

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

RICHARD LaBELLE,
Appellant
v.

D-18-024

SPRINGFIELD POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Austin M. Joyce, Esq.
Reardon, Joyce & Akerson, P.C.
4 Lancaster Terrace
Worcester, MA 01609

Appearance for Respondent:

Maurice M. Cahillane, Esq.
City of Springfield
36 Court Street, Room 05
Springfield, MA 01103

Commissioner:

Christopher C. Bowman

DECISION

On February 9, 2018, the Appellant, Richard LaBelle (Captain LaBelle), pursuant to the provisions of G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Respondent, the City of Springfield (City)'s Police Department to suspend him for one (1) day from his position as Police Captain for violating Department Rules related to Respectful Treatment of the General Public. On March 28, 2018, I held a pre-hearing conference at the Springfield State Building in

Springfield, MA. I held a full hearing at the same location on June 13, 2018.¹ As no written notice was received from either party, the hearing was declared private. A CD was made of the hearing.²

FINDINGS OF FACT:

Thirteen (13) Exhibits were entered into evidence. Based upon these exhibits, stipulated facts, and the testimony of:

Called by the Springfield Police Department:

- Commissioner John Barbieri, Springfield Police Department³;
- Sgt. Monique McCoy, Springfield Police Department;
- C.S., civilian, Springfield, MA;

Called by Captain LaBelle:

- Richard LaBelle, Appellant;

and taking administrative notice of all matters filed in the case, pertinent statutes, regulations, policies, stipulations and reasonable inferences from the credible evidence, a preponderance of the evidence establishes the following:

1. The City of Springfield does not have a Social Media Policy that is applicable to members of the Police Department. (Testimony of Commissioner Barbieri)
2. The Department does have Rules and Regulations applicable to all members of the Department. (Testimony of Commissioner Barbieri)
3. Rule 29 provides, in part: “RESPECTFUL TREATMENT: Employees shall, on all occasions, be civil and respectful, courteous and considerate toward their supervisors, their subordinates, and all other members of the Department and the general public.

¹ The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

² If there is a judicial appeal of this decision, the plaintiff becomes obligated to use the copy of the CD provided to the parties to supply the court with the written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

³ Commissioner Barbieri has subsequently retired from the Springfield Police Department.

No employee shall use epithets or terms that tend to denigrate a particular race or ethnic group except when necessary in police reports or testimony.” (Exhibit #13)

4. Captain LaBelle has been employed by the Springfield Police Department for approximately twenty-one (21) years and has been a Captain since 2017. (Testimony of Captain LaBelle)
5. There was no prior discipline of Captain LaBelle. (Stipulation of the parties)
6. Captain LaBelle had a Facebook account on the date of the incident, September 25, 2017. (Testimony of Captain LaBelle)
7. The profile for the account indicated that Captain LaBelle “Works at City of Springfield, MA”, but did not indicate that he was a police officer. (Exhibit #11, Testimony of Captain LaBelle)
8. MassLive is a media outlet in the Springfield area with a newspaper, a website and a Facebook page where it publishes news articles. (Testimony of C.S. and Captain LaBelle)
9. On the morning of September 25, 2017, MassLive published an article concerning New England Patriots players and the team owner kneeling during the national anthem before the game. (Testimony of C.S.)
10. In the comments section of the article, J.S. posted a cartoon on the MassLive Facebook page. The cartoon depicted a white man wearing a white T-shirt with an American flag logo saying, “That’s offensive!” as he points at a uniformed, kneeling football player meant to be Colin Kaepernick, while the man’s back is to an unarmed black man (as written on his shirt) sprawled face down with blood pooling around him. (Exhibit #11)

11. C.S. saw the cartoon post on Facebook early that morning before she went to work and she added her own post to the comments, “EXACTLY!!!”. (Exhibit #11, Testimony of C.S.)
12. Captain LaBelle also saw the cartoon post in the comments section of the Patriots article on Facebook that morning. At the time, Captain LaBelle was off-duty and at home. Captain LaBelle posted a reply that said, “Exactly, shows the world what a lying bigot you are.” (Exhibit #11, Testimony of Captain LaBelle)
13. After Captain LaBelle posted his comment on the MassLive Facebook page, C.S. got an anonymous call telling her that Richard LaBelle was a police officer who was high up in the Springfield Police Department and that she should be careful. (Testimony of C.S.)
14. After the call, C.S. again posted to the Facebook page, “officer....I’m not sure who you’re calling a lying bigot but try and understand why these players are silently protesting, just think about it.” (Exhibit #11)
15. Captain Labelle’s next post to the Facebook page said, “They are pushing their dishonest hateful political agenda by slandering other Americans ... you’re the one who needs to do some thinking.” (Exhibit #11)
16. J.S. then commented, “Richard thank you. I see we are in agreement about Trump and his sheep.” (Exhibit #11)
17. There were also other posts to the comments section added by other individuals throughout the back-and-forth listed here, but they do not have a bearing on the exchange among J.S., C.S. and Captain LaBelle. (Exhibit #11)

18. C.S. added another post, saying, “Richard I have informed the municipality you work for since you have violated their social media policy by spreading slander.” (Exhibit #11)
19. Captain LaBelle then posted, “Got it [C.S.] you’re a liar and morally reprehensible.” (Exhibit #11, Testimony of Captain LaBelle)
20. He then added another post directed to J.S., “Childish response but not surprising from someone who couldn’t keep a job bagging groceries. ...lol sheep, you are the one out to pasture.” (Exhibit #11)
21. Captain LaBelle indicated that “bagging groceries” was a reference to J.S.’s Facebook profile listing him as a former service clerk. (Testimony of Captain LaBelle)
22. Later that afternoon during her break at work, C.S. called the Police Department’s Internal Investigation Unit to complain about Captain LaBelle’s Facebook posts. (Testimony of Sgt. McCoy, Exhibit #6)
23. After talking to C.S., Sgt. McCoy printed copies of the Facebook posts and forwarded them along with her report to then-Commissioner Barbieri, who was the Appointing Authority. (Exhibit #6, Testimony of Commissioner Barbieri and Sgt. McCoy)
24. According to the department’s procedures, Commissioner Barbieri assigned the complaint to then-Deputy Chief Cheryl Clapprood on September 27, 2017, for investigation. (Testimony of Commissioner Barbieri, Exhibit #1)
25. As part of her investigation, then-Deputy Chief Clapprood spoke to C.S., and she had Captain Labelle submit a report concerning his postings. (Exhibit #4, Testimony of C.S.)

26. On October 10, 2017, then-Deputy Chief Clapprood concluded her investigation with a report to the Commissioner that recommended no further action. She found no violation of any rules or regulations of the department because Captain LaBelle did not use or infer his status as a police supervisor in his posts. She did not find that Captain LaBelle used his position, status or employment, nor did he threaten or try to intimidate anyone by his posts. (Exhibit #4)
27. The next step in the complaint process was review by the Community Police Hearing Board made up of civilians, which was established by the Mayor and the Law Department. (Testimony of Commissioner Barbieri)
28. On November 8, 2017, two members of the Community Police Hearing Board did that review of the investigation, and they recommended the issuance of a charge letter and a hearing before the full Board to get more information. (Exhibit #2)
29. On November 9, 2017, then-Deputy Chief Clapprood reiterated that she did not find any violation by Captain LaBelle of the department's rules or regulations but acquiesced to the hearing request. (Exhibit #3)
30. On the same date, then-Commissioner Barbieri forwarded the complaint on for a hearing before the Community Police Hearing Board. (Exhibit #3)
31. On November 10, 2017, Sgt. McCoy received additional information from C.S., and she filed a supplemental report containing the last two Facebook posts made by Captain LaBelle after C.S. advised him that she was filing a complaint. (Exhibit #7, Testimony of Sgt. McCoy)
32. On November 14, 2017, the Commissioner issued a Notice of Inter-Departmental Charges to Captain LaBelle, containing five charges. (Exhibit #8)

33. On January 24, 2018, the Community Police Hearing Board held a hearing on the charges and sustained only the charge under Rule 29 (Respectful Treatment) by a vote of three to two. (Exhibit #9, #10)
34. Based upon the finding of the Community Police Hearing Board and the recommendation of the City's Labor Relations attorney, Commissioner Barbieri suspended Captain Labelle for one-day without pay by a notice dated January 30, 2018, received by Captain LaBelle on February 1, 2018. The notice specified that the suspension was for posting comments on Facebook that a citizen took as offensive. (Testimony of Commissioner Barbieri, Exhibit #13)
35. In his testimony, Commissioner Barbieri stated that he based his decision on the postings made by Captain LaBelle after C.S. identified him as "officer" because of their content and manner, agreeing with the position that they were disrespectful and derogatory. (Testimony of Commissioner Barbieri)

Legal Standard

G.L. c. 31, § 43 provides:

"If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

An action is "justified" if 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;” Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 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 Comm. v. Civil Service Comm’n, 43 Mass.App.Ct. 486, 488 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983).

Analysis

In their post-hearing briefs, both parties have cited relevant federal court decisions regarding the balance between a government employee’s First Amendment rights and the interests of a government employer in promoting the efficiency of the public services it performs through its employees. I have carefully reviewed those arguments.

I agree with Captain LaBelle that the underlying topic related to these online postings was a matter of public concern; that he made the postings while he was off-duty; and that he did not use Department resources (i.e. – a Department computer) to make these postings, all of which, from the outset, tip the balance toward the First Amendment rights afforded to Captain LaBelle.

It is undisputed, however, that, at the mid-point of their online conversation, Captain Labelle knew that C.S. was aware of his position as a police officer for the Springfield Police Department. I gave the most weight to the postings made from this point forward, including Captain LaBelle’s posting to C.S. stating: “Got it [C.S.] you’re a liar and morally reprehensible” and his posting to J.S. stating: “Childish response but not

surprising from someone *who couldn't keep a job bagging groceries*. ...lol sheep, you are the one out to pasture.” (emphasis added)

The fact that the underlying topic here was a matter of public concern did not give Captain LaBelle, a superior officer in the Springfield Police Department, free reign to call a citizen “morally reprehensible” or to tell another citizen (J.S.) (who has a Spanish surname) that he “couldn’t keep a job bagging groceries”, even when viewed in the context of Captain LaBelle’s First Amendment rights and the recognition that discourse on matters of public concern can sometimes be caustic.

The Department has a right to expect that its police officers, particularly those who hold the position of Captain, treat *all* citizens with respect and courtesy -- and the Department’s Rules explicitly require it. Captain LaBelle violated that rule and the City’s decision to implement a short, one-day suspension to correct his boorish behavior did not violate Captain LaBelle’s First Amendment rights.

Conclusion

For all of the above reasons, Captain LaBelle’s appeal under Docket No. D-18-024 is *denied*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein, Commissioners [Tivnan – No]⁴) on April 11, 2019.

⁴ Commissioner Tivnan voted no as he believes that, based on the facts presented, including the lack of prior discipline, that a written warning, as opposed to a one-day suspension, is warranted here.

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 CMR 1.01(7)(1), 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:

Austin M. Joyce, Esq. (for Appellant)

Maurice M. Cahillane, Esq. (for Respondent)