

# COMMONWEALTH OF MASSACHUSETTS

## CIVIL SERVICE COMMISSION

100 Cambridge St., Suite 200

Boston, MA 02114

(617) 979-1900

NICHOLAS VIOLA, JR.,

*Appellant*

v,

BROCKTON PUBLIC SCHOOLS,

*Respondent*

Docket Number:

D1-22-090

### DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA) was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The Appellant submitted objections—but then the Respondent submitted a persuasive rejoinder to those objections.

After careful review and consideration of the Tentative Decision, attached, as well as the Appellant's objections and the Respondent's reply, the Commission today voted to affirm and adopt the Tentative Decision issued by the Magistrate, thus making the attached Tentative Decision, together with this document, the Final Decision of the Commission.

The DALA Magistrate duly considered evidence related to the Appellant's putative disability but properly concluded, in the Commission's estimation, that notwithstanding the scant evidence of any such limiting disability (largely overruled by an independent medical examination in any event, see Resp. Exh. 9 at R00034), Respondent had just cause to terminate Appellant's employment due to his threatening comments to a coworker and other past serious workplace misconduct. See generally Mammone v. President & Fellows of Harvard Coll., 446 Mass. 657 (2006) (employee engaged in serious workplace misconduct, even if such is partly impelled by a disability, is not protected from adverse employment consequences if the misconduct is sufficiently inimical to the employer's interests).

Accordingly, the Appellant's appeal under Docket No. D1-22-090 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Markey, McConney and Stein, Commissioners) on December 19, 2024.

Civil Service Commission

/s/ Christopher C. Bowman

Christopher C. Bowman

Chair

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 Sulman, Esq. (for Appellant)

Kevin Bresnahan, Esq. (for Respondent)

Natalie Monroe, Esq. (Chief Administrative Magistrate, DALA)

**COMMONWEALTH OF MASSACHUSETTS**

**Middlesex, ss.**

**Division of Administrative Law Appeals**

NICHOLAS P. VIOLA, JR.,

CSC Docket No. D1-22-090,

Appellant,

DALA Docket No. CS-22-0314

v.

Date: October 15, 2024

BROCKTON PUBLIC SCHOOLS,

Respondent.

**Appearances:**

Appellant: Joseph Sulman, Esq.

Respondent: Kevin F. Bresnahan, Esq.

**Administrative Magistrate:**

John G. Wheatley

**SUMMARY OF TENTATIVE DECISION**

Brockton Public Schools had just cause to terminate Nicholas Viola, Jr.'s employment due to threatening comments he made to a coworker in January 2022. The decision to terminate his employment rather than impose a lesser sanction was reasonable, considering the severity of Viola's threats, the impact they had on coworkers, and his prior history of discipline and the progressive discipline imposed.

**TENTATIVE DECISION**

The appellant, Nicholas Viola, Jr., timely appealed, under G. L. c. 31, § 43, the decision of Brockton Public Schools to discharge him from his position as building custodian. I held a full evidentiary hearing over the course of several days, with

the first two days of testimony occurring at the Civil Service Commission's office in Boston on March 2 and April 13, 2023, and the third day held remotely over Webex on October 20, 2023. Each day of the hearing was recorded. I admitted thirty-eight exhibits into evidence, twenty-four submitted by the appellant and fourteen by the respondent. The following witnesses testified:

*Called by the Respondent:*

- James Curran, Custodian for Brockton Public Schools
- Michael Clark, Supervisor of Outside Grounds for Brockton Public Schools
- Dr. Kathleen Moran, Assistant Superintendent for Human Resources for Brockton Public Schools
- Michael Thomas, Superintendent of Brockton Public Schools
- Ronald Dawber, Teamsters Union Representative
- Melissa Buckley, Confidential Administrative Assistant to the CFO and Deputy CFO at Brockton Public Schools

*Called by the Appellant:*

- Nicholas P. Viola, Jr.

**FINDINGS OF FACT**

Based on the evidence presented, I make the following findings of fact:

1. The appellant, Nicholas P. Viola, Jr., was employed as a custodian by the Brockton Public Schools from September 2005 until June 30, 2022. (Viola Testimony; App. Exs. 1, 23; Resp. Ex. 11.)

2. In October 2013, Viola was promoted to the position of commissary driver for Brockton High School. (Thomas Testimony; Resp. Ex. 13.)

3. While working as a commissary driver, Viola was formally disciplined on two occasions. In December 2014, Brockton Public Schools issued Viola a letter of reprimand, citing as reasons Viola's failure to properly report an absence from work and for an incident in which he placed frozen food delivery items into the freezer in a disorganized manner and left it to cafeteria staff to reorganize and restock the freezer. (Moran Testimony; Resp. Ex. 2.)

4. In March 2015, Brockton Public Schools suspended Viola without pay for three days following an internal investigation into an incident involving his interaction with the school's food service director. In a disciplinary notice to Viola, the school superintendent described the event as follows:

"[A]fter a food cart you were loading onto a truck at Brockton High School tipped over, you engaged in an obscenity-filled tirade and began jumping up and down on the spilled boxes of food. You then attempted to enter the building, and began pounding on the locked door and screaming obscenities; when you finally gained entry to the building, you burst into [the food service director's] office in an enraged state, yelling and swearing at him, and frightening several employees in the process."

(Resp. Exs. 3, 6.)

5. In addition to the suspension, Viola was reassigned to a custodian position at Brockton Public Schools' central office. (Moran Testimony; Resp. Exs. 3, 6.)

6. In May 2015, Viola was awarded a bid to return to Brockton High School as a building custodian. (Thomas Testimony; Resp. Ex. 13.)

7. In November 2015, Viola was placed on paid administrative leave pending the results of an investigation into multiple reports that Viola had made threatening remarks during a Teamsters union meeting. At the meeting, Viola reportedly confronted a group of his coworkers about his belief that someone had been "ratting on" him to school administration. Written statements from several coworkers report that Viola had told them that if he discovered who was "ratting on" him, he would go to the person's home and attack them, and that if their spouse came out he would attack their spouse too. According to one such report, Viola stated that he would kill someone, and that he was not afraid of going to jail for doing so and would kill himself. Brockton Public Schools indicated in a disciplinary letter to Viola that the school's administrators had also received several calls from Viola's coworkers reporting that they were "in fear for themselves and their families" because of Viola's remarks at the Teamsters meeting. (Moran Testimony; App. Ex. 10; Resp. Ex. 6.)

8. In January 2016, after it concluded its investigation, Brockton Public Schools suspended Viola for five days and required him to complete an anger management course. (Moran Testimony; Resp. Exs. 6, 14.)

9. Viola did not appeal the prior discipline imposed in 2014-2016, either through contractual grievance procedures or by appeal to the Civil Service Commission. (Moran Testimony.)

*The Incident Resulting in the Appellant's Termination*

10. In March 2020, Viola was promoted to the outside grounds crew. (Viola Testimony; App. Ex. 8; Resp. Ex. 13.)

11. The outside grounds crew members perform snow removal, sanding, and salting on school grounds. (Clark Testimony.)

12. Michael Clark was the supervisor of the outside grounds crew, including Viola. (Clark Testimony.)

13. During the weekend before Monday, January 24, 2022, Clark communicated with the outside grounds crew to arrive at work early on Monday, starting at 5:30 a.m. rather than the normal 6:30 a.m. start time. Viola confirmed that he would arrive at the requested time. (Clark Testimony.)

14. On Monday morning, Viola did not arrive until the regular shift start time at 6:30. Upon Viola's arrival, Clark, who was on traffic duty at the time, sent him a text message instructing him to complete salting at another Brockton Public School property. (Clark Testimony.)

15. Viola entered the garage at around 6:45 a.m. James Curran, a Brockton High School mechanic, was working in the garage when Viola arrived. Viola informed Curran that his truck would not start. Curran performed tests on the truck. (App. Ex. 15; Resp. Ex. 7; Curran Testimony.)

16. At around 7:20 a.m., Clark finished with traffic duty and saw Viola's truck still in the garage. Clark directed Viola to get a hand-spreader for salting. (Clark Testimony; Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

17. Viola left to get the hand-spreader. When he returned, he informed Clark and Curran that it was broken and there were no other spreaders in the area. Clark left to find a spreader for Viola to use. (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

18. Curran did a temporary repair to the broken spreader so Viola could use it. As Viola was leaving, he told Curran that he needed to "watch out" for Clark and indicated that he did not like him. When Curran asked what he meant, Viola replied, "you can't let him tell you what to do." Viola then left to do his assigned salting work. (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

19. At approximately 8:00 a.m. Viola returned to the shop and asked Curran to check the battery and alternator on his truck. As Curran started testing the alternator, Viola again



started talking about Clark and how he disliked him. (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

20. After Curran finished the tests on Viola's truck, Viola said, "you can't let people tell you what to do" and that "he [(Viola)] has no problem sticking up for himself." (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

21. Curran indicated that he had work that he needed to do and suggested that Viola go talk to Clark. Viola continued, however, stating he "would have no problem going to someone's house and kicking [their] ass if they did anything to [affect] his pay and his job." When Curran again told Viola to check in with Clark, Viola replied that he was "not afraid to go to his house and kick in the door and kick his ass," and that if his wife came out "he would kick her ass too, in front of their kids." (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

22. Curran cautioned Viola that he could "get in a lot of trouble talking like that." Viola was dismissive of Curran's warning, further commenting that he knew "people that had murdered people in the past and got away with it," and that he knew police officers who could be paid to move dead bodies and plant guns on the bodies. (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

23. Curran was a relatively new employee, and he did not want to get Viola into disciplinary trouble or otherwise get

involved. After reflecting further on Viola's comments that day, however, Curran decided it was necessary to inform Clark, as a precaution, about his interaction with Viola that morning and the threatening remarks he had made. (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

24. Clark, in turn, contacted his union representative, Ronald Dawber, to voice his concerns. (Clark Testimony.)

25. That same day, Clark, Viola, and Dawber met to discuss what had occurred. Viola was upset and apologetic during this meeting. (Clark Testimony.)

26. Later that evening, Clark discussed the situation with his wife, who was alarmed by Viola's comments. (Clark Testimony.)

27. Clark viewed Viola's comments as a threat to his family, and he contacted Dawber again to tell him that he did not want Viola on his crew. Dawber noted that such decisions were outside the union's purview and that Clark would need to report the incident to management instead. (Clark Testimony.)

28. Curran prepared a hand-written statement detailing his interaction with Viola on January 24 and the threatening comments Viola had made. (Curran Testimony; App. Ex. 15; Resp. Ex. 7.)

29. Concerned for his own safety as well, Curran applied an opaque window film over the garage windows at Brockton High

School to avoid being seen from outside, and he locked the doors at both ends of the garage to secure the area. (Curran Testimony.)

30. Clark showed his three minor children (then aged 7, 11, and 13 years old) a photograph of Viola, and he instructed them to go inside their home if they ever saw him. (Clark Testimony.)

31. Clark's in-laws also lived with Clark and his family. Clark advised them of Viola's comments to Curran and showed them the photograph of Viola for identification. For some time thereafter, Clark's mother-in-law would contact Clark or his wife when she saw an unfamiliar car in their neighborhood, out of concern that it might have been Viola. (Clark Testimony.)

#### *Post-Incident Investigation*

32. The day after the incident, Viola was placed on paid administrative leave. (Resp. Ex. 8.)

33. Dr. Moran, Assistant Superintendent for Human Resources, investigated the incident along with her staff. Their investigation included reviewing Curran's written statement and interviewing Curran, Clark, and Viola. (Moran Testimony.)

34. In April 2022, while he was still on administrative leave, Brockton Public Schools sent Viola for a medical evaluation to determine his fitness for duty and for violence screening. (App. Exs. 17, 18; Resp. Ex. 9.)

35. The psychologist who completed the evaluation concluded, and I so find as fact, that Viola was fit for duty without limitation and that he presented a low risk of violence both to himself and to others at his workplace. (App. Ex. 18; Resp. Ex. 9.)

36. On May 16, 2022, Superintendent Thomas held a meeting with Viola and his Union representative to discuss the fitness for duty report as well as concerns regarding his conduct. (Thomas Testimony.)

37. Superintendent Thomas informed Viola that he intended to continue with dismissal proceedings but offered Viola an opportunity to resign or retire instead. (Thomas Testimony.)

38. Viola declined the invitation to resign or retire. On June 6, 2022, Superintendent Thomas notified Viola that he scheduled a pre-termination hearing. (Thomas Testimony; App. Ex. 21; Resp. Ex. 10.)

39. On June 10, 2022, Superintendent Thomas held a hearing to consider whether to terminate Viola's employment. Clark and Dr. Moran testified at the hearing. Dr. Moran provided Viola's disciplinary history, and Clark described how he no longer felt safe supervising or working with Viola. (Clark Testimony; Moran Testimony; App. Ex. 23; Resp. Ex. 11.)

40. In a letter dated June 14, 2022, Superintendent Thomas notified Viola by letter that his employment with Brockton

Public Schools was terminated effective June 30, 2022. The decision to terminate Viola's employment was based on the threatening comments he had made to Curran, the effect those statements had on Clark, Viola's prior history of discipline, and the progressive discipline imposed as a result. The Superintendent emphasized that Viola had "continued to display poor judgement despite the District's efforts to remediate [his] behavior" and he could no longer trust Viola to work at Brockton Public Schools. (App. Ex. 23; Resp. Ex. 11.)

41. On June 22, 2022, Viola appealed to the Civil Service Commission. (Viola Discipline Appeal Form.)

## **DISCUSSION**

### *Legal Standard*

A tenured civil service employee may be disciplined or discharged for "just cause." G. L. c. 31, § 41. The appointing authority bears the burden of proving, "by a preponderance of the evidence, that there was reasonable justification for the action taken" against the employee. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006). See G. L. c. 31, § 43. For disciplinary action to be reasonably justified, it must be based "upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law." *Id.*, quoting *Selectmen of*

*Wakefield v. Judge of First Dist. Court of East Middlesex*, 262 Mass. 477, 482 (1928). There is "just cause" for discipline when an "employee has committed 'substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.'" *Brookline v. Alston*, 487 Mass. 278, 292 (2021), quoting *Doherty v. Civil Serv. Comm'n*, 486 Mass. 487, 493 (2020).

### *Analysis*

Brockton Public Schools established just cause to terminate Viola's employment based on the threatening comments he made to a coworker on January 24, 2022, the seriousness of those threats, the effect his comments had on his coworkers (i.e., Clark and Curran), and his prior disciplinary history of threatening language and behavior. Viola never acted on his threats, but his remarks still caused two of his coworkers (i.e., Clark and Curran) to fear for their safety. Clark, his supervisor, no longer felt safe working with Viola, and both he and his family were afraid that Viola might visit their home with violent intentions. Curran was also concerned for his safety, enough so that he covered the garage windows and locked the garage doors to protect himself at work. Threats of violence and especially murder cannot be taken lightly.<sup>1</sup> See,

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<sup>1</sup>I do not believe Viola had any intention of harming Clark, Curran, or either of their families. Viola presented as

e.g., *Wheeler v. Massachusetts Dept. of Correction*, 32 MCSR 32, 36 (2019) (finding just cause to terminate employee based on pattern of threatening behavior and angry outbursts).

The appellant's argument that the discipline was discriminatory, or that his employer failed to consider a disability accommodation, is not supported by credible evidence. I did not find Viola's testimony to be credible on this issue. There is no indication that Viola requested an accommodation for any disability. And while there is mention in a 2009 letter from a former teacher that Viola had a learning disability as a student in high school, there is no evidence of any correlation between such disability and threatening remarks for which he was disciplined.

As noted, this incident is not the first time that Viola had been disciplined for threatening behavior. In 2015, Viola was suspended for three days and reassigned after an internal investigation concluded that he had engaged in an angry, obscenity-laden outburst during which he berated the food service director and frightened several of his coworkers. In 2016, Viola was suspended for five days and was required to complete an anger management class after a subsequent

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personable, rather than hostile or violent, and his actions and comments were likely attributable to workplace frustration. The fact that he did not intend violence does not mean, however, that significant disciplinary action was not justified.

investigation determined that he had confronted several of his coworkers during a union meeting about his belief that someone had been reporting him to school administration and threatening violence against anyone who did so. Considering this history of discipline, the progressive disciplinary action imposed in response, and the seriousness of the threatening comments presently at issue, I conclude that Brockton Public Schools had just cause to terminate Viola's employment as building custodian.

#### **CONCLUSION**

Brockton Public Schools established just cause to terminate the appellant's employment. Accordingly, subject to review and final decision by the Civil Service Commission, Brockton Public Schools' decision is affirmed, and the appellant's appeal is denied.

Division of Administrative Law Appeals

*/s/ John G. Wheatley*

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John G. Wheatley  
Administrative Magistrate