

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
617.727.2293

DANIEL T. FINN
Appellant,

v.

D-12-199

TOWN OF BOURNE,
Respondent

Appearance for Appellant:

Pro Se
Daniel T. Finn

Respondent's Attorney:

Robert S. Troy, Esq.
Bourne Town Counsel
90 Route 6A
Sandwich, MA 02563-1866

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Daniel T. Finn (Mr. Finn), filed a timely appeal with the Civil Service Commission (Commission), contesting the decision of the Town of Bourne (Town) to suspend him for two (2) days from his position as a firefighter with the Bourne Fire Department (Department). The appeal was filed with the Commission on June 25, 2012. A pre-hearing conference was held at the UMASS School of Law in North Dartmouth on July 27, 2012. A full hearing was held at the same location on December 14, 2012. A digital recording was created of the hearing and both parties were provided with CDs of the proceeding. The hearing was declared to be private. For the reasons stated below, Mr. Finn's appeal is dismissed.

FINDINGS OF FACT

A series of stipulated facts and thirteen (13) exhibits were entered into evidence at the hearing. Based upon the documents admitted into evidence, the stipulated facts and the testimony of:

Called by the Town:

- Martin Greene, Fire Chief, Town of Bourne;
- Deputy Fire Chief Joseph Carrara, Town of Bourne;

Called by the Appellant:

- Daniel Finn, Appellant;

I make the following findings of fact:

1. Mr. Finn is a firefighter / EMT and has been employed by the Town since March 6, 1994.
(Stipulated Fact).
2. Martin Greene has been the Town's Fire Chief for twenty-three (23) months. He has been employed by the Town's Fire Department since 1981 and has worked his way up the ranks to the position of Fire Chief. (Testimony of Chief Greene)
3. Chief Greene has given training at the Massachusetts Fire Academy for seventeen (17) years, has taught at all levels and has spoken at numerous training conferences. (Testimony of Chief Greene)
4. On February 6, 2012, Chief Greene issued a memorandum to his shift officers, instructing them to assign all of their shift personnel to a sixteen (16) hour online "Fire Prevention Officer – Basic" training program. (Testimony of Chief Greene and Exhibit 1) The training program was to be completed by all personnel while on duty as their schedules permitted.
(Testimony of Chief Greene)

5. The training covered everyday fire prevention activities including basic inspections, smoke detector and carbon monoxide alarms, liquid propane installations and oil burner installations. (Testimony of Chief Greene and Exhibit 1)
6. Chief Greene required the training, which was provided at no cost to the Town or the firefighters, to ensure that all fire personnel had the latest knowledge regarding the subject areas. It is not uncommon for firefighters / EMTs to see missing or improperly installed smoke detectors, carbon monoxide detectors and/or oil burners while responding to a call at a residence or business. Chief Greene wanted to ensure that all of the Fire Department's personnel could provide the public with accurate information regarding these topics.
(Testimony of Chief Greene)
7. Deputy Chief Carrara, who is Mr. Finn's supervisor, received Chief Greene's memorandum a few days after it was issued on February 6th and proceeded to inform the nine (9) employees under his command of this training requirement. (Testimony of Deputy Chief Carrara)
8. All of Deputy Chief Carrara's employees agreed to complete the online training program, with the exception of Mr. Finn. Mr. Finn told Deputy Chief Carrara that he believed that completion of the training would eventually lead to new duties and responsibilities that would need to be bargained and the official elimination of an unfilled fire prevention officer position, both of which he opposed. (Testimony of Deputy Chief Carrara)
9. After Mr. Finn refused the order to complete the training program, Deputy Chief Carrara drafted a written warning to be delivered to Mr. Finn and reviewed it with Chief Greene. Chief Greene, concerned that Mr. Finn might be apprehensive about completing the training program online, asked Deputy Chief Carrara to let Mr. Finn know that the training could be

completed through traditional classroom training if desired. (Testimony of Chief Greene and Deputy Chief Carrara)

10. After speaking to Chief Greene, Deputy Chief Carrara shredded the written warning and spoke to Mr. Finn about the classroom training option. Mr. Finn told Deputy Chief Carrara that he did not object to the online nature of the training and reiterated the reasons stated in their previous discussion. (Testimony of Deputy Chief Carrara)
11. On April 30, 2012, Deputy Chief Carrara issued Mr. Finn a written warning and Mr. Finn provided a written response (on May 1, 2012), stating the same reasons listed above. (Exhibit 2)
12. By letter dated May 2, 2012, Mr. Finn stated in relevant part that, “ ... I am not comfortable with being forced to take an officer training course that will lead us to change (sic) in working conditions to perform fire inspections ...” (Exhibit 4)
13. On May 8, 2012, Chief Greene and Deputy Chief Carrara met with Mr. Finn and his union representative regarding Mr. Finn’s refusal to take the online training course at which time Mr. Finn continued to refuse to complete the training. (Exhibit 5)
14. On May 11, 2012, Chief Greene issued Mr. Finn a 2-day suspension for his continued refusal to complete the training program. (Exhibit 5)
15. As of the date of the hearing before the Commission (December 17, 2012), Mr. Finn had still not completed the required training and still refuses to do so. (Testimony of Mr. Finn)
16. Rule 13, Section 6 of the Department’s Rules states that, “insubordination or disobedience of direct orders is prohibited.” (Exhibit 6)

LEGAL STANDARD

G.L. c. 31, § 43, provides:

“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.”

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission 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, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)

ANALYSIS

Most of the relevant facts are not in dispute here. Chief Greene issued a lawful order requiring all firefighters to complete a basic training program that included the most current information regarding such topics as the correct installation of smoke detectors, carbon monoxide detectors and oil burners. Believing that the training would eventually lead to the formal elimination of the fire prevention officer position, and new inspection duties for

firefighters, Mr. Finn refused the order. Chief Greene and Deputy Chief Carrara discussed the issue with him on multiple occasions, both formally, and informally, and encouraged Mr. Finn, who they consider to be a good firefighter, to complete the training. Several months later, Mr. Finn still steadfastly refuses to comply with the order by completing the training.

Mr. Finn does not argue that the order is unlawful. Rather, he argues that since the training may lead to new job duties and responsibilities, which he hopes the union will contest through the grievance process if and when this occurs. This is not a valid reason for disobeying the lawful order of the Fire Chief. The standard procedure for a public employee in such circumstances is to obey the order of his superior and then file a grievance. (See Wagner v. Cviil Service Comm'n and Holyoke, Hampden Superior Court No. 99-388 (2004)). Not only is Chief Greene's order lawful, but it is hard to imagine an order more reasonably tied to the proper management of the Department and the public interest. Mr. Finn has no basis to disobey Chief Greene's lawful order and the Town was warranted in its decision to suspend him for two (2) days for his continued failure to do so.

CONCLUSION

For all of the reasons stated above, Mr. Finn's appeal under Docket No. D-12-199 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 10, 2013.

A True Record. Attest:

Commissioner

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.

Notice to:

Daniel Finn (Appellant)

Robert Troy, Esq. (for Respondent)