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COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 10-01813-D

CITY OF METHUEN

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION & another[1]

MEMORANDUM OF DECISION AND ORDER ON THE PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

The plaintiff, the City of Methuen (the "City" or "Methuen"), filed this action, pursuant to G. L. c. 30A, § 14 and G. L. c. 31, § 44, as an appeal from a decision issued by the defendant, the Massachusetts Civil Service Commission (the "Commission"), which modified a personnel action taken by the City with respect to its employee, the co-defendant, Joseph Solomon ("Solomon"). This matter is currently before the court on the City's Motion for Judgment on the Pleadings. For the reasons explained below, the Motion for Judgment on the Pleadings will be **DENIED** and the Commission's decision will be **AFFIRMED**.

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[1] Joseph E. Solomon

BACKGROUND

I. Statutory Framework

Discipline imposed upon a civil service employee is statutorily governed by G. L. c. 31, §§ 41-45. These statutory provisions provide tenured civil service employees with certain procedural protections before the appointing authority can impose disciplinary action against them.[2] G. L. c. 31, § 41. In particular, a tenured civil service employee shall not be "discharged, removed, suspended for a period of more than five days, laid off, transferred from his position . . . nor his position be abolished," except for "just cause" and without first being given a hearing "before the appointing authority or a hearing officer designated by the appointing authority." G. L. c. 31, § 41.

If, after the hearing before the appointing authority's designee, a tenured employee is aggrieved by the appointing authority's decision, that employee may appeal to the Commission. G. L. c. 31, § 43. At that point, the employee "shall be given a hearing before a member of the [C]ommission or some disinterested person designated by the [C]hairman of the [C]ommission." G. L. c. 31, § 43. After the completion of this hearing, "the member or hearing officer shall file . . . a report of his findings with the [C]ommission" and "the [C]ommission shall render a written decision[.]" G. L. c. 31, § 43.

In reviewing the appointing authority's decision, the Commission must "conduct a *de novo* hearing for the purpose of finding the facts anew." Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823 (2006), citing Sullivan v. Municipal Court of Roxbury Dist., 322 Mass. 566, 572 (1948) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728, rev. den., 440 Mass. 1108

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[2] A "tenured employee" is defined as "a civil service employee who is employed following (1) an original appointment to a position on a permanent basis and the actual performance of the duties of such position for the probationary period required by law or (2), a promotional appointment on a permanent basis." G. L. c. 31, § 1. And, "appointing authority" is defined as "any person, board or commission with power to appoint or employ personnel in civil service positions." G. L. c. 31, § 1.

(2003). "The [C]ommission's task, however, is not to be accomplished on a . . . blank slate." Falmouth, 447 Mass. at 823. "After making its *de novo* findings of fact . . . . the [C]ommission does not act without regard to the previous decision of the . . . [appointing authority][;]" rather, it determines "whether 'there was reasonable justification for the action taken by the appointing authority in the circumstances found by the [C]ommission to have existed when the appointing authority made its decision.'" Id. at 823-824, quoting Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev. den., 390 Mass. 1102 (1983). If the Commission finds, by a preponderance of the evidence, that there was just cause for a disciplinary action taken against an employee, the Commission shall affirm the action of the appointing authority. Watertown, 16 Mass. App. Ct. at 334.

An action is "justified" if it is "'done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.'" Cambridge v. Civil Serv. Comm'n, 43 Mass. App. Ct. 300, 304, rev. den., 426 Mass. 1102 (1997), quoting Sullivan, 322 Mass. at 572-573; see also Selectmen of Wakefield v. Judge of the First Dist. Court of E. Middlesex, 262 Mass. 477, 482 (1928). Essentially, the Commission's role is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge, 43 Mass. App. Ct. at 304; see also Leominster, 58 Mass. App. Ct. at 728; McIsaac v. Civil Serv. Comm'n, 38 Mass. App. Ct. 473, 477 (1995). In making this determination, the Commission asks "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service." Murray v. Justices of Second Dist. Court of E. Middlesex, 389 Mass. 508, 514 (1983).

When the appointing authority fails to meet its burden to demonstrate just cause, the Commission may vacate or modify the discipline imposed. G. L. c. 31, § 43.

In undertaking the above analysis, the Commission must be guided by the purpose of the civil service legislation, which is "to free public servants from political pressure and arbitrary separation" while, at the same time, "not . . . prevent[ing] the removal of those who have proved to be incompetent or unworthy to continue in public service." Cullen v. Mayor of Newton, 308 Mass. 578, 581 (1941). "When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the [C]ommission." Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000), citing Cambridge, 43 Mass. App. Ct. at 304. Nevertheless, "[i]t is not within the authority of the [C]ommission . . . to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority." Id., citing Cambridge, 43 Mass. App. Ct. at 304.

II. Facts and Procedural History

The Police Chief of the Methuen Police Department (the "MPD") manages a department of approximately one hundred full-time and part-time sworn officers, along with civilian dispatchers, and other administrative personnel. During the period relevant to the current dispute, the position of Police Chief of the MPD was a tenured civil service position appointed by the Mayor of Methuen, as the appointing authority under G. L. c. 31, and confirmed by the Methuen City Counsel.[3] After a long and significant career with the MPD,[4] in September 2002,

[3] In June 2008, the City, by home rule petition, exempted the position of Chief of Police from the civil service law. See St. 2008, c. 141.

[4] Solomon began his law enforcement career with the MPD in 1986 as a reserve police officer. Then, in 1987, after graduating from the police academy at the top of his class, he became a full-time officer. Thereafter, Solomon was promoted to Sergeant in 1993, to Lieutenant in 1995, and to Captain in 2000, topping the promotional list each time.

Mayor Pollard appointed Solomon "Acting Chief." Then, in May 2003, when Solomon passed the civil service exam for police chief, he became the MPD's permanent Police Chief.

Following Solomon's appointment to the position of Chief of Police, in November 2005, William M. Manzi, III ("Mayor Manzi"), was elected to his first term as Mayor of Methuen. In November 2007, he was re-elected to a second term as Mayor. Shortly before his re-election, on September 28, 2007, Mayor Manzi placed Solomon on paid administrative leave, asserting numerous allegations of wrongdoing and mismanagement against Solomon.

In particular, Mayor Manzi asserted nine categories of allegations against Solomon: (1) Charge One, comprised of four subcomponents, alleged Solomon violated conflict of interest rules/laws in connection with a matter involving Sergeant Larry Phillips (Charge One(a)), Solomon improperly interfered with a criminal investigation (Charge One(b)), Solomon made improper disclosures to his private attorneys (Charge One(c)), and Solomon authorized/permitted improper surveillance of a property located on Baremeadow Street (Charge One(d)); (2) Charge Two, consisting of two subcomponents, alleged Solomon violated conflict of interest rules/laws in connection with transactions between the MPD and a local business, Merrimac Marine, Inc. ("Merrimac Marine") (Charge Two(a)), and in regard to the purchase of a boat from Merrimac Marine (Charge Two(b)); (3) Charge Three alleged Solomon improperly disseminated personnel information to his private counsel; (4) Charge Four alleged Solomon improperly used municipal property for private benefit; (5) Charge Five alleged Solomon engaged in abusive behavior on two occasions, specifically, on August 24, 2007 (Charge Five(a)) and on November 17, 2006 (Charge Five(b)); (6) Charge Six alleged Solomon improperly handled an investigation involving one Walter Flanagan; (7) Charge Seven alleged Solomon used municipal resources to hire private counsel; (8) Charge Eight alleged Solomon mismanaged grants under his control,

including failing to keep proper records for the Weed and Seed grant (Charge Eight(a)), failing to keep proper records for the Community Oriented Policing Services (the "COPS") grant (Charge Eight(b)), and "triple-dipping" in connection with the Weed and Seed grant (Charge Eight(c)); (9) Charge Nine, described by the City as a "catch-all," asserted that Solomon failed in his leadership duties, leading to a deterioration in morale internally and a breakdown in the relationships between the Police Chief's office and the City's other government officials.

In accordance with G. L. c. 31, § 41, a hearing with respect to these charges was held before a hearing officer, Michael J. Marks, Esq. ("Marks"), whose services were selected and paid for by the City, i.e., the appointing authority. During the hearing before Marks, the City abandoned four of the allegations it had asserted against Solomon, namely, Charges Three, Four, Five(b), and Eight(b). Then, following the hearing, Marks concluded that four additional allegations had not been proven, specifically, Charges One(b), Six, Seven, and Eight(c). Mayor Manzi reasserted Charge Six, but otherwise adopted Marks' recommendations and used the reasons Marks identified as the basis for discharging Solomon on May 7, 2008.

Thereafter, Solomon timely appealed, to the Commission, Mayor Manzi's decision to terminate him. The Commission held a nineteen-day *de novo* evidentiary hearing, pursuant to G. L. c. 31, § 43, before Commissioner Paul Stein ("Stein"), spanning from October 10, 2008 through April 9, 2009. This hearing consisted of litigating the remaining nine allegations, which included Charges One(a), One(c), One(d), Two(a), Two(b), Five(a), Six, Eight(a), and Nine. In June 2010, Stein submitted, to the Full Commission, a 125-page decision, modifying the City's discipline by reducing Solomon's discharge to a twelve-month suspension, commencing on May 7, 2008, the date of his discharge, and reinstating Solomon as the MPD's Police Chief,

commencing on October 1, 2010.[5] The Full Commission reviewed Stein's decision and, on June 29, 2010, voted to adopted Stein's findings and conclusions.[6]

Of the nine allegations asserted against Solomon, the Commission rejected in total six and found the remaining three only "proved in part." In particular, the Commission determined that:

> [o]f the numerous charges Methuen asserted against Chief Solomon as grounds for discharge, almost all of them were proved to be wholly without merit. The only three charges with partial merit include[:] (1) failing to transfer [Sergeant] Phillips's disciplinary review to someone else more promptly [Charge One(a)]; (2) deciding, as protection against the gathering storm of criticism against him, to copy private attorneys on a letter to Mayor Manzi that contained MPD personnel information [Charge One(c)]; and (3) succumbing to forces arrayed against him that distracted him (and Methuen) from the collaborative effort needed to effectively address the [Weed and Seed grant] investigation [Charge Eight(a)]. None of these mistakes were[,] [however,] willful misconduct or entirely of his own making, and all of them arose largely because of the toxic political atmosphere in which he was placed by those within and outside the MPD who were actively seeking to remove him.

Beyond these findings, the Commission also determined that improper and undue influence had infected the City's decision-making. More specifically, according to the Commission, the

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[5] In connection with Solomon's role as a witness, Stein made the following observations:

> He is a polite, highly focused and passionate man of medium height and build. He carries much pride about his career, his law enforcement colleagues, and his record of service with Methuen. As a party with a huge stake in the outcome of these appeals, his testimony necessarily must be scrutinized together with the other evidence in the record, both consistent and contradictory, and with his potential bias in mind. Overall, his responsiveness to questions on direct and cross-examination and by this Commissioner, and his demeanor, as witness and observer, appeared sincere and truthful. He acknowledged he had made mistakes and, in hindsight, would have done things differently. Despite the pressure of his career on the line, he was calm, courteous and respectful. He never displayed animus against those who opposed him or criticized him during the hearings, including during some tough cross-examination.

[6] Notably, although all five commissioners approved Stein's decision and his modification of the City's discipline, one commissioner, Daniel Henderson, noted that he believed an appropriate sanction for Solomon would have been a thirty-day suspension.

substantial evidence established that Mayor Manzi made a "political judgment call" that rendered the "preparation of charges and [the] holding of a hearing . . . a hollow formality." Ultimately, the Commission concluded "Manzi's personal ambition and politically biased state-of-mind were a significant and proximate cause that improperly contributed to his decision to put Chief Solomon on administrative leave and, later, to discharge him." As a consequence of its factual findings and these conclusions, the Commission determined the discipline imposed upon Solomon was to be modified.

The City filed a timely Complaint for Judicial Review with this court, seeking to set aside the Commission's Decision and to enter judgment affirming the discipline imposed by the City. The City also filed a Motion to Stay Solomon's reinstatement pending the outcome of its appeal. The court (Murtagh, J.) denied the Motion to Stay. Solomon resumed his duties as Chief of Police on October 1, 2010. On November 8, 2011, the City filed the pending Motion for Judgment on the Pleadings. The court held a hearing in connection with this motion on May 17, 2012.

DISCUSSION

In support of its Motion for Judgment on the Pleadings, the City asserts numerous arguments, challenging the Commission's factual findings and ultimate conclusions as not supported by substantial evidence. The court addresses these arguments below, concluding the Commission's Decision is supported by substantial evidence and represents a valid exercise of its authority.

I. Standard of Review

Pursuant to G. L. c. 30A, a court may reverse, remand, or modify an agency decision if the substantial rights of any party are prejudiced because the agency's decision is not supported

by substantial evidence. G. L. c. 30A, § 14(7)(e). Under the substantial evidence test, the court determines "whether, within the record developed before the administrative agency, there is such evidence as a reasonable mind might accept as adequate to support the agency's conclusion." Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n, 401 Mass. 713, 721 (1988); see also G. L. c. 30A, § 1(6) (defining substantial evidence). If there is substantial evidence, the court must affirm the agency's decision "even though [it] might have reached a different result if placed in the position of the agency." Seagram Distillers Co., 401 Mass. at 721. Judicial review of an agency's decision is confined to the administrative record. G. L. c. 30A, § 14(5).

In reviewing an agency decision, the court must give due weight to the experience, technical competency, and specialized knowledge of the agency, and may not substitute its own judgment for that of the agency. G. L. c. 30A, § 14(7); Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); Southern Worcester County Reg'l Vocational Sch. Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420-421 (1982). The court "must apply all rational presumptions in favor of the validity of the administrative action," Consolidated Cigar Corp. v. Department of Pub. Health, 372 Mass. 844, 855 (1977), and may not engage in a *de novo* determination of the facts, Vaspourakan, Ltd. v. Alcoholic Beverages Control Comm'n, 401 Mass. 347, 351 (1987). The party appealing an administrative decision under G. L. c. 30A bears the burden of demonstrating its invalidity. Merisme v. Board of Appeals on Motor Vehicle Liab. Policies & Bonds, 27 Mass. App. Ct. 470, 474 (1989).

II. Preliminary Arguments Regarding The Proceedings Before the Commission

A. The Standard of Review Applied By the Commission

As a starting point, the City argues the Commission applied the wrong standard of review and that the Commission impermissibly substituted its judgment for that of the appointing

authority. The court disagrees, concluding the City mistakes the Commission's role. The Commission's review of a decision by an appointing authority is not the same as the court's review of a decision issued by the Commission. While the substantial evidence standard circumscribes the court's review of a decision issued by the Commission, the same cannot be said of the Commission's review of an appointing authority's disciplinary action. Rather, the Commission has a duty to determine, under a preponderance of the evidence test, whether the appointing authority has met its burden of proving that "there was just cause" for the disciplinary action taken. G. L. c. 31, § 43. And, in making this inquiry, the Commission is directed to conduct a *de novo* hearing. Falmouth, 447 Mass. at 823 (internal citations omitted). A review of the Commission's decision reveals that it applied the appropriate standard of review, determining, based on a review of all material evidence, that the City had failed to carry its burden of proving that the charges cited as grounds for Solomon's discharge had merit. There is no evidence to suggest the Commission modified this standard or substituted it for a more burdensome standard.[7]

B. The Commission's Authority to Reinstate Solomon as Police Chief

In a cursory fashion, the City claims that, since it exempted the position of Chief of Police from the civil service law, via home rule petition, the Commission's decision to reinstate Solomon "is of questionable legality." The court concludes this argument is without merit. First, St. 2008, c. 141, § 2 specifically provides that the exemption "shall not impair the civil

[7] In making this argument, the City relies, almost exclusively, on Beverly v. Civil Serv. Comm'n, 78 Mass. App. Ct. 182 (2010). This reliance is misplaced. Beverly involves a bypass decision not the review of an appointing authority's disciplinary action and, as the Appeals Court points out in that case, the standards applicable to the two scenarios are "materially different." Id. at 191. With respect to a bypass decision, the appointing authority must demonstrate that there was "reasonable justification" to bypass a job candidate and the Commission "owes substantial deference to the appointing authority's exercise of judgment." Id. at 188. Meanwhile, in connection with the discipline of a tenured employee, the appointing authority must demonstrate that it acted with "just cause" and it owes an appointing authority no special deference. Id. at 191. The different standards are warranted because "a municipality should be able to enjoy more freedom in deciding whether to appoint someone as a new police officer than in disciplining an existing tenured one." Id.

service status of any person holding the office of police chief" on the effective date of the legislation. Second, it would be singularly unfair to permit a municipality to fire a civil service employee illegally, i.e., without just cause, to, then, remove his position from the jurisdiction of the civil service law for political reasons,[8] and to, thereafter, permit the municipality to block his reinstatement on the basis that the position is no longer governed by the civil service law.

C. The Adequacy of the Commission's Findings

Here, the City appears to make two related arguments. First, the City argues that Stein failed to make appropriate findings of fact because, while he included, in his findings, the facts that supported his ultimate conclusions, he failed to include the facts that "fairly distracted from the same." According to the City, "it is critical that all relevant and undisputed facts be included" in the hearing Commissioner's decision because "the non-hearing Commissioners rely on . . . [these] findings of fact[.]" The court rejects this argument because it fails to take into consideration the fact that, prior to making a final decision, the Full Commission is presented with the entire record and may review it before deliberating and voting.

Next, the City argues that, since the Commission adopted Stein's findings and thus, failed to include "all relevant and undisputed facts," its decision "is by its nature, arbitrary and capricious[.]" The court also rejects this assertion. There is no requirement that the Commission include, in its findings, *all* relevant and undisputed facts. In fact, the law clearly states the opposite. "Although an agency's adjudicative body must *review* all the evidence in the record, it need only *record* findings which were necessary for it to decide the issue and provide the courts

[8] The Commission found that the decision to remove the position of Chief of Police from the jurisdiction of the civil service law was part of the political atmosphere created by those "plotting [Solomon's] imminent removal." At the very least, the court concludes that the timing of the home rule petition is suspect. As determined by the Commission, since it was enacted in June 2008, the home rule petition had to have been placed on the City Council's agenda no later than September 27, 2007, which was the day before Mayor Manzi placed Solomon on administrative leave.

with a basis for judicial review." Catlin v. Board of Registration of Architects, 414 Mass. 1, 6 (1992) (internal citations omitted) (emphasis in original); see also Massachusetts Auto. Racing and Acc. Prevention Bureau v. Commissioner of Ins., 401 Mass. 282, 292 (1987) (stating agency is not required to "make factual findings on every controverted issue of law or fact" and is only required to make findings that "indicate the over-all basis of . . . decision and that permit effective appellate review."). Here, the Commission's decision is 125 pages long and includes 179 specific findings. These findings provide more than sufficient information to identify the basis of the Commission's decision and offer an adequate record for the court's review.

D. The Commission's Credibility Determinations

Throughout its Memorandum in Support of the Motion Judgment on the Pleadings, the City challenges various credibility determinations made by the Commission. More specifically, the City asserts, among other statements, the following: (1) Stein incorrectly "gave Solomon, Havey and Kalil full credibility in their respective testimony[;]" (2) "[t]o give credit to [Havey's] testimony defies common sense [;]" (3) "Neve, having nothing to gain by his testimony, appearing with counsel and having no self-interest, testified truthfully yet his testimony was utterly discredited by Stein[;]" (4) "[c]learly Stein in a result driven decision sanctions his own unsupported findings in the weighing of credibility between the Mayor and Alaimo and [improperly] falls on the side of the latter[;]" (5) "[i]nstead of relying on the testimony of trustworthy witnesses and documentation, the Commission chose to rely mostly on self-serving testimony in determining whether Solomon was fit to run a municipal police department[;]" (6) "the Commission improperly relied on the testimony of Solomon's witnesses[;]" and (7) "the Commission impermissibly relied upon the testimony of Solomon[.]" These challenges are wholly without merit and cannot form the basis of overturning the Commission's decision. It is

well-settled that "[i]t is for the agency, not the courts to weigh the credibility of witnesses and resolve factual disputes." School Comm. of Wellesley v. Labor Relations Comm'n, 376 Mass. 112, 120 (1978); see also Leominster, 58 Mass. App. Ct. at 733 ("[T]he reviewing court may not make new determinations of facts or make different credibility choices."). The Commission's decision cannot be deemed improper merely because the Commission did not view the evidence in the way the City contends the Commission should have viewed it.

E. The Commission's Rejection of Marks' Findings

In more than one instance, the City argues that the Commission was, during its fact-finding procedures, somehow bound by the facts as found by Marks, the appointing authority's designated hearing officer. The court disagrees. There is no authority for the proposition that the Commission is required to defer to the findings of the appointing authority's local hearing officer. In fact, in discharging its duties under G. L. c. 31, § 43, the Commission is directed "to conduct a *de novo* hearing for the purpose of finding the facts anew." Falmouth, 447 Mass. at 823 (internal citations omitted). Given this instruction, its would be contrary to require that the Commission give any special deference to the factual findings determined by the appointing authority's hearing officer.[9]

F. The Commission's Acceptance of Testimony from Witnesses that Failed to Testify Before the Appointing Authority

The City claims that the Commission should have draw an adverse inference against Solomon because he called various witnesses during the hearing before the Commission that were not called during the appointing authority's hearing. The court rejects this argument. The case the City cites in support, Falmouth, 447 Mass. at 826-827, does not support this assertion.

[9] In asserting this argument, the City again relies on Beverly. As explained previously, this reliance is misplaced. The standards applicable to a bypass decision, which was the subject of that case, and a disciplinary action, which is the issue in this case, are different. Beverly, 78 Mass. App. Ct. at 191.

Rather, Falmouth merely stands for the rule that an adverse inference can be draw against a *party* who refuses to testify during a civil proceeding. Id. (emphasis added). This does not support the proposition that the failure to call witnesses during the appointing authority's hearing, should result in an adverse inference against the employee. In fact, the direct opposite appears true since the appellate courts have clearly stated that, "[t]here is no limitation of the evidence to that which was before the appointing officer."[10] Leominster, 58 Mass. App. Ct. at 727-728.

III. Factual Errors Asserted by the City

In addition to the arguments already addressed, the City contends the Commission made various factual errors, which warrant overturning the Commission's decision. The court addresses each of the City's claims.

A. The Weed and Seed Grant

The City contends the Commission erred in connection with the findings it made related to the Weed and Seed grant. At base, the City appears to be arguing that, because the federal government conducted an audit and determined certain costs were not allowed under the Weed and Seed grant, just cause existed to terminate Solomon. The court disagrees. The federal audit inquiry as to whether certain expenditures were allowed under the Weed and Seed grant is not comparable to the just cause inquiry. And, the fact that a federal audit revealed disallowed expenditures does not equate with a determination that an employee engaged in wrongdoing warranting termination.

Essentially, the City disagrees with the Commission's view of the evidence as it pertained to the Weed and Seed grant. The City, however, has not adequately contradicted the Commission's findings. Although the Commission stated "certain problems" with the Weed and

[10] Further, drawing the adverse inference the City urges seems largely inequitable given the fact that, while a civil service employee can request that the Commission authorize subpoenas in proceedings pending before it, G. L. c. 31, § 72, the employee as no such power at the local level. See G. L. c. 31, § 41.

Seed grant "were clearly . . . beyond Slomon's control" and that the responsibility for the record-keeping errors was to be shared with the City Auditor and the City's private auditing firm, the Commission did not hold Solomon totally blameless. In fact, Charge Eight(a), failing to keep proper records in connection with the Weed and Seed grant, was actually one of the charges the Commission deemed partially proven. The court fails to see any merit in the City's contention that the record does not support these findings.

B. Conflicts of Interest

A significant portion of the Commission's hearing was devoted to conflict of interest issues involving the MPD's dealings with Merrimac Marine, a local business owned by Solomon's sister and brother-in-law. In particular, the MPD's marine unit purchased a boat from Merrimac Marine and the City took the position that Solomon knew about, and permitted, the purchase without making proper disclosures. The Commission disagreed, concluding there was "no evidence that remotely support[ed]" the assertion that Solomon knew that the boat was purchased from Merrimac Marine. Now, the City argues that, in reaching this conclusion, the Commission ignored important documentary evidence establishing Solomon's knowledge, namely, a grant application for the purchase of a boat and emails referencing a boat purchase. However, none of these documents clearly state that the boat was being purchased from Merrimac Marine and no witness testified that Solomon was involved in the purchase of the boat. There was no direct evidence establishing Solomon's knowledge and the Commission refused to draw the inference urged by the City. In fact, the Commission explicitly stated, "Solomon was proactive in disclosing the family relationship with Merrimac Marine, and fully complied with the ethics laws[.]" There is no reason to overturn the Commission's decision on this basis.[11]

[11] At the hearing before the Commission, and again here, the City argues that, although Solomon filed an ethics disclosure with the previous mayor, his failure to file an updated disclosure, regarding his connection with Merrimac

C. Baremeadow Street

The City asserts that the Commission's factual findings and conclusions regarding matters related to 38 Baremeadow Street, the address at which Solomon's sister and brother-in-law live, were erroneous. The claims regarding the Baremeadow address were contained in Charge One(d) and involved allegations that Solomon authorized special treatment for his sister and brother-in-law in the form of extra property checks and the installation of a surveillance camera. Basically, this is yet another instance of the City disagreeing with the Commission's interpretation of the evidence. In connection with these claims, the Commission heard testimony from several witnesses and made numerous findings of fact, which it used to support its conclusion that the City had failed to prove Solomon engaged in any wrongdoing.

First, with respect to the property checks, the Commission concluded that, "Solomon provided convincing proof that Methuen significantly overstated the number and nature of the activities." More importantly, the Commission credited evidence from Solomon that indicated a call logged to a certain address did not mean that the call was from, or that the police responded to, that address; rather, the address was used as a point of reference for a more general "area check." Second, as to the surveillance camera, while the City faults the Commission for failing to draw the inference that Solomon knew about and authorized its installation, the City fails to mention that there was no direct evidence on this point. In fact, the only evidence presented was that Solomon had observed the camera at his sister's home *after* it had been ordered and installed.

Marine, when Mayor Manzi came into office, constituted an ethical violation. While this may be true, the City provides no support for the contention that this oversight constitutes just cause for imposing the ultimate sanction of termination.

Ultimately, in relation to the claims regarding Baremeadow Street, the Commission stated the following:

> after hearing from all of the witnesses with percipient knowledge of the events, . . . MPD patrol and surveillance activities in the vicinity of 38 [Baremeadow] Street were nothing other than appropriate law enforcement responses to clearly-documented issues of proper concern to the public safety of residents in that area. The preponderance of evidence established that these legitimate, routine activities were not improperly orchestrated at the behest of Chief Solomon.

This conclusion was supported by the substantial weight of the evidence and the court finds no error.

D. The FBI Investigation Involving Mayor Manzi

During the hearing before the Commission, Solomon argued that Mayor Manzi became aware of Solomon's cooperation with federal authorities in an investigation of him and, becoming angry, took action against Solomon through an administrative leave and later termination. The City characterizes this investigation as "inveigled" at the behest of Solomon for his own benefit and further, states that, in addressing the issue, Stein "assumed, without any substantiation, that the FBI took the allegations seriously" and drew related findings "out of thin air." The Commission's findings with respect to the FBI investigation are largely immaterial since the City's current contention that Solomon made up the allegations supporting the investigation did not form the basis of any charge against Solomon. Nevertheless, it is worth noting that the Commission's findings with respect to this issue are, in fact, favorable to the City. In particular, according to the Commission, "[a]lthough . . . a reasonable person could believe there was a causal connection, Chief Solomon's contentions are based entirely on hearsay and circumstantial evidence susceptible of other plausible explanations . . . . [there is] no inference

that Chief Solomon's report to the FBI was a factor at the time of the decision to place him on administrative leave."

E. Solomon's Disclosure of Confidential Information to Counsel

Next, the City challenges the Commission's findings with respect to Solomon's copying of three private attorneys on a piece of correspondence addressed to Mayor Manzi since the document contained private personnel information regarding certain MPD officers. Specifically, the City takes issue with the fact that the Commission treated the disclosure to Solomon's counsel as different than disclosure to the general public. The Commission made detailed findings of fact on this issue leading the Commission to conclude that the disclosure, while "problematic[,]" was understandable given "the unique political forces inside and outside the MPD that then were plotting . . . [Solomon's] imminent removal." Even given these mitigating circumstances, the allegations regarding disclosure of confidential information, contained in Charge One(c), were, according to the Commission, "proved in part," resulting in a sanction against Solomon in the form of a year-long suspension without pay. Within the framework of a just cause hearing, it was within the Commission's authority to weigh the seriousness of Solomon's disclosure and the court finds no error with its findings and conclusions.[12]

[12] Along with this argument, the City claims that the Commission erred in excluding from evidence certain emails between Solomon and his counsel that were routed through a City server and, according to the City, thereby became City property despite the attorney-client privilege. The court finds no error. The rules of evidence do not apply in administrative hearings, G. L. c. 30A, § 11(2), and an agency has "'wide discretion in ruling on evidence.'" Alliance to Protect Nantucket Sound, Inc. v. Department of Public Utils., 461 Mass. 190, 196 (2011), quoting Sudbury v. Department of Pub. Utils., 351 Mass. 214, 219 (1966). For this reason, claims of error with respect to evidence are reviewed under an abuse of discretion standard. See Box Pond Ass'n v. Energy Facilities Siting Bd., 435 Mass. 408, 421 (2000) (stating no abuse of discretion regarding agency's decision not to re-open case to add evidence). In other words, "[w]ith respect to administrative agencies' evidentiary rulings, unless the admission or exclusion of the evidence resulted in a denial . . . of substantial justice, the appellants have no valid complaint." Massachusetts Auto Racing and Acc. Prevention Bureau v. Commissioner of Ins., 401 Mass. at 285-286. Here, the City has failed to demonstrate how the exclusion of these emails negatively impacted its substantial rights.

F. Relations with Other Law Enforcement Agencies

The City also claims the Commission committed error with respect to its findings regarding Charge Nine, which alleged Solomon failed in his leadership duties causing a decrease in morale within the MPD and a breakdown in connection with the MPD's relationships with other law enforcement agencies. This is yet another instance of the City merely disagreeing with the Commission's view of the evidence and ultimate findings. And, as the court as reiterated numerous times throughout this decision, such a disagreement does not warrant overturning the Commission's decision.

Despite the fact that the Commission was not pleased with the assertion of this "catch-all" claim, it made specific findings, determining the City failed to meet its burden of proof. In particular, as to the City's failure, the Commission stated:

> [n]o outside law enforcement officials testified and no specific evidence of a problem with other law enforcement agencies was proffered . . . . against . . . the resounding formal endorsement of the MPD superior officers' union (sergeants, lieutenants, and captains), as well as testimony of numerous other current and former MPD officers, of all ranks, the gist of which was that most members just 'want to do their jobs' and it was, rather, the intrusion of politicians into the affairs of the MPD that 'split' the department . . . . [I]t was not Chief Solomon's performance that led to a "loss of confidence," but, rather, his failure to bend to the prevailing political winds of those who were already pre-disposed against him.

The court finds no error with the Commission's findings.

G. Political Considerations

Finally, the City takes issue with the Commission's findings that political considerations influenced the decision-making with respect to Solomon, stating "[t]here is nothing on the record suggesting political overtones or personal bias on the part of the City. On the contrary, the City's decision to discharge Solomon was a valid exercise of judgment reached after a thorough

investigation and obvious circumstances and events necessitating the same." The City took this same position at the hearing before the Commission. And, the Commission explicitly rejected it, stating the "overarching undue and improper influence . . . [of] political and personal motives played [a role] in every facet of this cases, especially in Chief Solomon's unjustified summary removal from office and subsequent . . . discharge[.]" This conclusion is supported by numerous factual findings contained in the record and many credibility determinations made by the Commission that, as explained, are not subject to review by this court.

ORDER

For the reasons explained above, it is hereby **ORDERED** that:

1. the City's Motion for Judgment on the Pleadings be **DENIED**; and
2. the Commission's decision be **AFFIRMED**.

SO ORDERED.

Date: July 26, 2012

Robert A. Cornetta
Justice