

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

**PEARL LUTTA,**

*Appellant*

v.

**TOWN OF SOUTHBRIDGE,<sup>1</sup>**

*Respondent*

Docket Number:

D-24-114

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Angela C. McConney

**SUMMARY OF DECISION**

The Commission affirmed the Town of Southbridge's decision to suspend a police officer for five days based on her failure to follow policies and procedures when responding to a report of animal abuse and her misuse of an emergency personal day.

**DECISION**

On July 12, 2024, the Appellant, Pearl Lutta (Appellant or Ms. Lutta), acting pursuant to G.L. c. 31, § 43, timely appealed to the Civil Service Commission (Commission) contesting the

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<sup>1</sup>Southbridge has a city form of government but retains "The town of" in its official name.

July 1, 2024 decision of the Town of Southbridge (Respondent or Town) to impose a five-day suspension from her service as a police officer.

The Commission held a remote pre-hearing conference on August 27, 2024. On November 13, 2024, I held an in-person evidentiary hearing at the offices of the Commission, located at 100 Cambridge Street, Suite 200, Boston, Massachusetts.<sup>2</sup> I recorded the hearing via the Webex platform, and forwarded a link to the recording to both parties.<sup>3</sup> The parties submitted post hearing briefs in January 2025, whereupon the administrative record closed.

For the reasons stated herein, the appeal is denied.

## **FINDINGS OF FACT**

I admitted 48 exhibits from the Appellant (A. Exhibits 1-48) and 23 exhibits from the Respondent (R. Exhibits 1-23). I admitted the Appellant's appeal form at A. Exhibit 49. Based on the documents entered into evidence, the testimony of the following witnesses:

### *Called by the Appellant:*

- Scott Alicea-Bailey, Detective, SPD
- Katelyn Jewell, Animal Control Officer, Town of Southbridge
- Pearl Lutta, Police Officer, SPD and Appellant

### *Called by the Department:*

- Carlos Dingui, Lieutenant, SPD
- Shane Woodson, Police Chief, SPD

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

<sup>3</sup> A link to the audio/video recording was provided to the Parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the recording provided to the Parties should be used to transcribe the hearing.

and taking administrative notice of pleadings filed in this case, plus pertinent rules, statutes, regulations, case law and polices, and drawing reasonable inferences from the credible evidence, I make the following findings of fact:

*Appellant's Employment and Disciplinary Background*

1. Pearl Lutta (Ms. Lutta or Appellant) has served as a patrol officer in the Southbridge Police Department (Department) since April 2021. (Testimony of Lutta)
2. Ms. Lutta's disciplinary history during her three-year tenure with the Department includes the following:
  - a. July 8, 2022: Ms. Lutta received a verbal reprimand for feigning an illness.
  - b. July 29, 2022: Ms. Lutta received a written reprimand for failing to complete an assignment given to her by her direct supervisor and failing to request permission from a superior officer to clear from a shift in the middle of a serious investigation.
  - c. September 2, 2022: Ms. Lutta received a verbal counseling session for failing to provide a superior officer with all necessary information regarding a domestic violence incident.
  - d. September 13, 2022: Ms. Lutta received a verbal warning for a social media violation.
  - e. March 14, 2023: Ms. Lutta received a verbal counseling session for failing to provide a superior officer with all necessary information regarding a call for service.
  - f. April 18, 2023: Ms. Lutta received a five-day suspension for incidents occurring on March 16, 2023 and April 4, 2023 that violated the Rules governing neglect of duty, attention to duty, *failing to complete a report*, and incompetence. (R. Exhibit 20)
  - g. December 6, 2023: Ms. Lutta was issued a notice of a 30-day unpaid suspension for September 25, 2023 conduct in violation of the Department's Policy and Procedures (Policy) and its Rules and Regulations (Rules) governing anti-discrimination and sexual harassment, incompetence, conduct unbecoming a police officer, orders, *failing to complete a report*, and property damage. The parties subsequently agreed to reduce this to a six-day unpaid suspension.

(R. Exhibit 20) (emphasis added)

*The April 1, 2024 Citizen Report and Investigation*

3. On April 1, 2024, Ms. Lutta was dispatched to the Department's main lobby to investigate a report of threats made against Ms. A by her sister-in-law, Ms. B, stemming from a dispute over the custody of a dog belonging to Ms. A's mother, Ms. C. Ms. A's boyfriend, Mr. E, was also present for the meeting with Ms. Lutta. (R. Exhibit 12)

4. Ms. A additionally expressed concerns over the care and safety of the dog while in the custody of Ms. B and Mr. D (Ms. A's brother and Ms. B's husband). (R. Exhibit 12)

5. The entirety of the main lobby conversation among Ms. Lutta, Ms. A, and Mr. E was captured on body camera footage. (R. Exhibits 16-19)

6. Ms. Lutta had first met Ms. A the previous evening on a service call for Ms. C, who was transported to the hospital for a mental health crisis. At the incident, Ms. Lutta observed Ms. A take custody of Ms. C's dog. (R. Exhibits 16 and 17; Testimony of Lutta)

7. During the main lobby conversation, Ms. A informed Ms. Lutta that she had dropped off the dog at Ms. B and Mr. D's home by handing the dog to Mr. D, who willingly accepted custody of the dog. (R. Exhibits 16 and 17; Testimony of Lutta)

8. Ms. A informed Ms. Lutta that, after dropping the dog off, Ms. B called her and threatened her, saying "I'll fucking kill you, I'll beat your ass." Ms. B then followed up by sending a series of insulting and harassing text messages to Ms. A, because she did not want to care for the dog. (R. Exhibits 16 and 17)

9. Ms. A was also concerned about the safety and wellbeing of the dog, claiming that Ms. B and Mr. D would leave the dog inside all day and that they did not like or want the dog. (R. Exhibits 16-19)

10. At one point during the conversation, Ms. Lutta left Ms. A in order to telephone Mr. D. During the call, Ms. Lutta made arrangements to see the dog at Ms. B and Mr. D's residence; Mr. D informed Ms. Lutta that he would call her after he and Ms. B returned from dinner. After speaking with Mr. D, Ms. Lutta let Ms. A know that Mr. D said that he would take care of the dog. Further, he said that he did not want Ms. A on his property and that Ms. B had not made any threats. (R. Exhibits 1, 8, 18 and 19)

11. During the conversation on April 1, 2024, Ms. Lutta assured Ms. A that:

- a. Ms. Lutta would log the fact that Ms. A was threatened;
- b. Ms. Lutta would go to Ms. B and Mr. D's home to check on the dog;
- c. The Animal Control Officer (ACO) would contact Ms. A about the allegations of animal abuse; and
- d. Ms. A had a right to file for a Harassment Protection Order (HPO).

(R. Exhibits 1, 8, 18 and 19)

12. Ms. A was visibly distressed throughout the approximately twenty-minute interaction with Ms. Lutta. She repeated that she was confused and that "nobody's listening to me."

(R. Exhibits 16-19)

13. Throughout the conversation, members of the public came and went in the main lobby. (R. Exhibits 11, 12, 16 and 18)

14. During the course of the conversation, a private interview room was open and available for use. (R. Exhibits 11, 12, 16-19)

15. After Ms. A and Mr. E left, Ms. Lutta documented the encounter in the Department's log, including Ms. A's allegations and Ms. Lutta's intent to notify the ACO. (R. Exhibit 1)

16. When Ms. Lutta texted the ACO that same evening, the ACO texted back that Ms. A had not mentioned abuse when they spoke earlier in the day, and the dog's custody was a civil matter. The ACO stated that "if she [Ms. A]'s calling me outside of a dog license, rabies vaccine or public nuisance violations, my department isn't able to help her." (A. Exhibit 46)

17. During the conversation with Ms. A and Mr. E, Ms. Lutta did not obtain details about Ms. B's alleged threats to Ms. A, including the time and the content. (R. Exhibit 10)

18. Ms. Lutta failed to document the April 1, 2024 conversation in a police incident report. (R. Exhibit 2)

19. Mr. D failed to contact Ms. Lutta after dinner on April 1, 2024. Ms. Lutta did not reach out to him again to follow up until April 6, 2024. (R. Exhibits 7, 8 and 10)

20. Ms. Lutta never spoke with Ms. B. Further, she never went to Ms. B and Mr. D's home to check on the safety and wellbeing of the dog. (R. Exhibit 10)

*The April 2, 2024 Complaint*

21. On April 2, 2024, Ms. A submitted an online Department form complaining about her interaction with Ms. Lutta on the previous day. Ms. A alleged that the April 1, 2024 interview was conducted in the Department lobby with no privacy and that Ms. Lutta did not give her the chance to explain, failed to make eye contact, displayed no empathy, and treated her as a suspect rather than the victim of a death threat. (R. Exhibit 1)

22. Lt. Carlos Dingui followed up with Ms. A on April 2, 2024 for further information. Ms. A withdrew her complaint but let Lt. Dingui know that she was displeased with how she was treated and the lack of any investigation into her allegations. (R. Exhibits 1 and 2)

23. After watching her body camera footage, Lt. Dingui informed Ms. Lutta that an incident report was necessary. On April 4, 2024, he ordered her to complete one, as well as a separate report documenting why she failed to complete an incident report by the end of her scheduled April 1, 2024 shift. (R. Exhibits 1 and 2)

*The April 4, 2024 Emergency Personal Day*

24. Ms. Lutta was scheduled to be off-duty on April 2 and 3, 2024, with a return to her regularly scheduled shift on April 4, 2024. She had already arranged to "swap off" her regularly scheduled April 5, 2024 shift in order to attend a wedding. (Testimony of Lutta)

25. Ms. Lutta did not return to work on April 4, 2024 after a tree fell on her car, rendering it impossible to operate. She requested and used an emergency personal day. (A. Exhibit 47, R. Exhibit 14; Testimony of Lutta)

*The Department's Investigation*

26. When Ms. Lutta returned to work on April 6, she completed the reports that Lt

Dingui had requested. (R. Exhibits 3 and 4)

27. In the report documenting her failure to complete an incident report, Ms. Lutta stated that she did not observe any actual threats in the text messages from Ms. B to Ms. A; that Ms. A had sarcastically commented that she didn't think Ms. B could hurt her; and that Ms. A's comments and actions "implied she really had no reasonable fear that her sister-in-law had the intention and the ability to carry out the threat." The incident report omitted any reference to contacting Mr. D on April 6, 2024. (R. Exhibits 3 and 4)

28. Lt. Dingui scheduled an interview with Ms. Lutta for April 11, 2024. Ms. Lutta appeared for that meeting with her union representative. Lt. Dingui questioned Ms. Lutta about the April 1, 2024 lobby interview incident and the April 4, 2024 emergency personal day. (R. Exhibits 5-8)

29. After the interview, Lt. Dingui completed an internal investigation report and submitted it to Chief Shane D. Woodson on April 16, 2024. In the report, Lt. Dingui submitted his findings that Ms. Lutta had violated the following Department Policy, Rules, and CBA provision:

- a. Policy and Procedures 4.27- *Incident Reporting*
- b. Policy and Procedures 1.05 - *Preliminary Investigations*
- c. Rule and Regulations 9.17- *Reports*
- d. Rule and Regulation 5.01- *Incompetence*
- e. Police Officer Job Description - *Duties and Responsibilities*
- f. Contract Violation - Management Rights - *Article 6, Section B- Personal Days*

(R. Exhibit 9)

30. Lt. Dingui recommended that Chief Woodson issue Ms. Lutta a five-day suspension as a form of progressive discipline and noted:

I request this punishment due to the progressively increasing number of disciplinary issues she has had with our Department in her short career of less than 4-years. Officer Lutta has two prior violations and subsequent suspensions for incidents where she failed to complete a report ...

(See Finding of Fact 2; R. Exhibit 9)

### *Five-Day Suspension*

31. On April 24, 2024, Chief Woodson informed Ms. Lutta that he was suspending her without pay for five days, with the suspension to be served from April 24 through April 28, 2024. Chief Woodson noted, “[t]he specific reason for this suspension is for your failure to follow department rules and regulations and policy and procedures due to progressive discipline.” (R. Exhibit 10)

### *Section 41 Hearing*

32. The City scheduled a Section 41 hearing for June 17, 2024 upon Ms. Lutta’s request. John D. Jovan, Jr., the Town Manager, presided. (R. Exhibit 12)

33. At the hearing, Ms. Lutta acknowledged that she had violated the Department’s Policy, Rules, and CBA. (R. Exhibit 12)

34. On July 1, 2024, Mr. Jovan issued a decision upholding the Department’s suspension “on the basis of all the evidence presented and due to the fact that you have had numerous previous violations with the Department.” He noted that “[a]t the hearing you acknowledged that your actions in April of 2024 violated Departmental rules and policies as set out in the notice of hearing.” (R. Exhibit 12)

35. Ms. Lutta appealed to the Commission on July 12, 2024. (A. Exhibit 49)

### **APPLICABLE LEGAL STANDARD**

A tenured civil service employee may be disciplined for “just cause” after due notice and hearing upon written decision “which shall state fully and specifically the reasons therefor.” G.L. c. 31, § 41. An employee aggrieved by the decision may appeal to the Commission. G.L. c. 31, § 43. Under section 43, the appointing authority carries the burden to prove to the Commission by a “preponderance of the evidence” that there was “just cause” for the action taken. *Id. See, e.g., Falmouth v. Civil Serv. Comm’n*, 447 Mass. 814, 823 (2006); *Police Dep’t of Boston v. Collins*, 48



Mass. App. Ct. 411, *rev. den.*, 726 N.E.2d 417 (2000). In performing its function:

... the commission does not view a snapshot of what was before the appointing authority...the commission hears evidence and finds facts anew...[after] a hearing de novo upon all material evidence and...not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer... For the commission, the question is . . . “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.”

*Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003) (quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983) (emphasis added)). See also *Falmouth v. Civil Serv. Comm’n*, 447 Mass. at 823; *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-05, *rev. den.*, 428 Mass. 1102 (1997).

The Commission determines “just cause” for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *School Comm. v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 486, 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (1983). Furthermore, 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 Serv. v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971); *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. at 304; *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See *Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 264-65 (2001). It is the purview of the hearing officer to determine the credibility of testimony presented to the Commission: “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting

judicial review treads with great reluctance.” *Leominster v. Stratton*, 58 Mass. App. Ct. at 729. *See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n*, 401 Mass. 526, 529 (1988); *Doherty v. Retirement Bd. of Medford*, 425 Mass. 130, 141 (1997).

Section 43 of G.L. c. 31 also vests the Commission with the authority to affirm, vacate or modify a penalty imposed by the appointing authority. The Commission is delegated “considerable discretion” in this regard, albeit “not without bounds” so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. *See, e.g., Police Comm’r v. Civil Serv. Comm’n*, 39 Mass. App. Ct. 594, 600 (1996) and cases cited; *Falmouth v. Civil Serv. Comm’n*, 61 Mass. App. Ct. 796, 800 (2004); *Faria v. Third Bristol Div.*, 14 Mass. App. Ct. 985, 987 (1982) (remanded for findings to support modification). However, the Supreme Judicial Court has added that, in the absence of “political considerations, favoritism, or bias,” the same penalty is warranted “unless the commission’s findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth v. Civil Service Comm’n*, 447 Mass. at 824.

## ANALYSIS

The Town has proven by a preponderance of the evidence that it had just cause to suspend Ms. Lutta for five days.

I now examine each of the violations.

### *Disciplinary Reason One: Failure to File a Report*

Section 4.27 of the Policy, *Incident Reporting*, provides:

Police Employees of this agency shall prepare a written report for all the following incidents: Crimes.

Section 1.05 of the Policy, *Preliminary Investigations*, provides:

An officer conducting a preliminary investigation shall make an accurate and complete written report of the incident in accordance with departmental

procedures.

Section 9.17 of the Rules, *Reports*, provides:

Officers shall promptly and accurately complete all reports and forms required by the Department. Before leaving the department at the end of his tour, an officer shall complete all reports and forms which pertain to events occurring during the concluded tour unless authorized by their superior.

It is undisputed that Ms. Lutta did not prepare, complete, or submit a report despite the clear direction in the Policy and Rules that she do so, and despite having been formally disciplined twice in 2023 for the same failure. Regarding her failure to file a report in September 2023 (the second time she was disciplined for this failure), Ms. Lutta wrote to Chief Woodson on January 8, 2024, “I do realize the importance of completing accurate and timely reports and look forward to providing better service to our community.” (R. Exhibit 20). Yet a few months later, she violated the same Policy and Rule by failing to file a police incident report again. It bears repeating: this infraction is the third time in one year that Ms. Lutta has not filed an incident report when one was required by the Policy and Rules.

Ms. Lutta admitted that she violated the Department’s rules and regulations in the Section 41 hearing. However, in her pleadings before the Commission, she asserts that she did not complete a report for the April 1, 2024 lobby conversation because she did not believe that Ms. A was reasonably in fear for her life and that the allegations about the dog arose from her distress about the situation with her mother. Ms. Lutta also claims that other police officers regularly fail to file incident reports, and that the Department does not enforce the Policy and Rules in a uniform manner.

Because Ms. Lutta was disciplined for this same infraction in April and December 2023, she was indeed on notice of the Department’s expectations and requirements for filing incident reports and should have acted accordingly. Unfortunately, the previous discipline as meted out by

the Town failed to achieve the desired curative effect on her behavior.

*Disciplinary Reason 2: Failure to Conduct an Investigation*

Section 1.05 of the Policy, *Preliminary Investigations*, provides:

It is the policy of the Southbridge Police Department to investigate all instances that violate the criminal laws of the Commonwealth.

Section 5.01 of the Rules, *Incompetence*, provides:

No employee shall fail to maintain sufficient competency to perform his duty and to assume the responsibilities of his position. Incompetence may be demonstrated by, but is not limited to, ... unwillingness or inability to perform assigned tasks.

Ms. Lutta failed to conduct an adequate investigation into Ms. A's April 1, 2024 allegations. Ms. Lutta's bodycam footage shows that Ms. Lutta failed to ask Ms. A basic questions regarding Ms. B's comments, including whether there was a history of conflict or violence between the two. Although Ms. A was distressed and emotional, Ms. Lutta should have exhibited the necessary competence in order to deescalate the situation and focus on the substance of Ms. A's claims.

Ms. Lutta also failed to follow up with others who may have possessed relevant information. She spoke to Mr. D only briefly and over the phone, and he said that Ms. B did not threaten Ms. A and that the dog was fine. If she indeed did speak to him again (which is not clear), this did not take place until April 6, 2024, five days after Ms. A made her allegations. She never spoke to Ms. B. Although Ms. A's boyfriend, Mr. E, was present in the lobby conversation, Ms. Lutta never questioned him.

Finally, Ms. Lutta did not follow up with a visit to Ms. B and Mr. D's home to check on the dog. When the ACO texted Ms. Lutta that allegations of animal abuse were not within the purview of her department, Ms. Lutta should have recognized (if she did not already know) that it was her obligation to follow up on Ms. A's claims about the dog with a visit to Ms. B and Mr. D's home.

Instead, she relied on the statements from the alleged perpetrator of the animal abuse that the dog was fine without independent verification or police work.

Ms. Lutta asserts that she conducted a proper investigation given her conclusion about Ms. A's credibility. However, she did not even perform the bare minimum to ascertain the credibility of her allegations. The fact that Ms. Lutta conducted the entire 20-minute conversation with Ms. A in the Department lobby without affording her privacy in the available conference room may show that she was not inclined to believe her and failed to give the allegations a fair assessment and more thorough inquiry. It appears that Ms. Lutta dismissed the allegations out of hand, showing an unwillingness to perform the tasks necessary to meet her responsibilities as a police officer.

*Disciplinary Reason Three: Lack of Knowledge of the Law*

Rule 5.01, *Incompetence*, provides:

No employee shall fail to maintain sufficient competency to perform his duty and to assume the responsibilities of his position. Incompetence may be demonstrated by, but is not limited to: a lack of knowledge of the application of laws required to be enforced.

Ms. Lutta made at least two inaccurate statements concerning the law to Ms. A during their April 1, 2024 conversation. First, she advised Ms. A to file for a harassment prevention order (HPO), when the familial relationship between Ms. A and Ms. B warranted a c. 209A abuse protection order. Second, Ms. Lutta informed Ms. A that the ACO would visit Ms. B and Mr. D's home to verify that the dog was not being abused, when animal abuse is not within the jurisdiction of the ACO. Animal abuse and any ensuing investigation is a police responsibility.

These two misstatements demonstrated Ms. Lutta's lack of knowledge about the laws that she is charged with enforcing. Ms. Lutta's conduct, at the very least, could cause confusion to the public.

#### *Disciplinary Reason Four: Misuse of Personal Time*

Article 6, Section B of the CBA provides:

...emergency personal days shall not be requested on the last day before a scheduled vacation or on the first day the officer is scheduled to return from vacation, on the day before or after a detail that an officer works, on the day before or after any holiday or on the day before or after any swap off a shift.

It is undisputed that Ms. Lutta used an emergency personal day on April 4, 2024, the day before a scheduled “shift swap” for April 5, 2024. This not only violated the CBA, but it also ultimately meant that Ms. Lutta failed to file the reports as ordered by Lt. Dingui for a length of time.

Ms. Lutta asserts that she was unaware that police officers may not take an emergency personal day before a swap; that she was instructed by the union vice president to take an emergency personal day; and that the application of the provision in the CBA was meant to curb fraud and not address true emergency situations as the one she experienced on April 4, 2024.

All Department officers agree to abide by the CBA when they join the Department and the union, and its provisions should not be subject to discretion in enforcement. Ms. Lutta therefore should have known that she was not permitted to use an emergency personal day prior to a swap and was not justified in relying on the guidance of the union vice president on this point after giving him only partial information about her situation.

This is also the second time in her short tenure as a patrol officer that Ms. Lutta has misused leave time. She was previously found to have called in sick from work on the same day that she appeared at a social event with work colleagues.

This is yet one more example of Ms. Lutta’s poor judgment and her failure to learn from her prior missteps.

### *Commission's Authority to Modify a Penalty*

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

*Falmouth v. Civil Serv. Comm'n*, 61 Mass. App. Ct. at 800, *quoting Police Comm'r v. Civil Serv.*

*Comm'n*, 39 Mass. App. Ct. at 600. Even if the Commission were inclined to reduce Ms. Lutta's suspension, it must be noted that the same disciplinary penalty is warranted “unless the

commission's findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way.” *Falmouth v. Civil Serv. Comm'n*, 447 Mass. at 824.

When the Commission passes judgment on an appointing authority's selected disciplinary measure, it does not “act without regard to the previous decision of the [appointing authority].” *Falmouth v.*

*Civil Serv. Comm'n*, 447 Mass. at 823, *quoting Watertown v. Arria*, 16 Mass. App. Ct. at 334.

Intervention by the Commission in the form of a modified penalty is not warranted here.

First, there are no allegations of political considerations, favoritism, or bias. Second, the

underlying material facts found by the Department and the Town are supported by the

administrative record. Third, the five-day suspension appropriately reflected progressive discipline in accordance with Ms. Lutta's previous discipline.

### **CONCLUSION**

For all of the above reasons, the appeal filed under Docket No. D-24-114 is hereby *denied*. I find that the Town of Southbridge has proven by a preponderance of the evidence that it had just cause to suspend Pearl Lutta for five days.

CIVIL SERVICE COMMISSION

/s/ Angela C. McConney

Angela C. McConney

Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein) on June 26, 2025.

Either party may file a motion for reconsideration within ten days of receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 C.M.R. § 1.01(7)(1), 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 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 their 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:

Jennifer Smith, Esq. and Nicholas Adams, Esq. (for Appellant)

David Jenkins, Esq. and Stephen Johnston, Esq. (for Respondent)