

H.E. NO. 2016-21

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF WESTFIELD,

Respondent,

-and-

Docket No. CI-2012-046

BARRON CHAMBLISS,

Charging Party.

SYNOPSIS

On remand, a Hearing Examiner of the Public Employment Relations Commission again recommends dismissal of the N.J.S.A. 34:13A-5.4a(1) charge and complaint. The Hearing Examiner found that the 2010 and 2011 allegations were untimely. The Hearing Examiner admitted a secretary's testimony under an exception to the hearsay rule, but credited the testimony of the Police Chief, a Captain, and a Lieutenant that the events of January 6, 2012 did not occur as asserted by the charging party. Consequently, the Hearing Examiner found that the respondent did not violate subsection 5.4a(1) of the Act.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Appearances:

For the Respondent,  
Appruzzese, McDermott, Mastro and Murphy, attorneys  
(Robert J. Merryman, of counsel)

For the Charging Party,  
Mets, Schiro and McGovern, LLP, attorneys  
(Peter Paris, of counsel)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On September 18, 2014, the Commission issued a decision (P.E.R.C. No. 2015-13, 41 NJPER 155 (¶53 2014), remanding this matter to me because I mistakenly found that an alleged conversation occurred January 6, 2010, rather than on January 6, 2012 and determined that the charge was untimely. I find that the correct date is 2012, not 2010. I also determined that a witness' testimony was double hearsay and therefore inadmissible. I now admit the secretary's testimony as an exception to the hearsay rule. I credit the charging party's testimony that the secretary spoke to him about a January 12, 2012 conversation

among the Chief, a Captain, and a Lieutenant. However, I also credit the testimony of these superior officers that the conversation among them did not occur. I, therefore, find that the charging party has not met his burden of proof to support the N.J.S.A. 34:13A-5.4a(1) charge. Consequently, I again recommend dismissal of the charge.

Barron Chambliss ("Chambliss") is a detective in the Town of Westfield ("Town"). He was also president of his local union. On May 21, 2012, he filed an unfair practice charge with the Public Employment Relations Commission ("Commission"), which was amended on August 10, 2012, against the Town. (C-1; R-1).<sup>1/</sup> Chambliss alleges that the Town violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. ("Act"). Chambliss specifically contends that Chief John Parizeau

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<sup>1/</sup> Exhibits received in evidence marked as "C" refer to Commission exhibits, those marked "CP" refer to the Charging Party's exhibits, those marked "J" refer to exhibits jointly submitted by the parties, and those marked "R" refer to the Respondent's exhibits. Charging party's exhibits admitted into evidence were CP-1, CP-3, 4, 5, 6, 7, and 10. (2cT21). Transcript citations are designated with a "T." Although there were two days of hearing, the court reporter provided several transcripts. For ease of reference, 1T refers to the transcript of the hearing on April 9, 2014 and 2T refers to the transcripts of the hearing on April 10, 2014. "1aT" refers to the testimony of Detective Chambliss. "1bT" refers to the testimony of Ms. Claiborne. "1cT" refers to the testimony of former Captain, now Chief, Wayman. "2aT" refers to the testimony of Chief John Parizeau. "2bT" refers to the testimony of Lieutenant, now Captain, Scott Rodger. "2cT" refers to the testimony of Town Administrator James Gildea.

("Parizeau" or "Chief") violated N.J.S.A. 34:13A-5.4a(1) and (3)<sup>2/</sup> during various dates in 2010, 2011, and 2012, when he did not provide an original recording of a grievance meeting, when he was allegedly untruthful while under oath at a grievance hearing, and when he allegedly made threatening and retaliatory remarks regarding Chambliss and other union members. Chambliss additionally contends that the Town's investigation regarding Parizeau's alleged untruthfulness was incomplete because it was motivated by anti-union animus towards him. Chambliss also contends that on January 6, 2012, two secretaries in the records bureau of the police department overheard a conversation among the Chief, a Captain, and a Lieutenant discussing ways to have Chambliss demoted and removed from the detective bureau due to his union activity. Chambliss seeks an order directing the Town to thoroughly investigate complaints against Parizeau, to cease retaliating against Chambliss, to direct Parizeau to cease engaging in behavior which interferes with, restrains, coerces, and intimidates Chambliss, and directing the Town to post a notice of its unlawful conduct. (C-1).

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2/ N.J.S.A. 34:13A-5.4a(1) prohibits public employers from "Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this [Act]." N.J.S.A. 34:13A-5.4a(3) prohibits public employers from "Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act."

On September 27, 2012, the Director of Unfair Practices issued a complaint and notice of hearing regarding N.J.S.A. 34:13A-5.4a(1) only; she did not issue a complaint regarding subsection a(3). N.J.A.C. 19:14-2.1; N.J.A.C. 19:14-2.3.

On November 6, 2012, the Town filed its answer and affirmative defenses. (C-2). The Town denies any anti-union animus, denies that the conversation allegedly overheard by two secretaries occurred, and denies that Parizeau engaged in any action that violates N.J.S.A. 34:13A-5.4a(1). (C-1). As affirmative defenses, the Town asserts that it did not violate the Act, that Chambliss failed to state a claim upon which relief may be granted, and that no adverse action has been taken against Chambliss. (C-1).

On October 10, 2013, the Town filed a motion for summary judgment in accordance with N.J.A.C. 19:14-4.8. On October 21, 2013, Chambliss filed a brief opposing the motion. On November 12, 2013, the motion for summary judgment was denied. The Town's request for special permission to appeal was denied on December 2, 2013.

A hearing was held on April 9 and 10, 2014, at which the parties examined witnesses and presented exhibits.

On June 2, 2014, each of the parties submitted post-hearing briefs. In his post-hearing brief, the charging party contends that the alteration of the detective schedule was due to anti-

union animus, that Chief Parizeau lied under oath, and that Parizeau threatened the charging party with adverse employment action. In its post-hearing brief, the respondent contends that the only allegation that complies with the six-month statute of limitations is the alleged inquiry about the charging party's performance reviews, which comment is based on hearsay, and asserts that even if such a comment was made it is a reasonable and legitimate business inquiry.

As directed by the Commission, I have reexamined the testimony and conclusions of law.

Based on the record, I make the following:

**FINDINGS OF FACT**

1. The Town's police department employs approximately 59 officers. (1aT29). Four or five of the officers are detectives, which is down from a high of nine or ten detectives. (1aT29; 1aT116). The size of the detective bureau and assignments to the bureau are at the Chief's discretion. (1aT27; 1aT29-30).

Detectives and patrol officers have the same rank. (1aT24-25).

2. On January 29, 1992, Chambliss began his employment as a police officer in the Town. (1aT20-21). In 2002, he was promoted to plain clothes detective, then second grade detective. (1aT22; 1aT27). In or about June 2009, Chambliss became president of the PBA local. (1aT30).

3. Parizeau became Chief of Police on January 1, 2006 and retired on or about April 1, 2012 after 31 one half years of service as a police officer. (2aT8). He was a union member until he became Chief. (2aT10-11).

2010 - Tape of O'Keefe's Grievance Meeting

4. On January 20, 2010, Chambliss attended a grievance meeting with Parizeau and officer Kevin O'Keefe regarding O'Keefe's request for a detective stipend. (1aT32). Parizeau asked whether he could record the meeting; both O'Keefe and Chambliss consented. (1aT37; 1aT117). According to Chambliss, Parizeau told him that he would give them a copy of the recording. (1aT37; CP-3). Parizeau does not deny that he said he would provide a copy of the recording. Chambliss also contends that Parizeau said, "[w]hen I give people gold badges, they tend to fall asleep." (1aT37; 1aT51; 1aT143-145). Parizeau denies he said this. (2aT23; 2aT26). The recording was not provided into evidence, but is available. I do not believe Parizeau had a reason to deny mentioning the gold badges if it can easily be discredited with the recording. I credit Parizeau's testimony.

5. Chambliss testified that at the January 2010 meeting, Parizeau made an offer of settlement to O'Keefe, but the matter did not settle, and that O'Keefe was subsequently transferred out of the detective bureau. (1aT50). Parizeau testified that he

offered O'Keefe a \$500 stipend, but O'Keefe refused it and instead filed a grievance because he wanted to be made first grade detective right away. (2aT25). I credit Parizeau's testimony because he acknowledges there was a grievance and offered a stipend.

6. Parizeau testified that Chambliss and O'Keefe, with their PBA attorney, came to his office, listened to the tape, and were offered the tape but "they did not want it." (2aT28; 2aT32; 2aT52-53). Chambliss listened to a tape, but believes it was not complete. (1aT61). Chambliss twice requested the original recording, but it was not provided to him. (1aT52). He testified that the original recording was done on a digital recorder, but the version he heard was on a small micro cassette. (1aT110; 1aT141).

7. On August 22, 2010, an arbitrator heard O'Keefe's grievance. (1aT51; 1aT117; CP-3). Chambliss believes that Parizeau's testimony at the arbitration was not truthful. (1aT61; 1aT109; 1aT143-144).

8. O'Keefe also heard the tape at his arbitration hearing. (1aT111; 1aT114; 1aT150). He did not file a charge, or any other action, alleging that the recording was not authentic. (1aT150).

9. The arbitrator denied the grievance and O'Keefe pursued the matter to the Superior Court. (1aT117-118; 1aT151). Chambliss was unaware that O'Keefe appealed the arbitrator's



decision. (1aT117-118; 1aT151). At the time, Chambliss was president of the union. (1aT151).

10. Chambliss submitted into evidence Parizeau's policy regarding electronic monitoring; the effective date of the policy was April 14, 2009. (1aT49; CP-1). Parizeau testified that he wrote this policy for the police department and that he could discipline his staff for violating it. (2aT31; CP-1). He also testified that the policy does not apply to him since he created it for officers. (2aT31-32).

11. On September 1, 2010, Chambliss wrote to Town Administrator James Gildea ("Gildea") listing his concerns regarding events occurring on January 20, 2010, July 7, 2010, and August 10, 2010. (CP-3). He complained about not receiving the original recording and believed that Parizeau had lied under oath. (1aT70; 1aT118-119). Gildea provided Chambliss a complaint form taken from the employee manual which is "separate and distinct from the contractual obligations." (2cT11).

12. On September 2, 2010, Chambliss completed an "Employee Complaint Form" which refers to an "attached report addressed to Mr. Jame[s] Gildea" regarding incidents reported on July 7, 2010 and August 11, 2010. (CP-3; CP-4). There was no testimony regarding the "attached report."

13. Chambliss testified that his complaint to Gildea was not a PBA matter. (1aT118). I infer that Chambliss did not file

a grievance or attempt to obtain a copy of the recording on behalf of the union.

14. Gildea forwarded Chambliss' complaint, attachments, and disc of the recorded O'Keefe conversation to the County Prosecutor because he was not authorized to investigate the Chief. (2aT28; 2cT11-14; CP-3; CP-4). He told Chambliss that if he needed the original recording he could go to the Prosecutor's office to obtain it. (2cT12-13). No evidence was presented to show that Chambliss was prevented from obtaining the original recording from the Prosecutor.

15. On October 22, 2010, Parizeau sent a memo to Chambliss informing him that his request for a copy of the tape was denied because it "is currently part of the internal affairs complaint you initiated against me and is currently in the possession of the Union County Prosecutors Office. Please contact that authority on their policy in releasing such items." (2aT41; 2aT44; 2aT54; CP-2). Chambliss testified that he was aware that the recording had been forwarded to the Prosecutor's office. (1aT112-114; 1aT141-144; CP-2). Nevertheless, on February 9, 2011, Chambliss wrote to Gildea requesting a certified copy of the recorded conversation that took place on January 20, 2010. (CP-6).

16. On April 4, 2011, Chambliss wrote to Gildea stating that he wanted to file a grievance on behalf of himself and two

other officers regarding his complaint of October 6, 2010 and refers to the "Whistle Blower" law. (CP-7). There was no testimony about whether this document relates to the request for the tape, or whether Chambliss in fact filed a grievance or "Whistle Blower" action. I infer that Chambliss did not contact the Prosecutor to obtain the recording.

17. On March 19, 2012, Gildea wrote to Chambliss, notifying him that he had received the "independent investigation report concerning the employee complaints regarding Chief Parizeau." (1aT132-133; CP-10).<sup>3/</sup> Gildea wrote that the employee complaints filed on September 2 and October 6, 2010 were independently investigated in accordance with the Town's employee handbook. (CP-10). Gildea wrote in his letter that the investigator concluded, "There is no evidence presented that can substantiate a violation of a departmental charge for lying under oath or similar charge of officer misconduct. The finding from the Union County Prosecutor's Office that no charge could be presented criminally is similarly affirmed here for any administrative charges by the Town of Westfield." (CP-10).

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<sup>3/</sup> Chambliss does not believe that the Prosecutor's office conducted a thorough investigation of Parizeau's alleged untruthful testimony. (1aT115). His belief is not relevant because the Prosecutor is not his employer and not a respondent in this matter. County Prosecutors are in the Executive Branch of State government, not the Town.  
[http://www.state.nj.us/hangout\\_nj/government\\_executive.html](http://www.state.nj.us/hangout_nj/government_executive.html)

2010 - Time Clock Requirement

18. On August 11, 2010, according to a memo Chambliss wrote to Gildea dated September 1, 2010 (CP-3), Chambliss, as president of the then wall-to-wall unit, was involved in a grievance regarding a sergeant who violated a time clock requirement.

(1aT71). He met with Parizeau and asked him about adding a step to the time requirement before an officer is disciplined.

(1aT71). According to Chambliss, Parizeau accused him of being "very adversarial for him and I'm quoting him and that when we strike, he strikes back." (1aT72; CP-3). This alleged statement in reaction to a suggestion to add a step seems like a far-fetched statement. I credit Parizeau's testimony.

2010 - Change in Work Schedule

19. On October 6, 2010, Chambliss completed an "Employee Complaint Form" alleging that, as a result of his complaint of September 14, 2010, Parizeau changed the detectives' work schedule. (CP-5). Chambliss complained to Parizeau about the implementation of a new schedule for detectives, but no date about this complaint was provided. (1aT73). Parizeau recalled that Chambliss had complained about the schedule change. (2aT35).

Parizeau testified that he changed the schedule because we [had] been going through...the most biggest reduction of police officers in the history of the town of Westfield because of the State funding cut. I lost 15 percent of my force. I had another two to three percent out in sick time. [M]y overtime budget was cut. And we were in the position

where I had to make changes to try to deal with that. I mean, we had no detectives working weekends and I was told I had to cut down in overtime and I could no longer have detectives come in and work overtime when I had the right to schedule them to work. (2aT38).

I credit Parizeau's testimony.

20. Scott Rodger ("Rodger"), who was a Lieutenant at the time of the alleged incidents, testified that the detectives were unhappy with the schedule change, but did not pursue any action against it. (2bT31-33).

21. On March 19, 2012, Gildea informed Chambliss that the Prosecutor's independent investigator "concluded that the Chief did not engage in retaliation by changing the work schedule as he acted within his statutory and local police ordinance powers," nor had he violated the parties' collective negotiations agreement. (CP-10).

**2011 - Patrol Sergeant's Conversation Regarding Grievance Hearing**

22. Chambliss stated that in or about June or July 2011, he represented a patrol sergeant in a grievance hearing. (1aT76-78). Chambliss stated that the sergeant told him that Parizeau said he "had it in for those guys in the detective bureau." (1aT79; CP-3). Chambliss did not file a grievance regarding the statement attributed to Parizeau. (1aT81). Chambliss did not provide a context for the alleged statement and I do not draw any

particular inference in regard to interference of any statutory rights.

2012 - Conversation Overheard by Secretaries

23. Vanita Claiborne ("Claiborne") is a police clerk ["secretary"] in the police department's records bureau. (1bT6). She stated that her desk is in a cubicle and she can see people who are taller than her cubicle walls when they walk by, that a wall blocks the doorway, and her supervisor sits behind her. (1bT7). She also testified that she cannot see people entering the office unless she is standing at her cubicle or stands up from her desk chair. (1bT19). I credit this testimony.

Claiborne testified on direct examination that on January 6, 2012, she and Debbie DeFabio ("DeFabio"), another secretary, overheard a conversation among Parizeau, then-Captain David Wayman (now Chief), and then-Lieutenant Rodger (now Captain), and told Chambliss about it the same afternoon or the next day [i.e., January 7] when he came in. (1bT7-9; 1bT13). Claiborne testified:

Their conversation was mostly about Barron, but they were talking about[,] you know, his evaluations, did he get - they were asking someone if he got a good evaluation. That he needs to be working nights with . . . Officer Kevin O'Keefe. That how poorly he was handling the Union and the funds and a few other things they were talking about.

I know some of it was about him being the PBA president and just that he was doing a poor

job or he was costing them money<sup>4/</sup>. I wasn't sure what they were talking about as far as the money.

[A]nd I felt like they were trying to do something to get even with him or do something to him. So just to warn him that he should watch himself. (1bT7-8).

On cross-examination, Claiborne testified that she overheard the conversation on January 6, 2012, around 11:00 a.m. or 11:30 a.m., that the conversation lasted about 15 to 20 minutes, and that she took lunch that day. (1bT14; 1bT18). She testified that she did not know when she took lunch, but her lunches have been variously scheduled at 12:00 p.m. to 1:00 p.m., 12:15 p.m. to 1:15 p.m., or 12:30 p.m. to 1:30 p.m.. (1bT14-15). After her hour-long lunch, she spoke to DeFabio about the conversation. (1bT19-20). She claims that she and DeFabio spoke to Chambliss about what they overheard as he was walking down a hallway. (1bT19-20). DeFabio is a part-time employee (1bT15). DeFabio's time sheet shows that she worked from 8:22 a.m. until 1:31 p.m. on January 6, 2012. (2bT13). DeFabio did not testify.

On cross-examination, Claiborne testified that she has known the three men "most of her life" and could recognize their voices. (1bT26). She acknowledged that Rodger had disciplined her a number of times and that Wayman suspended her for attendance violations. (1bT23-24). She also acknowledged that

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<sup>4/</sup> In January 2012, the unit was a wall-to-wall unit.

she was facing criminal charges. (1bT26). I infer that her motive for testifying against the officers was self-serving.

Claiborne also testified on cross-examination that during the conversation she could only see Wayman "because he stands over the partition." (1bT14). She said Rodger was sitting at his desk typing on the computer and she could not see him. (1bT15), but also said that Rodger was wearing his uniform (1bT17). She could not see Parizeau, but said he was "standing because I could hear him by the [partition]." (1bT15). She testified that Rodger was at work that day and was wearing his uniform. (1bT17). She also testified that Parizeau was wearing his uniform but could not recall if Wayman was wearing his uniform. (1bT17). She further testified that during the conversation she was typing and reviewing reports. (1bT18). I infer that Claiborne could not have heard the conversation well or in its entirety because she was working.

The three superior officers overheard by Claiborne flatly deny that the conversation occurred. Rodger was not at work when the conversation allegedly occurred. There was no testimony about whether Wayman was scheduled to work, or was at work, on January 6, 2012. Parizeau testified that, even though he was not scheduled to work, it was possible that he may have come to work on January 6, 2012. I credit Rodger's testimony that he was not at work when Claiborne contends the conversation occurred. There



is insufficient credible evidence to determine whether Wayman and Parizeau were at work or in the Records Bureau, but if they were at work, they deny the conversation occurred. I credit Rodger, Wayman and Parizeau.

With respect to the content of the conversation, Claiborne could not recall what each person specifically said. (1bT16-17). However, she also testified that she remembered the Chief used the word "evaluation." (1bT16). She could not hear everything Rodger said because he "sometimes whispers things." (1bT17). She testified that Wayman talks loudly and she remembers him "saying that if there was a way that he could put him on night with Officer O'Keefe, he would because they're such great buddies." (1bT517). If the conversation occurred, I infer that Rodger whispered during it. Chambliss did not report directly to Wayman and Wayman denies he was involved in the conversation. I credit Wayman's testimony that he was not in the conversation because Chambliss did not report directly to him, there was no reason for him to have the conversation. Although I credit both Claiborne's and Chambliss' testimony that they spoke to each other about what Claiborne claims she overheard, I do not credit Claiborne's testimony about the content of the conversation.

I do not credit Claiborne's testimony. Claiborne's memory is not clear as to the time the conversation occurred, the identity of two of the speakers, or what day she told Chambliss

about the conversation, and incorrect as to Rodger's presence during the time in question. According to Claiborne, she overheard the conversation among Parizeau, Wayman, and Rodger on January 6, at 11:00 a.m. or at 11:30 a.m. Claiborne also said that she could not physically see one of the three men, could not hear one of the other men, and could not attribute any of the remarks to any of the speakers other than the Chief's mention of evaluations. She also said that she and DeFabio told Chambliss about the conversation on either January 6 or January 7. Time records show that Rodger was not scheduled to work on January 6, but came to the office on overtime starting 12:00 p.m. in plain clothes. This is an half hour or hour after Claiborne claims she overheard the conversation. I credit the time records and Rodger's testimony that he was not at work at 11:00p.m. or 11:30 p.m. on January 6 and he was not in uniform. These circumstances belie any suggestion that these three individuals had a conversation together about Chambliss.

Even assuming that the conversation occurred, the only statement attributable to the Chief was the one regarding evaluations. Contrary to Chambliss's allegations, Claiborne did not testify that the Chief suggested demoting or moving Chambliss. There is no credible evidence that Parizeau asked about "ways to have Chambliss demoted and removed from the Detective Bureau." The charging party has no evidence to satisfy

his burden to prove by a preponderance of the evidence that the Chief said he wanted to demote or transfer Chambliss.

24. Chambliss testified that on January 6, 2012, at 2:18 p.m., two secretaries, Claiborne and DeFabio, told him about a conversation they overheard. (1aT81; 1aT96; 1aT121; R-2). He said:

I was faxing something to the Prosecutor's office. I walked into an area of the records bureau and I was approached by Ms. Claiborne who's a civilian employee and Ms. DeFabio who works, another civilian employee, and they told me that I better watch my back because the Chief, Parizeau, a captain by the name of Wayman who is now current chief and a lieutenant, Scott Rodger, who [has] been promoted to captain were in there talking about me and having me removed from the detective bureau and other members of the detective bureau. Me in particular. Captain Wayman made a comment that, 'Maybe he should be put back in patrol with his butt buddy O'Keefe.' And then Chief Parizeau questioning, 'What do his evaluations look like,' is what was said to me. (1aT89; 1aT122-126; R-2).

Chambliss took notes after the secretaries spoke to him. (1aT126-127; R-2). I credit Chambliss' testimony that he took notes and specifically credit the time that Claiborne spoke with him. Chambliss' notes and testimony are inconsistent with Claiborne's testimony. First, the time the secretaries spoke with Chambliss is different from the time that Claiborne said they spoke with Chambliss. I credit Chambliss' testimony, and therefore do not credit Claiborne's testimony, about the time she

spoke with Chambliss. According to Chambliss, both Claiborne and DeFabio told him about the conversation on January 6 at 2:18 p.m., not the next day as suggested by Claiborne. DeFabio's time sheet shows that she worked from 8:22 a.m. until 1:31 p.m. on January 6, 2012. Since the conversation may have happened at 11:00 a.m. or 11:30 a.m., it is possible that DeFabio was in her cubicle and overheard the conversation. If Claiborne's lunch began at either 12:00 p.m. or 12:15 p.m., it is possible that Claiborne and DeFabio spoke about the conversation. However, if Claiborne's lunch began at 12:30 p.m. and ended at 1:30 p.m., the secretaries' conversation probably could not have happened because DeFabio's workday ended at 1:31 p.m. Claiborne also said that she and DeFabio spoke with Chambliss before DeFabio left for the day. (1cT21). However, DeFabio's work day on January 6 ended approximately 45 minutes before the 2:18 p.m. that Chambliss noted. It is more probable than not that a part-time secretary would leave after the end of her workday rather than stay at work 45 minutes of unpaid time. Thus, I do not credit testimony that both Claiborne and DeFabio talked to Chambliss on January 6, which occurred 45 minutes after the end of DeFabio's workday.

Second, Chambliss attributes specific comments to specific individuals. However, Claiborne could not recall what each person specifically said, other than Parizeau. (1bT16-17).

Chambliss used the term "butt buddy," but in her testimony Claiborne said the men said "great buddies." I infer that Chambliss embellished what Claiborne said to him.

Third, according to Chambliss, the secretaries also mentioned that Detective Lieberman would be reassigned. (1aT124). Chambliss does not mention Lieberman in either the notes he took after he spoke with the secretaries nor in his answers to interrogatories propounded by the Town. (1aT126). For those reasons I do not credit the testimony regarding Lieberman.

25. Parizeau was not scheduled to work on Friday, January 6, 2012. (2aT11-12; 2bT15; R-3; R-5). On cross-examination, he testified that it was possible that he came in even though he was not scheduled to work. (2aT11). I infer that Parizeau may have been at work on January 6, 2012. Even if he was at work, Parizeau testified that he did not speak with Wayman or Rodger about moving Chambliss out of the detective bureau. (2aT9). He also testified that personnel matters would only be discussed in his office. (2aT8-9). I credit Parizeau's testimony because as the Chief he has his own office where he can discuss personnel matters and there is no reason for him to discuss a matter in an open area next to a secretary.

26. Wayman was a Captain in January 2012 and became Chief on April 2012. (1cT6; 1cT8). He did not work directly with

Chambliss, but Chambliss worked under his chain of command. (1cT6-7). Wayman oversaw Chambliss's performance evaluations; he testified that he had no concerns about his performance nor made any efforts to reassign him out of the detective bureau. (1cT7-8). He testified that he would not discuss personnel matters with Rodger because Rodger did not report to him. (1cT9). He also testified that he would not discuss personnel matters with Parizeau in the Records Bureau because they each had enclosed offices and thus there was no need to have a conversation in an open area. (1cT9). I credit this testimony because it is more believable than not that conversations about personnel issues with Parizeau would occur in an enclosed office. I also credit this testimony because there is no reason to discuss personnel matters with Rodger, whose responsibilities only included IT and the Records Bureau, not supervision of Chambliss.

27. Rodger testified that in 2012 he was a Lieutenant assigned to the records bureau and he basically handled information technology. (2bT5). His "office" was a cubicle which was adjacent to Claiborne's cubicle (they shared a partition) and DeFabio's cubicle was six feet from Claiborne's. (2bT9-10). He said that Claiborne "used to frequently comment on conversations [I was] having on the phone [with] some third party. She would shout over the cubicle wall in conversations that didn't involve her." (2bT11). Because of this, Rodger

would never discuss a confidential matter at his cubicle. (2bT11). He supervised Claiborne and DeFabio, but he did not supervise Chambliss. (2bT9; 2bT12 ). Although Rodger was not scheduled to work on January 6, 2012, he came in for overtime work from 12:00 p.m. to 5:00 p.m. to deal with computer issues, but was not in uniform. (2aT11-12; 2bT14-15; R-3; R-5). He would frequently speak to Parizeau about IT issues, but not staffing issues. (2bT16). Rodger testified that he did not speak with Parizeau and Wayman in the Records Bureau regarding Chambliss and his assignment. (2bT16). Rodger also testified that there had been instances where he was unsure about Chambliss's honesty. (2bT24). I credit Rodger's testimony about the description of his and Claiborne's cubicles because the descriptions given by each of them are consistent. I also credit Rodger's testimony because he was aware of the lack of privacy the Records Bureau had in the open area next to Claiborne and was especially sensitive speaking about confidential matters considering his experience with Claiborne. I also credit Rodger's testimony that he did not speak with Parizeau or Wayman about staffing because his authority only extended to IT and the Records Bureau, not Chambliss. Finally, I credit Rodger's testimony that he was unsure about Chambliss' honesty because they were friends and also Chambliss' and Claiborne's testimony was not consistent as to the time or content of the conversation.

Since I credit Rodger's testimony, I cannot credit Claiborne's or Chambliss' testimony to the contrary.

28. Chambliss did not speak with Parizeau, Wayman, or Rodger about the alleged conversation overheard by the secretaries. (1aT90; 1aT96-97). Chambliss was never told by Parizeau or Wayman that he would be reassigned or transferred from the detective bureau. (1aT90; 1aT93-94; 1cT8). Even assuming that Parizeau made the statement about evaluations, Chambliss acknowledged that in considering transfers it is appropriate for management to review evaluations of officers. (1cT7; 1aT95).

#### ANALYSIS

With regard to N.J.S.A. 34:13A-5.4a(1), the Commission has determined that: "It shall be an unfair practice for an employer to engage in activities which, regardless of the absence of direct proof of anti-union bias, tend to interfere with, restrain or coerce an employee in the exercise of rights guaranteed by the Act, provided the actions taken lack a legitimate and substantial business justification." New Jersey College of Medicine and Dentistry, P.E.R.C. No. 79-11, 4 NJPER 421, 422-423 (¶4189 1978); New Jersey Sports and Exposition Authority, P.E.R.C. No. 80-73, 5 NJPER 550, 551 note 1 (¶10285 1979). In Commercial Tp. Bd. of Ed. and Commercial Tp. Support Staff Assn. and Collingwood, P.E.R.C. No. 83-25, 8 NJPER 550, 552 (¶13253 1982), aff'd, 10



NJPER 78 (¶15043 App. Div. 1983), the Commission held that proof of actual interference, intimidation, restraint, coercion or motive is unnecessary to prove an independent N.J.S.A. 34:13A-5.4a(1) violation. An employer's comments must objectively tend to interfere with an employee's rights to find a subsection a(1) violation. Mine Hill Tp., P.E.R.C. No. 86-145, 12 NJPER 526 (¶17197 1986). Finally, a violation of N.J.S.A. 34:13A-5.4a(1) requires an examination of the totality of the circumstances. See, State of NJ, P.E.R.C. 2012-024, 38 NJPER 205, 206 (¶70 2011); State of NJ (Dept. of Human Services), P.E.R.C. No 82-83, 8 NJPER 209, 215 (¶13088 1982).

The Act requires that a charge be filed within six months after the alleged unfair practice occurred, unless the charging party was prevented from filing such charge. N.J.S.A. 34:13A-5.4c. Here, Chambliss filed his initial charge on May 21, 2012, and submitted an amended charge on August 10, 2012. (C-1; R-1). Any alleged unfair practices occurring six months before May 21, 2012, i.e., November 21, 2011, are outside of the six months statute of limitations and should be dismissed N.J.S.A. 34:13A-5.4c.

However, a "charge may still be filed if the charging party was 'prevented' from filing a charge on time and the six month period will not begin to run until the charging party was 'no longer so prevented.'" State of NJ (Human Services), P.E.R.C.

2003-56, 29 NJPER 93, 95 (¶26 2003). In determining whether a party was prevented from filing a timely charge, "we must conscientiously consider the circumstances of each case and assess the Legislature's objectives in prescribing the time limits as to a particular claim." Bridgewater-Raritan Reg. Bd. of Ed., P.E.R.C. No. 2010-43, 35 NJPER 455, 457 (¶150 2009); State of NJ (Human Services), ibid., 29 NJPER at 95.

The word 'prevent' ordinarily connotes factors beyond a complainant's control disabling him or her from filing a timely charge, but it includes all relevant considerations bearing upon the fairness of imposing the statute of limitations. Kaczmarek v. New Jersey Turnpike Auth., 77 N.J. 329, 340 (1978). Relevant consideration include whether a charging party sought timely relief in another forum; whether the respondent fraudulently concealed and misrepresented the facts establishing an unfair practice; when a charging party knew or should have know the basis for its claim; and how long a time has passed between the contested action and the charge. State of NJ (Human Services), ibid., citing, (other citations omitted).

Chambliss' amended charge has two references to 2012. One is the date the Prosecutor's investigation was completed; however, it must be noted that this portion of the statement refers to matters in 2010 and 2011 in support of a subsection 5.4a(3) violation. This anti-union animus allegation did not proceed to complaint and should not be considered here.

The incidents prior to the 2012 conversation were not referenced in the subsection 5.4a(1) allegation of the charge which proceeded to complaint and should be dismissed. Even if those allegations could be considered to support a subsection 5.4a(1) violation, no facts were presented to show that Chambliss was prevented from filing a timely charge. In fact, Chambliss submitted complaint forms to the Town and filed grievances, yet waited until 2012 to file a charge. With respect to receipt of the 2010 tape, Chambliss knew in 2010 that the original tape was not going to be provided to him. He had an opportunity to file a timely charge or contact the Prosecutor, but chose not to do so. With respect to Chambliss's allegation that Parizeau lied under oath in August 22, 2010, that accusation was sent to the Prosecutor's office for investigation. Consequently, the following allegations that relate to events that allegedly occurred in 2010 and 2011 should be dismissed as untimely: the 2010 change in schedule, the 2010 time clock requirement, the 2011 Patrol Sergeant's conversation, and the 2010 tape of O'Keefe's grievance meeting. N.J.S.A. 34:13A-5.4c.

The remaining allegation concerns the conversation overheard by the secretaries on January 6, 2012. The January 6, 2012 allegation was timely filed. In accordance with the Commission's regulation, N.J.A.C. 19:14-6.6, the rules of evidence are not controlling and hearsay evidence is admissible, but some legally

competent evidence must exist to support each ultimate finding of fact. In Kearny Bd. of Ed., P.E.R.C. No. 2008-44, 34 NJPER 40 (¶10 2008), statements made to the charging party were determined by the Commission to be admissible under N.J.R.E. 803(b), because they were statements by a party opponent. Under the rules of evidence, although Chambliss' and Claiborne's testimony is hearsay, it is admissible as an exception to hearsay. However, because I credit the testimony of Parizeau, Wayman, and Rodger, I consequently do not credit the testimony of Chambliss or Claiborne.

The 2010 and 2011 events described by Chambliss occurred more than six months prior to the filing of the charge and well before the 2012 conversation among the three men. Even if the 2010 and 2011 allegations were to be considered, they lack temporal proximity to the 2012 conversation. "Timing is an important factor in assessing motivation and understanding the context of events." Warren Hill Reg. Bd. of Ed., 30 NJPER 439, 442 (¶145 2004), aff'd 32 NJPER 8 (¶2 2006). See also, New Jersey State (State Police), 36 NJPER 89, 97-98 (¶39 2010) (Where there was a two to three year gap regarding statement made by Captain to Sergeant, who was a union representative, that he was "a pain in the ass" was "too remote in time and unconnected to any personnel actions within the statutory period . . . ." Tenneco Automotive, Inc. V. NLRB, \_\_\_ F. \_\_\_ (D.C. Cir. 2013) (2013

U.S. App. Lexis 10635; 195 L.R.R.M. 2861) (A temporal factor is weighty if it involves a matter of days or weeks; however, "a lapse of months fails to support, and typically weighs against, a finding of close temporal proximity.")

Here, the charging party testified at the hearing he wanted to refer to the events in 2010 and 2011, because he was providing "background for the story" (1aT39; 1aT65), that he was trying to explain his "state of mind and the nature of the conflict" (1aT53), and that the recitation of 2010 and 2011 events "color[ed] [his] efforts to exert his Union presiden[cy] and to achieve things." (1aT56). As stated, the protected activity occurred in 2010 and 2011, the conversation among the three men allegedly occurred on January 6, 2012, the Chief retired on April 1, 2012, and the unfair practice charge was filed on May 21, 2012 and amended on August 10, 2012. Based on the preceding case law, the protected activity of 2010 and 2011 lack temporal proximity to the 2012 conversation. The remote timing of the 2010 and 2011 events are not relevant to statements in the January 6, 2012 conversation and do not bolster the January 6 claim.

Even if Parizeau asked about Chambliss' evaluations, the Chief has a legitimate business justification in considering an employee's evaluations. Similarly, any statement by Wayman about transferring Chambliss and other detectives seems illogical given that staffing of the detective bureau was at its minimum.

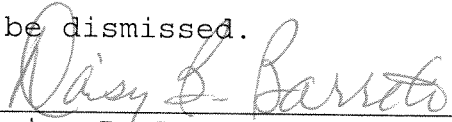
Additionally, the Chief, not Wayman, has the discretion to make assignments. Under all the circumstances of the case, there cannot be an objective reasonable belief that these statements tended to interfere with Chambliss' exercise of rights guaranteed by the Act.

Parizeau was thus not "Interfering with, restraining or coercing [Chambliss] in the exercise of the rights guaranteed to [him] by this [Act]." N.J.S.A. 34:13A-5.4a(1). Consequently, I recommend that this allegation be dismissed.

For the foregoing reasons, I renew my recommendation that the Complaint be dismissed.

#### RECOMMENDATION

I recommend that the Complaint be dismissed.

  
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Daisy B. Barreto  
Hearing Examiner

Dated: May 6, 2016  
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).