

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT  
DOCKET NO. 2079CV00168

JEFFREY GODERE

vs.

CITY OF CHICOPEE & another<sup>1</sup>

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED

SEP 22 2021

  
CLERK OF COURTS

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

This matter arises out of the termination of a Chicopee police sergeant, the plaintiff, Jeffrey Godere, by the mayor of the City of Chicopee (the City) in 2018 due to Godere's untruthful answers in 2012 during an internal affairs investigation of the Chicopee Police Department (CPD). Godere appealed from the City's termination decision to the Civil Service Commission (the Commission). The Commission found that Godere had engaged in the alleged misconduct but modified his discipline by reinstating him as a police officer rather than as a sergeant. Godere filed this action seeking judicial review under G. L. c. 30A, § 14, and declaratory judgment challenging the Commission's decision. Godere denies being untruthful but focuses on the Commission's penalty and asserts that he should be reinstated to the rank of sergeant. Godere now moves for judgment on the pleadings. The City has filed a cross-motion for judgment on the pleadings and seeks a ruling vacating the Commission's decision and reinstating its decision terminating Godere. After a hearing and review of the administrative record, I *affirm* the Commission's decision and *deny* both parties' motions.

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<sup>1</sup> Civil Service Commission

## 1. Background

The following facts are taken from the administrative record, with some details reserved for the legal analysis.

### *a. Investigation Into Dissemination of Photo of Homicide Victim*

On August 26, 2011, Godere, a recently promoted sergeant,<sup>2</sup> was called to a homicide scene with another sergeant, KL,<sup>3</sup> and several officers, including TD. They stayed there until detectives arrived. While there, without being told to do so, KL and TD used their cell phones to photograph the victim, a woman who had been stabbed. Hours later, back at the police station, KL showed Godere the photo he had taken and Godere asked KL to send it to him. Godere then sent the photo to an officer, CL. On August 27th, CL showed the photo to individuals at a youth football game. TD sent the photo he had taken to nine officers, including MC.

On October 3, 2011, the CPD's captain in charge of detectives, Thomas Charette, received a report that CL, while off-duty on August 27th, had shown a photo of the victim to individuals at the youth football game. William Jebb, then the CPD deputy chief of police in charge of internal investigations, began an internal investigation to find out who had taken and disseminated the photo. That investigation entailed many interviews between October 2011 and February 2012 of CPD employees and attendees at the youth football game.

On October 4, 2011, Jebb interviewed TD, who admitted to taking the photo and sending it to others, but he could not recall to whom. Although TD said that he sent the photo once in a group message, that was not true; he had sent it multiple times over the course of hours.

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<sup>2</sup> Godere began working for the City in 1994 as a special police officer. In 2001, he became a full-time police officer, and in June 2011, he was promoted to the rank of sergeant.

<sup>3</sup> The Commission, in its decision, referred to certain police officers involved in the underlying incident by their initials, as does Godere in his motion papers. For the sake of convenience, I use that approach in this decision.

MC had received the photo from TD. MC first told Jebb that he was 99% certain he received the photo from TD; the next day, he denied remembering who had sent it to him.

Jebb interviewed CL. In October and November 2011, CL repeatedly denied to Jebb that he had received, possessed, shown, or sent the photo, even though Jebb had received information that CL had shown the photo at the football game. After months not telling Jebb the truth, on January 24, 2012, CL admitted to Jebb that he had shown the photo at the game. When Jebb asked CL who sent him the photo, CL said he did not want to get anyone in trouble, but that he was a supervisor. CL showed Jebb his cell phone records. Jebb learned that Godere was the supervisor referenced by CL and that CL had received the photo at 12:40 a.m. on August 27th.

On January 26, 2012, Jebb emailed Godere asking him (1) if he had taken a photo of the victim; (2) if not, then who sent it to him; and (3) if he had forwarded the photo to anyone. On January 28, 2012, Godere wrote back that he had no recollection of taking a photo of the victim, that he did receive a photo via text message, and that he did not recall if he sent the photo to anyone. On January 30, 2012, Jebb directed Godere to obtain from his wireless provider a copy of his picture/data transactions for the period of August 26, 2011 through mid-September, and particularly on August 27, 2011, at 12:40 a.m. On February 2, Godere met with Jebb and initially repeated his denials with respect to the photo. When Jebb confronted Godere with conflicting information gathered in the internal investigation, Godere told Jebb that he was concerned about being labelled a rat. Eventually, Godere told Jebb that he believed he had received the photo from KL and had sent it to CL. Jebb directed Godere to write a report, which Godere did, communicating the same information.

Jebb prepared a written internal investigation report and gave it to the Chief of Police John Ferraro. Jebb did not recommend charging any officers with untruthfulness. The report does

not contain any determination or finding that Godere was untruthful. With respect to Godere, the report summarizes some of his statements to Jebb, including that Godere did not want to be a rat, and Jebb's response that he would not continue to tolerate Godere's "continued reluctance to cooperate with this investigation."<sup>4</sup> Concerning Godere, the report contains Jebb's finding that he violated the CPD competency policy by failing to conform to work standards established for the officers' position. On those charges, in April 2012, Ferraro issued disciplinary decisions: CL was given three tours of punishment duty for violating the departmental rule on incompetence, and on April 12, 2012, TD, KL, and Godere received letters of reprimand which were placed in their personnel files. The reprimand letter to Godere states in relevant part,

"As a result of a recent Internal Affairs Investigation, information surfaced that your use of a cell phone during an ongoing investigation . . . was not consistent with the mission of the [CPD]. Your duties are to assist in any way possible as requested or directed by those who were conducting the investigation. There has been no information that you were requested or directed to engage in such activity."

Shortly thereafter, Ferraro retired and Thomas Charette became the police chief.

*b. The Brady Memorandum*

On May 4, 2012, Jebb wrote to the then-Hampden County District Attorney Mark Mastroianni that two officers, KL and TD, had taken the photos of the homicide victim and sent them to other officers, and that those officers had deleted the photos. Jebb expressed his belief that the photos were no longer in existence except in the internal investigation file.

On October 4, 2012, Mastroianni wrote to Mayor Bissonnette expressing concern about the behavior of the officers involved in the photo dissemination and those who gave false statements during the internal investigation. Mastroianni did not name any officers in that letter, but wrote:

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<sup>4</sup> The report incorrectly states that Godere denied receiving the photo.

"You have made me aware that you are considering further available administration (sic) action for these officers, in addition to the sanctions imposed by the Police Department directly. . . . Turning to the officers' behavior during the internal affairs investigation, there is evidence of more than one officer's reluctance to be candid about his activities relating to these photographs and a prolonged effort to hide the truth by misleading or false statements and/or reports. Such lack of honesty is very troubling. In future court proceedings, I will be ethically obligated, under mandatory discovery requirements, to produce this material when relevant to the question of these officers' credibility."

Following up on that letter, on January 10, 2013, Mastroianni sent his assistant district attorneys a memorandum entitled "Discovery Related to Certain Chicopee Police Officers." Mastroianni wrote that his office had received the internal investigation report stating, "The finding includes a determination that false statements were made by certain officers during the investigation," and identified two officers, Godere and CL, as having made false statements in that investigation.<sup>5</sup> In his January 10, 2013, memorandum ("the *Brady* memorandum"),<sup>6</sup> Mastroianni directed that when either Godere or CL is a potential witness in a case, the prosecutor and a supervisor should determine, on a case-by-case basis, whether disclosure of the officers' false statements is required by *Brady v. Maryland*, 373 U.S. 83 (1963) (exculpatory material held by prosecution must be disclosed to defense in criminal prosecution).

Although Godere was named in the *Brady* memorandum, he was unaware of it at that time. Police Chief Charette and Bissonnette discussed whether CL and Godere could be disciplined for the misconduct cited by Mastroianni. Charette sought legal guidance on that question but was told it would be inappropriate. Neither Charette nor Bissonnette disciplined Godere or CL for their untruthfulness in Jebb's internal investigation.

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<sup>5</sup> This sentence appears to state that the internal investigation report contains a determination or finding that Godere made false statements during the investigation. The report does not contain such a finding or determination. Instead, with respect to Godere, the report merely summarizes his statements on February 2, 2012, and Jebb's reply that he would "not tolerate [Godere's] continued reluctance to cooperate with this investigation."

<sup>6</sup> The parties at times refer to Mastroianni's October 2013 letter as "the *Brady* letter." It is not a *Brady* letter as it does not identify any officers. For the sake of clarity, I will refer to Mastroianni's January 10, 2013, memorandum, which does name Godere, as the *Brady* memorandum.

In late 2013, Bissonnette lost his mayoral reelection bid to Richard Kos. The handling of the photo dissemination was a controversial issue in the mayoral race.

*c. Discipline of Godere in 2015 in Separate Matter*

In 2015, Kos was Chicopee's mayor and Jebb was the police chief. That year, Godere was the subject of another internal investigation in connection with his response to a call for service in February 2015. As a result, in May of 2015, Kos charged Godere with violating CPD rules by being untruthful, incompetent and neglecting his duty. Kos suspended Godere for five days and demoted him to the rank of patrolman. Kos took into account Godere's record as a sergeant and explained that Godere's conduct in 2015

"along with your prior conduct at the scene of the . . . [2011] murder when you forwarded photographs of the decedent taken by another sergeant and disseminated those photographs via your cell phone to another police officer, which resulted in a Letter of Reprimand in your Personnel File, as well as the five extra tours of duty you received [on August 2, 2011] for failing to take supervisory action after observing a patrolman punch a handcuffed suspect in the head, demonstrates your inability to supervise police officers and remain in the rank of Police Sergeant."

Godere appealed the discipline to the Commission. In its February 4, 2016, decision, the Commission did not find the charge of untruthfulness supported. The Commission affirmed the five-day suspension but rescinded the demotion and returned Godere to the rank of sergeant.

*d. Brady Memorandum as Basis for Mayor Kos's Termination of Godere*

On October 16, 2017, the police chief, Jebb, received the *Brady* memorandum naming CL and Godere. On November 3, 2017, Jebb emailed his command staff that

"because [Godere and CL] cannot perform one of their most important duties, serving as a credible witness, I must take action to protect the credibility of the [CPD] and any further investigations . . . . [Godere and CL] will permanently be assigned to administrative duties from this day forward. The officers are not allowed to work overtime or extra details."

That day, when a captain informed Godere of Jebb's email, Godere learned of his designation in Mastroianni's *Brady* memorandum.

By 2018, the Hampden County DA was Anthony Galluni. On January 26, 2018, Galluni wrote to Jebb regarding the status of Mastroianni's *Brady* memorandum. Galluni concluded, after reviewing Kos's 2015 disciplinary decision, the related Civil Service Commission decision, Mastroianni's letter to Bissonnette on October 4, 2012, and the *Brady* memorandum dated January 10, 2013, that Mastroianni's statements "continue to represent the opinions and current procedures" of the DA's office.

On July 30, 2018, Kos sent Godere a letter notifying him of contemplated discipline for untruthfulness and incompetence "arising out of your conduct during the internal affairs investigation into the release of the [homicide victim's] photograph" in 2011. In explaining why he was ordering a disciplinary hearing at that point, Kos stated that it had recently come to his and Jebb's attention that former DA Mastroianni had issued the *Brady* memorandum years earlier, and that the current DA Galluni had affirmed Mastroianni's position with respect to the *Brady* memorandum.<sup>7</sup> Kos attached to his letter to Godere copies of the *Brady* memorandum and Jebb's 2012 internal investigation report.

On November 2, 2018, after Kos conducted a disciplinary hearing, he notified Godere by letter of his decision to terminate him. Kos wrote:

"The requirement and expectation for police officers to be truthful is the lynch pin of every police officer's credibility and reliability. Based upon your testimony at the October 15, 2018, hearing, as well as reading the exhibits submitted, I agree with the findings of former District Attorney Mastroianni and current District Attorney Galluni that you were untruthful and impeded this [2011-2012] internal affairs investigation."

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<sup>7</sup> Kos's letter inaccurately stated that DA Galluni had reviewed Jebb's 2012 internal investigation report "11-05-IA." Galluni had not told Jebb that he had read that report. That inaccuracy does not alter the analysis or conclusion reached here. As noted above, that report does not contain a determination that Godere had made false statements.

CL faced the same charges as Godere but resigned before there was a disciplinary hearing. The administrative record does not show that officers other than CL and Godere repeatedly lied to Jebb.

*e. Godere's Appeal to the Commission*

Godere appealed his termination to the Commission. After a hearing, on February 13, 2020, the Commission issued its 28-page decision. The Commission found that Godere's conduct violated the CPD rules regarding truthfulness and constituted substantial misconduct which adversely affected the public interest. Godere had not been truthful in his responses to Jebb by repeatedly denying recalling who sent him the photo of the victim or to whom he had sent it.

Nonetheless, the Commission determined that modification of the penalty of termination was warranted because the City had known of Godere's untruthfulness in 2012 and of the *Brady* memorandum in early 2013 but chose not to charge him with that misconduct and instead charged him only with incompetence related to the use of his phone. The Commission found it problematic that the City knew by 2013 of Godere's designation in the *Brady* memorandum but waited to 2018 to discipline him for it, while Godere was unaware of it until late 2017. The Commission explained that the election of a new mayor or the appointment of a new police chief should not result in the reversal of their predecessors' decision not to discipline a permanent, tenured civil service employee, and that the "civil service system was designed to prevent these types of arbitrary decisions."

The Commission listed other ways in which it viewed Godere's termination as unfair: that Godere had not been provided a copy of Jebb's 2012 internal investigation report until years later, and that Godere was treated differently than similarly situated individuals. The significance, or lack thereof, of these two perceptions by the Commission will be discussed in



the legal analysis. For these reasons, the Commission modified Godere's discipline from termination to a demotion from sergeant to police officer without the loss of compensation or other rights.<sup>8</sup>

## 2. Discussion

### *a. Judicial Review of the Commission's Decision*

Any party aggrieved by a decision of the Commission may obtain judicial review in this court, where the proceedings are not de novo. Instead, the court reviews the Commission's decision "conformably with judicial review of administrative agency decisions, i.e., as prescribed in G. L. c. 30A, § 14. The reviewing court is, therefore, bound to accept the findings of fact of the commission's hearing officer, if supported by substantial evidence." *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). The court may not make new factual determinations or different credibility choices. See *id.* at 733. The question on judicial review is whether, on the facts found by the commission, the action of the Commission was legally tenable. *Id.*

An appointing authority cannot discharge an employee without just cause, which "exists where the employee has committed 'substantial misconduct which adversely affects the public interest by impairing the efficacy of the public service.'" *Brookline v. Alston*, 487 Mass. 278, 292 (2021), quoting *Doherty v. Civil Service Comm'n*, 486 Mass. 487, 493 (2020). An appointing authority's decision to discipline must be consistent with basic merit principles, which include assuring fair treatment of all employees. *Brookline*, 487 Mass. at 293.

In reviewing the City's termination of Godere, the Commission was required to determine, by a preponderance of the evidence, whether there was just cause or reasonable

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<sup>8</sup> I read this to mean that Godere will be compensated and receive benefits as a police officer, not as a sergeant, as of November 2, 2018. It would make no sense to interpret the discipline imposed by the Commission as a demotion to one rank and the salary and benefits of another rank, and the Commission has not offered any explanation which might support that reading of its decision.

justification for the termination "in the circumstances found by the commission to have existed when the appointing authority made its decision." See *Leominster*, 58 Mass. App. Ct. at 727; *Falmouth v. Civil Service Comm'n*, 61 Mass. App. Ct. 796, 800 (2004). The Commission's role has been described as reviewing the legitimacy and reasonableness of the appointing authority's action. *Beverly v. Civil Service Comm'n*, 78 Mass. App. Ct. 182, 187 (2010). The Commission makes de novo findings of fact and then must pass judgment on the penalty imposed by the City. See *Falmouth v. Civil Service Comm'n*, 447 Mass. 814, 823 (2006).

The Commission found that Godere committed misconduct, specifically untruthfulness, and that it constituted substantial misconduct which adversely affected the public interest by impairing the efficacy of the public service. That determination is supported by substantial and overwhelming evidence, despite Godere's denials, and constitutes a sufficient basis upon which to find that the City had just cause to terminate Godere. See *Brookline*, 487 Mass. at 292.

The more difficult issue here is whether the Commission was warranted in modifying the discipline imposed by the City from termination to demotion. The Commission may, in some circumstances and only with an adequate explanation, modify the penalty imposed by the City. See G. L. c. 41, § 43; *Police Comm'r of Boston v. Civil Service Comm'n*, 39 Mass. App. Ct. 594, 600 (1996) (vacating decision of commission which failed to explain its modification of the penalty from discharge to 18-month suspension). Where the discipline of a police officer is at issue, unless the commission's findings of fact differ significantly from those reported by the appointing authority, or the commission interprets the relevant law in a substantially different way, the absence of political considerations, favoritism or bias would warrant essentially the same penalty. *Falmouth*, 447 Mass. at 824.

The Commission's power to modify penalties "permits the furtherance of uniformity and the equitable treatment of similarly situated individuals. It must be used to further, and not to frustrate, the purpose of civil service legislation, i.e., 'to protect efficient public employees from partisan political control.'" *Police Comm'r of Boston*, 39 Mass. App. Ct. at 600, quoting *Debnam v. Belmont*, 388 Mass. 632, 635 (1983).

"In making that analysis, the commission must focus on the fundamental purposes of the civil service system--to guard against political considerations, favoritism, and bias in governmental employment decisions . . . and to protect efficient public employees from political control. Where there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission. It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority."

*Cambridge v. Civil Service Comm'n*, 43 Mass. App. Ct. 300, 304 (1997) (citations omitted). See *Boston Police Dept. v. Collins*, 48 Mass. App. Ct. 408, 412-413 (2000) (where commission did not find that discipline was based on bias or tainted by singling out police officer for unusually harsh punishment, and nothing indicated that discipline was anything other than valid exercise of discretion based on merit or policy considerations, commission could not modify discipline).

This case presents a close question. In addition to the well supported conclusion that Godere had been untruthful during the investigation, the administrative record discloses Godere's troubling disciplinary record since June 2011. This includes two incidents of misconduct for which Godere was given five-day suspensions, as cited by Kos in the November 2, 2018, termination letter. These valid concerns over Godere's competency raise red flags about the limits of the authority of the Commission, which cannot "substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." See

*Cambridge*, 43 Mass. App. Ct. at 304.

On the other hand, the Commission's modification of Godere's discipline is also grounded in one of the core reasons for the civil service system: guarding against political considerations. The Commission cited substantial evidence for its conclusion that it was unfair to terminate Godere, six years after his misconduct, and where the discipline followed political changes in the mayor's office and in the CPD leadership. There is substantial support in the administrative record, even if not completely elaborated upon in the Commission's decision, for the Commission's position that Godere's belated discipline for being untruthful was influenced by political considerations.<sup>9</sup> These factors, the unfairness of the delay, and the lack of any explanation for why Godere and CL were not disciplined for untruthfulness in 2012 justify the Commission's decision to reduce Godere's discipline from termination to demotion.<sup>10</sup> See *Police Comm'r of Boston*, 39 Mass. App. Ct. at 600.

Therefore, Godere's severe punishment--termination--could be viewed as grounded in legitimate competency concerns but also as an unfairly delayed decision which was improperly

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<sup>9</sup> The administrative record contains, *inter alia*, a news article published days before the November 2013 mayoral election. According to the article, Kos criticized Bissonnette's handling of the CPD officers' dissemination of the photo and Bissonnette's ignorance, for a considerable period, of the *Brady* memorandum, while Bissonnette tried to defend himself by saying he was considering imposing further punishment on the officers involved. The issue of punishing Godere was a political issue in the mayoral race.

<sup>10</sup> That conclusion is not altered by the fact that other reasons cited for the Commission's penalty reduction are not supported by substantial evidence. One is the Commission's view that "As [Godere] was not charged with untruthfulness, and was not provided with a copy of *Jebb's internal affairs report*, Sgt. Godere had no ability to refute the charge at that time." (Emphasis added). That Godere did not obtain a copy of *Jebb's internal investigation report* in 2012 is irrelevant. That report does not contain an accusation that Godere was untruthful, contrary to the *Brady* memorandum reference to the report and that it includes "a determination that false statements were made by certain officers during the investigation." Because the report would not have enabled Godere to refute a charge of being untruthful, there is no factual support for the Commission's view that Godere's belated receipt of it unfairly hindered his ability to refute dishonesty accusations at any point.

Also without evidentiary support is the Commission's conclusion that Godere had been treated differently than similarly situated individuals, MC and TD. Consistent with Mastroianni's *Brady* memorandum dated January 10, 2013, and his letter to Bissonnette on October 4, 2012, only Godere and CL *repeatedly* gave untruthful responses to *Jebb* during the internal investigation. The only person who was similarly situated to Godere was CL, who resigned before he could be disciplined by Kos. See *Falmouth*, 447 Mass. at 824.

influenced by political considerations. Because the evidence supports two conflicting views, I am constrained to defer to the Commission's determination. See *Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 526, 529 (1988) (court may not displace agency's choice between two fairly conflicting views, even though court would justifiably have made different choice had matter been before it de novo). Accordingly, the Commission's decision to demote rather than terminate Godere cannot be disturbed.

*b. Industrial Double Jeopardy Doctrine*

Godere challenges the Commission's decision insofar as it imposes any discipline on him. He contends that his demotion constitutes a second penalty for the same conduct for which he was already disciplined when he received the reprimand letter in 2012, and that such a second penalty would violate the industrial double jeopardy rule. See *Springfield v. United Public Service Employees Union*, 89 Mass. App. Ct. 255, 260-261 (2016). The doctrine of industrial double jeopardy "enshrines the idea that an employee should not be penalized twice for the same infraction." See *Zayas v. Bacardi Corp.*, 524 F.3d 65, 68-69 (1st Cir. 2008), citing 1 Tim Bornstein et al., *Labor & Employment Arbitration* Section 15.01 (2d ed. 1997).

Godere's argument fails. As an initial matter, industrial double jeopardy has only been applied in Massachusetts published case law once, and that was in the arbitration context. See *Springfield*, 89 Mass. App. Ct. at 260-261 (city's authority to discipline employee was limited by arbitration award, such that additional suspension, loss of pay, or loss of other employment rights based on same incident would violate industrial double jeopardy provisions). It has dubious applicability here, absent arbitration proceedings.

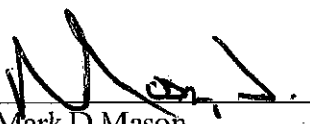
Nor has Godere otherwise shown that industrial double jeopardy bars his demotion, which does not constitute a second punishment for the same misconduct. His 2012 reprimand

letter was for incompetence, due to using his cell phone for non-official activities on August 27, 2011. In 2013, Bissonnette and Charette considered punishing Godere for his untruthfulness in connection with the internal investigation, but did not do so. He cannot complain that he is being punished twice for the same misconduct.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that:

- (1) the Civil Service Commission's decision is **AFFIRMED**;
- (2) the Plaintiff Jeffrey Godere's Motion for Judgment on the Pleadings is **DENIED**; and
- (3) the Defendant City of Chicopee's Cross-Motion for Judgment on the Pleadings is **DENIED**.

  
Mark D Mason  
Justice of the Superior Court

**Dated:** September 22, 2021