

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 22-3999

TOWN OF WINCHESTER

vs.

CIVIL SERVICE COMMISSION & another¹

MEMORANDUM OF DECISION AND ORDER ON
PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

In June 2021, the Town of Winchester (the "Town") demoted Ryan Mawn ("Mawn") from the rank of Sergeant to that of Patrol Officer for the Winchester Police Department (the "Department"). Mawn appealed that decision to the Civil Service Commission (the "Commission"). After a *de novo* hearing during fall 2021, in October 2022, the Commission issued a written decision (the "Decision") concluding that the Town lacked "just cause" for Mawn's demotion, and it ordered that the Town reinstate him to the rank of Sergeant. Thereafter, in November 2022, the Town filed the Complaint for Judicial Review (Paper No. 1) in this action, seeking judicial review of the Decision.

This matter is now before the court on the Town's Motion for Judgment on the Pleadings (the "Motion"), wherein it argues that the court should reverse and vacate the Decision, as well as the Commission's Cross-Motion for Judgment on the Pleadings and Mawn's Cross-Motion for Judgment on the Pleadings (collectively, the "Cross-Motions"), wherein they argue that the court should affirm the Decision. After hearing, consideration of the extensive administrative record,

¹ Ryan Mawn

and review of the applicable law, for the reasons stated below, the court concludes that the Town's Motion will be **DENIED**, the Cross-Motions will be **ALLOWED**, and the Decision will be **AFFIRMED**.

BACKGROUND

The court accepts the facts found by the Commission. See Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003) (noting that reviewing court is "bound to accept the findings of fact of the [C]ommission's hearing officer") (citations omitted). However, certain facts not set forth here may be referenced during the court's discussion of the parties' arguments.

I. The Department and Mawn's Employment

The Department employs approximately forty police officers. Vol. I, p. 385. It follows a paramilitary structure utilizing the following chain of command: Chief of Police; four Lieutenants, including a Lieutenant-in-Charge, who is second-in-command after the Chief of Police; eight Sergeants, including five Patrol Sergeants and three who serve in specialty roles; and twenty-seven Patrol Officers. Vol. I, p. 385. The Patrol Officers Association serves as the union for the Patrol Officers, while the Superior Officers Association is the union for the Lieutenants and Sergeants. The Chief of Police and the Lieutenant-in-Charge are both non-union, managerial positions. Vol. I, p. 385.

The Department hired Mawn as a Patrol Officer in March 2006.² Vol. I, p. 385. Approximately thirteen years later, on June 16, 2019, then-Chief Peter MacDonnell ("Chief MacDonnell") promoted him to the rank of Sergeant. Vol. I, pp. 385-386. In doing so, Chief MacDonnell bypassed a candidate who scored higher on the promotional exam because,

² Before joining the Department, Mawn worked as a police officer in Harwich for two years and in Brewster for one year. Vol. I, p. 385.

according to him, Mawn had an “excellent” interview and, unlike the bypassed candidate, Mawn had never been subject to any discipline by the Department. Vol. I, p. 386.

Following Mawn’s promotion, he received the following training: a week-long Frontline Leadership class at the Cambridge Police Department, a one-day suicide prevention class at the Grafton Police Department, and a one-day Officer-In-Charge class at the Grafton Police Department.³ Vol. I, p. 386. He also participated in approximately two weeks of “ride alongs,” where he shadowed a more experienced Sergeant. Vol. I, p. 386.

Daniel O’Connell is the current Chief of Police (“Chief O’Connell”). Vol. I, p. 386. He joined the Department in 2000 and became Lieutenant-in-Charge in 2016. Vol. I, p. 386. He was promoted from Lieutenant-in-Charge to Chief of Police when Chief MacDonald retired on January 5, 2021. Vol. I, p. 386.

II. The Superior Officers Union Contract

In March 2020, the Superior Officers Association negotiated a new collective bargaining agreement (“CBA”) with the Town. The new CBA was ratified by a vote of ten to two. Vol. I, p. 387. Chief MacDonald and then-Lieutenant O’Connell had “heard through the grapevine” that Mawn and Sergeant Horst Filtzer (“Sergeant Filtzer”) were the two superior officers who voted against the new CBA.⁴ Vol. I, p. 387. On March 20, 2020, Chief MacDonald and then-Lieutenant O’Connell called Mawn into Chief MacDonald’s office to question him about why

³ The Frontline Leadership class typically ran for two weeks; however, the class Mawn attended was shortened to one week due to the Covid-19 Pandemic. Vol. I, p. 386, n.5.

⁴ Sergeant Filtzer had worked for the Department since 1996. Vol. I, p. 387. He was promoted to the rank of Sergeant in 2001; thus, when the new CBA was ratified, he was the longest-serving superior officer of anyone then serving in the Department. Vol. I, p. 387. Sergeant Filtzer opposed the new CBA because it eliminated his position as a canine handler and took away his 8% specialist stipend. Vol. I, p. 387. Sergeant Filtzer’s canine was getting old, nearing retirement, and Chief MacDonald decided that the Department no longer needed a canine position. Vol. I, p. 387. The new CBA reallocated the canine funds to increase the stipends for four other positions. The Lieutenant-in-Charge stipend went from 10% to 12%, and the stipends for the other three specialist lieutenant positions increased from 8% to 10%. Vol. I, p. 387. Chief MacDonald and then-Lieutenant O’Connell understood why Sergeant Filtzer opposed the new CBA, as it eliminated his canine position and the associated specialty stipend; however, they did not understand Mawn’s opposition. Vol. I, p. 387.

he had voted against the new CBA. Vol. I, p. 387. Chief MacDonnell asked Mawn if he had his own reason for voting against the contract or if he was just “going along with” Sergeant Filtzer because they were friends. Vol. I, p. 388. Mawn insisted that he had voted completely on his own accord. Vol. I, p. 388.

III. The McCall Middle School Incident

At 12:15 a.m., on July 13, 2020, the Department was notified that an alarm had been triggered at McCall Middle School. Vol. I, p. 388. Mawn was the patrol supervisor during this shift. Vol. I, p. 388. When he arrived at the scene, Mawn saw two juveniles run out of the school and head down Main Street. Vol. I, p. 388. He followed them in his cruiser but eventually lost sight of them. Vol. I, p. 388. Thereafter, on his way back toward the school, Mawn saw two juveniles walking down Main Street. Vol. I, p. 388. He stopped and asked them if they had been inside the school. Vol. I, p. 388. The juveniles’ answers were evasive; they smelled of alcohol; and they were sweating profusely. Vol. I, pp. 388-389.

Mawn left Officer L and M with the juveniles and walked to his cruiser, which was approximately thirty feet away, to confirm the juveniles’ identities and get telephone numbers for their parents. Vol. I, p. 389. While Mawn was at his cruiser, Officer E arrived at the scene.⁵ Vol. I, p. 389. Officer E recognized juvenile #1 as the same individual who had given him “the finger” while running away from a similar alarm call at McCall Middle School the previous week, on July 4, 2020. Vol. I, p. 389.

The Officers separated the two juveniles. Vol. I, p. 389. Officer L directed juvenile #1 to turn around and put his hands against the cruiser. Vol. I, p. 389. When juvenile #1 did not comply, Officer E put his hands on his shoulders, turned him around, and moved him over to the

⁵ At the time of the McCall Middle School incident, Officer E had been with the Department for approximately thirty-five years. Vol. I, p. 389, n.6.

cruiser. Vol. I, p. 389. Officer E held juvenile #1 against the cruiser and directed Officer M to patfrisk his person. Vol. I, p. 389. Officer E then searched juvenile #2's backpack and found alcohol and cannabis. Vol. I, p. 389. Officer Mawn returned from his cruiser after the backpack search and called the juveniles' parents to come pick them up. Vol. I, p. 389.

Approximately two weeks after the above incident, juvenile #2 filed a complaint with the Department, alleging that, during the stop, Officer E "was aggressive and used profane and degrading language." Vol. I, p. 389-390. The Department retained Anderson & Kreiger LLP to investigate the complaint. Vol. I, p. 390. The investigation report (the "A&K Report") concluded that the allegations were "Not Sustained," meaning that "[t]he investigation fail[ed] to discover sufficient evidence to clearly prove or disprove the allegations made in the complaint." Vol. I, p. 390, n. 7. This conclusion was largely based on the fact that the juveniles presented conflicting accounts of the relevant events, which raised questions regarding their credibility. Vol. I, p. 390. Nevertheless, the A&K Report noted that: "[I]t [wa]s 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]." Vol. I, p. 390.

IV. The Shooting at Parkview Apartments

On November 2, 2020, Mawn was dispatched to the Parkview Apartments along with Officers L and R, for a report concerning a possible breaking and entering. Vol. I, p. 390. When they arrived, a security guard informed them that a male resident (the "Resident") had reported a break-in at his apartment. Vol. I, p. 390. In addition, the guard told the officers that the Resident was carrying two large kitchen knives, that he was bleeding from cuts on his hands, and that he "appeared unstable." Vol. I, p. 390. Officer L informed Mawn and Officer R that he (Officer L) knew the Resident from two prior encounters, and that, during both encounters, the Resident had been carrying "edged weapons." Vol. I, p. 390.

As the officers approached the Resident's apartment, they observed fresh blood on the floor leading to the door. Vol. I, p. 390. Officer R knocked and announced the officers' presence multiple times, but they received no response. Vol. I, pp. 390-391. After hearing continued loud noises from inside the apartment, Mawn ordered Officer R to breach the door. Vol. I, p. 391.

Upon entering the apartment, the officers saw the Resident sitting on the floor by the sliding glass doors, stabbing at the doors with two large kitchen knives, causing the glass to break. Vol. I, p. 391. All three officers ordered the Resident to drop the knives multiple times. Vol. I, p. 391. The Resident stared at the officers and kept stabbing the glass, turning his body toward the officers. Vol. I, p. 391. Mawn ordered Officer R to fire his taser at the Resident. Vol. I, p. 391. Despite being tased, the Resident stood and moved toward the officers, holding a large knife in one hand and a blanket in the other to shield himself from further tasing. Vol. I, p. 391. As the Resident approached the officers, they began to back up toward the door to exit the apartment. Vol. I, p. 391. Officer R fired a second taser at the Resident, but, again, it failed to subdue him. Vol. I, p. 391. As the officers repeatedly yelled at the Resident to drop the knife he was carrying, he backed them out into the hallway leading to the neighboring apartment units. Vol. I, p. 391. Because the officers feared for their lives and for the safety of nearby residents, Officer L fired a single gunshot, which hit the Resident in the chest. Vol. I, p. 391.

When the Resident went down, Officer R handcuffed him and "immediately checked for a pulse which [he] could not feel." Vol. I, p. 391. The Resident "was turning pale, let out a single very light agonal breath and was nonresponsive. His eyes were open and not focused on anything." Vol. I, p. 391. Officer R began performing lifesaving measures. Vol. I, p. 391. Roughly two minutes later, Officer M arrived at the scene and assisted Officer R until the paramedics arrived. Vol. I, p. 391. Meanwhile, Mawn conducted a protective sweep of the

Resident's apartment. Vol. I, p. 391. Several minutes later, the Resident was transported by ambulance to Winchester Hospital where he was pronounced dead. Vol. I, p. 391.

By all accounts, the shooting at the Parkview Apartments was "extraordinary" and "unprecedented" in the history of the Department. Vol. I, p. 392. Following the incident, Chief MacDonnell nominated Officer L (who had fatally shot the Resident) and Officer R (who responded to the scene with Mawn), as well as Officer M (who arrived immediately after the shooting), "to receive the Massachusetts Police Association's Medal of Valor for their actions in the line of duty on November 2, 2020."⁶ Vol. I, p. 392. All three officers were selected for the award. Vol. I, p. 392. Mawn was the only officer at the Parkview shooting incident not nominated for the Medal of Valor.⁷ Vol. I, pp. 392. In fact, instead of nominating Mawn for the Medal of Valor, Chief MacDonnell reprimanded him for failing to assign an officer to accompany the Resident to Winchester Hospital. Vol. I, p. 392.

V. Chief MacDonnell Disciplines Mawn

On November 23, 2020, Chief MacDonnell issued Mawn a written reprimand (the "November Reprimand") regarding the shooting at the Parkview Apartments. Vol. I, p. 393. The November Reprimand asserted violations of Department Regulation 370.40(C) and Policy 36-2(G), both of which relate to prisoners and/or detainees being transported to the hospital and the requirement that the individual being transported be accompanied by an officer to provide

⁶ Although he was eventually cleared of any wrongdoing, 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 surrounding the Resident's death. Vol. I, p. 392.

⁷ Chief MacDonnell excluded Mawn from the nomination because, according to him, Mawn "really didn't do anything" at the scene. Vol. I, pp. 392-393. In the Decision, the Commission gave no weight to this testimony, concluding that the testimony amounted to "unsubstantiated hearsay," and that it was contradicted by the record, which, according to the Commission, established that, during the Parkview incident, Mawn: (1) instructed Officer R to breach the apartment door; (2) ordered the Resident to drop his knives; (3) commanded Officer R to fire his taser at the Resident; and (4) conducted a protective sweep of the Resident's apartment while the officers waited for paramedics to arrive. Vol. I, p. 393, n. 11. The Commission concluded that the dismissal of Mawn's contributions at the Parkview Apartments shooting and the subsequent exclusion of him from the Medal of Valor nomination "suggest[ed] the existence of bias against him." Vol. I, p. 413, n. 25.

security.⁸ The November Reprimand stated: “[I]t 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.” Vol. II, p. 1304.

On this same day, Chief MacDonnell also issued Mawn a written warning (the “November Warning”) arising out of the incident at McCall Middle School, which had occurred months prior on July 13, 2020. Vol. I, p. 394. When questioned about the delay between the incident and the issuance of the November Warning, Chief MacDonnell testified that he had not received the A&K Report until November 4, 2020. Vol. I, p. 394, n.11.

The November Warning referenced violations of Regulations 250.10, 250.30, and 250.40, and states that “Supervisors are expected to closely supervise their subordinates, making corrections when appropriate.”⁹ Vol. II, p. 1302. Thereafter, the Warning states that Mawn

⁸ Regulation 370.40 pertains to the “Transportation of Prisoners.” Vol. II, p. 576. Subsection C provides, in relevant part, that: “Any prisoner transported to a hospital in a private ambulance shall be accompanied and guarded by an Officer unless Police exigencies dictate otherwise.” Vol. II, p. 576. Policy 36-2 is entitled “**DETAINEE TRANSPORTATION.**” Vol. II, p. 542. Subsection (G) relates to “Special Transportation Situation[s]” and states as follows:

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. Restrain 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 office 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.

Vol. II, p. 546.

⁹ Section 200 of the Rules and Regulations addresses “Command and Supervisory Responsibilities and Authority.” Vol. II, pp. 558-561. Regulation 250.10, entitled “Supervision,” states, in relevant part, that: “During his/her tour of duty [a supervisory officer] . . . must closely supervise the activities of his/her subordinates making corrections where necessary and commending where appropriate.” Vol. II, p. 560. Regulation 250.30, which is titled “Direction,” provides in part as follows: “Supervisors must exercise direct command in a manner that assures the good order, conduct, discipline and efficiency of subordinates.” Vol. II, p. 560. Lastly, Regulation 250.40, entitled “Enforcement of Rules,” states that: “Supervisors must enforce Departmental rules and regulations and insure compliance with Departmental policies and procedures.” Vol. II, p. 560.

failed to: (1) “closely supervise the[] officers [involved in the McCall Middle School incident] during a pat-frisk, search of a backpack, as well as, [when] language [was] allegedly used by an officer which did not reflect favorably on the Winchester Police Department”; and (2) “make corrections to . . . [Officer E’s] interaction with the[] minors [involved] when it was required.” Vol. II, p. 1302. As a result of the November Warning, Mawn was ordered to attend a training on warrantless searches. Vol. I, p. 395.

VI. The Loring Road Hit-and-Run

On December 22, 2020, Mawn was the patrol supervisor on an overtime shift from 5:00 p.m. to 10:00 p.m. Vol. I, p. 395. At approximately 9:27 p.m., he responded to a report concerning a hit-and-run on Loring Avenue. Vol. I, p. 395. Detective Kathryn DiPerna (“Detective DiPerna”) and Officer Frank Spinoso (“Officer Spinoso”) had arrived at the scene just before Mawn.¹⁰ Vol. I, p. 395.

While on the way to the scene, Mawn heard from dispatch that a man had been struck in a hit-and-run accident and then, while down in the road, struck again by a second vehicle. Vol. I, p. 395. When he arrived at the scene, he observed “a significant amount of blood on the ground” from the victim. Vol. I, p. 395. Shortly thereafter, the victim was transported by ambulance to Lahey Hospital. Vol. I, p. 396.

Officer Spinoso reported what he knew to Mawn, informing Mawn that the victim had been struck by a white sedan that fled the scene, and that, while he was lying in the road unconscious, he was struck by a second vehicle that had pulled over and remained at the scene. Vol. I, p. 395. Mawn was told that the victim had sustained life-threatening injuries. Vol. I, p.

¹⁰ Although DiPerna holds the rank of Detective, on the night in question, she was working an overtime shift covering an opening for a patrol officer; thus, she was serving as a Patrol Officer, not in her capacity as a Detective. Vol. I, p. 395, n.12.

395. Mawn ensured that the scene was secured, and the road blocked off from traffic.¹¹ Vol. I, p. 396. He also called dispatch and requested that a BOLO be issued for the first vehicle that had fled the area.¹² Vol. I, p. 396.

Mawn initially directed Officer Spinoso to go to the hospital to check on the victim, but Officer Spinoso protested, as he did not think it was appropriate to leave the scene because he was in the middle of interviewing witnesses. Vol. I, p. 396. Mawn allowed Officer Spinoso to remain at the scene to continue his witness interviews, but he “reiterated that [Officer Spinoso] needed to go to the hospital at some point.” Vol. I, p. 396.

In the report Detective DiPerna drafted immediately following the hit-and-run, she wrote that when the owners of the second vehicle (the driver’s parents) arrived on the scene, she “explained the ongoing situation and their son’s involvement”; that she “advised [them that] the[ir] car would be impounded for investigatory purposes”; that the owners of the vehicle “stated that they understood”; and that she updated Mawn, “advis[ing] him of the situation.” Vol. I, p. 396. Detective DiPerna also wrote that the scene “was secured by responding officers and no vehicles were permitted to pass through.” Vol. I, p. 396.

Mawn took photographs, knocked on the door of the victim’s house to check if anyone was home, and inspected several vehicles located in the area. Vol. I, p. 397. At some point, he, Detective DiPerna, and Officer Spinoso convened to discuss next steps. Vol. I, p. 397. During this conversation, Mawn commented: “There’s not much more we can do here.” Vol. I, p. 397. Neither Detective DiPerna nor Officer Spinoso understood what Mawn meant because, in their view, there was lots of investigating left to be done; however, neither asked Mawn for clarification. Vol. I, p. 397. DiPerna testified that she believed that this statement meant Mawn

¹¹ Officer Spinoso had already blocked off the north end of Loring Avenue. Mawn requested that additional officers block off the south end of the roadway near Swanton Street. Vol. I, p. 396.

¹² BOLO stands for “Be On the Look Out” for a suspect or vehicle. Vol. I, p. 396, n. 13.

was prepared to release the scene or, at the very least, the second vehicle prematurely. The Commission specifically found that, in making this statement, Mawn meant only that Detective DiPerna, Officer Spinosa, and his "capacities were limited[,] and additional resources needed to be called in to conduct a full investigation." Vol. I, p. 397.

As the supervisor on scene, Mawn was responsible for updating the Officer-in-Charge (the "OIC"), who remained back at the station.¹³ Vol. I, p. 397. On this night, Sergeant Frank Limoncelli ("Sergeant Limoncelli") was the OIC. Vol. I, p. 397. When Sergeant Richard Donohue ("Sergeant Donohue") arrived at the station to start his 10:00 p.m. shift, Sergeant Limoncelli told him about the Loring Avenue hit-and-run but also that he did not have much information at that point because he had not yet heard from anyone at the scene. Vol. I, p. 397.

Meanwhile, at the scene, Detective DiPerna suggested to Mawn that they request additional resources because they could be investigating a potential homicide if the victim died from his injuries. Vol. I, p. 397. Mawn agreed and told her to call the OIC, i.e., Sergeant Limoncelli, to request additional assistance. Vol. I, p. 397. Just before 10:00 p.m., Detective DiPerna telephoned the station and advised Sergeants Limoncelli and Donohue of what was happening at the scene. Vol. I, pp. 397-398. While she was on speakerphone, Sergeant Donohue telephoned Sergeant Frank Batchelor ("Sergeant Batchelor") and requested his assistance at the scene.¹⁴ Thereafter, Sergeant Donohue advised Detective DiPerna that he and Sergeant Batchelor were on their way to the scene. Vol. I, p. 398.

Before Sergeant Donohue left the station, he and Sergeant Limoncelli telephoned Mawn at the scene. Vol. I, p. 398. Mawn did not have much information to share, aside from what

¹³ The OIC is the shift commander; he or she remains at the station to ensure that the shift runs properly, processing bookings, answering the telephone, and dealing with anything else that arises during the shift.

¹⁴ Sergeant Batchelor serves as the Department's Traffic Safety Officer. He has specialized training in crash investigations, so he typically responds to motor vehicle crashes involving serious bodily injuries. Vol. I, p. 398, n.14.

Detective DiPerna had already reported. Vol. I, p. 398. It was a complex scene that was still under investigation. Vol. I, p. 398. According to the Sergeants, Mawn "sounded a little anxious" on the telephone, and he said, "I don't know," in response to more than one question. Vol. I, p. 398. Sergeant Donohue interpreted Mawn's statements to mean that there was a lot going on at the scene and that he was maybe feeling a "little overwhelmed." Vol. I, p. 398.

At approximately 10:20 p.m., Sergeant Donohue arrived at the scene and took control of the investigation. Vol. I, p. 398. Shortly thereafter, Sergeant Batchelor arrived. Vol. I, p. 398. Based on the nature of the incident and the seriousness of the victim's injuries, Sergeant Batchelor contacted Sergeant Limoncelli and requested that he call additional resources, including Detective Lieutenant Joseph Abdella ("Detective Lieutenant Abdella"), the State Police Collision Analysis and Reconstruction Team, and the Middlesex County District Attorney's office. Vol. I, p. 398. At some point, Mawn commented, to Sergeant Batchelor, "this is f***ed up." The Commission found that, in making this comment, Mawn was speaking about the thirty-foot trail of blood in the street and expressing his (Mawn's) understanding that they were dealing with a "very serious" and "major" situation. Vol. I, p. 399.

Once Sergeant Donohue had taken over as the supervisor on scene, he told Mawn that he could return to the station and begin writing his report. Vol. I, p. 399. Ultimately, by the time Mawn left the scene, it had been secured, evidence had been preserved, and no vehicles had been prematurely released. Vol. I, p. 399. The Commission found that "[d]espite the rarity of this double hit-and-run, and the dynamic nature of the scene, the investigation was successful," that the Department was able to "identif[y] the driver who had initially struck the victim and fled," Vol. I, p. 399, and that nothing Mawn did or did not do impeded the success of the investigation.

VII. Mawn's Demotion and His Appeal

The day after the Loring Avenue hit-and-run, on December 23, 2020, Chief MacDonnell held a briefing concerning the incident in his conference room (the "December Briefing"). Vol. I, p. 399. Chief MacDonnell, then-Lieutenant O'Connell, Detective Lieutenant Abdella, Sergeant Batchelor, and Detective DiPerna attended; Mawn was not invited. Vol. I, p. 399. During the December Briefing, Detective DiPerna expressed concerns about Mawn's supervisory skills and his handling of things at the scene of the hit-and-run. Vol. I, p. 399. In response, Chief MacDonnell instructed Detective Lieutenant Abdella to collect written statements regarding Mawn's performance from the other officers involved in the investigation. Vol. I, p. 399. Chief MacDonnell did not request a statement from Mawn. Vol. I, p. 399. On December 28, 2020, Detective Lieutenant Abdella provided Chief MacDonnell with statements from Detective DiPerna, Officer Spinosa, Sergeant Limoncelli, Sergeant Donohue, and Sergeant Batchelor.¹⁵ Vol. I, p. 401.

On the same day, December 28, 2020, Chief MacDonnell called Mawn into the station for a meeting (the "December Meeting"). Vol. I, p. 401. Mawn did not know the purpose of the December Meeting. Vol. I, p. 401. In addition to Chief MacDonnell and Mawn, then-Lieutenant O'Connell, Detective Lieutenant Abdella, and Mawn's union representative attended the December Meeting. Vol. I, p. 401. Shortly after he arrived, Chief MacDonnell informed Mawn that he was being demoted from the rank of Sergeant to that of Patrol Officer, effective December 29, 2020. Vol. I, p. 401. Chief MacDonnell then handed Mawn a previously prepared demotion letter dated December 28, 2020 (the "2020 Demotion Letter"), which stated as follows:

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 [sic] command in the proper discharge of their duties. You have failed to proficiently take command of incident scenes and or instill confidence in

¹⁵ The Decision contains excerpts from these statements, Vol. I, pp. 399-401, and the record contains the full statements, Vol. II, pp. 1307-1313.

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. 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

Vol. II, p. 471.

Mawn filed a timely appeal with the Commission, alleging that the Town violated G. L. c. 31, § 41, by demoting him without just cause and by failing to follow applicable procedural requirements. Vol. I, p. 402. Due to the alleged procedural defects, the Town rescinded the 2020 Demotion Letter and reinstated Mawn to the rank of Sergeant with backpay, effective February 11, 2021. Vol. II, p. 473. This rescission was, however, short-lived.

On March 15, 2021, Chief O'Connell sent Mawn written notice of a hearing scheduled to take place in four days "to determine possible disciplinary action" (the "March Notice").¹⁷ Vol. II, p. 475. The March Notice refers to violations of Regulations 250.10 ("Supervision"), 250.3[0] ("Direction"), 250.70 ("Assisting Subordinates"), 320.51 ("Incompetence"), 370.05 ("Command of Scene"), and 310.28 ("Knowledge of Laws & Regulations"), as well as violation of Policy 35-2, which pertains to "Traffic Collisions." Vol. II, p. 475. It reads as follows:

Please note that the Town is contemplating disciplinary action against you, including demotion, arising out [sic] your handling of a pedestrian hit-and-run incident on December 22, 2020 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 9, for which you were issued a written

¹⁶ Notably, the November Reprimand addressed an incident that occurred on November 2, 2020, not November 9, 2020, as the December Demotion Letter states.

¹⁷ By this point Chief MacDonnell had retired and O'Connell had taken over as Chief of Police.

warning and a written reprimand for poor supervision and decision-making in your role as sergeant.¹⁸

Vol. II, p. 475. The March Notice explicitly stated that the purpose of the upcoming hearing was “to determine whether just cause exists to warrant [Mawn’s] demotion in rank or other disciplinary consequences.” Vol. II, p. 475.

The Town conducted a remote hearing over the course of three days on April 1, April 27, and May 14, 2021. Vol. I, p. 405. The Town Manager, Lisa Wong, designated attorney Mark Pearson (“Hearing Officer Pearson”) to serve as the hearing officer. Vol. I, p. 405. While others testified, including Chief MacDonnell and Chief O’Connell, the testimony that Hearing Officer Pearson seems to have considered the most significant came from Detective DiPerna. She testified that, in her opinion, Mawn did not realize the seriousness of the Loring Avenue hit-and-run, and that he failed to complete basic tasks such as securing the scene and issuing a BOLO.¹⁹ Vol. II, p. 595-596. Further, Detective DiPerna testified that she believed Mawn’s statement that “[t]here isn’t much more we can do here,” was an indication that he (Mawn) believed that nothing more could be done until the hit-and-run driver was located and that he was ready to release the scene and/or the second vehicle. Vol. II, p. 595-596.

On June 8, 2021, Hearing Officer Pearson released a report of his findings and recommendation, wherein he found that there was “just cause” to demote Mawn. Vol. II, pp. 592-602. On June 24, 2021, the Town Manager sent Mawn a letter (the “2021 Demotion Letter”) informing him that she had accepted Hearing Officer Pearson’s findings and recommendations, and that he was being “demoted from [his] present rank of Sergeant to Patrol Officer effective June 24, 2021.” Vol. II, p. 478. The 2021 Demotion Letter explains as follows:

¹⁸ Again, as noted above, the November incident, which involved the shooting at the Parkview Apartments, occurred on November 2, 2020, not November 9, 2020.

¹⁹ It should be noted that, in the Decision, the Commission rejected this testimony and specifically found that Mawn had both secured the scene and called dispatch to issue a BOLO for the vehicle that left the scene. Vol. I, p. 406, n.20.

This demotion is based on your failure to perform the necessary supervisory and leadership responsibilities required of the sergeant position. When responding to incidents, you have not demonstrated appropriate oversight and instruction of subordinate officers under your command. You have also failed to demonstrate the requisite leadership abilities of a sergeant, such as inadequate command of incident scenes, abnegation of supervisory direction and responsibilities, poor decision-making, and not instilling confidence in your subordinate officers that you are capable of sound command decisions and direction.

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.

Vol. II, p. 478. Mawn filed a timely appeal with the Commission.

VIII. The Commission's Decision

The Commission held three days of hearings on September 29, November 4, and November 5, 2021, via Webex's videoconferencing platform, before Commissioner Cynthia Ittleman ("Commissioner Ittleman"). Because Commissioner Ittleman retired before drafting a decision in connection with this matter, the case was reassigned to Commissioner Paul Stein ("Commissioner Stein"). After review of the evidentiary record, including the audio-video recordings of the hearing, on October 20, 2022, Commissioner Stein issued the Decision, Vol. I, pp. 383-414, concluding that the Town failed to meet its burden to establish, based on a preponderance of the evidence, that it had "just cause" to demote Mawn. Vol. I, pp. 409-414.

Commissioner Stein disagreed with the Town's findings on certain significant issues. Most notably, he disagreed that during the Loring Road hit-and-run incident, Mawn did not take adequate actions to secure the hit-and-run scene; Mawn was prepared to prematurely release the scene, or the second motor vehicle involved in the hit-and-run; Mawn did not appreciate the seriousness of the events; and Mawn did not keep the OIC adequately updated about what was happening at the hit-and-run scene. Commissioner Stein found concerning and was influenced by the fact that prior to Mawn's demotion, the Town failed to provide him with any sort of

remedial discipline, such as a performance improvement plan; that when questioned before the Commission, the Town Manager "was unable to provide a substantive answer as to why [Mawn] was demoted," and she "did not know whether there had been any discussion of remedial measures"; and that the record evidence suggested some bias against Mawn. Commissioner Stein concluded that Mawn's conduct did not amount to the type of substantial misconduct or serious violation of duty adversely affecting the public interest, which warranted demotion. The Town's request for judicial review followed.

DISCUSSION

The Town asserts a number of arguments in support of its Motion requesting that the Commission's Decision be vacated. First, the Town contends that the Decision was based on error of law because its decision to demote Mawn was fully consistent with the basic merit principles that apply to the civil service system. Next, the Town argues that in deciding against the Town, the Commission exceeded its statutory authority and abused its discretion by substituting its judgment for that of the Town. Third, the Town claims that the Decision is not supported by substantial evidence because it is premised on findings that are contradicted and/or unwarranted by the evidence in the record. Lastly, the Town argues that, insofar as the Decision is based on a finding of bias, it is arbitrary and capricious.

On the other hand, in their Cross-Motions, the Commission and Mawn argue that Commissioner Stein properly found that the Town did not have just cause to demote Mawn because his conduct did not rise to the level of substantial misconduct. They further assert that the Commission's Decision is supported by substantial evidence contained in the record, not arbitrary or capricious, and free from legal error.

I. The Legal Framework

As explained above, the instant matter concerns the Town's decision to demote Mawn from the rank of Sergeant to Patrol Officer. General Laws c. 31, § 41, governs the demotion of civil service employees, such as Mawn. This provision states that "[e]xcept for *just cause* . . . a tenured employee shall not be . . . lowered in rank." G. L. c. 31, § 41 (emphasis added). "[T]he civil service law does not define what constitutes 'just cause'"; however, our appellate courts have determined that "it exists where the employee has committed 'substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.'"

Brookline v. Alston, 487 Mass. 278, 292 (2021), quoting Doherty v. Civil Serv. Comm'n, 486 Mass. 487, 493 (2020); see also Police Comm'r of Boston v. Civil Serv. Comm'n, 39 Mass. App. Ct. 594, 599 (1996). Ultimately, "just cause" is to be construed in conformity with the purpose of the civil service law, which is "to free public servants from political pressure and arbitrary separation . . . but not to prevent the removal of those who have proved to be incompetent or unworthy to continue in the public service." School Comm. of Brockton v. Civil Serv. Comm'n, 43 Mass. App. Ct. 486, 488 (1997) (quotations and citation omitted).

A. Review of the Town's Decision by the Commission

"A tenured civil service employee who is aggrieved by a disciplinary decision of an appointing authority may appeal to the [C]ommission." Thompson v. Civil Serv. Comm'n, 90 Mass. App. Ct. 462, 463 (2016), citing G. L. c. 31, § 41. The Commission "does not view a snapshot of what was before the appointing authority." Stratton, 58 Mass. App. Ct. at 727. Rather, the Commission hears evidence and "find[s] the facts anew[.]" Thompson, 90 Mass. App. Ct. at 463. Thereafter, the Commission determines whether the appointing authority met its burden to prove, by a preponderance of the evidence, that there was just cause for the action taken. Id., citing Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 260 (2001); Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823-824 (2006). In

making this determination, "the question is not whether [the Commission] would have acted as the appointing authority had acted, but whether, on the facts found by the [C]ommission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision."

Stratton, 58 Mass. App. Ct. at 728.

B. Review of the Commission's Decision by the Court

Any party aggrieved by a decision of the Commission may obtain judicial review in the Superior Court in accord with G. L. c. 30A, § 14. See G. L. c. 31, § 44 (noting that any party aggrieved “may institute proceedings for judicial review in the superior court,” and that those proceedings “shall . . . be governed by the provisions of section fourteen of chapter thirty A”). In contrast to the proceedings before the Commission, the proceedings in the Superior Court “are distinctly not *de novo*; it is not the occasion for a retrial of the case.” Stratton, 58 Mass. App. Ct. at 728 (citation omitted). “The reviewing court may not make new determinations of facts or make different credibility choices.” Id. at 733 (citation omitted). “[T]he Commission is entitled to choose how to interpret the evidence before it.” McCormack v. Department of State Police, 92 Mass. App. Ct. 1103, 2017 WL 346901, at *4 (Aug. 14, 2017) (Unpublished Rule 1:28). The Court’s task is “limited to determining whether the [C]ommission’s decision was supported by substantial evidence[,]” and in making this determination, the court “is required to ‘give due weight to the experience, technical competence, and specialized knowledge of the . . . [Commission], as well as to the discretionary authority conferred upon it.’” Brackett v. Civil Serv. Comm’n, 447 Mass. 233, 241-242 (2006).

II. The Analysis

With the above standards in mind, the court will now address the arguments raised in the Motion and Cross-Motions.

A. Merit Principles

First, the Town argues that the Decision is based on an error of law because, contrary to the position taken by the Commission, its decision to demote Mawn, rather than terminate his employment, is plainly consistent with the merit principles that apply in the civil service context. The Town maintains that its issuance of the November Reprimand and Warning, which put

Mawn on notice that there were issues with his performance that he needed to address, shows that its demotion of Mawn was based upon merit principles. The Commission and Mawn disagree with the Town. They contend that demoting Mawn without providing him with any remedial training or opportunity to improve his allegedly poor supervisory skills is clearly contrary to the merit principles interwoven within the civil service system. The court agrees with the Commission and Mawn.

In determining whether an employment decision was made properly, the court “recognize[s] that the civil service law expressly mandates that decisions be consistent with ‘basic merit principles.’” Alston, 487 Mass. at 293 (citation omitted). Pursuant to G.L. c. 31, § 1, the term “[b]asic merit principles” is defined to include: the “providing of training and development for employees, as needed, to assure the advancement and high quality of such employees”; and the “retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected[.]” G.L. c. 31, § 1. Given the statutory definition, the court finds that basic merit principles require that, prior to the imposition of the harshest punishments, the employer should provide the civil service employee with training and an opportunity to correct poor performance. See Worcester v. Civil Serv. Comm’n, 87 Mass. App. Ct. 120, 124 (2015) (noting that civil service law “is intended to protect the tenured employee’s interest by restricting, not enlarging, the removal powers of an appointing authority”).

Here, in the Demotion Letter, the Town states that Mawn’s demotion was based on his poor supervisory skills, i.e., his “failure to perform the necessary supervisory and leadership responsibilities required of the sergeant position.” Prior to his demotion, however, the Town offered no remedial training aimed at improving his alleged supervisory deficiencies.²⁰ The

²⁰ The court acknowledges that, following the November Warning, which arose out of the McCall Middle School incident, Mawn was ordered to attend training on warrantless searches. The court does not, however, view this as

Town's failure to do so is particularly concerning given that, at the time of his demotion, Mawn was a relatively new sergeant with less than two years of supervisory experience, and his initial Frontline Leadership Class was cut in half due to the Covid 19 Pandemic.²¹ Accordingly, the Commission's conclusion that, pursuant to basic merit principles, the Town should have provided Mawn with some remedial training or opportunity to correct his alleged supervisory deficiencies prior to resorting to demotion, is consistent with the law.

B. Substituted Judgment

Next, the Town argues that the Commission exceeded its statutory authority and abused its discretion because in its Decision it essentially substituted its judgment for that of the Town. More specifically, the Town contends that Commissioner Stein discounted the testimony of Chief MacDonnell and Chief O'Connell, as well as the other officers, including Detective DiPerna, who testified on behalf of the Town. In the circumstances of this case, the Town argues that Commissioner Stein's failure to credit their testimony and opinions was particularly egregious because he was not physically present at the hearing and should not have made determinations about the credibility of these witnesses. The Town's assertions are not persuasive.

First, the Town's complaint that the Commission substituted its judgment for that of the Town is basically a complaint that Commissioner Stein made findings of fact that differed from those on which the Town based its demotion decision. Essentially, the Town appears to argue that Commissioner Stein was required to believe its witnesses and accept their version of events

training or education aimed at improving Mawn's supervisory skills, which was acknowledged in the Demotion Letter as the Town's primary basis for his demotion.

²¹ Mawn was promoted to Sergeant on June 16, 2019, and officially demoted effective June 24, 2021; however, during that two-year span of time, he was out of work on medical leave for four months between October 2019 and February 2020, after suffering a "traumatic and disabling injury[.]" Vol. I, p. 86. Thus, at the time of his demotion, Mawn had not worked in his position as Sergeant for even a full two years.

and conclusions. The law, however, is clear on this point. “[T]he [C]ommission hears evidence and finds facts anew.” Stratton, 58 Mass. App. Ct. at 726. In other words, the Commission “is the sole judge of [the] credibility and weight of the evidence before it,” Kavaleski, 463 Mass. at 694 (citation omitted), which means that the Commission is entitled to discredit or discount evidence offered by the appointing authority. Id. This is precisely what occurred in this case.

Commissioner Stein did not find credible Detective DiPerna’s testimony that, based on Mawn’s statement that “[t]here’s not much more we can do here[,]” he was prepared to release the scene or the second motor vehicle involved in the Loring Road hit-and-run prematurely. Nor did Commissioner Stein find credible her testimony that Mawn failed to complete required tasks, such as securing the scene or issuing a BOLO for the missing vehicle credible. In fact, in rejecting her testimony, Commissioner Stein made distinctly different findings. He found that, in making the above statement, Mawn meant only that the capabilities of the officers then-present at the scene were limited and additional resources were needed to complete the investigation. Further, Commissioner Stein specifically found that Mawn had properly secured the scene and requested a BOLO. Given that Commissioner Stein did not find Detective DiPerna’s testimony credible and/or reliable on these important matters, the fact that his conclusion regarding the propriety of Mawn’s demotion differed from that of the Town is understandable and reasonable. From the beginning of this process, starting with the December Briefing, the Town’s decisions regarding Mawn appear to have been heavily influenced by Detective DiPerna’s view of how he did or did not perform his duties.

Second, to the extent that the Town takes issue with the fact that Commissioner Stein made credibility determinations even though he was not physically present for the hearing before Commissioner Ittleman, the Town’s argument is without merit. First, Commissioner Stein begins his Decision stating that he “review[ed] . . . the entire record in this matter, including the

recording of the full hearing and all exhibits[.]” Vol. I, p. 383, n.1. Having reviewed the entire evidentiary record, including the video and audio recordings of the testimony, Commissioner Stein was in a position to make credibility determinations as necessary for his Decision. As the Commission points out, the Supreme Judicial Court has specifically stated that, “with today’s video conferencing technology, a virtual hearing can approximate a live physical hearing in ways that it could not previously[.]” including by permitting “adequate[] observ[ation] [of] the witnesses who testify[.]” Diaz v. Commonwealth, 487 Mass. 336, 342 (2021). Indeed, due to the restrictions necessitated by the Covid 19 Pandemic, conducting administrative hearings and court proceedings via video conferencing platforms such as Webex and Zoom became quite common. The court finds no reason to conclude that that Commissioner Stein’s after-the-fact viewing of the video and audio recordings of the hearing restricted him from making determinations regarding the credibility of testifying witnesses.

C. Substantial Evidence

Third, the Town argues that the Decision is not supported by substantial evidence because it is premised on findings that are contradicted and/or unwarranted by evidence in the record. In some respects, this argument is a reiteration of the Town’s earlier argument and fails for much the same reason. The Commission reviews the evidence anew and makes its own findings regarding the facts. Stratton, 58 Mass. App. Ct. at 726. More importantly, with respect to the specific question that the court must answer – whether there was substantial evidence to support the Commission’s conclusion that that the Town did not have just cause to demote Mawn – the court concludes that the record evidence amply supports the Commission’s conclusion that there was no just cause for Mawn’s demotion.

As stated above, just cause for disciplinary action exists where the employee has “committed ‘substantial misconduct which adversely affects the public interest by impairing the

efficiency of the public service.” Alston, 487 Mass. at 292 (citation omitted). The Commission found that the misconduct at issue in this case did not rise to that level. There was substantial evidence, based on the facts found by the Commission, to support this conclusion. See Boston Police Dept. v. Civil Serv. Comm’n, 483 Mass. 461, 473-474 (2019) (“[s]ubstantial evidence is [only] ‘such evidence as a reasonable mind might accept as adequate to support a conclusion’”) (citation omitted).

As an initial matter, while the McCall Middle School and the Parkview Apartments incidents were mentioned and discussed, the record reveals that the primary basis for Mawn’s demotion was his alleged supervisory deficiencies at the scene of the Loring Avenue hit-and-run. Also, as stated above, the Town’s concern regarding Mawn’s performance at the scene was primarily based upon Detective DiPerna’s observations and opinions. However, Commissioner Stein found that, with respect to certain key issues, Detective DiPerna’s testimony was either not credible or not reliable. For example, despite her contrary testimony, Commissioner Stein found that Mawn did in fact ensure that the scene was secure and did request a BOLO for the vehicle that had left the scene. In addition, he specifically discounted Detective DiPerna’s claim that Mawn was prepared to release the scene and/or the second motor vehicle prematurely.

Ultimately, Commissioner Stein concluded that nothing Mawn did or failed to do impeded the investigation into the hit-and-run, and that the Town’s claims that Mawn actions amounted to substantial misconduct adversely affecting the public safety were speculative and unfounded. The Commission’s conclusion is sound and based upon substantial evidence.

D. Bias

Lastly, the Town argues that, insofar as the Decision is based on some finding of bias, it is arbitrary and capricious. The court disagrees.

“A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support.” Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 313 (1997). In this case, the court is not convinced that the Decision rests on a finding of bias, as Commissioner Stein made only passing references to there being a “suggest[ion]” of bias. Further, to the extent the Decision does rely on a finding of bias, it is not arbitrary and capricious, as there is evidence in the record from which reasonable persons might conclude that the Town, the Department, and/or Mawn’s supervisors held some bias against him. First, in March 2020, mere months before the incidents that led to Mawn’s demotion, Chief MacDonnell and then-Lieutenant O’Connell questioned Mawn about his vote regarding the new CBA. Second, and perhaps more significant, Chief MacDonnell excluded Mawn from nomination for the Medal of Valor in relation to the shooting at the Parkview Apartments, even though he nominated all the other officers who were involved, including Officer L, who was under investigation at the time of the nomination, and Officer M, who did not even arrive at the scene until the Resident had been subdued and handcuffed. Then, in relation to the events immediately preceding Chief MacDonnell’s decision to demote Mawn, he excluded Mawn from the December Briefing; he never sought a statement from Mawn concerning his conduct during the Loring Avenue hit-and-run; and he failed to give Mawn any prior notice about the purpose of the December Meeting. Given these facts, the Commission had a rational basis to conclude that there was bias working against Mawn.

III. Conclusion

In sum, the court concludes that the Commission’s Decision that the Town lacked just cause for Mawn’s demotion is supported by substantial evidence, based upon the law, and not arbitrary, capricious, or an abuse of discretion.

ORDER

December Meeting. Given these facts, the Commission had a rational basis to conclude that there was bias working against Mawn.

III. Conclusion

In sum, the court concludes that the Commission's Decision that the Town lacked just cause for Mawn's demotion is supported by substantial evidence, based upon the law, and not arbitrary, capricious, or an abuse of discretion.

ORDER

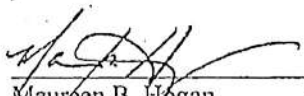
For the reasons explained above, it is hereby ORDERED:

1. The Town's Motion for Judgment on the Pleadings is DENIED;
2. The Commission's Cross-Motion for Judgment on the Pleadings is ALLOWED; and
3. Mawn's Cross-Motion for Judgment on the Pleadings is ALLOWED.

Accordingly, it is further ORDERED that the Commission's Decision, dated October 22, 2022, wherein it concludes that the Town did not have just cause to demote Ryan Mawn from the rank of Sergeant to that of Patrol Officer, is AFFIRMED.

SO ORDERED.

Dated: August 2, 2024


Maurcen B. Hogan
Justice of the Superior Court

For the reasons explained above, it is hereby **ORDERED**:

1. The Town's Motion for Judgment on the Pleadings is **DENIED**;
2. The Commission's Cross-Motion for Judgment on the Pleadings is **ALLOWED**; and
3. Mawn's Cross-Motion for Judgment on the Pleadings is **ALLOWED**.

Accordingly, it is further **ORDERED** that the Commission's Decision, dated October 22, 2022, wherein it concludes that the Town did not have just cause to demote Ryan Mawn from the rank of Sergeant to that of Patrol Officer, is **AFFIRMED**.

SO ORDERED.

Dated: August 2, 2024

Maureen B. Hogan
Justice of the Superior Court