NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2484CV03028

GREGORY GALLANT

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION & another[1]

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

The plaintiff, Gregory Gallant, filed this action pursuant to G.L. c. 30A, § 14 and G.L. c. 31, § 44 seeking judicial review of the October 31, 2024, decision of the Massachusetts Civil Service Commission ("the Commission") in which the Commission vacated a decision by the Division of Administrative Law Appeals ("DALA") determining that the City of Methuen ("the City") lacked just cause to terminate Gallant pursuant to G.L. c. 31, § 41. For the reasons discussed below, Gallant's motion for judgment on the pleadings is **DENIED**, and the Commission's and the City's cross-motions for judgment on the pleadings are **ALLOWED**.

ADMINISTRATIVE RECORD

The administrative record contains the following evidence. On October 31, 2024, the Commission issued a decision in which it determined that the City had established just cause pursuant to G.L. c. 31, § 41 to discharge Gallant, a former police captain in the Methuen Police Department ("MPD"), for untruthfulness and conduct unbecoming a police officer. In the decision, the Commission included the following procedural background. In June 2022, the City terminated Gallant's employment after a local disciplinary hearing into charges of conduct

[1] City of Methuen.

unbecoming an officer, untruthfulness, and failure to cooperate fully with investigations of suspected misconduct. The Division of Administrative Law Appeals ("DALA") assigned an Administrative Magistrate to conduct an evidentiary hearing regarding the matter on behalf of the Commission. The Magistrate conducted the hearing and issued a tentative decision on August 4, 2023, in which he recommended that the Commission reverse Gallant's discharge. Because the Magistrate only explicitly analyzed two of the three charges asserted as a basis for Gallant's discharge, conduct unbecoming an officer and untruthfulness, and did not analyze whether Gallant had failed to comply with internal investigations, the Commission recommitted the case to DALA in January 2024, for further fact finding and analysis. In late April 2024, DALA conducted another hearing, and on May 3, 2024, issued a supplemental tentative decision which did not alter the original tentative decision.

The Commission's October 31, 2024, decision incorporated most of the facts found by DALA and included additional facts. Those facts are summarized as follows. Gallant began his career as a City police officer in 1993. He achieved the rank of captain in 2017. Between May and August of 2017, the City and the MPD superior officers' union negotiated a new three-year collective bargaining agreement ("CBA"). Gallant led the union's bargaining team and Stephen Zanni, the mayor of the City at the time, was the City's lead negotiator.

Around August 29, 2017, the bargaining teams reached a tentative agreement with respect to the CBA. Among other things, they agreed that holiday pay, a cleaning allowance, and hazardous duty pay would be rolled into the officers' base pay. They did not agree that educational incentives would be rolled into base pay. Base pay was the starting point for the calculation of the officers' overtime pay, vacation pay, and other compensation amounts. The salary of each rank of officers was calculated as a percentage of the next lower rank's base pay.

Those percentage differentials were commonly referred to as "the splits." Among the items agreed upon at the bargaining table was a gradual increase of the splits. Each percentage number would remain unchanged in 2017, rise by two percent in 2018, and rise by another two percent in 2019. The parties referred to this agreement as "0,2,2." Zanni requested that Gallant memorialize the agreement reached by the parties in the form of a new CBA. After the other union members ratified the agreement, Gallant delivered a signed copy of the new CBA to Zanni.

Shortly afterwards, MPD Police Chief Joseph Solomon advised Gallant that Zanni wanted the CBA to expressly mention the "0,2,2," raises. Gallant accommodated that request by adding the following language into article XXIV of the CBA:

> The cost of living increases are as follows:
> July 1, 2017 – zero percent increase
> July 1, 2018 – two percent increase
> July 1, 2019 – two percent increase

At the time that he added that language to the CBA, Gallant inserted more than twenty pieces of new, pay-related language into several sections of the CBA. He made these calculations partly in the hope of preventing miscalculations. He also understood that the revisions would be beneficial to the union's members. Gallant's most substantive edit appeared below the "0,2,2," language and read as follows:

> Base pay and added base pay calculation are to be calculated in the following order and manner to arrive at base pay for all purposes; Base pay, then add cleaning allowance, subtotal, then calculate and add Holiday compensation under Article XII, then add calculated Protective Vest/Hazardous Duty and Technology Compensation percentage, calculate Quinn Bill/ Education Incentive.

That clause caused substantial educational incentives to be rolled into base pay, and the splits would compound the impact of this revision with each successive rank of officers. In paragraph 11 of DALA's decision, the Magistrate wrote,

> A preponderance of the evidence supports the conclusion that Captain Gallant did not believe that his edits would roll educational incentives into base pay. At the same time that he inserted roll-into-base-pay language into the CBA's provisions about holiday pay, the cleaning allowance, and hazardous duty pay, Captain Gallant made no such changes to the provision about educational incentives. (article XXIX, 19). He also did not indicate that education incentives would be rolled into base pay in contemporaneous conversations with union members and other individuals.

The rest of Gallant's calculation formula relates to an issue posed by the bargaining teams' agreement that base pay would include three new components, holiday pay, a cleaning allowance, and hazardous duty pay. Holiday pay and hazardous duty pay were themselves derived from base pay. The bargaining teams did not discuss whether base pay would include any of its three new components for the purpose of calculating these two items. Gallant's approach to that issue in his formula was that the cleaning allowance would count as base pay for the purpose of calculating holiday pay and both the cleaning allowance and holiday pay would count as base pay for the purpose of calculating hazardous duty pay. Those choices were favorable to the union, and the splits would have compounded their impact on the compensation of high-ranking officers.

At the time he was drafting those edits, Gallant wrote in an email to the union's attorney, "[T]here are some big changes to the splits . . . There is also an increase given to us with a percentage [*sic*] and hazardous duty pay. I foresee, [b]ecause of the large increases in pay, having to litigate the wording." He wrote in another email to the union's attorney that the union had obtained "great increases, and it all compounds."

Gallant showed the new CBA draft to Chief Solomon, whose own employment contract gave him a strong financial interest in maximizing the value of the "base pay" and ancillary benefits paid to officers under his command, and they discussed Gallant's edits. Gallant then delivered the new CBA to Zanni, and Zanni signed it without further questions or requests. At a

later arbitration proceeding, Zanni and the Assistant City Solicitor testified that they did not read the new CBA before Zanni signed it, and the City Solicitor testified that he did not receive the new CBA. Gallant testified that he had delivered the document to Zanni with yellow tabs marking the places where he had made edits. The arbiter found no credible evidence that the edits were brought to the attention of the City's full bargaining team. On September 13, 2017, the City Councilors voted to approve the CBA. Some of them did not read the new CBA, and none of them understood the implications of its terms.

In early 2018, a new mayor took office. City personnel then computed the CBA's financial consequences. They concluded that, by the last year of the CBA, the superior officers would be earning annual base salaries of $200,000 to $500,000. These figures would have represented pay increases of between 77% and 224% compared to the prior CBA. The implementation of the 2017 CBA would have made Chief Solomon one of the highest-paid chiefs in the country, earning more than the Massachusetts State Police Colonel and the Boston Police Commissioner.

The new mayoral administration tried to revise the 2017 CBA compensation through a memorandum of understanding ("MOU") with Gallant's union to yield a more sustainable pay package that would not bankrupt the City's pension fund and cause layoffs. During those MOU discussions, neither Gallant nor Chief Solomon informed the City that the former administration had never agreed to the formula that Gallant inserted in the 2017 CBA. Instead, Gallant remained silent, and the union's bargaining team was able to negotiate raises that, while lower than what was expected under Gallant's base pay formula, were still significantly higher than the raises the parties had agreed to while negotiating the 2017 CBA. The negotiating teams reached an agreement, but the City Council declined to approve it.

During 2018, in response to complaints that the new CBA reflected a waste of public funds and possibly fraud, the Massachusetts Office of the Inspector General ("OIG") opened an investigation. As part of that investigation, two OIG investigators questioned Gallant in person in February 2020. Gallant gave several evasive non-answers to the investigators when asked repeatedly whether he had informed Mayor Zanni of the last-minute changes to the CBA as well as when asked whether he intended for the educational incentives to be included in the base pay calculations. Gallant also offered evasive, misleading, or untruthful answers when OIG investigators tried to ascertain whether he was aware of the financial impact of his revisions to the basic pay formula. When asked whether he had ever calculated his or anyone else's projected salary under his formula, Gallant insisted that he "never did the math" and that he had never discussed any numbers with his union members, but he knew the amount "was going to be high." Gallant also told the OIG investigators that he was not sure whether he had ever discussed the terms of the CBA with Chief Solomon outside of negotiations and that he was not aware that in 2018 Chief Solomon had been consulting with the City Auditor about how to calculate the base pay formula. The OIG report ultimately found that Gallant had unilaterally revised the base pay formula and recommended that the City pursue all available avenues of discipline against Gallant for engaging in bad faith negotiation.

In March 2019, the superior officers' union brought a class action grievance against the City to arbitration due to the City's alleged failure to honor its obligations under the CBA. The arbitrator heard ten days of testimony. During the arbitration proceedings, Gallant testified that he had, in fact, ballparked his salary and he estimated the salaries of two of his fellow union members at a union meeting on September 29, 2017. Gallant also testified about conversations he had with Chief Solomon in April 2018 regarding the Chief's salary calculations with the City Auditor. Ultimately, the Arbitrator found that Gallant had unilaterally revised the contract

without discussing his changes with anyone on the City's negotiating team besides Chief Solomon and ruled that the CBA was not enforceable because there had been no meeting of the minds.

In early 2022, the MPD commenced an investigation into Gallant's conduct. In February 2022, Gallant received a letter from the U.S. Department of Justice advising him that he had become "a target of a federal grand jury investigation in the District of Massachusetts regarding possible violations of the United States Code, including wire fraud . . . and obstruction of justice[.]" The letter continued: "This means the investigation being conducted has uncovered substantial evidence of your involvement in criminal activity and this office may recommend to the grand jury that it indict." In March 2022, Gallant attended a two-hour investigative interview convened at the request of the new chief of police, Scott McNamara. Citing the privilege against self-incrimination, Gallant declined to answer any substantive questions about his role in the negotiation, formation, or execution of the 2017 CBA.

In an April 2022 report, Chief McNamara concluded that Gallant had committed conduct unbecoming a police department employee, had behaved dishonestly, and had provided untruthful testimony to the OIG, the arbitrator, or both. In May 2022, the City convened a disciplinary hearing before a hearing officer. Gallant took the stand and answered preliminary questions but otherwise asserted his privilege against self-incrimination. In a June 2022 decision, after drawing negative inferences from Gallant's silence, the hearing officer found that Gallant had behaved dishonestly and engaged in conduct unbecoming a police officer in connection with his last-minute revisions to the 2017 CBA. She also found that Gallant had testified untruthfully before the OIG, the Arbitrator, or both. The City promptly terminated Gallant's employment.

Ultimately, the Commission held that Gallant engaged in conduct unbecoming a police officer for two reasons. First, it held that because Gallant had an obligation to negotiate in good faith under G.L. c. 150E, § 6E and the last-minute revisions Gallant inserted into the 2017 CBA were so significant, G.L. c. 150E, § 6E required Gallant to meet at the bargaining table with City representatives to discuss the edits although he did not make the changes with the intention of tricking the City into adopting them. It also held that Gallant engaged in conduct unbecoming a police officer because he breached a duty not to take unfair advantage of the City during the MOU negotiations when he did not inform the participants that the parties never negotiated his edits to the 2017 CBA. The Commission further held that Gallant did not give wholly truthful OIG testimony. In making all those determinations, the Commission drew an adverse inference from Gallant's invocation of the privilege against self-incrimination at the MPD internal affairs investigation and at the local disciplinary hearing and found, unlike the DALA Magistrate, that the adverse inference was not outweighed by other considerations. It clarified that Gallant's silence did not itself constitute a violation of the MPD rules warranting discipline but could be considered when ruling on the other wrongdoings.

DISCUSSION

Gallant makes several arguments in support of his position that the Commission erred in determining that the City had established just cause pursuant to G.L. c. 31, § 41 for his discharge. First, he argues that the Commission's decision was unsupported by substantial evidence. Specifically, he argues that the Commission improperly disregarded the DALA Magistrate's credibility determination that he did not intend to deceive the City in making his edits to the CBA, failed to consider other evidence showing that he lacked an intent to deceive the City both in making the edits to the CBA and during the MOU negotiations, and failed to adopt the DALA

Magistrate's conclusion that his testimony at the OIG proceedings was not untruthful. Second, he argues that the Commission erred in drawing an adverse inference against him due to his invocation of his Fifth Amendment rights and in determining that he was subject to discipline for invoking those rights. Third, he argues that because the Commission issued its decision 181 days, rather than 180 days, after the tentative decision was refiled on May 3, 2024, the DALA Magistrate's decision became the final decision according to 801 Code Mass. Regs § 1.01(11)(c)(3).

Under G. L. c. 31, § 41, an appointing authority cannot discharge or remove an employee without "just cause." Courts have held that just cause exists where the employee has committed substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service. *Brookline* v. *Alston*, 487 Mass. 278, 292–293 (2021). In its review of an appointing authority's decision, the Commission finds facts de novo, and in doing so, the Commission is not limited to examining the evidence that was before the appointing authority. *Beverly* v. *Civ. Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010). The Commission's role is to 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. *Falmouth* v. *Civil Serv. Comm'n.*, 447 Mass. 814, 843 (2006). Although the finding of facts is the province of the Commission, not the appointing authority, the Commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was reasonable justification shown. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. at 187-188.

A party aggrieved by a final decision of the Commission may seek judicial review pursuant to G.L. c. 31, § 44. *Andrews* v. *Civ. Serv. Comm'n*, 446 Mass. 611, 615 (2006). The

review is governed by the provisions of G.L. c. 30A, § 14. *Id.* Review of conclusions of law is de novo. *Id.* The Commission's factual determinations must be supported by substantial evidence, meaning such evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* at 615-616. In reviewing the Commission's action, a Superior Court judge may not substitute his or her judgment for that of the Commission. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006). A judge is required to give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it. *Id.* at 241-242. This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom. *Id.* A court may not displace an administrative board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it de novo. *Brookline* v. *Alston*, 487 Mass. at 303. A reviewing court must consider the entire administrative record and consider whatever fairly detracts from its weight. *Andrews* v. *Civil Serv. Comm'n*, 446 Mass. at 616. Courts defer, however, to credibility determinations made by a hearing officer. *Id.*

First, the court concludes that the Commission's decision was supported by substantial evidence. The Commission did not improperly disregard the DALA Magistrate's credibility determination regarding Gallant's intent in making the edits to the CBA or fail to consider other evidence that Gallant did not intend to deceive the City in making the edits. It did not in fact, conclude that Gallant acted in a manner that was unbecoming of a police officer due to any intent to deceive the City's bargaining team before the CBA was signed. Rather, it decided that Gallant acted in a manner unbecoming of a police officer in part because the record showed his subjective awareness that his edits would have a large impact on the pay base formula and therefore he had a legal obligation under G.L. c. 150E, § 6E to bring those edits to the attention

of the City's bargaining team regardless of his intent in making those edits. The Commission also did not improperly fail to consider other evidence showing that Gallant lacked the intent to deceive the City during the MOU negotiations when it determined that he acted in a manner unbecoming a police officer. There was substantial evidence in the record showing that Gallant failed to tell the participants at the MOU negotiations that his edits to the CBA had not been negotiated originally although those edits caused the City great financial difficulty and endangered the jobs and salaries of other City employees. Furthermore, the Commission did not err in failing to adopt the DALA Magistrate's conclusion that Gallant's testimony at the OIG proceedings was not untruthful. Substantial evidence in the form of the OIG findings as well as the OIG and arbitration testimony supported the Commission's conclusions that Gallant testified in evasive and contradictory ways at those proceedings. Therefore, this court will not reweigh the evidence in a different manner from the Commission. See *Brookline* v. *Alston*, 487 Mass. at 303.[2]

Second, the court determines that the Commission properly considered Gallant's invocation of his Fifth Amendment right to remain silent. See *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 826 (2006) (party in civil case invoking privilege against self-incrimination of Fifth Amendment to United States Constitution and art. 12 of Declaration of Rights of Constitution of Massachusetts may be subject of negative inference by fact finder). Contrary to Gallant's assertion, the Commission did not conclude that Gallant's invocation was a separate basis for his termination but rather considered the negative inference when ruling on the other two bases for termination, which it was entitled to do. Compare *Carney* v. *Springfield*, 403

[2] Gallant further argues that the Commission improperly imputed Chief Solomon's misconduct to Gallant, but the Commission's holding with respect to Gallant's conduct is unrelated to any misconduct on the part of Chief Solomon.

Mass. 604, 608–609 (1988) (it is well settled that public employees cannot be discharged simply because they invoke privilege under Fifth Amendment to United States Constitution not to incriminate themselves in refusing to respond to questions propounded by employers).

Third, although the Commission issued its decision 181 days after the DALA Magistrate's tentative decision was refiled on May 3, 2024, the Commission's decision is still effective. According to 801 Code Mass. Regs. § 1.01(11)(c)(3), a hearing officer's tentative decision transforms into the final decision of the Commission if the Commission fails to act within 180 days of the filing or refiling of the tentative decision. Nevertheless, according to G.L. c. 31, § 2(b):

> [N]o decision or action of the administrator shall be reversed or modified nor shall any action be ordered in the case of a failure of the administrator to act, except by an affirmative vote of at least three members of the commission, and in each such case the commission shall state in the minutes of its proceedings the specific reasons for its decision.

Here, because three Commission members have not voted to reverse or modify the City's decision to terminate Gallant, the City's decision stands. See *McGuiness* v. *Department of Correction*, 465 Mass. 660, 665 n.7 (2013) (legislative statutes trump administrative agency regulations if two are in conflict and hearing officer's initial decision recommending modification or reversal of appointing authority's decision that does not garner votes of three members of the Commission cannot automatically become final decision). In this case, because the DALA Magistrate's tentative decision reversed the decision of the City and was not supported by a vote of at least three members of the Commission, the tentative decision does not become the final decision. For all these reasons, the court denies Gallant's motion for judgment on the pleadings and allows the Commission's and the City's cross-motions for judgment on the pleadings.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the plaintiff's motion for judgment on the pleadings is **DENIED**, and the defendants' cross-motions for judgment on the pleadings are **ALLOWED**.

Cathleen E. Campbell
Justice of the Superior Court

DATED: April 7, 2026