

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place – Room 503
Boston, MA 02108
617-979-1900

RYAN MAWN,

Appellant

v.

D-21-112

TOWN OF WINCHESTER,

Respondent

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Paul M. Stein¹
Cynthia A. Ittleman

Summary of Decision

The Commission allowed the appeal of a recently promoted Winchester Police Sergeant who was demoted to Patrol Officer primarily for his alleged mishandling of an unusually complex hit-and-run incident. A preponderance of the evidence failed to establish he engaged in misconduct or serious violations of his duties that rose to the level that warranted such severe discipline. In addition, procedural flaws adversely prejudiced the Town's decision.

¹ Commissioner Ittleman conducted the full hearing regarding this appeal, but she retired from the Commission prior to drafting a decision. For that reason, the appeal was reassigned to Commissioner Stein, who acknowledges the assistance of Law Fellow, Courtney Timmins, J.D., in his review of the entire record in this matter, including the recording of the full hearing and all exhibits, and the drafting of this Decision.

DECISION

On June 25, 2021, the Appellant, Ryan Mawn, acting pursuant to G.L. c. 31, §§ 41-43, appealed to the Civil Service Commission (Commission) from the decision of the Town of Winchester (Town) to demote him from the rank of Sergeant in the Winchester Police Department (WPD) to Patrol Officer.² The Commission held a prehearing conference on July 20, 2021, via remote videoconference (Webex). The Commission subsequently held a full hearing, also via Webex, over the course of three days on September 29, 2021, November 4, 2021, and November 5, 2021, which was recorded on Webex.³ Thirteen (13) joint exhibits, twelve (12) Appellant exhibits, and three (3) Respondent exhibits were received in evidence. Each party filed a Proposed Decision on December 17, 2021. For the reasons set forth below, Ryan Mawn's appeal is allowed.

FINDINGS OF FACT

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

Called by the Town:

- Lisa Wong, former Town Manager, Town of Winchester
- Daniel O'Connell, Chief, Winchester Police Department
- Peter MacDonnell, former Chief, Winchester Police Department
- Joseph Abdella, Detective Lieutenant, Winchester Police Department
- Edward Donohue, Sergeant, Winchester Police Department
- Frank Batchelor, Sergeant, Winchester Police Department
- Frank Limoncelli, Lieutenant, Winchester Police Department
- Kathryn DiPerna, Detective, Winchester Police Department
- Frank Spinoso, Patrol Officer, Winchester Police Department

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ A link to the recording of the full hearing was provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the recording to supply the court with the stenographic or other written transcript of the 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.

Called by the Appellant:

- Michelle Vibert, former Human Resources Director, Town of Winchester
- Horst Filtzer, Sergeant, Winchester Police Department
- Ryan Mawn, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Town Manager is the appointing authority for the WPD.⁴ Lisa Wong was the Town Manager at all times relevant to this appeal. (*Testimony of Wong; Joint Ex. 10, J0130*)
2. The WPD, the Town's municipal police department, employs approximately forty officers. It has a paramilitary structure with the current recognized chain of command: Chief of Police; four Lieutenants, including a Lieutenant-in-Charge who is second-in-command after the Chief; eight Sergeants (five patrol Sergeants and three specialist roles); and twenty-seven Patrol Officers. (*Testimony of O'Connell*).
3. WPD officers belong to one of two bargaining units: the Patrol Officers Association, or the Superior Officers Association (for Lieutenants and Sergeants). The Chief of Police and Lieutenant-in-Charge are both non-union managerial positions. (*Testimony of O'Connell*)
4. The Appellant, Ryan Mawn, has been an officer in the WPD for over sixteen years. He was hired as a Patrol Officer in March 2006 and promoted to Sergeant on June 16, 2019. (*Testimony of Appellant; App. Ex. 3C, A0497-98*)
5. Prior to the Winchester Police Department, the Appellant had worked for three (3) years as a police officer in two Cape Cod towns – two years in Harwich and one year in Brewster. (*Testimony of Appellant; A-3C, A0497-A0498*).

⁴ Winchester Code of Bylaws Art. 4, § 4-2(b).

6. To become a Sergeant, the Appellant took the Sergeant's promotional examination. Then-Chief Peter MacDonnell promoted the Appellant to Sergeant, bypassing a higher-ranked candidate because, according to Chief MacDonnell, the Appellant had an excellent interview and, unlike the bypassed candidate, the Appellant had no prior discipline in his career. (*Testimony of Appellant, MacDonnell, & O'Connell*)
7. Following his promotion, Sgt. Mawn received the following training: a week-long Frontline Leadership class at the Cambridge Police Department,⁵ a one-day suicide prevention class at the Grafton Police Department, and a one-day Officer-In-Charge class at the Grafton Police Department. He also participated in approximately two weeks of "ride alongs" shadowing an experienced WPD Sergeant. (*Testimony of Appellant; Joint Ex. 11, J0172*)
8. In October 2019, about four months after his promotion, Sgt. Mawn suffered a traumatic and disabling injury. He was out on medical leave for approximately four months until he was cleared to return to work in February 2020. (*Testimony of Appellant; App. Ex. 3C, A0498-500*)
9. Daniel O'Connell is the Police Chief. He was hired in 2000, promoted to Sergeant in 2008, promoted to Lieutenant in 2012, and promoted to Lieutenant-in-Charge in 2016. Then-Lt. O'Connell took over as Chief following the retirement of former Chief Peter MacDonnell on January 5, 2021. (*Testimony of O'Connell*)

⁵ The Frontline Leadership class that Sgt. Mawn attended was shortened to one week in duration (as opposed to its usual two-week duration) because of COVID-19. (*Testimony of Appellant*)

Superior Officers Union Contract

10. In March 2020, the WPD Superior Officers Association negotiated a new Collective Bargaining Agreement (CBA). The CBA was ratified by a 10-2 vote. *(Testimony of O'Connell & Filtzer)*
11. Chief MacDonnell and Lt. O'Connell had "heard through the grapevine" that Sgts. Mawn and Filtzer were the two Superior Officers who voted against the CBA. *(Testimony of O'Connell)*
12. Sgt. Horst Filtzer has worked for the WPD since 1996. He was promoted to Sergeant in 2001, making him the longest-serving Superior Officer of anyone presently in the WPD. Sgt. Filtzer opposed the contract because it eliminated his position as a canine handler and took away his 8% specialist stipend. Sgt. Filtzer's canine was getting old, nearing retirement, and Chief MacDonnell decided the WPD no longer needed a canine position. *(Testimony of Filtzer & O'Connell)*
13. The CBA reallocated the canine funds to increase the stipends of four other positions. As the Lieutenant-in-Charge, Lt. O'Connell's stipend went from 10% to 12%. The other three specialist stipends were increased from 8% to 10%. *(Testimony of Filtzer & O'Connell)*
14. Chief MacDonnell and Lt. O'Connell understood why Sgt. Filtzer opposed the CBA because it eliminated his canine position and stipend. However, they could not understand why Sgt. Mawn voted against the CBA and they were concerned that he was "overly guided" by Sgt. Filtzer. *(Testimony of Filtzer & O'Connell)*
15. On March 20, 2020, Chief MacDonnell and Lt. O'Connell called Sgt. Mawn into Chief MacDonnell's office to question why Sgt. Mawn voted against the CBA. Chief MacDonnell was not happy and wanted to know whether Sgt. Mawn had his own reason

or was just following Sgt. Filtzer. Lt. O’Connell expressed his belief that Sgt. Mawn had acted at the direction of his “friend” Sgt. Filtzer. Sgt. Mawn denied this and said he had voted completely on his own accord. (*Testimony of O’Connell; App. Ex. 3C, A0549-51, A0595-96*)

16. Afterward, Sgt. Mawn was quite upset about this meeting and told Sgt. Filtzer about it. (*Testimony of Appellant & Filtzer*)

17. On March 23, 2020, Chief MacDonnell drove by Sgt. Filtzer working a detail. Chief MacDonnell pulled over to say hello, and Sgt. Filtzer asked Chief MacDonnell stop putting pressure on the Appellant. (*Testimony of Filtzer*)

McCall Middle School Incident

18. Just before 12:15 a.m. on July 13, 2020, the WPD was notified of a burglary alarm at McCall Middle School. Sgt. Mawn was the patrol supervisor during this shift. (*App. Ex. 1, A007-10*)

19. Officer A was the first to respond to the school, then Officers L and M arrived soon after. Officer A said over the radio that he saw two juveniles inside who took off running when they saw him. He pursued them outside the school but was unable to locate them. Officers L and M searched the area outside for people on foot, while Officer A walked through the building with a custodian to check for damaged or missing property. (*App. Ex. 1, A007-9*)

20. Sgt. Mawn stood by his cruiser outside the school. He saw two juveniles run out of the school and head down Main Street, so he followed them in his cruiser. He lost sight of them and went back toward the school, when he came across two juveniles walking down Main Street, across the street from the school. Sgt. Mawn stopped the juveniles to ask what they were doing and where they were going. He asked if they had been inside the school,

and their answers were evasive. The juveniles smelled of alcohol and were sweating heavily. (*App. Ex. 1, A007-13*)

21. When Officers L and M joined them, Sgt. Mawn walked to his cruiser roughly thirty feet away to run the juveniles' identification information and get phone numbers for their parents. Officer E arrived shortly after Sgt. Mawn went to his cruiser.⁶ (*Testimony of Appellant; App. Ex. 1, A007-13*)
22. Officer E recognized juvenile #1 as the individual who had stopped and given Officer E the finger while running away from a similar alarm call at McCall Middle School on July 4, the previous week. (*App. Ex. 1, A007-13*)
23. The Officers separated the two juveniles. Officer L directed juvenile #1 to turn around and put his hands against the cruiser. When juvenile #1 did not comply, Officer E put his hands on his shoulders, turned him around, and moved him over to the cruiser. Officer E held juvenile #1 against the cruiser and directed Officer M to pat him down. Officer E then searched juvenile #2's backpack and found alcohol and cannabis. Officer E became verbally frustrated as juvenile #2 repeatedly challenged his authority. (*App. Ex. 1, A007-14*)
24. Officer A arrived just after the backpack search. Sgt. Mawn returned from his cruiser and called the juveniles' parents to come pick them up. Shortly thereafter, Officer E left the scene to respond to a medical emergency call elsewhere. (*App. Ex. 1, A007-11*)
25. Approximately two weeks after this incident, juvenile #2 filed a citizen complaint with the WPD. He alleged that he was mistreated by Officer E during the July 13 stop and that

⁶ Officer E had been on the WPD for about thirty-five years, and Officer L had been on the WPD for about twenty years. (*Testimony of O'Connell*)

Officer E “was aggressive and used profane and degrading language.” (*App. Ex. 1, A0002, A0016*)

26. The WPD retained Anderson & Kreiger LLP to investigate the citizen complaint. The investigation report concluded the allegations were “**Not Sustained**”⁷ because both juveniles presented credibility issues and conflicting accounts. However, the investigators noted: “we believe it is more likely than not that Officer [E] engaged in conduct that reflected poorly on the Department, and more likely than not that he used inappropriate or profane language when speaking to [juvenile #2].” (*App. Ex. 1, A0002, A0021*)

Parkview Shooting Incident

27. On November 2, 2020, Sgt. Mawn was dispatched to the Parkview Apartments in Winchester along with Officers L and R, both experienced WPD officers, for a report of breaking and entering. (*App. Ex. 5, 0638-40*)

28. When they arrived, a security guard informed them that a male resident (Mr. C) had reported that his apartment had been broken into. The guard said that Mr. C was carrying two large kitchen knives, had bleeding cuts on his hands, and “appeared unstable.” Officer L informed Sgt. Mawn and Officer R that he (Officer L) knew Mr. C from two prior encounters, and Mr. C had been carrying “edged weapons” in both incidents. (*App. Ex. 5, 0638-40*)

29. As the three officers approached Mr. C’s apartment, they observed fresh blood on the floor leading to the apartment door. Officer R knocked and announced multiple times but the

⁷ Such a finding means “[t]he investigation fail[ed] to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint.” (*Joint Ex. 10, J0165*)

resident did not respond. After hearing continued “loud commotion inside of the apartment,” Sgt. Mawn told Officer R to breach the apartment door. (*App. Ex. 5, 0638*)

30. Upon entering the apartment, the officers saw Mr. C sitting on the floor by the glass slider doors, stabbing at the doors with large kitchen knives and causing glass to break. All three officers ordered Mr. C to drop the knives multiple times. Mr. C stared at the officers and kept stabbing the glass, turning his body toward the officers. Sgt. Mawn instructed Officer R to fire his taser at Mr. C. Despite being tased, Mr. C began to stand up and move toward the officers, holding a large knife in one hand and using a blanket to shield himself from further taser contact. (*App. Ex. 5, A0639*)

31. As Mr. C approached the officers, they began to back up toward the door to exit the apartment. Officer R fired a second taser at Mr. C, but it again failed to subdue him. As the officers repeatedly yelled at Mr. C to drop the knives, he backed them out into the narrow corridor leading to neighboring apartment units. Because the officers were in fear for their lives and for the safety of nearby residents, Officer L fired a single gunshot which fatally struck Mr. C in the chest. (*App. Ex. 5, A0639*)

32. Officer R handcuffed Mr. C and “immediately checked for a pulse which [he] could not feel.” Mr. C “was turning pale, let out a single very light agonal breath and was nonresponsive. His eyes were open and not focused on anything.” (*App. Ex. 5, A0639*)

33. Roughly two minutes later, Officer M arrived and assisted Officer R in performing lifesaving measures until paramedics arrived. Sgt. Mawn conducted a protective sweep of the apartment. Several minutes later Mr. C was transported by ambulance to Winchester Hospital, where he was pronounced dead. (*Testimony of O’Connell; App. Ex. 5, A0642*)

34. Sgt. Mawn and Officers L and R were taken to Lahey Hospital for treatment and later released. (*App. Ex. 5, A0641*)⁸
35. This situation was “extraordinary” and “unprecedented” in the WPD. (*Testimony of MacDonnell*)
36. Sgt. Mawn, the supervising officer on scene, failed to assign another officer to accompany Mr. C to Winchester Hospital. As a result, medical personnel were unable to remove Mr. C’s handcuffs at the hospital. A hospital worker called the WPD requesting an officer to respond to the hospital to remove the handcuffs. (*Testimony of O’Connell & MacDonnell*)
37. Following the incident, Chief O’Connell nominated Officer L (who had fatally shot Mr. C) and Officer R (who responded to the scene with Sgt. Mawn), as well as Officer M (who arrived immediately after the incident), “to receive the Massachusetts Police Association’s Medal of Valor for their actions in the line of Duty on November 2, 2020.” All three officers were selected for the award. (*Testimony of O’Connell; App. Ex. 2, A0023*)
38. At the time of the nomination, Officer L was on paid administrative leave pending an inquest by the Middlesex District Attorney’s office into the circumstances of Mr. C’s death.⁹ (*Testimony of O’Connell*)
39. Sgt. Mawn was the only officer at the Parkview shooting incident not nominated for the Medal of Valor. Chief O’Connell excluded Sgt. Mawn from the nomination because he

⁸ Sgt. Mawn’s report does not indicate what treatment they received, but it appears from other evidence that it may have related to concerns that the officers came into contact with Mr. C’s bodily fluids during the encounter. (*App. Ex. 5, A0642*)

⁹ According to published reports, in November 2021, Officer L was formally cleared of any wrongdoing in the fatal shooting of Mr. C.

had heard that Sgt. Mawn “really didn’t do anything” at the scene.¹⁰ Chief O’Connell never spoke to Sgt. Mawn directly about the incident. (*Testimony of O’Connell*)

Initial Discipline

40. On November 23, 2020, Chief MacDonnell issued Sgt. Mawn a written reprimand regarding the Parkview shooting incident. The reprimand asserted violations of two WPD Rules and Regulations:

- 370.40(C) Transportation of Prisoners: “Any prisoner transported to a hospital in a private ambulance shall be accompanied and guarded by an Officer unless Police exigencies dictate otherwise. In the latter case, a guard shall be arranged for the prisoner as soon as possible.”
- Policy 36-2 Transportation of Prisoners, (G) Special Transport Situation:
 - (1) Sick, injured or disabled detainees in the holding facility or booking, requiring medical examination and/or treatment shall, be transported by ambulance. At least one officer should be assigned to ride with the detainee and provide security. Restraint devices shall be used. Should restraints need to be removed for treatment, caution should be exercised while the detainee is unfettered. Only under unusual circumstances will the detainee be allowed out of the officer’s sight. When released from treatment, the detainee’s condition should be recorded. Before transporting, the detainee should again be searched and restrained. Sick, injured or disabled detainees requiring medical treatment at the point of arrest shall whenever possible be transported by ambulance.
 - (2) Whenever a detainee is admitted to a hospital the officer will notify the Patrol Supervisor who will notify the Shift Commander. The Shift Commander will determine the need for calling in additional personnel to cover the continuing need for security/guarding at the hospital.

¹⁰ I do not give any weight to Chief O’Connell’s testimony that Sgt. Mawn “didn’t really do anything” at the Parkview shooting incident. This is unsubstantiated hearsay, and the record indicates that Sgt. Mawn (1) instructed Officer R to breach the apartment door; (2) ordered Mr. C to drop his knives; (3) commanded Officer R to fire his taser at Mr. C; and (4) conducted a protective sweep of the apartment while they waited for paramedics to arrive.

(Joint Ex. 10, J0151; Joint Ex. 9, J0121)

41. The reprimand stated, “it was your responsibility to see that an officer accompanied the prisoner/gunshot victim to the hospital. At least one officer should always be assigned to accompany a detainee during a transport, including in an ambulance for medical treatment.” *(Resp. Ex. 2, R0004)*

42. Also on November 23, 2020,¹¹ Chief MacDonnell issued Sgt. Mawn a written warning related to the McCall Middle School incident that had occurred in July 2020. The warning cited the following WPD Rules and Regulations:

- 250.10 Supervision: “A supervisory Officer may be assigned to field or office duties. During his/her tour of duty he/she must closely supervise the activities of his/her subordinates making corrections where necessary and commending where appropriate.”
- 250.30 Direction:

Supervisors must exercise direct command in a manner that assures the good order, conduct, discipline and efficiency of subordinates. Exercise of command may extend [*sic*] to subordinates outside his/her usual sphere of supervision if the Police objective or reputation of the Department so requires; or if no other provision is made for personnel temporarily unsupervised. This authority shall not be exercised unnecessarily. If a supervisor requires a subordinate other than his/her own to leave a regular assignment, the supervisor so directing will inform the subordinate’s own supervisor as soon as possible.
- 250.40 Enforcement of Rules, etc.: “Supervisors must enforce Departmental rules and regulations and insure compliance with Departmental policies and procedures.”

¹¹ Chief MacDonnell issued the written warning for the McCall Middle School incident and the written reprimand for the Parkview shooting incident on the same day. This was because the Chief did not receive the investigation report regarding the McCall Middle School incident until November 4, 2020. *(Testimony of MacDonnell & O’Connell)*

(*Joint Ex. 10, J0135*)

43. The warning stated:

You failed to closely supervise these officers during a pat-frisk, search of a backpack, as well as, language allegedly used by an officer which did not reflect favorably on the Winchester Police Department. Further you failed to make corrections to your officer's interaction with these minors when it was required.

Sgt. Mawn was also ordered to attend warrantless search training. (*Resp. Ex. 1, R0002*)

Loring Avenue Hit-and-Run

44. On December 22, 2020, Sgt. Mawn was the Patrol Supervisor on an overtime shift from 5:00PM to 10:00PM. At approximately 9:27 p.m., Sgt. Mawn responded to a report of a hit-and-run near 27 Loring Avenue. Det. DiPerna¹² and Officer Spinosa had arrived at the scene just before Sgt. Mawn. (*Testimony of DiPerna, Spinosa, & Appellant; Joint Ex. 6, J0059-60*)

45. While on his way to the scene, Sgt. Mawn heard from dispatch that there was "a man down in the road" from a hit-and-run who was then struck by a second vehicle. When Sgt. Mawn arrived, he saw "a significant amount of blood on the ground" from the victim. (*Joint Ex. 6, J0059*).

46. Officer Spinosa informed Sgt. Mawn that the victim had been struck by a white sedan that fled the scene, and while he was down and unconscious, he was struck by a second vehicle that pulled over and remained at the scene. The victim had sustained life-threatening injuries. (*Resp. Ex. 3, R0009; App. Ex. 3A, A0169*)

¹² Det. DiPerna was working a patrol overtime shift that evening, so she was serving as a Patrol Officer rather than in her capacity as Detective. (*Testimony of DiPerna; App. Ex. 3A, A0180*)

47. Upon Sgt. Mawn's arrival, he ensured the scene was secured and the road blocked off from traffic. Officer Spinosa had already blocked off the north end of the street, and Sgt. Mawn requested additional officers to block off south Loring Avenue at Swanton Street. (*Testimony of Appellant; Joint Ex. 6, J0059; App. Ex. 3A, A0085, A0123*)
48. Sgt. Mawn also called dispatch to issue a BOLO¹³ for the first vehicle that had struck the victim and fled the area. (*Testimony of Appellant; Joint Ex. 6, J0059*)
49. Shortly after Sgt. Mawn arrived, the victim was transported by ambulance to Lahey Hospital. (*Testimony of DiPerna, Spinosa, & Appellant; Joint Ex. 6, J0059-60*)
50. Sgt. Mawn initially directed Officer Spinosa to go check on the victim in the hospital, but Officer Spinosa did not think it was appropriate to leave the scene because he was in the middle of witness interviews and there was still much to do. Sgt. Mawn allowed Officer Spinosa to remain on scene to interview witnesses, "but reiterated that [Officer Spinosa] needed to go to the hospital at some point." (*Testimony of Spinosa; Resp. Ex. 3, R0009-10*).
51. In Det. DiPerna's report immediately following the incident, she wrote that when the owners of the second vehicle (the driver's parents) arrived on scene, she "explained the ongoing situation and their son's involvement, and advised the car would be impounded for investigatory purposes." The owners "stated that they understood." Det. DiPerna then "spoke with Sgt. Mawn and advised him of the situation." (*Joint Ex. 6, J0066*)
52. Det. DiPerna also wrote in her report that the scene "was secured by responding officers and no vehicles were permitted to pass through." (*Joint Ex. 6, J0066*)

¹³ BOLO stands for "Be On the Look Out" for a suspect or vehicle.

53. Sgt. Mawn took photographs, knocked on the door of the victim's residence to check if anyone was home, and inspected several vehicles in the area. (*Testimony of DiPerna, Spinosa, & Appellant; Joint Ex. 6, R0059*)
54. At some point, Sgt. Mawn, Det. DiPerna, and Officer Spinosa convened to determine next steps. Sgt. Mawn commented, "there's not much more we can do here," meaning their individual capacities were limited and additional resources needed to be called in to conduct a full investigation. Det. DiPerna and Officer Spinosa did not understand this comment, but neither officer asked Sgt. Mawn what he meant. (*Testimony of Appellant, DiPerna, & Spinosa*)
55. As the supervisor on scene, Sgt. Mawn was responsible for providing updates to the Officer in Charge (OIC). The OIC is the shift commander; they remain at the station to ensure the shift is running properly, process booking, answer the phone, and deal with anything else that arises during the shift. The OIC that evening was Sgt. Limoncelli. (*Testimony of Limoncelli; App. Ex. 3A, A0055*)
56. Sgt. Donohue arrived at the station five to ten minutes before his 10:00 p.m. shift. Sgt. Limoncelli informed Sgt. Donohue of the incident at Loring Avenue, but they did not know much yet because Sgt. Limoncelli had not heard from anyone on scene. (*Testimony of Donohue & Limoncelli; Resp. Ex. 3, R0007-8*)
57. At the scene, Det. DiPerna suggested they request additional resources because they could potentially be investigating a homicide if the victim died from his injuries. Sgt. Mawn agreed and told Det. DiPerna to call Sgt. Limoncelli, OIC, to request additional resources. Just before 10:00 p.m., Det. DiPerna called and advised Sgts. Limoncelli and Donohue of

the active and ongoing investigation. (*Testimony of DiPerna, Spinosa, & Appellant; Joint Ex. 6, J0066; Resp. Ex. 2, R0008-11*)

58. While Sgts. Limoncelli and Donohue had Det. DiPerna on speakerphone, Sgt. Donohue called Sgt. Batchelor and requested his assistance at the scene.¹⁴ Sgt. Donohue advised Det. DiPerna that he and Sgt. Batchelor were coming to the scene. (*Testimony of DiPerna & Donohue; Resp. Ex. 3, R0011-13*)

59. Before Sgt. Donohue left the station, he and Sgt. Limoncelli called Sgt. Mawn. Sgt. Mawn did not have much information to share; it was a complex scene that they were still investigating. Sgt. Mawn “sounded a little anxious” on the phone and said “I don’t know” more than once. Sgt. Donohue interpreted Sgt. Mawn’s statements over the phone to mean there was a lot going on and maybe Sgt. Mawn was a little overwhelmed. (*Testimony of Limoncelli, Donohue, & Appellant; App. Ex. 3A, A0119*)

60. At around 10:20 p.m., Sgt. Donohue arrived at the scene and took control of the investigation. It was still a very active investigation when Sgt. Donohue arrived. (*Testimony of Donohue; App. Ex. 3A, A0117-18*)

61. Sgt. Batchelor arrived shortly after Sgt. Donohue. Based on the nature of the incident and serious bodily injury, Sgt. Batchelor contacted Sgt. Limoncelli to call in additional resources including Det. Lt. Abdella, the State Police Collision Analysis and Reconstruction Section, and the Middlesex County District Attorney’s office. (*Testimony of Donohue & Batchelor, Resp. Ex. 3, R0013; Joint Ex. 6, J0074*)

¹⁴ Sgt. Batchelor is the Traffic Safety Officer. He has specialized training in crash investigations, so he typically responds to crashes involving serious bodily injury. (*Testimony of Batchelor; App. Ex. 3B, A0210*)

62. At some point, Sgt. Mawn commented to Sgt. Batchelor, “this is f***ed up.” Sgt. Batchelor believed Sgt. Mawn was speaking from the standpoint of looking at the thirty-foot trail of blood in the street and expressing that they were dealing with a “very serious” and “major” situation. (*Testimony of Batchelor; App. Ex. 3B, A0215*)
63. Once Sgt. Donohue had taken over as the supervisor on scene, he told Sgt. Mawn that he could return to the station and begin his report. (*Testimony of Donohue; Resp. Ex. 3, R0008*)
64. Ultimately, when Sgt. Mawn left the scene, it had been secured, evidence had been preserved, and no vehicles had been prematurely released. Despite the rarity of this double hit-and-run, and the dynamic nature of the scene, the investigation was successful and the WPD identified the driver who had initially struck the victim and fled. (*Testimony of DiPerna & Spinosa; Joint Ex. 6, J0056*)
65. The following day, December 23, 2020, Chief MacDonnell held a briefing of the incident in his conference room. Chief MacDonnell, Lt. O’Connell, Lt. Abdella, Sgt. Batchelor, and Det. DiPerna attended. During the briefing, Det. DiPerna expressed concerns about Sgt. Mawn’s supervision at the scene. (*App. Ex. 3B, A0227-28, A0318-19*)
66. Chief MacDonnell instructed Det. Lt. Abdella to collect written statements regarding Sgt. Mawn’s performance from the other officers involved in the hit-and-run investigation. Chief MacDonnell did not seek a statement from Sgt. Mawn. On December 28, 2020, Det. Lt. Abdella submitted statements from Det. DiPerna, Officer Spinosa, and Sgts. Limoncelli, Donohue, and Batchelor. Excerpts from those statements follow.

- Det. DiPerna:

Until additional Sergeants arrived, I felt that it was my responsibility to secure the scene and direct the beginning stages of the investigation. I made several suggestions to Sgt. Mawn about things that needed to be done, all of which are things I believe he should have known on his own.

He was prepared to release the scene before it had been photographed, he did not ask for assistance from other partnering agencies, he did not attempt to identify next of kin, he did not suggest an immediate BOLO for surrounding towns and he conducted himself as more of a patrolman than a supervisor.

- Officer Spinosa:

Sgt. Mawn was quick to direct me to the hospital to check on the victim's condition. Although this is a crucial element to the investigation, as the primary officer, I felt my attention and focus should be on the present scene. Furthermore, this task could be conducted by another unit or by me at a later point.

Officer Spinosa further stated, "Sgt. Mawn advised there wasn't much more we could do with the scene. It was unclear to me what he meant exactly by that comment but overall direction and guidance was lacking."

- Sgt. Limoncelli, the OIC on duty, expressed his dissatisfaction with Sgt. Mawn's updates. St. Limoncelli wrote that Sgt. Mawn "sounded a little anxious" and failed to communicate with the OIC in a timely manner.¹⁵
- Sgt. Donohue wrote that on the phone, "Sgt. Mawn stated he 'didn't know what was going on.'"
- Sgt. Batchelor:

Det. Diperna and Ptl. Spinosa were able to provide me with the most information including what has been done and what steps they were doing which included taking witness statements, obtaining ring camera video, and the preservation of evidence. I had minimal contact with Sgt. Mawn and he did not provide me much information, was randomly taking pictures of the scene, and at one point stated to me: "this is f***ed up."

¹⁵ Sgt. Limoncelli's frustration at Sgt. Mawn's lack of personal update was a bit subjective. It can be hard to have the full picture needed to provide a helpful update right away. Another officer may have let things play out more before becoming frustrated; things like this vary from officer to officer. (*Testimony of Donohue*)

(Testimony of MacDonnell & Abdella; Resp. Ex. 3, R007-13)

Demotion

67. On December 28, 2020, the same day Chief MacDonnell received the officers' written statements, he called Sgt. Mawn into the station for a meeting. Sgt. Mawn did not know what the meeting was about. In addition to Chief MacDonnell and Sgt. Mawn, Lts. O'Connell and Abdella attended the meeting, as well as Sgt. Mawn's union representative, Lt. Houlihan. *(Testimony of Appellant)*

68. Shortly after Sgt. Mawn arrived at the meeting, Chief MacDonnell informed Sgt. Mawn that he was being demoted to the rank of Patrol Officer, effective December 29, 2020. *(Testimony of Appellant; Joint Ex. 2, J0046)*

69. Chief MacDonnell handed Sgt. Mawn an already prepared demotion letter dated December 28, 2020. It stated, in relevant part:

Your demotion is based on your failure to perform the supervisory responsibilities required at the rank of sergeant. You have not demonstrated an ability to instruct subordinates under you [*sic*] command in the proper discharge of their duties. You have failed to proficiently take command of incident scenes and or instill confidence in you [*sic*] subordinate officers that you are capable of command decisions and direction.

On November 23, 2020 you were issue [*sic*] a written warning for failing to properly supervise, direct and enforce proper investigative procedure and enforcement of rules, at an incident that occurred on July 13, 2020 and resulted in a citizen's complaint. On November 23 you were issued a written reprimand for again failing to properly direct subordinates and necessary police actions at an incident scene occurring on November 9, 2020.¹⁶ On December 22, 2020 you failed to provide direction and leadership at the scene of a serious pedestrian/MV hit and run scene, which resulted in subordinate and ranking officers expressing concern.

¹⁶ The written reprimand addresses an incident that occurred on November 2, 2020, not November 9.

(Joint Ex. 2, J0046)

70. In deciding to demote Sgt. Mawn, Chief MacDonnell and Lt. O’Connell relied on Det. DiPerna’s claim that Mawn had been prepared to release the second vehicle at the hit-and-run scene prematurely. However, no one ever asked Sgt. Mawn about this or gave him a chance to respond to the claim. Similarly, Chief MacDonnell and Lt. O’Connell failed to provide Mawn an opportunity—either before or during the meeting—to read the written statements which served as the basis for his demotion. *(Testimony of O’Connell & MacDonnell)*
71. Mawn was shocked to be demoted without notice or a meaningful opportunity to defend himself. Furthermore, the WPD Rules and Regulations do not include demotion in the list of penalties an employee may face as disciplinary action. The possible penalties listed are oral reprimand, written reprimand, suspension, and dismissal from service.¹⁷ *(Joint. Ex. 10, J0162)*
72. Sgt. Mawn was never given any remedial training or placed on a performance improvement plan. From a Human Resources standpoint, the purpose of performance plans is to be fair to all employees and give them the best possible opportunity to succeed. *(Testimony of Vibert)*
73. Sgt. Mawn filed a timely appeal with the Civil Service Commission alleging that the Town violated G.L. c. 31, § 41 by demoting him without just cause and without following applicable procedural requirements. *(App. Ex. 11, A0676-77)*

¹⁷ Rule 400.20, “Penalties.”

74. Due to the procedural defects, the Town rescinded the demotion and reinstated Sgt. Mawn to the rank of Sergeant with backpay effective February 11, 2021.¹⁸ (*Joint Ex. 3, J0048*)

75. After Sgt. Mawn's reinstatement as Sergeant, he was assigned to be the Officer in Charge (shift commander) on one occasion. (*Testimony of Filtzer & Appellant*)

76. On March 15, 2021, Chief O'Connell gave Sgt. Mawn written notice of a "hearing to determine possible disciplinary action." It stated:

Please note that the Town is contemplating disciplinary action against you, including demotion, arising out your handling of a pedestrian hit-and-run incident on December 22, 2020 (Case #361095). Specifically, with regard to your lack of supervisory control and leadership, incident awareness, and crisis management while at the scene. The contemplated discipline also takes into account two prior incidents in 2020, on July 13 and November [2], for which you were issued a written warning and a written reprimand for poor supervision and decision-making in your role as sergeant.

(*Joint Ex. 4, J0050*)

77. The letter directed Sgt. Mawn to attend a hearing in four days, on March 19, 2021.¹⁹ The purpose of the hearing was "to determine whether just cause exist[ed] to warrant [Sgt. Mawn's] demotion in rank or other disciplinary consequence." The letter listed the following WPD Rules and Regulations:

- 250.10 Supervision: "A supervisory Officer may be assigned to field or office duties. During his/her tour of duty he/she must closely supervise the activities of his/her subordinates making corrections where necessary and commending where appropriate."

¹⁸ By February 2021, former Chief MacDonnell had recently retired and O'Connell had taken over as Chief.

¹⁹ The first day of the hearing was subsequently rescheduled to April 1, 2021.

- 250.3[0] Direction:

Supervisors must exercise direct command in a manner that assures the good order, conduct, discipline and efficiency of subordinates. Exercise of command may extend [*sic*] to subordinates outside his/her usual sphere of supervision if the Police objective or reputation of the Department so requires; or if no other provision is made for personnel temporarily unsupervised. This authority shall not be exercised unnecessarily. If a supervisor requires a subordinate other than his/her own to leave a regular assignment, the supervisor so directing will inform the subordinate's own supervisor as soon as possible.

- 250.70 Assisting Subordinates:

A supervisory Officer shall have a working knowledge of the duties and responsibilities of his/her subordinates. He/she shall observe [contacts] made with the public by his/her subordinates and be available for assistance or instruction as may be required. Field supervisor(s) shall respond to calls of serious emergencies. Felonies in progress, assaults and others unless actively engaged in a Police incident. He/she would observe the conduct of the assigned personnel and take active charge when necessary.

- 320.51 Incompetence:

Officers shall maintain sufficient competency to perform his/her duties and assume the responsibilities of his/her position. Incompetency may be demonstrated, but is not limited to, the following:

- (A) A lack of knowledge of the application of laws required to be enforced;
- (B) An unwillingness or inability to perform assigned tasks;
- (C) The failure to conform to work standards for the Officer's rank, grade position;
- (D) Repeated poor evaluations or repeated infractions of the rules and regulations.

- 370.05 Command of Scene:

At the scene of any crime, accident or other Police incident, the senior or ranking Officer present shall assume command and direction of Police personnel in a manner to assure the most orderly and efficient accomplishment of the Police task. When two or more Officers of the same rank are present and one of these is assigned the investigating detail that will follow up the investigation, that Officer will be in charge. This provision is intended to provide for the coordination of the efforts of the several subordinate members who may be assigned to the

incident; therefore, [*sic*] it is incumbent upon the ranking Officer assuming such control to become acquainted with the facts and insure that appropriate action is being taken or is initiated.

- 310.28 Knowledge of Laws & Regulations:

Every member is required to establish and maintain a working knowledge of all laws and by-laws in force in the town, the rules, regulations and policies of the Department and the orders, memorandums, and bulletins and other directives of the Department and divisions thereof. In the event of improper action or breach of discipline, it will be presumed that the member was unfamiliar with the law, by-law, rule, order, or policy in question.

- Policy 35-2 Traffic Collisions, Sec. III:

In all cases of serious collisions and collisions resulting in a major disruption of the flow of traffic, a supervisor, if available, shall be assigned to the scene and shall take charge until relieved by a member of the detective unit or a superior officer. The supervisor shall:

- (1) Coordinate the response of other public safety service providers;
- (2) Request additional resources as necessary;
- (3) Coordinate the re-routing of traffic if necessary;
- (4) Supervise the treatment of injured until medical personnel arrive;
and
- (5) Supervise the investigation.

(Joint Ex. 4, J0050; Joint Ex. 10, J0135-49; Joint Ex. 9, J0109-11)

78. The Town conducted a remote hearing over the course of three days on April 1, 2021, April 27, 2021, and May 14, 2021. The appointing authority (Lisa Wong, Town Manager) designated Mark Pearson, J.D., as the Town hearing officer. *(Joint Ex. 11, J0168)*

79. At the Town hearing, Sgt. Donohue testified that he thought Sgt. Mawn “had control of the scene” at the hit-and-run, but “could have done things better.” *(App. Ex. 3A, A0094)*

80. Sgt. Limoncelli acknowledged that “sometimes officers are too busy at the scene, sometimes to make an immediate update,” and “if it’s a more complex call, it could take a half hour to hash out. It depends how complex the situation is.” *(App. Ex. 3A, A0066, A0152)*

81. Det. DiPerna claimed that Sgt. Mawn did not realize the seriousness of the situation. She believed that Sgt. Mawn made no efforts to do basic tasks such as secure the scene or issue a BOLO (although Sgt. Mawn had done both of those tasks). (*Testimony of DiPerna; App. Ex. 3B, A0289-92, A0311-15*)
82. Det. DiPerna’s purported main concern was Sgt. Mawn’s statement, “there isn’t much more we can do here.” Det. DiPerna assumed, without asking, that Sgt. Mawn meant they could not do anything else until they identified the hit-and-run driver. Det. DiPerna thought that Sgt. Mawn was ready to release the other vehicle because the driver was the nephew of a retired WPD officer.²⁰ (*Testimony of DiPerna; App. Ex. 3B, A0297, A0314*)
83. Chief O’Connell relied on Det. DiPerna’s assumptions (that Sgt. Mawn failed to secure the scene, failed to issue a BOLO, and contemplated releasing the second vehicle) as primary reasons for demoting Sgt. Mawn. (*Testimony of O’Connell; App. Ex. 3B, A0391-92, A0457*)
84. On June 8, 2021, the Town hearing officer released a report of his findings and recommendation. He found that there was “just cause” to demote Sgt. Mawn to the rank of Patrol Officer. (*Joint Ex. 11, J0177*)
85. On June 24, 2021, the Town Manager sent Sgt. Mawn a letter informing him that she had accepted the findings and recommendation of the Town hearing officer. As such, Sgt.

²⁰ This testimony is not consistent with other evidence, such as Det. DiPerna’s report immediately following the incident, which stated that the owners of the second vehicle understood, upon their arrival, that the vehicle would be impounded for investigatory purposes. Furthermore, neither Officer Spinosa nor the Appellant heard any mention of a possible release of a vehicle that evening. (*Joint Ex. 6, J0066; Testimony of Spinosa & Appellant*)

Mawn was “demoted from [his] present rank of Sergeant to Patrol Officer effective June 24, 2021.” The letter explained:

This decision is the result of your actions and conduct in response to the serious motor vehicle accident involving a struck pedestrian on December 22, 2020, including the violation of rules and regulations and policies listed in the Hearing Officer’s report, and also takes into account two prior incidents in 2020 for which you were issued a written warning and written reprimand, respectively.

(Joint Ex. 5, J0053)

86. When asked before the Commission, Ms. Wong was unable to provide a substantive answer as to why the Appellant²¹ was demoted or what he had actually done to warrant demotion.

(Testimony of Wong)

87. Notably, Ms. Wong did not know whether there had been any discussion of remedial measures or training for the Appellant, whether anyone else in the WPD had been demoted before,²² or who had drafted the demotion letter that she signed and sent to the Appellant.

(Testimony of Wong)

88. Ms. Wong misinterpreted the Appellant’s statement, “this is f***ed up,” to mean that he had “knowledge that things were not right at the [hit-and-run] scene.” She also found the statement to be indicative of the Appellant’s failure to effectively direct his subordinates. Ms. Wong was unaware that this statement referred to the gravity of the situation, and that the Appellant had said it to a senior officer rather than a subordinate. *(Testimony of Wong,*

Batchelor, & Appellant)

²¹ Sgt. Mawn will hereinafter be referred to as “the Appellant.”

²² Aside from the Appellant, no officer in the WPD has ever been demoted. *(Testimony of MacDonnell & Filtzer)*

89. Ms. Wong did not know what actions the Appellant had performed at the hit-and-run scene, such as blocking off the area, instructing Officer Spinosa to go to the hospital to check on the victim, asking Det. DiPerna to update the OIC, and taking photographs. (*Testimony of Wong*)

APPLICABLE CIVIL SERVICE LAW

The mission of Massachusetts civil service law is to enforce “basic merit principles,” which means “assuring fair treatment of all applicants and employees in all aspects of personnel administration,” “providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees,” and ensuring that all employees “are protected from arbitrary and capricious actions.” G. L. c. 31, § 1. Basic merit principles require that discipline be remedial, not punitive, “correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected” *Id.*

The Commission’s responsibility under G. L. c. 31, § 43 is to determine whether there was just cause for the appointing authority’s action “in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.” *Falmouth v. Civ. Serv. Comm’n*, 447 Mass. 814, 823-24 (2006), quoting *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). “‘Just cause,’ in this context, is defined by ‘substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.’” *Doherty v. Civ. Serv. Comm’n*, 486 Mass. 487, 493 (2020) (emphasis in original), quoting *Police Comm’r of Boston v. Civ. Serv. Comm’n*, 39 Mass. App. Ct. 594, 599 (1996). If the Commission finds by a preponderance of the evidence that just cause existed, “it shall affirm the action of the appointing authority, otherwise it shall reverse such action” G. L. c. 31, § 43.

The Commission also has the power to “modify any penalty imposed by the appointing authority.” *Id.* Such power “is at its core the authority to review and, when appropriate, to temper, balance, and amend. The power to modify penalties permits the furtherance of uniformity and the equitable treatment of similarly situated individuals.” *Police Comm’r of Boston v. Civ. Serv. Comm’n*, 39 Mass. App. Ct. 594, 600 (1996). Modification is appropriate where the Commission finds, for example, the presence of “political considerations, favoritism, or bias,” or material facts that differ from those reported by the appointing authority. *Falmouth*, 447 Mass. at 824. The Commission must provide a reasoned explanation for any modification. *Police Comm’r of Boston*, 39 Mass. App. Ct. at 600.

ANALYSIS

The Town failed to meet its burden of establishing by a preponderance of the evidence that it had just cause to demote the Appellant. I have found multiple material facts which differ from the findings upon which the Town relied in demoting the Appellant. His actions over the course of July to December 2020 do not amount to the type of misconduct or serious violation of duty that adversely affects the public interest that warranted the severe discipline imposed. In addition, the Appellant’s superiors were predisposed with their unsupported perception of him as a “follower,” and not a leader, which ultimately guided their decision to demote him.

One of the Town’s main concerns was that the Appellant was prepared to prematurely release the hit-and-run scene, or at least release the second vehicle to its owners. Det. DiPerna assumed this from the Appellant’s statement, “there isn’t much more we can do here.” Yet in her report from the day of the incident, Det. DiPerna wrote that when the owners of the second vehicle arrived at the scene, she “advised the car would be impounded for investigatory purposes” and the owners “stated that they understood.” Officer Spinosa did not recall any discussion of releasing a

vehicle, and the Appellant maintained that he had always known the vehicle needed to remain on scene and/or be impounded. Thus, a preponderance of the evidence does not support the Town's conclusion that the Appellant was prepared to prematurely release the vehicle. There is nothing else to demonstrate a risk of the Appellant prematurely releasing the scene.

Despite this, the Town accepted the unsupported findings of its hearing officer that the Appellant "talked about releasing the [second vehicle] from the scene" and that "[t]he release of the vehicle did not happen because of the arrival of Sgt. Donahue [*sic*] who took charge of the crime scene."²³ The latter assertion is particularly puzzling, as nothing of the sort appears anywhere in the record. Such material discrepancies throughout the report, which the Town adopted, confirm that "just cause" did not, in fact, exist for the Appellant's demotion.

The report of the Town hearing officer further stated:

Witnesses testified that it is customary to secure the crime scene, call for additional resources, call for the Safety Officer (Sgt. Batchelor), call for Detectives, and call for Massachusetts State Police Accident Reconstruction Team. Also to take measurements, photographs, collect evidence, talk to witnesses, canvas the area for cameras and seize vehicles for evidence collection.²⁴

Yet the report failed to acknowledge that the Appellant did do several things along those lines, such as secure the crime scene, instruct Det. DiPerna to call for additional resources, take photographs, and canvas the area. Sgt. Batchelor did respond to the scene, as well as the State Police Collision Analysis and Reconstruction Section. Chief O'Connell actually testified that in the past, the State Police have needed to analyze and reconstruct a scene after it had already been "released or unsecured." However, that was not the case here; according to the record, the investigation proceeded without obstacles.

²³ (*Joint Ex. 11, J0174*)

²⁴ (*Joint Ex. 11, J0174*)

This success was no doubt thanks to multiple officers, especially Det. DiPerna, who has displayed advanced investigatory experience. As the Appellant suggested, it seems detrimental to require a sergeant to prioritize “taking command” over a skilled detective rather than utilizing her expertise. Moreover, the report presented unfounded speculation in its conclusion that absent “intervention,” the Appellant would have basically sabotaged the hit-and-run investigation. Substantial criticism against the Appellant is grounded in (1) speculation about what “might” or “could” have happened, and (2) inaccurate claims.

A major concern of the Town was that the Appellant made no efforts to secure the scene, as alleged by Det. DiPerna. However, Det. DiPerna’s initial report following the incident stated that the scene “was secured by responding officers and no vehicles were permitted to pass through.” It is undisputed among all of the other officers on scene that evening (the Appellant, Officer Spinosa, Sgt. Donohue, Sgt. Batchelor) that the scene was secured. Det. DiPerna was simply unaware that the Appellant had requested additional units to secure the scene. She was also unaware that the Appellant had issued a BOLO. However, the Town failed to recognize these facts.

Another concern was that the Appellant did not appreciate the seriousness of the crime scene, which is not supported by a preponderance of the evidence. Before the Appellant arrived on scene, he knew from dispatch that there was “a man down in the road” from a hit-and-run who had then been hit a second time by another vehicle. When the Appellant arrived, he saw “a significant amount of blood on the ground,” specifically a thirty-foot trail of blood from the victim being dragged under a car. Officer Spinosa informed the Appellant that the victim had sustained life-threatening injuries, which is likely why the Appellant “was quick to direct [Officer Spinosa] to the hospital to check on the victim’s condition.” This indicates that the Appellant did appreciate the severity of the situation and realize this could be a homicide if the victim died at the hospital,

which the Appellant intended for Officer Spinosa to find out. When Officer Spinosa asked to remain on scene in order to continue key witness interviews, the Appellant “reiterated that [Officer Spinosa] needed to go to the hospital at some point.” This demonstrates that the Appellant was aware of the victim’s critical state and, necessarily, the serious nature of the situation. Furthermore, the Appellant and Sgt. Batchelor both stated that the Appellant’s comment, “this is f***ed up,” referred to the “very serious” and “major” nature of the situation.

A final concern involved the Appellant’s alleged failure to directly update the OIC, Sgt. Limoncelli, in a timely manner. Regarding this issue, both Sgt. Limoncelli and Sgt. Donohue testified that it takes longer at complex or dynamic scenes to get a handle on things in order to provide a helpful update. Sgt. Limoncelli did receive a meaningful update from Det. DiPerna, at the Appellant’s instruction, around thirty minutes into their time at the scene. Other officers expressed that it was unusual for the Appellant to have Det. DiPerna update the OIC instead of doing it himself, but it was not inappropriate or against policy. When Sgt. Limoncelli called the Appellant, the Appellant was aware that Det. DiPerna had updated Sgt. Limoncelli and requested additional resources just minutes before. This likely explains why he did not provide additional information or reiterate a request for resources. They were still investigating, there was a lot happening at the scene, and the Appellant sounded a bit anxious. In this one instance, there is some merit to the position that Sgt. Mawn might have been done a better job of communicating more clearly with the OIC. This exchange, however, does not demonstrate a level of incompetence or a serious violation of his duties that warranted a demotion.

Finally, in addition to the Town's reliance on unsubstantiated facts, the Appellant correctly argued that he was afforded no opportunity to correct his perceived inefficiencies.²⁵ This is not proper; as the Commission has asserted before, "[o]nly when the evidence establishes that an employee's behavior or performance cannot be remediated may an employee be removed from his position." *Martin v. Dracut Housing Authority*, 32 MCSR 165, 172 (2019).

In particular, the Town failed to objectively determine what actually occurred and consider what remedial steps were warranted. At the time of the hit-and-run, Sgt. Mawn was still a relatively new Sergeant, especially given that he had been out for four months on injured leave from October 2019 to February 2020. In addition, the length of his classroom training for Sergeants had been cut in half due to COVID-19. The Appellant was not counseled on his behavior, and he was never put on notice about any issues with his communication skills. Most of the concerns over the Appellant's performance at the hit-and-run scene stem from inexperience and ambiguous communication on his part. Despite what the Town ultimately believed, this does not "speak for [the Appellant's] inability to perform as a Sergeant."

In sum, the Town did not have just cause to demote the Appellant.

²⁵ Neither of the two prior written warnings concerned the issues that the Town used to demote Sgt. Mawn. The first was a minor difference in judgment—going to his cruiser to run a check of the juveniles, temporarily relying on the supervision of other senior officers who were eventually exonerated of improper conduct other than possibly using profanity. The second was his failing to send an officer to accompany a handcuffed, mortally wounded gunshot victim to the hospital, requiring the WPD to send another officer to attend to it. The dismissal of the Appellant's contributions at the Parkview shooting incident without seeking any information from the Appellant, and the subsequent exclusion of him from the Medal of Valor nomination, further suggests the existence of bias against him. Regardless, neither incident of prior discipline implicated any serious or systemic flaws in leadership.

CONCLUSION

For the reasons stated above, the appeal of Ryan Mawn, CSC Docket No. D-21-112, is *allowed*. The Appellant shall be returned to his position of Sergeant in the WPD effective June 24, 2021, without loss of compensation or other rights.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on October 20, 2022.

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:

Kareem A. Morgan, Esq. (for Appellant)

Lauren Kopec, Esq. (for Appellant)

James M. Pender, Esq. (for Respondent)