

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503

Boston, MA 02108

(617) 979-1900

**DINO D’ANDREA,**

Appellant

**D1-20-088**

v.

**CITY OF EVERETT,**

Respondent

Appearance for Appellant:

Daniel J. Moynihan, Esq.

Mark A. Russell, Esq.

271 Main St., Suite 302

Stoneham, MA 02180

Appearance for Respondent:

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KP Law, PC

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Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Dino D’Andrea, acting pursuant to G.L. c. 31, § 43, appealed to the Civil Service Commission (Commission), challenging the decision of the City of Everett (Everett or Respondent) discharging him from his tenured position of Police Officer with the Everett Police Department (EPD).<sup>1</sup> The Commission held a remote pre-hearing conference on October 7, 2020 via Webex videoconference and held a remote full hearing via videoconference over three (3) days on December 1, 2 & 4, 2020. The full hearing was declared private, with witnesses sequestered.

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

The remote evidentiary hearings were recorded and a link to the recordings was provided to the parties.<sup>2</sup> Thirty-seven (37) exhibits were received in evidence at the hearing (*Joint Exhs. 1, 2A through 2C, 3A through 3D, 4 through 25; Appellant's Exhs. 1 through 3, 5, 7 through 12; Respondent's Exhs. 1 through 3*). Three (3) documents were marked for Identification (*Appellant's Exhs.5ID, 6ID & 13ID*). The Commission received Proposed Decisions from the parties on February 9, 2021. For the reasons stated herein, the Appellant's appeal is denied.

### **FINDINGS OF FACT**

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

*Called by Respondent:*

- Steven Mазzie, EPD Police Chief
- William Fox, EPD Police Sergeant
- Jermaine Bellard, EPD Police Officer
- Thomas Parsons, EPD Police Officer
- Hayli Hill, EPD Police Officer
- Ms. D, Everett resident

*Called by the Appellant:*

- Dino D'Andrea, Appellant
- Demetri O'Malley, EPD Captain
- Patty Couto, EPD Matron
- Darryl Doe, Malden resident

and taking administrative notice of all matters filed in the case, pertinent law and inferences from the credible evidence, I find the facts stated below are established by a preponderance of the evidence.

1. The Appellant, Dino D'Andrea, is a life-long resident of Everett, where he currently owns a home and lives with his younger sister. He holds a bachelor's degree in criminal justice which he received from Northeastern University in 2010. (*App.Exh.3; Testimony of Appellant*)

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<sup>2</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to use the Webex recordings to provide an accurate transcript, satisfactory to the court, to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

2. In June 2011, Mr. D'Andrea was appointed to the position of a full-time, permanent EPD Police Officer. He served in that position until he was terminated, effective June 1, 2020. Officer D'Andrea's productivity (citations, etc.) consistently ranked him among the top ten (10) percent of more than one hundred sworn EPD police officers. (*Exh.3; Testimony of Appellant & Mazzie*)

3. During his tenure with the EPD, Officer D'Andrea was a member of the EPD police officers' union, Local 94 of the New England Police Benevolent Association (NEBA or Union) and was covered by the terms of a collective bargaining agreement (CBA) made between the Union and Everett. (*Resp.Exh.3; Testimony of Appellant*)

4. Steven Mazzie has been the EPD Chief of Police since 2003, having come up the ranks, beginning as an EPD Patrol Officer in 1992. (*Testimony of Mazzie*)

5. Prior to the Fall of 2019, Chief Mazzie had issued Officer D'Andrea one written reprimand and counseled Officer D'Andrea about his performance on several occasions. Specifically, he was counseled on more than one occasion for driving in his cruiser while talking on a cell phone and with his seat back reclined; for parking in the restricted space between two disabled persons' parking spaces, rendering them unusable; and reprimanded for failing to wear the required uniform while on detail. He was also provided informal counseling by his immediate supervisor in the form of "guidance and direction to be making good decisions about work habits and responsibilities." (*Resp.Exh.3; Testimony of Mazzie & O'Malley*)

6. In 2015, Officer D'Andrea began a dating relationship with Ms. A, whom he had known since high school. She and her teenage son lived with Ms. A's mother [Ms. D]. Ms. A has worked for the Everett City Solicitor for about ten (10) years and had access to confidential information about other Everett employees, including Officer D'Andrea. (*Testimony of Appellant, Ms. D & Mazzie*)

7. At some point in 2018, the relationship between Officer D’Andrea and Ms. A became acrimonious. Officer D’Andrea tried to end the relationship twice that year over issues of Ms. A’s allegedly violent behavior toward him (one of which he documented) but they eventually resumed the relationship on each occasion. (*App.Exh.12; Testimony of Appellant & Ms. D*)

8. In August 2019, after Ms. A and Officer D’Andrea had a verbal altercation, Officer D’Andrea reached out to a superior officer, Capt. O’Malley, with an urgent request to see him. They arranged to meet at the EPD command center in the Encore Resort Casino, where Capt. O’Malley was then on duty. Officer D’Andrea described the argument he just had with Ms. A, stating that she had said she would get him fired if he ever stopped dating her. Capt. O’Malley informed Officer D’Andrea that there wasn’t anything that the EPD could do about that comment but, if she did actually ever make a complaint, it would certainly be investigated thoroughly. Capt. O’Malley advised Officer D’Andrea that the best way to prevent Ms. A from making any credible complaints against him was to stay away from Ms. A. (*Testimony of Appellant & O’Malley*)

9. If it was not generally known before August 2019, it was clearly known to the EPD command staff by then that Officer D’Andrea was involved in an acrimonious personal relationship which Chief Massie and Capt. O’Malley described as “tumultuous” and “toxic”. (*Testimony of Mazzie & O’Malley*)<sup>3</sup>

#### The Last Chance Agreement

10. In or about August or September 2019, Officer D’Andrea began to stay at home, spending time sitting in his cruiser when he was scheduled to be on patrol duty. (*Testimony of Appellant; Mazzie and O’Malley*)

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<sup>3</sup> The Appellant faults Capt. O’Malley and the EPD command staff for failing to recommend that he seek professional help and did not offer him the opportunity to participate in the EPD’s Employee Assistance Program (EAP), as the EPD had done for other officers who struggled with domestic issues. I address this point later in the Decision.

11. Officer D’Andrea had been avoiding Ms. A, but they were in contact via text messages in which he wrote that he could not continue a relationship with her due to what he labeled “lies” and threats against his job. In one text exchange, Ms. A wrote: “I cannot live without you”, “I made empty threats”, and “I’m not going to hurt you anymore”, to which Officer D’Andrea responded: “I’ve heard that too many times. You’ve hurt me more than anyone should be hurt and it’s continuous.” (*App.Exh.1; Testimony of Appellant*)

12. On September 19, 2019, an (unidentified) citizen reported that an EPD police officer seemed to be spending large amounts of time at his residence when he seemed to be on-duty, because the police cruiser was there and the individual was in uniform. The EPD identified the officer to be Officer D’Andrea and conducted a three-week drive-by and video surveillance of his home. As a result of this investigation, the EPD determined that Officer D’Andrea had spent more than fifty-five hours at home during that period when he should have been on duty, which is more than half of his scheduled duty hours as a patrol officer. (*Resp.Exh.3; App.Exh.10; Joint Exh.24; Testimony of Appellant, Mazzie & O’Malley*)

13. Officer D’Andrea’s absence from duty was especially “disappointing” to Chief Mazzie because Officer D’Andrea worked the “5 sector [of Everett] where thousands of people [were] visiting [the] city weekly due to the recently opened Encore Resort . . . .” (*Resp.Exh.3*)

14. In November 2019, Chief Mazzie initially suspended Officer D’Andrea for four tours of duty (equivalent to one week of duty) and initiated negotiations with the Union over further disciplinary action. Ultimately, Chief Mazzie agreed to offer Officer D’Andrea a Last Chance Agreement (LCA) in lieu of pursuing further disciplinary proceedings. (*Testimony of Appellant, Mazzie & Bellard*)

15. On January 6, 2020, Chief Mazzie met with Officer D'Andrea, his Union President and two other union representatives. Chief Mazzie presented them with a three-page LCA which he reviewed verbatim with all those at the meeting. After review of the document, and on advice of his union representatives, Officer D'Andrea accepted the terms of the LCA and he signed the agreement that day, as did the Union President on behalf of the union and Chief Mazzie on behalf of the City of Everett. (*Resp.Exh.3; Testimony of Appellant, Mazzie & Bellard*)

16. The LCA provided that Officer D'Andrea would serve an additional suspension of sixteen (16) tours of duty without pay (for a total suspension of twenty (20) tours, including the four (4) tours already served) and would work an additional six (6) tours of duty unpaid as punishment duty to be determined by his group operations commander. (*Resp.Ext.3*).

17. The LCA, after reciting Officer D'Andrea's suspension for staying at home while on duty as well as his written reprimand for working a detail in the wrong uniform, and setting forth the agreed further discipline noted above, provided:

4. NEPBA, Local 94 and D D'Andrea (sic) agree to waive any and all rights they have or may have to file a grievance or to arbitrate the subject concerning D'Andrea's (sic) suspension as a result of this disciplinary action.

4.(sic). The terms and conditions or subject matter of the Agreement are not grievable or arbitrable except to enforce the terms of this Agreement.

5. This Agreement, the subject matter, and/or the terms hereunder shall not be used to set precedence or act as past practice or policy between the City of Everett and NEPBA, Local 94.

6. It is important for "D'Dandrea"(sic) to understand through this agreement that, if, at any time in the future, during the course of the performance of his duties as an Everett Police Officer he is involved in any further incidents involving unacceptable judgement; unacceptable conduct or conduct unbecoming a Police Officer, there will be scheduled a Chapter 31, Section 41 termination hearing, utilizing "D'Andrea's" overall history as noted herein.

7. At any such hearing, the police chief would recommend the termination of "D'Andrea's" employment based on the above and "D'Andrea's" overall record. "D'Andrea" should further understand that if he is involved, (sic)n an off-duty basis with unacceptable judgement; unacceptable conduct; and/or conduct unbecoming a

Police Officer, that you “D’Andrea” may be subject to a Chapter 31, Section 41 termination hearing based on his overall record as a whole and his failure, after being warned about such conduct and judgment, to correct himself.

8. “ D’Andrea” (sic) acknowledges that **this is a serious matter**. By virtue of this agreement, your chief, (sic) is providing you with both A.) an opportunity to take notice of your record and to correct yourself as well as, b.) notice that, should you “D’Andrea” fail to correct, [sic] yourself in the future, your employment with the Everett Police Department will be subject to termination.

*(Resp.Exh.3) (emphasis in original)*

18. Officer D’Andrea served the remaining sixteen (16) tours of unpaid suspension and returned to duty on February 21, 2020, performing detail assignments on Thursday, February 21, 2020 and Friday, February 22, 2020. As of February 22, 2020, Officer D’Andrea had not satisfied the final requirement of the LCA to perform six (6) tours of punishment duty. *(Resp.Exh.3; Testimony of Appellant)*

19. While on suspension, Officer D’Andrea came to learn information that, again, caused him to question Ms. A’s trustworthiness, but by the time his suspension was completed, they had reconciled. *(Testimony of Appellant)*

#### The February 23, 2020 Incident

20. After completing his detail assignment on Friday, February 22, 2020, Officer D’Andrea drove to Ms. A’s home. They had been reconciled for a few weeks and had made plans to go out with other friends to a night club to watch a boxing match. When he arrived at Ms. A’s home, he saw that she had a container of vodka in her room. She became upset when Officer D’Andrea commented about it. This prompted him to suggest that she stay home and he would go out alone, but she ultimately ended up joining Mr. D’Andrea. They picked up another couple with whom Officer D’Andrea was friendly and arrived at the club where they met another couple they knew. Both Ms. A and Officer D’Andrea consumed several mixed drinks.*(Testimony of Appellant & Doe)*

21. While at the club, Ms. A and Officer D’Andrea began to argue about how they were both behaving. They left the club about 1:15 AM with the couple they had come with and brought that couple to their home on Broadway in Everett where they stopped to allow Ms. A to use the bathroom. (*Testimony of Appellant & Doe*)

22. After dropping off the friends, Mr. D’Andrea told Ms. A that she had “embarrassed him” in front of his friend and said they had to part ways. Ms. A started hitting Officer D’Andrea as they continued south on Broadway. (*Testimony of Appellant*)

23. A security camera mounted on a private restaurant located on the west side of Broadway, facing east, captured Officer D’Andrea’s white SUV as it proceeded south on Broadway. According to the time-stamp on the video footage (there is no audio) introduced in evidence at the Commission hearing, Officer D’Andrea’s vehicle came into view of the restaurant’s video camera at 1:52:38 AM. (*Joint Exhs. 3A through 3D*)

24. Based on my review of the video footage<sup>4</sup>, I find that it shows the following:

<u>Elapsed Time</u>	<u>Description</u>
00:00	SUV appears traveling south on Rt. 99 at approximately 25 mph
00:08	Passenger door swung open as car passes parked vehicle
00:10	Pedestrian appears walking north on opposite side of street
00:11	Ms. A seen lying on street as the SUV continues south; Pedestrian starts running toward Ms. A
00:16	Passenger door on the SUV hit street sign and swings shut.
00:20	SUV comes to a stop (about 100’ from Ms. A)
00:23	D’Andrea opens driver’s door; pedestrian crossing street behind
00:24	Ms. A starts to stand up
00:25	D’Andrea exits SUV; pedestrian running to Ms. A
00:26	Ms. A begins walking toward pedestrian who stops running about 20’ feet from Ms. A
00:27	D’Andrea turns his head away from Ms. A; disappears behind rear of his SUV
00:29	D’Andrea on passenger side of car looking at door. Man and Ms. A about 10’ apart walking toward each other
00:32	D’Andrea opens passenger door

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<sup>4</sup> There is no audio on the recording. The estimated speed of the SUV as it approached the restaurant is based on Officer D’Andrea’s testimony. The estimated distances are based on the testimony of Chief Mazzie.



00:33 Pedestrian reaches Ms. A on sidewalk about 30' feet from car  
00:35 Pedestrian and Ms. A begin walking side by side toward car  
00:37 D'Andrea leans down looking toward front tire  
00:38 D'Andrea begins walking toward pedestrian and Ms. A (15'away)  
00 41 Ms. A begins walking ahead of pedestrian toward car  
00:44 D'Andrea stops walking to Ms. A  
00:49 Ms. A comes within 3' of D'Andrea and turns away  
00:55 Ms. A and D'Andrea pass each other (no discernable sign of verbal or physical exchange) as they walk in opposite directions around rear of car  
01:00 Ms. A opens passenger front door and gets inside as D'Andrea is walking toward driver's side  
01:12 D'Andrea opens driver's side front door and gets inside  
01:15 SUV departs continuing south on Rt. 99. Pedestrian continues walking north

*(Joint Exhs.3A through 3D)*

25. When Ms. A exited the SUV, Officer D'Andrea heard a bump and was not sure what caused the sound, possibly, that it was from Ms. A's fall or from the car door hitting the parked car as Ms. A opened it. Once he stopped his vehicle and got out, Officer D'Andrea noticed that Ms. A was standing and walking toward the pedestrian running to meet her, which led him to conclude she had not been seriously injured and he turned his attention to an inspection of his SUV. He later asked if she wanted medical attention and she declined, saying "Just take me home."

*(Testimony of Appellant)*

26. After Officer D'Andrea and Ms. A left the scene in front of the restaurant, they proceeded toward her home on Elm Street. Ms. A resumed her verbal and physical attacks as he continued to attempt to drive the vehicle. *(Testimony of Appellant)*

27. The EPD Police Headquarters is located on Elm Street, approximately a half-mile from Ms. A's home. Officer D' Andrea drove up to the Police Station and parked the SUV in front of the station. He intended to go inside. This incident is captured on footage from a security camera mounted on the front of Police Headquarters introduced in evidence, although the camera footage does not have a time stamp. *(Jt.Exhs.2A through 2C; Testimony of Appellant)*

28. As he first attempted to exit the vehicle, something caused Officer D'Andrea to remain inside and close the driver's door. The two parties then became involved in a physical encounter that lasts for nearly two minutes, being interrupted when a pedestrian (whose identity is not known) comes upon the vehicle. Officer D'Andrea then exited the SUV and engaged the pedestrian in conversation for approximately two minutes. Officer D'Andrea re-entered his vehicle, where he and Ms. A spoke for another few minutes and then he drives off, and the pedestrian continues on his way. (*Jt.Exhs.2A through 2C; Testimony of Appellant*)

29. I cannot clearly identify everything that happened while Ms. A and Officer D'Andrea were inside his SUV while it was parked in front of EPD Police Headquarters. Ms. A and Officer D'Andrea are distinctly visible inside the car and there is no doubt that they were engaged in a lengthy physical struggle until Office D'Andrea left the car to speak to the passing pedestrian. I do find that the video contains examples of both Ms. A and Officer D'Andrea moving toward each other and initiating physical contact with each other. I also find examples of each person moving away from the other person in a manner consistent with fending off physical contact from the other person. (*Joint Exhs.2A through 2C*)

30. Officer D'Andrea changed his mind and decided not to go into Police Headquarters for assistance after Ms. A pleaded with him, persuading him that she finally had calmed down, and after Officer D'Andrea concluded that he did not want to jeopardize her job or her custody of her son. (*Testimony of Appellant*)

31. Upon arriving at Ms. A's home, another physical altercation ensued in the car (during which Ms. A began hitting Officer D'Andrea with her cell phone before dropping it on the seat). After Ms. A eventually exited the SUV, Officer D'Andrea picked up the cell phone and put it in his back pocket. As Officer D'Andrea and Ms. A proceeded to the front door of her home, Officer

D'Andrea's shirt was ripped open at some point. Ms. A's mother, Ms. D, opened the door and they went inside. The verbal argument continued in the entry hall. Eventually, Ms. A said: "I'm calling the police. You are getting fired." She then called 911, using her cell phone, which Officer D'Andrea had returned to her after they entered the apartment. (*Testimony of Appellant & Ms. D*)

#### The EPD Response and Mutual Arrests on Scene

32. At 2:07 AM on February 23, 2020, the EPD received a 911 call from Ms. A who reported that "'I need cops over at [# redacted] Elm Street . . . My boyfriend is acting like an animal" and then the caller hung up. Officer Bellard, who was assigned to "3 sector" where Elm Street is located, was dispatched to the scene as the lead officer. Officers Parsons and Hill also responded as back-up. (*Joint Exhs.4 & 11; Resp.Exh.1; Testimony of Appellant, Mazzie, Bellard & Parsons*)

33. Upon arrival, the officers recognized the white SUV in the driveway as belonging to Officer D'Andrea and heard raised voices coming from inside. When the front door opened, Officer D'Andrea and Ms. A were both waiting inside. There is a noticeable difference in their height and weight, Officer D'Andrea being about 6 feet tall and Ms. A being slender and about 5'5". (*Resp.Exh.;1 Joint Exh.2A; Testimony of Appellant, Ms. D, Bellard, Parsons & Hill*)

34. Ms. A and Officer D'Andrea displayed signs of a struggle. Ms. A had dried blood on her lip, scratches on her arm, her hair and clothing were out-of-place and her hair extensions were on the floor. She had been crying and there was mascara all over her face. In addition to his ripped shirt, Officer D'Andrea had scratches on his neck area and a bump on his head. Both of them had a discernable odor of alcohol on their breath; at least three EPD officers said Ms. A was intoxicated. (*Resp. Exh.1; Joint Exhs. 1 & 12; Testimony of Appellant, Ms. D, Fox, Bellard, Parsons & Hill*)

35. Consistent with the training and experience EPD officers receive about responding to domestic abuse incidents, Officer D’Andrea and Ms. A were separated. Officer D’Andrea went outside, accompanied by Officer Hill, while Ms. A and Ms. D remained inside. Because the incident involved an EPD officer, Officer Bellard relayed that information to his patrol supervisor, Sgt. Fox, who reported to the scene shortly thereafter and assumed command of the incident. *(Testimony of Appellant, Fox, Bellard, Parsons & Hill)*

36. When Sgt. Fox arrived, Officer Hill approached him and said that Officer D’Andrea was seated in her cruiser and wanted to talk to him. Officer D’Andrea told Sgt. Fox that he and Ms. A had been out drinking. He said that she had “attacked him” on the ride home, forcing him to stop the vehicle twice – once near the restaurant on Broadway when she exited the vehicle and, again, after he had stopped in front of Police Headquarters. *(Resp.Exh.1; Testimony of Fox & Ms. D)*

37. While Sgt. Fox was speaking with Officer D’Andrea, Officer Hill re-entered the home. She had met Ms. A at a party at Officer D’Andrea’s home, knew she worked for the City of Everett, and knew she was Officer D’Andrea’s girlfriend. *(Testimony of Hill)*

38. After talking with Officer D’Andrea, Sgt. Fox went inside where Officer Parsons and Hill had been meeting with Ms. A and her mother. Ms. A had asked them to “pull the film”, indicating her awareness that there were video cameras in the vicinity of the encounters on the ride home. *(Resp.Exh.1; Testimony of Fox, Parsons & Hill)*

39. While outside, Officer D’Andrea called Capt. O’Malley (from whom he had sought advice after his August 2019 argument with Ms. A.). Officer D’Andrea told Capt. O’Malley that he was “being arrested” and that there would be video showing what happened on the drive to Ms. A’s home. *(Testimony of Appellant & O’Malley)*

40. Both Officers Hill and Parsons had found Ms. A to be “agitated and upset”. Ms. A called Officer Hill derogatory names and expressed concern that the EPD would cover up for Officer D’Andrea. Officer Hill eventually distanced herself from Ms. A. and went back outside. *(Testimony of Parsons & Hill)*

41. After speaking with Ms. A and Ms. D, Sgt. Fox asked Officer D’Andrea about certain statements they these two women had made about him withholding Ms. A’s cell phone from her. I credit Officer D’Andrea’s explanation, which Ms. D substantially corroborated, that Ms. A had left her cell phone in his car and he retrieved it and returned it to her, after which she used it to call the police in his presence. He waited at Ms. A’s home for the police to arrive. No witness testified that Officer D’Andrea prevented or delayed Ms. A’s call to EPD dispatch. *(Testimony of Appellant, Fox & Ms. D)*

42. After completing his on-scene investigation, and conferring with his direct supervisor (Lt. Lane, the shift commander) and Capt. O’Malley, Sgt. Fox found probable cause to believe that “a physical altercation had occurred . . . but it was unclear who the aggressor was. . . . Based on the facts and unable to determine who the clear aggressor was, he made the decision to place both D’Andrea and [Ms. A] under arrest for assault and battery on a family/household member.” In conferring with Sgt. Fox on scene, Lt. Lane and Capt. O’Malley supported the decision to make mutual arrests. *(Resp.Exh.1; Joint Exhs.1 & 12; Testimony of Bellard, O’Malley & Fox)*<sup>5</sup>

43. Sgt. Fox drove Officer D’Andrea to EPD Headquarters and Ms. A was transported to HQ via police wagon. They were both booked, photographed, and charged with Domestic Assault and Battery. Officer D’Andrea also was charged with Intimidation of a Witness (i.e. Ms. A) No sobriety tests were administered. *(Resp.Exh.1; Joint Exhs.1 & 12; Testimony of O’Malley & Fox)*

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<sup>5</sup> Officer Hill was the only percipient witness on scene who said testified she would have found Ms. A was the “primary aggressor”. *(Joint Exh.16; Testimony of Hill)*

44. Under EPD Policy and Procedures regarding “Domestic Violence”, arresting officers must attempt to identify the primary aggressor at the scene and make arrests accordingly. Dual arrests are “strongly discouraged”, but permissible, when the circumstances do not point clearly to a single primary aggressor. Typically, the lead officer on the call (here, Officer Bellard) would make the determination as to who was the primary aggressor, but when a domestic incident involves an EPD officer, and a supervisor is called to the scene, the supervisor (here Sgt. Fox) becomes responsible to determine the primary aggressor. (*Joint Exhs.5, 6 & 20; Testimony of Fox & O’Malley*)

45. According to EPD procedure, Ms. Couto, who had 25 years’ experience as an EPD Matron, was called to the station to conduct the required search of Ms. A during booking and to stay with Ms. A until she was released on bail or sent to court. (*Testimony of Couto*)

46. While under Matron Couto’s observation, Ms. A “cried and yelled” until her mother arrived and calmed her down. While in custody, Ms. A said that she knew that Officer D’Andrea was “on probation” and hoped he would get fired. (*Testimony of Couto & Ms. D*)

47. The criminal charges against each party eventually were dismissed at the request of Ms. A and Officer D’Andrea respectively, after each of them claimed a Fifth Amendment privilege and refused to testify. (*App.Exh.2; Testimony of Appellant*)

#### The Internal Investigation

48. Upon learning that Officer D’Andrea had been the subject of an “arrestable domestic abuse related offense”, in accordance with EPD policy and procedure, Chief Mazzie immediately placed Officer D’Andrea on administrative leave without pay. (*Joint Exh.5; Testimony of Mazzie*)

49. EPD policy also states: “All such officers shall be ordered to **attend a Batterers’ Intervention Program** through the Employee Assistance Program (EAP).” (Exh.5)(**emphasis in**

**original**). Chief Mazzie did not issue such an order because Officer D’Andrea was subject to an LCA and his continued employment status was uncertain. (*Joint Exh.5; Testimony of Mazzie*)

50. A day or two after the incident, Chief Mazzie telephoned Ms. D and asked her if she had any information that would help the EPD conduct an internal investigation into the recent incident at her home. Chief Mazzie heard her say something that led him to believe that Ms. A may have been choked. Ms. D mentioned that there were children living in the home. Ms. D also questioned why Ms. A was transported by police wagon and Officer D’Andrea taken to the Police Station in a cruiser. (*Joint Exh.13;Testimony of Mazzie*)

51. As the incident report made no mention of choking, on February 26, 2020, Chief Mazzie directed Captain Strong, the group captain, to follow-up. Capt. Strong ordered each officer who had responded to submit a written report about the incident and, specifically, whether they had any information to confirm whether children were present and whether Ms. A may have been choked. Each officer confirmed that they saw no children nor indicia that Ms. A had been choked and confirmed that neither Ms. A nor Ms. D had made any allegations of choking at the scene. (*Resp.Exh.1; Joint Exhs.1, 14 through 17; Testimony of Fox, Parsons, Hill & Bellard*)

52. Officer D’Andrea provided the video footage taken by the private security camera at the restaurant on Broadway. The security camera footage showing the front of Police Headquarters was retrieved by the EPD. (*Testimony of Appellant & O’Malley*)

53. Both Captain O’Malley and Chief Mazzie eventually reviewed the security camera footage that showed Officer D’Andrea’s vehicle in the vicinity of the restaurant on Broadway as well as security camera footage of the vehicle pulled up in front of the EPD Police Headquarters. Copies of these videos, as well as enhanced versions were introduced at the Commission hearing. (*Joint Exhs.2A through 2D & 3A through 3D; Testimony of Appellant, O’Malley & Mazzie*)

54. By letter dated March 5, 2020, Chief Mazzie informed Officer D’Andrea that his license to carry a firearm (LTC) was suspended on the grounds that he was “deemed to be an unsuitable person” based on the open court case for domestic assault and battery. (*Joint Exh.7*)

55. Officer D’Andrea did not appeal the suspension of his LTC. He knew that he was required by EPD regulation to hold a valid LTC, but he believed it would not be necessary to appeal the LTC suspension because, once he was cleared to return to duty, he assumed his LTC would be reinstated. He did not have the benefit of advice of counsel at that time. (*Testimony of Appellant*)

#### Termination of Employment

56. By letter dated May 5, 2020, Everett Mayor DeMaria (the Appointing Authority) notified Officer D’Andrea that a G.L. c. 31, § 41 local civil service hearing would be held to determine “whether just cause exists for disciplinary action against you as a result of your conduct that resulted in you being charged criminally with domestic assault and battery and intimidation of a witness. The specific charges for the hearing are as follows: ‘On February 23, 2020 you were arrested and charged with domestic assault and battery and intimidation of a witness. It was determined that there was probable cause where you caused physical harm by causing the victim to suffer from a bloody lip, an injury from pulling hair extensions from her head. Additionally, you intimidated the victim by taking possession of her phone and placing it in your pocket. These charges both are serious crimes.’” (*Joint Exh.8*)

57. On May 13, 2020, a hearing officer designated by Mayor DeMaria held an evidentiary hearing on the charges against Office D’Andrea. Everett presented four witnesses (Chief Mazzie, Capt. O’Malley, Lt. Hannon & Sgt. Fox) and showed the two videos taken in the vicinity of the restaurant on Broadway and EPD Headquarters. Officer D’Andrea was represented by counsel but he did not testify and offered no other witnesses. (*Resp.Exh.2*)



58. On May 23, 2020, the hearing officer submitted his report to Mayor DeMaria, finding that Officer D’Andrea “exhibited a pattern of unacceptable judgment, unacceptable conduct and/or conduct unbecoming a police officer in violation of the rules and regulations of the Everett Police Department” and that Sgt. Fox “was justified in charging D’Andrea with domestic assault and battery and intimidation of a witness.” The hearing officer recommended that Officer D’Andrea be terminated from his position as an EPD Police Officer. (*Resp.Exh.2*)

59. By letter dated June 1, 2020, Mayor DeMaria adopted the Findings of Fact and Recommendations of the hearing officer and informed Officer D’Andrea that he was terminated from the EPD effective immediately. (*Joint Exh.10*)

60. On June 2, 2020, the Appellant filed this appeal to the Commission. (*Claim of Appeal*)

Claims of Disparate Treatment.& Bias

61. The Appellant proffered evidence of three prior instances of discipline of other EPD officers for what he argues are similar infractions:

A. Officer 1 – During his probationary period, Officer 1 was involved in a domestic incident. His probation was extended and he was ordered to attend counseling which he did not complete. In 2016, after he was involved in another domestic incident, he entered into a Last Chance Agreement by which he served two weeks suspension and was ordered to Anger Management Training and would be immediately terminated if he failed to complete the training or to conduct himself in an acceptable manner. Officer 1 remained employed without incident. (*Exh.5; Testimony of Mazzie*)

B. Officer 4 – After a history of prior discipline in 2008 (neglect of duty), 2013 (sleeping on duty), and 2017 (missing court dates), Officer 4 was disciplined for failing to properly handle a crash scene and entered into a Last Chance Agreement by which he

agreed to a suspension and demotion from Sergeant to Patrolman. He remained employed by the EPD without further incident. (*Exh.7; Testimony of Mazzie*)

C. Officer 5 – After three episodes involving abuse of alcohol (2004, 2018 and 2019), Officer 5 entered into a Last Chance Agreement by which he agreed to a suspension, EAP referral for alcohol treatment and random alcohol testing. Further misconduct in which alcohol was involved would result in termination; other further misconduct may result in termination. Officer 5 remains employed without incident. (*Exh.8;Testimony of Mazzie*)<sup>6</sup>

62. Officer D’Andrea also introduced evidence that, while Officer D’Andrea’s father had been an EPD police officer, he (the father) had a negative encounter with certain members of Officer Parsons’ family. (*Testimony of Appellant*)

### **APPLICABLE LEGAL STANDARD**

Sections 41 to 45 of G.L. c. 31 allow discipline of a tenured civil servant for “just cause” after due notice, a hearing (which must occur prior to discipline other than a suspension from the payroll for five days or less), and a written notice of the decision that states “fully and specifically the reasons therefor.” G.L. c. 31, § 41. An employee aggrieved by such disciplinary action may appeal to the Commission, pursuant to G.L. c. 31, § 42 and/or § 43, for de novo review by the Commission “for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006). As prescribed by G.L. c. 31, § 43, ¶ 2, the Appointing Authority bears the burden of proving “just cause” for the discipline imposed by a preponderance of the evidence.

“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,

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<sup>6</sup> The Appellant proffered other evidence of alleged disparate treatment which I excluded as based on unreliable hearsay or not pertaining to a true comparator. (*App.Exhs.6 & 9*)

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.”

The Commission determines just cause 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, rev. den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) (appointing authority must provide “adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law” for discharge of public employee), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (justification for discharge of public employee requires proof by a preponderance of evidence of “proper cause” for removal made in good faith). It is also a basic tenet of merit principles, which govern civil service law, that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “[only] separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, §1.

Section 43 of G.L. c. 31 also vests the Commission with “considerable discretion” 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).

The Commission takes into account the special obligations imposed upon police officers, who carry a badge and a gun and all of the authority that accompanies them, and which requires them to comport themselves in an exemplary fashion, especially when it comes to exhibiting self-control and to adhere to the law, both on and off duty. “[P]olice officers voluntarily undertake to adhere to a higher standard of conduct . . . [and] must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement . . . . [T]hey implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.” Attorney General v. McHatton, 428 Mass. 790, 793-74 (1999) and cases cited. See also Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 801-802 (2004); Police Commissioner v. Civil Service Comm’n, 39 Mass. App. Ct. 894, 601-602 (1996); McIsaac v. Civil Service Comm’n, 38 Mass. App. Ct. 473, 475-76 (1995); Police Commissioner v. Civil Service Comm’n, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986) See also Spargo v. Civil Service Comm’n, 50 Mass. App. Ct. 1106 (2000), rev. den., 433 Mass. 1102 (2001).

## ANALYSIS

The preponderance of the evidence established just cause to discharge Officer D'Andrea for substantial misconduct that required the suspension of his LTC and his lawful arrest for domestic violence. His failure to conduct himself in the exemplary manner expected of a police officer after he was confronted with a stressful situation is misconduct that substantially affects the public service. Everett is entitled to conclude that such misconduct cannot be tolerated in a member of the EPD and, under all of the circumstances presented in this case, justifies his discharge under basic merit principles of civil service law.

### The February 23, 2020 Misconduct

The Commission consistently sustains discipline imposed upon a public safety officer who engages in off-duty violent behavior, especially when it involves domestic abuse, even when the conduct did not result in criminal or civil penalties. See, e.g., Luis v Town of Dartmouth, 34 MCSR xxx (2021) (domestic abuse); Gould v. Town of North Attleborough, 31 MCSR 186 (2018) (domestic abuse); Torres v. City of Chicopee, 30 MCSR 467 (2017); (domestic abuse); Lavery v. Town of North Attleborough, 30 MCSR 373 (2017) (domestic abuse); Robichau v. Town of Middleboro, 24 MCSR 352 (2011) (domestic abuse); Haynes v. City of Somerville, 29 MCSR 525 (2010) (citizen harassment); Andrade v. Town of Hudson, 21 MCSR 73 (2008) (bar fight); Rivers v. Town of Wilmington, 19 MCSR 425 (2000) (bar fight).

The heightened scrutiny that applies to such behavior stems from the exemplary standard to which such officers are expected to hold themselves. An Appointing Authority is entitled to exclude from its police and fire service anyone who either knowingly distorts the truth through lying or whose credibility and trustworthiness is open to question by demonstrated lack of objectivity (to be distinguished from honest mistakes), as neither trait is acceptable behavior in the

public safety profession. See Robichau v. Town of Middleborough, 24 MCSR 352 (2011), citing City of Cambridge v. Civil Service Comm'n., 43 Mass. App. Ct. 300, 303-305, *rev. den.*, 428 Mass. 1102 (1997) (“The city was hardly espousing a position devoid of reason when it held that a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic . . . . It requires no strength of character to speak the truth when it does not hurt.”).

After a careful review of the evidence that was presented during the Commission hearing, I conclude that Everett had just cause to terminate Officer D’Andrea based on his conduct during the February 23, 2020 encounter with Ms. A.

First, I do not second-guess Sgt. Fox’s on-scene decision to make a mutual arrest of both Officer D’Andrea and Ms. A. The evidence does indicate that Officer D’Andrea presented more indicia at the scene than did Ms. A of the level of violence that occurred between them, but that evidence did not conclusively inform Sgt. Fox which party may have been the primary cause of the injuries to either party. Sgt. Fox conducted a good faith investigation, taking account of the conflicting stories that he was told, and conferred with two superior officers who concurred with his assessment. Based on his training and experience, and his good faith investigation and observations on scene (including the fact that both parties contended that there was video footage to confirm their version of events), Sgt. Fox reached the conclusion that there was probable cause to conclude that both Ms. A and Officer D’Andrea had, at times, used unwanted and aggressive force against the other.

Second, Sgt. Fox’s on-scene assessment is confirmed by the video footage, especially the footage of a physical confrontation in front of EPD Police Headquarters. The video is not crystal clear, and may or may not be sufficient to convince a trier of fact of criminal intent “beyond a reasonable doubt”, but, after viewing the video multiple times, I am persuaded that I see examples

of both Ms. A and Officer D'Andrea engaged in what I conclude, by a preponderance of evidence, to be aggressive, not defensive, behavior. The video in the vicinity of the restaurant is less conclusive and I am unable to determine whether Ms. A falls out of the SUV, in whole or in part, as a result of either or both party's negligent or reckless behavior.

Third, I take account of the adverse inference that must be drawn from Officer D'Andrea's failure to testify at the appointing authority hearing. See Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 826-27 (2006). The Commission may properly draw such an inference even when the failure to testify is the result of a claim under the privilege of self-incrimination. As stated in Town of Falmouth, 447 Mass. 826-27, *supra*, "where the opposing party . . . has established a case adverse to the party invoking the privilege . . . refusal [of the party invoking the privilege] to tell his side of the story before the town administrator [is] ostensibly an integral part of the circumstances found by the commission to have existed when the appointing authority made its decision.'" Id. The adverse inference is particularly appropriate when, as here, it is the dubious behavior of a police officer, who is expected to comport himself in an exemplary manner, that put himself in the position of being unwilling or unable to tell his version of events.<sup>7</sup>

Fourth, Everett is rightly concerned by the repeated lapse of judgment on the part of Officer D'Andrea during the February 23, 2020 encounter. Numerous examples were shown of this clouded behavior by Officer D'Andrea. To begin with, he had just come back to duty after serving a lengthy suspension due to his inattention to duty and was still under orders to perform additional punishment duty for that prior misconduct. Rather than using that suspension as a "teachable moment", he showed that discipline had taught him very little about his obligation to address the

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<sup>7</sup> I do not overlook the fact that there was probable cause to arrest Ms. A as well and that both Officer D'Andrea and Ms. A exercised the privilege against self-incrimination. I can understand Officer D'Andrea's frustration that Ms. A was not similarly disciplined, but, as a non-public safety employee outside the civil service system, her status falls outside the purview of the civil service system.

EPD's concern that he demonstrate that he could exercise good judgment when faced with a difficult or stressful situation. Officer D'Andea acknowledged that Ms. A began to attack him while he was driving a vehicle on a public way, risking the safety of both of them and, potentially, other motorists and pedestrians as well. The obvious and prudent course of action, especially given his testimony that Ms. A had a history of similar behavior, should have been to immediately pull over and call for assistance before Ms. A exited the SUV and, certainly, immediately after she had done so. Rather, Officer D'Andrea, through his lack of objectivity and impaired judgment, erroneously perceived that he could handle the situation himself, which he most definitely could not and did not do professionally. When he arrived at the EPD Police Headquarters and attempted to leave the SUV to go inside, he compounded his error by, again, deciding that he would handle the situation himself (resorting to fisticuffs), when the prudent course would have been to seek assistance that was immediately available inside the EPD Police Headquarters. Both videos show objective evidence that something was seriously amiss with how Officer D'Andrea handled this situation from beginning to end.

In sum, having engaged in misconduct that resulted in his arrest, compounded by the additional evidence of his lack of objectivity and sound judgment in dealing with the situation in which he found himself, provides ample just cause for the decision to terminate Officer D'Andrea.<sup>8</sup>

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<sup>8</sup> Officer Fox also charged Officer D'Andrea with intimidation of a witness, based on the conflicting stories he was told about Ms. A's cell phone being taken from her. While Sgt. Fox may have had probable cause to include that charge based on what he learned at the scene, at the appointing authority hearing, the evidence showed that this additional charge was not supported even under a preponderance of the evidence standard. In particular, Officer D'Andrea had turned over the cell phone to Ms. A before she made the 911 call. It is not disputed that she (not Ms. D) made the 911 call from that phone in Officer D'Andrea's presence, and he waited for the police to arrive. Although Officer D'Andrea created the same problem for himself by failing to testify at the appointing authority hearing, thus, allowing an adverse inference also to be drawn about this intimidation charge, I do not hold that inference conclusive because the evidence persuades me that Officer D'Andrea's version of the cell-phone issue is credible. The fact that the intimidation charge turned out not to be credible, however, does not change my conclusion that Officer D'Andrea's arrest and poor judgment concerning his actions provides just cause for his termination.



## The Last Chance Agreement

The February 23, 2020 encounter stands on its own footing as just cause to terminate Officer D’Andrea under basic merit principles of civil service law. His misconduct on that date, however, was not the first time Officer D’Andrea’s poor judgment as a police officer had been called to his attention. He was counseled on multiple occasions about his public conduct that implied a cavalier attitude toward his work and told that he needed to work on “making good decisions about work habits and responsibilities.” The most recent lapse of judgment – which Officer D’Andrea himself attributed to personal issues overtaking his devotion to duty – resulted in his acceptance of a lengthy suspension and other discipline, and a LCA (last chance agreement), which he was still in the process of completing as of February 23, 2020.

The Appellant argues that the LCA is unenforceable for various reasons, including: lack of any time limit, failure to provide adequate “warning” before imposing discipline for future off-duty (as opposed to on-duty) misconduct, and a claim that the LCA was tainted by the EPD’s unlawful surveillance of him in violation of his right of privacy. I do not need to address these arguments as Everett did not rely, nor does the Commission need to rely, on the terms of the LCA (as opposed to the history of discipline of which the LCA was a part) to establish just cause for Officer D’Andrea’s termination. Moreover, interpretation of the LCA or its enforcement lies with grievance or a duty of fair representation claim under collective bargaining law.<sup>9</sup>

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<sup>9</sup> Although it lies outside the Commission’s purview to decide issues governed by collective bargaining, unless the LCA directly conflicts with basic merit principles of civil service law (which is not the contention here), I note that the evidence showed that the LCA was thoroughly negotiated on Officer D’Andrea’s behalf by the top officials of his union. I also note that better clarity as to the duration of the agreement and the intended distinction between off-duty and on-duty misconduct might obviate such disputes as arose here in future cases.

### Modification of the Penalty

As the findings upon which Everett relied differ from those established by the preponderance of the credible evidence before the Commission, I have considered whether the Commission should exercise its discretion to modify the termination to a suspension or other lesser discipline. After carefully considering the record in its entirety, I find no evidence of bias by any of the EPD investigators or decision-makers. I do not find merit in the contention that Officer D'Andrea was treated differently than other officers purportedly similarly situated. In each case the Appellant argues to show disparate treatment, every officer has maintained a clean record since the last discipline imposed. Here, it took Officer D'Andrea less than two days to relapse into his poor behavior. I also am persuaded that, although Officer D'Andrea was not advised to seek out EPD assistance or ordered to obtain professional counseling, that does not change my conclusion that the EPD had just cause to terminate his employment. Such action is certainly encouraged and may possibly be mandated through collective bargaining. Under the circumstances here, however, it does not establish that Officer D'Andrea's termination amounted to disparate treatment under civil service law. Finally, although I disagree with the appointing authority hearing officer that Officer D/Andrea intimidated Ms. A by withholding her cell phone, that limited discrepancy in the findings does not change the ultimate conclusion that the facts found by the Commission at the time the appointing authority made its decision provide just cause for that decision.

### CONCLUSION

For these reasons, the Appellant's appeal under Docket No. D1-20-088 is hereby denied.

Civil Service Commission

/s/ Paul M. Stein  
Paul M. Stein  
Commissioner

By 4-1 vote of the Civil Service Commission (Bowman, Chair [AYE]; Camuso [NO], Ittleman [AYE], Stein [AYE] and Tivnan [AYE], Commissioners) on August 26, 2021.

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:

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**COMMONWEALTH OF MASSACHUSETTS**

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**DINO D'ANDREA,**  
Appellant

**D1-20-088**

v.

**CITY OF EVERETT,**  
Respondent

**DISSENTING OPINION OF COMMISSIONER CAMUSO**

I respectfully dissent. I concur with the majority that the video and other evidence presented showing Officer D'Andrea's actions on the evening in question were out of character for a police officer and troubling to watch at best.

However, I do take issue with the fact that at least one other Everett Police Department Officer (Officer 1) involved in a domestic incident during his probationary period was not terminated, but was directed to counseling and given a second chance, even though he did not enjoy due process rights guaranteed by G.L. c. 31, sections 41-45 (situating him similarly to a tenured officer subject to a last chance agreement). Then, in 2016, he repeated his misconduct, was arrested on multiple charges of domestic violence (including alleged strangulation) and held without bail. Despite this serious misconduct, Officer 1 was given a third chance to remediate himself. While not condoning domestic violence in the least, I am troubled that, here, faced with essentially the same situation and potential for remediation, the appointing authority effectively treated Officer D'Andrea differently and more harshly.

I find that Officer D'Andrea should have been given a lengthy suspension and offered EAP as the other similarly situated Officer was given.

/s/ Paul A. Camuso  
Commissioner