

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street; Suite 200

Boston, MA 02114

(617) 979-1900

DEVANTE INFANTINO,

Appellant

v.

CITY OF FITCHBURG,

Respondent

Docket Number:

D-24-020

Appearance for Appellant:

DeVante Infantino, *Pro se*

Appearance for Respondent:

Eric T. McKenna, Esq.
Valerio Dominello & Hillman, LLC
One University Avenue, Suite 300B
Westwood, MA 02090

Commissioner:

Angela C. McConney¹

SUMMARY OF DECISION

The Commission denied the Appellant's appeal, finding that the City had just cause to issue the 5-day suspension. The Appellant, a heavy equipment operator, engaged in unsafe work-place behaviors, misconduct and was insubordinate to his supervisor.

DECISION

The Appellant, DeVante Infantino (Appellant or Mr. Infantino), acting pursuant to G.L. c. 31, §§ 41 and 43, timely appealed to the Civil Service Commission (Commission) contesting the February 9, 2024 decision of the City of Fitchburg (City) to impose a five-day unpaid suspension from his service as a Heavy Equipment Operator (HEO) in the City's Department of Public

¹ The Commission acknowledges the assistance of intern Gretchen Wang with the preparation of this decision.

Works (DPW).

The City issued a Notice of Intent to Suspend on January 19, 2024, conducted a Section 41 hearing upon the Appellant's request on January 31, 2024, and issued a decision on February 9, 2024. Mr. Infantino filed his appeal to the Commission on February 13, 2024.

The Commission held a pre-hearing conference on February 20, 2024 via videoconference. On July 17, 2024, I conducted an in-person full evidentiary hearing at the offices of the Commission, located at 100 Cambridge Street, Boston, MA.²

I recorded both days of hearing via the Webex platform, and a copy of the recording was provided to both parties.³ The parties submitted post-hearing briefs on August 23, 2024.

On September 3, 2024, the Appellant filed a Motion to Dismiss and two video clips of the July 17, 2024 evidentiary hearing. The Appellant moved that the appeal be dismissed due to the alleged perjury of a Respondent witness. The Respondent filed a response thereto on September 10, 2024.⁴ I hereby deny the motion, I have reviewed that witness's testimony and give it the weight it deserves. I did not accept the video clips of the two witnesses' contradictory testimony into evidence, as they are already part of the Commission's official recording of the hearing.

² The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. § 1.01 (formal rules), apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

⁴ The Respondent noted that the Appellant based his motion on G.L. c. 268, § 1, whereas the grounds for a Motion to Dismiss or a Motion for Summary Judgment are set forth in G.L. c. 31, §§ 1.01(7)(g)(1), (7)(h).

FINDINGS OF FACT

I admitted eleven exhibits from the Respondent (R. Exhibits 1-11). I admitted three of the Appellant's proffered six exhibits (A. Exhibits 1, 5-6). I accepted the Appellant's proffered "Overtime, Part 2" as A. Exhibit 7. I submitted the Appellant's appeal form as A. Exhibit 8.

Based on the documents submitted and the testimony of the following witnesses:

Called by the City:

- Craig Leger, former General Foreman of DPW
- Jeffrey Hillman, Superintendent of DPW
- James Bunnell, Director of Parks and Recreation, DPW
- Nicholas Erickson, Commissioner of DPW

Called by the Appellant:

- DeVante Infantino, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. Dante Infantino has been employed by the City of Fitchburg's Department of Public Works (DPW) as a Heavy Equipment Operator (HEO) since January 27, 2023, and was previously employed as a Light Equipment Operator (LEO) from September 27, 2021 to January 27, 2023. (Stipulated Facts)
2. Mr. Infantino had no disciplinary history. (Stipulated Facts)
3. The Collective Bargaining Agreement (CBA) is an agreement between the City and its Teamsters / Local 170 union that governs the policies and rights of DPW workers employed by the City. (R. Exhibit 2)
4. The CBA Telephone Usage Policy provides:

[t]he use of cellular telephones should never interfere with an employee's attention to duty, and should never be used when engaged in safety-sensitive functions which require the employee's full attention.

(Appendix B: Telephone Usage Policy of Collective Bargaining Agreement between the City of Fitchburg and Teamsters/Local 170)
(R. Exhibit 2)

5. Mr. Infantino had received by multiple verbal warnings from supervisors regarding his cell phone usage and failure to wear his appropriate reflective safety "HiViz" clothing during work hours. (R. Exhibit 8; Testimony of Leger, Testimony of Erickson)

October 11, 2023 Incident – Phone Usage

6. On October 11, 2023, Mr. Infantino was loading up a front end loader dump truck at the Caldwell Street Pit (Caldwell Pit) with material for transport to a recycling plant in Leominster. (Testimony of Leger, Testimony of Appellant)

7. While loading his truck, Mr. Infantino uncovered a rock that prevented him from loading his truck smoothly. (Testimony of Leger, Testimony of Appellant)

8. Craig Leger, a general foreman and Mr. Infantino's supervisor at the time, saw that Mr. Infantino was having difficulties and told him to dump out his truck. (Testimony of Leger)

9. As Mr. Infantino exited the truck, Mr. Leger noticed that he was holding his cell phone in his hand. (Testimony of Leger)

10. Mr. Leger called Mr. Infantino over and informed him that he should not be using his phone while in the loader truck. Mr. Leger often counseled other employees regarding phone usage as it is a frequent issue. (Testimony of Leger)

11. Mr. Infantino then asked to go home. Mr. Leger allowed the request. (Testimony of Leger)

12. As Mr. Infantino left, Mr. Leger called him over again and asked him what he was doing, pointing out that Mr. Infantino had been on his phone during break, while waiting to load, and had had his phone out while in the loader. (R. Exhibit 7; Testimony of Leger)

13. Mr. Infantino denied being on his phone and claimed that he had just taken it out of his pocket. Mr. Leger did not believe him and told him to be honest. (R. Exhibit 7; Testimony of Leger)

14. This was not the first time that Mr. Leger had spoken to Mr. Infantino about his cell phone use while working. (Testimony of Leger)

15. Mr. Infantino later claimed that he had taken his phone out of his pocket when getting into the vehicle to lay on the dashboard for comfort while sitting; that he had received a text, looked at the text, and sent a reply while sitting in a running loader. Mr. Infantino further said that he had his phone out because there was an emergency, and that anyone contacting him during work hours would only do so if there were an emergency, so Mr. Leger should have known the urgent circumstances. He did not specify the nature of the emergency. (R. Exhibit 5; Testimony of Leger, Testimony of Appellant)

16. Mr. Infantino then showed Mr. Leger an unrecognizable woman's name on his phone, and mentioned something about discrimination. (Testimony of Leger)

17. Mr. Leger asked Mr. Infantino if he thought he was racist. Mr. Infantino said no, but that, "It's your way or you think it's wrong." (R. Exhibit 7; Testimony of Leger)

18. Mr. Infantino expressed unhappiness at an incident from the previous day (October 10, 2023) when Mr. Leger had called him into the office. Mr. Leger explained that he had done so because Jeff Leger, another employee, and Superintendent Jeff Hillman had come to him that day with an incident that involved Mr. Infantino and his vehicle. (R. Exhibit 7)

19. On October 10, 2023, Mr. Infantino had left Caldwell Pit, but called Mr. Leger soon after and said he wished to meet with Mr. Hillman and Commissioner Nicholas Erickson. Accordingly, Mr. Leger called Mr. Hillman and asked him to call Mr. Infantino to set up a meeting. (R. Exhibit 7; Testimony of Leger)

20. Mr. Infantino then returned to Caldwell Pit, stating that he would not leave until he had a meeting with Mr. Hillman and Mr. Erickson. Mr. Leger stated that if Mr. Infantino should work if he were going to stay. Mr. Infantino loaded his truck and left. (Testimony of Leger)

October 11, 2023 Incident – Confrontation on Street

21. All members of the streets division report to Mr. Hillman in his capacity as the Superintendent of the Streets in the DPW. Mr. Hillman reports to the DPW's Commissioner Nicholas Erickson. (Testimony of Hillman)

22. As Commissioner, Mr. Erickson is responsible for the management and oversight of all DPW divisions, including discipline of employees. (Testimony of Erickson)

23. On the morning of October 11, 2023, Mr. Hillman was marking a location for a sign installment when Mr. Infantino called him after the commissioner did not return his texts. (R. Exhibit 8; Testimony of Hillman)

24. Seven minutes later, Mr. Leger called Mr. Hillman and let him know that Mr. Infantino wanted to meet him, and that he was unhappy because he thought he was being discriminated against. (R. Exhibit 8; Testimony of Hillman)

25. After completing his current work task, Mr. Hillman contacted Mr. Infantino, explained that he was in a meeting but could meet at 11 a.m. or 1 p.m. (Testimony of Hillman)

26. Mr. Hillman began traveling to Caldwell Pit, while having an already scheduled

work phone call with James Bushnell during the drive. Mr. Hillman used his Bluetooth to speak with Mr. Bushnell as he drove. (Testimony of Hillman)

27. James Bunnell is the DPW Director of Parks and Recreation. He often meets with Mr. Hillman to coordinate collaborative efforts on each division's projects. (Testimony of Bunnell)

28. At the T intersection of West Street, Main Street, and Sheldon Street, Mr. Hillman encountered Mr. Infantino driving a dump truck. Upon seeing Mr. Hillman, Mr. Infantino stopped his truck in the middle of the intersection and got out, stood right outside Mr. Hillman's car window and demanded to know why Mr. Hillman could not meet with him sooner. Mr. Infantino spoke in a loud aggressive and agitated voice. (Testimony of Hillman)

29. Mr. Hillman explained that he was in the middle of the street and in a meeting so he would not be able to meet right now. He repeated his offer to meet at 11 a.m. or 1 p.m. (Testimony of Hillman)

30. Because of Mr. Hillman's Bluetooth connection and Mr. Infantino's raised voice, Mr. Bunnell was able to hear everything Mr. Infantino said clearly through the phone connection. (Testimony of Bunnell)

31. Mr. Infantino refused to leave the intersection, continuing to demand that Mr. Hillman meet with him right then and there. Mr. Bunnell heard Mr. Infantino threaten "repercussions" if Mr. Hillman did not meet with him. (Testimony of Hillman)

32. Mr. Hillman noticed that Mr. Infantino's truck was causing a backup of vehicles in the street. Mr. Hillman informed Mr. Infantino that he did not have time for this confrontation and drove onto another street so that other vehicles may pass. (Testimony of Hillman)

33. During the confrontation, Mr. Hillman noticed that Mr. Infantino was not wearing

his reflective “HiViz” safety vest, which he was required to wear during work hours pursuant to the CBA. by the City and union’s Collective Bargaining Agreement. (R. Exhibit 2; Testimony of Mr. Hillman)

34. The CBA provides:

All Union members are required and shall not refuse to wear safety equipment supplied to them or as determined necessary by the Commissioner of Public Works, Deputy Commissioner, Manager and/or immediate Supervisor.

(Article 22 of Collective Bargaining Agreement between the City of Fitchburg and Teamsters/Local 170)
(R. Exhibit 2)

35. After the encounter, Mr. Bunnell advised Mr. Hillman to contact Commissioner Erickson and Human Resources (HR) Director Susan Davis about the confrontation. (Testimony of Bunnell)

36. After the call ended, Mr. Bunnell called Mr. Erickson to let him know that he would hear from Mr. Hillman soon about an incident with Mr. Infantino. (Testimony of Bunnell)

37. Shortly thereafter, Mr. Hillman arrived at Caldwell Pit. (Testimony of Mr. Hillman)

38. At the Caldwell Pit, Mr. Leger updated Mr. Hillman with the events of the morning, and Mr. Hillman told Mr. Leger about the confrontation he’d just had with Mr. Infantino. Mr. Leger called Mr. Infantino back to Caldwell Pit. (Testimony of Mr. Hillman)

39. Mr. Infantino demanded that Mr. Erickson also be present at the meeting. Mr. Hillman called Mr. Erickson and arranged a meeting for 1 p.m. (Testimony of Mr. Hillman)

40. Mr. Infantino stopped by Mr. Erickson’s office when he was in a meeting and asked him if they had a meeting. Mr. Erickson put the call on hold and confirmed that they had a meeting, but that Mr. Erickson himself had a prior meeting that was likely to continue past 1 p.m.

so he may be unable to attend their meeting. (Testimony of Erickson)

41. Later, the meeting was changed to 12:30 p.m. with Mr. Hillman, Ms. Davis, Mr. Infantino in attendance. Mr. Infantino was also allowed union representation at the meeting. Mr. Erickson was unable to attend the meeting. (Testimony of Erickson)

Investigation and Disciplinary Process

42. Mr. Hillman later told Mr. Erickson that, at the October 10, 2023 meeting, Mr. Infantino had been agitated and accused several DPW employees, including Mr. Erickson, of various things. He also appeared to have written down false statements that were contrary to the discussions that took place. (R. Exhibit 6)

43. Commissioner Erickson consulted HR Director Davis and Mr. Hillman before placing Mr. Infantino on paid administrative leave pending an investigation conducted by HR Director Davis. Ms. Davis notified Mr. Infantino of the administrative leave in a notification dated October 11, 2023. (R. Exhibit 3)

44. According to the October 11, 2023 letter, Mr. Infantino was advised:

During your administrative leave, you are not to enter City property or report to work. You are not to contact any City employees other than your union representative, nor are you to take any action to retaliate against or deter any individual from cooperating in the City's investigation. Violation of any of these directives will subject you to separate discipline, up to and including termination of employment.

(R. Exhibit 3)

45. HR Director Davis conducted an investigation into whether Mr. Infantino had engaged in misconduct, unsafe behaviors and insubordination towards his supervisor(s). (R. Exhibit 3)

46. HR Director Davis directed Mr. Leger, Mr. Hillman, Mr. Bunnell and Mr. Erickson to submit witness statements. (R. Exhibits 6-9)

47. On December 3, 2023, HR Director Davis submitted an investigation report to Mr. Erickson. (R. Exhibit 5)

48. The report included Mr. Infantino's account of the events, as told to Ms. Davis in a December 3, 2023 interview. (R. Exhibit 5)

49. Mr. Infantino claimed that he had asked to go home because Mr. Leger had yelled at him. In response to the allegations of improper cell phone usage, he said that the CBA allowed him to use his phone if it wasn't "interrupting business." (R. Exhibit 5)

50. Article 23 of the CBA provides:

Texting is prohibited at all times while operating machinery or while driving a City vehicle and/or the employee's personal vehicle if said vehicle is being used for City business during work hours.

(R. Exhibit 2)

51. Mr. Infantino did not deny blocking the road in the vicinity of West Street. He stated that he had not stopped his truck with the intention to block the street, but "just stopped [Mr. Hillman]" because "in my mind he was dodging me." Mr. Infantino thought so because "he answered everyone but me." (R. Exhibit 5; Testimony of Appellant)

52. Mr. Infantino denied that he had been hostile, yelled, or had an agitated demeanor during the confrontation with Mr. Hillman. (R. Exhibit 5; Testimony of Appellant)

53. Article 22 of the CBA illustrates the policy regarding safety equipment, including reflective safety clothing:

All Union members are required and shall not refuse to wear safety equipment supplied to them or as determined necessary by the Commissioner of Public Works, Deputy Commissioner, Manager and/or immediate Supervisor.

(R. Exhibit 2)

54. Mr. Infantino stated that he always wore the required HiViz reflective safety clothing, but that he sometimes covered it up completely with a hoodie or sweatshirt. (R. Exhibit 5; Testimony of Appellant)

55. Ms. Davis's December 3, 2023 report noted that the City and Department prohibit DPW employees from engaging in conduct that constitutes unsafe work behavior that create safety risks for City employees and City residents/guests. Such conduct could also subject an employee to discipline. (R. Exhibit 5)

56. In her December 3, 2023 report, Ms. David sustained the following allegations, finding that Mr. Infantino engaged in impermissible conduct and unsafe work behaviors when he:

- Blocked an intersection with his work vehicle for illegitimate purposes;
- Failed to wear his reflection safety clothing;
- Used his cellphone impermissibly and unsafely while in a City vehicle;
- Yelled at Mr. Hillman in a verbally hostile way; threatening with "repercussions";
- Was insubordinate toward Mr. Hillman when he demanded that Mr. Hillman meet with him; and
- and engaged in abusive conduct to Mr. Hillman.

(R. Exhibit 5)

57. On January 19, 2024, after reviewing the report along with the witness statements, CBA, and the policy on progressive discipline, Mr. Erickson issued Mr. Infantino a Notice of Intent to Suspend for a Period of Five (5) Days. (R. Exhibit 10; Testimony of Erickson)

58. Mr. Infantino served the suspension from January 22, 2024, to January 26, 2024. (Testimony of Erikson, Stipulated Facts)

59. Mr. Erickson sought a Section 41 hearing, which the City scheduled for January 31, 2024. R. Exhibit 10)

60. While on paid administrative leave, Mr. Infantino sought DPW overtime assignments because the superintendent, Mr. Hillman, had allowed another employee to work

while on paid administrative leave. However, the Human Resources Department (HR) has authorized Mr. Hillman to call in that employee due to a snow emergency. Mr. Infantino attempted to negotiate with HR, but was informed that such a negotiation, absent an emergency, would necessitate a signed agreement with Local 170. Mr. Infantino also sought permission to work another job while receiving pay while on administrative leave. (A. Exhibits 3 and 7)

61. There were snow events while Mr. Infantino was on paid administrative leave. Because there were enough DPW employees to provide coverage, there was no need for Mr. Hillman to declare a snow emergency during Mr. Infantino's leave. (A. Exhibit 3)

62. Mr. Erickson presided over the January 31, 2024 Section 41 hearing. (R. Exhibit 5)

63. In a February 9, 2024 notice enclosing his appeal rights, the City informed Mr. Infantino of its decision to uphold the suspension. In the notice, Mr. Erickson wrote.

After considering the evidence presented at this hearing, including but not limited to the "Notice of Intent to Suspend for a Period of Five (5) Days" and the accompanying "Investigation Report" provided by Human Resources and dated December 3, 2023, I have concluded the following:

1. That you engaged in unsafe work behaviors by using your cell phone inappropriately in a City vehicle;
2. That you that you engaged in unsafe work behaviors by stopping a City vehicle in an active roadway in an effort to confront your supervisor in the middle of said roadway;
3. That you engaged in misconduct during a confrontation with your supervisor by talking to your supervisor in a verbally hostile way;
4. That you engaged in misconduct during such confrontation with your supervisor by threatening him with "repercussions";
5. That you engaged in subordination with your supervisor; and
6. That you engaged in unsafe work behaviors by failing to wear required appropriate reflective safety clothing while at work and operating City vehicles.

(R. Exhibit 10; Testimony of Erickson)

64. Mr. Infantino appealed his suspension to the Commission on February 13, 2024.

(A. Exhibit 8)

Applicable Civil Service Law

A tenured civil service employee may be disciplined for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefore.”

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. Civil 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 by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *School Comm. v. Civil 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. *See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n*, 401 Mass. 526, 529 (1988); *Doherty v. Retirement Bd. of Medford*, 425 Mass. 130, 141 (1997).

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. *See, e.g., Police Comm’r v. Civil Serv. Comm’n*, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; *Falmouth v. Civil Serv. Comm’n*, 61 Mass. App. Ct. 796, 800 (2004); *Faria v. Third Bristol Div.*, 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, 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 established by a preponderance of the evidence that it had just cause to suspend Mr. Infantino. Ms. Davis conducted a thorough investigation and issued a December 3, 2023 report. Mr. Erickson later presided over a January 31, 2024 Section 41 hearing, and upheld Ms. Davis's recommendation that Mr. Infantino be suspended for five days.

The City sustained six allegations as the basis for Mr. Infantino's suspension. I now examine them.

First reason: Mr. Infantino engaged in unsafe work behaviors by using his cell phone inappropriately in a City vehicle

The Telephone Usage Policy within the CBA provides:

[t]he use of cellular telephones should never interfere with an employee's attention to duty, and should never be used when engaged in safety-sensitive functions which require the employee's full attention.

(Appendix B: Telephone Usage Policy of Collective Bargaining Agreement between the City of Fitchburg and Teamsters/Local 170)

Texting is prohibited at all times while operating machinery or while driving a City vehicle and/or the employee's personal vehicle if said vehicle is being used for City business during work hours.

(Article 23 of Collective Bargaining Agreement between the City of Fitchburg and Teamsters/Local 170)

On October 11, 2023, Mr. Leger observed Mr. Infantino holding his cell phone in his hand while leaving his loader at the Caldwell Pit. Since that day, Mr. Infantino has offered changing justifications. First, he claimed that he had just taken the phone out. But in the investigative interview with Ms. Davis, Mr. Infantino claimed that he had taken his phone out and received and replied to a text while sitting in the running loader. In the hearing, during his

cross-examination of Mr. Leger, Mr. Infantino tried to reason that Mr. Leger had no justification for claiming he had used his phone because he could have just taken his phone out when he got into the loader for comfort. Later in the hearing, during his own testimony, Mr. Infantino again stated that he had received and replied to a text, but added that it was an emergency, that he only used his phone outside of break times if it was an emergency. Finally, he mentioned that he had said this during the investigative interview, but the investigator had failed to record this.

Mr. Leger testified and Mr. Infantino admitted that the October 11, 2023 incident was not the first time that he had been asked to refrain from cell phone use while at work. Mr. Infantino submitted photographs of other employees allegedly using cell phones while working as validation for his behavior. He appeared unaware that the CBA applied to his employment and everyone at DPW in an effort to promote safety and prevent safety hazards. He failed to understand and abide by Article 23 and the Telephone Usage Policy.

I find that Mr. Infantino engaged in unsafe work behaviors by using his cell phone in a City vehicle, a violation of both the Telephone Usage Policy and Article 23 of the CBA.

Second reason: Mr. Infantino engaged in unsafe work behaviors by stopping a City vehicle in an active roadway in an effort to confront a supervisor in the middle of said roadway

Mr. Infantino does not dispute that he stopped the City vehicle at the intersection of West and Sheldon Streets, and left it idling when he got out to confront Mr. Hillman in the middle of the street. Mr. Hillman testified that Mr. Infantino's City vehicle impeded traffic, and Mr. Infantino has asserted that operators were able to go around both vehicles. However, his large, specialized dump truck presented an unsafe condition for members of the public, other employees, and emergency vehicles. Mr. Infantino failed to exercise common sense and remain alert to possible safety hazards when he left the City vehicle in the intersection. I find that in doing so, Mr. Infantino did engage in unsafe work behavior.

Third reason: Mr. Infantino engaged in misconduct during a confrontation with his supervisor by talking to him in a verbally hostile way

Mr. Infantino left his truck idling in the middle of the road, and approached Mr. Hillman while Mr. Hillman was in a previously scheduled telephone meeting with Mr. Bunnell. Through Mr. Hillman's Bluetooth device, Mr. Bunnell was able to hear Mr. Infantino clearly as he yelled at Mr. Hillman. In response, Mr. Hillman told Mr. Infantino over and over that he was in a telephone meeting, but was free to meet him later at 11 a.m. or 1 p.m. Despite these explanations, Mr. Infantino insisted on meeting right away and threatened repercussions if the meeting were not immediate.

Mr. Infantino's confrontation with Mr. Hillman exhibited a lack of civility and professional respect toward management and supervisory personnel. He was unwilling to wait for an opportunity to openly and respectfully discuss and exchange ideas and information in a positive and productive manner.

I find that Mr. Infantino engaged in misconduct when he confronted Mr. Hillman on West Street, and spoke to him in a verbally hostile way.

Fourth reason: Mr. Infantino engaged in misconduct during the confrontation with Mr. Hillman when he threatened him with "repercussions"

While Mr. Infantino realized that Mr. Hillman would not discuss that day's cell phone incident with him right away, promised him that there would be repercussions. Mr. Infantino was unable to comprehend and accurately execute instructions and directions as requested by his supervisor. Further, cornering one's supervisor in a public place, demanding a meeting without listening to reason, and threatening repercussions is highly unprofessional and demonstrates a lack of understanding of the seriousness of office hierarchy, an important aspect of maintaining a well-functioning work-place.

I find that in behaving in this manner, Mr. Infantino did engage in misconduct.

Fifth reason: Mr. Infantino engaged in subordination with his supervisor

Mr. Infantino was unwilling to carry out instructions as directed by Mr. Leger and Mr. Hillman, and he failed to speak to both men in a positive and productive manner. Mr. Infantino chose to yell at Mr. Hillman in a public way, while blocking the public way with a City vehicle and where a member of the general public could reasonably see that they were both DPW employees.

Sixth reason: Mr. Infantino engaged in unsafe work behaviors by failing to wear required appropriate reflective safety clothing while at work and operating City vehicles

Article 22 of the CBA provides:

All Union members are required and shall not refuse to wear safety equipment supplied to them or as determined necessary by the Commissioner of Public Works, Deputy Commissioner, Manager and/or immediate Supervisor.

(Article 22 of Collective Bargaining Agreement between the City of Fitchburg and Teamsters/Local 170)

During the October 11, 2023 confrontation, Mr. Hillman observed that Mr. Infantino was not wearing visible HiVis clothing as required of him by Article 22 of the CBA. Mr. Infantino countered that he was wearing HiVis, but with a dark sweatshirt or hoodie over it. Ms. Davis noted in the December 3, 2023 investigation report that rendering the HiVis clothing unseen defeats the purpose of wearing it at all, and is the equivalent of not wearing the HiVis clothing at all.

The safety regulations as outlined in Article 22 are intended to prevent hazardous conditions and conditions that may cause injury or illness to an individual employee, coworkers or others. The HiVis clothing increases the visibility of employees to that purpose, and covering up HiVis clothing is counterintuitive to the intentions of the safety regulations. As the

confrontation transpired, Mr. Infantino was out of City vehicle, left it idling in the street, and was yelling at his supervisor while on a public way, while not properly attired in his HiVi clothing.

I find Mr. Infantino engaged in unsafe work behaviors when he failed to wear the required appropriate reflective safety clothing while at work and operating City vehicles.

I next address the issue of whether the Commission should a modify the five-day suspension without pay. Though the events of October 11, 2023, were the first time Mr. Infantino was formally disciplined, it is not the first time supervisors had to speak with him about compliance with work-place regulations. All of his supervisors who testified at the hearing recounted that they had spoken to him multiple times about his phone usage or lack of HiVis protective clothing.

The DPW, as all other public sector places of employment, is a professional work-place. Regulations must be taken seriously, especially when operating special machinery, and employee conduct must be professional and in accordance with safety rules, regulations and procedures. Mr. Infantino's continued disregard for rules regarding phone usage and HiVis safety gear does not demonstrate a professional attitude.

During his testimony, Mr. Infantino made several claims that DPW has "lots of things that go on that may not be contractually correct, but that happens" and that it's "common knowledge" for employees that in certain situations, they are allowed to skirt regulations for matter such as phone usage or safety gear.

That is not the proper barometer for ensuring safety in the work-place: the improper conduct of others does not justify one's own misconduct. Ultimately, the City has demonstrated that Mr. Infantino has violated several regulations in the CBA and additionally engaged in unsafe work behaviors and misconduct.

Given the numerous warnings from supervisors regarding cell phone use and the failure to wear the required high visibility clothing; Mr. Infantino's misconduct manifested in failure to follow the Telephone Usage Policy, the texting policy, the high visibility clothing requirement and his insubordination toward the superintendent on October 11, 2023, I find no mitigating factors that would potentially justify a downward modification of the five-day suspension.

CONCLUSION

The appeal filed under Docket No. D-24-020 is hereby ***denied***. I find that the City of Fitchburg has proven by a preponderance of the evidence that it had just cause to discipline Devante Infantino and suspend him for five (5) days.

Civil Service Commission

/s/ Angela C. McConney
Angela C. McConney
Commissioner

By a vote of the Civil Service Commission (Bowman, Chair, Dooley, Markey, McConney, and Stein, Commissioners) on December 19, 2024.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. § 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:

DeVante Infantino (Appellant)
Eric T. McKenna, Esq. (for Respondent)