

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

WILLIAM LEEMAN  
CHRISTOPHER PAGLIUCA,  
Appellants

v.

D-12-342  
D-12-346

CITY OF HAVERHILL,  
Respondent

Appearance for William Leeman:

Stephen C. Pfaff, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
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Boston, MA 02110

Appearance for Christopher Pagliuca:

Joseph A. Padolsky, Esq.  
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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, William Leeman ( Lt. Leeman) is appealing the decision of the City of Haverhill (City or Appointing Authority) to suspend him for ten (10) days from the Haverhill Police Department (HPD) for violations of HPD's Rule 130 (Departmental Reports), Rule 111 (Unsatisfactory Performance), and Canon of Police Ethics, Article X (Presentation of Evidence). Pursuant to the provisions of G.L. c. 31, § 43, the

Appellant, Christopher Pagliuca (Officer Pagliuca) is appealing the decision of the City to suspend him for five (5) days for violations of HPD's Rule 130 (Departmental Reports), Rule 111 (Unsatisfactory Performance), and Canon of Police Ethics, Article X (Presentation of Evidence). The appeals were timely filed with the Civil Service Commission (Commission) on December 11, 2012 (Leeman) and December 17, 2012 (Pagliuca) and the cases were consolidated. A full hearing was held on March 20 and 21, 2013 at the offices of the Commission. As no written notice was received from the parties, the hearing was declared private. Two (2) CDs were made of the hearing and copies were provided to all three parties at the conclusion of the hearing. All witnesses, with the exception of the Appellants and Police Chief Alan R. DeNaro (Chief DeNaro) were sequestered. Chief DeNaro was sequestered prior to giving his testimony before the Commission. All three (3) parties submitted post-hearing briefs in the form of proposed decisions.

#### **FINDINGS OF FACT:**

Based upon the twenty-five (25) documents entered into evidence and the testimony of the following witnesses:

*Called by the Appointing Authority:*

- Alan R. DeNaro, Chief of Police, Haverhill Police Department;
- Donald E. Thompson, Deputy Chief, Haverhill Police Department;
- Daniel Cena, Sergeant, West Newbury Police Department;
- Harry Miller, Patrolman, Haverhill Police Department;
- Adam White, Police Officer, Merrimac Police Department;
- Erin Fortin, Paramedic, Trinity Ambulance;
- Carl Rizzo, Paramedic, Trinity Ambulance;

*Called by Lt. Leeman::*

- William Leeman, Appellant;
- Jonathan Lee Mimms, Lieutenant, Haverhill Fire Department;
- Charles Noyes, retired Lieutenant Colonel, Massachusetts State Police and Director of Public Safety, Wentworth Institute

*Called by Officer Pagliuca:*

- Christopher Pagliuca, Appellant;

I make the following findings of facts:

1. Lt. Leeman is a tenured civil service employee and has been employed by the HPD for twenty-five (25) years and currently holds the position of Lieutenant. (Testimony of Lt. Leeman; Stipulated Facts). Leeman had received no prior discipline before the ten (10) day suspension that is the subject of these appeals. (Stipulated Facts).
2. Officer Pagliuca is a tenured civil service employee and has been employed by the HPD for eight (8) years and currently holds the position of Patrolman. (Testimony of Officer Pagliuca; Stipulated Facts). Officer Pagliuca had received no prior discipline before the five (5) day suspension that is the subject of these appeals. (Stipulated Facts).
3. Officer Pagliuca was previously a member of the United States Coast Guard upon which he was honorably discharged. (Testimony of Officer Pagliuca and Exhibit 17). Officer Pagliuca's Early Night Patrol Police Squad received an Official Commendation for the officers' and supervisors' collective efforts in preventing a mentally disturbed person from jumping off the Comeau Bridge on November 29, 2006. (Exhibit 16).
4. Daniel Cena is a police sergeant for the West Newbury Police Department, a non-civil service community. (Testimony of Sgt. Cena)
5. On March 30, 2012, Sgt. Cena was working the 3:00 P.M. to 11:00 P.M. patrol shift in West Newbury. At 10:34 P.M., Sgt. Cena, while on patrol near the West Newbury / Groveland town line, was dispatched to respond to what was reported to be a motor vehicle accident near the intersection of Route 113 and Bailey's Lane in West Newbury. (Testimony of Sgt. Cena)

6. Upon arriving at the scene of the reported accident, Sgt. Cena did not observe a vehicle, but did observe a downed-utility pole in the road with wires still attached to it. He also observed a cast iron yellow flashing light on the ground. The westbound travel lane of Route 113 was not passable and the surrounding neighborhood was now without power.  
(Testimony of Sgt. Cena)
7. Several area residents came out of their homes, including Sgt. Cena's fourth grade teacher, who conveyed a report of a damaged vehicle heading toward Rocks Village Bridge. Sgt. Cena also observed fresh fluid in the Westbound lane of Route 113.  
(Testimony of Sgt. Cena)
8. After another police officer and fire and rescue personnel arrived, Sgt. Cena returned to his cruiser and followed the trail of fresh fluid on Route 113 in the direction of Rocks Village Bridge. The trail of fluid led him to Bridge Street, where Sgt. Cena took a right. He then followed the fluid for approximately one mile on Bridge Street until he arrived at a temporary stop light just before the Rocks Village Bridge. Sgt. Cena noticed a pool of fluid at the stop light, leading him to the conclusion that the vehicle in question had stopped in that location. (Testimony of Sgt. Cena)
9. The temporary stop light where Sgt. Cena was stopped is located in West Newbury. The waterway under the Rocks Village Bridge is partially in Merrimac. The other side of the Rocks Village Bridge is located in Haverhill. (Testimony of Sgt. Cena)
10. Sgt. Cena proceeded to drive over the Rocks Village Bridge onto East Main Street in Haverhill, at which point he saw a white Cadillac Escalade on the right side of the road, partially on the pavement and partially on the shoulder of the road. (Testimony of Sgt. Cena)

11. Sgt. Cena parked his unmarked police vehicle behind the Cadillac Escalade, exited his vehicle and approached the driver's side of the Cadillac Escalade. At or around the same time, Officer Adam White of the Merrimac Police Department arrived. He parked his cruiser behind Sgt. Cena's vehicle, exited his cruiser and stood behind the Cadillac Escalade while Sgt. Cena approached the driver's side of the Escalade. (Testimony of Sgt. Cena)
12. Sgt. Cena knocked on the driver's side door of the Escalade. The individual sitting in the driver's seat, Charles Noyes, opened the door.<sup>1</sup> (Testimony of Sgt. Cena)
13. It is undisputed that Mr. Noyes is a retired Lt. Colonel with the Massachusetts State Police.
14. Sgt. Cena had never met Mr. Noyes before and was not aware, initially, that he was a retired Lt. Colonel with the State Police. (Testimony of Sgt. Cena) I take administrative notice that Mr. Noyes retired in 2006 and collects a state-funded pension of \$117, 769.00 annually. ([www.mass.gov/opencheckbook](http://www.mass.gov/opencheckbook))
15. Sgt. Cena detected an odor of alcohol emanating from Mr. Noyes's breath and person. He observed that his speech was very slurred and that Mr. Noyes was not following directions, including exiting the vehicle when he was told not to. (Testimony of Sgt. Cena)
16. Officer White, who was standing behind the Escalade, heard Sgt. Cena tell Mr. Noyes that he was going to ask him to do a field sobriety test. (Testimony of Officer White)
17. When Sgt. Cena asked Mr. Noyes for his license, Mr. Noyes opened his wallet and "flashed a badge" indicating that he was a retired state trooper. (Testimony of Sgt. Cena)

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<sup>1</sup> Although Officer White testified that Sgt. Cena talked with Mr. Noyes through an open window, I have credited the testimony of Sgt. Cena on this matter.

18. At some point, Sgt. Cena noticed a bag in the back of the Escalade and asked Mr. Noyes if there was “anything [he] should know about.” Mr. Noyes told Sgt. Cena that there was a firearm in the back seat in a bag marked with the words Massachusetts State Police. Sgt. Cena proceeded to “secure the firearm.” (Testimony of Sgt. Cena)
19. Before returning to his cruiser to call dispatch at the West Newbury police station, Sgt. Cena spoke to Officer White and told him that Mr. Noyes was intoxicated and that he was a retired state trooper. (Testimony of Sgt. Cena) Sgt. Cena proceeded to his cruiser and made the call to dispatch. (Testimony of Sgt. Cena)
20. At some point, Sgt. Cena observed Mr. Noyes stumble to the back of the vehicle and lean against it. (Testimony of Sgt. Cena) Officer White observed that Mr. Noyes was unsteady on his feet and his eyes were a little red. (Testimony of Officer White)
21. Shortly thereafter, Officer Pagliuca from the Haverhill Police Department arrived on the scene in his police cruiser. While Officer Pagliuca was still in his cruiser, he asked Sgt. Cena if Mr. Noyes was “drunk”. Sgt. Cena responded by saying “yes; he’s legless.” (Testimony of Officer Pagliuca)
22. Officer Pagliuca proceeded to turn his cruiser around and park behind the cruiser of Merrimac Police Officer Adam White. (Testimony of Sgt. Cena and Officer Pagliuca)
23. After Officer Pagliuca exited his cruiser, Sgt. Cena approached him and told Officer Pagliuca the following:
- Mr. Noyes told him (Cena) that he was a retired Trooper and “tinned him”.
  - Mr. Noyes hit a couple of poles in West Newbury
  - Mr. Noyes told Sgt. Cena that he had a gun in the vehicle.

- Sgt. Cena seized the gun and secured it in the back of his cruiser. (Testimony of Officer Pagliuca)

24. After talking to Sgt. Cena, Officer Pagliuca contacted his supervisor, Sgt. Harry Miller, who would arrive approximately fifteen (15) minutes later. (Testimony of Officer Pagliuca) Sgt. Cena proceeded to direct traffic. (Testimony of Sgt. Cena)

25. While waiting for Sgt. Miller to arrive, Officer Pagliuca approached Mr. Noyes, who was leaning against the back of the Escalade. Officer White of Merrimac was standing nearby. Officer Pagliuca asked Mr. Noyes where he was coming from and Mr. Noyes told him he was coming from Boston where he works. Officer Pagliuca proceeded to walk around the Escalade and observe the damage to the vehicle. (Testimony of Officer Pagliuca)

26. When Officer Pagliuca made his way back to the rear of the vehicle, rescue personnel from Trinity Ambulance had arrived. Officer Pagliuca heard a paramedic ask Mr. Noyes if he had been drinking. Officer Pagliuca heard Mr. Noyes tell the paramedic from Trinity Ambulance that he had consumed “a couple of drinks.” He also heard Mr. Noyes refuse any treatment. (Testimony of Officer Pagliuca)

27. Erin Fortin is a paramedic with Trinity Ambulance who was dispatched to this incident. When she arrived, she observed that Mr. Noyes was leaning against the back of the Escalade; he appeared melancholy and relaxed. He initially refused any medical care; said he was fine; and refused to be transported to the hospital. Ms. Fortin recalls smelling the odor of alcohol and asking Mr. Noyes if he had anything to drink that night. Mr. Noyes told her that he had “two drinks.” When Ms. Fortin asked Mr. Noyes if he had any pain in his head, neck, or back, he said he did not. (Testimony of Ms. Fortin)

28. When Ms. Fortin told a Haverhill police officer, who I infer to be Officer Pagliuca, that Mr. Noyes did not want treatment or transport, she was told to “stay put” and stand in front of the ambulance until another Haverhill police officer arrived. (Testimony of Ms. Fortin)
29. Shortly thereafter, Sgt. Miller arrived and asked Officer Pagliuca, “what have you got?” Officer Pagliuca replied in part, “well, he’s a retired trooper, he’s intoxicated or he’s drunk ... He hit some poles in West Newbury.” (Testimony of Officer Pagliuca)
30. Sgt. Miller approached Mr. Noyes and stated words to the effect, “you put us in a tough spot; I’m going to call our lieutenant; we can’t give you any breaks; there’s not much we can do here; I’m going to call my lieutenant and get some advice.” (Testimony of Officer Pagliuca)
31. At some point, Mr. Noyes stated words to the effect that “[we] all work the same job” and that “if this was the good old days, [you] would just let me go.” (Testimony of Sgt. Miller)
32. Sgt. Miller went back to his cruiser and Officer Pagliuca stood next to Mr. Noyes. Mr. Noyes began reminiscing with Officer Pagliuca about his time as a state trooper, relating a story about when a state trooper got stabbed in Haverhill. (Testimony of Officer Pagliuca)
33. Lt. Leeman held the position of Lieutenant and was the Officer in Charge (OIC) on the night in question. As the OIC, Lt. Leeman served as the Chief of Police in the Chief’s absence. (Testimony of Chief DeNaro). As the OIC, Lt. Leeman was the shift commander and responsible for all officer under his command. (Exhibit 3)



34. Lt. Leeman recalls receiving three phone calls from Sgt. Miller while he (Miller) was at the scene and researching caselaw to determine whether, based on the facts presented to him, there was sufficient evidence to charge Mr. Noyes with OUI. (Testimony of Lt. Leeman)
35. Officer Pagliuca went over to Sgt. Miller's cruiser to find out the status of his conversation with the Lt. Leeman. When Officer Pagliuca approached Sgt. Miller's cruiser, he heard Sgt. Miller talking to Lt. Leeman on the phone. Specifically, he heard Sgt. Miller state, "no, I don't smell any booze. Chris, do you smell any booze?" Officer Pagliuca replied: "I don't smell anything." After speaking with Lt. Leeman further, Sgt. Miller then stated, "No, I don't know, did anyone ask him if he was driving?" Officer Pagliuca replied: "I didn't ask him." (Testimony of Officer Pagliuca)
36. Sgt. Miller, while still on the phone with Lt. Leeman, got out of his cruiser and walked over to where Mr. Noyes was leaning against the back of the Escalade. Sgt. Miller then asked Mr. Noyes, "were you driving?" Mr. Noyes first replied, "where you going with this one?" and then stated "no". Asked by Sgt. Miller who was driving, Mr. Noyes did not respond. (Testimony of Officer Pagliuca)
37. At some point, Sgt. Cena told Sgt. Miller that his department (West Newbury) did not have jurisdiction to charge Mr. Noyes with OUI. Sgt. Miller stated that Haverhill would not be charging Mr. Noyes with OUI because "we don't have operation." (Testimony of Officer Pagliuca)
38. When Sgt. Cena was told by Sgt. Miller that Haverhill would not be charging Mr. Noyes with OUI, Sgt. Cena walked over to Mr. Noyes and, in the presence of Sgt. Miller and Officer Pagliuca, stated to Noyes, "are you really going to play this fucking game?"

You're lucky you made it into Haverhill. You'd be in jail right now if you didn't." Sgt.

Cena then told Mr. Noyes how he (Cena) had almost been hit and killed by a drunk driver in 2007 and then told Noyes that it was "ridiculous" what he was doing. (Testimony of Sgt. Cena)

39. Sgt. Cena ultimately charged Mr. Noyes with reckless driving and crossing a marked lane in West Newbury. (Testimony of Sgt. Cena)

40. Neither Sgt. Miller or Officer Pagliuca administered a field sobriety test (FST) or asked Mr. Noyes to take a breathalyzer test. (Testimony of Officer Pagliuca)

41. Sgt. Miller then walked back over to Mr. Noyes and said words to the effect that maybe Mr. Noyes should go get checked out at the hospital. (Testimony of Officer Pagliuca)

42. Ms. Fortin of Trinity Ambulance, who had been instructed to stand in front of the ambulance and had now been on scene for 50 minutes, was informed by a Haverhill police officer that Mr. Noyes had now agreed to be transported and she and her partner facilitated the transport. When Mr. Noyes was put into the ambulance, Ms. Fortin no longer detected the smell of alcohol coming from him. (Testimony of Ms. Fortin)

43. Officer Pagliuca returned to the Haverhill police station that night. When he asked Lt. Leeman what type of report he should write, he was told to write a "miscellaneous report". Lt. Leeman reminded Officer Pagliuca to include in his report that Sgt. Cena's cruiser lights were activated when he (Pagliuca) arrived; that "you guys couldn't smell any booze" but Sgt. Cena could; and that no keys were found. (Testimony of Officer Pagliuca)

44. As Officer Pagliuca was writing up his report on the computer, Lt. Leeman walked over and sat down next to him to see how he was doing. (Testimony of Lt. Leeman) Sgt.

Miller was also present. At that point, Officer Pagliuca stated that he couldn't smell any alcohol on Mr. Noyes, but then recounted hearing Mr. Noyes state that he had "three drinks" with dinner earlier that night in Newburyport and that he comes through West Newbury because somebody leaves eggs out on their porch for him. When Sgt. Miller heard this information from Officer Pagliuca, he said, "geez, you didn't tell me about the three drinks on scene and the West Newbury thing with the eggs." Sgt. Miller then said to Lt. Leeman, "maybe we should put in a complaint and let the court decide whether there's operation or not." Lt. Leeman replied by saying, "No, I checked. We don't have operation. If Cena comes up with more information later, he can get the records from the hospital and charge him with OUI." (Testimony of Sgt. Miller)

45. In his report, Officer Pagliuca stated in relevant part that, "Trinity ambulance arrived on scene and checked Charles for injuries. Sgt. Miller was advised of the situation and spoke with Sgt. Cena. I spoke with Charles and asked him where he was coming from. Charles stated that he started work at 0530 this morning in Boston and went out to eat after work in Newburyport. As I was speaking to him, I could not detect any odor of liquor on him. Sgt. Miller also spoke with Charles and could not smell any liquor coming from him." Officer Pagliuca omitted from his report that he heard Mr. Noyes state that he had a couple (See Finding 26) or three (See Finding 44) drinks that night. (Exhibit 5) . (Testimony of Lt. Leeman)

46. The next day, after reading Officer Pagliuca's report, Sgt. Miller told Lt. Leeman that he "didn't like" that part of the report that referenced not being able to smell alcohol. (Testimony of Lt. Leeman) Sgt. Miller did not feel comfortable with that portion of the report because he thought it "stood out" and made it look like he and Officer Pagliuca

were concluding that Mr. Noyes was not intoxicated. Lt. Leeman told Sgt. Miller that it was “staying in there” because that’s what he and Pagliuca had told him. (Testimony of Sgt. Miller) Lt. Leeman, despite having been told by Officer Pagliuca that he heard Mr. Noyes state that he had a couple or three drinks, did not instruct Officer Pagliuca to include this information in the report and took no steps to have the report amended to correct this omission. (Testimony of Lt. Leeman)

47. Multiple calls and e-mails to the Haverhill Mayor’s Office from unidentified people who were outraged that the HPD had let a retired Lieutenant Colonel of the Massachusetts State Police, possibly operating under the influence, go without an arrest on Friday, March 30, 2012 prompted an investigation by the Haverhill Police Department (HPD). (Testimony of Chief DeNaro and Deputy Thompson)

48. Chief DeNaro has been the Chief of Police at the HPD for eleven (11) years. He is the chief executive of the Police Department and responsible for deciding all policy matters, setting rules and regulations, assigning officers, recommending discipline of officers, deployment of personnel and resources, and in charge of the HPD’s budget. Chief DeNaro is also the Commissioner of Public Safety and in charge of the Haverhill Fire Department (“HFD”). He oversees eighty-five (85) sworn police officers and eighty-five (85) firefighters. (Testimony of Chief DeNaro).

49. Deputy Thompson has been with the HPD for thirty-five (35) years. He has held numerous positions with the HPD, including Reserve Officer, Patrolman, Sergeant, Detective, and Captain. He has been Deputy Chief for five (5) years. Deputy Thompson has completed ten (10) to fifteen (15) in-depth, Internal Affairs interviews and numerous investigations into citizens’ complaints. (Testimony of Deputy Thompson).

50. On Saturday, March 31, 2012, Chief DeNaro was at the scene of a fire. He went into the police station after and was approached by Lt. Leeman. Lt. Leeman advised Chief DeNaro of an incident that occurred on March 30, 2012. Lt. Leeman informed the Chief that there had been an accident in West Newbury and the driver stopped in Haverhill and was not arrested. Lt. Leeman told the Chief that the driver was a retired officer. Chief DeNaro instructed Lt. Leeman to make sure that the report of this incident was well-documented, including all information and everything the HPD's officers did, because the incident would probably be subject to extreme scrutiny because it involved a retired officer. (Testimony of Chief DeNaro).
51. On Monday, April 1, 2012, the Chief reviewed Officer Pagliuca's Miscellaneous Report (Exhibit 5) documenting the incident on Friday, March 30, 2012. Chief DeNaro felt the report was incomplete and appeared to be purposely designed to avoid supporting that there was sufficient probable cause at the scene to make an arrest. (Testimony of Chief DeNaro)
52. The Chief wanted Deputy Thompson to address these concerns by looking into what the Haverhill Officers did at the scene and Officer Pagliuca's report. On April 1, 2012, the Chief asked Deputy Thompson to conduct an investigation into whether Pagliuca, Miller, and Leeman properly performed their duties on March 30, 2012. Deputy Thompson began his investigation that day. (Testimony of Chief DeNaro and Deputy Thompson and Exhibit 8).
53. When Sgt. Miller came in for his shift that night, Lt. Leeman told Sgt. Miller that the Noyes matter was turning into an investigation. Lt. Leeman told Sgt. Miller that the Chief was not happy that everyone at the scene smelled alcohol on Noyes except for his

two (2) officers. At this time, Miller explained to Leeman that he never got closer than six (6) feet to Noyes, which the two determined was actually three (3) feet. (Testimony of Miller).

54. During Deputy Thompson's Internal Affairs investigation, he interviewed all of the witnesses that testified at the Commission hearing except for the Chief and Mimms. Deputy Thompson also interviewed attorneys with the Essex and Worcester County District Attorney's Offices and reviewed several documents. He submitted a four (4) page, single-spaced report with nine (9) attachments to Chief DeNaro for review. (Exhibit 8 and Testimony of Thompson).
55. During his interview, Officer Pagliuca told Deputy Thompson that he thought Mr. Noyes was intoxicated on the night in question. (Testimony of Officer Pagliuca)
56. Deputy Thompson recommended that Pagliuca, Miller, and Leeman be found to have violated Department rules regarding: Rule 130 Department Reports, which states in part, "Reports submitted shall be truthful and complete"; Rule 111 Unsatisfactory Performance, which states in part, "Officers shall perform their duties in a manner that will maintain the highest standards of efficiency"; and Cannon of Police Ethics, Article X, which states in part, "They shall ascertain what constitutes evidence" and "shall present such evidence impartially." (Exhibit 1 and 8 and Testimony of Thompson).
57. In his report, Thompson concluded that while West Newbury should have charged Noyes with OUI, Pagliuca and Miller did a poor job at the scene determining who the operator was as there was evidence at the scene sufficient to support that Noyes was the operator. Also, the Haverhill Officers did a poor job of documenting the incident. (Exhibit 8 and Testimony of Thompson).

58. In his report, Thompson concluded that all three officers had violated Rule 130 because all three had contributed to the report submitted by Pagliuca. Deputy Thompson concluded that this report did not contain all of the relevant facts per Haverhill Police Department Policy and Procedure #82.2 Field Reports. Deputy Thompson found that the following relevant facts were not in the report: details of the discussion of West Newbury and Haverhill with regards to charging Noyes with OUI; that all Officers present believed Noyes was intoxicated; that neither Miller nor Pagliuca made a specific attempt to smell alcohol on Noyes and that they were never closer than three (3) to four (4) feet from Noyes; that Cena specifically told the Haverhill Officers that he thought Noyes was intoxicated; and that only a limited attempt was made to locate Noyes's keys. (Exhibit 8).

59. Deputy Thompson concluded that all three Officers violated Rule 111 because: Miller and Pagliuca did a poor job on the scene as there was sufficient evidence that Noyes was the operator of the car; Noyes was alone at the scene; he refused to say who was driving when asked; and, he had called a tow truck before the Officers arrived. Pagliuca and Miller had also failed to properly search for the vehicle keys and failed to offer a field sobriety test to Noyes. Leeman was not at the scene, but did contribute to the report. Also, while it was busy at the station, Leeman knew that Miller had concerns about operation and had options available to obtain a clearer understanding of the situation. (Exhibit 8 and Testimony of Deputy Thompson).

60. Deputy Thompson concluded that all three officers had violated Cannon of Police Ethics, Article 10 because: Miller and Pagliuca did not gather evidence available at the scene relating to the operation of the vehicle and they did not conduct a FST. Leeman violated

this article when he assisted with writing the report. Both Miller and Pagliuca had stated that they believed Noyes was intoxicated and that there was discussion with West Newbury regarding charging Noyes with OUI. There was no mention of any of this in the report.

61. The Chief agreed with Deputy Thompson's recommendation and determined that Pagliuca, Miller, and Leeman had violated Rule 130 (Departmental Reports), Rule 111 (Unsatisfactory Performance), and Canon of Police Ethics, Article X ("They shall ascertain what constitutes evidence"). The Chief was concerned that the Officers had not made an arrest at the scene, regardless of whether or not Cena should have made the arrest: "If we have a crime committed in the City and we have probable cause, regardless of the action or inaction of an Officer from a [department] that doesn't handle the calls we handle . . . my Officers with their vast knowledge and the experience that they have should have made the arrest." (Testimony of Chief DeNaro).
62. Even more pressing to the Chief was that the report was not produced in a truthful and forthright manner. The Chief felt that "the key information that was necessary to substantiate probable cause was eliminated from the report that was filed by Officer Pagliuca." (Testimony of Chief DeNaro).
63. The Chief testified that as a result of these Officers' actions on March 30, 2012, the "public has lost a serious amount of confidence in [the HPD] and in [the HPD's] ability to police everyone fairly and equitably and that is something that is going to take a long time to overcome because there are many people, and rightfully so, [who] feel that if it had been them in the same situation they would have been arrested." (Testimony of Chief DeNaro).



64. The Chief provided both Leeman and Pagliuca with a Notice of Suspension, a copy of M.G.L. c. 31 ss. 41-45, and discussed their underlying conduct. The Chief suspended Leeman for five (5) days with a recommendation to the appointing authority for an additional five (5) days. The Chief suspended Pagliuca for five (5) days. The Appellants refused to accept their suspensions and requested a hearing. (Exhibits 2 and 3).
65. On July 19 and October 25, 2012, hearings were held at Haverhill City Hall before a hearing officer, designated by the appointing authority, City of Haverhill, James J. Fiorentini, Mayor pursuant to M.G.L. c. 31, s.41. On November 26, 2012, the hearing officer issued his decision, finding just cause for the suspensions. (Exhibit 14). The Mayor upheld the decisions of the hearing officer and Chief DeNaro and adopted Chief DeNaro's recommendations for suspension. (Exhibits 2 and 3)
66. Leeman was suspended for ten (10) days and Pagliuca was suspended for five (5) days. (Exhibits 2 and 3).

## **CONCLUSION**

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. Mun. Ct. of Boston, 359 Mass. 211, 214, 268 N.E.2d 346 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427 (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, 684 N.E.2d 620, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, 451 N.E.2d 408 (1983)

The Appointing Authority's burden of proof by a preponderance of the evidence 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, 133 N.E.2d 489 (1956).

The Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. 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 Service Comm'n, 43 Mass.App.Ct. 300, 304 rev.den., 426 Mass. 1102 (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477 (1995); Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

"The commission's task...is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision

of the [appointing authority], but rather decides whether ‘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’”, which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102, 453 (1983) and cases cited.

### *Analysis*

#### *Officer Pagliuca*

**“ ... [H]e’s a retired trooper, he’s intoxicated or he’s drunk ... he hit some poles in West Newbury.”**

.... Haverhill Police Officer Christopher Pagliuca’s statement to Sergeant Harry Miller on March 20, 2012 regarding retired State Police Lt. Colonel Charles Noyes.

There was good reason for Officer Pagliuca to make this statement. First, upon arriving at the scene, and prior to knowing that Mr. Noyes was a retired state trooper, he asked Sgt. Cena of the West Newbury Police Department, “is he drunk?” and Sgt. Cena replied, “yes, he’s legless.” Second, he heard Mr. Noyes tell a paramedic from Trinity Ambulance that he had been drinking that night. It is undisputed that Officer Pagliuca *omitted* some of this relevant information from his report. Most significantly, Officer Pagliuca omitted that he personally heard Mr. Noyes say that he had been drinking that night. This was not an administrative oversight. As he was preparing his report, he recounted to Lt. Leeman and Sgt. Miller that he heard Mr. Noyes make this statement. Yet, Officer Pagliuca omitted this information from his report. Further, even if I were to accept Officer Pagliuca’s written statement (and testimony) that he did not detect the smell of alcohol from Mr. Noyes, he omitted from his report that he purportedly never got any closer than three feet from Mr. Noyes. Finally, despite telling Deputy Thompson that he had

formed the conclusion that Mr. Noyes was intoxicated that night, he omitted this information, along with the reasons he reached this conclusion, from his report.

Officer Pagliuca was the first Haverhill Officer on scene and was responsible for gathering evidence and conducting an investigation. Upon arrival, Sgt. Cena told Officer Pagliuca that Noyes was a retired trooper, and that he had detected the odor of alcohol on Noyes, and that Noyes was “legless.” Officer Pagliuca was on scene for at least fifteen (15) minutes before Sgt. Miller arrived and during that time he made no further inquiries of Cena nor did he try to verify what Sgt. Cena had told him about Mr. Noyes. Officer Pagliuca, as referenced above, heard, first hand, Mr. Noyes admitting to having drinks at dinner. Officer Pagliuca still took no action and even failed to initially tell Sgt. Miller that Mr. Noyes had made this admission. Officer Pagliuca concluded that Mr. Noyes was intoxicated. Yet, even though it would have been standard operating procedure to perform a Field Sobriety Test, which Officer Pagliuca acknowledged, he did not perform one nor did he make any further inquiries about what Sgt. Cena had observed.

Pagliuca also assumed that Noyes was the operator of the vehicle, but did not take any steps to gather evidence that would have supported that conclusion. Such evidence was available at the scene. Cena and White, who were already on the scene when Pagliuca arrived, had both observed Noyes behind the wheel of the Escalade. White had also heard Noyes denying having the keys to the car and stating the keys were on the passenger seat. Pagliuca also heard Noyes deny having the keys, but did not ask White or Cena if they knew where the keys were. He walked around the Escalade with his flashlight but did not specifically look for the keys.

Officer Pagliuca violated the HPD’s rules requiring reports to be truthful and complete. His inadequate investigation at the scene also violated HPD Rule 111 “Unsatisfactory Performance” and Cannon of Police Ethics, Article X.

*Lt. Leeman*

Lt. Leeman was the OIC on the night of the Noyes incident. He was serving in the capacity of the Chief of Police and bore the ultimate responsibility for the work of Officer Pagliuca and Sgt. Miller that night, including Officer Pagliuca's report, which he reviewed and approved. Lt. Leeman should have taken every measure available to ensure that a full investigation was conducted and the incident was handled and reported correctly. He did not do so.

Over the course of thirty (30) minutes, Leeman had three (3) calls with Miller over their cell phones. Lt. Leeman had numerous options available to him to appropriately oversee this incident and he failed to do so. At the very least, he should have directed Sgt. Miller to conduct a FST, and to make further, pointed inquiries of all persons on the scene about Noyes's operation of the vehicle and his level of intoxication. In his interview with Deputy Thompson, Leeman admitted that if he had been at the scene he would have asked a lot more questions and would have done a FST.

Also, Lt. Leeman failed to make sure that Officer Pagliuca's report was accurate and complete. The report does not contain relevant details regarding Noyes's condition and operation of the vehicle, including that while Pagliuca and Miller did not smell alcohol on Noyes, they did not get closer than three (3) to four (4) feet to him, that Pagliuca and Miller thought Noyes was intoxicated, and that Noyes had admitted to Pagliuca that he had had a couple of drinks before the incident. Leeman learned these facts when Miller and Pagliuca returned to the station, and over the next couple of days, but he did not order Pagliuca to include them in the report and did not add them to the report.

The report also does not include any mention of the HPD's concerns regarding jurisdiction and how the decision was made that the HPD was not going to charge Noyes with OUI. This,

coupled with the glaring absence of any mention of the evidence at the scene that would have supported probable cause to make an arrest, makes the report appear as though these Officers tried to cover up their decision to give a pass to a retired Lieutenant Colonel of the State Police on an OUI charge. At the very least, the report reads like these Officers knew that they had not adequately performed their duties, which they did not, and were trying to cover up that fact by using this report.

Leeman failed to appropriately carry out his duties as the shift commander. He failed to insure that Miller and Pagliuca conducted a comprehensive and appropriate investigation at the scene and that Pagliuca completed a comprehensive and adequate report of the incident in violation of the HPD's rules 111 (Department Reports), 130 (Unsatisfactory Performance), and Cannon of Police Ethics, Article X.

Having determined that it was appropriate to discipline both Pagliuca and Leeman, the Commission must determine if the City was justified in the level of discipline imposed, which in this case was a five (5) day suspension for Pagliuca and a ten (10) day suspension for Leeman.

The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.' " Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune employees' suspensions to ensure perfect uniformity. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

“The ‘power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.’ ”

Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission’s findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation” E.g., Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006).

I have found no reasons that would warrant a modification of the penalties imposed in the instant appeal. The Appellants did not present any evidence of bias on the part of the HPD against these Officers or of disparate treatment. (Exhibits 21, 22 and 25). Only one (1) of four (4) incidents of comparative discipline presented by the Appellants involved a public official. (Exhibit 25). Unlike Pagliuca and the Noyes incident, there was no evidence presented that the officers who arrived first on scene of the incident in Exhibit 25 wrote a police report that violated Rule 130 by leaving out information relevant to establishing probable cause for an arrest.

Also, despite their prior clean disciplinary records, both Pagliuca and Leeman engaged in serious misconduct in violation of the Departmental Rules and Canon Police Ethics, as charged. Leeman, as the shift commander and most experienced officer involved, was also responsible for the actions of Pagliuca and Miller. He failed to take action to correct their misconduct and instead contributed to it by engaging in his own justification of the City’s additional five (5) day suspension of him.

The Appellants’ appeals under Docket Nos. D-12-342 and D-12-346 are hereby ***dismissed***.

*Retired Lt. Colonel Charles Noyes*

***“if this was the good old days, [you] would just let me go.”***

... Statement of Retired Lt. Colonel Charles Noyes

The Commission’s jurisdiction is limited to ruling on whether there was just cause to discipline Lt. Leeman and Officer Pagliuca of the Haverhill Police Department. For all of the reasons stated above, I have concluded that there was just cause for the discipline imposed against them. Commentary about the actions and testimony of retired Lt. Colonel Charles Noyes, however, is warranted.

Mr. Noyes collects a state-funded annual pension of \$117,769. Mr. Noyes consumed enough alcohol that resulted in a trained police sergeant and a paramedic to smell the odor of alcohol coming from him on the night in question. With a firearm in the backseat, he then drove his Cadillac Escalade through the streets of West Newbury, struck and took down a utility pole and its wires and a cast iron street light, causing a large number of the Town’s residents to lose power. He continued to drive for over a mile and cross into Haverhill. Police officers on the scene described him as “drunk,” “intoxicated”, or “legless”.

Within moments of being confronted by a West Newbury police officer, Mr. Noyes “flashed his badge” and told the officer that he was a retired Lt. Colonel with the Massachusetts State Police. While leaning on the back of his vehicle, he reminisced with a Haverhill police officer about his days on the State Police. He denied being the driver of the vehicle and, at one point, told a police sergeant how, in the “good old days”, they would just let him go. Mr. Noyes was asking for a favor – and he got one. Sworn police officers opted not to conduct a field sobriety test, not to ask Mr. Noyes to take a breathalyzer test, and not perform even the most rudimentary tasks expected of a police officer. It is painfully clear that had Mr. Noyes not “flashed his



badge” that night, he likely would have been arrested for OUI or, at a minimum, been subjected to a field sobriety test.

Even more offensive than his actions on the night in question was his testimony before the Commission. Mr. Noyes first testified before the Commission that, after reaching for his cell phone in his vehicle, he has no memory of the events that occurred thereafter until he was placed in the ambulance and transported to the hospital. Remarkably, however, Mr. Noyes then testified that he remembers with certainty that:

- There was blood on the windshield, his head, shirt and arms as a result of a head injury sustained by what he presumes was his head striking the windshield;
- He told personnel on the scene that he hit the windshield with his head;
- He told personnel on the scene that he had the flu for a few days;
- He told personnel on the scene that he cut himself with a chainsaw a few years ago and cut his Achilles tendon, causing him to have trouble walking.

This testimony is not consistent with the testimony of all other percipient witnesses that night. No other percipient witnesses stated that they observed any blood on the windshield or on the head, shirt or arms of Mr. Noyes and no other percipient witnesses testified that Mr. Noyes stated that he was suffering from the flu or that he had difficulty walking because he cut his Achilles tendon with a chainsaw three (3) years ago. In fact, Paramedic Erin Fortin, whose testimony was highly credible, specifically remembers *asking* Mr. Noyes if was experiencing any head, neck or back pain and Mr. Noyes stated “no”. In short, his testimony that he had sustained a head injury so severe causing him to have virtually no recollection of the events of March 30, 2012 was wildly unbelievable and tarnishes the image of the Massachusetts State Police.

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on July 11, 2013.

A true record. Attest:

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Commissioner

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)(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.

Notice:

Stephen C. Pfaff, Esq. (for Appellant William Leeman)

Joseph A. Padolsky, Esq. (for Appellant Christopher Padolsky)

Rachel E. Muñoz, Esq. (for Appointing Authority)