

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

One Ashburton Place, Room 503

Boston, MA 02108

(617) 979-1900

TIMOTHY SHEA,
Appellant

v.

D1-20-151

CITY OF BOSTON,
Respondent

Appearance for Appellant:

Joseph G. Donnellan, Esq.
Rogal & Donnellan, P.C.
100 River Ridge Drive Suite 202
Norwood, MA 02062

Appearance for Respondent:

Kate Kleimola, Esq.¹
Office of Labor Relations
City of Boston
Boston City Hall, Room 624
Boston, MA 02201

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Appellant has shown, by a preponderance of the evidence, that the City failed to follow the requirements of the civil service law before terminating his employment and that his rights were prejudiced by the City's failure to follow those requirements. Therefore, he must be restored to his permanent civil service position of Senior Computer Operator immediately without loss of compensation or other rights. The multiple failures by the City and the resulting prejudice are detailed in the decision. Nothing in this decision prevents the City, after reinstating

¹ Attorney Kleimola is no longer employed by the City. Subsequent to the filing of a proposed decision, Attorney Tanya Dennis filed a Notice of Appearance on behalf of the City.

the Appellant, and providing him with the due process required, from imposing discipline if there is just cause for such discipline.

DECISION

On October 19, 2020, the Appellant, Timothy Shea (Mr. Shea or Appellant) acting pursuant to G.L. c. 31, §§ 42 and 43, appealed to the Civil Service Commission (Commission), contesting the decision of the City of Boston (City or Respondent) to terminate his employment as a Senior Computer Operator in the City's Property Management Department (Department). I held a remote pre-hearing conference on November 17, 2020 and conducted a remote full hearing over the course of three days on February 3, 2021, June 23, 2021, and July 8, 2021.² The full hearing was conducted and recorded via Webex and both parties received a link to the recordings.³ All witnesses, with the exception of the Appellant and Carol Donovan, were sequestered. Both parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT

The Appellant submitted four exhibits (App. Exhibits 1-4) at the hearing and the Respondent submitted eight exhibits (Resp. Exhibits 1-6; 7a; 7b; and 8). Per the Commission's request, four additional exhibits were submitted by the parties post-hearing and marked as post-hearing exhibits 1-4. Based upon the evidence and the testimony of the following witnesses:

² The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

³ Should either party file a judicial appeal of this decision, the plaintiff is obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, the electronic copy of the recordings previously sent to the parties should be used to transcribe the hearing.

For the City:

- Carol Donovan, former HR Director for Property Management Department
- Ms. A, former contractor for City of Boston⁴
- John Gillis, Alarm Specialist for City of Boston
- Daniel Rothman, Chief Technology Officer for City of Boston

For the Appellant:

- Timothy Shea, Appellant
- William Joyce, former Chief of Security for Property Management Department

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, case law and policies, and reasonable inferences therefrom, a preponderance of the evidence establishes the following findings of fact:

Appellant's Background and Prior Discipline History

1. The Appellant began his career with the City in 1985 and became a Special Police Officer in the Department of Municipal Building Police. (*Resp. Ex. 7(b)*)
2. In 1994, the Municipal Building Police was renamed the "Municipal Police Department" and the department was transferred from the Public Facilities Department to the Property Management Department of the City. (*Resp. Ex. 7(b)*)
3. On or about May 19, 1997, the Appellant was terminated from his position as a Special Police Officer with the Boston Municipal Police. (*Resp. Ex. 7(b)*)
4. Immediately upon his termination as a Special Police Officer, the Appellant was offered and accepted a position as a Computer Operator with the Municipal Police Communications

⁴ Consistent with the Commission's practice to not identify the alleged victims of workplace or other harassment unless the identify of the person is essential to the appeal, the Commission is referring to this witness as Ms. A.

Division. He held that position from 1997-2019. (*Resp. Ex. 7(b); Testimony of Appellant and Donovan*)

5. In 1998, the Appellant became a tenured civil service employee in the position of Senior Computer Operator through a Special Act of the Legislature related to hundreds of provisional civil service employees employed by the City. (*Stipulated Fact*)
6. On November 26, 2008, the Appellant received a 10-day suspension from the Department for conduct unbecoming a City of Boston employee, conducting personal business on City equipment and time, for alleged harassment of female coworkers, and untruthfulness. (*Resp. Ex. 7(a)*)
7. The Appellant appealed the 10-day suspension to the Civil Service Commission pursuant to his rights under G.L. c. 31, § 43. After a full hearing, the Commission found sufficient evidence to prove one of the charges against him – that he conducted personal business on City equipment and time, ultimately reducing the suspension to three days. (*Resp. Ex. 7(a)*)
8. In March 2019, the Appellant, via a provisional appointment, was effectively promoted to Senior Administrative Shift Supervisor in the Property Management Division. This is not a tenured position, as it is a provisional appointment to an official service position for which no civil service examination has been administered for many years. (*Testimony of Appellant; Stipulated Fact*)⁵
9. As Senior Administrative Shift Supervisor, the Appellant’s responsibilities included oversight of the security cameras under the jurisdiction of the Property Management Department. The

⁵ The Commission has jurisdiction to hear this appeal based on the Appellant’s permanency in his former official service position of Senior Computer Operator. As such, any potential remedy by the Commission regarding this appeal is limited to restoration to the position of Senior Computer Operator, not to the position of Senior Administrative Shift Supervisor, for which the Appellant has never obtained permanency.

Appellant had administrative privileges for the Department's camera system, as well.

(Testimony of Appellant)

10. The Appellant was a member of the Service Employees International Union ("SEIU") and, at all relevant times, was represented by and consulted with Neal O'Brien, the Appellant's SEIU union representative. *(Testimony of Appellant)*

Property Management Department and Municipal Protective Services

11. The Property Management Department manages and owns City of Boston buildings, to include Boston City Hall, 1010 Mass Ave, Faneuil Hall, and 400 Frontage Road. The Department provides custodial services and holds landlord responsibilities for all City-owned buildings. *(Testimony of Donovan, Appellant)*
12. The Municipal Protective Services (MPS), formerly the Municipal Police Department, is a division of the Property Management Department (Department) which provides security for the City-owned buildings. Security is provided through a combination of site officers and sergeants along with a vast array of video surveillance cameras and monitored alarm systems. Security system managers install the surveillance cameras and hook them up to the City's system. *(Testimony of Donovan)*
13. Carol Donovan was the Director of Human Resources for the Department during all relevant times in the Fall of 2019 through the Appellant's termination in October 2020. She held that position for four years. *(Testimony of Donovan)*
14. In the Fall of 2019, John Gillis was the Appellant's direct supervisor in the Department. Mr. Gillis had been the Security Operations Manager since 2018 and his duties consisted of overseeing the electronic monitoring of City-owned buildings and managing 6-7 employees at the central station. He was in charge of the repair of the cameras and alarm system in the

City. Mr. Gillis also had Administrative Access to the Department's computer system.⁶

(Testimony of Gillis)

15. William Joyce was Chief of Security for Boston City Hall and the head of the Municipal Protective Services Division within the Department. Mr. Joyce was Mr. Gillis's direct supervisor. He was hired for that position in 2014. *(Testimony of Appellant, Gillis, Joyce)*

16. Mr. Joyce resigned from his position in November 2020 in lieu of termination. *(Testimony of Joyce and Donovan)*

The Core Federation

17. The Core Federation is a system by which City of Boston agencies/departments and a select few outside agencies (such as the MBTA Transit Police Department and the State Police) can share security camera access. Each agency maintains administrative control over their own camera system and can choose to allow access to their cameras on this joint system called the Core Federation. *(Testimony of Ms. A and Rothman)*

18. The Property Management Department allows their security cameras to feed onto the Core Federation, but still maintains administrative control over their cameras. *(Testimony of Ms. A and Rothman)*

19. The Boston Police Department and the Massachusetts State Police have access to the Core Federation for public safety purposes, allowing first responders access to cameras in case of an incident at City-owned buildings. *(Testimony of Donovan)*

⁶ Mr. Gillis has twenty-one (21) years of total employment with the City, with a three (3) year break in his employment from 2015-2018. *(Testimony of Gillis)*

20. The Department of Innovation and Technology (“DoIT”) manages the Core Federation for the City, even though it has no cameras on the system. The City wanted a neutral party to manage the Core Federation. *(Testimony of Rothman and Ms. A)*
21. Ms. A was hired by the City’s Chief Technology Officer (“CTO”), Daniel Rothman, as a private contractor/consultant for the City of Boston’s DoIT Department. She undertook full-time employment as a City contractor from January 2016 through July 2020. She worked on the first floor of City Hall, next to Chief Joyce’s office, and reported to Mr. Rothman, the CTO. Ms. A. was an employee of a national consulting firm. *(Testimony of Rothman and Ms. A)*
22. Daniel Rothman has been the Chief Technology Officer for the City since 2014 and is the Department Head for the DoIT Department. He oversees the City’s network operations, storage, mainframe operations, and the computer/technology service desk for all city employees. He was there for the initial setup and roll out of the Core Federation. *(Testimony of Rothman)*
23. Mr. Rothman hired Ms. A. She worked for Mr. Rothman and was initially a project manager. She then got involved in the Core Federation project and video consolidation. She was the point person for all vendors for the Core Federation. *(Testimony of Rothman)*
24. Ms. A’s background is in IT Project Management, focusing on fiber and network installations. She works with clients having fiber installed on building networks, the initial fiber build-out and the fiber maintenance. Her background is both in the business aspect and the technical aspect. *(Testimony of Ms. A)*
25. One of Ms. A’s roles for the City was to maintain the Core Federation. The Core Federation has no cameras of its own, just users and links. Ms. A’s job was configuration work to keep

the links and connections up and running. She also maintained and monitored storage of recorded video. *(Testimony of Rothman and Ms. A)*

26. Ms. A worked closely with the third-party vendor (vendor) that has expertise on the Core Federation system. This vendor was also hired by other agencies to maintain their cameras and their system, to include camera installation, software installation, and upgrades and provided ongoing consultancy and training to the City. *(Testimony of Ms. A)*

Ms. A's Technical Assistance Provided to Property Management

27. In addition to her ongoing management of the Core Federation, Ms. A also had Administrative Access to the Property Management Department's camera system, at the request of the Department's Chief of Security, William Joyce. *(Testimony of Ms. A)*

28. In 2018, Chief Joyce asked Ms. A to help his Department when their administrative person, Michael Flaherty, retired. When Michael Flaherty retired, the Appellant was promoted to his position. This was the first time the Appellant and Ms. A began working together. *(Testimony of Ms. A)*

29. Administrative Access to the Property Management Department's computer system means that one can set up the following: configurations, users, cameras, privileges, and computer groups. A person with administrative privileges is able to add or subtract any cameras accessible by the Core Federation. The only access above Administrative Access was by Siemens itself. *(Testimony of Ms. A)*

30. The Appellant also had Administrative Access to the Property Management Department's computer system. After the Appellant first started when Mr. Flaherty retired, the Appellant would often ask Ms. A for help setting up new cameras and user accounts. *(Testimony of Ms. A)*

31. After Mr. Flaherty retired, Ms. A set up training through the vendor for the Appellant to gain a better understanding of the tasks required of his job. Mr. Gillis attended the training as well since he also had Administrative Access to the Property Management camera system.

(Testimony of Ms. A)

32. In 2019, there were three large outages of the Property Management Department's camera system. In September and October 2019, the camera system was down and it required technical help with the servers. Because some of the cameras were out on the Department's system, it required confirmation of actual camera views and confirmation that all cameras were back up and running. *(Testimony of Rothman and Ms. A)*

33. Due to the outages and the subsequent restoration efforts, Ms. A would spot check the camera views from her desk in Room 111 in the Networking Department section at City Hall. At times, the Department would assist Ms. A in checking on camera views since there were many cameras to confirm. She would ensure that the cameras were working and recording in such locations as the Mayor's Office, entrances and exits to city owned buildings, City Hall, and many other City agencies. *(Testimony of Ms. A)*

Working Relationship between Appellant and Ms. A - Fall 2019

34. Initially, Ms. A and the Appellant had a good working relationship. Ms. A's working relationship with the Appellant was initially "fine" and "pleasant." The Appellant's demeanor changed towards her at the end of the Summer of 2019. Ms. A found the Appellant to be more aggressive and less cooperative. *(Testimony of Ms. A)*

35. Chief Technology Officer Rothman recalls that the working relationship between Ms. A and the Appellant deteriorated over time, "progressively becoming more confrontational in 2019." It became "less collegial and more confrontational." *(Testimony of Rothman)*

36. In or about September 2019, Mr. Rothman spoke with Chief William Joyce about the state of the relationship between Ms. A and the Appellant. (*Testimony of Rothman*)

August 2019 Investigation into Municipal Protective Services Sergeant

37. In August 2019, the City's Office of Labor Relations (OLR) and the Property Management Department undertook an investigation into a Municipal Protective Services (MPS) employee for possible time theft. Chief Joyce was the employee's supervisor. (*Testimony of Donovan*)

38. As part of the investigation, the Property Management Department and OLR obtained surveillance footage and still photographs from the Property Management's surveillance cameras. (*Testimony of Donovan*)

39. Chief Joyce was unaware that an investigation was initiated by his superiors in the Property Management Department and OLR. He was only notified of the results of the investigation by HR Director Donovan when the investigation was complete and prior to discipline being imposed on the employee. (*Testimony of Joyce and Donovan*)

40. The Property Management Department and OLR notified Chief Joyce of the investigation on October 3, 2019 and informed him that they obtained surveillance video and a still photograph from the video as part of the investigation. (*Testimony of Donovan, Joyce*)

41. Immediately upon learning of the investigation, Chief Joyce informed the Appellant of the investigation and showed him the still photograph that was obtained. (*Testimony of Joyce, Appellant, Donovan*)

42. Neither the Appellant nor his supervisor, John Gillis, were aware of the investigation into the employee, either. (*Testimony of Donovan, Joyce, Gillis, Appellant*)

43. Chief Joyce was angry that an investigation was done into his employee without his knowledge and that the camera system was utilized. (*Testimony of Joyce*)

44. Like Chief Joyce, the Appellant was also angry that an investigation was done without his knowledge, most especially because video surveillance and still photographs were obtained from the Department's camera system without his knowledge. *(Testimony of Appellant)*

45. Both the Appellant and Chief Joyce were intent on finding out who captured the still photograph and the video footage off of the Department's camera system. *(Testimony of Joyce)*

46. Joyce asked the Appellant to find out how the Department and OLR obtained still photographs from the Department cameras without the Appellant, Gillis, or Chief Joyce knowing about the investigation. *(Testimony of Donovan)*

47. The Appellant ran an audit report to determine who had been accessing the Department's surveillance system, at the request of Chief Joyce. *(Testimony of Appellant, Joyce, and Donovan)*

October 5, 2019-Meeting (First Meeting)

48. On October 5, 2019, a meeting was held in Chief Joyce's office between Ms. A and Daniel Rothman of DoIT and William Joyce, John Gillis, and the Appellant from Municipal Security/Property Management. *(Testimony of Appellant, Joyce, Gillis, Ms. A, Rothman, and Donovan)*

49. During the October 5th meeting, the team of three MPS employees accused Ms. A of allowing the MBTA Transit Police Department to view Property Management's cameras on a certain date. Following the meeting, Ms. A provided a screen shot of the MBTA Transit Police Department's access to the cameras through the Core Federation only, not through Ms. A. *(Testimony of Ms. A)*

50. Also during the October 5th meeting, John Gillis stated that he wanted to take over managing the Core Federation, which Ms. A was managing as a contractor for DoIT. Mr. Rothman, Ms. A's supervisor, reiterated that the Core Federation has no cameras of its own and it would be best to keep a neutral party managing it to ensure collaboration with all agencies.

Additionally, managing the Core Federation required extensive technical expertise that was not part of the training Mr. Gillis or the Appellant had undergone. (*Resp. Ex. 6; Testimony of Ms. A*)

51. During that October 5th meeting, the MPS team of three told Ms. A to stay off their Property Management camera system. They also told her they were going to remove her log in, which is her user account on the Property Management camera system. (*Resp. Ex. 6; Testimony of Ms. A*)

52. A couple of days later, Ms. A's log in capability on the Property Management camera system was removed. (*Testimony of Ms. A*)

October 23, 2019 – (Second Meeting)

53. On or about October 23, 2019, Chief Joyce asked Ms. A to step into his office for a couple minutes for a quick meeting. During this meeting, Chief Joyce asked Ms. A why she was looking at various Property Management cameras so much. He showed her an audit report, pointed to three dates in particular: September 13, 2019, September 27, 2019, and October 2, 2019. (*Testimony of Ms. A; Resp. Ex. 6*)

54. Ms. A thought it was unusual for Chief Joyce to be asking her these questions, since they had a trusting relationship in the past. She felt the tone of the meeting was "inquiring."

(*Testimony of Ms. A*)

55. During the October 23rd meeting, Ms. A told Chief Joyce that she had been doing a lot of work on the infrastructure and that she would look into the details about those three particular dates. (*Resp. Ex. 6; Testimony of Ms. A*)
56. Upon review, Ms. A determined that all three days flagged by Chief Joyce were in “lockstep with outages” – two network outages in October and a storage upgrade in September, which caused her to have to look at the Property Management cameras to confirm that they were working. (*Testimony of Ms. A*)
57. Mr. Joyce confirmed that Ms. A had Administrative Access to the Property Management camera system at his request; that she used to help them out a lot if they were having problems with the cameras; and that she would help set things up if the Appellant or Mr. Gillis were unable to do it. Ms. A would fix outages and would make sure everything was back up online. Mr. Joyce confirmed that it was part of Ms. A’s job to look at cameras, especially if they were having issues with the Core Federation as it related to their camera system. (*Testimony of Joyce*)

October 25, 2019 Meeting – (Third Meeting)

58. On October 25, 2019, Chief Joyce asked Ms. A to come to his office for a quick meeting. Ms. A asked her boss, Daniel Rothman, to accompany her to the meeting. (*Testimony of Ms. A; Resp. Ex. 6*)
59. When the meeting commenced, the Appellant was in Chief Joyce’s office sitting at a desk with video snapshots pulled up. (*Resp. Ex. 6*) John Gillis was brought into the meeting via the Appellant’s cell phone. (*Testimony of Gillis, Ms. A; Resp. Ex. 6*)
60. During this October 25th meeting, Chief Joyce reiterated to Ms. A that he thought she was using Property Management’s computer system a lot. Ms. A told the Chief that she

researched the three specific dates he questioned her about at their last meeting two days prior, and she gave him details of the work she had been doing on those dates. (*Testimony of A; Resp. Ex. 6*)

61. The Appellant then showed Ms. A one photograph of a woman, who was an aide to the Mayor, and asked Ms. A if she knew who the woman was. Ms. A replied that she did not know the woman. (*Testimony of Ms. A; Resp. Ex. 6*)

62. The Appellant then showed Ms. A one photograph of Mr. Gillis and asked why she was viewing Mr. Gillis. Ms. A told the Appellant that when she did spot checks on cameras as part of her job, she did not look at the camera views in detail, she simply confirmed that the cameras were working. Ms. A told him that she would never just view the Property Management camera system for no reason. (*Testimony of Ms. A*)

63. Ms. A, as part of her duties managing the Core Federation, would spot check other Core Federation cameras as well, not just the Property Management cameras on the Federation. The Appellant was unable to see that she had been looking at other cameras as well, since he could only pull an audit report on the Property Management Department cameras. (*Testimony of Ms. A; Resp. Ex. 6*)

64. Chief Joyce then asked if Ms. A or Mr. Rothman knew that two additional MPS employees were being investigated. Both Ms. A and Mr. Rothman had no knowledge of two employees being investigated. (*Testimony of Ms. A; Resp. Ex. 6*)

65. The Appellant then told Ms. A that she was “spying” on them. (Testimony of Ms. A and Appellant) When Ms. A denied this, the Appellant stated that he did not believe her. (*Testimony of Ms. A*)

66. At that point, Ms. A stated that she was being targeted and that the accusations of spying were unprofessional. (*Testimony of Ms. A; Resp. Ex 6*)
67. The Appellant then told Ms. A that there would be an investigation into her and her actions. (*Resp. Ex. 6; Testimony of Ms. A*)
68. Chief Joyce then stated that there would not be an investigation.⁷ (*Testimony of Joyce*)
69. The Appellant then stated that there would “absolutely be an investigation” into Ms. A and her actions. (*Resp. Ex. 6; Testimony of Ms. A*)
70. Ms. A’s supervisor, Mr. Rothman, then spoke up and told Chief Joyce that this behavior was uncalled for and that the Appellant should forward all future communication from that group to Ms. A through Chief Joyce only. (*Testimony of Ms. A; Resp. Ex. 6*)
71. At one point in this meeting, Ms. A recommended that her access be removed completely from the Property Management camera system. Her access was removed by the Appellant, because of her request. A couple weeks later, Ms. A’s access was reinstated. (*Testimony of Ms. A, Gillis, and Appellant*)
72. Mr. Rothman described the meeting as confrontational. He recalls that the Appellant was accusatory and was standing, while everyone else remained seated. While he stood, the Appellant pointed repeatedly at an audit paper in front of him, going through the dates rapid fire. He recalls that Ms. A told the group that she was just diagnosing issues. Chief Joyce did not try to restrain or defuse the situation, which was surprising to Mr. Rothman. He walked out of the meeting unhappy due to the unprofessional manner of the Appellant and Joyce,

⁷ Joyce confirmed in his testimony that the Appellant was aggravated and that he told the Appellant to calm down, as a result.

expressing to the group that he was uncomfortable with the tone in that meeting. (*Testimony of Rothman*)

73. Chief Joyce confirmed that “the meeting did not go so well.” (*Testimony of Joyce*)

74. Chief Joyce did not seek an investigation of Ms. A with his superior or the human resources department “because they were all part of it” and never let him know about the investigation into one of his own employees in August 2018. (*Testimony of Joyce*)

75. Asked whether he had other still photographs (other than one of Mr. Gillis and one of the Mayor’s aide) to support his allegation that Ms. A was spying, the Appellant said he did not. (*Testimony of Appellant*)

76. The photograph of Mr. Gillis was of him appearing once in a hallway near an elevator for a brief moment in time at Frontage Road. The photograph of the Mayor’s aide was a photograph of her once in a hallway at City Hall for a brief moment in time. (*Testimony of Appellant*)

77. Ms. A and Mr. Rothman informed the Director of DoIT’s Human Resources, Ed Pinkerton, about what they considered to be the Appellant’s unprofessional behavior at the October 25th meeting. Within a couple days after that October 25th meeting, Ms. A was asked to draft notes of her memory of the history of her relationship with the Appellant, Joyce and Gillis. Those notes were forwarded to Ed Pinkerton via email. (*Testimony of Ms. A; Resp. Ex. 6*)

Appellant’s Removal of Property Management Cameras from Core Federation

78. Following the two October meetings he attended with Ms. A, the Appellant noticed what he called a “second Core Federation” which he was not previously aware of nor had anyone brought to his attention. He drew this conclusion because one Core Federation was labelled COB-CORE-FED and the second was named “Core Federation.” (*Testimony of Appellant*)

79. There were indeed two Core Federations: (1) the original “COB-CORE-FED” and (2) “Core Federation” that was created by the vendor months earlier in June 2019. (*Resp. Ex. 5*)
80. The vendor made “COB-CORE-FED” a member of the “Core Federation” user group on June 20, 2019 – meaning that “COB-CORE-FED” would only have as much access as was given to the “Core Federation.” (*Testimony of Ms. A; Resp. Ex. 5*)
81. Upon first noticing the “second” Core Federation, the Appellant ran an audit and personally saw that the third-party vendor that created the Core Federation created the “newer” Core Federation. (*Testimony of Appellant*)⁸
82. That same day, November 5, 2019, the Appellant, without inquiring with Ms. A or the vendor about the reason for creating the second Core Federation, took all cameras controlled by the Property Management Department off of the second Core Federation. (*Testimony of Ms. A and Appellant; Resp. Ex. 5*)
83. When the Appellant took all Department-controlled cameras off the “Core Federation,” the result was that no member of the original “COB-CORE-FED” could access the Department cameras either, including the State Police, the MBTA Transit Police Department or the Boston Police Department. (*Testimony of Appellant, Ms. A & Resp. Ex. 5*)

⁸ The Appellant offered contradictory testimony regarding when he became aware that the vendor had created a “second” Core Federation, at times stating that he saw that it was created by Siemens at the time he first noticed the second Core Federation and, at other times, stating that he did not come to realize this until a later date. At the time I initially heard the Appellant’s testimony, I believed that he was aware, at the time he first observed the second Core Federation, that the vendor had created it. After reviewing the recording of the Appellant’s relevant testimony multiple times, my assessment has not changed. Thus, before he removed the Property Management Department from the second Core Federation (referenced in subsequent findings), the Appellant was indeed aware that the vendor had created the so-called second Core Federation. (*Testimony of Appellant*)

84. At the time or shortly after the Appellant removed the Property Management Department cameras from the second Core Federation, he informed Chief Joyce and Mr. Gillis that he had taken this action. He did not, however, inform Joyce or Gillis that the second Core Federation had been created by the vendor and/or that his action prevented other agencies from viewing Property Management Department cameras, which he himself was unaware of at the time. (Relevant Testimony)⁹
85. On or about November 19, 2019, the Commissioner of Property Management, after learning that the Boston Police Department and other agencies had been prevented from viewing Property Management Department cameras, ordered Chief Joyce to reinstate the Core Federation's access to Property Management cameras. (*Testimony of Appellant and Joyce*)
86. Chief Joyce, who was unaware that other departments had lost access as a result of the Appellant's action, then told the Appellant to reinstate the Property Management cameras to the second Core Federation, which the Appellant did the same day. (*Testimony of Appellant and Joyce; Resp. Ex. 5*)

⁹ The parties disagree on what role Joyce had in regard to the Appellant removing the Property Management Department cameras from the second Core Federation. According to Donovan, *both the Appellant and Joyce* stated during the internal affairs investigation that Joyce was not aware that the Appellant took this action at the time. At the Commission hearing, Joyce, who subsequently resigned, and the Appellant stated that Joyce *directed* the Appellant to take this action. The investigative interviews were not recorded and I asked the City to produce any notes taken by Donovan during her interviews. The City responded by saying that Donovan is no longer employed by the City and that they were only able to locate the notes taken by Donovan during her interviews with Gillis and Ms. A. I believe the most plausible explanation of what happened, as noted in this and subsequent findings, is that the Appellant removed the Property Management Department cameras from the second Core Federation and then immediately informed Joyce and Gillis, neither of whom objected. The Appellant did not, however, convey to either Joyce or Gillis that the vendor had created the second Core Federation, an important factor that likely would have given Joyce and Gillis pause about the Appellant's action. Also, as the Appellant failed to consult with the vendor and/or Ms. A, he did not know, and therefore was unable to convey to Joyce or Gillis, that his action prevented other agencies, including the Boston Police Department, from viewing Property Management Department cameras.

87. At the direction of the Commissioner of Property Management, Indira Alvarez, Ms. A's log-in access was reinstated to the Property Management camera system in November 2019.

With the authorization of the Commissioner, Ms. A ran an audit trail of the Appellant.

(Testimony of Ms. A; Resp. Ex. 5)

88. The audit trail confirmed that it was the Appellant who restricted the second Core Federation's access to all Property Management cameras on November 5, 2019. The audit trail further reveals that the Appellant reinstated the Core Federation's access to all Property Management cameras on November 19, 2019. *(Resp. Ex. 5)*

Appellant's Pre-Disciplinary Hearing

89. As part of an internal investigation, the Appellant was interviewed by the City's Office of Labor Relations on November 26, 2019. The Appellant was represented by his SEIU Union Representative, Neal O'Brien, during this interview. *(Testimony of Appellant and Donovan)¹⁰*

90. During that interview, the Appellant was asked about his treatment of Ms. A, the October 3, 2019 meeting, his own investigation into the Department personnel investigation (of the property management employee), the October 25, 2019 meeting, and his actions with the Core Federation, including limiting access to Department cameras. *(Testimony of Donovan)*.

91. On December 2, 2019, the Appellant was notified that a pre-disciplinary hearing would take place on December 4, 2019. The letter stated:

Dear Mr. Shea:

Please be advised that the department is conducting a pre-disciplinary hearing on December 4, 2019 at 12:00 P.M. This hearing will take place in Room 624, at City Hall.

¹⁰ As referenced above, there is no recording of this interview and the City was unable to provide any notes taken by Ms. Donovan during this interview.

The hearing will address allegations of retaliation, insubordination, and conduct unbecoming a City of Boston employee.

Please be advised you may have a Union representative present during this hearing. It will be your responsibility to ensure the availability of your representative for this process.

Sincerely,
Carol Donovan
Director of Human Resources

Copies to: N. O'Brien
K. Kleimola"

*(Resp. Ex. 2; Testimony of Donovan)*¹¹

92. Two days later, a hearing was held on December 4, 2019.¹² No witnesses, including the Appellant, testified at the hearing. *(Testimony of Donovan and Appellant; Resp. Ex. 8)*
93. At the beginning of the hearing, the Appellant was informed, verbally, that the Department was seeking serious discipline, up to and including termination. *(Testimony of Donovan)*
94. Through his SEIU union representative, the Appellant introduced five exhibits at the December 4, 2019 hearing. The Department introduced four exhibits. *(Resp. Ex. 8; Testimony of Donovan)*
95. Barbara Parker was the Designated Hearing Officer from the Office of Labor Relations. Approximately ten months after the hearing¹³, the hearing officer sent a report (hearing officer's report) and recommendation for termination to the Department on October 5, 2020. *(Resp. Ex. 8)*

¹¹ Importantly, this notice did not inform the Appellant that the hearing could result in his termination from employment with the City; the relevant sections of the civil service law were not attached to the letter; and the letter did not specify the underlying alleged misconduct that formed the basis of the City's charges.

¹² As discussed in more detail in the analysis, the civil service law requires that appointing authorities provide employees with at least three days' advance notice of the hearing.

¹³ G.L. c. 31, § 41 states in relevant part that: "... If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action ...".

96. The local hearing officer found that the Appellant's actions in removing the BPD and the MSP view access to the Core Federation camera feed was misconduct that warranted termination. (*Resp. Ex. 8*)
97. The hearing officer also found that the Appellant demonstrated poor judgment that warranted termination when he (1) eliminated the Core Federation's access due to purported security concerns without taking easy steps to understand what entities were part of the group and (2) when he reinstated the access without resolving his purported security concerns. (*Resp. Ex. 8*)
98. The hearing officer also found that the Appellant committed misconduct when he retaliated against Ms. A because he believed that (1) she provided video footage to Property Management and the Office of Labor Relations for the MPS employee's time theft investigation and (2) she was spying on City employees (which she was not). (*Resp. Ex. 8*)
99. Lastly, the hearing officer found that the Appellant engaged in multiple instances of conduct unbecoming a City of Boston employee. Specifically, that he engaged in unprofessional and increasingly hostile behavior towards Ms. A- accusing her and members of the Data Center of spying. (*Resp. Ex. 8*)
100. The Appellant was put on paid administrative leave by the City on December 11, 2019.
(*Testimony of Donovan*)
101. The Department terminated the Appellant's employment on October 9, 2020. (*Resp. Ex. 1; Testimony of Donovan and Joyce*)
102. The delay between the December 4, 2019 hearing and the October 9, 2020 termination was a result of an ongoing investigation into Chief William Joyce and lengthy discussions with the Appellant about resignation in lieu of termination. The investigation into Chief Joyce

ultimately confirmed to the City that the Appellant was not authorized by anyone to remove the Property Management cameras from the Core Federation.¹⁴ (*Testimony of Donovan*)

Applicable Civil Service Law

Section 41 of G.L. c. 31 states in relevant part:

“Except for just cause and except in accordance with the provisions of this paragraph, a tenured employee shall not be discharged, removed, suspended for a period of more than five days ... without his written consent ... Before such action is taken, such employee shall be given a written notice by the appointing authority, which shall include the action contemplated, the specific reason or reasons for such action and a copy of sections forty-one through forty-five, and shall be given a full hearing concerning such reason or reasons before the appointing authority or a hearing officer designated by the appointing authority. The appointing authority shall provide such employee a written notice of the time and place of such hearing at least three days prior to the holding thereof ... If such hearing is conducted by a hearing officer, his findings shall be reported forthwith to the appointing authority for action. Within seven days after the filing of the report of the hearing officer, or within two days after the completion of the hearing if the appointing authority presided, the appointing authority shall give to such employee a written notice of his decision, which shall state fully and specifically the reasons therefor ...”.

Section 42 of G.L. c. 31 states in relevant part:

“ ... Any person who alleges that an appointing authority has failed to follow the requirements of section forty-one in taking action which has affected his employment or compensation may file a complaint with the commission. Such complaint must be filed within ten days, exclusive of Saturdays, Sundays, and legal holidays, after said action has been taken, or after such person first knew or had reason to know of said action, and shall set forth specifically in what manner the appointing authority has failed to follow such requirements. If the commission finds that the appointing authority has failed to follow said requirements and that the rights of said person have been prejudiced thereby, the commission shall order the appointing authority to restore said person to his employment immediately without loss of compensation or other rights ...”.

¹⁴Chief Joyce ultimately resigned in lieu of termination on other, unrelated grounds. Joyce was put on Administrative Leave in November 2019 and resigned on October 31, 2020 (*Testimony of Joyce*)

Section 43 of G.L. c. 31 states in relevant 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 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 in 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 ...”.

Section 42 (Procedural Appeal) Analysis

The Appellant has shown, by a preponderance of the evidence, that the City failed to follow the requirements of the civil service law before terminating his employment and that his rights were prejudiced by the City's failure to follow those requirements. Therefore, he must be restored to his permanent civil service position of Senior Computer Operator immediately without loss of compensation or other rights. The multiple failures by the City and the resulting prejudice are discussed below.

First, the City *never* provided the Appellant with written notice that he may be subject to termination for his alleged misconduct. Rather, at the outset of the local hearing, the City notified the Appellant, verbally, that termination was a possible outcome.

Second, the notice sent to the Appellant regarding the local hearing did not include Sections 41 through 45 of the civil service law, as required.

Third, in addition to failing to state the contemplated action of termination, the notice failed to provide the “specific reasons” for the unstated contemplated action. Rather, the notice simply stated the broad categories of “ ... retaliation, insubordination, and conduct unbecoming a City of Boston employee.”

Fourth, the deficient notice was not provided to the Appellant at least three days in advance of the hearing, but, rather, was given to him two days prior to the hearing.

Fifth, after the conclusion of the hearing, the hearing officer failed to provide a report to the Appointing Authority forthwith, but rather, submitted a report approximately ten months after the hearing.

Collectively, the above-referenced violations of the civil service law were prejudicial to the Appellant. Had the Appellant received a *timely* notice with *specific* allegations, and had he known that the end result could be *termination*, and had the Appellant been provided with a copy of the civil service law stating such requirements, it is reasonable to conclude that he may have been more able to address some of the specific allegations (e.g. – whether he engaged in misconduct by removing the Property Management Department cameras from the Core Federation, a paramount concern of the City which was never referenced in the notice to the Appellant).

In reaching this conclusion, I am aware that a pre-deprivation hearing “.. need not be elaborate and, where more comprehensive post-termination procedures are available [such as an appeal to the Commission] the pre-termination hearing need only provide ‘an initial check’ against mistaken decisions. Cleveland Bd. of Education v. Loudermill, 470 U.S. 532, 545 (1984). Here, however, the multiple missteps by the City, undermined the ability to even conduct the type of “adequate check” envisioned in Loudermill. Also, the prejudice associated with the City’s final violation, failing to issue a hearing officer’s report forthwith, actually carried over to the subsequent hearing before the Commission. Specifically, the passage of time contributed to the Commission’s inability to obtain notes taken by the Department’s Human

Resources Director, which could have played an important role in assisting with credibility assessments critical to this appeal.

It is perplexing that the largest municipal civil service employer in Massachusetts, with a rich history in civil service disciplinary proceedings, failed, on multiple fronts, to comply with the rather straightforward procedural requirements of the statute. They did, however, fail to follow those requirements which, for the reasons stated above, resulted in prejudice to the Appellant.

Section 43 (Just Cause) Analysis

The Section 42 and Section 43 appeals were not bifurcated before the Commission and it would have been difficult to assess the issue of prejudice in the Section 42 appeal without hearing all of the facts presented as part of both appeals, which were heard concurrently over a period of three days. Although, based on the procedural violations and resulting prejudice referenced above, Section 42 requires immediate reinstatement of the Appellant, there is nothing preventing the City from attempting to correct the procedural deficiencies through a new pre-termination process that could ultimately result in the Appellant being disciplined (again), up to and including termination. For that reason, and for reasons related to judicial economy given the resources already expended by both parties here, I think it is prudent to comment on whether, at least based on the record already presented, the City is likely to be able to meet its burden to show just cause for terminating the Appellant.

The Commission determines just cause 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. 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).

The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. See also Town of Brookline v. Alston, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) (appointing authority must provide “adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law” for discharge of public employee), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) (justification for discharge of public employee requires proof by a preponderance of evidence of “proper cause” for removal made in good faith). It is also a basic tenet of merit principles, which govern the civil service system, that discipline must be remedial, not punitive, designed to “correct inadequate performance” and “[only] separating employees whose inadequate performance cannot be corrected.” G.L. c. 31, §1.

Section 43 of G.L. c. 31 also vests the Commission with “considerable discretion” to affirm, vacate or modify discipline but that discretion is “not without bounds” and requires sound explanation for doing so. See, e.g., Police Comm’r v. Civil Service Comm’n, 39 Mass. App. Ct. 594, 600 (1996) (“The power accorded to the commission to modify penalties must not be confused with the power to impose penalties ab initio . . . accorded the appointing authority”). See also Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006), quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983).

As a preliminary matter, the City relies heavily on alleged statements made by the Appellant and Joyce at the unrecorded investigatory interviews. As stated in the findings, the City was unable to provide the hand-written notes of Carol Donovan, who conducted the interviews in her capacity as the Department's Human Resources Director and who is no longer employed by the City. Ms. Donovan testified before the Commission that both the Appellant and Joyce stated during those interviews that Joyce was *not* aware, at the time, that the Appellant had removed the Property Management Department cameras from the "new" Core Federation. The Appellant and Joyce both testified before the Commission that Joyce *was* aware of the Appellant's actions and had, in fact, *directed* the Appellant to remove Property Management Department cameras from the new Core Federation. I did not give any weight to the hearsay statements of Ms. Donovan regarding the statements made at the investigatory interviews. For clarity, this is not a question regarding Ms. Donovan's credibility. Rather, having reviewed (and re-reviewed) the entire record here, it is clear that multiple related issues were being discussed, including whether Joyce (and/or Gillis) instructed the Appellant to take this action, whether they were aware of it at the time, and/or whether, if and when they became aware of it, they effectively sanctioned it by not immediately directing the Appellant to reverse course. Without the benefit of a recording of those interviews, or even written notes, I don't find the hearsay testimony reliable enough to credit Ms. Donovan's statements regard her recollection of what the Appellant and Joyce did, or did not, say during the investigatory interviews.

As stated in the findings, I have concluded that the most plausible version of events, which does not line up squarely with the Appellant or Joyce's testimony before the Commission, is that the Appellant took the Property Management cameras off the new Core Federation without first getting permission and/or being directed to do so by Joyce or Gillis. I do, believe,

however, that, at or around the same time, the Appellant made both Joyce and Gillis aware of what he had done and that both Joyce and Gillis supported his decision to do so. Importantly, however, I have concluded that the Appellant withheld material information from both Joyce and Gillis about the Appellant's decision to remove the Property Management cameras from the new Core Federation. Specifically, despite his unsuccessful attempts to change his testimony to the contrary, the Appellant, at the same time that he pulled the cameras off the new Core Federation, was aware that the new Core Federation was actually created by the third party vendor, as opposed to nefarious municipal actors attempting to get into the Core Federations through some clandestine "back door" as both Joyce and Gillis incorrectly believed. In short, the Appellant withheld information from his superiors that would have allowed them to make a more informed decision about his actions.

The Appellant also acted recklessly by making this decision without consulting with, or at least informing, Ms. A or the outside vendor of what he had done. Had he taken this appropriate step, he would have learned, immediately, that his actions would prevent other agencies, including the Boston Police Department, the MBTA Transit Police Department and the State Police, from being able to view cameras on City-owned properties. The Appellant's decision to act without consulting Ms. A or the vendor was not an administrative oversight. Rather, concerned that Ms. A was "spying" and, angered that Ms. A had complied with a request to pull video coverage as part of an investigation of an employee that neither he nor Joyce was aware of, the Appellant chose not to disclose what he had done to Ms. A or the vendor. These actions, his failure to inform his supervisors that Siemens had created the new Core Federation and his failure to determine the consequential nature of what he was doing, are solely attributable to the Appellant, and constituted misconduct that, had the City provided the Appellant with

proper due process that the civil service law requires, could have justified significant discipline against the Appellant.

The City has also proven, by a preponderance of the evidence, that the Appellant engaged in misconduct in relation to his behavior toward Ms. A. Specifically, I find that the Appellant did accuse Ms. A of “spying” and threatened to “investigate” her (more than once) during a heated meeting in which the unprofessional behavior of three male employees (Joyce, Gillis and the Appellant) was on full display. It was the Appellant, however, who was the most combative, refusing to back down on his threats to investigate Ms. A, even after Joyce sought to overrule him.

Should this matter make its way back to the Commission, the Commission shall be fully warranted to take administrative notice of the findings and conclusions set forth in this Decision and prior decisions in weighing the merits of any future appeal brought by the Appellant.

Conclusion

The Appellant’s procedural appeal filed under Section 42 is hereby *allowed*. He shall be restored to his permanent civil service title of Senior Computer Operator with no loss of pay or benefits; the just cause appeal filed at the same time under Section 43 is for now moot on account of this remedial order.

Civil Service Commission

/s/ Christopher Bowman
Christopher Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners on June 30, 2022)

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to:

Joseph Donnellan, Esq. (for Appellant)

Tanya Dennis, Esq. (for Respondent)