

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NOS. 0131016226,
0131016229, 0131016227, 0131016230, 0131016228, 0131016232, 0131016318,
0131016316, 0131016319 and 0131016317:

KRISTEN CARLIN AND NATHAN WULF,) Case Nos. 1047-2014, 1055-2014,
) 1050-2014, 1056-2014, 1052-2014,
Charging Parties,) 1058-2014, 1053-2014, 1061-2014,
) 1054-2014, 1062-2014
vs.)
) HEARING OFFICER DECISION
MIKE CHAMBERS, JENNY CHAMBERS,) AND NOTICE OF ISSUANCE OF
CITY OF LIVINGSTON, AND LIVINGSTON) ADMINISTRATIVE DECISION
FIRE AND RESCUE, JEFF SCHOENEN,)
AND DAVID FINE,)
)
Respondent.)

AND

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NOS. 0131016231 AND
0131016315:

NATHAN WULF,) Case Nos. 1057-2014, 1060-2014,
)
Charging Party,)
vs.) HEARING OFFICER DECISION
) AND NOTICE OF ISSUANCE OF
) ADMINISTRATIVE DECISION
SHANNON BROWNING AND)
SETH RIVARD,)
)
Respondent.)

* * * * *

I. Procedure and Preliminary Matters

On May 1, 2013, Kristen Carlin filed an original complaint with the department's Human Rights Bureau (HRB), charging employment discrimination because of sex and retaliation for resisting and opposing that discrimination. She named the Livingston Fire and Rescue ("LFR"), for which she worked as a reserve firefighter, as well as the City of Livingston (the actual governmental unit containing

LFR and hereafter called “the City”), as one of the three respondents. She also named LFR Captain Mike Chambers and his spouse Jenny Chambers (who was not and is not an employee of the City) as the other two respondents.

On May 1, 2013, LFR Captain Nathan Wulf filed an original complaint, charging four respondents with retaliation against him for resisting the discrimination and retaliation against Carlin. He named the City (in its name and in LFR’s name), Mike Chambers, Jenny Chambers and Firefighter/Medic Shannon Browning.

On May 30, 2013, Carlin filed an amended complaint, adding recent events as additional acts of retaliation and/or discrimination and adding LFR Fire Chief Jeff Schoenen and the City’s human resources specialist David Fine as respondents.

On May 30, 2013, Wulf filed an amended complaint, adding recent events as additional acts of retaliation and/or discrimination and adding Schoenen, Fine, and LFR firefighter Seth Rivard as respondents.

On December 18, 2013, the department’s Human Rights Bureau requested contested case proceedings on all twelve cases, forwarding the complaints and amended complaints to the Office of Administrative Hearings (formerly the Hearings Bureau). On December 20, 2013, a “Notice of Hearing” for all twelve cases was served by mail upon the attorneys representing each of the parties in all of these cases, which hereafter have been treated, without objection, as consolidated by OAH from the inception. On December 24, 2013, Hearing Officer Gregory L. Hanchett issued his “Order Setting Contested Case Hearing Date and Prehearing Schedule” in this proceeding, setting a four-day contested case hearing to convene on May 27, 2014.

Timothy C. Kelly (Kelly Law Office) and Kevin Brown (Paoli & Brown PC) appeared and acknowledged service on behalf of Kristen Carlin and Nathan Wulf. Harlan B. Krogh and Eric Edward Nord (Crist, Krogh, Butler & Nord, LLC) appeared and acknowledged service on behalf of Mike Chambers, Seth Rivard and Shannon Browning. Michael J. Lilly and Lynda S. White (Berg Lilly & Tollefsen PC), appeared and acknowledged service on behalf of City of Livingston (and Livingston Fire and Rescue), Jeff Schoenen and David Fine. Karl Knuchel, Knuchel Law P.C., appeared on behalf of Jenny Chambers.

On March 3, 2014, Hearing Officer Hanchett issued his “Order Resetting Contested Case Hearing Dates and Prehearing Schedule,” resetting the four day contested case hearing to convene on August 11, 2014, as agreed by all parties. On May 8, 2014, Hearing Officer Hanchett issued his “Order Transferring Case,” transferring this proceeding to Hearing Officer Terry Spear.

On June 25, 2014, counsel for Carlin and Wulf filed an “Unopposed Motion to Vacate Hearing Dates and to Set Certain Deadlines and Revise Prehearing Schedule.” On July 2, Hearing Officer Spear issued his “Rescheduling Order, July 1, 2014,” resetting the four-day contested case hearing to convene on February 9, 2015, as agreed by all parties.

On December 26, 2014, the last briefs on the various prehearing motions for summary judgment were filed. On January 6, 2015, the Hearing Officer granted the first part of an unopposed motion by Chambers, Rivard and Browning to vacate and reset the remaining deadlines and settings in the case by vacating the remaining deadlines and settings. On January 16, 2015, the Hearing Officer issued his “Order Resetting Exchange Deadline, Final Prehearing Conference Date and Contested Case Hearing Dates,” resetting the contested case hearing (now extended to five days) to convene on May 18, 2015.

The hearing convened on May 18 through May 22, 2015. Joshua Pierce, Jason Cajune, Jeff Schoenen, Jeremy Jacobsen, Kiera Pattison, Lance Gray, Kristen Carlin, Nathan Wulf, Shannon Browning, David Fine, John Leonard, Lydia Juhnke, Ed Meece, Mike Chambers, and Seth Rivard were called as witnesses and testified. Kristen Carlin and Nathan Wulf testified on rebuttal. Seth Rivard testified on surrebuttal.

The Hearing Officer admitted Exhibits 1-13, 18, 22-26, 33-34, 36-41, 54-63, 65-71, 74-76, 78, 105-109, 124-125 (also referenced as 315-316), 129-134 and 221 into evidence. Exhibit 28 was admitted but withdrawn. The Hearing Officer took administrative notice of the “Order of Protection” issued by the Livingston City Court in and for Park County, Montana, in the case of Kristen Carlin v. Jenny Chambers, Case No. CV-OP-2013-0000009, on April 17, 2013.

1. Transcriptions of Investigative Interviews of City Employees. During the hearing, the charging parties offered transcriptions of investigative interviews of City employees taken during the City’s investigations of events related to the claims in this case, marked as Exhibits 14-17, 19-21, 27 [removed¹], 29-32, 35 [removed²], 42-47, 49-51, 72 and 79.³ Exhibit 79 was offered during Mike Chambers’ testimony

¹ Exhibit 27 consists of duplicate pages LIV\CAR\124-125, which are part of Exhibit 79, the complete transcripts of both Mike Chambers interviews on May 13, 2013.

² Exhibit 35 consists of duplicate pages LIV\CAR\137-139, which are part of Exhibit 79, the complete transcripts of both Mike Chambers interviews on May 13, 2013.

³ There is also an interview transcript of a Josh Pierce interview on May 6, 2013, as well as the May 7, 2013, Josh Pierce interview transcript, which is Exhibit 47. Both interviews have been included as Exhibit 47, because the Hearing Officer believes that all were submitted and all are covered

in respondents' presentation of their defense evidence on May 22, 2015, as the complete set of the transcripts of three investigative interviews of Mike Chambers by the City, to replace Exhibits 27 and 35, and accepted for those purposes should the transcription exhibits be admitted. However, Ex. 79 actually contained only the two interviews of Chambers done on May 22, 2013, and Ex. 72 contained the one interview done on April 2, 2013. Respondents objected to the admission of the investigative interview transcription exhibits, and conditionally offered, in the event those exhibits were admitted, Exhibit 200 (list of all investigative interview transcription exhibits) and Exhibits 201-220 (additional investigative interview transcript exhibits). Charging parties did not object to admission of these additional investigative interview transcript exhibits if their investigative interview transcript exhibits were admitted. The Hearing Officer reserved ruling so that the parties could submit post-hearing briefs. After all timely post-hearing filings were received, the Hearing Officer overruled the objections and admitted all of the investigative interview transcript exhibits offered by any of the parties, which included Ex. 72 as well as Ex. 79, excluding the two investigative interview transcript exhibits of the two interviews of Chambers on May 13, 2012, being Ex. 27 and Ex. 35, which were withdrawn in favor of Ex. 79. The Hearing Officer refused a list of the investigative interview transcript exhibits without exhibit numbers (Ex. 200) as more confusing than helpful. "Order Regarding Interview Transcript Exhibits" (9/29/15).

2. Exhibit 52 – E-Mail Thread. During the hearing, charging parties also offered Exhibit 52, an email thread of May 24-28, 2013 – (1) May 24, 2013, 4:49 p.m., City Manager Ed Meece to City Attorney Bruce Becker, City Legal Analyst Lisa Hammer and outside counsel Mike Lilly, copy to Human Resources Director and Assistant City Manager David Fine; (2) May 28, 2013, 8:41, Hammer to Meece, copies to Becker and Fine; (3) May 28, 2013, 8:45 a.m., Meece to Hammer, copies to Becker and Fine. The City objected that the exhibit was protected by the attorney-client privilege, and the other respondents added other objections. The Hearing Officer reserved ruling so that the parties could submit post-hearing briefs. After all timely post-hearing filings were received, the Hearing Officer sustained the privilege, refusing and sealing the first e-mail in Exhibit 52 and admitting the second and third e-mails. "Order Sustaining Objection to Disclosure and Admission into Evidence of Exhibit 52 and Maintaining its Sealed Status" (10-5-15) [with regard to the first e-mail only of Ex. 52].

3. Motion to Reopen Hearing. After the hearing, respondent Rivard filed a motion to reopen the hearing record for additional evidence about charging party

by the ruling. However, whether the Josh Pierce interview transcript dated May 6, 2013, is in evidence or out of evidence makes no difference to the decision herein. The May 6 interview, largely consistent with Pierce's other interviews, was of no influence in deciding the case.

Wulf's participation as a member of the promotion board considering Rivard's promotion. The parties submitted briefs on the issues raised by this motion. After all timely post-hearing filings were received, the Hearing Officer denied Rivard's motion to reopen the hearing record. "Order Denying Rivard's Motion to Reopen Record" (10-7-15).

II. Formality of Proceedings and Jurisdiction

Pursuant to §49-2-505, MCA, the Department of Labor & Industry (DLI) has jurisdiction over this matter. Applicable portions of the Montana Rules of Civil Procedure and the Montana Rules of Evidence governed the contested case hearing. §49-2-204(2), MCA. A licensed court reporter was present throughout the hearing and transcribed the proceedings. The transcript is the official record of the hearing and the evidentiary record, subject to the post hearing orders of the Hearing Officer regarding evidentiary issues.

III. Issues

The primary issues in this case are:

1. Did Mike Chambers and the City of Livingston, or either of them, discriminate against Kristen Carlin in employment because of her sex, in violation of Mont. Code Ann. §49-2-303?

2. Did Mike Chambers, Jenny Chambers, City of Livingston, Jeff Schoenen and David Fine, or any of them, retaliate against Kristen Carlin because she opposed any practices forbidden under the Montana Human Rights Act or the Montana Governmental Code of Fair Practices Act or had filed a complaint, testified, assisted, or participated in any manner in any proceeding under either Act, in violation Mont. Code Ann. §49-2-301?

3. Did City of Livingston, Mike Chambers, Shannon Browning, Jeff Schoenen, Jennifer Chambers, Seth Rivard and David Fine, or any of them, retaliate against Nathan Wulf because he opposed any practices forbidden under the Montana Human Rights Act or the Montana Governmental Code of Fair Practices Act or had filed a complaint, testified, assisted, or participated in any manner in any proceeding under either Act, in violation of Mont. Code Ann. §49-2-301?

4. Did the City of Livingston breach any of its affirmative duties under Mont. Code Ann. §§49-3-201(2), 49-3-205 or 49-3-209, MCA, causing or contributing to any discrimination or retaliation against Kristen Carlin or any retaliation against Nathan Wulf?

5. If any respondent has violated the rights of Kristen Carlin as she has alleged, what relief, in addition to injunctive relief against the liable respondent or respondents, should be ordered under Mont. Code Ann. §49-2-506(a) through (c)?

6. If any respondent has violated the rights of Nathan Wulf as he has alleged, what relief, in addition to injunctive relief against the liable respondent or respondents, should be ordered under Mont. Code Ann. §49-2-506(a) through (c)?

IV. Findings of Fact

1. The City of Livingston (City) is a municipal corporation, political subdivision, employer and local government agency. Livingston Fire & Rescue (LFR) is a City department that handles fire protection and emergency medical services. LFR is not a separate legal entity from the City. LFR provides fire and rescue services for the Livingston community and the surrounding area. LFR also had a Fire Chief, an Emergency Medical Services (“EMS”) Director, a Fire Inspector/Training Officer, and four captains. In 2013, LFR had 15 full-time paid firefighters, 1 female and 14 males.

2. LFR also had reserve firefighters, who were part-time City employees. In 2013, the City payroll listed 18 LFR reserve firefighters, 7 females and 11 males. The reserves assisted the full-time firefighters and participated (on a volunteer basis) in “ride-alongs,” which were opportunities for the reserves to ride with an LFR ambulance or fire truck when called out for service. The reserves were not paid for ride-alongs, which were included in their training. The LFR also provided training opportunities to reserves in the classroom and in clinical settings as well as during ride alongs. Training was optional, but important for an opportunity to apply for a full-time position. Reserves were not paid to attend for classroom and clinical settings training sessions. Reserves were required to devote 3 hours of time to LFR per month. They were not assigned to a specific LFR shift and could choose shifts during which they worked their required 3 hours of service per month, and any additional hours they chose to serve. The amount of time devoted by various reserves varied greatly from month to month and from reserve to reserve. For instance, in the period of January to March 2013, reserve Clint Juhnke was paid \$15 and reserve Alicia Pipolo was paid \$390.

3. LFR used a “call-back” procedure, a page or automatic message to members of LFR that fire station coverage was required and that available members should come to the fire station to cover for any calls that came in while the on duty crew was already on a call. It is more likely than not that reserves were paid for call-backs at a rate of \$15.00 per hour, if a reserve member came to the fire station for a call-back and served as one of the three members of the “covering” crew that took a call.

Reserves were not assigned to a specific shift. They could choose which shifts they wished to accompany to satisfy their required hours. The reserves were also encouraged to volunteer for special events requiring standby emergency medical services such as rodeos and motor cross (“motocross”), as a paid “tag along” to the firefighter or firefighters assigned the event, for the reserve’s experience and training.

4. All full-time employees of LFR except the Fire Chief and the Emergency Medical Services (“EMS”) director were members of the union that was and is the exclusive bargaining representative for LFR employees whose relationship with the City was governed by a Collective Bargaining Agreement (CBA). The CBA provided that the City’s Policy and Procedural Manual was controlling unless contrary to the specific terms of the CBA. At the outset of employment with the City, full-time firefighters were provided a copy of the City’s Policy and Procedures Manual, first adopted in 1990 and revised in 2008. Each full-time firefighter acknowledged that she or he had received and read a copy of the manual. None of the reserves belonged to the union.

5. The City employed Ed Meece as its City Manager at all times pertinent to this case. He was essentially the City’s chief executive officer.

6. The City employed Respondent David Fine as its Human Resources Director and Assistant City Manager, and he was the primary HR person for LFR. Fine began with the City in 2011 and left in December 2014. Fine was responsible for all employee training while employed by the City. During his employment, he scheduled annual sexual harassment training sessions for each city Department. The training was conducted by the Montana Municipal Interlocal Authority (MMIA). In the fall of 2012, at the request of Schoenen, Fine conducted additional sexual harassment training for LFR. This training session was conducted by the Department with Associated Employees rather than the MMIA. All LFR firefighters attended the fall training, including firefighters who participated in this proceeding as parties and/or witnesses.

7. The City employed Respondent Jeff Schoenen for approximately two years as LFR’s Fire Chief, until his resignation effective on December 20, 2013. He had served as an interim chief for approximately six months before he became Chief. His duties included supervision of firefighting and emergency medical functions, operations and personnel of LFR. Schoenen began his employment with LFR in 1992.

8. During the times pertinent to this case, the City employed Kevin Harrington as LFR’s EMS Director. His LFR rank was Captain. During the same times, the City employed Jeremy Jacobsen as LFR’s Fire Inspector/Training Officer

until Respondent Mike Chambers took over those duties (see Finding 8, *infra*). Jacobsen's LFR rank was Captain until he became interim chief after Jeff Schoenen resigned.

9. As Fire Inspector/Training Officer, Jacobsen was in charge of the Reserves, and they were subject to his direction in the chain of command except when on a shift. When on a shift or a call-back, a reserve was subject to the direction of the Captain on shift or, in his/her absence, the watch commander, or, for a call-back, the highest ranking member of the call-back crew. Prior to the matter at hand the reserves were not issued a City Policy and Procedures manual, but during these proceedings, LFR instituted a practice that reserves would receive a copy of the manual in the future.

10. The City employed Respondent Mike Chambers as an LFR captain, firefighter and medic. Chambers joined LFR on June 24, 2000 as a firefighter and EMT. He became a paramedic in 2006, was promoted to captain in early 2010, became LFR's Fire Inspector in 2014 and LFR's Training Officer later in July 2014.

11. The City employed Charging Party Nathan (sometimes referred to as "Nate or "Nat") Wulf as a LFR captain, firefighter and medic. Wulf became a full-time firefighter for LFR in 2004. He was promoted to captain in early 2012. He was responsible for paramedic training for LFR's advance EMT training program during 2013. He had been involved in paramedic training at LFR since shortly after he became a full-time firefighter.

12. The City employed Andy Marlowe and Patty Walker as the two other shift commanders during 2013.

13. The City employed Respondent Seth Rivard as an LFR firefighter and medic. Rivard joined LFR in June 2008. 2011-2014 Rivard served as president of the union that was the exclusive bargaining agent for all labor management matters, including but not limited to the CBA, for the employees of LFR, except for the Chief and the EMS Officer.

14. The City employed Respondent Shannon Browning as an LFR firefighter and medic, from August 2004 until he left service in November 2013.

15. The City employed Josh Pierce as an LFR firefighter and medic. Pierce joined LFR in early 2008. By the time of the 2015 hearing in this case, he had been promoted to captain and had been working in that capacity for six or seven months.

16. The City employed Jason Cajune as an LFR firefighter and medic. He joined LFR in 2012 before the inception of the planning of the 2013 Livingston Fire and Rescue Community Ball.

17. LFR utilized four three-person shifts (A, B, C and D), each with a captain and two firefighters. Normal scheduling had a shift on-duty for 24 hours, followed by 72 hours off, although sometimes LFR personnel worked double shifts of 48 hours. Typically, a shift crew stayed together and worked as a crew for a prolonged time. From at least late 2011 well into 2013, B-Shift was comprised of Chambers, Browning and Rivard. Wulf became captain of D-Shift near the time of his promotion to captain, having been an acting captain before the actual promotion. In late October 2013, Jacobsen sent out a letter advising of shift changes effective in July 2014. Those shift changes were not made, and the evidence was unclear about any implementation of reassignments.

18. The City employed Charging Party Kristen Carlin as an LFR reserve. She had extensive tattooing on her arms, which was particularly noticeable without long sleeves. In December 2011, Carlin had a conversation with LFR full-time firefighter and medic Seth Rivard at a grocery store. He told her that LFR had a reserve program and suggested she come down and do a ride-along. Carlin had been interested in paramedic work since she “was little.” She believed joining the LFR reserves could help her pursue that career. She went down and spoke with Fire Chief Jeff Schoenen and Fire Inspector/Training Officer Jeremy Jacobsen. She scheduled a ride-along and then went on the ride-along, with Captain Mike Chambers, Seth Rivard and Shannon Browning, and then filled out an application for employment. LFR offered her an open position in the reserve and she accepted, beginning in January 2012. At the hearing in this case, Carlin testified both that she was still a reserve and that she was no longer active with the reserves as a result of her treatment in the events pertinent to this case.

19. The City employed Kiera Pattison as an LFR reserve, starting in 2010. A Registered Nurse, she began employment for Livingston Health Care in November 2007 as an emergency department staff nurse. She was promoted to emergency department manager (“EDM”) in 2009. By 2013 she was the clinic nurse manager, and in May 2015 she earned a Master’s degree in health administration. Beginning in 2007 as a staff nurse she had considerable contact with LFR, receiving their patients and working with them closely. After she became EDM, part of her job was to monitor and inspect the quality of the care provided to patients in the emergency department, which could include review of the charts regarding the care provided by LFR paramedics. She was a qualified and experienced R.N. and could assist LFR with critical care patient transfers from one facility to the next. In 2010 Chief Schoenen hired her for her special skills with emergency medical service and exempted her from

reserve duties in firefighting. She also taught classes on emergency medicine procedures that the reserves needed for their paramedic class. II:530:20 – 531:13.

20. The City employed Lance Gray as an LFR reserve during the times involved in this case.

21. Respondent Jennifer (“Jenny”) Chambers was and is Mike Chambers’ spouse. In 2013 she worked in emergency patient registration at Livingston Health Care, where Pattison was the emergency department manager. This was also the same hospital where reserve members like Carlin completed their clinical training to qualify for paramedic certification. At no time pertinent to this case was Jenny Chambers ever an employee of the City.

22. During Carlin’s first 14-15 months (January 2012 to March 2013) as a reserve, Carlin attended monthly training, did ride-alongs and spent time at the fire station helping out and learning. V:637:21 – 638:11. She received “cautions or warnings” from “other firefighters or reservists” . . . “[t]o avoid Mike’s [Mike Chambers’] shift because he doesn't like females – doesn't believe that we have the capabilities to do the job.”⁴ V:638:16 – 639:2. Carlin considered these admonitions more than just isolated warnings or opinions. V:639:4-7.

23. Carlin concluded that Chambers’ views of women in the workplace were “inappropriate.” She “made the choice to avoid him and his shift and if I did go down [to the fire station] and he was around, I just kept my head down. It was uncomfortable.” V:639:8-14. In other words, she believed what she was told and avoided Chambers. She testified that being around Chambers was uncomfortable “[b]ecause of his beliefs on females and the fire service,” V:639:15-18, yet she also testified that Chambers never said anything in her presence to confirm his reported beliefs. More likely than not, the discomfort she felt was caused by the cautions and warnings she was given and the credence she gave to them, based upon which she viewed Chambers as hostile toward women in general.

24. Carlin could only recall one instance, during her first 14-15 months as a reserve when she was avoiding Chambers, when she and Chambers were in “proximity” and interacted – it was during a “call-back” on which two reserves (Carlin and Glen Boren) accompanied Chambers to respond to an emergency medical call while the on-duty crew was on another call. V:639:19 – 641:7. She recalled that Chambers didn’t speak more than two words to her the entire trip.

⁴ The Hearing Officer overruled a hearsay objection to this testimony, allowing the testimony as proof of what Carlin had heard, not as proof of its truth. Vol. 3, p. 638, Ins. 21-23.

25. Chambers testified regarding the same call-back (and about some “small talk” with Carlin in the fire station). IX:1423:18 – 1427:14. He testified that he sat in front with the third member of the call-back crew, Boren, who was also a reserve and almost as new as Carlin, but with perhaps some driving experience. Because of Boren’s slightly greater experience, Chambers had him drive and stayed with him for safety and training, which meant he did not have any conversation with Carlin, who was in the back of the ambulance on the trip to the site. Chambers also testified that the patient was one of a number of “younger guys,” who had fallen in the water, swallowed “a bunch of water” and was “nauseous and not feeling good.” *Id.* As the most experienced emergency services member of the crew Chambers brought the patient to the ambulance and began evaluating and treating him. Chambers testified that he tried to make it a “teaching moment” with Carlin and involve her in the treatment, with more that the “two words” she had recalled. He had heard no negative feed back about the call-back. *Id.*

26. Obviously, both accounts of the call-back cannot be true, although each could represent the honest recollections of each person. Were there no other credibility evidence about them, neither Chambers nor Carlin would be more credible. At the time of the encounter, Carlin had already decided, based on second-hand information from other co-employees, that Chambers disliked women and that she should avoid him. Chambers and Carlin had no experience working together before that call, even though he and his crew had taken her on a ride-along before she applied for work with LFR. The third person on that emergency medical call present that day, Glen Boren, did not testify at hearing. Boren was interviewed in the second investigation, addressed *infra*, but was not asked about the call-back.

27. Chambers and Carlin also disagreed about whether they had conversed during the 2012 City Christmas Party.⁵ Testifying on Wednesday, May 20, 2015, Carlin had denied any recollection of such an encounter, at any time.

- Q. You’ve had conversations with Mike prior to the March complaint that you filed, and I’ll direct your attention to the Christmas party of 2012.
Did you have a conversation with Mike?
- A. I had many conversations that night.

⁵ This Christmas party in 2012 was an event at which some minor developments relevant to this case occurred. Incidents far more central to the case occurred at the “Livingston Fire and Rescue Community Ball” on April 13, 2013. The two events should not be confused, or it will be difficult to follow the progression of the problems.

- Q. Okay. But isn't it true that you and Mike spoke about your concerns that he didn't want women riding with him or on his shift?
- A. I don't recall that conversation.
- Q. You don't recall Mike telling you at that time that all you've got to do is show up and do your job and you'll be fine?
- A. I don't recall.
- Q. Did you ever hear Mike Chambers ever say that to you?
- A. Not that I can recall.
- Q. Can't recall that, okay.
- A. Unh-unh [Negative noise].

VI:842:2-19. On Friday, May 22, Chambers testified about an encounter with Carlin at that party.

- Q. Mike, do you remember the City Christmas party for 2012?
- A. Yes, it was in this building.
- Q. Did you go to it?
- A. Yes.
- Q. Was Kristen there?
- A. Yes.
- Q. Did you have a conversation with her?
- A. Yeah, had a great conversation with her.
- Q. Did she express concerns over you thinking she couldn't do the job?
- A. I don't know if it was specific concerns but we had a good conversation about the fire service and, you know, what it means to me and all those kinds of things.
It was a good conversation.
- Q. Did you tell her that if she could do the job, you had no problems with her working?
- A. Yeah, it was kind of a, you know, it was a passionate conversation. I said, Hey, if you can do the job, come right along, and you're welcome on my shift any time.
And she literally said, I'll see you Thursday.
- Q. Did you mean it when you said that?
- A. Absolutely.

X:1506:15 – 1507:13.

After Chambers concluded his testimony and the respondents rested their cases, Carlin testified again on Friday about the 2012 Christmas party conversation she had repeatedly denied recalling on Wednesday.

Q. At the Christmas party of 2012 –

A. Yes.

Q. – what, if anything, did Mike Chambers say to you?

A. If I could do the job, I was welcome to come to his shift.

MR. KROGH: I'm sorry, I couldn't hear that.

THE WITNESS: If I could do the job, I was welcome to come on his shift.

X:1577:1-9.

28. There was no evidence explaining why Carlin remembered on Friday what she had adamantly not recalled on Wednesday. This change in her testimony damaged her credibility regarding her testimony about how Chambers treated her at work. Given Carlin's testimony about her avoidance of Chambers and her negative views of him, it was reasonable to expect that she would note and remember encounters with Chambers that either confirmed or contradicted the warnings of her co-workers about him. She reasonably should have remembered the call-back, and she appeared to remember it, testifying that he did not speak more than two words to her, which seemingly confirmed what she had been told about him. But she also reasonably should have remembered the conversation at the Christmas party, when he told her that if she could do her job she would be welcome on his shift, which seemingly contradicted what she had been told about him. Testifying under oath, she remembered an incident that confirmed what she was told about Chambers, but denied any recollection of an incident that contradicted what she was told. Two days later, she confessed that Chambers had indeed said exactly what he testified he had said.

29. Chambers told the very same story about this encounter near the end of his April 2, 2013 investigative interview by the City. Ex. 72, LIV\CAR39:

If you want to interview her about the Christmas party, the last conversation we actually had, that conversation was all about how she should come in on my shift and I will help her and she could come in and I'm very passionate about my job and I love my career and I take it very seriously. I support three kids and a wife with my job. I have a retirement with my job. If she wants to come in and learn and get to know me and my shift she can do

that. She said I'll be in on Thursday, and never showed. That's the last interaction I had with Kristen Carlin.

30. There was no credible evidence that Kristen Carlin saw or heard Mike Chambers say or do anything in 2012 that objectively indicated he had any bias against her or women in general.

31. Carlin completed her basic EMT training (which took place in Bozeman and was not provided by LFR members) sometime late in 2012 and began her paramedic class, among 8 or 9 other trainees, all reserves, at about that same time. Captain Wulf was the trainer.

32. In Fall 2012 firefighter Jason Cajune had come to Mike Chambers with the idea that the LFR firefighters could host a "Livingston Fire and Rescue Community Ball" to raise money for their charitable activities fund.⁶ Chambers liked the idea. It seemed a good opportunity to create a nice community event to raise money to pay for other events that were not typically self-supporting, like the trout derby or the Easter egg hunt. The event, if appropriately planned and carried out, could also promote good public relations between LFR and the community. The City did not contribute any public funds to support the firefighters' charitable activities. The full-time firefighters themselves elected to have small sums deducted from their paychecks to be deposited into their charitable activities fund. Thus, for the Ball fully to accomplish one of the primary purposes for holding it, it had to generate considerably more revenue than it would cost. With permission from the Chief, the firefighters began to plan the Ball, which was scheduled for April 13, 2013, at the Livingston Depot Center.

33. The City did not sponsor the Ball. Chief Schoenen authorized the firefighters to plan the Ball during their shifts, to use the fire station for their meetings and to identify the Ball as the Livingston Fire and Rescue Community Ball (referring to the LFR firefighters). Chambers volunteered to be in charge of planning and conducting the Ball. He was assisted in the planning by Browning, Cajune, Pierce and LFR firefighter Torsten Prah. Chambers e-mailed communications about the Ball to Schoenen and to the other full-time firefighters, sometimes on city time and always via city email addresses. During a 24-hour shift, on-duty firefighters typically had time for activities unrelated to firefighting (while maintaining their readiness to respond as needed). Giving permission for the LFR firefighters to plan the Ball and hold planning committee meetings during on-duty hours and allowing

⁶ By 2013 the "charitable activities fund" had lost its non-profit corporate standing, due to failure to file necessary paperwork, and the firefighters were trying to get it reinstated. For purposes of the present case, it will still be called the "charitable activities fund."

limited use of City resources for communications and preparation for the Ball did not establish that the City was supporting the Ball and had assumed responsibility for LFR members' conduct at the Ball or after it. The Ball was scheduled for April 13, 2013, at the Livingston Depot Center.

34. On or about March 7, 2013, Chambers conducted a meeting of the Ball planning committee at the fire station. Chambers, Cajune, Pierce and Torsten Prah were present (Shannon Browning may also have been present). During that meeting, Chambers made it clear that he did not want Carlin taking tickets at the Ball, because of her tattoos, and did not want the reserves (including Carlin in particular) to be part of the LFR firefighters' hosting of the Ball (which meant the reserves would have to buy tickets to attend). After that meeting both Nathan Wulf (who was not at any of the planning meetings as far as this record reflects) and Jason Cajune told Carlin that Chambers didn't want her at the Ball because of her tattoos. V:710:6 – 711:20. The evidence does not show that either Wulf or Cajune reported Chambers' express intentions for Carlin or for the reserves vis-a-vis the Ball to LFR management (the Chief or the City's Human Resources people) until their investigative interviews in April 2013. There is substantial and credible evidence that before Carlin took a regularly scheduled vacation from work in early to mid-March, Cajune and Wulf had already told her of Chambers' negative remarks about her tattoos at the March 7, 2013 planning meeting.

35. For the following week, while Carlin was on vacation, Chambers struggled to convince the other full-time firefighters on the Ball planning committee that the best way to handle the Ball was to have a few of the full-time firefighters in uniform, not drinking alcoholic beverages, serve as hosts. The hosts and any other full-timers who actually helped to set up for the ball, would not pay for their dinners. Everybody else – the rest of the full-timers, all of the "dates" (spouses, significant others, etc.) would need tickets. The reserves were part of the "everybody else" who had to buy tickets. Chambers encountered wide-spread resistance on every one of those points.

36. Chambers tried a combination of finesse and brute force– he was the volunteer chair for the committee and a captain, and he sent out a memo that described how he wanted the Ball hosted, as if everyone had agreed to it. Exhibit 26, Chambers e-mail, Friday, March 15, 2013 7:34 a.m., second page, also found in Exhibit 129, pp. 2-3^A and 4-5.⁷

⁷ Ex. 129 was admitted and is legible, while Ex. 26 is all but illegible. Ex. 129 has two pages both bearing the number "3" at the bottom. Cross-references to Ex. 129 are given for both e-mails in Ex. 26, clarifying whether a reference to page 3 is to the first page 3 (3^A) or the second page 3 (3^B). The footnote-like reference letter is handwritten on the 2 page 3's in the actual exhibit.

37. Opposition arose at once. Jason Cajune and Joshua Pierce were two of the majority of the full-timers opposed to Chambers' plan. One of them appealed to Wulf about the fait accompli Chambers had presented to the committee. Wulf went to Chief Schoenen, who called Chambers that same day and suggested there was discontent and that Chambers might want to rethink his proposal for hosting the Ball. Chambers made some concessions with a second e-mail that all full-timers would get in without purchasing a \$10.00 ticket, and uniforms were no longer part of the requirements, but he still wanted dates to have tickets, he still wanted firefighters not to drink and clearly (although it was unstated in the second e-mail) he still wanted the reserves to buy tickets. This e-mail of Friday, March 15, 2013, 1:43 p.m., appears as the first page of Ex. 26, and more readable copies are at pages 1-2 and page 3^B of Ex. 129.

38. Chambers still did not want Carlin to help at the Ball, holding very firm at that point. At 6:11 p.m. on Friday, March 15, 2013, Cajune sent Chambers, the rest of the full-time firefighters, and the Chief, an e-mail responding to Chambers' second e-mail. Exhibit 130. It was essentially a gentle and reasoned plea for dropping the remaining edicts about who must pay and who would get in without paying, and for everyone to pull together and make the evening a success. At one point Cajune urged getting along and not engaging in controversy "to make sure we get the most 'buy in' from our staff first. Because if we don't all go to this thing it will be weird." Ex. 130, Cajune March 15 e-mail, first page, first paragraph after "Thoughts on the upcoming Fireman's Ball" – beginning, "First, Mike . . ." – last sentence of paragraph [emphasis added].

39. Cajune, like Chambers, did not mention the reserves in his e-mail, but "because if we don't all go to this thing it will be weird" could be readily applied to the reserves and actually was applied to them by the full-time firefighters who did not support leaving them out. Ultimately, firefighters, spouses and reserves attended without being required to buy tickets for themselves, uniforms were not required and consumption of adult beverages was acceptable for one and all. Chambers confirmed these conditions decisions with another e-mail to the Chief and the full-time firefighters on Monday, March 18, 2013 at 12:17 p.m. IX:1450:18 – 1451:11:

Q. I think there's another e-mail, 109. You have that in front of you as well.

A. Oh, boy.

MS. WHITE: There's a single copy of it with the Hearing Officer.

BY MR. KROGH:

Q. Mike, you've been handed Exhibit 109.

A. Okay.

- Q. Do you recognize that document?
A. (Witness reviewing document.)
Yes.
Q. Okay. And what is it?
A. It's an e-mail from me sent on Monday, March 18th.
Q. Okay. What was the purpose of sending that e-mail?
A. We had come to a resolution or conclusion as to how we were going to operate the event as far as tickets and who was going to work and how – you know, basically how things were going to work at the ball.

Exhibit 109, Chambers' e-mail, Monday, March 18, 2013 12:17 p.m. reads as follows:

We had a meeting to address concerns about the ball that had come up. We decided that all of us and the reserves, including spouses/significant others will not have to purchase tickets and are covered by the event itself. We have 200 tickets for sale with about 50 purchased or reserved as of now. You of course are welcome to purchase tickets to offset costs if you like but this is in no way a requirement. There will be no dress code for fire department personnel and [no] limitations on participation for the ball. Everyone can drink adult beverages if they choose and enjoy the evening as they see fit. Please forward to me who is going so I can have our numbers for seating and accountability. I don't foresee to [sic] much physical work needing to be done prior to the ball and at set up as of now. Jason and Vedra are working on signs for the Depot and some decorations. We still need to come up with center pieces for about 26 tables and could use some help with ideas and getting those together. Let me know if you have any questions or concerns.

40. On or about March 20, 2013 after she returned from vacation, Carlin had another conversation with Wulf about Chambers' reported comments, now almost two weeks earlier, regarding her participation in the Ball. During that conversation, Wulf hinted that there were far more inappropriate things being discussed during planning meetings. Carlin did not inquire about those other inappropriate things. Wulf suggested that Carlin talk to Chief Schoenen about Chambers' comments if she was concerned about them, which she obviously was. From Carlin's reaction, it is doubtful that Wulf told Carlin that the questions were all resolved, she and the rest of the reserves would not be required to buy tickets. He apparently did not tell her that she was not excluded from the Ball, only not wanted as a helper – Pierce and

Cajune also understood Chambers to not want Carlin at the Ball at all. In any event, she went to Fire Chief Jeff Schoenen that same day about Chambers' comments, and reported that she believed Chambers (perhaps among others) had been saying that she should not be at the Ball because of her tattoos. Schoenen told her this could be harassment and she needed to report it to Human Resources. Carlin talked to City Human Resource Specialist and Assistant City Manager David Fine, and provided the requisite complaint in writing, dated March 20, 2013. What she had been told about Captain Chambers' remarks should have been clearer in her mind then, when she wrote the complaint, than when she testified in May 2015, although she was upset when she wrote the complaint and had not had much time to think about it before she talked to Fine and wrote and submitted her complaint. The complaint consisted of one long paragraph.

On the day of March 7th 2013 it was brought to my attention that a few of the FLD employees [LFR was also called "Livingston Fire Department"] did not feel I should be able to attend the Fireman's Ball that is being held on April 13. I was told during a committee meeting regarding the ball things were brought up and at the time I did not ask for detail because I was getting ready to go on leave for vacation and was hoping things would just pass over while I was gone. I came to LFD March 20th for Paramedic class where I was pulled aside by my instructor Nate Wulf and was told that Captain Chambers was saying he did not want me there because of all my "tattoos." Now none of this has been said to me by Captain Chambers but I have been told by other employee's [sic] and also a committee member who heard those words 1st hand from his mouth. I should not be discriminated against because I have body art. My tattoos do not define me as a person or as an EMS professional. The workplace is not where Captain Chambers opinion of me should be discussed and is unprofessional. I hope these kinds of statements are not being said outside of the department either as it would not look good in the general public's eye. It is no secret that Mike Chambers and one of his shift members Seth Rivard do not like me and just the reserves in general. I am not the only Reserve member who feels this way and senses the hostility. I do not deserve it and feel I do not have to put up with it any longer. None of the Reserves should feel this way as we should all be working together as a unit. Although we may not be "Career men or women" we are here to support the full time employees as part time EMS personnel. They should support us as we do them. Their behavior is now affecting me as a Reserve and Paramedic student.

I feel this animosity is a form of harassment in the work place. I am concerned if I don't bring it to management's attention it will continue and like I said it is affecting my job as a Reserve and who I am to work with. I should not show up on call back and feel like I am not welcomed with glares and not being spoken to. How would that look to a patient if they picked up on any of that? I have done my best to avoid situations where I am with either of them on a call. If either Mike or Seth is present I will not come in on call back and I for sure will not show up on their shift. This defeats my purpose as a Reserve. I would like to make it clear I like my job as a Reserve and I am honestly somewhat shocked by Captain Chambers statements about me attending a Fire Department function. I attend our monthly meetings, come in on call back when I not feeling uncomfortable and also help out when LFD does functions like the Easter Egg hunt, Trout Derby and Pancake Supper. This harassment is uncalled for in any work place environment.

Exhibit 10.

41. On March 29, 2013 Carlin sent an e-mail to David Fine, adding some additional information to her complaint.

I had just a few things I would like to add to my statement. Things happened so fast last week during our initial meeting that I was unable to fully look at the entire picture. I've never done anything to Captain Chambers or proved myself to be incompetent in this profession and I am partially being discredited due to the fact that I am a female in a more male dominant profession in some eyes and for merely being a Reserve in general. Also, since our last meeting it was brought to my attention that another LFD employee and committee member for the ball was present when Captain Chambers was saying negative things about me during their meetings for the ball. Josh Pierce was the other LFD employee that was present during these conversations and he could probably provide some more insight on this matter.

Exhibit 11. This was the first communication by Carlin to her employer that any kind of illegal discrimination was allegedly occurring – having tattoos does not qualify as a protected class.

42. Pierce was at the planning meeting and did confirm, in an investigative interview and then by testimony at hearing, both what he heard Chambers say and what he understood Chambers meant. I:62:3-16 and 83:17 – 84:15. Cajune admitted, under oath, that Chambers had said at some point that he did not want Carlin taking tickets because of her tattoos, but by the time of his testimony in this case he was no longer sure if those comments were about the Ball or perhaps at a pancake breakfast fund raising event.⁸ I:98:22 – 99:14. Prahl did not testify.

43. On March 29, 2013, two weeks before the Ball, David Fine issued written notices that were hand delivered to Carlin and Chambers notifying each of them that he and Chief Schoenen would investigate Carlin's complaint of "harassing comments and a hostile work environment" and that investigation would involve employee interviews, including their interviews in particular. Exhibits 12 and 13. Fine advised Carlin to report any perceived retaliation for raising the concerns immediately to him and directed her to contact him to schedule an interview date and time that was before April 4, 2013. Ex. 12. Fine's letter to Carlin indicated that the investigation would involve "harassing comments and a hostile work environment created by Mike Chambers and Seth Rivard, and that her two written communications (Ex. 10 and 11) were the "written complaint." Ex. 12. Fine's letter to Chambers warned him not to retaliate against Carlin or anyone else participating in the investigation and advised him that his interview would be on April 2, 2013 at 9:00 a.m. and that Fine and Chief Schoenen were the investigators. Ex. 13. Chambers' letter also advised that any refusal by him to answer questions would be considered insubordination and result in discipline. Carlin's letter did not contain any such advice. Both Chambers and Carlin were told the "matter" was being treated as a "Personnel Complaint" within the meaning of the City's Personnel Complaints and Discipline Policy (Sec. 15). Chambers was provided with a copy of that Section, while Carlin was not.

44. Fine and Chief Schoenen conducted multiple investigative interviews regarding Carlin's complaint. On April 1, 2013, they interviewed Carlin, Cajune, Pierce and Wulf. Exhibits 14 through 17, in that order. Carlin reported she had heard from Cajune and from Pierce about what was said. When asked by Fine what Wulf told her that Chambers had said, Carlin replied, "What did Nat say? He just said that [confusing phrase – ". . . or" – removed] Mike said that he didn't want F'ing [sic] Kristen there with her tattoos." Ex. 14, LIV\CAR14. Asked if Chambers said "F'ing" Carlin said, "That's what Nat said. I don't know if he [Chambers] said it because I wasn't there, so you would have to ask the people who were in on this

⁸ Chambers' initial investigative interview and his testimony at hearing confirmed that Carlin had helped at the most recent pancake breakfast fund-raiser, that Chambers reportedly heard negative comments from some of the patrons about her tattoos, and that this was the reason he gave for not wanting her representing the department at the Ball.

conversation.” Asked whether Wulf had elaborated about what Mike had said, Carlin responded, “No. No. He did say that what I know was not even really touching the other things that are being said.” Fine asked, “Nat said that?” She responded, “Yes. What else is being said. I don’t know. I don’t ask. I don’t want to know.” Ex. 14.

45. Asked whether Chambers had ever directed harassing comments at her, Carlin responded, “Not directly . . .” She went on to add, “. . . but I try to avoid him as much as I can, but there have obviously been times when I can’t. So it’s obvious that I am not welcomed and I think he tries to, I don’t know, by me not saying anything I think he tries to intimidate me in other ways, not so much being direct, and maybe he thinks that’s okay because he is not really directly saying things to me.” Id.

46. Fine next asked Carlin, “You’re saying that he makes it clear that he doesn’t want you around?” She agreed. Then Fine asked Carlin, “How does he do that?” She responded, “Just his attitude and just the way he, I don’t know, carries himself. It’s not just, I mean if you are like talking among reserves, it’s not just me. Like it’s, I don’t know.” Id. This impression that Carlin had, that Chambers was trying to intimidate her in “other ways,” was her own perception from interactions with him, but that perception was facilitated by other LFR employees characterizing Chambers as hostile in “warnings” to Carlin. Observing Chambers during the hearing, the Hearing Officer saw what appeared to be a neutral expression or “poker face,” but perhaps that lack of expression could be interpreted as “glaring” or otherwise hostile by someone predisposed to see hostility.

47. Fine followed up on Carlin’s response to his question about how Chambers made it clear he didn’t want Carlin around. “Okay. When you are talking about other reserves, is it because you are reserves or is it against other female reserves?” Ex. 14, LIV\CAR15. Carlin responded, “I mean, I think it’s both. I think for me it’s because I am a reserve and I think partially because I’m a woman, and I think that he thinks that this is a more male-dominant profession.” Asked by Fine why she thought that was what Chambers thought, Carlin replied, “Just, I’ve been told. So . . .” Id. Fine then said, “You’ve been told.” Carlin followed by completing Fine’s sentence with “That that’s what he thinks.” Fine then asked, “That what is what he thinks?” Carlin responded, “That females shouldn’t be in this profession.” Id. At least more likely than not, Carlin told Fine that she concluded Chambers didn’t want women in the firefighting profession because other LFR employees told her that he had said that or that he felt that way. It was what she thought but she had not observed him say or do anything that supported it.

48. Fine then asked about negative comments Rivard had made and Carlin replied, “He hasn’t.” She went on to describe how Rivard, like Chambers, tried to intimidate her with glares and hostile facial expressions, being “a product of his environment due to his captain.” Id. She then said that Rivard once told her, away from City premises, that “it was not his job to help or teach the reserves period, so for me not to excite [sic] anything from him.” Id. She suggested, during her testimony at the hearing, that this comment about not having any duty to help or to teach could have happened at the 2012 City Christmas Party. X:1577:11-22.

49. That same day, April 1, 2013, David Fine and Chief Jeff Schoenen performed recorded investigative interviews of Jason Cajune and Josh Pierce about these matters on behalf of the City. In Cajune’s investigative interview, Fine told Cajune they were investigating Carlin’s complaint that Chambers has made harassing comments that created a hostile work environment, and asked if Cajune was “familiar with any of the comments in question.” Cajune said, “I think so, yeah.” Exhibit 15, CP-086. Again the interviewee is talking in terms of “think” and not in terms of “I saw” or “I heard.”

50. Cajune confirmed that he had told Carlin that there had been a meeting planning the Ball that “is coming up on April 13th” and that Chambers had been “very vocal” about not wanting Carlin to attend. Id. At Fine’s request, Cajune described Chamber’s comments.

David: Can you describe his comments.

Jason: He said that he didn’t want her. The conversation revolved [around] whether or not the reserves needed to pay to go to the ball. Some of us felt that it wasn’t going to be quite fair to have a fire department event and make some of our members have to pay to get in.

Ex. 15, p. CP-086. After Fine made an affirmative noise, Cajune went on. Id.:

We had quite a long conversation about that and during that conversation Mike said that he didn’t want to have Kristen there representing the department. That was pretty much it. I mean, why he doesn’t like the idea of the reserves being there I think in general was them not paying and some of them in specific who are on the force but not around a lot, for whatever reason.

Fine asked “So why Kristen specifically?” Cajune replied, “I just don’t think he likes her.” Fine responded, “Okay.” Id.

51. Cajune then said, “I mean, I think that probably, it’s just I’m just not sure that he’s really crazy about girls in the department in general.” Ex. 15, CP-087. When Fine asked why Cajune thought that, Cajune responded, “I don’t know if I can speculate why.” Id. When Fine asked if Chambers had ever made “comments to that effect” in Cajune’s presence, Cajune responded, “Yeah,” and when asked what Cajune had heard Chambers say Cajune replied, “It’s stuff like . . . it obviously has to do with like the physical nature of the fire department and fire service. I don’t think that he thinks that women could do a job correctly.” Ex. 15, CP-087. Fine asked if Cajune had heard Chambers “say that just once,” and Cajune replied at a bit more length, without much more clarity about what he actually witnessed. Id.:

I mean, I couldn’t give you specific times that I’ve heard him say that. I mean, it’s pretty well known that he doesn’t . . . he’s not crazy about having the women in the reserves for certain. It’s definitely made [inaudible 0:03:59] and has made remarks that he doesn’t like the reserves basically at all being [inaudible 0:04:05]. But, I mean, as for his reasoning I wouldn’t really know his exact reasoning.

Fine repeated back what Cajune had already said about what he heard Chambers say. “But you know that he doesn’t like having women in the fire department because he said he doesn’t like having women in the fire department.” Cajune’s answer was somewhat more clear, but still with a time and circumstances disclaimer. “Yeah, pretty much yeah. I mean, again I couldn’t give you an exact specific time that he said that, but there have been conversations like that.” Id.

52. Fine changed the subject and asked about Seth Rivard’s presence at that meeting. Cajune indicated he thought Rivard was there, and Fine asked Cajune if Rivard made any negative comments about Carlin attending the Ball or about Carlin. Cajune had no recollection of what Rivard said, although he noted that Carlin and Rivard were “not exactly good friends.” Ex. 15, LIV\CAR30-LIV\CAR31.

53. The last question Cajune answered during his April 1, 2013 investigative interview was the only question posed by Chief Schoenen, “Actually, let me ask you this. You were on the reserves and when you were on the reserves did you ever get the feeling that Mike didn’t want you around and why?” Cajune answered. Ex. 15, CP-089:

I think that he is really invested in the fact that he is a professional and he wants it to be a professionals-only department. It was the feeling I got at the time. I went out of my way to try . . . I would ask him advise [advice] when I was

taking paramedic class and I just tried to get around that by trying to be as professional as I could as a reserve. I asked him questions and tried to make him see that it was for real that I wasn't going to flunk out on him. But, yeah, I mean I definitely got the feeling that he felt that it was not necessary to have reserves here and he had to deal with us on reserve night and kind of resented that. This is the feeling I got. I don't know if that's true. I suppose you could read body language different from everybody.⁹

54. In summary, Jason Cajune told the City's investigators that Chambers did not want the reserves to come to the Ball without buying tickets, that Chambers did not want Kristen Carlin representing the department at the Ball and that Chambers did not want Carlin at the Ball, all (according to Cajune) with the sole justification that she had too many tattoos that were too visible. Cajune was uncertain why Chambers seemed so set against Carlin representing the department at the Ball or even being at the Ball – apparently he did not think her tattoos were a big deal – even though Chambers had mentioned her tattoos negatively. Cajune went on to tell the City's investigators that Chambers was well-known to believe, and had said something maybe more than once in Cajune's hearing that made Cajune think that Chambers thought that women could not do the job of firefighter because of the physical requirements. In this instance, with Cajune, it seemed to be what he thought Chambers meant more than what he actually remembered hearing.

55. In the Joshua Pierce April 1, 2013 investigative interview, Fine told Pierce that Kristen Carlin told the investigators that he (Pierce) was present when Chambers said that he did not want Carlin at the Ball because of her tattoos and that Pierce could confirm other comments Chambers made regarding female firefighters. Pierce agreed. Exhibit 16, CP-090.

56. Pierce stated that during a discussion at a planning meeting for the Ball about who was going to be paying for their tickets and who was not going to need tickets, Chambers had mentioned "something in regards to not wanting Kristen there because he felt like she didn't represent the fire service, and he didn't really have any good explanation for why he didn't want her there. He just said that he really didn't

⁹ The pagination of Ex. 15, the transcript of the Jason Cajune investigative interview, was confusing, but the exhibit was complete. In the upper right hand corner, the 3 pages are designated CP-086, CP-087 and CP-089, with no CP-088. In the lower right hand corner, the 3 pages are designated LIV\CAR29, LIV\CAR30 and LIV\CAR31. The transcriptions at the bottom of the second page (CP-087 and LIV\CAR30) and at the top of the third page (CP-089 and LIV\CAR31) dovetail perfectly, with Fine asking about Seth Rivard and Cajune responding.

want her there taking tickets, and he didn't want her to be seen at the Firefighter Ball." Ex. 16, CP-090 and 091. Pierce indicated that this statement was made during a debate about whether the reserves and the spouses of firefighters would have to buy tickets. According to Pierce, aside from Chambers, "the rest of us" in the group organizing the Ball did not want to require reserves to buy tickets, because reserves "end up volunteering a lot of their time with us, and he [Chambers] made it clear that he didn't really particularly want them there." Ex. 16, CP-091. Pierce stated that Chambers did not want Carlin in particular at the Ball and also did not want any of the reserves at the Ball. Id. Asked by Fine if Chambers elaborated on why he did not want Carlin in particular at the Ball, Pierce said, "No. Boy, let's see. He made it clear he doesn't like her tattoos, but I don't know if that was his reason for not having her there. I don't know if those two routinely argue about something. I just felt like he had something against her that I wasn't privy to. I really didn't know the reason that he had something against her." Id. Pierce went on to say (without any additional question from Fine) about Carlin, "As far as I'm concerned, I'm sure Jeff is concerned, she puts in a fair amount of effort in the fire service with us. She goes to paramedic classes. She rides along on our shifts all the time. Definitely does her fair share of the work when she's here, so I don't really feel like there's any reason to say that she doesn't represent us, because she does as much work as any of the other reserves do, which is [inaudible 00:04:50]" Id.

57. Pierce was asked, "Were other reserves welcome at the event? Did they ultimately resolve it in favor of . . ." He answered, "Yes, we did after a big mess. Mike sent out an email about discussing with the rest of the group, saying that reserves were going to have to buy tickets and unless they wanted to work at the thing, wives were going to have to buy tickets, and the whole thing came across very poorly. Mike ended up backtracking on that, and ended up sending emails saying that of course, everyone was invited and everybody wanted the reserves there. It was sort of a mess." Ex. 16, pp. CP-091 and 092. Pierce reiterated that he "definitely" knew that Chambers didn't like Carlin, that he had something against Carlin, but was unable to recall any thing Chambers did or said at any specific time that substantiated his knowledge. Ex. 16, CP-092.

58. Pierce was also asked if he ever heard Chambers say anything about Carlin or any other female reserve regarding not wanting female firefighters in LFR. He responded that "He pretty much regularly says women don't have a place in the fire service. I've heard him say that on more than one occasion, verbatim." Id. Asked if he had ever witnessed Chambers saying, in the presence of women in the fire service, that women don't have a place in the fire service, Pierce answered, "I don't know. No, probably not. He often says pretty inappropriate things to Lydia, and I'm trying to think if that's one of them. I don't think he said that specifically in front of her." Id. That response prompted Fine to ask Pierce, "Can you give me an example or

[should have been “of”] an inappropriate thing he said in Lydia’s presence.” He responded, “Well, how long do you have? She’ll be getting in the shower, because it’s typical for a firefighter going on a 48-hour shift, and when you do, it’s sort of standard practice to take a shower in the morning between your two shifts.” Fine made an affirmative noise, and Pierce continued, “She’ll be getting in the shower, and he’ll say things like, “Do you need help in there?” Things like that. He definitely has something against women, because he makes jokes about sleeping with other firefighters’ wives and very inappropriate. There’s a lot of joking that goes on in the fire service, especially between guys that have been friends for a long time, but he takes it to that next level. I’m definitely not on that level with him for him to make jokes to me about Jenny [Jenny Pierce, his wife] that way. I’m not easily offended, so it doesn’t . . .” Id.

59. Fine interposed some questions at this point, and Pierce told the City investigators that Chambers made “jokes” to Pierce about Chambers sleeping with Pierce’s wife. Pierce also agreed that he was “aware” that Chambers said “other inappropriate things” “toward female members of the department or female reservists” He also agreed that Chambers “comments” were a regular occurrence.” Ex. 16, CP-093.

60. Pierce also agreed that he “felt” Chambers wanted the reserves to pay for tickets because he didn’t want Carlin there. “I can’t read his mind, but that’s the feeling I got. This whole thing just turned into a giant mess because he had a bunch of reserves who obviously had their feelings hurt. A few of them, in particular, spend really a lot of time here doing a fair amount of work, and to have somebody they work under to come back and say, ‘Now you have to pay to come to this thing.’ It’s sort of celebration of what we do. It’s a slap in the face to them. The whole thing was a giant mess.” Ex. 16, CP-094.

61. Following that summary comment by Pierce, Fine asked three questions about Seth Rivard. When he asked Pierce if Rivard was at the meeting at which Chambers talked about not wanting Carlin at the Ball, Pierce said, “No.” When he asked if Pierce had ever heard Rivard make negative comments “towards” Carlin, Pierce said, “No. No. The fire department’s a small place. I’ve heard people say that . . . No. The answer is no.” Id. When he asked if Pierce had ever heard Rivard make comments about women in the fire service, Pierce said, “No.”

62. In summary, Joshua Pierce told the City’s investigators that Chambers did not want the reserves to come to the Ball without buying tickets, that Chambers did not want Kristen Carlin representing the department at the Ball and that Chambers did not want Carlin at the Ball. Pierce believed that Chambers definitely disliked Carlin, and said Chambers had mentioned her tattoos negatively. Pierce said that

Chambers “pretty much regularly says women don’t have a place in the fire service,” but that Pierce had not witnessed Chambers saying that in the presence of fire service women. Pierce also said that Chambers often said inappropriate things to Lydia Juhnke, such as “Do you need help in there?” when she was heading towards the shower. Pierce also said that Chambers made jokes about sleeping with other firefighters’ wives, “once in a while” making comments to Pierce about Chambers sleeping with Pierce’s wife.

63. The only thing Carlin put in her March 20 and March 29 complaints regarding Rivard was that he did not like her and that she avoided being around him as a result. Ex. 10 and Ex. 11. After the interviews of Carlin, Cajune and Pierce, Fine did no further investigation of Rivard regarding Carlin’s harassment claim. Ceasing to investigate Rivard because there were no concrete allegations and no evidence of any significant hostile behavior was reasonable.

64. Nathan Wulf was interviewed on April 1, 2013 about Chambers’ alleged comments regarding Carlin. Wulf confirmed he had told Carlin about some of the “harassing comments” that Chambers reportedly made and that Carlin subsequently had complained contributed to a hostile work environment. Exhibit 17, CP-096.¹⁰

65. Wulf told Fine that when Carlin came back from a week long family vacation, she approached him and said she had heard she was not really welcome at the Ball. Wulf told Fine that he told Carlin he had not heard of such things, but would look into it. He also told Fine that he “told or advised” Carlin to go talk to Chief Schoenen if she felt uncomfortable, had issues or feelings that she was being picked on, or “for whatever reason.” Fine asked Wulf if he had “told her you had heard these things.” Wulf responded, “At this point, no.” Fine said, “Okay.” Wulf again responded. *Id.*

At this point, no. That might not be entirely correct. I’ve heard Mike Chambers say things about the reserves, and I can’t be specific on whether or not he said things about Kristen, specifically, but I’ve heard enough things out of his mouth referencing reserves that I would have said I’m not surprised or whatever. Nonetheless, I advised her to go talk to Jeff.

Id. This seems very much like a convoluted admission that Wulf did say something to suggest to Carlin that Chambers might have said negative things about her, then advised her to go talk to Chief Schoenen about it.

¹⁰ Some of the “LIV\CAR” numbers are incomplete, so “CP-“ numbers are cited for Ex. 17.

66. Wulf told Fine about asking Cajune that same day whether Cajune (being on the planning committee for the Ball) had heard anything, and related what Cajune had said. Ex. 17, CP-097:

His [Cajune's] exact words were, "Oh, man. Boy have I," type of stuff. Then he went on to say that Mike had literally come out and made references to Kristen Carlin and Lance Gray on them, to quote, "Not being fucking welcome at the ball."

David: Why were they not welcome?

Nathan: My understanding of something to do with Kristen's tattoos, and my understanding was implying that Lance Gray was not either reputable or worthy of attending the ball. Jason, being privy to that conversation, gave me the impression that it was basically just saying that those people didn't belong here, and weren't welcome. "Those people," as in whether it was volunteers or just people Mike didn't deem worthy of being affiliated with the department.

Ex. 17 at CP-097. Cajune never mentioned Grey in his interview.

67. Chief Schoenen then asked Wulf, "Those particular people or reserves in general?" Wulf said, "I took it as those particular people. That being said, I've been . . ." Schoenen interrupted, "You weren't there, right?" Wulf responded, "Correct. I was not there. That's what I heard out of Jason's mouth." Schoenen said, "Okay." Ex. 17 at CP-097. Wulf then picked up the thread of what he had begun to say before the Chief interrupted him.

Nonetheless, being an employee here for the last nine years, I've heard Mike routinely make comments about our reserves, implying that they're dysfunctional, not important, not worthy, not needed. Not to unload on you here, but I was recently promoted. I sat in as the Interim Captain on B-Shift, starting on November 21st. Now, my first official captains' meeting would have been that December, and in the first three months of captains' meetings, there was a lot of hubbub or a lot of talk or rumor on badmouthing the reserves on competency and other . . .

Id. Jeff Schoenen interrupted again, "By the captains in general?"

Nathan: Correct. Specifically Mike. At that same time . . .

Jeff: At multiple captains' meetings?
Nathan: He wouldn't say it at multiple captains' meetings, but he would say it in the general duty of the workday.

Id.

68. After Schoenen said, "Okay," Wulf continued his train of thought.

What was coming out in those captains' meetings from Chief Schoenen was, "This is unacceptable." I remember sitting as a newly promoted captain, what I'm hearing from the chief of the department saying, "Number one. Our reserves are part of this department. They're part of the team. No matter what their skill level may be, they need to be welcomed, worked with, and trained up." That was a routine, three, four months in a row, this is a fact.

As time went by within that four month period, it turned into, "Hey. Do not get caught doing this. This is technically harassment if you continue." It was put out as a blanket information at the captains' meetings attended by myself, Mike, Andy Marlow, Pat Walker, Jeremy Jacobson, and Kevin Harrington on "Do not do this. Do not engage in harassing behavior. Do not badmouth reserves. Welcome then [sic – should be "them"] and work with them. Train them up.

At that same timeframe, we started the paramedic program, and the only captain that didn't seem to get that message was Mike Chambers. I'm not going to put words in other people's mouths, but Andy Marlowe and I have coffee routinely a couple of days a week, discussing work techniques from Fireside, personnel management. Andy is a senior captain to me, and we sit and have coffee a couple of times a week. During those discussions, I have never heard Andy Marlowe say, "The reserves suck. I hate the reserves. The reserves waste our money," and at the same time, I deal with Pat Walker quite a bit, just through work capacity. I relieve Pat Walker's shift, and so there's a half hour of coffee time at 8:00 a.m.

Same deal. I rarely hear anything out of anybody's mouth. It's just been a consistent deal with Mike Chambers.

On top of that, I've heard for years, unprofessional comments that he's made about member's wives, my ex-wife. If I had a nickel for every time he asked Lydia if she

wanted help taking a shower, so he could wash her back, I'd be a rich man.

Ex. 17 at CP-098.

After Fine commented, "I'm trying to write this," Wulf continued his account of Chamber's bad conduct through the years. *Id.*

Yes. Going back in time, on previous paramedic programs. Mike Chambers, once again, seems to be the only consistent captain, board member of this department, that I will use the word, "shits" on reserves because of his position or his perceived entitlement within this department.

One of our former reservists, Brian Francis, was a paramedic student at the same time. This goes back years, were it's been common practice for paramedic students to carry a radio or a pager and help out in any capacity just like a normal deal, but on some of the higher profile calls, they would respond to the scene to help out, to get experience, and Mike would routinely throw these guys off these things, creating very uncomfortable positions. As the instructor, I would inform them that, "Hey, if you hear a heart attack or a code go out, or if a person has died, and you can safely get to that scene and help out, then do it." They would do that, following my instructions, and once on scene, Mike would throw them off the scene or out of the ambulance and say, "just go away," or just make it so uncomfortable that they'd leave on their own.

Ex. 17 at CP-098 and CP-099.

69. The transcript shows that at this point an unidentified female said something "inaudible," and then Wulf continued his monologue. Ex. 17, CP-099:

Then, in this paramedic program that was just recently started, once again, Mike displayed the same behavior of being against the paramedic program, specifically educating the reserves. I don't have a ton of positive things to say about his behavior when it comes to the reserves, and I feel it's one of those issues the City has where I won't do the

“I’m paranoid” comment and say “If it was me, I would expect to be fired,” but the information that has come out of the administration’s offices through Chief Schoenen and Kevin and Jeremy, the implication that if harassing behavior continues within this department against fellow members of our reservists or volunteers, you will probably be terminated.

I’ve heard that more times in my short year-long captain history that it’s something that myself and some of my other captain coworkers wouldn’t even think of broaching that subject.

70. Schoenen said, “Okay.” Then Fine asked a question. “Have you ever heard Mike Chambers make harassing comments toward Kristen Carlin in person?” Wulf responded, “No.” Fine then asked, “Have you ever heard Mike Chambers make in-person comments about women in the fire service?” Wulf responded. “Yes. (Laughs). I’ve heard Mike Chambers say that he does not believe women should be in the fire service. I’ve heard him say that . . .” Fine interrupted to ask, “On shift? On duty?” Wulf responded. “Correct.” Fine then asked, “More than once?” Id.

71. Wulf answered Fine, “Oh, yes, routinely.” Fine then asked, “Have you ever heard him say it in front of Lydia?” Wulf responded, “I can’t tell you. Sorry. The Lydia comments, I can say I’ve heard him make in front of her about washing her back in the shower.” Fine said, “Okay.” Wulf went on, “The women in the fire service and to quote him, ‘I didn’t join the fire service to work with women,’ and him referencing being upset that women are allowed in the fire service, I’ve heard that in person myself numerous times.” Wulf then added one further comment. “Knowing Lydia like I do, like I said, she’s my ex-wife. I would be surprised if she would voluntarily come forward to be interviewed about this stuff, but knowing her well enough also, she would not lie about them.” Ex. 17, CP-100.

72. At this point, Fine confirmed that Chief Schoenen had no followup questions and concluded the investigative interview. Id.

73. Nathan Wulf had nothing to contribute directly to the investigation of what Chambers said during the March 7 Ball planning meeting, because Wulf did not attend the meeting. He could and did confirm who he heard talking about it, thus providing information about other employees to interview. But Wulf also made a number of accusations about Chambers’ conduct regarding the reserves, the women in the reserves and regarding his conduct towards Lydia Juhnke, the only female LFR full-time firefighter and medic. As far as the record reflects, Wulf had never before made any complaint or report, written or otherwise, about Chamber’s conduct

regarding the reserves or the women in the reserves or Chamber's conduct towards Lydia Juhnke. Neither Fine nor Schoenen asked Wulf to make a written complaint regarding any of those matters during or after his interview on April 1, 2013 interview. Of course, after the interview, a record of his reports had been made.

74. Wulf's comments were sometimes unclear about what he himself heard Mike Chambers say, what he heard others say that Mike Chambers had said, and what he surmised, suspected or guessed that Mike Chambers had said. For example, "I've heard Mike Chambers say that he does not believe women should be in the fire service" [Ex. 17, CP-099] is a direct assertion that Wulf was present and heard Chambers make the statement. On the other hand, "If I had a nickel for every time he asked Lydia if she wanted help taking a shower, so he could wash her back, I'd be a rich man" [Id., CP-098] is not an assertion that Wulf heard all or any of the instances of Chambers doing that. It is a report that Wulf thinks that Chambers has asked the only full-time LFR female firefighter if he could wash her back during her shower many, many times. Wulf might think this based on what Wulf himself heard Chambers say to her at various times. He might think it based on what other people told him Chambers said to her. Wulf might think it based on his own surmises, suspicions or guesses about what Chambers said to her and about how often he might have said it. It could be based on a combination of all or some of those sources. If it actually was an assertion of fact, if Wulf himself witnessed each and every time Chambers said that to Lydia Juhnke, he could testify under oath that he heard Chambers make those many, many repetitions of what was at best a tired joke the first time, but human communication is notorious for not being that precise except when forced to be. Nobody asked Nathan Wulf to explain the fact basis for this thought he shared, of how wealthy he could be if only he had a nickel for every time Chambers asked Lydia Juhnke if she wanted help taking a shower. Did he hear it every time that Chambers asked this? How would that be possible? If not, what did he rely upon, and why, in making the statement?

75. Jason Cajune, Joshua Pierce and Nathan Wulf all three provided confirmation that Mike Chambers tried to make reserves buy tickets to the Ball and tried to exclude Carlin from representing the department at the Ball, based upon her tattoos. They all three reported multiple and apparently continuing comments about women being unsuitable to perform the physical tasks required of firefighters. Pierce and Wulf also reported multiple and apparently continuing inappropriate suggestive comments to Lydia Juhnke, the only female full-time firefighter.

76. Mike Chambers was interviewed on April 2, 2013. Ex. 72. Wulf, in his interview, gave long and detailed responses that went well beyond the scope of some of the questions, to share information that Wulf wanted management to know. Chambers gave shorter answers, but sometimes he also included information beyond

the scope of the questions, that he presumably wanted management to know. Chambers was told, "Some of your colleagues have testified that you made regular comments about women in the fire service and how they don't have any place in the fire service" and then asked, "Do you recall making comments like that?" Chambers answered, "No. I said any female that can do the job, she's welcome in the fire service. That's what I said, and I've said routinely that Lydia Wrights [sic] is one of the best employees around here. I work with her any time and she's a female." Ex. 72, LIV\CAR34. The form of the question to which he answered "no" meant that Chambers actually asserted only that he did not recall making statements like "women don't have place in fire service," but again, human communication normally does not make such fine distinctions.

77. Chambers admitted saying that he did not want Carlin helping out during the Ball, but he insisted he did not mean (or say) he did not want her at the Ball.

David Fine: So Kristen alleges that during a meeting planning for the fireman's ball that's upcoming that you made comments that you didn't want her specifically being in attendance.

Mike Chambers: No. I said I didn't want her working the door of the hall.

David Fine: Why was that?

Mike Chambers: Because she has tattoos and people have made comments to me when she worked the door at the pancake supper last year and people . . . heard some comments from people about you know not liking that look because she's got full sleeves of tattoos. But I said that.

David Fine: Where did you make those comments?

Mike Chambers: In the meeting.

David Fine: Where was the meeting held?

Mike Chambers: Upstairs at the table.

David Fine: Are you aware of any City of Livingston or Fire Department policy that prohibits tattoos or makes any restrictions of that kind on . . .

Mike Chambers: This is not a City of Livingston event. This is a Livingston Firefighters event.

David Fine: Are you aware . . .

Mike Chambers: It's not a city deal.

David Fine: Are you aware of any city policies that . . .

Mike Chambers: Oh, I'm not aware of any.

David Fine: About tattoos or [inaudible 00:02:07] tattoos?

Mike Chambers: I'm not aware of any, yeah.

David Fine: Okay. But you did make the comments in a city owned building?

Mike Chambers: About not liking her tattoos at a city event?

David Fine: And not wanting her . . . attending an event for firefighters?

Mike Chambers: I didn't say she couldn't come. I said I didn't want her working the door.

David Fine: Okay.

Mike Chambers: She's welcome to come. She's a city employee.

Ex. 72, LIV\CAR32-33.

78. Several times, Fine and Chambers interrupted each other, so that sections of the interview are unclear and sometimes incoherent. At one point near the end of the interview, Chief Schoenen interrupted a series of incomplete statements exchanged between Chambers and Fine. Schoenen asked Fine if he had any more questions about the issue under investigation. Fine then made several incomplete efforts to make what appeared to be a comment about what he was trying to do in the interview. Chambers then interjected what seemed to be an argument that he had not said anything that could have created a hostile environment, including some comments potentially useful in this proceeding.

Jeff Schoenen: Do you have any more questions about this specific thing?

David Fine: No. I just wanted to get a clarification on exactly you know . . . people express their opinions about reserves and what that . . . they don't express it to the intent of exactly what they mean. So that's . . .

Mike Chambers: Well yeah and all of this stuff you're getting, none of it came from me. So and so heard it from so and so at a meeting. It's like in contextual situations when it comes to creating a hostile work environment it's a pattern about treating somebody where they're in fear of their job, when they're in fear of promotion. You can't discriminate against age, sex or gender. I can make an off-handed joke and although inappropriate that does not create a hostile environment. I mean we know that so you know. I don't see how somebody, I don't see or talk to if I've made possibly some personal opinion comments none different than anybody else in the organization. I'm not singling her out to be mean to her I have opinions like everybody else. I don't see how that can create a hostile environment.

If you want to interview her about the Christmas party, the last conversation we actually had, that conversation was all about how she should come on my shift and I will help her and she could come in and I'm very passionate about my job and I love my job and I love my career and I take it very seriously. I support three kids and a wife with my job. I have a retirement with my job. If she wants to come in and learn and get to know me and my shift she can do that. She said I'll be in on Thursday, and never showed. That's the last interaction I had with Kristen Carlin.

Ex. 72, LIV\CAR39.

79. In his testimony at hearing, Chambers also stated under oath what he did say about Carlin during that ball planning meeting.

- Q. Did you make any comments about I don't want any women there?
- A. No.
- Q. Did you make comments that you didn't want Kristen Carlin there because she's a woman?
- A. No.
- Q. Did you make any reference to Kristen Carlin?
- A. Yes.
- Q. Okay. Tell me the circumstances in which you made that comment.
- A. We were discussing how people were going to pay and how we were going to work the event, and in the middle of that discussion, Jason said, What about the reserves? And I was like, Well, what about the reserves? And he says, Well, they're part of the organization too. I go, I know, but that's not what I'm talking – and I said – Like I want Kristen working the door with her tattoos hanging out – is what I said.
- Q. Okay. Do you regret that comment?
- A. Absolutely.
- Q. Okay. What was your intent? What was your feeling about or thinking of that?
- A. You know, it was just – it was misdirected stress.
- Q. Okay. Was it your intent that you wanted the ball to be a professional atmosphere?

- A. Yes.
- Q. Okay. Tell me about what you were thinking about.
- A. Well, my thought was is this is an event where people potentially could wear a suit and a tie and we're going to have a band and it's going to be kind of a nicer event targeting professionals within the community and I wanted it to be a really nice high-end where we can bring in a lot of money.

X:1447:17 – 1448:25.

80. “Like I want Kristen working the door with her tattoos hanging out.” Chambers testified under oath that this was the only comment he made about Carlin during the planning meeting. Assuming it was the only comment he made about her, that single statement could still be interpreted to mean that Chambers not only didn't want Carlin taking tickets at the Ball, he also didn't want Carlin at the Ball at all, “with her tattoos hanging out,” spoiling the “nicer event,” making “targeting professionals within the community” more difficult, ruining the “really nice high-end” feel of the event and making it harder to “bring in a lot of money,” because of her visible body art. Thus, if Chambers meant what he testified he meant, his comment and the stance he was taking about who had to buy tickets could reasonably have been interpreted by Cajune and Pierce as indicative of Chambers not wanting Carlin at the Ball at all. Likewise, Chambers did want to require full-time firefighters to buy tickets for the Ball unless they helped out in one or more of the three ways he outlined in his first March 15 e-mail. He did want to require the spouses of full-time firefighters to purchase tickets. He did want to require reserves to buy tickets for the Ball. Combining what his e-mails said he wanted with what he admitted he did say, it was not a stretch for Cajune and Pierce to interpret what they heard and saw during that meeting to mean that Chambers did not want Carlin at the Ball at all.

81. But despite what Cajune and Pierce may reasonably have interpreted that Chambers meant, Mike Chambers had legitimate non-discriminatory concerns about raising as much money as possible. To do that, the Ball needed as many attendees as possible to buy tickets. Every free admission was a lost sale. Clearly Chambers did not want Carlin to represent the department, but that certainly could mean keeping her from helping out at the event rather than keeping her from attending the Ball. At the time he made this statement, Chambers wanted and expected that only some of the full-time firefighters would host the Ball (“represent the department”), and those few would be in on-duty clothing and not drinking alcohol. He also wanted and expected that Carlin, like every other reserve, would only be attending if she bought a ticket and would be in “civilian” clothing. In the final analysis, Chambers may have given the impression that he didn't want her at the Ball. It was not proved that he actually intended and attempted to keep her from attending the Ball. Nonetheless,

the planning committee's discussion of who would have to buy tickets and who would be eligible to represent the department at the Ball, including Chambers' comment about Carlin's tattoos and its possible interpretations, did not constitute an adverse employment action against her. Indeed, it did not result in her exclusion from the Ball or in any requirement that she and rest of the reserves buy tickets. Additionally, it was not action by her employer – the firefighters were planning the Ball, not LFR. Even if it could somehow be an adverse employment action, and even if it could be somehow attributed to her employer, there were legitimate non-discriminatory reasons for not wanting her to represent the department.

82. There is also no evidence that Chambers would have behaved any differently if it had been a male reserve with visible body art who was being discussed. The fund-raising concerns were that the presence – at the door taking tickets – of a reserve firefighter/medic “with . . . tattoos hanging out,” might spoil the “nicer event” and ruin the “professional atmosphere” with visible body art, thereby reducing the fund-raising power and/or the public relations value of the event, that night or in the future. Since there is no evidence that this fund-raising concern had any connection to Carlin's gender, these were, again, legitimate non-discriminatory reasons for his efforts to assure that Carlin did not represent the department at the event, whatever that might have meant. This Hearing Officer has no bias against body art (tattoos), himself having some upon his upper arms which become entirely visible when he wears a tank top or goes shirtless. Nonetheless, at least under the facts of this case, there was no protected class status related to Carlin having body art.

83. On April 5, 2013, the City placed Chambers on paid administrative leave pending the outcome of the investigation into Carlin's March 20 and March 29 complaints. This was not improper for the City to do. It was presented to Chambers as being “for his protection.” This meant LFR management had concerns that employees might be or become aware of this investigation while it was pending and assert that Chambers said something inappropriate to them.¹¹

84. On Friday, April 5, 2013, Seth Rivard sent an e-mail to Mike Chambers saying:

¹¹ This was not a tacit admission that Chambers had done something inappropriate or likely would do something inappropriate. “Warnings” from other employees influenced Carlin to avoid Chambers and to interpret his words and actions unfavorably. Talk about a personnel complaint investigation regarding alleged harassment based upon sex might have the same kind of impact on other employees.

I heard there have been some things that have come up while I've been on vacation. I have no idea of any specifics. The local has your back with representation. I encourage you to use our resources. I'll be coming back tomorrow and available to talk on Sunday. We'll get things squared away. I'll have internet for a bit longer so feel free to hit me back via email if you get this tonight.

Ex. 75.

85. Chambers responded. The exhibit includes his response, without indicating its date, but its contents suggest it was either later on Friday or on Saturday, since Rivard indicated that he would be available on Sunday:

Thanks man. I know the union is there for me. It is very weird and it feels like some are targeting me. I am on paid admin leave at least for Sundays shift. Jeff is on vacation and told me they did it to protect me since a couple of complaints came in about me since my interview on Tuesday [April 2]. I took a sick day on Wednesday to do mental health and having to work with Cajune who is a main player in spinning this thing. Truman also had a dentist appointment and needs a root canal that I had to do. I came in later to do the workout and some filed complaints I guess. The interview was only 16 minutes and I recorded it. They really had nothing yo [should be "to"] ask me except a comment I made at a ball meeting about kristens tattoos. The rest was about how I don't like women in the fire service and my issues with reserves. No meat or smoking gun anywhere. I don't feel there is anything and doubt I can get any punishment for an opinion. I will hook up with you when you get back.

Ex. 75. This message from Chambers suggests strongly that he had said he didn't like women in the fire service (the "opinion" he refers to) in the past, presumably at work, but does not confirm that he said he believed women could not do the job. There is also no evidence that the City had this email when it imposed the April 11 discipline on Chambers. Even if the City did have it, it was no "smoking gun" and still isn't.

86. In 2013, Kiera Pattison was clinic nurse manager at Livingston Health Care, where Jenny Chambers worked in the "front line" – registration. Pattison knew Ms. Chambers, and they were often in contact at work, but Pattison did not supervise her, since they were in different departments. The week before the Ball, Ms. Chambers went around the chain of command to text Pattison and ask for a

conversation with her regarding contact at work with Carlin, because of Carlin's involvement in the complaint against her husband and her concern about not having any contact with Carlin if she came into the emergency department as a paramedic student. Pattison was not surprised at Ms. Chambers' avoidance of the chain of command and they talked by telephone Friday, April 5, 2013.

Q. Did she indicate in her discussion with you any awareness of a complaint made against her husband?

A. Yes.

Q. Can you describe how she described that?

A. She just said that Kristen had filed a complaint against her husband and she didn't want anything to do with Kristen and she didn't want to have an encounter with her in the emergency department.

Q. And you referred her to her supervisor?

A. Correct.

Q. Did you take any further action?

A. No.

Q. Did you have any contact with Jenny Chambers between then and the firefighters' ball?

A. Not anything specific, I'm sure I would have just from the working relationship.

Q. Her being in registration?

A. Correct.

IV:534:23 – 535:15.

87. After Chambers had notice of Carlin's complaint (March 29, 2013) but before the Ball (April 12, 2013), Carlin received a message, by text or e-mail, from Jenny Chambers.

Q. After your interview and after your complaint in March, did you receive any texts or e-mails from Jenny Chambers?

A. After my complaint?

Q. After your complaint but before what I'm going to call the Murray Bar incident, we're not up to that yet.

A. Yes, I did.

Q. What was the nature of that?

A. She asked if I had started my clinicals yet down in the emergency room and asked that I did not [start my clinicals] because of the investigation, until this was done.

III:649:21 – 650:6. Carlin did not respond. Delaying her clinicals would delay completion of the requirements to be fully qualified for EMS work with LFR.

88. On April 10, 2013, Fine and Schoenen interviewed Captains Harrington, Jacobsen and Marlowe as part of the investigation. Kevin Harrington agreed that he had heard Mike Chambers make statements regarding women in the fire service, on shift or in the fire house. Asked to characterize those comments, Harrington did.

I can't say exact word for word, but my sense was that he doesn't think there's much place for women, physically able to do a firefighter's job. I know he has concerns about Reserves in general. I have had that . . . there have been other Reserves besides Kristen Carlin that have said that they don't feel comfortable going on their shift [Chambers' crew's shift], riding along or doing stuff or coming in on his shift, I guess.

Ex. 19, CP-102 and CP-103. Harrington confessed that he “probably should have done a little more proactive work when I heard these things and gone to Jeff [Chief Schoenen] with this kind of discussion” *Id.* Then Fine read a “legal definition” from “state and federal case law” defining “hostile work environment” as one in which a member of a statutorily protected class is subjected to unwelcome verbal or physical conduct related to that membership and the unwelcome conduct affected a term or condition of employment or had the purpose of or was unreasonably interfering with the member's work performance or creating an intimidating, hostile or offensive work environment. Ex. 19, CP-103. Harrington then denied hearing Chambers make “those kinds of comments” about women in the fire service “on a regular basis,” calling Chambers' statements “isolated” and saying, “he has more issues with the reserves in general” and “he just doesn't think the Reserves in general are really meant for firefighting.” *Id.* He confirmed that he had heard Reserves say that they were not coming in because “they heard” these comments and that they were also choosing not to be on certain shifts or attend certain classes for the same reason. *Id.* Asked to identify the three people (including Carlin) that he said had “voiced concerns” he did so and Fine ended the interview after Harrington answered that question. *Id.*, CP-104.

89. Jeremy Jacobsen said that he heard Mike Chambers make statements (at work) about females' ability to do the job (“able to be in the fire service”). Ex. 20, p. CP-105. Jacobsen said that “the only comments I've heard were related to probably physical fitness about he feels there shouldn't be women in the fire service. *Id.* Fine asked, “Females generally, or unfit females?” Jacobsen replied. *Id.*:

It was kind of in the context of a strength overview, I guess. You could have taken it as females in general, but I think it was more of a strength thing with females.

Jacobsen was invited to characterize how often Chambers made such comments and how well-known his views were. *Id.*, CP-106. Jacobsen characterized the frequency of the comments as neither “regular” nor “isolated” and added that there had been “more than one.” He characterized whether Chamber’s views on women were well-known. *Id.*:

Yes and no. I don’t know who all he’s spoken to or who he’s stressed his opinion around. I don’t know. There’s probably a larger audience that would agree that that is his view versus . . . like I said, I don’t know who he has talked to. I’m not around him all the time, but I would probably say there’s more than none that have heard his comments.¹²

90. In 2013, Kristen Carlin’s engagement to Zach Knaff was coming to an end. The two had a house together, and were raising children (from prior relationships) together, but their relationship was no longer working, and they were in the process of separating. Carlin was at the beginning of what became a new romantic relationship with Captain Jeremy Jacobsen. There is no evidence that this evolving relationship in any way influenced Jacobsen’s perceptions, attitudes or and knowledge about Mike Chambers at any time pertinent to this case. As far as the record reflects, on April 10, 2013, Jacobsen and Harrington revealed the information they shared in their investigative interviews with the Fire Chief and the City Human Resource Specialist/Assistant City Manager for the very first time. The same was true for what Marlowe revealed that day.

91. Andy Marlowe affirmed that he had heard Mike Chambers make negative comments about females in the fire service on shift, on duty or in the fire station. Ex. 21, CP-107. Asked to characterize the comments he had heard, he mentioned two comments, both involving Lydia Juhnke. Marlowe was present when Chambers made a remark about how she was backing up the fire truck (which she was doing at

¹² The City later interviewed Jordan Yarborough, one of the persons named by Harrington. She reported several reasons for avoiding work with Chambers, including that those on B-Shift were unfriendly and separated themselves from others, and that she was personally “scared” because of things she had heard in the firehouse. Ex. 46 (CP-222). She did not identify any illegal discrimination or retaliation in her report. There is no evidence the City made any attempt to follow up after receiving that report.

the time) that Marlowe thought “came off” gender related and negative. *Id.* at 108. He also mentioned that he remembered “one time clearly” (although he could not remember the date, only that it was “a while ago”) that he heard Chambers say something about joining her in the shower. *Id.* After Chief Schoenen, who had asked the last few questions to that point, said “Okay. That’s all I have,” Marlowe disclosed a recent conversation about Chambers. *Id.* at CP-108 & 109:

I do have one more thing. I thought about this all day long. With all that’s going on, I didn’t even know if I was going to bring it up or not, but about two weeks ago, we were all talking, me, Lydia and Josh [Pierce]. Lydia did bring up the shower and these comments to me. She brought it up, and knowing Lydia, she’s very quiet, subtle, doesn’t want to make any waves, but she brought it up that these things were inappropriate and not right, some of the things Mike said to her. [inaudible 00:05:48] write a letter to bring it up to you as hey, she’s brought this to my attention. Not straightforward, but it was, for Lydia, it was pretty strong to say. These things that you say aren’t cool and I don’t like it, especially since she’s going to go to his shift. I figured I needed to bring that to your attention just so both parties demand the same and she can feel comfortable and Mike can know that maybe he’s crossing the line on that point for her.

92. After telling David Fine and Chief Schoenen about this recent conversation, Marlowe concluded by saying, “I don’t know if you want me to write something up to that.” The following comments ended the interview immediately after his statement.

Jeff: I don’t think we need to.

Andy: Since it’s here, I just figured it be best . . .

David: We’ll let you know if you need to.

Andy: For her to say, because she actually did bring it up and that was pretty strong coming from her that she didn’t like it. I wanted to pass it on.

Jeff: That’s it.

David: That’s all we have.

Andy: All right.

David: Thanks a lot.

David Fine would reluctantly admit, after cross-examination cornered him and forced him to respond to the specific question, that Chief Schoenen's dismissal of any need to reduce to writing Marlowe's report of what Lydia Juhnke had said was contrary to City personnel policy. VIII:1236:9-11:

- Q. I'm just saying, is that consistent with city policy to tell someone, We don't need to write it up?
- A. No.

Consistent with policy or not, the transcript was already providing a record of this report by Captain Marlowe.

93. On April 10, 2013, David Fine issued the City's "Notice of Findings from the Administrative Investigation" (Exhibit 22), after consulting with the City Attorney Bruce Becker, outside counsel for the City, Mike Lilly, and the City's legal analyst, Lisa Hammer (who held a law degree from Hamline School of Law, St. Paul, Minnesota, but was not admitted to practice in Montana). Fine called Chambers and Carlin in and met with each separately, handing each a copy of the document and explaining the findings to each. Fine thought Chambers wasn't happy with the decision but Chambers didn't appeal it, and Carlin accepted it. Fine also provided a copy of the notice to Chief Schoenen.

94. Fine found that Chambers had made negative comments about Carlin's tattoos at a meeting on City premises (in the fire station) which she did not attend, but that those comments were an "isolated incident" that did not create an intimidating, offensive or hostile environment. Ex. 22, p. 1, "Conclusion." This decision was appropriate and consistent with the data obtained in the investigation.

95. Fine found Chambers had made comments at the fire station that "he did not believe that women should be in the fire service" and that he "believed that women did not have the ability to do the job." Ex. 22, p. 2, "Conclusion." Fine found these comments were made repeatedly, based upon "colleagues" who said they had heard Chambers making those comments repeatedly, and these comments were widely known, because other "colleagues" told him they had not heard Chambers make the comments but were aware that he had said that he did not believe that women belonged in the fire service. *Id.* He also found that these comments met the criteria for creating a hostile work environment. *Id.* Since Chambers did not hire or qualify members of LFR for employment, he also found whether Chambers considered a woman incapable of doing the job was irrelevant once that person was selected for employment. *Id.*

96. Fine did not identify any particular person who asserted hearing Mike Chambers make a specific statement (such as "I believe women do not have the

ability to do this job”), at the fire house or any other specific location, at a particular date and time, with specified persons present. There had been no such detailed assertion. There was no such testimony at hearing. Cajune and Pierce could not provide such specifics. Nathan Wulf was not asked for such specifics.

97. On April 11, 2013, Chief Schoenen gave Chambers a one page “Record of Disciplinary Counseling” (also called a “letter of verbal counseling”), which was the first step in progressive discipline under the CBA between the firefighters and the City. Exhibit 23. Fine was present for the verbal counseling of Chambers by the Chief. Seth Rivard was also present as Chambers’ union representative. He advised Chambers that he did not have to sign and accept the disciplinary counseling.

98. Fine had eliminated Rivard from the investigation on April 1, 2013, based upon the lack of evidence. Rivard had been unaware that he was “involved” in Carlin’s initial complaint, as the other full-time employee accused by Carlin of disliking her and trying to intimidate her. Not until after the incidents at the Murray after the Ball did Rivard learn of this. He was not interviewed during the investigation, he was not notified of his “involvement” and his only participation was as Chambers’ union representative. He had no other involvement after Chambers signed and accepted the disciplinary counseling. X:1536:8– 1539:4.

99. Schoenen “walked” Chambers through the letter, which meant that Schoenen read him what it said, which was, in pertinent part, Ex. 23 [original emphasis]:

It is unacceptable to make comments about the general ability of females to serve in the fire service while in the fire station or while on duty. The Administration is responsible for maintaining standards for this department. If you feel that any employee is not meeting standards, you should discuss that with the Administration. However, it is wholly unacceptable, and in violation of City policy, to repeatedly stereotype the qualifications of an entire class of people – especially if that class is protected by statute from exactly these kinds of comments. You are verbally counseled that such comments are in violation of City Policy. You are counseled not to make such comments in the future. Future comments of this type are cause for further disciplinary action.

100. Fine testified at hearing about what he believed Schoenen had said to Chambers on April 11, 2013 in the verbal reprimand. IV:1176:23 – 1177:8:

Q. And were you part of the verbal counseling?

- A. I was there for it, yes.
- Q. And describe what occurred at that meeting.
- A. I don't recall it very clearly but I believe the chief walked him through this [Ex. 23] and said it was inappropriate to be saying that women didn't have a place in the fire service, that that was something for the administration – yeah, it's just inappropriate to do that and that as far as the reservists were concerned, that's something the administration has a prerogative on too as to how it uses reservists and incorporates them into the fire service.

101. Mike Chambers' signed for receipt of the "Record of Disciplinary Counseling," on Thursday, April 11, 2013.

102. Chambers accepted the discipline. There had been no shortage of information about what Chambers was thought to have said, only an absence of statements establishing where, when and whether Chambers had said he didn't believe women should or could do fire service. Clearly, quite a number of the LFR employees, from Captains to reserves, had been busily talking about what Chambers thought regarding women in the fire service. Given the remarks Chambers was thought to have made, there was reason to think that he did not welcome women in LFR, but the proof that he actually did say it was weak, at best. "Everybody knows" is not good enough. Chamber reasonably believed that this discipline resolved any past instances of comments at the fire station such as "he did not believe that women should be in the fire service" and that he "believed that women did not have the ability to do the job."

103. To this point in the process, the City reasonably responded to Carlin's complaint of harassment based upon sex. There was no proof that Carlin had been subjected to harassment. There was enough rumor and gossip about Chambers thinking women shouldn't be in the fire service so that efforts to work with Chambers to address that problem would have been appropriate. Instead, the City had disciplined him and he had accepted the discipline. On the investigative record established, first level discipline was probably the strongest response the City could possibly have defended.

104. On Saturday, April 13, 2013, the Firemen's Ball took place. Nothing relevant to this case happened during the Firemen's Ball on April 13, 2013, at the Livingston Depot, although some of the participants subsequently reported in their investigative interviews or testimony at hearing that the Ball had been uncomfortable with "stares and stuff." After cocktail hour and dinner, and the end of the Ball, many of the participants, including full-time members of LFR, some with spouses or dates,

and reserves, some with spouses or dates, and other members of the community gathered in the Murray Bar in downtown Livingston, across the street from the site of the Ball. None of the LFR members were in uniform at the Murray Bar.

105. Four couples from the Ball became one of several groups of LFR employees – both singles and couples – gathered at the Murray: reserve Kristen Carlin and her fiancé, Zach Knaff; Captain Nathan Wulf and reserve Kiera Pattison (who were a couple at that time); reserve Lance Gray and his spouse Nadia Gray; and firefighter Josh Pierce and his spouse Jenny Pierce. Off-duty (and out of uniform) Livingston police officer John “Buzz” Leonard joined that group – he would circulate among the groups until he and his wife left the Murray later that night. The bar was filled up and the band was playing. Music and crowd noises made conversation rather difficult. The members of this group including Carlin and Wulf were loosely bunched near the right end of the bar (looking from the vantage point of the inside surveillance camera), where there was a pool table and a more open area, not really visible in the video. Other people and other groups of people overlapped with and surrounded the group including Carlin and Wulf.

106. By the time she came to the Ball, Pattison understood that paramedic student Kristen Carlin had filed a complaint against Captain Mike Chambers, and that complaint had just been resolved. II:531:14 – 532:2. She had little other information about what that meant.

107. Twenty to thirty minutes after the group including Carlin and Wulf arrived at the Murray, a smaller group consisting of LFR’s B-Shift crew and the wives of two of the three crew members – Captain Mike Chambers and his wife Jenny Chambers; firefighter Seth Rivard and his wife Ryan Rivard; and firefighter Shannon Browning – came into the Murray, after completing Ball cleanup chores at the depot. According to Rivard’s testimony, consistent with the video recording of the initial locations of the two groups, the group including Carlin and Wulf was some distance away at the right end of the bar, while the smaller B-Shift group stood together in an open spot in front of the bar (again from the vantage point of the security camera) and to the left of where the scattered group containing Carlin and Wulf was situated. X:1540:9 – 1541:1. Rivard testified that his group came to the Murray to “get a drink and start socializing.” Initially, there was no interaction between the B-Shift group and the group including Carlin and Wulf. All three members of B-Shift testified at some point during the hearing that they came to the Murray to relax and have a few drinks. More likely than not, none of them expected or wanted to interact with LFR members who, in B-Shift members’ views, had not supported Chambers in every way possible regarding Carlin’s complaint and the City’s investigation.

108. Pattison thought the B-Shift group seemed isolated and looked unhappy. She told Wulf that someone should go over and tell them how well they did in organizing the Ball, and Wulf encouraged her to do that. Pattison did so, expecting that it would be awkward, but wanting to make peace between LFR people in both groups. Pattison's idea that peace needed to be made and Wulf's encouragement of her illustrated two very different perceptions of the situation. Wulf believed that with the investigation over and done (which it appears everybody knew) things could return to normal. Pattison was concerned that things were not looking like they were getting back to normal at all, because B-Shift to her was keeping an unfriendly distance from the rest of the LFR people in the Murray. Pattison went over to compliment the B-Shift crew for their good work on the Ball, and jump-start the healing process.

109. In speaking with the B-Shift group, Pattison made an effort to be, in her own words, "Switzerland," i.e., a neutral party and peacekeeper. She expressed her hope that everyone could "be friends and get along" and "let bygones be bygones." Seth Rivard, the current union president, responded by saying, "I'm just trying to get through negotiations," referring to union negotiations with the City for a new CBA.

110. After Seth Rivard made his "getting through negotiations" comment to Pattison, he left the B-Shift group and went over by himself to confront Nathan Wulf. Rivard testified that he went over "with the intention to talk to" Wulf, to address the division within LFR over the complaint against and discipline of Chambers. The way he said it at hearing, it sounded like a fence-mending trip. It wasn't.

111. Wulf testified that Rivard approached and stuck his finger in Wulf's face, "Basically saying, you're a fucking piece of shit and don't belong in the fire department and don't belong in the union." Wulf described Rivard as "angry, hostile, inflamed, enraged." VI:872:23 – 873:22. Carlin was sitting "in the corner . . . " with Wulf to her left" when Rivard "came up and started pointing at his [Wulf's] face, telling him he was a piece of shit and something about the union," and that was all she heard over the noise in the bar. Rivard appeared "upset" and his tone of voice was "full of anger." V:661:17-25.

112. Rivard testified that he had no firm recollection of anything he may have said to Wulf in the Murray, and specifically that he had no recall of "ever saying 'you don't belong in the union.'" X:1524:12 – 1546:21. His overall lack of memory about this conversation, in light of his explanation of his reasons for going over to talk to Wulf, and his testimony about the conversation that ensued outside, which he apparently did remember, was inconsistent.

113. Lance Gray saw and heard Rivard confront Wulf. During his investigative interview on May 6, 2014, Gray described how Rivard “came over and was pointing at [Wulf’s] face and yelling at him saying, ‘you shouldn’t be fucking doing this. You should be supporting the department. You should be supporting Mike.’ After that, I didn’t hear what Nate said, but it looked like, let’s go outside and talk.” Ex. 32, p. 8. At hearing, Gray could not remember most of these details, but when referred to the transcript of the investigative interview to “refresh his recollection” he affirmed that the details of his interview regarding this confrontation between Rivard and Wulf were accurate. V:611:1 – 612:15.

114. Off-duty police officer John Leonard also saw the confrontation between Rivard and Wulf. He testified at hearing that he “observed Seth Rivard, Mike Chambers, and/or Shannon Browning show up at the Murray” and that one of the first things he recalled after their arrival was a “small confrontation, if you will, a verbal exchange, I guess,” between Seth Rivard and Nathan Wulf. VIII:1214:17 – 1215:1. During the City’s investigative interview of Leonard, he said that he observed that Rivard “walked over to Nate and I mean the finger went in the face and I don’t know what was being said but you could see that it was kind of a non-friendly [sic], how’s that.” Ex.49, p. 2. Asked by David Fine whether he heard any things Rivard said to Wulf, Leonard said that Rivard said, ““Nate, you’re a fucking asshole.” Id. At hearing, after reviewing his interview transcript to refresh his recollection, Leonard testified that “Right off the bat” Rivard approached Wulf “with his finger pointing close” “Directly at his face.” Leonard could see that this confrontation “was not friendly by any means,” which heightened Leonard’s concerns because “unfortunately, it put me in an extremely bad position because if something was to have occurred, I would have been required – not only by my position within the City but by state statute – to intervene. So what I did was I kind of got in the middle of them.” VIII:1216:20 – 1218:11. Leonard did not verify that Rivard denounced Wulf for not supporting the department and Chambers and did not verify that Rivard told Wulf he didn’t belong in the fire department and didn’t belong in the union.

115. After Leonard’s interruption, Wulf and Rivard agreed to go outside so the two of them could talk (away from the band, the crowd and the noise in the Murray). They did not resolve their disagreements about whether Wulf “should support Chambers and the department” and blame Carlin for the problems, as Rivard insisted, or whether, as Wulf insisted, the problem was Chambers’ fault for inappropriate conduct. The discussion did not escalate into a fist fight. After three to five minutes, the two men came back inside. Rivard and his wife left shortly thereafter.

116. At perhaps about the same time as Wulf and Rivard headed outside, Jenny Chambers took offense at Pattison's suggestion to let bygones be bygones. Ms. Chambers, displaying "in your face" intensity, declared that everyone getting along was "never going to happen." She went off about how "all of this was bullshit, and that Kristen's a whore . . . [Ms. Chambers'] husband is innocent, that she'd read the entire report that HR gave her" She declared that "nothing's every [sic] going to fix this, and this is just how it's going to be now." Ms. Chambers also denounced Wulf (with whom Pattison came to the Ball). Ms. Chambers' emotional blast brought Pattison to tears and she walked away, attempting to retreat to the restroom. Standing in line in the hallway for the women's bathroom, she saw Mike Chambers, "and I was like, 'I just don't get why everybody can't get along.' And he was like, 'what do you mean?' I was like 'I'm just trying to be neutral, and you guys like jumped me in this conversation that I don't feel was fair.'" Pattison walked into the restroom but Ms. Chambers followed her and continued her tirade until Pattison went into one of the stalls. Ex. 30. Ms. Chambers then left the women's bathroom.

117. When Nathan Wulf came back into the Murray after his stand-off outside with Seth Rivard, he was looking for Kiera Pattison. He walked over to the B-Shift group, where Pattison had been going when she left Wulf at the end of the bar. The B-shift group (without Rivard, who was probably just leaving with his wife) had recently been joined by John Leonard. Wulf put one hand on Officer Leonard, the other on Shannon Browning, and said to the group that they did a good job with the planning and execution of the Ball. Browning told Wulf to "get your fucking hands off me or I'll kill you." Tr.876-878. Leonard heard it slightly differently, with Browning telling Wulf, "Get your fucking hand off my shoulder [and something to the effect of] I'll beat your ass right here." Tr. 1220. Leonard did not verify that Browning made a death threat. Browning testified that he asked that Wulf remove his hand, without using expletives or making threats and, that, following the request, Wulf did so. Tr. 1153-54.

118. Had John Leonard not been present, it would be difficult to decide whether to believe Wulf or Browning, but Leonard had no reason to lie, embellish, misunderstand or misremember what anyone said or did at the Murray that night and as a law enforcement officer, was a particularly reliable witness regarding what was said and done in such a high stress situation. More likely than not, Browning was angry and threatening towards Wulf, as Wulf and Leonard testified.

119. After removing his hand from Browning's shoulder, Wulf, who did not want to get into a fight, put his hands in his pockets and decided to look elsewhere for Pattison. However, before Wulf could move, Jenny Chambers lunged at him, slamming both her hands into his body, knocking him off-balance and into to the

nearby wall, where he fell to the floor. (Ex. 70). Jenny Chambers' action was the equivalent of a "sucker punch" – an unexpected and sudden attack.

120. As Wulf started to get up, Mike Chambers got between his wife and Wulf, aggressively grabbing Wulf's arm. Chambers wanted to move Wulf's focus to him and away from his wife. According to Wulf, Chambers called him "a fucking piece of shit" and saying Wulf was "trying to ruin his career and . . . shouldn't have said the things that [Wulf] did in the report as far as him wanting to shower with Lydia or sleep with other firefighters' wives" and "should not have been testifying" against Chambers. The two moved outside, where Chambers, according to Wulf, continued berating Wulf and reiterating the things he had already said. In response, Wulf testified that he said to Chambers, "I told the truth. I only said what I've heard you say. I'm not here to ruin anyone's career, and, on top of that, I'm not here to fight." By his account Wulf was stunned by the emotional violence shown towards him by Rivard and Browning, the physical violence inflicted upon him by Jenny Chambers and the emotional violence and threat of physical violence with which Mike Chambers was now confronting him. VI:880:4 – 883:8.

121. Wulf was trying to avoid having the situation degenerate into more physical violence. This confrontation was a larger and scarier reprise of his earlier encounter with Rivard. Wulf testified at hearing that he was amazed Chambers was not apologetic, saying that if the situation had been reversed and he or Pattison had attacked Mike Chambers, his reaction would have been different.

[M]y first reaction would not be to get in that person's face and berate them some more. It would have been more of, Oh, my God, Kiera's drunk – if that had happened and – I apologize, and let me buy you a beer or I'm taking her home.

Even if I didn't like that person, I would say, You and I don't like each other but that was wrong and I apologize. We are held to a higher standard being firemen, being officers in the fire department. We know better. Our conduct should be better and we are judged both off and on duty.

Q. Okay. At any point does he apologize?

A. No, not at all.

Q. About how long are you two out there?

A. Only a couple of minutes. The video is in slow motion so it gives the appearance that we're deciding lots of things but we really aren't. At this point in time, though, you can hear audible screams coming from inside the Murray Bar.

- Q. You heard that?
- A. I heard that, yes.
- Q. Okay. Do you and Mike ever reach, shall we say, a resolution out there at all?
- A. No, not whatsoever. And as the screams continue to grow inside the bar, I make the suggestion we should put this on hold and go back inside. Where he states, No, we are staying right here.
- Q. What are you thinking at that point?
- A. I'm a little fearful for what's going on in there, I'm fearful for Kiera.
- Q. Were you fearful for yourself?
- A. Oh, definitely – definitely. I mean, this is an extremely heated conversation as you see the siren or the lights, the police cars in the background are starting to come up at this point in time.
- Q. And what did you want to do at that point?
- A. I wanted to just leave this area.
- Q. Do you know what you're saying then?
- A. Not, it was all pretty much a one-dimensional conversation based off of Mike saying that I shouldn't have said what I did in my interview and me saying he probably shouldn't have been saying the things that he did.

VI:884:12 – 886:4.

122. For Wulf, it was a remarkably bad end to what started as a nice evening. The controversy over a comment about tattoos had somehow “slowly escalated and got completely out of control.” VI:887:8-12.

123. Shannon Browning testified at hearing that when Nathan Wulf arrived at the Ball, he said (to Browning or at least where Browning could hear him), “I’m going to get drunk.” VII:1127:17-19. This kind of remark would seem inconsistent with Wulf’s testimony about starting out to have a nice evening and having it turn into a nightmare. Mike Chambers’ report to David Fine and Lisa Hammer during one of his two investigative interviews on May 13, 2013, that at the Murray after the Ball, Seth Rivard came back inside after his confrontation with Nathan Wulf and reported that Wulf “was drunk,” Ex. 79, LIV\CAR126, likewise seems inconsistent with Wulf’s description of the evening.

124. Off-duty officer Leonard was asked about the state of intoxication of the participants in the incidents at the Murray. His answer was to the point.

- Q. I know it's been a couple of years, John, but do you recall having the impression at the time that any of these individuals were particularly intoxicated or anything?
- A. No. You know, that night we'd all been drinking, we were all having a good time but nobody was – to me, on either side of this, was heavily intoxicated or, you know, not able to handle themselves. Nobody was flat-out drunk.
- Q. Nothing stood out in your mind?
- A. No.
- Q. And obviously is it fair to say you've got training in detectives and those types of things.
- A. Yes, it is.

VIII:1222:9-21.

125. Chambers did not concede that he was angry and swearing at Wulf during their confrontation. Although Chambers appeared on the video to be making more aggressive arm gestures and body movements and being generally more physically active than Wulf, this does not necessarily establish that Chambers was behaving in a hostile and threatening manner, as Wulf testified. What is clear is that Chambers was telling Wulf he was wrong to report Chambers and Wulf was telling Chambers that he was only confirming what Chamber actually had said. The circumstances of this confrontation, even though Chambers may have commenced the confrontation with Wulf to protect his wife from what Chambers expected Wulf to do, became that as the confrontation continued Chambers animatedly argued, whether or not with threats and insults, that Wulf should not have cooperated in the investigation into Kristen Carlin's internal sex discrimination complaint. That was retaliation for good faith opposition to illegal discrimination.

126. What is also clear from the video is that after Chambers grabbed Wulf by the arm, and the two men left the Murray and interacted on the sidewalk outside, neither man responded violently to anything the other said or did. There were a number of body shifts and arm movements by each of them that could have been misread by the other as the beginning of an attack, triggering violence in response, but that did not happen. Both men maintained their poise and ended the confrontation without violence. The last moments of that exchange were briefly interrupted by the bartender, Cole Murphy, coming outside, then when a law enforcement vehicle began to approach, lights flashing. Soon policemen in uniform were entering the bar. Chambers and Wulf went back inside.

127. Before Jenny Chambers attacked Wulf, Kristen Carlin realized she needed to plug her cell phone in to charge, so she had to get her charger from her

car.¹³ She began to make her way from her location near the pool table up towards the bar and the door. Her counsel asked her about what happened next while showing her the bar security video of the interior of the Murray.

MR. BROWN: (To Ms. Wilson) So resume the video.

(Video running.)

BY MR. BROWN:

Q. Let me ask you, are you privy to what's being said at this point?

A. No.

(Video stopped.)

BY MR. BROWN:

Q. Okay.

MR. BROWN: (To Ms. Wilson) Resume the video.

(Video running.)

MR. BROWN: (To Ms. Wilson) Pause it.

BY MR. BROWN:

Q. Did you observe Nate being shoved back into the wall?

A. I saw Nate go down, he was already down, I didn't see who had pushed him down. I was – I'll be walking here shortly. I was trying to get to the door to go plug my phone in.

Q. Okay. We'll resume the video and we will pause it when you tell us when you come into the frame, okay?

(Video running.)

THE WITNESS: I'm right there behind Lance (indicating).

MR. BROWN: (To Ms. Wilson) And pause it, please.

(Video stopped.)

BY MR. BROWN:

Q. Who is Lance, for the record?

A. Lance Gray.

Q. Can you point him out?

A. Right there (indicating).

Q. And again, point you out.

A. Right here (indicating).

Q. Okay. Where is Jenny Chambers?

A. She's right there (indicating).

¹³ The argument that Carlin inconsistently reported initially that the first time she approached where Jenny Chambers was standing was when Wulf was pushed into the wall and went down, but now in her testimony she was approaching to get her cell phone charger is unpersuasive. Apparently she was in the process of getting up and coming to the door to go to her car and get the cell phone when Wulf was pushed.

MR. BROWN: (To Ms. Wilson) Okay, we'll resume the video.
(Video running.)

MR. BROWN: (To Ms. Wilson) Okay, so pause it.
(Video stopped.)

BY MR. BROWN:

Q. What did we – we is – did Jenny say anything to you there?

A. I remember her screaming at me saying that she read her husband's report and that it was bullshit and I was a fucking whore and a fucking cunt and she was going to kill me.

Q. Okay. And then what did you do – it's a little unclear, but what did she do to you there?

A. She struck me in the chest and then punched me in the face.

Q. And when you say she struck you in the chest, can you be more descriptive, like –

A. She just attacked me. I don't know if it was opened fist, closed fist, I mean, it happened –

Q. Had you said – did you say anything to her during that exchange?

A. No – no, I was shocked.

Q. Okay.

MR. BROWN: (To Ms. Wilson) Resume the tape.
(Video running.)

MR. BROWN: (To Ms. Wilson) Pause it.
(Video stopped.)

BY MR. BROWN:

Q. Now at this point, what's going on? She's no longer on you or on top of you. Is she continuing to say things?

A. Yes.

Q. Like what types of things?

A. The same things that she said initially, that I was a fucking whore, a fucking cunt, she was going to kill me, she read her husband's report, it was bullshit.

MR. BROWN: (To Ms. Wilson) Okay, resume.
(Video running.)

BY MR. BROWN:

Q. And what's going on right now?

A. I'm trying to exit.

Q. Okay. And what is she doing?

A. Harassing me.

(Video stopped.)

BY MR. BROWN:

Q. Okay. Did you – what is your state of mind at this time?

A. I was afraid.

MR. BROWN: (To Ms. Wilson) Resume.

(Video running.)

BY MR. BROWN:

Q. Okay, she goes outside.

And where are you in the frame? Do you see yourself anywhere? Do you know where you were?

A. I believe I was back at the corner trying to retrieve my jacket and my belongings.

Q. Okay.

MR. BROWN: (To Ms. Wilson) Pause – pause.

(Video stopped.)

III:663:1 – 666:20.

128. Ms. Chambers was forcibly removed from Carlin. Carlin, hurting and afraid at this point, got up and retreated back to where she had been sitting and collected her belongings as best she could. She tried to leave, at which point Ms. Chambers again hurled invectives at Carlin, calling her a whore and a cunt, threatening to kill her, and periodically attempted to break loose and attack Carlin again. Carlin stopped to apologize to the bartender for what had happened, and then realized Ms. Chambers had moved close to her once more, and, still enraged, was attempting to launch herself at Carlin once again. Other bar patrons moved in between the two, allowing Carlin to move away. When Ms. Chambers continued to scream at and try to attack her, Carlin called 911 and asked for help from the police. This call was placed at 12:30 AM on April 14, 2013.

129. The police arrived within minutes. An officer took Carlin outside to interview her. The two were sitting on the bench in front of the Murray, when Mike and Jenny Chambers appeared, about to go home. Ms. Chambers saw Carlin and went into attack mode again, yelling once more that she was going to kill Carlin, screaming that Carlin was a “fucking bitch” and a “fucking whore.” The officer who had been sitting with Carlin moved toward Ms. Chambers, attempting to calm her and eventually having to restrain her. Ms. Chambers was screaming that she was going to run Carlin over with her car, and now two police officers tried to control her. When Ms. Chambers was finally subdued, the officers let her husband take her home. Carlin and her fiancé also went home.

130. An hour after she returned home, Jenny Chambers sent Carlin the following text message, “You fucking hoe bag, you better watch the fuck out you will get yours!” A few hours later, around 6:30 AM on April 14, Jenny Chambers attached the following comment to a Facebook photo of Carlin: “You really should not be proud of look like such a whore Kristen [sic].” Tr. 673-74; attachments to April 17, 2013 Order of Protection; attachments to April 16, 2013 Verified Complaint.

131. The events surrounding Jenny Chambers’ assaults on Wulf and on Carlin were recorded on security video by cameras at the Murray. (Ex. 70). The next day, Sunday, April 14, the bartender at the Murray offered Carlin a portion of the security videos. She accepted. Wulf came over to Carlin’s residence and made a copy of a segment of the security videos on his cell phone. Carlin only remembered showing Wulf and her mother the video. He called Schoenen and left a voice-mail that same day, asking the chief to return the call. Schoenen called back sometime late that night, but did not reach Wulf.

132. On Monday, April 15, Kristen Carlin filed a sworn petition with the Livingston City Court (Cause No. CV-OP-2013-009) for a temporary order of protection against Jenny Chambers. The petition was granted on April 17, 2013. Carlin also filed criminal and civil complaints against Jenny Chambers. Carlin also sent an email to David Fine, early (7:23 a.m.) on Monday, April 15, describing the physical assault by Jenny Chambers and asking for help. She ended the email by asking, “How do I know Captain Chambers did not provoke that attack? How do I know I am safe at LFR?” E x. 33. Fine was on vacation. There was no immediate response.

133. Monday, April 15, 2013 Wulf asked to meet with Chief Schoenen and the EMS Director, Captain Kevin Harrington. Wulf went to their office and began to say he needed to talk about some issues. Before he could even explain, Schoenen “put his hands up, saying, ‘I already know what happened off city property.’” Wulf spent close to an hour explaining what had happened, talking about Mike Chambers getting two junior employees and his wife “so fired up over a complaint that originated from Carlin” that Browning had said he was “going to fucking kill [him];” Rivard had gotten in his face about the matter; and Chambers’ wife had knocked Wulf to the ground and assaulted Carlin. Wulf showed Schoenen and Harrington the video and requested that Schoenen bring Chambers in for a discussion. According to Wulf, Schoenen said the City was “not going to help.” Ex. 29; Tr. 899-903. According to the City, with Fine on vacation, and the entire incident happening off city property and involving off duty employees, Schoenen felt he needed to consult with Meece, and probably Fine as well.

134. Wulf's complaint led Schoenen to consult City Manager Ed Meece, who indicated they needed to wait until Fine returned from vacation. Wulf began to talk about what had happened to others and began to show other employees the security video segments he had on his cell phone. Wulf convincingly testified that his goal, in summary, was to get a dialogue with Chambers, and perhaps Rivard and Browning, too, with Schoenen or Fine or some other authority figure present to control the interaction, and explore how to resolve the situation. His employer was not immediately interested in pursuing that approach.

135. On Tuesday, April 16, Chambers met with Schoenen and made a verbal complaint about Wulf, alleging that Wulf was creating a hostile work environment for Chambers by showing people the security videos of the Murray incidents after the Ball. Chambers asserted Carlin was also showing the videos. Ex. 79, LIV\CAR130. Schoenen was not happy about the security videos being shown to LFR employees.

136. On that same day, Wulf sent an e-mail to David Fine complaining of retaliation by Chambers and asking for the chance to discuss it at Fine's earliest opportunity. Ex. 34. Fine was on vacation. There was no immediate response.

137. Schoenen talked to City Manager Meece about Chambers' complaint about being harassed and possibly subjected to a hostile work environment. Meece decided the complaint had merit and directed Schoenen to give Wulf a direct order not to show the video or talk about the Murray incident at work. Chambers' harassment claim was dubious. Although showing the videos at work had no conceivable work-related purpose and might interrupt and interfere with the conduct of business at work, that was not the stated basis for the order given to Schoenen.

138. Wulf also sought guidance from the union about whether he could expect any support in this matter. He candidly testified that his real fear was that Rivard was union president, and might try to rouse the union in support of Chambers. Given his confrontation with Rivard on Saturday night, that fear was reasonable. Wulf showed the portions of the security videos he had on his cell phone to Patty Walker, vice president of the local, and Jacob DeVries the secretary. Wulf was informed that the union would stay neutral unless anybody's due process was violated, which he correctly understood to mean that the union would not be involved if everyone "played by the rules." Wulf also showed the video on his cell phone to City of Livingston Police Officer Harris, when Harris took Wulf's statement. Wulf told Officer Harris he did not want to press charges against Jenny Chambers.

139. Shortly after 5:00 p.m. on Tuesday, April 16, Chief Schoenen called Wulf and informed him that Mike Chambers had met with Schoenen and that

Chambers was asserting that Wulf's sharing of a portion of the security video was creating a hostile work environment for Chambers. Schoenen told Wulf not to show the video at all, to anybody at the fire department or on city grounds, and not to discuss the incident with anyone.

140. On April 17, Schoenen pulled Carlin out of her paramedic class and downstairs into his office. He told her that Chambers had complained that she was creating a hostile work environment by showing the video. Carlin told him that she did not have a copy of the video on her cell phone and had not brought a copy onto City property. He ordered Carlin not to show the video and stated that, if she did, she would face discipline. Other reserves reported in their interviews that Carlin had shown them the video off-premises.

141. Fine returned to the office on April 22, 2013, and Carlin made a verbal complaint to him about the events at the Murray and followed up with an email. On April 23, Wulf sent Fine a second email asking for an investigation of Chambers for retaliation. The City responded on April 24, advising both Kristen Carlin and Nathan Wulf that their respective claims of retaliation would be investigated. In the letter to Carlin, Lisa Hammer (whose name was on both letters) cited Jenny Chamber's physical attack upon her as "retaliation from a non-employee of the City." Ex. 38, Carlin letter. Both letters included typed requests for information about the alleged retaliation. Ex. 38, both letters and enclosures.

142. On April 24, Schoenen, Fine and Meece conferred about how to reduce tension within LFR and facilitate investigation into the retaliation complaints. Tr. 277-78. Keeping the reserves away from B-Shift, and particularly Mike Chambers seemed important. Fine objected, but Meece approved the separation and directed Schoenen to implement it. Tr. 288-91; Tr. 461; Tr. 1376; Ex. 74. Schoenen directed Captain Jacobsen to send an e-mail to all reserve firefighters, including Carlin, directing that, "effective immediately reserves are to refrain from doing ride along times, exercising or doing clinical time when B-shift is on duty. I would advise each of you to stop in and get copies of the shift calendars so that you know is on at any given day." The e-mail directed questions to Chief Schoenen. It was sent at 6:32 p.m. on April 24, 2013.

143. The City's directive regarding the reserves' separation from B-Shift remained in force from April 24 to May 29, 2013, while the City interviewed LFR employees in connection with Carlin/Wulf internal complaints of retaliation and issued its report on those complaints. Many of the reserves and some full-time firefighters thought this directive seemed punitive toward the reserves. Some reserves and firefighters did not view it that way. Some reserves and firefighters never found out about the directive until their investigative interviews.

144. This directive decreased reserves' opportunities to earn money, to gain ride-along experience and accrue monthly service hours, to gain clinical experience and accrue needed clinical hours; and to use the LFR's exercise equipment by 25%.

145. On paper, the directive had a disproportionate adverse affect on seven of the eight women (87.5%) employed at the LFR and 11 of the 25 men (44%) employed there, while having no effect on the male employees – Chambers, Rivard and Browning – who were the subject of the pending retaliation complaints. There was no evidence the City looked for or considered any alternatives that might have a less disproportionate effect on female LFR employees. The directive could be seen as collective punishment or segregation of the reserves. On paper, in terms of access to facilities, it reduced the access of the reserves to resources and facilities necessary to do their jobs and diminished their usual privileges and employment opportunities. Ex. 42 (CP-208); Ex. 43 (CP-212); Ex. 46 (CP-223); Tr. 89-94; Tr. 679-80. In reality, the evidence indicated that in April 2013, the only reserve regularly interacting with B-Shift on-duty was Jerome Rusdal, who exercised with them. The directive thus had very little actual impact upon the current activities of the reserves, and the City reasonably concluded that this directive was more workable than removing all three members of B-Shift from their duties until the investigations were completed.

146. Schoenen received some inquiries about the directive. He had a second directive sent out by Jacobsen assuring the reserves that was not the purpose and the reserves were not accused of any wrongdoing and were not being punished.

147. On April 29, 2013 physical exams for the firefighters were scheduled at the fire station. Wulf's exam was scheduled for 10 AM., Chambers' for 11 AM., and Browning's for 11:20 AM. Firefighters were instructed to "keep to the schedule" to avoid a backlog, although historically, nobody had ever paid much attention to the schedule. Ex. 40. Chambers came in before 10:00 a.m., called Browning and told him that nobody else was there and to come in and get a blood draw and get the physical done early. B-Shift was not on duty that day. Browning had his two little girls, ages 3 and 5, that day and brought them with him. Chambers and Browning (with his children) were already there and waiting when Wulf arrived. Wulf left and came back later. In the words of Seth Rivard, testifying regarding a brief and unpleasant comment he made to Carlin at the 2012 City Christmas Party, "this is sounding a bit like grade school," but Wulf asserted that this was an intimidation tactic and was meant to cause or could have led to a fight between the men. This was wildly unlikely in light of Browning bringing his small children with him to the location for the blood draws and physicals.

148. On April 30, 2013, Carlin and Wulf filed separate retaliation complaints with the Montana Department of Labor's Human Rights Bureau. The City received copies of the complaints on May 1, 2013.

149. The City also decided to investigate Chambers' alleged harassing comments toward firefighter Lydia Juhnke. The City issued an "Employee Notice of Administrative Investigation" to Chambers on May 10, 2013. The two investigations proceeding simultaneously, with separate interviews of many of the same employees for each investigation.

150. The decision to direct Wulf and Carlin not to show the videos, with no written complaint from Chambers and no investigation, was not justifiable in terms of Chambers' hostile environment claim. Ex. 22. Indeed, the City, through Jacobsen, at Schoenen's direction, and through Schoenen, at Meece's direction, treated Chambers' verbal hostile work environment complaint differently and more favorably than the written internal harassment complaint of Carlin and the subsequent written retaliation complaints of Carlin and Wulf, considering Chambers' claim and citing it to Carlin and Wulf as a reason for the directions they were given. However, directions not to show the videos at work or to co-workers, and not to talk to co-workers about the incidents at work, were otherwise reasonable and appropriate because display of the bar security videos and talk about the incidents at work had no possible work-related purpose and was likely to interrupt and interfere with the conduct of business at work. Similar directions regarding talking to co-workers about the incidents at the Murray were given to the B-Shift respondents.

151. Failure to follow an order by the Chief was insubordination under LFR regulations. Ex. 8, Sec. 7 Definitions, "Insubordination" (CP-050). Insubordination could result in "disciplinary action up to and including termination" under the City's personnel policies. Ex. 71, §14.7.B. "Employees must first follow the order and then turn to available grievance procedures if they feel the order was improper." Ex. 71, §14.7.C. Both Carlin and Wulf curtailed their showing of the videos. The linkage of the order with Chambers' bogus hostile environment claim, and the attempt also to prevent only Carlin and Wulf from talking to everybody about the incidents established that the City acted with retaliatory animus in ordering Carlin and Wulf not to show the videos at work or to co-workers. The City did defend on the basis of business necessity. Although giving a false reason as well as a true reason for an alleged retaliatory act can indicate retaliatory intent, the City's intent here was not retaliatory in trying to reduce if not eliminate the gossip and rumor circulating about the events at the Murray.

152. There is no credible evidence that the City considered taking any action to protect Kristen Carlin while she was at the firehouse or on city property from

possible risks posed to her by Jenny Chambers. Her questions about her safety put the City on notice of her concern. Fortunately, no further attacks upon her occurred, but her emotional distress would more likely than not have been relieved substantially had the City adopted some measures to protect Carlin in the event that Ms. Chambers arrived on the premises in the same murderous frame of mind as she had been in at the Murray on the 13th. There was no reason not to take that step. Jenny Chambers' attack on Carlin was vicious and unprovoked, except by retaliatory animus due to Carlin's opposition to sex discrimination, which is illegal under the Montana Human Rights Act. Not the attack itself, but the City's failure to take any action to protect her thereafter was retaliatory and harmful to Carlin. But for the City's retaliatory non-action, Kristen Carlin's emotional distress would have been significantly diminished and relieved. Because of this post attack indifference to Carlin's situation, the City is jointly and severally liable with Jenny Chambers for the damages wrought by the attack upon Carlin.

153. The City began its interviews of LFR employees on the Carlin/Wulf retaliation complaints on May 6, 2013, and completed them on May 22 with an interview of Chief Schoenen, in conjunction with interviews on the Chambers hostile environment investigation. Exs. 29-32, 42-51, 79, 201-220. The interviews were relatively narrowly focused and relatively brief. The interviewers (Lisa Hammer and David Fine, for the most part) were zeroing in, for the retaliation claims, for verifying what was said and done, whether it was on City property and whether it was on duty, and then within those confines, whether it might be retaliatory. For the hostile environment claims, the interviewers were seeking confirmation of Mike Chambers making inappropriate statements to Lydia Juhnke, thereby subjecting other employees to a hostile work environment. They looked for people who heard such statements on the specific date at a specific place around a specific time, and who could identify who else was present. They had very limited success. General statements of what Chambers regularly or often said were again what the investigators got. Specifics were few and far between. Subjects might say that "even now," or within weeks before "now," Mike Chambers was still making inappropriate statements to Lydia Juhnke, but no one could specify details of where, when and in front of whom any such statements had been made.

154. In May, Carlin signed up to be present as a reserve firefighter at an outside assignment, a motocross event which would take place on May 18, 2013. Reserves were encouraged to accept those types of assignments, and were paid to do so. Sometime after she signed up, a firefighter originally assigned to the event withdrew his name. Following the overtime board maintained by the City pursuant to the CBA, Rivard was the next firefighter to serve at this motocross. Rivard expressed a concern to Schoenen that if he and Carlin were both present, with her retaliation complaint pending, it could lead to further conflict or complaints.

Schoenen was concerned that problems might occur because of the ongoing investigation. As a result, Schoenen advised Carlin that Rivard was scheduled for the event and recommended that she not attend. Carlin agreed with Schoenen that it would not be a good idea for her to attend, nonetheless, she did not like it. Carlin complied. Tr. 308-309; Tr. 685-87. Asked how doing this made her feel, she said, "Like crap." More likely than not, this was a true statement of how she felt. Nonetheless, Schoenen's request was reasonable and for the protection of Carlin as well as of Rivard and the City. Schoenen's request was not retaliatory.

155. Within days after the Motocross event, Seth Rivard asked Schoenen if his July 1, 2013, shift assignment was with Wulf, and Schoenen confirmed it would be. Rivard asked to change his assignment. Schoenen granted the request. This was a reasonable request under the circumstances. Wulf's umbrage at Rivard's request and it being granted was suspiciously vindictive. Rivard's conduct at the Murray was part of what Wulf was pursuing in his internal complaint. After Rivard was relieved of reassignment to Wulf, Wulf filed an amended complaint that, among other things, named Rivard as an additional respondent.

156. When he was interviewed on May 13, 2013, Rivard described his actions at the Murray as "taking it upon myself to ask Nate to come outside and have a conversation with me. . . a conversation of 'we need to move on, there's a better way to do things that just take shots at people'. . . that whatever rift was there could somewhat be fixed by, 'let's just get along,' a kumbaya kind of thing." Rivard denied "absolutely" telling Wulf he didn't belong in the union. He could not recall whether he called him "a piece of shit" or not, but reacted when asked about that and challenged how that would pertain to the city's investigation. He claimed he intended the conversation with Wulf to "start some sort of healing process." Ex. 220, pp. 2-4. Rivard's avoidance of admitting what he had actually said was transparent and unhelpful.

157. In light of the substantial and credible evidence regarding the confrontation, Rivard's lack of recollection about aspects of it and about his alleged motive, were not credible. His entire description of approaching Wulf to tell him of the need to move on, to fix the rift, to just get along, to start a "healing process" and "a kumbaya kind of thing" was a fiction. By May 14, 2013, the City had sufficient information to recognize that Rivard was not truthful during his investigative interview the day before, and that Rivard had acted, in a rage, to coerce or intimidate Wulf at the Murray because Wulf had given an interview supporting Kristen Carlin's complaint of discrimination against Chambers. The city investigators, David Fine and Lisa Hammer, as well as City Attorney Bruce Becker, had interviewed Nate Wulf, Lance Gray, John Leonard, and Kristen Carlin. Exs. 29, 31, 32, 49. Nonetheless, faced with the conflicting testimony, the City elected to take no action on Wulf's complaint against Rivard.

158. The City took action regarding Rivard's conduct at the Murray for purposes other than determining the validity of the retaliation claim of Wulf. On May 28, 2013, City Manager Ed Meece sent a letter to Rivard as union president. Ex. 221. The letter recapitulated the City's investigation into employee complaints of possible retaliation by other co-workers, noting that witness testimony indicated that a member of the IAFF #630 leadership team publicly criticized a co-worker (and IAFF member) for their participation in a legitimate administrative investigation. The letter went on to say that any attempt by IAFF #630 leadership, or other department staff, to interfere with or otherwise obstruct, an official administrative investigation into reported employee misconduct was a very serious matter, with potential disciplinary/legal implications for anyone that engages in such conduct. The letter went on to advise that the City would be changing its procedures and would "ask questions regarding attempts to coerce, intimidate, or threaten, by other department staff, in all of our internal investigations." The letter stated that "[a]ny evidence that such behavior has occurred will lead to the appropriate available administrative and/or legal action - by the Administration." The City took no action against Rivard for his retaliatory conduct towards Wulf at the Murray, despite the fact that it arguably violated city policy. Ex. 71, §§ 13.2.C.3-4, 14.6.D. The City took no action against Rivard for making false statements during his investigative interview on May 13, despite the fact that this behavior arguably violated policy. Ex. 8, §§ 16.6, 16.8. The City also took no action on the alleged threat that Wulf didn't belong in the union. But the City sent a shot across the union's bow warning that union efforts to steer members' evidence in an internal investigation would not be tolerated in the future. These actions are not directly contradictory, but they clash sufficiently to establish, with the rest of the evidence about what Rivard did and said in the confrontation, to make it more likely than not that the City had a retaliatory motive in finding no merit in Wulf's complaint regarding the confrontation with Rivard at the Murray.

159. The day after Meece sent his letter to Rivard, the City issued its reports on the investigation by David Fine and Lisa Hammer into the retaliation complaints of Kristen Carlin and Nate Wulf, which City Manager Meece had an opportunity to review and approve. The City determined that Chambers, Rivard, Browning and the "city administration" did not retaliate against either Carlin or Wulf.¹⁴ Ex. 53, 54.

160. The City investigators interviewed Lydia Juhnke in both investigations. Exhibits 217 and 218. Ex. 218 addressed the investigation into Chambers' alleged harassing comments to her. She told the investigators she had never made a complaint to Marlowe. She told them that she did remember Chambers "saying something about the shower, I couldn't even tell you specifically what he said," She said she took it as a joke, that they were friends, and that she didn't read anything

¹⁴ The City considered Jenny Chambers outside its authority to take any action.

into it. Ex. 218, LIV\CAR66. She went on to say again that she “never made a complaint with Andy” and she “absolutely never put anything in writing as far as a complaint.” She said, “It’s not like he makes those comments all the time. He did make that comment [singular].” Id., LIV\CAR67

161. As previously noted, the original investigative interviews about what Chambers regularly said, whether regarding Lydia Juhnke or women in fire service or the reserves, were replete with descriptions that left open for doubt whether the firefighter reporting on Chambers was talking about what he heard Chambers say or what he heard others say Chambers said. Now, on the second investigation, the additional problem was that Lydia Juhnke denied that Chambers had been making multiple inappropriate suggestive comments to her over the years. She reported that he once said something about a shower, and that was it. The need for actual identification of time, place and persons present witnessing such alleged statements was even more critical.

162. In his original statement, on April 1, 2013, Wulf did not suggest that he had heard or at least heard about Lydia Juhnke ever reporting to any of her supervisors over the years any inappropriate suggestive comments made to her by Chambers. Ex. 17. In fairness, he only mentioned Lydia Juhnke briefly, with the line about “I’d be rich” with a nickel for every inappropriate suggestive comment made to her by Chambers, and then, when asked if he ever heard Chambers make any “women shouldn’t be in the fire service” comments to her, he responded that he only heard Chambers make inappropriate suggestive comments to her. Id.

But in his second interview, on May 15, 2013, he told the City investigators that the inappropriate suggestive comments were made “the majority of the time” when she would tell Chambers “in mixed company, within the department” that she was going to take a shower (SOP to let the captain on duty know), for years (“a minimum of two years,” “a number of years,” “I heard it personally in 2013, 2012, 2011, and somewhere earlier,” etc.) Ex. 50. He also told interviewers that “At one point in time, Andy Marlowe and I discussed this, and he had admitted that Lydia had approached him on a number of occasions, saying, ‘I really wish he wouldn’t do that. That makes me uncomfortable.’” On April 10, 2013, in his first interview, Marlowe had said that Lydia Juhnke “about two weeks ago” brought up “the shower and these comments,” and his account involved that one single report, with no mention at all of any series of such reports over the years. Ex. 21, CP-108 & 109. Wulf’s statements, one more time, painted a larger and darker picture of Chambers than the statements of the rest of the firefighters, particularly Marlowe’s alleged statements to Wulf about alleged statements that Lydia Juhnke had made to Marlowe on a number of occasions.

163. At the hearing, Lydia Juhnke was called by the City to testify, and she addressed the issue of what Chambers said to her and how she took it.

- Q. You're aware in this matter that some of your co-workers have be [sic] concerned for you because of jokes that have been made around the station concerning you; is that right?
- A. That's what I hear.
- Q. Do you share that concern?
- A. I don't.
- Q. There's been some concern that Mr. Chambers has made statements to you that are offensive.
- A. I never perceived anything as offensive.
- Q. And these statements have involved comments about you need help in the shower, that type of thing. Have you heard those kinds of statements?
- A. I believe the comment was made, I can't tell you exactly what it was, it was so long ago, and at the time it was nothing more than a joke, and it was only once that that happened that I can remember.
- Q. Do you have any sense in time as to when that happened?
- A. I don't.
- Q. Did any of your male co-workers approach you and express that they were uncomfortable with the statement?
- A. No one came to me, it was more just gossip around the station about how they, you know, I guess, were upset.
- Q. But no one expressed that directly to you.
- A. No.
- Q. What is your relationship with Mike Chambers?
- A. We're friends, co-workers.
- Q. Do you have any reservations working with him or on his shift?
- A. No.
- Q. Has he ever made you feel that you're not wanted on his shift?
- A. Never.

IX:1284:16 – 1285:24.

164. A number of male employees of LFR agreed that they thought Chambers had been making inappropriate suggestive comments to Lydia Juhnke for years. They often agreed that they had heard Chambers make such comments on one or two, or

perhaps four occasions, but none of them could identify a specific place, date and time and other persons present. On May 29, 2013, Fine issued a “Notice of Findings From Administrative Investigation” which concluded that Chambers had made inappropriate comments to Juhnke that were cause for discipline. Ex. 55. Chambers was issued a Letter of Reprimand, which is the second step in the City’s progressive discipline policy in the CBA. (Ex. 56). The reprimand also required Chambers to attend and pay for sexual harassment training and that Chambers had the right to grieve the discipline. Id.

165. Chambers chose to grieve the discipline and the grievance was then reviewed by City Manager Meece. After his review Meece concluded that the discipline of Chambers should be overturned due to the fact that the investigation could not cite to specific dates and comments upon which to base the Letter of Discipline. Ex. 57. Meece further concluded that there were also mitigating factors to overturn the Reprimand. Meece’s conclusions and action were not retaliatory. It made no sense for the City to distrust the statements of Lydia Juhnke. Because she was allegedly too shy, too quiet, too timid, too private to speak up for herself, or because she wouldn’t make waves? She certainly had no problem standing up for herself and making waves when LFR proposed to assign her to her ex-husband’s shift on what looked to her like a permanent basis. She resolved that problem at once, with one letter, dated November 4, 2013. Ex. 125 (also labeled Ex. 316). Lydia Juhnke knew better than anyone else what Chambers had said to her over the years. Her testimony was and certainly should have been conclusive on the matter, under these circumstances.

166. After Chambers’ reprimand was overturned, Chief Schoenen met with Wulf about the decision. On August 15, Wulf was instructed in writing that,

To avoid this situation in the future, you should inform the harasser that you want the unwelcome behavior to stop. If you fear it will jeopardize your physical safety or your job document the harassment. Keep a journal of harassment including what happened, where, on what date, and who else was present. Do this as soon as possible after the incident and note the date and time you are writing it down. Also, report any harassment promptly to your supervisor by following the city’s internal complaint policy.

Exhibit 58, Schoenen 8/15/13 email. There is no evidence any other member of the LFR was so advised. On the other hand, Wulf, who had taken the lead in reporting Chambers alleged harassment by the sheer volume of his statements, was simply being asked to make the record that would provide LFR with the information it

needed effectively to discipline Chambers. The advice, under these circumstances, was therefore reasonable and not retaliatory. In other circumstances, it might be inappropriate to the extreme, but under these facts, it was reasonable.

167. The City determined that Carlin and Wulf's claims of retaliation could not be sustained because the assault on each of them at the Murray was by Jenny Chambers and was not caused by the city or any of its employees. Ex. 53. This is a valid determination and a valid defense herein, for the City and its minions. It is very likely that Mike Chambers disclosed the nature of his discipline, the identity of the complainant, and his own views that he was innocent of any illegal discrimination against women. It is also clear that he counseled his spouse to leave everyone alone at the Ball and the Murray. It is also clear that he had no reason to expect his spouse to explode in murderous rage. The theory espoused by Wulf that Chambers engaged in a Machiavellian plot to inflame the emotions of his spouse and subordinates and aim them at Carlin and Wulf like exploding drones is interesting, but credits Chambers with far more power than they have proved that he exercised. Neither love of a spouse nor loyalty of shift members gave Chambers the power to use his spouse and friends as weapons, nor does the evidence prove either that he did so or that he would have done so if he could have done so.

168. The physical assaults, screaming, threats, and insulting text messages and Facebook comments by Jenny Chambers caused physical injury to Kristen Carlin. They also caused Carlin to fear for her own personal safety and that of her children. This fear was sufficient to compel Carlin to file a petition for an order of protection, which was granted on April 17, 2013, to seek unsuccessfully for some protection at work from the City, and that fear continued in effect through the date of the hearing. The retaliatory acts of Jenny Chambers were coupled with the retaliatory actions taken by the City, which failed and refused to act upon her requests for protection after the assault, wrongly found that her retaliation claims were all lacking in merit and, for an invalid reason (Chambers unwritten hostile environment claim) threatened her with discipline unless she stopped showing a video and talking to others about her claims and about the events at the Murray and after. All of these events caused Carlin fear for her safety at work, fear for her job, embarrassment, humiliation, anger, resentment, depression and ongoing stress, all seriously aggravated by the knowledge that City tacitly endorsed the actions of the offenders, ultimately deciding that she had no valid claims against it or any of her fellow employees. She lost interest in working for the City of Livingston as a reserve firefighter and lost her commitment to obtaining her paramedic license for that purpose, as well as for the purpose of advancing her career. By the time of the hearing, Carlin had decided that she would not make any report of discrimination or retaliation by Chambers or anyone else again, due to her experiences in having done so in 2013.

169. The events which have transpired since Nate Wulf was interviewed on April 1, 2013 regarding the Carlin complaint against Chambers (specifically the adverse actions taken against him since Chambers was cited on April 10 for violating city policy) have had substantial adverse affects on Wulf. He has suffered an unexpected physical attack by Jenny Chambers, his coworkers' rage about his refusal to lie in a city investigation or to support discriminatory behaviors, threats of discipline on the basis of oral complaint with little to no merit, made outside city procedure and to which he was given no opportunity to respond. Rivard made an attempt to terminate the employment of a member of his family (Pattison) with the reserves. His trust and confidence in certain firefighters – individuals upon whom he has to depend on in doing his job – has been greatly damaged, leaving residual and ongoing concerns for his personal safety on the job. His satisfaction with and his commitment to his job have been impaired. He has struggled with emotional and mental stress on the job – not present before these events – which has interfered with his personal life and caused him to be more distant and removed from his family. He now questions seriously whether he should have spoken up in the first place and whether he would do so in the future.

170. Jenny Chambers' attacks upon Carlin and Wulf were entirely motivated by retaliatory rage that Carlin filed a complaint against her husband for sex discrimination in employment and that Wulf encouraged and supported that complaint. Both Carlin and Wulf, as already noted, were at that point opposing illegal discrimination in good faith. Therefore, Jenny Chambers' attacks upon them were illegal retaliation against them for their opposition to what they saw as illegal discrimination in employment because of sex.¹⁵ Jenny Chambers is liable to Carlin for \$25,000.00, with the City jointly and severally liable thereto (see Findings 179 and 180). Jenny Chambers is liable to Nathan Wulf for \$5,000.00, with the City jointly and severally liable thereto (see following Findings for reasons for joint and several liability).

171. The City's reports – dismissing Wulf's and Carlin's internal complaints and taking no action against Rivard, Chambers, Browning or the "city

¹⁵ Jenny Chambers' defense that she was neither the employer nor an agent or employee of that employer is factually sound, but legally irrelevant. Retaliation is a form of illegal discrimination that does not depend upon the relationship (or lack thereof) between the charging party and the alleged retaliator. Proof of the act of retaliation, its adversity to the target and of the retaliatory motive establish the liability, without regard to the relationship or lack of same between the parties. Mont. Code Ann. § 49-2-301. "It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because the individual has opposed any practices forbidden under this chapter or because the individual has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter."

administration” for retaliation – were copied to the personnel files of Chambers, Browning and Rivard. Tr. 1489, 1146-47. The reports were also copied to the personnel files of Carlin and Wulf. Exs. 53, 54.

172. The City’s report of May 29, 2013 communicated to Nate Wulf and Kristen Carlin that, if somebody files an internal complaint of discrimination and gives a witness statement supporting such a complaint, or files a human rights charge, then city policy prohibiting retaliation against that person might not be enforced. Moreover, city policy prohibiting false statements made during its investigative interviews might not be enforced. Additionally, efforts to coerce or intimidate the person filing the complaint – including threats of physical violence – might be tolerated. Complaints against the person filing the complaint, made outside the channels of ordinary city procedures, might be considered and acted upon. These are retaliatory messages.

173. In a union meeting that also occurred some time in the summer of 2013, Seth Rivard suggested getting rid of some of the reserve firefighters. He singled out Kristen Carlin and Kiera Pattison. Rivard claimed this was due to Carlin’s and Pattison’s level of participation in the program. Tr. 940-41. Records furnished by the City indicated that a number of reserves, other than Carlin or Pattison, had lower levels of participation than either of those two women. Exs. 65, 66. This was also retaliatory towards Carlin, and towards Wulf, who was in a relationship with Pattison. No action was taken, and therefore the damages awarded in other findings are sufficient and proper, but Rivard’s retaliatory animus is manifest. The chilling effect of the attempt is clear. The relation between the City’s failure to analyze and review (see following Finding) more likely than not caused or contributed to Rivard’s actions taken upon his retaliatory animus.

174. There is no evidence that prior to November or December, 2013, the City ever analyzed LFR operations concerning its reserve firefighters in terms of compliance with state nondiscrimination laws. There is also no evidence that, as of 2013, the City had ever reviewed its personnel practices towards the reserve firefighters to ensure compliance with state nondiscrimination policies and its guarantee of equal employment opportunities. David Fine testified at the hearing that reserves were not invited to the training on preventing discrimination in the workplace that the City conducted in 2012, that he had no knowledge if any were ever provided with a copy of city personnel policies, and that at least some reserves did not even have personnel files. Tr. 1250-52; Ex. 106. These failures must be remedied, and, had they not occurred, at least some of the illegal retaliation in this case might have been avoided. For the reasons stated in this Finding and Findings 172 and 173, the City is found to have joint and several liability with the individual respondents on the awards herein, as stated in other Findings.

175. LFR's Fire Chief has the authority to change the shifts the firefighters work, pursuant to the CBA. On October 29, 2013 Rivard was again assigned to Wulf's shift (effective at later date). Rivard asked Schoenen if he could be reassigned because he did not want to work with Wulf. Further, Rivard believed that a transfer to another shift would place him in a better position for a promotion since Wulf had named Rivard in his retaliation complaint and Wulf's added responsibility to teach a paramedic class would not give Rivard the experience he wanted for his career advancement. Schoenen granted Rivard's request. This was reasonable and not retaliatory.

176. Juhnke was also assigned to Wulf's shift. Juhnke and Wulf were divorced and she did not want to work with Wulf, based upon their past history of interactions since the divorce when he was her direct supervisor. On November 4, 2013, Juhnke asked to be reassigned and Schoenen granted her request. This was reasonable and not retaliatory.

177. Due to both of Wulf's new shift firefighters being released from their assignments, Schoenen decided not to make any shift changes. He based his decision of Section IV of the CBA, which gives the Employer the exclusive rights amongst other things to: "determine the personnel, methods, means, organizational structure job classifications, and facilities by which operations are conducted . . ." (CBA Article IV, Section 4.1(F)). This was not retaliatory.

178. On May 29, 2013, the City issued its reports on the investigation by Fine and Lisa Hammer into the retaliation complaints of Nathan Wulf, after City Manager Meece had an opportunity to review and approve. The City determined that Chambers, Rivard and the "city administration" did not retaliate against either Wulf.¹⁶ This was erroneous, and retaliatory, with regard to Chambers and Rivard, in failing to recognize its failure to perform its affirmative duties under Mont. Code Ann. §§ 49-3-201 and 49-3-205 of the Governmental Code of Fair Practices and its failure to apply a consistent analysis to Rivard's conduct at the Murray as it applied in warning the union against coercion attempts in internal City investigations. For those failures, the City is jointly liable with the individual employee respondents (Mike Chambers and Seth Rivard) for their illegal retaliation and harm thereby sustained by Nate Wulf at the Murray on April 13-14, 2013. The damages for which the City is jointly and severally liable are those stated for those individual employee respondents, Rivard and Mike Chambers. No additional damages arise from these failures, nor from the failure to acknowledge those failures.

¹⁶ The City properly considered Jenny Chambers outside its authority. The City properly found no retaliation by Shannon Browning.

179. The City also determined with regard to Carlin and Wulf that it specifically was not responsible for any alleged retaliation arising out of the conduct of Jenny Chambers during and after the assault on Carlin at the Murray because Jenny Chambers was not an employee of the City and no City employees had any responsibility for it. With regard to Rivard's conduct at the Murray, that could have caused or contributed to Jenny Chambers' conduct, since some or all of that part of the confrontation between Rivard and Wulf was inside the Murray and within Jenny Chambers' view. This places Carlin within the ambit of Finding 178. Also, the City failed and refused to take action to protect Carlin after Jenny Chambers' retaliatory acts at the Murray and later than night, as she had sufficiently given notice she wanted. Also, the City failed to acknowledge its liability for those inactions. The damages for the retaliatory failure to protect and the retaliatory failure to admit that retaliatory failure are remedied by making the City jointly and severally liable for Carlin's damages from Jenny Chambers' retaliation against her, having effectively ratified it afterwards by washing its hands of it.

180. The City's reports – dismissing Wulf's and Carlin's internal complaints and failing to take any action against Rivard, Chambers, Browning or the "city administration" for retaliation – were copied to the personnel files of Chambers, Browning and Rivard, and sent the message to them that they were "exonerated." The reports were also copied to the personnel files of Carlin and Wulf. This actions require corrections with regard to the files of Chambers, Rivard, Carlin and Wulf. Together with the rest of the order, this is a reasonable and appropriate remedy for this failure, together with training of Rivard and Mike Chambers and such requirements to change practice and procedure to avoid any future retaliatory recurrences as the Montana Human Rights Bureau may direct, including a permanent injunction against such retaliation.

181. On November 19, 2013, Schoenen initiated an investigation against Wulf for violating LFR policy (specifically, leaving the station without a Captain present on November 9, 2013). (Ex. 61). Schoenen dismissed the complaint as unfounded. The investigation and determination were not retaliatory.

182. In December, 2013 Wulf filed a complaint against Chambers alleging retaliation by manipulating the holiday schedule so that Wulf would have to work the Christmas holidays two years in a row. Wulf thought Chambers was not communicating with him and Chambers was failing to work his share of weekends. The City investigated this complaint by Wulf and concluded it had no merit. This was not retaliatory.

V. Conclusions of Law

1. Jenny Chambers and the City of Livingston are jointly and severally liable in the amount of \$25,000.00 to Kristen Carlin for violations of her rights, under Mont. Code Ann. § 49-2-301 including Jenny Chambers' retaliatory assault and attempted additional assaults at the Murray after the Ball and the additional retaliatory verbal and written threats and insults at the scene and later by electronic messaging and social media, and including the City's retaliatory refusal to assure her safety at work after the attack at the Murray Bar, its retaliatory order threatening her with discipline if she showed the video of the Murray incident or talked to co-workers about it and its retaliatory failure to admit its retaliations. Without the City's retaliatory acts by the City, Carlin's emotional distress resulting from Jenny Chambers' retaliatory acts would have been substantially reduced and abated. Mont. Code Ann. §§ 49-2-301 and 506(1)(b). The City is jointly liable for these damages because of its failure to analyze, to review and to train its personnel, which caused or contributed to the environment and circumstances by which Jenny Chambers was tacitly encouraged in the retaliatory animus that motivated her and or its retaliatory failure to admit is retaliations. § 49-2-506(1)(b).

2. Jenny Chambers is liable to Nate Wulf in the amount of \$5,000.00 for the violation of his rights under Mont. Code Ann. § 49-2-301 and the harm caused by her retaliatory assault on Wulf and the subsequent emotional distress he suffered as a result. Mont. Code Ann. § 49-2-506(1)(b). The City is jointly liable for these damages because of its failure to analyze, to review and to train its personnel, which caused or contributed to the environment and circumstances by which Jenny Chambers was tacitly encouraged in the retaliatory animus that motivated her and or its retaliatory failure to admit is retaliations. *Id.*

3. Seth Rivard is liable in the amount of \$5,000.00 to Nate Wulf for the violation of his rights under Mont. Code Ann. § 49-2-301 when Rivard was off duty and outside the scope of employment at the Murray in April 2013, and acted to intimidate and coerce Wulf and threaten his employment and his membership in the union because Wulf had given an interview during the investigation of Kristen Carlin's internal city complaint and had supported Carlin's claim of discrimination against Chambers. The City is jointly liable for these damages because of its failure to analyze, failure to review and to train its personnel, which caused or contributed to the environment and circumstances in which Rivard was tacitly encouraged in the retaliatory animus that motivated him, its failure to apply a consistent standard to Rivard's behavior in the retaliation claim as opposed to the warning against coercion it gave to the union and its failure to acknowledge and to find Rivard's liability, thereby failing to apply and follow the law to protect Wulf from this illegal retaliation. Mont. Code Ann. § 49-2-506(1)(b).

4. Mike Chambers is liable in the amount of \$5,000.00 to Nate Wulf for the violation of his rights under Mont. Code Ann. § 49-2-301, when Chambers was off duty and outside the scope of his employment at the Murray on April 13-14, 2013, and acted to intimidate and coerce Wulf because Wulf had given an interview during the investigation of Kristen Carlin's internal city complaint and had supported Carlin's claim of discrimination against Chambers. The City is jointly and severally liable for this award, because of its failure to analyze, failure to review and to train its personnel, and its failure to acknowledge and to find Chambers' liability, thereby failing to apply and follow the law to protect Wulf from this illegal retaliation. Mont. Code Ann. § 49-2-506(1)(b).

5. Had the City discharged those duties to review the employment practices at the LFR and analyze the operations there, particularly in terms of the reserve firefighters, it is more likely than not that it would have identified the numerous deficiencies at the fire department that failed to comply with the nondiscrimination policies of the state and its guarantees of equal employment opportunities. The hostile work environment created by Chambers would have been identified. The indifference and lack of actions by LFR supervisory who received reports or observed instances of discriminatory conduct would have been identified. The lack of effective training for full time LFR staff and the lack of any training for reserves in nondiscriminatory employment practices would have been identified. As a result, the City would have been legally obliged, under Section 49-3-205(3), to initiate a comprehensive program to remedy every one of those and any others found to exist, long before the events giving rise to this contested case occurred. Had the City undertaken such a comprehensive program, it is unlikely the acts of discrimination and retaliation occurring in March 2013 at the LFR and thereafter would have occurred, and the harm sustained by the charging parties would have been prevented.

6. The City has breached its affirmative duties under Mont. Code §§ 49-3-201 and 49-3-205 of the Governmental Code of Fair Practices Act, but has not thereby contributed to the harm suffered by either charging party as found herein, except as already addressed in Conclusions of Law 1-4, above.

7. Each of the respondents is subject to the injunctive relief mandated Mont. Code Ann. § 49-2-506(1), and may be subject to affirmative relief ordered pursuant to Mont. Code Ann. § 49-2-506(1)(a), MCA, for the violation of the rights of Carlin and Wulf under the Human Rights Act.

8. Pursuant to §49-2-506(1)(a), the City of Livingston should be ordered to develop within 180 days after issuance of this decision a proposed comprehensive written plan to remedy the deficiencies in the operations of the Livingston Fire & Rescue that do not comply with the state's nondiscrimination policies as set forth in

the Human Rights Act and Governmental Code. The City should be further required to present a copy of that comprehensive plan to the Montana Human Rights Bureau for review and approval and to the Charging Parties, through their legal counsel, for review and comment within 30 days. Within 90 days after approval by the Human Rights Bureau after its consideration of the comments submitted by the charging parties, the City should be ordered to implement the comprehensive plan and file a written report with the Human Rights Bureau every three months until the plan is fully implemented.

VI. Final Order

1. Judgment is found in favor of Respondents City of Livingston and Mike Chambers and against Charging Party Kristen Carlin on her claims of employment discrimination in violation of her rights under Mont. Code Ann. § 49-2-303, MCA.

2. Judgment is found in favor of Charging Party Kristen Carlin and against Respondents City of Livingston and Jenny Chambers on her claims of unlawful retaliation in violation of her rights under Mont. Code Ann. § 49-2-301, in the amount of \$25,000.00, for which said Respondents are jointly and severally liable.

3. Judgment is found in favor of Charging Party Nate Wulf and against Respondents City of Livingston and Jenny Chambers, on his claims of unlawful retaliation in violation of his rights under Mont. Code Ann. § 49-2-301 in the amount of \$5,000.00, for which said Respondents are jointly and severally liable.

4. Judgment is found in favor of Charging Party Nate Wulf and against Respondents City of Livingston and Mike Chambers, on his claims of unlawful retaliation in violation of his rights under Mont. Code Ann. § 49-2-301 in the amount of \$5,000.00, for which said Respondents are jointly and severally liable.

5. Judgment is found in favor of Charging Party Nate Wulf and against Respondents City of Livingston and Seth Rivard, on his claims of unlawful retaliation in violation of his rights under Mont. Code Ann. § 49-2-301 in the amount of \$5,000.00, for which said Respondents are jointly and severally liable.

6. Judgment is found in favor of Charging Parties Kristen Carlin and Nate Wulf and against Respondents City of Livingston and Livingston Fire & Rescue on their claims that those respondents breached their affirmative duties under Mont. Code Ann. §§ 49-3-201(2) and 49-3-205(3). No additional monetary award is reasonable.

7. Pursuant to Mont. Code Ann. § 49-2-506(1), each of the respondents is enjoined from engaging in acts of illegal retaliation against the charging parties or others in violation of Mont. Code Ann. § 49-2-301.

8. Pursuant to §49-2-506(1)(a), the City of Livingston is ordered to develop within 180 days after issuance of this decision a proposed comprehensive written plan to remedy the deficiencies in the operations of the Livingston Fire & Rescue that do not comply with the state's nondiscrimination policies as set forth in the Human Rights Act and Governmental Code. The City is further required to present a copy of that comprehensive plan to the Montana Human Rights Bureau for review and approval and to the Charging Parties, through their legal counsel, for review and comment within 30 days. Within 90 days after approval by the Human Rights Bureau and after its consideration of the comments submitted by the charging parties, the City is ordered to implement the comprehensive plan and file a written report with the Human Rights Bureau every three months until the plan is fully implemented.

Dated: April 29, 2016

/s/ TERRY SPEAR

Terry Spear, Hearing Officer

Office of Administrative Hearings

Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Charging Parties, Kristen Carlin and Nathan Wulf, and their attorneys, Timothy C. Kelly, Kelly Law Office, and Kevin Brown, Paoli & Brown PC; and Respondents, Mike Chambers, Seth Rivard and Shannon Browning, and their attorneys, Harlan B. Krogh and Eric Edward Nord, Crist, Krogh, Butler & Nord, LLC; City of Livingston and Livingston Fire and Rescue, Jeff Schoenen and David Fine and their attorneys, Michael J. Lilly and Lynda S. White, Berg Lilly & Tollefsen PC; and Jenny Chambers, and her attorney, Karl Knuchel, Knuchel Law PC:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court.
Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Marieke Beck
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The original transcript is in the contested case file.