

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

100 Cambridge St., Suite 200
Boston, MA 02114
(617) 979-1900

ANDREW BARSALOU,
Appellant

v.

HOLYOKE FIRE COMMISSION,
Respondent

Case Number: D1-24-012

DECISION

Pursuant to G.L. c. 31, § 43, the undersigned Chair of the Civil Service Commission (Commission) charged the Commission's General Counsel, Robert L. Quinan, Jr., with conducting a full evidentiary hearing regarding this matter on behalf of the Commission.

Pursuant to 801 CMR 1.01 (11) (c), Presiding Officer Quinan issued the attached Tentative Decision to the Commission on February 19, 2025, and the parties had thirty days to provide written objections to the Commission. No objections were received in a timely fashion.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Presiding Officer, thus making this the Final Decision of the Commission.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, and Stein, Commissioners [Markey – Absent]) on April 3, 2025.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

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 CMR 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:

Terence Coles, Esq. (for Appellant)

Kathleen Degnan, Esq. (for Respondent)

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Docket Number:

D1-24-012

Appearance for Appellant:

Terence Coles, Esq.
Pyle Rome Ehrenberg PC
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Boston, MA 02109

Appearance for Respondent:

Kathleen Degnan, Esq.
Assistant City Solicitor
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Presiding Officer:

Robert L. Quinan, Jr.

SUMMARY OF TENTATIVE DECISION

The Presiding Officer recommends that the full Commission deny the disciplinary appeal of a Holyoke Fire Department superior officer who was demoted one rank (from Captain to Lieutenant) and suspended for five days after a thorough investigation revealed that he had engaged in inappropriate conduct, both verbal and physical, including of a sexual nature, which he directed toward a probationary firefighter whom he was assigned to train and supervise. Detailed testimony from seven percipient witnesses and other corroborating evidence establish convincingly that the Respondent manifested just cause for the discipline imposed here.

TENTATIVE DECISION

On January 25, 2024, the Appellant, Andrew Barsalou (Appellant), acting pursuant to G.L. c. 31, §§ 41-43, appealed to the Civil Service Commission (Commission) from the decision of the City of Holyoke's Fire Commission (City) to suspend him for five days and demote him from the rank of Captain in the Holyoke Fire Department (HFD) to Lieutenant. The Commission held a prehearing conference on March 12, 2024, via remote videoconference.¹ Subsequently, following designation by the Commission Chair pursuant to Section 43 of G.L. c. 31, I presided over a full evidentiary hearing, which was digitally recorded, on May 3, May 17, June 14, June 17, June 21, July 19, and August 9, 2024, in Springfield.² The full hearing was declared private, with witnesses sequestered. The Commission received thirty-seven (37) Appellant exhibits and twenty-six (26) Respondent exhibits into evidence (collectively, the "Exhibits"). Each party filed a Proposed Decision on or before October 25, 2024. For the reasons set forth below, I recommend that Andrew Barsalou's appeal be denied.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the City:

- Carlos X.³, Firefighter, Holyoke Fire Department
- Alexander Rodriguez, Firefighter, Holyoke Fire Department
- Robert Sadowski, Lieutenant, Holyoke Fire Department

¹ The Commission follows the Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, in its adjudicatory proceedings, with Chapter 31's provisions or any rules promulgated thereunder taking precedence.

² A link to the recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to use the recording to provide an accurate transcript, satisfactory to the court, to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

³ "Carlos X." is a pseudonym for a Holyoke firefighter who claimed to be the victim of a sexual assault at the hands of the Appellant.

- Denis Sanchez, Firefighter, Holyoke Fire Department
- Raul Maldonado, Firefighter, Holyoke Fire Department
- Jorge Diaz, Firefighter, Holyoke Fire Department
- Daniel Spafford, Firefighter, Holyoke Fire Department
- Dana Potter, Firefighter, Holyoke Fire Department
- David Rex, Captain, Holyoke Fire Department
- Kelly Curran, Personnel Director, City of Holyoke
- Jeffrey Trask, Chairman and Commissioner, City of Holyoke Fire Commission
- George Mettey, Commissioner, City of Holyoke Fire Commission

Called by the Appellant:

- Appellant Andrew Barsalou, Lieutenant, Holyoke Fire Department,
- William Alicea, Firefighter, Holyoke Fire Department, and President, Local 1693, International Association of Firefighters, AFL-CIO
- Michael Leary, retired Firefighter, Holyoke Fire Department

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

The Holyoke Fire Department

1. The Holyoke Fire Commission is the appointing authority for the Holyoke Fire Department (HFD). *(Testimony of Trask)*
2. HFD firefighters, lieutenants, captains, and deputy chiefs belong to a single bargaining unit represented by Local 1693, International Association of Firefighters, AFL-CIO. *(Testimony of Alicea)*
3. Newly hired HFD firefighters serve a one-year probationary period, during which time they are to receive training and evaluations. *(Testimony of Rex).*
4. Probationary firefighters receive initial training for three to four weeks by the HFD Training Division. *(Testimony of Rex)*
5. Thereafter, they receive a training officer who is assigned to train them at their assigned station. The training officer is also required to prepare monthly evaluation reports of the probationary firefighter. *(Testimony of Rex)*

6. Probationary firefighters also attend the Massachusetts Firefighting Academy for approximately two and one-half months during their one-year probationary period.
(Testimony of Alicea; Testimony of Appellant; Testimony of Rex)
7. At the time of this hearing, HFD had nine Captains, twenty-two Lieutenants, and seventy-six Firefighters. *(Testimony of Rex)*
8. The chain of command within the HFD is: Chief – Deputy Chief – Captain – Lieutenant Firefighter. *(Administrative Notice)*
9. The HFD is divided into four fire stations (Stations 1, 2, 3, 4) and four employee groups (Groups A, B, C, D). *(Testimony of Rex)* Within each station, employees are assigned to a specific apparatus (which is a piece of equipment such as a truck or an engine).
(Testimony of Rex)
10. The HFD maintains a sexual harassment policy applicable to all employees, and all employees are required to sign that they have received a copy of this policy. *(Resp. Exhibit 12)*

The Appellant's Employment History

11. The Appellant, Andrew Barsalou, had been employed by the HFD for approximately seventeen years at the time of this hearing. He was hired as a probationary firefighter in October 2007, he became a permanent firefighter one year later, he was promoted to Lieutenant in or around 2014, and he was promoted to Captain in or around 2021.
(Testimony of Appellant)
12. The Appellant, both in his capacity as Lieutenant and as Captain, was assigned to train probationary firefighters. The record establishes that he was previously assigned to train at least three probationary firefighters who successfully passed their probationary period

and became permanent members of the HFD: Russ McKenna; Matthew Morris; and Kevin Danzero. (*Testimony of Appellant*)

13. The Appellant has no prior discipline with the HFD. (*Testimony of Appellant*)

The Appellant's Professional Role with Regard to Probationary Firefighter Carlos X.

14. Carlos X. was appointed to the position of Probationary Firefighter by the Holyoke Board of Fire Commissioners on November 7, 2022. (*Testimony of Carlos X.*)

15. Carlos's probationary period was November 7, 2022 – November 6, 2023. (*Testimony of Carlos X.*)

16. HFD senior management assigned Carlos to Station 3, Group B, Truck 2. (*Testimony of Carlos X.*) He began work at Station 3 on November 21, 2023, following his initial training at the Training Division. (*Testimony of Carlos X.*)

17. The Appellant, who at that time was a Captain and the officer in charge of Truck 2 at Station 3, was assigned to be Probationary Firefighter Carlos X.'s training officer. (*Testimony of Appellant; Testimony of Carlos X.; Testimony of Rex*)

18. The Appellant had both training and evaluation responsibilities regarding Probationary Firefighter Carlos X., except during the time that Carlos attended the Fire Academy. (*Testimony of Rex; Testimony of Appellant*)

19. Carlos attended the Fire Academy from March 2, 2023 through June 15, 2023. (*Testimony of Carlos X.*)

20. The Appellant's responsibility in training Probationary Firefighter Carlos X. included: familiarizing him with the equipment and operations on Truck 2; firefighting suppression skills; preparing him for the Fire Academy; and driving and operating Truck 2. (*Testimony of Appellant*)

21. The HFD maintains a daily report, an apparatus logbook, and a computer log. The purpose of the daily report is to document a narrative of each shift, and this document is filled out every day and is given to the on-duty deputy. The daily reports include information such as who is on the apparatus, who is out, calls that occurred, and trainings that were done. The apparatus logbook is assigned to a piece of equipment, it stays with the piece of equipment as a sort of historical document, and it is supposed to mirror the daily report. Maintenance of the apparatus is usually described better in the apparatus logbook than in the daily logs. A computer log is also maintained on the “emergency reporting” system for insurance purposes and that computer log includes digital training reports. (*Testimony of Rex; Testimony of Appellant*)
22. The HFD training protocol, at the time that Carlos X. was a probationary firefighter, required that each probationary firefighter receive three drills per day for the first three months. (*Testimony of Rex; Testimony of Appellant*)
23. There was conflicting testimony regarding how many drills per day (two vs. three) a probationary firefighter was supposed to receive following their first three months of employment, and then following their return from the Fire Academy. (*Testimony of Rex; Testimony of Appellant*)
24. Included in the record are daily reports that reflect training provided by the Appellant to Carlos X. (*App. Exhibit 28A, 28B*)
25. The Appellant’s responsibility in evaluating Probationary Firefighter Carlos X. included producing monthly written evaluations. (*Testimony of Rex*)
26. Carlos’s personnel record includes six monthly performance evaluations. The timeliness of the Appellant’s production of the evaluations that post-date Carlos’s attendance at the

Fire Academy is in question due to date discrepancies and handwritten changes on the documents, but for reasons provided in the Analysis, this is not an outcome-determinative fact, so I need not conclude whether they were completed in a timely manner. (*Resp. Exhibit 8*)

Station 3, Group B of the HFD

27. During the timeframe relevant to this matter, the following individuals were assigned to the main apparatus at the HFD's Station 3:

- a. Assigned to Truck 2: Appellant; Firefighter Dana Potter; Firefighter Denis Sanchez; and Probationary Firefighter Carlos X.
- b. Assigned to Engine 3: Lieutenant Robert Sadowski; Firefighter Raul Maldonado; Firefighter Daniel Spafford; and Firefighter Alexander Rodriguez.

(Testimony of Appellant)

Incidents Preceding the Discipline of the Appellant

28. On June 16, 2023, on Carlos's first day back at Station 3 after attending the Fire Academy, the Appellant grabbed Carlos's butt. (*Testimony of Carlos X.; Testimony of Rodriguez*) The Appellant told Carlos he had a "nice ass." (*Testimony of Carlos X.*)

29. Firefighter Rodriguez witnessed the Appellant's hand make physical contact with Carlos's buttocks, noting that it lasted "longer than expected," and that he "wouldn't take that as a tap." (*Testimony of Rodriguez*)

30. Firefighter Rodriguez observed that "the kid (Carlos) was almost in tears," and noted that Carlos asked him, "Why would the Captain grab my ass?" (*Resp. Exhibit 3*)

31. On the evening of June 16, 2023, the Appellant had a "coaching session" with Carlos. The impetus for the coaching session was that Carlos had, on that day, moved the

Appellant's water bottle and the Appellant could not find it. The Appellant was coaching Carlos about not touching others' property. (*Testimony of Appellant; Testimony of Carlos X.*)

32. During the coaching session, Carlos told the Appellant that he was uncomfortable that:

(1) the Appellant had grabbed one of his buttocks; and (2) the Appellant had made unwelcome comments about Carlos's girlfriend. (*Testimony of Appellant; Testimony of Carlos X.*)

33. In this June 16, 2023 coaching session with Carlos, the Appellant did not deny engaging in the conduct that had been alleged by this probationary firefighter. Nor did the Appellant question Carlos as to what specifically he was referring to, regarding either allegation. (*Testimony of Appellant; Testimony of Carlos X.*)

34. Rather than acknowledging the gravity of what Carlos had stated, the Appellant later testified before me that he assumed the comments Carlos made were in reaction to "just the ball busting...okay...sit around all day, and you know – you were here...like whatever Potter and sorry I'm blanking on names – they testified to just the daily [joking around] stuff." (*Testimony of Appellant*). I do not credit this explanation.

35. The Appellant described mornings after days off at the station as follows:

I'll start in the morning. Everyone comes in, sits at the kitchen table, has coffee. Your typical morning. This is pretty much every morning. [Two Station crew members] would do their daily recap of the 5 days before... They would [go into detail about sex]. Would always be followed by . . . followed by what they referred to as 'wife sex.' [Another firefighter] would always have pics of not quite naked ... sometimes they were naked – but usually just the girls he was talking to.

(*Testimony of Appellant*)

36. There was daily talk at the Station about women's genitalia and breasts and sex. Two of the firefighters had a running joke about who had "the top five dicks in the department," and one would joke: "Let me see your dick." (*Testimony of Appellant*)
37. On June 17, 2023, Firefighters Potter and Sanchez told Carlos that he cannot do what he did moving the Appellant's water bottle out of sight because the Appellant is the Captain. Carlos told Firefighters Potter and Sanchez: "[Then] the Captain should start acting like a Captain and not stick his finger in my butt and ask for pictures of my girlfriend." Somewhat taken aback, Firefighters Sanchez and Potter told Carlos he should talk to the Appellant or the Chief about it. (*Testimony of Potter; Testimony of Sanchez; Testimony of Carlos X.; Resp. Exhibit 3; Resp. Exhibit 5*)
38. On June 17, 2023, Firefighters Potter and Sanchez told the Appellant what Carlos had said to them. (*Testimony of Potter; Testimony of Sanchez; Testimony of Appellant; Resp. Ex. 3*)
39. In that conversation with Potter and Sanchez, the Appellant did not deny or admit the allegations, but said, "Fuck him – I'm done!" (*Testimony of Potter; Testimony of Sanchez; Resp. Exhibit 3; Resp. Exhibit 5*)
40. The Appellant denied having said "fuck him" to Potter and Sanchez but admitted saying something to the effect of "I'm done," meaning that he was done joking around with Carlos. (*Testimony of Appellant*) I find it is more likely than not that the Appellant indeed used the salty language quoted above.
41. The Appellant viewed Carlos X.'s June 16, 2023 statements as a "red flag," meaning that he perceived Carlos to be saying, "I've got that on you now; back off." (*Testimony of Appellant*)

42. The Appellant's relationship with Carlos X. changed after June 16, 2023. The Appellant's description of the change was that "unless he came to me with questions or had an issue, that was where I kept it." He stated that he did not talk to him unless necessary or make further jokes in Carlos's presence. (*Testimony of Appellant*)
43. Contrary to the testimony of others, the Appellant testified that he did not reduce the amount of training he gave to Carlos after June 16, 2023. (*Testimony of Appellant*) Although the truth or falsity of this claim is not essential to my ultimate recommendation, I do not credit the Appellant's assertion on this point.
44. In a text to his subordinate, Firefighter Potter, dated October 18, 2023, the Appellant wrote: "Every single time I talked to him about how come he never approaches me to go over stuff his reason was the same every single time – I ask Dana (Potter) and Denis (Sanchez). So, unless you guys literally train him all the time and went over stuff, no one did." (*Resp. Exhibit 13*)
45. Carlos indeed asked Firefighters Sanchez and Potter for training in the summer of 2023, telling them that the Appellant was not talking to him. (*Testimony of Sanchez*)
46. At least five HFD employees working at Station 3 perceived that the Appellant had limited interactions with Carlos X. following Carlos's return from the Fire Academy, which included perceiving that the Appellant was providing Carlos with less (or "little to no") training. (*Testimony of Potter; Testimony of Diaz; Testimony of Sanchez; Testimony of Maldonado; Testimony of Rodriguez*)
47. On several occasions during Carlos X.'s probationary year, the Appellant would refer to Carlos as "stupid" or "dumb" or "an idiot" in his conversations with other firefighters at the Station. When asked at the CSC hearing if he used these words referring to Carlos

X., the Appellant replied, “Sure I did.” (*Testimony of Appellant; see also Testimony of Rodriguez; Testimony of Maldonado; Resp. Exhibit 3; Resp. Exhibit 6*) The Appellant provided the same “Sure I did” response when asked if he engaged in “razzing” of Carlos. (*Testimony of Appellant*)

48. The Appellant made comments directly to Carlos such as “Are you stupid?” and “Are you an idiot?” in response to work-related questions Carlos would ask the Appellant. (*Testimony of Carlos X.*)

49. Sanchez heard the Appellant speak to Carlos in a condescending way, saying something to the effect of “I’m gonna pick four tools; tell me what they are for and I bet you can’t name one.” (*Resp. Exhibit 3, Resp. 5*). Actually, Carlos correctly identified them all. (*Testimony of Sanchez*)

50. Potter noted that “every question [Carlos] would ask [the Appellant], he would act like it was a stupid question.” (*Resp. Exhibit 3*)

51. On or around October 8, 2023, while on duty and in the presence of Firefighters Rodriguez and Diaz, Carlos asked the Appellant if there was anything he needed him to do. The Appellant responded something to the effect of, “other than sucking my dick – no.” (*Testimony of Appellant; Testimony of Carlos X.; Testimony of Rodriguez; Testimony of Diaz; App. Exhibit 3; Resp. Exhibit 19*) The Appellant admitted that he said this but referred to it as a joke. (*Testimony of Appellant*)

52. Firefighter Diaz reported that he viewed Carlos as being uncomfortable about the Appellant’s comment, based on the look on Carlos’s face. (*Testimony of Diaz*)

53. On October 16, 2023, Carlos underwent his ten-month evaluation, which was administered by Captain Rex. Captain Rex failed Carlos in the following areas: Properly

dress a hydrant with 5” supply; Supply water to the pump with 5” supply; Properly switch over from tank to hydrant supply. (*Testimony of Rex; App. Exhibits 31-32*)

54. The written report on Carlos X.’s evaluation set forth:

1. Properly dress a hydrant with 5” supply. PFF [Carlos X.] was able to dress the hydrant properly but when charging the hydrant he failed to flush the hydrant. PFF [X.] was also unable to answer correctly how much hose supply T-2 had.
2. Supply water to the pump with 5” supply. PFF [X.] sent water to the apparatus straight from the hydrant the 5” gate was not closed. The issue there is, it is hard to control the speed of the water and prevent water hammer.
3. Properly switch over from tank to hydrant supply. PFF [X.] closed the tank to pump valve prior to opening the hydrant, he had to be reminded that he should not shut off water until he has water established to the pump. PFF [X.,] while trying to open the proper valve to get hydrant supply[,] first opened the aerial waterway and then opened the driver side waterway. The supply was on the office side of the piece.

(*App. Exhibit 31, 32*)

55. Captain Rex opined that the areas that PFF Carlos X. failed are critical skills needed in fire suppression, and that failure to master these skills could prevent the firefighters from responding effectively to a fire and jeopardize the lives of firefighters and civilians.

(*Testimony of Rex*)

56. On October 16, 2023, at some point after Carlos X. had completed his ten-month evaluation with Captain Rex, the Appellant slapped Carlos’s butt in the presence of other firefighters. While doing so, he said something to the effect of: “We’re leaving now” or “Let’s go, [Carlos].” (*Testimony of Carlos X.; Testimony of Potter; Testimony of Sanchez; Resp. Exhibit 3*)

57. Firefighter Sanchez witnessed the Appellant slap Carlos’s buttocks on October 16, 2023.

(*Testimony of Sanchez*)

58. Firefighter Potter also witnessed the Appellant slap Carlos’s butt on October 16, 2023.

He made eye contact with Firefighter Fernandez, who was also present when this butt

slap occurred, and he saw her eyes widen. (*Testimony of Potter*)

59. Firefighter Diaz witnessed the Appellant slap Carlos's butt "pretty hard" on October 16, 2023, and noted that seeing the incident made him (Diaz) uncomfortable, so he talked separately to his Lieutenant and to Carlos about it afterwards. (*Testimony of Diaz*)

60. The Appellant admitted to, on one prior occasion, "tapping" Carlos's butt and saying, "Let's go, [Carlos]," and he offered the context that they were near an apparatus and on their way to respond to a fire. (*Testimony of Appellant*)

61. On October 16, 2023, after Carlos's ten-month evaluation, the Appellant met with Deputy Chief Shea and Chief Kadlewicz to review Carlos's performance as a probationary firefighter. Captain Rex submitted his evaluation and report identifying the areas that Carlos failed. Chief Kadlewicz asked Appellant if he would recommend making Carlos a permanent firefighter and the Appellant stated that he would not want to work with Carlos on Truck 2 because he did not care about his job and he did not want to learn. (*Testimony of Appellant*)

62. On October 16, 2023, Deputy Chief Shea submitted a letter to Chief Kadlewicz regarding his evaluation of Carlos X., which stated:

Firefighter [Carlos X.] is just about to finish his first year as a Holyoke firefighter, it appears to me that FF [X.] lacks motivation, does not have a since [sic] of urgency while on calls. With this profession, one needs to be self-motivated, have confidence in their job, and be able to work under severe pressure. I think FF [X.] needs much self-improvement and FF [X.] is not there yet.

(*App. Exhibit 7*)

63. On October 16, 2023, Union President Alicea was informed by Chief Kadlewicz that the Chief would be recommending Carlos X.'s termination based on his substandard

performance during probation. Alicea subsequently notified Carlos of this. (*Testimony of Alicea; Testimony of Carlos X.; App. Exhibit 26*)

64. On October 16, 2023, Carlos received a notice to appear before the Board of Fire Commissioners on October 19, 2023 regarding his employment status. (*App. Exhibit 26*)

65. The Appellant texted with another subordinate, Firefighter Potter, in confidence on or about October 18, 2023, in an apparent effort to refresh Firefighter Potter's memory about a conversation they previously had about Carlos's training. The text exchange reveals that Firefighter Potter's recollection was diametrically opposed to what the Appellant wanted it to be, and to what the Appellant had "told the Chief" had occurred. (*Resp. Exhibit 13*)

66. On October 19, 2023, Carlos X. filed an Incident Report with the Holyoke Police Department with handwritten allegations against the Appellant. (*Resp. Exhibit 15*)

67. His allegations included:

- The Appellant "attempted to take a picture of me putting his finger in my rear";
- The Appellant "grabbed my butt on June 16, 2023";
- The Appellant "has made a lot of comments towards me";
- "On October 8, 2023, I asked Captain Andrew Barsalou if he needed anything. He replied with 'Besides a blow job from you, nothing.'";
- "In February 2023, their [sic] were 2 civilians at Station 3. Captain Andrew Barsalou was drilling me when they were in the Bay. He says out loud to them that I [Carlos] have a small penis, he needs loving ... He said after "he doesn't know if that is true unless you wanted to show me!";
- "I have been hazed, put down, and harassed because of Captain Andrew Barsalou."
- "My girlfriend came to the station once, and he asked me to ask her to spin around for him."

(*Resp. Exhibit 15*)

68. Carlos X. also wrote in the police Incident Report: “I didn’t report this early because I was scared, I was still a probationary firefighter with no union that could be fired at any moment.” (*Resp. Exhibit 15*)
69. On October 19, 2023, the HFD Chief was informed by the Holyoke Police Department that a criminal complaint had been filed. Carlos and the Appellant were then both placed on paid administrative leave, pending the results of the criminal investigation. Carlos X.’s scheduled appearance before the Board Fire of Commissioners was removed from the October 19, 2023 agenda. (*Testimony of Alicea; App. Exhibit 8*)
70. Between October 19, 2023 and October 24, 2023, the Holyoke Police Department conducted interviews of Carlos X. and eight other members of Station 3: Firefighters Rodriguez, Diaz, Potter, Sanchez, Maldonado and Spafford; Lieutenant Sadowski; and Captain Francisco Rivera. (*Resp. Exhibits 16-25*)
71. Multiple firefighters were nervous at their police interview and unsure of where the police investigation might be heading and, as a result, they did not disclose everything that they had witnessed to the police—or they failed to tell the whole truth in their police interview. Their nervousness was repeatedly attributed to Detective Parnell telling some interviewees (Lieutenant Sadowski, Sanchez, and Rodriguez), something to the effect of, the Appellant “keeps texting me” and that the Appellant “is scared he is going to lose his job.” Others learned about Lieutenant Sadowski’s experience of being told this before they were interviewed. Sanchez explained that his fear was also based on the fact that “no one let us know if we were facing any [disciplinary] actions for doing so [talking to police],” because the superior officers in the HFD “were not talking to us.” I found this

testimony and these explanations to be credible, and I do not view their failure to be fully forthcoming as evidence that these firefighters later lied at the hearing in this matter, when they gave hearing testimony that they did not give to the police. (*Testimony of Sadowski; Testimony of Sanchez; Testimony of Rodriguez; Testimony of Potter; Testimony of Diaz*)

72. Carlos X. was interviewed by two detectives (Parnell and Norton) in the Holyoke Police Department building on October 19, 2023 and October 24, 2023. Carlos's testimony during these interviews included the following:

- Carlos stated that during a drill, he turned around and observed Appellant with his phone out and pointing his finger toward Carlos's butt. Carlos told the detectives that he thought the Appellant was trying to be "funny" and "jokey" during this incident. He stated that Appellant's finger never touched him.
- Carlos stated that the Appellant asked him to have his girlfriend "spin around." Carlos told the detectives that his girlfriend was not present when this statement was made.
- Carlos stated that on his first day back from the Fire Academy, the Appellant "grabbed my ass, randomly." He stated that Appellant did so with an "open hand" and did not squeeze his butt. He stated that Appellant also commented on his butt, saying it "looked nice."
- Carlos stated that about a week prior to the police interview, he had asked Appellant if he needed anything from him and Appellant responded, "besides a blowjob, no."

(*App. Exhibit 16 and 17*)

73. While the police investigation was underway, on October 20, 2023, Firefighter Sanchez (who had been a part of the Appellant's small crew for some eight years at that point, and who had first met the Appellant when the Appellant joined the HFD in 2007) texted the following with the Appellant:

Firefighter Sanchez: “Talked to the lawyer. It pretty much went the way I thought. I told him the truth. He said he didn’t have much to go on from my statement but he’ll call me if he needs me.”

Firefighter Sanchez: “He straight up asked me if I saw or heard anything and I told him the truth that I didn’t see it hear anything.”

Firefighter Sanchez: “That I told him [Carlos] that if he had a problem with you touching to talk to you.”

Appellant: “Did you see me touch his butt? I honestly don’t remember doing this.”

Firefighter Sanchez: “Never!!! And that’s what I told the lawyer.”

Firefighter Sanchez: “I never heard you ask him for anything either.”

Appellant: “What did I ask him for?”

Firefighter Sanchez: “Sounds like he thought he was gonna get fired so he made this up.”

“Pictures of his girlfriend?”

Appellant: “I’d say exaggerated. I actually remember that . . . that was a group conversation I chimed in on.”

Firefighter Sanchez: “Yes, exaggerated.”

(App. Exhibit 25)

74. On October 24, 2023, the Appellant texted with Firefighter Sanchez, after Sanchez had been interviewed by the Holyoke Police Department:

Appellant: “How you doing?”

Firefighter Sanchez: “Good. Had a good interview with the detective. He said there’s nothing there from our end.”

Appellant: “I know for sure I was walking around the piece once because we had a call and I gave him a little tap and I said Let’s go [Carlos,] big fire.”

Firefighter Sanchez: “Detective mentioned if that’s the case there’s nothing there also.

He said the difference is huge.

I agreed but I never saw anything truly.”

(App. Exhibit 25)

75. On October 26, 2023, Carlos X. informed the City of Holyoke Personnel Director, Kelly Curran, that he wanted to file an internal complaint against the Appellant, and he told her that she could obtain the Incident Report that he previously filed with the Holyoke Police Department. *(Testimony of Curran; Testimony of Carlos X.)*
76. Personnel Director Curran requested the Incident Report from the Holyoke Police Department but it was not released to her. *(Testimony of Curran)*
77. On October 31, 2023, Personnel Director Curran contacted Carlos and told him that he would need to make a written statement. She scheduled an appointment for November 2, 2023. Carlos did not call or show up for the meeting. *(Testimony of Curran; App. Exhibit 9)*
78. In late October or early November, 2023, Union President Alicea learned that the criminal complaint was either dropped or not being pursued. *(Testimony of Alicea)*
79. The Holyoke Board of Fire Commissioners rescheduled its meeting to review Carlos X.'s employment after learning that the criminal complaint had been dropped and/or was not being pursued. The rescheduled meeting was held on November 6, 2023. *(Testimony of Alicea; Testimony of Carlos X.)*
80. On November 6, 2023, Carlos appeared before the Holyoke Board of Fire Commissioners and he was terminated. *(Testimony of Alicea; Testimony of Carlos X.)*
81. On November 7, 2023, Carlos filed an appeal with the Civil Service Commission, contesting his termination, which was followed by the submission of pre-hearing memos and a pre-hearing conference. Carlos subsequently withdrew his appeal after being reinstated by the City the next month.

82. On November 7, 2023, Chief Kadlewicz spoke to the Appellant and notified him that he was being returned to work because Carlos had dropped his criminal complaint. The Appellant was transferred to a different station. (*Testimony of Appellant; App. Exhibits 8, 9*)
83. On November 7, 2023, Chief Kadlewicz issued a Notice of Reassignment, transferring the following individuals at Station 3 to different locations: Lieutenant Sadowski and Firefighters Maldonado, Potter, Sanchez, and Spafford. (*App. Exhibit 10*)
84. On November 7, 2023, Firefighter Sanchez was called by the Mayor. Sanchez's wife is the godmother of the Mayor's children. Sanchez complained to the Mayor about getting transferred. He told the Mayor that no one was happy and that the group thought they were being targeted. The call lasted over 14 minutes. (*Testimony of Sanchez; App. Exhibit 33*)
85. Chief Kadlewicz came to Station 3 on or around November 9, 2023. The Chief threatened to discipline whoever had called the Mayor. Union members voiced their extreme displeasure with being transferred but were told that the HFD had every right to reassign them. (*Testimony of Sanchez; App. Exhibit 34*)
86. On November 9, 2023, Firefighter Sanchez texted Union President Alicea: "The chief came to the station and threatened us with punishment." (*App. Exhibit 33*)
87. Several other firefighters contacted Union President Alicea and requested that he file a grievance about the transfers. Alicea met with firefighters at Station 3 on or around November 10, 2023. Alicea noted that the firefighters were adamant that the transfers were punitive; that they asserted that the transfers were due to the firefighters "not reporting back" to HFD officers about their interviews with the Holyoke Police

Department; and that they were getting punished because the Appellant “did not do his job.” (*Testimony of Alicea*)

88. Union President Alicea advised the firefighters to go to the Fire Chief about their concerns and told them that he could not put the Appellant’s name in a grievance given that the Appellant was also a member of the same Union. (*Testimony of Alicea*)

89. Union President Alicea heard from some firefighters that it was their opinion that the Chief would not do anything if they complained because he was “good friends with” the Appellant. (*Testimony of Alicea*)

90. On November 22, 2023, Union President Alicea did file a grievance on behalf of Lt. Sadowski, and Firefighters Potter, Sanchez, and Spafford, without naming the Appellant. The grievance alleged that these four individuals were transferred “due to a punitive manner. Members believe these transfers are retaliation due to fact they were outspoken against the termination of Probationary Fire Fighter [Carlos X.]” The grievance was dismissed for lack of supporting evidence and it was not pursued further. (*Testimony of Alicea; App. Exhibit 11*)

91. Union President Alicea also advised the firefighters that they could file a complaint with the Personnel Department. (*Testimony of Alicea*)

92. On November 28, 2023, upon returning from the Thanksgiving holiday, City Personnel Director Curran found letters from Firefighter Sanchez (dated November 18, 2023), Firefighter Potter (dated November 17, 2023), and Firefighter Rodriguez (dated November 27, 2023) on her desk, each of which alleged that the Appellant had mistreated Carlos X. and had not provided him with sufficient training. (*Testimony of Curran; Resp. Exhibit 4; Resp. Exhibit 5; Resp. Exhibit 6*)

93. An Internal Affairs investigation was conducted in response to these three letters. It was led by Personnel Director Curran, City Solicitor Lisa Ball, and Fire Department Deputy Chief Mark Fortin. (*Testimony of Curran; Resp. Exhibit 3*)
94. The Internal Affairs investigation included interviews of: Lieutenant Sadowski, Firefighter Potter; Firefighter Spafford; Firefighter Rodriguez; Firefighter Maldonado; Firefighter Sanchez; Firefighter Diaz; Firefighter Hernandez; Carlos X. (virtually); the Appellant; and Captain Francisco Rivera. (*Resp. Exhibit 3*)
95. The Internal Affairs investigation did not include a review of the Holyoke Police Department's prior interviews of HFD personnel about the Incident Report filed by Carlos with the Holyoke Police Department. (*Testimony of Curran; Resp. Exhibit 3*)
96. The Internal Affairs investigation amassed evidence of the Appellant committing: sexual harassment and assault; inefficiency or incapacity in the service; making false reports concerning the personal character of a fire department member; allegedly fraudulently completing evaluation forms for Probationary Firefighter Carlos X.; and neglect to obey orders of a superior officer. (*Resp. Exhibit 3*)
97. Regarding Carlos's allegation that the Appellant had asked him for pictures of his girlfriend, this was corroborated by Maldonado, who testified at the hearing that he witnessed the Appellant ask for a picture of Carlos's girlfriend's breasts while they were sitting at the kitchen table and that he observed Carlos to be uncomfortable. It was also corroborated by Diaz, who testified that he witnessed the Appellant ask Carlos for pictures of his girlfriend. It was also corroborated by Lieutenant Sadowski, who testified that he had observed Appellant ask Carlos for pictures of his girlfriend, and he had

observed the Appellant ask Carlos about his sex life in vulgar ways. (*Testimony of Maldonado; Testimony of Diaz; Testimony of Sadlowski; Resp. Exhibit 3*)

98. Concerning Carlos's allegation that the Appellant had asked him to ask his girlfriend to spin around for him when she came to the station, this was corroborated by Diaz at the Commission's evidentiary hearing. (*Testimony of Diaz*)

99. In regard to Carlos's allegation that the Appellant poked his finger close to his butt while trying to take a picture, this was corroborated by Rodriguez, who testified at the hearing that he observed Appellant point his finger at Carlos's butt and try to take a picture. (*Testimony of Rodriguez; Resp. Exhibit 3; Resp. Exhibit 6*)

100. Regarding Carlos's allegation that, when he asked the Appellant if there was anything he needed him to do, the Appellant responded something to the effect of, "other than sucking my dick – no," the Appellant admitted that he said this. It was also corroborated by Rodriguez and Diaz. (*Testimony of Appellant; Testimony of Rodriguez; Testimony of Diaz*)

101. With respect to Carlos's allegation that the Appellant slapped him on his butt, Rodriguez corroborated that the Appellant slapped Carlos's butt his first day back from the Fire Academy (June 16, 2023) and three witnesses (Diaz; Potter; and Sanchez) corroborated that the Appellant slapped Carlos's butt on October 16, 2023. The Appellant admitted that he "tapped" Carlos's butt on one occasion when they were heading to a fire. (*Testimony of Appellant; Testimony of Rodriguez; Testimony of Diaz; Testimony of Potter; Testimony of Sanchez; Testimony of Appellant*)

102. As to Carlos's allegation that the Appellant made comments about Carlos's genitals in the presence of two civilians at the Station, I credit Carlos's testimony that this

occurred. (*Testimony of Carlos X.; Exhibit 15*)

103. The Fire Commission rehired Carlos X. on or about December 5, 2023.

(*Testimony of Alicea*)

The “Milieu” of the Holyoke Fire Department

104. Firefighters at Station 3 discuss their sex lives, women’s genitalia and breasts, penis size, and make crude sexual jokes frequently both in person at work and via text messages while on and off duty. (*Testimony of Appellant; Testimony of Alicea; Testimony of Maldonado; Testimony of Potter; Resp. Exhibit 26*)

105. Lieutenant Sadowski, an officer who had training responsibilities for probationary firefighter Rodriguez, explained that there was a “stark contrast between myself and [the Appellant] ... I partook in the joking, but with Alex Rodriguez, I didn’t joke in front of him or with him ... So that’s because I have to provide a learning environment for him so he could succeed ... I think that’s the line that was crossed.” (*Testimony of Sadowski*)

106. Certain firefighters would on occasion slap one another on the butt. Potter and the Appellant had a “friendship” in which they “encouraged” this with one another. (*Testimony of Appellant; Testimony of Potter; Testimony of Spafford*)

107. Only one witness, who is a retired firefighter, testified that he had ever previously observed an officer slap the butt of a probationary firefighter. (*Testimony of Leary; Testimony of Alicea*). I do not conclude, however, that such was accepted behavior even among the rank-and-file in the Fire Department.

Discipline of the Appellant

108. On December 22, 2023, Chief Kadlewicz notified the Appellant in writing that he had reviewed the (enclosed) Internal Investigation Report, that he was recommending

termination from employment, and that a hearing was scheduled for January 8, 2024 with the Board of Fire Commissioners to determine whether discipline, up to and including termination, would be imposed. (*Resp. Exhibit 2*)

109. On January 17, 2024, Jeffrey Trask, Chairman of the Board of Fire Commissioners, notified the Appellant in writing that his actions “are substantial enough to necessitate a five-day suspension without pay and a demotion in rank.” The letter concludes that the Appellant engaged in incidents of “mistreatment and sexual harassment” and specifically references:

significant evidence of you speaking to Probationary Firefighter [Carlos X.] in a demeaning manner and verbally abusing him several times. There was evidence of you sexually harassing him by physically touching him in an inappropriate way. You engaged in highly unprofessional conduct unbecoming a Fire Captain with a subordinate. You verbally assaulted him by calling him an idiot.

(*Resp. Exhibit 1*)

110. The record includes documents pertaining to prior discipline of two Holyoke Fire Department employees (Tim Moran: 1994, 1996, and 2011; and William Moran: 1995 and 2008), which were submitted by the Appellant as comparators. (*App. Exhibits 1 – 6*)

APPLICABLE CIVIL SERVICE LAW

A tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L. c. 31, § 41, may appeal to the Commission under G.L. c. 31, § 43, which provides in relevant part as follows:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on

the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” *Falmouth v. Civ. Serv. Comm’n.*, 447 Mass. 814, 823 (2006). However, “[t]he commission’s task ... is not to be accomplished on a wholly blank slate. After making its de novo findings of fact, the commission does not act without regard to the previous decision of the [appointing authority], 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.’” *Id.*, quoting internally from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

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 (1997); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *School Comm. v. Civil Service Comm’n.*, 43 Mass. App. Ct. 486, 488 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983).

Section 43 of G.L. c. 31 also vests the Commission with authority to affirm, vacate or modify discipline but that discretion is “not without bounds” and requires sound explanation for doing so. *See, e.g., Police Comm’r v. Civil Service Comm’n.*, 39 Mass. App. Ct. 594, 600 (1996) (“The power accorded to the commission to modify penalties must not be confused with the

power to impose penalties ab initio . . . accorded the appointing authority”). *See also Town of Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006), quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). 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*, 447 Mass. at 824.

ANALYSIS

Following a de novo review of the facts, I conclude that the Holyoke Fire Commission has shown, by a preponderance of the evidence, that it had just cause to discipline the Appellant for engaging in mistreatment and what amounts to sexual harassment of a probationary firefighter.⁴ Specifically, a preponderance of the evidence shows that the Appellant, a Captain of the Holyoke Fire Department, engaged in inappropriate conduct, both verbal and physical, including of a sexual nature, which he directed toward a probationary firefighter whom he was assigned to train and supervise. Further, I find that the Appellant’s conduct constituted “substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *School Comm. v. Civil Service Comm’n*, 43 Mass. App. Ct. at 488; *Murray v. Second Dist. Ct.*, 389 Mass. at 514.

Unwelcome Butt Slapping

Corroborating and credible testimony established by a preponderance of the evidence that

⁴ The Holyoke Fire Commission’s decision to demote and suspend the Appellant was based on its findings of mistreatment and sexual harassment. (*Resp. Exh. 1*) While additional restrictions were put on the Appellant in relation to evidence about alleged training deficiencies, those restrictions do not fall within the scope of G.L. c. 31, § 43. *Cf., Doherty v. Civil Serv. Comm’n*, 486 Mass. 487 (2020) (overturning the loss of accrued leave time in the wake of unprofessional conduct by state trooper not within the Commission’s authority). Therefore, the alleged training deficiencies and restrictions attributed to them are outside of the scope of this decision.

the Appellant slapped the buttocks of the probationary firefighter assigned to him (back in late 2022) on two occasions: once on or about June 16, 2023, and again on or about October 19, 2023. First, I deem it significant that there was an array of firefighters who testified to witnessing the Appellant slap the butt of this probationary firefighter, Carlos X. The June 16th slap was witnessed by Firefighter Rodriguez. The October 16th slap was witnessed by Firefighters Diaz, Potter, and Sanchez (and likely others). Secondly, the Appellant himself admitted that he “tapped” Carlos’s butt on one occasion, explaining that they had a big fire to get to (a contextual detail which did not align with the testimony of any other witness). Third, a June 16, 2023 conversation between the Appellant and the probationary firefighter, recounted at hearing by both parties, makes clear that the probationary firefighter did directly tell the Appellant that he did not appreciate the Appellant touching his butt or making comments about his girlfriend, and the Appellant neither denied nor questioned these allegations when they were made to him. Finally, even the Appellant’s hearing testimony makes it more likely than not that he had engaged in the unwelcome conduct alleged by the probationary firefighter on or about June 16, 2023; the Appellant testified that he immediately told the probationary firefighter something to the effect of, “if you do not like it, I’m not going to do it again.”

Other Inappropriate Sexual Conduct and Comments

Next, there is uncontroverted evidence that, on the job, the Appellant responded to the probationary firefighter’s work-related question, as to whether there was anything that the Appellant/Captain needed him to do, with the crude sexual response, of: “Other than you sucking my dick – no.” The Appellant admitted saying this, or something very similar, although noting that he was “joking.” Firefighters Diaz and Rodriguez also witnessed this entire interaction, and Firefighter Diaz credibly testified that while the Appellant was laughing, the probationary

firefighter was not, and instead appeared to be uncomfortable from the interaction.

Further, I find that the allegation that the Appellant poked his finger towards the probationary firefighter's butt while holding his camera out was supported by a preponderance of the evidence. Firefighter Rodriguez testified without hesitation that he observed this when it occurred. Additionally, on or around June 16, 2023, Carlos X. personally shared this specific allegation with Firefighters Sanchez and Diaz; he reiterated it in his handwritten police incident report; and he spoke about it in the personnel investigation interview. Indeed, the corroborated June 2023 sharing of this very specific allegation with Firefighters Diaz and Sanchez wholly undermines the Appellant's argument that it was the probationary firefighter's pending termination that motivated him to fabricate allegations against the Appellant on October 19, 2023.

Credible testimony from Firefighter Rodriguez corroborated the allegation that the Appellant asked the probationary firefighter to have his girlfriend "spin around" when she visited the station. Probationary firefighter X., as well as Firefighters Rodriguez and Maldonado, all credibly testified that the Appellant asked the probationary firefighter for pictures of his girlfriend. This was further supported by the Appellant's own texts. The Appellant's texts with Firefighter Sanchez indicate that he recalls the discussion about the photographs as being part of a group discussion that he jumped in on. Furthermore, given that the Appellant did not deny "making comments about the girlfriend" when he was directly confronted with this accusation by the affected probationary firefighter on June 16, 2023, it is more likely than not that such comments were made.

The allegation that the Appellant told the probationary firefighter that he "has a nice ass" is also proven by a preponderance of the evidence. The Appellant admitted in his personnel

investigation interview that he said this.

I am unable to give much credence to the Appellant's argument that several firefighters transferred from Station 3 in November 2023 were motivated to lie about, or exaggerate, the level of harassment Appellant engaged in because they were deeply unhappy about their involuntary transfers. There is simply too much consistent corroboration among seven percipient witnesses of the details of sufficient misconduct on the Appellant's part to both justify the discipline meted out and greatly diminish the force of Appellant's argument. As noted, the Appellant himself either admitted to, or was unpersuasive in denying, misconduct warranting demotion and suspension. At least two who testified credibly about the Appellant's misbehavior were *not* the subjects of the involuntary transfer order and I discerned no reason for them to have exaggerated in describing their observations. Although many individuals contributed to the emergence of a clear picture of gross misconduct, I did find the testimony of two to be particularly compelling. Lieutenant Sadowski strikes me as a stand-up, straight-shooting superior officer and I did not discern any embellishments in his testimony. Another firefighter who was transferred exuded unusual candor, even when delivering some eyebrow-raising testimony suggesting that he is far from an altar boy. He managed to convey some continuing affection for the Appellant while being brutally honest about some of their shared misdeeds. Notwithstanding some reason to be upset about a (by then many months old) transfer, I cannot conclude that he materially exaggerated or shaded his damning testimony.

Demeaning Comments/Verbal Abuse

Additionally, there was a plethora of credible testimony from diverse sources that the Appellant referred to the probationary firefighter, both directly to him and to others when he was not present, as "dumb" or "stupid" or "an idiot." The Appellant admitted in his personnel

investigation interview that he said, “They really let idiots pass the fire academy,” explaining that it was “a joke.” The Appellant’s somewhat cavalier response at hearing, when asked if he had spoken to other employees about probationary firefighter Carlos X. as being “stupid,” was, “Sure I did.” Firefighter Rodriguez credibly testified that he heard the Appellant call this probationary firefighter an “idiot.” Firefighters Maldonado and Rodriguez credibly testified that they heard the Appellant refer to the probationary firefighter, when he was not present, with these types of words. Carlos X. credibly testified that the Appellant made these comments about him being “an idiot” when he was asking work-related questions. Firefighter Potter credibly testified that the Appellant would act like every question this probationary firefighter asked the Appellant was a stupid question. Again, these are on-the-job responses emanating from the very officer designated to train this probationary firefighter.⁵

Relevance of Supervisory Role

Especially egregious in the facts of this matter is that all of the above involve an officer-supervisor’s conduct directed towards a newly hired subordinate still on probation. The Appellant, a ten-year officer and seventeen-year employee of the HFD, was directing all of the above mistreatment and harassment with sexual overtones towards the probationary firefighter whom he was assigned to train, and he did so on an ongoing basis and frequently in full view of other firefighters. A probationary firefighter is an individual with no job security. This probationary firefighter was dependent on the Appellant’s training, evaluation, and overall approval as he sought to progress to a permanent firefighter position. The power disparity here is enormous. As stated by Commissioner Mettey, if you are a probationary firefighter, “you’re

⁵ I also observe that Carlos X. successfully graduated from the fire academy in June of 2023 and note the absence of any record evidence indicating that his academy performance was subpar.

at the will of the Lieutenant, Captain, or anybody ... so you have to be compliant.”

Commissioner Trask also emphasized the relevance of the supervisor-subordinate relationship to the outcome in this matter, opining that “supervisors with responsibility over other people, especially probationary firefighters, are held to a higher standard.” He testified, and I concur, that “unwanted touching is never appropriate, but in a supervisor/subordinate relationship, it is even more disturbing.”

Importantly, as a Captain, the Appellant’s job was to conduct himself as a role model for others. The Holyoke Fire Department, which is comprised of over 100 employees, currently designates only nine individuals to the rank of Captain. Furthermore, the Appellant is not new to the officer role; of his seventeen years of employment with the Holyoke Fire Department, he has served as an officer for approximately ten years. He began serving as a Lieutenant in or around 2014 and as a Captain in or around 2021.

At no time at the hearing did the Appellant acknowledge the importance of serving as a role model in his officer position. Instead, the Appellant’s conduct at Station 3 and his testimony at hearing indicate that he considers “ball-busting”⁶ to be an expected and accepted part of his place of employment. To the contrary, the expectation is that public servants, particularly those who are entrusted with the responsibility of supervising others, such as a Captain in a Fire Department, will set an appropriate example of decorum within their place of employment; behavior that enables their employees to engage in their daily work on behalf of the public in a safe and supportive environment.

⁶ That the Appellant chose to use the terminology “ball-busting” in his testimony at this formal adjudicatory hearing to describe his own behavior in the workplace is in itself telling. It is demonstrative of his *laissez-faire* attitude toward exhibiting professionalism where professionalism is expected.

Additionally, while the Appellant asserted at hearing that the “ball-busting” that he described as occurring “daily” among employees at Station 3 did not “cross the line,” several others working at Station 3 clearly perceive that the Appellant did “cross the line” with his assigned probationary firefighter. Another officer assigned to Station 3, Lieutenant Sadowsky, who has also served as a Lieutenant for ten years, testified that although he jokes, he does not joke in front of or to the probationary firefighter to whom he was assigned to train, explaining, “that’s because I have to provide a learning environment for him so he could succeed. I think that’s the line that was crossed [by the Appellant].” Firefighter Sanchez, while acknowledging that firefighters use crude language at work, stated that “[the Appellant] took it to another level.” Firefighters Potter and Sanchez determined it appropriate to speak directly to the Appellant about the probationary firefighter’s allegations in June 2023—and also advised the probationary firefighter to talk to the Captain (the Appellant) or the Chief about those allegations. On October 16, 2023, Firefighter Diaz, who was approximately eight feet away from the Appellant when he slapped the probationary firefighter on the butt, testified that the slap was “pretty hard” and “I felt uncomfortable.” His discomfort led him to talk to his Lieutenant and the probationary firefighter (separately) about it afterwards. None of the witnesses other than a retired firefighter, Michael Leary, testified that they had ever previously observed an officer slap the butt of a probationary firefighter. For context, retired Firefighter Leary also testified that he observed slapping on the butt amongst firefighters occurred “frequently” when he worked at the HFD and he gave his opinion that this was not “harassment in my eyes.”

Finally, the Holyoke Fire Department’s Sexual Harassment Policy defines sexual harassment consistently with state law and further specifies that the City also prohibits conduct or behavior of an offensive or sexual nature that may go beyond what is prohibited by state law.

The Appellant has received this policy and is responsible for understanding it and complying with it. Importantly, while the Appellant has argued that the “context of the milieu” at Station 3⁷ should serve as a reference point as to what conduct is acceptable in this particular workplace, I note that this argument must fail. If a workplace unit could simply declare itself beyond or immune to the law and/or City policy prohibiting sex harassment by creating a “regular milieu” of sexually related talk and conduct, the law would be rendered meaningless.

Modification of Discipline

Having determined that the Appellant did engage in the alleged misconduct of mistreatment and harassment with sexual overtones of a probationary firefighter, I next must determine whether the discipline assigned to that misconduct was warranted. My findings do not differ significantly from the findings made by the Holyoke Fire Commission.

As emphasized above, the matter before me concerns the conduct of a superior officer. Public officers are reasonably held to a higher standard of professionalism than non-supervisory personnel. *Brown v. City of Chelsea*, 36 MCSR 217, 233 (2023) (reasoning a “supervisor ... is expected to enforce the rules and stand as a role model for others”); *Griffin v. Town of Easton*, 35 MCSR 1, 9 (2022) (reasoning that there was a “sufficient level of poor judgment and lack of candor that cannot be tolerated in the second-in-command of a municipal fire department”).⁸

The Appellant’s position as a Captain who was directing inappropriate verbal and physical

⁷ I received evidence that during the relevant time period at Station 3, firefighters talked openly amongst themselves about their sex lives, shared nearly naked and naked pictures, obsessed about women’s breasts and genitalia, and talked about their relative penis size while on duty. One hopes that effective measures have been implemented by the HFD to squarely relegate these excesses to the past.

⁸ Appellant Brown has sought judicial review of the Commission’s decision cited above. See docket in Suffolk Superior Court case no. 2384CV01839. The Superior Court dismissed the appeal from the Commission’s decision initiated by Appellant Griffin in 2023. See docket in case no. 2084CV01491.

conduct towards a probationary firefighter whom he was assigned to train was appropriately noted to be of particular relevance to the determinations made by the Holyoke Fire Commission.

The Appellant argues that the discipline of a demotion and five-day suspension is disproportionate to prior discipline imposed by the Holyoke Fire Commission. In the record for comparison are the prior discipline records of two HFD employees. I do not consider one of the prior employees to be a “comparator” because that employee was not an officer and, as noted above, the expectations are far greater for those entrusted with an officer position. The other prior employee was an officer, and he was not demoted following a determination that he engaged in “offensive and intimidating verbal and physical acts against” a firefighter—who was not a probationary firefighter—but instead received a three-day suspension.

Not only is that matter distinguishable because it did not involve a probationary firefighter, but also, due to public policy concerns, I do not view the lighter discipline imposed in that matter, fourteen years ago, as a mandate for lighter discipline in the Appellant’s case. Indeed, the Supreme Judicial Court previously vacated an arbitrator’s decision, noting:

That other police officers have received lesser sanctions for their serious misconduct avails nothing here. Each case must be judged on its own facts Leniency toward egregious police misconduct in the past (assuming such leniency occurred) cannot lead a police officer to commit reprehensible actions in the expectation that he will receive a light punishment.

Diaz v. Somerville, 32 MCSR 156, 161 (2019), quoting *City of Boston v. Boston Police Patrolman’s Association*, 443 Mass. 813, 822 n.9 (2005).

Finally, the Appellant’s receipt of a demotion and a five-day suspension, despite his lack of prior discipline, is consistent with merit principles and prior decisions. There is no prohibition under the civil service law to issuing a demotion as a first measure of discipline.

A demotion, while severe, is clearly less ‘draconian’ than a termination By choosing demotion, rather than termination, the Select [Board] appropriately

applied the remedial nature of the merit principle to correct inadequate performance and to leave termination, appropriately, to ‘employees whose inadequate performance cannot be corrected. G.L. c. 31, § 1.’

Robichau v. Middleborough, 24 MCSR 352, 362 (2011).

As the Chairman of the Holyoke Fire Commission testified, that commission considered the entire range of discipline when evaluating what the appropriate consequence should be for the Appellant’s mistreatment and sexual harassment of a probationary firefighter. Termination was considered, as was a demotion of two ranks. The Appellant’s lack of prior discipline was a factor in the Holyoke Fire Commission’s decision to demote, rather than terminate, the Appellant. A demotion of a supervisory personnel member as a first form of discipline is not atypical for particularly serious misconduct, given the heightened expectations of professionalism that accompanies public leadership positions. *See Robichau v. Middleborough*, 24 MCSR 352 (2011) (police sergeant of 13 years with no prior discipline demoted); *Harrod v. Dep’t of Soc. Servs.*, 6 MCSR 236 (1993) (Area Director with 22 years of service and no prior discipline received a demotion and a one-year suspension). In the matter before me, the end result of a five-day suspension and a demotion of one rank was clearly justified, and I find no evidence of political considerations, favoritism, or bias that would warrant a downward modification of this penalty.

CONCLUSION

For all of the above reasons, I recommend that Andrew Barsalou's appeal under docket no. D1-24-012 be denied.

CIVIL SERVICE COMMISSION

/s/ Robert L. Quinan, Jr.

Robert L. Quinan, Jr.

General Counsel and Presiding Officer

Date: February 19, 2025