

Decision mailed: 8/28/09
Civil Service Commission
CB

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503

Boston, MA 02108

(617) 727-2293

JUSTIN JOYCE,
Appellant,

v.

D-07-228

DEPARTMENT OF STATE POLICE,
Respondent.

Appellant's Attorney:

Joseph P. Kittredge, Esq.
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Acton, MA 01720

Respondent's Attorney:

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Commissioner:

John E. Taylor¹

DECISION

Pursuant to the provisions of G.L. c. 31, § 43 and G.L. c. 22C, § 13 as amended by Chapter 43 of the Acts of 2002, the Appellant, Justin Joyce (hereinafter "Joyce" or "Appellant"), is appealing the decision of the Department of State Police (hereinafter "State Police") that he (1) be suspended for a period of ten (10) days; (2) be transferred from his place of assignment; and (3) forfeit twenty (20) days of accrued leave. The

¹ The Commission acknowledges the assistance of Legal Intern Kelly Deegan in the preparation of this Decision.

appeal was timely filed. A hearing was held on January 9-10, 2008 at the offices of the Civil Service Commission. All witnesses other than the Appellant were sequestered.

The hearing was recorded onto six (6) tapes and both parties subsequently submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Fourteen (14) exhibits were entered into evidence. Based upon the documents entered into evidence and the testimony of:

For the Department of State Police:

- Leonard Beach, Trooper, Massachusetts State Police;
- Steven Pacifico, Trooper, Massachusetts State Police;
- Ruben Colon, Trooper, Massachusetts State Police;
- Dana Pagley, Lieutenant, Massachusetts State Police;
- Anthony Bille, Lieutenant, Massachusetts State Police

For the Appellant:

1. Justin Joyce, Appellant, Trooper, Massachusetts State Police;
2. James Mackin, Trooper, Massachusetts State Police;
3. Baldwin Leon, Trooper, Massachusetts State Police;
4. Edward Powers, Trooper, Massachusetts State Police

I make the following findings of fact:

1. The Appellant, Justin Joyce, is a Trooper who has been employed by the Massachusetts State Police for thirty years. He was assigned to Troop F, which does security for Logan Airport, for twenty-two years, the last twenty of which he worked in the Aerodrome Office in Logan Airport. (Testimony of Appellant)
2. The Aerodrome Office is responsible for processing requests for badges that give access to restricted areas of the airport. The Aerodrome processes many applications for temporary visitor passes (TVPs) to vendors or contractors who will be working at

the airport for a short period of time and photo badges, which were required for troopers who would be working security details at Logan. (Testimony of Appellant)

3. In order to obtain a TVP, which gives access to some restricted areas, a vendor or contractor submits a list of employees to the Aerodrome office. After a background check, their applications are approved, and then sent to Massport, which issues the badges. (Testimony of Appellant)
4. In order to obtain a photo badge, for unrestricted access to the building, the troopers would report to the Aerodrome and fill out an application, then take and pass a SIDA (Security Identification Display Area) computer test. After they pass the test, the application is forwarded to Massport, which takes the picture and issues the photo badges. (Testimony of Appellant)
5. The collective bargaining association for troopers and sergeants in the Massachusetts State Police is the State Police Association of Massachusetts (SPAM). The Appellant was one of three barracks representatives elected by his troop and Sergeant James Mackin was the Troop F representative in the association. (Exhibit 13, Testimony of Appellant and Mackin)
6. Security details at Logan were originally paid at the detail rate and required troopers to call patrol to handle any law enforcement issues such as weapons or drugs being brought into the airport. However, after September 11, 2001, the duties and responsibilities significantly increased. Troopers on security details were now responsible for all law enforcement actions, including making arrests, completing the paperwork associated with the arrest, and filing reports. There was also a need for more troopers to do patrols subsequent to the attacks. Due to the need for additional

troops and the additional work they were required to do, the pay was increased from the detail rate to the overtime rate. However, approximately one and a half to two years after the attacks, when outside officers were no longer necessary, the pay rate went back down to the detail rate. (Testimony of Appellant)

7. The members of Troop F were upset about the decreases in pay for doing the same job, so Mackin filed a grievance on behalf of Troop F after the pay rate dropped, which at the time of the hearing was subject to arbitration. (Testimony of Appellant)
8. On or about August 14, 2006, the Department of Homeland Security elevated the aviation security threat level at Logan International Airport to “orange” due to a terrorist attack in London. (Exhibit 4-D2, Testimony of Appellant, Bille and Mackin)
9. The elevated alert prompted increased security with more personnel and visibility. Specifically, there needed to be one officer present at every checkpoint (prior to the elevated alert, one officer could cover two or three checkpoints), they needed to screen every vehicle going through the North and South Gates, they employed “walk and talk” units whose job it was to dress in plainclothes and ask people what they were doing in the airport, and they had K-9 units patrolling the airport. (Testimony of Appellant)
10. These added temporary positions were paid at the overtime rate (one and a half times regular pay) and were thus highly sought after. The detail rate that was available to Troop F only paid \$40 per hour. (Testimony of Appellant and Mackin)
11. Outside officers were offered these overtime positions first, which differed from the usual policy of first offering overtime positions to Troop F members who were not already signed up for details. (Testimony of Mackin)

12. On August 11, 2006, the Appellant noticed an unmanned checkpoint and wrote a letter which expressed his concern that the airport was not staffed as mandated by the increased “orange” alert level. He presented it to Major Pare and stated that he would not forward the letter but that he did make copies for the labor attorney, the director of public safety of Massport, and the president of SPAM. (Exhibit 4-D2, Testimony of Appellant)
13. A few days prior to August 17, 2006, Trooper Mackin, as the representative for Troop F, met with Major Pare and Captain Grabowski to discuss the issues about pay rates and manning checkpoints for the security posts at Logan. Major Pare indicated there was no change in his position and Trooper Mackin stated that the members of Troop F would refuse to work the voluntary security details. (Testimony of Appellant and Mackin)
14. The security details that Troop F was scheduled to work were voluntary work assignments that the officers could not be compelled to work. (Testimony of Appellant and Mackin)
15. On August 17, 2006, Trooper Beach came into the Aerodrome and stated that he wanted to see Lieutenant Bille. The Appellant said that he was here but not in his office right now. Trooper Powers worked with Trooper Beach after that. (Exhibit 4-SP2, Testimony of Appellant and Powers)
16. Lieutenant Bille came in shortly after and asked Trooper Beach if he had been badged, and Trooper Beach responded that he had not. They went to Lieutenant Bille’s office where he gave Trooper Beach an application for a badge. Trooper Beach left after receiving the application. (Testimony of Beach and Bille)

17. After Trooper Beach left, Lieutenant Bille spoke with the Appellant and said,
“Listen, no games, you need to cooperate, we have to get this done,” and told him that
he needs to assist and not hinder in getting these people badged. (Testimony of Bille)
18. The Appellant replied by saying that he did not know why Trooper Beach was there
or what he wanted. He stated “for all I know he was there for a TVP,” implying that
Trooper Beach did not say why he was there. (Testimony of Appellant)
19. On or about the same day, when Trooper Beach returned to get his badge, the
Appellant told him to check with his union representative to see what was going on.
(Testimony of Beach and Appellant)
20. Trooper Beach did not know about the other Troop F members exercising their
union rights and stated that there was a “firestorm” in the following days between
management and the Association (SPAM). He also stated that he chose not to get
badged because he “did not want to make waves” and that he was glad he did not get
a badge. (Exhibit 4-SP4, Testimony of Beach)
21. Between August 17 and August 23, 2006, the barracks were divided between the
management and the union. A sign was hung in the barracks labeled “Known Scabs”,
which listed several officers’ names, some derogatory comments about them, and the
phrases “If you pick a scab it will bleed!” and “We’re at War”. There were also some
illustrations at the bottom. (Exhibit 11, Testimony of Mackin and Beach)
22. On August 23, 2006, the Appellant arrived early at the Aerodrome office around
5:00am and saw Trooper Leon. He opened early when he heard voices in the lobby
and asked the two troopers there if he could help them. They requested applications
so that they could be badged. (Testimony of Appellant, Pacifico, Colon, and Leon)

23. Before giving the troopers the applications, the Appellant asked if they knew what they were doing. He told them about the Troop F members' action and said getting badges was "like crossing a picket line". (Testimony of Appellant, Colon, and Pacifico)
24. Troopers Pacifico and Colon both received applications from Trooper Joyce and filled them out. While Trooper Pacifico testified that he did not hear anything, Trooper Colon testified that Trooper Joyce also said, "Are you working for the management or the association?" and, "You will be treated like scabs." (Testimony of Appellant, Pacifico, and Colon)
25. After the troopers completed the applications, they were told to come back the next day to receive their badges. (Testimony of Pacifico and Colon)
26. Trooper Leon testified that he told the troopers to come back at 7am to take the computer test because he did not have the keys to open the office where the test was given. (Testimony of Leon)
27. However, both Trooper Pacifico and Trooper Colon testified that Trooper Joyce did not prevent or discourage them from getting a badge. Trooper Pacifico stated he did not complete the process because he received a letter which said that additional troopers were no longer needed. Trooper Colon completed the process and got a badge. (Testimony of Pacifico and Colon)
28. Trooper Colon was upset about the way he was treated in the badging process. He told Lieutenant Pagley about his experience. When Lieutenant Bille found out about the incident, he said that it might be sent to Internal Affairs. (Testimony of Colon and Pagley)

29. Lieutenant Bille met with Trooper Colon. Afterwards, he decided to issue a negative Employee Evaluation (EES) on Trooper Joyce. At no point did Lieutenant Bille speak to Trooper Joyce about the incident. (Testimony of Bille)
30. Lieutenant Bille also did not give Trooper Joyce the EES because Major Pare informed him that he would take care of it. (Testimony of Bille)
31. On August 28, 2006, the management and the association came to an agreement about the badging issue. The association agreed not to call out of their shifts in exchange for the management's agreement not to recruit outside troopers. All of the troopers who received badges during the labor action were ordered to return them within two weeks. (Testimony of Appellant)
32. The following day, August 29, Major Pare presented Trooper Joyce with the EES that Lieutenant Bille completed almost a week earlier. (Testimony of Appellant)
33. On February 2, 2007, Trooper Joyce wrote Lieutenant Bille about his version of the events. (Exhibit 14)
34. On June 18, 2007, the State Police trial board found the Appellant guilty of three of the four charges filed against him. He was found guilty of Unsatisfactory Performance, Insubordination, and Untruthfulness.
35. Trooper Joyce was given (10) days suspension without pay, (20) twenty days loss of accrued vacation time and a one year transfer from Troop-F.
36. This Appellant filed a timely appeal with the Civil Service Commission on June 24, 2007.

Conclusion

The role of the 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. Com’n., 43 Mass. App. Ct. 300, 304 (1997). See Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003); Police Dep’t of Boston v. Collins, 48 Mass. App. Ct. 411 (2000); McIsaac v. Civil Serv. Com’n., 38 Mass. App. Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass. App. Ct. 311 (1983). An action is “justified” when it is done upon adequate reasons sufficiently supported by credible evidence, when weighted by an unprejudiced mind, guided by common sense and by correct rules of law. Commissioners of Civil Serv. v. Mun. Ct. of the City of Boston, 359 Mass. 214 (1971); Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). 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.” School Com. of Brockton v. Civil Serv. Com’n., 43 Mass. App. Ct. 486, 488 (1997); Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983).

The Appointing Authority’s burden of proof is one of a preponderance of the evidence which is established “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, 35-6 (1956). In reviewing an appeal under G.L. c. 31 § 43, if the Commission finds that there was just cause for an action taken against the Appellant by a

preponderance of the evidence, the Commission shall affirm the action of the Appointing Authority. Falmouth v. Civil Serv. Com'n., 61 Mass. App. Ct. 796, 800 (2004). The issue for 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.” Arria at 334. See also Stratton at 727-8; Commissioners of Civil Serv. v. Mun. Ct. of Boston at 86. If the Commission decides to modify a penalty, it must provide an explanation of its reasons for doing so, because a decision to modify shall be reversible if unsupported by the facts or based upon an incorrect conclusion of law. Police Comm'r of Boston v. Civil Serv. Com'n., 39 Mass. App. Ct. 594, 602 (1996); Faria v. Third Bristol Division of the Dist. Ct. Dep., 14 Mass. App. Ct. 985, 987 (1982). When the Commission modifies an action taken by the Appointing Authority, it must remember that the power to modify penalties is granted to ensure that employees are treated in a uniform and equitable manner, in accordance with the need to protect employees from partisan political control. Falmouth v. Civil Serv. Com'n. at 801; Police Comm'r of Boston v. Civil Serv. Com'n. at 600.

The Commission has the jurisdiction and authority to review State Police Trial Board's decision. See Comm. of Mass. Dep't of State Police v. Hicks, Suffolk Sup. Ct., No. 07-3766A (July 25, 2008); Comm. of Mass. Dep't of State Police v. Reilly, Suffolk Sup. Ct., No. 06-2349E (March 31, 2008). The Appellant appeals the guilty findings associated with violating three articles of the Rules and Regulations of the Department of State Police; specifically he is charged with violating:

Article 5.8: Unsatisfactory Performance

“In that Trooper Justin Joyce ID# 1261 Massachusetts State Police, Division of Field Services, Troop F Logan Airport on diverse dates in August 2006 did demonstrate an unwillingness or inability to perform assigned tasks and the failure to conform to work standards established for his rank and position. This occurred when he failed to assist State Police personnel in the processing and issuance of security badges, as directed. This action is in direct violation of Article 5.8.2.”

Article 5.12: Insubordination

“In that Trooper Justin Joyce ID# 1261 Massachusetts State Police, Division of Field Services, Troop F Logan Airport on diverse dates in August 2006 did fail to promptly obey a lawful order conveyed to him by Lieutenant Anthony Bille. This action is in direct violation of Article 5.12.1.”

Article 5.27: Truthfulness

“In that Trooper Justin Joyce ID# 1261 Massachusetts State Police, Division of Field Services, Troop F Logan Airport on diverse dates in August 2006 did fail to truthfully answer, upon the order of Lt. Anthony Bille, all questions specifically directed and narrowly related to the scope of employment and operation of the Massachusetts State Police. Specifically questions about his interaction with Tpr. Beach. This action is in violation 5.12.2.”

The first charge is associated with failing to assist Trooper Beach in getting badged on August 17, 2006 and failing to assist Troopers Pacifico and Colon in getting badged on August 23, 2006. There is inconsistent testimony in regards to events that occurred when Trooper Beach came in to be badged on August 17. Trooper Beach states that he was called on his radio by Lieutenant Bille to go to the Aerodrome to be badged. When he went, he stated that it was approximately 8:15am and that he spoke only to Trooper Joyce. He also stated that when he asked for a badge, Trooper Joyce asked who had sent him and, when Trooper Beach replied that Lieutenant Bille had, he suggested that he

double check with Lieutenant Bille. After Trooper Beach completed the application, he took the SIDA test and stated that it took him 20 minutes to complete. According to the testimony of Joyce, Bille, and Powers, the time was approximately 7am and, according to Trooper Joyce, the SIDA test takes approximately 45 minutes to complete.

Additionally, Trooper Powers and Trooper Joyce both state that Trooper Beach entered and asked to see Lieutenant Bille and Lieutenant Bille states in his testimony that he told Trooper Beach to go to the Aerodrome and see him to get badged. Trooper Joyce and Trooper Powers also testified that Trooper Joyce only told Trooper Beach that Lieutenant Bille was there, but not in his office at the moment and that Trooper Beach only asked to see Lieutenant Bille. After Trooper Beach saw Lieutenant Bille, Trooper Powers was the one who interacted with Trooper Beach. Trooper Beach was given an application, which he completed. He testified that later, when he was aware of the “firestorm” the badging had caused, he was glad he did not get badged because he “did not want to make waves.” The Commission does not think Trooper Beach was lying, but was mistaken about details of an event that happened one and a half years ago.

When Troopers Pacifico and Colon came in to be badged, Trooper Joyce informed them of the labor association’s action and gave them applications, which he helped them complete. They did not take the SIDA test then, but that was because Trooper Leon thought the office which had the computers for the test did not open until 7am, so he told the troopers to come back then. Trooper Pacifico did not get badged later because he received a letter stating that outside troopers were no longer needed to fill details in Logan. Trooper Colon was badged.

Trooper Colon stated that Trooper Joyce said to him: “who are you working for, management or the association; getting badged is like crossing a picket line; and you will be treated like scabs”. However, Trooper Colon also testified that it was more of an argument than Trooper Joyce trying to threaten him from getting the badge. Trooper Pacifico testified that he was next to Trooper Colon the entire time and that Trooper Joyce did say that getting badged was like crossing a picket line, which Trooper Joyce admits, but never used the word scab. Trooper Leon also testified that he did not hear Trooper Joyce use the word “scab”, but that there was an opportunity for him to have done so. Trooper Joyce provided applications to all officers requesting them, helped them to fill it out, and his comments about potential trouble that troopers could encounter by being badged were not an attempt to discourage officers from being badged. This is proven by the eighteen officers badged over the short period of time that the management was encouraging the issuance of the badges. Finally, in the collective bargaining agreement (CBA), union members were allowed to talk to other union members and do union work to try to resolve issues during their regular work time. Based on the testimony and facts, the Commission cannot conclude that Trooper Joyce failed to complete the assigned task of assisting officers in the badging process.

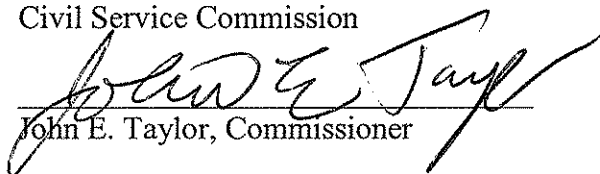
The second charge of insubordination is only an issue if the first charge were substantiated. Trooper Joyce was not found to have been unwilling to perform assigned tasks and he did perform the tasks assigned to him by Lieutenant Bille. Since Trooper Joyce followed the orders to assist in badging all officers who came into the Aerodrome, he is not guilty of insubordination.

The final charge concerns the truthfulness of Trooper Joyce. Trooper Joyce's comment "for all I knew he wanted a TVP" was not to be taken as a serious response, but as a sarcastic remark to imply that Trooper Beach had not told him what he had come in for; Lieutenant Bille was not expected to believe something so outrageous. In determining whether or not Trooper Beach said that, his testimony shows that he has forgotten details of what happened on that day and it is understandable that he might not remember what his exact words were. The testimony of Trooper Powers and Trooper Joyce are consistent and they both state Trooper Beach came in and said he wanted to see Lieutenant Bille.

Due to these findings of fact, the Commission finds that the Appointing Authority did not meet its burden of proof in supporting its justification for the disciplinary action taken against Trooper Joyce. The reasons for taking this action against him seem to be due more to his union leadership role and the letter that he wrote and forwarded to the labor attorney, the director of public safety of Massport, and the president of SPAM, which stated that there were unmanned checkpoints. This makes his discipline seem more retaliatory and thus, not justified.


For all of the above reasons, the Appellant's appeal under Docket No. D-07-228 is hereby **allowed**. The Appellant shall be restored to his position at Troop F., and made whole for any loss of earnings and benefits.

Civil Service Commission


John E. Taylor, Commissioner

By vote of the Civil Service Commission 3-2 (Bowman, Chairman; [No] Henderson, [Yes] Marquis, [No] Stein, [Yes] and Taylor, [Yes] Commissioners on August 27, 2009)

A true record. Attest:



Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. 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:

Joseph P. Kittredge, Esq. (Appellant)

Michael B. Halpin, Esq. (Department of State Police)