COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

BRIAN LAFLAMME,
Appellant

v.

D1-07-255

CITY OF HOLYOKE,
Respondent

Appellant's Attorney:

Devin Moriarty, Esq.
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101 State Street
Springfield, MA 01103

Appointing Authority's Attorney:

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Commissioner:

Christopher Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Brian LaFlamme (hereinafter "Appellant" or "LaFlamme"), is appealing the decision of the Appointing Authority, the City of Holyoke (hereinafter "Appointing Authority" or "City"), to terminate him from his position as a Motor Equipment Repairman.

Two days of hearings were conducted. The first day of hearing was conducted at the Springfield State Office Building in Springfield on February 27, 2008 and was heard by then-

Commissioner John Guerin. The second day of hearing was conducted at Holyoke City Hall on May 16, 2008 and was heard by Commissioner Christopher Bowman.[1]

The hearing was declared private. Two (2) tapes were made of the proceedings. Both parties submitted post-hearing briefs.

FINDINGS OF FACT:

Eight (8) documents were entered into evidence and the following witnesses testified before the Commission:

Appointing Authority Witnesses:

- William D. Fuqua, Holyoke Department of Public Works General Superintendent;
- David Beaudoin, Superintendent of Outdoor Works

Appellant Witnesses:

- Brian LaFlamme, Appellant;
- Nelson Hanby, Heavy Motor Equipment Operator; Holyoke Department of Public Works;
- Michael Gallagher, President, Holyoke Employees Association

Based on the above-referenced exhibits and testimony, I make the following findings of fact:

1. Brian LaFlamme was an employee of the Department of Public Works (hereinafter "DPW") of the City. He was employed as a Motor Equipment Repairman. His date of hire was November 26, 1996. (Stipulated Facts) He has been a member of the Air Force National Guard for thirteen (13) years. (Testimony of Appellant)

[1] Commissioner Guerin's term on the Civil Service Commission expired after the first day of hearing. Pursuant to 801 CMR 1.01 (11)(e) of the Standard Adjudicatory Rules of Practice and Procedure, Commissioner Bowman listened to the tapes of the first day of hearing, reviewed the evidence that was admitted, and reviewed Commissioner Guerin's detailed notes. before conducting the the second day of hearings. Both parties were notified of these procedural issues and had no objections before the hearings resumed on the second day.

2. On July 15, 1997, the Appellant was suspended for three (3) days for failing to call out per City policy. (Exhibit 6)
3. On August 11, 1997, the Appellant was suspended for five (5) days for failing to call out per City policy. (Exhibit 6)
4. On April 10, 2000, the Appellant was suspended for three (3) days for failing to call out per City policy. (Exhibit 6)
5. On September 8, 2000, the Appellant was suspended for five (5) days for failing to call out per City policy. (Exhibit 6)
6. On January 26, 2001, the Appellant was suspended for three (3) days for failing to punch the time clock. (Exhibit 6)
7. On March 9, 2001, the Appellant was suspended for one (1) day for failure to report to duty while on stand-by. (Exhibit 6)
8. On August 2, 2001, the Appellant was suspended for three (3) days for tardiness and failure to comply with the call out policy. (Exhibit 6)
9. On August 10, 2001, the Appellant was suspended for five (5) days for failing to call out per City policy. (Exhibit 6)
10. On May 17, 2002, the Appellant lost the balance of day's pay for insubordination. (Exhibit 6)
11. On May 20, 2002, the Appellant was suspended for three (3) days for absenteeism. (Exhibit 6)
12. On October 17, 2002, the Appellant was suspended for three (3) days for failing to call out per City policy. (Exhibit 6)
13. On November 18, 2005, the Appellant was suspended for three (3) days for insubordination. (Exhibit 6)

14. On February 7, 2006, the Appellant was suspended for five (5) days for insubordination. (Exhibit 6)
15. The instant appeal involves an allegation of insubordination that occurred on June 22, 2007.
16. On June 22, 2007, the Appellant was being supervised by Ryan Labreque, the Working Foreman (hereinafter "Labreque"). Labreque reports to David Beaudoin, the Superintendent of Outdoor Work (hereinafter "Beaudoin")s and Beaudoin reports to William Fuqua, the General Superintendent (hereinafter "Fuqua"). (Stipulated Facts)
17. On June 22, 2007, Labreque ordered the Appellant to work on the repair of a refuse truck. (Stipulated Facts)
18. At approximately 8:00 A.M. on June 22, 2007, Beaudoin received an in-house call from Labreque, indicating that the Appellant was failing to obey his directive to repair the refuse truck. (Testimony of Beaudoin)
19. As a result of that call, Beaudoin walked down to "Bay 9" and told the Appellant that he needed to get the refuse truck "back on the road." The Appellant responded by sarcastically telling Beaudoin that the truck was "on the road" since the tires were touching the ground. Beaudoin then told the Appellant that he didn't have time to "play" and again told the Appellant that he needed the refuse truck running. At no point during this conversation did the Appellant raise any safety concerns regarding this assignment. (Testimony of Beaudoin)
20. Unable to get the Appellant to comply with his order, Beaudoin then called Union President Michael Gallagher (hereinafter "Gallagher") and asked him to talk to the Appellant about getting the Appellant to comply with his order to repair the refuse truck. Gallagher arrived and talked to the Appellant. Beaudoin was not present for the conversation between the Appellant and Gallagher. (Testimony of Beaudoin)

21. Hoping that the situation was resolved, Beaudoin then left the repair bay and went back to another location to take care of other duties and responsibilities. (Testimony of Beaudoin)
22. At approximately 9:00 A.M., Beaudoin received another call from Labreque. Labreque told him that there was still a problem, that he was getting no cooperation from the Appellant, and that he would try to do the repair job on the refuse truck himself. (Testimony of Beaudoin)
23. After receiving this second call, Beaudoin referred the matter to Fuqua. (Testimony of Beaudoin)
24. Beaudoin's testimony was very direct and he had a good recall of details and the statements made on the morning in question. (Finding of former Commissioner Guerin in regard toBeaudoin's testimony)
25. At approximately 9:30 A.M., Fuqua went to the repair bay and talked to Labreque, who told him that he had wound up doing the work himself. The Appellant was not present at this time. (Testimony of Fuqua)
26. At approximately 12:00 Noon, Fuqua returned to the repair bay and told the Appellant that his behavior had been disruptive and ordered him to punch out and go home. (Testimony of Fuqua)
27. During his testimony before the Commission, the Appellant did not dispute that he was ordered by Labreque to repair the refuse truck at approximately 7:20 A.M. The Appellant testified that in response to this order, he first told Labreque that the refuse truck could not be repaired in one day and would take two (2) – three (3) days. The Appellant testified that when Labreque again told him to work on the refuse truck, he told him that it would take forty-five (45) minutes to finish up work on another truck that was suspended in Bay 8.

Later in his testimony, however, the Appellant testified that he told Labreque it would take 20 minutes to finish up work on the other truck in Bay 8.

28. During his testimony before the Commission, the Appellant stated that he had "safety concerns" about leaving a truck suspended in the air in Bay 8 and that at no time did he refuse to do the brake job. Rather, he testified that he told Mr. Labreque "there's a right way and a wrong way of doing it." (Testimony of Appellant)
29. The Appellant did not dispute that he was subsequently ordered by Beaudoin to begin repairing the refuse truck immediately. According to the Appellant, he said to Beaudoin, "not a problem; I'll start the brake job when I put my equipment away in Bay 8." According to the Appellant, Beaudoin "got all aggravated and he left." (Testimony of Appellant)
30. The Appellant testified that despite being told to start work on the refuse truck immediately, he instead proceeded to complete the following tasks: (1) Cleaned up "sprayers" that he had been using in Bay 8, (2) lowered the other truck in Bay 8, (3) disconnected the hydraulics from the other truck, (4) parked the other truck in Bay 3, (5) pulled a loader up and turned it around in Bay 8, (6) disconnected the sander, and then (7) put the loader in Bay 2. (Testimony of Appellant)
31. The Appellant testified that after he completed the above-referenced tasks, he then went to assist Labreque, who had begun repairing the refuse truck himself in Bay 9. The Appellant testified that he had safety concerns about how Labreque was doing the job and said to him, "What the hell are you doing? I'm not going to work with you if it's not safe." (Testimony of Appellant)
32. The Appellant testified that sometime between 9:30 A.M and 10:00 A.M. he left to go to a truck parts store in Agawam, a 20-minute drive, in order to get parts to complete the brake

job said truck. He initially testified that he left at 9:00 A.M. The Appellant did not return to the DPW garage until 11:30 A.M. (Testimony of Appellant)

33. Asked during cross-examination if based on his service in the National Guard, he understood that he is supposed to follow the chain of command, the Appellant stated, "yeah, *unless they are wrong*, I've proved my chain of command wrong before, of my expertise and knowledge. Now, I can bring a master sergeant in and he can testify that I've proven him wrong. Nobody's perfect, but when you know you're right, you're right." (*emphasis added*) All of the disciplinary actions outlined in findings 2 through 14 involve supervisors other than Labreque, the Appellant's supervisor on June 22, 2007. (Testimony of Appellant)
34. Fuqua subsequently conducted a week-long investigation and had further conversations with all parties, including the Appellant. A disciplinary hearing was conducted on July 17, 2007 by the City's Board of Public Works. (Testimony of Fuqua and Exhibit 5)
35. The DPW has adopted General Conduct Rules and Regulations. According to these rules, any "Section II" offense, including insubordination, "may be cause for a suspension up to five days or discharge based upon the circumstances surrounding the incident. Employees suspended for violations of this section will be reinstated on a last chance basis. Another offense will be cause for discharge within a twelve (12) month period." (Exhibit 2)
36. The DPW voted to terminate the Appellant from his employment for insubordination, effective July 18, 2007. (Exhibit 5)

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. Civ. Serv. Comm'n, 43 Mass. App. Ct. 300,304 (1997). *See* Watertown *v.* Arria, 16 Mass. App. Ct. 331 (1983); McIsaac v. Civ. 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); Commissioners of Civ. Servi. 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. Civ. 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. Civ. Serv. Comm'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." Watertown at 334. *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster at 726, 727-728.

Brian LaFlamme has served our country in the Air Force National Guard for thirteen (13) years. However, that service does not exempt him from the standards of conduct expected of municipal employees.

Before the incident , Mr. LaFlamme had been disciplined a *thirteen (13)* times since 1997, including twelve (12) suspensions. Three (3) of the five (5) most recent suspensions involved acts of insubordination which took place in 2005 and 2006. (*See* LaFlamme v. Holyoke, 21 MCSR 399, 403 (2008); and LaFlamme v. Holyoke, 21 MCSR 403, 407 (2008)).

In this instant appeal, the overwhelming evidence, including the Appellant's own testimony, shows that Mr. LaFlamme committed yet another act of insubordination. When he was ordered to begin a repair job on June 22, 2007, the Appellant argued that the brake job could not be completed in one day. When he was given the order a second time, the Appellant argued that he would need forty-five (45) minutes to complete his current assignment. I do not credit the Appellant's testimony that he raised safety concerns about the other truck being suspended in the air. It strains credibility to suggest that it would have taken forty-five (45) minutes to return the other truck to floor level.

After the Appellant failed to comply with his order, Labreque contacted his superior, Beaudoin. When Beaudoin told the Appellant he needed to get the refuse truck back on the road, the Appellant sarcastically retorted that the truck was already on the road. To no great surprise, Beaudoin lost his patience and told the Appellant he didn't have time to play games. Although

the forty-five (45) minutes that the Appellant had requested had elapsed, the Appellant requested additional time in order to put away his equipment.

Beaudoin contacted the local union president for assistance in dealing with the Appellant. After the intervention of the local union president, the Appellant, chose to complete several other tasks although Labreque had begun the repair job himself. Finally, the Appellant then took close to two hours to get the parts from a parts store located less than twenty (20) minutes from the DPW garage.

When he testified before the Commission several months later, the Appellant attempted to justify his insubordination by stating that he is required to comply with a supervisor's order "unless they are wrong." If the Appellant disagreed with the order, he should have complied with the request and then grieved it pursuant to the terms of the Collective Bargaining Agreement and the renowned labor rule: obey now, grieve later. *See* Beal et. al. v. Boston Public Schools, 18 MCSR 57 (2005); Ouillette v. Cambridge, 19 MCSR 299, 303 (2006) (citing concept of "obey now, grieve later").

In this case, after a careful review of the evidence in this case, including the testimony of the Appellant, I reach the same conclusion that the Commission reached regarding the two most recent suspensions involving the Appellant :

> "A supervisor should not have to repeat a simple, clearly articulated instruction to a seasoned employee. The Appellant's dismissive attitude towards his supervisor's directive underscores his negativity and resentment . . ."
> LaFlamme v. Holyoke, 21 MCSR 399, 403 (2008);

> "The Appellant's dismissive attitude towards his supervisor's directive underscores his negativity and resentment . . . The Appellant's refusal was due to stubbornness rather than safety. If the Appellant ever had any genuine safety concerns . . . he could very easily have sought guidance from his supervisors . . .Instead, the Appellant chose to make a mountain out of a molehill. . . The Appellant was not credible. His supervisors were credible and were found not to have disciplined

the Appellant without just cause."

LaFlamme v. Holyoke, 21 MCSR 403, 407 (2008)

In the instant appeal, the Appellant was once again insubordinate by failing to comply with yet another supervisor's order. While the Appellant argues that the wording of the applicable collective bargaining agreement limits the City's ability to consider any prior discipline that occurred more than 12 months prior to this incident, the Commission does not have jurisdiction to interpret the provisions of the contract. Even if the Commission had this authority, there is nothing in the language of the contract that prohibits the City from considering the Appellant's prior discipline when determining if he should be terminated.

The City has proven by a preponderance of the evidence that it had just cause to terminate Brian LaFlamme as a Motor Equipment Repairman for insubordination. Further, there is no evidence of inappropriate motivations or objectives that would warrant the Commission modifying the discipline imposed upon him.

For all of the above reasons, the Appellant's appeal under Docket No. D1-07-255 is hereby ***dismissed***.

Civil Service Commission

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Christopher Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on December 11, 2008.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or 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 to:
Devin M. Moriarty, Esq. (for Appellant)
John D. Connor, Esq. (for Appellant)
Melissa Shea, Esq. (for Appointing Authority)