

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MATTHEW LYNCH,
Appellant

v.

Case No.: D-12-283

**BRIDGEWATER POLICE
DEPARTMENT,**
Respondent

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission.

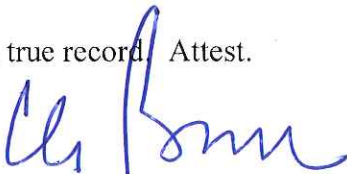
The Commission received and reviewed: 1) the Tentative Decision of the Magistrate dated August 29, 2013; 2) the Respondent's Objections to the Recommended Decision; and 3) the Appellant's Response to the Respondent's Objections.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Appointing Authority to suspend the Appellant for five (5) days is reversed and the Appellant's appeal is *allowed*. The Appellant shall be returned to his position without any loss of pay or benefits. Further, pursuant to G.L. c. 31, § 45, the Town shall reimburse the Appellant: \$200 for attorney's fees for the hearing before the Town; \$200 for attorney's fees for the civil service hearing; and \$100 for any other necessary expenses incurred.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on November 14, 2013.

A true record. Attest.



Christopher C. Bowman
Chairman

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 to:

Alan H. Shapiro, Esq. (for Appellant)

Mark C. Gildea, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

MATTHEW LYNCH,
Appellant

v.

BRIDGEWATER POLICE DEP'T,
Respondent

Division of Administrative Law Appeals
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Boston, MA 02114
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Docket Nos.: D-12-283
CS-13-88

Appearance for Appellant:

Alan H. Shapiro, Esq.
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Appearance for Respondent:

Mark C. Gildea, Esq.
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Bridgewater, MA 02324

Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF DECISION

The Town of Bridgewater has failed to prove that it had just cause to discipline the Appellant for working too many hours in a twenty-four hour period, for being untruthful, for making or submitting false or inaccurate reports or knowingly entering or causing to be entered into departmental books, records, or reports inaccurate, false or improper information. Further, I find that the Town's actions were retaliation against the Appellant for pursuing a previous appeal before the Civil Service Commission. I therefore recommend that the Civil Service Commission allow the appeal.

DECISION

INTRODUCTION

The Appellant, Matthew Lynch, pursuant to G.L. c. 31, § 43, filed a timely appeal with the Civil Service Commission (Commission) on October 9, 2012, claiming that the Bridgewater Police Department (Department or Appointing Authority) did not have just cause to issue a five-

day suspension for a violation of a General Order and for violations of Department Rules and Regulations.

The Appellant filed a previous appeal with the Commission after he was promotionally bypassed on November 11, 2011. The matter was heard on June 1, 2012 by a Magistrate at the Division of Administrative Appeals (DALA). The Commission, in a closely divided vote, dismissed the appeal upon the recommendation of the Magistrate. *Lynch v. Bridgewater*, 26 MCSR 120 (2013).¹

In the instant matter, a pre-hearing conference was held on November 6, 2012 at the offices of the Commission, One Ashburton Place, Room 503, Boston, MA 02108. A full hearing was held on January 22, 2013 at the offices of the Commission, and continued on April 17, 2013 at the offices of DALA, One Congress Street, 11th Floor, Boston, MA 02114.

The Appellant testified on his own behalf. The Respondent called four witnesses: Chief Christopher Delmonte, Lieutenant Thomas Schlatz, Sergeant Anne Schuster and Patrol Officer John Hennessey. The witnesses were sequestered. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

I admitted the sixteen (17) joint exhibits and stipulated facts into evidence. I admitted the Appellant's bypass appeal form as Exhibit 18. Both parties submitted their post-hearing briefs on June 10, 2013, whereupon the record closed.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

¹ Docket Nos. G1-12-13, CS-12-13, Recommended Decision, (December 18, 2012), adopted by Final Decision March 8, 2013.

A. Background

1. The Appellant, Matthew Lynch, a tenured civil service employee of the Department, has been a police officer for 13 years. (Stipulation of Fact; Testimony of Appellant.)

2. The thirty-member Department is composed of the following superior officers: the chief, 1 lieutenant, 5 sergeants, 1 detective sergeant and 1 detective. The remaining eleven are patrol officers. (Testimony of Chief Delmonte, Testimony of Schuster.)

3. The Appellant holds an Associate's Degree from Massasoit Community College, a Bachelor of Science degree in Criminal Justice from Western New England College and a Master's degree from the University of Massachusetts, Lowell in Criminal Justice.

4. The Appellant has no prior discipline.² (Testimony of Appellant.)

5. In addition to his patrol duties, the Appellant was specially assigned as a Department representative to the Southeastern Massachusetts Law Enforcement Council (SEMLEC) SWAT team (2006 to July 2012); he served on the WEB Task Force, a multi-jurisdictional drug enforcement team (September 2011 to July 2012) and also served as a bicycle patrol officer. (Stipulation of Fact; Testimony of Appellant.)

6. The Appellant is the only certified drug recognition expert in the Department, and one of only 77 in the Commonwealth. He is also a certified field sobriety instructor. (Testimony of Appellant.)

7. The Appellant served as the local union president from 2007 to 2010. (Testimony of Appellant.)

² The Appellant disputes the "two previous verbal reprimands" referenced by Chief Delmonte in the notice of suspension. (Exhibit 13.) The Respondent has not submitted any evidence of prior discipline.

8. The Appellant has instructed police recruits at Plymouth Police Academy. He attended a two-week training program run by the Drug Enforcement Agency and has participated in the Bridgewater Citizens Academy. He has been trained to find drug hides in motor vehicles and to work undercover in drug cases. (Testimony of Appellant.)

9. The Appellant, a member of the Army National Guard since 1990, has been a staff sergeant in the National Guard since 2005. He served for one year in Iraq, where he commanded a security staff of twelve. (Testimony of Appellant.)

10. Police Chief Christopher Delmonte, a 22-year veteran of the Department, previously served as a sergeant and lieutenant in the Department. He became chief on September 1, 2010. (Testimony of Chief Delmonte.)

11. The Chief is the appointing authority for the Department. (Stipulation of Fact; Testimony of Chief Delmonte.)

B. Appellant's Previous Appeal: Lynch v. Bridgewater, Docket Nos. G1-12-13, CS-12-13

12. When Chief Delmonte was appointed in September 2010, there were two vacancies for sergeant. The outstanding sergeants' civil service list had been established in March 2008 from the state Human Resources Division (HRD) written exam. That list included Anne Schuster and the Appellant. (Exhibit 14.)

13. On December 1, 2010, Chief Delmonte appointed Officer Anne Schuster, who was at the top of the list, as a sergeant. (Exhibit 14.)

14. In order to fill the second vacancy, Chief Delmonte and the Town of Bridgewater entered into a delegation agreement with HRD to utilize an assessment center as the "sole basis for scoring and ranking candidates on an eligible list." (Emphasis added.) (Exhibit 14.)

15. On September 16, 2011, the Department posted a notice informing employees of the upcoming Assessment Center examination for promotion to sergeant. The Appellant scored highest in the assessment center with a score of 92, followed by Officer Carl MacDermott III and Officer Christopher Shaw, who tied with a score of 84. (Stipulation of Fact; Exhibit 14.)

16. Officer MacDermott had been a friend of the chief for 20 years. (Exhibit 14.)

17. Chief Delmonte then instructed Lieutenant Thomas Schlatz to organize an interview panel consisting of ranking officers from nearby police departments. The panel consisted of two interviewers, including Lieutenant Victor Flaherty of the West Bridgewater Police Department. Lt. Flaherty spoke to Lt. Schlatz about his relationship with the MacDermott family. He was concerned due to his friendship with the MacDermott family, one of Officer MacDermott's sons had even worked for him in the West Bridgewater Police Department before moving on to the Massachusetts State Police. Lt. Flaherty expressed his concerns to Chief Delmonte on two occasions.³ (Exhibit 14.)

18. The interviewers asked the three candidates the same questions. They ranked MacDermott first of the three candidates. (Exhibit 14.)

19. Based on the interview ranking, Chief Delmonte appointed Officer MacDermott to the position of sergeant. (Testimony of Appellant, Testimony of Delmonte.)

20. On November 16, 2011, Chief Delmonte sent a letter to the Town Manager, recommending candidate MacDermott for the promotion. He also sent a letter to the Appellant informing him of his decision to promote MacDermott to sergeant. (Stipulation of Fact.)

³ In its March 8, 2013 decision, the Commission wrote, "... we remain troubled that ... when a member of the interview panel expressed concern – twice – that his prior working relationship with Detective MacDermott and his son could create a perception that he was predisposed toward [candidate] MacDermott's candidacy, the Town should have looked for another individual to serve on the interview panel." *Lynch v. Bridgewater*, 26 MCSR 120 (2013). (Exhibit 14.)

21. The Appellant filed a timely appeal of his bypass on January 11, 2012.

(Stipulation of Fact; Exhibit 14.)

22. The Commission scheduled a full hearing on the matter for June 1, 2012.

(Stipulation of Fact; Exhibit 14; Testimony of the Appellant.)

C. The Instant Appeal: Lynch v. Bridgewater, Docket Nos. D-12-283, CS-13-88

23. The week of May 27, 2012 was the beginning of a busy time for the Appellant.

Not only did the Appellant have his regularly assigned shifts to work, he had Task Force duties, his promotional bypass civil service case was scheduled for that Friday, June 1, 2012, he had military duty beginning on Saturday, June 2, 2012 for two weeks, and then he was off to visit his children. He would not be back at work until June 22, 2012. (Testimony of the Appellant.)

24. As part of his work for the Task Force, on Sunday, May 27, 2012 the Appellant was granted a mobile search warrant for DF, who was suspected of distribution of heroin.

(Exhibits 10 and 11; Testimony of the Appellant.)

25. All of the Appellant's Task Force work was under the direct supervision of Task Force Commander and East Bridgewater Sergeant Detective Scott Allen and Sgt. Schuster of the Department. (Exhibit 7H; Testimony of the Appellant.)

26. The Appellant was also building a case against MG, another suspected heroin dealer, but needed to make one more controlled buy before applying for a search warrant.

(Testimony of the Appellant.)

27. On May 29, 2012, the Appellant learned from a confidential informant that MG was going to be in Bridgewater that afternoon. The Appellant was already scheduled to work his regular 4 p.m. to midnight work shift that day, but reported to duty at 1 p.m. in order to organize

the needed "buy." With the assistance of Sgt. Det. Allen, the needed "buy" from MG was made between 1 p.m. and 4 p.m. on May 29, 2012. (Testimony of the Appellant.)

28. The Appellant's work on the MG case overlapped into his 4 p.m. to midnight shift. During that shift, he was assigned to Task Force work instead of regular patrol, so that he could continue working on the MG and DF cases. (Testimony of the Appellant, Testimony of Delmonte.)

29. After the controlled buy, the Appellant wrote an affidavit in order to secure a search warrant for MG's residence. That evening, an assistant clerk magistrate from the Brockton District Court came to the Department and issued the search warrant. (Exhibit 12; Testimony of the Appellant.)

30. The Appellant, Sgt. Det. Allen, Sgt. MacDermott and Officer John Hennessey met at the Department to plan an early morning execution of the MG search warrant for May 30, 2012, in coordination with the SWAT team. (Exhibits 7H and 15; Testimony of the Appellant, Testimony of Hennessey.)

31. During that same shift on May 29, 2012, the Appellant learned that suspect DF, the subject of the May 27, 2012 search warrant, was going to be in Bridgewater. At approximately 10:30 p.m., the Task Force consisting of the Appellant, Sgt. Det. Allen, Officer Hennessey and other officers stopped DF's vehicle and executed the May 27 search warrant. Although they found no drugs, the officers retrieved \$1,000 in cash and four cell phones from DF's person and his motor vehicle. They arrested DF for operating with a suspended license. (Exhibits 10 and 11; Testimony of the Appellant.)

32. The Appellant spent the remainder of his May 29, 2012 4:00 p.m. to midnight shift writing the narrative for the DF arrest with Sgt. Det. Allen. Before Sgt. Det. Allen left the

Bridgewater station shortly after midnight,⁴ he spoke with the Appellant about the planned MG raid for the next day. The SWAT Team, rather than the Task Force would be used due to MG's violent criminal history and other factors. Sgt. Det. Allen then went into the basement to work with Sgt. MacDermott, who would lead the raid SWAT team. Sgt. Det. Allen ordered that all participants in the MG raid assemble back at the station at 3:15 a.m. (Exhibits 7 and 15; Testimony of the Appellant.)

33. Although the Appellant lived five minutes away from the station, he chose to stay at the station after his 4:00 p.m. to midnight shift ended. He was afraid that he would fall asleep if he returned home. In the past, the Appellant had spent considerable time at the station for which he neither requested nor received compensation. Some of the investigators on the upcoming SWAT raid left the station, including Sgt. Det. Allen and Officer Hennessey. Other officers chose to remain. (Exhibits 3 and 15; Testimony of the Appellant.)

34. From midnight to 3:15 a.m. on May 30, 2012, the Appellant spent the bulk of his time in the detectives' office. He drank coffee, went to the bathroom and relaxed. Officer Hennessey asked the Appellant's advice in completing the forfeiture report and in tagging evidence of the completed DF search warrant. The Appellant spoke to other officers, including Officer Silvia, who was off duty at the time. The Appellant also took the raid kit needed for the upcoming raid to Officer Hennessey. (Exhibits 7C, 7I and 10; Testimony of the Appellant, Testimony of Hennessey.)

35. At about 2:20 a.m. on May 30, 2012, Officer Kingsley went to the detectives' office and asked the Appellant to speak with prisoner DF, who had made bail. When DF asked

⁴ Sgt. Det. Allen mistakenly informed Lt. Schuster that he had left the station at approximately 1 a.m. However, the Department camera system showed a 12:13 a.m. departure time. (Exhibits 4 and 7.)

about the return of his \$1,000 bail, the Appellant spent 15 minutes explaining forfeiture proceedings to him. (Exhibit 7 J; Testimony of the Appellant.)

36. Sgt. Det. Allen returned to the station around 3:15 a.m. on May 30, 2012 in order to assemble the officers for the MG search warrant. At 4:11 a.m., the warrant was executed and resulted in the suspect's arrest, the seizure of a large quantity of heroin, cocaine and drug paraphernalia. (Exhibit 12; Testimony of the Appellant.)

37. After the execution of the search warrant, the Appellant returned to the station to help with processing the prisoner and filling out the necessary paperwork. At about 8:00 a.m. on May 30, 2012, he left the station. (Exhibit 7; Testimony of the Appellant.)

38. At 9:00 a.m. on May 30, 2012, the Appellant and Officer Kingsley appeared in Brockton District Court to testify in an operating under the influence of drugs matter. Although they had been told that this was the final date, the matter was continued yet again. After the case was continued, the Appellant returned to the station around 10:30 a.m. to drop off his court overtime slip. Chief Delmonte saw the Appellant at the station that morning, but did not speak to him. This was two days before the Appellant's scheduled bypass appeal at the Commission. (Exhibits 1, 3 and 5; Testimony of the Appellant, Testimony of Delmonte.)

39. The Appellant's promotional bypass hearing proceeded as scheduled on Friday, June 1, 2012. (Testimony of the Appellant.)

40. During the second day of hearing on the instant appeal on April 17, 2013, Chief Delmonte testified that he was "disappointed" that the Appellant had gone forward with his appeal, and that he believed that the Appellant's attorney was rude to him throughout the proceeding. (Testimony of Delmonte, Testimony of the Appellant.)

41. On Saturday, June 2, 2012, the Appellant reported as scheduled for his annual mandatory two-week military training on Cape Cod. (Exhibit 4; Testimony of Appellant.)

42. On Monday, June 4, 2012, with permission from his military commanding officer, the Appellant appeared in court to answer on a summons for a firearms case. The military commander allowed the Appellant to attend court because it was a summons from a court, but ordered that all police matters would have to be postponed. (Exhibit 3; Testimony of the Appellant.)

43. Because it was a police matter, the Appellant was ordered by his military commander to miss the Department's mandatory domestic violence training, also scheduled for June 4, 2012. (Exhibit 3, Testimony of the Appellant.)

44. On June 4, 2012, two days after the promotional bypass hearing at the Commission, Chief Delmonte initiated an investigation into the Appellant's possible violations of Department General Orders and Department Rules and Regulations on May 29 and 30, 2012. He put Lt. Schlitz in charge, Lt. Schlitz then designated Sgt. Schuster to investigate the Appellant's June 4, 2012 court appearance and whether he had violated the 16-hour rule. (Stipulation of Fact; Exhibits 4 and 5; Testimony of Delmonte, Testimony of Lt. Schlitz.)

45. Sgt. Schuster learned that same morning that the Appellant had had to testify. She was aware that the Appellant had submitted an overtime slip for 1:00 p.m – 4:00 p.m. on May 29, 2012, after working his regular shift from 4 pm to midnight. She was concerned about the Appellant's hours from midnight until 9:00 a.m. She spoke with Officer Hennessey, who told her that the Appellant had texted him to fill out the overtime slip for him, a common practice in the Department. However, Officer Hennessey could not recall the hours the Appellant had asked him to submit. (Exhibit 4.)

46. During a break from his court case on June 4, 2012, the Appellant spoke with Sgt. Schuster, who inquired about the Appellant's military orders and his hours for May 30, 2012. The Appellant replied that although he had been present in the station from midnight until 8:00 a.m. on March 30, 2012, he had not worked from midnight until 3:15 a.m., or from or 8 a.m. until 9:00 a.m. Sgt. Schuster agreed to fill out the overtime form for the Appellant. Again, filling out another officer's overtime form was common practice among the officers in the Department. (Stipulation of Fact; Exhibit 4; Testimony of the Appellant, Testimony of Schuster.)

47. Sgt. Schuster later left the Appellant a voicemail to come to the station to fill out the slip himself. After court, the Appellant did so, filling in his hours of work from 3:15 a.m. to 8:00 a.m. (Stipulation of Fact; Exhibits 4 and 5, Testimony of the Appellant, Testimony of Schuster.)

48. The Appellant returned to his military training. He then received an email from Sgt. Schuster, copying Lt. Schlatz, which stated:

Matt:

In addition to the report I already spoke to you about (explanation of how you were able to be released from military duty to go to court on 6-4-12, who authorized it, etc.) I will need a second report from you detailing all of your actions between 1:00 PM on 5-29-12 through 10:35 AM on 5-30-12. I need you to account for every hour that you were here whether you were actually working or not. I also need you to include what events were scheduled ahead of time and when you became aware of them (MV stop, Spring St. search warrant, etc.). As I stated over the phone, you went well over the number of hours allowed to work in a 24 hour period so it had to be documented why this happened. Both of these reports can be done when you return from military duty. Thank you.

Det. Sgt. Anne M. Schuster

(Stipulation of Fact; Exhibit 9)

49. When Lynch emailed back, "Is this a discipline investigation?" Sgt. Schuster replied, "I need the reports to account for your military, WEB and regular duty times." She did

not inform the Appellant that she was undertaking an investigation at the request of Lt. Schlatz.

(Stipulation of Fact; Exhibit 9; Testimony of Schuster.)

50. After his military training was complete, the Appellant then made a scheduled one-week vacation in order to see his children. (Testimony of the Appellant.)

51. On June 22, 2012, the Appellant returned to the Department for the first time after his civil service hearing. He submitted the detailed report to Sgt. Schuster as she had requested. (Exhibit 3; Testimony of the Appellant.)

52. Sgt. Schuster forwarded the Appellant's report to Sgt. Det. Allen. Sgt. Det. Allen agreed with the report, and confirmed that he had stayed at the station until 1:00 a.m. on May 30, 2012. However, Department cameras showed him leaving at 12:13 a.m. (Exhibit 4.)

53. During the investigation, Chief Delmonte removed the Appellant from all special assignments, including the Task Force, SWAT and the bicycle unit. (Testimony of the Appellant.)

54. In order to write her report, Sgt. Schuster reviewed the station camera for the midnight to 3:15 a.m. time period. She observed the Appellant "several times in the corridor (in and out of booking dispatch, etc.)" Without interviewing the Appellant, she concluded that, "It did appear that he was actually working during that time." (Exhibit 4; Testimony of Schuster.)

55. Based on Sgt. Schuster's report, Lt. Schlatz submitted an undated report which found that the Appellant had (a) worked more than 16 hours in a twenty-four hour period from March 29 to 30, 2012 in violation of General Order, September 21, 2006 (the 16 hour work rule); (b) had violated Department Rules and Regulations §§ 7 and 32 on truthfulness and submitting false or inaccurate information by claiming not to have worked between midnight and 3:15 a.m. on May 30, 2012; but (c) had not violated any Department rules in choosing to attend court on

June 4, 2012 while on military leave instead of the Department domestic violence training.
(Exhibit 5; Testimony of Schlatz.)

56. On July 16, 2012, the chief spoke with the Appellant in order to schedule an investigatory interview in regard to his National Guard training orders and his work hours from May 29-30, 2012. (Stipulation of Fact.)

57. On July 31, 2012, the Appellant met with Chief Delmonte for the investigatory interview. The Appellant appeared with his counsel and the union president. Lt. Schlatz was also present. The chief questioned the Appellant, asking him if he had lied when he denied earlier having worked from midnight to 3:15 a.m. on May 30, 2012. The Appellant insisted he was telling the truth. The exchange was heated. (Exhibit 7; Testimony of the Appellant, Testimony of Delmonte, Testimony of Schlatz.)

58. After the investigatory interview, Chief Delmonte ordered Lt. Schlatz to conduct an expanded investigation "to determine whether Officer Lynch was working between the hours of Midnight and 3:15 am in the morning of 5/30/12, as stated in his report or if he (Lynch) was being untruthful in his report." Lt. Schlatz interviewed seven officers - Hennessey, Officer Silvia, Officer Kingsley, Officer Hile, Officer Coyle, Officer Parmeggiani and Officer LaGrasta and also ordered them to submit written reports. Lt. Schlatz reviewed the station's camera system and had the computer system accessed forensically in order to check the Appellant's log in times. He found that the arrest report of DF was accessed from the Appellant's desk under the Appellant's login on five occasions: three times at 12:46 a.m., once at 1:13 a.m. and once at 2:17 a.m. Lt. Schlatz did not interview the Appellant. (Exhibits 5 and 7; Testimony of the Appellant, Testimony of Delmonte, Testimony of Lt. Schlatz.)

59. The chief ordered the Appellant to submit "a more detailed report spelling out what specific tasks he (Officer Lynch) performed between 12:00am and 3:15am on the morning of 5/30/12." The Appellant submitted the report on August 8, 2012. (Exhibit 7.)

60. There were some inconsistencies in the second investigation. In his interview of Officer Kingsley, Lt. Schlatz reported:

d) What interactions did you have with Officer Lynch after Midnight? A: He said that at one point he (Kingsley) was in the Detectives' Office with Officers Lynch and Hennessey. Officer Lynch was at his computer working on the affidavit for the second search warrant on Spring St [of suspect MG]. I asked Officer Kingsley how he knew it was the affidavit. He (Kingsley) said because he could see it on the screen and he (Kingsley) was asking him about it. (Emphasis added.)

(Exhibit 7.)

However, The MG search warrant on which the MG affidavit was based had already been issued. Officer Kingsley's report states:

At the station I was in the Detectives Office talking with Officer Hennessey and Officer Lynch who were both assigned to plain clothes. We spoke about the drug search that just occurred, and also mentioned the up and coming High Risk Search Warrant. I asked Officer Lynch the location, and style of dwelling. Officer Lynch had the affidavit for the search warrant up on his computer screen. I didn't observe Officer Lynch working on the affidavit in my presence. (Emphasis added.)

(Exhibit 7.)

61. Lt. Schlatz submitted his report to the Chief on August 21, 2012. (Stipulation of Fact; Exhibit 7; Testimony of Chief Delmonte, Testimony of Lt. Schlatz.)

62. Lt. Schlatz ended his investigation report with the following:

In conclusion, I would like to add that Officer Lynch is contending that he was not working on the evening of 5/30/12 between the hours of Midnight and 3:15 am. This investigation revealed ample evidence disputing his claim. It also reveals that Officer Lynch was considered to be on duty by his co-workers ...

(Exhibit 7.)

63. Lt. Schlatz also concluded that "Officer Lynch's actions jeopardized the safety of his co-workers and the public" due to his violation of Department General Order, September 21, 2006, which limits the number of hours an officer can work in a twenty-four period to 16 hours (the 16 hour rule). He also found that the Appellant was under the orders of his military commander who allowed him to answer a court summons, but not attend the Department's mandatory domestic violence training. He found that "Officer Lynch was at the discretion of his Company Commander and [had] limited control over which events he was to attend." (Exhibits 5 and 7.)

64. Three other police officers, Officer Kingsley, Officer Hennessey and Sgt. MacDermott also violated the 16 hour work rule during the same period. (Exhibit 8.)

65. Supervisors may excuse officers from violation of the 16 hour work rule after the fact. This is a common practice in the Department. No one has ever been investigated for violating the 16 hour work rule in the history of the Department. (Testimony of the Appellant, Testimony of Chief Delmonte.)

66. On September 17, 2012, Chief Delmonte presided over a disciplinary hearing of the Appellant, pursuant to G.L. c. 31, § 41. Chief Delmonte, Lt. Schlatz, Sgt. Schuster and Officer John Hennessey testified for the appointing authority. When it was Chief Delmonte's turn to testify as a witness, Lt. Schlatz presided over the hearing. After giving his testimony, the Chief resumed his role as the hearing officer. The Appellant testified on his own behalf. (Testimony of Appellant, Testimony of Delmonte.)

67. On September 27, 2012, Chief Delmonte issued his findings against the Appellant. The chief wrote that:

You [the Appellant] went on to state in the report [Exhibit 4] when discussing the 12 midnight to 3:15 a.m. time period: "At the end of my shift at midnight, I was

relieved of all work duties, but remained in or at close proximity to the PD." This statement ... was not supported by the initial camera recordings which show you actively moving about the station, including carrying the "raid kit" from one room to another.

Once you became aware that there was a potential error in working more than 16 hours, it appears that you felt that excluding the 12 midnight to 3:15 a.m. may have limited your liability for going over the hours' limitation. By your own admissions, you worked at least 18 hours, excluding the disputed hours from 12 midnight to 3:15 a.m., which would have you working 21 hours in a 24 hour period.

(Exhibit 13.)

68. The chief further wrote:

DISPOSITION:

In reviewing the appropriate sanction for exceeding the general order limitation on hours worked, there was no exigency or emergency to the drug investigation because the target was not aware of your surveillance, or because you were not able to finish it the day after, or that you were leaving for two weeks of military training. You had the option of: 1. letting Officer Hennessey further the investigation while you were away; 2. not adding hours at the beginning of your tour duty knowing you would likely continue through the night into court previously scheduled the next day; 3. obtain the search warrants and not execute service on days when you were working at night and then due back again during the next day for court; or 4. delay obtaining the search warrants until you were able to commit your time accordingly. ...

...I am also aware that you were working on an active drug investigation which at times can be labor intensive and unpredictable when dealing with informants. As such, you are only being issued this reprimand for exceeding the general order with instructions that future violations can result in more serious discipline. ...

... Since this incident occurred, you have not been fully cooperative with your superior officers by submitting inaccurate reports knowing they were so and being evasive when asked to clarify certain parts. ...

Your conduct in reporting to your superior officers on this particular incident has been at least misleading and inaccurate. This has demonstrated poor judgment on your part. *As you know, many people involved in this case have attempted to improve your recognition of the error and ignorance of the obvious facts.* Had you taken the appropriate corrective action, this matter would have been limited to an inquiry about exceeding hours only. *I am deeply concerned by your obstinate attitude and willingness to accuse other officers of unsubstantiated impropriety in order to cast doubt in your case.* (Emphasis added.)

(Exhibits 13 and 18.)

69. The Chief ordered for the Appellant (1) a reprimand for working more than 16 hours in a twenty-four hour period from March 29 to 30, 2012 pursuant to General Order, September 21, 2006 and (2) a five-day suspension for untruthfulness in submitting false or inaccurate reports on March 30, 2012 pursuant to Department Rules and Regulations §§ 7 and 32. The Appellant was also suspended from special activities for one year and was not restored to his appointments on the WEB Task Force and the SEMLEC SWAT Team. The Appellant was not allowed to serve as the shift supervisor if no superior officer was posted to his assigned shift. The Appellant was also prohibited from serving the Department in any special activity for a period of one year, including but not limited to, the Citizens Police Academy and the Bike Patrol. (Stipulations of Fact; Exhibit 13.)

70. The five-day suspension was served over September 2 and 29, 2012, October 2, 3 and 4, 2012. (Stipulation of Fact.)

71. On October 9, 2012, the Appellant filed a timely appeal with the Commission. (Exhibit 17.)

72. The Appellant's previous civil service matter remained pending. After the November 6, 2012 prehearing conference of the instant matter at the Commission, Chief Delmonte ordered an investigation of Officer Hennessey's hours. The investigation concluded that Officer Hennessey's violation of the 16 hour rule was "unfounded." (Exhibit 16.)

D. Disposition of Lynch v. Bridgewater, Docket Nos. G1-12-13, CS-12-13

73. On December 18, 2012, the DALA Magistrate issued a Recommended Decision in the Appellant's promotional bypass civil service case, recommending that the Commission deny the Appellant's appeal. (Exhibit 14.)

74. On March 7, 2013, the Commission, while dismissing the Appellant's previous appeal upon the Magistrate's recommendation in a closely divided vote, voiced its consternation that Lt. Flaherty was appointed to the interview panel – after the lieutenant had voiced his concerns about his friendship with the MacDermott family. Although the Commission agreed with the Magistrate's credibility assessments of the chief and a member of the interview panel, it advised that appointing authorities should avoid similar situations in the future. (Exhibit 14.)

CONCLUSION AND ORDER

A. *Applicable Legal Standards*

Pursuant to G.L. c. 31, § 43, a “person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission. . . .” The statute provides, in pertinent 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, 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 the 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, 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.” *Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 304, *rev. den.*, 426 Mass. 1102 (1997); *Commissioners of Civil Serv. v. Municipal Ct. of Boston*, 359 Mass. 211, 214 (1971); *Selectmen of Wakefield v. Judge of First Dist. Ct.*, 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring “whether the

employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” *School Comm. of Brockton v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 488, *rev. den.*, 426 Mass. 1104 (1997); *Murray v. Second Dist. Ct.*, 389 Mass. 508, 514 (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 (1956). “[T]he 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 ...” *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823. *See Watertown v. Arria*, 16 Mass. App. Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983) and cases cited.

Under Section 43, the Commission is required to “conduct a de novo hearing for the purpose of finding the facts anew.” *Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 823(2006) and cases cited. The role of the Commission is to determine “whether the appointing authority sustained its burden of proving there was reasonable justification for the action taken by the appointing authority.” *Cambridge v. Civil Serv. 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 (2003); *Police Dep't of Boston v. Collins*, 48 Mass. App. Ct. 411, *rev.*

den., (2000); *McIsaac v. Civil Serv. Comm'n*, 38 Mass. App. Ct. 473, 477 (1995); *Watertown v. Arria*, 16 Mass. App. Ct. 331, rev. den., 390 Mass. 1102 (1983).

Absent significant differences between the Commission's findings of fact and those found by the appointing authority, or a substantially different interpretation of the relevant law, "the commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation." *Falmouth v. Civil Ser. Comm'n*, 447 Mass. 814 at 824; *Police Comm'r of Boston v. Civil Serv. Comm'n*, 39 Mass. App. Ct. 594, 600 (1996).

Bridgewater Police Department General Order, dated September 21, 2006 provides that:

Bridgewater Police Department Order updated September 21, 2006, effective as of October 9, 2006, provides that no officer will be allowed to work more than sixteen hours in a twenty-four hour period, including military reserve hours worked, except during emergencies or when ordered to do so by a superior officer.

(Exhibit 1.)

Bridgewater Police Department Rules and Regulations, Required Conduct, Section 32

(2011) provides that:

Truthfulness: Officers shall truthfully state the facts in all reports as well as when they appear before and [sic] judicial, Departmental, or other official investigation, hearing, trial or proceeding. They shall cooperate fully in all phases of such investigations, hearings, trials or proceedings.

(Exhibit 2.)

Bridgewater Police Department Rules and Regulations, Prohibited Conduct, Section 7

(2011) provides that:

False Information on Records: An officer or employee shall not make or submit any false or inaccurate reports or knowingly enter or cause to be entered into any department books, records, or reports and inaccurate, false or improper information.

(Exhibit 2.)

B. Analysis

There are significant differences between the recommended findings of fact and those found by the appointing authority in this matter. In all matters, the Commission is charged with ensuring that decisions made by Appointing Authorities are consistent with basic merit principles and free of political or personal bias. I find that the Town has not shown by a preponderance of the evidence that Officer Lynch violated the 16 hour work rule contrary to normal practice in the Department (Exhibit 1), that the Appellant was untruthful (Exhibit 2), or that the Appellant made or submitted false or inaccurate reports, or knowingly caused false or improper information to be entered into department records (Exhibit 2.). I find that Chief Delmonte oversaw and personally directed a result-driven investigation against the Appellant because he had exercised his lawful right to file a civil service appeal after being promotionally bypassed. With no pretense for even handedness, the chief then presided over the § 41 hearing - while also serving as a witness. The chief then utilized his findings and conclusions to support his foregone conclusion to discipline the Appellant and remove him all special activities. The chief unfairly singled out Officer Lynch and caused dissension in the Department. Far worse than what he has done to Officer Lynch, the chief has raised questions about his own fitness for leadership and maintaining morale in the Department. *See Silva v. East Bridgewater Police Dep't*, D1-12-209 (June 13, 2013).

The Respondent argues that the 16 hour work rule has been well-established administrative policy in the Department for many years and was updated most recently in 2006. Its purpose is to promote officer safety by preventing officers from extending themselves beyond reasonable working periods. The 16 hour work rule is well known because it must be followed by officers looking for overtime or detail assignments.

The Respondent argues that the Appellant violated the 16 hour work rule when he worked more than 16 hours on his 4:00 p.m. to midnight May 29, 2012 shift leading into May 30, 2012. The Respondent is adamant that the Appellant was working from midnight on May 29, 2012 until 3:15 am on May 30, 2012, which the Appellant vehemently disputes.

The chief ordered two investigations of the Appellant, one by Sgt. Schuster on June 4, 2012, the first weekday back at work after the civil service full hearing on June 1, 2012; and one by Lt. Schlatz on August 21, 2012. The Appellant was not interviewed for either investigation. As a matter of fact, he was never informed by Sgt. Schuster that she was investigating him.

The chronology of events is important to the understanding of this case. The week in which the Appellant received and executed the search warrants on DF and MG was also the same week in which he had to attend the full hearing on his first civil service appeal. After attending the civil service hearing on June 1, 2012, the Appellant planned to be away for three weeks. He had to leave for military training the next day on June 2, 2012 for two weeks. He then had a scheduled vacation to see his children following his military duty. Thus it was important for him that the search warrants be executed before he left.

It is more likely than not that the other officers in the raids were aware of his appeal and the chief's disapproval, and that there was an air of tension in the department. The Department is a small town force: in addition to the chief, there is one lieutenant, 5 sergeants, 1 detective sergeant and 1 detective.

The chief testified that he was upset and "disappointed" that the Appellant had chosen to appeal after being bypassed for sergeant. Those feelings had not abated on June 1, 2012. On the second day of hearing in the instant matter on April 17, 2013, the chief was visibly angry about that first appeal. He interpreted the zealous advocacy of the Appellant's counsel (not the

same counsel in the instant matter), as rudeness directed at him. On the first weekday back in the office after the June 1, 2012 civil service hearing, the chief ordered the first investigation of the Appellant. Although the chief had ordered two investigations of the Appellant in addition to conducting his own interview of the Appellant on July 31, 2012, he could not give any details of the Appellant's duties on May 29-30, 2012 during his testimony. I infer that it didn't matter what the Appellant said to the chief during the interview or what the superior officers found in their investigations. Chief Delmonte wanted to punish the Appellant for pursuing his civil service appeal, and it is clear to me that the chief had already determined that the Appellant had violated a General Order or Department Rules or Regulations before the investigations started. Although in the greatest of ironies, the Appellant did not prevail in the first civil service appeal, the chief's retaliation could not wait for the result of the hearing.

When the Appellant arrived in the station on June 4, 2012 to sign his overtime slip as ordered by Sgt. Schuster, the chief saw him but did not speak to him. Lt. Schlatz and Sgt. Schuster, the superior officers who he later ordered to investigate the Appellant, had appeared as witnesses at the June 1, 2012 civil service hearing. Chief Delmonte himself was the hearing officer at the § 41 September 17, 2012 disciplinary hearing for the instant matter. As a matter of fact, when it was the chief's turn to testify as a witness in the same proceeding, Lt. Schlatz, one of the superior officers - a witness - doubled as the presiding officer. With the chief as presiding officer, it would have been difficult for the police witnesses to offer testimony other than what the chief wanted to hear. Thus the § 41 proceeding was highly inappropriate and irregular, and validated the Commission's concerns of the Town's behavior in the first appeal. When I asked the chief why he had presided over the appointing authority hearing, he replied that if he had not done it, the hearing would not have taken place. When I questioned whether it would have been

wiser to have a disinterested party preside, he was confused and could not understand the perception that his behavior had presented.⁵

In contrast to the chief's angry demeanor, the Appellant presented himself as a skilled professional and exhibited incredible graciousness in light of his promotional bypass and demotion. He was a credible witness.

The Appellant was a highly accomplished police officer in the Department until he challenged Chief Delmonte's decision to bypass him for sergeant. Until June 2012, he was assigned to both the WEB Task Force, the SEMLEC SWAT team - both highly specialized assignments, and the bike patrol. He is certified as a drug recognition expert, the only one in the Department and one of the few in the Commonwealth. His peers recognized his leadership by electing him local union president for four years.

After the Appellant found out that MG would be in his jurisdiction on May 29, 2012, he arranged with Task Force Commander Sgt. Det. Allen to perform the needed controlled buy between 1:00 p.m. and 4:00 p.m. When he returned to the station for his 4:00 p.m. to midnight shift, he drafted the affidavit for the MG search warrant, had it approved by Sgt. Det. Allen, and was granted the search warrant by the Brockton District Court later that evening. Sgt. Det. Allen ordered the SWAT team, including the Appellant, to report back to the station at 3:15 a.m. in order to execute the MG search warrant.

When he learned later in the shift that DF, the subject of another search warrant would be in Bridgewater, the Appellant helped to execute that search warrant. DF was arrested for

⁵ In contrast to the chief's testimony, the parties stipulated that Chief Delmonte served as hearing officer, Lt. Schlatz represented the Department, the Appellant was represented by counsel, and Town Attorney Mark C. Gildea served as the presiding officer when the chief was testifying as a witness. No evidence was submitted to show who represented the Department when it was Lt. Schlatz' turn to testify on behalf of the Department. (Stipulation of Facts.)

operating a motor vehicle with a suspended license. Back at the station, Officer Hennessey was responsible for drafting the forfeiture report for the seizure of DF's cash. The Appellant's shift concluded at midnight.

Although the Appellant lived five minutes away, he was afraid to go home and risk oversleeping. The Appellant chose to stay at the station and relax for the three hours and fifteen minutes before he was due to report back. Being at the station and off the clock was something he had done frequently during his career. It was also common practice for officers to remain at the station while they were off duty. Although he was off duty, the Appellant's work ethic would not let him deny assistance to his fellow officers. When Officer Hennessey asked for advice on how to tag pieces of evidence seized in the DF case, the Appellant showed him. He also took the raid kit for the upcoming search warrant execution from one office to another. While the Appellant was in the station, DF, one of the search warrant subjects, made bail. When Officer Kingsley asked the Appellant to explain to DF why his previous \$1,000 bail was forfeited, he complied. The Appellant did not request payment for this time, and the tasks altogether did not amount to 3.25 hours of overtime pay. I find that the Appellant was truthful in this regard. He was in the station, but not working from midnight until 3:15 a.m. on May 30, 2012.

After the successful MG raid and arrest, the Appellant left the station at about 8:00 a.m., returned home briefly, then appeared in court at 9:00 a.m. After the court matter was continued, the Appellant returned briefly to the station and submitted his court overtime slip.

On June 2, 2012, the Appellant reported for military training. On June 3, 2012, realizing that he had failed to fill out his overtime slip for May 30, 2012, he texted Officer Hennessey to fill it out for him. It was common practice for officers to fill in overtime slips for each other.

Lynch asked Officer Hennessey to list his hours from 3:15 a.m. to 8:00 a.m. Officer Hennessey testified that he could not recall what hours the Appellant had given him.

On June 4, 2012, with permission from his military commander, the Appellant returned to testify in a criminal matter that would have been dismissed in his absence. On the same day, Chief Delmonte initiated the first investigation, ordering Sgt. Schuster to see whether Lynch had exceeded the 16 hour work rule and how he was able to return from military duty to testify in court. The chief was also concerned that the Appellant had appeared in court, but had missed a mandatory Department domestic violence training on the same day. The chief later ordered a second investigation by Lt. Schlitz. Neither investigation included an interview with the Appellant.

The chief charged the Appellant with violation of (1) the Bridgewater Police Department General Order, dated September 21, 2006, commonly known as the 16 hour work rule; untruthfulness, pursuant to Rules and Regulations, Required Conduct, § 32 (2011); and false information on records, pursuant to Rules and Regulations, Required Conduct, § 7 (2011). The chief found that the Appellant had worked more than 16 hours in a twenty-four period from May 29 to May 30, 2012, that he had been untruthful when he failed to admit to doing so, and that he had filed false or inaccurate reports in reporting his time sheet and in the reports that he submitted to Sgt. Schuster and Lt. Schlitz. The Appellant had already explained in the interview with the chief on July 31, 2012 that he could not in good faith justify submitting an overtime card because he did not consider himself to be working from midnight to 3:15 a.m.

The Appellant has never denied that his hours exceeded the limits of the 16 hour rule. He admitted that his hours occurred in the time span from 1:00 p.m. on May 29, 2012 to May 30, 2012 at 10:30 a.m. From May 29, 2012 to May 30, 2012, the Appellant worked 17.25 hours:

1:00 p.m. – 4:00 p.m. overtime on May 29, 2012; 4:00 p.m. – 12:00 a.m., his regular shift on May 29, 2012; 3:15 a.m. – 8:00 a.m. on May 30, 2012; and 9:00 a.m. –10:30 a.m. for a court appearance on May 30, 2012. He did not believe any of his work time was discretionary. In the disputed time period, the Appellant wrote a search warrant affidavit, was granted the search warrant based on the affidavit, and executed two search warrants.

It is undisputed that no one in the Department had ever even been investigated for violating the 16 hour rule. Despite evidence that several other officers had also worked more than 16 hours on May 29-30, 2012, the Appellant was the only officer who was disciplined. One of the officers, Officer Hennessy, was only investigated after the Appellant brought his overage to the chief's attention in November 2012. Instead of approving the extra time after the fact as is the common practice, the chief found that any such allegation was "unfounded."

Although the chief wrote in his disposition that the Appellant should have consulted with Det. Schuster before the events on May 29-30, 2012 so that he would not gone over the 16 hour rule limit, Chief Delmonte also stated that he was aware that in an active drug investigation can be labor intensive and unpredictable when dealing with informants. The Appellant would not have pleased the chief no matter which route he took.

C. Conclusion

As stated above, after conducting a two-day de no hearing, my findings differ significantly from the findings of the chief at the § 41 hearing. Based on the preponderance of credible evidence presented at the hearing, I conclude that the City was not reasonably justified in disciplining the Appellant. Accordingly, I recommend that the appeal be *allowed*. The Appellant, Matthew Lynch, shall be restored to his special activities and to his appointments on the WEB Task Force, the SEMLEC SWAT Team and the bicycle unit.


D. Reimbursement of Attorney's Fees

Further, pursuant to G.L. c. 31, § 45, I recommend to the Commission that the Town shall reimburse Officer Lynch in the following manner: \$200 for attorney's fees for the hearing before the appointing authority, \$200 for attorney's fees for the civil service hearing and \$100 for any other necessary expenses incurred. Regrettably, I can order no more. If it were permitted by statute, I would recommend that the Commission order full reimbursement for attorney's fees.

See Silva v. East Bridgewater Police Dep't, D1-12-209 (June 13, 2013).

SO ORDERED.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Angela McConney Scheepers
Administrative Magistrate

DATED: **AUG 29 2013**