COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL PELTIER,
Appellant

v.

NEW BEDFORD SCHOOL DEP'T
Respondent

D1-13-270

Appearance for Appellant:

Phillip Brown, Esq.
Associate General Counsel
AFSCME Council 93
8 Beacon St, 7th Floor
Boston MA 02108

Appearance for Respondent:

Jane Medeiros Friedman, Esq.
First Assistant City Solicitor
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133 William Street
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Commissioner:

Paul M. Stein

CORRECTED DECISION

The Appellant, Michael Peltier, acting pursuant to G.L.c.31, §§ 41-43, duly appealed the decision of the New Bedford School Department, Appointing Authority (NBSD), terminating him from his position as a Junior Building Custodian. A full hearing was held at the UMASS School of Law in Dartmouth on March 25, 2014. The hearing was declared private. Fourteen (14) exhibits were entered into evidence at the hearing and a video disk (P.H.15) was received after the close of the hearing. The NBSD called two witnesses and the Appellant testified on his own behalf. The hearing was digitally recorded and copies were sent to the parties. Both parties submitted proposed decisions to the Commission.

FINDINGS OF FACT

Based upon the exhibits, the testimony of the witnesses (the Appellant; Al Oliveira, NBSD Director of Facilities; Ann M. Bradshaw, NBSD Assistant Superintendent, Human Resources) and reasonable inferences from the credible evidence, I make the following findings of fact:

1. The Appellant, Michael Peltier began employment with the NBSD in 1993 as a temporary Building Custodian and became permanent in or about 1996. He was terminated in 2002 for alleged misconduct and reinstated in July 2009. He was transferred to fill a vacancy at the Keith Middle School in October 2009, and held a tenured civil service position of Junior Custodian at that school, working the 3PM to 11PM shift until his termination in November 2013. (*Exhs.1, 2, 5[ID], 11 through 14; Testimony of Appellant & Bradshaw*)

2. Mr. Peltier successfully contested his 2002 termination in litigation and the parties stipulated that the circumstances of that termination and subsequent reinstatement with back pay were not relevant to the present discipline, save to explain his employment history. As to the 2009 transfer, there was no percipient evidence and the record was "not clear what [actually] happened." (*Colloquy with Counsel; Testimony of Appellant, Oliveira & Bradshaw*)

3. Mr. Peltier received satisfactory annual performance reviews throughout his employment, including the most recent four performance reviews by the Principal of the Keith Middle School from 2010 through 2013. (*Exh.12; Testimony of Appellant & Bradshaw*)

4. Mr. Peltier's prior discipline included a three-day suspension in 1997 for insubordination (calli[1]ng a school principal an "asshole") and a written reprimand in 1998 for failing to report an absence from work. After his reinstatement in 2009, Mr. Peltier had no further discipline until the incident involved in this appeal. (*Exhs. 3 & 4*)

[1] Mr. Peltier's 2002 discharge was the subject of two prior Commission decisions. Peltier v. New Bedford Public Schools, 17 MCSR 86 (2004), on remand, 20 MCSR 408 (2007).

5. Al Oliveira became the Director of Facilities for the NBSD in December 2012, a newly created position within the NBSD. His responsibility includes oversight of the maintenance at all 25 schools and supervision of approximately 110 maintenance and custodial employees.

6. Mr. Oliveira first met Mr. Peltier as part of a "walk through" of all facilities upon becoming the Director of Facilities. He also had interacted with Mr. Peltier on a few other occasions, including a subsequent meeting in or about January 2013 with the custodial staff about the lack of heat in the Keith Middle School. Mr. Peltier said he was the guy who the school had to pay "tons of money" and Mr. Oliveira acknowledged he knew, stating something to the effect: "So you are the notorious Mr. Peltier." (*Testimony of Appellant & Oliveira*)

7. Mr. Oliveira's last contact with Mr. Peltier occurred on September 18, 2013. Mr. Oliveira had tried to call Mr. Peltier's supervisor, Joe Aguiar, the Senior Custodian at the Keith Middle School, by telephone. It was Mr. Oliveira's intention to discuss an issue concerning the school's lawnmowers that Mr. Aguiar had reported at a School Committee meeting the day before to be in need of repair. Mr. Aguiar did not answer the call. After checking the records and learning that Mr. Aguiar had not received authorization to take the day off, Mr. Oliveira drove to the school to see if he could find Mr. Aguiar. (*Exh. 6b; Testimony of Oliveira*)

8. Mr. Oliveira arrived at Keith Middle School at about 3:30 PM. He located Mr. Peltier who was in the midst of mopping the floors of the school. Mr. Peltier informed Mr. Oliveira that Mr. Aguiar had called in sick. Mr. Oliveira then asked Mr. Peltier what he knew about the lawnmowers, to which Mr. Peltier stated: "They don't work" and that Mr. Aguiar had brought his own lawnmower from home. Mr. Oliveira disputed this statement because he had been told that Michael Medeiros had just fixed the school's three lawnmowers a week earlier. Mr. Peltier insisted that the lawnmowers were not working. (*Exh.6b; Testimony of Appellant & Oliveira*)

9. At this point in the conversation, Mr. Oliveira said: "Let's go. I'll show you that you have three [working] lawnmowers." Mr. Peltier said he was too busy to leave his post and walk over to the room near the gymnasium where the lawnmowers were kept, with Mr. Aguiar absent (leaving Mr. Peltier to cover the entire first floor) and the school was also one other custodian short, as Mr. Oliveira knew. Mr. Peltier told Mr. Oliveira he [Oliveira] knew where the lawnmowers were located. (*Testimony of Appellant, Oliveira & Bradshaw; Commission View*)

10. Mr. Oliveira had a master key to the room where the lawnmowers were located, as did the on-site plant engineer. (*Testimony of Appellant & Oliveira*)

11. When Mr. Oliveira told Mr. Peltier that he was giving him a direct order, Mr. Peltier agreed to comply. Mr. Peltier had been told by his union to get representation whenever he got into conflict with management for his own protection. As they proceeded down the hallway to where the lawnmowers were located, Mr. Peltier used his cell phone to place a call to his union vice president, but got no answer. He saw Mr. Oliveira "smirk" in reaction to Mr. Peltier's unsuccessful attempt to reach a union official. (*Exh. 6b; Testimony of Appellant & Oliveira*)

12. As they approached the gymnasium, Mr. Peltier pointed to the door to the room containing the lawnmowers, which was unlocked (ajar), and said he was going back to work. Mr. Peltier pointed a finger at Mr. Oliveira and said "if you [Oliveira] have any fucking problem with me" [pointing his finger back at himself], then "write me up", and Mr. Oliveira said: "Will do." Mr. Peltier immediately returned to his duties and completed his shift without further incident. Mr. Oliveira left the building, never checking the lawnmowers until a later time, claiming that Mr. Peltier had put him in fear of physical injury, and began immediately writing up a letter about the incident. (*Exh. 6b; Testimony of Appellant & Oliveira*)

13. The evidence did not establish what or when, in fact, any repairs had been made to the lawnmowers as Mr. Medeiros had told Mr. Oliveira, or whether one or more of them were still not working on September 18, 2013, as Mr. Aguiar had reported to the School Committee the day before. (*Testimony of Appellant & Oliveira*)

14. He did not then mention it, but Mr. Peltier had just had a tooth pulled and his wife was suffering from a serious illness that required a four-day hospital stay. (*Testimony of Appellant*)

15. On September 20, 2013, Mr. Oliveira submitted his letter with a cover letter to Ann M. Bradshaw, Assistant Superintendent, Human Resources. The cover letter stated:

> Mr. Mike Peltier . . .was placed at the Keith Middle School on an emergency basis, due to a physical altercation with the [AFSCME Council 93, Local 641] President. Upon reading [the enclosed] letter, you will find that the employee was in the process of trying to assault me. Had I not defused the situation, the employee would have tried to perform physical harm to me. Several years prior, to the above mentioned altercation with the Union President, the Principal of the Normandin Middle School wrote a letter to the Superintendent, stating that Mr. Peltier should be removed from his school, due to an altercation that occurred at the school. These three incidents are not the only altercations that this employee has had during his work hours.
>
> In my opinion, this employee must not be allowed to work for the New Bedford Public Schools, past the date of this letter. He is an unstable individual, with the ability to fly off the handle at any given time. Mr. Peltier should be placed on administrative level [sic], until a hearing is scheduled with the AFSCME Union and the School Department.

(*Exh. 6*)

16. Mr. Peltier was not placed on administrative leave, but, on October 3, 2013, Assistant Superintendent Bradshaw notified Mr. Peltier that she would conduct a hearing (on October 9, 2013) to investigate allegations that his conduct on September 18, 2013 was "insubordinate, threatening and unbecoming an employee", specifically, that he "refused to open a closet when directed to by Mr. Oliveira and swearing at him in a "loud, threatening manner" and "with your finger pointing in Mr. Oliveira's face" that put Mr. Oliveira in fear "that you were about to physically assault him." (*Exh. 7; Testimony of Bradshaw*)

17. At the October 9, 2013 hearing, information came to light that the school was equipped with video cameras through the building. Mr. Oliveira viewed the video for September 18, 2013. After doing so, he found that the cameras that would have captured the alleged physical confrontation (in the vicinity of the gymnasium where the lawnmowers were kept) had not been working. He reported to Ms. Bradshaw that he saw nothing material on the video tapes, and she did not view them. The non-functioning cameras still were awaiting repair at the time of the Commission hearing. (*Exh. 10; Testimony of Oliveira & Bradshaw*)

18. On November 25, 2013, Assistant Superintendent Bradshaw issued a letter to Mr. Peltier that recited, verbatim, the charges stated in her October 3, 2013 letter, and finding that he had engaged in such alleged conduct and that his "explanation was not credible". His employment was terminated effective immediately. This appeal duly ensued. (*Exhs. 9 & 11*)

19. A video disk was provided to the Commission that shows the views captured by the three working cameras for the period of approximately five minutes on September 18, 2013, from the time (3:31)[2] that Mr. Oliveira approaches Mr. Peltier while he is mopping the floors to their leaving together to walk over to the gymnasium where the room containing the lawnmowers is located (3:34) and then seeing Mr. Peltier returning to the area and resuming his duties (3:36). At the day of the Commission hearing, I also took a physical view of the material areas of the Keith Middle School premises. (*P.H. Exh. 15*)

20. I make the following findings based on my view of the school premises, along with the video from the three cameras that recorded a portion of the incident:

7:19:39 to 7:20:22 - Mr. Peltier moving trash (*Cafe N Frames 0-45; Cafe S Frames 0-63*)

7:29:16 to 7:31:32 - Mr. Peltier mopping floor (*Cafe S Frames 98-131;R153S Frames 32-86*)

[2] The camera time stamps are four (4) hours after real time, so 3:30 PM actually shows as a time stamp of 7:30 PM. The camera operates only when it detects motion in its range of view. (Per Commission view)

7:31:02 to 7:31:38 - Mr. Oliveira walking hall (*Cafe N Frames 46-65; Cafe S Frames 132-174; R153S Frames 88-122*)

7:31:40 to 7:32:15 - Mr. Oliveira spots Mr. Peltier mopping in room - converse while he stands in hallway (*R153S Frames 123-132*)

7:32:15 to 7:33:20 - Mr. Oliveira walks around hall while on cell phone – Mr. Peltier leaves room and continues mopping floors (*R153S Frames 133-250*)

7:33:20 to 7:33:37 - Mr. Oliveira and Mr. Peltier approach each other - meet in hallway about 10 feet apart – brief conversation – Mr. Peltier walks away down hall (*R153S Frames 251-263*)

7:33:37 to 7:33:42 - Mr. Oliveira walks after Mr. Peltier (*R153S Frames 263-270*)

7:34:25 to 7:34:55 - Mr. Oliveira and Mr. Peltier walking back toward camera side-by-side – turn corridor on way to gymnasium - Mr. Peltier making a cell phone call – Mr. Oliveira looking down hall (*R153S Frames 271-295; Cafe N Frames 65-99; Cafe S Frames 177-213*)

7:35:53 to 11:00:00 - Mr. Peltier returning from gymnasium and resuming custodial duties – tape ends at 7PM (*Cafe S Frames 215-1740; Cafe N Frames 100-1726; R153S Frames 297-616*)

(*P.H.Exh. 15*)

Applicable Law

Under G.L.c.31,§43, a tenured civil service employee aggrieved by a disciplinary decision of an appointing authority made pursuant to G.L.c.31,§41, may appeal to the Commission. The Commission has the duty to determine, under a "preponderance of the evidence" test, whether the appointing authority met its burden of proof that "there was just cause" for the action taken. G.L.c.31,§43. See, e.g., Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823, (2006); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct.473,477 (1995); Town of Watertown v. Arria, 16 Mass.App Ct. 331,334, rev.den.,390 Mass. 1102 (1983).

"Just cause" for discipline means "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of public service." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev.den., 426

Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983) An action is "justified" if "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." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928)

It is the purview of the hearing officer to determine the credibility of the testimony presented through the witnesses who appear before the Commission. See, e.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See also Covell v. Dep't of Social Services, 439 Mass. 766, 787 (2003); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997); Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988)

G.L.c.31, Section 43 also vests the Commission with "considerable discretion" to affirm, vacate or modify a penalty imposed by the appointing authority, albeit "not without bounds". E.g., Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594,600 (1996) and cases cited.

> "It is well to remember that the *power to modify 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 equitable treatment of similarly situated individuals. *It must be used to further, and not to frustrate, the purpose of civil service legislation, i.e., 'to protect efficient public employees from partisan political control' . . and 'the removal of those who have proved to be incompetent or unworthy to continue in the public service*'."

Id., 39 Mass.App.Ct. at 600. (*emphasis added*). See Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982) (remanded for findings to support modification). The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded to the appointing authority.' " Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796, 800 (2004) quoting Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996) (modification of 10-day suspension to 5 days unsupported by

material difference in facts or finding of political influence). Unless the Commission's findings of fact differ materially and significantly from those of the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to "substitute its judgment" for that of the appointing authority, and "cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation.". See, e.g., Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited (modification cannot be justified on minor, immaterial differences in findings by Commission and appointing authority); Commissioner of MDC v. Civil Service Comm'n, 13 Mass.App.Ct. 20 (1982) (discharge improperly modified to 20-month suspension); cf. School Committee v. Civil Service Comm'n, 43 Mass.App.Ct. 486, rev.den., 426 Mass. 1104 (1997) (upheld discharge modified to one-year suspension); Dedham v. Civil Service Comm'n 21 Mass.App.Ct. 904 (1985) (upheld discharge modified to 18-month suspension; Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102, (1983) (commission modification must be based on substantial evidence and supported by specific findings)

Analysis

The NBSD did not have just cause to terminate Mr. Peltier from his position as a Junior Custodian for the alleged misconduct on September 18, 2013 for which he was charged. Although Mr. Peltier's behavior on the occasion in question was inappropriate and rude, and warranted some progressive remedial discipline, the NBSD's mischaracterization of a relatively minor incident as flagrant insubordination and threatening physical harm toward a superior, and its improper reliance on other alleged prior misconduct that was not proved, requires that Mr. Peltier's termination must be rescinded and, in the exercise of the Commission's discretion, will be modified to a 10 day suspension.

First, the video cameras captured all but less than one minute of the five-minute incident involving Mr. Oliveira and Mr. Peltier on September 18, 2013. Based on my review of the video, my view of the Keith School premises, and the evidence presented at the Commission hearing, Mr. Peltier's version of events tends to match the video record more closely than does Mr. Oliveira's version. The video shows a very busy Mr. Peltier going about his duties until Mr. Oliveira tracks him down and speaks very briefly to him and, then, Mr. Oliveira has a one-minute cell phone conversation while Mr. Peltier immediately resumes his duties. I infer this interaction related to Mr. Oliveira's inquiries concerning the Senior Custodian's whereabouts. After finishing the one-minute cell phone conversation, Mr. Oliveira walks down the hallway toward Mr. Peltier, who approaches him. They speak, again, briefly, with Mr. Peltier holding his mop, about 10 feet apart, and Mr. Peltier turns away and resumes mopping the floor. I infer that was the conversation when Mr. Oliveira brings up the subject of the lawnmowers and Mr. Peltier tells Mr. Oliveira that he (Peltier) is very busy and Mr. Oliveira "knows where they are". Mr. Oliveira is seen walking down the hall toward Mr. Peltier when the camera shuts off. At no time during any of this encounter do I perceive an indication that either party is engaged in anything but normal conversation or doing anything offensive to the other.

When the camera turns back on about a minute later, it shows Mr. Oliveira and Mr. Peltier walking together back toward the hallway where they had previously engaged in their initial conversations. I infer that it was this interval, not on camera, when Mr. Oliveira called out to Mr. Peltier and made it clear that he was being "ordered" to walk with him to see the lawnmowers, causing Mr. Peltier to leave his mop and follow Mr. Oliveira's order. Their travel is also picked up by two other cameras as they make their way toward the gymnasium. The cameras show Mr. Peltier making a cell phone call (his attempt to reach his union representative)

as both men walk side-by-side down the hallway. Mr. Oliveira shows no signs of apprehension. Mr. Peltier is fully engaged in the phone call. When the men leave camera view, Mr. Peltier is still on the phone. They are still many feet away from the gymnasium.

Mr. Peltier next appears on the video, less than a minute later, walking alone in the opposite direction and resumes his custodial duties. The alleged abusive conversation and threat of physical harm that Mr. Oliveira claims led him to believe that Mr. Peltier was about to "blow" and assault him would have to have occurred within this short time span. Given the distance to the area of the gymnasium where the lawnmower room was located (the far side from the entrance at the hallway), and Mr. Peltier's credible testimony that he noticed that the door to that room was ajar, the altercation, if any, could have lasted only seconds. While I do not totally discount Mr. Oliveira's testimony that some vulgarity was used, I do not credit Mr. Oliveira's recollection that Mr. Peltier's demeanor during that time frame was any different from how he appears on all the other video. I credit Mr. Peltier's testimony that he voiced his disgust at being called away from his work, short staffed and under personal stress, and his use of finger-pointing (first pointing to Oliveira then to himself) while stating "<u>you</u> have a problem with <u>me</u>?" simply proves that Mr. Peltier was feeling just as upset and pressured by what he perceived as Mr. Oliveira's disruption of his busy work schedule as Mr. Oliveira was disgusted with Mr. Peltier trying to raise the issue to the level of a union grievance. Mr. Peltier never raised his hand or otherwise gestured in any manner that could reasonably be construed as a threat of physical harm. He immediately returned to his duties showing no sign of any anger by his pace, his body language or otherwise. I find no basis in the evidence to believe that Mr. Peltier intended to cause Mr. Oliveira physical harm or that Mr. Oliveira was ever at risk of any physical harm.

Second, in giving more weight to the testimony of Mr. Peltier than Mr. Oliveira that the confrontation did not rise beyond the level of a very brief verbal exchange, I take into account the credibility and demeanor of each witness during their testimony. Mr. Peltier was more low-key, less articulate and less precise in certain of his recollections, but, in general, persuaded me that he was speaking as accurately as he could recall the events. I do find that he did use the "f" word but, otherwise, his testimony on the important, material facts, was responsive and rang true. His lack of specific recall as to some of the ancillary events preceding and following September 18, 2013 did not impeach his credibility on the core facts in question, but actually reinforced his intention to be as truthful as he could. In particular, I do not find it plausible that Mr. Peltier - whose first reaction to being asked to do something he did not want to do was to reach out for assistance of a union representative, as he testified he had been instructed to do - would then suddenly, and without provocation, do something that put himself in a position of having to defend himself against a claim that he threatened a manager. On the other hand, I found Mr. Oliveira far more set on providing self-serving, and often non-responsive, justification for his actions and his opinions, and he failed to convince me that the facts supported his opinions. In sum, even without the video to corroborate the conclusion, the preponderance of evidence establishes that Mr. Peltier never took any actions that could be construed as a threat of workplace violence. Although I find that Mr. Oliveira and Assistant Principal Bradshaw sincerely, and correctly, believe that workplace violence cannot be tolerated in the NBSD, the contention that Mr. Peltier's behavior rose to such a level in this case was not proved.

Third, Mr. Peltier's fate was sealed by improper use of unsubstantiated claims that he had been involved in numerous "altercations" and was an "unstable individual" who could "fly off the handle at any given time". These claims were based on uncorroborated hearsay attributed to

third-parties by Mr. Oliveira and Assistant Superintendent Bradshaw about incidents that had occurred long before they were employed by the NBSD. Only one incident (in 1997) was actually documented and resulted in discipline (for calling his principal an "asshole"). Otherwise, the assertions are pure speculation. In particular, Ms. Bradshaw admitted that the reason for the transfer in 2009 due to an altercation with his union president, was not "clear", and the documents suggest conflicting versions of events. In any event, no discipline resulted from that "altercation" and, until the September 18, 2013, Mr. Peltier had maintained a clean disciplinary record and satisfactory employment reviews. Mr. Oliveira's September 20, 2014 letter to Assistant Superintendent Bradshaw demonstrates how the unsubstantiated assertions about these and "other" unspecified alleged "altercations that [Mr. Peltier] has had during his work hours" unfairly tainted the NBSD's perceptions, assessment and disciplinary disposition of the September 18, 2013 incident.

Fourth, since the facts found here differ significantly from those relied upon by the NBSD, a modification of the penalty is warranted. After carefully considering all of the evidence in this matter, I conclude that, while NBSD did not have just cause to terminate Mr. Peltier from employment, his dismissive and rude behavior toward Mr. Oliveira warrants some remedial discipline. Indeed, Mr. Peltier, by his own admission at the time, acknowledged that he was skirting on thin ice with Mr. Oliveira, and was prepared to risk discipline for choosing to put his own work ahead of Mr. Oliveira's requirements. The Commission has serious concern that Mr. Peltier has truly learned to regulate his future interaction with his superiors and that any further rude and vulgar behavior cannot be tolerated. Although, here, the facts did not justify termination, I conclude that a suspension of thirty (30) days be imposed as remedial discipline to emphasis how important his good behavior will be to his continued employment with NBSD.

CONCLUSION

For the reasons stated herein, the appeal of the Appellant, Michael Peltier, filed under Docket No. D-13-209 is hereby ***allowed in part.*** His termination is modified to a suspension of ***thirty (30)*** days and, otherwise, Mr. Peltier shall be reinstated to his position as Junior Custodian without further loss of compensation or benefits.

Civil Service Commission

/s/ *Paul M. Stein*

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell & Stein, Commissioners) on January 22, 2015.

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

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

Notice to:
Philip Brown, Esq. (for Appellant)
Jane Medeiros Friedman, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
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2293

MICHAEL PELTIER,
Appellant

v.

D1-13-270

NEW BEDFORD SCHOOL DEP'T
Respondent

CONCURRING OPINION OF CHRISTOPHER BOWMAN

Deferring to the findings of Commissioner Stein that Mr. Peltier's remarks to Mr. Oliveira were not made in a threatening manner, the crux of the School Department's case, I concur with the conclusion that termination is not warranted here.

I do so, however, with great reservation given Mr. Peltier's history which includes:

- Calling a school principal an "asshole";
- Bringing an unsanitary animal hide into a school building and performing taxidermy;
- Failing to report that he "found" a master key to a school building and not turning it in;
- Initially refusing a reasonable request from a manager and then asking him if he had a "fucking problem" with him.

The record here suggests that Mr. Peltier viewed his prior litigation before the Commission as a vindication of any wrongdoing on his part, which he apparently boasts about to his superiors. Viewing this most recent decision in the same light would be a mistake. While not explicitly stated here, this decision, in my view, effectively puts Mr. Peltier on the same footing as someone under a last chance agreement in which any further misconduct is likely to justify a swift termination of his employment from the School Department.

/s/ Christopher C. Bowman