

**VILLAGE OF PLEASANT PRAIRIE
POLICE AND FIRE COMMISSION
Minutes of October 12, 2012**

A meeting of the Police and Fire Commission was held on Friday, October 12, 2012 at the Pleasant Prairie Village Hall located at 9915 – 39th Avenue for the purpose of a disciplinary hearing regarding Wayne Pitts of the Fire Department.

Minutes of this meeting were taken by court reporter and transcript is attached.

Tom Terwall moved to adjourn. Christine Genthner seconded the motion. Motion carried. Meeting adjourned 3:43 p.m.

In re the matter of:	Transcript of
Wayne Pitts Discharge	Proceedings

Attorney Hector de la Mora - legal counsel

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1 MR. MAYER: Call the meeting to
2 order. Roll call.

3 CLERK LEGLER: Roger Mayer?

4 MR. MAYER: Yes.

5 CLERK LEGLER: Christine Genthner?

6 MS. GENTHNER: Present.

7 CLERK LEGLER: Larry Nelson?

8 MR. NELSON: Present.

9 CLERK LEGLER: Robert Ramsdell?

10 MR. RAMSDELL: Present.

11 CLERK LEGLER: Tom Terwall?

12 MR. TERWALL: Here.

13 MR. MAYER: We are considering
14 the request for Wayne Pitts for the Police and Fire
15 Commission to reconsider the disciplinary recommendation
16 of the fire chief, Chief McElmury. Now Hector wants to
17 say a few words.

18 MR. DE LA MORA: For the record, my
19 name is Hector de la Mora and I am an attorney that has
20 been retained to provide legal advice to the five
21 members of the Fire and Police Commission and I am going
22 to be assisting them as they proceed through this
23 particular hearing.

24 For everyone's information, I have passed
25 out and have given to Mr. Pitts a copy of that portion

1 of the Wisconsin Statute 62.13(5) and the reason for my
2 giving this out is that at the bottom of that page, we
3 have a series of seven questions at the bottom of the
4 page on the backside which basically will be the
5 questions that you will have to be considering and
6 responding to in hearing this particular matter.

7 Essentially what has happened is that
8 the fire chief has submitted to you under cover date of
9 September 21, 2012 a set of charges. I have passed out
10 copies of those charges in the event that you have not
11 brought your personal copy and I understand that
12 Mr. Pitts has his copy also.

13 Is that correct?

14 MR. PITTS: Correct.

15 MR. DE LA MORA: And these are the
16 charges which the fire chief will basically have to
17 establish before you to your satisfaction and then you
18 will have to make a determination as to whether the
19 evidence is here to support these charges. You will
20 then have to make a determination with regard to the
21 disposition of this matter.

22 As you may have noticed, the notice of
23 the meeting itself contemplates that today, the only
24 thing that will occur is that you will receive evidence
25 from the fire chief, his witnesses, and Mr. Pitts to the

1 extent that he wishes to present information to you.
2 I have spoken previously with Mr. Mark Olson who is the
3 attorney representing the fire chief and Mr. Pitts and
4 I have learned that Mr. Olson will, to start off his
5 presentation, be asking that an exhibit be marked and
6 I will pass out this exhibit to you. He will have his
7 witnesses testify.

8 Mr. Pitts on the other hand has indicated
9 to me that he is appearing here on his own. He is not
10 being represented by an attorney and at this time, I
11 don't believe that he has any materials that he
12 contemplates passing out.

13 Is that correct, Mr. Pitts?

14 MR. PITTS: Correct.

15 MR. DE LA MORA: To my left is a court
16 reporter. The court reporter will be taking down all of
17 the testimony that will be considered by you. In making
18 your decision about this matter, it is very important
19 that even though you are in some cases perhaps long-time
20 members of this community, that you make your decision
21 solely on the basis of the information, the evidence
22 that is received during this proceeding.

23 Because the notice says that we will only
24 be having the hearing today, I will be recommending to
25 your chairperson that another date be set once we

1 conclude the hearing for you to convene in closed
2 session to deliberate. You will have at that point a
3 copy of the transcript if you need to refer to it and
4 give me direction as to the preparation of a decision in
5 this matter.

6 Under the Wisconsin Statutes, it is
7 required that you provide a written determination with
8 Findings of Fact. It is important that you pay
9 attention as much as you can. The court reporter will
10 be taking down everything verbatim. The interesting
11 thing about your role here is that you also, after
12 Mr. Olson has presented his witness and the witness has
13 been examined, you, too, will have the opportunity to
14 ask questions of the witness to satisfy yourself about
15 anything that the witness has testified or anything you
16 think the witness has knowledge of that may be relevant
17 to this particular matter.

18 All of the testimony that will be
19 presented will be presented under oath and the court
20 reporter, who is also a notary public, will be swearing
21 the witnesses.

22 Do any of you have any questions
23 concerning the procedure?

24 MR. MAYER: No.

25 MR. DE LA MORA: Okay. Mr. Pitts,

1 you acknowledged before that you did receive the
2 charges. Do you wish the charging document to be read
3 orally or are you willing to accept the document as part
4 of the record without it being read?

5 MR. PITTS: I can accept it
6 without it being read.

7 MR. DE LA MORA: I would ask the
8 reporter to mark the charges as Hearing Exhibit No. 1.

9 At this time, I will turn the matter over
10 to Mr. Olson for the presentation of the fire chief's
11 case.

12 (A document was marked as Hearing Exhibit 1)

13 MR. OLSON: Thank you. I want
14 to thank you ladies and gentlemen of the Commission
15 and Mr. de la Mora. We are here today because of the
16 determination of the administration of the Fire and
17 Rescue Department that it is necessary -- it is
18 unfortunate, but it is necessary that the employment
19 of Wayne Pitts, a paid on-call firefighter, be
20 terminated through this procedure.

21 We do not do this. We don't ask for
22 his termination without a good deal of thought and a
23 good deal of consideration of the situation. This is an
24 employee who has been a part of this department for some
25 time. But in those years that he has been here, there

1 have been problems -- significant and troubling problems
2 that Mr. Pitts has created for this department, and that
3 is what has brought us here today in this proceeding.

4 It is the position of the department that
5 these problems cannot be permitted to continue if this
6 department is going to continue to function efficiently
7 and with an appropriate level of discipline in the
8 department among its employees. This department, like
9 the police department, is a paramilitary organization
10 and it has to function that way. It cannot exist or
11 function if its members are insubordinate or if they do
12 not observe policies and work rules or if they cannot or
13 will not follow the directives of the supervisory
14 employees of this department.

15 The citizens of your village depend upon
16 these employees in times of emergency. Their lives are
17 in the hands of these employees. And if your employees
18 cannot or do not or will not follow the orders and
19 directives of this department, the lives of your
20 citizens are placed at risk, their properties placed at
21 risk, and also the lives and the safety of other
22 employees of the department are placed at risk.

23 This department cannot function
24 effectively and efficiently if employees are permitted
25 to make their own decisions on matters such as whether

1 they will come to work or not when they are scheduled to
2 do so, whether they will follow the orders of their
3 supervisors or will disregard those orders, whether they
4 will engage in the training that is necessary if they
5 are to have the necessary skills in order to function
6 efficiently in this department, whether they will
7 comport themselves in a manner which is professional and
8 respectful and observant of the chain of command which
9 exists here and has to exist in this department.

10 It is within that context that I have
11 described that we begin our recommendations as to this
12 matter today. You are going to hear and see evidence
13 that establishes very clearly the following facts.

14 On August 21, 2012, Mr. Pitts, during
15 the midst of a department training exercise, made the
16 unilateral decision to simply abandon the exercise
17 without any reason and without any permission or
18 authorization from the department and without even
19 giving the department the courtesy of notifying them
20 that he was leaving the exercise without concluding it.
21 Chief McElmury and Lieutenant Clark will describe for
22 you what happened on that day and why Mr. Pitts' conduct
23 was detrimental and potentially catastrophic to the
24 department and, of course, for your citizens on that
25 date. His unilateral unauthorized abandonment of the

1 training exercise on August 21, 2012 was a major
2 violation of a number of rules and regulations of the
3 department and of the employee village handbook. This
4 in and of itself we submit was probably grounds for
5 termination of his employment.

6 But what happened on that date,
7 August 21, 2012, was only the tip of the iceberg because
8 Mr. Pitts has been flaunting and ignoring and
9 disregarding the rules of this department for years as
10 Chief McElmury and other witnesses will describe for you
11 and as our exhibits will show you.

12 On August 20, 2009, Mr. Pitts was
13 disciplined by this department for cancelling his work
14 shift without finding any replacements and without
15 notifying the department of his absences.

16 On November 8 and November 14, Mr. Pitts
17 was reprimanded for failing to follow department orders
18 and for insubordination and disrespect to his
19 supervisors.

20 On November 26, 2009, Mr. Pitts was
21 reprimanded by the village administrator for sending
22 e-mails to village employees which were abusive,
23 disrespectful and unacceptable.

24 On April 25, 2011, Mr. Pitts was
25 reprimanded by the department for negligent conduct

1 which was directly responsible for causing damage to a
2 new department vehicle.

3 The evidence that will be presented here
4 will demonstrate that not only did Mr. Pitts engage in
5 these acts of negligence and misconduct and
6 insubordination and disrespect for the rules and
7 policies of your department; he never cooperated with
8 the department in the investigation of these events and
9 he never acknowledged or accepted any responsibility for
10 his negligence and his misconduct on those occasions.

11 Further, this department expects and
12 requires that its employees will participate in 75%
13 of the department training exercises. Mr. Pitts was
14 clearly and unequivocally advised of this expectation
15 when he was hired in 2002 and you will see a document
16 that establishes that. This 75% standard is also
17 clearly stated in the rules and regulations of the
18 department. The evidence which we will show you here
19 and present to the chief will clearly demonstrate that
20 Mr. Pitts has failed by a wide margin to meet this
21 training goal, this training standard, in 2007, 2008,
22 2010, and in 2011. He was advised by Chief Paul
23 Guilbert -- former Chief Paul Guilbert in 2009 that this
24 attendance was not acceptable and could not continue and
25 yet he again failed to meet that standard in 2010 and in

1 2011 leading to this recommendation among other things.

2 Further, Mr. Pitts was convicted after
3 a plea of no contest in 2008 to the criminal act of
4 computer crimes and destruction of computer data. This
5 was a result of his hacking into the computer files of a
6 former employer which had terminated him in 2006. What
7 he did resulted in losses to the employer -- his former
8 employer of over \$34,000. Mr. Pitts admitted in
9 Waukesha County to the authorities there where it
10 occurred and to Chief Guilbert that he had committed
11 these crimes. He characterized them as pranks. We
12 don't view them as pranks. Chief McElmury will advise
13 you during his testimony how this criminal conduct by
14 Mr. Pitts is relevant to this issue to his termination
15 and why this criminal conduct creates the need to
16 terminate his employment in the department here.

17 The sum total of all of this, ladies
18 and gentlemen, is that Mr. Pitts has proven to be a
19 liability to this department. His presence as an
20 employee in that department -- in this department is a
21 threat to this department and to your citizens and a
22 threat to your other employees, his fellow employees,
23 and can't be tolerated to continue or continue any
24 longer.

25 This department believes that it has

1 tolerated all that it can from Mr. Pitts and his
2 abandonment of his training on August 21, 2012 must be
3 viewed as the last straw. His insubordination, his
4 disrespect, his disregard of the policies and
5 regulations of this department can no longer be
6 tolerated or permitted to continue here. The August 21,
7 2012 training incident was the last straw and the
8 department cannot continue to permit such conduct any
9 longer which is why we are here.

10 Before we present our witnesses, I want
11 to provide you with the documents which Mr. de la Mora
12 has indicated he has in his possession now and briefly
13 walk you through those and indicate what they are. I
14 have a copy here for Mr. Pitts as well.

15 MR. DE LA MORA: Can we have this
16 marked as a chief's exhibit and numbering it
17 consecutively as Exhibit 2?

18 MR. OLSON: However you would
19 like to, yes. It is subdivided in the book anyway, so
20 however you'd like to identify these.

21 MR. DE LA MORA: I will have the
22 reporter mark the document that you have given me.
23 (A document was marked as Exhibit No. 2)

24 MR. OLSON: Just to briefly
25 explain, there is a table of contents here which shows

1 what is behind the numbered and lettered tabs. What I
2 want to do is just walk through and identify what is
3 behind each of these to make it easier when we get to
4 those during the testimony or during your deliberation.

5 Tab A is the statement of the charges
6 regarding Mr. Pitts prepared by Chief Douglas McElmury.
7 It is dated September 21, 2012 and ends with the
8 recommendation that Mr. Pitts' employment with the
9 department be terminated. This has already been entered
10 into the record as Exhibit 1, but it remains referred to
11 here as well.

12 Behind Tab B, we have certain portions
13 of the revised village employee handbook which state the
14 handbook areas that are relevant to this recommendation
15 as we view them and which are cited by Chief McElmury in
16 his September 21, 2012 charges, all of which were in
17 effect on August 21, the date of the action by Mr. Pitts
18 which have caused the chief to make this recommendation
19 to the Commission.

20 Behind Tab 1 are signed acknowledge-
21 ments by Mr. Pitts indicating that he has received the
22 handbook that is cited here in support of this
23 recommendation.

24 Behind Tab C, we have the July 16, 2002
25 Contingent Offer of Employment which was issued to

1 Mr. Pitts by Mr. Pollocoff as the village administrator
2 stating specifically the conditions and expectations for
3 the position of paid on-call firefighter including the
4 clearly-stated requirement that the employee attend 75%
5 of all scheduled fire and rescue training sessions.

6 Behind Tab D, we have the most recent
7 department job description for the position of paid on-
8 call firefighter which is the position that was held
9 here by Mr. Pitts prior to this action reflecting the
10 revisions that had been made to the job description.

11 Tab E has a number of subtabs dated one
12 through six. These are documents which address the
13 August 21, 2012 training session incident in which
14 Mr. Pitts left before it was concluded and without
15 authorization from any supervisor. The first document
16 behind number one is the training sign-in sheet which
17 was initialed by Mr. Pitts indicating he was going to
18 take part in that training. It does show at the top the
19 start of the training would be 1900 hours, 7:00 o'clock,
20 the time. Ended was scheduled to be 2130.

21 Behind Sub 2 -- Tab 2 are directions to
22 the employees who are taking part in the training
23 exercise on that date, the date in question in this
24 matter. These were put together by the chief and his
25 assistants and distributed to all participants in the

1 exercise.

2 Behind Tab 3 is Chief McElmury's
3 documentation of an August 28 meeting with Mr. Pitts.

4 Behind Tab 4 is a statement from
5 Lieutenant Thomas Clark regarding his participation in
6 the August 21, 2012 training exercise and what
7 Lieutenant Clark observed regarding Mr. Pitts' conduct
8 on that date -- He will be testifying here to describe
9 this in more detail -- including the critical fact that
10 Mr. Pitts left the training exercise on that date
11 without obtaining supervisory authorization and before
12 the exercise had been concluded.

13 Behind Tab 5, we have a corresponding
14 statement from Firefighter Justin Beach regarding that
15 training exercise. Mr. Beach was Mr. Pitts' partner
16 during that training exercise and Mr. Beach was left at
17 Station 2 by Mr. Pitts before the training exercise had
18 been concluded. In fact, he was abandoned by Mr. Pitts
19 at that time.

20 Tab 6 is documentation from Chief
21 McElmury to other members of the department advising
22 them that Mr. Pitts was no longer a member of the
23 department as a result of the events surrounding the
24 August 21 training exercise.

25 Behind Tab F, we have a series of

1 documents which are official department personnel
2 records, all of which indicate that Mr. Pitts was not
3 or has not for five years been meeting his clear
4 obligation to attend 75% of the department training
5 exercises.

6 And at Tab F5, a letter from Mr. Guilbert
7 who was chief at that time counseling Mr. Pitts that he
8 is obligated to attend at least 75% of the department
9 training sessions.

10 Briefly, behind Tab 1, we have the 2007
11 attendance records which show a 60% attendance by
12 Mr. Pitts, not the required 75%.

13 Behind Tab 2, we have the corresponding
14 2008 records showing in that year, 60.98% attendance at
15 training.

16 Behind Tab 3, we have the 2010 records
17 indicating a 68.29% attendance at training, still well
18 below the 75% standard.

19 And behind Tab 4, the 2011 Pitts
20 attendance records here showing 61.54% attendance at
21 training.

22 Behind Tab 5, there are various pieces of
23 correspondence between Mr. Pitts and Chief Guilbert and
24 Chief McElmury addressing Mr. Pitts' failure to achieve
25 the 75% training attendance requirement.

1 Tab G begins the records of prior
2 discipline imposed upon Mr. Pitts in various years by
3 the department.

4 Behind Tab G, we have a written reprimand
5 which was issued because Mr. Pitts was cancelling his
6 assigned work shifts without department authorization,
7 without securing a replacement as he was required to do.

8 Behind Tab H is a record of verbal
9 warnings which Mr. Pitts received also in 2009 for gross
10 and repeated insubordination when he refused to comply
11 with repeated directives that he wear his uniform dress
12 shirt in the fire station, directives which Mr. Pitts
13 pointedly and repeatedly disregarded.

14 Behind Tab I are records of abuse and
15 inappropriate conduct by Mr. Pitts, specifically a
16 series of abusive e-mails which he sent to another
17 village employee culminating in the need for
18 Mr. Pollocoff, village administrator, to intervene in
19 this matter because of the aggravated nature of
20 Mr. Pitts' correspondence with one individual who is
21 a village employee, Ms. Willke, which he copied to
22 numerous other village employees which the department
23 submits to the Commission is an indication of a pattern
24 of insubordinate and unacceptable conduct, all of which
25 is documented here.

1 Behind Tab J, we have discipline imposed
2 upon Mr. Pitts by Chief McElmury on April 25, 2011 for
3 causing damage to a new department vehicle as a result
4 of negligence on Mr. Pitts' part and also Mr. Pitts'
5 refusal to cooperate with Chief McElmury in the
6 investigation of this incident.

7 Finally, behind Tab K, we have
8 documentation from the State of Wisconsin and from the
9 City of Waukesha and the Waukesha Police Department
10 indicating that Mr. Pitts in 2008 pled no contest to
11 criminal charges of computer crimes and destruction of
12 computer data, crimes which were directed by Mr. Pitts
13 at a former employer who had terminated his employment
14 in August of 2006, all of this is contained in the
15 police report which is attached there. These crimes
16 resulted in losses to the former employer of \$34,000 and
17 that also is documented here.

18 Now because this department maintains
19 a data base which contains significant amounts of
20 confidential data and information regarding its citizens
21 and employees of this village, the department believes
22 that these records of criminal conduct by Mr. Pitts are
23 clearly relevant to this matter and should be considered
24 by you as a part of this recommendation.

25 That will conclude our opening statement

1 and we prepared to call Chief McElmury at this time.

2 MR. MAYER: Fine.

3 MR. DE LA MORA: Excuse me. I would
4 like to interject. At this time, Mr. Pitts, you can
5 make an opening statement to the Commission about what
6 your case is going to be about or you can reserve the
7 right to make that statement after Mr. Olson and the
8 chief have presented their case. Which would you want
9 to do?

10 MR. PITTS: I will reserve.

11 Thank you.

12 MR. DE LA MORA: Okay.

13 DOUGLAS MC ELMURY, having been first duly
14 sworn on oath to tell the truth, the whole truth, and
15 nothing but the truth testified as follows:

16 DIRECT EXAMINATION BY MR. OLSON:

17 Q Mr. McElmury, when did you become chief in this
18 department?

19 A I became chief in February of 2012.

20 Q And what positions have you held here prior to the time
21 you became chief?

22 A I have held the position of firefighter/EMT
23 intermediate, training officer, captain, and assistant
24 chief.

25 Q And when did you begin your employment here?

1 A On March 13, 1989.

2 Q How long were you the assistant chief here?

3 A Approximately 15 years.

4 Q Briefly, what are your duties here as chief?

5 A I oversee the daily operations of the department,
6 budgeting, I oversee training and discipline and hiring
7 of the candidates.

8 Q And you are also responsible for discipline of
9 employees. Is that correct?

10 A That is correct.

11 Q Are you familiar with the work record of Mr. Pitts in
12 this department?

13 A Yes, I am.

14 Q How have you become familiar with it?

15 A Most of the instances of his discipline, I was involved
16 in. As the assistant chief, my responsibility was to
17 investigate charges of wrongdoing and sit down with the
18 individuals and perform counseling with that.

19 Q Thank you. Chief, was there training scheduled to be
20 conducted for fire and rescue personnel in this
21 department on August 21 of this year?

22 A Yes, there was.

23 Q Can you please explain to the Commission what was going
24 to be conducted -- or what training was going to be
25 conducted on that date?

1 A Sure. The training schedule that night is titled
2 scavenger hunt and what we do is we pick multiple
3 addresses that we normally don't go to and we actually
4 put a small piece of like painter's tape with a letter
5 or a symbol on that -- or a number. The crews need to
6 go out to that location. They actually -- It is not
7 just an address, it is the name of a building and if
8 there are multiple buildings, we put that in there,
9 which specific location. They go out and they find
10 that -- not only find the building and become familiar
11 with the area, but to be able to find the fire
12 protection equipment, specifically the fire department
13 connections or Knox Boxes and so on.

14 Q What was the goal or purpose of the training that was
15 going to be conducted on that date?

16 A The goal was to familiarize the people with addresses
17 and buildings that we don't normally go to or in some
18 cases, we have facilities that have multiple locations
19 in town and to kind of highlight some of those.

20 Q Thank you. When on that date was the training to occur?
21 Between what times?

22 A It was scheduled to start at 1900 until it finished
23 approximately at 2100.

24 Q Okay. Now it indicates 2130 in the document we looked
25 at. Would that be --

1 A Training that night was delayed. The end of training
2 was delayed.

3 Q Okay. Thank you. Chief, was it important for employees
4 who were participating in this training to remain on
5 duty for the entire time during which the training was
6 to be conducted?

7 A Yes. One of the most valuable parts of the training is
8 not only going out from address to address, but then the
9 collective conversation at the end which buildings did
10 he have problems finding, you know, what were some of
11 the anomalies, access to the pumper pads and so on and
12 the group discussion of that proves to be very
13 beneficial and everybody learns from everybody else's
14 problems.

15 Q So there is interaction at the end of the exercise. Is
16 that correct?

17 A Yes.

18 Q Now if an employee left the training early, would that
19 employee benefit from the training at all?

20 A It would be severely diminished as far as what they got
21 out of the training.

22 Q I would like to refer you to Exhibit E1 in your
23 materials. What is that, please, Chief?

24 A This is the sign-in sheet for the night of August 21.

25 Q What does it indicate?

1 A It indicates who was at the location by signing in and
2 then if they -- if somebody was not at training, we have
3 written in such as vacation, trades and so on. The
4 names that are crossed off, those people are attendees
5 on other days. We offer the same training three days in
6 a row.

7 Q Now according to this schedule, this sign-in, was
8 Mr. Pitts scheduled to attend this training?

9 A Yes, he was scheduled to attend and did attend.

10 Q Where do you see that, please?

11 A On the right-hand column, the sixth name down.

12 Q What role were you playing in the training session on
13 that date?

14 A I was actually the training coordinator, the training
15 leader. I was the one that handed out the information
16 and the instructions, went over the instructions and
17 then kind of the ground rules, if you will, and then
18 facilitated the discussion at the end.

19 Q What role specifically was Lieutenant Clark playing on
20 that date?

21 A Lieutenant Clark was the lieutenant on duty, so in my
22 absence, he would have been the officer in charge of the
23 training.

24 Q What was the location of the training, please,
25 specifically?

1 A The meeting point that we used was 72nd Avenue just
2 south of Highway 165 in the area of the town buildings
3 and then from there, the people went out to the specific
4 buildings that were listed on the training site and then
5 met again on 72nd Avenue.

6 Q So their intent is to come back to 72nd Avenue where the
7 training had begun. Is that correct?

8 A That is correct.

9 Q Chief, what happened on that date, August 21, involving
10 Mr. Pitts and the training session, please?

11 A The training session started approximately at 1908.
12 We got going a little bit late because it took a little
13 bit longer to get all the clues in place on some of the
14 buildings. We then briefed everybody on what the
15 training was going to be. We split up the crews, made
16 sure we went through the ground rules and everybody then
17 dispersed and went out to the different addresses. Then
18 what was supposed to happen is everybody was supposed to
19 come back, we were supposed to review the findings and
20 with the different letters and numbers, there is
21 actually a puzzle they solve, if you will, try -- try to
22 make training like this a little bit fun, so they
23 actually had to solve a puzzle. There was a
24 discrepancy. Two of the crews had different letters at
25 one of the address, so I went to check on that

1 address -- or on the clue at that specific address, so I
2 left the training prior to the end to check on that and
3 then returned shortly after, after I checked on that
4 clue. In the time that had transpired since I went over
5 to Volkswagon to check on the clue and came back, the
6 5631 had in fact came back to the training site, had a
7 discussion with a couple of the people, found out that
8 there was a discrepancy in which of the OHL facilities
9 were --

10 Q Chief, let me interrupt you. 5631, would you explain
11 that?

12 A Sure. 5631 is the fire department's only ladder truck,
13 110-foot aerial.

14 Q Who was driving the truck?

15 A Firefighter/EMT Wayne Pitts.

16 MR. OLSON: Please go ahead.

17 A So the apparatus and the crew of Firefighter/EMT Wayne
18 Pitts and Justin Beach had left before I returned to the
19 site and we wanted to get going. We had called the
20 crews back to the site so we could finish up the
21 discussion as far as any problems of finding locations
22 and so on and when I noticed that the ladder truck --
23 5631 -- was missing, I asked if anyone knew where that
24 rig was and everybody said the same thing; it was just
25 here. We are not sure where it is at. I then went to

1 my command car and I called over Kenosha County fire
2 frequency for 5631 which would be our normal operating
3 frequency. There was no answer. I looked at my mobile
4 data terminal which has icons of where the rigs are at
5 any given time and I noticed that that rig was at
6 Station 2. I then called Station 2. The phone was
7 answered by Firefighter/EMT Beach and I asked him and
8 Firefighter/EMT Wayne Pitts to come back to the scene.
9 He said they couldn't do that. Wayne had already left
10 and so he was there. Justin is on light duty. He is a
11 qualified driver for that piece of apparatus, but is not
12 able to drive it or respond to any calls for us because
13 of a previous injury. He can ride as a passenger, but
14 he can't drive it. So I then asked why Wayne left. He
15 stated that Wayne stated something about being
16 aggravated and he left. So I asked Firefighter/EMT
17 Beach then to return to the training site in his
18 personal vehicle so we could conclude training and he
19 did as I requested. I was then able to ask him when he
20 got back on the scene what happened. He reiterated the
21 story that they left the training site, that there was
22 confusion over one of the addresses and after they got
23 on the road, they went by the site and he continued on
24 to Station 2 and when he arrived back at Station 2, he
25 parked the apparatus and left, thereby abandoning

1 Firefighter/EMT Beach at the station.

2 Q So Chief -- Mr. Pitts -- did not complete the training
3 and left early. Is that correct?

4 A That is correct.

5 Q How again did you discover this, briefly, that he had
6 left early? This was through your conversation with
7 Lieutenant -- with Firefighter Beach. Correct?

8 A Correct. Well, physically, the apparatus wasn't there
9 when I returned. Right around 8:45, physically it
10 wasn't there and when I talked to Firefighter/EMT Beach,
11 he confirmed that they had left prior to my arrival.

12 Q Chief, looking at that, Mr. Beach was Mr. Pitts' partner
13 on Unit 5631 on that date. Correct?

14 A That is correct.

15 Q How did Mr. Beach get back to the training after
16 Mr. Pitts left him at Station 2?

17 A Because he was not able to ride in the ladder truck
18 because he was on light duty, he was forced to take his
19 personal vehicle and drive down to the site on 72nd
20 Avenue from Station 2.

21 Q Now was that a concern to you that Mr. Beach had to
22 drive in his -- his own vehicle as a result of being
23 abandoned?

24 A Yes. It caused two problems. Number one, we weren't
25 able to have the full crew there to talk about their

1 experiences during the training. We had to wait for
2 Mr. Beach to return to the site so it inconvenienced
3 everybody having to wait additional time for him to come
4 back. So it definitely was one of the reasons why we
5 went to 2130 hours that night.

6 Q Mr. Pitts was not at the conclusion of the exercise
7 during which the discussion occurred. Correct?

8 A That is correct.

9 Q Did you speak to Mr. Beach on that date as part of your
10 investigation of this incident?

11 A Yes, I did.

12 Q What again did he tell you had happened?

13 A He stated that when they returned -- they went to the
14 different addresses as outlined on the sheet, on the
15 instructions, and when they arrived back at the scene,
16 they found out that they had went to the wrong OHL. We
17 have two locations; one over in one of the new town
18 development buildings and there is also one on 109th
19 Street. They established through talking to one of the
20 crews that they went to the wrong one. Then I am told
21 by Firefighter/EMT Beach that they then went -- said
22 let's go check that address, so they both got in the
23 ladder truck, 5631, they left, and then while at some
24 point during that trip, they just continued on to
25 Station 2 and at that point, Firefighter/EMT Wayne Pitts

1 left the station.

2 Q Prior to the conclusion of the exercise.

3 A Prior to the conclusion of the exercise, right, after
4 stating he was aggravated or something to that effect.

5 Q In doing so, he left his partner, Firefighter Beach, at
6 Station 2 without any way to return to the exercise. Is
7 that correct?

8 A That is correct.

9 Q Did Mr. Beach give you a written statement regarding
10 this incident?

11 A Yes, he did.

12 Q Would you please look at Exhibit E5 in your materials,
13 behind Tab 5? Is this the statement that Firefighter
14 Beach gave you?

15 A Yes, it is.

16 Q What does Mr. Beach state here that Mr. Pitts did during
17 the training session?

18 A It states that they participated in the training
19 scavenger type hunt. During the drill, they went to the
20 different addresses -- to the certain addresses and they
21 found the letters written on the pumper pads or
22 department hook-ups. At the end of the scavenger hunt,
23 they went back to the set location for the discussion of
24 the drill. Firefighter Pitts is the driver of 31. We
25 found out that they had went to the wrong location.

1 Firefighter Pitts said we are going to look at the
2 correct location to receive the clue that we needed for
3 the drill. As we left, Firefighter Pitts said he was
4 aggravated and that we were going back to Station 2.
5 At that point, he drove to Station 2. We arrived at
6 Station 2. Firefighter Pitts said again he was
7 aggravated and that he was out of here and he left.

8 Q Okay. Thank you. Just near the bottom, Firefighter
9 Beach says, "I then returned to the training location to
10 complete the training." So he was forced to do that on
11 his own. Correct?

12 A Correct.

13 Q Was that a concern to you?

14 A Yes.

15 Q Why?

16 A It caused a delay in training. He wasn't able to come
17 with his partner to have -- and have not only
18 Firefighter Pitts, but also the entire group gain the
19 benefit of their experiences finding the addresses.

20 Q Chief, who was the lieutenant who was on duty during the
21 training exercise?

22 A Lieutenant Tom Clark was on duty that day.

23 Q Did you speak to Lieutenant Clark as a part of your
24 investigation?

25 A Yes, I did.

1 Q What did Lieutenant Clark tell you happened on that
2 date?

3 A Lieutenant Clark stated that 5631, the ladder truck,
4 had returned to the location. There was a discussion
5 reference the -- they went to the correct OHL building
6 and at that point, somebody said we need to go. 5631
7 left the area. He did not know why or had not spoken
8 with him about why the rig was leaving.

9 Q Now was Firefighter Pitts, Mr. Pitts, obligated to
10 advise Lieutenant Clark and to obtain Lieutenant Clark's
11 permission if he were leaving this exercise early?

12 A If he was going to leave the exercise early, definitely,
13 he would need to.

14 Q Did he do that according to what you learned?

15 A No, he did not.

16 Q Did Lieutenant Clark give you a written statement
17 regarding the events of that evening?

18 A Yes, he did.

19 Q Would you please look at Exhibit E4 in your materials,
20 please? Is that the statement that Lieutenant Clark
21 gave you?

22 A Yes, it is.

23 Q Why was the conduct described here by Mr. Pitts a
24 concern to you, Chief?

25 A The fact that he left the training without letting

1 anyone know that they were going to leave. I normally
2 would have been the person they would have needed to
3 advise. However, I was checking on that address. In
4 my absence, Lieutenant Clark is the officer in charge
5 and was obviously right there because he had been
6 involved in the conversation. So he failed to tell
7 them. He would have been the one in my absence to need
8 to know where all the apparatus was.

9 Q What should Mr. Pitts have done on that date, August 21,
10 as a part of this exercise if he had to leave early?

11 A If he needed to leave early, he needed to contact either
12 myself or Lieutenant Clark in my absence and ask
13 permission to leave the training.

14 Q Thank you. And did he do that or not?

15 A No, he did not.

16 Q Chief, looking at your September 21 Statement of Charges
17 if we could, specifically the last two paragraphs on
18 Page 2 under Charges, you offer a series of statements
19 that I would like to have you elaborate upon. First,
20 how did Mr. Pitts' conduct -- I am quoting you --
21 prevent the unit, 5631, from being available for
22 emergency responses?

23 A When he left the training site and Firefighter Pitts
24 abandoned the rig and his partner at the station without
25 our knowledge of that rig being gone, had we had a fire

1 call, had we had a response for that piece of apparatus,
2 we had no reason to think that it did not have a driver
3 and that it was not available for response when in fact
4 it was not. We didn't know that that rig was available
5 until I called Station 2 and found out that Firefighter
6 Pitts had left the rig there and had left the station.

7 Q Where should the rig have been?

8 A The rig should have been at the training site or
9 anywhere where he had received permission to take it.

10 Q Thank you. Continuing on with your statement in the
11 charges here, how did his conduct on that date, "cause
12 a delay in the completion of training", Chief?

13 A Number one, we had to attempt to locate the location of
14 the rig and its whereabouts. That in itself took a few
15 minutes. When we established that the apparatus was at
16 Station 2, I was able to call there and talk to
17 Firefighter/EMT Beach who told me what transpired and
18 when I asked him to return in his personal vehicle so we
19 could do that, that took additional time for him to do
20 that to drive back down to the training site from the
21 corner of Highway C and H all the way back down to 72nd
22 Avenue, thereby delaying training and everyone that was
23 there.

24 Q Continuing, how did Mr. Pitts' conduct "force
25 Firefighter/EMT Beach to return to the training site

1 in his personal vehicle"?

2 A Firefighter/EMT Beach is on injury leave, is not allowed
3 to drive fire and rescue apparatus at this time, so he
4 is only allowed to ride in that as a passenger, as an
5 observer, or in his own personal vehicle.

6 Q How did Mr. Pitts' conduct on that date -- and I am
7 quoting from your Statement of Charges here -- "show
8 blatant disrespect for the department training"?

9 A By leaving before it was completed, he showed that he
10 had no interest in the results of the training and the
11 experiences of everyone that came back to that. He
12 showed disrespect for the participants by forcing them
13 to wait for Firefighter/EMT Beach's arrival back at the
14 scene and delaying it and for the organizers, who had
15 obviously taken a significant amount of time to put
16 together this thing to drive around to each of the
17 locations, leave clues and put together in essence a
18 word puzzle to do this and picking locations that
19 frankly are -- can be difficult to find, he showed
20 complete disrespect for the organizers of the training
21 in that way.

22 Q How was his conduct insubordinate as you state here?

23 A There was very specific instructions given at the
24 beginning of the training to here is the addresses you
25 need to find. You need to go find those. You cannot

1 talk over the radio, texting, phones or any other way,
2 because we don't want the rig sharing clues and thereby
3 eliminating a stop at one of these addresses. We want
4 each of the crews to find these addresses. That is the
5 purpose of the training. Then upon completion of
6 finding all the clues, come back to the scene, assure
7 that you've solved the puzzle and then share your
8 experiences with everyone else.

9 Q How did his conduct -- again, I am quoting you -- show
10 a blatant disregard for communication between department
11 members and supervisors, please?

12 A The instructions were clearly given of what needed to
13 happen. There was plenty of opportunities for him to
14 communicate face to face, over the radio or even via
15 cell phone and he did none -- he did not use any of
16 those three methods to communicate.

17 Q How was his conduct, quote, detrimental to his
18 credibility as a firefighter/EMT, Chief?

19 A These were simple instructions; come to the training,
20 participate in it, come back afterwards. And when he
21 left, that calls into question his ability to follow
22 even basic orders at the scene of an emergency. If we
23 order somebody to go in and search a building or more
24 importantly, to leave that building or to move to a
25 different area due to safety hazards, it calls into

1 question his ability to follow those basic instructions.
2 If he is going to do what he wants to do, he can
3 endanger both himself and others.

4 Q Chief, thank you. Did all of these stated
5 considerations that you have described here come into
6 play or cause you to make the recommendation which we
7 have here before us to the Commission?

8 A Yes, that is correct.

9 Q Briefly, can you explain why?

10 A When you look at each of the components and how they
11 added up to the disrespect for the people, the
12 disrespect for the training, his failure to communicate,
13 his failure to let us know that he took a piece of
14 village equipment without our knowledge and left it at
15 the fire house, again, without our knowledge and
16 prevented us from having that piece of apparatus able to
17 respond in the event we needed to, it created a safety
18 problem, it created some potential bad will because
19 people had to be kept at training longer and it just
20 showed a total disrespect and disregard for what we
21 are trying to accomplish as a department and what our
22 mission is and what we need to accomplish in the event
23 we had an emergency call in that time after he left.

24 Q Thank you, Chief. Would you turn to Page 6 of these
25 charges, if you would, the final page? You state on

1 this page of the charges that Mr. Pitts has demonstrated
2 what you characterize as "a clear pattern of refusal to
3 adhere to department policies and supervisor
4 directives." Is that correct?

5 A That is correct.

6 Q And why do you state that, please?

7 A This isn't his first time we've been involved in a
8 disciplinary issue. He's had multiple instances before
9 where verbal warnings and counseling sessions were
10 performed that were outlined at the beginning of the --
11 of our hearing today.

12 Q Chief, were you in the position of either assistant
13 chief or chief of the department at the time of these
14 previous disciplinary actions which involve Mr. Pitts?

15 A Yes, I was.

16 Q Were all of these stated in his personnel file?

17 A Yes, they were.

18 Q Would you look at Document G in this set of materials?
19 Do you refer to this disciplinary episode in your
20 Statement of Charges?

21 A Yes, I do.

22 Q Was Mr. Pitts given a verbal warning in August of 2009?

23 A Yes, he was.

24 Q Do you find that in here?

25 A Yes, I believe to be about the seventh page -- eighth

1 pages. It is titled Documentation of Verbal Warning to
2 Wayne Pitts, 8-20-09.

3 Q Briefly, why was Mr. Pitts disciplined in August of
4 2009?

5 A We had a bout of Mr. Pitts cancelling out on shifts of
6 which he was assigned to work and then also, some he had
7 signed up for in addition to the schedule. The way that
8 the schedule works is the individual turns in a schedule
9 of when they are available for paid on call or on-call
10 shifts and part-time shifts. He turns that in to one
11 of -- our paid on-call lieutenant, Lieutenant Madison
12 (phonetic). He then uses that availability to create a
13 schedule of all the different paid on call and part-time
14 people and lays out in advance who is going to be on
15 call or who is going to work part-time on specific
16 dates. There were times that there were openings for
17 part-time people that nobody had signed up for and in
18 some of those instances, Wayne had signed up for those
19 shifts, had written his name on the schedule and then
20 did not fulfill those. There were seven specific
21 instances in which he was assigned a part-time shift
22 that he had in fact put down as being available and he
23 canceled out of it without any coverage. There were
24 four additional shifts that he had written in that he
25 could cover and then failed to work that part-time

1 shift, would have it crossed off.

2 Q Chief, why was that practice that you have described
3 here a concern to you and to Chief Guilbert?

4 A When you have people on the schedule, you are planning
5 on them being there. The staffing is based on that.
6 Sometimes we have assignments that are based on that,
7 public education, training, and other things and if you
8 know you have a set staffing level, you are going to be
9 able to do things. It basically throws the ability to
10 have any planning go right out the door.

11 Q What does department policy state about employees being
12 available for duty?

13 A In the job description, it states that the person must
14 be available to work part-time paid on-call shifts.

15 Q Thank you. Chief, would you turn back to the first
16 document behind Tab G, the letter from Chief Guilbert
17 to Mr. Pitts dated August 17, 2009?

18 A Yes.

19 Q Are you familiar with the contents of that letter?

20 A Yes, I am.

21 Q What concerns are raised by that letter?

22 A Toward the bottom of the letter, not only did he cancel
23 the shifts, but he made telephone calls and informed the
24 people below my rank at that time, the assistant chief
25 or the chief, and said that either he can't or he

1 will -- or will not report for duty and the chief --
2 Chief Guilbert believed the timing of the calls were
3 calculated with the intent of avoiding having to speak
4 with either myself or Chief Guilbert.

5 Q These were during the times when he was cancelling out
6 his work shift. Correct?

7 A That is correct.

8 Q Chief, what did Mr. Pitts do with the verbal warning --
9 the documentation of verbal warning that you and Chief
10 Guilbert gave to him?

11 A After completing the counseling session in which we went
12 through the Documentation of Verbal Warning that we have
13 just reviewed, he signed the Documentation of Verbal
14 Warning. He then proceeded to the day room of Station 2
15 and posted it on the refrigerator.

16 Q What concerned you about his response to the discipline,
17 his posting it on the refrigerator in the fire station?

18 A At that point, he was making mockery of the discipline
19 that we had just sat down in doing. The goal of
20 discipline was to advise him that this was unacceptable
21 behavior, to try to change the behavior, and try to
22 solve the problem. He then took that warning and just
23 posted it on the refrigerator in plain view of everyone.
24 We make great efforts to counsel in private, praise in
25 public. This counseling session was done at my office

1 behind closed doors so would no one would have to hear
2 that there were any problems with him to protect
3 Mr. Pitts' privacy. He then took the efforts of private
4 counseling and posted that on the refrigerator in front
5 of the entire crew.

6 Q Thank you, Chief. Looking at Page 5 of your charges,
7 you make reference to a prior disciplinary action that
8 occurred on November 8, 2009 and November 14, 2009.

9 What occurred on those dates that involved Mr. Pitts?

10 A Mr. Pitts was working at the station under the
11 supervision of Senior Firemedic Ron Weavel, Jr. We had
12 a special event at that station that night and he was
13 asked to put on a uniform shirt. Our policy states if
14 we have an official event, you need to put on a dress
15 uniform shirt. There are times at night where you can
16 wear just a tee shirt for calls, but for certain events,
17 you do need to put on a uniform shirt. Instead, he just
18 put on a sweatshirt. Then six days later, again, Fire-
19 fighter/EMT Pitts was working with Firemedic Ron Weavel
20 and he was told three specific times to put on his
21 uniform shirt and each time, he failed to do so.

22 Q Now just to clarify, Mr. Pitts would have been subject
23 to the supervision of Firefighter Weavel. Is that
24 correct?

25 A That is correct.

1 Q So he should have obeyed orders given to him by
2 Firefighter Weavel.

3 A That is correct.

4 Q Was that conduct by Mr. Pitts a concern to you and if
5 so, why?

6 A The conduct was of great concern. It was blatantly
7 insubordinate. He was insubordinate. He was instructed
8 to put on a uniform shirt. We have that rule in effect
9 for a reason. When groups come into the station or when
10 we are going on an official event, we want to appear
11 professional, we want to project a good image and
12 frankly, it is done to show respect for the person that
13 we are honoring. If it is a station tour or somebody is
14 getting an award or something like that, you know, if
15 we are sitting -- if the crews are sitting there in
16 different degrees of uniform or dress, sweatshirts or
17 whatever, it just doesn't look as nice and it doesn't
18 show the respect that the other people are due.

19 Q Had he been directed to put on his dress shirt?

20 A Multiple times.

21 Q Would you be look at the materials behind Tab H, please,
22 in your book? What is documented there, please?

23 A This is a copy of the e-mail that Firemedic Weavel sent
24 to Lieutenant Barnes who would have been the supervisor
25 on duty at Station 2 that day. This is the one dated

1 November 14 and this is where Paramedic Weavel had
2 actually gave the exact times. He asked Firefighter
3 Pitts to put on his dress uniform shirt at 1802, 1825
4 and 2000 hours. He was ignored as you can see.

5 Q What about the second e-mail also from Mr. Weavel?

6 A The second e-mail was written three days prior and it
7 goes back to an event that happened on the eighth, so
8 the shift before that even, where they had prize winners
9 coming into the station and he had asked him at about
10 3:00 p.m. to put on his dress shirt. Instead,
11 Firefighter Pitts put on his sweatshirt rather than his
12 uniform shirt. So Firefighter Weavel felt completely
13 disrespected and he was trying to get his crew looking
14 sharp, wanted to do the right thing right in line with
15 what our uniform policy is and Firefighter Pitts just
16 ignored him.

17 Q Would you please look at the first sentence in the
18 second paragraph?

19 A "To me, this is complete disrespect."

20 Q Do you agree that this is complete disrespect?

21 A Definitely.

22 Q Is it insubordinate?

23 A Yes.

24 Q How is it insubordinate?

25 A Firemedic Weavel was his direct supervisor that night.

1 He was instructed on both this and the other occasion
2 multiple times to put a uniform shirt on and he failed
3 to do so.

4 Q Did Mr. Pitts receive a verbal reprimand as a result of
5 his insubordinate conduct toward Mr. Weavel?

6 A Yes. Lieutenant Barnes talked to him at some point in
7 November reference these things and was told that when
8 instructed to do so, he needs to have his uniform shirt
9 on.

10 Q And that's the third document which is included behind
11 Tab H. Correct?

12 A That is correct. It appears that Firefighter Pitts did
13 not have his uniform shirt at the station that day which
14 again is in violation of our policy for uniforms for
15 part-time people. When you report to work, you have to
16 have your uniform with you.

17 Q Behind that is a Uniform Regulation in the book. I
18 would like to -- There is a statement. The first
19 asterisk on the first page states, "The sweatshirt shall
20 be worn over the uniform shirt, NOT instead of the
21 uniform shirt." Is that the directive which you were
22 talking about?

23 A That is correct.

24 Q Thank you. How long has that been in effect in this
25 department?

1 A This goes back to -- The original date was 5-6-94.
2 It was revised on 1-15-96.

3 Q Thank you. Chief, again looking back at Page 5 of your
4 Statement of Charges under Prior Disciplinary Actions,
5 what occurred on November 26, 2009 that involved
6 Mr. Pitts and Village Administrator Michael Pollocoff?

7 A Firefighter/EMT Pitts met with Village Administrator
8 Michael Pollocoff as a result of a series of e-mails and
9 verbal exchanges that Firefighter Pitts had at the
10 RecPlex. He was upset that he was not able to use a
11 specific racquetball court. He then spoke with the
12 RecPlex employees and others involved in that and
13 evidently did not like the answer that he received.
14 He then went on to have a series of e-mails that he
15 exchanged back and forth with Ms. Willke, who is the
16 director of recreation for the village. As these chain
17 of e-mails continued to go back and forth, he then added
18 additional people. As a matter of fact, to be specific,
19 17 additional RecPlex staff that had absolutely no
20 direct oversight in the area of the racquetball courts;
21 maintenance directors, ice directors and so on. People
22 that had absolutely nothing to do with the incident at
23 hand. And it was quite disrespectful and quite
24 aggressive and frankly, quite sarcastic in some of the
25 e-mails which then culminated in this meeting with

1 Village Administrator Michael Pollocoff.

2 Q Why was it necessary for Mr. Pollocoff to speak to
3 Firefighter Pitts on that date?

4 A At that point, the e-mails had just gotten downright
5 abusive and sarcastic and he was -- by sending them to
6 the other people, it was showing complete disrespect to
7 Ms. Willke and her staff for their policies and for the
8 way that they run the RecPlex. The interesting thing
9 about this is that Firefighter Pitts' membership is
10 actually paid for by the Fire and Rescue Department. It
11 is a benefit of being a paid on-call member. If you
12 meet benchmarks, you are able to secure a membership for
13 both the employee -- the paid on-call employee and their
14 family which is of significant value and it is a
15 significant perk that we use in attracting and keeping
16 paid on-call personnel. So he was dealing with not only
17 RecPlex staff, but his co-workers.

18 Q Now you state here on Page 5 of the charges again that
19 Mr. Pitts' behavior was -- I am quoting you -- extremely
20 insubordinate and disrespectful. Why do you state that?

21 A He was dealing again with fellow employees. The RecPlex
22 is a village-owned building. They are village employees
23 that he was sending e-mails to just as he is. They are
24 in a different department, but they are all village
25 employees. He was being extremely disrespectful and

1 very short with the supervision and with the management
2 of the RecPlex.

3 Q Chief, would you please look now at Exhibit I in your
4 materials behind Tab I and explain briefly what is
5 documented there?

6 A The chain of the e-mails starts actually at the back and
7 goes forward. There is a fairly extensive description
8 of what the original incident was where Firefighter
9 Pitts had signed up for a racquetball court, wasn't
10 happy with the racquetball court that he was given
11 because a wrestling program was in the one racquetball
12 court that he wanted. He then continued on this
13 exchange of e-mails and started copying in additional
14 people including, as I mentioned, 17 other individuals
15 here. As we keep going forward, you can see they get
16 shorter and a little more disrespectful as time goes on
17 with the -- Probably the worst one is on the very first
18 page right after letter I. This is the e-mail dated
19 October 14, 2009 at 3:14 p.m. to Carol Willke and at
20 this point, it was to Administrator Pollocoff, Vesna,
21 who is the administrative secretary for Mr. Pollocoff,
22 and Jane Snell and HR. And the second line down, very
23 sarcastically, he said "I appreciate the 3.5 minutes
24 that you have spent to unsuccessfully schedule the
25 meeting with me." So I would say pretty blatant

1 disrespect for a person who is the manager of another
2 village department.

3 Q Now Chief, did this series of disrespectful e-mails to
4 Mr. Willke from Mr. Pitts concern you as chief?

5 A Yes.

6 Q Why?

7 A It shows an ongoing pattern of just disrespect for
8 anyone that is in authority or anyone that disagrees
9 or has a different position than Mr. Pitts.

10 Q Thank you. Looking again back at Page 5 of your
11 Statement of Charges, also under Prior Disciplinary
12 Actions, can you explain to the Commission why Mr. Pitts
13 was disciplined on April 25, 2011?

14 A On April 25, I gave Mr. Pitts a verbal warning for an
15 incident that happened on April 24. We had just placed
16 a Pierce pumper/tanker in service three days prior.
17 This piece of apparatus is worth over half a million
18 dollars. The Sunday daily duties include pulling that
19 apparatus out and we clean the apparatus bay floors.
20 The specific rigs that are in front -- that get pulled
21 out the front of the building would be this pumper/
22 tanker, 5612, a ladder truck, and another very similar
23 pumper tanker. They have the chocks down. Usually in
24 colder weather, they are left running. Sometimes they
25 are shut down for a short amount of time. What happened

1 was they were moving the vehicles back in. He moved the
2 first rig back in successfully. Somebody else moved in
3 the middle rig. Firefighter Pitts moved in the last
4 rig, 5612, the new pumper/tanker, and while being backed
5 in, he was stopped and a wheel chock had not been
6 removed from the front of the tandem wheels on this
7 hill and had gotten wedged underneath a sideboard that
8 contains hose pushing the brand-new diamond plate metal
9 up and thereby damaging it.

10 Q Now was this conduct negligent on his part as you
11 observed it?

12 A Yes. It is the driver's responsibility to remove the
13 chocks, store them in the proper holders prior to moving
14 the vehicle.

15 Q So it was specifically what did he fail to do on that
16 date that caused damage to the vehicle?

17 A He had failed to remove the chocks before moving the
18 vehicle.

19 Q Did you speak to Mr. Pitts as a part of your
20 investigation of this incident of what had occurred on
21 August 25, 2011?

22 A Yes.

23 Q What do you recall about that discussion?

24 A It started out very evasive.

25 Q Evasive on his part you mean?

1 A Yes. Evasive on his part.

2 Q Please continue.

3 A He was not forthcoming. When I started out the
4 questioning, can you explain to me what happened on
5 Sunday, he answered something to the effect of I don't
6 know. What happened Sunday? What are you talking about
7 on Sunday? I would have thought that it would be pretty
8 fresh in your mind that it was a pretty significant
9 event. You just did hundreds of dollars, if not
10 thousands of dollars worth of damage to a \$500,000 piece
11 of apparatus the day before. I had to ask very
12 specific, pointed questions about responsibilities;
13 whose job is it to do this, whose job is it to do that,
14 and only when asked very specific questions, would he
15 give a specific answer. He never really took ownership.
16 There was no doubt he was responsible for the incident
17 at all. He was the driver. It is clearly stated that
18 the driver's responsibility is to make sure the chocks
19 were out. That fact could not be refuted. Getting him
20 to take responsibility and ownership of the problem was
21 another story. His e-mail that he sent to Lieutenant
22 Barnes at Lieutenant Barnes' request very quickly, you
23 know, showed that he was the driver, but another
24 firemedic was backing him up. He was not able to see
25 the chock from the driver's seat and that the other

1 firemedic stopped him while he was backing up. At no
2 point did he say I made a mistake. I should have picked
3 up the chock and I didn't.

4 Q What else did he do that caused concern for you as part
5 of this investigation?

6 A As the discussion went, I proceeded to hand him the
7 Documentation of Verbal Warning. I specifically stated
8 in there that he was not forthcoming in the incident.
9 The e-mails that he had sent basically tried to blame
10 other people and he never, like I said, took the
11 responsibility, so I mentioned in the Documentation of
12 Verbal Warning that he was slow to take responsibility
13 and was not forthcoming in the investigation and he took
14 offense to that and refused to sign the Documentation of
15 Verbal Warning unless that line was struck. I informed
16 him that it wasn't his choice to strike what he was
17 being verbally reprimanded for and he finally did cross
18 off the line that he thought shouldn't be in there. He
19 signed it and he said if any further discussion is going
20 to take place, he wants to have a representative from
21 HR present.

22 Q So Chief, if I understand your testimony, Officer Pitts,
23 during this investigation -- the interview that you had
24 with him, refused to sign the documentation until it
25 was altered, refused to volunteer any information to you

1 which would have shed light on the incident, and refused
2 to admit or acknowledge any fault for the damage to the
3 vehicle. Is that your testimony?

4 A Yes.

5 Q Would you turn to Exhibit J in your document? Would you
6 briefly explain for the members of the Commission what
7 is contained behind Tab J?

8 A This is a series of e-mails. Page 1 is an e-mail that
9 was sent to Chief Guilbert reference the incident. The
10 second are actually my notes that I wrote down. This is
11 a typed version of my notes. They were handwritten.
12 They were typed for this proceeding. Page 3 is the
13 actual Documentation of Verbal Warning. You can see the
14 crossed off line that Wayne crossed off that says that
15 he was not forthcoming with the details of the incident,
16 was slow to take responsibility for the damage. He did
17 sign it after doing that. And at the bottom, you can
18 see the e-mail -- that is actually another copy of the
19 e-mail. We do have that coming up again. Tom
20 Overocker -- Firemedic Overocker did send an e-mail to
21 both Chief Guilbert and Lieutenant Barnes about the
22 incident with the wheel chock where he talks about who
23 is doing what. And then the last page in this --
24 Excuse me. The next page in here is Firefighter Wayne
25 Pitts' e-mail to Lieutenant Barnes about what was

1 happening.

2 Q Thank you. Going back to the issue of the verbal
3 warning, his altering it before he signed it, Chief, was
4 his refusal to sign the document a part of the pattern
5 of conduct that you commented on in your complaint?

6 A Yes.

7 Q Excuse me, in your charge?

8 A Yes. I think that is even further demonstrated in the
9 chain of e-mails that went afterwards.

10 Q Would you point out an example of how that is indicated
11 in the chain of e-mails?

12 A The very last page of J is an e-mail that Firefighter
13 Pitts sent me on Thursday, April 28, stating that he
14 thought the verbal warning that I gave him was
15 inaccurate and insulting. He then gave me six reasons
16 why he thought it was inaccurate and insulting and I
17 think the very last sentence says it all.

18 Q What does that state?

19 A "In an effort to further reduce unnecessary expenditures
20 of administrative time and the prospect of me being
21 insulted further, I hope you will consider this matter
22 closed."

23 Q In your estimation, Chief, did Mr. Pitts ever fully or
24 even partially cooperate with you in this investigation?

25 A Not at all. He asked very specific, very pointed

1 questions and again, at no point did he say, do you know
2 what? I made a mistake. I should have seen it. I
3 picked up the chocks in the other very similar -- almost
4 identical piece of apparatus minutes before. I didn't
5 pick up the chocks on this piece of apparatus, and I
6 should have. I made a mistake.

7 Q Why was this incident including your investigation of
8 the incident a cause of concern to you, Chief?

9 A Well, there was significant damage to a brand-new piece
10 of apparatus. It had to be repaired. The sheer fact
11 that there was -- there was really no denying that he
12 was responsible for it, but the fact that he wouldn't
13 take ownership, the tone of the conversation when we sat
14 down for the verbal warning and the fact that he
15 wouldn't answer simple questions without almost an
16 interrogation per se really goes with the pattern. He
17 just doesn't get it. He doesn't understand that he
18 needs to change his behavior at times.

19 Q Thank you. Chief, again looking back at Page 5 of your
20 charges, if you would, under Training Attendance,
21 please, Chief, why did you include this observation in
22 your Statement of Charges against Mr. Pitts?

23 A Number one, the accumulation of this series of
24 disciplinary actions was at a training and we have had
25 previous problems with Mr. Pitts in regard to training

1 and his training attendance. Specifically four years,
2 he didn't meet the minimum 75%. We have a very
3 complicated village. We have industry, we have housing,
4 we have interstates, we have hazardous materials, we
5 have railroads, much more so than -- From a fire and
6 rescue standpoint, it is far more complicated than many,
7 many communities. We really rely on our people to
8 attend 75% of the training at a minimum to keep them up
9 to speed in techniques to deal with these emergencies,
10 to be proficient with the equipment, to know their way
11 around and to know how to get to these addresses in a
12 timely fashion and once they are there, to respond and
13 function in an effective manner.

14 Q Chief, what had Mr. Pitts' Contingent Offer of
15 Employment document state as to his minimum training
16 attendance requirement?

17 A The minimum training requirement for fire and rescue
18 people is 75%.

19 Q Would you look at the document found behind Tab C in
20 your materials? This is a letter and material dated
21 July 16, 2002. Would you explain what that is and what
22 its significance is here?

23 A This is Mr. Pitts' Contingent Offer of Employment that
24 he would have signed upon being hired -- receiving a
25 contingent offer upon successful completion of the psych

1 and physical of the requirements that he needed to meet.

2 Q Would you look at Page 2 of that document, if you would?

3 Do you see the 75% training standard or requirement

4 stated there?

5 A I do. Fourth line down. Specifically it states,

6 "Must attend 75% of all scheduled fire and rescue

7 training sessions."

8 Q Okay. Thank you. Would you please go further back in

9 your materials? It will be the fourth page which is

10 headed at the top Page 2 of 3 in this same exhibit.

11 What does the department's regulation which is

12 represented here state about minimum training and

13 attendance?

14 A This is the fire and rescue training requirements and

15 rules and regulations. The first paragraph under A

16 Required Trainings says, "Personnel classified as fire

17 fighters SHALL attend a minimum of 75% of all scheduled

18 fire AND rescue training sessions to maintain their

19 employment with the Village of Pleasant Prairie."

20 Q These materials were provided to Mr. Pitts when he was

21 hired. Correct?

22 A That is correct.

23 Q Now according to your charges, again on Page 5, did

24 Mr. Pitts meet the 75% minimum training standard in

25 2007?

1 A No, he did not.

2 Q In 2008?

3 A No.

4 Q 2010?

5 A No.

6 Q 2011?

7 A No.

8 Q Why do you comment in your charges on his failure to
9 meet the minimum training standard?

10 A Again, it shows a pattern of his disregard for
11 department rules and regulations. I just explained why
12 our -- why we have a requirement for this training, why
13 it is important for not only his safety, but others'
14 safety to attend this training and for four years, he
15 was significantly under the minimum requirement of that
16 training.

17 Q Chief, would you look at Exhibit F1 in your materials,
18 what is behind F1? What is that document?

19 A This is a computer report out of our records management
20 system on training attendance specifically for required
21 training. This would be the weekly trainings.

22 Q For what year?

23 A This specific one is for 2007.

24 Q For the entire year. Correct?

25 A For the entire year.

1 Q What does this indicate regarding Mr. Pitts' 2007
2 training attendance?

3 A It shows that the percent of his training attendance was
4 60%. Cnt indicates count.

5 Q Thank you. Would you look at Tab F2? What is that
6 exhibit?

7 A This is again the RMS records for the year of 2008,
8 January 1 through December 31, showing that his count --
9 or his percentage of training attendance is 60.98%.

10 Q Is that substandard?

11 A Yes. It is less than 75%.

12 Q Look at Tab 3. What that document?

13 A This is his participation in training detail here for
14 the year -- the entire year of 2010 showing that his
15 training attendance was 68.29%.

16 Q Thank you. Finally, F4. What is that?

17 A The same form for the year 2011 and it states -- it
18 shows that his training attendance was 61.54%.

19 Q So Chief, it is your testimony -- and this documentary
20 evidence supports that -- that Mr. Pitts failed to meet
21 the minimum 75% training standard in those four years;
22 2007, 2008, 2010, and 2011. Correct?

23 A That is correct.

24 Q Would you look at Document F5 if you would and explain
25 what those documents are?

1 A This is a series of documents of both e-mail and e-mail
2 exchange with Firefighter Pitts and myself in 2009 and a
3 letter and other documentation from 2008 in which Chief
4 Guilbert and myself had counseled Firefighter Pitts on
5 his training attendance.

6 Q What was he told by you and by Chief Guilbert in 2008
7 regarding his attendance?

8 A It specifically states that the demands of his full-time
9 employment are factored into his training record, but
10 his attendance record -- this is as of year-to-date at
11 that point for the first three months -- were at 58%.
12 At some point, it becomes unacceptable because he is not
13 receiving the needed training and refreshing and he is
14 obligated -- he is missing required training which he is
15 obligated to provide certain refreshers regard to health
16 and safety issues. It finishes off with "When all is
17 factored, you can become a liability", both to himself
18 and his crew.

19 Q So following receipt of these documents, Chief, did
20 Mr. Pitts improve his training attendance to the
21 required 75% in 2010 or 2011?

22 A No, he did not.

23 Q Did his continuous substandard training attendance
24 concern you when you drafted the charges?

25 A Yes.

1 Q Why?

2 A Again, it goes to show the pattern of his disregard for
3 the department's rules and regulations.

4 Q Thank you. Finally, would you look at the documents
5 behind Tab K in your materials? These address the
6 computer crime and damage. How did the facts that are
7 stated here, documented here, first come to your
8 attention as chief?

9 A This was an EMT renewal. Part of the EMT renewal --
10 and this is for the 2008 - 2010 renewal process --
11 licensure period. Part of the requirement for this is
12 that you need to go to a basic refresher, you need to be
13 current in CPR, and you need to document any criminal or
14 traffic history that you have. On the second page, you
15 will see that there are two offenses or convictions
16 listed. The first is for failure to yield while making
17 a left turn and the second is a computer crime,
18 specifically destroying data.

19 MR. OLSON: Please continue.

20 A So as part of the EMT licensure process, you have to
21 provide records -- or the state will get the records --
22 of these convictions and they will determine if they
23 will renew the EMT license based on this. If you look
24 at what the actual crime was, it refers specifically to
25 destroying data from a former employer.

1 Q Thank you. If you would look, please, Chief, at the
2 June 23, 2008 letter to Chief Guilbert from Mr. Pitts
3 which is documented here, do you see that in front of
4 you?

5 A Yes.

6 Q What does Mr. Pitts admit to in this letter?

7 A He admits to committing the crime. He states that he
8 pleaded no contest to the charge and he describes it as
9 a prank that he played on a friend of his at her place
10 of work, that he had accessed the website of her work
11 and removed items around the production tracking web-
12 site.

13 Q Did you consider this to be a prank as he alleges?

14 A No, I do not.

15 Q Does he state here that this company against which he
16 played this alleged prank was one that had fired him?

17 A I do not see that. I do not see that in here.

18 Q Okay. Now he alleges that "I also voluntarily offered
19 to restore any damages which were estimated to be around
20 \$4,000." What was your understanding of the amount of
21 damage that was caused by his alleged prank?

22 A Well, the \$4,000, actually about \$4,080 according to the
23 criminal complaint, \$4,080.45 was the cost to restore
24 the data itself. However, the company lost over \$34,000
25 in revenue because of the delay in the orders from them

1 being moved in the computer system.

2 Q The police report or the statement from the circuit
3 court is contained in here as well, is it not?

4 A That is correct.

5 Q Would you please look at that statement, specifically at
6 Page 3? Is the \$34,000 indicated there as being the
7 loss sustained by the employer as a result of Mr. Pitts'
8 actions?

9 A That is correct, as the lost revenue.

10 Q What about the paragraph above that? What is stated
11 there?

12 A "Pitts stated that he did this on an impulse, to be
13 mischievous. He stated that his motivation was to cause
14 problems for St. George Publishing, but that he did not
15 realize it would cause this many problems."

16 Q Chief, again, why do you believe that this criminal
17 conduct by Mr. Pitts is relevant here to this
18 department?

19 A Number one, we have an extensive amount of computer
20 data. Not only do we have data on training, equipment
21 records, personnel records, fire calls, but most
22 importantly, we have medical records and these are
23 HIPAA-protected medical records, private medical records
24 of personnel or of patients that we have transported.

25 Q What do you believe to be the relevance of that here?

1 A Well, Mr. Pitts has access to these records and when he
2 was disciplined, he's obviously shown a history of going
3 in and attempting to tamper with or destroy that data
4 and with this HIPAA-protected data for the patients, if
5 that got into the wrong hands, could be of great
6 concern. As a matter of fact, I was so concerned with
7 this, I immediately, upon the termination of Mr. Pitts,
8 sent out an e-mail to all of the fire department, to the
9 police department dispatchers, and to the village
10 department heads that Mr. Pitts had been terminated and
11 he was not to enter the buildings without being escorted
12 by myself or somebody that I had appointed and we had
13 worked with IT, the Information Technology Department,
14 to immediately suspend all access he had to our computer
15 system and I had also, even to further assure that he
16 wouldn't get in, taken away his rights to our records
17 management system that included that sensitive patient
18 data.

19 Q Chief, what standards of honesty and integrity does the
20 department expect of its employees?

21 A The highest level. We are called to people in their
22 greatest time of need; their most sensitive and their
23 most embarrassing moments. If you look at any newspaper
24 poll that is done, who do people trust? Firefighters
25 and EMTs and paramedics come out on top every time.

1 That is something we don't take lightly because that is
2 something where we need to do our jobs. If we don't
3 have the trust of people to come in and do our job and
4 to take care of the people and have them expect for us
5 to be able to keep that confidential, it is almost
6 impossible for us to do our jobs.

7 Q Chief, is intentional malicious damage to an employer
8 consistent with the standards of this department?

9 A No, it is not. It shows a complete breakdown in
10 decision-making ability and judgment that calls into
11 question his ability to make prudent judgements at the
12 scene of an emergency.

13 Q Finally, Chief, you made reference to a memo that you
14 sent to the other members of the department and to the
15 police dispatch. Is that contained at E6 of the
16 materials, just to point out that it is here?

17 A Yes.

18 Q Is that the memo that you described?

19 A Yes. This is the e-mail that I sent.

20 Q Finally, Chief, looking at Page 6 of the charges,
21 the charges of September 21, 2012, you state the
22 following -- I am quoting you -- for the good of the
23 Pleasant Prairie Fire & Rescue Department, it is my
24 recommendation that Firefighter/EMT Wayne Pitts be
25 terminated from employment with the Village of Pleasant

1 Prairie Fire & Rescue Department. Is that your
2 statement?

3 A That is correct.

4 Q Why do you make that recommendation to this Commission
5 at this time?

6 A Not only this last incident that in essence as you
7 described was the straw that broke the camel's back, but
8 all the events leading -- the disciplinary history and
9 the escalating nature of some of this leading up to this
10 doesn't -- doesn't show a good example of the decision
11 making and the judgment of Mr. Pitts and it would make
12 us impossible to run a department. If we have all the
13 members deciding what they want to do when they want to
14 do it and how they want to do it, in essence using their
15 own rules and not following the rules and regulations of
16 the department or acting like a member of a paramilitary
17 organization, the ability to carry out basic orders and
18 instructions and then come back and report the findings
19 of those, it completely prevents us from operating in an
20 efficient manner.

21 Q Chief, you also state that the termination of Mr. Pitts
22 would be for -- I am quoting you -- for the good of the
23 department. Is that correct?

24 A Yes.

25 Q Why do you state that?

1 A It is almost like an infection within the department.
2 If you have somebody that just blatantly in this case,
3 leaves training, everyone sees that and what does that
4 show about that person's respect for the others in
5 there, for the officers, for the management and for the
6 processes that you have set out? It just shows a
7 blatant disregard and it can't be tolerated. You need
8 to stop that right away and make sure that people are
9 functioning as a team.

10 Q Do you believe that the department has been tolerant
11 and patient with Mr. Pitts prior to this last incident?

12 A Very much so. We have given him more than enough
13 opportunities to correct his behavior.

14 MR. OLSON: Thank you. We have
15 no further questions subject to any rebuttal to ask the
16 chief.

17 MR. PITTS: I don't have any
18 questions.

19 MR. DE LA MORA: No questions of the
20 chief?

21 MR. PITTS: No questions.

22 MR. DE LA MORA: Members of the Police
23 and Fire Commission?

24 MR. TERWALL: With reference --

25 MR. DE LA MORA: Could you please

1 identify yourself for the record?

2 MR. TERWALL: Tom Terwall.

3 With regard to the August 21, 2012
4 incident, was there any radio communication between 5631
5 and dispatch while he was en route back to Station 2 or
6 when he returned to Station 2?

7 THE WITNESS: None that myself or
8 anyone on the fire grounds was able to hear. None that
9 I am aware of.

10 MR. TERWALL: So Station 2 was not
11 aware that a return to the station was needed.

12 THE WITNESS: Station 2 was at the
13 training site on 72nd Avenue. Station 2 was empty as a
14 result of that.

15 MR. TERWALL: Okay. But dispatch
16 was not notified.

17 THE WITNESS: Not that I am aware
18 of, no.

19 MR. TERWALL: My second question
20 is, what percentage of your employees, both full-time
21 and POC, have attendance records that show a 60%
22 attendance over a four-year period? Is that an
23 exception or is that --

24 THE WITNESS: That would definitely
25 be an exception.

1 MR. TERWALL: Thank you.

2 MS. GENTHNER: Christine Genthner,
3 commission member. I have a question with regard to
4 Exhibit E1 which is the training sign-in sheet. Next to
5 Mr. Pitts' name, it appears there is some initials.
6 Would he have initialed that?

7 THE WITNESS: Yes.

8 MS. GENTHNER: And next to that, it
9 appears to be 2100. Who put that there and what does
10 that stand for?

11 THE WITNESS: That would be my notes
12 denoting that he left the training at 2100. Our people
13 are paid for attendance at training and since training
14 went to 2130 that night, the other participants that
15 were off duty that came in for the training were paid
16 to 2130. However, Mr. Pitts as only paid to 2100
17 because he had left by that time.

18 MS. GENTHNER: I have another
19 question. With regard to the communication to the
20 participants that they were to not only complete the
21 exercise, but stay for the discussion afterwards, how
22 was that communicated to the participants?

23 THE WITNESS: Verbally at the start
24 of the exercise. Every other piece of apparatus and all
25 other participants were there.

1 MS. GENTHNER: I am not quite sure I
2 understand some of the process. That is why I am asking
3 the question. With regard to 5631, the physical vehicle
4 itself, is it normally parked at a specific location?

5 THE WITNESS: The station that he
6 returned to, Station 2, is the assigned station for that
7 piece of apparatus, yes.

8 MS. GENTHNER: But did I understand
9 you to say that that station otherwise didn't have
10 staffing because of the scavenger hunt?

11 THE WITNESS: Yes. The entire crew
12 from Station 2 were on site on 72nd Avenue at the
13 meeting point. Lieutenant Clark and all the other
14 assigned firemedics and off-duty paid on-call part-time
15 people were at the site on 72nd Avenue. The only one
16 that was at Station 2 was Firefighter Beach after being
17 abandoned by Firefighter Pitts there.

18 MS. GENTHNER: Is that likely where
19 Mr. Pitts' personal vehicle would have been? Is that
20 where he would have started that scavenger hunt from,
21 that location?

22 THE WITNESS: Yes. We started at
23 72nd Avenue, but he met with the rest of the group at
24 Station 2. He was at Station 2 prior to the beginning
25 of training and then rode down on a piece of apparatus

1 probably -- I couldn't tell you if he came down on 5631.
2 I am assuming he probably did.

3 MS. GENTHNER: Thank you.

4 MR. MAYER: Any other questions?
5 Okay.

6 MR. DE LA MORA: Your next witness.

7 MR. OLSON: We would call
8 Lieutenant Thomas Clark, please.

9 THOMAS CLARK, having been first duly
10 sworn on oath to tell the truth, the whole truth, and
11 nothing but the truth testified as follows:

12 DIRECT EXAMINATION BY MR. OLSON:

13 Q Thank you. Lieutenant Clark, your position obviously is
14 lieutenant. How long have you been a lieutenant here in
15 this department?

16 A I have been a lieutenant for about 12 years.

17 Q What positions have you held previous to that in this
18 department?

19 A I was a paid on-call for five years. I got hired after
20 that full-time and I was a firemedic before lieutenant.

21 Q Thank you. Briefly, Lieutenant, what are your
22 supervisory duties and responsibilities in this
23 department?

24 A I would say middle management. I take care of all of
25 the new building construction as far as code

1 enforcement, fire prevention, and I also take care of
2 the maintenance of the vehicles.

3 Q Do you have responsibility during training sessions
4 also?

5 A Yes, I do.

6 Q What was your role in the training exercise that was
7 conducted by this department on August 21, 2012?

8 A It was more of to participate in the training. I was on
9 one of the vehicles by myself and I also participated.

10 Q So you did attend the training session on that date?

11 A I did.

12 Q Lieutenant, was Mr. Pitts a participant in that training
13 session on August 21?

14 A Yes, he was.

15 Q What was the directions that Mr. Pitts and the others
16 were taking part, what were the direction that they were
17 to follow and observe concerning beginning and
18 concluding the exercise?

19 A Chief McElmury had given us a paper with a list of all
20 the businesses and places to go to and write down a
21 letter that was taped onto a specific piece of fire
22 protection equipment and then transfer that onto the
23 paper.

24 Q Lieutenant, were employees expected to remain to
25 complete the training exercise on that date?

1 A Yes, they were.

2 Q And when was the training scheduled to end? Do you
3 know?

4 A Routinely, it ends around 9:30, 2130. It depends on the
5 training and when people get -- in that particular case,
6 when they got the task completed.

7 Q Was it your understanding -- and the chief has
8 testified -- that employees were to reassemble at the
9 training point for discussion of what had occurred
10 during the scavenger hunt?

11 A Yes. That is what he said.

12 Q Thank you. Did it come to your attention on that date
13 during that training session that Mr. Pitts had taken
14 his department vehicle and had left the exercise without
15 permission?

16 A I did not realize that at the time.

17 Q You knew that he had left, though. Correct?

18 A Yes, I did.

19 Q How did that come to your attention?

20 A We had a discussion. I was one of the first ones back
21 at the rendezvous point on 72nd Avenue. We had a
22 discussion. 5631 pulled up next to me. I got out and I
23 was talking with them. We were kind of comparing notes
24 and we came to realize that there was two OHL buildings
25 in Pleasant Prairie and that 5631 had probably gone to

1 the wrong one and they were unable to get the letter off
2 of that OHL building and after that, they left and I was
3 assuming that they were going to the correct OHL
4 building at that point to get that letter.

5 Q By "they", you mean Mr. Pitts and Firefighter Beach?

6 A That is correct.

7 Q So Lieutenant, you were the lieutenant on duty during
8 that exercise. Did Mr. Pitts ever on that date let you
9 know or advise you that he was leaving the training
10 exercise?

11 A No.

12 Q Did he ever ask your permission to leave the training
13 exercise?

14 A No.

15 Q Did he stay until the exercise was ended?

16 A No. And that was -- I guess when I realized it is when
17 Firefighter Beach was coming back in his personal
18 vehicle.

19 Q He had begun that exercise riding in 5631 with
20 Firefighter Pitts. Correct?

21 A Correct.

22 Q But he came back alone.

23 A He came back in his personal vehicle, right.

24 Q Hypothetically, Lieutenant Clark, if an employee who is
25 participating in such a training exercise needs to leave

1 before the exercise is concluded for some reason, what
2 should that employee do?

3 A They should contact a supervisor. If the chief is not
4 available or the person in charge of training, which
5 was the chief that night, they should go to the next
6 immediate supervisor and it is permitted routinely if
7 they need to leave.

8 Q But they have to ask permission and advise you before
9 they leave. Correct?

10 A Correct.

11 Q And the chief was not there at the time, so you were the
12 ranking officer. Did Mr. Pitts do either of these
13 things? Did he advise you that he was leaving or did he
14 seek your permission?

15 A He did not advise me that he was leaving and not for the
16 rest of the night. They did say something when they
17 pulled away in 31. I don't remember specifically what
18 it was, but again, I was assuming that they were going
19 to the correct building.

20 Q But in fact they went to Station 2 as you know now.
21 Correct?

22 A Correct. I did not know that.

23 Q Lieutenant, I'd like to refer you to a document that you
24 had written regarding this incident which is in front of
25 you here. It is Exhibit E4. Did you draft that?

1 A I did.

2 Q Does this memo address the events that occurred on
3 August 21 at the training exercise or during the
4 training exercise?

5 A Yes.

6 Q In that memo, you state in Paragraph 2, Lieutenant
7 Clark, the following -- I am quoting -- 5631 left the
8 area. I assumed 5631 left to find the correct building
9 so they could be familiar with it, and you testified
10 that that was your understanding. What actually
11 happened when 5631 left the area as you learned later?

12 A I found out that they had gone back to Station 2. I do
13 not know if they went to the OHL building or not, but I
14 did find out that they had gone back to Station 2.

15 Q And you had not been advised that they were going to
16 Station 2. Correct?

17 A Correct.

18 Q You also state, Lieutenant, in the last paragraph of
19 your memo that -- I am quoting you -- toward the end of
20 the training on 72nd Avenue, Justin Beach arrived back
21 at the training site driving his personal vehicle. Just
22 to reiterate, Mr. Beach was Mr. Pitts' partner in
23 Unit 5631 on that date. Correct?

24 A He was. He was in the passenger's seat.

25 Q Why as you understand it did Justin Beach have to drive

1 his personal vehicle back to the training site on that
2 evening?

3 A Because he has an injured thumb and he would not be able
4 to drive 5631. He is not qualified to do so right now.

5 Q Who had been the driver of 5631?

6 A Wayne Pitts was.

7 Q Mr. Pitts did not return to the training site. Correct?

8 A That is correct.

9 Q The return of Mr. Beach occurred before the training had
10 been concluded. Is that correct?

11 A That is correct.

12 MR. OLSON: I have no further
13 questions of Lieutenant Clark.

14 MR. MAYER: Any questions?

15 MR. DE LA MORA: I just have a
16 question for clarification. There's been a reference,
17 Lieutenant Clark, to the OHL building. Could you
18 explain what OHL, the acronym stands for? If you know.

19 THE WITNESS: I am sorry. I don't
20 remember what OHL is. It is a storage of pool supplies
21 is what it is and I don't remember what is it.

22 MR. DE LA MORA: Pool as in swimming
23 pool?

24 THE WITNESS: Swimming, correct.

25 MR. DE LA MORA: I don't have any

1 further questions.

2 MR. OLSON: We would next call
3 Firefighter Justin Beach, please.

4 MR. DE LA MORA: Do we have any
5 questions by you in regard to Officer Clark's testimony?

6 MR. OLSON: I'm sorry.

7 MR. PITTS: No questions.

8 MR. DE LA MORA: Thank you.

9 (Witness excused)

10 MR. OLSON: We next call
11 Mr. Beach.

12 JUSTIN BEACH, having been first duly
13 sworn on oath to tell the truth, the whole truth, and
14 nothing but the truth testified as follows:

15 DIRECT EXAMINATION BY MR. OLSON:

16 Q Mr. Beach, what is your position in this department,
17 please?

18 A A paid on-call firefighter/EMT.

19 Q How long have you been in that position?

20 A Approaching seven years.

21 Q Were you scheduled to take part in a training exercise
22 on August 21, 2012?

23 A Yes.

24 Q What did the exercise consist of as you recall?

25 A A scavenger hunt type drill. We were there to --

1 we had a list of addresses of facilities and buildings
2 to check for fire department connections and pump pads
3 for letters taped to the appliances for a puzzle.

4 Q Thank you. And who were you paired with for the
5 purposes of this exercise?

6 A Firefighter Pitts.

7 Q What unit were you assigned to?

8 A 5631.

9 Q Thank you. And who was the driver of Unit 5631 for this
10 exercise?

11 A Firefighter Pitts.

12 Q Mr. Beach, did you prepare a memo or document regarding
13 what happened during that training exercise?

14 A Yes, I did.

15 Q Do you have that in front of you?

16 A Yes, I do.

17 Q Thank you. Is this an accurate accounting of what
18 occurred on that evening during that training exercise
19 and your role in it?

20 A Yes, it is.

21 Q Mr. Beach, looking at this memo and based on your own
22 recollection of what happened that evening, can you tell
23 the Commission what happened? Did Mr. Pitts complete
24 the training exercise with you?

25 A No.

1 Q Did he take you to Station 2 during the exercise?

2 A Yes, he did.

3 Q Was that before the training session was completed?

4 A Yes, it was.

5 Q Did he leave you there?

6 A Yes.

7 Q What did you have to do then to complete the training

8 exercise?

9 A I had to return to the training site on 72nd Avenue in

10 my own vehicle.

11 Q Why did you have to use your own vehicle?

12 A At this point, I am on injured leave. I am unable to

13 drive department equipment.

14 Q 5631 was left at the station then. Correct?

15 A Correct.

16 Q Looking at your statement, I'd like to quote you.

17 "I then returned to the training location to complete

18 the training." So when Mr. Pitts left you at Station 2,

19 it was before the training exercise had been concluded

20 or completed. Correct?

21 A Correct.

22 Q You had to complete the training on your own without

23 Mr. Pitts. Is that correct?

24 A Correct.

25 Q Did you speak to Chief McElmury on the phone that

1 evening?

2 A Yes, I did. There was a phone call placed to Station 2.
3 Being the only one there, I answered the phone. It was
4 Chief McElmury. I told him that I would need to respond
5 back in my own vehicle because Mr. Pitts had left.

6 Q What did the chief ask you in that phone call, please?

7 A He had asked me if he had left and that -- if I would
8 return in my vehicle.

9 Q Thank you. You did tell him that Mr. Pitts had left
10 Station 2 at that time.

11 A Correct.

12 Q You state in your -- in your written statement here,
13 Mr. Beach, that Mr. Pitts saying that he was aggravated
14 and he was out of there and he left. Is that correct?

15 A Yes, it is.

16 MR. OLSON: No further questions.

17 MR. MAYER: Commissioners?

18 MS. GENTHNER: Christine Genthner for
19 the record.

20 Lieutenant Clark indicated that when
21 5631 left, that he recalls something to the effect of
22 somebody saying we need to go. Do you remember somebody
23 saying that?

24 THE WITNESS: Yes. At that point
25 when we realized that there was a second location,

1 Firefighter Pitts had suggested that we go look at the
2 second location and him being the driver, I was not
3 going to wait; I was going to go with him. So he
4 suggested that we do that and we left, but never made
5 it to that location. We kind of rerouted our way to
6 Station 2.

7 MS. GENTHNER: Nothing further.

8 MR. MAYER: Any other questions?

9 MR. NELSON: Larry Nelson.

10 You said Mr. Pitts was aggravated and we
11 were going back to Station 2. Why was he aggravated?

12 THE WITNESS: He had stated that he
13 was aggravated. I didn't -- I didn't notice any
14 physical aggravation. He said he was aggravated and
15 that he was leaving. I don't know if it was --

16 MR. NELSON: No explanation?

17 THE WITNESS: I don't know if it
18 was with the training or myself. That, I don't know.

19 MR. MAYER: Any other questions?

20 MR. DE LA MORA: For the record,
21 Mr. Pitts, do you have any questions --

22 MR. PITTS: No questions.

23 MR. DE LA MORA: -- of Mr. Beach?

24 MR. PITTS: No questions.

25 MR. DE LA MORA: Thank you, sir.

1 (Witness excused)

2 MR. OLSON: Our final witness
3 would be Mr. Pollocoff.

4 MICHAEL POLLOCOFF, having been first duly
5 sworn on oath to tell the truth, the whole truth, and
6 nothing but the truth testified as follows:

7 EXAMINATION BY MR. OLSON:

8 Q Mr. Pollocoff, what is your position in the Village of
9 Pleasant Prairie, please?

10 A I am the village administrator.

11 Q How long have you been the village administrator here?

12 A A little over 27 years.

13 Q Briefly, what are your duties and responsibilities as
14 village administrator?

15 A I am responsible for implementing policies set forth by
16 the village board, I am responsible for the day-to-day
17 operations of general village operations, personnel,
18 all financial operations of the village, various utility
19 enterprise funds such as RecPlex, sewer and water
20 utility.

21 Q You mentioned personnel. Do you have supervisory
22 responsibility for village employees?

23 A Yes, I do.

24 Q I'd like to direct your attention, Mr. Pollocoff, to a
25 meeting that you had with Mr. Pitts on October 26, 2009.

1 Do you recall that meeting?

2 A Yes.

3 Q What do you recall?

4 A It was a meeting that arose out of a dispute over a
5 racquetball court assignment that had escalated over a
6 string of e-mails from Mr. Pitts with Mrs. Willke.

7 Q Now what had Mr. Pitts done during this incident or
8 during this time that concerned you in your role as
9 village administrator, please?

10 A Well, Mr. Pitts as a paid on-call firefighter, one of
11 the benefits we provide to those employees is access to
12 the RecPlex for their use for its enjoyment as well as
13 for physical development. They get to use that as an
14 employee for the fire department. To have a dispute
15 arising out of not being able to get the racquetball
16 court assignment and then have a series of e-mails that
17 were sarcastic and demeaning directed at the director
18 and then copied to 17 other staff members who have no
19 relationship to scheduling a racquetball court -- they
20 might clean a racquetball court, they might walk by a
21 racquetball court, but they have no involvement with
22 that -- it was not conducive to a good employee working
23 atmosphere. If there is a problem, he needed to talk
24 about it with the chief or he could talk directly with
25 the director. His actions were inappropriate and caused

1 a lot of people to spend a lot more time than necessary
2 to deal with such a minor issue.

3 Q Now what position did Mrs. Willke hold on that date on
4 October 26, 2009?

5 A Mrs. Willke is the director of recreation and she is
6 also director of Human Resources.

7 Q These e-mails from Mr. Pitts were directed at her and
8 copied to a number of other village employees. Is that
9 correct?

10 A Correct.

11 Q Would you please look at Exhibit I in your materials?
12 Are you familiar with the e-mails and correspondence
13 that are referenced there?

14 A Yes.

15 Q Are these the e-mails that Mr. Pitts sent to Mrs.
16 Willke?

17 A Yes.

18 Q How would you characterize these, Mr. Pollocoff?

19 A I would characterize them as sarcastic and
20 disrespectful.

21 Q Do you believe these e-mails that Mr. Pitts had sent
22 Mrs. Willke were inappropriate and unacceptable at your
23 level as well as the chief's?

24 A Yes.

25 Q Why was it a concern to you that he copied a number of

1 other persons with it?

2 A Again, it was bringing a personal problem that he was
3 having to a great number of people who had no direct
4 involvement in either fixing that problem or curing it
5 and it was done to bring some level of perceived harm to
6 Mrs. Willke.

7 Q Did you believe these e-mails were demeaning toward
8 Mrs. Willke?

9 A Yes, they were.

10 Q What did you advise Mr. Pitts during your meeting with
11 him on that date?

12 A I advised him that his actions were in violation of the
13 village handbook, they were not becoming of a person of
14 his position in the fire and rescue department, they
15 wouldn't be tolerated and I found no reason for them to
16 begin with at all.

17 Q Did you advise him during that meeting that he could be
18 subject to further discipline if he engaged in similar
19 conduct in the future?

20 A Yes, I did.

21 Q Are you familiar with what Chief McElmury is asking the
22 Commission to do here?

23 A Yes, I am.

24 Q Do you agree with that?

25 A Yes, I do.

1 Q Why?

2 A I think that there's been obviously a long-running
3 series of events where Mr. Pitts finds himself in the
4 unique position of being the only person who is not
5 subject to the rules and regulations culminating in his
6 last transgression, taking a half million dollar front-
7 line piece of equipment out of service to a station with
8 no knowledge, exposing the village and his co-workers to
9 significant risk. I find that totally unacceptable and
10 when taken in totality with all the other activities
11 that he's engaged in over the last few years, I think
12 there is really no other action that the village fire
13 chief can take with any good conscience.

14 MR. OLSON: Thank you,
15 Mr. Pollocoff. We have no further questions.

16 MR. MAYER: Any questions,
17 Commission?

18 MR. DE LA MORA: Mr. Pitts, do you
19 have any questions of Mr. Pollocoff?

20 MR. PITTS: No questions.

21 MR. DE LA MORA: Commission?

22 MR. MAYER: No questions.

23 (Witness excused)

24 MR. OLSON: We at this point rest
25 subject to any necessary rebuttal. We have concluded

1 our case in chief here.

2 MR. DE LA MORA: What about your
3 exhibits, Mr. Olson? You move them into evidence?

4 MR. OLSON: I move them into
5 evidence, yes.

6 MR. DE LA MORA: Mr. Pitts, basically
7 what has been requested by the chief is that the
8 materials that are in the binder and have been marked as
9 Exhibit No. 2 be accepted by the Commission as evidence
10 in this proceeding. Do you have any objection to that
11 occurring at this time?

12 MR. PITTS: No objection.

13 MR. DE LA MORA: At this point, it
14 would be appropriate for Mr. Pitts to proceed with his
15 presentation. My recommendation would be that since we
16 started at 1:00, that you consider taking a five-minute
17 break to allow Mr. Pitts to prepare and commence --

18 MR. MAYER: That is fine.
19 (Discussion off the record)

20 MR. DE LA MORA: At this time,
21 Mr. Pitts, it is your opportunity to go ahead and pre-
22 sent your case if that is what you wish. You also have
23 the opportunity to make an opening statement before you
24 present any testimony or you can go into the testimony
25 immediately. This is your opportunity to be heard by

1 the Commission as to why you feel you should not be
2 terminated as the fire chief has indicated. If you have
3 other feelings other than that, please express them to
4 the Commission.

5 MR. PITTS: Okay. Thank you.
6 Thank you for giving me the opportunity to speak with
7 you. First, I'd like to apologize to Chief McElmury,
8 Mrs. Willke and Mr. Pollocoff for any disrespect that
9 you felt came your way. I certainly didn't mean it and
10 I regret any disrespect that I put on you. All I wanted
11 to do is just add a little bit of perspective on the
12 events.

13 I don't contest anything that the fire
14 chief -- Chief McElmury has brought up. It is just that
15 my understanding of the events on the training -- the
16 scavenger hunt training on August 21 were different.
17 That is simply all. My understanding was that we were
18 supposed to find the location, solve the puzzle, return
19 to the check-in point -- or check in at the check-in
20 point and return to Station 2, and that is exactly what
21 I did. We went to all ten locations, we solved the
22 puzzle, we checked in and then I returned to Station 2.
23 At no time did I have any intent to abandon one of the
24 rigs or the training or Firefighter Beach. My
25 impression was that everybody was coming back to Station

1 2 and that is why I returned to Station 2. I had to
2 leave at 9:00 o'clock, and it is typical for training to
3 go from 7:00 o'clock to 9:00 o'clock. They had not
4 returned, but I left because I had to go take care of my
5 kids. I told Firefighter Beach what exactly I was
6 doing, that I had to leave to go take care of my kids
7 and I asked him to relay the message when they returned
8 back to Station 2.

9 Again, I was following instructions as
10 far as I understood them and I wasn't trying to be
11 insubordinate, I wasn't trying to abandon anybody or
12 take any rigs out of service or anything like that.

13 The only other thing that wasn't clear --
14 Well, before I move on, I can see now in retrospect from
15 listening to the chief's understanding that I had a
16 misunderstanding on what the instructions were and I
17 deeply regret that I didn't follow the instructions or
18 that I misunderstood the instructions.

19 As far as the training, the last time I
20 heard the training was an issue was three and a half
21 years ago in 2009. I haven't been aware or been
22 counseled about my training attendance since then. If
23 you look in the documents, it even shows that my
24 training attendance did go up. I am not happy with the
25 training attendance numbers and I wish I would have

1 known that it was an issue a little earlier because I
2 would have made a more pointed effort to make all the
3 training -- or to meet the standards for the training
4 attendance.

5 The only additional perspective I would
6 add to that is that in my career and ten years on the
7 Pleasant Prairie Fire and Rescue, that I have met 75%
8 of the trainings. I have exceeded 75% of the trainings.
9 I wasn't aware and it doesn't say in the documentation
10 that that window is on a yearly or annual basis. But
11 regardless, I wish I had known that I was not meeting
12 the training requirements in the last couple of years
13 and I would have made a better effort to have done the
14 training.

15 The only other perspective I would like
16 to add is that I have been here and I have worked here
17 for ten years. There are some incidents where I was
18 counseled and corrected and I took responsibility and
19 showed improvement in, but there are the also countless
20 other hours and calls at all hours of the night that I
21 went on and fulfilled my responsibility not only to the
22 standard, but exceeding the standard and I would argue
23 that that is the bulk, the high majority of my career
24 here, but it isn't presented in the documentation that
25 you are seeing.

1 So taking that into consideration, I
2 would simply request that you consider instead of
3 termination, a probation to give me the opportunity to
4 correct the issues that I am aware of that have been
5 brought up here and continue serving the Village of
6 Pleasant Prairie, the fire department, and the residents
7 of the Prairie. The village has a lot invested in me in
8 the last ten years and I still have a lot to give and my
9 intent is to do that to the best of my ability not only
10 meeting these requirements, but exceeding these
11 requirements and I hope you will agree to and give me
12 the opportunity to do that. Thank you.

13 MR. MAYER: Any questions?

14 Mr. Terwall?

15 MR. TERWALL: With respect --

16 The question is with respect to the number of both paid
17 on-call and part-time shifts that you canceled on fairly
18 short notice. Can you explain what happened there?

19 THE WITNESS: There really wasn't a
20 policy in place about anything about the duty schedule
21 until this occurred and I work a full-time job, so
22 sometimes I hit traffic or I work late and I can't get
23 to the station in time and so that is typically what has
24 happened in the past. On short notice, I try to find
25 coverage for the shifts, but it is not always possible

1 on such a short notice, but I would offer on the flip
2 side that there is a lot of times that the reverse
3 happens where I get a call that says hey, can you come
4 into the station. We missed -- somebody else couldn't
5 make their shift or we have a public ed event or we have
6 a triathlon. I guess my hope would be that both sides
7 would be just as flexible with each other and work
8 together and I think for the most part, we have done
9 that.

10 MR. TERWALL: Thank you.

11 MR. MAYER: Roger Mayer. How
12 would you explain the RecPlex fiasco with the e-mails to
13 Mrs. Willke? I understand getting frustrated over some
14 issue, but I don't quite understand why you would take
15 it to such a degree. What was the motivation? What was
16 so angry and frustrating --

17 THE WITNESS: That is a great
18 question. I have thought a lot about that, too, and
19 again, I would like to apologize to Mrs. Willke because
20 I didn't mean any disrespect. I was just frustrated in
21 the process in trying to get an answer to my question
22 and find a workable solution. That is initially how I
23 started that; to find a workable solution. I copied
24 other people in because I was not sure if other people
25 would have a perspective or maybe somebody else was in

1 charge or had something to do with scheduling those
2 conflicting events. I think I remember at the time --
3 and maybe I am not remembering correctly -- I think you
4 were the director of HR and the director of recreation,
5 so I thought maybe somebody -- that it was somebody
6 else's responsibility. But I do -- I am sorry and I do
7 regret the disrespect that I gave to Mrs. Willke and I
8 am very sorry about that and I wish I could have done
9 better.

10 MR. MAYER: Another area. You
11 want us to believe that over this long period of time
12 with the training, that you never were counseled --
13 I can't go through all of these documents -- to say
14 this is where you have to be. It goes back to Chief
15 Guilbert. So the only obvious answer that the chief can
16 come up with would be that you don't give a damn. You
17 did not respond because it wasn't one time. It goes on
18 for years from '07 to '11 -- or '08 to '11.

19 THE WITNESS: That is a good
20 question. The last time I was counseled on training
21 attendance was back in 2009. I had no idea that I was
22 not meeting the requirement.

23 MR. MAYER: So nobody talked to
24 you since 2009?

25 THE WITNESS: Correct.

1 MR. MAYER: I have to go back and
2 read through all of this, but okay. Any questions?
3 Larry?
4 MR. NELSON: Firefighter Beach,
5 I believe when I asked him the question, you know, what
6 did you say, he was agitated or whatever? He just said
7 he was agitated and had to go. You told him that you
8 were going, but yet there was no reason -- he didn't
9 mention a reason that you had to get home because of
10 whatever and he is not your supervisor.
11 THE WITNESS: Correct.
12 MR. NELSON: So I am having a
13 problem understanding why you didn't report to your
14 supervisor that you were going.
15 THE WITNESS: I understand. I did
16 provide Firefighter Beach a reason. I told him that I
17 had to go take care of my kids and I was under the
18 understanding that everybody, the supervisors included,
19 were coming back to Station 2 and training is typically
20 concluded at 9:00 and it was 9:00 o'clock when I asked
21 Firefighter Beach to relay the message to the
22 supervisors when they returned to Station 2.
23 MR. NELSON: Is it Beach's
24 responsibility to do that?
25 THE WITNESS: No, it is not his

1 responsibility, it is my responsibility, but in the
2 day-to-day operations of the department outside of
3 what is written in the book, it operates differently
4 and there is a lot more flexibility and there is a lot
5 more understanding and scratching each other's back or
6 watching each other's back and so that is not abnormal
7 in the day-to-day operations.

8 MS. GENTHNER: Christine Genthner.
9 With regard to the 75% attendance at training, you
10 acknowledge you were counseled in 2009. Correct?

11 THE WITNESS: Yes.

12 MS. GENTHNER: And the records appear
13 to indicate that even after the counseling in 2010 and
14 2011, you still did not meet that 75%.

15 THE WITNESS: That is correct.

16 MS. GENTHNER: What did you do to
17 follow up with trying to get in the training for that
18 75% because obviously, you knew from 2009 that that was
19 a requirement.

20 THE WITNESS: Yes, I did. I tried
21 to make greater attendance to the training, which I did
22 and it shows the percentage going up. I guess I wrongly
23 assumed that I would have been counseled, that I wasn't
24 meeting the training requirements or wasn't meeting the
25 standard and I wasn't -- it was never brought to my

1 attention, so I didn't think it was a concern.

2 MS. GENTHNER: What did you do to
3 make sure that you were meeting that? Who keeps track
4 of it?

5 THE WITNESS: The administration in
6 the department.

7 MS. GENTHNER: Did you address it
8 with administration or anybody even midway through the
9 year to find out how you were doing?

10 THE WITNESS: No, I did not because
11 typically if it became an issue, somebody would let me
12 know.

13 MS. GENTHNER: With regard to that
14 night, did I understand you to say that you believe you
15 completed the scavenger hunt?

16 THE WITNESS: I did, yes.

17 MS. GENTHNER: But there was some --
18 maybe I misunderstood, but I thought at some point when
19 you and your partner returned to the 72nd Avenue
20 location, there was some confusion about whether or not
21 you and your partner had gone to the correct OHL
22 building?

23 THE WITNESS: Correct.

24 MS. GENTHNER: So did you go back to
25 the correct OHL building before you went back to Station

1 2?

2 THE WITNESS: No, we did not.

3 MS. GENTHNER: So in fact, you
4 didn't complete the scavenger hunt?

5 THE WITNESS: Well, my understanding
6 of the instructions were to go to all the ten sites and
7 to solve the puzzle and to check in and return to
8 Station 2. I didn't know if we were supposed to go back
9 to the original or the correct OHL or if we had been to
10 the correct OHL or not, but I received a call that I
11 needed to take care of my kids and so it was at that
12 time that I diverted from going back to the OHL to
13 Station 2.

14 MS. GENTHNER: So in fact, you didn't
15 solve the puzzle because you had not gone to the correct
16 OHL?

17 THE WITNESS: No, we did solve the
18 puzzle. The answer was sprinklers.

19 MS. GENTHNER: At some point, did
20 you make a statement to Firefighter Beach about being
21 aggravated?

22 THE WITNESS: I was aggravated
23 because of the call I received. I had made plans for
24 somebody to watch my kids that evening so that I could
25 typically -- Training takes time, from 7:00 o'clock to

1 9:00 o'clock. I had made plans with somebody to be
2 there in case it runs over and they said that they
3 wouldn't be able to stay there and that I had to go to
4 watch my kids.

5 MS. GENTHNER: Nothing further.

6 MR. MAYER: Help me out because
7 you ask that we consider -- we give you another chance
8 and put you on probation.

9 THE WITNESS: Sure.

10 MR. MAYER: That is a
11 consideration, but explain to me that number one, after
12 you were counseled, you did not pay attention to what
13 your percentage was which should be your duty to know
14 where you are at, but you just told us that you have a
15 children's problem for a babysitting type of thing, you
16 told me there is traffic involved, so what is going to
17 make the difference? If we give you probation or
18 suggest that, what is going to make any difference in
19 your life that you won't be back here in several months
20 doing the same thing? What changed in your life to make
21 it all of a sudden, you will be pure as the driven snow
22 and solve all these problems and you are going to make
23 the chief happy?

24 THE WITNESS: It is a great
25 question. I think it comes down to me personally taking

1 responsibility and ownership of the mistakes that I have
2 made and taking ownership for them and having a plan,
3 taking ownership of correcting those problems. You can
4 see some of that in the documentation that was provided
5 to you in mentioning that the training attendance did go
6 up after I was counseled.

7 MR. MAYER: But it still has
8 never been where it should be, never once.

9 THE WITNESS: That is correct.
10 I wasn't sure if I was making training attendance
11 standard or not because I wasn't getting any feedback
12 and even so, I mean, the documentation states that it is
13 75% training and over my career, I have far exceeded the
14 75% training. So I am asking for that opportunity
15 because now I have the feedback and once I get the
16 feedback and I know the changes and corrections I need
17 to make, it is up to me to make those changes and
18 corrections. And like I mentioned before, the village
19 has a lot invested in me and I have a lot of service yet
20 to give the village and the residents and I would like
21 the opportunity to do that.

22 MR. MAYER: Any other questions?

23 MR. TERWALL: No.

24 MR. NELSON: You said you had to
25 go home --

1 THE WITNESS: Yes.

2 MR. NELSON: -- to take care of

3 the kids.

4 THE WITNESS: That is correct.

5 MR. NELSON: In the report from

6 the chief in the factual summary on Page 2, when he

7 called the house, a lady answered. So there was

8 somebody home.

9 THE WITNESS: Yes. Correct; there

10 was.

11 MR. NELSON: So I guess I don't

12 understand the urgency of going home to take care of the

13 kids if there was somebody there because you said there

14 was nobody there, that she couldn't make it or

15 something.

16 THE WITNESS: I can provide some

17 clarification. At the time, my wife and I were recently

18 separated and she agreed to come watch the kids -- watch

19 the kids until 9:15 and I got a call from her shortly

20 before 9:00 o'clock saying she would be there until

21 9:15, no later, and that I should be there to watch the

22 kids. So that is why I was in a hurry to go home and

23 take care of the kids. I picked them up and we went out

24 and she was there apparently when Chief McElmury called.

25 MR. NELSON: I have one other

1 question. Concerning the uniform, there were a series
2 of a couple days where you were asked to put on the
3 dress uniform or shirt.

4 THE WITNESS: Correct.

5 MR. NELSON: Why didn't you comply
6 with that?

7 THE WITNESS: In fact, I did. You
8 can wear a dress uniform and if it is cold, you can wear
9 what we call a duty shirt or duty sweatshirt over it,
10 but you can't see the duty shirt when you are wearing
11 the sweatshirt, so it is just another layer to wear if
12 you are cold, but I didn't really contest it because you
13 can't really tell and I am sure Ron couldn't tell if I
14 was wearing it or not.

15 MR. MAYER: Any other questions
16 by the Commission?

17 MR. DE LA MORA: At this point, I
18 think we should clarify the record. It was not clear to
19 me whether you were intending to give testimony or just
20 make a statement. Would I be correct in understanding
21 that you were intending to give testimony?

22 MR. PITTS: No. I think as we
23 spoke before we reconvened, I just wanted to make a
24 statement, and I have made my statement.

25 MR. DE LA MORA: Okay. But would you

1 have any problem in taking an oath and saying that what
2 you have testified to was correct and would have been
3 the same testimony had you been under oath so that
4 Mr. Olson can ask you questions?

5 THE WITNESS: No, I don't have a
6 problem with that.

7 MR. DE LA MORA: Why don't you
8 administer the oath.

9 WAYNE PITTS, was first duly sworn on oath
10 to tell the truth, the whole truth, and nothing but the
11 truth.

12 MR. DE LA MORA: Now administer an
13 oath regarding the previous testimony he gave being
14 truthful.

15 WAYNE PITTS, having been first duly
16 sworn that his prior statement/testimony was given under
17 oath to tell the truth, the whole truth, and nothing but
18 the truth.

19 MR. DE LA MORA: Mr. Olson, do you
20 have any questions that you want to ask?

21 MR. OLSON: No. We are going to
22 recall the chief to address some of the assertions that
23 have been made.

24 MR. DE LA MORA: Okay.

25 MR. OLSON: Could we recall Chief

1 McElmury now --

2 MR. DE LA MORA: Yes.

3 MR. OLSON: -- as a rebuttal
4 witness?

5 MR. DE LA MORA: Yes.

6 EXAMINATION BY MR. OLSON:

7 Q Chief, I'd like to ask you several things about what
8 Mr. Pitts has said here regarding the training exercise
9 on August 21. First, he stated that he was under the
10 impression that the conclusion of the training would be
11 at Station 2. What is your reaction or response to that
12 assertion?

13 A If that was his reaction, he was the only one that had
14 that because all the other units were there, everyone
15 was standing outside.

16 Q There being where?

17 A At the 72nd Avenue rendezvous point and also the
18 original meeting point. When I returned at about
19 roughly ten or 12 minutes to 9:00, everybody was there
20 outside of their apparatus and were beginning to discuss
21 the events and the locations and some of the problems
22 that they had with that. We then concluded the --
23 We waited for -- Once we established that 5631, the
24 ladder truck, was missing, we waited and just had a
25 conversation as a group until Firefighter Beach

1 returned. We then did a wrap-up of that training and
2 we all left. Normally when we meet on site, we go
3 through a talk, we make sure that there is no questions,
4 any other announcements that need to be made, things
5 like with all the construction on I-94 project, stuff
6 like that, we talk about stuff that, upcoming trainings,
7 special events and so on, we discuss all of that and
8 then is every one all set? It is usually a very large
9 group of people going to each of the individual pieces
10 of apparatus and then returning to their respective
11 stations, which is what happened that night when
12 training was truly over.

13 Q Had you directed the employees who were taking part in
14 that exercise that night that they were to return to the
15 meeting point?

16 A Yes, I did.

17 Q And that meeting point was or was not Station 2?

18 A The meeting point was our original meeting point on
19 72nd Avenue.

20 Q Would you look at Document E2, the directions to the
21 scavenger hunt, please?

22 A Yes.

23 Q Were these distributed to all the members that were
24 taking part in the exercise that evening?

25 A Each crew had this because they needed this list of

1 names because this is the list of addresses that they
2 went to, so each piece of apparatus had this sheet with
3 them.

4 Q The last sentence before the numbered statement says,
5 "The first team back to the meeting point that has
6 visited all of locations listed below, with both of
7 their forms filled out with all of the required
8 information wins." The meeting point again was where?

9 A 72nd Avenue south of 165.

10 Q This says back to the meeting point. Correct?

11 A Yes.

12 Q Should there have been any doubt as to where the
13 conclusion of the exercise was to be?

14 A No, there was no doubt with anyone else that was on
15 scene.

16 Q I'd like to look at your Statement of Charges if we
17 could, Page 2, the statement of facts that you provided
18 for the benefit of the Commission. Officer Pitts stated
19 that he was expected to be home at 9:15. Is that your
20 understanding of what he said?

21 A That is what I understand he said, yes.

22 Q Would you look at the second paragraph up above Charges
23 which states at approximately 2133? Would you go ahead
24 and explain what you are stating there?

25 A Sure. I wanted to try to establish what happened here,

1 why did he leave? He being Firefighter Pitts. So I
2 called his home number which is the number we have on
3 file on our telephone list at approximately 9:33 that
4 night, 2133. A female answered the phone. I asked to
5 speak with Firefighter Pitts and she stated that --
6 the female that answered the phone informed me that he
7 wasn't available. I asked if I could leave a message
8 for him and the female stated yes and then I asked her
9 to leave a message that I called and could he call me.
10 Q So he stated that he had to be home at 9:15 to watch his
11 kids. Was he home at 9:33?
12 A If he was, I would not have been aware of that because
13 the female told me he wasn't available. She didn't
14 state if he was or was not there.
15 MR. OLSON: Thank you. I have no
16 further questions.
17 MR. MAYER: Any questions?
18 MR. DE LA MORA: Mr. Pitts, do you
19 have any questions of the chief?
20 MR. PITTS: No, I don't.
21 MR. DE LA MORA: Members of the
22 Commission, any questions of the chief?
23 MR. TERWALL: No.
24 MS. GENTHNER: Christine Genthner.
25 Did Mr. Pitts call you back after you

1 left the message at 2133 on August 21?

2 THE WITNESS: I don't recall that
3 he called me that evening. I believe he called me
4 either the next day or the day after. I am going off
5 memory here.

6 MS. GENTHNER: Nothing further.

7 MR. DE LA MORA: Could I ask a
8 question --

9 MR. MAYER: Yes.

10 MR. DE LA MORA: -- in follow-up?

11 Do you have any recollection of the
12 substance of that conversation that you had the day
13 after or subsequent to the date in question here?

14 THE WITNESS: I don't have any
15 specific -- If I could refer to my notes.

16 MR. DE LA MORA: Please do.

17 THE WITNESS: I don't have any
18 notes from the initial phone call after the incident.
19 We did schedule a time for him to meet one week later.
20 We tried to set up a time and there wasn't a time that
21 we could get together until the training session
22 scheduled for the 28th of August and that is when we
23 met -- that is when we met and issued the first
24 paperwork on this incident.

25 MR. DE LA MORA: Thank you.

1 MR. NELSON: Mr. Pitts said
2 that -- he is saying one thing about the procedure that
3 hey, I am leaving the station and he told his partner,
4 you know, to tell the supervisor and so forth. Is the
5 procedure to tell the supervisor that you are going on a
6 daily basis? On a day-to-day basis? How does that work
7 within the department? Was there some confusion on his
8 part that way?

9 THE WITNESS: Probably the most
10 accurate thing -- or the best example I can give is of
11 any training session. We have a cross section of people
12 in our department, full-time, paid on call, part-time,
13 interns and so on. People have family responsibilities,
14 kids get sick. We have had instances where people were
15 injured, family members were injured, there was some
16 type of an emergency, the house is flooding. It is not
17 uncommon for people to have to leave. What is uncommon
18 is for them not to tell the person in charge of the
19 training or an officer there, you know, one of the
20 lieutenants, somebody that is in charge saying hey, I
21 got this happening, I need to leave. We would grant
22 that. It is not unusual to say I am losing my child
23 care at this time, could I leave? All we ask is you
24 have to tell us and we can accommodate that, but you
25 have to tell us. So it is not unusual at all for a

1 training, but very unusual not to tell a direct
2 supervisor, whether it be a lieutenant or whoever is
3 doing the training or myself, that they need to do that.

4 MR. MAYER: Any other questions?

5 MS. GENTHNER: Christine Genthner for
6 the record. How is that communication typically made?
7 Is it cell phone? Is it radio? What equipment might
8 Firefighter Pitts have had to communicate to somebody
9 at 72nd Street (sic) after he left what he wanted to do?

10 THE WITNESS: At the site, he had
11 the opportunity to talk face to face with Lieutenant
12 Clark. Lieutenant Clark was there, one of the first
13 people back. He could have said that face to face.
14 After they left is when he found out he needed to go
15 home. We have high power radios in each of the rigs
16 that is capable of talking among the -- between
17 different rigs, to our dispatch center and so on.
18 Obviously, he had his cell phone with him if he was able
19 to get a call. He had the opportunity to make a cell
20 phone call to our dispatch center. He may not have had
21 the number for one of the -- for like the lieutenant's
22 phone, but he would have had cell phone numbers for
23 people that were at the training, people that he is
24 personal friends with that had their cell phones on
25 them. So there were multiple opportunities to make

1 that contact himself to inform either Lieutenant Clark
2 or myself that he needed to leave.

3 MS. GENTHNER: Thank you.

4 MR. NELSON: I have one more
5 question. The uniform deal. Could you go over that
6 part of your testimony there? I am getting confused
7 with the shirt, under the shirt and over the shirt.

8 THE WITNESS: Sure. Firefighter
9 Pitts is correct in stating that the sweatshirt is an
10 outer garment and can be -- it states right here that it
11 can be an additional piece of clothing over the top of
12 the uniform shirt. Firefighter Weavel -- Firemedic
13 Weavel was very specific that he did not put on that
14 dress uniform shirt on either occasion. I think a
15 follow-up to that is important, that when Lieutenant
16 Barnes spoke with him, there was no mention that he had
17 his shirt on and that he put his sweatshirt over it. He
18 reminded him he needs to have his shirt with him as a
19 part-timer. The problem is he didn't have his shirt
20 there at the station. He put on his sweatshirt in lieu
21 of the uniform shirt.

22 MR. NELSON: And that is not
23 acceptable.

24 THE WITNESS: Right. The sweat-
25 shirt is to be worn over the uniform shirt, and you can

1 see it because the collar comes up in between where the
2 collar of the sweatshirt is.

3 MR. NELSON: And he did not have
4 that on.

5 THE WITNESS: That is what both
6 Firemedic Weavel and Lieutenant Barnes indicated; that
7 he did not have the uniform shirt on on either of those
8 dates at any of the times that he was asked to do so.

9 MR. MAYER: Any other questions?

10 MR. TERWALL: No, sir.

11 MR. DE LA MORA: Is there anything
12 further that you wish to state, Mr. Pitts, or submit to
13 the record before the proceeding is closed?

14 THE WITNESS: No.

15 MR. DE LA MORA: Okay. My
16 recommendation would be to the Commission that it
17 declare the hearing closed and that the Commission
18 consult with the reporter as to when a transcript might
19 be available so that you can convene and deliberate this
20 matter in closed session.

21 MR. OLSON: If I may, may I make
22 a brief closing statement?

23 MR. DE LA MORA: Forgive me.

24 MR. OLSON: I don't have a lot,
25 but I want to bring up something that was brought up by

1 Mr. Pitts. Traditionally, we would have a closing
2 statement going back through all the evidence. We don't
3 believe that is necessary. I think it's all been made
4 very clear to you, but there was one suggestion that was
5 made by Mr. Pitts that he be placed on probation and
6 given another chance. Our response to that is this is
7 too late for that. This department and this
8 administration has been more than patient in dealing
9 with these multiple examples of insubordination, failure
10 to follow rules, all the things that we have documented
11 here today and explained for you. That time has come
12 and gone where that would have been a possible outcome
13 of a hearing like this.

14 We didn't come here today because we want
15 to see him return. We thought that now is the time
16 where with all the evidence that's been accumulated and
17 all the things that the chief described for you, there
18 is no further -- there is no further opportunities for
19 Mr. Pitts to improve his performance beyond what we have
20 already seen here, so we would argue that that would be
21 an inappropriate -- an inappropriate response and
22 outcome here. Thank you. That is all we would have to
23 offer on that.

24 MR. MAYER: Thank you.

25 MR. DE LA MORA: Do you have any final

1 closing statement?

2 MR. PITTS: No.

3 MR. MAYER: I will take a motion

4 to adjourn.

5 MR. DE LA MORA: Wait. We need to

6 find out from the reporter realistically when we can

7 obtain the transcript.

8 THE REPORTER: From ten days to 14

9 days.

10 MR. DE LA MORA: I don't believe there

11 is any need for an expedited transcript. 14 days would

12 be reasonable.

13 MR. OLSON: That is fine with us.

14 MR. DE LA MORA: Perhaps if the

15 Commission would like to look at its calendar, schedule

16 a meeting.

17 MR. MAYER: This is a closed

18 meeting just for the Commission?

19 MR. DE LA MORA: And possible

20 announcement of the decision afterwards.

21 MR. TERWALL: Assuming it is 14

22 days. If we don't get the transcript until two weeks

23 from today, would we have an opportunity to review that

24 before we meet or would we see it for the first time

25 when we meet?

1 MR. DE LA MORA: I would think that
2 it would be more productive if we make copies available
3 to you prior to our meeting and so given that comment,
4 I think it might make sense to go out further on the
5 calendar assuming --

6 Mr. Pitts, do you have any objection to
7 the Commission taking more time to be able to review the
8 transcript?

9 MR. PITTS: No, I don't.

10 MR. DE LA MORA: Are you prepared to
11 waive any time period that may require the Commission to
12 take action promptly?

13 MR. PITTS: Yes.

14 MR. DE LA MORA: Okay. And do you
15 agree?

16 MR. OLSON: Yes, sir.

17 MR. DE LA MORA: Okay. So you are
18 free to set a date. I would recommend maybe 30 days
19 from now.

20 MR. TERWALL: Or at least three
21 weeks.

22 MS. GENTHNER: Three weeks, yes.

23 MR. MAYER: This is the 12th, so
24 say the 15th, the first part of November. Fifth?
25 Sixth? Something in there?

1 MS. GENTHNER: What day of the week?
2 MR. MAYER: Monday, Tuesday --
3 MR. NELSON: November 6 is
4 Tuesday.
5 MS. GENTHNER: The fifth or sixth,
6 I would be available.
7 MR. MAYER: The sixth?
8 MR. TERWALL: I am good.
9 MR. NELSON: November 6?
10 MR. MAYER: Yes.
11 MR. NELSON: Are we talking at
12 4:00 o'clock?
13 MR. MAYER: Probably 4:00
14 o'clock.
15 MS. GENTHNER: I am available
16 anytime that day.
17 MR. TERWALL: Mike, you had a
18 comment?
19 MR. POLLOCOFF: The sixth is election
20 day.
21 MR. DE LA MORA: It's so easy to
22 forget.
23 MS. GENTHNER: The seventh?
24 MR. MAYER: They would be too
25 hostile depending how they vote. How about Thursday on

1 the first?

2 MR. TERWALL: That is good for me.

3 MS. GENTHNER: That would be fine.

4 MR. NELSON: At 4:00 o'clock?

5 MR. MAYER: Yes. All right. We

6 will meet November 1st, 2012, at 4:00 o'clock. Are we

7 going to be able to use the other facility for that

8 time?

9 MR. TERWALL: Does November 1 give

10 them --

11 MR. MAYER: It is not quite three

12 weeks. Maybe it is too short. Let's go back. How

13 about the 12th?

14 MS. GENTHNER: I can't do it on the

15 12th.

16 MR. MAYER: The eighth?

17 MS. GENTHNER: That, I can do.

18 MR. MAYER: The eighth is good?

19 MR. NELSON: The eighth is okay.

20 MR. MAYER: Now it is the eighth.

21 Janice, on Green Bay Road?

22 MS. LEGLER: Yes.

23 MR. MAYER: The eighth of

24 November. Anything else?

25 MR. DE LA MORA: The meeting will

1 be --

2 MR. MAYER: At Green Bay Road.

3 MR. TERWALL: Can we go for 3:00

4 o'clock? I have a 6:00 o'clock meeting that same night.

5 MR. MAYER: 3:00 o'clock is fine

6 with me.

7 MR. TERWALL: On the eighth. Is

8 that good for you?

9 MR. MAYER: 3:00 o'clock on the

10 eighth.

11 MR. TERWALL: Send us an e-mail,

12 would you please? So I can update my calendar.

13 MR. MAYER: Motion to adjourn.

14 MR. TERWALL: So move.

15 MR. MAYER: Motion to adjourn.

16 All in favor?

17 MS. GENTHNER: Aye.

18 MR. TERWALL: Aye.

19 MR. NELSON: Aye.

20 MR. RAMSDELL: Aye.

21 MR. MAYER: Thank you all.

22 MS. GENTHNER: I second. Do we keep

23 our materials then?

24 MR. DE LA MORA: Yes. My

25 recommendation is that you keep your materials, that you

1 not discuss this matter amongst yourselves until you are
2 together in a closed session and that you not discuss
3 this case with anybody else for the sake of the
4 integrity of the process.

5 (WHEREUPON, THE PROCEEDINGS ADJOURNED AT 3:45 P.M.)

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STATE OF WISCONSIN)

)

COUNTY OF KENOSHA)

I, SUSAN K. TAYLOR, do hereby certify that I am a stenographic reporter; that I was present at the hearing in the above entitled action, and that I recorded the same in shorthand; that the above and foregoing is a true, correct and exact copy, in longhand, of my shorthand notes taken at said hearing.

Dated this day of 2012

SUSAN K. TAYLOR

Court Reporter

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