

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

Decision mailed: 3/14/08
Civil Service Commission
CB

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

JAMES BRANCACCIO,
Appellant

v.

CITY OF QUINCY,
Respondent

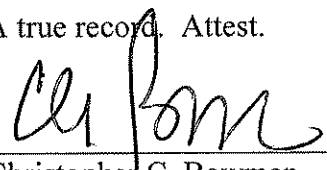
Case No.: D1-07-4

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on March 13, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated February 8, 2008. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Marquis and Taylor, Commissioners [Henderson – Absent]) on March 13, 2008.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Anthony Pini (for Appellant)
David F. Grunebaum, Esq. (for Appointing Authority)
James P. Rooney, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

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February 8, 2008

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place
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David F. Grunebaum, Esq.
Quincy City Hall
1305 Hancock Street
Quincy, MA 02169

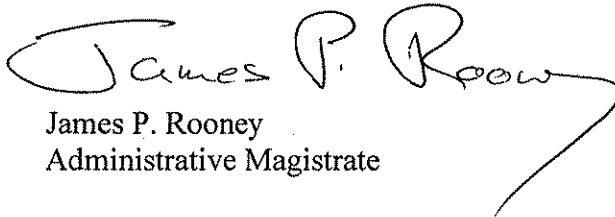
Anthony Pini
Laborers' Union
7 Laborers' Way
Hopkinton, MA 01748

Re: *James Brancaccio v. City of Quincy*, D1-07-4, CS-07-398

Dear Commissioner Bowman, Attorney Grunebaum, and Mr. Pini:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,


James P. Rooney
Administrative Magistrate

encl.

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Suffolk, ss.

Civil Service Commission

Appeal of:

James Brancaccio,
Appellant

v.

Docket Nos. CS-07-398
D1-07-4

City of Quincy,
Appointing Authority

Appearance for Appellant:

Anthony Pini
7 Laborers' Way
Hopkinton, MA 01748

Appearance for Appointing
Authority:

David Grunebaum, Esq.
1305 Hancock Street
Quincy, MA 02169

Administrative Magistrate:

James P. Rooney, Esq.

Recommended Decision

James Brancaccio appeals a December 11, 2006 decision by the Mayor of Quincy, William J. Phelan, terminating him from his position as a civilian employee of the Quincy Police Department. He timely appealed under the provision of M.G.L. c. 31, § 43. Ex. 1. I heard the appeal on May 17, 2007 and July 12, 2007 at the offices of the Division of Administrative Law Appeals (DALA).

The City submitted documents into the record; I have listed them as 12 exhibits. I heard testimony from Quincy Police Officers Stephen Kelly and Roger White, Sergeant Patrick Faherty, Lieutenant John Sullivan, and from James Brancaccio. There are two tapes of the hearing. The record closed on August 13, 2007 with the submission of post-hearing briefs. The

City submitted a brief; Brancaccio did not.

Findings of Fact

1. James Brancaccio worked for the City of Quincy for 17 years. He began by cutting trees, worked for a time at the Department of Public Works, and most recently was a civilian auto mechanic with the Quincy Police Department. Testimony.

2. As a mechanic, Brancaccio possessed keys to the City's police cars. For ten years, the Quincy Police Department has keyed its fleet of patrol cars all to one key to allow its officers to drive any vehicle. Brancaccio possessed this master key and, as well, copies of keys to other police vehicles, such as the chief of police's car, that are individually keyed. Testimony.

3. Brancaccio lives a few blocks away from an apartment building at 80 Newbury Avenue in Quincy. On October 18, 2006, he worked a day shift for the Police Department and was at home that evening. Testimony.

4. Sometime after 6:00 p.m. on October 18, 2006, Quincy Police Officers Stephen Kelly and Roger White were dispatched to 80 Newbury Avenue. They arrived in separate police cars. Officer Kelly parked his car in front of 80 Newbury, while Officer White parked across the street. Each locked his vehicle. The two officers entered the apartment building at around 6:14 p.m. They completed the call and left the building at about 6:42 pm. Testimony and Ex. 4.

5. Shortly after the officers arrived, Brancaccio went to buy cigarettes at a liquor store at the corner of Newbury Avenue and Walker Street, which is the nearest cross-street north of 80 Newbury. He saw the two police cars and decided to play a prank. Using his keys, he drove both cars onto Walker Street and parked them across from the liquor store where they could not be seen from the entrance of 80 Newbury. He then went back into the store and left his set of keys

with liquor store clerk Charles Feeley saying the police may need these.¹ Testimony and Ex. 4.

6. When Officers Kelley and White left 80 Newbury Avenue at 6:42 p.m., they saw their police cars were gone. Suspecting that someone had moved the vehicles as a prank, Officer White ran behind the apartment building to look for them. Meanwhile, Officer Kelly called the police dispatcher. He initially reported the cars as missing, but quickly changed that to stolen after Officer White returned without finding the cars. Officer Kelly asked that a report of two stolen police cars be broadcast to surrounding communities on the Boston Area Police Emergency Radio Network, which was done. Testimony and Ex. 4.

7. Officer Kelly then walked 75 yards north to toward to the corner of Walker Street. Once he reached the corner, he saw the missing police cars and, at around 6:44 p.m., called dispatch to ask for a police sergeant to come to the scene. Mr. Feeley then left the liquor store, came over to Officer Kelly, and gave him the keys he had received from Brancaccio. Testimony and Ex. 4.

8. Brancaccio, who had been listening to his police scanner, left his house after hearing the broadcast about two stolen police cars and walked back toward the liquor store. Feeley pointed him out to Officer Kelly, who called him over. Although at first denying that he had

¹ Although Brancaccio possessed both the master key to Quincy patrol cars and keys to other police cars, the keys he left with Feeley were only his copies of the master key that could be used in any Quincy patrol car. Ex. 4. Because the officers who drove the police cars to Newbury Avenue would have used their copies of the same master key to operate the vehicles, it is not immediately obvious why Brancaccio left his set of keys with Feeley. Brancaccio testified that one of the cars was running when he first saw it, suggesting that one of the officer's keys was still in the ignition. Thus, Brancaccio may subsequently have left his keys with Feeley so that the officer who left his keys in the ignition would have a set of keys to use to drive away. But both officers Kelly and White testified that they parked and locked their cars. And there was no testimony that either officer was missing his set of keys or that Brancaccio gave any keys he found in the ignition to Feeley.

moved the cars, he soon admitted that he had and said, "I screwed up." Testimony and Ex. 4.

9. When Sergeant Patrick Faherty arrived, he released Officers Kelly and White back to patrol duty. Testimony.

10. Between the time Officers Kelly and White entered 80 Newbury Avenue and the time they returned to duty after they recovered their police cars, nothing transpired that would have created an immediate need for use of the cars. The officers did not arrest anyone as a consequence of their call at 80 Newbury, and hence had no need at that time to transport a suspect. They also did not receive a dispatch to respond to another call. Quincy police officers are routinely dispatched from one call to another, but only when the second call, which may involve either a crime or a health emergency, is more urgent. Testimony and Ex. 4.

11. Sergeant Faherty interviewed Feeley and Brancaccio. Two days later he filed a report of these events with Police Chief Robert Crowley. Testimony and Ex. 4.

12. On October 19, 2006, Chief Crowley suspended Brancaccio for five days and informed him that he might be subject to further discipline by the mayor. Ex. 2. On October 30, 2006, Mayor Phelan informed Brancaccio that he was convening a disciplinary hearing. Ex. 7. He appointed First Assistant City Solicitor Robert Quinn, Esq., as the hearing officer. Ex. 8.

13. Attorney Quinn held the hearing on November 3, 2006 pursuant to M.G.L. c. 31, § 41. The parties offered written exhibits, but no live testimony. Quinn found that (1) Brancaccio moved two police cars without permission, (2) his action violated Quincy Police Department General Order #91-21, which addresses the operation of police cars, (3) it might also violate M.G.L. c. 90, § 24, a criminal statute concerning unauthorized use of a motor vehicle, and (4) he breached security by giving master keys to a person not authorized to possess them. Quinn noted

that no serious consequences occurred as a result of the car movement, but that Brancaccio's action could have created serious problems including (1) the inability of officers Kelly and White to transport anyone they might have arrested as a result of the call they responded to at 80 Newbury Avenue, (2) the inability of these officers to respond to any other call promptly, (3) the loss of police coverage in the City (the two cars represent 20 percent of Quincy's patrol cars), and (4) the diversion of police resources in Quincy and elsewhere to respond to the loss of the cars. Quinn recommended that Brancaccio be terminated from his employment with the City of Quincy. Ex. 11.

14. Mayor William J. Phelan accepted Quinn's findings and recommendation. In a discharge letter the Mayor Phelan sent to Brancaccio on December 11, 2006, he informed Brancaccio that he was being discharged for his "overall conduct," his violations of Quincy Police Department General Order 91-21, sections 3.0 (Vehicle Regulation) and 3.3 (Use of Department Vehicles), and his violation of M.G.L. c. 90, § 24. Ex. 12.

15. Two Quincy patrol cars have been stolen in the past. Although Officer White and Sergeant Faherty had heard rumors that police cars had been moved as pranks, none of the police witnesses were aware of any instance in which this actually occurred in Quincy. Testimony.

Conclusion and Recommendation

The City of Quincy has shown just cause to discharge James Brancaccio as a civilian employee of the Quincy Police Department.

A tenured Civil Service employee may be discharged for "just cause." M.G.L. c. 31, § 41. At the *de novo* hearing before the Division of Administrative Law Appeals, the City had to prove by a preponderance of the evidence that just cause existed for Brancaccio's discharge. See

M.G.L. c. 31, § 43 and School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488, 684 N.E.2d 620, 622 (1997). Justification for discipline exists if the employee has “been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” Murray v. Justices of Second Dist Ct. of Eastern Middlesex, 389 Mass. 508, 514, 451 N.E.2d 408, 412 (1983).

The facts are not in dispute. Brancaccio, without authorization, moved two police cars while Quincy police officers were on a call. He moved the cars to a spot where they could not be seen when the officers left the apartment building they were in. Although he intended only to pull a prank and not to deprive the officers of their cars for any length of time, Brancaccio's actions had the potential to interfere with public safety by preventing the officers from quickly responding to another police or health emergency dispatch, had one been made before the officers located their missing police cars. His actions also would have made it much harder for the officers to transport a suspect, had they arrested anyone during the course of the call they were on.

These facts establish that, at the very least, Brancaccio violated Quincy Police Department General Order 91-21, section 3.3 (Use of Vehicles). This section provides that “employees [of the Police Department] shall not use any Department vehicle without the permission of a Commanding Officer” and that “Department vehicles shall never be used for personal business or pleasure.” I assume Brancaccio had authority to move police cars as part of his job as a mechanic for the Police Department and that his possession of a set of master keys confirms that he did not have to seek permission each time he moved a police car as part of his job. Secretly moving patrol cars that were in use by police officers was not part of Brancaccio's

job. Thus, whatever general authorization he had to move police cars while working as a mechanic did not apply to his actions on Newbury Street. And whatever Brancaccio thought he was doing by moving the police cars as a prank, he did not do so to further some Police Department goal. Rather, he acted for his own personal pleasure. His action was therefore unauthorized within the meaning of section 3.3.

Not only did the Police Department establish a violation of its rules, it also demonstrated that the violation concerned public safety and was thus detrimental to the public interest. Moving the police cars had both potential impacts on public safety – the inability of Officers Kelly and White either to respond immediately to another call, if one had come, or to have readily available transport had they made an arrest at the call they were on – and actual impacts – the diversion of Quincy police forces to the investigation of the missing, and presumably stolen, police cars. These impacts are sufficient to prove that the Police Department had a basis to discipline Brancaccio.

The only issue then is whether the sanction, termination of Brancaccio's employment, is to be affirmed. I conclude that evidence does not support a modification.

After a hearing, the Civil Service Commission "may ... modify any penalty imposed by the appointing authority." M.G.L. c. 31, § 42, ¶ 2. The Commission's authority to modify a penalty is significantly constrained, however. It must decide "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." Watertown v. Arria, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, 445 (1983). If so, the appointing authority's decision must stand.

In evaluating whether reason justification exists for the appointing authority's action, the Commission may not "substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304, 682 N.E.2d 923, 926 (1997). What it may consider is whether the personnel decision was imbued with "overtones of political control or objectives unrelated to merit standards or neutrally applied public policy." Id. These factors are significant to the Commission's decision because its analysis "must focus on the fundamental purpose of the civil service system – to guard against political considerations, favoritism, and bias in governmental employment decisions." Id. In this vein, when an appointing authority takes an action that penalizes an employee, the Commission's "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.'" Town of Falmouth v. Civil Service Commission, 447 Mass. 814, 824, 857 N.E.2d 1052, 1059 (2006)(*quoting* Police Commissioner of Boston v. Civil Service Commission, 39 Mass. App. Ct. 594, 600, 659 N.E.2d 1190, 1194 (1996)).

Here, there is no evidence that the City's decision to terminate Brancaccio was based on any improper political consideration, bias, or favoritism.

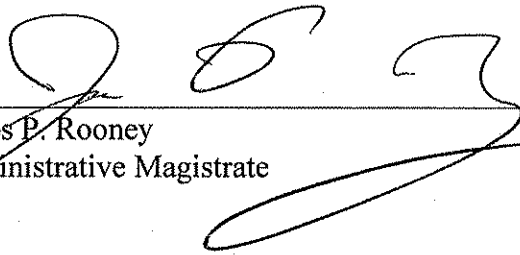
Termination is no doubt a far harsher penalty than Brancaccio expected. An argument could be made that the City's decision to terminate a 17 year employee of the City for moving police cars was harsh indeed, given that the officers affected found the cars within two minutes of noticing their disappearance and the employee returned to the scene in an evident effort to fix the problem he had caused. Still, as I have found, the City had a basis for concluding that

moving the cars posed a significant risk to public safety. Its further conclusion that the risk was serious enough to warrant Brancaccio's termination was a policy decision that was within its discretion to make.

There is no evidence that Brancaccio was dealt with any more harshly than similarly situated individuals. There is no evidence that this sort of incident had occurred before in Quincy. While the officers who testified had heard rumors of police cars being moved as pranks, none knew of any actual incidents of this occurring. Thus, the City appears to have been confronted with a situation it had not faced before. The policy decision the City made to terminate Brancaccio was in line with its conclusion that his prank posed a significant public safety risk. I find no evidence that would support modifying that penalty.

Accordingly, I recommend that the Civil Service Commission affirm the action of the City of Quincy discharging James Brancaccio from his position as a civilian employee of the Quincy Police Department.

DIVISION OF ADMINISTRATIVE LAW APPEALS



James P. Rooney
Administrative Magistrate

Dated: February 8, 2008