BEFORE THE BOARD OF POLICE AND FIRE COMMISSIONERS
OF THE CITY OF MADISON

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| Bill Lueders,<br>Complainant<br>vs.<br>Lt. Dennis George Riley,<br>Respondent | DECISION<br>AND<br>ORDER |

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DECISION This Order encompasses matters raised by a motion to dismiss the complaint, a motion *in limine* regarding evidentiary issues, and requests or motions to quash subpoenas. We address the motions in that order.

*Motion to Dismiss:* The gravamen of respondent's motion is the insufficiency of complainant's standing as an "aggrieved person." This issue has not commonly arisen in our proceedings, because the nearly universal pattern of complaints before us involves charges either by a chief or by an individual directly and indisputably aggrieved by alleged misconduct. Coincidentally, we are now faced in two concurrent but unrelated cases with similar issues of standing in charges brought by non-principals to the subject matter of the complaints. (See our concurrent decision in *Greer v. Amesqua.*)

After careful consideration of the arguments of the parties, we have concluded that complainant Lueders lacks standing as an aggrieved person with respect to the greater part of his complaint, which deals largely with matters to which he may be, at most, a peripheral witness. We believe that the amendment of the statutory qualification for standing some years ago from *elector* to *aggrieved person* signalled a requirement of some degree of particular interest or involvement in the circumstances of the matter at issue. From the face of the complaint we conclude that this complainant's interest in these matters generally is not distinguishable from the interest of any other observer. Therefore we must conclude that this complainant lacks standing with respect to such allegations, and our order excludes those allegations from this proceeding.

We observe one exception to this generalization about this complaint. Complainant alleges that respondent untruthfully represented that respondent had no knowledge of certain matters, in violation of department rule 2-1816 (Complaint, page 5). As the person to whom this representation is alleged to have been made, complainant's interest and involvement is sufficient to qualify him as an aggrieved person.

We note that complainant has suggested that the individual more directly interested in the primary subject matter of the complaint would participate in the complaint if necessary, and complainant has submitted a photocopy of that individual's handwritten note to that effect, but we have not received papers formally joining her as a party. Rather than delay these proceedings further, we act on the record before us. Our action here does not preclude that other individual from prosecuting her own complaint before us if she chooses to do so.

*Motion in limine:* Respondent's motion seems to us to focus on matters related to the elements of the complaint which we have excluded by our decision regarding complainant's standing. Discovery by its legal nature is limited to lines of inquiry which produce admissible material or which reasonably may be expected to lead to the discovery of admissible material. In light of our action in limiting the scope of the complaint to the allegation regarding respondent's truthfulness, the evidentiary issues posed by respondent's motion appear moot. However, to avoid confusion, we grant respondent's motion *in limine*. In fact, we expect that complainant's inquiry may be further limited simply by the scope of the surviving element of the complaint.

*Motion to quash:* We decline to quash outright any outstanding subpoenas, but we note that the proper scope of inquiry both in discovery and at hearing is to be determined by reference to the sole surviving allegation of untruthfulness.

ORDER

1. Complainant may continue to prosecute the following allegation of the complaint that respondent violated rule 2-1816, Untruthfulness: "I believe that Lt. Riley violated this rule when he falsely represented to me that he had no knowledge of Patty's complaint."

2. All other allegations of this complaint are dismissed for insufficient legal standing by complainant.

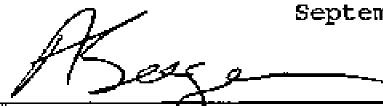
3. Respondent's motion *in limine* dated May 26, 1998, is granted.

4. Pending motions to quash subpoenas are denied.

5. All discovery shall be consistent with the complaint as narrowed by this ORDER and shall be completed no later than October 9, 1998, that being the fifth business day prior to the first date of evidentiary hearing as provided by previous order.

6. Hearing will convene as scheduled on October 15 and 22 and November 5 and 9, 1998.

September 30, 1998



Alan Seeger, President and Commissioner

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DDA Jill Karofsky
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## DECISION

Complainant Bill Lueders filed charges against Lt. Dennis George Riley on April 1, 1998. The original charges were significantly narrowed by the Board's decision to dismiss several elements of the complaint, partly granting a motion by Respondent. This decision follows hearing on the surviving charge and post-hearing argument.

Complainant alleges that respondent untruthfully represented that respondent had no knowledge of certain matters, in violation of department rule 2-1816 (Complaint, page 5). Specifically, Complainant states "I believe that Lt. Riley violated this rule when he falsely represented to me that he had no knowledge of Patty's complaint."

Our disciplinary decisions are subject to 62.13, Wisconsin Statutes, as amended by 1993 Wisconsin Act 54. The pertinent provision of that amendment sets forth the standards which the Board must use in imposing discipline, summarized generally as "just cause" and known colloquially as the "seven standards." These standards are clearly designed to guide decisions on charges prosecuted by chiefs, but the statute does not distinguish formally between such charges and those brought by a citizen such as Mr. Lueders; we are merely directed to apply the seven standards "to the extent applicable."

Our statute provides the following text of the "seven standards" :

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3. was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

We have concluded that department rule 2-1816, the standard of conduct at issue, was known to respondent, and that it is reasonable, as required by the first two of the seven standards. As we have noted, the application of the seven standards to citizen complaints is awkward, but we have concluded that no other component of complainant's burden has been met. Complainant has not established at any satisfactory threshold level that any violation has occurred. Formally, this

failure of proof may be construed as insufficiency of Complainant's case under standards 3., 5., and 6.

We observe that this is not simply a matter of unresolvable contradictions or inconsistencies among conflicting items of evidence, nor is it a matter of complainant's proof failing to rise to a necessary level of persuasion, which in this instance we believe would be a "preponderance of the evidence" as the standard is often expressed. In this case we find *no evidence other than Complainant's opinion testimony* that Respondent lied to the Complainant, that is, deliberately misrepresented a fact. In our view, *all* evidence is fully consistent with Respondent's explanation that he may have had a lapse of memory but did not intentionally misstate a fact. The evidence before us includes, but obviously is not limited to, the uncontradicted reports of Respondent's corrective action when questions regarding the correspondence at issue led to the identification and retrieval of the material. We believe that Respondent has a sound reputation for truthfulness; we believe that Respondent was truthful in our hearings; we find Respondent's explanation of forgetfulness or inadvertence fully credible and reasonable.

In the absence of sustained allegations we need not address the final standard regarding appropriate penalty.

In our deliberations we have given no weight to submissions filed by each party after the close of the briefing schedule.

Order

The Complaint filed April 1, 1998, is dismissed, with prejudice.

*Approved following deliberations,*
*and*
*filed with the Secretary this ____ day of December, 1998:*

MADISON BOARD OF POLICE AND FIRE COMMISSIONERS

Alan Seeger, President

Margaret McMurray, Secretary

Byron Bishop, Vice-president

Lynn Hobbie, Commissioner

Mario Mendoza, Commissioner

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