

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2384CV01229

RECEIVED

RAFAEL A. ROCA

vs.

Notice sent
9/12/24
BA(3)

SEP 16 2024

MA OFF. of Attorney General
Administrative Law DivisionCIVIL SERVICE COMMISSION
and CITY OF HOLYOKE**MEMORANDUM OF DECISION AND ORDER ON PARTIES'**
CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

The plaintiff, Rafael A. Roca ("Roca"), seeks review, pursuant to G.L. c. 30A, § 14 and G.L. c. 31, § 44, of a decision by the defendant, the Civil Service Commission ("Commission"), to affirm the defendant's, the City of Holyoke ("City"), decision to terminate his employment as a police officer in the Holyoke Police Department ("HPD"). Before the court are the parties' cross Motions for Judgment on the Pleadings. For the reasons discussed below, Roca's Motion for Judgment on the Pleadings is **DENIED**, the City's and the Commission's Motions for Judgment on the Pleadings are **ALLOWED**, and the Commission's decision is **AFFIRMED**.

BACKGROUND

Roca, who identifies as Black and Hispanic, received a permanent appointment as a fulltime police officer in the HPD on October 16, 2015.

On March 7, 2021, Roca posted a forty-three minute video on his YouTube channel, in which he identified himself as a Holyoke police officer who was exposing "the corruption, and the lies, and the injustice" within the HPD. He then made numerous statements alleging corruption and racism in the HPD. For example, Roca stated that then-Chief of Police, Manuel Febo ("Febo"), was an "overall, dirty police officer," "covered up crime within" the HPD, and

“protected his friends.” He also claimed that Febo had covered up prior incidents of officers losing weapons. He further claimed that the HPD covered up an incident in which an officer “assaulted people with [his] boat.” Roca also made general allegations that his supervisors “have lied on the stand,” and that his that fellow officers “like to beat their wives,” have been “involved in drunk driving incidents,” and have “stolen money.” Roca claimed that he had tried to speak with his supervisors, his union, and the press about his concerns, but he was ignored or punished for speaking out. Several of Roca’s allegations related to perceived injustices against him, such as being accused of being a liar, and interference with his career, such as Febo “sabotog[ing]” Roca’s attempts to transfer to another police department or ordering him to attend remedial training on how to apply a tourniquet.

That same day, Febo ordered Roca to remove the video. Roca refused. Thereafter, Roca participated in several interviews with news outlets about his allegations. He specifically told some news outlets that he had disobeyed an order to remove the video.

The HPD placed Roca on administrative leave on March 8, 2021. On April 8, 2021, the HPD issued a Disciplinary Action Notice to Roca which advised him that his conduct violated the rules of the HPD, including those that require police officers to obey lawful orders from superior officers and those that prohibit conduct unbecoming an officer, criticism of the HPD, and the use of social media without permission from the HPD.

As a result of Roca’s YouTube video and subsequent media interviews, the HPD had to respond to numerous complaints, accusations, and threats. The HPD also had to divert staffing and resources, including one time when the HPD dispatched officers to the Hampden County Juvenile Court for reports that a group of individuals was being disruptive. When officers arrived, individuals from this group yelled “Roca was right.”

Thereafter, the HPD conducted an internal review of Roca's allegations and determined that they were false or unfounded. In addition, many other agencies, including the FBI, the Massachusetts Attorney General's Office, and the Hampden County's District Attorney's Office investigated various aspects of Roca's allegations. After conducting their respective investigations, none of these agencies took further action.

On November 10, 2021, the City terminated Roca. On November 18, 2021, Roca appealed his termination to the Commission.

On March 24, 2023, the Commission issued a Tentative Decision, in which it recommended that the Commission deny Roca's appeal, citing that he was "discharged after refusing a direct order to remove a lengthy YouTube video he posted in which he made unsupported allegations, accusing fellow police officers of committing crimes and other misconduct." The Commission determined that "[t]he extensive disruptions caused by [Roca's] often reckless and sometimes spurious accusations stripped his statements of First Amendment protection." The Commission noted that Roca had offered no direct evidence corroborating his claims. Instead, Roca argued that the statements he made in the YouTube video and subsequent media interviews were protected by the First Amendment and thus could not form the basis for disciplinary action.

On May 18, 2023, the Commission denied Roca's appeal. The Commission stated, in relevant part, that it:

[C]oncur[ed] that [Roca's] actions in publicly broadcasting a 43-minute video replete with unsupported statements about fellow police officers and subsequent media interviews conducted in defiance of police department policy, as well as a direct order from a superior officer, were not protected activities insulating him from discipline under the First Amendment.

[Roca's] objections focus heavily on an assertion that [he], in his video and media statements, was commenting on matters of public concern, despite the fact that the

Presiding Officer explicitly conceded that many (though not all) of his statements could be viewed as directed toward matters of public concern. There is no question that public comments about, for example, an alleged lack of minority representation in the more desirable positions within the Department are protected by the First Amendment. Here [Roca], however, went beyond that in making wholly unfounded accusations in his YouTube video that fellow police officers had committed crimes such as stealing money, 'beat[ing] their wives,' and committing perjury on the witness stand. Publicly referring to the Police Chief, without some proof of misconduct, as 'just an overall dirty police officer' is obviously detrimental to the ability of a paramilitary organization to function effectively.

The Commission acknowledged that Roca "most often was speaking as a citizen upon matters of public concern," however, Roca's "actions both threatened and did harm the [HPD's] interests in efficient and effective policing and so discharge was an appropriate response under these circumstances."

On May 26, 2023, Roca appealed the Commission's decision to this court.

DISCUSSION

Pursuant to G.L. c. 31, § 44, "[a]ny party aggrieved by a final order or decision of the commission following a hearing pursuant to any section of this chapter or chapter thirty-one A may institute proceedings for judicial review in the superior court within thirty days after receipt of such order or decision." Review of the Commission's decision in the Superior Court is conducted under the highly deferential standards set forth in G.L. c. 30A, § 14, to determine whether it is supported by substantial evidence, G.L. c. 30A, § 14 (7)(e), and whether the decision is arbitrary, capricious, or otherwise not in accordance with the law, G.L. c. 30A, § 14 (7)(g). As the one appealing the Commission's decision, Roca bears the heavy burden of establishing that the decision is invalid. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 242 (2006); *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 263-264 (2001). The court gives "due weight to the experience, technical competence, and specialized knowledge" of the Commission in deciding these matters. G.L. c. 30A, § 14 (7).

Further, the court's review "is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom." *Brackett*, 447 Mass. at 242.

Roca primarily contends, as he has throughout the process, that notwithstanding his employment as a sworn police officer for the HPD, his statements about his department and fellow officers and superiors are all protected by the First Amendment and that the Commission's conclusion that his comments do not fall within his First Amendment rights constitute an error of law. The court disagrees.

While it is true, that public employees cannot "be compelled to relinquish the First Amendment rights they would otherwise enjoy as citizens to comment on matters of public interest," *Pickering v. Board of Educ.*, 391 U.S. 563, 568 (1968), the contours of a public employee's "free speech" rights are fettered in certain circumstances. The public policy underlying this principle requires the court to conduct a balancing test. On the one hand is the recognition that "public employees are often the members of the community who are likely to have informed opinions as to the operations of their public employers." *San Diego v. Roe*, 543 U.S. 77, 82 (2004) (per curiam). Nonetheless, a citizen who accepts public employment "must accept certain limitations on his or her freedom." *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006). Government employers enjoy considerable discretion to manage their operations, as other employers do, and the First Amendment "does not require a public office to be run as a roundtable for employee complaints over internal office affairs." *Connick v. Myers*, 461 U.S. 138, 149 (1983). In practice, the employee's right to speak out about matters of public concern must be balanced against the public employer's ability to manage its office and effectively operate and successfully perform its public mission.

To conduct this analysis, the court examines claimed violations of First Amendment rights under a three-part test. See *Decotiis v. Whittemore*, 635 F.3d 22, 29 (1st Cir. 2011). First, the court determines whether the employee spoke “as a citizen upon matters of public concern.” *Connick*, 461 U.S. at 147. If so, then “the possibility of a First Amendment claim arises.” *Garcetti*, 547 U.S. at 418. Second, under what is known as the *Pickering* balancing test, the court balances “the interests [of the employee] in commenting upon matters of public concern and the interest of the [government], as an employer, in promoting the efficiency of the public services it performs through its employees.” *Pickering*, 391 U.S. at 568. See *Decotiis*, 635 F.3d at 35 (quotations and citation omitted) (*Pickering* test attempts to “balance the value of an employee’s speech — both the employee’s own interests and the public’s interest in the information the employee seeks to impart — against the employer’s legitimate government interest in preventing unnecessary disruptions and inefficiencies in carrying out its public service mission”). Third, the employee must “show that the protected expression was a substantial or motivating factor in the adverse employment decision.” *Decotiis*, 635 F.3d at 29 (quotations and citation omitted). Regardless, “the employer may still escape liability if it can show that it would have reached the same decision even absent the protected conduct.” *Id.* at 29-20 (quotations and citation omitted).

Here, the court assumes, as the Commission did, that Roca spoke upon matters of public concern. Additionally, although not addressed by the parties, the court assumes, for the purpose of this motion, that Roca can show that his comments in the YouTube video and his subsequent media interviews were a substantial motivating factor in his termination and that the HPD would

not have reached the same decision to terminate him absent those comments.¹ Thus, this case turns on the *Pickering* balancing test.

The court first considers the interests of Roca in commenting upon matters of public concern involving his employer, the HPD; specifically, his comments concerning corruption, dereliction of duty, and lack of integrity by its officers and superiors. However, many of Roca's statements were also motivated by self-interest as he frequently claimed that the HPD was interfering with his career or committing injustices against him. "[I]nsofar as self-interest is found to have motivated public-employee speech, the employee's expression is entitled to less weight in the *Pickering* balance than speech on matters of public concern intended to serve the public interest." *O'Connor v. Steeves*, 994 F.2d 905, 915 (1st Cir. 1993). Moreover, the court must also factor that many of Roca's claims that might have otherwise been in the public's interest, claims such as that officers committed perjury, stole money, or beat their wives, were in fact false and baseless accusations. See *Decotiis*, 635 F.3d at 35 (on employee's side of balance, court considers public's interest in information employee seeks to impart). Roca failed to support his serious accusations about the HPD. Significantly, neither the HPD nor any of the independent agencies, including the FBI and the Commonwealth's Attorney General, that investigated his claims and accusations took any action after concluding their investigations. If true, the public would undoubtedly have an interest in Roca's disclosures; however, false information of this nature is of no use to the public, and at worse, groundless accusations undermines public confidence in the HPD. On balance, Roca's interest in making false and unfounded claims is minimal. See *Condez v. Civil Serv. Comm'n*, 2019 Mass. App. Unpub. LEXIS 443 *16 (2019) (employee's interests in making false and defamatory statements, with at

¹ Although the court notes that Roca's disobedience of a direct order was also a substantial motivating factor in his termination.

least reckless disregard for their truth, if not knowledge of their falsity, were minimal). Overall, considering the nature of the claims made by Roca, his interests in making these statements are slight.

The court must next assess the HPD's interests as Roca's employer. When evaluating the government's interest in regulating employee speech, the court considers "the government's interest in the effective and efficient fulfillment of its responsibilities to the public" and its "legitimate purpose" in promoting "efficiency and integrity in the discharge of official duties" and "proper discipline in the public service." *Connick*, 461 U.S. at 150-151. In addition, "a police department has a more significant interest than the typical government employer in regulating the speech activities of its employees in order to promote efficiency, foster loyalty and obedience to superior officers, maintain morale, and instill public confidence." *Wagner v. Holyoke*, 241 F. Supp. 2d 78, 92-93 (D. Mass. 2003) (quotations and citations omitted) (law enforcement agencies, as para-military organizations, have been recognized as qualitatively different from other governmental branches, and its employees are subject to greater First Amendment restraints than most other citizens). See *Guilloty Perez v. Pierluisi*, 339 F.3d 43, 53 (1st Cir. 2003) ("The importance of discipline, maintenance of harmony among co-workers, and close working relationships requiring personal loyalty and confidence is greater in the context of a law enforcement agency ... than it might be in another type of government agency."). Thus, courts must be sensitive to the needs of law enforcement agencies in disciplining an employee whose expressive conduct interferes with these interests. See *Guilloty Perez*, 339 F.3d at 53-54.

Roca contends that because the City did not show that his statements caused the HPD "actual or threatened disruption" it cannot justify its limitation of his First Amendment rights. The court disagrees. First, there is evidence in the record that Roca's statements actually

disrupted the HPD's operations. Not only did the HPD have to divert officers to the Hampden County Juvenile Court on one occasion, but it invested time and resources to internally investigate Roca's largely unfounded allegations, resulting in the distraction of those involved from their normal duties. In addition, Roca's allegations subjected the HPD to federal, state, and local inquiry.

Further, an employer need not show an actual adverse effect in order to terminate an employee. *Curran v. Cousins*, 509 F.3d 36, 49 (1st Cir. 2007). Indeed, courts "consistently give greater deference to government predictions of harm used to justify restriction of employee speech than to predictions of harm used to justify restrictions on the speech of the public at large. Few of the examples ... involve tangible, present interference with the agency's operation. The danger in them is mostly speculative." *Waters v. Churchill*, 511 U.S. 661, 673 (1994). See also *Curran*, 509 F.3d at 50 (courts must provide greater deference to police department's assessments of risk of disruption). Roca made numerous statements that were detrimental to the reputation of the HPD within the community it serves. His accusations of corruption and criminal activity had the potential to lower the public's estimation of the HPD in the eyes of city residents, significantly undermine the public's trust in the HPD, impair the proper function of the HPD, and interfere with the HPD's operations. See *Rowe v. Civil Serv. Comm'n*, 2023 Mass. App. Unpub. LEXIS 544 *5 (2023); *Condez*, 2019 Mass. App. Unpub. LEXIS 443 at 16 (government has strong interest in protecting integrity of its law enforcement officers against baseless accusations that they are menaces to society). His claims also had the potential to "impede harmony among co-workers" and have a "detrimental impact on those with whom he must maintain personal loyalty and confidence for the fulfillment of his job responsibilities." *MacDonough v. Board of Directors Hous. Fin. Agency*, 28 Mass. App. Ct.

538, 544 (1990). Finally, Roca disobeyed a direct order to remove the video and then publicly acknowledged his disobedience. His actions had a real and substantial potential to undermine his superiors and the HPD as a whole. The HPD, like all law enforcement agencies, has a strong interest in maintaining the obedience and loyalty of its police officers, and in maintaining proper discipline among its employees. See *McGunigle v. Quincy*, 132 F. Supp. 3d 155, 172-173 (D. Mass. 2015).

Balancing the relatively weak interests of Roca in his largely false statements about his employer against the strong interests of the HPD in maintaining obedience, loyalty, discipline, and the public's confidence in it, the *Pickering* balance must be struck in favor of the HPD. Thus, the First Amendment does not bar Roca's discharge based on his statements on YouTube and to the media. As Roca has not met his heavy burden of establishing that the Commission's decision is invalid, the court affirms the decision.²

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Roca's Motion for Judgment on the Pleadings is **DENIED**, the City's and the Commission's Motions for Judgment on the Pleadings are **ALLOWED**, and the Commission's decision is **AFFIRMED**.

/s/Rosemary Connolly

Rosemary Connolly

Associate Justice of the Superior Court

DATED: September 11, 2024

² Roca also challenges certain factual determinations made by the Commission and argues that the Commission's decision was not supported by substantial evidence. All Roca's challenges are either to immaterial facts (like the date of Roca's appointment to HPD) or amount to a disagreement with the Commission's fact-finding and credibility determinations. As stated earlier, the court's review "is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom." *Brackett*, 447 Mass. at 242. See also *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 729 (2003) (court is "bound to accept the findings of fact of the commission's hearing officer, if supported by substantial evidence"). There was substantial evidence supporting the Commission's decision.