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APPEALS COURT

COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION

14-P-1124

TOWN OF MAYNARD

VS.

TONY REGO & another.<sup>1</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Tony Rego, a former patrolman with the Maynard police department, appeals from a judgment of the Superior Court reversing a Civil Service Commission (commission) decision finding that he was wrongfully terminated. We affirm.

1. Background. The administrative record establishes the following undisputed facts. The Maynard police department (department) hired Rego in November, 2005. In late 2010, the chief of police noticed that the focus of certain "pan, tilt, and zoom" cameras (PTZ cameras)<sup>2</sup> were being moved from their preset locations. As a result, on December 16, 2010, the second

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<sup>1</sup> Massachusetts Civil Service Commission.

<sup>2</sup> The PTZ cameras are located at the front and back of the police station. They can be manually adjusted, with a joystick, to zoom in and out, look up and down, and left and right. The joysticks are located in four areas of the police station: dispatch, the technical room, the chief's office, and the lieutenant's office. Movement of the PTZ cameras are visible on monitors at each of those locations.

in command at the station, Lieutenant James Dawson, sent an order via electronic mail message (e-mail) to the department stating: "Per Chief Corcoran no one is [to] move or change the location of the front and rear pan, tilt, zoom (PTZ) cameras from the controls at dispatch. They are to remain in the preset viewing areas. Supervisors please cover at roll call." Sergeant Thomas Neufell sent an e-mail to the chief and the Maynard town manager expressing his belief that the order created a safety issue. The order was not rescinded. Nevertheless, certain officers continued to move the PTZ cameras.

On February 2, 2011, the chief ordered an internal investigation of suspected violations of the order. As part of the investigation, Rego was ordered to meet with Dawson and another officer. Having received notice of the meeting only shortly before it was to begin, Rego disobeyed direct orders to enter the conference room and be seated. A loud, verbal altercation ensued during which Rego waved a union rights card<sup>3</sup> and refused to participate in the meeting. The chief learned of these events and placed Rego on paid administrative leave.

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<sup>3</sup> See National Labor Relations Bd. v. J. Weingarten, Inc., 420 U.S. 251 (1975) (holding an employee is entitled to the presence of a union representative at an investigatory interview that the employee reasonably believes might result in disciplinary action).

The internal investigation revealed the following facts. Rego moved the PTZ cameras approximately nine times after issuance of the special order. He also made a videotape recording (video), on his personal cellular telephone, of the PTZ camera monitor in the dispatch area displaying a woman in the police department parking lot. Claiming that the chief had directed the PTZ camera at the woman from the controls in his office, Rego shared the video with the town manager, family, and close friends. Rego also told the town manager that a female town employee was "scared" that she was being watched. In fact, the town employee had no concerns about the cameras, and never told Rego that she did.

By letter dated April 20, 2011, the chief informed Rego that he would be the subject of a disciplinary hearing for the violation of several departmental rules and regulations. Specifically, the chief cited Rego's violation of an order, lack of truthfulness, improper dissemination of official information, and improper communication with local officials, all in relation to his behavior concerning the PTZ cameras. The chief also charged Rego with insubordination based on his behavior at the investigatory meeting. On June 27, 2011, by unanimous vote, the town of Maynard (town), as the appointing authority, terminated Rego's employment with the department.

Rego appealed his termination to the commission. Following a de novo hearing, it issued a decision finding that, apart from the insubordination charge, there was just cause to discipline Rego for violations of departmental rules and regulations related to the movement of the PTZ cameras. On the insubordination charge, the commission found insufficient cause to discipline Rego because, in its opinion, the investigating officers should have terminated the meeting as soon as Rego attempted to assert his right to union representation.

The commission also found that Rego had a history of previous discipline. On two prior occasions, the town had suspended Rego for five days for violations of departmental rules and regulations. Rego entered into settlement agreements with the town as to each of those incidents in exchange for his withdrawal of pending appeals to the commission. As a result, following a certain period of good behavior, one suspension was reduced to a written reprimand and the other was removed from his personnel file. He did not receive back pay as a result of either settlement.

The commission found little useful evidence of discipline at the station comparable to Rego's termination. While two other officers received written reprimands for moving the PTZ cameras after the special order was announced, no other officer had subjected the department to public ridicule and

embarrassment in the manner Rego had. The commission further found the town had never before terminated a police officer, and that the most significant prior discipline was a five-day suspension of an officer for yelling at individuals while responding to a domestic violence call.

Taking into account Rego's behavior and prior discipline, but having found no precedent for terminating a police officer for analogous conduct, the commission concluded that "considerable discipline" was warranted but that termination was not. It accordingly modified the town's termination decision to an unpaid suspension beginning June 28, 2011, and ending April 30, 2013.<sup>4</sup>

The town sought judicial review of the commission's decision pursuant to G. L. c. 30A, § 14. Upon review, the judge concluded that the commission had wrongly substituted its judgment for that of the appointing authority, and ordered the commission to reinstate the town's termination of Rego's employment. This appeal followed.

2. Discussion. A tenured civil service employee who is aggrieved by a disciplinary decision of an appointing authority may appeal to the commission. See G. L. c. 31, § 41. After finding facts anew, the commission then must determine, by a

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<sup>4</sup> Two of five members of the commission dissented from the majority's decision.

preponderance of the evidence, whether the appointing authority met its burden of proof that there was just cause for the action taken. See Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 260 (2001); Falmouth v. Civil Serv. Commn., 447 Mass. 814, 823 (2006).

"The commission's task, however, is not to be accomplished on a wholly blank slate." Ibid. Rather, "[i]ts role is to 'decide[ ] 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.'" Beverly v. Civil Serv. Commn., 78 Mass. App. Ct. 182, 187 (2010), quoting from Falmouth, supra at 824. In other words, the commission is tasked with the relatively narrow job of "reviewing the legitimacy and reasonableness of the appointing authority's actions." Id. at 188, quoting from Falmouth, supra. Where the discipline of a police officer is at issue, "[u]nless the commission's findings of fact differ significantly from those reported by the town or interpret the relevant law in a substantially different way, the absence of political considerations, favoritism, or bias would warrant essentially the same penalty. The commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate

explanation." Falmouth, supra, citing Police Commr. of Boston v. Civil Serv. Commn., 39 Mass. App. Ct. 594, 600 (1996).

In this case, the judge aptly noted that "if misconduct is sufficiently serious to warrant the suspension of a police officer in a small police department for close to two years, ipso facto, it is sufficiently serious to warrant termination." We agree that, where, as here, the operative facts were essentially the same, the commission erred in modifying the penalty imposed. On appeal, Rego argues that the commission's findings as to his prior discipline, the comparative discipline of other officers, and the insubordination charge support its modification of termination to suspension. We address each point in turn.

a. Prior discipline. Rego argues that the town wrongfully maintained the position that Rego's prior discipline consisted of two suspensions, not written reprimands. He argues that the town took such a position because Rego did not receive back pay for the two prior incidents. Rego claims the commission's findings differ from the town's representations on this point.

The record does not support this claim. The administrative record includes a letter from the chief to Rego detailing his violation of departmental rules and regulations, and a stipulation that a disciplinary hearing was conducted, at which Rego was represented by union counsel. Following a hearing, the

town voted unanimously to terminate Rego's employment. There is nothing further in the record detailing the town's reasoning and rationale in terminating Rego, much less any factual support for Rego's claim that the town terminated him, in part, due to a prior record of two suspensions. In its decision, the commission details Rego's history of prior discipline, including the settlement agreements, but is silent about the town's use of that history in terminating Rego's employment. In short, there can be no "significant difference" in the commission's findings from the town's view of the prior discipline where the record is devoid of findings on the issue.

b. Comparative discipline. Rego next argues that the commission found favoritism or bias on the part of the town due to its failure to more severely sanction the other officers who had moved the PTZ cameras. The claim misconstrues the record. First, the commission's decision makes no overt mention of favoritism or bias, and no such finding can be inferred from the facts or legal conclusions contained therein. Second, the commission explicitly found that, by publishing the video to friends and family, Rego's behavior "merit[ed] further discipline," as compared to the other officers, for subjecting the department to public ridicule.

c. Insubordination. Any difference between the town's and the commission's findings as to the insubordination charge



likewise did not support the commission's reduction of the penalty. The behavior underlying that charge involved a single incident that was minor in comparison to the other conduct at issue, about which the commission and the town were in agreement; namely, Rego's moving the PTZ cameras in violation of a direct order, subsequently sharing a video recording of the PTZ monitor in order to inculcate the chief, and lying about whether an individual was concerned about being watched. Thus, on the majority, and most egregious, of the violations at issue there was no significant difference in view or legal interpretation as to the facts before the town and those as found by the commission. Under those circumstances, as noted, "[t]he commission is not free to modify the penalty imposed by the town on the basis of essentially similar fact finding without an adequate explanation." Falmouth, 447 Mass. at 824 (reversing commission's reduction of police officer's suspension where, on the basis of similar fact finding, town's action was reasonable).

3. Conclusion. Because the commission exceeded its authority in reducing the discipline imposed, the judge properly allowed the town's motion for judgment on the pleadings, thereby

reinstating the termination of Rego's employment.

Judgment affirmed.

By the Court (Kantrowitz,  
Blake & Massing, JJ.<sup>5</sup>),

Clerk

Entered: June 29, 2015.

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<sup>5</sup> The panelists are listed in order of seniority.