

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503

Boston, MA 02108

(617) 727 – 2293

GARY GRESH,
Appellant

Docket No.: D-10-265

v.

CITY OF HOLYOKE,
Respondent

Appellant's Attorney:

Michael Clancy, Esq.
International Brotherhood of Police Officers
1299 Page Boulevard
Springfield, MA 01104

Respondent's Attorney:

Lisa A. Ball, Esq.
City of Holyoke
536 Dwight Street
Holyoke, MA 01040

Hearing Officer:

Angela C. McConney, Esq.

DECISION

The Appellant, Gary Gresh (hereinafter "Appellant"), pursuant to G.L. c.31 § 43, filed an appeal with the Civil Service Commission, (hereinafter "Commission"), claiming the City of Holyoke (hereinafter "Appointing Authority" or "City") did not have just cause to suspend him for one (1) day from the Holyoke Police Department ("Department") for insubordination and

conduct unbecoming of a police officer in violation of the rules, regulations, and standing operating procedures of the Department.

A hearing was held on December 8, 2010 at the State Building in Springfield, Massachusetts. Since neither party requested a public hearing, the hearing was declared private. The witnesses were sequestered. The hearing was digitally recorded. Copies of the hearing were forwarded to the parties, and a copy is retained by the Commission.

The Respondent submitted a proposed decision on January 11, 2011. The Appellant submitted a proposed decision on January 28, 2011.

FINDINGS OF FACT

Two (2) Appointing Authority Exhibits and one (1) Joint Exhibit were entered into evidence at the hearing. Based on these exhibits and the testimony of:

For the Appointing Authority:

- Lieutenant Manuel Febo, Holyoke Police Department
- Sergeant Isaias Cruz, Holyoke Police Department
- Sergeant David O'Connell, Holyoke Police Department

For the Appellant:

- Dispatcher Scott Burns, Holyoke Police Department
- Appellant, Officer Gary Gresh, Holyoke Police Department

I make the following findings of fact:

1. The Appellant Gary Gresh, a tenured civil service employee, has been employed by the City as a police officer since April 28, 1986. (Testimony of Appellant, Exhibit 3)

2. During his career, he attended numerous trainings including a two (2) week training in narcotics by the Drug Enforcement Agency, and a two (2) week training in helicopter aerial surveillance given by the federal government and the military. (Testimony of Appellant)
3. From 1994-1994, he served as a patrolman in the Department's Community Policing Program. From 1995-2002, he worked as a patrolman in the Narcotics Bureau. He also worked in Detective Bureau conducting criminal investigations. (Testimony of Appellant)
4. He has had no disciplinary history in his long career. (Testimony of Appellant)
5. The Appellant's regularly scheduled shift is the day shift, which runs from 8:00 am to 4:00 pm. (Testimony of Appellant)
6. The day shift is usually staffed by the "old timers", or police officers with greater seniority. (Testimony of Appellant)
7. At the time of the June 24, 2010 incident, Lieutenant Manuel Febo (hereinafter "Febo") had been Assistant Watch Commander of the day shift for only three (3) weeks. Febo had been a police officer for fifteen (15) years and a lieutenant for two (2) years. (Testimony of Febo)
8. Febo's duties included supervising the Supervising Sergeant who in turn supervised the patrolmen in the Operations Bureau. It was his responsibility to direct personnel, making sure that the day to day operations ran smoothly. He was in charge of making assignments, which were fluid depending on how the city was doing, and could change from day to day. Assignments, orders, and schedules are created and delegated at the sole discretion of superior officers. (Testimony of Febo)
9. The assignments for the day shift covered assigning patrolmen to a six cruisers, one of which served as a two man vehicle; and a "houseman" position to serve as booking officer and to serve prisoner watch. (Testimony of Febo)

10. Febo alternated his duties with Lieutenant Michael Higgins (hereinafter “Higgins”) on two day shifts. When Febo was on duty, it was his responsibility to make the roster for the following day, similarly with Higgins. Neither Higgins nor Febo would change the other’s roster assignments. (Testimony of Febo)
11. The roster assignments were usually posted by the beginning of the day shift for the following day. (Testimony of Appellant)
12. Although he stated that he had no issues with Febo, the Appellant testified that when he tried to offer him advice on how to run the day shift, Febo took offense. (Testimony of Appellant)
13. The Appellant told Febo that he had always been assigned to cars 3 and 5, but now he was being assigned to other vehicles. He advised Febo to be careful “flexing his muscles” and making “enemies”. He further advised him not to shake things up and cause problems for himself. Febo replied that he didn’t believe in seniority or permanent assignments. He got upset, told the Appellant that the conversation was over, and walked off. (Testimony of Appellant)
14. On June 23, 2010, the Appellant checked for the next day’s assignment at the beginning of his shift. It was not yet up. At 3:15 pm when he checked again, it still was not posted. It was up when he checked again at 3:30 pm. (Testimony of Appellant)
15. He learned that he was assigned to foot patrol in the two block area from Elm/Appleton Streets to Walnut/Essex Streets. This area was less than three (3) blocks away from the police station. (Testimony of Appellant)
16. That area was a hot spot, there had been shooting in that vicinity less than three (3) days before. (Testimony of Appellant)

17. The Appellant was assigned to this post along with Officer James Bartolomei (hereinafter “Bartolomei”) and Officer Emil Morales (hereinafter “Morales”). (Testimony of Appellant)
18. Both Bartolomei and Morales had had issues with Febo since he had started supervising them on the day shift. (Testimony of Appellant)
19. Sgt. Isaias Cruz (hereinafter “Cruz”) has been a police officer for fifteen (15) years, and a sergeant for nine (9) years. He is in charge of the street patrolmen. (Testimony of Cruz)
20. On June 24, 2010, the Appellant appeared as scheduled at the day shift roll call. (Testimony of Appellant)
21. It was very hot day, with temperatures running in the mid-nineties. (Testimony of Appellant)
22. Cruz read out the assignments for the day. When he came to the Appellant’s name, he said, “Here’s the spanking detail.” The other patrolmen in the room chuckled and made comments. When the patrolmen were dismissed, the Appellant headed out with Bartolomei and Morales to their assignment. (Testimony of Appellant)
23. When they got downstairs, Morales went to check on a report in the report room, and Bartolomei also went to check on police business. (Testimony of Appellant)
24. The Appellant got the keys to the cruiser, his gear bag and hat and went out to the vehicle. He started the engine to get the air conditioning running, and waited for Bartolomei and Morales. (Testimony of Appellant)
25. While the Appellant was in the vehicle, dispatch called over the radio looking for one of the three officers assigned to the foot patrol. When no one else responded, the Appellant responded via the radio, stating that he was still on the precinct premises. Dispatch requested that he report back to the Commanding Officer’s office for further instructions. (Testimony of Appellant)

26. When the Appellant entered the Commanding Officer's office, Sgt David O'Connell (hereinafter "O'Connell") and Cruz were present, sitting behind their desks. (Testimony of Appellant, Testimony of O'Connell, Testimony of Cruz; Exhibit 2)
27. The Appellant said, "What's up?" O'Connell flipped a piece of paper at the Appellant. It was an email from Febo, containing additional instructions for the foot patrol assignment. (Testimony of Appellant, Testimony of O'Connell, Testimony of Cruz; Exhibit 2)
28. The email stated that the cruiser should not be used except for lunch and bathroom breaks. It also instructed O'Connell to use his discretion to move the foot patrol officers out of the area if shots were fired at the officers. (Testimony of Appellant, Testimony of O'Connell, Testimony of Cruz)
29. The Appellant testified that he thought that it was a fake order, that the email was a joke and said so. O'Connell said that the email was real. (Testimony of Appellant)
30. The Appellant then got frustrated and said loudly words to the effect: You mean if there's shots fired we have to call you and ask if we can move? Why give us a car if the beat is three blocks away? There's heat advisory out there. There's a health advisory out there. It is too hot for me to wear my protective vest out there. I will walk for only an hour or so and be back to the Watch Commander's office with a "sick slip" by 9 am. I just finished taking meds two days ago. I have been seeing a doctor for my allergies for over three (3) weeks. I feel like shit. I can't walk this beat for eight (8) hours. I'll take half a v[acation] day or half a sick day. This assignment is bullshit, no one around here has any balls to say anything about it, supervisors around here have no balls, balloon head Higgins has no balls. (Exhibits 1 and 2; and Testimony of Appellant, Testimony of O'Connell)

31. The Appellant's remarks lasted from approximately a minute and a half (1 ½) to two (2) minutes. (Testimony of Appellant, Testimony of O'Connell)
32. The Appellant then said that the criminal activity in that area should be handled as it had been in the past when he was a member of the Narcotics Bureau. He said that back then there had been a more tactical approach, working in conjunction with other law enforcement agencies. (Exhibits 1 and 2; Testimony of Appellant, Testimony of O'Connell)
33. O'Connell said, "Do what you have to do, but an order's an order. If you need to, sit in the cruiser with the AC on, no one's checking on you guys." (Testimony of Appellant, Testimony of O'Connell)
34. In his testimony before the Commission, the Appellant stated that there is a McDonalds restaurant three (3) blocks away from the beat assignment, in addition to variety stores less than two (2) blocks away if the need for a bathroom break arose. He testified that he couldn't understand why a cruiser had been assigned to a foot patrol less than three (3) blocks away from the station. (Testimony of Appellant)
35. As he was leaving the Commanding Officers office, the Appellant said to Cruz, "If you want this to get back to Febo, be my guest. You are his pipeline." The Appellant testified that it was well known in the station that Febo had superior officers who reported everything back to him, and that Cruz was one of them. (Testimony of Appellant)
36. Cruz got out of his chair, and approached the Appellant. When he was about four (4) inches from his face, he yelled, "If you have a problem with that fucking nut, take it up with that fucking nut! Don't jerk me around! Get the fuck out of this office!" (Testimony of Appellant)
- "Don't speak to a sergeant like this!" (Testimony of Burns, Testimony of Cruz)
37. The Appellant replied, "Yes, sergeant." (Testimony of Appellant)

38. Cruz followed him to the door. He yelled, “Get the fuck out of here, and stay the fuck out of here! Stay out of the building for the rest of the day!” (Testimony of Appellant)
39. The Appellant replied, “Are you done, sergeant?” (Testimony of Appellant)
40. Cruz replied, “I’m all done.” (Testimony of Appellant)
41. Cruz testified that he was upset because of the tone of the Appellant’s voice and because the Appellant had pointed at him. He said that he had never yelled at a patrolman before. He said that the Appellant’s behavior was insubordinate and made him feel disrespected. He testified that he had never had a problem with the Appellant before. (Testimony of Cruz)
42. Scott Burns (hereinafter “Burns”) has been a dispatcher at the Department since January 2000. He works the 7 am to 3 pm shift in the Communications Center. (Testimony of Burns)
43. His office is separated by a door from the Commanding Officer’s office. (Testimony of Burns)
44. During the exchange, he saw Cruz standing and pointing at the Appellant, yelling, “Get the fuck out! You don’t speak to a sergeant like this!” He did not hear any of the remarks made by the Appellant. (Testimony of Burns)
45. Although the exchange between the Appellant and Cruz took place in his presence, O’Connell said that he did not take any measures to pursue discipline against the Appellant. (Testimony of O’Connell)
46. O’Connell was aware that the Appellant had never been disciplined. (Testimony of O’Connell)
47. Cruz did not take any measures to pursue discipline against the Appellant. (Testimony of Cruz)
48. The Appellant worked his entire shift. (Testimony of Appellant, Testimony of Cruz)

49. Febo was out of the office on June 24, 2010. He first heard about the incident when he returned to the station on June 27, 2010. (Testimony of Febo; Exhibit 2)
50. Febo asked O'Connell to submit a "To/From" memorandum documenting what he had observed. O'Connell submitted the memorandum on June 30, 2010. (Exhibit 1; Testimony of Febo, Testimony of O'Connell)
51. Febo then conducted an investigation and made a recommendation to the chief. (Testimony of Febo)
52. On July 26, 2010, Police Chief Anthony R. Scott notified the Appellant that he was being suspended without pay for two (2) working days for violating the following rules, regulations, and standing operating procedures of the HPD, and for violating the following portion of the collective bargaining agreement between the Respondent and Local 388:

1. **Rule 1 Authority, paragraph 1.2 OBEDIENCE TO ORDERS, which states,**
Members of the Department shall promptly obey any lawful order emanating from any superior officer. Should any such order conflict with a previous order from any other superior officer, with any General or Special Order, or any provision of the Rules, the member to whom such order is given shall respectfully call attention to such conflict, his order shall stand and the responsibility shall be his, and the person obeying the same shall not be held in any way responsible for disobedience of any orders theretofore issued. If any unlawful order is given to any member of the department, such member shall promptly report such fact in writing to the Chief of Police. (old #1.5)
2. **Rule 1 Authority, paragraph 1.3 OBEDIENCE TO ORDERS, which states,**
No member of the Department shall willfully disobey any lawful command of any commissioned officer, non-commissioned officer, or member of the Department senior to him. (old #1.50)
3. **Rule 1 Authority, paragraph 1.4 COMPLIANCE TO ORDERS, which states,**
Officers shall promptly obey any lawful orders of a superior officer. This will include orders relayed from a superior officer by an officer of the same or lesser rank. (old #1.18)
4. **Rule 1.6.0. Definitions, Orders:** Commands or instructions, oral or written, given by one member to a member of lesser rank or to a civilian member of the department.
5. **Rule 1.6.0. Definitions, Supervisor:** Any ranking officer (sergeant, lieutenant or captain) above the classification of police officer or a civilian placed in a supervisory position over other civilian employees of the department. In the case of a civilian placed in a

supervisory role by the Chief of Police, they can only be referred to as a supervisor not a commander or commanding officer.

6. **Rule 3 Conduct and Responsibility, paragraph 3.2 UNBECOMING CONDUCT, which states,** Officers shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably upon the Department. Conduct unbecoming an officer shall include that which brings the Department into disrepute or reflects discredit upon the officer as a member of the Department, or that which impairs the operation or efficiency of the Department or officer. (old #1.6)
7. **Rule 3 Conduct and Responsibility, paragraph 3.14 CONDUCT TOWARDS MEMBER, which states,** No member of the Department shall, on any pretense whatsoever, strike his superior officer or non-commissioned officer, or any other member of the Department, or draw or lift up any weapon or offer any violence against him whatsoever. (old #1.48)
 - (a) No member of the Department shall attempt or threaten to strike or assault any commissioned officer, non-commissioned officer, or any other member of the Department. (old #1.49)
 - (b) No member of the Department shall use threatening or insulting language, or behave in an insubordinate or disrespectful manner toward any commissioned officer, non-commissioned officer, or any member of the Department senior to him. (old #1.51)
8. **Rule 4 Performance of Duty, paragraph 4.1 PERFORMANCE OF DUTIES AND RESPONSIBILITY, which states,** Members of the Department shall be held responsible for their proper performance of the duties assigned them, and for the strict adherence on their part to the Rules adopted from time to time for the government of the department; and it shall not be received as an excuse or justification for anything that they may omit to do, that they followed the advice or suggestion of any other person, whether that person be connected with the department or not, except when an officer of higher rank may take upon himself the responsibility of issuing direct and positive orders. (old #1.4)
9. **Rule 4 Performance of Duty, paragraph 4.2 COMPETENCY IN PERFORMANCE OF DUTY, which states,** Officers shall maintain sufficient competency to properly perform their duties and assume the responsibilities of their positions. Officers shall perform their duties in a manner which will maintain the highest standard of efficiency in carrying out the functions and objectives of the department. Unsatisfactory performance may be demonstrated by a lack of reasonable knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; the failure to take reasonable action on the occasion of a crime, disorder or other condition deserving police attention; or absence without leave. In addition to other indications of unsatisfactory performance, the following will be considered prima facie evidence of unsatisfactory performance: repeated poor evaluations or a written record of repeated infractions of rules, regulations, directives or orders of the department. (old #1.13)
10. **Rule 4 Performance of Duty, paragraph 4.6 PERFORMANCE OF DUTIES/COMPETENT AUTHORITY, which states,** Notwithstanding the assignment of specific duties and responsibilities to members of the Department by the provisions of the Rules of the Department, all members shall perform all such other duties as may be required by them by competent authority. (old #1.41)

11. **Rule 4 Performance of Duty, paragraph 4.16 DUTY AND ASSIGNMENTS in rule 2.0, which states,** Members upon assignment to a beat, post or zone, shall proceed without delay to the assigned beat, post or zone, via the most direct route, unless prevented by a superior, an emergency, or the handling of a police matter. He shall confine his patrol within the limits of his beat except in case of fire, arrest of prisoner or other necessary absence on duty, until the time assigned for the expiration of his tour of duty. In case a patrolman is obliged to leave his beat, he will, if practicable, notify the station when he leaves and when he returns. Patrolmen are not to refuse to give their assistance for the protection of persons and property near their own beats if called for in any case requiring immediate attention, but they are to return as soon as possible to their own beats. Patrolmen must not walk together, nor talk with each other or with any other persons, on their beats while on duty, unless to communicate information pertaining to the Department or in the line of their duty, and such communication must be as brief as possible. They must not remain in one spot but constantly patrol their beats. (old #1.89)
12. **Rule 5 Restricted Activities, paragraph 5.10 CRITICISM OF DEPARTMENT, which states,** Officers shall not, except on matters of public concern, publicly criticize or ridicule the Department, its policies, or other officers by speech, writing or other expression, where such speech, writing, or other expression is defamatory, obscene, unlawful, is intended to undermine the effectiveness of the Department, is insubordination, or is made with reckless disregard for truth or falsity. (old #1.24).
13. **ARTICLE TWO, UNION RECOGNITION, PARAGRAPH 2.5**
Except as expressly abridged by the terms and provisions of this Agreement, the Union and the employees agree that the responsibility and the right to operate and manage the business and the affairs of the Department, the right to select and direct the working forces in accordance with the agreements contained below regarding the use of Reserves, Auxiliaries and the apprentice program, and the right to control and direct the use of its properties and facilities are vested exclusively in the City. These rights include without being limited to, the right to control, determine and change the extent to which the properties and facilities under the control or supervision of the City shall be operated, located, increased, decreased or discontinued and to introduce, change, discontinue and operate new or improved facilities, methods, techniques and process and the Union shall be so informed within a reasonable time; to control, determine and change operating, overtime, emergency, experimental, training and working assignments and schedules, provided however, that the overtime compensation presently provided shall not be eliminated; to determine, control and change all matters pertaining to financial policies, accounting procedures, public relations and the organization of the management staff and the working forces. To select, test, train, and determine the ability and the qualifications of the employees; to determine, control, establish, discontinue and change the extent of and the methods, procedures, programs or tactics used in furnishing services to the citizens of the City of Holyoke; to employ, promote, discipline and to discharge for just cause * as this term is used in Chapter 31 of the Civil Service Law, layoff, transfer and retire the employees and to determine and make changes in job standards, frequency and standards of inspection and the size of the work force; to, during the working hours and on the premises under the control of supervision of the City, limit Union activities, the distribution of literature and solicitation for money or the purposes; to establish, distribute, modify and enforce rules of employee conduct and manuals of operating procedures and safety procedures and to control, determine, direct and change facilities and services on the premises under the control or supervision of the City for the use or benefit of the employees; to determine, control and change standards for leave of absence and to determine, establish and change any form of employee benefits in excess of and in addition to those provided in this Agreement; to

determine, change and discontinue operating practices; to maintain discipline and order and to maintain or improve efficiency within its operations and facilities and all other rights pertaining to the operation and management of the business and affairs of the Department. The failure by the City to exercise any of the rights as provided in this Agreement shall not be construed to constitute a waiver of or any restriction upon the inherent and legal rights of the City to control, direct, manage and make changes in the operations and the affairs of the Department, except as specifically provided in this Agreement. The exercise by the City or by the Chief of the rights as provided in this Paragraph shall not be subject to the grievance procedure or to arbitration as provided in this Agreement unless such exercise is contrary to one or more specific provisions of this Agreement. It is further understood that the employee has the right to expect: 1. Reasonably safe and healthy working conditions, 2. Fair treatment 3. Fair promotion as controlled by civil service law, 4. To be treated as people of dignity and substantial worth.

*(2.5) THE CITY AND UNION AGREES THAT JUST CAUSE SHALL BE DEFINED AS CURRENTLY LISTED IN CIVIL SERVICE LAW, ARBITRATION DECISIONS AND LABOR RELATION DECISIONS.

(Exhibit 2)

53. The Appellant served his suspension on August 3, 2010, and August 4, 2010. (Exhibit 2)

54. Mayor Elaine A. Pluta conducted a hearing on September 24, 2010. Based upon the

Appellant's lack of disciplinary history, she reduced the Appellant's suspension to one (1) day. (Exhibit 3)

CONCLUSION

The role of the Civil Service Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304 (1997). See Watertown v. Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civil Serv. Comm'n, 38 Mass. App. Ct. 473, 477 (1995); Police Dep't of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is "justified" when it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Id. at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928);

Commissioner of Civ. Serv. v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971).

The Commission determines justification for discipline by inquiring "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983); School Comm. of Brockton v. Civil Serv. Comm'n, 43 Mass. App. Ct. 486, 488 (1997).

The Appointing Authority's burden of proof is one of a preponderance of the evidence which is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G. L. c. 31, § 43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an Appellant, the Commission shall affirm the action of the Appointing Authority. Falmouth v. Civil Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004).

The issue before the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." Watertown v. Arria at 334. See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton at 727-728.

An Appointing Authority's reasonable justification for discipline must be supported by adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law. See Leominster v. Stratton at 728.

It is undisputed that the Appellant was upset that he was assigned to a foot patrol on a particularly warm day. Superior officers have great latitude when making assignments, but there was an indication of handing out a penalty when the announcement was made at roll call. In fact, Cruz referred to the assignment, drawn up by Febo, as the "Spanking Order." Bartolomei and Morales had already had run ins with Febo. I believe the Appellant when he stated that others in the room laughed when the assignment was read out.

Unfortunately, the Appellant's reaction was the wrong one. I believe that he raised his voice when he was in the Commanding Officer's office in order to express his displeasure. I do not believe that the Appellant intimidated anyone, or that that was ever his intention. However, he could have expressed his discontent in another way. It is unfortunate that with almost twenty-five (25) years on the Department, the Appellant allowed the unprofessional behavior of his superiors during the roll call and thereafter to needle him, and thereby lead to this suspension. As a matter of fact, the Mayor reduced the original two (2) day suspension to (1) one day because of his previously unblemished disciplinary record.

However, I find that there was disparate treatment in the Department's discipline of Officer Gresh. Cruz exhibited the same type of behavior as the Appellant, but was not subject to discipline.

Although the Appellant went out to his assignment, the "Spanking Order", the superior officers were not done with him. He was called back into the office and showed Febo's email, which ordered among other things that in the event of gunfire, he had to await O'Connell's orders before leaving the area. The Appellant reacted wrongly, but Cruz' outburst was even worse. His profanity laced comments directed at the Appellant and his remarks about Febo, his

superior officer, constituted more egregious conduct than that of the Appellant. I cannot comprehend why the Appellant was disciplined, but Cruz was not.

In light of the Department's disparate treatment of Cruz and the Appellant, I find that the Appointing Authority has not demonstrated by a preponderance of the evidence that there was reasonable justification for the Appellant's suspension.

WHEREFOR, the Appellant's appeal filed under Docket No. D-10-265 is *allowed*.

Civil Service Commission

Angela C. McConney, Esq.
General Counsel

By a vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein, Commissioners) on May 5, 2011.

A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice sent to:

Michael P. Clancy (*for Appellant*)

Lisa A. Ball, Esq. and Adam Pudelko, Esq. (*for Appointing Authority*)

