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- - - - -x.

In the Matter of the Section 75

Proceeding,

Sullivan County,

Petitioner,

and

Jack Harb,

Respondent.

- - - - -x

July 24, 2024

10:02 A.M.

B E F O R E: Eric Benjamin, Esq.

TRANSCRIPT OF PROCEEDINGS - VOLUME I

APPEARANCES:

Khalid Bashjawish, Esq.
Assistant County Attorney
County of Sullivan
100 North Street
Monticello, New York 12701

James B. Tuttle, Esq.
The Tuttle Law Firm
939 Route 146
Clifton Park, New York 12065

Taken by Sandra Noel Bartels

Page 2

1 PROCEEDINGS
2 THE HEARING OFFICER: We are now
3 on the record. Today's date is July
4 24th. The time now is 10:02 a.m. and
5 this is a disciplinary hearing being
6 conducted pursuant to Section 75 of
7 The New York State Civil Service Law.
8 We are holding this hearing in the
9 Sullivan County Government Center in
10 the Village of Monticello in the
11 Legislative Room.
12 My name is Eric Benjamin. I have
13 been appointed by Sullivan County
14 Sheriff Michael Schiff to conduct this
15 hearing. This hearing concerns a
16 Mr. Jack Harb, a detective and
17 employee of the Sullivan County
18 Sheriff's Office, Patrol Division. He
19 is charged with misconduct as outlined
20 in the Notice of Discipline dated
21 April 30, 2024.
22 Representing The County is Mr.
23 Khalid Bashjawish, Assistant County
24 Attorney, and representing Mr. Harb is
25 PBA attorney Mr. James Tuttle, Esq.

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1 PROCEEDINGS
2 Do both sides waive the formal
3 reading of the charges?
4 MR. BASHJAWISH: Yes.
5 MR. TUTTLE: Yes.
6 THE HEARING OFFICER: We can
7 begin with our opening statements.
8 MR. BASHJAWISH: I would like to
9 admit Petitioner 1, 2 and 3.
10 Petitioner 1 would be the amended
11 charges dated April 30, 2014.
12 A copy of Petitioner 2, P-2,
13 designation of hearing officer and
14 notice.
15 And P-3, identified as the
16 Respondent's answer with affirmative
17 defenses.
18 MR. TUTTLE: May I examine those?
19 I have no objection to those offered
20 exhibits.
21 THE HEARING OFFICER: I would
22 like to enter into the record Exhibits
23 P-1, P-2 and P-3.
24 Counsel, you'll have the ability
25 to make copies?

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1 PROCEEDINGS
2 MR. BASHJAWISH: Yes, I do have
3 copies right now. I presume opposing
4 counsel has copies already.
5 MR. TUTTLE: Yes.
6 MR. BASHJAWISH: Would you like
7 to do copies at the end?
8 THE HEARING OFFICER: Sure, at
9 the end is fine.
10 Counselor?
11 MR. BASHJAWISH: I would like to
12 discuss what this case is about and
13 what this case is not about. I'll be
14 very brief in each section. In
15 talking about what this case is not
16 about, I would like to examine and
17 what I propose -- the way that I
18 interpret Respondent's affirmative
19 defenses. This case, this Section 75
20 proceeding, arises out of an incident
21 on October 31, 2022. Mr. Harb made
22 derogatory comments towards a higher-
23 ranking officer, Lieutenant Pratti,
24 and you'll hear why that came about.
25 Mr. Harb and Lieutenant Pratti had

Page 5

1 PROCEEDINGS
2 disagreements about a contract and on
3 that day on October 31, 2022, Mr. Harb
4 made prepared remarks about Lieutenant
5 Pratti. These remarks are the basis
6 of the four charges. Each charge has
7 eight specifications. Respondent will
8 agree to some of the specifications.
9 They will agree -- I expect him to say
10 yes, that he did say X, Y and Z. He
11 may not say -- he may not agree or
12 admit that he said all of them. For
13 those that he does not admit, I'll
14 call witnesses.
15 Mr. Harb did submit an answer and
16 in that answer he has six affirmative
17 defenses and I would like to discuss
18 -- in discussing what those are,
19 identifying what those are, I would
20 like to discuss what this case is not
21 about.
22 The first affirmative defense in
23 the answer, in P-3, you'll see that he
24 says that he was engaged in a
25 protected activity, a union activity

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1 **PROCEEDINGS**
2 as part of his contractual negotiation
3 as union president, I interpret to be
4 legal argument and opposing counsel
5 can either discuss or argue that in
6 any form that he choses.
7 The second affirmative defense,
8 Petitioner interprets Respondent's
9 second affirmative defense as the
10 hearing authority that the Petitioner
11 somehow interfering or coercing him
12 into some type of activity.
13 The third affirmative defense is
14 a proportionality defense analogous to
15 let the punishment fit the crime.
16 The fourth affirmative defense is
17 phrased as Lieutenant Pratti did bad
18 acts and he wasn't punished. I don't
19 see that as an affirmative defense but
20 I'll certainly address it and address
21 those concerns.
22 Number five is the most important
23 and I would like to discuss that last.
24 And the last one, just ask the
25 hearing officer, which you are

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1 **PROCEEDINGS**
2 certainly entitled to do, is consider
3 the merits of his defense in assessing
4 or recommending some type of
5 discipline.
6 For the fifth affirmative defense
7 he refers to a section in the Civil
8 Service Law, Section 75, referring to
9 retaliation. And this is the part
10 that I think is most important. I
11 don't know what Mr. Harb will discuss
12 in the retaliation claim. He has a
13 right to make that defense, that's
14 certainly his right. But I advise the
15 hearing officer to limit it to what he
16 says. He says that he believes the
17 reason why these charges are brought
18 up is that it's a result of his
19 disclosure to a government body of
20 information regarding a violation of
21 law, rule or regulation, and he's
22 saying -- I interpret that as him
23 saying that's the reason why these
24 charges are being brought up. If
25 that's true, he certainly has a right

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1 **PROCEEDINGS**
2 to bring it up, but I would ask that
3 he limit his defense to what those
4 are, what did he do, not somebody
5 else, what did he do, what did he
6 disclose and whether or not the
7 sheriff had some sort of notice or an
8 awareness of it, and is retaliating
9 against him. We would have to see
10 that. But anything beyond that scope,
11 I don't think is relevant. And I
12 think that's fair because he actually
13 listed what his affirmative defenses
14 are. Thank you.
15 **THE HEARING OFFICER:** Thank you,
16 Counselor. Mr. Tuttle?
17 **MR. TUTTLE:** Thank you, Mr.
18 Hearing Officer.
19 I actually don't have much to
20 disagree with in Mr. Bashjawish's
21 opening statement. Mr. Harb does
22 admit that there were some exchanges
23 by both he and Lieutenant Pratti
24 having to do with the union contract.
25 This was clearly a union issue in the

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1 **PROCEEDINGS**
2 context where those remarks were made
3 in both directions, has nothing to do
4 with department operations or
5 procedures. He was not on duty at the
6 time. So we'll hear about exactly who
7 said what about whom. And I would
8 like to address briefly affirmative
9 defenses.
10 First defense is just that. This
11 was union business. And neither the
12 County nor the sheriff, who are joint
13 employers here today, has any right to
14 punish Mr. Harb for what he did on
15 union time. And again, as was
16 referenced, I would like the
17 opportunity -- these are legal
18 arguments and I would like to have the
19 opportunity to address them in post
20 hearing briefs -- I'm not going to
21 waste a lot of time arguing about them
22 now.
23 The second affirmative defense is
24 basically anti-union activity. The
25 proof will show that Mr. Harb has been

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1 **PROCEEDINGS**
2 a very active and effective union
3 president throughout his tenure, as
4 opposed to his predecessor who was
5 basically a place holder with very
6 friendly ties to the administration
7 and the current administration is not
8 very happy with Mr. Harb because of
9 his strong and effective union
10 leadership, so we believe they are
11 taking this opportunity to take a
12 swing at him. But their true
13 motivation has to do with retaliation
14 against him for being an effective
15 union leader.
16 Principles of uniformity of
17 discipline come in here. As I
18 mentioned, Lieutenant Pratti also said
19 nasty things about President Harb.
20 They both filed complaints with the
21 county's human resource officer -- I
22 can't remember her name right now,
23 Julie, and she found both of them
24 founded. Now Jack Harb is being
25 punished and Lieutenant Pratti retired

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1 **PROCEEDINGS**
2 without any discipline whatsoever
3 being administered or even noticed or
4 threatened. So we consider that to be
5 a due process violation.
6 And fourth affirmative defense,
7 based on Section 75(b) of the Civil
8 Service Law is based on the fact that
9 President Harb has on multiple
10 occasions gone to public authorities
11 to report criminal activity concerning
12 activities going on within the
13 sheriff's office, one through an
14 outside agent and one internally, and
15 you'll hear the proof about that and
16 under Section 75(b), either the
17 hearing officer or the arbitrator as
18 the case may be, is required to
19 consider those defenses and to address
20 it in his or her decision. It doesn't
21 mean you have to accept it, but it
22 means you have to consider it,
23 consider the proof and discuss it in
24 your determination.
25 That concludes my opening

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1 **PROCEEDINGS**
2 remarks.
3 **MR. BASHJAWISH:** May I make one
4 commentary point? I'm sorry to extend
5 it, and please allow Mr. Tuttle to
6 reply. My only concern -- so this is
7 open to the public and it's an unusual
8 event to have because Section 75 is an
9 employment matter and they are
10 typically closed. It's Mr. Harb's
11 right to open it to the public because
12 of whatever he wants -- this is about
13 him and he's allowed to do that. I
14 would just ask that when we do get
15 into that discussions, that it doesn't
16 veer off into the realm of irrelevant
17 discussion. And the way that it has
18 to be relevant is there has to be
19 evidence of some kind where the
20 sheriff was aware of it and that he
21 acted on that. There has to be some
22 evidence of some kind, not just
23 speculation. And I think getting into
24 that just gets into the realm of
25 speculation which degrades the

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1 **PROCEEDINGS**
2 integrity of the hearing.
3 **THE HEARING OFFICER:** Counsel?
4 **MR. TUTTLE:** We'll see what the
5 proof is and you'll rule accordingly.
6 **THE HEARING OFFICER:** That's it
7 for opening remarks?
8 **MR. BASHJAWISH:** Yes.
9 **THE HEARING OFFICER:** Would you
10 like to proceed?
11 **MR. BASHJAWISH:** Yes. I would
12 like to call Mr. Harb.
13 **THE HEARING OFFICER:** Please
14 state your name, sir.
15 **MR. HARD:** Jack Harb, H-A-R-B.
16 **THE HEARING OFFICER:** Mr. Harb,
17 you are aware that this is a hearing
18 and you are being represented here
19 today?
20 **MR. HARB:** Yes.
21 **THE HEARING OFFICER:** And your
22 counsel here is present?
23 **MR. HARB:** Yes.
24 **THE HEARING OFFICER:** Before we
25 take any testimony, can you raise your

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1 PROCEEDINGS

2 right hand.

3 J A C K H A R B, called as a

4 witness, having been duly sworn by a

5 Notary Public, was examined and

6 testified as follows:

7 THE HEARING OFFICER: Counsel.

8 DIRECT EXAMINATION

9 BY MR. BASHJAWISH:

10 Q. Good morning, Mr. Harb.

11 A. Good morning.

12 Q. My name is Khalid Bashjawish.

13 I'm an assistant county attorney

14 representing the petitioner. Have you

15 ever taken a deposition before?

16 A. Yes.

17 Q. So are you aware of the rules of

18 a deposition?

19 A. Yes.

20 Q. So let's just agree that when I

21 ask a question you'll answer it and we

22 won't talk over one another.

23 A. Yes.

24 Q. And let's agree that you won't

25 nod your head, that you'll give oral

Page 15

1 PROCEEDINGS

2 responses, of course for the obvious

3 reason that the court reporter is

4 recording our conversation.

5 A. Yes.

6 Q. And if you need a break,

7 obviously just let us know and we will

8 take a break.

9 A. Okay.

10 Q. Please state your title.

11 A. Detective Corporal Jack Harb.

12 Q. How long have you worked for the

13 sheriff's office?

14 A. I was hired full time in

15 November of 2012. Prior to that I was

16 brought in as a 90-dayer, I want to say

17 2010.

18 Q. You are also the union president,

19 correct?

20 A. Correct.

21 Q. Which union?

22 A. The patrol division.

23 Q. As president of the patrol

24 division, are you familiar with Section 75

25 proceedings, correct?

Page 16

1 PROCEEDINGS

2 A. Somewhat.

3 Q. In what capacity are you familiar

4 with that?

5 A. I have typically utilized our

6 attorney for that.

7 Q. How do you utilize your attorney

8 for that?

9 A. Basically have them handle

10 Section 75 hearings.

11 Q. Do you ever advise or educate

12 your members on what a Section 75 hearing

13 is, do you ever review the charges with

14 them?

15 A. I typically leave that up to

16 counsel. I give advice after having

17 spoken to counsel.

18 Q. So have you done that before?

19 A. Yes.

20 Q. Have you ever attended a Section

21 75 hearing?

22 A. Yes.

23 Q. When?

24 A. Roughly a year ago.

25 Q. Do you recall who the member was?

Page 17

1 PROCEEDINGS

2 A. Lieutenant Peter Ramos.

3 Q. Before that, have you ever

4 attended a Section 75 hearing?

5 A. Not that I recall.

6 Q. What is your role as union

7 president?

8 A. I'm the president of the union.

9 I hold meetings, negotiate contracts,

10 reach out to counsel to file grievances,

11 things of that nature.

12 Q. What does that mean, to file a

13 grievance?

14 A. If the contract has been violated

15 or we feel there is an improper practice,

16 I reach out to counsel to file necessary

17 paperwork.

18 Q. What do you mean by improper

19 practice?

20 A. Something that may be or not be

21 covered in the contract but would go

22 against some other section of law.

23 Q. So if there is something you feel

24 or believe -- I assume it's administration

25 we are talking about, correct?

Page 18

1 PROCEEDINGS

2 A. Correct.

3 Q. Is it correct to say that an

4 improper practice is the process by which

5 the union and the administration resolve

6 problems?

7 A. I wouldn't limit it to the

8 administration because we have dual

9 employers with the county as well. We've

10 had issues come up with the county as

11 well. But I think it's one of the tools

12 that we would use.

13 Q. Would you agree there is a

14 process by which you have a grievance, by

15 you I mean the union, there is a process

16 by which you can resolve your complaints.

17 Is that a fair statement?

18 A. With who?

19 Q. With administration.

20 A. Currently, I would say no.

21 Q. Why not currently?

22 A. Because the administration does

23 not speak with us.

24 Q. But you do have an improper

25 practice process by which you are allowed

Page 19

1 PROCEEDINGS

2 to submit, discuss, basically litigate?

3 A. Through our attorney.

4 Q. Let's talk about the contract

5 that was voted on around October 2022.

6 Let's talk about events leading up to

7 that.

8 A. Sure.

9 Q. There was a pending contract

10 before October 31, 2022, correct?

11 A. Yes.

12 Q. Is it correct to say that the

13 basic terms of the contract were that

14 members would get more money in exchange

15 for lesser healthcare coverage?

16 A. That was one piece of it, yes.

17 Q. Is it correct to say that

18 Lieutenant Pratti disagreed with voting on

19 the contract?

20 A. Yes, I believe so.

21 Q. Do you know why he disagreed with

22 the contract or was against the contract

23 that was proposed?

24 A. He basically was making

25 statements that he would no longer be

Page 20

1 PROCEEDINGS

2 covered for his medical issues.

3 Q. How old was Lieutenant Pratti at

4 the time, in your best estimate?

5 A. Early 60s.

6 Q. So he was definitely older than

7 you?

8 A. Yes.

9 Q. Would you say he had more to

10 consider, that he had to consider more for

11 his healthcare coverage than others?

12 A. Absolutely not.

13 Q. Why not?

14 A. Lieutenant Pratti is married.

15 Has no children. Has no dependents. His

16 wife has her own medical. He has his own

17 medical. And he has single coverage, to

18 the best of my knowledge. The majority of

19 our members have family members, have

20 kids.

21 Q. But would you agree that he

22 disagreed with the contract?

23 A. Yes.

24 Q. Would you agree that he lobbied

25 fellow members to vote against it?

Page 21

1 PROCEEDINGS

2 A. I wouldn't say lobbied. I would

3 say manipulated or attempted to manipulate

4 others.

5 Q. Is that any different from saying

6 he wanted to persuade people to vote in

7 his favor?

8 A. When he is spreading

9 misinformation, I think that's different

10 than spreading truth or accurate

11 information.

12 Q. True or not. Would you agree

13 that he wanted people to vote his way?

14 A. Yes.

15 Q. We can agree at least to that?

16 A. Yes.

17 Q. And he wanted them to vote in a

18 way that he thought would benefit himself?

19 A. Yes.

20 Q. And there was a voting process,

21 correct?

22 A. Correct.

23 Q. When did the PBA -- is it correct

24 to say PBA?

25 A. Yes.

Page 22

1 PROCEEDINGS

2 Q. When did the PBA members actually

3 vote, they actually submitted yes or no on

4 that contract?

5 A. They had a two-week timeframe

6 from the previous PBA meeting in October

7 and the vote was scheduled to be counted

8 on October 31st.

9 Q. So is it correct to say your

10 testimony is they voted and then on

11 October 31st you guys would count the

12 votes and say this is the result of the

13 votes?

14 A. Correct.

15 Q. So then October 31st comes and

16 what happens, what is the first thing that

17 happens?

18 A. So with what?

19 Q. With the, quote unquote, meeting?

20 A. So at that point I was off duty.

21 I arrived at the station. Met up with now

22 Detective Cintron who grabbed the ballot

23 box and we started to make our way

24 towards, what would you call it, the

25 conference room basically, that's where we

Page 23

1 PROCEEDINGS

2 hold roll call. Roll call was not

3 concluded so we waited outside the door.

4 Q. So you claim -- you say that you

5 were off duty, correct?

6 A. Yes.

7 Q. How many members were actually

8 there at the meeting?

9 A. At roll call or at the actual PBA

10 meeting?

11 Q. At both.

12 A. Roll call, I'm not 100 percent.

13 It would be one squad.

14 Q. Approximately?

15 A. Approximately maybe six, seven

16 people.

17 MR. BASHJAWISH: Let me say for

18 the record that when I refer to

19 meeting, I don't think it was a

20 meeting. I will say meeting just for

21 the sake of moving along with the

22 questions and answers.

23 BY MR. BASHJAWISH:

24 Q. So eventually you did gather, you

25 had a meeting, you met with members of the

Page 24

1 PROCEEDINGS

2 PBA, correct?

3 A. Yes.

4 Q. How many people were there in

5 that gathering?

6 A. I would say anywhere from 15 to

7 20 possibly.

8 Q. Were they off duty?

9 A. Yes.

10 Q. All of them were off duty?

11 A. No.

12 Q. Were they in uniform?

13 A. Some of them were, yes.

14 Q. Some were, some weren't?

15 A. Correct.

16 Q. Do you believe that -- I'll call

17 it a gathering, you'll call it a meeting.

18 For the sake of argument let's call it a

19 meeting. Do you believe that it was an

20 official meeting?

21 A. Yes.

22 Q. On what basis?

23 A. If you look at our bylaws, I have

24 the ability as the PBA president to call

25 for a special meeting.

Page 25

1 PROCEEDINGS

2 Q. Let's take a look at the bylaws.

3 Let's mark this as P-4.

4 (Exhibit P-4 bylaws marked for

5 identification.)

6 THE HEARING OFFICER: Do you have

7 a copy?

8 MR. TUTTLE: I do.

9 BY MR. BASHJAWISH:

10 Q. Turn to the second page, Article

11 5, duties of officers. Section 1 says

12 that you have the power to call a special

13 meeting, in the last sentence; correct?

14 A. Yes.

15 Q. What is a special meeting?

16 A. A special meeting is basically

17 anything we need to discuss. It could be

18 a vote, it can be an urgent issue that

19 just came up, anything from getting a

20 member services, officer-involved

21 shootings, we've had deaths, we've had

22 fundraisers, basically anything that we

23 deem necessary. We have a special

24 meetings board to go over things. We have

25 deadlines. Literally anything we feel

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1 PROCEEDINGS
2 needs to be addressed.
3 Q. Anything for any purpose?
4 A. Pretty much.
5 Q. The purpose of your gathering was
6 for counting the votes, correct?
7 A. It was dual purpose, actually.
8 Q. What was the other purpose?
9 A. It was to count the votes and
10 then, depending on how the vote went,
11 figure out what we are going to do with
12 contract negotiations because Mr. Potosek
13 gave us a 90-day timeline to get a vote
14 passed because of medical insurance. So
15 it was already delayed once and
16 Mr. Potosek stated that we can possibly
17 still get it done within 60 days but he
18 needed to know. And that's why in our
19 contract it states the new salary for 2023
20 is such and then there is some language in
21 there pending the switch to Excelsior.
22 Q. Turning to Article 6 under the
23 section meetings, page 3 of Exhibit P-4,
24 let me know when you are ready.
25 A. Section 6?

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1 PROCEEDINGS
2 Q. Yes.
3 A. Okay.
4 Q. What does that section discuss?
5 A. It discusses the president, vice
6 president, secretary treasurer and
7 sergeant of arms as the executive board --
8 Q. I'm sorry, Article 6.
9 A. Discusses meetings.
10 Q. What does it mean to have a
11 meeting -- let me phrase. What are the
12 requirements to having a meeting?
13 A. It doesn't say requirements.
14 Q. Do you have to have minutes?
15 A. It's suggested, yes.
16 Q. Is it suggested or required?
17 A. I don't see required anywhere.
18 Q. Let take a look at Article 6,
19 Section 3. Can you read that phrase after
20 Section 3?
21 A. It says, Meetings will follow the
22 following format.
23 Q. Does the phrase "will" suggest
24 anything to you?
25 A. No.

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1 PROCEEDINGS
2 Q. It doesn't?
3 A. No.
4 Q. It doesn't suggest anything
5 obligatory?
6 A. No.
7 Q. That you will do this --
8 A. No.
9 Q. Or you will follow?
10 A. No.
11 Q. How do you interpret the word
12 "will"?
13 A. In this setting, I see it as
14 optional for the simple fact that we
15 haven't always followed this format.
16 Q. So you are saying your practice
17 is you typically don't follow your bylaws?
18 A. No, that's not what I'm saying.
19 What I'm saying is when we have normal
20 monthly meetings, this is the format that
21 we try to follow. But there are also
22 numerous times at these monthly meetings
23 where we waive the reading of the minutes,
24 we waive attendance taken by the
25 secretary, we waive the treasurer's report

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1 PROCEEDINGS
2 for the treasurer simply not being there.
3 And the meeting that took place on October
4 31st, we said the Pledge of Allegiance and
5 basically bypassed this to get to the vote
6 because we were crunched for time.
7 Q. Is it correct to say that you
8 still viewed it as an informal meeting; is
9 that a fair statement?
10 A. Yes.
11 Q. If fact, you did view it as an
12 informal meeting; is that right?
13 A. That's why I call it a special
14 meeting.
15 Q. Why would you call a special
16 meeting an informal meeting?
17 A. So a more formal meeting, I would
18 say, would be our monthly meetings that we
19 have away from the stations. We go to
20 restaurants, different spots, and we
21 basically follow this format. An informal
22 meeting, like we had in the past, I'll
23 gather up the executive board, for
24 example, and we'll sit down to eat, have a
25 meeting, the card that's assigned to the

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1 PROCEEDINGS
2 PBA to pay for the food and we go over
3 issues. We don't follow this format, we
4 don't stand and say the pledge, we don't
5 take attendance, we don't do any of that
6 kind of stuff, so that's why I'm saying
7 it's more of an informal type of meeting.
8 Q. As PBA president you don't think
9 it's important to follow the rules of the
10 bylaws?
11 A. No, never said that. I think our
12 union has been under a lot of change since
13 I took over. I've actually been trying to
14 make it to where it is more formal and
15 more business like. One of the things
16 I've tried to address is updating the
17 bylaws for some of these reasons. And as
18 you can see the last time it's been
19 updated was 2010. It has been brought up
20 in our PBA meetings and it is something
21 that we are currently working on.
22 Q. Why has it been so hard to update
23 the bylaws?
24 A. We just had numerous things
25 coming up since I've taken over as PBA

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1 PROCEEDINGS
2 president that need to be addressed and
3 Mr. Tuttle has helped with some of these
4 bylaw updates as well and things that we
5 have to get in place.
6 Q. When did you become president?
7 A. Approximately five years ago.
8 Q. So in the five years that you've
9 been president you have been bombarded
10 with so many things you haven't been able
11 to update the bylaws?
12 A. We basically took over and COVID
13 hit and then it was impossible to have
14 meetings. All the restaurants shut down.
15 We started using the station on a regular
16 basis but then between the mandates and
17 the masks and not being allowed to come to
18 the station and our own members getting
19 sick and everything else, it just kind of
20 became an informal thing. And then we
21 rolled into contract negotiations because
22 we were out of contract during COVID and
23 one thing after the other and that's
24 basically where we've been. The members
25 can tell you the other piece to that too

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1 PROCEEDINGS
2 is it's difficult sometimes to get things
3 done in the union because we don't have a
4 huge participation at the meetings, we
5 don't have a great turnout, partially
6 because of 12-hour shifts, partially
7 because members are good with the way
8 things are.
9 Q. By turnout you mean quorum?
10 A. Not necessarily a quorum. I
11 think we always have a quorum, otherwise
12 we cancel the meetings. But for a unit
13 that has approximately 60 members, we are
14 lucky to get on average 12 people at a
15 meeting and four or five of them are
16 executive board members.
17 Q. Let's talk about the actual day,
18 October 31, 2022. So you came in with
19 prepared remarks, correct?
20 A. Yes.
21 Q. Why did you do that?
22 A. Because the week before the
23 meeting I was getting bombarded with phone
24 calls. Lieutenant Pratti had been going
25 around, making disparaging remarks about

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1 PROCEEDINGS
2 me, about Mr. Tuttle, to the sheriff, to
3 the undersheriff, to junior members, to
4 senior member, at roll call, in uniform,
5 on duty. I heard he was at the government
6 center telling everybody that we were
7 forcing him out, making him retire and all
8 of this, he was basically saying, was
9 because of me and me alone.
10 Q. He said a lot of things, correct?
11 A. Correct.
12 Q. He said a lot of things that you
13 disagreed with?
14 A. Yes.
15 Q. He said a lot of things you took
16 offense to?
17 A. I think anybody would.
18 Q. But you took offense to it,
19 correct, and you wrote a prepared
20 statement to address those remarks?
21 A. Not necessarily to address those
22 remarks but to also explain to the
23 membership what has been going on. He
24 didn't make these remarks just as an
25 attempt to get at me, he -- maybe to the

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1 PROCEEDINGS
2 sheriff and undersheriff and
3 administration, but he was also making
4 these remarks to junior members to try to
5 get them to vote a different way. What I
6 had said was basically in response to what
7 he was doing and how we need to keep the
8 integrity of what the actual information
9 is for the vote.
10 Q. That's interesting. So by the
11 day you are meeting on October 31st, if we
12 can imagine that we are sitting there that
13 day, everyone in that room had already
14 voted, correct?
15 A. Correct.
16 Q. Did it matter what Lieutenant
17 Pratti had said before that?
18 A. Absolutely.
19 Q. Why would it matter if everyone
20 voted?
21 A. Because if the vote didn't go a
22 certain way, that means I have to start
23 contract negotiations all over again and
24 it was imperative that we try to get
25 something done before the timeline Potosek

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1 PROCEEDINGS
2 gave us or contract negotiations are out
3 the window.
4 Q. So did you count the votes on
5 that day?
6 A. Yes.
7 Q. What was the result?
8 A. 48 "yes" I believe, and eight
9 "no."
10 Q. So Pratti lost?
11 A. Ultimately, yes.
12 Q. Did you want to know what the
13 result of that tally was before you made
14 those remarks?
15 A. Did I want to know the result of
16 the tally?
17 Q. Right. In other words, your
18 concern that Pratti might persuade people
19 based on wrong information, and the fact
20 they did vote against it, you had to let
21 everyone know this is incorrect and you
22 have to know why. My question to you is,
23 did you make your remarks before or after
24 the tally?
25 A. Before.

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1 PROCEEDINGS
2 Q. Why before and not after?
3 A. Because it was imperative that
4 people knew if this didn't go through, it
5 was for this reason. Because of the
6 misinformation that he was spreading.
7 Q. All you had to do was wait for
8 the count to go through to know how it
9 would go, right?
10 A. Yes, it could have waited.
11 Q. So why not wait?
12 A. Honestly, I had a death in the
13 family. I was pressed for time. I
14 probably could have waited but I had a lot
15 going on and I didn't know how things were
16 going to go.
17 Q. You were angry at Pratti for the
18 false information that he said about the
19 contract and about you?
20 A. I was more disappointed in the
21 administration and him for allowing this
22 type of behavior to go on, and they all
23 knew about it. And the manipulation of
24 trying to mess with union business, that I
25 was upset at that point. There was a

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1 PROCEEDINGS
2 period of time when I was upset, it was
3 probably days ago.
4 Q. You are the president of the PBA,
5 correct?
6 A. Yes.
7 Q. Not everyone is going to agree
8 with what you do?
9 A. Correct.
10 Q. Not everyone is going to agree
11 with what you have to say?
12 A. Correct.
13 Q. When you are on the top, people
14 are going to throw mud at you, correct?
15 A. Yes.
16 Q. They are going to try to say you
17 have your own personal motives for voting
18 a certain way or doing certain things,
19 correct?
20 A. Sure.
21 Q. But Pratti lost, correct?
22 A. Ultimately, yes.
23 Q. The union members weren't
24 persuaded by his comments no matter how
25 false they were?

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1 PROCEEDINGS

2 A. I have no idea of knowing that

3 until we counted the vote.

4 Q. Would it have been better to have

5 just waited and count the vote rather than

6 make those remarks?

7 A. I don't know. I think I have a

8 duty to the membership when somebody is

9 spreading misinformation about contract

10 negotiations to address it.

11 Q. Yeah, but you are also in a

12 leadership position, you are also the

13 president. And what I'm interested in

14 knowing is why not just wait? Because the

15 voting -- would you agree with me the

16 voting results would have answered your

17 question as to whether or not people were

18 persuaded?

19 A. I don't know. Only because I

20 don't know who he spoke with before or

21 after they voted.

22 Q. Well, yeah, you didn't know. All

23 you had to do was wait and see what the

24 tally was and you would have known?

25 A. Could have.

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1 PROCEEDINGS

2 Q. In fact, you did know the result;

3 40 plus to eight. All you had to do was

4 wait. Would you agree?

5 A. Potentially could have.

6 Q. So you made your prepared marks

7 before, correct?

8 A. Yes.

9 Q. I want to go through each --

10 there are four charges, they are

11 duplicative. We are not going to go

12 through every single one, but bear with me

13 on how we proceed through this.

14 Do you have a copy of the charges

15 in front of you?

16 A. No.

17 Q. There are four charges. And as

18 you see they are all duplicative, they are

19 based on different theories and analogous

20 to -- you are aware of the charges, I'm

21 not going to explain that. But let me do

22 this. What I'd like to do is go through

23 specifications one through eight, okay,

24 and just tell me yes or no if you said

25 that.

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1 PROCEEDINGS

2 For Specification No. 1, page 1,

3 did you call Lieutenant Pratti a liar?

4 A. I stated that he was lying about

5 myself and Mr. Tuttle and some of the

6 details of the contract negotiations and

7 thus making him out to be a liar.

8 Q. So is that yes or no?

9 A. Yes.

10 Q. Did you say that he couldn't be

11 trusted?

12 A. I believe I stated that he was

13 going around telling people that I

14 couldn't be trusted and I didn't know what

15 I was doing and, in fact, I said

16 Lieutenant Pratti is acting in this

17 manner, he is the one that couldn't be

18 trusted.

19 Q. So you said that too?

20 A. Um-hm.

21 Q. Did you say Lieutenant Pratti

22 shouldn't be a cop?

23 A. I believe I made some mention to

24 that. Yes, I believe so.

25 Q. Did you say that Lieutenant

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1 PROCEEDINGS

2 Pratti doesn't have the balls to answer?

3 A. No.

4 Q. Did you say that -- skip to the

5 next page, Specification No. 5, page 2.

6 Did you say that Lieutenant Pratti should

7 stick to cooking and towing boats?

8 A. I believe I stated something to

9 the effect that those that are still

10 looking to conspire and alter contract

11 negotiations should stick to towing boats

12 and pack a lunch because I wasn't going

13 anywhere.

14 Q. And that applied to Lieutenant

15 Pratti?

16 A. I think it applied to anybody.

17 Q. So is that specification a yes or

18 no?

19 A. I think it applies to everybody,

20 so if you are going to include him in

21 that, that would be yes.

22 Q. Would you include him in that?

23 A. Yeah, he was cooking and towing

24 boat, so yes.

25 Q. Specification No. 6, did you say

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1 **PROCEEDINGS**
2 that Lieutenant Pratti was incompetent?
3 A. I don't recall.
4 Q. Did you say he was not a cop,
5 Specification No. 7?
6 A. I don't think so but honestly I
7 don't recall.
8 Q. What about the last one, No. 8,
9 that he lacked testicular fortitude?
10 A. Yeah, I said he -- I tried to
11 call him a couple times to try and work
12 out whatever issues he was having and that
13 he lacked the testicular fortitude to
14 answer the phone. I think that's the one
15 being confused with no balls.
16 Q. Would you say that's duplicative?
17 Did you say the phrase "he doesn't have
18 the balls to answer"?
19 A. No, I never said that.
20 Q. But you did say that he lacked
21 testicular fortitude?
22 A. I said he lacked testicular
23 fortitude to answer the phone when I
24 called him, and then somebody else called
25 him and he answered right away.

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1 **PROCEEDINGS**
2 Q. My question is why say that about
3 someone? Why said, especially you are
4 both professional law enforcement
5 officers, he had a disagreement with you,
6 he's an older man, he's, you know, getting
7 ready to retire, maybe he feels vulnerable
8 about his healthcare and whether or not he
9 will be able to pay for certain
10 procedures, getting the quality that he
11 might have, that you may not know of, that
12 his wife may have that you may not know
13 of. Maybe he felt very vulnerable. Maybe
14 he felt attacked; is that possible?
15 A. How would he feel attacked?
16 Q. That he was going to lose
17 something, that he was going to lose his
18 healthcare coverage of some form of any
19 kind?
20 A. If anything, it's a benefit for
21 him to retire. He would have gotten free
22 medical insurance rather than pay for it
23 currently.
24 Q. Let me rephrase the question.
25 Why talk about another colleague in front

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1 **PROCEEDINGS**
2 of your colleagues, in front of your
3 members, and say this man, he lacks
4 testicular fortitude, which you agree is
5 another way of saying he doesn't have the
6 balls?
7 A. I think it's just articulate. I
8 think he --
9 Q. It's a euphemism, I'd say.
10 A. Sure. I didn't use foul
11 language, I didn't swear.
12 Q. But you are questioning his
13 manhood, correct?
14 A. Not really.
15 Q. When you say somebody lacks
16 balls, how do you interpret that?
17 A. I didn't say balls, I said he
18 lacked testicular fortitude to answer the
19 phone.
20 Q. What does that mean?
21 A. That he doesn't have the guts to
22 speak with me.
23 Q. That he doesn't have the guts.
24 A. Right.
25 Q. Would you say he doesn't have the

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1 **PROCEEDINGS**
2 courage?
3 A. Yeah, we can say that.
4 Q. Would you say he's not a man for
5 not confronting someone?
6 A. No, I wouldn't say that.
7 Q. But at least that he lacks
8 courage to talk to you?
9 A. Yeah. He was comfortable talking
10 behind my back and all these other things
11 but when we tried to resolve things with
12 him and called him multiple times, he's
13 not even answering the phone. What am I
14 supposed to do here?
15 Q. Why say that to your members, why
16 let them know?
17 A. Why would he go around making
18 disparaging remarks about me? He's a
19 lieutenant. On the clock. In uniform.
20 Q. That's a good question.
21 A. How do I respond as PBA president
22 without letting them know what is actually
23 being said about the contract?
24 Q. That's a good question. He's not
25 here to answer. But you are the guy on

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1 PROCEEDINGS
2 the top. You are the PBA president. You
3 agreed with me that people are going to
4 throw mud at you.
5 A. Sure.
6 Q. Do you have to respond to
7 everything that somebody says?
8 A. No, I don't respond to
9 everything.
10 Q. You didn't have to respond to
11 Lieutenant Pratti's comments no matter how
12 absurd they were.
13 A. In this case I think I did
14 because of the misinformation he spread
15 about the contract.
16 Q. But you agree with me in this
17 case you could have just waited until the
18 vote was counted and that would have
19 answered the point that Lieutenant Pratti
20 rattled his mouth about all this false
21 information and you guys showed me that
22 you didn't trust or believe what
23 Lieutenant Pratti said.
24 A. I could have waited. It wasn't
25 really on my mind at that point.

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1 PROCEEDINGS
2 Q. You're a leader. You could have
3 just waited.
4 A. It was an option. But again,
5 it's not like I had this all planned out,
6 per se.
7 Q. You reacted emotionally?
8 A. I don't know if it was
9 emotionally. I think it was more a time
10 crunch because I had to get down to
11 Brooklyn for a funeral. That's where I
12 ended up going later on that day after I
13 left.
14 Q. Bear with me a minute.
15 Let's call this P-5.
16 (Exhibit P-5 Bates stamp of 0026
17 marked for identification.)
18 THE HEARING OFFICER: Counselor,
19 before you go to P-5, I never asked
20 Mr. Tuttle if he had objections to
21 P-4.
22 MR. TUTTLE: I have no objection.
23 THE HEARING OFFICER: I'd like to
24 enter P-4 into the record. Any
25 objections to the testimony regarding

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1 PROCEEDINGS
2 this?
3 MR. TUTTLE: No.
4 THE HEARING OFFICER: Thank you.
5 P-5?
6 MR. BASHJAWISH: Labeled Sullivan
7 County Sheriff's Office rules and
8 regs. Has a Bates stamp of 0026.
9 THE HEARING OFFICER: Do you have
10 a copy, Counselor?
11 MR. TUTTLE: Yes.
12 THE HEARING OFFICER: Any
13 objections?
14 MR. TUTTLE: I think this needs
15 to be authenticated before I consent
16 to it.
17 THE HEARING OFFICER: Take your
18 time.
19 BY MR. BASHJAWISH:
20 Q. Do you recognize this document,
21 Mr. Harb?
22 A. I know what it is, yes.
23 Q. What is it?
24 A. Sullivan County rules and regs.
25 Q. As PBA president you are aware of

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1 PROCEEDINGS
2 what the rules and regulations are,
3 correct?
4 A. Yes and no.
5 Q. But you are aware that certain of
6 your members have been brought on Section
7 75 charges, presumably under violations
8 under certain rules and regs, correct?
9 A. When I took over as PBA president
10 I don't know even know that we used this,
11 to be honest. I don't believe I got a
12 copy of this. Everything referenced to my
13 members has been more after Lexipol took
14 effect.
15 Q. If you turn to page 8, the Bates
16 stamp is 33, on the bottom.
17 THE HEARING OFFICER: Excuse me.
18 Were there any further objections,
19 Mr. Tuttle --
20 MR. TUTTLE: I don't think it has
21 been established as an existing
22 regulation of the Sullivan County
23 Sheriff's office.
24 MR. BASHJAWISH: He acknowledged
25 what it was.

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1 PROCEEDINGS

2 MR. TUTTLE: He said he's seen

3 it.

4 THE WITNESS: I never received

5 this. I would argue a majority of our

6 members don't have this. That was

7 part of the problem with our agency,

8 why we switched to Lexipol.

9 MR. BASHJAWISH: Noted. I'm

10 going to proceed anyway.

11 BY MR. BASHJAWISH:

12 Q. Charge one said that you violated

13 this policy, subsection F(5) which says

14 that a member shall not express any

15 derogatory statement bearing upon the

16 efficiency or standing of a former or

17 present member or employee of Sullivan

18 County's office except to a person

19 officially titled thereto.

20 Did you make derogatory

21 statements -- would you say the statements

22 you made about Lieutenant Pratti were

23 derogatory?

24 A. I don't think so.

25 Q. Why not?

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1 PROCEEDINGS

2 A. I think they were factual.

3 Q. If I said in this hearing, if I

4 said to someone that they lacked

5 testicular fortitude or that they were a

6 liar, that wouldn't be derogatory?

7 A. Based on what? If you lied, you

8 would be a liar.

9 Q. So you think it's appropriate as

10 a detective corporal in the sheriff's

11 office to make those comments about your

12 colleagues?

13 A. I wasn't acting as a detective or

14 as a corporal, I was acting as the PBA

15 president and I was speaking to my

16 membership, entitled thereto.

17 Q. So you think your members were

18 entitled to hear you say those comments

19 about a higher-ranking Sullivan County

20 employee?

21 A. I think I could have been nicer

22 about what I said potentially, however the

23 message was still the same; Lieutenant

24 Pratti was going around making derogatory

25 remarks by myself, our counsel, and lying

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1 PROCEEDINGS

2 about specific things in the contract in

3 the negotiations. Nothing changed.

4 Q. Let's go to Charge 2, P-6.

5 (Exhibit P-6 policies marked for

6 identification.)

7 BY MR. BASHJAWISH:

8 Q. Do you recognize this document?

9 THE HEARING OFFICER: You are

10 entering this now?

11 MR. BASHJAWISH: Yes.

12 THE HEARING OFFICER: Any

13 objection? Do you have a copy?

14 MR. TUTTLE: Yes. I don't know

15 what it is yet.

16 THE HEARING OFFICER: In the

17 interim I would like to enter P-5 into

18 the record.

19 And I would like to give

20 Mr. Tuttle an opportunity to speak on

21 behalf of Exhibit P-5.

22 MR. TUTTLE: I object to its

23 receipt. I don't believe it's been

24 established as a rule and regulation

25 in force and effect at the sheriff's

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1 PROCEEDINGS

2 office at the time of these events.

3 THE HEARING OFFICER: Your

4 objection is noted. I'll allow it.

5 From my understanding there is another

6 rules and regulations that we might be

7 getting to as indicated --

8 MR. BASHJAWISH: Yes, there is an

9 additional one based on the -- Charge

10 2 and 3 are based on this policy.

11 Charge 4 is based on the Sullivan

12 County Employee Handbook. For Charges

13 2 and 3, just to clarify now, that in

14 the event that I do need to call Lorne

15 Green, the head of IT, he will

16 establish that Mr. Harb did in fact

17 receive this document.

18 THE HEARING OFFICER: So we are

19 waiting for Mr. Tuttle. He has P-6.

20 MR. BASHJAWISH: Let me know when

21 you are ready.

22 MR. TUTTLE: May I question on

23 this, the offered document, P-6?

24 THE HEARING OFFICER: Sure.

25 MR. TUTTLE: Is there anything on

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1 PROCEEDINGS
2 this document that indicates when --
3 whether it was adopted by the Sullivan
4 County sheriff's office?
5 THE WITNESS: It says published
6 with permission but it doesn't say
7 anything about adopted.
8 MR. TUTTLE: Does it say when it
9 was published?
10 THE WITNESS: Copyrighted in
11 2022, November 29, 2022.
12 MR. TUTTLE: So assuming that is
13 an effective date, was that in effect
14 on 10/31/22?
15 THE WITNESS: I honestly don't
16 know.
17 MR. BASHJAWISH: Again, just to
18 clarify, I do intend to call Lorne
19 Green who will testify that he is able
20 to access every single employee's
21 e-mail and he was able to see that Mr.
22 Harb opened or received this document.
23 THE HEARING OFFICER: Anything
24 further on P-6?
25 MR. TUTTLE: I've noted my

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1 PROCEEDINGS
2 objections and we'll see what Mr.
3 Green has to say about it.
4 THE HEARING OFFICER: I'll enter
5 P-6 into the record.
6 BY MR. BASHJAWISH:
7 Q. Charge 2 charges you with
8 misconduct, violating this policy Section
9 320.5.9(f) that's on page 6, Bates stamped
10 43. Just let me know when you are done
11 reading sub F.
12 A. I see it.
13 Q. Ready?
14 A. Sure.
15 Q. Were your comments discourteous,
16 disrespectful or discriminatory treatment
17 of any other member, meaning Lieutenant
18 Pratti, on that day October 31, 2022?
19 A. I don't believe I was being
20 disrespectful or discriminatory.
21 Depending on your view it could be seen as
22 being discourteous, but that would depend
23 on the definition of discourteous.
24 Q. What is your definition of
25 discourteous?

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1 PROCEEDINGS
2 A. I guess lack of courtesy.
3 Q. What does it mean to be
4 courteous?
5 A. I guess please and thank you.
6 Q. Let me ask you this. So
7 Lieutenant Pratti didn't have the courage,
8 if I recall you used that word, to
9 confront you about this?
10 A. Not confront me, just pick up the
11 phone, be courteous. I called him
12 multiple times.
13 Q. So he didn't have the courtesy to
14 call you?
15 A. To pick up the phone.
16 Q. Why not call him and be
17 courteous?
18 A. I did. I called him like three
19 times.
20 Q. And he didn't pick up?
21 A. Correct.
22 Q. Let's take a look at Charge 3.
23 It has the same specifications as Charges
24 1 and 2. It says you violated Section --
25 same policy, that you violated Section

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1 PROCEEDINGS
2 320.5.9(m). Let me know when you are done
3 reading this one.
4 A. Okay.
5 Q. It says here any other on- or
6 off-duty conduct which any member knows or
7 reasonably should know is unbecoming of
8 this agency as contrary to good order,
9 efficiency or morale or tends to reflect
10 unfavorably upon this agency or its
11 members.
12 Would you say you violated this
13 policy even though as you say that you
14 were off duty?
15 A. No.
16 Q. Why not?
17 A. Because I was acting as the PBA
18 president at a PBA meeting, addressing my
19 membership discussing contract
20 negotiations, and some of the
21 misinformation that was being spread. And
22 I did so believing that I was covered by
23 the Taylor act, the Taylor Law.
24 Q. So what kind of behavior are you
25 allowed to do in a PBA meeting?

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1 PROCEEDINGS
2 A. What is your definition of
3 behavior?
4 Q. What is your understanding of
5 what that word means?
6 A. To me it would be acts. I didn't
7 act anything. All I did was speak.
8 Q. How far can you go, what is your
9 understanding of how far you can go? If
10 you believe you are covered by the Taylor
11 Law, I'm not saying whether you are right
12 or wrong, I want to know how far can you
13 go as PBA president?
14 A. Well, I don't think you should
15 use foul language. I don't think you
16 should discuss people's sexuality,
17 religion, ethnicity, things to that
18 effect.
19 Q. What is the basis of that belief?
20 A. Being courteous.
21 Q. So in some instances you do have
22 an understanding of what it means to be
23 courteous?
24 A. Yes.
25 Q. And your testimony is that on

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1 PROCEEDINGS
2 October 31, 2022 you were acting
3 courteously?
4 A. I think as courteous as I could
5 be, given the situation and the amount of
6 time that I had.
7 Q. Let's move on to Charge 4. This
8 will be P-7.
9 (Exhibit P-7 Sullivan County
10 Handbook marked for identification.)
11 MR. BASHJAWISH: Can we go off
12 the record for a minute?
13 THE HEARING OFFICER: Any
14 objection to going off the record?
15 MR. TUTTLE: No.
16 (Off the record 10:58 a.m. to
17 10:59 a.m.)
18 THE HEARING OFFICER: Any
19 objection to that, counsel?
20 MR. TUTTLE: No.
21 THE HEARING OFFICER: We
22 introduced item P-7. You had an
23 opportunity to look at it. Any
24 objections?
25 MR. TUTTLE: No.

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1 PROCEEDINGS
2 THE HEARING OFFICER: I'd like to
3 enter document P-7 into the record.
4 BY MR. BASHJAWISH:
5 Q. Mr. Harb, if you look at page 36
6 of this document, I underlined one phrase,
7 Bates stamped 47 and 48, looking at the
8 bottom of what is marked as 36, or Bates
9 stamped 47. If you take a look at the
10 middle of the page where it says, Other
11 unacceptable conduct, just take a minute
12 to read the first two sentences, which is
13 the basis of Charge 4.
14 A. Okay.
15 Q. Charge 4 says this policy, the
16 Sullivan County Handbook and
17 Discriminatory Harassment Policy, also
18 prohibits conduct which may not rise to
19 the level of discrimination but
20 nonetheless creates a degree of hostility
21 or intimidation that adversely affects the
22 work environment.
23 Did your actions on October 31,
24 2022 affect the workplace environment?
25 A. I wouldn't have a way of knowing

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1 PROCEEDINGS
2 that.
3 Q. Would you say your conduct
4 intended to annoy, personally attack,
5 belittle or embarrass another individual,
6 specifically Lieutenant Pratti?
7 A. I don't know how he would feel
8 about it. He wasn't even present at the
9 moment.
10 Q. Was it intended to annoy,
11 personally attack or belittle or embarrass
12 Lieutenant Pratti?
13 A. It was intended to basically set
14 the record straight. I don't know about
15 belittling or embarrassing. It wasn't a
16 personal attack.
17 Q. Your testimony is that the
18 language you used was not a personal
19 attack against Lieutenant Pratti?
20 A. I mean, I think the word attack
21 is a bit much. Was there a segment
22 directed to him? Sure. Was it an a
23 attack? I don't view it that way.
24 Q. Is the Sullivan County sheriff's
25 office, is it a paramilitary organization?

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1 **PROCEEDINGS**
2 A. That's a good question. I think
3 it wants to be, but I don't believe that
4 it is. A paramilitary organization has
5 chain of command.
6 Q. What does that mean?
7 A. That means it would filter down
8 sheriff, undersheriff, chief, lieutenant,
9 so on and so forth.
10 Q. And the lowest rank would be
11 deputy?
12 A. Or recruit, yes.
13 Q. What is above that?
14 A. Above a recruit?
15 Q. Above deputy?
16 A. Above a deputy would be a
17 corporal.
18 Q. And above him is sergeant?
19 A. Actually, above a deputy would be
20 a field training officer and then a
21 corporal.
22 Q. Where do you fit in that rank?
23 A. Well, according to the boss, I'm
24 not really a corporal so I think I'm a
25 deputy.

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1 **PROCEEDINGS**
2 Q. Are you a deputy detective?
3 A. For whatever that means,
4 apparently, yes.
5 Q. What is your job title?
6 A. My assignment is --
7 MR. TUTTLE: He's asking about
8 your civil service title.
9 THE WITNESS: My title is
10 corporal.
11 BY MR. BASHJAWISH:
12 Q. What are your responsibilities?
13 A. As a corporal?
14 Q. Yes, if there are any?
15 A. The sheriff says I am ceremonial
16 corporal. I've not been told what my
17 corporal responsibilities are.
18 Q. Do you believe he has -- has he
19 promoted you to corporal?
20 A. Yes, off the civil service test.
21 Q. Do you have corporal
22 responsibilities?
23 A. No.
24 Q. Do you have an understanding as
25 to why or why not?

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1 **PROCEEDINGS**
2 A. Why am I not at corporal
3 responsibilities?
4 Q. Why don't you have corporal
5 responsibilities?
6 A. Apparently because the sheriff
7 does not view detective corporals as
8 supervisors.
9 Q. So it's not an attack against
10 you, he just doesn't view detective
11 corporals as supervisors; is that right?
12 A. I don't know if that's right but
13 he's allowed detective corporals,
14 detective sergeants, detective
15 lieutenants, supervisors, responsibilities
16 in the past.
17 Q. Bear with me one minute.
18 For one of your affirmative
19 defenses I'm going to reserve the right to
20 cross examine him once opposing counsel
21 goes to his direct, so I can't go through
22 each affirmative defense. But one of the
23 defenses that I want to highlight is your
24 understanding of the fourth affirmative
25 defense.

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1 **PROCEEDINGS**
2 Your fourth affirmative defense
3 -- do you have a copy of P-3, that's your
4 answer.
5 So P-3, your affirmative defense
6 No. 4. No. 4 of the affirmative defenses
7 says Lieutenant Pratti who was on the
8 other side of this argument concerning the
9 merits of the proposed successor
10 collective bargaining agreement from the
11 respondent made false and derogatory
12 statements equivalent to or worse than the
13 statements alleged to have been made by
14 the respondent about the respondent and
15 even about the PBA's counsel but no
16 discipline was ever imposed or sought
17 against him for that conduct.
18 Lieutenant Pratti said bad things
19 about you, correct?
20 A. Yeah.
21 Q. You are saying, the allegation is
22 nothing was done to him, correct?
23 A. Yes.
24 Q. Do you have an understanding as
25 to why nothing was ever done to him?

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1 PROCEEDINGS

2 A. Yes.

3 Q. What is that understanding?

4 A. My understanding is that he's a

5 protected species within our department.

6 Q. You are saying that the sheriff

7 favors him but doesn't favor you?

8 A. I would say that when it comes to

9 Lieutenant Pratti you would be hard

10 pressed to find him being disciplined.

11 Q. Do you have an understanding as

12 to when he retired?

13 A. The end of December of 2022.

14 Q. Is it possible they just never

15 got to disciplining him?

16 A. Absolutely not.

17 Q. There was an investigation,

18 correct?

19 A. Investigation into what?

20 Q. Into the events that happened on

21 October 31, 2022?

22 A. Yes.

23 Q. Who conducted that investigation?

24 A. Julie Diescher, the undersheriff

25 and the chief.

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1 PROCEEDINGS

2 Q. Did Chief Muthig conduct the

3 investigation?

4 A. He was one of the three, yes.

5 MR. BASHJAWISH: I want to go off

6 the record. I want to take a minute

7 to gather stuff.

8 THE HEARING OFFICER: Off the

9 record.

10 (Off the record 11:09 a.m. to

11 11:09 a.m.)

12 MR. BASHJAWISH: I'm going to

13 introduce what is marked as P-8.

14 (Exhibit P-8 response marked for

15 identification.)

16 MR. BASHJAWISH: This document os

17 about 22 pages long.

18 THE HEARING OFFICER: Any

19 objections to P-8, Counselor?

20 MR. TUTTLE: May I see the

21 document?

22 BY MR. BASHJAWISH:

23 Q. Do you have an understanding at

24 to what these documents are?

25 MR. TUTTLE: No objections.

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1 PROCEEDINGS

2 THE HEARING OFFICER: Noted. I'd

3 like to offer Exhibit P-8 into the

4 record.

5 BY MR. BASHJAWISH:

6 Q. Do you have a understanding what

7 these document are?

8 A. My understanding is that this was

9 the response to the demand for discovery

10 from the allegations and that this is a

11 Sullivan County sheriff's office

12 investigation report complaint against

13 personnel.

14 Q. So there was an investigation

15 conducted in response to the events on

16 October 31, 2022?

17 A. There was multiple, yes.

18 Q. And Chief Muthig was responsible

19 for that?

20 A. I would say he was one of the

21 people assigned to it.

22 Q. Do you know where Chief Muthig is

23 right now?

24 A. That's a very good question. I

25 do not.

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1 PROCEEDINGS

2 Q. Do you have an understanding

3 whether or not he is ill?

4 A. I have no way of confirming that

5 one way or the other. He's made mention

6 of having health issues in the past. I'm

7 assuming that's what it is.

8 Q. Did you ever report what

9 Lieutenant Pratti said to the sheriff or

10 the undersheriff?

11 A. What Lieutenant Pratti said?

12 Q. Yes.

13 A. No. There would be no reason to.

14 Q. So Lieutenant Pratti made

15 derogatory comments to you, nothing was

16 ever done --

17 A. No.

18 Q. You mentioned in your affirmative

19 defense No. 4, Lieutenant Pratti said

20 equally or even worse things about you --

21 A. Yeah.

22 Q. But nothing was ever done to him.

23 A. Not to me, about me.

24 Q. About you?

25 A. Yes.

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1 PROCEEDINGS
2 Q. You learned about that, you
3 didn't like it?
4 A. Sure.
5 Q. You wanted something done to
6 Lieutenant Pratti, correct?
7 A. I wanted something done about the
8 environment we work in, yes.
9 Q. So you didn't complain or report
10 that to the sheriff or undersheriff, you
11 reported that to Julie Diescher, correct?
12 A. Yes.
13 Q. Do you have an understanding --
14 did she conduct her own investigation?
15 A. Yes, she was the first one to
16 conduct an investigation.
17 Q. Do you have an understanding of
18 when or if she completed or gave a report
19 of her investigation?
20 A. I think it was in February of
21 '23. I might be off.
22 Q. Do you have an understanding as
23 to what she concluded?
24 A. Yes.
25 Q. What was it?

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1 PROCEEDINGS
2 A. She found that both myself and
3 Lieutenant Pratti were guilty or founded,
4 however you want to phrase it, of the
5 county policy.
6 Q. How do you know the results of
7 that report?
8 A. How do I know the results?
9 Q. Yes.
10 A. Because she sent me a letter.
11 Q. How do you know the results of
12 Lieutenant Pratti's report or
13 investigation?
14 A. I'm pretty sure she told me.
15 Q. She told you, she disclosed to
16 you her investigation whether or not
17 Lieutenant Pratti violated certain
18 policies?
19 A. Not necessarily that, it was
20 founded. My complaint from that day is
21 founded.
22 Q. Would you say they both were
23 founded approximately the same time?
24 A. Give or take. Mine was first and
25 then his.

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1 PROCEEDINGS
2 Q. And that happened when
3 approximately?
4 A. Mine would have been around
5 February and his would have been maybe
6 around March. I might be off like a
7 month.
8 Q. In 2023?
9 A. Yes.
10 Q. When did Lieutenant Pratti
11 retire?
12 A. In 2022.
13 Q. So would you agree with me then
14 if the sheriff became aware that
15 Lieutenant Pratti violated certain
16 policies that they couldn't have done
17 anything because he retired at that time?
18 A. Absolutely not.
19 Q. Why not?
20 A. Because the sheriff and
21 undersheriff were advised by Lieutenant
22 Pratti, he went to them making these
23 allegations and had to be removed from the
24 office.
25 Q. How do you know that?

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1 PROCEEDINGS
2 A. Because I got a phone call from
3 Ed Simon who removed him from the sheriff
4 and the undersheriff's office. And
5 there's a past history of him going to
6 them, spreading these kinds of lies. They
7 told me about it.
8 Q. But the point is that Julie
9 Diescher conducted her own investigation,
10 correct?
11 A. Into the county charge, not into
12 the administrative charges.
13 Q. Into the county charge.
14 A. Right.
15 Q. And Lieutenant Pratti is no
16 longer here, correct?
17 A. Yes.
18 Q. But you are here?
19 A. Yes.
20 Q. You were here when the charges
21 were served, correct?
22 A. Yes.
23 Q. You didn't retire?
24 A. Correct.
25 Q. Lieutenant Pratti did?

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1 PROCEEDINGS

2 A. Yes.

3 MR. BASHJAWISH: I'm going to

4 mark this as P-9.

5 (Exhibit P-9 memo marked for

6 identification.)

7 MR. TUTTLE: I have seen this. I

8 have no objection.

9 THE HEARING OFFICER: No

10 objection to P-9. I am entering P-9

11 into the record.

12 BY MR. BASHJAWISH:

13 Q. Mr. Harb, do you recognize this

14 document?

15 A. Yes.

16 Q. What is it?

17 A. This is my memo and response to

18 memo that I was asked to give.

19 Q. You wrote this document to

20 Mr. Schiff, correct?

21 A. Ultimately, yes. It goes to the

22 chief but everything is supposed to be

23 addressed to the sheriff.

24 Q. And just for clarity, you write

25 about yourself in the third person in

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1 PROCEEDINGS

2 this, just so I'm clear?

3 A. That's how we are trained to do

4 it.

5 Q. That's the training of every

6 deputy, correct?

7 A. Yes.

8 Q. Can you read the first line to

9 us, please?

10 A. Sure. On October 31, 2022 at

11 approximately 0800 hours Detective

12 Corporal Harb arrived at the Sullivan

13 County Sheriff's Office acting in his

14 capacity as PBA president to conduct an

15 informal PBA meeting.

16 Q. So back to the issue about the

17 meeting, you yourself called it an

18 informal meeting?

19 A. Yes.

20 Q. Why did you call it an informal

21 meeting?

22 A. Because our formal meetings would

23 typically be outside of the station and

24 that's when we would actually follow that

25 format that you talked about before, and

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1 PROCEEDINGS

2 we would have a typed up agenda, old

3 business, new business, the whole nine.

4 This was more informal because really

5 there was just a couple things to go over.

6 Primarily it was the vote.

7 Q. Before you called it a special

8 meeting.

9 A. Yes.

10 Q. But in this document on December

11 15, 2022, that's closer to October 31,

12 2022, correct?

13 A. Say again, I'm sorry.

14 Q. This isn't meant to be

15 disparaging; I'm trying to be factual so

16 just to let you know it might seem obvious

17 but just give me a moment to ask the

18 question.

19 A. Sure.

20 Q. December 15, 2022 is how many

21 days or approximately months away from

22 October 31, 2022?

23 A. Six weeks.

24 Q. Today is what day?

25 A. July 24, 2022.

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1 PROCEEDINGS

2 Q. Much further away from October

3 31, 2022, correct?

4 A. Sure.

5 Q. Do you agree with me your memory

6 when you wrote this on December 15, 2022

7 is better than what your memory is right

8 now of that event of October 31, 2022?

9 A. I'm not sure, to be honest. Only

10 because I was told to write this, it was

11 after -- almost two months after the

12 incident and there was a lot of people

13 talking and everything else. And since

14 then and having been served charges in

15 April of this year, it's all been kind of

16 coming back left and right so I don't

17 really know.

18 Q. Let me rephrase the question.

19 When an event happens, and let's say six

20 weeks pass, is your memory of that event

21 better the closer it is to that event than

22 it is two years way from the event?

23 A. Depending on the event.

24 Q. Nevertheless, you called it an

25 informal meeting, you didn't call it a

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1 PROCEEDINGS
2 special meeting.
3 A. I use those terms
4 interchangeable.
5 Q. As head of the PBA organization
6 do words matter to you?
7 A. Do words matter to me?
8 Q. Yeah.
9 A. As far as?
10 Q. Bylaws.
11 A. Do bylaw words matter to me?
12 Q. Yes.
13 A. Sure.
14 Q. Should you have called it a
15 special meeting if you believe it was a
16 special meeting?
17 A. I don't really think that was
18 part of my thought process when I was
19 saying what kind of a meeting it was.
20 I've used emergency meetings before. I
21 think informal is more as to how the
22 meeting was going to be conducted rather
23 than what type of a meeting it is.
24 MR. BASHJAWISH: Bear with me one
25 minute. Let me review my notes before

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1 PROCEEDINGS
2 I dismiss Mr. Harb. And again I would
3 like to state clearly that I would
4 like that ask Mr. Harb any questions
5 that are subject to Mr. Tuttle's
6 examination.
7 THE HEARING OFFICER: Noted on
8 the record.
9 MR. BASHJAWISH: No more
10 questions.
11 THE HEARING OFFICER: Thank you,
12 Counselor.
13 Cross examination?
14 MR. TUTTLE: Yes. I don't think
15 I'll be too long.
16 CROSS EXAMINATION
17 BY MR. TUTTLE:
18 Q. Mr. Harb, just to be clear, you
19 are a civil service corporal; is that
20 correct?
21 A. Yes.
22 Q. Passed the test?
23 A. Yes.
24 Q. Took the test, passed the test
25 and were officially appointed civil

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1 PROCEEDINGS
2 service corporal?
3 A. Yes.
4 Q. In the Sullivan County sheriff's
5 office, correct?
6 A. Yes.
7 Q. So let's go back to the
8 beginning. You were asked prior
9 proceedings you brought as union president
10 and I think you mentioned something about
11 a Section 75 for Lieutenant Ramos. Was
12 that a Section 75 proceeding or a 207(c)
13 hearing?
14 A. Oh. I apologize. I misspoke.
15 That was a 207(c) hearing.
16 Q. Is that another one of the things
17 you do as unit president, is oversee a
18 207(c), the application of 207(c) in your
19 department to your members?
20 A. Yes. I assist in the paperwork
21 and try to get to the county within 10
22 days and get the guy's paperwork and all
23 that kind of stuff.
24 Q. Over the past several years have
25 we had trouble with that, have we had a

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1 PROCEEDINGS
2 number of people denied 207(c) benefits
3 that we felt were entitled to them?
4 A. Yes.
5 Q. And you talked about improper
6 practice charges and grievances. So first
7 of all, what is the Public Employment
8 Relations Board, do you recall?
9 A. PERB?
10 Q. Yes. What is PERB?
11 A. I usually defer that kind of
12 stuff to you.
13 Q. Is that an administrative agency
14 charged with enforcing the Taylor Law?
15 A. Yes.
16 Q. When we talk about improper
17 practice charges, is that the same thing
18 as a grievance or something distinct from
19 a grievance?
20 A. I think it's different from a
21 grievance.
22 Q. A grievance is when some specific
23 term of contract is violated, right?
24 A. Yes.
25 Q. And you have in your contract a

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1 **PROCEEDINGS**

2 procedure to be followed, multiple steps,

3 and it ends in binding arbitration; is

4 that fair?

5 A. Yes.

6 Q. And if some dispute comes up

7 between you and the administration that is

8 not directly dealt with in the contract,

9 do those sometimes become improper

10 practice charges at the Public Employment

11 Relations Board?

12 A. Yes.

13 Q. Do you have some of those pending

14 now?

15 A. Yes.

16 Q. How many, do you know?

17 A. I want to say there is three

18 right now.

19 Q. You discussed misinformation that

20 was -- let me ask you something else

21 first.

22 Was Lieutenant Pratti, before he

23 retired, was he a member of your union,

24 PBA?

25 A. Yes. Lieutenants are included.

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1 **PROCEEDINGS**

2 Q. And you discussed that he was

3 spreading misinformation about the

4 proposed new contract?

5 A. Yes.

6 Q. What information were you

7 referring to, what misinformation was he

8 spreading?

9 A. So we had to bring in Julie

10 Diescher from HR. She brought in -- I

11 forgot the person's name but they were a

12 rep from Excelsior, to actually come in

13 and speak with us on the medical

14 insurance --

15 **THE HEARING OFFICER:** I'm sorry,

16 Excelsior?

17 **THE WITNESS:** Excelsior is the

18 other medical coverage that we had for

19 contract negotiations. We have Empire

20 and we were looking to switch toe

21 Excelsior, that was part of the issue.

22 Some of the misinformation was that

23 Excelsior wouldn't cover people that

24 have cancer, Excelsior was going to

25 cost far more to the member than

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1 **PROCEEDINGS**

2 Empire did, Excelsior -- there's a

3 couple other things -- it wasn't going

4 to be accepted, I think, at some of

5 the hospitals. It's been like two

6 years. I don't remember the rest, but

7 it was things to that effect.

8 **BY MR. TUTTLE:**

9 Q. Those are all things Lieutenant

10 Pratti addressed incorrectly, correct?

11 A. Yes.

12 Q. He was telling members incorrect

13 information about those subjects?

14 A. Yes.

15 Q. In order to induce them to vote

16 his way on the contract, to reject the

17 contract?

18 A. Yes.

19 Q. Had the contract been rejected

20 that morning, October 31st, had the count

21 gone the other way, what would have to

22 happen and why?

23 A. So we basically have to start

24 contract negotiations all over again, the

25 reason being was that switching over to

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1 **PROCEEDINGS**

2 Excelsior was a big component with our

3 union but it wasn't just our union, it was

4 on the county level. The county was

5 trying to get all the unions to switch

6 over. The problem became, like I said,

7 the county manager Josh Potosek told us

8 they needed a 90-day window to be able to

9 switch us over so if we don't pass this

10 proposal to the contract, then pretty much

11 everything is out the window, the raises

12 are out the window, switching to Excelsior

13 is out the window, the stipends, the

14 retro, we have to start contract

15 negotiations basically all over because

16 now the medical wouldn't be a piece of it

17 and we would be going into January. So

18 Mr. Potosek said we could possibly still

19 get it done within 60 days and that's why

20 it was crucial October 31st was the last

21 day we had to know yes or no. And once we

22 knew, I reached out to him we are good and

23 Detective Cintron, now on the executive

24 board, sent out an e-mail to everybody

25 letting them know the results of the vote.

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1 **PROCEEDINGS**
2 Q. So let's talk about the
3 relationship you just expressed between
4 the change in the health insurance and the
5 wage piece of this contract; how did that
6 work?
7 A. In switching over to Excelsior it
8 helped us out financially so we took a
9 little bit of a --
10 Q. Does that mean it would cost the
11 county less?
12 A. Yes. So it would cost the county
13 less and helped us out financially to be
14 able to negotiate for bigger raises and
15 they wound up giving us a 17 percent raise
16 over the life of the contract and we would
17 be going into the third year of the
18 contract with retro. I also didn't think
19 the Excelsior piece was very fair. This
20 was another point of contention. The
21 previous contract before I became PBA
22 president, it was voted on that anybody
23 hired on said date and forward would have
24 Excelsior. So basically what happened was
25 it was the current members selling out the

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1 **PROCEEDINGS**
2 unborn and I warned them if we do this
3 it's going to come back to haunt house
4 because we can't keep people regardless
5 and we have very senior people retiring so
6 what would end up happening is for this
7 specific contract -- I'm fairly certain, I
8 have to go back and look at the numbers --
9 we were already going to be outvoted
10 because so many of our members had
11 Excelsior. But they were going to change
12 how much people paid and everything else
13 and some of the terms were changing so I
14 wasn't sure how this was going to play
15 out.
16 Q. So in what manner was Lieutenant
17 Pratti spreading the misinformation you
18 testified about?
19 A. So while I was at training, this
20 was three days leading up to October 31st,
21 he went into the sheriff's office and from
22 what I'm being told, told the sheriff, the
23 undersheriff, that I don't know what I'm
24 doing and I'm looking to screw him over
25 and that apparently there was a side deal

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1 **PROCEEDINGS**
2 he was trying to negotiate between him and
3 the sheriff to where everybody would
4 switch to Excelsior but the sheriff would
5 make him management confidential and he
6 would be able to keep Empire for his
7 medical and be able to stay on and when
8 the sheriff told him that wasn't going to
9 work out, again this is what I'm being
10 told, he lost his mind. That's when Ed
11 Simon, Detective Simon, came into the
12 sheriff's office and had to remove him and
13 then Simon reached out to me down in
14 training in Long Island telling me what
15 was going on and is there any truth to
16 this and so that's why I say the bosses
17 already knew about this, what he was
18 spreading. But it also was happening at
19 roll calls and after roll calls he was
20 telling people I don't know what I'm
21 doing, I'm a liar, I shouldn't be trusted,
22 Mr. Tuttle doesn't know what he's doing,
23 we are all going to get screwed. He was
24 reaching out to retired members, they were
25 calling me the exact same scenario. He

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1 **PROCEEDINGS**
2 told the executive board he's going to sue
3 everybody because we're targeting him.
4 It's all me specifically, I'm targeting
5 him, I'm forcing him out. It just kept
6 getting uglier and uglier to the point
7 where Sergeant Steiner on the board called
8 back Deputy Barrett to the station to see
9 if we could get a hold of Mr. Tuttle to
10 see if there is any truth to what
11 Lieutenant Pratti was spreading and I was
12 getting phone calls from junior members,
13 retired members, senior members,
14 everybody. And the people who were with
15 me at the training can attest to that. I
16 don't know if you were involved in the
17 conversation, Khalid, I don't remember
18 actually, but it got so ugly I had to step
19 away from training and have a conference
20 call with Josh Potosek and Julie Diescher
21 and I think Mr. Tuttle was involved in
22 that too. There may have been -- it
23 wasn't you, I apologize. It was another
24 attorney, Nate, and there was e-mails back
25 and forth and I supplied all of this, just

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1 PROCEEDINGS
2 speaking to what was going on.
3 Q. Did Lieutenant Pratti ever come
4 to a meeting of the PBA to discuss his
5 concerns about the new contract?
6 A. I think early on he may have came
7 to one, but outside of that no. And I mean
8 early on. He may have came to one like
9 around June maybe of that year.
10 Q. So the meeting on October 31,
11 2022, did you send out a notice concerning
12 that meeting to your members?
13 A. Yes. So after our regularly
14 scheduled monthly meeting in October we
15 again had talked about contract
16 negotiations, and specifically Excelsior,
17 and then sent out an e-mail letting
18 everybody know that in two weeks we would
19 be counting the vote at roll call. We
20 were going to do it at roll call that
21 morning but we didn't want to interrupt so
22 we waited for roll call to end and we did
23 it right after roll recall.
24 Q. Do you know when you sent that
25 notice out?

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1 PROCEEDINGS
2 A. I have a copy of it somewhere
3 here but it would have been approximately
4 two weeks before the 31st, I would say
5 around October 15 of 2022.
6 MR. TUTTLE: I'll mark this as
7 R-1.
8 (Exhibit R-1 e-mail marked for
9 identification.)
10 BY MR. TUTTLE:
11 Q. What is that document, Mr. Harb?
12 A. So that's an e-mail that I sent
13 out. It was --
14 THE HEARING OFFICER: Before we
15 get into that, counsel, do you have
16 any objection to this?
17 MR. BASHJAWISH: No objection.
18 THE HEARING OFFICER: I'd like to
19 enter R-1 into the record.
20 (Off the record 11:37 to 11:45
21 a.m.)
22 THE HEARING OFFICER: We just
23 accepted R-1. There was no objection
24 and it was entered into the record.
25 BY MR. TUTTLE:

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1 PROCEEDINGS
2 Q. So we may have covered this but
3 tell us what R-1 is.
4 A. So R-1 is a printed copy of the
5 e-mail that I sent to out to the
6 membership the morning of October 24, 2022
7 at approximately 10:30 in the morning.
8 Q. What's it about?
9 A. It reference the PBA meeting that
10 we are going to have that day and I'm
11 thanking everybody that helped out with
12 getting us to this point and what is being
13 proposed as per our contract and see if
14 anybody else has any more questions.
15 Q. Did you mention the October 31,
16 2022 meeting in this document?
17 A. Not in this one, no.
18 Q. The next document I'm going to
19 show you is labeled R-3.
20 A. Yes.
21 (Exhibit R-3 e-mail marked for
22 identification.)
23 BY MR. TUTTLE:
24 Q. So this is the e-mail that I then
25 sent out to everybody from the previous

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1 PROCEEDINGS
2 e-mail, the entire membership, letting
3 them know we conducted a PBA meeting and
4 thanking everybody for getting us to this
5 point and that we are going to be counting
6 the votes on Halloween during the roll
7 call, October 31st. And thanking
8 everybody for their cooperation?
9 THE HEARING OFFICER: Do you have
10 a copy Counselor?
11 MR. BASHJAWISH: Yes. No
12 objections.
13 THE HEARING OFFICER: Hearing no
14 objections, R-3 is in the record.
15 BY MR. TUTTLE:
16 Q. The fish bowl room, is that on
17 site?
18 A. That's a supervisory room that
19 can see the floor and dispatch area.
20 That's typically where the ballot box is
21 kept.
22 Q. I'll show you what we've marked
23 as R-2 for identification. What is that?
24 A. So this is your response in
25 reference to MLU stating the county does

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1 PROCEEDINGS
2 not intend to affect any retiree health
3 insurance.
4 (Exhibit R-2 letter dated
5 10/31/22 marked for identification.)
6 BY MR. TUTTLE:
7 Q. Is that a letter that you
8 requested from me?
9 A. Yes.
10 Q. What is the date of the letter?
11 A. October 31, 2022.
12 MR. TUTTLE: I'll offer that.
13 THE HEARING OFFICER: Counselor,
14 do you have a copy?
15 MR. BASHJAWISH: I do. Let me
16 double check. No objection, I'm just
17 curious as to the relevance of the
18 document.
19 THE HEARING OFFICER: Exhibit
20 R-2, no notable objections and entered
21 into the record.
22 BY MR. TUTTLE:
23 Q. So the question is how did that
24 letter come about?
25 A. So that came about because I was

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1 PROCEEDINGS
2 getting phone calls from members that
3 planned on retiring or retired and wanting
4 to know how the new contract was going to
5 affect their medical insurance, again,
6 because Lieutenant Pratti was reaching out
7 to people telling them misinformation.
8 Q. Was that letter intended to
9 address the misinformation that Lieutenant
10 Pratti was spreading?
11 A. 100 percent, correct.
12 Q. I'll show you document labeled
13 R-4. Tell me what that is.
14 A. This is my response, the memo I
15 was asked to produce, to what transpired
16 on October 31, 2022.
17 MR. TUTTLE: Do we already have
18 this?
19 MR. BASHJAWISH: That's P-9.
20 MR. TUTTLE: Withdrawn.
21 BY MR. TUTTLE:
22 Q. You mentioned Lexipol. What is
23 Lexipol?
24 A. Lexipol would be considered our
25 policy manual now.

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1 PROCEEDINGS
2 Q. What is Lexipol, is that a
3 company, is it a service?
4 A. I'm sure it's attached to a
5 company. It's basically become like a
6 policy for everything.
7 Q. Do you know if other departments
8 rely on Lexipol-generated standard
9 operating procedures, rules, regulations,
10 and that kind of thing?
11 A. That I'm not sure about.
12 MR. TUTTLE: I think we have
13 somewhere in our exhibits we have a
14 Lexipol document. Do you remember
15 seeing a Lexipol exhibit?
16 MR. BASHJAWISH: Marked P-6.
17 BY MR. TUTTLE:
18 Q. Does that say Lexipol in the
19 bottom right hand corner?
20 A. Yes.
21 Q. Is that a service that the
22 sheriff's office employs rather than
23 starting from scratch and handwriting
24 every regulation from scratch?
25 A. Yes.

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1 PROCEEDINGS
2 Q. Do you know if there is any
3 authority that allows an employer to
4 pursue disciplinary charges against a
5 former employee after he or she has
6 retired or resigned?
7 A. I believe the county can still
8 take disciplinary action against a retired
9 employee, but I'm not 100 percent sure.
10 Q. Have you sought a legal opinion
11 on that?
12 A. No.
13 Q. And you don't have a law degree,
14 do you?
15 A. No.
16 MR. TUTTLE: I have nothing
17 further on cross examination but I
18 reserve the right to produce direct
19 testimony from Mr. Harb.
20 MR. BASHJAWISH: I have some
21 follow up based on his cross
22 examination.
23 THE HEARING OFFICER: Proceed.
24 DIRECT EXAMINATION
25 BY MR. BASHJAWISH:

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1 PROCEEDINGS

2 Q. With R-3, with your e-mail, I

3 believe R-3 is the e-mail from you to all

4 your members, it's two, three sentences?

5 Looks like this.

6 A. Okay.

7 Q. So it says here, I just want to

8 look at the second sentence, Voting starts

9 now, and it's dated October 24th, and will

10 be concluded this weekend and then it says

11 votes will be counted on Halloween.

12 So is it correct to say then that

13 the voting was over before October 31,

14 2022?

15 A. I believe they had up until roll

16 call on October 31st so the overnight

17 shift can still vote.

18 Q. But in other words, you got an

19 opinion from your counsel to address any

20 concerns that people might have had

21 relating to Lieutenant Pratti's comments

22 and he had no effect on the votes because

23 people already voted by the time you guys

24 counted the votes?

25 A. So that opinion was for members

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1 PROCEEDINGS

2 that were thinking about retiring, which

3 was a couple, and other people that had

4 retired. So I don't know if that would

5 have been enough either way. The people

6 who have already retired don't vote. And

7 the people that are going to retire, I

8 don't know how it would effect them.

9 MR. BASHJAWISH: No further

10 questions.

11 MR. TUTTLE: Nothing further.

12 THE HEARING OFFICER: Are we

13 going to excuse this witness?

14 MR. BASHJAWISH: From my side,

15 yes, subject to his direct.

16 THE HEARING OFFICER: Mr. Harb,

17 thank you for your testimony. You can

18 stay here, remain here, you may be

19 recalled.

20 At this point, Counselor, any

21 objections to a 15-minute break?

22 MR. BASHJAWISH: No.

23 THE HEARING OFFICER: So we will

24 reconvene at 12:15. Any other member

25 that's here that has to testify or may

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1 PROCEEDINGS

2 be in the room today, make sure you

3 are back here by 12:15.

4 We are now off the record.

5 (Off the record 11:54 a.m. to

6 12:08 p.m.)

7 THE HEARING OFFICER: We'd like

8 to go back on the record in the

9 hearing with Detective Corporal Jack

10 Harb. We have a new witness. State

11 your name and spell it for the record.

12 THE WITNESS: Nancy Bowdren,

13 B-O-W-D-R-E-N.

14 N A N C Y B O W D R E N, called as a

15 witness, having been duly sworn by a

16 Notary Public, was examined and

17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BASHJAWISH:

20 Q. I have a few questions. This

21 won't take that long. Ms. Bowdren, what

22 is your title?

23 A. I'm the deputy director of human

24 resource.

25 Q. What are your responsibilities?

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1 PROCEEDINGS

2 A. In a nutshell, we oversee

3 approximately 40 county departments and 40

4 local municipalities recruiting,

5 disciplining, training, terminations.

6 Q. So you deal with terminations,

7 correct?

8 A. Yes.

9 Q. So you have a understanding of

10 Civil Service Section 75, correct?

11 A. Correct.

12 Q. I'm going to show you what is

13 marked as P-10.

14 (Exhibit P-10 employee roster

15 history marked for identification.)

16 THE HEARING OFFICER: Do you have

17 a copy?

18 MR. TUTTLE: Yes. No objection.

19 THE HEARING OFFICER: Enter P-10

20 in the record.

21 BY MR. BASHJAWISH:

22 Q. What is this document?

23 A. It's an employee roster history.

24 Q. Where does it come from?

25 A. It comes from our personnel

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1 PROCEEDINGS
2 software, EGO.
3 Q. What does it tell you?
4 A. We have it on every single
5 employee we have and it gives you
6 employment records, so any time they are
7 appointed, salary changes, termination,
8 any kind of change of address, any kind of
9 personnel action is recorded.
10 Q. And this roster card if for who?
11 A. This one is for Jack Harb.
12 Q. Did Mr. Harb get a salary
13 increase based on the first page?
14 A. Yes.
15 Q. Can you tell me approximately
16 when and what was it for?
17 A. Can you rephrase? There are
18 multiple.
19 Q. How about the earliest one.
20 Actually, let's take a look at the first
21 page, number, and compare number seven to
22 number eight. Is there a salary increase
23 between the two?
24 A. Yes.
25 Q. For approximately how much? You

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1 PROCEEDINGS
2 don't have to say the actual --
3 A. It looks like \$12,000
4 approximately.
5 Q. What did Mr. Harb get an increase
6 for?
7 A. For the detective assignment.
8 Q. How does one in Mr. Harb's
9 position get a detective assignment?
10 A. That would be the sheriff to
11 designate that. He has the authority as
12 per the collective bargaining agreement to
13 authorize --
14 Q. So the sheriff has the authority
15 to appoint anyone he wants as detective?
16 A. Correct.
17 Q. And that person would get --
18 A. Well, it's not -- gives the
19 assignment.
20 Q. Assigning someone the detective
21 assignment. Now, did Mr. Harb have to
22 take a test?
23 A. For that, no. It's just an
24 assignment.
25 Q. Assignment means I'm the sheriff

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1 PROCEEDINGS
2 and I say I just give you that title?
3 A. It's an assignment. It's not a
4 title because his title would still be
5 deputy sheriff at that time and he got
6 detective assignment.
7 Q. So detective assignment?
8 A. Correct.
9 Q. Thank you for clarifying that.
10 So Mr. Harb got an increase in pay because
11 of that?
12 A. Yes.
13 Q. Did he get another increase in
14 pay based upon what you see in front of
15 you?
16 A. Yes.
17 Q. For what?
18 A. January the following year, an
19 annual increase and then he got another
20 stipend for on call.
21 Q. So approximately how much of an
22 increase did Mr. Harb receive as a result
23 of the sheriff's appointment?
24 A. Can you phrase that? That
25 appointment for the detective?

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1 PROCEEDINGS
2 Q. For both the stipend and
3 detective assignment?
4 I'll rephrase the question. It's
5 okay. You're in control. Tell me if I
6 don't make sense. Let me know.
7 A. So the detective assignment gave
8 him approximately 12,000. Then he gets
9 the annual increase and then he gets the
10 annual stipend on his increase that
11 brought him 23,000.
12 Q. Your testimony is he got an
13 increase of \$23,000?
14 A. When he received the detective
15 assignment to the next years increase with
16 the stipend, yes.
17 Q. From what year to what year?
18 A. From February 2022 to January
19 2023.
20 Q. So within that time period he got
21 an increase in pay?
22 MR. TUTTLE: What was the time
23 period? I'm having trouble hearing
24 you.
25 THE WITNESS: February of 2022 to

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1 PROCEEDINGS
2 January of 2023.
3 BY MR. BASHJAWISH:
4 Q. And that's all because of what
5 the sheriff granted Mr. Harb, could you
6 agree? In other words, if the sheriff
7 didn't want to, he didn't have to give him
8 the assignment, correct?
9 A. Correct.
10 Q. But he gave it to him, correct?
11 A. Correct.
12 Q. And because of that, he got an
13 increase in pay?
14 A. Correct.
15 Q. Thank you.
16 I want to show you what is marked
17 as P-11.
18 (Exhibit P-11 eligible list
19 marked for identification.)
20 MR. BASHJAWISH: I would like to
21 add that as P-11.
22 THE HEARING OFFICER: Any
23 objections, Counselor?
24 MR. TUTTLE: I don't know what it
25 is yet, so I would like to reserve my

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1 PROCEEDINGS
2 objection.
3 THE HEARING OFFICER: Enter
4 Exhibit P-11. It's in the record.
5 BY MR. BASHJAWISH:
6 Q. What document is in front of you?
7 A. This is an eligible list.
8 Q. What does that mean?
9 A. It's what we establish after
10 applicants take a civil service exam and
11 the results come back, we compile an
12 eligible list of candidates that passed
13 the exam.
14 Q. So what test was provided for?
15 A. This test is for sergeant.
16 Q. So a sergeant test was provided
17 to members that could apply?
18 A. Correct.
19 Q. And it looks like based on this
20 document two people passed that test,
21 correct?
22 A. Yes.
23 Q. What are the names of those two
24 people?
25 A. Kevin Rogers and Jack Harb.

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1 PROCEEDINGS
2 Q. Do you have an idea of who Kevin
3 Rogers is?
4 A. Yes, I do.
5 Q. Who is he?
6 A. He's a deputy that works in the
7 department.
8 Q. Did you look at Kevin Rogers, his
9 employment status recently?
10 A. Yes.
11 Q. Is he a sergeant?
12 A. No.
13 Q. Do you have an understanding as
14 to why or why not?
15 A. I wouldn't know that. It's up to
16 the appointing authority to appointment
17 them.
18 Q. So Mr. Harb can be -- is it
19 correct to say Mr. Harb can become a
20 sergeant?
21 A. Yes.
22 Q. What has to happen for him to
23 become a sergeant?
24 A. He would have to be appointed.
25 Q. By who?

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1 PROCEEDINGS
2 A. By the sheriff.
3 Q. Same thing for Mr. Rogers?
4 A. Yes.
5 Q. He could become a sergeant
6 tomorrow theoretically?
7 A. Yes.
8 Q. And all that has to happen is
9 what?
10 A. The sheriff would have to request
11 certification of eligibles, which are
12 these two people, and we would certify a
13 list for him and he would canvass them and
14 then appointment.
15 Q. And as of today, neither Jack
16 Harb or Mr. Rogers is a sergeant?
17 A. No.
18 Q. Do you know Mr. Harb's title, his
19 complete title?
20 A. It is deputy sheriff corporal.
21 Q. So what does it mean for him get
22 that tile of corporal?
23 A. He had to take a test and be
24 appointed off the list.
25 Q. Do you know if he has corporal

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1 PROCEEDINGS

2 responsibilities?

3 A. I can't attest to that. That's

4 up to the appointing authority.

5 Q. Based on your knowledge of

6 Section 75, Civil Service Law, your

7 experience here for how many years?

8 A. 24 and a half.

9 Q. Based on your 24 and a half years

10 of experience, is the sheriff obligated to

11 appoint people that pass certain tests?

12 A. It's up to him. This is not a

13 mandatory list. He can even appoint a

14 provisional sergeant that's not even on

15 this list because it's not mandatory.

16 Q. So we are looking at the

17 sergeant's list but presumably the same

18 would be true for the corporal list?

19 A. Can you rephrase that?

20 Q. So in other words, he took a test

21 for corporal and he passed, correct?

22 A. Yes.

23 Q. My question is, is the sheriff

24 obligated to appoint anyone from that list

25 as corporal?

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1 PROCEEDINGS

2 A. No.

3 Q. Do you have an understanding of

4 what the pay is for the different titles,

5 deputies, sheriffs, corporals, do you have

6 an understanding of what it is?

7 A. Yes.

8 Q. I'm going to show you what is

9 marked as P-12.

10 (Exhibit P-12 salary schedule for

11 the PBA marked for identification.)

12 BY MR. BASHJAWISH:

13 Q. Do you recognize this document?

14 THE HEARING OFFICER: One second.

15 Any objection?

16 MR. TUTTLE: I'm not sure what

17 the relevance is, but I have no

18 objection to it.

19 THE HEARING OFFICER: Enter P-12

20 into the record.

21 BY MR. BASHJAWISH:

22 Q. Do you recognize this document?

23 A. Yes.

24 Q. What is it?

25 A. The salary schedule for the PBA.

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1 PROCEEDINGS

2 Q. So you are very familiar with

3 this schedule, correct?

4 A. Yes.

5 Q. You have been involved in

6 different aspects of any kind?

7 A. Yes.

8 Q. Is it correct to say that Mr.

9 Harb receives the same pay as sergeant

10 based on this document?

11 A. Yes.

12 Q. How do you know that?

13 A. Because on the salary schedule

14 the deputy sheriff sergeant gets the same

15 pay as the detective assignment.

16 Q. So because he has the detective

17 assignment he gets the same pay as

18 sergeant?

19 A. Yes.

20 Q. Does he get any increase in pay

21 with the title of corporal, to your

22 knowledge based on the document in front

23 of you?

24 A. Can you rephrase?

25 Q. So he has the title of corporal,

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1 PROCEEDINGS

2 right?

3 A. Yes.

4 Q. Is he getting any extra pay

5 because of that? Is the salary increased

6 because he has that title --

7 A. Well from deputy sheriff to

8 corporal, yes he does. He got the

9 detective assignment when he was deputy

10 sheriff. So he didn't even get the

11 corporal. So he got the detective

12 assignment and got the sergeant's pay in

13 February of 2022. They appointed him

14 deputy sheriff corporal in May of 2022

15 with no increase because he was already

16 above the corporal pay.

17 Q. So there is no increase?

18 A. Yes.

19 Q. Does the sheriff have the power

20 to remove any of its employee's titles, to

21 your knowledge?

22 A. Can you rephrase?

23 Q. So let me phrase the question

24 this way. Suppose there's a Section 75

25 hearing for a hypothetical employee.

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1 PROCEEDINGS

2 Suppose that the charges are founded and

3 there is some disciplinary action to be

4 proposed. If that title were removed

5 based on the Section 75 charges, based on

6 founded charges, and that title were

7 removed, my question to you is would that

8 affect him monetarily, would the salary be

9 affected if the sheriff just removed that?

10 A. Removed what?

11 Q. The title of corporal.

12 A. If he removed the corporal and

13 put him back to deputy sheriff?

14 Q. With a detective assignment.

15 A. No, he would still be at

16 sergeant's pay.

17 Q. I want to ask you questions about

18 Lieutenant Pratti. You are aware that

19 Lieutenant Pratti and Mr. Harb had

20 reciprocal complaints for one another,

21 correct?

22 A. I don't know the specifics but

23 I'm aware of something that happened, yes.

24 Q. My question is you are aware they

25 both filed reciprocal complaints?

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1 PROCEEDINGS

2 A. Yes.

3 Q. Do you have an understanding as

4 to when the findings of your office

5 produced their report?

6 A. Yes.

7 Q. Approximately when?

8 A. March of 223.

9 Q. Do you have an understanding as

10 to when Lieutenant Pratti retired?

11 A. December of 2022.

12 Q. Based on your knowledge and

13 experience as HR deputy director and

14 employee of Sullivan County, can the

15 sheriff have imposed a penalty on

16 Lieutenant Pratti?

17 MR. TUTTLE: I object to the

18 question. This calls for a legal

19 conclusion. I don't believe this lady

20 has any legal training.

21 MR. BASHJAWISH: She doesn't have

22 any legal training, that's not my

23 proposal. But she is an expert in

24 employment law, her experience as a

25 Sullivan County employee for 24 years

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1 PROCEEDINGS

2 would attest to her experience as an

3 HR employee, not as a legal expert.

4 THE HEARING OFFICER: I'm going

5 to note your objection, but I'm going

6 to allow it.

7 BY MR. BASHJAWISH:

8 Q. So I'll rephrase the question.

9 Based on your experience, do you have an

10 understanding as to whether or not the

11 sheriff could have imposed a penalty and

12 have brought Section 75 charges on

13 Lieutenant Pratti?

14 A. Well, if he retired in December

15 and the results didn't come out until

16 March, I mean, he was already gone, right?

17 Q. Yes or no, could he have imposed

18 disciplinary charges on Lieutenant Pratti?

19 A. Not in March of 2023 when he was

20 no longer an employee, no.

21 MR. BASHJAWISH: Bear with me one

22 minute.

23 THE HEARING OFFICER: Is that

24 opinion or is that law?

25 THE WITNESS: On what?

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1 PROCEEDINGS

2 MR. BASHJAWISH: Based on her

3 opinion as an HR employee.

4 No further questions.

5 THE HEARING OFFICER: Counsel.

6 CROSS EXAMINATION

7 BY MR. TUTTLE:

8 Q. Are you familiar with a case

9 known as Murray versus Town of North

10 Castle?

11 A. No.

12 Q. And you have no legal training;

13 is that correct?

14 A. Legal training, no.

15 Q. The eligible list, is there one

16 test for corporal or two?

17 A. I'm sorry?

18 Q. This is the most recent?

19 A. This is deputy sheriff sergeant,

20 the one I'm looking at.

21 Q. Was there a prior test for

22 sergeant?

23 A. Probably.

24 Q. Do you know when?

25 A. Not off the top of my head.

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1 PROCEEDINGS

2 Q. This seems to indicate that the

3 test was given on June 10, 2023?

4 A. Yes.

5 Q. It that what that indication

6 means?

7 A. Yes.

8 MR. TUTTLE: I have nothing

9 further.

10 MR. BASHJAWISH: Can the witness

11 be excused?

12 THE HEARING OFFICER: The witness

13 can be excused. Thank you.

14 Do you have another witness?

15 MR. BASHJAWISH: Yes. I'll be

16 very brief. Lieutenant Ramos.

17 P E T E R J. R A M O S, called as

18 a witness, having been duly sworn by a

19 Notary Public, was examined and

20 testified as follows:

21 THE HEARING OFFICER: Counsel.

22 DIRECT EXAMINATION

23 BY MR. BASHJAWISH:

24 Q. Pleas state your name and title.

25 A. My name is Peter J. Ramos and my

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1 PROCEEDINGS

2 title is lieutenant.

3 Q. You were present at the

4 October 31, 2022 meeting, correct?

5 A. Yes.

6 Q. Did you hear Mr. Harb call or say

7 about Lieutenant Pratti that he was not a

8 cop?

9 A. Yes.

10 MR. BASHJAWISH: No further

11 questions.

12 THE HEARING OFFICER: Counselor?

13 MR. TUTTLE: Just a moment, Your

14 Honor.

15 CROSS EXAMINATION

16 BY MR. BASHJAWISH:

17 Q. Did you give an official

18 statement to Chief Blake Muthig concerning

19 the meeting on October 31, 2022?

20 A. Yes.

21 Q. This is will R-4.

22 (Exhibit R-4 marked for

23 identification.)

24 MR. BASHJAWISH: Do you have a

25 copy?

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1 PROCEEDINGS

2 MR. TUTTLE: I'm sorry, I don't

3 have a copy. It's attached to some of

4 the other documents. I know you

5 produced a copy of it.

6 THE HEARING OFFICER: Any

7 objections, Counselor?

8 MR. BASHJAWISH: No objections.

9 THE HEARING OFFICER: R-4 will be

10 entered.

11 BY MR. TUTTLE:

12 Q. In the first sentence of your

13 statement -- first of all, why did you

14 give this statement?

15 A. I was interviewed by the chief on

16 patrol.

17 Q. Did the chief direct you to

18 provide this statement?

19 A. Yes.

20 Q. In the first sentence it says, On

21 10/31/22 Detective Sergeant Peter Ramos

22 attended the morning roll call briefing

23 and stayed after for a PBA vote count

24 function.

25 That was your word, correct?

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1 PROCEEDINGS

2 A. Correct.

3 Q. Function, is that considered a

4 PBA function?

5 A. Yes.

6 Q. And you state further on in your

7 statement it says, During said speech

8 Detective Corporal Jack Harb brought up

9 some issues he was having with Lieutenant

10 Paul Pratti. Detective Sergeant Peter J.

11 Ramos does not recall the specifics of

12 what was said but knows there is a written

13 record of what was said because Detective

14 Harb was reading his speech off of a

15 paper. Detective Sergeant Peter J. Ramos'

16 impression of what was said that Detective

17 Jack Harb was talking about talking down

18 about Lieutenant Pratti.

19 Those were your words on

20 December 9, 2022; is that correct, have I

21 read that correctly?

22 A. Yes.

23 MR. TUTTLE: I have nothing

24 further.

25 MR. BASHJAWISH: No further

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1 PROCEEDINGS
2 questions for this witness.
3 THE HEARING OFFICER: Nothing
4 further, Counselor?
5 MR. TUTTLE: No.
6 THE HEARING OFFICER: This
7 witness can be excused. Thank you.
8 MR. BASHJAWISH: Can we take a
9 five-minute break?
10 HEARING OFFICER: We can. We'll
11 take a quick five-minute break.
12 (Off the record 12:30 p.m. to
13 12:37 p.m.)
14 THE HEARING OFFICER: Do you have
15 a witnesses? Are you resting?
16 MR. BASHJAWISH: Subject to the
17 witness on the second day. But no
18 more witnesses today.
19 MR. TUTTLE: I would like to
20 recall Jack Harb as my first witness.
21 THE HEARING OFFICER: Mr. Harb,
22 you are still under oath.
23 DIRECT EXAMINATION
24 BY MR. TUTTLE:
25 Q. Corporal Harb, you have in front

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1 PROCEEDINGS
2 of you the answer that you filed in this
3 matter. I would like to direct your
4 attention to the first affirmative
5 defense. Read that through to yourself.
6 A. Okay.
7 Q. In your own words tell us what
8 the substance of that affirmative defense
9 is.
10 A. Basically that on October 31st I
11 was acting as PBA president. I was head
12 and still am the head of the PBA. I'm the
13 head of the contract negotiating committee
14 and I was basically acting as PBA
15 president.
16 Q. And I assume by that you are
17 referring to during the time of all of the
18 activities you testified about, statements
19 that you made concerning Lieutenant
20 Pratti?
21 A. Yes.
22 Q. Did you ever make any such
23 statement while you were on duty or acting
24 in an official capacity as a corporal in
25 the Sullivan County sheriff's office?

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1 PROCEEDINGS
2 A. Not that I recall.
3 Q. What is the second affirmative
4 defense?
5 THE HEARING OFFICER: What
6 document was that?
7 MR. TUTTLE: P-3, the answer.
8 THE WITNESS: They are trying to
9 basically deprive me of my rights
10 under the Taylor Law and discriminate
11 against me for the purpose of speaking
12 to my membership.
13 BY MR. TUTTLE:
14 Q. Do you have an understanding of
15 your duties as the head of a contract
16 negotiating committee under the Taylor
17 Law?
18 A. Somewhat.
19 Q. Do you understand that as such
20 you had an obligation once you had agreed
21 to the proposed memorandum of
22 understanding in the context of your
23 meetings with the county's negotiating
24 committee, did you understand that you had
25 an obligation to affirmatively recommend

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1 PROCEEDINGS
2 to your members and obtain the passage of
3 that proposal?
4 A. Yes. I think I referenced that
5 in the e-mail about being transparent and
6 giving everybody accurate information.
7 Q. In other words, did you
8 understand that you couldn't go to the
9 negotiating table with the sheriff and the
10 county on the other side and agree to
11 something and then go back to your
12 membership and say I think we can get a
13 better deal, I think you guys ought to
14 vote this down. Did you understand that
15 would have been an improper practice?
16 A. Yes.
17 Q. Did you believe that you were
18 fulfilling your duties when you made the
19 statements you made about Lieutenant
20 Pratti?
21 A. Yes.
22 Q. Did you feel it was your duty to
23 ensure that no misinformation was
24 permitted or circulated with regard to the
25 proposed contract?

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1 PROCEEDINGS
2 A. Yes.
3 Q. Did you feel it was your duty to
4 correct any misinformation that was out
5 there?
6 A. Yes.
7 Q. In your opinion did you do that?
8 A. Yes.
9 Q. Is that the purpose of the
10 remarks made about Lieutenant Pratti?
11 A. Yes.
12 Q. So let's go through your third
13 affirmative defense. What is that about?
14 A. So this speaks to discipline
15 being basically consistent and similar for
16 other members of the unit as well.
17 Q. So would uniformity of discipline
18 be a shorthand for that?
19 A. Yes.
20 Q. So if members of the same
21 bargaining unit engage in similar
22 misconduct, should they be disciplined in
23 the same fashion?
24 A. Yes.
25 Q. Was Lieutenant Pratti ever

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1 PROCEEDINGS
2 disciplined for misconduct with regard to
3 remarks he made about you?
4 MR. BASHJAWISH: Objection to the
5 question based on the stated fact that
6 he retired by that time.
7 THE HEARING OFFICER: I'm
8 allowing, Counselor.
9 THE WITNESS: Not that I'm aware
10 of.
11 BY MR. TUTTLE:
12 Q. I think we discussed, I asked you
13 earlier, I think, if you were aware
14 whether the county had a legal right to
15 pursue discipline against Lieutenant
16 Pratti even after he retired?
17 MR. BASHJAWISH: Objection on the
18 basis the witness is not a legal
19 expert.
20 MR. TUTTLE: I didn't ask him
21 that, I asked him did I ask about that
22 earlier.
23 THE WITNESS: Yes.
24 THE HEARING OFFICER: You have an
25 objection on that?

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1 PROCEEDINGS
2 MR. BASHJAWISH: No, not on the
3 question of knowledge that he asked
4 him that question.
5 BY MR. TUTTLE:
6 Q. And I believe you told me you
7 didn't have knowledge of that and you
8 don't have legal training, right?
9 A. Correct.
10 Q. Did Lieutenant Pratti ever engage
11 in any other misconduct in the department
12 for which he could have been disciplined
13 that you are aware of?
14 A. Well, he went around making these
15 disparage remarks about me to the sheriff
16 and the undersheriff before he retired.
17 They could have taken action right there
18 but they didn't do anything. There has
19 been instances in the past. He had his
20 gun go off at the Galleria Mall --
21 MR. BASHJAWISH: Objection.
22 Whether that's true or not, that has
23 nothing to do with the charges
24 presented.
25 THE HEARING OFFICER: I'm going

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1 PROCEEDINGS
2 to sustain because of relevance.
3 BY MR. TUTTLE:
4 Q. To your knowledge, was Lieutenant
5 Pratti ever disciplined during his tenure
6 in the department?
7 A. Not that I know of. Even up
8 until the end. It was proven that he
9 deleted the schedule before he left. He
10 was upset that the sheriff wasn't doing
11 anything and he deleted the schedule for
12 2024.
13 MR. BASHJAWISH: Objection for
14 the same reason.
15 THE HEARING OFFICER: Counselor,
16 you raise the objection. Is there any
17 foundation here on -- you keep
18 bringing up that he retired. Do we
19 have a foundation on the date he
20 retired?
21 MR. BASHJAWISH: The testimony
22 from Nancy Bowdren was December 30 --
23 December 2022. By my objection is
24 based on the relevance of the
25 allegation that he deleted certain

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1 PROCEEDINGS
2 documents. There is no basis for that
3 and the reciprocal complaints that Ms.
4 Bowdren testified to were based on the
5 events leading up to the contract and
6 leading up to the comments made both
7 parties on or before October 31, 2022;
8 nothing subsequent to that or before
9 that.
10 THE HEARING OFFICER: I think
11 what they are bringing up, Counselor,
12 is discipline imposed in matters
13 proportional to discipline proposed on
14 other members of the bargaining unit
15 or similar contact, which I don't know
16 if we got to that point yet,
17 Counselor. I'm going to sustain your
18 objection but I'm going to allow you,
19 Counselor, to expound on that a little
20 bit.
21 BY MR. TUTTLE:
22 Q. You mentioned that he deleted the
23 schedule.
24 A. Yes.
25 Q. What does that mean?

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1 PROCEEDINGS
2 A. So lieutenants put out a schedule
3 on a yearly basis and --
4 Q. A schedule of what?
5 A. The patrol schedule. Deputy
6 schedule, corporal schedule, sergeant
7 schedule, lieutenant schedule, detective
8 schedule for the year. So in 2022, in
9 December, that schedule was now put in
10 place for the entire year of 2023 for all
11 the members of the Sullivan County
12 sheriff's office patrol division.
13 MR. BASHJAWISH: Objection for
14 the same reason. There is no evidence
15 the he did this by accident or with
16 malicious intent of any kind. There
17 is no basis. And this has nothing to
18 do with the basis of the, I believe,
19 which is the point that there were
20 reciprocal or equal degrading comments
21 to one another. I believe that's the
22 basis of the point.
23 THE HEARING OFFICER: I'm going
24 to sustain your objection.
25 BY MR. TUTTLE:

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1 PROCEEDINGS
2 Q. Did Lieutenant Pratti have a
3 reputation in your department that you are
4 aware of?
5 A. Yes.
6 Q. What was that reputation?
7 A. So we would call it stirring the
8 pot. He liked to lie and spread
9 misinformation and the sheriff and
10 undersheriff, the chiefs, they all knew
11 about it.
12 Q. Did he have a reputation for
13 being immune from discipline?
14 A. Yes.
15 Q. Do you know of any facts that
16 would discredit that reputation?
17 A. Well, Lorne Green actually proved
18 that Lieutenant Pratti deleted the
19 schedule for 2023.
20 Q. How are you aware of that?
21 A. I believe the chief told me,
22 actually, because the chief -- I forget
23 who else it was, but the chief actually
24 went to Lieutenant Pratti and questioned
25 him about it.

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1 PROCEEDINGS
2 Q. By the chief, who are you
3 referring to?
4 A. Blake Muthig.
5 Q. When did you have that
6 conversation with Blake Muthig?
7 A. He actually would have told me
8 about it towards the end of 2022, in
9 December.
10 Q. Let's move on to the fourth
11 affirmative defense in your answer,
12 Corporal Harb. Just take a look at that
13 for a moment.
14 A. This one is the fourth?
15 Q. Yes.
16 A. Yes.
17 Q. Is that based on Section 75(b) of
18 the Civil Service Law?
19 A. Yes.
20 Q. Does it have to do with basically
21 whistleblower status?
22 A. Yes.
23 Q. Have you brought to the attention
24 of anyone within the Sullivan County
25 sheriff's office or any outside agency any

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1 PROCEEDINGS

2 information indicative of criminal conduct

3 within the Sullivan County sheriff's

4 office?

5 A. Yes.

6 Q. Tell us about that.

7 A. In accordance with LEMIO, I

8 notified the attorney general --

9 Q. What is LEMIO? Is it LEMIO?

10 A. Yes. Law Enforcement Misconduct

11 Investigative Office, I believe it stands

12 for. It's a subdivision of the attorney

13 general's office?

14 THE HEARING OFFICER: New York

15 State Attorney General?

16 THE WITNESS: Yes.

17 BY MR. TUTTLE:

18 Q. By the way, are you required as a

19 Sullivan County sheriff's office to report

20 any criminal conduct you become aware of

21 in the department to LEMIO?

22 A. Yes, I am.

23 Q. Is there a departmental

24 regulation that provides that?

25 A. Yes.

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1 PROCEEDINGS

2 Q. Did you do that?

3 A. I did.

4 Q. What information did you provide

5 to LEMIO?

6 A. I provided documents to the

7 attorney general's office referencing a

8 criminal history that was ran on a

9 civilian that was done improperly.

10 MR. BASHJAWISH: Objection to

11 this line of questioning because I

12 haven't seen any basis for which --

13 because this is retaliation, as Mr.

14 Tuttle acknowledges that plaintiff is

15 engaged in a protective activity, the

16 petitioner -- not the plaintiff, the

17 Respondent is suffering some adverse

18 consequence and that the appointing

19 authority, sheriff's department,

20 Sheriff Schiff acted on that knowledge

21 and I don't see any evidence provided

22 for it. It's just sort of accusatory,

23 sort of throwing mud at the sheriff

24 for alleged criminal conduct that I

25 don't see any evidence for.

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1 PROCEEDINGS

2 THE HEARING OFFICER: Counselor,

3 I will sustain that objection.

4 And Counsel, I will say that I

5 would like to see a better built

6 foundation for this. So I'll allow

7 it.

8 BY MR. TUTTLE:

9 Q. How did you contact LEMIO?

10 A. I believe it was through the

11 website and then I got a phone recall.

12 Q. When did you conduct LEMIO?

13 A. Shortly after I had knowledge of

14 the incident.

15 Q. When was that?

16 A. Probably about a year and a half

17 ago by now.

18 Q. Is that before or after October

19 31, 2022?

20 A. It was after.

21 Q. Did you -- you said there was an

22 e-mail communication followed a phone

23 call?

24 A. Yes.

25 Q. Did you call them or did you they

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1 PROCEEDINGS

2 call you?

3 A. They called me.

4 Q. Was there one such conversation

5 or more than one?

6 A. Just one.

7 Q. What did you tell them?

8 A. I basically answered the question

9 in reference to the documents.

10 Q. Wait a minute. Did you send them

11 documents ahead of the phone call?

12 A. Yes.

13 Q. What documents did you send them?

14 A. I sent them a criminal history

15 audit, e-mail and a memo.

16 Q. What was the relevance of the

17 criminal history to your allegations of

18 criminal conduct?

19 MR. BASHJAWISH: Again, I'm going

20 to object because it's been a year and

21 a half before the supposed complaint

22 and there is no evidence of any

23 findings a year and a half ago. Even

24 if he did submit a complaint there is

25 no evidence, still no evidence placed

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1 PROCEEDINGS

2 into the record that a year and a half

3 ago the state attorney general

4 wouldn't respond to an allegation of

5 criminal conduct at the sheriff's

6 department. Again, this is open to

7 the public. This is what I see as

8 unsubstantiated mud throwing at the

9 sheriff's office with no basis.

10 THE HEARING OFFICER: I tend to

11 agree. I don't know the relevance

12 here. Do you have any written

13 documentation regards to this? So far

14 in his testimony I don't know what

15 he's talking about or who is the

16 civilian or the circumstances

17 surrounding it.

18 MR. TUTTLE: We're getting there.

19 BY MR. TUTTLE:

20 Q. Do you have the documents you

21 submitted to LEMIO here today?

22 A. I do.

23 THE HEARING OFFICER: You're

24 objection is noted, Counsel.

25 BY MR. TUTTLE:

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1 PROCEEDINGS

2 Q. Can you find them for us?

3 A. Yes.

4 MR. BASHJAWISH: Again, I want to

5 state for the record I wasn't provided

6 these documents ahead of time.

7 Counsel and I exchanged discovery

8 demands. I submitted document

9 requests.

10 THE HEARING OFFICER: Let's go

11 off the record here for a moment while

12 they are looking for those documents.

13 (Off the record 12:57 p.m. to

14 12:57 p.m.)

15 MR. BASHJAWISH: Discovery

16 request was sent to Mr. Tuttle on June

17 10, 2024 and now on the day of trial

18 we get this -- these documents weren't

19 submitted. That's clearly improper

20 for us to proceed.

21 THE HEARING OFFICER: When was

22 that received?

23 MR. BASHJAWISH: On the back is

24 has the date of June 10, 2024. Talk

25 about fairness and due process, I

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1 PROCEEDINGS

2 don't understand why on the day of the

3 hearing that opposing counsel wouldn't

4 submit this to me in advance so that I

5 can prepare and provide somewhat --

6 any defense of any kind. I don't know

7 what those documents are. I have to

8 think about who I'm going to call to

9 counter that and I can't do that now

10 right before me. I wasn't submitted

11 those documents. I was submitted

12 exhibits A, B, C and D. I don't

13 understand why I was not given these

14 documents in advance.

15 THE HEARING OFFICER: Well, this

16 is a hearing, not a criminal trial.

17 Your objection is duly noted,

18 Counselor.

19 I'm going to allow him to testify

20 and then we'll see what the relevance

21 is on his testimony.

22 MR. BASHJAWISH: I would ask that

23 the hearing officer ask for any

24 evidence by which, if it is

25 retaliation, and I have case law that

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1 PROCEEDINGS

2 defines what retaliation is, that the

3 sheriff acted on whatever alleged

4 complaint that Mr. Harb filed. I

5 don't see any evidence for that.

6 THE HEARING OFFICER: I would

7 like to see his documentation and any

8 and all responses or actions that were

9 taken on that matter, if you can

10 provide that. We are looking for

11 documentation whistle blowing status.

12 MR. BASHJAWISH: Can I get a

13 copy.

14 BY MR. TUTTLE:

15 Q. Corporal Harb, are those the

16 documents you submitted to LEMIO?

17 A. Yes.

18 MR. BASHJAWISH: May I receive a

19 copy of the alleged complaint?

20 BY MR. TUTTLE:

21 Q. Are those all of the documents?

22 A. Yes.

23 MR. BASHJAWISH: Is this the only

24 copy?

25 MR. TUTTLE: Yes.

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1 PROCEEDINGS
2 MR. BASHJAWISH: I'll make
3 copies.
4 (Off the record 1:00 p.m. to 1:05
5 p.m.
6 THE HEARING OFFICER: Everybody
7 should have a copy. Are you going to
8 submit this as an exhibit?
9 MR. TUTTLE: Yes, the whole
10 thing as --
11 MR. BASHJAWISH: I object to the
12 basis.
13 THE HEARING OFFICER: On the
14 record, we are discussing a complaint
15 to the attorney general's office.
16 MR. BASHJAWISH: May I make a
17 basis for the objection?
18 THE HEARING OFFICER: Absolutely.
19 Please do.
20 MR. BASHJAWISH: Again, this is
21 the equivalent of mud being thrown on
22 the wall to disparage the reputation
23 of sheriff. This was supposedly filed
24 a year and a half ago. There is no
25 finding of any kind. It might be an

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1 PROCEEDINGS
2 open investigation. As we know with
3 allegations, people can say whatever
4 they want. They can utter any insane,
5 unfounded comments. People have a
6 right to do that. People here, we
7 have an audience here, people hear
8 certain things and then that gets
9 uttered and that gets uttered and that
10 gets uttered and people believe it to
11 be true. I'm objecting because there
12 is no basis that Sheriff Schiff was
13 aware that Jack Harb filed something
14 and then acted on it. I don't see any
15 evidence for this of any kind for the
16 basis of a retaliation claim.
17 HEARING OFFICER: Understood.
18 Again, your objection is noted. I'm
19 going to allow it. I'll make my
20 determination really based on those
21 facts; is it sported, does this appear
22 it was utilized in retaliation where
23 they have to connect the dots. So
24 your objection can be overruled but
25 noted. And they will have to lay that

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1 PROCEEDINGS
2 case out and I'll have the opportunity
3 later to go through it and make that
4 determination.
5 MR. BASHJAWISH: My concern is
6 that the nature of this hearing is
7 public and that people hear certain
8 things and they will just take it as
9 truth.
10 THE HEARING OFFICER: That's
11 noted as well, Counselor, but I don't
12 think there is any determination of
13 findings or that this has been
14 investigated and is factual. I mean,
15 rumors or information gets spread in
16 any manor.
17 MR. BASHJAWISH: We can't stop
18 that from happening.
19 THE HEARING OFFICER: Counselor?
20 MR. TUTTLE: Are we up to R-6?
21 THE HEARING OFFICER: We are up
22 to five.
23 BY MR. TUTTLE:
24 Q. Mr. Harb I'm going to show you a
25 document marked as R-5, which is a

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1 PROCEEDINGS
2 multiple page exhibit. Can you tell us
3 page by page what each them consist of?
4 (Exhibit R-5 multiple pages
5 marked for identification.)
6 THE HEARING OFFICER: You have
7 objection to this document?
8 MR. BASHJAWISH: Yes.
9 THE HEARING OFFICER: Again,
10 noted. And we'll submit R-5 into the
11 record.
12 BY MR. TUTTLE:
13 Q. Please continue.
14 A. The first document is an e-mail
15 from Corporal Brian Kelting to at the time
16 Detective Corporal Cyrus Barnes. And the
17 subject is a monthly criminal history
18 repository inquiry and search audit.
19 Q. Who is Mr. Kelting?
20 A. Mr. Kelting at the time was a
21 deputy with the sheriff's office.
22 Q. What is the substance of that
23 communication?
24 A. The substance of that
25 communication is that Deputy Kelting had

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1 **PROCEEDINGS**
2 run a criminal history and it appears to
3 have been done improperly and does not
4 conform with the requirements for a
5 criminal history to be run.
6 Q. By the way, who is Cyrus Barnes?
7 A. Cyrus Barnes is a detective
8 corporal at the sheriff's office at this
9 time and he was in charge of criminal
10 history audits.
11 Q. So was Cyrus Barnes telling
12 Deputy Kelting that he ran an improper
13 criminal history?
14 A. Correct.
15 Q. What is the next document?
16 A. The next document is a memo to
17 Sheriff Schiff from Brian Kelting dated
18 April 21, 2023 and the subject is in
19 reference to the criminal history.
20 Q. What is the substance of the
21 document?
22 A. The substance of the document
23 references why Lieutenant Paul Slavik was
24 trying to obtain a criminal history audit
25 that was run, trying to get information

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1 **PROCEEDINGS**
2 from Deputy Brian Kelting.
3 **THE HEARING OFFICER:** Are these
4 dates accurate, Counsel, speaking
5 about this was run on 11/17/2017?
6 **THE WITNESS:** Correct.
7 **BY MR. TUTTLE:**
8 Q. Aside from the documents,
9 Corporal, do you have knowledge of the
10 underlying facts involved here?
11 A. When it came time for Lieutenant
12 Slavik to speak with the bosses, that's
13 when I learned about this. That's where
14 my underlying knowledge would have come
15 from. He was trying to get these
16 documents.
17 Q. Did you become involved in this
18 matter as PBA president?
19 A. I did.
20 Q. Was that at Lieutenant Slavik's
21 request?
22 A. Yes.
23 Q. Is Lieutenant Slavik still
24 employed in your department?
25 A. No.

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1 **PROCEEDINGS**
2 Q. What is the next document?
3 A. The next document is an incident
4 report, or what we call a blotter entry,
5 referencing the incident number that was
6 used to run the criminal history which
7 would be improper.
8 Q. So how would that be improper?
9 A. According to the incident report
10 this is for a vehicle, a suspicious
11 vehicle parked on a driveway. This would
12 not justify running a criminal history.
13 Q. What is the next document?
14 A. The next document is the criminal
15 history, criminal history and search audit
16 log for November 1, 2017 through
17 November 30, 2017.
18 Q. Is this the last document?
19 A. Yes.
20 Q. So what is to your understanding
21 what is the sum and substance of these
22 documents?
23 A. The sum and substance of these
24 documents is that a criminal history was
25 ran two times on a civilian with no

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1 **PROCEEDINGS**
2 legitimate reason to do so.
3 Q. Does this violate department
4 procedure?
5 A. Yes. I believe it's a violation
6 of DCJS.
7 Q. What si DCJS?
8 A. Division of Criminal Justice
9 Service.
10 Q. Do they have regulations
11 concerning these matters?
12 A. Yes.
13 Q. Did you discuss this matter,
14 these matters with the LEMIO
15 representative who called you?
16 A. Yes.
17 Q. In sum and substance what did you
18 tell the LEMIO representative?
19 A. In substance that there was
20 corruption and this needed to be
21 investigated and I was assigned a number.
22 And I was asked if anybody else was also
23 looking into this and there is an outside
24 agency looking into this.
25 Q. They asked you that question?

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1 PROCEEDINGS

2 A. Yes.

3 Q. And you told them what?

4 A. The FBI is investigating this.

5 Q. Have you spoken to the FBI about

6 this?

7 A. No.

8 Q. Have you been contacted by the

9 FBI about this?

10 A. No.

11 Q. Do you know of any member, either

12 present or former member of your

13 department, has been?

14 A. I've heard rumors that some of

15 the members have been in contact with the

16 FBI. I have been told by Chief Muthig

17 that he has been speaking to the FBI about

18 this is Lieutenant Paul Slavik has also

19 informed me that he is involved with the

20 FBI in this matter.

21 Q. Have you ever discussed these

22 matters with Julie Diescher, the county's

23 personnel manager?

24 A. Yes.

25 Q. That's not the right title.

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1 PROCEEDINGS

2 What, is she is director of human

3 resources I guess?

4 A. Yes.

5 Q. When and where did you discuss

6 these matters with Julie Diescher?

7 A. Around the time this all became

8 aware to me I advised them that I would be

9 speaking to the attorney general's office

10 about this. That would have been Julie

11 Diescher and Michelle Hawk (phonetic).

12 Q. When you say around the time,

13 when was that time around the time of

14 these documents?

15 A. Around August 2023, I want to say

16 midweek.

17 Q. When were the disciplinary

18 charges against you commenced?

19 A. When did I receive them? I

20 received two sets. I believe the first

21 one was April 26, 2024 and the next

22 amended one I received was April 30, 2024,

23 approximately 18 months after the October

24 31st incident.

25 Q. For the record what is the

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1 PROCEEDINGS

2 relevance of 18 months?

3 A. So 18 months would be the

4 timeline or the deadline for which you can

5 bring charges against somebody.

6 Q. Is that your understanding of

7 Section 75 of the Civil Service Law?

8 A. Yes.

9 Q. Did you ever meet with Chief

10 Muthig about this matter?

11 A. Yes, I did.

12 Q. Under what circumstances?

13 A. He advised me as to why

14 Lieutenant Pratti [sic] was being

15 investigated and advised me what was going

16 on here but didn't produce the documents.

17 He told me he had these documents and gave

18 me somewhat of an explanation of who knew

19 about this and how this came to be.

20 Q. Did there come a time when Paul

21 Slavik came to you for assistance with a

22 change in the terms of his employment?

23 MR. BASHJAWISH: Objection. What

24 does that have to do with the charges?

25 MR. TUTTLE: We'll connect it.

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1 PROCEEDINGS

2 THE HEARING OFFICER: I'll allow

3 it.

4 THE WITNESS: Yes, there was.

5 BY MR. TUTTLE:

6 Q. What were those circumstances?

7 A. Lieutenant Slavik was removed

8 from the scene of an investigation and

9 subsequently had his vehicle taken away

10 and escorted out of the building and put

11 on administrative leave.

12 Q. Did we bring a contract grievance

13 with regard to that matter?

14 A. Yes, we did.

15 Q. Was Lieutenant Slavik also

16 notified by Chief Muthig to come to his

17 office for disciplinary interview?

18 A. Yes, he was.

19 Q. Did Lieutenant Slavik ask you for

20 assistance with that -- in that

21 appearance?

22 MR. BASHJAWISH: Objection. At

23 what point are we going to understand

24 what this has to do with the charges?

25 THE HEARING OFFICER: Let's get

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1 PROCEEDINGS
2 to the point here, Counselor.
3 MR. TUTTLE: We're almost there.
4 MR. BASHJAWISH: If I may, the
5 Respondent has been given latitude to
6 make points that are very disparate in
7 connection and I don't see any
8 connection as to how this is
9 retaliation. I would ask the hearing
10 officer to compel Respondent --
11 HEARING OFFICER: Counselor, I
12 understand. Your objection is noted.
13 At the end of the day I get to make a
14 determination here. But I'm going to
15 allow him to proceed.
16 MR. BASHJAWISH: Understood.
17 Thank you.
18 BY MR. TUTTLE:
19 Q. Did you attend with Lieutenant
20 Slavik when he was required to appear in
21 front of Chief Muthig?
22 A. I did.
23 Q. And in preparing for that did you
24 meet with Lieutenant Slavik and me?
25 A. Yes.

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1 PROCEEDINGS
2 Q. In the course of those
3 preparations did we discuss Lieutenant
4 Slavik's knowledge of criminal activity
5 within the department?
6 A. Yes.
7 Q. During the course of the meeting
8 with Chief Muthig did we make disclosures
9 to Chief Muthig in that regard?
10 A. Yes.
11 Q. What did we discuss with Chief
12 Muthig about criminal activity within the
13 department?
14 A. Lieutenant Slavik made mention he
15 believed there was corruption within the
16 agency and that he was being basically
17 removed for trying to uncover corruption.
18 Q. Did he specify what criminal
19 activity he was referring to?
20 MR. BASHJAWISH: Again, at what
21 point are we going to find out a
22 connection between the relevance of
23 the Section 75 hearing?
24 THE HEARING OFFICER: Make this
25 point pretty quick here, Counselor,

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1 PROCEEDINGS
2 where it becomes relevant --
3 BY MR. TUTTLE:
4 Q. As Lieutenant Slavik's union rep
5 did you advise him that he has the right
6 to raise those issues?
7 A. Yes. As PBA president I
8 represented Lieutenant Slavik and because
9 of that role I basically got put into the
10 middle of all of this between the
11 administration, the chief and Lieutenant
12 Slavik.
13 Q. When was that?
14 A. That would have been in 2023, in
15 of the summer of 2023.
16 Q. Was that meeting recorded?
17 A. Yes.
18 Q. Who recorded the meeting?
19 A. Chief Muthig and myself.
20 Q. Did both of you know that the
21 other was recording?
22 A. Yes.
23 Q. Is that a practice that you
24 developed with Chief Muthig over the
25 years?

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1 PROCEEDINGS
2 A. It was off and on. Typically he
3 would record and provide a transcript.
4 That wasn't really happening. And he was
5 okay with us recording.
6 Q. So on the date of that interview
7 you knew he was recording and he knew you
8 were recording, correct?
9 A. Yes.
10 Q. Do you have a copy of the
11 transcript with you here today?
12 A. I do.
13 MR. TUTTLE: So we previously
14 provided you with a tape of this. You
15 didn't request electronic or recorded
16 material, but we gave it to you
17 anyway. And I have a transcript of
18 the audio.
19 MR. BASHJAWISH: I would rather
20 the transcript because I don't have a
21 copy of the audio.
22 MR. TUTTLE: I sent you a copy
23 off it on a thumb drive.
24 MR. BASHJAWISH: I wasn't able to
25 open it.

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1 PROCEEDINGS
2 MR. TUTTLE: We offer this as
3 R-6.
4 MR. BASHJAWISH: I object. Who
5 transcribed -- if it's an audio
6 recording there is no stenographic
7 formal proceeding. We are relying on
8 someone's typing of an audio. And
9 again, what does this have to do with
10 the charges brought up on what he said
11 about Lieutenant Pratti on the basis
12 of which is this Section 75 hearing?
13 We are going on. I understand the
14 latitude but at some point what is the
15 relevance?
16 THE HEARING OFFICER: Is that the
17 one you are going to submit,
18 Counselor?
19 MR. TUTTLE: Yes.
20 THE HEARING OFFICER: It is a
21 good question, Counselor.
22 MR. TUTTLE: It specifically
23 relates to our affirmative defense in
24 this Section 75(b) of the Civil
25 Service Law which says if anyone feels

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1 PROCEEDINGS
2 they are being retaliated against in
3 disciplinary proceedings for having
4 disclosed criminal activity, he is
5 entitled to prove that.
6 MR. BASHJAWISH: He has not --
7 THE HEARING OFFICER: I agree
8 with you, Counsel. I haven't heard
9 how he has been retaliated from this,
10 this specific incident.
11 MR. BASHJAWISH: If I may, I
12 think the only purpose of introducing
13 it is to project certain messages to
14 the audience for that purpose. That's
15 the only thing I can deduce.
16 Otherwise, okay, suppose he did
17 retaliate you, what's the evidence?
18 Let's see it. Otherwise I see it as
19 more sensational gossip for the
20 audience to take and then relay. And
21 yes, you have that right but he
22 doesn't have a right just to make
23 allegations without proving that there
24 is a causal connection between two
25 events; this and him bringing up these

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1 PROCEEDINGS
2 charges. I haven't seen any evidence
3 for it.
4 MR. TUTTLE: The timing of the
5 documents is circumstantial evidence
6 that there were -- I have an image of
7 Sheriff Schiff's mind of what was
8 going on, to initiate the charges.
9 MR. BASHJAWISH: That's a
10 timeliness argument. It's a question
11 of whether or not -- which is not an
12 affirmative defense. Is it timely?
13 18 months, you can question something
14 for being too early or too late in our
15 world, in the Section 75 world, it's
16 18 months. It's 18 months for a
17 reason, and it was brought before the
18 deadline. It did not go past it. If
19 it went past and we can't bring those
20 charges. It is timely. This is a
21 question of correlation versus
22 causation. Something X causes Y. Two
23 certain events, if I drop my pen and
24 it thunders outside, my dropping the
25 pen does not cause the thunder

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1 PROCEEDINGS
2 outside. Same thing here, I don't see
3 any connection. They are making a
4 argument based on correlation. There
5 is no causal evidence. There is no
6 evidence that one caused the other.
7 It's just gossip. It's
8 unsubstantiated and I ask the hearing
9 officer to reject this evidence for
10 not showing any evidence for
11 causation, which is a basis for
12 retaliation.
13 THE HEARING OFFICER: I am going
14 to overrule your objection, Counselor.
15 I still would like Mr. Tuttle to make
16 his points.
17 MR. BASHJAWISH: He hasn't
18 provided any connection as to how the
19 sheriff is acting on this.
20 THE HEARING OFFICER: Have you
21 finished your line of questions,
22 Counselor?
23 MR. TUTTLE: Not quite.
24 THE HEARING OFFICER: So I'm
25 going to allow him to proceed.

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1 PROCEEDINGS
2 BY MR. TUTTLE:
3 Q. So we began talking about the
4 meeting with Chief Muthig, which
5 apparently occurred on August 14, 2023 at
6 1:25.
7 MR. TUTTLE: Is this document
8 received, Your Honor?
9 THE HEARING OFFICER: Your
10 objection is noted on R-6.
11 MR. BASHJAWISH: I have no idea
12 who typed it, there is to formal
13 proceeding, it is supposedly based on
14 an audio recording.
15 THE HEARING OFFICER: Understood.
16 It's going to be entered into the
17 record as document R-6.
18 BY MR. TUTTLE:
19 Q. Do you know who typed that?
20 A. All I know about this is this is
21 what the chief at the time, Blake Muthig
22 provided to me well after everything had
23 concluded with Lieutenant Slavik.
24 Q. Then first paragraph, correct me
25 if I'm wrong, but the last sentence

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1 PROCEEDINGS
2 states -- the introduction paragraph
3 states: This statement is being
4 electronically recorded. The recording
5 will be transcribed and copies of both
6 will be provided to Lieutenant Slavik.
7 Have I read that correctly?
8 A. Yes.
9 Q. Does that refresh your
10 recollection as to where you got this
11 transcript?
12 A. Well, as far as what is
13 documented here on this transcript, yes,
14 it says August 14, 2023 at 1:25 P.M. But
15 when I actually received the physical
16 paper, that was well after everything was
17 done.
18 Q. The question is who typed it?
19 A. That I don't know.
20 Q. Did you receive this from Chief
21 Blake?
22 A. Yes. Who typed it for him, I
23 don't know.
24 Q. Do you have any direct knowledge
25 that these matters were considered in the

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1 PROCEEDINGS
2 initiation of charges against you?
3 A. If these were considered in
4 charges against me?
5 Q. Yes.
6 A. No.
7 Q. If you asked the sheriff why he
8 initiated these charges against you do you
9 think he'd tell you?
10 MR. BASHJAWISH: Objection.
11 Calls for speculation. Relevance.
12 THE HEARING OFFICER: Sustained.
13 BY MR. TUTTLE:
14 Q. Did you discuss these matters
15 with Julie Diescher, the matters that you
16 discussed on August 14, 2023 among Chief
17 Muthig, Lieutenant Slavik and me?
18 A. Yes.
19 Q. When and where did you discuss
20 those matters with Julie Diescher?
21 A. Around that time, around August
22 of 2023.
23 Q. Before or after the meeting with
24 Chief Muthig on August 14th?
25 A. I want to say it was after.

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1 PROCEEDINGS
2 Q. What was the nature of the
3 discussion?
4 A. Basically that I've been in
5 contact with the attorney general's
6 office, this is what I've learned, and I
7 was in fear for my job.
8 Q. In what sense were you concerned
9 about your job?
10 A. Well, as PBA president I had to
11 take part in dealing with Lieutenant
12 Slavik's situation with all this and the
13 bosses know that I've learned about this.
14 I basically felt I had a bulls eye on my
15 back.
16 MR. BASHJAWISH: Objection. That
17 has not been established that they
18 know. In fact, he testified he has no
19 basis for saying the chief was even
20 aware of this.
21 THE HEARING OFFICER: I'm going
22 to sustain your objection.
23 BY MR. TUTTLE:
24 Q. Did you ever have any
25 conversations with Chief Muthig about the

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1 PROCEEDINGS
2 administration's knowledge of these
3 matters?
4 A. Yes.
5 Q. When were those?
6 A. 2023, throughout the year.
7 Q. Were there multiple?
8 A. Yeah, multiple conversations.
9 This would come up from time to time.
10 Q. When you say this would come up,
11 what would come up?
12 A. The FBI's investigation.
13 Q. Into matters within the Sullivan
14 County sheriff's office?
15 A. Yes.
16 Q. What did Chief Muthig tell you on
17 those occasions?
18 A. Just that the FBI was looking
19 into criminal history and motor vehicle
20 accident reports.
21 Q. What was the issue with motor
22 vehicle accident reports?
23 A. That they were being altered.
24 Q. In what context did Chief Muthig
25 discuss those matters with you?

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1 PROCEEDINGS
2 A. So he would call me in his
3 office, we would discuss different things
4 that would come up, PBA stuff, cases,
5 things to that effect, grievances, and
6 that's when he would get into one way or
7 another stuff pertaining to this.
8 Q. Did he tell you about its
9 potential impact on your employment?
10 A. Not as far as whether or not I
11 would be fired or disciplined, more into
12 how bad this was for the agency.
13 Q. Did he ever suggest to you in
14 substance that you had a target on your
15 back because of your involvement in these
16 matters?
17 A. He told me that I was in the
18 cross hairs. To stay low. That kind of
19 thing. But he said that the bosses were
20 out to get me. He didn't specify for
21 what.
22 Q. Who did you understand him to
23 mean by "the bosses"?
24 A. The sheriff and the undersheriff.
25 Q. Hid he tell you that once or more

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1 PROCEEDINGS
2 than once?
3 A. I would say a couple times.
4 Q. Were those conversations before
5 these disciplinary charges were brought?
6 A. Yes.
7 Q. When was Blake Muthig last in
8 your office that you know of? In the
9 offices of the sheriff?
10 A. The last time I saw Chief Blake
11 Muthig would be around November or
12 December of 2023.
13 MR. BASHJAWISH: Object. I'm
14 going to object to this line of
15 questioning. We haven't gotten
16 anywhere. Supposedly there is hearsay
17 evidence that someone, Blake Muthig, a
18 chief who hasn't been called as a
19 witness, has testimony, he
20 conveniently recites his words but
21 Blake Muthig isn't here to testify to
22 them. We are still on the affirmative
23 defense of retaliation. Mr. Harb
24 promotes certain documents. He
25 admitted he has no knowledge as to how

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1 PROCEEDINGS
2 the chief was aware of these documents
3 and how it relates to the Respondent.
4 THE HEARING OFFICER: Again,
5 Counselor, I'm going to overrule you.
6 I'm going to allow him to provide his
7 defense. I'm interested in what he
8 has to say and at the end of the day I
9 have to review this information and
10 make a determination.
11 Counsel?
12 BY MR. TUTTLE:
13 Q. Did you record any interviews
14 with Chief Muthig?
15 A. Yes.
16 Q. Some are all?
17 A. Some.
18 Q. Do you have those recordings?
19 A. I do.
20 Q. In what format are they?
21 A. Thumb drive.
22 Q. Do you have them with you here
23 today?
24 A. Yes.
25 Q. Are you prepared to present them?

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1 PROCEEDINGS

2 A. I can.

3 THE HEARING OFFICER: Counsel,

4 were you provided any of this

5 information in discovery.

6 MR. BASHJAWISH: No.

7 MR. TUTTLE: You didn't ask for

8 it. You asked for documents.

9 MR. BASHJAWISH: I asked any and

10 all documents that Respondent intends

11 on using at the hearing to be used in

12 Respondent's defense or affirmative

13 defense or to be used for any other

14 purpose. Now, to sort of weasel one's

15 way out of, oh, yes, by document you

16 meant paper but not audio recording is

17 weaseling at best, to say it nicely.

18 To say, yeah, I totally knew that

19 there was recording of Chief Muthig

20 who conveniently isn't here today and

21 who cares what Muthig has to say, he's

22 not the one that brought the charges.

23 Yes, even if he says something I

24 believe the smoking gun evidence is

25 right here. It has nothing to do with

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1 PROCEEDINGS

2 the sheriff's drafting up charges for

3 things he said and did on October 31,

4 2022.

5 MR. TUTTLE: As to whether this

6 is weaseling or not, I read your

7 letter on June 20, 2024 saying

8 attached please find the Respondent's

9 supplemental discover response, and I

10 was referring to a recording of what

11 we now have here as the written

12 transcript. Although that demand

13 speaks in terms of documents, we are

14 disclosing the recorded conversation

15 in the interest of full disclosure.

16 You never sent me a follow-up demand

17 for any other recording.

18 MR. BASHJAWISH: You sent me

19 one -- the transcript I have. I have

20 that. No other recordings I received.

21 MR. TUTTLE: I sent you the

22 recording this was made from.

23 MR. BASHJAWISH: That document I

24 received, yes. But you are talking

25 about other --

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1 PROCEEDINGS

2 MR. TUTTLE: I didn't send you

3 this document, I sent you a recording,

4 a thumb drive on which was recorded

5 that which is now here as a

6 transcript.

7 MR. BASHJAWISH: But you are

8 talking about other audio recordings.

9 THE HEARING OFFICER: There's no

10 other thumb drives sent to him

11 relative to --

12 MR. TUTTLE: No.

13 THE HEARING OFFICER: I want to

14 go off the record here a moment. Any

15 objection?

16 (Off the record 1:38 p.m. to 1:50

17 p.m.)

18 THE HEARING OFFICER: There is a

19 an objection. Do you want to

20 reiterate that?

21 MR. BASHJAWISH: I made discovery

22 requests to opposing counsel for any

23 and all documents that would be used

24 as part of any defense, affirmative

25 defense in my discovery request. I

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1 PROCEEDINGS

2 was not provided with a 15-hour audio

3 recording and it's not even proposed

4 what the relevance is and it's based

5 on Chief Muthig, who could have been

6 called as a witness, he is not

7 conveniently called as a witness. And

8 we did formally discuss in our

9 conference that we would be concluded

10 in a day.

11 THE HEARING OFFICER: I'm tending

12 to lean towards your objection. Is

13 there any way, Counselor, that you

14 think maybe if this has some relevance

15 you can get Chief Muthig to testify?

16 I don't know his health or location.

17 MR. TUTTLE: We can certainly

18 explore that.

19 THE HEARING OFFICER: I want to

20 give you an option to pursue this and

21 we can add it to our video conference

22 if we get another -- if you want to

23 pursue that.

24 MR. TUTTLE: Yes, I would request

25 that opportunity.

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1 PROCEEDINGS
2 THE HEARING OFFICER: I'm going
3 to exclude the statements that were
4 taken from you. You had plenty of
5 time to turn those over to counsel.
6 There were previous discussions. I
7 was unaware of this. And I think it's
8 going to turn into us going on for
9 several days going through that stuff.
10 MR. TUTTLE: For the record, I
11 would like to state that the discovery
12 demand I was served with, quote, the
13 documents. That means documents, it
14 doesn't mean recordings. That's why
15 when we serve a subpoena nowadays the
16 description of what that covers --
17 THE HEARING OFFICER: I do
18 understand that, Counselor, but you
19 did also provide him with some
20 electronic documentation in the manner
21 of a thumb drive.
22 MR. TUTTLE: I did provide him
23 with one and I noted my belief that he
24 had not even asked for it and I gave
25 it to him in the interest of hopefully

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1 PROCEEDINGS
2 resolving this matter before having to
3 come and doing a hearing.
4 THE HEARING OFFICER: I would
5 hope we could have, but here we are.
6 Your objection is sustained. But
7 I do want to give counsel an
8 opportunity, if you deem it is
9 relevant, to see if we can get Blake
10 Muthig to do a Zoom conference. I
11 hope he's in good enough health that
12 he can provide some insight testimony
13 on this.
14 MR. TUTTLE: We'll pursue that.
15 THE HEARING OFFICER: Continue.
16 MR. TUTTLE: Can you read back
17 the last question or two.
18 (Record read.)
19 BY MR. TUTTLE:
20 Q. So Corporal Harb, what was Chief
21 Muthig's role as chief of patrol, what
22 were his duties, what were his functions?
23 A. So Chief Muthig would oversee the
24 detective's division. He was chief of
25 patrol, basic patrol supervision, and he

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1 PROCEEDINGS
2 was in charge of internal affairs.
3 Q. Was he in your direct line of
4 command?
5 A. He was my immediate supervisor.
6 Q. So if you had an issue with the
7 administration, would you go to Chief
8 Muthig first?
9 A. Yes.
10 THE HEARING OFFICER: There was
11 nobody in between?
12 THE WITNESS: No.
13 THE HEARING OFFICER: As what,
14 the PBA? Clarify --
15 MR. TUTTLE: We'll have to talk
16 about that.
17 BY MR. TUTTLE:
18 Q. Outline for us the chain of
19 command, starting with deputy on up to the
20 sheriff.
21 A. So a deputy would go to corporal,
22 corporal would go to a sergeant, sergeant
23 would go to a lieutenant, a lieutenant
24 would go to a chief, a chief would go to
25 undersheriff, an undersheriff would go to

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1 PROCEEDINGS
2 a sheriff. That would be the typical
3 structure.
4 Q. I did not hear captain in
5 there --
6 A. We don't have captain. But we
7 also have an open door policy so you can
8 go directly to the sheriff. That's what
9 he invites you to do. As far as the
10 detectives go, you could say our first
11 line supervisor is the chief. And then it
12 would be the undersheriff and sheriff.
13 Q. For detectives?
14 A. Yes.
15 Q. So does that mean a detective
16 would not go first to a lieutenant and
17 then the chief?
18 A. Correct.
19 Q. They would go directly to the
20 chief?
21 A. Correct. The detectives are a
22 separate division from patrol.
23 THE HEARING OFFICER: There is no
24 supervision in between?
25 THE WITNESS: No.

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1 PROCEEDINGS

2 BY MR. TUTTLE:

3 Q. And with regard to your union

4 function, who was your liaison to the

5 administration from that perspective?

6 A. It would be me, as the PBA

7 president.

8 Q. Who in the administration would

9 you go to with union issues?

10 A. The undersheriff. And ultimately

11 the sheriff.

12 Q. What about Chief Muthig?

13 A. Sometimes. But the undersheriff

14 says that everything starts with him as

15 far as grievances and improper practices.

16 MR. TUTTLE: I think that's all I

17 have of Detective Corporal Harb at

18 this time.

19 THE HEARING OFFICER: Counsel?

20 CROSS EXAMINATION

21 BY MR. BASHJAWISH:

22 Q. Mr. Harb, your memory is not so

23 good; is that correct?

24 A. It depends on what we're talking

25 about.

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1 PROCEEDINGS

2 Q. Well, we were talking about your

3 experience with Section 75 and at first

4 you testified yes, you were. And then at

5 cross examination your counsel said no,

6 you were there at a 207(c) hearing and you

7 said yes, that's correct. You revised

8 your --

9 A. I think --

10 Q. Let me finish my question,

11 please.

12 And then on this direct you said

13 yes, you attended a Section 75 with Paul

14 Slavik, correct?

15 A. I'm sorry. I'm trying to go back

16 and forth here a little bit. So when you

17 initially asked about it I think I was

18 getting what that type of hearing was a

19 little confused because it was so long

20 ago. That one I believe was with

21 Lieutenant Peter Ramos. He had a 207(c)

22 case. That was my first real experience

23 with having to testify at these types of

24 hearings. I got confused.

25 Q. But you did attend a Section 75

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1 PROCEEDINGS

2 hearing with Paul Slavik, correct?

3 A. No.

4 Q. You didn't?

5 A. No.

6 Q. What is the number incident that

7 you reported to the state?

8 A. I'm sorry, say again?

9 Q. You received so sort of number,

10 some sort of identifying number, some sort

11 of ID from the state when you reported --

12 A. From the attorney general?

13 Q. Yes?

14 A. 1-6-9-1-3-8-8-5-7-2.

15 Q. So that was reported over a year

16 and a half ago, correct?

17 A. August 1, 2023.

18 THE HEARING OFFICER: Can you

19 read those numbers?

20 THE WITNESS:

21 1-6-9-1-3-8-8-5-7-2.

22 BY MR. BASHJAWISH:

23 Q. Has the state AG, attorney

24 general, come back to you with a finding

25 of any kind?

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1 PROCEEDINGS

2 A. One of -- the actually attorney

3 general herself, or just somebody from the

4 office?

5 Q. Of course I mean generally

6 speaking from the office.

7 A. Someone from the office reached

8 out to me, took my information, and said

9 they would follow up if they had more

10 questions.

11 Q. Have they followed up?

12 A. No.

13 Q. So they don't have any questions

14 presumably?

15 A. Correct.

16 Q. You mentioned before you

17 testified about the FBI, correct? Do you

18 recall giving testimony referring to the

19 FBI?

20 A. That they were actually -- from

21 what I'm being told, they are the ones

22 actually looking into this.

23 Q. But you were told --

24 A. I've never spoke to them, no.

25 Q. Who were you told that by?

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1 PROCEEDINGS
2 A. Chief Muthig and Lieutenant Paul
3 Slavik.
4 Q. But don't know have any direct
5 information whether as to whether or not
6 they are investigating the sheriff's
7 office for alleged wrongdoing?
8 A. I wouldn't, no.
9 Q. Do you have an affirmative
10 defense that the charges brought to you
11 are untimely?
12 A. According to our policy, I was
13 supposed to have been given updates as to
14 wear their investigation was. The last
15 thing I heard from the chief was that the
16 investigation was over in January of 2023
17 and he actually boasted that it's not
18 going to go anywhere, it's going to sit
19 there until it turns to dust and in 18
20 months it was all going to be gone. When
21 they put in the demand for discovery, the
22 report that you offered up stated the
23 investigation started on October 31,
24 2022 --
25 Q. I'm sorry to interrupt. I just

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1 PROCEEDINGS
2 want to know if you have an affirmative
3 defense that what we served you is
4 untimely?
5 MR. TUTTLE: No.
6 MR. BASHJAWISH: I'll move on.
7 BY MR. BASHJAWISH:
8 Q. We heard a lot about Chief
9 Muthig, him trying to help you. I got the
10 impression, I'm not going to testify, but
11 let me direct your attention to one of the
12 documents that were previously entered
13 into evidence. It would be P-8. Bates
14 stamped 10 and 11.
15 A. Okay.
16 Q. Who is that memo from?
17 A. Me.
18 Q. Do you mind if I take a look?
19 A. I'm sorry, that was from Chief
20 Muthig.
21 Q. From Chief Muthig to who?
22 A. To me.
23 Q. What is he asking?
24 A. He's asking me to supply a memo
25 specifically to Items 1 through 7.

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1 PROCEEDINGS
2 Q. And it relates to the incident on
3 October 31, 2022, correct?
4 A. Yes.
5 Q. Do you have an idea -- do you
6 have any understanding of any kind when
7 Chief Muthig was no longer in the office
8 due to his health?
9 A. My best guess would be
10 November or December of 2023.
11 Q. But it could have been before
12 that?
13 A. No. Before that he was there on a
14 regular basis.
15 Q. Let's talk about your statements
16 about the affirmative defenses. Do you
17 mind if I get that back?
18 THE HEARING OFFICER: P-3?
19 MR. BASHJAWISH: No, I'm just
20 going to proceed with my questions.
21 BY MR. BASHJAWISH:
22 Q. You have a number of improper
23 practices. Before you testified there
24 were about three improper practices,
25 correct?

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1 PROCEEDINGS
2 A. Yes.
3 Q. Is there a conclusion on any of
4 those three?
5 A. Two, I believe, have been merged.
6 We have offered up a resolution. We're
7 waiting to hear back. I believe that one,
8 if those two nothing happens with, the
9 next step is setting up a date for White
10 Plains. The third one I think we are
11 still waiting to hear on.
12 Q. But you could get a decision is
13 your favor; is that possible?
14 A. Is it possible? Yes. Anything
15 is possible.
16 Q. It's possible you may get a
17 decision that's not in your favor?
18 A. Correct.
19 Q. But those are still pending?
20 A. Yes.
21 Q. Before you testified in your
22 affirmative defenses that you were acting
23 as PBA president. Do you recall that
24 testimony?
25 A. Yes.

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1 PROCEEDINGS

2 Q. Do you recall your attorney asked

3 you if you had an obligation to

4 affirmatively address or correct any

5 misinformation?

6 A. Yes.

7 Q. Was it your duty to call

8 Lieutenant Pratti a liar?

9 A. I don't think it's anybody's

10 duty.

11 Q. Was it part of your duty to say

12 that he couldn't be trusted?

13 A. I don't think it's anybody's

14 duty.

15 Q. Was it your duty to say that he

16 lacked testicular fortitude?

17 A. No.

18 Q. Was it your duty to say that he

19 wasn't a cop?

20 A. I don't recall saying that. I

21 think that's getting misconstrued just

22 like a lot of these things are being taken

23 out of context. You can take any phrase

24 out of anything that was said and make it

25 sound like it's something else.

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1 PROCEEDINGS

2 Q. But before you testified that all

3 you had to do was wait for the vote count

4 to realize that Lieutenant Pratti's

5 comments, no matter how disparaging or

6 wrong they were, all you had to do was

7 wait to see that the votes were counted

8 and to see that you won?

9 A. You had said that. I said there

10 was a possibility.

11 MR. BASHJAWISH: No further

12 questions.

13 MR. TUTTLE: Nothing on redirect.

14 THE HEARING OFFICER: You can

15 step down, Mr. Harb.

16 Do you need a break? Do you have

17 anybody else to call? You do.

18 (Off the record 2:06 P.M. to 2:18

19 p.m.)

20 THE HEARING OFFICER: It's 2:18.

21 We are back on the record.

22 MR. TUTTLE: I call Paul Slavik.

23 MR. BASHJAWISH: I am going to

24 object to this witness because he

25 wasn't there on the day of the events

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2 and he is not a witness to the events

3 and he has nothing to do with the

4 affirmative defenses insofar as I

5 mentioned in the beginning that scope

6 of the alleged retaliation related to

7 Mr. Harb's disclosure, beyond that

8 there is nothing to hear from this

9 witness as to what he has to say.

10 THE HEARING OFFICER: Your

11 objection is noted. Overruled. We

12 are going to listen to his testimony.

13 Mr. Slavik, raise your right

14 hand.

15 P A U L S L A V I K, called as a

16 witness, having been duly sworn by a

17 Notary Public, was examined and

18 testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TUTTLE:

21 Q. How are you employed?

22 A. I'm current unemployed. I'm

23 retired.

24 Q. Retired from what employment?

25 A. Sullivan County sheriff's office.

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1 PROCEEDINGS

2 Q. When did you retire from the

3 Sullivan County sheriff's office?

4 A. Effective December 21, 2023.

5 Q. When were you first employed in

6 the Sullivan County sheriff's office?

7 A. November 1, 1999.

8 Q. What rank did you hold when you

9 retired?

10 A. Lieutenant.

11 Q. When did you first become a

12 lieutenant in the Sullivan County

13 sheriff's office?

14 A. I believe it was 2022. It might

15 have been '21, I'm sorry.

16 Q. Were you a member of the union?

17 A. I was.

18 Q. In fact, were you ever an officer

19 of the union?

20 A. I was. I was --

21 Q. What office have you held?

22 A. I've held two positions over the

23 course of my career. One was sergeant at

24 arms and the other one was president.

25 Q. So you were employed in the

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1 PROCEEDINGS
2 department in October of 2022; is that
3 correct?
4 A. Yes.
5 Q. Were you on the negotiating
6 committee that negotiated the memorandum
7 of agreement that was voted on on October
8 31, 2022?
9 A. Yes, I was.
10 Q. Did you feel it was a contract
11 that should be voted favorably on?
12 A. I did.
13 Q. Did Lieutenant Pratti have any
14 conversation with you relative to that
15 contract or its merits?
16 A. Yes, he did.
17 Q. What did he have to say?
18 A. He came to my office and he told
19 me that Jack Harb was a scum bag liar and
20 he was only doing this to take away the
21 health insurance from Lieutenant Pratti.
22 Q. Did you understand what he meant
23 when he referred to the health insurance,
24 was there some disadvantage to him in the
25 health insurance arrangement in the new

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1 PROCEEDINGS
2 contract?
3 A. Yes, we all would have had to
4 agree to take a plan that was by most
5 standards not as good as the plan we had.
6 I believe it was the Excelsior in exchange
7 for a healthy raise and we would be giving
8 up, I want to call it the Empire plan, I
9 think that's what it was. Lieutenant
10 Pratti being a very senior member, he was
11 one of the last of the older guys who
12 didn't really have to contribute as much
13 or I think he actually had it for his
14 family as well, as I do not. I only have
15 health insurance for myself.
16 Q. Did he tell you why he thought --
17 who did he refer to as a lying scum bag?
18 A. Jack Harb.
19 Q. Did he tell you why he thought
20 that or why it was relevant to the
21 contract?
22 A. He said he looked into the new
23 plan, Excelsior, and that what Jack was
24 saying wasn't true as far as the benefits
25 that were being conveyed. I guess there

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1 PROCEEDINGS
2 was some discussion about the differences
3 between the plans and Lieutenant Pratti
4 did not agree with President Harb's --
5 what he was saying about the plan. I
6 didn't get much more into it than that.
7 Q. Did you hear him say anything
8 else. Withdraw that.
9 You described one conversation
10 when Lieutenant Pratti came to your
11 office. Were there others?
12 A. Vaguely, he was complaining about
13 it but I don't remember -- I just remember
14 him complaining about it. He was really
15 upset about it.
16 Q. Did you attend the meeting on
17 October 31st?
18 A. No, I did not.
19 Q. How did you learn that the
20 contract had been approved?
21 A. I don't recall. I would be
22 guessing. My best guess is Jack Harb told
23 me but I know I wasn't there. I didn't
24 work that day.
25 Q. So Detective Corporal Harb has

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1 PROCEEDINGS
2 testified to a reputation that Lieutenant
3 Pratti had in your department. Were you
4 present when he gave that testimony?
5 A. I was.
6 Q. Did you agree with it or disagree
7 with it?
8 A. I agree with it.
9 Q. Are you aware of any examples
10 that justify that reputation?
11 A. Lieutenant Pratti had earned a
12 reputation of being untouchable or a
13 protected species, is the word. There's
14 an incident that comes to mind with the
15 Galleria in Middletown where he fired
16 unintentionally, there were three rounds
17 fired into the ceiling. I mean, he was a
18 firearms -- he was a SWAT team member and
19 our senior firearms instructor. To the
20 best of my knowledge he did not receive
21 really any significant discipline for
22 that. He continued to be the firearms
23 instructor and he continued to be on the
24 SWAT team -- we did call it the ESU. But
25 over the course of my career there were

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1 PROCEEDINGS
 2 several things that he had done and just
 3 never seemed to catch up with him. He was
 4 certainly known by administration to tell
 5 stories, not be truthful, and that was his
 6 reputation. He earned it, as far as I'm
 7 concerned.
 8 MR. BASHJAWISH: Objection to
 9 this line of questioning. So far we
 10 are five minutes in and not one piece
 11 of statement has been relevant to the
 12 charges or any defenses.
 13 THE HEARING OFFICER: Noted and
 14 overruled. Make a point here,
 15 Counselor.
 16 BY MR. TUTTLE:
 17 Q. Who is Blake Muthig?
 18 A. Blake Muthig is chief of patrol
 19 and also he's chief of internal affairs.
 20 He wears two hats.
 21 Q. Did there come a time when you
 22 received a memo from Chief Muthig to
 23 appear for a disciplinary interview?
 24 A. Yes.
 25 Q. Tell us about the circumstances

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1 PROCEEDINGS
 2 underlying that.
 3 A. This is the interview -- let me
 4 expand further. This is the interview
 5 that we are talking about regarding -- I
 6 guess it would be the last one, right?
 7 Q. Would it have on or about August
 8 14, 2023?
 9 A. Yes. I received a memo to
 10 report.
 11 Q. What was that about?
 12 A. I was giving testimony into --
 13 well I guess if I'm going to start from
 14 the beginning, I guess that meeting was
 15 about giving testimony into -- they were
 16 investigating my, I think the word they
 17 used is my conduct at the sheriff's
 18 office.
 19 Q. Concerning what?
 20 A. So on April 7th, I believe, it's
 21 a long, drawn out story, I came over here
 22 to the county government center and I
 23 confided in the deputy county manager and
 24 Julie Diescher, the head of personnel, on
 25 some illegal activities that were

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1 PROCEEDINGS
 2 occurring in the sheriff's office. Within
 3 a week later I had been given a -- placed
 4 on paid administrative leave while they
 5 looked into my conduct at the sheriff's
 6 office. Now my conduct at the sheriff's
 7 office was a co-worker told my bosses,
 8 sheriff and undersheriff that I was trying
 9 to obtain a certain document, a document I
 10 believed proved corruption in the
 11 sheriff's office. By intent was to give
 12 that document to the FBI. I had been
 13 cooperating at that time for at least two
 14 years with the FBI. There are several
 15 reports that I believe are corrupted. The
 16 agent's name that I had been talking to is
 17 Agent Hagen (phonetic), again, this has
 18 been going on for two years, and
 19 ultimately -- I'll let you ask more
 20 question. I kind of expanded.
 21 Q. You mentioned you were placed on
 22 administrative leave.
 23 A. Yes.
 24 Q. Were any other actions taken
 25 against you?

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1 PROCEEDINGS
 2 A. I was placed on paid
 3 administrative leave for eight months and
 4 then just as I approached retirement there
 5 was a settlement offer that I would get to
 6 keep my badge credentials. There was
 7 never any article 75 or Section 75
 8 charges, and basically they would give me
 9 a good boy letter if I just basically
 10 retired. And I'm retired in good standing
 11 and collecting my pension, check of the
 12 months club.
 13 MR. BASHJAWISH: Objection. What
 14 does this have to do with Section 75
 15 charges for Jack Harb?
 16 MR. TUTTLE: We're getting there.
 17 THE HEARING OFFICER: Hopefully
 18 we're getting there.
 19 BY MR. TUTTLE:
 20 Q. So we discussed that you were
 21 summoned to a meeting with Chief Muthig to
 22 talk about what?
 23 A. So he asked me about certain
 24 things. They had come up with -- they
 25 were investigating an unauthorized press

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1 PROCEEDINGS
2 release they claimed they were looking
3 into -- they claimed it was an
4 unauthorized press release, which it was
5 not. They were looking into me getting a
6 purchase card, a P card as we call it,
7 from the county manager. The county
8 manager gave me a P card to feed the men
9 and women at a scene of a lost person. I
10 had tried to go through administration and
11 get means to feed the men and women and
12 was really -- got nowhere. So I took it
13 upon myself to go and get -- find other
14 resources, quite frankly, and I got a P
15 card from the county manager. That -- I
16 think that embarrassed the administration,
17 quite frankly, but I did go to them first
18 for help. I don't regret that. I think I
19 had an absolute obligation to feed the men
20 and women out on that detail. I think
21 that's what I good boss does. And they
22 tried to say -- they wanted to know about
23 my -- I was on the HSI task force. They
24 wanted to know about the cell phone that
25 they made me return and they wanted to

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1 PROCEEDINGS
2 know why it was cleared of any contents
3 and I explained that --
4 Q. What is HSI?
5 A. Homeland Security Investigations.
6 I explained that I had to clear it because
7 I had a top secrete security clearance and
8 any information on that phone, you can't
9 just give it away. I actually used the
10 example of President Trump and Pence and
11 Joe Biden at the time who were all at the
12 time being slammed for not safeguarding
13 national security information. Plus I had
14 been in the coast guard and I was well
15 aware of the rules with classification
16 information. Like if that ever went
17 anywhere, they basically wanted me to go
18 away, in my opinion.
19 Q. Did you seek the assistance of
20 the union after you got that memo from
21 Chief Muthig?
22 A. I did. I was stopped short of --
23 when I was trying to obtain the document
24 that Jack Harb -- I believe you guys might
25 have entered it into evidence, that

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1 PROCEEDINGS
2 document, I was trying to get copies of it
3 in the e-mails. I was basically kicked
4 out of the office prior to obtaining it.
5 And I asked Jack to finish what I started.
6 My intent was to give that to the FBI. I
7 do believe the FBI has it now. I have
8 believable knowledge that they have it.
9 But yes, I did ask Jack Harb to get all
10 the documents that he could for my defense
11 and also for the FBI. I felt I had a duty
12 as a law enforcement officer to assist the
13 FBI.
14 MR. TUTTLE: Do you have those
15 documents, Mr. Hearing Officer? I
16 think it's our last exhibit.
17 THE HEARING OFFICER: R-5,
18 criminal history?
19 MR. TUTTLE: Yes, that's the
20 document.
21 BY MR. TUTTLE:
22 Q. I'm showing you Exhibit R-5.
23 It's been received in evidence. Is that
24 the document you are referring to?
25 A. I never got to it. I learned of

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1 PROCEEDINGS
2 the circumstances surrounding this and I
3 never got my hands on it.
4 So this exhibit is in line, just
5 reading the first page so far, of what I
6 was attempting to get. Part of it.
7 THE HEARING OFFICER: Counsel,
8 where is the relevance to your client?
9 MR. TUTTLE: We are just about to
10 the point where he gets involved in
11 this.
12 THE WITNESS: Yes. I do remember
13 looking myself at the incident report
14 in our SJS as well. This is the
15 incident report. I recall the names
16 on it.
17 BY MR. TUTTLE:
18 Q. What is SJS?
19 A. SJS is our in-house -- we would
20 refer to it as RMS, or records management
21 system.
22 Q. So did you seek the union's
23 assistance in connection with the summons
24 that you got from Blake Muthig to appear
25 in his office?

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1 PROCEEDINGS
2 A. Yes, I did.
3 Q. Who was present of the union at
4 that time?
5 A. Jack Harb.
6 Q. Did he offer you assistance?
7 A. Yes.
8 Q. Did he participate with you in --
9 first of all, did you bring a grievance
10 challenging the administration's right to
11 impose discipline on you before there was
12 ever a hearing --
13 A. Yes.
14 Q. By means of placing you on
15 administrative leave, taking away your
16 car, whatever they else they did?
17 A. Yes.
18 Q. Was a grievance brought?
19 A. Yes, it was.
20 Q. And you mentioned an ultimate
21 settlement. Was that settlement of the
22 grievance?
23 A. Yes, I believe so. That settled
24 the grievance. There was two parts.
25 There was the part where they took away

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1 PROCEEDINGS
2 the car and then once they found out that
3 I was trying to obtain this document, that
4 is when I was relieved of duty. My access
5 to the building was taken. Again, I was
6 never suspended without pay during that
7 time.
8 Q. Did you ultimately meet with
9 Blake Muthig to talk about these matters?
10 A. I did.
11 Q. Was that on August 14, 2023?
12 A. That sounds about right, that
13 would be the time of the hearing.
14 Q. And who attended with you?
15 A. President Jack Harb and you, Mr.
16 Tuttle, as I remember.
17 Q. What was discussed at that
18 meeting?
19 A. We discussed -- well, Chief
20 Muthig asked me about the things I just
21 mentioned, about me trying to obtain this
22 document. He asked me about my cell
23 phone. There was something else, too.
24 They claimed that I didn't answer the cell
25 phone quick enough one day while I was

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1 PROCEEDINGS
2 actually here in the legislative chambers.
3 I provided proof of a Verizon document, at
4 least I know I did to Chief Muthig on
5 that. So we talked about the P card, as I
6 mentioned, and we talked about -- jail
7 food, because that's how the whole P card
8 came along. And then we talked about --
9 I'm missing something here. There was
10 something else they alleged. The press
11 release, the unauthorized press release.
12 And we talked about corruption.
13 Q. So you mentioned the document you
14 were trying to get. You hadn't been able
15 to at that time. Why were you trying to
16 get that document?
17 A. Because I believed -- I believed
18 I needed proof to do anything about the
19 corruption -- the systemic corruption, I
20 might add, in the sheriff's office. I
21 believed I needed actual proof. You
22 don't -- well, one, I wanted to make sure
23 the document didn't disappear but I also
24 needed proof and again I was helping the
25 FBI. I had been for two years. I felt

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1 PROCEEDINGS
2 the right thing to do was to -- listen,
3 I've been there a long time. I knew where
4 the stuff was, how to get it and I was
5 doing what I thought was my duty.
6 Q. And Chief Muthig was concerned
7 with why you wanted that document?
8 A. He was. They were trying to say
9 that I tried to obtain unauthorized
10 documents.
11 Q. Did you do that?
12 A. I did try. I absolutely tried to
13 obtain these documents. But unauthorized?
14 I don't believe so. Unfortunately I was
15 left in the position where I was the
16 only -- I was the only person who could do
17 this. The sheriff was aware that there
18 was corruption because I personally told
19 him about certain things. He did not want
20 to hear it. The undersheriff I certainly
21 couldn't go to because he was the man
22 perpetrating it. There is other stuff,
23 too. Chief Muthig was well aware of this
24 and his -- he did try to address it and
25 was shut down. So there was nobody above

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1 PROCEEDINGS
2 me and again I felt duty bound. I
3 certainly didn't want to leave my career
4 early. Thank God I had my time in to be
5 able to retire.
6 THE HEARING OFFICER: Can I put
7 you on hold for a second.
8 Counsel, we are not making any
9 headway with how this witness is
10 relevant to Detective Harb. Let's get
11 to it. We sat her now for almost 15
12 minutes listening to this witness.
13 There is no relevance to Detective
14 Harb that's been made so far. Let's
15 get to the point.
16 BY MR. TUTTLE:
17 Q. Was Detective Harb with you in
18 the meeting?
19 A. Yes, he was.
20 Q. Did Detective Harb advise you to
21 discuss all of these --
22 A. Yes.
23 Q. Your knowledge of corruption with
24 Chief Muthig?
25 A. Yes. Detective Harb also advised

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1 PROCEEDINGS
2 me, as did you Mr. Tuttle, because I
3 wasn't aware of it even though I had been
4 cooperating with the FBI, he advised me
5 that I had an obligation under the state
6 law to contact LEMIO, the AG's office.
7 Q. Did you do that?
8 A. I did.
9 Q. Was that before or after this
10 meeting?
11 A. That was after this meeting. And
12 I also advised the FBI and they said,
13 okay, thanks. And I was advised by LEMIO
14 that they would be contacting the FBI. I
15 gave them the case agent's name and
16 number.
17 Q. So in doing all those things did
18 you rely on the advice you received from
19 Jack Harb as union president?
20 A. Absolutely.
21 MR. TUTTLE: I have nothing
22 further from Officer Slavik.
23 MR. BASHJAWISH: I have a couple
24 questions.
25 CROSS EXAMINATION

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1 PROCEEDINGS
2 BY MR. BASHJAWISH:
3 Q. You testified before there is an
4 FBI investigation?
5 A. Yes, there is.
6 Q. Was there any conclusion as to
7 that?
8 A. I believe it's still open. I'm
9 not exactly sure. They won't discuss that
10 with me.
11 Q. They won't tell you if there is
12 nothing to your allegations or if in fact
13 there is something to your allegations?
14 A. Well, they were investigating
15 prior to my allegations, so I think I just
16 added to it. They were already
17 investigating. That's how I ended up
18 contacting them. I had heard because at a
19 command staff meeting the undersheriff
20 told everybody don't speak to the FBI.
21 Q. So your understanding is that in
22 any investigation one investigates by
23 looking at documents, talking to people
24 and making a conclusion?
25 A. Absolutely.

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1 PROCEEDINGS
2 Q. And so far there hasn't been any
3 conclusion?
4 A. No.
5 MR. BASHJAWISH: No further
6 questions.
7 MR. TUTTLE: Nothing further.
8 THE HEARING OFFICER: You are
9 excused. Thank you.
10 Do you have any witnesses?
11 MR. TUTTLE: May we have five
12 minutes?
13 THE HEARING OFFICER: Absolutely.
14 (Off the record: 2:38 p.m. to
15 2:44 p.m.)
16 THE HEARING OFFICER: We are back
17 on the record. No further witnesses.
18 And so we are going to adjourn to July
19 30, Tuesday, 11:00 a.m. for remote.
20 So we'll dismiss this for today and go
21 off the record.
22 (Off the record 2:45 p.m.)
23
24
25

1
2 CERTIFICATE
3
4 STATE OF NEW YORK)
: SS.:
5 COUNTY OF ORANGE)
6
7 I, SANDRA NOEL BARTELS, a Notary
8 Public for and within the State of New
9 York, do hereby certify:
10 That the testimony as herein set
11 forth, was duly sworn by me; and that the
12 within transcript is a true record of the
13 testimony given.
14 I further certify that I am not
15 related to any of the parties to this
16 action by blood or marriage, and that I am
17 in no way interested in the outcome of
18 this matter.
19 IN WITNESS WHEREOF, I have hereunto
20 set my hand this 1st day of August 2024.
21
22
23 
24 SANDRA NOEL BARTELS
* * *
25

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