

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293**

**DEBRA NORCROSS,
Appellant**

v.

Case No. D1-11-169

**CITY OF NEW BEDFORD,
Respondent**

Appearance for Appellant:

Jaime Kenny, Esq.
AFSCME Council 93
8 Beacon Street
Boston, MA 02108

Appearance for Respondent:

Jane Medeiros Friedman
First Assistant City Solicitor
City of New Bedford Law Department
133 William Street
New Bedford, MA 02740

Commissioner:

Paul M. Stein¹

DECISION

Procedural History

Pursuant to G.L. c. 31, § 43, the Appellant, Ms. Debra Norcross (hereinafter “Appellant” or “Ms. Norcross”) filed a timely appeal with the Civil Service Commission (hereinafter “Commission”) on May 17, 2011, contesting the decision of the City of New Bedford (hereinafter “City”) to terminate her employment as a paramedic on May 9, 2011. A pre-hearing conference was held on June 24, 2011 at the University Of Massachusetts School Of Law in Dartmouth, Massachusetts and two (2) days of full hearing were held on December 16,

¹ The Commission acknowledges the assistance of Law Clerk Beverly J. Baker, Esq., in the drafting of this decision.

2011 and April 27, 2012, at the same location. Neither party requested a public hearing, so the hearing was deemed private. The witnesses were sequestered. The hearing was digitally recorded and the parties were provided with copies of the recording. The parties submitted post-hearing briefs on Friday, August 3, 2012.

Summary

By a preponderance of evidence, the City has shown that it had just cause to discipline Ms. Norcross for her failure to conduct herself in a professional manner with respect to her co-worker. However, the Commission finds that the penalty imposed on Ms. Norcross, termination, was not supported by the evidence and modifies the discipline to a forty-five (45) day suspension.

FINDINGS OF FACT

Based on the nine exhibits entered into evidence², the stipulations of the parties, the testimony of:

Called by the City:

- Mr. Richard Torrey, Captain of Training, New Bedford EMS;
- Mr. Steven Arruda, Deputy Director, New Bedford EMS;
- Mr. Mark McGraw, Director, New Bedford EMS;

Called by Ms. Norcross:

- Ms. Debra Norcross, Appellant;

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, and policies, and reasonable inferences therefrom, a preponderance of the evidence

² Exhibits A.A.-4A, A.A.-4B, A.A.-4C, and A.A.-4D were not admitted into evidence. These documents relate to a 2005 discipline where a settlement was ultimately reached between the parties. That settlement agreement is admitted into evidence as A.A.-4E. Similarly, Exhibits A.A.-5B, A.A.-5C, and A.A.-5D were not admitted as they relate to a 2005 discipline that was ultimately decided by an arbitrator. The 2005 decision of the arbitrator, A.A.-5E, was admitted into evidence, but not the supporting documentation. Also, Exhibits A.A.-7A, A.A.-7B, and A.A.-7C were not admitted for the same reasons. These are supporting documentation for a discipline which ultimately resulted in a settlement agreement, which is admitted as Exhibit A.A.-7D.

establishes the following findings of fact:

1. Ms. Norcross was appointed to the position of permanent intermittent Emergency Medical Technician (EMT) with the City on March 8, 1988. On September 23, 1991, she became a permanent full-time EMT. On December 31, 1996, Ms. Norcross was promoted to the position of Senior EMT (Intermediate) and on April 25, 2005, she became a paramedic. (Ex. A.A.-1)
2. The job description of a paramedic includes, as a minimum qualification, the ability “to work effectively with other public safety personnel.” (Ex. A.A.-2)
3. On or about April 25, 2001, Ms. Norcross received a written warning for the use of profanity in the work place. (Ex. A.A.-3)
4. On or about September 8, 2005, pursuant to a settlement agreement, Ms. Norcross was suspended for two tours of duty and agreed to attend anger management training with the Employee Assistance Program as a result of her conduct in late August 2005. (Exs. A.A.-1, A.A.-4E)
5. As a result of Ms. Norcross’ behavior that delayed the response to a call for service in late August 2005, she received a Letter of Reprimand/Order to Correct from the Massachusetts Department of Public Health Office of Emergency Medical Services on or about January 3, 2006. (Ex. A.A.-4F)
6. Ms. Norcross was suspended for an incident that occurred on October 22, 2005. In that instance, the arbitrator found Ms. Norcross’ behavior to be “unprofessional and disrespectful toward her supervisor and fellow worker” and warranted disciplinary action and reduced her discipline from a thirty (30 day) suspension to a twenty (20) day suspension. (Ex. A.A.-5F)

7. Pursuant to a settlement agreement in April 2009, Ms. Norcross accepted a twenty-five (25) shift suspension for an incident in September 2008.³ (Ex. A.A.-7D; Testimony of Deputy Arruda)
8. In approximately 1995, Ms. Jean Quintin was hired by the City as an EMT. At all relevant times, Ms. Quintin held the position of EMT Intermediate. Testimony of Ms. Norcross
9. Ms. Quintin was the only EMT Intermediate in the entire department. All other employees were paramedics. (Testimony of Capt. Torrey, Ms. Norcross)
10. Prior to 2010, Ms. Norcross' relationship with Ms. Quintin could be characterized as "cordial." Though they were not partners at this time, Ms. Norcross and Ms. Quintin did work together on occasion. (Testimony of Ms. Norcross)
11. Ms. Norcross became partners with Ms. Quintin in or about June 2010, when the City changed to eight-hour shifts and shift "rebid" took place. (Testimony of Ms. Norcross, Dir. McGraw)
12. A paramedic is higher in the chain of command than an EMT intermediate. An EMT intermediate is only authorized to provide a certain level of care to a patient. An EMT intermediate is not authorized to give medication to a patient or to provide Advanced Life Support (ALS) to a patient. (Testimony of Ms. Norcross)
13. As the paramedic, Ms. Norcross is responsible for overall care on any ALS call. As an EMT intermediate, Ms. Quintin's role in these situations is to provide assistance to Ms. Norcross. (Testimony of Ms. Norcross)
14. Ms. Norcross and Ms. Quintin worked three shifts out of five together: Sunday, Monday, and Thursday. (Testimony of Ms. Norcross; Ex. A.A.-8A)

³ Ms. Norcross had appealed this suspension to the Commission and withdrew that appeal upon reaching a settlement. See *Norcross v. New Bedford*, CSC No.D-08-227.

15. After Ms. Norcross and Ms. Quintin became partners, personality conflicts between them began to arise. In November 2010, Ms. Quintin complained that Ms. Norcross was not allowing her to perform her skills. Ms. Norcross denied this charge and complained that Ms. Quintin was not cooperative on calls. For example, at times, Ms. Quintin would not comply with orders from Ms. Norcross, acting as the paramedic. Ms. Quintin would refuse to assist Ms. Norcross on some calls. (Testimony of Ms. Norcross & Dir.McGraw; Ex. A.A.-8A)
16. In February 2011, Ms. Norcross complained to EMS Director McGraw because she and Ms. Quintin had a specific disagreement regarding having paramedic students ride with them. Prior to the complaint, a loud discussion on this matter had taken place in the office, between the two women, in the presence of Deputy Director Arruda. Ms. Norcross was a paramedic preceptor and in this role, she was responsible for mentoring and supervising paramedic students. Ms. Quintin did not want students riding along and was very vocal about her opinions and sometimes rude to the students. It was decided that the shift was not busy enough for students to learn their skills and the decision was made to allow student riders only when the students needed that schedule, due to the students' other obligations. (Testimony of Dir. McGraw, Deputy Arruda, Ms. Norcross)
17. In late March 2011, Ms. Norcross and Ms. Quintin both made complaints of a hostile work environment and Director McGraw requested that they submit the complaints in writing. (Exs. A.A.-8A, A.A.-8B; Testimony of Dir. McGraw)
18. Director McGraw asked Ms. Angela Natho, the City's Personnel Director, for advice regarding the situation between Ms. Norcross and Ms. Quintin. Ms. Natho met with both women. Director McGraw did not attend the meeting but did receive a copy of the

Memorandum Ms. Natho sent to the Appellant and Ms. Quintin. (Testimony of Dir. McGraw; Ex. A.A.-8C)

19. On April 6, 2011, Ms. Angela Natho, Director of the City's Department of Labor Relations and Personnel issued a memorandum to both Ms. Quintin and Ms. Norcross in which Ms. Natho concluded that while the complaints did not rise to the level of harassment or hostile environment, "there have been instances of unprofessional conduct and miscommunication." Ms. Quintin and Ms. Norcross were ordered to "immediately conduct themselves with the highest degree of professionalism at all times Director McGraw has indicated that you are both valued, capable employees Although past tensions have existed, I am confident that professional, productive work behaviors will be exhibited by all involved." (Ex. A.A.-8)

20. In her April 6, 2011 memorandum, Ms. Natho specifically directed both employees that: "*If there are further concerns regarding patient care or interactions with the public they will be documented and brought to your Supervisor immediately.* Likewise, if concerns regarding inappropriate work behaviors arise in the future, they will be documented and brought to your Supervisor." (Ex.A.A.8 (*emphasis added*))

21. Director McGraw offered both the Appellant and Ms. Quintin the opportunity to switch shifts. Both employees refused the offer. together. (Testimony of Dir. McGraw, Ms. Norcross)

22. Around the same time, there were discussions of an involuntary transfer from the shift. As a senior employee, Ms. Norcross been able to choose her shift had become accustomed to working it. Her shift allowed her to spend more time with her family. (Testimony of Ms. Norcross & Dir. McGraw; Ex. A.A.-8A)

23. As Ms. Norcross possessed more seniority than Ms. Quintin, Ms. Quintin would have been the employee to be moved from the shift. However, management made the decision not to move either employee from the shift and they continued to be assigned to work together. (Testimony of Dir. McGraw)
24. On April 11, 2011, Captain Torrey, EMS Training Officer, rode along with Ms. Quintin and Ms. Norcross on their shift. He observed Ms. Norcross and Ms. Quintin interacting with a patient “without any issues.” He further noted that “both Norcross and Quintin engaged in patient care well.” (Testimony of Capt. Torrey; Ex. A.A.-8S)
25. On April 12, 2011, Ms. Norcross and Ms. Quintin were working together when they responded to a call at approximately 5:00 AM involving a patient in cardiac arrest. (Testimony of Ms. Norcross; Ex. A.A.-8D)
26. Upon arrival at the scene, Ms. Norcross and Ms. Quintin found a woman lying on the floor, not breathing. Police officers and firefighters were attempting to administer CPR. (Testimony of Ms. Norcross; Ex. A.A.-8D)
27. Ms. Norcross removed the woman’s clothing and put the defibrillator pads on the patient. Ms. Quintin was assisting with the heart monitor and ventilating the patient and was positioned at the head of the patient. Ms. Norcross attempted to insert an IV in the patient’s hand, but could not gain access to the woman’s vein. (Testimony of Ms. Norcross)
28. Ms. Norcross and Ms. Quintin transported the patient to the ambulance, where Ms. Norcross attempted another IV, unsuccessfully. (Testimony of Ms. Norcross)
29. While in the ambulance with Ms. Norcross, Ms. Quintin continued to assist with ventilation. A member of the New Bedford Fire Department was driving the ambulance. (Testimony of Norcross)

30. When Ms. Norcross was unable to gain access to the patient's vein, she performed an intraosseous infusion⁴ (IO) on the patient, through which Ms. Norcross administered three doses of epinephrine, each administered approximately five minutes apart. (Testimony of Ms. Norcross; Ex. A.A.-8D)
31. Both before going out on that particular medical call and after returning to quarters, and in the days before and after, Mr. Norcross and Ms. Quintin got along in a friendly manner, and chatted about their personal life. There was no mention of what Ms. Quintin would later claim was a breach of EMS protocol on that call. (Ex. A.A. 8-D; Testimony of Norcross)
32. On April 14, 2012, at approximately 5:00 AM, Captain Torrey arrived at the Hillman Street station pursuant to orders from Director McGraw. Mr. Torrey was assigned to provide Ms. Norcross and Ms. Quintin "refresher" training. Based on conversations with Ms. Norcross and Ms. Quintin, Director McGraw decided to change the purpose of the training and directed Capt. Torrey to train Ms. Norcross and Ms. Quintin on roles and responsibilities of a paramedic and EMT intermediate. (Testimony of Capt. Torrey, Dir. McGraw; Ex. A.A.-8E)
33. Captain Torrey was initially met with some "resistance" from Ms. Norcross, who did not believe that she needed to go over the roles and responsibilities. (Testimony of Capt. Torrey)
34. Both Ms. Norcross and Ms. Quintin were "upset" that they had to accomplish this task. (Ex. A.A.-8E)
35. Captain Torrey felt like he was a "counselor," rather than an instructor, because Ms. Norcross and Ms. Quintin were speaking through him and not getting along. (Testimony of Capt. Torrey; Exs. A.A.-8E, A.A.-8G)

⁴ This procedure involves drilling into a patient's tibia to gain access to veins.

36. At some point during this training session, Ms. Quintin walked out of the meeting, saying she “couldn’t take it anymore.” Ms. Quintin had also stated that she had a learning disability and “there is such a thing as Americans with Disabilities Act and she is going to get a lawyer.” (Testimony of Capt. Torrey; Ex. A.A.-8G)
37. At approximately 5:15 AM, Ms. Quintin called Director McGraw and told him that she was upset and needed to go home. Director McGraw told Ms. Quintin that if she was indeed upset and could not work, to go home. (Testimony of Dir. McGraw; Ex. A.A.-8E)
38. Captain Torrey eventually continued the training session with both Ms. Quintin and Ms. Norcross separately, as the atmosphere had deteriorated and was not conducive to training the two employees simultaneously. While Captain Torrey was going over the roles and responsibilities with Ms. Quintin, individually, she stated that Ms. Norcross made her put a medication down the patient’s endotracheal tube two days earlier. Captain Torrey instructed Ms. Quintin not to do that anymore and she stated that she would not. (Ex. A.A.-8G)
39. Later that day, at approximately 8:30 AM, Director McGraw met with Deputy Arruda and Captain Torrey to discuss the events that had transpired during the training session earlier. (Testimony of Dir. McGraw; Ex. A.A.-8E)
40. After their discussion, Director McGraw, Deputy Arruda, and Captain Torrey met with Ms. Norcross and Ms. Quintin in the training room. They were also joined by the union steward, Ms. Rosemary Nunes. (Testimony of Deputy Arruda, Dir. McGraw; Ex. A.A.-8E)
41. At this meeting, Director McGraw informed Ms. Norcross and Ms. Quintin that they are required to work in a professional manner at all times. He expressed his “dismay with the situation” and that it has “totally gone out of control.” Director McGraw further informed

them that he might take the matter to Personnel again and consider possible termination of employment for both of them. (Testimony of Dir. McGraw; Ex. A.A.-8E)

42. Ms. Quintin, Ms. Norcross, and Ms. Nunes went into another room to speak privately.

When Ms. Quintin returned to the training room, she was visibly upset, crying, and stated that she “can’t take it anymore” and that the situation was causing her stress and chest pain and that she would go see her doctor in order to get a note to go out on leave due to stress.

(Testimony of Dir. McGraw, Deputy Arruda; Ex. A.A.-8E)

43. Ms. Quintin then stated to Director McGraw that during the cardiac arrest call that had occurred earlier in the week, Ms. Norcross ordered her to give epinephrine down the patient’s endotracheal tube. Ms. Quintin stated that while she initially told Ms. Norcross that she was not allowed to do it, Ms. Norcross insisted and Ms. Quintin complied out of fear that Ms. Norcross would “write her up” for something else. Ms. Quintin then left, crying. (Testimony of Dir. McGraw; Ex. A.A.-8E)

44. Ms. Nunes and Ms. Norcross then came into the training room and asked where Ms. Quintin had gone. Director McGraw informed them that Ms. Quintin had left upset. At this time, Director McGraw asked Ms. Norcross about the allegations that had just been raised by Ms. Quintin. (Testimony of Dir. McGraw; Ex. A.A.-8E)

45. Ms. Norcross denied the allegation and stated that it never happened. Director McGraw requested a written incident report from Ms. Norcross and the meeting concluded. (Testimony of Dir. McGraw, Deputy Arruda; Ex. A.A.-8E)

46. Ms. Quintin was also asked to submit a written report of the April 12, 2011 incident. (Testimony of Dir. McGraw, Deputy Arruda)

47. On April 15, 2011, at approximately 9:00 AM, Ms. Quintin spoke to Director McGraw to apologize for what had transpired over the past few weeks. At this time, Ms. Quintin also questioned Director McGraw about the possible ramifications of her alleged actions, including what might happen if the state were to be notified. Director McGraw stated that he was unsure of the potential consequences and until he knew all the facts, “it was unclear if this was a serious reportable incident mandating that we call the state [referring to the Massachusetts Department of Public Health, Office of Emergency Medical Services (OEMS)].” (Ex. A.A.-8E)
48. Shortly after this conversation took place, at approximately 10:25 AM, Ms. Quintin called Director McGraw again. During this conversation, Ms. Quintin informed him that she had called OEMS on her own initiative and reported anonymously what she said had transpired on the cardiac arrest call. Ms. Quintin said that OEMS eventually convinced to give her name and identify where she worked. She told Director McGraw that she was calling him to give him a “heads up” that OEMS was aware of the incident and said she apologized for any trouble she had caused. (Ex. A.A.-8E)
49. Director McGraw was “unsure of the validity of the allegation” and placed Deputy Arruda in charge of investigating Ms. Quintin’s accusation. (Testimony of Dir. McGraw, Deputy Arruda; Ex. A.A.-8E)
50. In Director McGraw’s incident report, he states that on or about Friday, April 15, 2011, at approximately 10:30 AM, he made a call to Ms. Angela Natho. When Ms. Natho asked Director McGraw “if [he] felt if the two people involved need to be placed on administrative leave, [he] replied that [he] did not think so at this time.” He also stated that Ms. Quintin would be out on medical leave and that Ms. Norcross “would then be working only with

another licensed paramedic and that any of the issues that have been concerns over that past few weeks would be nonexistent since nobody else in the department as [*sic*] an intermediate.” (Ex. A.A.-8E)

51. Director McGraw found it strange that Ms. Quintin was complaining that Ms. Norcross was not letting her do her skills, but then supposedly ordered Ms. Quintin to perform something that was beyond the scope of her skills. He thought it was “odd” for Ms. Quintin to claim she had been ordered to do something that was clearly outside her standard of care and Ms. Quintin’s statement “didn’t make sense.” (Testimony of Dir. McGraw)

52. During his investigation of the April 12, 2011 incident, Deputy Arruda reviewed the run report and the written incident reports of Ms. Norcross and Ms. Quintin. Deputy Arruda also listened to an audio recording of the call and requested that the Medical Director’s liaison review the hospital nurses’ notes. (Testimony of Deputy Arruda)

53. The run sheet for the cardiac arrest call, which took place on April 12, 2011, shows that, consistent with Ms. Norcross’s statements, she administered three doses of epinephrine administered via “O/S” after the patient was transported to the ambulance and Ms. Norcross had attached the O/S line. There is nothing in the run sheet that would indicate that epinephrine was ever administered to the patient through the endotracheal tube at any time. (Ex. A.A.-8D)

54. Neither the audio recording of the call nor the hospital nurses’ notes make any mention about epinephrine being administered via the patient’s endotracheal tube. (Testimony of Deputy Arruda; A.A.-8J)

55. As part of his investigation, Deputy Arruda also interviewed the two firefighters who were present during the April 12, 2011 incident and summarized the interviews in a memorandum dated April 21, 2011. (Testimony of Deputy Arruda; Ex. A.A.-8I)
56. Neither firefighter could recall observing Ms. Quintin administer epinephrine down the patient's endotracheal tube. Firefighter Horn stated that he did not hear any sort of disagreement or argument between Ms. Norcross and Ms. Quintin. Lieutenant Barriteau did not see Ms. Quintin give a drug down the endotracheal tube. (Ex. A.A.-8I)
57. Following his investigation, Deputy Arruda did not make a definitive conclusion as to whether Ms. Norcross ordered Ms. Quintin to administer epinephrine to a patient through the endotracheal tube. Deputy Arruda took Ms. Quintin "at her word" when she said he administered the medication to the patient through the endotracheal tube. (Exs. A.A.-8K, A.A.-8S; Testimony of Deputy Arruda)
58. Deputy Arruda recommended to Director McGraw that both Ms. Norcross and Ms. Quintin be terminated. Specifically, with regards to Ms. Norcross, Deputy Arruda stated: "I am of the opinion that this entire situation is the direct result of her continued bad and disruptive behavior towards her co-workers, in particular those of which she may view as 'subordinate' to her." (Testimony of Deputy Arruda; Ex. A.A.-8K)
59. In a letter dated April 26, 2011, Director McGraw informed Ms. Angela Natho, Director of Personnel, that he had decided to move forward with a termination/suspension hearing for both Ms. Norcross and Ms. Quintin, citing the "poor behaviors of both." (Ex. A.A.-8L)
60. By letter dated April 28, 2011, Director McGraw notified Ms. Norcross that he was contemplating her termination and suspending her immediately. In this letter, Director McGraw stated that while he anticipated Ms. Norcross' and Ms. Quintin's "full cooperation

going forward” that had not been the case. Director McGraw also stated that Ms. Norcross has “repeatedly been warned about [her] disruptive behavior towards co-workers.” Nevertheless, “coaching, anger management training, discipline and pronouncements that [her] workplace behavior must change have had little or no impact on [her].” Copies of G.L. c. 31, §§ 41-45 were also enclosed. (Ex. A.A. 8P)

61. Director McGraw conducted a hearing to consider Ms. Norcross’ termination on May 5, 2011. (Exs. A.A.-8P, A.A.-8Q; Testimony of Dir. McGraw)

62. In a letter dated May 9, 2011, Director McGraw informed Ms. Norcross that her employment with the City’s EMS was terminated. The letter stated the following reason for her termination:

“[Y]our attitude and actions toward a fellow employee caused your working relationship with her to be strained to the point that you were unable to properly supervise her as is your responsibility and resulted in a significant Patient care issue, which occurred on April 12, 2011.”

(Ex. A.A.-8Q)

63. OEMS conducted an investigation following Ms. Quintin’s allegations. The conclusion of the investigation report was “unable to be determined” and the investigation was closed on October 19, 2011. OEMS took no action against Ms. Norcross. (Ex. A.A.-8S)

64. As part of the changes to Statewide Treatment Protocols, the endotracheal tube was removed as a medication delivery route effective March 1, 2011. (Ex. A.A.-8O)

65. Ms. Norcross answered questions clearly and without hesitation. I found her to be a credible witness.

66. Captain Torrey, Deputy Arruda, and Director McGraw all answered questions in a straight-forward and consistent manner. I found their testimony to be credible.

CONCLUSION

A. Legal Standard

Pursuant to G.L. c. 31, § 43, a “person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission” The statute provides, in pertinent part:

If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee, by a preponderance of the evidence, establishes that said action was based upon harmful error in the application of the appointing authority’s procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform his position, said action shall not be sustained and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

G.L. c. 31, § 43.

An action is “justified” if it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” Cambridge v. Civil Serv. Comm’n, 43 Mass. App. Ct. 300, 304 (1997); Comm’rs of Civil Serv. v. Mun. Ct. of Bos., 359 Mass. 211, 214 (1971); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). The Commission determines justification for discipline by inquiring “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service.” School Comm. of Brockton v. Civil Serv. Comm’n, 43 Mass. App. Ct. 486, 488 (citing Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)).

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956).

While the Commission makes *de novo* findings of fact, "the Commission's task, however, is not to be accomplished on a wholly blank slate." Town of Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823 (2006). "Here, the Commission does not act without regard to the previous decision of the town, but rather decides whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.'" Id. (citing Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983)).

B. Analysis

Following the April 12, 2011 incident in which Ms. Quintin stated that Ms. Norcross ordered her to administer epinephrine through a patient's endotracheal tube, two investigations were conducted: one was performed by Deputy Arruda; the other was carried out by OEMS. The results of these investigations were unable to conclude that Ms. Norcross ordered Ms. Quintin to administer a medication down the endotracheal tube or that the patient received any medication via endotracheal tube at all.

I conclude that, as OEMS and the City had found, the preponderance of evidence infers that Ms. Quintin did not administer the medication to the patient as she said she did, but that this statement was a fabrication made in the heat of anger directed toward Ms. Norcross. My conclusion is based, in part, on the credible testimony provided by Ms. Norcross regarding the April 12, 2011 incident, the documentary records of the call (which, despite some scrivener's

errors, is largely consistent with the normal practice and more consistent with what Ms. Norcross said occurred than what Ms. Quintin later claimed) and the timing of Ms. Quintin's accusations, which occurred after an emotional and confrontational exchange between the two employees which was headed in a direction (a change of shift) that would be more unpleasant to Ms. Quintin than to Ms. Norcross. The allegation was made approximately two days after the incident allegedly occurred. Had Ms. Quintin been ordered to administer the medication to the patient, as she stated, this would have been a serious violation of the limit of her standard of care, and needed to be reported to the City *forthwith*. Ms. Quintin had been told only days earlier that she must report any problems with Ms. Norcross *immediately*.

Accordingly, I do not find that the City has met its burden to establish just cause to terminate Ms. Norcross for ordering a medication in violation of protocols, or for any other misconduct in supervising Ms. Quintin or providing patient care during the April 12, 2011 medical call. I do find, however, that, by contributing to the tension created in the training session on April 14, 2011, Ms. Norcross did fail to act in a professional manner towards her co-worker on this one occasion, after being specifically warned a week earlier. A paramedic's inability to work effectively with his or her partner is a relevant concern, especially in light of the serious nature of EMS work and even when there is no direct implication of a violation of treatment protocols or patient care. As a result, the City had just cause to discipline Ms. Norcross.

Having determined that discipline was warranted, the Commission must determine if the City was justified in the level of discipline imposed, which, in this case, was termination. As I conclude that Ms. Quintin's statement implicating Ms. Norcross were untrue, the charge of failure to supervise and create a patient care issue was not proved and does not support just

cause for any discipline. Ms. Norcross's behavior during the training session with Captain Torrey, during which Ms. Norcross was uncooperative and made derogatory comments about Ms. Quintin is the only incident of poor behavior that occurred after the City had closed its prior investigation of the charges and counter charges between the two employees. This blow-up involving the two women in the training room was the only evidence that Ms. Norcross had behaved badly since receiving the written "warning letter" from Ms. Natho on April 6, 2011. The evidence demonstrated that, but for that incident, those who had observed them saw no other recent signs of acrimony. In fact, immediately before and after the April 12, 2011, medical call, the preponderance of the evidence showed that Ms. Norcross and Ms. Quintin reported no issues. Ms. Norcross must be held accountable for the one lapse in her professional and respectful manner towards her coworker on the singular occasion in question, but her offense was not entirely of her own making and it does not implicate any violation of state treatment protocols or patient care. I conclude that it does not warrant her termination.

I have taken Ms. Norcross' prior disciplinary record from 2005 and 2008 into account as well. It is noteworthy that, despite full knowledge of Ms. Norcross' prior disciplinary record and the recent history between Ms. Norcross and Ms. Quintin, as of April 6, 2011, Ms. Natho saw no need for formal disciplinary action or separating the two women.

For these reasons and because the facts found by me differ materially from those relied upon by the City, the Commission hereby modifies Ms. Norcross' discipline from termination to a forty-five (45) day suspension. This penalty is intended to make it clear that in light of the nature of EMT work, the ability to work cooperatively in highly stressful and demanding situations requires an exemplary degree of professionalism and collegiality. I am convinced that this penalty will provide the impetus for Ms. Norcross' future good behavior but if that

does not prove to be the case, nothing would prevent the City from taking further disciplinary action.

For all of the above reasons, Ms. Norcross' appeal under Docket Number D1-11-169 is hereby *allowed in part*, subject to the Commission's modification of her discipline from termination to a forty-five (45) day suspension, and Ms. Norcross shall be restored to her position without further loss of pay or benefits.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on June 13, 2013.

A True Record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:

Jaime Kenny, Esq. (for the Appellant)

Jane Medeiros Friedman, Esq. (for the Respondent)