

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200

Boston, MA 02114

617-979-1900

PAUL GAUVIN,

Appellant

v.

CITY OF FALL RIVER,

Respondent

Docket Number:

D1-25-108

Appearance for Appellant:

Andy Gambaccini, Esq.

Vigliotto, Gambaccini & Akerson, P.C.

4 Lancaster Terrace

Worcester, MA 01609

Appearance for Respondent:

Jaime Kenny, Esq.

Daniel R. Williams, Esq.

Clifford & Kenny, LLP

32 Schoosett Street, Unit 405

Pembroke, MA 02355

Commissioner:

Paul M. Stein

Summary of Decision

The Commission modified the termination of a Fall River police captain to a 90-day suspension and ordered his reinstatement after determining that, although he had been neglectful in certain respects in handling his responsibilities in transitioning back to the civil service position of police captain after resigning as the Chief of Police, just cause for discipline had been shown for only some parts of two out of four charges of misconduct, none of which warranted termination.

Decision

On April 25, 2025, the Appellant, Paul Gauvin (Appellant), filed an appeal with the Civil Service Commission, pursuant to G.L. c. 31, §§ 42 and 43, to contest his termination from the position of Police Captain with the City of Fall River (City) Police Department (FRPD). I

held a remote pre-hearing conference on May 27, 2025 and nine days of evidentiary hearing on September 11, 12 and 26, 2025; November 20 and 21, 2025; December 4, 2025; and January 16, 29 and 30, 2026.¹ The hearing was audio/video recorded and the parties were provided with links to the recordings.² The Appellant subsequently withdrew his claim under G.L. c. 31, § 42. Both parties submitted Proposed Decisions. For the reasons set forth below, the Appellant's appeal is allowed, in part, and the discipline is modified to a 90-day suspension.

Findings of Fact

Based on the ninety-six exhibits entered into evidence (*App. Exs. 1 – 38; Resp. Exs. 1 – 58*), two chaulks (*Chaulk A & B*) and the testimony of the following witnesses:

Called by the City:

- Daniel Bennett, Esq., Comprehensive Investigations and Consulting
- FRPD Chief of Police Kelly Furtado
- City Mayor Paul Coogan
- Jeffrey Cardoza, retired FRPD Chief of Police
- FRPD Lieutenant Matthew Mendes, Office of Professional Standards
- Nicholas Macolini, City Human Resources Director

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §1.01 et seq., apply to adjudications before the Commission with G.L. c. 31 and Commission rules taking precedence.

² Due to administrative error, cross-examination and redirect examination of one witness (Jeffrey Cardozo) was not audio/video recorded. The parties stipulated, and I concur, that the contemporaneous notes taken by Respondent's counsel accurately summarize that witness's missing testimony. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to use the recording, plus the notes of the cross-examination and redirect examination of Jeffrey Cardozo, to provide an accurate transcript, satisfactory to the court, to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

Called by the Appellant:

- FRPD Lieutenant John Martins
- Kevin Aguiar, Fall River resident
- FRPD Deputy Chief of Police Barden Castro
- Paul Gauvin, Appellant

and taking administrative notice of all matters noted, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence proves these facts:

Appellant's Background

1. The Appellant, Paul Gauvin, is a life-long City resident. He served honorably for nine years in the Army National Guard. He holds a master's degree in criminal justice. (*Testimony of Appellant*)

2. The Appellant began employment with the FRPD in 1997. His initial positions included: (1) FRPD Police Officer (1997-2004): Booking, Housing Unit, Patrol, Vice & Intelligence Unit; (2) FRPD Police Sergeant (2004-2010): Staff Services Division, Internal Affairs Division; and (3) FRPD Police Lieutenant (2010-2017): Internal Affairs Division, Uniform Division, Major Crimes Division. (*Testimony of Appellant; Resp Ex.20 [R260-262]*)

3. In 2017, the Appellant was promoted to the rank of captain. As a captain, he first served in the Uniform Division and then as the commanding officer of the Major Crimes Division (MCD). (*Testimony of Appellant; Resp.Exs.5 & 6; Resp.Ex.20 [R261]*)

4. During his employment, the Appellant was subject to discipline only once, receiving a written reprimand when he was a lieutenant for unprofessional conduct involving inappropriate language while attempting to resolve a dispute between subordinates. (*Testimony of Appellant; Resp.Ex.20 [R265]*)

The Appellant's Tenure as Chief of Police

5. In December 2021, less than a year in the job, FRPD Police Chief Jeffrey Cardoza, went out on sick leave. Chief Cardoza described the FRPD during his tenure as Chief to be a toxic environment—driven by competing factions, some of whom resisted his appointment and whom he believed were attempting to sully his reputation—which, according to him, became so stressful that it affected his health, resulted in his decision to take sick leave and, eventually, his decision to retire. (*Testimony of Cardoza, Mayor Coogan & Appellant*)³

6. When Chief Cardoza went out on sick leave, Mayor Coogan chose the Appellant to serve as interim Chief of Police, on a temporary basis and, after serving the initial period satisfactorily, Mayor Coogan extended the temporary appointment. (*Testimony of Appellant, Mayor Coogan and Cardoza; Resp.Exs.7 & 9*).

7. As interim Chief, the Appellant was faced with a myriad of pending issues, including ongoing termination proceedings for officers involved in domestic violence while on duty, unreasonable force and improper interactions with minors, and the substantial impact of the attrition of senior FRPD officials, causing an experience void exacerbated by difficulties in recruiting new officers. (*Testimony of Appellant*)

8. When Chief Cardoza retired, the Mayor offered the job to the Appellant. The parties negotiated a three-year employment contract and the Appellant became permanent Police Chief in May 2022. (*Testimony of Appellant, Mayor Coogan & Macolini; Resp.Ex.11*)

³ Chief Cardoza was the second FRPD Chief in a decade to retire for medical reasons and the second Chief in a row to resign prematurely (*Testimony of Cardoza & Appellant; Administrative Notice* [[FRPD Chief To Retire \(2016\)](#); [Troubled Legacy of FRPD Chiefs \(2025\)](#)])

9. The Appellant's employment as Police Chief was conditioned on confirmation that he would maintain his right to revert to his tenured civil service position as captain if he resigned as Police Chief or if the City did not renew his employment contract.⁴ The "reverter" was an essential, non-negotiable condition for the Appellant's agreement to assume the position of "permanent" Chief of Police, given his concern about the history of premature resignations of his predecessors. (*Testimony of Appellant & Mayor Coogan; Resp.Exs.6-12 & 20[R416-418]*).

10. During the Appellant's tenure as Chief of Police, all sworn personnel were outfitted with body worn cameras and individual electronic control weapons (eliminating the prior practice that caused officers to have to share those weapons). The Appellant also took additional actions to improve officers' equipment and training; and he initiated measures to implement stronger systems of accountability. Financially, the Appellant was "budget conscious" and the FRPD moved from a budget seven percent above its allotment to one that was six percent below the target budget for each successive year, something that added three million dollars of the eight million dollars total into the City's free cash account. (*Testimony of Appellant & Macolini; App.Ex.22; Resp.Ex.20 [268, 277-278]*)

11. Beginning in late 2023, the Appellant's relationship with certain FRPD officers, mainly the leaders of the police unions for patrol and superior officers, began to deteriorate. (*Testimony of Appellant & Mayor Coogan & Macolini; App. Ex. 22; Resp.Ex.20 [265]*)

⁴ Prior to his tenure as interim Chief of Police, the Appellant requested and began a temporary leave of absence from his civil service position as captain, because the Chief of Police position was a non-civil servant position. The Appellant renewed this request in 2023 after appointment as permanent Chief. (*Testimony of Appellant; Resp.Ex.8; Resp.Ex.12*).

12. Initially, Mayor Coogan took a wait-and-see approach to the complaints he was hearing. In July 2024, union leaders met with Mayor Coogan to try to convince him to invoke the contractual non-renewal notice so that the Appellant's term as Police Chief would expire in May 2025. They left with the impression that Mayor Coogan had not then been convinced to issue a non-renewal notice. (*Testimony of Mayor Coogan & Macolini*)

13. At some time during the late summer of 2024, both police unions took a vote of "no confidence" in the Appellant by paper ballot. The vote count was never released and most witnesses did not know what it was. (*Testimony of Appellant, Mayor Coogan, Macolini, Mendes, Martins & Castro; Resp.Ex.20 [265]*)

14. At some time in the late summer of 2024, around the time of the union vote, Mayor Coogan went to the Appellant's house to see him. The Mayor told the Appellant that the situation was not about his performance, but the reality was that "those guys" (the union leaders) do not like you at all, and it was "tough to lead people when they don't like you." (*Testimony of Mayor Coogan*)

15. While away at a conference, the Appellant concluded that he needed to step down as Chief of Police. He began drafting a transition plan for him to revert to his position as a police captain. (*Testimony of Appellant*)

16. Upon his return, the Appellant met with Mayor Coogan, HR Director Macolini and Seth Aikin, the City Administrator. At that point, Mayor Coogan had determined that he did not see the Appellant receiving a renewal of his contract. The City Administrator confirmed that the issues involved personal dislike that had evolved over time and that there was no just cause for the Appellant's removal. The parties discussed the Appellant's draft which

proposed that the Appellant take paid leave through the end of his contract in May 2025 and then return as a captain. The Appellant proposed Deputy Chief Castro, the Appellant's second in command, for Interim Chief. (*Testimony of Appellant, Mayor Coogan & Macolini*)

17. At a subsequent meeting, the Appellant learned that the City would not make Deputy Chief Castro the Interim Chief and he was asked to move up the date for his return because the FRPD "could really use your leadership and we look forward to you coming back". (*Testimony of Appellant, Mayor Coogan & Macolini*)⁵

18. On or about September 26-27, 2024, less than two and a half years into the three-year employment contract, the Appellant and the Mayor executed a Transition Agreement. In broad terms, the contract provided that the Appellant would resign as Chief of Police on or about October 15, 2024, be placed on "Agreed-Upon Separation Leave" until January 15, 2025 and then resume command of the Major Crimes Division (MCD), as a captain. He would receive his full Chief's salary through May 25, 2025 (the end of the initial three-year contract). (*Testimony of Appellant, Mayor Coogan & Macolini; Resp.Ex.13*).

19. Simultaneously with the execution of the Transition Agreement, Mayor Coogan and the Appellant issued an agreed Joint Statement for public release about the transition, which Mayor Coogan reaffirmed during his testimony at the Commission hearing. This statement acknowledged the Appellant's "dedication and leadership" and "significant contributions to the department and community turning the department around during difficult times" as well as expressed confidence that the Appellant's "leadership and expertise will continue

⁵ According to HR Director Macolini, Deputy Chief Castro, then second-in-command, would be viewed simply as a "clone" of the Appellant. (*Testimony of Macolini*)

to benefit the Fall River Police Department . . . as he steps in a familiar role overseeing the Major Crimes Division.” (*Testimony of Appellant & Mayor Coogan; Resp.Ex.14*).

20. On October 9, 2024 and October 10, 2024, the Appellant and the Mayor completed the necessary paperwork to implement the “reverter” agreement and enable the Appellant to return to his tenured civil service position as Police Captain. (*Resp.Exs.5 & 16*).

21. The Appellant cleaned out his desk, boxed up the contents of his office, moved some items to the MCD Captain’s office (the incumbent was then on sick leave and storage space in the MCD office was limited), put some items in his FRPD locker, and took some items home with the intention of returning them to the MCD Captain’s office when he resumed his duties in January 2025. (*Testimony of Appellant; Resp.Ex.20 [R319,390]*)

22. When the Appellant went to his locker, he found a box that triggered a memory for him; specifically, he recalled that, more than ten years earlier, he put three firearms in his locker given to him by a longtime friend, Kevin Aguiar, owned by Mr. Aguiar’s ailing, now deceased, father (the Aguiar Firearms). The Appellant closed the locker and left the Aguiar Firearms locked inside. (*Testimony of Appellant; Resp.Exs.13, 20 [R310-319] & 35*)

23. The Appellant last visited the Chief’s Office on October 13, 2024, leaving his duty badge (but not the ceremonial “Vintage” Chief’s badge), a key to the office (which he left unlocked) and a letter for his successor, dated October 11, 2024, outlining the issues requiring the Chief’s attention, as his predecessor, Chief Cardoza had done for him. (*Testimony of Appellant & Cardoza; Resp.Ex.32 & 56: Resp.Ex.20 {309}*)⁶

⁶ The Appellant offered to meet his successor, Captain Furtado, to discuss the transition, but she elected to leave for a pre-planned vacation instead. (*Testimony of Appellant & Chief Furtado*)

24. The Appellant's October 11, 2024 letter to Captain Furtado closed with the following:

Despite any hard feelings for what my family had to endure, I wish you luck. My primary focus has always been the betterment of this department. My loyalty to this place is unwavering and when I return you can expect no less. (*Resp. Ex. 32*)

25. On or about October 25, 2024, approximately two weeks after the Appellant stepped down as Police Chief, Mayor Coogan delivered a "To Whom It May Concern" Letter of Recommendation to the Appellant which stated, in part:

Paul Gauvin . . . has served the City of Fall River with pride and dedication, and under his leadership, led the department through a challenging period of policing. . .

As Chief, Paul faced many budgetary constraints and staffing challenges. . . . To confront these difficulties, the union agreements negotiated during his tenure as Chief addressed recruitment, retention, and training issues Through careful planning and creative problem solving, he ensured the safety of his officers and the citizens of Fall River; he has made significant contributions to the department and community.

(*Testimony of Mayor Coogan & Macolini; App.Ex.19*)

Selection of the Appellant's Successor as Chief of Police

26. The selection of the Appellant's replacement began in late September 2024. Both Deputy Chiefs and two Captains were interviewed by the Mayor, the HR Director and the City's Corporation Counsel. Approximately a week later, the Mayor offered Captain Furtado the job of Interim Police Chief. (*Testimony of Mayor Coogan, Chief Furtado & Macolini*)

27. Captain Furtado was then contemplating retirement. She never "aspired to the job" but was "talked into it". She believed that the Appellant and former Chief Cardoza had done "more damage to the police department than any other chiefs" and took the job "out of love" for the department. She accepted the position knowing of the agreement with the Appellant for him to revert to his prior position in January 2025, reporting to her as the MCD captain in charge of major crimes. (*Testimony of Chief Furtado & Mendes*)

28. Captain Furtado was officially sworn in as the Interim Chief on October 15, 2024 and reported for duty in her new assignment the following day. (*Testimony of Chief Furtado*)⁷

29. Chief Furtado began her career with the FRPD in 1988 as a dispatcher. She was promoted to sergeant in 2018 or 2019, to Lieutenant in or about 2021 and, in or around 2023, the Appellant promoted her to Police Captain, assigned to Special Operations, bypassing a higher-ranked male candidate. (*Testimony of Appellant & Chief Furtado*).⁸

30. Beginning in about 2014, the relationship between then Sergeant Furtado and the Appellant, then a Lieutenant, began to sour. She came to believe the Appellant had a “game plan” to get to her. Her complaints ranged from allegations of disparate treatment involving dress code (hair) infractions, restricting overtime, ordering her to transfer her assigned cruiser to another officer, and, when the Appellant couldn’t directly “get at her”, vindictively reassigning or refusing transfers of her son and husband and otherwise treating her differently from the “good old boys’ club”. (*Testimony of Chief Furtado*)

31. In May 2020, the Appellant, then a Captain, requested an investigation to clear his name. (*Testimony of Appellant & Cardoza*)

32. Chief Cardoza ordered then Sergeant Furtado to document her concerns and commissioned an outside vendor (APD Management) to investigate her thirteen allegations. (*Testimony of Cardoza; Resp.Exs.9 & 30*)

⁷ The FRPD FOB Activity log indicates that Furtado and (then) Sergeant Mendes also entered the Chief’s Suite on October 15, 2024, the day she was sworn in. (*Resp.Ex.56*)

⁸ Chief Furtado asserts that she was selected her over the first ranked candidate because the Appellant “hated us equally” but he then was “angrier” with the other candidate. That candidate later filed suit against the FRPD and the Appellant. (*Testimony of Chief Furtado; App.Exs.20 -23*)

33. In September 2020, in an 85-page investigation report, the Appellant was exonerated on two allegations, one was unfounded and the remaining ten allegations, including gender bias, were not sustained. (*Resp.Ex.29; App.Exs.12, 13 & 14*)

34. The report stated that it was “well-known . . . that the relationship between Captain Paul Gauvin and Sergeant Kelly Furtado is one of mutual dislike” and “personal animus” stemming, primarily, from a perception that “her family history and personal relationships” enabled her, at times, to expect preferential treatment. The report also stated that most FRPD officers and superiors viewed the Appellant’s leadership favorably, calling him “by the book” and a “no nonsense” supervisor, so that it was “not surprising that he would bristle at the idea of someone circumventing the chain of command.” (*Resp.Ex.29*).⁹

35. The Appellant and Chief Furtado did not deny their mutual dislike; others called it “not the best of relationships” but, except for Chief Furtado, had little percipient knowledge. (*Testimony of Appellant, Chief Furtado, Cardoza & Mendes; Resp.Ex.20 [328, 345-348]*)

The Events That Precipitated the Appellant’s Termination

36. Chief Furtado first day on duty was October 16, 2024, the day after being sworn in as Interim Chief. She went to the Chief’s Office accompanied by Lieutenant (then Sergeant) Mendes and Sergeant Brandon Pacheco. (*Testimony of Chief Furtado & Mendes*)¹⁰

⁹ Chief Furtado also asserted that the Appellant continued to harass and retaliate against her and further sabotage the FRPD careers of her son and husband, claims that I do not credit. (*Testimony of Chief Furtado & Bennett; Resp.Exs.53 & 54*)

¹⁰ The Appellant promoted Officer Mendes to permanent Sergeant in 2022. In 2023, he worked under then-Captain Kelly Furtado in Special Operations. On her first day as Interim Chief, she transferred Sergeant Mendes to the Office of Professional Standards and she promoted him to Lieutenant in December 2024. (*Testimony of Mendes & Chief Furtado*).

37. Chief Furtado and Lieutenant Medes noticed, among other things, that certain photographs were missing from the walls, which they thought was “odd”. They also saw the October 11th letter from the Appellant to Chief Furtado, which she initially called “gibberish” but later retracted that statement. (*Testimony of Chief Furtado; Resp.Ex.20 [329-330]*)¹¹

38. Chief Furtado called the office “filthy” and “disgusting.” She left the office to find some cleaning material. (*Testimony of Chief Furtado & Mendes; Resp. Ex. 20 [R328]*)¹²

39. While Chief Furtado was away, as Lieutenant Mendes moved the glass plate on the Chief’s desk to dust underneath, he opened one of the drawers of the Chief’s desk to rest the glass. When Chief Furtado returned, Lieutenant Mendes reopened the top side drawer to show her a folding knife and a .40-caliber bullet in the front compartment of that drawer. The rest of the drawers were empty. (*Testimony of Mendes; Resp.Ex.20 [328]*)¹³

40. When Chief Furtado saw the contents of the drawer, she stated something to the effect that it meant the Appellant was calling her a “backstabber” and that she “was going to get a bullet.” (*Testimony of Mendes & Chief Furtado; Resp. Ex.20 [R328]*).

¹¹ I find the letter, which contained two pages of bullet points, was well-organized and professionally written, a conclusion corroborated by other reliable testimony. (*Testimony of Bennett, Resp. Exh.32*)

¹² Lieutenant Medes did not agree the office was “filthy”. I credit his impression and infer that, at most, routine maintenance to get the “dust off”, was probably all that was needed. (*Testimony of Medes; See Resp. Ex. 20 (R256)*)

¹³ The FRPD uses .40-caliber duty round ammunition. The type of round found in the drawer was ordered in FY2015 & FY2016 and then FRPD transitioned to a different vendor. (*Resp.Ex.57*)

41. The drawer was opened for a third time to take the pictures of the drawer introduced in evidence. (*Testimony of Furtado & Mendes; Resp. Exs.20 [257-259], 51 & 52; App.Ex.24*)

42. At some point, Chief Furtado's FRPD laptop was connected and opened to her Special Operations homepage. (*Resp.Ex.20 [R256-R257]*)¹⁴

43. On October 16, 2024, Chief Furtado ordered a restriction be placed on the Appellant's access to his FRPOD email and the departmental database. (*Testimony of Appellant, Chief Furtado & Macolini, App. Ex. 8; Resp. Ex. 20 [395]*)

44. On October 17, 2024, HRD Director Macolini informed the Appellant that the restrictions were not "any kind of retaliation" but during his "agreed separation leave" his FRPD access was "subject to the determination of the Police Chief". He was directed to make all his future communications through Deputy Chief Hoar, to return his laptop and other items pursuant to the Transition Agreement, and to surrender his FRPD-issued firearms no later than October 24, 2024. (*Testimony of Appellant & Macolini; App. Ex. 18*)

45. On October 21, 2024, the Appellant's locker was opened, and the contents inventoried and boxed by Captain David Murphy, Lieutenant Mendes, Lieutenant Moses Pereira, Office of Professional Standards, and HR Director Macolini. Both Captain Murphy and Lieutenant Mendes performed this task with body worn cameras recording, and the

¹⁴ As the City knew, the Appellant was due to testify in a pending FRPD matter and he brought his FRPD-issued laptop home to prepare. He arranged with the IT department to be sure that Capt. Furtado would have a replacement to use when she assumed the position of Chief. (*Testimony of Appellant & Macolini*).

recordings were entered into evidence. (*Testimony of Mendes; Resp. Exs.20 [334=336]. 34, 35, 38-42, 45-46*).

46. Among the contents found in the locker were six firearms, including three older weapons (the Aguiar Firearms). (*Testimony of Mendes; Resp Exs.34 & 35; Resp. Ex.336-344*).

47. Lieutenant Mendes notified the Appellant by phone that he would bring the Appellant's personal effects to his house, but before he could return the firearms, the FRPD would first need to run inquiries through the Commonwealth's Criminal Justice Information System (CJIS) to determine to whom each firearm was registered. (*Testimony of Mendes & Bennett; Resp.Exs.20, 34, 40 & 41*).

48. The Appellant asked Lieutenant Mendes why it was necessary to run CJIS inquiries when it was not disputed that the Appellant had a license to carry. Lieutenant Mendes responded that it was the required protocol. The Appellant then said that the older firearms just needed to be kept at the FRPD and turned into the Gun Buyback Program for destruction. (*Testimony of Mendes & Appellant; Resp.Ex.34*).

49. Lieutenant Mendes ran the CJIS inquiries on all the firearms. He identified one as the Appellant's FRPD-issued firearm; two firearms were the Appellant's personal firearms, registered to him; and three older firearms (the Aguiar Firearms) were determined not to be registered to the Appellant. (*Testimony of Mendes; Resp.Ex.33; Resp.Ex.34*).

50. As to the three Aguiar Firearms, two were registered to Dan Aguiar, the deceased father of Kevin Aguiar. The third firearm was unregistered and appeared to have been produced and acquired prior to the 1968 enactment of the Massachusetts law requiring gun registration. (*Testimony of Mendes; Resp.Exs.33 & 34*).

51. Some of the contents of the Appellant's locker were moved to the MCD office. The rest of the Appellant's personal effects were delivered to him at his residence by Lieutenant Mendes (accompanied by Captain Murphy and HR Director Macolini), at which time the Appellant provided Lieutenant Mendes with the Vintage Chief badge¹⁵ and other items. During this exchange, the Appellant again inquired about the Aguiar Firearms and gave Lieutenant Mendes the impression that the Appellant was trying to persuade Lieutenant Mendes that he didn't need to run a CJIS on the older guns. (*Testimony of Mendes & Macolinin; Resp Exs.20 [R334-344], 34, 41, 42 & 45*).

52. Also, on October 21, 2014, after the CJIS check was completed, the personal firearms registered to the Appellant were returned to him. (*Testimony of Appellant, Mendes & Macolini; Resp. Exs.20 [R163-164], 41, 42 & 46*)

53. By December 2024, a series of seven internal investigations had been opened concerning allegations brought against the Appellant by Chief Furtado, Captain Gil Costa (the officer suing the FRPD and the Appellant), Lt. Jason Resendes (the superior officers' union representative) and Officer John Ferreira, the patrol union president). (*Testimony of Appellant, Chief Furtado & Mendes; App. Exs.10, 24, 25, 28, 30, 36, 37; Resp.Ex.17*)

54. On December 16, 2024, the City engaged Attorney Daniel Bennett, Comprehensive Investigations and Consulting, LLC, to conduct an independent investigation into the seven allegations regarding the Appellant (the Bennett Investigation). (*Resp. Ex.18*)

¹⁵ Until Chief Furtado made an issue of it, the Appellant planned to use Vintage Chief's badge when posing for his portrait as a former Chief, which was customary, prior to returning it. Chief Furtado was upset that he took it with him and complained that she had to use the Chief's "duty badge" when sworn in as Interim Chief. (*Testimony of Appellant & Chief Furtado*)

55. Attorney Bennett was provided with December 2024 correspondence authored by Lieutenant Mendes, which set out seven issues to be investigated and the potentially relevant rules/regulations that the FRPD had identified as applying to each issue which he used as his “template” for the scope of his investigation. (*Testimony of Mendes & Bennett; Resp. Exs.17 & 20; App. Ex.10*).

56. By letter dated December 17, 2024 from HR Director Macolini, the Appellant was informed that he was being placed on paid administrative leave pending the results of the Bennett Investigation. He was ordered to return all FRPD property and to refrain from visiting “non-public areas” of the FRPD without an escort. (*Resp. Ex.19*)

57. The Bennett Investigation included approximately six hours of interviews, including the Appellant (2 hours), Chief Furtado (20 minutes) and 16 interviews with other individuals; as well as a review of FRPD Rules and Regulations, body-worn camera videos, media articles, and photographs. Attorney Bennett did not review the Appellant’s personnel file as part of his investigation. (*Testimony of Bennett; Resp.Ex.20*).

58. On or about February 13, 2025, Attorney Bennett met with Mayor Coogan and others to review his report (undated) which sustained violations for four of the seven issues he investigated and concluded that:

- ***The bullet and a knife left in the Chief’s desk drawer was an attempt by the Appellant to threaten, intimidate, and harass Chief Furtado*** in violation of: 8.01 Conduct Unbecoming an Officer; C03-26 Workplace Harassment; 8.11 Conduct Toward Associates; 8.03 Untruthfulness; Law Enforcement Code of Ethics.
- ***The Appellant stored three firearms in his FRPD locker for at least ten years without logging them into evidence or filing the proper paperwork to transfer them and was untruthful about his action*** in violation of: 8.03 Untruthfulness; 8.01 Conduct Unbecoming an Officer; C08-11 Evidence and Property Control.

- ***The Appellant credited himself for, and cashed out, excessive on-call compensation over a three year period and was untruthful when he claimed that he had corrected the mistake fully in 2021***, in violation of: C03-05 Compensation, Benefits and Conditions of Work; 8.05 Attention to Duty; Law Enforcement Code of Ethics; 8.01 Conduct Unbecoming an Officer.
- ***The Appellant took a 1920's photograph of the FRPD in the Chief's Office and brought it home out of spite*** for his removal from his position as Chief in violation of: 8.01 Conduct Unbecoming an Officer; Law Enforcement Code of Ethics; 12.10 Surrender of Department Property; 8.09 Obedience to Laws and Regulations).

(Testimony of Bennett & Mayor Coogan; Resp.Ex.20).

59. By email dated February 19, 2025 to Mayor Coogan and Police Chief Furtado, the Appellant requested that his reinstatement to the civil service position of Police Captain be made forthwith and that, upon reinstatement, his employment contract as Chief of Police could be terminated. *(Resp.Ex.21)*

60. By letter dated February 27, 2025, Mayor Coogan informed the Appellant that his employment contract as Chief of Police was terminated for cause, effective March 29, 2025, based on the findings of the Bennett Investigation, subject to his right to a hearing pursuant to the terms of the employment contract. The letter did not mention the Appellant's February 19, 2025 request to be reinstated to his civil service position of Captain. *(Resp.Exs.22 & 25)*

61. A hearing was held on March 19, 2025 before a Hearing Officer designated by Mayor Coogan and a decision was issued by the Hearing Officer on March 31, 2025, which found just cause for the termination of the Appellant's employment contract. *(Resp.Exs.23 & 24).*

62. By letter dated March 31, 2025 Mayor Coogan informed the Appellant that his employment contract as Chief of Police was terminated effective immediately for just cause as stated in the Hearing Officer's report of that date. *(Resp.Ex.25)*

63. Mayor Coogan's March 31, 2025 letter also informed the Appellant:

Be advised that, pursuant to G.L. c.31, §41, the City of Fall River ("City") is now contemplating terminating you from your permanent civil service position of Captain with the City of Fall River Police Department prior to your reinstatement through Civil Service on May 25, 2025. This termination is based on investigator Daniel Bennett's sustained findings of misconduct and Hearing Officer Jane Friedman's finding of just cause for termination.

(Resp Ex.25).

64. On April 9, 2025, a hearing was held before Hearing Officer Gary Howayeck, at which the Appellant was the sole witness to testify. Later that same day, Hearing Officer Howayeck issued a report which determined that the City had shown just cause to terminate the Appellant from his civil service position of Police Captain for the following reasons:

- **FIREARMS IN APPELLANT'S LOCKER.** Although there was no indication of an improper motive, the firearms were not logged as evidence, were stored outside of policy guidelines, and were not formally transferred through accepted custody procedures. The failure to properly document, transfer, or secure them for over a decade represents a serious breach of duty, particularly for someone in a command role. *Violations Sustained: Policy C08-11-Evidence & Property Control; Article 8.01-Conduct Unbecoming an Officer & Article 8.09-Obedience to Laws and Regulations*
- **KNIFE AND BULLET (ALLEGED THREAT).** A knife and bullet was found in a drawer in the Police Chief's desk drawer upon Chief Furtado assuming command. **No direct evidence that Captain Gauvin intended to threaten or retaliate against Chief Furtado [but] the Appellant was the individual who placed the items in the drawer and he had the opportunity to remove them but did not. . . .** Employees are expected to avoid conduct that may "reasonably be perceived as intimidating or retaliatory." Regardless of intent, it was reasonable under the circumstances, given the strained relationship between the parties and the timing of the discovery, for Chief Furtado to perceive the items as intimidating or retaliatory. The Appellant, a long-serving command officer, should have recognized that leaving such items could be interpreted in this way and could reasonably be expected to cause concern. *Violations Sustained: Article 8.01-Conduct Unbecoming an Officer, Article 8.11-Conduct Toward Associates; Policy C03-26-Workplace Harassment*
- **USE OF COMPENSATORY TIME.** Appellant credited himself approximately 54 hours of cashable compensatory time between 2018 and 2021, beyond what was permitted under departmental policy. In 2021, he removed 14 hours from his balance, leaving roughly 40 hours outstanding at the time of the review. There was no documentation of any . . . authorization by former

Chief Cardozo. Violations Sustained: Policy C03-05-Compensation, Benefits & Conditions of Work, Article 6.02-Responsibilities and Authority; Article 8.05-Attention to Duty; Article 8.01 -Conduct Unbecoming an Officer

- **REMOVAL OF FRPD HISTORIC PHOTOGRAPHS.** The Appellant's removal of two FRPD historical photographs without documentation or permission violated established rules regarding custody and accountability of City assets. **Violations Sustained:** Article 8.01-Conduct Unbecoming an Officer, Article 12.10-Surrender of Department Property, Article 8.09-Obedience to Laws and Regulations, Code of Ethics

(Resp.Ex.26) (**emphasis added**)

65. By "Notice of Termination" dated April 21, 2025, Mayor Coogan adopted the substance of the Hearing Officer's April 9, 2025 Decision and terminated the Appellant's FRPD employment immediately. The Notice of Termination stated: "[T]he City of Fall River had just cause for discipline in connection with unregistered firearms in your department locker, the knife and bullet in the incoming chief's desk drawer, improper compensatory time usage, and removal of department-owned historical photographs in violations of:

Article 8.01 - Conduct Unbecoming an Officer
Article 8.09 - Obedience to Laws and Regulations
Article 8.11 - Conduct Toward Associates
Policy C03-26 - Workplace Harassment
Article 6.02 - Responsibilities an [sic] Authority
Article 8.05 - Attention to Duty
Article 12.10 - Surrender of Department Property
Code of Ethics"

(Resp.Ex.27).

66. This appeal then duly ensued. (*Claim of Appeal*)

FRPD Policies, Rules and Regulations Cited in the April 21, 2025 Termination Notice¹⁶

67. FRPD Law Enforcement Code of Ethics

¹⁶ Attorney Bennett, Hearing Officer Friedman and Hearing Officer Howayeck sustained the same four charges of misconduct by the Appellant but reached different conclusions as to what specific policies or rules that misconduct violated. (*Compare Resp.Ex.20, Resp Ex.24 & Resp Ex.26*)

As a law enforcement officer, my fundamental duty is to serve mankind; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all men to liberty, equality and justice.

I will keep my private life unsullied as an example to all; **maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint**; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the laws of the land and the regulations of my Department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession... law enforcement.

(Resp.Ex.2 [R044])(**Emphasis added**)

**68. FRPD Rules & Regulations Article 6.02 - Responsibilities and Authority-
Commanding Officers, Deputy Chiefs, Captains, Lieutenants, Sergeants**

Authority and Responsibilities . . . **[C]ommanding officers are responsible for the following:**

- (a) Command - The direction and control of personnel under their command to assure . . . **adherence to established rules, regulations, policies and procedures. . . .**
- (f) Reports and Records - **Preparation of required correspondence, reports and maintenance of records. . . .**

(Resp.Ex.2 [R050-051]) (**Emphasis added**)

**69. FRPD Rules & Regulations Article 8.01-Professional Conduct & Responsibility -
Conduct Unbecoming an Officer**

Conduct unbecoming an officer shall include conduct that brings the Department into disrepute or reflects discredit upon an officer as a member of this Department. All employees are prohibited from engaging in any conduct, on or off duty, that tends to bring the Department into disrepute or reflects discredit upon the employee as a member of this Department. Any illegal

activities shall constitute conduct unbecoming an officer. An employee who is found to have committed a criminal act, after investigation administratively, shall be subject to disciplinary action, up to and including discharge, regardless of criminal conviction. (*Resp. Ex.2 {R058}*) (**Emphasis added**)

70. *FRPD Rules & Regulations Article 8.05-Professional Conduct & Responsibility-Attention to Duty*

Although periodically relieved of its routine performance, all officers are always subject to duty. Regardless of rank or assignment, officers shall take appropriate action at all times to protect life and property, preserve the peace, and prevent crime. All officers and employees shall perform their duties as required or directed by law, Department rule, policy or order, or by order of a superior officer. (*Resp. Ex.2 {R058}*)

71. *FRPD Rules & Regulations Article 8.09-Professional Conduct & Responsibility - Obedience to Laws and Regulations*

Employees shall observe and obey all laws and ordinances, rules, regulations and orders of the Department or any division thereof. (*Resp. Ex. 2[R059]*)

72. *FRPD Rules & Regulations Article 8.11-Professional Conduct & Responsibility - Conduct Toward Associates*

Employees shall treat commanding, supervisory officers, subordinates and associates with respect, in or out of their presence. They shall be courteous and civil at all times in their relationships with one another. (*Resp. Ex.2 [R059]*)

73. *FRPD Rules & Regulations Article 12.10-Department Property & Equipment - Surrender of Department Property*

Employees are required to surrender all Department property . . .upon separation from the service. If employees fail to return any non-expendable item(s), they may be required to reimburse the Department for the fair market value of the article(s) or may be criminally charged. (*Resp.Ex.2 [R068]*) (**Emphasis added**)

74. *FRPD Policy C03-26- Workplace Harassment [Excerpts] (Resp .Exh.4)*

BACKGROUND

- 1. Massachusetts General Law C 151B, s3A, prohibits sexual harassment in the workplace.**
- 2. Accreditation Standards require departments to prohibit harassment, sexual or otherwise, in the workplace.**

PURPOSE

1. The Fall River Police Department in carrying out its mission to serve the community has the duty to respect the rights of all people. **(No less important than how we treat people outside the department is the manner in which we treat our fellow employees).**
2. **It is the goal of the Fall River Police Department to promote a workplace that is free from harassment, sexual or otherwise, and discrimination.**

POLICY

1. **The Fall River Police Department promotes a workplace free from harassment, sexual or otherwise, and discrimination.** The Fall River Police Department will not tolerate this type of behavior in the workplace by anyone, including superiors, coworkers or non-employees. Any retaliation against an individual who has complained or is cooperating with an investigation is unlawful and will not be tolerated.
2. Individuals who are victimized by sexual or unlawful harassment have statutory remedies which include filing a complaint with an administrative agency and [in state and federal] court . . . The Fall River Police Department has adopted this Standard Operating Procedure to familiarize employees with applicable legal guidelines.
4. **While this policy sets forth the Fall River Police Department's goal of promoting a workplace free from all forms of harassment and discrimination, it is not designed to limit the department's authority to take action for any workplace conduct which is unacceptable, regardless whether that conduct satisfies the definition of sexual harassment.**¹⁷

DEFINITIONS ONLY APPLICABLE TO THIS S.O.P.

Sexual Harassment

1. **Massachusetts General Law C151B, s1 (18) defines sexual harassment as sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature** including . . .
 - a. submission to or rejection of such advances, requests or conduct made either explicitly or implicitly as a term or condition of employment or as a basis for employment decisions,

¹⁷ The "Policy against Discrimination, Workplace Harassment, and Sexual Harassment" in the City's Employee Handbook defines "harassment" as "unwelcome conduct . . . based on characteristics protected by law. . . . [W]hile this policy sets forth our goals of promoting a workplace that is free of sexual harassment and harassment based on one's protective class, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of harassment or sexual harassment. (*Resp. Ex. 1*)

- b. such advances, requests or conduct [that] have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment, and
- c. discrimination based on gender shall include but not be limited to sexual harassment.

Unlawful Harassment

- **Unlawful harassment is unacceptable conduct interfering with an individual's work performance, creating an intimidating, hostile or offensive working environment. This could apply to age, race, national origin, disability, religious beliefs or sexual orientation.**

Hostile Work Environment Harassment

1. **This form of harassment is unwelcome conduct that is so severe or pervasive as to change the conditions of the victim's employment and create an intimidating, hostile or offensive work environment.**

Sanctions

1. Any employee found to have engaged in sexual or unlawful harassment is subject to serious disciplinary action. Furthermore, the victim may pursue criminal and civil complaints.
2. Retaliation against an individual who has complained about sexual or unlawful harassment or has cooperated with an investigation for sexual or unlawful harassment will be considered a significant violation of this policy and subject to serious disciplinary action, in addition to possible criminal and civil charges.

Resp.Exh.4 (**Emphasis added**)

75. FRPD Policy C08-11 – Evidence and Property Control (Resp.Ex.3 [Excerpts])

Purpose:

1. As part of their routine responsibilities, police officers come into possession of evidence and property that varies widely in nature, value and condition. These items may include anything from jewelry to the bloodstained clothing of a murder victim and could be as worthless as yesterday's newspaper or as valuable as priceless art. Items of evidence and property are normally held by a police department subject to strict legal constraints and under control of the department's property and evidence officer.
2. Storing, safekeeping and managing evidence are major responsibilities, not only for the evidence/property room detectives but also for all officers in the department. . . .

Policy:

1. It is the policy of the Fall River Police Department to effectively and efficiently manage and control all found, recovered and evidentiary property **as well as any other property coming into the custody of this department.**

2. **All evidence and property recovered or turned into the department will be properly and lawfully preserved, packaged, recorded, accounted for, handled and stored.**

...

4. Property and evidence that is no longer useful or is potentially dangerous will be disposed of or purged as provided by law.

...

Guidelines . . .

1. No evidence, property or contraband will be stored by any member of the department in their office, desk, vehicle or locker.
2. Evidence or property shall not be left unattended or unsecured at any time.
6. **All evidence or property which comes under the control of the Fall River Police Department shall be properly recorded in IMC Records Management System.** All employees shall enter the required information into IMC before the end of his/her tour of duty. If there are exceptional circumstances that prevent the employee from fulfilling this requirement the shift commander will be notified and must approve any deviation from this procedure.

Firearms: . . .

2. Firearms are considered to be extremely dangerous wherever they are kept. **All firearms coming into the custody or control of the department will be handled with the strictest safety consideration.** Firearms will be stored in a separate, locked and secured area within the evidence room.
3. All firearms will be checked through the CJIS/NCIC computer system by the case officer as part of their investigation. The results will be documented in the incident report.

...

Semi-Annual Inspection. Semi-annually, , , the Commander of the Major Crimes Division or his designee, shall conduct and maintain pertinence files on the investigation of all Department evidence and property storage areas to ensure that: . . . (b) Property is properly stored and protected from damage and/or deterioration. (c) Property having no further evidentiary value is being disposed of promptly upon authorization. . . .

(Resp.Ex.3 [R074-092] (**emphasis added**))

76. The Hearing Officer's April 8, 2025 decision also cited the Appellant's alleged improper compensatory time usage as a violation of Policy CO3-05-Compensation, Benefits & Conditions of Work, but the Mayor's April 21, 2025 Notice of Termination did not. Policy C03-05 was not entered into evidence at the Commission hearing. (*Compare Resp.Ex.26 and Resp.Ex.27*)

Findings Regarding Firearms in Appellant's Locker

77. The parties agreed that FRPD officers have consistently followed a “one door, one lock” requirement for the storage of firearms. Under this practice, FRPD officers are authorized to secure their FRPD-issued firearms as well as their own registered firearms in their locked FRPD lockers. (*Testimony of Appellant, Mendes & Cardoza*)

78. Pursuant to the “one door, one lock requirement”, the Appellant's storage of his FRPD-issued firearm and his two personal, properly registered firearms in his locker constituted proper storage for these firearms. (*Testimony of Appellant, Mendes & Cardoza*)

79. The precise circumstances that led the Appellant to place the Aguiar Firearms into his FRPD locker was not conclusively established. Kevin Aguiar probably did discuss the Aguiar Firearms with the Appellant prior to his father's death but not until Mr. Aguiar's father passed away, more than ten years ago, did the Appellant take possession of them, stored them in his FRPD locker and formed the intention to turn them into the FRPD “Gun Buyback Program” to be destroyed. (*Testimony of Appellant & Castro; Resp.Exh.20 [310-325]*)¹⁸

80. The Appellant called the Aguiar Firearms “antiques”. One was probably manufactured in the early 1900's and the Appellant believed it was probably inoperable. (*Testimony of Appellant & Mendes; Resp.Ex.20 [R314]*)¹⁹

¹⁸ These finding are based on the Appellant's generally consistent recollection about the circumstances surrounding the Aguiar Firearms and I give it more weight than I do to Kevin Aguiar's recollections which I, and others, found less consistent and less reliable. (*Testimony of Appellant, K. Aguiar, Medes & Bennett; Resp.Exh.20 [R310-319; R525-540]*)

¹⁹ Prior to the Commission hearing, the FRPD had not tested the Aguiar Firearms. At my direction, the FRPD tested the oldest, unregistered, firearm produced sometime prior to the enactment of the 1968 gun registration law. The undisputed ballistic report demonstrating that it was capable of firing live ammunition was entered in evidence. (*Resp.Ex.58*)

81. When the Appellant received the Aguiar Firearms, and at all times thereafter, the Appellant served as a superior, commanding officer of the FRPD. (*Testimony of Appellant*).

82. The FRPD Gun Buyback Program began around 1995, and it is typically held on an annual basis, although there were some years when it was not held. There was one FRPD Gun Buyback Program held while the Appellant held the role of Chief of Police. (*Testimony of Appellant & Mendes*).

83. FRPD Evidence and Control Policy C08-11 does not directly reference the FRPD Gun Buyback Program. The FRPD has no other written policy or procedure that governs the Gun Buyback Program. (*Testimony of Appellant, Castro & Mendes; Resp.Ex.3*).

84. The Appellant did not, at any time, document or log, anywhere within the FRPD, the fact that he had received the Aguiar Firearms and/or that he had placed them into his locked FRPD locker. (*Testimony of Appellant; Resp.Ex.20 [R310-325]*).

85. The Appellant did not, at any time, run a background check on the Aguiar Firearms through the State Criminal Justice Information System (CJIS). (*Testimony of Appellant*).

86. The Appellant thereafter did not turn the Aguiar Firearms into any of the Gun Buyback programs held by the FRPD. (*Testimony of Appellant*).

87. The Appellant described his action as “sloppiness – I just forgot.” His explanation for not doing anything with the Aguiar Firearms in October 2024 was: “I was burnt. I was tired. I wish I had, but I was just tired” and “they were safe there.” (*Testimony of Appellant; Resp.Ex.20 [R310]*).²⁰

²⁰ The Appellant rarely used his locker during his tenure because, as typical for a commanding officer, he then had other assigned space for his belongings. (*Testimony of Appellant, Chief Furtado & Mendes*)

88. The Appellant admitted that he left his locker in October 2024 looking like a “bomb” and intended to return after taking a few days off to move things out, “the guns being one of them”, but that changed when his access to FRPD was cut off on October 16, 2024 (*Resp.Exh.20 [R319, 390-395]*)

89. The Appellant was familiar with the FRPD Evidence and Property Control, Policy C08-11, revised in January 2022 under his tenure as Police Chief. (*Testimony of Appellant & Bennett; Resp. Ex.3*).

90. When asked if he thought the Aguiar Firearms constituted “recovered property,” the Appellant first replied “yes” and then stated that it was “very grey to me,” since the FRPD Policy C03-11 “does not speak to the Gun Buyback Program.” (*Testimony of Appellant*).

91. When asked if someone were to walk into the FRPD with a firearm and announce that they wanted to surrender that firearm, the Appellant stated that the firearm would then become “Department property,” he would “log it” and “run the serial number. . . absolutely.” (*Testimony of Appellant*).

92. When asked if he could see in retrospect that there was a legitimate reason to question his handling of the Aguiar Firearms, the Appellant responded, “Absolutely – 100%” and “I know I’m in violation of Attention to Duty” and I “violated best practices.” The Appellant stated it would have been best practice to have run the serial numbers and to have logged the firearms into the Department. (*Testimony of Appellant*).

93. Former Chief Cardoza interprets FRPD Policy C03-11 to be applicable to the Aguiar Firearms that Mr. Aguiar gave the Appellant. (*Testimony of Cardoza*).

94. Lieutenant Martins and Lieutenant Mendes separately opined that if any citizen turned in firearms to the FRPD, they would have logged them as property into the Evidence Room under Policy C08-11. (*Testimony Martins & Mendes*)

Findings Regarding the Items in the Chief's Desk Drawer

95. When the Appellant became Chief of Police, he discovered some very old, oxidized bullets in the center drawer of the Chief's desk, which he assumed had been left there by Chief Cardozo, his predecessor. Chief Cardoza also left a knife behind which the Appellant found useful for opening boxes. (*Testimony of Appellant; Resp.Ex.20 [R360-362]*).²¹ As Chief of Police, the Appellant often wore a suit on duty. While seated at his desk, the Appellant was in the practice of taking off his gun, removing the magazine, clearing the chamber and placing the items in his desk. Deputy Chief Castro witnessed this practice. (*Testimony of Appellant & Castro*).

96. Lieutenant Mendes did not "regularly" store ammunition in his desk, but he could not say that he never did so in the past. Deputy Chief Castro specifically stated that "I have ammunition in my desk". (*Testimony of Mendes & Castro; Resp.Ex.20 [R308]*)

97. When he cleaned out his office in October 2024, the Appellant emptied the drawers in his desk and took out the "rubbery" insert liners he had placed at the bottom of the drawers when he became Chief. He does not recall which specific items were in the drawer. (*Testimony of the Appellant*)

²¹ Cardoza was unable to recall whether or not he left a knife behind for the Appellant when he transitioned out of the Police Chief's office. He was certain that he did not leave any bullets behind "although it could happen, I guess." (*Testimony of Cardozo & Bennett; Resp.Ex.20*).

98. Although he had no specific recollection of putting either the knife or bullet in the drawer, the Appellant has consistently acknowledged that “I put the knife in there” and, although he doesn’t “recall putting the bullet in there with the knife”, “it would make sense that it was my bullet. . . that was more likely left by me accidentally at some point during this process.” (*Testimony of the Appellant & Castro; Resp.Ex.20 [R307-310, 396]*).

99. Per the Transition Agreement, the Appellant was aware, no later than October 11, 2024, that he would be returning to full-time duty on or about January 15, 2026 as a Captain in the Major Crimes Division (MCD), most likely under the supervision of Interim (or permanent) Chief of Police Furtado. (*Testimony of Appellant; Resp.Ex.13*).

100. Lieutenant Mendes’s initial reaction to seeing the knife and bullet in the Chief’s desk drawer was: “Oh – what is this? . . . [S]he’s [Chief Furtado] not going to be happy about both of these items being in the drawer” and “knowing that they [Chief Furtado and the Appellant] didn’t have the best of relationships, I found it odd that those items were there.” (*Testimony of Mendes; App.Ex.24; Resp.Ex.20 [R348-349]*).

101. Chief Furtado ordered Lt. Mendes to document the incident in a formal Incident Report. (*Testimony of Mendes*)

102. Chief Furtado also contacted the Mayor’s office and spoke with the former City Administrator, Seth Aitken, who is a former Assistant District Attorney, about filing criminal charges against the Appellant. (*Testimony of Chief Furtado*)²²

²² Chief Furtado claims that, initially, seeing the knife and bullet raised concern for her personal and “political” safety. (*Testimony of Chief Furtado*).

103. Mr. Aitken informed Chief Furtado that filing criminal charges against the Appellant was not advisable. (*Testimony of Chief Furtado*).

104. Chief Furtado agreed not to file for criminal charges against the Appellant, stating that she knew they would not “go anywhere” and “I just talked myself out of it and I said, you know what, let him [the Appellant] play his games” (*Testimony of Furtado*).

105. On October 23, 2024, eight days after discovery of the knife and bullet, Lieutenant Mendes prepared an Incident Report. He described the incident as “**Workplace Harassment**” and specified “**No crime involved.**” The Incident Report also stated:

Chief Furtado acknowledges that these allegations may appear petty in nature but expressed that this is the kind of unprofessional and unethical behavior she has been subjected to for several years under the leadership of [the Appellant].

(*App. Ex. 24*) (**emphasis added**)

106. Having viewed a photograph of the knife and bullet in the drawer and knowing the “history” between the Appellant and Chief Furtado, former Chief Cardoza would have initiated an internal investigation if he had been Chief of Police when this occurred. (*Testimony of Cardoza; Resp.Ex.20*).

Findings Regarding On-Call Compensatory Time

107. In or about June 2020, when the Appellant assumed command of the MCD, he was responsible for documenting and inputting additional compensatory time that he earned, and for overseeing the crediting of additional compensatory time of others in the MCD. (*Testimony of Appellant; Resp.Ex.2 [R044]*).

108. At all times relevant, the applicable collective bargaining agreement provided a “6 & 4” on-call compensation benefit; i.e., the MCD captain was entitled to receive six hours of

cashable compensatory time per week and detectives were to receive four hours of cashable compensatory time per week. (*Resp.Ex.28; App. Ex.9*)

109. Prior to becoming the MCD commander, the Appellant commanded the Uniform Division, where the applicable collective bargaining formula for on-call time for supervisors and officers was “8 & 6” per month. (*Testimony of Appellant; Resp.Ex.24 & 28; App.Ex.9*)

110. While in the role of MCD Captain, for some period prior to May 2021, the Appellant erroneously credited himself and other MCD officers for on-call compensatory hours on the Uniform Division “8 & 6” formula rather than the “6 & 4” formula prescribed for the MCD commander and detectives under the applicable collective bargaining agreement. (*Testimony of Appellant, Cardoza & Bennett; App.Exs.7-9; Resp Exs.28 & 31*).

111. At a superior officer’s union meeting on May 18, 2021, (then) Lieutenant Gil Costa asserted (incorrectly as it turned out) that the Appellant and others were receiving two additional comp time hours per period than that which they were entitled to receive and that (then) Chief Cardoza was aware of this illicit practice and permitted it. (*Testimony of Appellant & Castro; See Costa Interview with Bennett, Resp.Ex.20 [R427-456]*)

112. Approximately two weeks prior to that union meeting, the Appellant’s mistake already had been brought to his attention and the Appellant had begun an audit, starting with an accounting of his own time, which was to be followed by discussions with those he worked with in order to explain his error and that their time would be adjusted accordingly. (*Testimony of Appellant, Castro & Bennett; App.Ex.7; Resp.Ex.20 [287-300]*)

113. After the union meeting, Chief Cardoza became aware of Costa’s allegations and spoke directly with the Appellant about the time entries. Chief Cardoza confirmed that the

entries were being corrected by the Appellant and no one would be paid for more time than the contract allowed. (*Testimony of Cardoza*)

114. Instead of deleting entries and replacing them with new entries, the Appellant inserted new negative entries to remove the extra hours, which created a full audit trail of the fixes. (*Testimony of Appellant; App Exhs.7 & 8; Resp.Ex.20 [386-387]*)

115. After the Appellant duly corrected the errors, he informed Chief Cardoza. Chief Cardozo then considered the matter closed, that no internal affairs investigation was necessary, and that the matter was a “dead issue”. (*Testimony of Appellant & Cardoza*)²³

Findings Regarding Removal of Historical Photographs

116. When Chief Kelly Furtado arrived in the Chief’s Office on October 16, 2024, she observed that “historic” pictures were missing from the walls, specifically a photograph of the FRPD circa 1920 (the 1920’s Muster Photograph) and picture of the “opening of the Braga Bridge.” (*Testimony of Furtado & Mendes; Resp.Exs.7 & 20 [R329]; App.Ex.10*).

117. While Dan Racine was Chief of Police (2010-2016), the 1920’s Muster Photograph was framed and hung in the Chief’s office. At around the same time, Chief Racine had a photograph taken of the current FRPD. He made copies of both pictures available for

²³ Dan Bennett’s report erroneously counted over-paid compensatory time properly accrued under the “8 & 6” formula while the Appellant was the commander of the Uniformed Division and made a mathematical error in his calculations. Hearing Officer Jane Friedman noted his errors and altered her findings on this issue accordingly. (*Testimony of Appellant, Bennett & Macolini; Resp.Exhs.20 [R245-253] & 24; App.Ex.7*) The City now acknowledges that the Appellant made all necessary corrections to comp time incorrectly credited during his MCD tenure, and “considering the remoteness of this incident, the fact that former Chief Cardoza believed the matter was resolved, and the Appellant was subsequently promoted . . . the Appellant’s violation of Department Policy is insufficient to serve as an independent basis to support his termination.” (*City’s Proposed Decision, p.39 fnt.5*)

purchase through the Department; the Appellant purchased a copy of the more recent picture, which included him and other contemporaries. (*Testimony Appellant, Furtado & Cardoza; Resp.Exs.20 {R359-360} & 50; Administrative Notice [[FRPD Chief To Retire \(2016\)](#)]*)

118. The 1920s Muster Photograph appears to have been replaced by a plaque during Chief Dupere's tenure (between Racine and Cardozo) and then rehung by Chief Cardozo where it remained throughout his tenure and the tenure of the Appellant. (*Testimony of Appellant, Furtado & Cardoza; App.Exhs.5 & 38; Resp.Ex.20 [301-305]*)

119. While he was Chief, the Appellant had his copy of the modern-day version of the FRPD hung just below the 1920's Muster Photograph on the wall between two exterior windows. (*Testimony of Appellant & Martins*)

120. Unless an item or photograph is marked as evidence, each Chief has broad discretion in matters of office décor and is free to change, move or remove such items. (*Testimony of Cardoza*)

121. The 1920's Muster Photograph and the Appellant's copy of the modern-day version of the picture were two of the items that the Appellant removed from the Chief's office and brought home when he cleaned out the Chief's Office in October 2024. The Appellant intended to bring both pictures back to the FRPD and hang them in his office as Captain of Major Crimes when he returned to duty. (*Testimony of Appellant & Bennett; Res.Ex.20 [301-307, 390]; Finding No. 21 supra*)

122. No specific FRPD policy prevented the Appellant, while still employed as a superior officer in the department, from bringing non-evidentiary FRPD property to his home. (*Testimony of Mendes & Bennett; Resp Ex.2 [R068]*)

123. On December 4, 2024, after learning from former Chief Cardozo that his removal of the 1920's Muster Photograph was being questioned, he brought it back to the FRPD and Lieutenant Mendes was so informed. (*Testimony of Appellant, Cardoza & Mendes; Resp.Exs.20 [R510-513] & 37*).

124. A year after the Appellant returned the 1920's Muster Photograph to the FRPD, body camera footage taken of the Chief's office in January 2026 showed that the walls were filled with various items, but the 1920's Muster Photograph was not one of them. (*Resp.Exh.55*)

125. As to the alleged Braga Bridge photograph, when she spoke to Dan Bennett, Chief Furtado had a vivid memory that a big "black & white" picture depicting the opening of the Braga Bridge with people walking over it had been in the Chief's Office on the "wall . . . with windows" since the building was opened. She said she always focused on it whenever the Appellant called her into his office. (*Resp.Ex.20 [R329-330]*)

126. No other witness recalled a Braga Bridge picture in the Chief's Office. (*Testimony of Appellant, Mendes, Cardoza, Castro & Martins; Resp.Ex.20 [305, 359-360, 389]*)

127. Deputy Chief Castro is familiar with a picture fitting the description that Chief Furtado described to him. He never saw that image in the Chief's office or anywhere else in the building. (*Testimony of Castro*)²⁴

Comparator Evidence

128. The Appellant identified an FRPD detective whose wife had called the Department because, after repeatedly urging the detective to remove police items from the home, he

²⁴ The picture fitting Deputy Chief Castro's description appeared in a Herald News article in 2016, commemorating the 50th anniversary of the opening of the bridge. (*Administrative Notice [Walk across the Braga Bridge 50 years ago]*)

had failed to do so. The then-Chief and a sergeant went to the home and retrieved a box of items that the Appellant, in Major Crimes at the time, had to inventory. The material included drug evidence and sensitive interviews of minor children. Although the detective's actions were improper, the FRPD concluded that there was nothing malicious about the situation and it was not expected to occur again as the detective had an outstanding record. The detective received a written warning. (*Testimony of Appellant*)

129. Body worn camera footage from November 2024 shows an FRPD officer going into the office of a former FRPD Captain, who had been out on extended sick leave, and finding unsecured firearms and magazines belonging to that captain in the office. The captain faced no discipline from the FRPD, then under the command of Chief Furtado. (*Testimony of Mendes; Resp.Ex.43*)

Applicable Civil Service Law

A tenured civil service employee may be disciplined or discharged for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefor.” G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under Section 43, the appointing authority carries the burden to prove “just cause” for the action taken by a “preponderance of the evidence.” *Id.* See, e.g., *Falmouth v. Civ. Serv. Comm’n*, 447 Mass. 814, 823 (2006); *Police Dep’t of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000). In performing its review, the Commission hears evidence and finds facts anew.

Examining an earlier but substantially similar version of the same statute, the Appeals

Court wrote:

We interpret this as providing for a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer.

Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-28 (2003).

The Commission determines just cause for discipline and discharge 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. Civ. Serv. Comm’n*, 43 Mass. App. Ct. 486, 488, rev. den., 426 Mass. 1104 (1997). See also *Doherty v. Civil Serv. Comm’n*, 486 Mass. 487, 493 (2020).

It is also a basic tenet of merit principles, which are the core protections of 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. The Commission must take account of all credible evidence in the entire administrative record, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law, including whatever would fairly detract from the weight of any particular supporting evidence. See *Comm’rs of Civ. Serv. v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971), citing *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928); *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine credibility of testimony presented to the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [Commission] upon which a court conducting judicial review treads with great reluctance.” *Leominster v. Stratton*, 58 Mass. App. Ct. at 729.

Section 43 of G.L. c. 31 also vests the Commission with authority to affirm, vacate or modify discipline but that discretion is “not without bounds” and requires sound explanation for doing so. See, e.g., *Police Comm’r v. Civil Service Comm’n*, 39 Mass. App. Ct. 594, 600 (1996) (“The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio . . . accorded the appointing authority”). See also *Town of Falmouth v. Civil Service Comm’n*, 447 Mass. 814, 823 (2006), quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth*, 447 Mass. at 824.

Analysis

The City has shown, by a preponderance of the evidence, that it had just cause to discipline the Appellant for neglectful, but not malicious, behavior during the transition from his position as the FRPD Police Chief to his former tenured civil service position of Police Captain. Specifically, the Appellant was neglectful of his duties in failing to properly document and handle the Aguiar Firearms and he was inattentive to duty by failing to remove a bullet from the Chief’s desk when he vacated that office. Save for these conclusions, the City has not proven just cause for discipline for any of the other alleged reasons provided by the City — specifically, the allegations of workplace harassment, improper crediting of compensatory time and misappropriation of “historic” FRPD property. The findings of fact and conclusions in this Decision differ significantly from those found by the City when it

decided to terminate the Appellant's employment. After careful review of all the relevant facts and circumstances, including the Appellant's prior record of distinguished service with the FRPD, including more than two decades as a tenured civil service FRPD superior officer and, most recently, for nearly three years as the FRPD Police Chief, I conclude that the termination of the Appellant for the limited misconduct that has been established by the credible evidence does not comport with basic merit principles which require 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. I conclude that the Appellant's termination should be modified to a suspension of 90 days.

The Aguiar Firearms

A preponderance of the evidence establishes that the Appellant "forgot" that he had stored the Aguiar Firearms that were not registered to him in his FRPD locker for more than ten years. The undisputed evidence also establishes that, in October 2024, while still serving as the FRPD Chief of Police, the Appellant found the Aguiar Firearms in his locker but opted not to do anything at that time to document his possession or turn them over to the Evidence Room. The question was whether this action violated FRPD Rules, Regulations, and/or Policies. I conclude that it did.

First, as to "storing" of the Aguiar Firearms in the Appellant's locker (as well his FRPD and personal firearms), it is undisputed that the firearms were "secured" properly, because the Department has a "one door – one lock" policy, and the firearms remained behind a locked locker door, in the secure FRPD building. Using one's locked Department locker is considered proper storage within the Department for officers' Department-issued firearms

and their own personal firearms, registered to them. Thus, the Appellant's storage of the Aguiar Firearms in his locker complied with accepted FRPD practice; the Appellant did not violate any FRPD policy merely by storing them in his locker, as the City charged.

Second, apart from the storage issues, the City argues (supported by the testimony of former Chief Cardozo, Lieutenant Martins, Lieutenant Mendes, and Captain Platt) that the FRPD Evidence and Property Policy, Policy C08-11, applied, at a minimum, to other requirements for handling the Aguiar Firearms because this policy specifically governs "all found, recovered, and evidentiary property **as well as any other property coming into the custody of the Department**" (emphasis added). I agree.

The Appellant admits that he never recorded the fact that, through him, the FRPD received custody of the Aguiar Firearms. The Appellant acknowledged that he should have at least documented their receipt. In addition to documentation, the policy requires that the property or evidence that is received by the Department must be turned "over to the Evidence/Property Room Detective, before the end of [the officer's] tour of duty." The Appellant admits that he did not turn the firearms over to anyone.²⁵

Third, FRPD Policy C08-11 is to be distinguished from the statutory requirements for gun registration. The Appellant correctly argues that the registration of firearms is governed by 501 CMR §§ 19.00, et seq., and those regulatory provisions detail when and how transfers of

²⁵ The Appellant argued that Policy C08-11 is unclear because it does not directly reference, and does not apply to, guns destined for destruction through the Gun Buyback Program. The City's position is that no policy can be expected to individually reference every relevant scenario. The City's position is a reasonable one. Since FRPD does not even have a separate policy or procedure on the Gun Buyback Program itself, a lack of specific reference to it in Policy C03-11, although not preferable perhaps, is not surprising.

firearms are to be accomplished. According to 501 CMR § 19.09, the registration requirements for transfers do not apply when firearms are being delivered to law enforcement for the sole purpose of their destruction. See 501 CMR § 19.09(1). However, nothing within the gun registration regulations supersedes the FRPD's own internal requirements for documenting and handling firearms while in FRPD custody.

By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. *Zorzi v. Town of Norwood*, 29 MCSR 189 (2016). An officer of the law carries the burden of being expected to comport himself or herself in “an exemplary fashion.” *McIsaac v. Civil Service Comm’n*, 38 Mass. App. Ct. 473, 475 (1995).

In sum, the Appellant's handling of the Aguiar Firearms after they came into his possession did not comply with FRPD Policy C08-11. In addition, by forgetting he had kept the Aguiar Firearms in his locker for more than ten years and, of even greater significance, then failing to document his receipt and place them into the custody of the Evidence Room when he “rediscovered” them, while holding the position of Chief of Police and knowing that they needed attention, also established a violation of Article 8.01 (Conduct Unbecoming an Officer: “conduct, on or off duty, that tends to . . . discredit [an FRPD officer]) and Article 8.05 (Attention to Duty: “officers are always subject to duty . . . officers shall take appropriate action at all times to protect life and property, preserve the peace, and . . . shall perform their duties as required or directed by law, Department rule, policy or order . . .”). See also *Brown v. City of Chelsea*, 36 MCSR 217, 233 (2023) (a “supervisor ... is expected to enforce the rules and stand as a role model for others.”).

Bullet and Knife in Chief's Desk Drawer

The undisputed evidence established that the **knife** found in the Chief's drawer was put there by the Appellant. I credit the Appellant's testimony that he found the **knife** in the office when he succeeded former Chief Cardoza, he used it to open packages, and he left it behind. I infer he replaced it in the desk drawer after he cleaned out its other contents.

The evidence as to how and when the **bullet** appeared in the same drawer with the knife is entirely circumstantial. The Chief's office was unlocked for several days after the Appellant's last visit and Chief Furtado's arrival; the drawer containing the knife and the bullet was opened and closed two or three times before the photographs in evidence of the drawer were taken; the bullet was a Federal round last ordered for duty use in FY2016; and it is not unusual for ammunition to be found in an FRPD office. If this appeal required the rigor of a criminal law "chain of custody" standard, I would find it problematic to draw any conclusions as to how the bullet and knife wound up in the same drawer and in what order they were placed there.²⁶

The Commission, however, is not required to apply such strict criminal evidentiary standards. The known facts are: (1) the bullet was a Federal-made .40-caliber round, the same caliber as the FRPD's current Winchester-made standard duty round, last ordered from Federal in FY 2016; (2) the Appellant found ammunition in his office when he became Chief; (3) the Appellant would empty his duty weapon (remove the cartridge and the bullet

²⁶ Under that standard, for example, it would be hard to rule out, without further evidence, that the bullet may have been found and/or placed in the drawer by someone else. See *Resp. Ex.56 (nine personnel accessed the Chief's Suite from 10/8/24 through 10/15/24, including Chief Furtado and Lieutenant Mendes)*.

in the chamber) while in the Chief's office; and (4) ammunition was kept by other FRPD superior officers in their office desks (including Deputy Chief Castro and, possibly, Lieutenant Mendes). No direct or circumstantial evidence established how or when the bullet was first placed in the Chief's desk drawer or whether the bullet was already there when the Appellant put the knife in that drawer. Although I cannot conclude how those items wound up in the same drawer or in what order, I make the reasonable inference, which the Appellant does not deny, that he bears responsibility for both the bullet and the knife having been left in the drawer when he last visited the Chief's office on October 13, 2025.

The question here is whether the Appellant knew (or should have known) that, by leaving a knife and bullet in the same drawer, he was simply being neglectful, as he claims, or whether his actions were meant to threaten or intimidate Chief Furtado—and did it have that effect, as she claims? I have weighed the disputed evidence on this subject and I conclude that the preponderance of the credible evidence infers neglect, not intentional misconduct.

First, the conclusion that the Appellant acted out of neglect is consistent with Hearing Officer Howayeck's decision that "[n]o direct evidence [shows] that Captain Gauvin intended to threaten or retaliate against Chief Furtado. . . ." An inference against intentional misconduct is also supported by other indirect and circumstantial evidence, including:

- The Appellant knew that, upon his return to duty in January 2025 as the MCD Captain, he would be working closely with and reporting to Chief Furtado.
- The Appellant's memo written on October 11, 2024 provided Chief Furtado a detailed a roadmap to guide her through her transition to the job of Police Chief and concluded with a polite and conciliatory message that "despite any hard feelings", he "wished her luck" and pledged that she should expect "no less" than his continued "unwavering" loyalty to the FRPD upon his return to duty.
- The Appellant was uniformly considered a "no nonsense" but "fair" supervisor, whose only prior discipline over twenty-eight years of service was a written

reprimand as a Lieutenant in handling an incident in which he had intervened to **stop a confrontation** between two other officers.

- The record is devoid of evidence that the Appellant was a person who had attempted, or was inclined to threaten or intimidate anyone, especially an FRPD commanding officer.
- As to the alleged prior charges of harassment made against the Appellant by then Sergeant Furtado, a thorough investigation of her complaints in 2020 resulted in findings that none of her allegations of misconduct were proved to be true.

Second, I have carefully considered the disputed evidence as to whether Chief Furtado's characterization of her reaction to being shown the knife and bullet – as an attempt to threaten or intimidate her – is credible. I conclude that the preponderance of the evidence demonstrates that, at most, Chief Furtado was momentarily annoyed and angry at the Appellant for leaving the knife and bullet in the drawer but the preponderance of the evidence leads me to conclude that her claim that she reasonably continued to believe that the incident was an unlawful, even possibly criminal, threat of imminent or future harm to her physical or “political” safety is not supported by the evidence. For example, weighed against the subjective impressions offered by Chief Furtado and Lieutenant Mendes that finding the items was “odd” and seemed to be a threat, I find persuasive the following facts:

- Approximately one week after discovering the bullet and knife, the FRPD returned the Appellant's personally-owned firearms to him.
- Lieutenant Mendes took a week to submit his October 21st Incident Report. In that report, he stated that Chief Furtado “acknowledges that these allegations may appear petty in nature” and “this is the kind of unprofessional and unethical behavior she has been subjected to for several years under the [Appellant's] leadership” (nearly all of which was unfounded as noted above).
- On October 25, 2025, ten days after the discovery of the bullet and knife, Mayor Coogan issued a positive letter of recommendation concerning the Appellant.
- At the Commission hearing, Chief Furtado said she had decided that she “didn't want to start my chieftdom with controversy” and she would just “let him [the Appellant] play his games.”

Third, I conclude that a finding of Workplace Harassment is not warranted as a matter of law. The FRPD's and City's Workplace Harassment policy govern "unlawful" harassment that violates state or federal law; thus, the conduct must be motivated due to a person's protected category.²⁷ No such allegations were made, nor evidence adduced, to that effect.

Although the Appellant's intent to intimidate or harass Chief Furtado was not proved, the Appellant's actions which resulted in a knife and a live round of ammunition being left together in an unattended drawer in an unoccupied Chief's office, is, itself, outside of the norms and expectations of an FRPD superior officer, especially the Chief of Police. I also take account of the history of animosity between the Appellant and Chief Furtado. Thus, despite no malevolent intent, the circumstances did call for heightened vigilance by the Appellant when he turned over his office to his successor and known nemesis. Therefore, I conclude that the preponderance of the evidence does support a finding that the Appellant, who admitted that he was feeling "burnt out" and was dealing with his own angst at stepping down as Chief, knew or should have known that he had a heightened responsibility to exercise sound judgment to ensure that his actions in leaving the Chief's office were beyond reproach; his failure to do so, which contributed to this protracted appeal, justifies a conclusion that his lapse of judgment violated Article 8.01 Conduct Unbecoming an Officer ("conduct . . . on or off duty that tends to . . . discredit [an officer]"); Article 8.11 Conduct Toward Associates (officers must be treated "with respect, in or out of their presence.

²⁷ M.G.L. c. 151B § 4(1) prohibits employment discrimination, which includes employment harassment, "because of the race, color, religious creed, national origin, sex, gender identity, sexual orientation . . . genetic information, pregnancy or a condition related to said pregnancy . . . ancestry or status as a veteran of any individual . . .".

They shall be courteous and civil at all times in their relationships with one another”); Article 8.05 Attention to Duty (“officers are always subject to duty. . . . [O]fficers shall take appropriate action at all times to protect life and property”) and, although a closer call, also violated the Code of Ethics (“maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint and be constantly mindful of the welfare of others”). See also *Brown v. City of Chelsea*, 36 MCSR 217, 233 (2023) (a “supervisor . . . is expected to enforce the rules and stand as a role model for others.”).

Improper Crediting of “Cashable” Compensatory Time

The charge that the Appellant improperly credited himself and others for “cashable” compensatory time between 2018 and 2021 can be addressed summarily. As to alleged violations **prior** to 2021, the evidence established that the charges were without merit and had originated from an erroneous reading by investigators who overlooked the fact that the Appellant then commanded the Uniform Division, for which the “8 & 6” compensatory time formula **was** applicable. As to violations **after** the Appellant became the MCD commander, the Appellant did erroneously credit MCD supervisory and detective time using the wrong formula. However, the undisputed evidence also established that this error was corrected by the Appellant in 2021, and no officer ever “cashed out” more than proper amount of compensatory time due. Moreover, Chief Cardoso contemporaneously reviewed the matter in 2021 and concluded that the error was corrected, further investigation was unwarranted, and the matter was a “dead” issue. I also note that, according to a newspaper article in August 2024, Mayor Coogan was asked about the issue (then being raised in a lawsuit) and reportedly stated that he, too, understood the mistake had been fully rectified.

In sum, the City had no basis upon which to resurrect this stale issue in October 2024. See *Godere v. City of Chicopee*, 33 MCSR 48, 2020 WL 1182475 (2020) (Commission denied attempt by new administration to revisit a disciplinary decision made years earlier, rejecting the notion “that the election of a new Mayor or the appointment of a new Police Chief can result in the reversal of prior decisions not to discipline a permanent, tenured civil service employee based on the same information that was available to their predecessors. The civil service system was designed to prevent these types of arbitrary decisions.”)

Removal of Historical Photographs

This charge that the Appellant violated FRPD rules and regulations by his “removal of **two** FRPD historical photographs without documentation or permission” also is without merit.

First, there were never TWO historical photographs in the Chief’s office. The only “historical” picture was the 1920’s Muster Photograph. The second picture the Appellant removed from the Chief office was his own copy of the more recent modern-day photograph of the FRPD membership. The preponderance of the evidence showed that no picture of the Braga Bridge ever hung in the Chief’s office, let alone was removed by the Appellant.

Second, I credit the Appellant’s testimony that, when he brought the 1920’s Muster Photograph and his modern-day counterpart home with him, he intended to bring the pictures back to be hung in the MCD commander’s office when he returned duty in January 2025. Based on my review of the body-worn camera footage of the MCD Captain’s office taken when some of the contents of the Appellant’s locker were moved there, I credit the Appellant’s explanation that he brought those, and other items, home because there wasn’t enough room in his locker and the MCD commander’s office to store everything.

Third, although the 1920's Muster Photograph probably does qualify as "Department property," the Appellant's intent was not to keep the picture, but to store it temporarily until he returned to duty. It does not violate policy for FRPD personnel to take home FRPD property so long as it is not evidence – especially on a temporary basis and then return it. When the Appellant learned that his removal of the picture was being questioned, while still on leave, he immediately returned it to the FRPD. Article 12.10 only covers the limited situation in which "[e]mployees are required to surrender all Department property . . . **upon separation from the service**" (emphasis added). Pursuant to the Transition Agreement, the Appellant had not been separated from employment when he packed up his office in September/October 2024 or when he returned the 1920's Muster Photograph on December 4, 2024.

Fourth, I find no credible evidence, beyond speculation, to support a conclusion that the Appellant's removal of the 1920's Muster Photograph, along with his own copy of the modern-day version was motivated by animus or "puerile" behavior based on his animosity toward Chief Furtado, as opposed to his own explanation set forth above.

In sum, the City has not established by a preponderance of the evidence that the Appellant's removal of the 1920's photograph from the Chief's Office, taking it home with the intent to hang it on his Captain's Office wall in January 2025, and actually returning it in December 2024, meets the definition of a violation of Conduct Unbecoming an Officer (Art.8.01) or Conduct Toward Associates (Art.8.11), the Code of Ethics, or any other FRPD Policy, Rule and Regulation.

Modification of Penalty

I conclude that the Appellant engaged in misconduct that warrants discipline. However, the findings and conclusions made herein depart significantly from those upon which the City relied in deciding to terminate the Appellant's employment. Accordingly, the Commission must address whether to exercise its discretion pursuant to Section 43 of Chapter 31 to modify the discipline imposed by the City. After careful consideration, I conclude that the circumstances of this appeal show that the Appellant's mistakes do not rise to the level of "inadequate performance [that] cannot be corrected" and, therefore, the decision to terminate the Appellant's employment from his tenured civil service position was punitive and not remedial within the meaning of civil service law. I recommend a 90-day suspension as the more appropriate penalty necessary to ensure remediation.

This recommendation accounts for important distinctions between the City's conclusions and those made in this decision. These distinctions include the conclusion that the City did not have just cause to discipline the Appellant for two of the four alleged incidents of misconduct, including serious, but unproven, charges of unlawful receipt of "cashable" comp time (essentially theft of municipal property), untruthfulness, and workplace harassment. The violations supported by the evidence amount to poor judgement, neglect and errors of omission, rather than malfeasance that formed the gravamen of the City's allegations. In addition, I considered the evidence of the Appellant's highly commendable record of twenty-eight years of service, including, in particular, the Mayor's endorsement of the Appellant's past performance ("significant contributions to the department and community turning the department around during difficult times") and the

Mayor's assurance that the Appellant still had more to contribute ("his leadership and expertise will continue to benefit the Fall River Police Department"). Finally, I considered the comparator evidence which involved at least two other FRPD officers, one of whom received minor discipline for what could be considered more egregious misconduct by removing ACTUAL evidence and confidential reports concerning abuse of minors, and the other received no discipline for keeping firearms and ammunition in his office, presumably because the office door was locked, hence no violation of the "one door, one lock" policy.

In recommending a 90-day suspension, I acknowledge that a reasonable argument could be made for a lesser period as sufficiently remedial. However, my recommendation is meant to ensure that the Appellant, as well as ALL other FRPD personnel who will work under or with him upon his return to duty, know how seriously the Commission construes the obligation to address conflicts through collaboration and conciliation, not confrontation. Going forward, retaliation will not be tolerated. All stakeholders must use best efforts to exercise self-restraint, no matter how hard, both internally and in public, to keep personal feeling out of the performance of professional duty and heed the principles expressed in the FRPD's Code of Ethics as they chart the path ahead:

I will . . . maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life

I will never act officiously or permit personal feelings, prejudices, animosities or friendships to influence my decisions I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence

(Resp.Exh.2)

Conclusion

For the reasons stated above, the Appellant's appeal under Docket No. D1-25-108 is ***hereby allowed, in part.*** The Appellant's termination on April 21, 2025 is modified to a 90-day suspension and, save for the suspension, he shall be reinstated to his tenured civil service position of Police Captain, effective April 21, 2025, without further loss of compensation or benefits in accordance with G.L. c. 31, § 41 through § 45.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney, and Stein Commissioners) on August 6, 2026.

Either party may file a motion for reconsideration within ten days of receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Andy Gambaccini, Esq. (for Appellant)

Jaime Kenny, Esq. (for Respondent)

Daniel R. Williams, Esq. (for Respondent)