they give each other a hard time, and they tease each other, but it does not rise to the level of being rude, or obnoxious, or any of the things that she is charged with.

What brought this to a head -- and it's still not clear why this became a suspension -- but the evidence is that Officer Piccola was talking to his new supervisor, which was Sergeant Gaden, and said, "Hey, I got to get out of Records. I can't take it here anymore. Juanita's driving me crazy. I don't want to be in Records." That was in January. In December, he said the same thing to the then-supervisor, which was Sergeant Elkins, and says, "I don't want to be in Records. It's no fun. I don't want to be in here." And Sergeant Elkins says, "I can't move you. I mean, you've got to be here for right now. You're on light duty. I can't move you."

So, again, a little high school-ish, but apparently there was a going-away party for another officer, Officer Wilson, and Ms. Garza was not invited. She found out about it, and the next day, January 26th, Officer Piccola comes into the office, and she calls him a "low-life, two-legged rat." "You didn't include me in the party? Why not?" And you'll hear that Officer Piccola thought she was too old to go party with the younger officers. Why would she want to go party with people his age when she should be partying not with people his age? That she probably didn't want to go out at night, and that's why they didn't invite her. Well, she's upset. And that ends it for them, but later he contacts Ms. Henson, the third person in the office, and says, "Heads up. Juanita's mad at us because we went to this party without her." So Ms. Henson's like, "Oh, okay. Thanks for letting me know." And later, Ms. Henson and Ms. Garza have a discussion not at the office, off office. A text between the two of them, like, "What's going on? Are you mad at me? Why did you do this?" Ms. Garza's like, "I don't want to talk about it in a text. Let's talk in person so we can resolve this." And you will hear from Sergeant Elkins that that's the nature of this office -- this back-and-forth stuff. She and Ms. Henson resolve it, but meanwhile, I'm sorry but these are the facts, meanwhile, Ms. Henson has texted to, and I don't know why, to Officer Piccola a bunch of additional texts that she and Ms. Garza had which were not particularly flattering to Officer Piccola. For some reason, Ms. Henson shared them with Officer Piccola, which just was fire in the flames or oil in the fire, you know what I mean. So that raised it up to another level.

At this point, all those texts go to Sergeant Gaden, who turns them over to the Captain. The Captain orders the internal investigation. The internal investigation occurs, and the people that are interviewed are Ms. Henson, Sergeant Elkins, because he was the supervisor for the longer period of time,

Sergeant Gaden, who's the supervisor just for like four weeks at that point, and of course, Officer Piccola, all recorded.

And you will learn that repeatedly over and over again, Officer Piccola says, "I don't want to cause her any trouble. She's my friend. She's been good to me here in the Records. She's like my family. She comes to my family events, birthdays, that sort of thing. I'm not trying to cause her any trouble. I just want to get out of Records." And, lo and behold, here we are sitting here today. She gets a three-day suspension for talking to him like she talks to him all the other time. Is a three-day suspension appropriate under these circumstances? No. What would be appropriate would be to say, "Ms. Garza, you and Officer Piccola no longer have that kind of relationship here anymore. Talk how you want outside of the workplace, but no longer talk to each other at the workplace other than business." That would be an appropriate way to do it. Since it's been going on for so long, why do you start out with suspending her for something she's done for a very long time?

My first witness was going to be Ms. Henson. Ms. Henson is the woman with the three years at the department, the one Officer Piccola gave the heads-up. But Ms. Henson refused to come as a witness because she was frightened for her job, even though I interviewed her and she asked me to call her afterwards, and she agreed to come be a witness on behalf of Ms. Garza. Unfortunately, rightly or wrongly, after being interviewed by Counsel for the City [Mr. Levitt] and the HR Director [Ms. Whitley], she became frightened and didn't want to come anymore. So I am prepared, and I've let them know that I asked her to come. I let her know that she would not be retaliated against for appearing tonight. I asked her to call Ms. Whitley to confirm that she would not be in trouble for coming. She refused to come, and as you know, I have no subpoena power over her. I can't make her be here. But what I do have, and I will put in, is our exhibit one. I guess I'll call it appellant's exhibit one.

Ms. Emery: Do you intend to play this [CD]?

Ms. Michaels: I do. It's very short.

Ms. Emery: Do you know if she was asked to come or if she refused to come? Do you know? Ms. Henson.

Mr. Levitt: Well, first of all, I wasn't going to interrupt, but I will.

Ms. Michaels: If I can just finish though, I actually do have all the e-mails in which she said she would talk to me and then said she wouldn't come. So I actually have those as exhibits too, if you really want me to go that far. But I do have exhibits in which she claims she's not coming because she was worried about her job and I have it in writing.

Mr. Levitt: First of all, I'm going to object and I can't strike it from the record. This is totally inappropriate. We have done nothing to inhibit her. There is no right to subpoena. They asked her to come. She chose not to come. We don't know why.

She's expressed that she's afraid of retaliation. Ms. Whitley wrote and told Ms. Michaels to tell her there's no reason to fear retaliation. Nothing's going to happen. It's up to you whether you come or not. So her representing that she's in fear of retaliation is absolutely inappropriate. Must not be considered. It's tainting, really, the City to think we've done something. The Chief's done nothing. HR's done nothing. I've done nothing as Counsel and the City's done nothing. What her fears are, I couldn't tell you. She has protection under law. She has protection under City rules. She could come and she is free of harassment and any retaliation. We don't know why she didn't come. Maybe she didn't want to come because she didn't want to sit in front of Ms. Garza and tell the truth as to all the horrible things she does in the workplace. So we don't know why.

Ms. Michaels: Very inappropriate, Mr. Levitt.

Mr. Levitt: We don't know why she's not here and you can't continue.

Ms. Emery: How long is this [CD]?

Ms. Michaels: 10 minutes.

Mr. Levitt: First of all, there's a transcript. You have the transcript, so why don't you just put in the transcripts?

Ms. Michaels: I don't have a transcript. If you have one and like to provide one, that'd be great. I have no problem with that. I don't have a transcript.

Mr. Ochipa: I don't know the fact of why she didn't come is even material to anything that we're here for, so I'm not really concerned about that.

Ms. Michaels: It's only material because I normally wouldn't play the sworn testimony of a witness if the witness was going to be here. And as I said in the beginning, I can't say why, rightly or wrongly, that's the way she feels.

Mr. Ochipa: So is this tape telling us her version of what happened, or is it just telling us why she didn't want to come?

Ms. Michaels: No, it's the interview. I have nothing to do with this tape. It is the interview of her by the Investigator, Doggett. It's the sworn testimony. I reference it. Here's the documents which she signs that she would tell the truth. And if I had a transcript, I would put it in, but I don't have a transcript.

Mr. Coleman: But your comments that she was worried for her job -- is that your opinion or her words?

Ms. Michaels: Those are her words, and I have it in writing.

Mr. Coleman: Sworn or just in writing?

Ms. Michaels: It's just in writing. This is sworn.

Mr. Coleman: On that she did not make it.

Ms. Michaels: No, that's her investigation. That's the only thing. And the minute she advised that she wouldn't come I immediately contacted Ms. Whitley.

Mr. Levitt: Who immediately assured everyone that she will not be subject to retaliation.

Mr. Berman: The statement you want to play, that was given under oath?

Ms. Michaels: Yes.

Mr. Berman: And either party, presumably neither party has subpoena power here, so she has the ability to decide whether or not she comes. Is that what correct?

Mr. Levitt: Correct.

Ms. Emery: It's up to you if you want to hear [the CD].

Mr. Ochipa: At this point, I'm not even sure what happened, to be honest with you. I would say let's put it on hold, and if I'd like to hear it towards the end I'll ask for it, if pieces aren't falling together. But right now I don't know that there's a need to hear another version of what you just told us.

Ms. Michaels: Oh, it's actually her interview with the investigator of the case. So it's not words out of my mouth, it's words out of her mouth. It's nothing to do why she's not here. It's part of the investigation.

Mr. Ochipa: So are you done with giving your client's version of what happened or-- I mean, are we moving on to the witnesses?

Ms. Michaels: Yes. That would have been my first witness. So I was going to play just her short interview since she can't be here.

Mr. Ochipa: Can we ask you a couple questions about-- do you all have any questions? Because I have a question right away. I guess I'd like to know, in your client's mind, what triggered this? Because it sounds, from the story that you said, that this has been a long going way that they tease each other. So what was the trigger that caused her to be suspended? Exactly what happened that got her employer mad at her? Was it just that this has been going on for too

long and we need to put an end to it? Or did something specifically happen that somebody heard and said, "Hey, you can't talk like that to the officer?"

Ms. Michaels: The trigger was Officer Piccola complaining to his new supervisor, Sergeant Gaden, about he didn't want to be in Records anymore because Ms. Garza was "crazy" or driving him crazy, driving him-- because of her mouth. And that's on the tape.

Mr. Ochipa: So that caused her supervisor to come to her and say there was a complaint against you?

Ms. Michaels: Well, and then Sergeant Gaden then says, "Well, then we need to investigate this if that's it." And that was one facet of it. But when they got Ms. Henson involved, she transferred a bunch of texts between her and Ms. Garza to Officer Piccola, and that raised the bar another level, even though it was between the two of them and had nothing to do with Officer Piccola.

Mr. Ochipa: Okay. So then the employer said enough's enough at that point?

Ms. Michaels: Then they opened an internal investigation in which each of those people I just mentioned were interviewed under oath on tape. And then at the end of those interviews, they made a recommendation that Ms. Garza receive a three-day suspension. And then the Chief approved the three-day suspension. And while factually I'm not arguing that Ms. Garza didn't say that two-legged rat comment to Officer Piccola, it was part and parcel of their ongoing nip, nip, nip, or to use Sergeant Elkins' words, their back-and-forth bickering that they always engage in. And that is the reason why we're arguing that the three-day suspension is not appropriate.

And the reason why I feel it's important that you listen to Ms. Henson because she is not Officer Piccola, she is not Ms. Garza, and she will confirm, "Oh yeah, they go back and forth. They're a long-time family. They talk all the time. This is the way they always are. This was nothing unusual." And then you will hear from Ms. Henson on the tape, Officer Piccola on the tape, if you ever listen to it, although he's called here today, and from Sergeant Elkins, who was their supervisor that, "Yeah. This is what goes on all the time. Nobody's complained before. They haven't complained to me before.

The only thing I know is that Piccola wants to get out of Records. But no one's complained about-- Piccola's never complained to me about her before. Ms. Henson doesn't complain about it before. They basically go fight, and then have lunch together, and the next day's a new day. And that's my point. But the reason why this tape of Ms. Henson is important is because she is-- there's three people involved in this situation and she would be-- I would think that you would want to hear. It's not very long. And I do wish I had a transcript. It sounds like he does. So...

Ms. Emery: Do you have other recordings?

Ms. Michaels: No, that was it.

Ms. Emery: Okay. That was it?

Ms. Michaels: That's was it. But I've given you this because this is the disk, the actual disk given by the Investigator. This is the actual one. I didn't recreate this. It was given.

Mr. Coleman: In the predetermination conference, you listed-- or two of the items for your defense, one was the City was taking retaliatory nature, which I can see, people say that all the time. Also violated her civil rights. I'm confused. How did it violate her civil rights? It's stated in their representative of she did not speak at the predetermination conference, but stated that the City was violating her civil rights.

Ms. Michaels: Okay. First, I was not there.

Mr. Coleman: Okay.

Ms. Michaels: So...

Mr. Coleman: So you were not her representative at that time?

Ms. Michaels: No, I mean I think it was a local representative. I'm not raising those issues.

Mr. Coleman: Okay. That's what I was wondering -- why it came up but then it's not coming up now.

Ms. Michaels: I'm not raising retaliation or violation of civil rights.

Mr. Coleman: I know. Well, that's why I was wondering is that you're saying there are things that were said then that aren't being brought up now. I was wondering...

Ms. Michaels: Our only argument is based on the long-standing nature of the relationship and no complaints by Officer Piccola before, the three days is not reasonable. You need to set the line in the sand, just go, "You guys aren't going to talk like that anymore." But don't start with a three-day suspension. That's purely what I'm arguing.

Mr. Ochipa: I thought that there was a previous discussion that her employers had with her at least telling her to correct her actions.

Ms. Michaels: Right. There was one regarding a citizen complaint and one regarding an e-mail she sent to a supervisor. That's not Officer Piccola.

Mr. Rohmer: So that's not part of all this?

Ms. Michaels: No.

Mr. Rohmer: Well, why is it in this thing from the Chief?

Ms. Michaels: I guess he used...

Ms. Emery: We'll have a chance to clarify.

Mr. Levitt: I guess I'm confused on process. Is that their whole case and now they're asking questions, or are there going to be witnesses? Because it's sort of like a puzzle, like in my jury openings. These things come in pieces.

Ms. Emery: From what I understand, she's wrapping up...

Ms. Michaels: No I'm not wrapping up.

Mr. Ochipa: Well, what witnesses do you want to call?

Ms. Michaels: I was just going to call Sergeant Elkins, who's here.

Mr. Ochipa: Okay. So you want us to listen to the CD?

Ms. Michaels: Yes.

Mr. Ochipa: --and you want to call Sergeant Elkins?

Ms. Michaels: Yes. Thank you. And then I have-- the only reason why I'm offering this document is to show that she signed and that she was under oath and understood that she was facing penalty perjury. So you know that that's a sworn oath statement.

Mr. Levitt: We'll stipulate to that. There's no question, and it's on the tape as well, that the beginning of every interview, she's advised that she's giving a sworn statement, and she's sworn on the tape. There's no way she's unaware that it was a sworn statement.

Ms. Michaels: Okay. I just did it out of an abundance of caution.

Mr. Ochipa: Fair enough.

Ms. Michaels: And then the other documents, I would go ahead and put in before I would play the tape is a copy because the Chief cites Ms. Garza's previous evaluations. If I could just pass them to you. Those are the last three evaluations of Ms. Garza, and, overall, she has great evaluations. And we do concede that there was, as the Chief cites in his upholding the three-day suspension, that there was improvement needed in the last two years on interpersonal communication and customer service. So just look at this, but it's also you can take the whole performance evaluation, in effect, not just that one part because in 2014, 2015, Ms. Garza received a highly effective overall performance rating. 2015 to 2016, she received a successful and

effective overall performance rating. And then the third one, 2016 to 2017, which encompasses the time period we're talking about right now, she again receives a successful and effective overall performance evaluation. So I think instead of cherry-picking certain parts of the evaluation, it's important for you to review the last three years-- her entire evaluation.

Mr. Levitt: Is that going to be exhibit two, marked like two [inaudible]? I guess you can put one in. You want to mark this two or...

Ms. Michaels: Sure. I'm sorry. You're right. I should have done that. That would be appellant's exhibit two. Sorry about that. I forgot to mark it.

Ms. Emery: Do you want to call the officer?

Ms. Michaels: Sure.

Ms. Michaels: Good evening, Sergeant Elkins. Can you state your full name, please?

Sgt. Elkins: Sure. Sergeant Thomas Elkins.

Ms. Michaels: And Sergeant Elkins, how are you employed?

Sgt. Elkins: I'm the Criminal Investigation Sergeant with the City of Ormond Beach Police Department.

Ms. Michaels: And how long have you been in that position?

Sgt. Elkins: In this position?

Ms. Michaels: Yes, sir.

Sgt. Elkins: Since this past January, 2017.

Ms. Michaels: Okay. And bringing your attention to December of 2016, what was your title?

Sgt. Elkins: I was the Administrative Sergeant.

Ms. Michaels: Okay. And were you supervisor over Ms. Garza?

Sgt. Elkins: I was.

Ms. Michaels: And how about Ms. Henson?

Sgt. Elkins: Yes, I was.

Ms. Michaels: Okay. And how long have you known Ms. Garza?

Sgt. Elkins: I started here November 1st of 1999, so 18 years.

Ms. Michaels: Okay. And how long have you known, or do you know Officer Piccola?

Sgt. Elkins: 10 years. However long Officer Piccola's been here. Might be less than 10 years.

Ms. Michaels: I think it is 10 years, yes. And Ms. Henson, how long has she been with the department?

Sgt. Elkins: Two and a half, three years.

Ms. Michaels: And at the time of your supervision of Ms. Garza, was that in the Records department?

Sgt. Elkins: Yes.

Ms. Michaels: And was Ms. Henson also in the Records department?

Sgt. Elkins: Yes.

Ms. Michaels: And how about Officer Piccola?

Sgt. Elkins: He was in Records, light duty, working for me.

Ms. Michaels: Okay. And when we say light duty, is that because he was not able to work as a law enforcement officer on regular duty?

Sgt. Elkins: Correct. He was out on workers' compensation, so he was on restricted duty.

Ms. Michaels: Okay. Now, I understand your familiarity with this event. And just in the interest of time, I'd like to bring your attention to December. Was there an issue involving Officer Piccola and Ms. Garza over his knowledge of subpoenas?

Sgt. Elkins: Yes.

Ms. Michaels: And what was that?

Sgt. Elkins: I was typing a report at my desk, and a person from the sheriff's office came in and delivered the subpoenas. They dropped off subpoenas pretty much every day or every other day. And I remember Officer Piccola taking the subpoenas wanting to hand them to Ms. Garza, and her kind of just tossing them to the side. And Officer Piccola's take on it was, "Well, I'm not allowed to deal with the subpoena book, so you do what you want with them." During my IA interview there was a question of what was said after that. Don't quote me on what was said, but there was something to the effect of, "Dan is useless. He doesn't know what he's doing. I don't know why he's here," or something to that effect.

Ms. Michaels: Okay. Was that it?

Sgt. Elkins: Yes. So I told Ms. Garza, I said, "I don't care who puts the subpoenas in the book. Somebody put them in." When I talked to Officer Piccola after the fact,

he said previously that he and Ms. Garza had the discussion that apparently he was putting subpoenas in the book, he did them the wrong way or something like that and she said, "Hey, when the subpoenas come in, don't mess with them. Let me handle them." So when the subpoenas came in, he wasn't going to mess with the subpoena book. He just laid them on Ms. Garza's desk.

Ms. Michaels: And did you later ask Officer Piccola whether he was offended by what Ms. Garza said?

Sgt. Elkins: I did the next day.

Ms. Michaels: And did he say he was or was not?

Sgt. Elkins: He said he was not.

Ms. Michaels: You've observed the goings-on in the Records department. Would it be fair to say that it's an ongoing back-and-forth-type of relationships between the members that work in there?

Sgt. Elkins: Yes.

Ms. Michaels: And are you aware of a long-standing friendship/relationship between Ms. Garza and Officer Piccola?

Sgt. Elkins: I knew that they had been friends for quite a while, yes.

Ms. Michaels: And, well, the parties have a snit and then have lunch later together?

Sgt. Elkins: Yes. And that was one of the things I had said during my internal affairs interview was Officer Piccola would come to me and say, "Hey, Sergeant, I'm not having a good time working in Records. I don't want to work in Records," and I know that he didn't like working there. Nobody likes to work in Records. Nobody wants to be on light duty sitting at the front window. But he never came to me and said, "I can't work in here because of Ms. Garza," or whatever the case may be.

But they would go to a point where they would have a little discussion back and forth and then I'd go to a meeting or whatever and I come back and then they'd be sharing lunch together. And then maybe two hours later, maybe another issue would come up and they're not speaking to each other again. So it was an ongoing situation.

Ms. Michaels: But just so I'm clear, Officer Piccola never said, "Sergeant Elkins, I need to get out of Records because of Ms. Garza." It was, I just want to get out of Records because, I think you said, "it's no fun."

Sgt. Elkins: No. He never came to me and said-- he never approached me as a supervisor and said, "I need out because of Ms. Garza, or A, B, C." If he had

some kind of specific reason to come out or he thought it was a hostile work issue or something like that then it would have been addressed, but it was more, "I just don't like working in here." I guess, again, I don't think anybody really likes going on light duty and having to work the front window in Records, but that's just part of the job.

Ms. Michaels: That's all I have. Thank you.

Mr. Levitt: I have some questions if I may. Prior to your becoming the Sergeant over Records, there wasn't a Sergeant over Records, was there?

Sgt. Elkins: No.

Mr. Levitt: And you were put over Records because of the problems in Records, weren't you?

Sgt. Elkins: Correct.

Mr. Levitt: And the problems were the way Ms. Garza got along with the public and with other employees. Wasn't that the issue discussed among command as to why you needed to go in there as a Sergeant?

Sgt. Elkins: Correct.

Mr. Levitt: So there was a known problem with Ms. Garza getting along with citizens who came to the window, and other officers, wasn't there?

Sgt. Elkins: Correct. There were some previous issues that I investigated as the Internal Affairs Sergeant, either at the front window or with officers at the back window.

Mr. Levitt: Okay. So you're aware that officers found it difficult to work with her, even before you got there?

Sgt. Elkins: Correct.

Mr. Levitt: And your job was to try to help her to be a better employee, to fix that problem, wasn't it?

Sgt. Elkins: Better employee, supervise the interactions, yes.

Mr. Levitt: So it was sort of a known reputation that she didn't get along with a lot of the officers, wasn't it?

Ms. Michaels: I'm sorry. I apologize. I would have to object, because I have no notice, or I have not received anything of a bad reputation Ms. Garza has. I have two notices that Chief put in his report, and I have a statement by Officer Piccola, but I have no way to defend against these rumors of a bad reputation. That's inappropriate.

Mr. Levitt: First of all, there's no discovery, so it doesn't matter that she doesn't have it, number one. Number two, the way to defend is to ask a man under oath what the truth is and that's what I'm doing. She's trying to say this was the norm. She's already told you this was the norm. This was just what they did, and now they've called the witness. Not me. They've called the witness.

Mr. Ochipa: I have no problem with the line of questioning. He's her employer, basically. I think we should hear what he has to say about her job.

Mr. Levitt: Thank you, sir. So you were put in there to fix problems with the way she got along with officers and citizens. Isn't that correct?

Sgt. Elkins: Correct.

Mr. Levitt: And once you got in there, part of what you did, and the department did, was to give her training on being a better supervisor and being able to interact with others better than she had in the past. Was that true?

Sgt. Elkins: Not a better supervisor. Is that what your question was?

Mr. Levitt: Yeah. What was the training that she had?

Sgt. Elkins: It was customer service.

Mr. Levitt: Customer service. And customer service is getting along with people, right?

Sgt. Elkins: Yes.

Mr. Levitt: So there was a need, when you got in there, that you tried to fix by giving her training, right?

Sgt. Elkins: Correct. Because in her previous evaluation from Captain Crimins was that she could use some more training as far as dealing with the public on the phone or at the front window, so we tried to facilitate that by getting her some training, customer service training.

Mr. Levitt: And you said you even did some IAs before that where they called into question her getting along, and rudeness, and things like that. Is that correct?

Sgt. Elkins: Correct.

Mr. Levitt: Okay. And you heard her say something to the effect that Officer Piccola was useless, and she didn't even know why he was there.

Sgt. Elkins: Something to that effect.

Mr. Levitt: Something to that effect. That's not a nice thing to say, is it?

Ms. Michaels: Objection. That's not—

Mr. Levitt: Let me rephrase it. Is that a nice thing to say? As her supervisor, is that the way you want her talking to your other officers?

Ms. Michaels: I would again object. There are some rules that are followed.

Mr. Ochipa: We'll move on.

Mr. Levitt: I'll move on. Thank you. And when you said he wasn't offended, he did indicate to you that was Ms. Garza. She talked like that and you just sort of dealt with it and moved on, right?

Sgt. Elkins: I called him into my administrative office, which is not in the same area as Records. I actually have a regular office in the administrative wing and I brought him in to discuss the comment and that was his take on it was, "That's just Juanita. Juanita and I have known each other a long time. That's just kind of her being her and we'll just-- I don't think she meant much by it, whatever it was. And we carry on."

Mr. Levitt: But you thought it was serious enough to call him into your office to talk about it?

Sgt. Elkins: Yes.

Mr. Levitt: And you thought it was serious enough that you reported it to your Captain didn't you?

Sgt. Elkins: It was pretty much self-reported later that day or the next day when Captain Crimins came in for another issue.

Mr. Levitt: So it was serious enough that the Captain heard about it and got involved with it?

Sgt. Elkins: Correct. He was made aware of it.

Mr. Levitt: And there was a prior officer in there on light duty wasn't there?

Sgt. Elkins: Officer Medina.

Mr. Levitt: Okay. And did Ms. Garza tell you she wanted to keep him and not have Officer Piccola?

Sgt. Elkins: Yes.

Mr. Levitt: As far as the relationship between Ms. Garza and even Ms. Henson, did you observe times when Ms. Garza and Ms. Henson would sort of knock heads, for lack of a better term?

Sgt. Elkins: Absolutely.

Mr. Levitt: And did you observe when either one or the other actually had to leave the office and take a walk to sort of calm themselves before they came back?

Sgt. Elkins: Yes.

Mr. Levitt: Yes. And do you recall telling the Investigator that Ms. Garza comes off as short with citizens and officers?

Sgt. Elkins: Yes. Again, Ms. Garza never gave anybody wrong information. It was just probably the approach of how she gave the information.

Mr. Levitt: It was the way she interacted with people, right?

Sgt. Elkins: Correct.

Mr. Levitt: And part of your job as being placed as the supervisor in there was to try to improve her skills in that area, right?

Sgt. Elkins: Correct.

Mr. Levitt: Nothing further. Thank you.

Ms. Michaels: I just have a couple of follow-ups. But Ms. Garza is not the only reason why the Records department needed some fix-up or remediation, correct?

Sgt. Elkins: I think the department just needed a sworn supervisor because they had no supervision.

Ms. Michaels: So I'm saying it wasn't just Ms. Garza. There were other issues besides Ms. Garza talking to people?

Sgt. Elkins: I'm sure that there's probably more reason behind it. Like I said, that was my assignment from command staff. That's where I went.

Ms. Michaels: Your assignment to go be in Records?

Sgt. Elkins: To go move my office from the administrative wing where I was, to working out of Records, supervise Records, yes.

Ms. Michaels: And then you rotated out of that position?

Sgt. Elkins: I did. I got transferred back to the Detective Bureau, where I had spent almost 10 years, in January, when they promoted Lieutenant Smith.

Ms. Michaels: We're talking specifically today not about Ms. Henson. We're talking about Officer Piccola. Officer Piccola never took a walk because of Ms. Garza.

Sgt. Elkins: I can't say for sure, no.

Ms. Michaels: Do you remember making a statement on February 8th with the Internal Affairs Investigator?

Sgt. Elkins: I do.

Ms. Michaels: Do you recall telling him that Officer Piccola never had to take a walk?

Sgt. Elkins: I'd have to refer back to my transcript to see exactly what I said.

Ms. Michaels: Okay. Well, I don't have one, so you have—

Sgt. Elkins: So your question is did I ever see Officer Piccola have to take a walk?

Ms. Michaels: It was right when you were talking about Ms. Henson. A code word, if you find the word bickering, it would be right after that.

Sgt. Elkins: Bickering? Is that a statement I made? I don't remember using the word bickering, at all. I don't think that would have been a-- is that in my transcripts as something I would have said?

Ms. Michaels: I don't have a copy of your transcript, sir. I just have my notes.

Sgt. Elkins: It's possible that Officer Piccola went and took a walk because of a conversation he had, but...

Ms. Michaels: No, my question is do you recall making the statement to the Investigator, Dan never said to you he had to take a walk?

Sgt. Elkins: Yeah. I don't remember that, but -- I mean, he may have, if that's what your question is.

Ms. Michaels: And do you recall stating that you never felt the bickering was excessive?

Sgt. Elkins: Again, I don't recall the bickering statement, but yes, I do remember the question, did I ever feel that it was excessive, and I said no, I didn't.

Ms. Michaels: And do you recall telling the Investigator that Ms. Garza comes off as short, but not rude?

Sgt. Elkins: Yes.

Ms. Michaels: So you do recall telling him that?

Sgt. Elkins: Actually, I said, direct knowledge -- or Dan never came to me and said, "Hey, Sarge, I need to get out of here for the day," or, "I need to get out of here for a couple hours," or, "I need to go take a walk because I just can't deal with it," so he never said that. So, no, I don't ever recall Officer Piccola ever telling me, "I got to go take a walk because I can't deal with her anymore."

Ms. Michaels: Thanks.

Sgt. Elkins: But I do remember the question about did I ever think that it was excessive, and no. If I ever thought it was excessive, I would have interrupted.

Ms. Michaels: Exactly. And you do remember saying that she's not rude, but she comes off as short?

Sgt. Elkins: Correct. Well, short is a better way to describe, maybe, her interaction on the phone with the customers and maybe the people at the window than so much rude.

Ms. Michaels: That's all I have. Thank you.

Mr. Ochipa: Do you all have any questions?

Mr. Coleman: I have two questions. Why was Officer Piccola on light duty?

Sgt. Elkins: He was on worker's comp. He got hurt while on duty.

Mr. Coleman: Okay. And my second question is, what are the relationships between most of the officers and Records? Was he on the road with patrol like all the cops, and they have the same relationship with her, or was he doing something even before he was put into Records? Did he have some sort of relationship with her? I know that she said that they'd known each other and they've goofed around for a long time. Is that something with all the officers? Because they come through and they have a relationship with the Records office? That all the officers would have that opportunity to have that sort of relationship with her? Or was it just him?

Sgt. Elkins: No, I think it was strictly because he got hurt so he was in there working. We've got 20-year officers that never had to come in and work in Records.

Mr. Coleman: So before he was placed in Records, he didn't really have a back-and-forth, jokey, whatever, personal, you said almost family-like, sometimes go out afterwards, relationship with her?

Sgt. Elkins: No.

Mr. Coleman: That was only after being put into Records?

Sgt. Elkins: Yes. And I don't know what the relationship was leading up to it. When he came in to work for me under light-duty work status, I never thought there was an issue between him and Ms. Garza like it was going to be a problem. I never knew that they had anything other than good feelings for each other.

Mr. Coleman: So then, before then, when he was just a regular police officer, he just would have come in and had contact, whatever. He never would have spent more time with her?

Sgt. Elkins: No. Ms. Garza is friendly with a lot of the officers, but there are also a lot of officers that won't come down and deal with Records because they just -- it just depends on who it is. I can't really say one person, from one person to another.

Mr. Coleman: Okay. I'm done.

Mr. Berman: You said that Officer Piccola said it was just her being her, basically. In your interpretation of that comment, was that a statement that she kind of has an abrasive personality and they deal with it, or that that's how they all interact?

Sgt. Elkins: I think it was more that Ms. Garza has good days and bad days, and when she has bad days I just don't really have any dealings with her. He has a regular, working relationship with Ms. Garza, either personal or work relationship. And if she or Officer Piccola are in a bad mood, they just don't interact with each other. And that was the thing I wound up having with, not only Ms. Garza, but also some of the Records employees is they said some days they'd come to work and they do their job, but they may not interact with each other because of one issue or another. Other days, they were best friends. So one day they'd want to go to lunch together, and next day they'd have some kind of discussion or -- and then they wouldn't speak to each other for eight hours. But at the end of the day if they're getting their work done, that's really all I was in there to make sure that they're doing what they're supposed to be doing.

Mr. Berman: Would you say that a disproportionate amount of the issues and conflict that occurred in the department came from Ms. Garza as opposed to just the interactions?

Sgt. Elkins: I would say probably for the majority of if there were issues that I had to deal with because of interactions with officers or interactions at the front window that there was any concern, I would say the majority was Ms. Garza. I never had any complaints about Ms. Henson. I only had Ms. Garza and Ms. Henson in there. I never had any complaints about Ms. Henson about how she talked to somebody at the front or back window. And that was the thing, like I had said in my interview, there was to a point where some officers wouldn't want to come down to the back window when Ms. Garza was working because they just don't get along, and that's fine. They want to call me on the phone and say, "Hey, I need to go pick up some paperwork, but I'll come at 4:30 when Juanita is done for the day." And I think that's why I was able to sit where I was where I could listen to the interactions at the back window and I could listen to the interactions at the front window with the

customers because there's two different sets of windows. You walk up to the main window where the citizens walk up, and the back window where the officers would come up to the back window for whatever they needed because Records is secure and nobody is really supposed to be in there. So they would kind of ring the bell. A lot of times it would get to the point where I would just go help the officers at the back window just so there was no conflict. It was just easier that way.

Mr. Coleman: It's their defense that Officer Piccola is not the one who brought all this up. That he didn't want all of this to happen. That this happened without him wanting to make a big deal or anyone else making a big deal. As a supervisor, are there times or have there been times in the past where you've had to take something to Internal Affairs? Even if the people involved are saying, "Oh that's no big deal"? That you have to say, "I gotta do it anyway. This is my job." Or it's in the City Charter? This is what we have to do whether you want me to or not, I gotta bring it?

Sgt. Elkins: Sure. Absolutely. I mean I supervise 10 investigators now. If I see them do something wrong, I'll bring it to somebody's attention. I think that's where maybe the question is, is if I thought it was rising to a level where I thought something needed to be done, of course, I would have done something about it. And I did internal affairs last year. I investigated 18 internal affairs investigations and not every one of them had a complainant coming forward saying, "This is what happened." Sometimes it was a witness. Sometimes it was another employee. Sometimes it was a supervisor. So sometimes we don't necessarily have another employee filing the complaint. And yet, you still have an internal affairs investigation.

Mr. Coleman: Okay.

Mr. Ochipa: So I can get my timeline straight, you're not her supervisor now?

Sgt. Elkins: I'm not.

Mr. Ochipa: Were you her supervisor at the time that this complaint was made and they decided to put her on suspension?

Sgt. Elkins: I was not.

Mr. Ochipa: When you left, how long was it that she had a new supervisor before the suspension was made? Approximately.

Sgt. Elkins: A couple of weeks. We shift change every January.

Mr. Ochipa: So it was relatively quickly after you left that all of this went down?

Sgt. Elkins: I took over as the Administrative Sergeant January 2016 where I started doing internal affairs. I took over supervising Records, I think it was the

middle of the year, May-ish. And then in January when we shift changed again, I went to the detective bureau and Sergeant Gaden came in. I think this all happened -- I got interviewed the beginning of February -- so it was less than a month.

Mr. Ochipa: So less than a month.

Sgt. Elkins: I think it was maybe a couple of weeks.

Mr. Ochipa: And are we going to hear from the new supervisor tonight? Or is there a new supervisor?

Mr. Levitt: Probably not.

Mr. Ochipa: Oh, probably not. Okay.

Sgt. Elkins: There is a new supervisor in there, but I'm not supervising them anymore.

Mr. Coleman: Okay. But that's the person that made the decision to suspend her?

Mr. Levitt: No. The Chief made the decision.

Sgt. Elkins: The Chief made the decision.

Mr. Levitt: You will hear from him.

Mr. Ochipa: Okay. And then I guess the only other question I had, in your opinion, I mean, having been an employer, you kind of have a feeling for which way things are going. Was the work product affected by their bickering or not?

Sgt. Elkins: No.

Mr. Ochipa: No. Even though you had to go handle people at the window and things like that, you don't feel that that was affecting the overall work product?

Sgt. Elkins: No, because I thought at the end of the day, Ms. Garza does a good job in Records. She is a good employee. She knows what she's doing. She knows the ins and outs of Records like you wouldn't believe.

Mr. Ochipa: And do you feel that the relationships in there were trending in a way that you were like, "Something's going to happen. This is getting out of control," or did you not ever feel that way?

Sgt. Elkins: No. In my opinion, the relationships that I was witnessed firsthand, in the six months I was in there, is probably what I was used to seeing in the 18-plus years that I've worked there. So it wasn't all of a sudden that the six months I was there, "Oh my goodness, this has happened, this has happened, this has happened." Now, like I said, did some other things happen? As far as the internal affairs situation goes? I don't know. Like I said, I investigated the internal affairs when the other complaint came in, and

I did the investigation on that. There was another one where Ms. Garza was the complainant against one of our officers. I did that internal affairs investigation, so it may be something that's probably been going on for a long time, but here probably I'd say, in the last year, finally getting to the point where it's getting investigated and things are getting done about it.

Mr. Coleman: So when you found out that she was going to be investigated, were you surprised?

Sgt. Elkins: In this case?

Mr. Coleman: Yes, sir.

Sgt. Elkins: No.

Mr. Coleman: So you were not surprised?

Sgt. Elkins: No.

Mr. Berman: Okay. Did it not concern you as a supervisor to hear that officers were avoiding coming to Records due to a potential hostile interaction?

Sgt. Elkins: It did not because I-- that's something that I think has been going on, again, for many, many, many years. And I believe I said this to Mr. Levitt, if I spent my day on every little thing that had come up with either Ms. Garza being short with somebody, or somebody not wanting to deal with her, or her bickering back and forth with Officer Piccola, or a fight between her and Ms. Henson, that'd be a full-time job. So as long as they're getting their work done... Again, I supervise a 10-man unit now. They don't have to be friends, but at the end of the day you do your work. As long as you get your work done, I really don't care if you want to go out and have a beer after work. If it rises to the level where you're being insubordinate, or it's being a hostile work environment, or somebody comes to me and says, "Hey, I want to file a formal complaint," okay, now I'll do what I need to do as a Sergeant. But that never happened.

Mr. Coleman: So when she attended the workshops on June of 2016, you were her supervisor at that time?

Sgt. Elkins: Correct.

Mr. Coleman: So then would you feel that you've held her to a different standard after that? Knowing that she's already gotten a -- I don't want to say reprimand -- gotten a warning, that having to attend these workshops she's already been sort of told, "All right. Look, you need to get with the program."

Sgt. Elkins: Yeah. I think she was probably put on notice with Captain Crimins' evaluation the year before that -- "Hey, part of your job is working the front window, it's

interacting with citizens at the front window, it's answering the phone." And I think I said this in my IA interviews. I've been around a long time, so how I'll interact with somebody walking up to the front window, it's probably going to be a whole lot different than how Ms. Garza's going to interact with someone at the front window. At the end of the day, we may give them the same information but the delivery is going to be 180 degrees different.

Mr. Coleman: But he didn't have to go to these classes, she did. So I'm wondering since that happened, were you then looking at her saying, "Look, you've already gone to these classes on communication, improving communication," are you expecting more like, "I expect you to not be short with more people or when police officers or the public come to you"? I know this has been going on for years but really it shouldn't be going on anymore because you've now reached this point where you've gone for eight or however many years she worked there and she didn't attend any of these courses. Now, she's had to attend these courses, were you looking for a change or turnaround?

Sgt. Elkins: I would've liked to have seen a change, yes. I mean, obviously, you go to this training to improve your communications. And, like I said, you're trying to change your behavior. This is how it's been for how long? Longer than me. 20 years?

And, like I said, no, I never said it was rude. What I said was it was probably short. There's a big difference between, "Hey, let me help you get to the division you need and let me find the answer for you," versus "Hey, that's not your division, call dispatch," or "That's over at City Hall," and you hang up the phone. Well, you're right. That's the right information. I'm going to go about it a whole lot differently. I'm going to get the information you need. I'm going to get you who you need to talk with, I'm probably going to transfer you to who you need to talk with. So I'd say again, I think it was the delivery more than anything.

Mr. Berman: So I have in front of me a performance evaluation. There are several important skills listed that I guess are important while doing this job. Of all of these, two are customer service and interpersonal communications. And it sounds like what you've been saying is that Ms. Garza may have had some issues in those two departments but your primary concern was that she was doing well in the other areas, such as self-management....

Sgt. Elkins: Job knowledge.

Mr. Berman: Job knowledge, things like that. And I guess what I'm asking is how big of a role in essentially what would be expected in Ms. Garza's job performance overall is customer service, interpersonal communication, and teamwork?

Sgt. Elkins: Well, for me, I think it's a big role because it's the City we work for. I was born and raised here and I've lived my whole life here so that's just what you

expect when you come to our Police Department. I want all of my employees and all of my subordinates to have that kind of standard and go the extra mile for the citizens. But is it important? I think it's important but, like I said, at the end of the day, her job is to get the reports in, to make sure our reporting system is right, to make sure that we're sending the right stats to the state. And, as far as that's concerned, she does a fantastic job. So she knows the ins and outs of citations and reports and arrest reports for juvenile and public records law better than anybody I know. But would I like to see her be a little bit more friendly, a little more customer service? Absolutely. And I think that's just fair to say with anyone really, though.

Ms. Emery: Okay. Is he excused?

Mr. Ochipa: Yes, you're excused.

Ms. Emery: So I guess the question is, do you want to hear the 10 minute CD?

Mr. Ochipa: Okay. So, in regards to that, I really don't even have two witnesses - and I want to be as fair as possible to you - but I don't know how you feel about this, but if it's going to say the same thing, that it was an atmosphere where people poked at each other a lot, and we're not going to learn anything new from it, I don't really think we need to listen to it. If you think it's going to add something that we haven't heard so far, I'm willing to concede that she's going to agree with what she said. But if it's going to add something to it then I would say, "Let's hear it." But I want you to feel like you're getting a fair shake at the same time.

Ms. Michaels: If I could confer with my client.

Mr. Ochipa: Sure.

Ms. Michaels: Thank you. Could I have two minutes to step out?

Mr. Levitt: Could I ask—Are there other witnesses or this is--?

Ms. Michaels: That was it.

Mr. Levitt: Could we take five minutes? Good time for a break.

Mr. Ochipa: I think we have one that has to excuse herself [Linda Bradley] in about 10 minutes, also. But we'll still have quorum so I don't know that that will make a difference but—

Mr. Ochipa: We can reconvene. I guess the floor is yours at this point.

Mr. Levitt: Did she officially "rest" on the record?

Ms. Michaels: Yes. I officially rested.

Mr. Levitt: Okay. Let me do this in the form of an opening statement. Sometimes you would hear an opening statement before evidence but this procedure is rather informal which is perfectly fine. But let me take my opportunity to give a cross of an opening statement and presenting our facts as she did. We certainly do intend to call the Chief and you will hear from him and his explanation of why he made the decision he did.

And as I said there and would often say to a jury as a jury lawyer, you do hear things come in pieces and of course, you didn't hear all of our side. You gleaned some of it from your questions; I could tell. But it is clear we are here regarding a three-day suspension. It is important to know that the Chief did file progressive discipline. You didn't hear much about that. And that is within a year. This was the third incident of discourteous, rude behavior. Not to Officer Piccola. That's not the issue. When you're dealing with progressive discipline, it doesn't have to be punch the same guy in the face. If you punch three people in the face, it doesn't matter if it's a different person.

So you will hear evidence from the Chief and we will put into evidence that she received counseling due to discourteous behavior. She then received a written reprimand, the next level, if you will. And now the third time in a year for similar discourteous, rude behavior that the Chief decided that a three-day suspension was appropriate for. Now the purpose of discipline is that hopefully the person improves. If they wanted to fire her, they'd just fire her.

There's no question she did a good job. You have her evaluations in the substantive areas of job knowledge. And you heard Sergeant Elkins and you'll hear the Chief admit she did a good job. But as Sergeant Elkins also already said, it's a key component. And you're here as a Board for the City of Ormond Beach. What do you expect your citizens to hear as the first contact, perhaps, with the City? A victim of a crime or someone coming in for something, it is very important-- you'll hear the Chief say how important it is, customer service, etc.

So the fact that it's been going on, of course, you all probably know the Chief's not been the Chief that long, but took steps to put Sergeant Elkins in there because there is a perceived problem. You heard Sergeant Elkins say people didn't even want to deal with her. One of you asked a very astute question -- is that a good thing for the City? It's not just make the widget. It's not just punch the paper, or send a subpoena to be served, it is dealing with customers. This is the City of Ormond Beach. People live here for a reason. This is a great place to live. And they expect a certain level of service, and the Chief expected that. And Sergeant Elkins himself has already testified he was put in there to fix it.

And as you questioned, Mr. Coleman, she was sent to training and workshops and things like that. There was an expectation of improvement,

so they can't hide behind, "Well, we've been bickering for 18 years, and we're high school kids, and we'll just keep doing that." That wasn't acceptable to this Chief. He tried to fix it. And even Sergeant Elkins explained all that. He was put in there to fix it. He said, and I wrote down the quotes as you might recall, "A majority of problems related to Ms. Garza." Majority of problems. Maybe he didn't want to deal with his supervisor, but he said if he had to deal with all the issues in the department, it'd be a full-time job. He couldn't do anything else. Do you remember him saying that? That's not what we want. He's a Sergeant. That's why there are Chiefs, and Captains, and Lieutenants. Just because the Sergeant said, no, I'm willing to turn my back, the paperwork's getting done, that doesn't mean it's acceptable for the City of Ormond Beach or for this Chief and what you expect as citizens of this City.

So you will hear the evidence of the progressive discipline. You've already heard some of the reputation that people didn't even want to deal with her. He says, "Well, it didn't affect it." Well, it did affect it because he went and got the paperwork from the window. He's a Sergeant. He must have something better to do. Maybe he didn't say that. But he's not supposed to be getting the paperwork from the window, they are supposed to be giving it to Ms. Garza, but they won't even deal with her. So I'll come at 4:30 after she goes home. I'll give it to you. That's not efficient City employment. And we're not talking about termination. We are talking about a three-day suspension that we are asking you to affirm if you will. And one thing that's very important. I've toyed with the idea of presenting no evidence. They have the burden. If you've read your roles, and I assume you have, and Ms. Emery can explain to you the burdens if you need it, but they have the burden to prove the discipline was not proper, not appropriate, by clear and convincing evidence. I think we've got a lawyer, estate attorney, somebody, and you're smart enough to know this and everybody understands, it's not beyond a reasonable doubt. They don't have that burden, but it's also not a preponderance of the evidence. It's not that civil standard of 50% plus one like a political election. It's clear and convincing evidence.

I suggest to you if I did nothing and rested, they have not established clear and convincing evidence to overturn it. Because they've admitted, and their only evidence is she called him a low-life two-legged rat at the workplace. Not at night, not on the weekend, but at the workplace. She also tells him, by her own admission, "You're useless." Others use the word, "worthless," the report shows. I'm not sure there's a big difference between useless and worthless. But she admits in December saying, "You're useless. I don't even know why you're here." That's their evidence. When Sergeant Elkins is there and he hears it, it's serious enough to go to the Captain about it, even though he doesn't do anything else.

And then in January, just a few weeks after he's gone, a new supervisor is in there. You're not going to hear from her, because she didn't hear the incident, and she didn't make the decision, the Chief did. It says she gets upset with Officer Piccola for personal reasons. But at work says, "You're a lowlife two-legged rat." And that's admitted. We've proven our case. They've admitted our case. And then you add to it a prior reprimand, and a prior counseling, and a prior reprimand three times in a year. The only thing left is some level of suspension. And three days is a reasonable suspension. It could've been a week. It could've been two weeks. It could've been 30 days. It could've been termination. The Chief will explain to you why he chose three days, and why he thinks that was an effective thing, but it is very important.

So what I've presented to you in the form of testimony is the prior discipline. There's prior evidence already of her not getting along with the public. Sergeant Elkins, their witness said that, very positively for them [inaudible]. They called them. But she didn't get along with the public. She has a reputation with officers not wanting to deal with her. So the one thing we will put in is we will put in and would offer into evidence the internal affairs investigation. Lieutenant Doggett was assigned the internal affairs investigation. It is not short, but the basic summary is in the first-- the real write-up of it is only this long. The pages aren't numbered I don't think so. It's only this long; not too much. Over break, you could read it.

And he sustains two findings. He sustains the findings that she violated general orders, and sustains the findings that she was not polite and courteous with the public or City personnel. And he sustains that members will not use abusive or threatening language or gestures. He sustains those. He does not sustain or ignores the fourth charge. So this is the IA investigation. It's official City record I think it can go in there as that. And attached to this are also the e-mails that we've been talking about. Let me first pre-mark this as exhibit two.

Ms. Michaels: I actually object. I would object to this document because it is, as Mr. Levitt said on the first page they're allegations summaries. And the summaries, they are actually not verbatim from the interviews and they're not the actual words. They're Lieutenant Doggett's. Basically, he picks out of what these people said in their interviews to support his findings because when I went through it, it wasn't completely accurate based on listening to the tapes that we have. So the best evidence would be the tapes of the interviews or, apparently, Mr. Levitt has transcripts of the tapes which I don't have. But the transcripts would be what you would read. Not his summaries to support his findings because they're couched towards supporting what he did. So I would object to his summaries being in, especially since Mr. Levitt already said he has transcripts of all the people.

Mr. Levitt: Okay. First, as far as the document, it is the Internal Affairs document so it is-- and Ann Margret will have to give you some legal advice I guess, but it is an official document. It is the finding from which the Investigator - and I offer this to you - makes findings of fact. Does not recommend discipline. So all he does is sustain a finding of discourteous behavior. And for the two things you've already heard, the comments in December, "You're useless or worthless." And the comment in January that she's admitted about, "You're a two-legged rat," and that's what he sustains it on. So it is an official record. We could get them represented to you. We could get this into a court of law as the official business record of the IA. If she wishes to put in the tapes or we discuss off the record whether or not transcripts should go in we can do that, but the record itself clearly has a right to be in, I believe. Ms. Emery can give you legal advice.

Ms. Emery Mr. Levitt, you're going to be calling witnesses that will be able to testify to the contents of those Records or can summarize that?

Mr. Levitt: In an effort to -- I mean, the Investigator's here. Lieutenant Doggett's here. I call him and say, "Is this your report? Did you do an IA?" "Yes." "Are these your findings?" That's what he's going to say. So in an effort to cut this short and in view of the fact that I can make representations of fact, I'm doing that. He is here but that's all he'd do is authenticate this document. So—

Mr. Ochipa: I have no problem accepting the document. I mean it's an informal hearing. The summary is probably informal and we're not going to go through every single tape word by word and listen to it, so I think the summary of it is just fine for this type of a hearing.

Ms. Emery: And the reason why I ask is because there will be a determination made at this hearing, and I don't think that we're actually going to be able to actually have someone read that cover to cover. That's the reason why I ask.

Mr. Ochipa: We're going to summarize the summary is what I'm thinking.

Ms. Emery: That's what I'm thinking.

Mr. Levitt: There is a relatively-- I mean within 10 pages, you can flip through and see, he takes each person, what they said, and then he reaches his conclusion, so you certainly can see the gist. Now attached to the rest are the forms of people swearing and the e-mails are attached and things like that, which I will direct your attention to so you could specifically look at those. One thing I would direct your attention to, and I would—

Ms. Michaels: I'm so sorry. What I have doesn't have e-mails attached, so may I get a copy of--?

Mr. Levitt: Yeah, sure. I'm sorry.

Ms. Michaels: Thank you.

Mr. Berman: And if there's something in the summary that's inaccurate or just out of context, you could bring that to attention.

Mr. Levitt: But again, just to expedite this, and I wish I had numbered the pages. I apologize. But about two-thirds of the way through, and there's a heading that says, "Paperwork, e-mail, and text messages." The first thing I would show you is that Officer Piccola did write to his Sergeant. It was an e-mail. Wrote to his Sergeant bringing to her attention that, "One of the first words out of her mouth to me were, 'You're a low-life two-legged rat.' Ms. Garza went on to tell me how upset she was," etc. So that's part of the IA. So any suggestion that it meant nothing, I think this dispels that.

And then, from there, if you look at the e-mails that came later, but she had mentioned in the e-mail, "When you walked in, I called you a low-life two-legged rat," is in one of her e-mails. And in writing to Ms. Henson, she calls Officer Piccola a pussy-mouth, whatever that might be. But I don't think it's a term of endearment. But you can read these e-mails in the last few pages where she references to a fellow employee, "I'll be off work," but a fellow employee, "He's a pussy-mouth." So we think this is all part of the IA and part of what the sustained findings were based on. So we think those are very telling.

Then, the other documents I think I'll put in with the Chief rather than just present them myself. I was also going to put in the evaluations. You have the last three years. That's all I think you need so I don't need to duplicate that. You saw the comments about her customer service and interpersonal relationships. So I will have two more exhibits through the Chief that I would put on and I will call the Chief now if that's okay.

Mr. Levitt: Good evening. You were sworn, correct?

Chief Godfrey: Yes, I was. I still am.

Mr. Levitt: Yes, you are. Thank you, sir. So for the record-- pretty obvious, you've got all those stars on your shoulder there but please tell the panel your position with the City.

Chief Godfrey: I'm the Police Chief for the City of Ormond Beach.

Mr. Levitt: When did you become the Police Chief?

Chief Godfrey: April of 2016.

Mr. Levitt: And prior to that, what position did you hold?

Chief Godfrey: Police Captain for the City of Ormond Beach.

Mr. Levitt: How long have you been with the City?

Chief Godfrey: Six years.

Mr. Levitt: And what other positions have you held?

Chief Godfrey: Lieutenant.

Mr. Levitt: You came here as Lieutenant?

Chief Godfrey: Yes, sir.

Mr. Levitt: And went to the Captain and then Chief?

Chief Godfrey: Yes, sir.

Mr. Levitt: Okay. And are you the one who reviewed this matter and made the decision that Ms. Garza should receive a three-day suspension?

Chief Godfrey: Yes, sir.

Mr. Levitt: All right. First, let me show you what I've pre-marked as exhibit one. Let me share that with everyone. It's the final disciplinary action.

Mr. Levitt: Okay. Would you identify what we've marked as exhibit one?

Chief Godfrey: Would I identify it?

Mr. Levitt: Yes, please, do.

Chief Godfrey: It's a memo that I authored and signed and ultimately Ms. Garza signed receipt for with Captain Rosenthal as a witness.

Mr. Levitt: Okay.

Ms. Michaels: So this is exhibit one?

Mr. Levitt: Yes. The other one I think I had pre-marked as two. I'm sorry. So the IA was two because I had pre-marked it, so I'm sorry if that was confusing.

Ms. Michaels: Yeah. Okay. I got it.

Mr. Levitt: The IA is two and now since I pre-marked in my over-preparation this is one. Right. So is this a decision you rendered which ultimately determined that she would receive a three-day, 24-hour suspension?

Chief Godfrey: Yes, sir.

Mr. Levitt: All right. Now let's talk about some history. Prior to becoming Chief, did you have any experience with the Records department and specifically Ms. Garza?

Chief Godfrey: I did.

Mr. Levitt: And tell me about your interactions and experience with Ms. Garza and the Records department.

Chief Godfrey: I was the Support Services Lieutenant. There used to be a Lead Records Clerk in the Records unit. And they got rid of that position, and they never would replace it. So ultimately, it was Ms. Garza who was left in there with Ms. Henson to handle the entire Records functions of the police department.

Mr. Levitt: Okay. And there's been some testimony in 2016. Were you the Chief who put Sergeant Elkins as the Sergeant over Records?

Chief Godfrey: Yes.

Mr. Levitt: And why did you do that?

Chief Godfrey: We had had a series of events in the Records unit involving Ms. Garza. She had generated two internal affairs investigations. I believe there was one more counter investigation that Ms. Garza claimed against the officer that was involved in one of the original IAs. And it was just getting to be so draining and taxing on what we were-- we weren't delivering the service level we needed to deliver because we were spending a lot of time investigating internal issues with Ms. Garza.

Mr. Levitt: And do you have any knowledge as to how other officers in the department interacted with her, how they felt about their interactions with her? As supervisor, as Captain over that area, what knowledge do you have?

Chief Godfrey: Well, I don't have the direct knowledge that Sergeant Elkins had that he testified to. But I know that when we had supervisor meetings, the subject of Ms. Garza's behavior came up. And it was brought up that, "What are we going to do about it? When are we going to address it? Are we going to keep letting it occur?" And then we started making preparations to deal with the issues going on in Records.

Mr. Levitt: Okay. So let's go back to Sergeant Elkins. Did you tell us why you put him over there? Why did you decide there should be a Sergeant over Records?

Chief Godfrey: I think I already answered that, but there were just too many issues coming out of Records that were timely investigations. As you see, ma'am, Ms. Michaels, I believe, the amount of time and effort spent to investigate these allegations, this doesn't happen in a matter of hours, it's a matter of days. We have to send off things for transcription, we're here tonight. This is a lot

of energy and effort that could probably be placed somewhere else that the citizens deserve, and not investigating these allegations of misconduct that she has a history of and has been told to please stop.

Mr. Levitt: Okay. So what efforts if you know as the Captain or as the Chief, in putting Sergeant Elkins over it, what steps were taken in an effort to improve her customer service and improve relationships with employees and the public?

Chief Godfrey: Well, the documentation in her file is the progressive discipline model that we follow which was started out as a counseling, a written counseling, and then the next incident was a written reprimand and now we're at this incident. But prior to that, there was documentation and evaluations that you need to pick up your performance in your customer service. And then we sent her to some form of training to improve her customer service training.

Mr. Levitt: Okay. How important, and you heard them ask, you've been in the room, Sergeant Elkins [inaudible], how important are those two categories in the evaluation, the interpersonal skills, communication skills, how important is that to you as the Chief, and how you view it for the City?

Chief Godfrey: There's a man that works here that's retiring, and he's got like 50 years of service with government. And he says, "You treat people the way you want your grandmother treated." That's what he tells us, and he's a wise man. And when people come to the front desk, they walk into the Police Department, it's a very sterile environment, there's a big Plexiglas wall. And we don't know if they're a victim of a crime, if they've lost a child, if they've got a car stolen. But 9 times out of 10, they need something from us. Our customer service at that first contact is crucial, just like on a traffic stop when an officer stops a car or goes on an accident. When an individual steps in the building, I could almost assure you, if the building is open for service, 99 out of 100 times they're going to deal with somebody from Records. To answer your question, it's huge. That that customer service level is up here.

Mr. Levitt: I heard Sergeant Elkins saying, do you agree, she knows her job. She can push the paper. She knows what to do with the Records, how to do it, where to send it. She knows that part of her-- the substance of her job, correct?

Chief Godfrey: There's absolutely no doubt that Ms. Garza knows her job as a Records Clerk, and she does a great job as a Records Clerk in regards to her knowledge, skills, and abilities, absent her customer service.

Mr. Levitt: So as long as she's doing that, why is it important to discipline her, in your view as Chief, for her interpersonal communication skills? Why does that matter, as long as she's pushing the paper through?

Chief Godfrey: Because if that's all she did, if that's all a records clerk did was just push papers through, and they were locked in a closet for eight hours a day, and

they only came out for a break, for food, for water, we wouldn't be having this meeting tonight. But part of the records clerk duties are to deal with the public and deal with officers at the back window, as you heard. And when you heard Sergeant Elkins say that they would actually avoid her, and wait until she went home, or wait until somebody else was on the window, that's disruptive. It's not efficient and effective services that we're trying to put out. It's not how you want to treat your grandmother, so I don't think that's acceptable.

Mr. Levitt: Now is the fact that she's had poor skills for the 17 years before, does that affect your view of whether or not she deserves discipline now?

Chief Godfrey: When you say poor skills, do you mean her work skills, or—

Mr. Levitt: Interpersonal skills. The fact, people haven't liked her, and officers didn't get along with her in the past. So why do you need to come along as Chief and say, "This isn't going to happen under my watch"?

Chief Godfrey: Because I'm ultimately responsible for the citizens, the employees, the work product that we put out, and I'm the one in charge. I can't speak for the other Chief or Chiefs that allowed it to happen or didn't address it or did address it. I can only speak for what happened on my watch, and I don't want that under my watch. And I've had told her, in writing, this will be the third time, please, stop.

Mr. Levitt: And you've said a couple of times, this is the third time. So let's talk about the other incidents of discipline from the past. So I'm going to show you what I've pre-marked as exhibit three. It's this one here. Will you tell me what this first page is? Is this the beginning or the basis of some of the prior discipline?

Chief Godfrey: Yes, it is.

Mr. Levitt: In fact, this is Sergeant Elkins. Looks like he did the investigation back in March 2016, is that correct?

Chief Godfrey: Yes, sir.

Mr. Levitt: And he referenced that, that he himself had done some investigations, right?

Chief Godfrey: Yes, sir.

Mr. Levitt: All right. And they sustained against Ms. Garza, some allegations about being discourteous with a citizen. And number two, being abusive during her contact with a citizen, number three, and rule violations, and number one, right? That was the findings of that IA, correct?

Chief Godfrey: Yes, sir.

Mr. Levitt: And what discipline-- if you turn to the second page, there's a "concur with recommendation" from the Chief. That's not you, but for a written reprimand, was she given a written reprimand for this incident at that time?

Chief Godfrey: Yes, she was.

Mr. Levitt: And that's dated in March of 2016, correct? Or finding the Chief's concurrence was March.

Chief Godfrey: Yes. March, yes, 2016.

Mr. Levitt: Go to the third page. Is this a different incident? Does this appear? It's compiled together. But is this a prior incident earlier in March for which she was counseled?

Chief Godfrey: Yes, sir.

Mr. Levitt: Okay. And there the Captain's comments recommend counseling. Chief's comments on page three was "concur," so for an incident in early March, she's given a counseling, is that correct?

Chief Godfrey: Yes, sir.

Mr. Levitt: And on the second page, for another incident in March of 2016, she's given a written reprimand, correct?

Chief Godfrey: Yes, sir.

Mr. Levitt: So first is counseling, then a written reprimand?

Chief Godfrey: Yes, sir.

Mr. Levitt: And then, the three-day suspension, that's the third one, that's the one you gave that's in evidence, right?

Chief Godfrey: That's correct.

Mr. Levitt: And that's three in a year, from March 2016 to January 2017. It's less than 12 months. She's had three incidents of discipline, is that right?

Chief Godfrey: That's correct.

Mr. Levitt: Now, you mentioned something else. Turn to the next page. I believe it's page four of this exhibit. It's actually a memo from you as the Captain, dated 2014. What was that about?

Chief Godfrey: This is about an e-mail that a supervisor brought to my attention. I don't know who sent the first string of e-mails, but it was involving Ms. Garza and another supervisor and it involved Sergeant Gaston and Detective Larsen, who is now Sergeant. But basically, it was-- there's actually a page two to this that's

not attached, but there's a second page that sums it up basically that they need to work out their problems. Basically, it wasn't discipline. I just sat everybody down in the room and we tried to work it out, and apparently, before I got there, there was ongoing issues with Ms. Garza and Detective Larsen and his common-law wife, who used to work at the station, but she no longer works there. This all came up and I didn't think of it really as a level of discipline, but I thought it could be discussed, and basically—

Mr. Levitt: Did it relate to her relationship with another officer?

Chief Godfrey: Yes.

Mr. Levitt: And you're issuing this memorandum to try to correct, counsel, or whatever, even as early as 2014?

Chief Godfrey: Yes.

Mr. Levitt: And then, 2016, you have these other three incidents.

Chief Godfrey: Yes, sir.

Mr. Levitt: Now, this has already been referenced, so I won't spend much time, but when you look at the 2016/2017 evaluation, which is part of this document, but also already in evidence, she was marked down as, in customer service and interpersonal communications, down to the lowest score. Is that right?

Chief Godfrey: Yes.

Mr. Levitt: If you would look at the 2016/2017 evaluation, I know everybody has it, but read the comments on the first score of customer service and now on February 4, 2016, to February 3, 2017, she gets a one. Read the comments.

Chief Godfrey: Do you want me to read that out loud for the record?

Mr. Levitt: Yes, and for the record.

Chief Godfrey: Records Clerk Garza maintains the utmost respect towards command staff members. However, has some issues regarding dealings with citizens and other members of the department. She strives towards delivering services in a timely manner and often makes suggestions for ways to improve the paperwork flow within the division.

Mr. Levitt: Okay. And then read the comment under interpersonal communications where she got a one.

Chief Godfrey: Records Clerk Garza does communicate openly and honestly but is sometimes misunderstood concerning the delivery of information. The way

the message is delivered, both verbal and non-verbal, is just as important as the message itself. The same holds true for e-mail correspondence, as well.

Mr. Levitt: So, in 2014, there's a memorandum of understanding about working on relationships. The 2016/2017 evaluation marks her down for her communication skills, correct?

Chief Godfrey: Yes, sir.

Mr. Levitt: And then in three times within a span of 12 months, she receives counseling, written reprimand, and then the three day suspension. How did you arrive at it? Why did you arrive at it? Explain to the board why you arrived at it and felt that a three-day suspension was appropriate and sustainable, and why you're asking them to uphold your decision.

Chief Godfrey: Quite honestly, as I said earlier, the amount of effort and energy put into these issues within this short amount of time is unacceptable in my opinion, and I need to send a message that the whole goal of discipline is to modify behavior. I want to let Ms. Garza know that this needs to stop. The high school behavior as described by Ms. Michaels, the bickering as stated by Sergeant Elkins, this ongoing constant stressful drama workplace environment. I don't stand for it. I don't want it. I don't accept it. And that's why I came up with three days.

Mr. Levitt: I have no further questions.

Ms. Michaels: Chief, bringing your attention to the 2015 to 2016 evaluation. So I understand that-- let me just be clear here, these three infractions you're talking about were all under your watch. They all came when you became Chief, right?

Chief Godfrey: No.

Ms. Michaels: You weren't the Chief on these three things we're talking about?

Chief Godfrey: No.

Ms. Michaels: For this one.

Chief Godfrey: Just for this one. The prior Chief was for the reprimand and the counseling. The former Chief Henry Osterkamp was the Chief for the reprimand and the counseling.

Ms. Michaels: Okay. And they're all within a short period of time?

Chief Godfrey: Yes, ma'am, within less than a year.

Ms. Michaels: And what you're telling us-- you've been there a long time too, not as long as Ms. Garza, but you've been there a pretty long time, right?

Chief Godfrey: Six years.

Ms. Michaels: Okay. And you've been told that this has been an ongoing situation about people, not just with Ms. Garza, but other officers, engaging in behavior. Inappropriate behavior.

Chief Godfrey: I've been told that?

Ms. Michaels: Well, you understand that it didn't just start when you got there six years ago.

Chief Godfrey: Correct.

Ms. Michaels: Okay. In fact, on the paper that I just asked you look at, in Ms. Garza's 2015 to 2016 report, her performance evaluation, it says, "Unfortunately, there's a breakdown in customer service and/or communication when dealing with the rest of the police department staff. Disrespect and/or lack of satisfaction has been noted on both ends." Do you see that, sir?

Chief Godfrey: Oh, I see it.

Ms. Michaels: Okay. Ms. Garza's aware of these issues, and she's working hard to rectify them. When on the receiving end of disrespect, meaning she's being disrespected by other officers, Ms. Garza's been directed to bring these instances to the attention of her supervisor rather than just take it or brush it off. Right?

Chief Godfrey: That's what I'm reading.

Ms. Michaels: Okay. Well, you don't have any reason to believe somebody lied and put that down, do you?

Chief Godfrey: You're asking if I'm reading along with you. I'm reading along with you.

Ms. Michaels: Okay. So apparently, Ms. Garza has been on the opposite end of people talking bad to her from fellow officers, right?

Chief Godfrey: Well, not only apparently, but remember I said the amount of effort we're spending on her investigations and then her claims that someone's mistreated her at the back window-- we've had to investigate those too. So yes, this is—

Ms. Michaels: Oh. But you know actually what this says though, is she's asked to bring it to the attention of supervisors because she, apparently, has been taking it and brushing it off.

Chief Godfrey: Okay. I didn't write this document, but I'm agreeing with what you're saying.

Ms. Michaels: Okay. So you're trying to say that she shouldn't be reporting to the supervisors when she's being made fun of or spoken to disrespectfully?

Chief Godfrey: No, I think you're twisting words here. It says, "Records clerk Garza has been directed," which means the Captain that wrote this told her, "Listen, whatever's going on, you need to report it," because I think the reason why this was written was in her responses to the behavior at the back window, when she got held accountable, she says, "Well, they said it first." And we told her, "Listen, you've got to let us know when you're being mistreated so we can stop that behavior."

Ms. Michaels: So you can write up the people that have been abusing her?

Chief Godfrey: Absolutely.

Ms. Michaels: And who have you written up that's abused her?

Chief Godfrey: I don't have it in front of me, but—

Ms. Michaels: Right. Okay. The point being is that obviously it's been a give-and-take situation in the Police Department, not just the Records department, and not just involving Ms. Garza. Would that be a fair statement?

Chief Godfrey: Regarding why we're here today?

Ms. Michaels: No. You just went into the whole history of problems that were going to stop while it's under your watch, and my questions to you, sir, are-- it's not just Ms. Garza. Ms. Garza's been mistreated by other officers, to the point that they even put it in her evaluation to say, "Hey, quit taking it. Quit brushing it off. You need to report that people are mistreating you to your supervisors."

Chief Godfrey: Well, that was before my watch, but I understand what you're saying. Yes.

Ms. Michaels: Okay. When we say high school behavior has to stop, it has to stop on both sides.

Chief Godfrey: I agree. I'm over it.

Ms. Michaels: Now, just for clarification, the Records department. There's really just two employees in the Records department, right? Ms. Garza and Ms. Henson?

Chief Godfrey: No, ma'am, there's actually-- there's a supervisor in there and then there's a third employee right now.

Ms. Michaels: Who's that? Okay, so there's--?

Chief Godfrey: Four total.

Ms. Michaels: Four total. But the supervisor actually does the Records work too?

Chief Godfrey: They do some of the Records work, but I'm not sure they do a whole heck of a lot of Records work. Juanita could probably, well..

Ms. Michaels: But just so I'm clear, not being in the Police Department, the lion's share of the work is done by Ms. Garza.

Chief Godfrey: No. The lion's share of the work is done by the Records clerk. The supervisor will-- if they're busy, she'll answer the phone, she'll give somebody directions at the front window, she'll direct them to other things.

Ms. Michaels: Okay. And in the report that was put into evidence - excuse me - as exhibit two, you've reviewed this. Have you reviewed this?

Chief Godfrey: I hope I did.

Ms. Michaels: It's number two, not number one. They're bringing your attention to the back, where the texts are. You're aware, sir, that the majority of these texts are texts between Ms. Henson and Ms. Garza, not Ms. Garza to Officer Piccola?

Chief Godfrey: Yeah, I'll concede that, but some of them are-- yes. I don't have it in front of me.

Ms. Michaels: I saw the majority.

Chief Godfrey: I don't have it in front of me.

Ms. Michaels: If I may approach?

Chief Godfrey: The text you're referring to, this looks like it's from Ms. Garza to Ms. Henson.

Ms. Michaels: Okay. Just so we're clear. In the text that Mr. Levitt was referring to that started this was a text from Officer Piccola to his supervisor, the new supervisor, Sergeant Gaden.

Chief Godfrey: You're right. I think It was actually an e-mail if I'm not mistaken.

Ms. Michaels: So these texts are not having to do with Officer Piccola's incident. These are between Ms. Henson and Ms. Garza.

Chief Godfrey: No, I think Officer Piccola is referenced in those texts.

Ms. Michaels: Yes, he's referenced in those texts. But the texts were not sent from Ms. Garza to Officer Piccola.

Chief Godfrey: I think there were some, but most of them, like you said, were mostly between Ms. Garza and Ms. Henson.

Ms. Michaels: You're right. Let me clarify one more time. The texts that are in here were sent from Ms. Garza to Ms. Henson. Ms. Garza did not send them to Officer Piccola, but Ms. Henson sent them to Officer Piccola.

Chief Godfrey: That's probably more accurate, yes ma'am.

Ms. Michaels: Okay. That's all I have. Thank you.

Mr. Levitt: Well, let's clarify it, but that's not accurate. So let's look at the texts. Go to the texts, starting with the first dark one, then go to one, two, three. Look at the-- what's looks like this, the third page of text and the top is [inaudible]. Can you see this here?

Chief Godfrey: I don't have those texts.

Mr. Ochipa: If I may, what's the point of who sent them?

Ms. Michaels: I've already made my point.

Mr. Levitt: Page nine.

Ms. Michaels: I don't know where Mr. Levitt's going.

Mr. Levitt: Oh. Look, page nine from the back. The text is from Officer Piccola, isn't it? And to Officer Piccola. Between Officer Piccola and Ms. Garza, isn't it?

Ms. Michaels: No. Sorry, but no.

Mr. Levitt: Look at the middle statement. Read that. Let me read it. It says, "If you want to talk to me, talk to me in person, not text. Think, think, think. Low-life piece of shit, that sounds like what I would say. Again, if you want to know the truth and I'll say it in front of you and pussy-mouth that's one thing." So that was sent to—

Ms. Michaels: No, you're absolutely—

Mr. Levitt: That was sent to Ms. Henson. I'm saying that. Look at the first dark one, the first text, actually the second one. "Dan, I've told you about lying on me. If you're going to repeat something I said repeat truth. When you walked in I called you a low-life two-legged rat, you, I was all over you and told you in regards to Stefanie I would have never done that to her. And she knows never say another word to me unless work related." So that would appear January 26, 5:32, is from Ms. Garza to Officer Piccola saying, "Dan, I've told you about lying on me," and "Dan, I called you a low-life two-legged rat." So there is a text. You said there's no text directly to Officer Piccola, and this is a text directly to Officer Piccola.

Ms. Michaels: What I said was the majority of the texts are between Ms .Henson and Ms. Garza.

Mr. Levitt: You said that then you said all of them. Chief said he thought there was one directly to him and that's the one, so the record is now clear. There was the one IA you did-- Ms. Garza did bring a complaint. But after that's a 2015/2016 evaluation. In 2016 are you aware of Ms. Garza ever coming forward and

complaining that she was being disrespected or mistreated that resulted in an IA?

Chief Godfrey: I know there was an incident with Officer Braun at the back window, but I don't remember the outcome. I don't think it turned into an IA. I don't remember.

Mr. Levitt: If in fact-- you already said this, if in fact she had a problem with someone she was to bring it forward and you would look into it.

Chief Godfrey: Absolutely.

Mr. Levitt: Nothing further.

Mr. Ochipa: Do you guys have any questions for him?

Mr. Coleman: A couple. Did the evaluation change and does the style of evaluation change over the years? Because I noticed in 2013/2014, at the end under additional comments, she had six or seven good props, good comments from people in the community and stuff like that that gave her something-- or from one of the police officers. That's something that in dealing with them, their relation, and that they gave her some good [inaudible]. And then, after that, the other years, I looked and there weren't any more. Is that because there weren't any or because the evaluation-- did the style of the evaluation change, the form, and then did not include that anymore?

Chief Godfrey: Well, they did change the style of the evaluations, but if there was anything that Ms. Garza wanted -- or any employee wanted to add to their file -- they certainly could add it, and sometimes you would put it in the comments section.

Mr. Coleman: So that's her choice to include those?

Chief Godfrey: Well, it says here, Records Clerk Garza was awarded and given a commendation for the Mower Depot incident. So that was added in by the supervisor that did the evaluation. So yes. Normally, and we've been doing this for a while, if you get a positive e-mail, if you look at some previous evaluations, if an officer says, "Hey, Ms. Garza, helped me," yes, absolutely, that would go in her evaluation for that year.

Mr. Coleman: So then, after 2013/2014, there are none. I don't see any. Is that her choice not to put him in there, or did she just not get any more?

Chief Godfrey: I didn't complete this document, but there is a handwritten note here that says she got a unit commendation for the Mower Depot incident.

Mr. Coleman: Okay.

Ms. Michaels: I think he's not looking at the same page you are. I know what page you're talking about.

Mr. Coleman: Okay.

Ms. Michaels: But if I could just--

Mr. Coleman: Sure, yes. Please.

Chief Godfrey: Right. You mean these here?

Ms. Michaels: Mm-hmm.

Chief Godfrey: Yes. We had those. The employee says, "Hey, I want these in my file." Or if the supervisor roots through the file and adds them. Yes, absolutely. There's nothing inappropriate or unrealistic about adding that.

Mr. Coleman: Would you say that this was the tipping point or a change in how you decided to run things after Chief Osterkamp? That you decided to crack down more on customer service or if Chief Osterkamp was still here, were you just continuing his style of policing with, as far as what you're talking about citizens and meeting the face behind the plastic, so to speak?

Chief Godfrey: Well, he's not here to answer that. But you're asking me a question so I'll answer it. He basically trained me now as Captain. And I know we share the same thoughts as far as customer service and the first contact with the community and the public and all when they come into the building, and my only addition to what he was already doing was I wanted to put a supervisor back in Records. And that's what I did when I became Chief.

Mr. Coleman: And did a 30-day or termination or anything -- did that ever cross your -- when you looked at different options after looking at what's been -- the options that have been exercised already before you came to the three-day, did you look at anything harsher than this and then back off and go to three-day or was it three-day? Is that typically your next step?

Chief Godfrey: Well, to answer your question I don't want to fire Ms. Garza. I just want her to stop doing the things that's getting us here today. And, like I said, in all honesty, from my heart of hearts, I think she's a good person. I think she's a good mom. I think she's a good grandmother. But I think this activity needs to stop. And no, it never crossed my mind to fire her for this, to be honest with you.

Mr. Berman: Just one quick question then, Chief. I'm looking at this and it seems on the third or the final page of each performance evaluation there's an overall performance rating and it essentially takes into account all the other pages. And, obviously, on the first performance evaluation we have, she's highly effective. But on the second and third, even though she received ones in

customer service and interpersonal communications, and then a two in teamwork, she was still found successful and effective overall. So I'm wondering what that communicates about the sort of priorities of the department if somebody can essentially be a one in those two. And if they're doing well in everything else if that's still considered acceptable.

Chief Godfrey: Well, actually, it is per the training manual that they gave us when they trained us how to use these. I think the concept behind it is if they're low in one area it shouldn't carry out through their entire performance evaluation and basically double tap them or triple tap them. So if they need improvement in a certain area then, by all means, mark them down low. But overall the employee could be doing other things great and well and just not performing well a certain category. So I think it's designed that way mathematically to allow the employee to be put on notice on an annual basis. Give them the training, the re-training, and the counseling and the discipline if it goes that far. But that's the design of this employee evaluation as I understand it. And these are done on an annual basis.

Mr. Ochipa: Any other questions?

Mr. Levitt: All right. Thank you, Chief. At this time, we will not call any of the witnesses.

Mr. Ochipa: Do you all typically do closing statements of any type, or--?

Ms. Emery: Well, we can. That's up to you. We may want to ask them to...

Mr. Levitt: Procedure calls for it. Keep it short.

Ms. Emery: I was just going to say, you may request that they keep it short given the hour.

Mr. Ochipa: Yes, if you would like to do some brief closing statements, that would be fine.

Ms. Michaels: So may I go first?

Mr. Levitt: You've got the burden.

Ms. Michaels: I think we've made our position clear that we understand about that one incident. I think it's pretty telling that they have not called Officer Piccola, who was here earlier, as a witness. I think it's because Officer Piccola, with all honesty, would say that he has this longstanding relationship with Ms. Garza, over 10 years now, that he did not take offense, which is what he told the IA Investigator. He did not take offense at what she said. That he was not offended by what she said. That he wanted to get out of Records.

What's sort of interesting to me, not being in the department, but listening to this and reading the documents, and hearing what the Chief said, for 17 years, he said, for 17 years, he's heard that Ms. Garza was so awful. For

over 17 years. She's been awful since she was there for 20 years. Doesn't get along with people. But for virtually 20 years, she has received great performance evaluations. Excellent and great. Excellent and great. And all of a sudden, in the last year, all of a sudden, she's intolerable and we're going to have to write her up. All of the 17 years-- and I don't know the answer to that question why all of a sudden now, we're going to write her up for something with Officer Piccola that Officer Piccola has said, "I don't want her to get in trouble. I'm not getting offense at this. I'm not-- I'm not going to make something out of this."

You heard from Sergeant Elkins that Officer Piccola never complained about her before to him, didn't want any internal investigation on her. And what I think is most telling-- because none of us really know what the story is. But you can presume that this is the nature of the way the department was dealing with each other. Either the non-law-enforcement officers and the enforcement officers had to snap back and forth, back and forth. But for some reason, she is the one that's going to be punished for it. And you can see even though we couldn't hear it, no one's ever actually received any punishment for the way they treat the other officers. It's Ms. Garza.

And you can see with your own eyes long before I've been involved or anything, her history is if you look at this one, now of course I've probably lost it, where they're telling her, it's in the documents, where they're telling her, "Look, you don't have to take it anymore. You don't have to keep say brushing it off. We know people--" As I said to you opening my statement, that Officer Piccola gives as good as he gets, and he says the same things to her, making comments about her Mexican heritage, and she's told by her supervisors, "You don't have to take it either. You need to come forward. People are complaining about your short, brusque manner that you don't talk nice to them. Well when people are talking bad about you, you need to come forward and do it."

So what my proposal has been is that under these circumstances, because that's the guideline that you make your decision under these circumstances. Am I saying that Ms. Garza is saying, "You're a two-legged low-life rat," is a nice thing to say? No, okay, it's not a nice thing to say. But obviously, not-nice things were said to her and that's why under these circumstances a three-day suspension is inappropriate. Now, Officer Piccola, you no longer make comments to her about where she's from or anything she's done. Ms. Garza, you no longer make comments to anybody about what's going on. Everything is just unprofessional. Why cherry-pick her comments out of 17 years of behavior to now give her a three-day suspension?

And that is our objection to why this is inappropriate. And I think it's clear, and it's also clear from the witness they didn't call that there's obviously more to the story than you've heard tonight. The Chief said it himself, 17 years, I

believe is the number he used. She's been with the department for 20. Why all the sudden now she's getting a three-day suspension? That's not right. Thank you.

Mr. Levitt: Well, the Chief's been here 6 years, I don't think he said anything about 17 years, but we can rely on your own recollection--

Ms. Michaels: I'm sorry, I'll clarify. He had heard about 17 years.

Mr. Levitt: Trying to stay calm here. The most telling-- she's saying it's telling we didn't call Officer Piccola. Ms. Garza's sitting right here. We didn't hear from the grievant. She has said nothing in her defense. Choice of Counsel? Choice of Ms. Garza? That's fine. And you don't have to call her, but how can you rule in her favor? She hasn't testified to anything. She asked Sergeant Elkins, "What did somebody else say to you?" They didn't call Piccola either. They called Sergeant Elkins. He's sitting out there. He's probably still sitting out there. We told him to stay until we released him. We didn't have to. It's admitted he was called those names. It's admitted she called him useless or worthless, and that she called him, "You're a low-life two-legged rat." We don't need to call him to talk about that, whether he's offended or not. Sergeant Elkins said that. You asked him. There's things the department doesn't tolerate whether someone complains about it or not.

End of tape 3

But the most telling thing is Ms. Garza hasn't testified. How can you rule in her favor? She hasn't told her story. Counsel says she was called Mexican. We don't when. Was it 10 years ago, yesterday, 20 years ago? We don't know what happened. She's not under oath, so there's no evidence before you or anything. And there's also no evidence that Ms. Garza complained about anybody in the last year.

In 2015, there's an evaluation that says, "If you have a problem, bring it forward," but there's no evidence she brought anything forward in 2016 or 2017, so they haven't proven anything. They're saying, "We've counseled her on that, spoke to her about it, but she didn't do it." And there's no evidence that Officer Piccola or Ms. Henson or anyone disrespected her that led to this. The only evidence you heard is: he walks in the door, and she says, "You two-legged low-life rat." She doesn't say, "He provoked me." She doesn't explain before you the circumstances or anything else. She hasn't explained the circumstances of calling him useless. She might have had a great explanation, but you'd have to guess and speculate what it might be.

They have not presented any evidence to support undoing what the Chief believes is appropriate, and I come full circle back to-- and I hope you may understand it, and I hope you take counsel from the lawyer on the board and Ms. Emery, but the standard's clear and convincing evidence. It's not, "What do you think?" It's not, "What would you do?" It's not, "How do you feel about

it?" Clear and convincing evidence is more than a preponderance of the evidence that it was wrong what he did. And they have not established by clear and convincing evidence that the Chief's decision to give a three-day suspension is wrong. In fact, it's totally consistent with the HR rules and policies of progressive discipline since, within 12 months, she had been counseled and reprimanded for discourteous behavior. She didn't object to that. She didn't defend that. It's a fact. It's in her record. So you have no evidence, and certainly, you have no evidence by any standard to reverse what the Chief thought was appropriate.

He doesn't want to fire her. He thinks she's a good person. He's trying to send a message, and anything less than a three-day suspension doesn't do that. She needs to learn. We need her skills. We want her to be successful, but this is an appropriate discipline under the circumstances. There is no circumstance that she was provoked or she was called names or that she filed a complaint against Officer Piccola or anyone else. So they've set up these flares, these red herrings, if you will, but there's no evidence before you. And, respectfully, the fact she hasn't-- I've never seen an arbitration, a hearing--

Ms. Michaels: I have to object. I'm sorry. I've sat here and I've heard you say everything you have about Ms. Garza, about her failure to testify, but now it's turned inappropriate.

Mr. Levitt: It's not inappropriate. This is not a criminal case. There's no right against self-incrimination.

Mr. Ochipa: She has the right not to talk if she doesn't want to.

Ms. Emery: Correct. She does. And I'll just advise you that she doesn't have to testify, but this also is not a criminal trial. So whether or not you take an inference from that is up to you.

Mr. Levitt: And that's my point. It's not criminal, so it's not Fifth Amendment right against incrimination. You can draw an adverse inference that, had she testified, that she didn't have the facts to support her appeal. So I'll leave it at that. It's clear and convincing, and we believe aside from whether she testified or not, the Chief has explained to you why he did it. It's a legitimate basis. It's a legitimate management decision.

You're not here to rubber-stamp the City or rubber-stamp the Chief. We are here to determine if he did something wrong, and we don't believe, under this evidence, you can say that they've proven his decision for a three-day suspension was wrong. So we ask you to uphold it, of course, your recommendation goes to the City Manager, as you know, but issue an order,

if you will, or a recommendation to the City Manager upholding the Chief's decision to issue a three-day suspension. Thank you.

Ms. Emery: Okay. This is an open deliberation, and so you will make your decision here tonight. So you guys can talk about it, and basically, your decision is whether or not to uphold the recommended three-day suspension and whether or not you do depends on whether or not you believe that Ms. Michaels has proven with clear and convincing evidence that it's inappropriate. You talk here amongst yourselves, and then someone can make a motion, and then it can be seconded, you can discuss it, and then there's going to be a vote. It's a public discussion.

Mr. Rohmer: I'll go first. I've listened to all this stuff, and my main concern is the interaction with the public. We have to have good relations with the public. I've heard a little bit about there being problems there. I've heard an awful lot about internal bickering, which I think goes on in most places, but based solely on the relationship with the public, I'm going to sustain the suspension. That's it.

Mr. Coleman: It seems like everybody likes Ms. Garza; that she's good at her job, and if Ormond Beach were to lose her, there would be a hole there. But, that said, like Mr. Rohmer was saying, it's good communication with the public. And I completely agree with what the representative said about it being high school-ish. I'm a teacher, and where I work all the teachers, a lot of those same things - we cut up and goof around, things like that - but I do know two things. One, if I had called someone a POS or a pussy mouth or something like that, I would be getting the same kind of thing from my boss.

And I also know that if it ever came to the point-- and I've been through the school system's version of internal affairs; not on me, but been involved with other people -- and I do know that if I was ever asked to go to training, at that point, I think I would wise up and would watch my Ps and Qs from then on. Again, I just think that the communication with the public being the tip of the spear almost, I think it's important, and I think it was said in the testimony and the transcript here, that she was told that it's not always what you say; it's how you say it. And I think Ms. Garza's a great employee. I think all the witnesses would agree, and I think even if Officer Piccola were to come here, he would agree too, that she does her job and is a good employee.

But there are some times when even when you or the other person don't want to bring the grievance, it has to be brought because it's in the rules and it's gotten to this point especially it's been building, and I think this is the third, the fourth step, and I think three days is a reasonable amount as a wake-up call, maybe. Not a termination, but a "Look, we've told you time and time

again you've got to take that seriously." So I would uphold Chief Godfrey's decision.

Mr. Ochipa: I would uphold this decision, and, first of all, I think that to say that, "Well, she's been doing this for all these years or other people have been doing this for all these years" is not a defense. It's not an acceptable form of behavior, especially not in a workplace, and the fact that it's gone on for that long just makes it worse, in my opinion. I think three days is very nice. It could have been a lot worse. There's no place for any of that stuff in the workplace, and it doesn't matter whether you're a part of it, or whether there's 15 people involved in it, but for whatever reason, Ms. Garza seems to be the epicenter of an earthquake, maybe. And I think that it's appropriate completely that something be done about that, and I think you should consider yourself lucky that it wasn't worse.

Mr. Berman: I guess I would say, for me, I do think it's a burden issue beyond anything else, which, in my mind, there's no question the action is reasonable and is warranted and is appropriate. I guess the way I'd put it is this for what it's worth: I think increasingly there's a recommendation among business and cities that customer service, both internally and externally, has to be one of the most important priorities for the business, and if a team doesn't function because people are not getting along, I think it's very appropriate for somebody to take action to try to rectify that.

The only comment I would add for the City, though, is that if customer service and teamwork and how people interact with others is a priority, I think the performance evaluation should be changed to reflect that such that somebody cannot get a passing mark if they don't meet that criteria. And I've seen examples of this in other places, so I know it's done. But obviously whatever you think is appropriate, but that's kind of my thought. And I guess the only other thing I would add is-- yeah, I think that's sufficient. Yeah. I think it's an appropriate action.

A motion was made by Mr. Ochipa and seconded by Mr. Berman that the HR Board uphold Chief Godfrey's decision and notify the City Manager. The motion was seconded. All were in favor. Carried.

Ms. Emery confirmed that the voting members were Mr. Ochipa, Mr. Emery, Mr. Berman, and Mr. Rohmer (Ms. Bradley had to leave early), and that she would prepare a summary document for review and signature by the HR Board Chair.

Mr. Ochipa asked if there was any new business.

A motion was made and seconded that the meeting be adjourned. All were in favor. Carried.

Adjourned: 8:05 PM.