

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

ALEX AIELLO,
Appellant

D-22-171

v.

CITY OF GLOUCESTER,
Respondent

Appearance for Appellant:

Ian Collins, Esq.
Sandulli Grace, P.C.
44 School Street
Boston, MA 02108

Appearance for Respondent:

Suzanne Egan, Esq.
City of Gloucester Law Department
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Gloucester, MA 01930

Commissioner:

Angela C. McConney

SUMMARY OF DECISION

The Civil Service Commission finds that the City had just cause to discipline the Appellant where his conduct was violative of Gloucester Police Department rules and regulations but modifies the discipline to a three-day suspension.

DECISION

On December 14, 2022, the Appellant, Alex Aiello (Appellant), pursuant to G.L. c. 31, § 43¹, timely appealed to the Civil Service Commission (Commission) the December 6, 2022

¹ As part of the appeal form, Appellants are asked whether they are claiming that the Appointing Authority violated any procedural requirements in carrying out the discipline, which would represent a parallel appeal under Section 42 of Chapter 31. The Appellant answered “no”.

decision of the City of Gloucester (City) upholding the Gloucester Police Department (Department)'s decision to suspend him from his employment as a police officer for five days.

The Commission held a pre-hearing conference by videoconference on January 31, 2023. On March 29, 2023, I conducted a full hearing at the Department's Community Impact Unit (CIU) Room located at 67 Middle Street, Gloucester, Massachusetts.²

I recorded the hearing via digital audio which serves as the official recording of the hearing.³ Copies of the digital audio recording were emailed to both parties. The parties submitted their post-hearing briefs on May 19, 2023, whereupon the administrative record closed.

FINDINGS OF FACT

I marked Mr. Aiello's Pre-hearing Memorandum as "A" for identification, and the Department's Pre-hearing Memorandum as "B" for identification. I admitted into evidence four Appellant exhibits (Appellant Exhibits A-D) and twelve Respondent exhibits (Respondent Exhibits 1-12). I admitted the March 29, 2023 Stipulated Facts as Joint Exhibit 1 and the Appellant's appeal to the Commission as Joint Exhibit 2.

Based on the documents submitted and the testimony of the following witnesses:

Thus, this appeal solely relates to whether there was just cause for discipline (a matter assessed pursuant to Section 43.)

² The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §§ 1.01 (Formal Rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

Called by the Respondent:

- Chief Edward Conley, Gloucester Police Department;
- Deputy Chief, Joseph Fitzgerald, Gloucester Police Department;
- Holly Dougwillo, City of Gloucester Human Resources Director;

Called by the Appellant:

- Alex Aiello, Appellant

and taking administrative notice of all pleadings filed in the case, pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence,

I make the following findings of fact:

Background

1. Alex Aiello has been employed by the City of Gloucester as a patrol officer since 2016. (Testimony of the Appellant)

2. The Gloucester Police Department is comprised of 65 sworn officers; three professional administrative staff consisting of a financial manager and two dispatchers; two parking attendants; and two animal control officers. There is one Deputy Chief, six lieutenants, and seven sergeants. In all, five unions represent the collective interests of Department employees. (Testimony of Chief Conley)

3. Mr. Aiello has served as the President of the Gloucester Patrolmen's Association (Union), one of the five unions serving Department employees, since 2021. (Testimony of Appellant)

4. As union president, Mr. Aiello presented union members' concerns to the Chief and the Mayor's Chief Administrative Officer, Jill Cahill. (Testimony of Appellant)

5. Edward Conley became the Chief of the Gloucester Police Department (Department) on April 8, 2019, after serving as Chief of Police for the Town of Manchester by

the Sea. He also served as a police officer with the Chelsea Police Department, where he was last assigned to the Internal Affairs Department. (Testimony of Conley)

6. Upon assuming the duties of chief, Chief Conley communicated his goals and expectations to the Department via an April 8, 2019 email. The chief explained that police officers are held to a higher standard of conduct than the general public and that he would not tolerate any form of insubordination or discourteous communication or behavior. (Respondent Exhibit 1)

7. Chief Conley amended the Department's Rules and Regulations in May 2021, updating the mission and value statements, and adding a core values section to conform with current standards. He forwarded the amended document to the unions for their consent on May 7, 2021.⁴ (Respondent Exhibit 3)

8. Officer Aiello acknowledged receipt of the updated Department Rules and Regulations on June 23, 2021. (Respondent Exhibit 4)

9. Although he was a patrol officer, Chief Conley appointed Officer Aiello to the Northeastern Massachusetts Law Enforcement Council (NEMLEC) Rapid Response Team (RRT). (Exhibit 10; Testimony of Appellant)

10. Officer Aiello's disciplinary history is limited (1) to a February 20, 2015 written warning, (2) withdrawal from consideration to attend the Massachusetts Bay Transportation Authority (MBTA) Police Academy and (3) suspension from Reserve Officer status for failure to follow instructions and disobeying a direct order. Officer Aiello was reinstated on March 16, 2015. (Exhibit 10)

⁴ The Superior Officers' Union gave their assent to the proposed updated Rules and Regulations on May 10, 2021. (Exhibit 2)

11. In 2022, Chief Conley learned that the City of Gloucester planned to renovate the police station, and that there would be a tour of the building that summer by the Mayor, local and state officials. (Exhibit 10; Testimony of Chief Conley)

12. When Chief Conley inspected the station in advance of the visit, he observed the 12-photo collage of union presidents past and present, including a photo of Mr. Aiello, in the roll call/break room. The collage was not on the union bulletin board, and Chief Conley had not granted permission to post it on the wall. (Testimony of Chief Conley)

13. On August 1, 2022, Chief Conley emailed all Department employees a reminder that Department resources could not be used for non-work-related activities. The chief reminded employees that department equipment, including computers and printers for non-official business use, was prohibited. (Exhibit 5)

14. Chief Conley cited *6.9.1 Department Property and Equipment*: Department property shall be used for official purposes only. (Exhibit 5)

15. Within the email, Chief Conley referred to the union presidents' photo collage hanging on the wall in the roll call room. He stated that he assumed that it was done off-duty and with a personal color printer, but that it was a violation of Department rules to hang the collage outside the union bulletin board. (Exhibit 5)

16. The chief cited *6.9.3 Care of Department Buildings*:

Officers and employees shall not mark or deface any surface in any department building. No material shall be affixed in any way *to any wall in any department building* without specific authorization from the Chief or a Commanding Officer, excepting the Association Bulletin Board.

(Exhibit 5) (emphasis added). The chief urged that anyone who wished to remove a photo from the collage do so by the coming Thursday (August 25, 2022). (Exhibit 5; Testimony of Chief Conley)

17. Officer Aiello believed that morale was bad amongst the police officers in the Department. Some police officers approached him to state their dissatisfaction with the Chief's email. Officer Aiello thought that there was a nexus between the Chief's order and the fact that contract negotiations were about to begin. (Testimony of Officer Aiello)

18. On August 22, 2022 at 1:47 am, and while he was off-duty, Officer Aiello used his Department email address to respond to the Chief's email. Because he hit "reply all" to respond, his email was transmitted Department-wide (including to civilian employees), and stated as follows:

Thank you Chief for addressing the issues that really matter in the department. The issues with low morale (which these patrolmen were attempting to help with), Patrolmen being told not to do police work or punishing them when they do (which enabled them to have the time to create this work of art), and drastic increases in holdovers are not important when you have the misuse of paper and ink. It is also great that this was addressed in a timely manner and wasn't left to hang for several months where it would be almost impossible to miss for anyone who took any interest in the patrol function of the department.

Since you appreciate the artistry and historical record so much you can have my picture as a gift.

(Exhibit 5A)

19. Chief Conley was shocked when he read the email. He reread it several times, thinking that he was mistaken. He informed Officer Aiello that his email was rude, inappropriate, insubordinate, and an attempt to publicly mock him and his authority. Chief Conley found the email particularly disconcerting because it was sent to civilian employees as well. The Chief and Officer Aiello enjoyed a positive working relationship, and the Chief had assigned him to the NEMLEC RRT specialized unit. They had also worked together on union matters. Other Department employees expressed their concern at the inappropriateness of the email to the chief. (Testimony of Chief Conley)

20. Deputy Chief Joseph Fitzgerald has served with the Department for 25 years and has been the Deputy Chief since 2017. He is responsible for conducting Internal Affairs investigations. (Testimony of Deputy Chief Fitzgerald)

21. On August 23, 2022, Chief Conley directed Deputy Chief Fitzgerald to conduct an internal affairs investigation to determine whether Officer Aiello had sent the email during working hours, and whether it violated any Department rules or regulations. Deputy Chief Fitzgerald interviewed Officer Aiello as part of the investigation. (Exhibit 6; Testimony of Chief Conley)

22. Deputy Chief Fitzgerald examined whether Officer Aiello had sent the email and whether he had done it while on duty, or if someone had wrongfully gained access to his credentials and sent it; whether the email violated Department rules and regulations; was Officer Aiello's email protected as a legitimate exercise of his free speech as a labor representative; was there credible evidence that superior officers were encouraging Neglect of Duty behavior and/or informally sanctioning officers for performing their duties; and could Officer Aiello provide specifics on employees using free time to use City-owned printer equipment for personal use. (Exhibit 6)

23. After the Department approved an extension of time from his attorney, on September 8, 2023, Officer Aiello responded via email at 2:05 p.m. He wrote that he had sent the email in its entirety on August 2, 2022 while he was off-duty. (Exhibit 6)

24. In response to whether he was aware of patrol officers punished for performing their duties, Officer Aiello wrote that it was common knowledge that patrolmen are "house-punished" or reassigned out of cruisers by a lieutenant watch commander for making lawful arrests and performing other lawful police work. He elaborated that patrolmen would notice the

shift change after an arrest had been made and before the next shift. (Exhibit 6)

25. Officer Aiello wrote that he had first-hand knowledge of two such shift changes: (1) that on June 23, 2019, Officer D was reassigned during the middle of the midnight shift after making an OUI arrest after being told to “keep it quiet.” Officer Aiello stated that he had to pick up Officer D’s shift that same night after he was reassigned; (2) and that routinely his watch commander asked him to “keep it quiet” or similar commands, and punished him by changing his assignment from cruiser assignment to house officer or inside assignment when he made certain arrests. (Exhibit 6)

26. Officer Aiello noted another shift change incident where he lacked first-hand knowledge: On January 17, 2021, Officers L and N handcuffed a disorderly individual who resisted arrest after committing assault and battery upon a firefighter and a police officer (while they were providing medical attention to another). When the officers were about to place this individual into the cruiser, a sergeant arrived and told them to release him. However, Officer L issued a criminal complaint against the individual later. (Exhibit 6)

27. Officer Aiello wrote that he was not present when the collage was printed or compiled; and that his only knowledge came from other patrolmen discussing the project and from seeing the collage after it was hung. (Exhibit 6)

28. Deputy Chief Fitzgerald considered whether Officer Aiello was in violation of four rules and regulations:

Gloucester Police Department Core Values, to wit, Professionalism
We treat the public and our colleagues with courtesy and respect.

Rule 6.3.10 Insubordination

Failure or deliberate refusal to obey any order, oral or written, given by a supervisory officer, shall be insubordination. Officers and employees shall not publicly criticize instructions or any order.

Rule 6.7.6 Discourtesy

Being rude, impolite, contemptuous, or insolent to a superior officer, fellow officer, or to a member of the public is prohibited.

Rule 6.7.24 Public Statements

No officer shall make, publish, or issue any derogatory, discreditable, or disparaging public statements concerning the Department or its officers, which might tend to undermine the efficiency of Department operations and/or the morale of its membership.

(Exhibits 3 and 6)

29. Deputy Chief Fitzgerald found that Officer Aiello's August 2, 2022 conduct amounted to violations of the Department rules and regulations, and sustained the charges.

Gloucester Police Department Core Values, to wit, Professionalism - Sustained

The tone of Officer Aiello's email is clearly disrespectful and condescending. However, he violated the core of Professionalism when he chose to send it to all departmental staff including patrol officers, superior officers, and civilian personnel. This is separate from GPD codified rules because it violates a written expectation regarding both the culture and the moral priorities of the Gloucester Police Department.

Rule 6.3.10 Insubordination - Sustained

By including all employees in his response, Officer Aiello violated the GPD rule regarding publicly criticizing instructions or any order.

Rule 6.7.6 Discourtesy - Sustained

The disrespectful tone of Officer Aiello's email is self-evident. Officer Aiello chose to violate this rule in a very public manner and directed it specifically to the Chief of Police.

Rule 6.7.24 Public Statements-Sustained

Officer Aiello violated this rule by his response to an email specifying mocking rules and regulations of the Department. In doing so, he was undermining the legitimate authority of the Police Chief to enforce such rules.

(Exhibit 6)

30. Deputy Chief Fitzgerald examined whether Officer Aiello's email was protected as a legitimate exercise of free speech in his capacity as a labor representative. He noted that Officer Aiello used his Department-assigned email address and never represented that he was responding in his capacity as a union president. While union leaders are granted certain latitude

with free speech concerning membership interests, this latitude is restricted and speech becomes a violation of Department rules and regulations when there is a marked negative effect on Department operations, the integrity of the Department, or is reflective of poor moral conduct. Deputy Chief Fitzgerald recommended that by choosing such a public venue to share a disrespectful mocking email response to a legitimate request to remove an unauthorized hanging from City-owned space, Officer Aiello far exceeded any latitude afforded union leadership. (Exhibit 6)

31. Deputy Chief Fitzgerald recommended that the Department conduct a separate investigation into whether superior officers were encouraging neglect of duty behavior or sanctioning police officers for performing their duties. He recommended no further investigation of whether the collage was composed by on-duty officers or on City-owned equipment since Officer Aiello could not substantiate that claim from his August 2, 2022 email, and the chief's original intent was the removal of the collage in accordance with Department rules and regulations. (Exhibit 6)

32. On September 28, 2022, Deputy Chief Fitzgerald issued his recommendations in an Investigative Report and forwarded a copy to Chief Conley. The chief then forwarded Officer Aiello a copy of the report via email that same day. Chief Conley also enclosed a draft discipline memorandum proposing that if Officer Aiello acknowledged his wrongdoing, the chief would reduce to the five-day suspension to three days to be served with two days suspended for two years. The Chief testified that he understood that "midnight emails" could be emotional and not reflect one's best judgment. (Exhibits 8 and 10; Testimony of Chief Conley)

33. On October 5, 2022, Officer Aiello wrote the chief that was not willing to assent to the proposed discipline, and that he intended to exercise his appeal rights to a Section 41

hearing. (Exhibit 9)

34. In an October 19, 2022 memorandum, Chief Conley notified Officer Aiello that he agreed with the specific findings of Deputy Chief Fitzgerald's investigation, that he was in violation of Department Rule of Professionalism, Rule 6.3.10, Rule 6.7.6 and Rule 6.7.24. The memorandum also enclosed Officer Aiello's appeal rights. (Exhibit 10)

35. In the memorandum, Chief Conley explained his reasoning for the proposed significant discipline:

In response, and to all employees, you chose this moment to publicly ridicule my directive in a condescending, disrespectful, and immature email. In over 30 years of law enforcement, spanning 4 separate agencies, I cannot recall ever seeing such a demeaning public response not only to the chief of police but to any supervisor. More importantly, by opening mocking me an official directive you attempted to subvert my lawful authority to enforce our code of conduct. Your chosen forum and demonstrated immaturity calls into question your character as a police officer. The public demands a high level of discipline and sound decision making from its law enforcement officers. They assume that officers are held to a standard of conduct and that conduct reflects the police department's values. Lastly, it has been over two months since your email was sent. You have made no attempt to apologize to me, your co-workers or rephrase your response. This signals to me that you either believe what you did was justified or you lack and (sic) understanding of the implications of your actions. Again, this lack in insight regarding department rules, values and expectations requires corrective action.

It is unsettling to know that you are capable of having a respectful and productive conversation with me in a live setting, as we have done on many occasions, then to be so condescending when using a digital medium applied to a larger audience. I cannot recall a single instance when I refused to respectfully listen to you regarding any issues which you had requested to discuss. This incident is truly disappointing.

Since our integrity and core values are very important to this community and this organization, I must hold you to a high level of accountability and impose maximum discipline.

(Exhibit 10)

36. Five days was the maximum length of suspension that the Chief could impose

without the action coming from the Appointing Authority. G.L. c. 31, § 41. Mayor Greg Verga is the Appointing Authority for the City. (Exhibit 11).

37. In addition to the five-day suspension, Chief Conley suspended Officer Aiello from the NEMLEC RRT from November 1, 2022 until November 1, 2023. During the suspension, Officer Aiello was also ineligible for paid overtime, paid detail assignments, or attending court appearances. (Exhibit 10)

38. On October 20, 2022, the Chief memorialized the proposed discipline in a memorandum. The memorandum proffered the options of waiving the right to a Section 42 hearing and assenting to the suspension of five days, three day to serve, two days suspended for two year; no assenting to the suspension of five days, three day to serve, two days suspended for two year; or requesting a Section 41 hearing with the Appointing Authority to determine whether there was just cause for the discipline. (Exhibit 10)

39. Officer Aiello served the suspension on October 31, and November 1, 2, 3 and 6, 2022. (Testimony of Chief Conley)

40. Holly Dougwillo has been employed by the City for 26 years and has served as the Human Resources Director for the past three years. She oversees policy and procedure for the City and serves as a hearing officer for disciplinary matters. (Testimony of Ms. Dougwillo)

41. After Officer Aiello appealed his suspension to the Appointing Authority, the Mayor designated Ms. Dougwillo as the hearing officer for a November 20, 2022 Section 41 hearing. Chief Conley, Deputy Chief Fitzgerald, and Officer Aiello testified at the hearing. (Exhibit 11)

42. Ms. Dougwillo issued a decision and findings on December 6, 2022. She found that Officer Aiello's August 2, 2022 email violated the rules and regulations of the Department,

and provided just cause for the Department to suspend him for five (5) days. She recommended that the Appointing Authority uphold the Department action. (Exhibit 11)

Gloucester Police Department Core Values, to wit, Professionalism

“Officer Aiello’s actions of August 2, 2022 bring into question his professionalism as it relates to his work as a Patrolman. Professionalism is a powerful quality that involves not only being reliable, setting your own high standards, and showing that you care about every aspect of your job, but being a role model for politeness and good manners.”

Rule 6.3.10 Insubordination

“Officer Aiello’s actions of August 2, 2022, demonstrated insubordination by overtly disrespecting the Chief of Police by openly mocking and disagreeing with his orders thus potentially putting the Chief’s authority in doubt.

Rule 6.7.6 Discourtesy

“Officer Aiello’s actions of August 2, 2022, demonstrated his disrespect toward his superior, the Chief of Police.”

Rule 6.7.24 Public Statements

Officer Aiello’s actions of August 2, 2022, displayed a derogatory and disparaging public statement to all GPD staff, sworn officers, superior officers, and non-sworn officers.

(Exhibit 11)

43. The Mayor, as Appointing Authority, accepted Ms. Dougwillo’s findings and recommendations in their entirety, and so notified Officer Aiello in a December 6, 2022 letter.

(Exhibit 12)

44. Earlier in the year, a City employee had resigned from his position in another department due to insubordinate behavior. (Testimony of Appellant)

45. Officer Aiello appealed his suspension to the Commission on December 14, 2022.

(Exhibit 12)

Applicable Law

A tenured civil service employee may be disciplined or discharged for “just cause” after due notice and hearing upon written decision, which shall state fully and specifically the reasons

therefor. G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under section 43, the appointing authority bears the burden of proving to the Commission by a “preponderance of the evidence” that there was “just cause” for the action taken. *Id. See, e.g., Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006); *Police Dep’t of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000). In performing its function:

...the commission does not view a snapshot of what was before the appointing authority...the commission hears evidence and finds facts anew...[after] a hearing *de novo* upon all material evidence and...not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer... For the commission, the question is . . . “whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.”

Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003) (quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983) (emphasis added)). *See also Falmouth v. Civil Serv. Comm’n*, 447 Mass. at 823; *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-05, *rev. den.*, 428 Mass. 1102 (1997).

An action is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” *Commissioners of Civil Service v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971); *Cambridge v. Civil Service Comm’n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. *See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of

testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” *Leominster v. Stratton*, 58 Mass. App. Ct. at 729. *See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n*, 401 Mass. 526, 529 (1988); *Doherty v. Retirement Bd. of Medford*, 425 Mass. 130, 141 (1997).

The Commission has consistently held police officers to a high standard of conduct even in the absence of indictable conduct or a criminal conviction. For example, in *Zorzi v. Town of Norwood*, 29 MCSR 189 (2016), the Commission noted:

An officer of the law carries the burden of being expected to comport himself or herself in an exemplary fashion.” *McIsaac v. Civil Service Comm’n*, 38 Mass. App. Ct. 473, 475 (1995) (negligent off-duty handling of firearm). When it comes to police officers, the law teaches that there is a special ‘trust reposed in [a police officer] by reason of his employment Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.’ *Police Comm’r v. Civil Service Comm’n*, 22 Mass. App. Ct. 364, 371, *rev. den.*, 398 Mass. 1103 (1986).

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. *See, e.g., Police Comm’r v. Civil Service Comm’n* at 600 (1996) and cases cited; *Falmouth v. Civil Service Comm’n*, 61 Mass. App. Ct. 796, 800 (2004); *Faria v. Third Bristol Div.*, 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by

the town or interpret the relevant law in a substantially different way.” *Falmouth v. Civil Service Comm’n*, 447 Mass. at 824.

Analysis

Officer Aiello’s email, sent to sworn and unsworn personnel, was sarcastic, unprofessional, and discourteous. The City has established by a preponderance of the evidence that it had just cause to discipline Officer Aiello: the administrative record establishes that Officer Aiello’s August 22, 2022 email transmission constituted conduct violative of the Department⁵ Rules and Regulations, namely Department Core Values, to wit, *Professionalism*, and, Rule 6.7.6 *Discourtesy*. At the time of the alleged misconduct, Officer Aiello had been a police officer for six years, and was the President of the Union. He had experience working with City officials and the Chief on behalf of the union.

After Officer Aiello filed a Section 41 appeal, the Internal Affairs investigation report was upheld by the hearing officer and memorialized in her December 6, 2022 decision.

I find that Officer Aiello responded in an unprofessional and discourteous manner to the Chief of Police, who was simply making a minor request regarding removing a photo collage from the police station walls. While he may have disagreed with the Chief’s decision or his method in communicating it to the Department, the Appellant’s response was not appropriate.

“In a paramilitary organization it is important that each employee respect and follow the chain of

⁵ The Appellant makes a fair point that the Department Rules against making disparaging “public statements” about Department personnel was not meant to cover intra-Departmental communications and that the Department Rule prohibiting “insubordination” required criticism or failure to obey a superior officer’s direct “order”, neither of which transpired here. As I find that the Department’s Core Values of Professionalism and Courtesy cover both intra-Departmental and external communications, and that the Appellant’s unnecessarily broad dissemination of his email violated those two rules, the Commission need not reach the more complicated issue of whether the Appellant violated other rules as well in order to decide this appeal.

command in order to insure that the department functions effectively.” *Roca v. Holyoke*, 34 MCSR 172 (2023). Further, his conduct did not follow the role model for politeness and good manners as directed in the GDP Core Value: Professionalism.

Officer Aiello testified that, as Union President, he has used the procedure set out in the collective bargaining agreement to address union issues with the Chief. He also testified that he had negotiated with the mayor’s chief administrative officer and understood the process in which union matters and concerns were addressed. Thus, he was cognizant that there were other methods to contact the Chief and that composing that email was not the proper way to engage with the Chief. I find that his email was disrespectful and unnecessarily disseminated to all of the Department.

Officer Aiello offered diverse reasons for his email. First, he said that the email was in jest, and that he reinforced his jest by employing some of the Chief’s vocabulary in his response.

Second, Officer Aiello testified that the union photo collage was hanging in the roll call room for months, and that the chief had no issue with it until union negotiations were imminent. Although he was the president of one of the five unions in the Department, Officer Aiello sent his email to all employees.

I do not overlook the fact that, as a union official, Officer Aiello is entitled to the free exercise of his authority to speak to the Chief on matters of concern to union members. However, it could not have been in anyone’s best interests for the Union President to antagonize the Chief on the eve of contract negotiations. There was no exigency in the matter. In fact, it was even more incumbent upon Officer Aiello to exercise discretion and exhibit courtesy in his dealings with the Chief, where his Union President duties and duties to union members superseded any personal animus he had towards the Chief.

I also take into account Officer Aiello's demeanor during his testimony at the Commission hearing before me. Even in hindsight, he does not consider his email as a lapse in judgement. I was struck by his lack of remorse, and his failure to be contemplative and consider the greater good while serving as a leader among other officers.

In sum, I conclude that Officer Aiello engaged in substantial misconduct that adversely affected the public interest by impairing the efficiency of public service and that, as a consequence, there was just cause for discipline.

Officer Aiello has asserted that his five-day suspension was unusually punitive given his disciplinary history, which is limited to a written warning from 2015. He submitted into evidence a February 2022 disciplinary letter for an officer who received a three-day suspension for failure to follow Department rules and regulations regarding mandatory email usage and for insubordination. This officer had a disciplinary history and chose to resign. Officer Aiello proposes that this exhibit shows that he was treated differently from another officer in a similar situation. There are no further facts in the administrative record to support this allegation. The conduct of another officer violative of the Department rules and regulations is not an excuse for Officer Aiello's conduct.

Finally, Officer Aiello argues that he was unlawfully suspended for more than five days without a prior hearing as required by G.L. c. 31, § 41, because his suspension covered more than five "calendar" days and because he was unable to work paid details on his "off days" during his October 31 to November 6, 2022 suspension. *See Thornton v. Civil Service Comm'n*, 80 Mass. App. Ct. 441, 446 (2011). Although true, the Appellant waived any such procedural flaw by failing to assert a "Section 42" violation in his claim of appeal. Moreover, because I find after de novo review that there is just cause for discipline of less than five days, Officer Aiello

has not been aggrieved by any such alleged procedural flaw.

I also note that it is not unreasonable that an officer on suspension would be ineligible for paid work details (which provide lucrative income in addition to the regular police officer's salary) over the duration of a suspension. One may not wear the Department uniform and hold one's self out as a sworn police officer, with all the attendant duties and responsibilities, while one is suspended from serving as such. In all practicality, Officer Aiello also lacked his firearm, badge, official identification, and Department-issued key fob—necessary accoutrements for the performance of his job duties—that he had had to turn in upon his suspension.

In sum, it is unfortunate that Officer Aiello, perhaps misguided by his four years of collegiality with the Chief as both patrol officer and Union president, took the inappropriate liberty of engaging the Chief publicly via this type of sarcastic intra-Department email. He appeared more concerned with being clever, rather than appreciating the ruptured relationship between the Union and the City/Department that his behavior could, and did, cause. On the other hand, it is also unfortunate that the Chief may have made a mountain out of a mole hill in his original email criticizing the collage display. In future, it would be in the best interests of all involved for both Officer Aiello and the Chief to work on being more sensitive to each's other's point of view and resolving legitimate collective bargaining issues collaboratively and professionally, through appropriate channels, and keeping personal slights in proper perspective.

Modification of Penalty

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated "considerable discretion" in this regard, albeit "not without bounds," so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. See, e.g., *Police*

Comm'r v. Civil Service Comm'n, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; *Falmouth v. Civil Service Comm'n* at 800 (2004); *Faria v. Third Bristol Div.* at 987 (1982) (remanded for findings to support modification). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Town of Falmouth v. Civil Service Comm'n*, 447 Mass. at 824.

I find that Officer Aiello’s suspension was not based on political concerns, favoritism, or bias but for appropriate and legitimate reasons to maintain the decorum, respect, and integrity of the chain of command within the Gloucester Police Department. Although I find that Officer Aiello’s conduct was discourteous and unnecessarily communicated to all Departmental personnel, his behavior did not amount to the more serious offense of insubordination. Accordingly, a modification of the discipline to correspond to other instances of discourteous but not insubordinate conduct, is warranted. *See, e.g., Schlichte v. Town of Gloucester*, 30 MCSR 124 (2017) (one-day suspension for *pattern* of mocking fire chief).

I also am mindful that the subject matter that Officer Aiello included in his email does appear, on its face, to relate to matters of legitimate concern for his union members. I am persuaded that, while Officer Aiello’s chosen form of protest was not appropriate, the substance of his comments fell clearly within the scope of collective bargaining issues. In imposing what the Chief called the “maximum” discipline at his disposal, I find that the Chief put form over substance. The Commission is not vested with authority to interpret a collective bargaining agreement and does not adjudicate claims of unfair labor practices. However, it does fall within the penumbra of basic merit principles to ensure that disciplinary decisions are remedial and not

punitive, and do not unduly chill the legitimate rights of union representatives to speak freely and frankly about matters of concern to the members. For this additional reason, a modification of the five-day suspension is warranted.

CONCLUSION

The Appellant's appeal filed under Docket No. D-22-171 is hereby allowed in part. I find that the Department has proven by a preponderance of the evidence that it had just cause to discipline Office Aiello but that the City of Gloucester's December 6, 2022 decision to suspend Officer Alex Aiello for five (5) days is modified to a three-day suspension.

CIVIL SERVICE COMMISSION

/s/ Angela C. McConney

Angela C. McConney, Commissioner

By a 4-1 vote of the Civil Service Commission (Bowman, Chair; McConney, Dooley, and Tivnan, [Stein – NO] Commissioners) on December 28, 2023.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. § 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Ian Collins, Esq. (for Appellant)

Suzanne Egan, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

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OPINION OF COMMISSIONER STEIN, CONCURRING IN PART

I concur that the Appellant's actions warrant some discipline and that the five-day suspension and forfeiture of detail and overtime pay over a six-day period is excessive. I differ with the majority, however, in that I would find that, under the facts of this appeal, the consistent, remedial level of discipline for which just cause was shown was, at most, a written warning or no more than a one-day suspension. See *Schlichte v. Town of Gloucester*, 30 MCSR 124 (2017) (affirming Gloucester's one-day suspension for *pattern* of mocking fire chief). As the majority concludes, the Appellant's communication to the Chief did not amount to insubordination, and the substance of his message raised known issues of concern to the Department's rank-and-file. It is the Appellant's form, not the substance of his communications, that crossed the line expected of a sworn professional member of the Department. This off-duty behavior was uncharacteristic for the Appellant and was unrelated to the performance of police duties to the public at large. Finally, I am persuaded that, had the Chief used some discretion in how he handled this matter initially, that would have allowed both parties the opportunity to defuse the situation, rather than escalate it, and the Department would not have needed to consume the time and attention of a full-blown Internal Affairs investigation and Commission appeal. Accordingly, I would modify the discipline to no more than a one-day suspension, as any greater discipline appears to have been, in my opinion, more counter-productive and punitive rather than remedial.

/s/ Paul M. Stein
December 28, 2023