The Board of Selectmen met in Executive Session on January 24, 2012 in the Tisbury Town Hall.

Present: Geoghan E. Coogan, Chairman, Tristan R. Israel, Jeffrey C. Kristal, Clerk; John R. Bugbee, Town Administrator and Aase M. Jones, Assistant to the Town Administrator.

Also Present: Police Chief Dan Hanavan; Officers Scott Ogden and Michael Gately; John Becker, attorney for Massachusetts Coalition of Police (MASSCOPS); and Christopher Kesley, who stated that he is a police officer and area Vice President for MASSCOPS.

Call to order: 4:00 p.m. by Chairman Geoghan E. Coogan, who announced that the Board would go into Executive Session to hear two Police Department grievances at Step 2 of the grievance Process, if the grievants wished that the grievance hearings be heard in closed session.

Officer Ogden and Gately both requested that the grievances be heard in closed session.

Motion: That the Board of Selectmen vote to go into Executive Session to hear Officers Ogden’s and Gately’s grievances at Step 2 of the grievance process, to reconvene in Open Session. Seconded.

Voting on the Motion: Mr. Israel: Yes; Mr. Coogan: Yes; Mr. Kristal: Yes.

Convened in Executive Session: 4:05 p.m. M/s/c.

Background Information - Ogden Grievance: was filed on December 2, 2011 following disciplinary action by Chief Hanavan suspending Officer Ogden for 5 days without pay beginning on November 28, 2011 for his role in the Thrift incident on July 23, 2011. The grievance was denied by Town Administrator John Bugbee at Step 1 of the grievance process on December 16, 2011 and a request for a hearing before the Selectmen at Step 2 of the grievance process was received by the Selectmen’s Office on December 20, 2011.

Background Information - Gately Grievance: was filed on December 21, 2011, following a written disciplinary warning letter for officer Gately’s personnel file dated December 19, 2011. The letter cites officer Gately’s lack of judgment, failure to gather evidence and follow-up at the scene of the incident on July 23, 2011 and for his disrespectful attitude when questioned during the subsequent investigation into the incident. The grievance was denied by Town Administrator John Bugbee at Step 1 of the grievance process on January 5, 2012 and Officer Gately also later requested a hearing before the Selectmen at Step 2 of the grievance process.

Chairman Coogan asked for an opening statement from John Becker, attorney for the grievants.

Mr. Becker stated that the reason for this grievance hearing is to address two disciplinary matters resulting from the incident at the residence of David Thrift at where the officers were called to respond to call.
Mr. Becker stated that he does not feel there is a need to go over the details of the incident and events that led to the disciplinary action by the Chief, but noted that two disciplinary actions were taken as follows: (1) Officer Scott Ogden was given a 5-day suspension without pay for his role in the July 23rd incident; and (2) Officer Michael Gately was given a written letter of reprimand for his personnel file as a result of his participation in the incident, including failure to initiate certain steps to follow up, gather evidence and information at the scene as well as his demeanor and conduct during the investigative hearings that followed.

Mr. Becker pointed out that Sgt. Fiske was the officer in charge of the shift that evening, noting that Sgt. Fiske’s role in the handling of the incident has been addressed by the Board and will be dealt with later through the appeals process. Mr. Becker stated further that officers Ogden and Gately were doing their duties as patrolmen as instructed by Sgt. Fiske, searching for Mr. Thrift and officer Gately took additional steps to gather more information and get the harassment order in place. Mr. Becker stated further that neither Officer Gately nor officer Ogden were in a decision-making role that evening - that was the job of Sgt. Fiske.

Mr. Becker continued by stating that punishing these officers (Ogden and Gately) would be to misunderstand the chain-of-command in a para-military organization such as the Tisbury Police Department, where the officer in charge makes decisions for the shift. He commented further that this is not the case of an officer inflicting injury on anyone, but a case of subordinates following the orders of the OIC, Sgt. Fiske, who was exercising his judgment at the time, with the two officers not in a position to question Sgt Fiske’s decision (to leave the scene). Mr. Becker reiterated that officers Gately and Ogden were doing their jobs as they were told to do and that the decisions were made by Sgt. Fiske.

Mr. Becker concluded his introductory remarks by stating that officers Gately and Ogden should not be disciplined for their actions that evening, adding that this is an opportunity for the Selectmen to clear them of wrong-doing in this matter. Mr. Becker stated that later we can deal with Sgt. Fiske’s decision, and reiterated that he now hopes that the Board will take this opportunity to clear up the matter of responsibility for actions on the night of July 23rd.

At this point Mr. Israel commented briefly about the incident on July 23rd which led to the rape of a minor following the 911 call after the officers left the scene.

Mr. Coogan at this point noted that he does not feel it is necessary to go back over the entire evening’s events and requested that Chief Hanavan give a summary of his reasons for disciplining the two officers.

Officer Ogden: Chief Hanavan cited Officer Ogden’s Police Academy training, 8-1/2 years of experience, extensive training in dealing with domestic abuse cases as well as violation of the Department’s Domestic Abuse Policy as valid reasons for the disciplinary actions taken with regard to Officer Ogden. He commented further that if an
officer is on a criminal investigative call, the officer in charge must decide what is right and wrong and act accordingly, and remain on the scene if physical danger to any individual exists. He concluded by pointing out that 3 minor children were left behind in the care of a 15-year old babysitter, when the officers left the scene, adding that the welfare of the children under the age of 16 remains the main concern.

Chief Hanavan read excerpts from officer Ogden’s disciplinary letter dated December 5, 2011 into the record. The letter is hereby incorporated by reference.

Mr. Coogan inquired how the Chief arrived at the level of disciplinary action to take against Officer Ogden for his conduct at the scene of the Thrift incident on July 23rd.

Chief Hanavan reported that years of training and department policy were disregarded, adding that after conferring with Special Counsel Jack Collins, a 5-day suspension was recommended and implemented. Chief Hanavan also pointed out that officer Ogden’s own statement that “he left on his own”, was important in making the suspension decision.

At this point Town Administrator John Bugbee pointed out that this issue was part of the interview process following the incident and confirmed that officer Ogden stated that he left the scene on his own accord. Mr. Bugbee added that when a situation exists where a family is in danger, an officer should use his judgment and not leave the scene under the circumstances, when a person is still at large in the area.

At this point officer Ogden stated that he does not recall having said that or actually what he said.

Mr. Bugbee then stated that we can get the transcribed record of the initial investigative hearing to verify what was said.

At this point Chairman Coogan stated to Officer Ogden that the Chief stated that Officer Ogden should have done more, even if Sgt. Fiske said “we should leave”. He then questioned Officer Ogden, asking him if he should not have said, considering his level of training and what he knew, “No, I should stay”.

Mr. Israel commented that Officer Ogden’s testimony that he does not remember saying that he left on his own accord is a problem.

Mr. Becker stated that at a certain point disobeying instructions of a superior officer would be called insubordination, which he stated we do not have evidence of here.

Mr. Coogan then asked if Mr. Becker is saying that Fiske told Ogden to leave and he refused to do so.

Mr. Becker responded that there is no evidence that Fiske said that.

At this point Town Administrator John Bugbee referred to the Chief’s disciplinary letter to Officer Ogden, citing the section referring to policy in domestic abuse cases where it is clear that if there is any reason to believe that a family or household member has been abused or is in danger of being abused, an officer must use all
means to prevent further abuse and that this is clearly stated in
the Town’s policy as well as in MGL 209A, Sec. 6, and that an
officer shall remain on the scene as long as there is reason to
believe that any parties involved would be in immediate danger
without the presence of a police officer.

Mr. Bugbee pointed out that in this case three minor children were
left unprotected in a domestic assault case, adding that leaving the
scene under these circumstances shows a serious lack of judgment.

Mr. Bugbee noted further that there is a fine line between
insubordination and standing up for a department policy regarding
domestic abuse, and that this is the question that is being debated
here.

Mr. Coogan then asked Mr. Becker if he disagrees with the facts of
this issue as presented and stated in Chief Hanavan’s disciplinary
letter to Officer Ogden.

Mr. Becker responded that they do disagree with and dispute these
facts.

Mr. Coogan then stated that it would be a totally different
situation of Sgt. Fiske told Officer Ogden – “we’re out of here”,
than Officer Ogden leaving on his own accord, without being told by
his superior officer to leave the site.

Mr. Becker reiterated that he (and his client) disagree with this,
adding that Sgt Fiske did not say “I’m leaving now, you can stay”,
and pointed out that a lot goes on between police officers that is
not verbal. He then stated that he would like to hear from Officer
Ogden what transpired.

Mr. Ogden stated that he does not recall that Sgt. Fiske announced
that he was leaving.

Selectman Coogan then stated it appears that Sgt. Fiske did in fact
not order Officer Ogden to leave the scene.

Mr. Israel commented that he is aware that police officers often
work as a team and understands that Sgt. Fiske was in charge of the
shift. He noted further that the problem remains that the issue is
the fact that three minor children were in danger and left without
protection. He then asked why Officer Ogden did not question that,
even if Sgt. Fiske was in charge of the shift. He described it as a
red flag for him that in this situation, leaving the children
unprotected with a 15-year old, put them in danger.

Mr. Kristal commented that Mr. Becker in his statement said that
these two officers – Ogden and Gately – were not in a position to
question Sgt. Fiske’s judgment.

Mr. Becker then stated that Officer Ogden did not have the same data
that Sgt. Fiske did, adding that he does not recall if Officer Ogden
knew about the earlier 911 call, adding that he does recall that
Officer Gately did tell him about that call. He stated further that
Officer Ogden was reasonably relying on Sgt. Fiske who had most of
the information. He added that Ogden was not coordinating with
anyone, just acting as a patrolman – it was not Officer Ogden’s role
to decide whether someone should remain at the scene.
Mr. Becker continued by stating that Sgt. Fiske was in the best position to make such a decision, and he had decided not to leave anyone at the scene. He concluded by reiterating that Officer Ogden did not have the information that Sgt. Fiske had.

Mr. Israel noted that he might have suggested that perhaps the people in the house should have been moved out of there, and pointed out that the judgment was made by Sgt. Fiske that there was no need to leave anyone at the scene.

A discussion followed on how it came about that everyone left the scene.

At this point Selectman Kristal spoke up and asked Officer Ogden if it was his intention to grieve this matter or if this is something that the Union does all the time, no matter what, or did Mr. Ogden have some questions about what happened that evening when he sat through 6-1/2 hours of emotional testimony on November 2nd last year? Mr. Kristal then asked if someone could explain to him how the process works - is everything grieved automatically?

Mr. Kesley responded that MASSCOPS has oversight of this area, and in this case one officer was terminated and two veteran officers were disciplined as a result of the same incident for what was done or not done during the evening in question.

Mr. Kristal commented that Mr. Kesley was not present for the 6½ hour meeting during which much emotional testimony was heard, and then reiterated his concern that the union appears to automatically always file appeals on behalf of officers, regardless of the situation, even if the union does not know all the facts of a case. He then asked if the union ever negotiates in cases like this.

Mr. Kesley responded that every situation is different and that this is not done “carte blanche”, adding that the union wants to make sure that each situation has a fair outcome for the employee and the department.

Mr. Kristal then asked - and also for the townspeople?

Mr. Kesley responded - yes.

Mr. Kristal further discussed the matter of insubordination and wondered how it would have worked out if Officer Ogden had questioned Sgt. Fiske’s decision to leave and suggested that he thought that they should not leave the scene.

Mr. Kristal then asked Officer Ogden if he was the first officer on the scene.

Officer Ogden responded that Mike (Gately) arrived first and that he arrived on the bike shortly afterwards.

Mr. Kristal then asked Officer Ogden if he would have done anything differently.

Officer Ogden responded: “Sure, in retrospect and in view of what happened.”

Mr. Kristal inquired if Officer Ogden had any prior disciplinary action prior to this 5-day suspension.
Town Administrator John Bugbee noted that this suspension was based solely on the July 23rd incident.

Mr. Kristal reiterated his question if Officer Scott Ogden had any other prior disciplinary actions.

At this point Selectmen Coogan pointed out that it is not fair to ask that question, as any prior incidents did not apparently have any connection with this case.

Mr. Kristal then asked Officer Ogden, that knowing the Domestic Abuse Policy directives, was it not wrong to fail to speak up and question Sgt. Fiske’s decision to leave the scene?

Officer Ogden asked if this is a hypothetical question, and acknowledged that knowing the end result, he would absolutely have done it differently.

Mr. Coogan at this point asked Officer Ogden what he knew when he was at the scene.

Mr. Ogden stated that he did not know that a domestic abuse case was underway.

Mr. Kristal noted that there was a previous call for help from the Thrift residence.

Chief Hanavan pointed out that on an earlier occasion Officer Ogden and Sgt. Fiske were on duty when Officer Habekost responded to a domestic call at the Thrift residence.

Mr. Kristal questioned if Officer Ogden would have spoken up if he knew the kids should not be left alone.

Mr. Coogan commented that Officer Michael Gately testified earlier that he felt something else was going on there and that he told that to Sgt. Fiske, and then asked Officer Ogden if Sgt. Fiske informed him of Officer Gately’s comments.

Officer Ogden stated that he did not.

Chief Hanavan then asked Officer Ogden if he said that there was sexual abuse or say anything to she went to the hospital (with Officer Gately).

Officer Ogden responded that he never talked to her that day before she was taken to the hospital, only after she came back from the hospital.

At this point Chairman Coogan stated that these two should be taken together (what did he mean by that statement???? Check with Geoghan)

Town Administrator John Bugbee pointed out that for the Chief, attorney Jack Collins and himself the main thrust of this case is the fact that Mr. Thrift had fled the house and was still at large, when everyone left the scene, adding that, in a nutshell, they should not have left. He stated further that Jack Collins felt that a 5-day suspension was appropriate for Officer Ogden’s role in this matter.

Officer Gately Grievance: was taken up next.
The letter of reprimand cites two infractions: (1) the handling of evidence at the crime scene; and (2) manner of response during questioning at the follow-up investigation.

Mr. Coogan stated that the Chief feels that Officer Gately should have done more regarding protecting and securing the crime scene and followed up with photos and other gathering of evidence according to police procedures, and asked for a comment from Officer Gately to these allegations.

Mr. Gately responded that he did not have any more to say beyond what he testified to earlier, that the digital camera was not working, needed to be charged, etc.

Mr. Coogan then stated that he would like a response to his question, citing Mr. Gately’s 24 years of experience as a Police Officer, his extensive training with gathering evidence and use of a digital camera.

Officer Gately then responded that “we had the guy who committed the crime”, and added that there was no direction from Sgt. Fiske to do anything further. He then added that when he came back to the station he put the digital camera on the charger to charge the batteries.

Officer Gately had no comments about his manner of responding to questions during the investigation.

Selectman Kristal cited Officer Gately’s 24-year career as an officer in the Tisbury Police Department, his earlier candidacy for Chief and then questioned why Mr. Gately did not do something, just because he was not told what to do by a superior officer. Mr. Kristal pointed out that the disciplinary letter was issued because of Officer Gately’s attitude during the investigative questioning following the incident.

Mr. Gately stated that an officer cannot be insubordinate.

Mr. Kristal questioned the idea of an officer being silent and following orders when he is told to do something that he questions.

5:00 p.m.: Motion to close the grievance hearings. M/s/c.

Mr. Coogan commented that this case goes beyond just what the Selectmen now have in from of them, adding that this incident exploded the department. He stated further that lots of bad decisions were made that night, and that the Chief decided to discipline the officers for something that they did and which he deemed to be wrong. Mr. Coogan continued by stating that the Board needs to be able to let the Police Chief make a call and hand down discipline.

Discussion followed on what the result and effect would be (within the department) if the Board does not support the Chief’s actions when he administers discipline.

Selectman Coogan stated that if the Board does not support the Chief when making such a call, the officers will continue to run the department and in effect weaken his position, making him a weak Chief. Mr. Coogan noted further that an Oak Bluffs police officer
was disciplined for a minor infraction with a one-day suspension, which was not grieved, adding that here we have a case where one woman was beaten to a pulp and a 15-year old minor was raped, and when discipline is administered to the officers involved, everything is grieved.

Mr. Coogan then pointed out to Officer Gately that he could have avoided the letter of reprimand by answering questions properly at the hearing, but acknowledged that Mr. Gately has the right to refuse to answer certain questions, which he did during a prior hearing.

He stated further that if the Selectmen reduce the suspension of Officer Ogden to less time than what was initially ordered, would that be grieved and eventually go to arbitration as well?

Mr. Kesley then stated that MASSCOPS is trying to establish relations between the Chief and the officers, added that the Union would not take everything to arbitration and noted that he understands the Board’s need to support the Chief. He then reiterated that the Union is not wanting to grieve every little thing, and is now trying to work on some of these issues, but added that the union cannot say that it will not address issues that exist within the department.

Mr. Israel stated that he does not want to go down that road and pointed out that this case is not a “little thing”, but a case that traumatized a family and many others in the community.

Selectman Kristal concurred, adding that this is the hardest thing that he has ever done as a Selectman, noting that he simply cannot turn his back on what occurred that night.

Mr. Coogan noted that the Board has to decide what action to take and it was suggested that the Board and the parties take a 5-minute recess to caucus and make a decision.

Mr. Israel stated that he supports the Chief’s actions with regard to Officer Ogden’s discipline, stating that he would have replied to an order that he did not agree with, commented that it does not appear that there was much dialogue between Sgt. Fiske and Officer Ogden that evening, and concluded by reiterating that he supports the Chief with regard to Ogden’s 5-day suspension.

Mr. Kristal suggested that a 5-day suspension might be a little harsh, but pointed out that a paper-trail with the current Chief is intended to straighten out some of the behavioral and conduct issues that is not appropriate within the department. He then stated that he would support reducing the suspension to 2½ days. He commented further that on another occasion the Selectmen removed from his file references to a previous incident.

Mr. Coogan stated that he feels the same way, reduce the suspension of Officer Ogden to 2½ days, but then added that if this will also be grieved – this is all or nothing – he does not “want to go there”.
At this point Officer Scott Ogden cited his long friendship with Sgt. Fiske, noting that he would follow his orders and not question his judgment.

Mr. Coogan commented that just because of the friendship between Sgt. Fiske and Officer Ogden, he (Ogden) would have been the one person more likely to be able to say no to Sgt. Bob Fiske if he ordered him (Ogden) to do something that he questioned.

Officer Ogden then responded that he felt that Sgt. Fiske’s decision was reasonable, based on what information he had.

At this point Christopher Kesley of MASSCOPS questioned what would happen if Mr. Thrift, is found not guilty and this incident has led to the termination of one officer and the discipline of two others.

Mr. Israel then stated that if that happened it would be because of some technicality at best, not the facts of the case.

Further discussion followed on whether to reduce the discipline of Scott Ogden to less than 5 days, perhaps 2½ days, on condition that no further appeal will be filed.

Gately Grievance and Letter of Reprimand: was discussed next.

Mr. Israel stated that he feels differently about this one and would be inclined to consider some action in this matter.

Mr. Kristal disagreed, stating that he does not feel the way Selectman Israel does, adding that the only two people at the scene who could have said that something was wrong are Ogden and Gately. He commented further that many things could have happened that night, and added that he expects more for a Tisbury Police Officer who he said should do more than the ordinary and be held to a higher standard.

Mr. Kristal acknowledged that the officers may have been “beat up” down there (at the station) for years, but pointed out that this Board of Selectmen is trying to change that.

Mr. Coogan then stated that he agrees with Officer Gately’s assessment about the (need to gather additional ) evidence, adding that the officers “had their guy”, but stated that he cannot accept Officer Gately’s manner at the investigative hearing that followed. He admonished Mr. Gately to be straight with him and he would be straight with Officer Gately, and then stated that this (conduct at the hearing) is the only part of the written warning that he cares about.

Mr. Coogan stated further that there is no target on anyone’s back down there (at the station), not for him, adding that this case was a big deal. He stated next that he could “live without” the written warning and severely reducing Scott Ogden’s suspension, but pointed out that he wants things to change.

Officer Ogden then stated that he does not think that the Board is out to “get him”, but added that he does feel that others (at the station) are.

Mr. Coogan then stated that if that is so, we (the Selectmen) need to get over it and address it. He commented further that there is a
lack of opportunity to sit down (with the police officers) and talk about anything – that is called “micro-management”.

At this point Mr. Kesley of MASSCOPS offered to come back and sit down with the Selectmen and talk about issues.

Mr. Coogan stated that he wants to put these things to bed and move on, adding that he does not want to see all the new young officers leaving the department and move elsewhere.

Mr. Kristal suggested that the Board remove the written reprimand from Officer Gately’s personnel file and reduce Scott Ogden’s suspension.

Mr. Israel stated that he feels that Michael Gately tried to give some advice to Sgt Fiske about something else going on at the scene, adding that he feels that Office Gately has the right to refuse to answer questions and concluded by stating that he would let the reprimand be removed from his file.

Mr. Kristal pointed out that these actions are all about the future (of the department).

A brief discussion followed on why a verbal warning would be written and placed in someone’s personnel file.

Mr. Bugbee pointed out that, although a warning may be verbal, it becomes part of the file in written form to document that it happened, and if there is a next time and a written warning is issued, it enforces the fact that the same issue exists and is continuing.

Mr. Coogan then stated that if Scott Ogden’s disciplinary punishment is reduced, the Board should also reduce Mr. Gately’s written reprimand.

Mr. Kristal reiterated that he holds Officer Gately to a higher standard, in view of his 24 years of experience a police officer.

Mr. Coogan then asked the Board what action should be taken with regard to Scott Ogden’s situation and whether his suspension should be reduced.

In conclusion, Chairman Coogan addressed Officer Ogden directly noting that Officer Ogden told him that when he left the (Thrift) house, he did not know that anything was going on. Mr. Coogan stated that this is where he has to draw a line – a woman was beaten up and had to go to the hospital – and Officer Scott did not know about a 16-year old in danger of sexual assault?

Officer Ogden responded that he only knew this to be a domestic abuse call.

5:40 p.m.: – The Board called a brief recess and the Officers and Union representatives left the room to caucus.

During this time the Selectmen and Chief Hanavan discussed the case and the disciplinary actions taken.

Town Administrator John Bugbee commented that in his 8 years as Town Administrator in Tisbury and under 3 different Chiefs, no grievances have gone unchallenged by the Union – every one has been appealed.
Mr. Bugbee added that she told the officers to stay with the kids at 5:50 p.m.: Reconvened with all parties present.

Attorney Becker addressed the Selectmen stating, that with no disrespect intended, the Selectmen’s offer to reduce Officer Ogden’s suspension to 2½ days, with no appeal, must be turned down. He added that this is not a situation where everyone acknowledges that they did something wrong, but the question is whether it was reasonable for Officer Ogden to do what he did – anything less would mean that he admits to having done something wrong.

The Selectmen then made the following,

Motion: To uphold the Chief’s disciplinary action of a 5-day suspension of Officer Ogden, for his role in the Thrift incident July 23, 2011, as discussed. M/s/c.

Mr. Ogden stated only that this is “nothing personal”.

Motion: That the BOS drop Michael Gately’s reprimand letter, for his role in the Thrift incident, July 23, 2011, as discussed. M/s/c. (Selectman Coogan voting No).

At this point Mr. Coogan asked the parties if they would like to get together some time soon to discuss issues within the Police Department. There was no response or a decision on when such discussions could begin as proposed earlier.

There being no further business in Executive Session,

Motion: To reconvene in Open Session. Seconded

Voting: Mr. Israel: Yes; Mr. Coogan: Yes; Mr. Kristal: Yes.

Reconvened in Open Session: 6:00 p.m. M/s/c.

Respectfully submitted,

Geoghan E. Coogan, Chairman
Aase M. Jones, Asst. to Town Adm.

Tristan R. Israel
Jeffrey C. Kristal, Clerk