

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**

100 Cambridge Street, Suite 200

Boston, MA 02114

(617) 979-1900

**FRANCINE LYNCH,**

*Appellant*

v.

**BOSTON FIRE DEPARTMENT,**

*Respondent*

Docket Number:

D-24-144

Appearance for Appellant:

*Pro Se*

Francine Lynch

Appearance for Respondent:

Robert J. Boyle, Jr., Esq.

Boston City Hall, Room 624

Boston, MA 02201

Commissioner:

Shawn C. Dooley

**SUMMARY OF DECISION**

The Commission allowed the appeal of a fire alarm operator and overturned her one-tour suspension as the Boston Fire Department failed to prove that she made improper statements or engaged in insubordination.

**DECISION**

On August 8, 2024, the Appellant, Francine Lynch (Appellant), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Boston Fire Department (BFD) to suspend her for one, 10-hour tour for making improper statements to outside entities and other departments without going through the proper chain of

command.<sup>1</sup> On October 15, 2024, a remote pre-hearing conference was held. On December 10, 2024, I conducted an in-person full hearing at the offices of the Commission in Boston. The hearing was recorded via Webex.<sup>2</sup> Both parties filed proposed decisions. For the reasons set forth below, the Appellant's appeal is *allowed*.

## FINDINGS OF FACT

The Appellant entered into evidence 13 exhibits (App. Ex. 1-13)<sup>3</sup> and the BFD entered 15 exhibits (Resp. Ex. 1-15) into evidence. Based upon the documents entered into evidence and the testimony of the following witnesses:

*Called by the BFD:*

- Christopher Burke, Deputy Fire Chief, Fire Alarm Division;
- Rodney Marshall, Deputy Fire Chief; Chief of Operations, Support Division;

*Called by the Appellant:*

- Francine Lynch, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

1. The Appellant has been employed by the BFD as a Fire Alarm Operator since May 13, 2019. She has no prior discipline. (*Stipulated Facts*)

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.01, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

<sup>2</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.

<sup>3</sup> The BFD objected to exhibits 4, 5, 6, 9, and 12 on the basis of hearsay – the objection was noted but overruled.

2. The Appellant received a certification from the Association of Public Safety Communications International (APCO). The Commonwealth of Massachusetts State 911 Department issued the Appellant a certification. During her stage-four evaluation, the Appellant received all 6s and 7s, which equate to all As and Bs. (*Testimony of Appellant Resp. Ex. 8*)
3. The BFD has a Fire Alarm Operations Division (Operations) and a Fire Suppression Division. (*Stipulated Facts*)
4. Deputy Chief Christopher Burke (Burke) is in command of the Fire Alarm Division. Deputy Chief Rodney Marshall (Marshall) serves as one of two Chiefs of Operations (the other is Deputy Chief Calobrisi) and, as such, is second in command to the Fire Commissioner. (*Testimony of Burke and Marshall*)
5. Operations serves as the BFD's communications hub. Within Operations, there is a job series of civil service titles under Fire Alarm which includes: Fire Alarm Operator (FAO), Senior Fire Alarm Operator (SAO), and Principal Fire Alarm Operator (PAO). (*App. Ex. 2 and 3*)
6. To sit for the SAO civil service promotional examination, a candidate must have served as an FAO for at least 12 months before the date of the examination. To sit for the PAO civil service promotional examination, one must have served as an SAO for at least twelve months prior to the examination date. (*App. Ex. 3*)
7. The Appellant sat for the SAO examination in 2021 but did not pass. (*Testimony of Appellant*)
8. In addition to the FAO, SAO, and PAO positions, the command structure of Operations also includes an Assistant Superintendent (Eileen Clougherty), a Superintendent (Stephen

Keeley), and a Deputy Chief (Christopher Burke). (*Testimony of Appellant and Burke*)

9. On February 29, 2024, Fire Alarm Operators received an email from Assistant Superintendent Eileen Clougherty forwarded from Deputy Chief Christopher Burke. Referring to the most senior fire alarm operators as “Officers”, this directive from Commissioner Burke and Chief of Operations (CHOP) Calobrisi stated: “Officers shall not be hired for Officer manpower overtime. When both Officers are off duty for a working tour, the most senior Operator will assume the acting Senior Operator position and an Operator will be hired to fill the 5-member minimum for the tour.” (*Resp. Ex. 12*)
10. On March 8, 2024, Boston Firefighters Local 718 filed a grievance stating that “[t]he directive issued to Fire Alarm that ‘When both Officers are off duty for a working tour, the most senior Operator will assume the acting Senior Operator position and an Operator will be hired to fill the 5-Member minimum for the tour’ is a departure from established past and prior practice and creates working conditions detrimental to the operations of the unit and the safety of Local 718 Members.” (*Resp. Ex. 13*)
11. On May 8, 2024, the Appellant was working a 24-hour shift at the Fire Alarm Office on Group 2 as Acting Senior Operator. (*Resp. Ex. 7 and Testimony of Appellant*)
12. During the tour on May 8, 2024, Senior Operator Ralph Dowling, who was Acting Principal Operator for the tour, requested leave for May 11, 2024. Principal Operator John McKenna and Operator Beverly Freeman had already been approved for leave time for May 11, 2024. (*Testimony of Appellant*)
13. That same day, the Appellant became aware that, on May 11, 2024, she would be subjected to the new directive issued on February 29, 2024, requiring her to be the Acting Senior Operator with no Principal Operator on duty. She would be assuming the roles

and responsibilities of both the Senior and Principal Operator positions, in essence operating two ranks out of grade. (*Testimony of Appellant*)

14. Upon learning that she would be acting SAO with no PAO on shift (thereby making her the de facto PAO / officer in charge of quarters), the Appellant expressed her concerns with this assignment verbally to Assistant Superintendent Eileen Clougherty. (*Testimony of Appellant*)
15. Assistant Superintendent Clougherty then relayed these concerns via email to Superintendent Stephen Keeley and Deputy Chief Christopher Burke. (*App. Ex. 4*)
16. Assistant Superintendent Clougherty's email states in part: "Operator Lynch has voiced her concerns to me about Acting as the Principal Operator and they are valid; there is no reason that an Operator with less than 5 years should have to bump up two grades and run the group by herself; she is not comfortable acting as Senior Operator with a Principal Operator on duty, she should not be expected to now do both positions." (*App. Ex. 4*)
17. Assistant Superintendent Clougherty further wrote that "Fran will not take on that type of responsibility and should not be expected to. Her husband is on group 4, if something happened to him because Fire Alarm was staffed improperly, just saying this is a major lawsuit waiting to happen." (*App. Ex. 4*)
18. Assistant Superintendent Clougherty went on to write: "This is not the added stress an Operator should have ... we should not have to go through this ... we are not properly staffing our dispatch center when we have the people to do so; we are supposed to have a Principal Operator, Senior Operators, and multiple Operators. ... Is Commissioner Burke waiting for there to be a major catastrophe? I thought Commissioner Burke cared about the people of the city." (*App. Ex. 4*)

19. Assistant Superintendent Clougherty also noted the overall inexperience of the rest of the staff, who were scheduled to be working on this shift. (*App. Ex. 4*)
20. On the morning of May 9, 2024, while the Appellant was still on duty, Deputy Chief Burke asked to speak with the Appellant on the matter brought up by Assistant Superintendent Clougherty. During this conversation, the Appellant reiterated her concerns regarding her ability to handle the position on May 11<sup>th</sup>. (*Testimony of Burke*)
21. Deputy Chief Burke gave the Appellant a “Pep talk” and told her to, “do the best you can, that’s the Commissioner’s directive.” He got assurances from the Appellant that she would show up for her tour on the 11<sup>th</sup> and that in the meantime, he would “Come up with a plan.” (*Testimony of Burke*)
22. On the morning of May 11<sup>th</sup>, when the Appellant arrived at work she was to relieve Principal Operator Cassandra Sullivan who was the Officer in Charge. Citing to BFD’s Rules and Regulations 12.6, PAO Sullivan refused to leave her post since the regulation stated that she could not terminate her post until properly relieved. The reason stated was that the Appellant was “not only unwilling but also unqualified to take on the role of officer in charge of quarters.” (*App. Ex. 6*)
23. PAO Sullivan notified her immediate supervisor, Assistant Superintendent Clougherty, of this fact and was ordered by Clougherty to leave her post over her objections. (*App. Ex. 6*)
24. PAO Sullivan sent a Form 5A (official report) to Commissioner Burke that forcing the Appellant to act two ranks above her current appointment “will lead to delays in apparatus being dispatched and holes in coverage around the city. It is immense danger to the firefighters and the City of Boston.” (*App. Ex. 6*)

25. Deputy Chief Christopher Burke intervened and ordered PAO Sullivan to address her Form 5A to him instead of the Commissioner. Chief Burke replied on the Form 5A, "PO Sullivan, this was the directive that the Commissioner and Chief of Operations of Field Services put out. Those changes went into effect on February 29, 2024. Your concerns are noted."  
*(Testimony of Burke, Resp. Ex. 15)*

26. At the beginning of the shift on May 11<sup>th</sup>, the Appellant called Assistant Superintendent Clougherty to once again express her concern regarding the staffing situation. The recorded conversation went as follows:

**Appellant** – This is not safe.

**Clougherty** – I do not know this, Fran.

**Appellant** – And you are allowing it to happen.

**Clougherty** – I have no choice. They tied my hands. They would not let me do anything.

**Appellant** – I was an officer in the Coast Guard. This is not safe. The Commissioner is a person. Everyone makes mistakes. Some people have a lapse of judgment. Just because it is the Commissioner, telling you to do something, You do not have to do it. This should not be on my shoulders.

**Clougherty** – I am not there. You do not want my presence.

**Appellant** – I never said that. I said I appreciate that. Nobody is here. The Deputy said you would come up with a plan, where's the plan.

**Clougherty** – The plan is that Ralph Dowling sent a letter and the Union sent a letter to City Hall and they are letting it happen.

**Appellant** – Fire Alarm is a toxic work environment. The leadership is failing us. This is absolutely ridiculous. The COB and Firefighters are at risk. My health is at risk. I have not slept for 2 days and I am shaking.

**Clougherty** – I am not allowed to be there. I had it all planned.

*(Resp. Ex. 10)*

27. Assistant Superintendent Clougherty told the Appellant that she was available by phone if there were any questions or issues. In addition, Captain Darrell Higginbottom, one of the BFD officers whom the Appellant had called, agreed to be available for her calls as well.  
*(Res. Ex. 10)*

28. When the Appellant took over the shift, she used the radio and telephone to announce to BFD supervisors, Boston Police, Boston EMS, Boston City Hall, neighboring communities that are part of Metro Fire District 13 (34 mutual aid towns), as well as others, words to the effect: “All communities, be advised, Metro Fire is experiencing a major staffing issue and there may be a delay in notifications, responses, and communications.” (*Testimony of the Appellant, Resp. Ex. 10*)

29. In her telephone calls advising BFD stations and surrounding community fire departments of staffing issues some of the conversations included the following statements: *Fire Alarm was experiencing a major staffing issue. There were no officers on duty. She was an Operator being forced to do the jobs of the Senior and the Principal Operators. The other Operators on duty had minimal experience, less than her. There may be a delay in responses, notifications, and communications. It is unsafe. The Deputy, Superintendent, and Assistant Superintendent are aware.* (*Res. Ex. 10*)

30. These communications were not approved through the chain of command and were initiated solely at the discretion of the Appellant. (*Testimony of Appellant*)

31. At some point during her assigned shift, the Appellant called Boston Police 911 on three separate occasions to tell them about their understaffing and asked what to do if she had overflow. BPD 911 informed her that overflow should not go to them but should go to State Police. (*Res. Ex. 10*)

32. After speaking with BPD 911, the Appellant again called Assistant Superintendent Clougherty and said, “My concern is that if we are extremely busy with 911 overflow calls. I’m trying to figure out what to do.” Assistant Superintendent Clougherty told her, “If you get super busy, don’t pick it up and it will automatically transfer to State Police.

If you're in the middle of a fire, don't pick them up." Clougherty also reminded the Appellant that if Fire Alarm does pick up a call, it must do its job and get information from the caller. (*Res. Ex. 10*)

33. At approximately 0300, May 12, 2024, the Appellant was transported to the emergency room via ambulance for what she believed to be a medical emergency. She remained out of work for two tours thereafter and was then cleared to return by her physician. She returned to duty on May 24, 2024. (*Testimony of Appellant*)

34. After an internal investigation, on July 15, 2024, Chief Christopher Burke issued the Appellant a 1-tour suspension and written reprimand. Chief Burke cited violations of rules 18.44(j) (conduct prejudicial to good order) and 18.44(m) (willful misrepresentation of matters affecting the department or its employees). The suspension notice stated that the Appellant's notifications, "caused anxiety and uncertainty within the Fire Alarm Division, the Boston Fire Department, and within outside Agencies as to whether the Fire Alarm Division could provide the resources expected to mitigate an emergency." (*Resp. Ex. 3 & 6*)

35. On July 22, 2024, the Department provided the Appellant with a hearing to appeal the discipline imposed by Chief Burke. Chief of Operations Rodney Marshall conducted the hearing and Union President Sam Dillon represented the Appellant on her behalf. (*Res. Ex. 10*)

36. On July 25, 2024, Chief of Operations Marshall sent a letter to Fire Commissioner Burke notifying him of the appeal hearing and recommended that the original discipline stand. (*Res. Ex. 4*)

37. By letter dated July 30, 2024, Fire Commissioner Burke upheld the written reprimand and the 1-tour suspension. The Commissioner noted the following:

- “The notifications were made by Acting Senior Operator Francine Lynch without forewarning or prior approval by the Chain of Command at Fire Headquarters or Fire Alarm Command Staff . . . .”
- “Discussing or sending messages to outside entities or to other Department employees regarding internal staffing matters without going through the chain of command is not acceptable protocol.”
- “Further, staffing is a management responsibility and decision. The Department has determined that the staffing needs were adequate on the date in question.”
- “For you to unilaterally disseminate this type of misinformation to others in the Department, in the City, and to our other public safety partners outside the chain of command was wholly inappropriate.”

(*Res. Ex. 5*)

## LEGAL STANDARD

A person aggrieved by a disciplinary action of an appointing authority made pursuant to G.L. c. 31 § 41 may appeal to the Commission under section 43, which states in part: “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 . . . .” The Commission determines justification for discipline by inquiring whether the employee engaged in misconduct which adversely affects the public interest by impairing the efficiency of public service. Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 370, rev. den. 398 Mass. 1103 (1986). The Appointing Authority satisfies the preponderance of the evidence standard if its evidence on disputed facts appears more likely or probable to be true. Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928).

The Commission conducts a *de novo* hearing to find facts. Sullivan v. Municipal Court of the Roxbury District, 322 Mass. 566, 572 (1948). After making its *de novo* findings of fact, the

Commission must pass judgment on the penalty imposed by the appointing authority. Town of Falmouth v. Civil Service Commission, 447 Mass. 814, 823 (2006). In so doing, the Commission must uphold the appointing authority's action if the Commission finds "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." Id. at 824; City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728, rev. den. 440 Mass. 1108 (2003); Watertown v. Aria, 16 Mass. App. Ct. 331, 334, rev. den. 390 Mass. 1102 (1983).

The Commission reviews the penalty imposed in light of the underlying purpose of the civil service system: to guard against political considerations, favoritism, and bias in governmental employment decisions. Town of Falmouth, 447 Mass. at 824. The Commission is not charged with a duty to fine-tune employee discipline. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000); Caira v. City of Waltham, 28 MCSR 574, 578 (2015); Blake v. Springfield Fire Department, 28 MCSR 313, 317 (2015). "Unless the commission's findings of fact differ significantly from those reported by the [municipality] . . . the absence of political considerations, favoritism, or bias would warrant essentially the same penalty." Town of Falmouth, 447 Mass. at 824 (emphasis added) (Held: Commission improperly substituted its judgment for towns where factual findings did not differ significantly). The Commission may not modify a penalty without a reasoned explanation. Police Commissioner of Boston v. Civil Service Commission, 39 Mass. App. Ct. 594, 600 (1996); Faria v. Third Bristol Div. of the Dist. Ct. Dept., 14 Mass. App. Ct. 985, 986 (1982).

## **ANALYSIS**

The crux of the issue here is that the Appellant was put in a position of authority for which she was not trained or prepared. Despite repeatedly informing multiple levels within her chain of

command that she was unqualified to serve in the higher position of Principal Alarm Operator, two steps above her classification, and that serving in that capacity could put firefighters and civilians at risk, her superiors did nothing effective to address these concerns. And while she may not have followed typical procedures, there were many contributing factors that resulted in this breach of protocol, including not being properly trained for the rank that she was forced to assume.

When the Appellant was informed that she was going to be put into a position for which she was not qualified to serve, she immediately expressed these concerns through the proper channels. This was done well in advance of the shift and alternative resolutions could have been achieved or at least attempted. She continued to attempt to resolve the issue by speaking with her direct supervisor who attempted to intercede on her behalf with what I would consider an extremely alarming and forceful email to the Deputy Chief in charge of the Alarm Division. The Deputy Chief then spoke with the Appellant and, after getting her assurances that she would not call out sick, assured her that he would “come up with a plan” to address these concerns. He then appears to have done nothing to alleviate the issue and/or minimize potential dangers that may have arisen from this staffing decision.

It is noteworthy that while the Appellant could have called out sick so she would not be forced into this situation, she decided not to, as that would result in an even less experienced person having to fill this role. Instead, she reported for her scheduled shift with the expectation that a solution had been found. When she reported for her shift, the Officer in Charge of Quarters was so worried about the fact that she was not trained, she refused to be relieved until she was ordered to do so.

To her credit, when the Appellant was put in the position of Acting Senior Fire Alarm Operator and in essence, also Acting Principal Fire Alarm Operator, she did everything in her

power to ensure that she and the Department were in the best position possible to succeed. While not protocol, one can appreciate an inexperienced operator, out of an abundance of caution, advising departments that Fire Alarm was experiencing staffing issues so they would be aware in the event they became overwhelmed. When days before she expressed her concerns to the Deputy Chief in charge of Fire Alarm, he gave her a “pep talk” and told her to “do your best.” One must question the dichotomy that exists in that senior BFD officers (despite warnings to the contrary) were so confident in putting the Appellant in charge of the division without supervision or training (besides telling her to do her best) and then being upset that “her best” involved making a well-intentioned decision to manage expectations of those served by said division.

The evidence does not show that the Appellant violated Rule 18.44(m): *untruthfulness or willful misrepresentation in matters affecting the department or its employees*. Nothing that was said was untruthful or could be perceived as a deliberate misrepresentation of the situation at Fire Alarm during the evening in question. While one may argue that her opinion surrounding the severity of the situation was not as dire as she portrayed, the fact that her supervisors granted her the authority to make such an interpretation by placing her in the position of Officer in Charge belies that point.

As far as violation of Rule 18.44(j): *conduct prejudicial to good order*, the evidence also does not show that the Appellant violated this rule. While subjectively one could argue that the Appellant’s announcement could have resulted in some concern in the field, nothing was presented before the Commission regarding any harm, delays, or detrimental effect to good order because of her communication.

Boston Fire’s handling of this entire ordeal is very concerning, and they hold a significant degree of culpability for the actions taken by the Appellant. The Appellant followed procedure and

repeatedly tried to address her concerns with the chain of command. The Assistant Superintendent reiterated the Appellant's concerns to her superiors, citing the possibility that this staffing could create a catastrophe and would open the Department up to a major lawsuit. The person whom the Appellant relieved refused to leave her post because the Appellant was "unqualified to take on the role of officer in charge of quarters." I find it very troubling that warnings as dire as these, coming from the Department's own command staff, were simply disregarded. BFD knew about the potential issue well in advance, decided to do nothing (other than state that an order was given and must be followed), which exasperated this situation, leading to this breakdown in communication. Fortunately, it was a slow night and no one was hurt due to the confluence of poor decision making. The BFD, and the public, would be well served by the implementation of new protocols and procedures to ensure that a scenario such as this is never repeated.

## CONCLUSION

For all of the above-stated reasons, the appeal of Francine Lynch, filed under docket number G1-24-144, is hereby *allowed*. She shall be returned to her position without loss of compensation or other rights.

Civil Service Commission

/s/ Shawn C. Dooley  
Shawn C. Dooley  
Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey & Stein, Commissioners [McConney – Absent]) on May 1, 2025.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Francine Lynch (Appellant)

Robert J. Boyle, Jr., Esq. (for Respondent)