

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**SUPERIOR COURT  
CIVIL ACTION  
No. 24-00248**

**ALEX AIELLO**

**vs.**

**MASSACHUSETTS CIVIL SERVICE COMMISSION AND  
CITY OF GLOUCESTER**

**MEMORANDUM OF DECISION AND ORDER ON  
CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS**

The plaintiff Alex Aiello, an officer with the Gloucester Police Department (“GPD”), seeks judicial review of a decision from the Massachusetts Civil Service Commission (“Commission”) in which it concluded that the City of Gloucester (“City”) had just cause to suspend Aiello but reduced his suspension from five to three days. Aiello and the City have filed cross-motions for judgment on the pleadings.

In consideration of the parties’ memoranda of law and oral arguments, and for the reasons that follow, both motions are **DENIED** and the Court **REMANDS** the matter for further proceedings consistent with this decision.

**BACKGROUND**

The following is taken from the Administrative Record.

Aiello had been a police officer in Gloucester since 2016. There were three prior instances of discipline in which he was issued a written warning, was withdrawn from consideration to attend an academy, and was suspended from reserve officer status for failing to follow instructions and disobeying a direct order.

In 2022, the City began planning the renovation of the Gloucester Police station. That summer, Chief Edward Conley learned that the mayor and other state and local officials planned to tour the station as part of the project. Upon inspecting the station prior to the visit, the Chief noticed a collage of photos featuring past and current presidents of the Gloucester Patrolmen's Association ("Union") in the roll call room. The collage was not on the union bulletin board, and Conley had not granted permission to post it on the wall.

On or about August 1, 2022, Conley emailed all police department employees and, among other things, reminded them that department resources could not be used for non-official business and that no materials could be posted on departmental walls without the Chief's approval. He also urged anyone who wished to remove a photo from the collage to do so by the coming Thursday.

The next day, at 1:17 am, Aiello, a patrol officer and President of the Union, sent the following email to all officers in the department and all civilian employees:

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 increase 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.

Administrative Record ("AR") 82, 237.

Conley was shocked at the e-mail. He informed Aiello that the e-mail was rude, inappropriate, and insubordinate, and constituted an attempt to publicly mock him and his authority. Prior to this time, Conley and Aiello had enjoyed a positive working relationship.

In response to Aiello's email, Conley directed Assistant Police Chief Joseph Fitzgerald to conduct an internal affairs investigation. Upon the conclusion of that investigation, Fitzgerald determined that Aiello had violated the GPD's Rules and Regulations – namely, the Core Value of Professionalism, Rule 6.3.10 (Insubordination), Rule 6.7.6 (Discourtesy), and Rule 6.7.24 (Public Statements). He also concluded that the e-mail exceeded any latitude afforded union leadership to comment on issues concerning membership interests and that Aiello should face discipline.

Conley informed Aiello that he was imposing a five-day suspension. Five days was the maximum length of suspension the Chief could himself impose. Conley offered to reduce this to a three-day suspension (with the two additional days held in abeyance for two years) if Aiello acknowledged his wrongdoing. Aiello refused.

Aiello appealed the suspension to the mayor, who appointed the city's Human Resources Director as the hearing officer. A hearing was held during which Chief Conley, Assistant Chief Fitzgerald, and Aiello testified. Thereafter, the hearing officer issued a decision, concluding that the Chief had just cause for the suspension and that Aiello's email violated the specified GPD's Rules and Regulations. The mayor accepted these conclusions. Aiello appealed the decision to the Commission.

After hearing, during which the Commission heard from Conley, Aiello, and two other witnesses, the Commission issued its decision. See AR 77-98. It found the City had sustained its burden of proving by a preponderance of the evidence that it had "just cause" to suspend Aiello because the August 2, 2022 email, which it described as "sarcastic" and "disrespectful,"

violated the Core Value of Professionalism and Rule 6.7.6 (Discourtesy).<sup>1</sup> The Commission explained that although Chief Conley had seemingly “made a mountain out of a mole hill” by sending his email, Aiello’s response was not appropriate given that Conley was simply making a minor request and that Aiello was cognizant of other proper methods to contact Chief Conley to address his concerns. It also noted that Aiello’s demeanor during the testimony before the Commission was striking in that Aiello did not consider the e-mail a lapse in judgment, displayed no remorse, and failed to be contemplative and consider the greater good while serving as a leader among the officers. Accordingly, the Commission concluded that 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. However, the Commission declined to find that Aiello had violated Rule 6.3.10 (Insubordination) or Rule 6.7.24 (Public Statements).

With respect to the propriety of the five-day suspension, the Commission considered Aiello’s argument that another officer with a more serious disciplinary history had received a three day suspension in 2022 for failure to follow rules and regulations regarding mandatory e-mail usage and for subordination. The Commission did not find that this example demonstrated that Aiello had been treated disparately, and found no further facts in the administrative record to support the allegation that he had been. The Commission further concluded that the suspension had not been “based on political concerns, favoritism, or bias” but had been imposed “for appropriate and legitimate reasons to maintain the decorum, respect, and integrity of the chain of command within the Gloucester Police Department.”

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<sup>1</sup> With regard to professionalism, the Core Values provide that “[w]e treat the public and our colleagues with courtesy and respect.” Rule 6.7.6 states that “[b]eing rude, impolite, contemptuous or insolent to a superior officer, fellow officer or to a member of the public is prohibited.”

The Commission determined that modification of the discipline was warranted because Aiello's behavior did not amount to insubordination, a more serious offense, and so that the discipline imposed in his case corresponded to discipline posed in other instances of discourteousness but not insubordination, citing a case in which a firefighter for the town of Gloucester, Schlicte, had received a one day suspension for a pattern of mocking the Fire Chief. The Commission also indicated that modification was appropriate because the substance of Aiello's comments fell within the scope of collective bargaining issues such that the suspension imposed had the potential to unduly chill the legitimate rights of union representatives to speak freely and frankly about union member concerns. The Commission thus imposed a three-day suspension but did not explain why that penalty was appropriate.

### **DISCUSSION**

Appeals from decisions of the Commission are governed by G. L. c. 30, § 14. See G. L. c. 31, § 44 ("Any party aggrieved by a final order or decision of the commission following a hearing pursuant to any section of [G. L. cc. 31 or 31A] may institute proceedings for judicial review in the superior court ... Any proceedings in the superior court shall, insofar as applicable, be governed by [G. L. c. 30A, § 14]"). As such, judicial review of a Commission decision is "narrow and deferential," Buchanan v. Contributory Retirement Appeal Bd., 65 Mass. App. Ct. 244, 246 (2005), and the party appealing its decision bears a "heavy burden" of demonstrating its invalidity. Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 263-264 (2001). The Court may only set aside the decision if it is "based on an error of law, unsupported by substantial evidence, or otherwise not in accordance with the law." Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 689 (2012), citing G. L. c. 30A, § 14(7). In reviewing the Commission's decisions, "it [is] not for the court to substitute its

judgment on questions of fact or exercise of discretion.” School Committee of Brockton v. Civil Service Comm’n, 43 Mass. App. Ct. 486, 490 (1997) (internal quotation marks omitted). Rather, the Court must “accord due deference and weight not only to the [C]ommission’s ‘experience, technical competence, and specialized knowledge,’ but also ‘to the discretionary authority conferred upon it.’” Id., quoting G. L. c. 30A, § 14(7). Further,

[a]fter making its de novo findings of fact, the commission must pass judgment on the penalty imposed by the appointing authority, a role to which the statute speaks directly. G.L. c. 41, § 43 (“The commission may also modify any penalty imposed by the appointing authority”). Here the commission does not act without regard to the previous decision of the town, but rather decides whether 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.

Such authority to review and amend the penalties of the many disparate appointing authorities subject to its jurisdiction inherently promotes the principle of uniformity and the equitable treatment of similarly situated individuals. However, in promoting these principles, the commission cannot detach itself from the underlying purpose of the civil service system—to guard against political considerations, favoritism, and bias in governmental employment decisions. ... 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, the absence of political considerations, favoritism, or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation.

Town of Falmouth v. Civ. Serv. Comm'n, 447 Mass. 814, 823–824 (2006) (citations, internal punctuation omitted).

Aiello contends that the Commission’s decision was unsupported by substantial evidence and was based on an error of law. In particular, he argues that there was no just cause to suspend him because the overwhelming evidence confirms that the suspension was motivated by improper bias stemming from his activities as union president, and that Chief Conley imposed it

to retaliate against him for his engaging in protected, concerted activity in violation of G. L. c. 150E, § 10.<sup>2</sup>

Under G. L. c. 31, § 41, an employee cannot be suspended without “just cause.” G. L. c. 31, § 41. “Although the civil service law does not define what constitutes ‘just cause,’ [the SJC has] held that it exists where the employee has committed ‘substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.’” Town of Brookline v. Alston, 487 Mass. 278, 292 (2021), quoting Doherty v. Civil Serv. Comm’n, 486 Mass. 487, 493 (2020). “The role of the [C]ommission [is] to determine whether the [appointing authority] proved, by a preponderance of evidence, just cause for the action taken.” Boston Police Dep’t v. Collins, 48 Mass. App. Ct. 408, 411 (2000). In making that determination, “the [C]ommission must focus on the fundamental purposes of the civil service system—to guard against political considerations, favoritism, and bias in governmental employment decisions ... and to protect efficient public employees from political control.” Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 304 (1997). As such, the Commission appropriately intervenes “[w]hen there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy.” Id. The Commission, however, may not intervene “to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id.

At argument, the Plaintiff did not press the claim that the Commission's decision is subject to substantive challenge, and for good reason. Given the content of Chief Conley's email and the tone of Aiello's response, the Commission properly concluded that Aiello's email

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<sup>2</sup> Officer Aiello also contends that there were procedural irregularities in connection with his suspension. He made the same argument before the Commission, which concluded that he waived the argument and that the Commission's reduction of the suspension from five days to three rendered any procedural irregularity moot. The Court sees no error in this conclusion.



violated the GPD's Rules and Regulations, specifically the Core Value of Professionalism and Rule 6.7.6 (Discourtesy). The Commission thus supportably found there was just cause to discipline the Plaintiff on professionalism and discourteousness grounds, and the record before the Commission permitted it to conclude that Chief Conley's suspension decision was properly motivated, i.e., that it was aimed at maintaining order and respect for the chain of command, and that there was just cause to impose a suspension. As such, Aiello's assertion that his suspension reflected improper bias stemming from his activities as union president is unavailing. Aiello's further contention that the Commission failed to consider whether Chief Conley violated G. L. c. 150E, § 10 is without merit on this record. Commission did not have authority to adjudicate any claim of unfair labor practice under that statute. In any event, the protections provided under c. 150E, § 10 do not immunize officers who violate departmental rules and regulations, see Plymouth Police Bd. v. Labor Rels. Comm'n, 417 Mass. 436, 441 (1994), and there was substantial evidence supporting the Commission's conclusion that Aiello was punished for violating GPD rules, and not for speaking on union issues. Indeed, the Commission acknowledged Aiello's legitimate rights as union president to speak freely and frankly about union members' concerns in deciding to modify the penalty imposed upon him

The Chief initially imposed a maximum 5 day suspension. The Commission concluded that only two of the grounds relied on by the Chief supported the discipline imposed, and did not find that the more serious charges of insubordination was supported. Accordingly, the Commission concluded that the penalty imposed be modified. But in doing so, the Commission failed to explain why three day suspension was appropriate and why any lesser penalty, such as a one-day suspension advocated in Commissioner Stein's concurrence, was not. It must do so. Cf. Police Com'r of Bos. v. Civil Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (1996) ("We are



mindful of the commission's power to modify penalties and the considerable discretion provided it under G.L. c. 31, § 43. That discretion is, however, not without bounds, and the commission may not modify a penalty without providing a reasoned explanation for doing so.") (internal quotation marks omitted). Accordingly, this matter must be remanded to the Commission for an explanation of why a three-day suspension is appropriate under these circumstances.

**ORDER**

For the foregoing reasons, the parties' motions for judgment on the pleadings are **DENIED** and the Court **REMANDS** the matter for further proceedings consistent with this decision.

**SO ORDERED.**

M. D. Ricciuti  
MICHAEL D. RICCIUTI  
Chief Justice of the Superior Court

Dated: February 20, 2025