

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

CHRISTOPHER KENNEDY,
Appellant

v.

D-08-64

CITY OF PITTSFIELD,
Respondent

Appellant's Attorney:

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NAGE/SEIU
1299 Page Boulevard
Springfield, MA 01104

Respondent's Attorney:

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Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 43, the Appellant, Christopher Kennedy (hereinafter "Kennedy" or "Appellant"), is appealing the decision of the City of Pittsfield (hereinafter "City" or "Appointing Authority") to suspend him for three (3) days from the Pittsfield Police Department (hereinafter "Department") for untruthfulness, conduct unbecoming an officer and criticism of another officer. The appeal was timely filed with the Civil Service Commission (hereinafter "Commission").¹ A hearing was held on October 8, 2008 at the State Building in Springfield, Massachusetts. As no written notice was received from either party, the hearing was declared private. One (1) CD was made of the hearing and a copy was provided to

both parties at the conclusion of the hearing. All witnesses, with the exception of the Appellant, were sequestered. Both parties submitted post-hearing briefs in the form of proposed decisions.

FINDINGS OF FACT:

Based upon the sixteen (16) documents entered into evidence and the testimony of the following witnesses:

For the Appointing Authority:

- Michael Megaro, Police Officer for the Appointing Authority;
- Captain Stanley Caesar, Pittsfield Fire Department;
- Peter Durso, EMT for County Ambulance;
- George Litourneau, Supervisor Paramedic for County Ambulance;
- Erica Bulshey, EMT for County Ambulance;

For the Appellant:

- Kathleen, wife of James; private citizen;² (hereinafter “Kathleen” and “James”)
- Michelle Sawicky, EMT-Intermediate for County Ambulance;
- Christopher Kennedy, Appellant;

I make the following findings of facts:

1. The Appellant is a tenured civil service employee of the City and has been employed as a police officer for the City since January 18, 1987. He was appointed Acting Sergeant on September 5, 2007 and resumed the duties of police officer on March 23, 2008. (Exhibits 7, 8 and 10)
2. In the Appellant’s twenty one (21) years of service, he has served in numerous capacities within the patrol division such as a community police liaison, command vehicle operator, motorcycle officer, off-road motorcycle officer, and boat patrol. (Exhibit 11)

¹ The Appellant waived his right to a local hearing before the City with the City’s assent.

² The last name of the private citizens involved in this incident have been omitted from this decision.

3. During his tenure, the Appellant has received training in various job-related subject matters including police operations; law; policies and procedures; as well as First Aid/First Responder/CPR training. (Exhibit 11)
4. On October 12, 1998, the Appellant received a letter of reprimand due to his abuse of sick time. (Exhibit 15) He also received a one (1) day suspension for discourtesy on March 25, 2004. (Exhibits 13 and 14)
5. The Appellant has received various commendations and awards during his tenure with the City, including but not limited to letters of commendation for arrest of two people on charges of breaking and entering in the nighttime and possession of burglarious instruments; a citation of appreciation for administering life savings techniques in prevention of a fatality in Pittsfield; an award for removing an unconscious 7-year old child from a vehicle in a double fatal motor vehicle accident; a commendation for entering a burning building and evacuating occupants; and various letters of appreciation from citizens. (Exhibit 12)
6. On January 19, 2008, a verbal and physical altercation with Pittsfield police officer Michael Megaro (hereinafter "Officer Megaro") occurred during an emergency call. (Exhibit 1 and Testimony of Appellant and Officer Megaro)
7. At the time of the incident, the Appellant was serving in the role of Acting Sergeant. (Testimony of Appellant)
8. At the time of the incident, Officer Megaro had been a police officer with the City for approximately three years. Officer Megaro previously served as a police officer for the Town of Adams from 1992 to 2004 and also worked part-time as an EMT for North Adams Ambulance and Adams. He occasionally still works as an EMT. (Testimony of Officer Megaro)

9. Officer Megaro is trained as a First Responder, CPR instructor, ADD instructor, and Intermediate EMT. A First Responder is responsible for the medical aspects of the scene, and the primary concern is the basic medical care of the patient until higher trained medical professionals arrive. Officer Megaro teaches the personnel of the City's Police Department, including the Appellant, annually regarding CPR and First Responder Training. (Testimony of Officer Megaro) As a result, the Appellant is also trained as a "First Responder".

(Testimony of Appellant)
10. The City's fire department, police department and private EMS service responded to the above-referenced emergency call on Worthington Street on January 19, 2008. The subject of the call was James, an intoxicated individual who had fallen down a flight of stairs.
11. The credible testimony of James's wife, Kathleen, provides some context as to what took place at Worthington Street before emergency personnel responded. Earlier that day, Kathleen had dropped off James at his brother's home on Worthington Street with a 12-pack of beer. Before being dropped off, James had slipped and hurt his head. It is clear from Kathleen's testimony that her husband James would eventually drink multiple beers while visiting his brother's home. (Testimony of Kathleen)
12. A few hours after dropping her husband off, Kathleen was contacted by her nephew who told her that that James was dizzy and that she should come to pick him up. When Kathleen arrived back at Worthington Street, she was informed by her nephew that James had fallen down the stairs leading to a small basement, was unconscious, and that a call for assistance had been made to 911. The private EMS service had already arrived and were attending to her husband in the basement. Kathleen initially went upstairs to the first floor of the house, but was eventually asked to come down to the basement. (Testimony of Kathleen)

13. In regard to the instant appeal, the most relevant events on the day in question occurred in two locations at the home on Worthington Street: 1) the basement of the home which all witnesses described as an extremely cramped area no greater than 15 x 20 feet; and 2) the first floor of the home including the small porch / step area directly outside the front door. When entering the front door of the home, you can either walk directly into the first floor hallway / living area or go down the small, steep set of stairs to the small basement area. (*See* photographs in Exhibit 6.) (Testimony common to most of the percipient witnesses)
14. Based on the testimony of the percipient witnesses that testified before the Commission, it appears that after the 911 call was made, individuals appeared at the home in the following order: 1) personnel from the private EMS service; 2) fire department personnel; 3) Officer Megaro; and 4) the Appellant. It appears that additional EMS personnel, including at least one supervisor, arrived later. (Testimony common to most of the percipient witnesses)
15. In addition to the Appellant and Officer Megaro, the following percipient witnesses testified before the Commission: 4 personnel from the private EMS service, 1 Fire Captain, and Kathleen.
16. There is little dispute in regard to the most relevant events that occurred in the basement.. EMS and fire personnel found an unconscious James on the floor of the basement after he had fallen down the small, steep flight of stairs.. They concluded that he was intoxicated and placed him on a board in order to transport him to the local hospital. It appears that several other individuals at the home were intoxicated and there were empty beer cans strewn throughout the basement. (Testimony common to most of the percipient witnesses)
17. It is undisputed that James awoke while being strapped to the board, became belligerent, and refused to be transported to the local hospital.

18. It is also undisputed that both fire and EMS personnel sought the assistance of the Department in order to transport James to the hospital involuntarily. Officer Megaro was the first police officer to arrive, and based on the information he received from EMS and fire personnel and his own observations, he agreed that James should be transported to the hospital involuntarily. (Testimony of Officer Megaro)
19. According to Officer Megaro (and other fire and EMS personnel that testified before the Commission), their decision to transport James to the hospital over his objection was based on the principle of “implied consent”. Officer Megaro testified that his understanding of “implied consent” is that if a patient is not in his right mind and a normal person would agree to receive treatment, then the medical personnel must continue treatment even without consent. (Testimony of Officer Megaro)
20. Shortly thereafter, the Appellant arrived on the scene. Officer Megaro informed him that James was going to be transported to the hospital under the principle of “implied consent”. (Testimony of Officer Megaro and Appellant)
21. The Appellant agreed that James was belligerent and yelling, but he also believed that because he was “awake” and “alert”, he should not be transported to the hospital over his objection. (Testimony of Appellant)
22. According to the Appellant, he wanted to see if he could convince James to be transported to the hospital *voluntarily*, so he went upstairs and asked Kathleen, to come down to the basement and help calm him down. (Testimony of Appellant)
23. Kathleen had not been socializing with the family members that day. It appears that she was not intoxicated and was fully capable of making informed decisions.

24. Kathleen testified that when she went down into the basement, her husband was yelling, was belligerent and was refusing to be placed on the board to be transported. She testified that Officer Megaro told her that the EMS personnel had to “do their job” and that if her husband wouldn’t cooperate, he would be “taken in”. At the time, Kathleen was unsure if Officer Megaro was referring to the hospital or the police station. (Testimony of Kathleen)
25. It is undisputed that the Appellant, concerned about the number of people in the cramped basement area, ordered that James be brought upstairs to the first floor of the house. With the assistance of the Appellant and one other individual, James was escorted up the stairs to the first floor of the house. (Testimony of Appellant and Officer Megaro)
26. It is undisputed that after James was escorted upstairs, the Appellant and Officer Megaro subsequently got into a heated argument regarding whether James should be transported to the hospital over his objection. (Testimony of Appellant and Officer Megaro) Officer Megaro believed that under the principle of implied consent, James should be transported even if he objected. (Testimony of Officer Megaro) The Appellant believed that James should be convinced to go voluntarily. (Testimony of Appellant)
27. There is no dispute that the Appellant was the ranking officer at the scene.
28. Although they differ as to who was the aggressor, both the Appellant and Officer Megaro acknowledged that the two of them engaged in a vulgarity-laced argument that ultimately led to physical contact between the two of them. (Testimony of Appellant and Officer Megaro)
29. Before the confrontation on the porch, Officer Megaro was aware that EMS personnel were calling the local hospital in order for a physician or triage nurse to overrule the Appellant so that James could be transported to the hospital. (Testimony of Officer Megaro)

30. Based on a review of the testimony, I find that Officer Megaro believed that it was likely that the hospital would overrule the Appellant's decision and informed the Appellant of this. It is also clear to me that the Appellant, even knowing that this call was being made to the hospital, stood by his decision that James should only be brought to the hospital with his consent. This angered and frustrated Officer Megaro.
31. According to Officer Megaro, while he was standing out on the porch of the house, a paramedic from the EMS service came up to him and told him that a doctor from the local hospital had refused to overrule the Appellant's decision, but wanted to have the Appellant's name for their records. (Testimony of Officer Megaro)
32. Commenting on the hospital's decision, Officer Megaro testified before the Commission that "...now we're facing an issue because the doctors, the hospital, EMS, fire, everybody in the world has Sergeant Kennedy's name; Sergeant Kennedy being a Pittsfield police officer; so on and so forth; I went back up there to tell him that the doctor had his name...the issue with this is if we leave him [James] and...he dies ... and we've released him either illegally or not in the right frame of mind, we could face either a negligence or abandonment lawsuit." Officer Megaro testified that he went to convey this information to the Appellant. (Testimony of Officer Megaro)
33. Based on a review of the testimony, it is clear that Officer Megaro, a tall, muscular individual with a commanding presence, was furious when he conveyed this information to the Appellant and approached the Appellant in a hostile, confrontational manner. (Testimony, demeanor of Officer Megaro)
34. The Appellant and Officer Megaro offered divergent testimony regarding who initiated the physical contact.

35. According to Officer Megaro, he was standing outside the house on the porch and the Appellant was standing just inside the house when the two of them began talking. He testified that he told the Appellant that although the hospital wouldn't overrule his decision, he still believed that James should be brought into the hospital under the principle of implied consent. (Testimony of Officer Megaro)
36. According to Officer Megaro, the Appellant, in response, "started using his hands" by "making a motion" and yelled at him to "get the fuck away from him". Officer Megaro testified that when he turned around and started walking down the stairs of the porch, he heard the Appellant say, "hey asshole, come back here", so he turned around and started heading back up the porch stairs toward the Appellant. (Testimony of Officer Megaro)
37. The Appellant then said that as the superior officer, he had the right to make the call and that James should not be transported to the hospital over his objections. Officer Megaro testified that he then stated to the Appellant, "you're wrong." The Appellant bumped him with his chest ("chest-to-chest like a bar fight"). Officer Megaro responded by "losing his cool", calling the Appellant a "punk" and saying, "if you ever touch me again, I'll rip your fucking head off." The Appellant then ordered him to leave the scene and report to the police station. (Testimony of Officer Megaro)
38. According to the Appellant, the conversation began inside the house while the Appellant was standing in the living room and Officer Megaro was standing in the foyer inside the house. The Appellant testified that at some point he "motioned for him (Officer Megaro) to go outside" because he didn't want the argument to take place inside the home. Officer Megaro opened the door and exited, the Appellant followed, and the door sprung back and hit him..

The Appellant testified that a heated conversation ensued while both men were standing on the porch and that Officer Megaro was “in a rage”. (Testimony of Appellant)

39. According to the Appellant, Officer Megaro began walking off the porch, but then turned around for no reason, and bumped the Appellant in the chest saying “anytime you want to go at it, let me know”. The Appellant “pushed him away.” Officer Megaro said, “don’t fucking push me.” (Testimony of Appellant)
40. The Appellant testified that it is implausible that he would have initiated the physical contact because, “he’s bigger than I am; I’m over 50 years old; he’s in his 30’s and very muscular; he could kill me; he’s a very intimidating force when he’s out of control.” (Testimony of Appellant)
41. Several other percipient witnesses testified. However, their testimony is so divergent - even when compared against portions of the testimony common to both the Appellant and Officer Megaro - that I am unable to use it to determine who was the aggressor. For example, Kathleen, MET Sawicky and Paramedic Littorneau did not even recall hearing any swears or obscenities. The only medical staff who reported that the Appellant swore is EMT Trainee and Officer Megaro’s babysitter Erica Bulshey. She also reports that Officer Megaro yelled words to Acting Sgt. Kennedy, but can not recall the words. Appointing Authority witness EMT Durso’s testimony appeared to contrast with his own written statement to police. Captain Caesar stated that “in all the noise and confusion, I wasn’t paying attention until Kennedy said fucking asshole or some swear like that.”
42. In addition to the conflicting testimony, it is apparent that most of the witnesses have some favorable bias for Officer Megaro because of contact with him before the incident.

43. James eventually agreed to the Appellant's request to be taken to the hospital voluntarily.

(Testimony of Appellant)

44. When Officer Megaro returned to the police station after being ordered to do so by the Appellant, he spoke with a Lt. Winston and told him that the Appellant was a "worthless piece of shit" and that "they (the Department) didn't have the balls to not promote him" and further that "he shouldn't be a sergeant". A review of the City's investigatory report provides a vivid description of the post-incident interviews with both the Appellant and Officer Megaro. The description of Officer Megaro, which he does not contest, is one of an officer that had completely lost control of his emotions, pacing back and forth and stating, among other things, "I didn't hit him, but I wanted to rip his fucking head off." I draw a reasonable inference that Officer Megaro was in the same out-of-control state while at the scene of the incident. (Exhibit 6 and Testimony of Officer Megaro)

45. After a careful review of the testimony and the undisputed behavior of Officer Megaro, even after the incident, I find it more likely that Officer Megaro was the aggressor. I believe that he bumped the Appellant in the chest, and that the Appellant responded by pushing him away. (Testimony, demeanor of Appellant and Officer Megaro and Exhibit 6)

46. Captain David Granger was assigned to conduct an investigation of the above-referenced incident. After interviewing several witnesses and reviewing relevant documents, he submitted a 34-page, single-spaced report, not including attachments, to Captain-in-Charge Michael Wynn. (Exhibit 6)

47. Captain Granger recommended that both the Appellant and Officer Megaro be found to have violated Department rules regarding: Conduct Unbecoming an Officer and Criticism of Officers. (Exhibit 6)

48. In his report, Captain Granger also concluded that the Appellant “clearly was culpable and clearly an aggressor in this incident.” This conclusion served as one of the underpinnings for charging the Appellant, and not Officer Megaro, with untruthfulness. (Exhibit 6; Testimony of Appellant) For the reasons stated above, I have concluded that Officer Megaro was the aggressor on the day in question and that the Appellant was not untruthful regarding this issue, either to the Pittsfield Police Department or the Commission.
49. In his written report, Captain Granger concluded that the *Appellant* was enraged at the scene and based this partly on the fact that the Appellant “has a lengthy history of similar conduct...some founded and many unfounded or simply never investigated by prior administrations or supervisors.” (emphasis added) (Exhibit 6)
50. The Appellant was suspended for three (3) days. (Exhibit 1)
51. Officer Megaro was initially suspended for one (1) day, but the City ultimately reduced this discipline to a written reprimand to be expunged in six (6) months.

CONCLUSION:

A person aggrieved by a disciplinary action of an appointing authority made pursuant to G.L.

c. 31, § 41 may appeal to the Commission under G.L. c.31, § 43, which provides:

“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.”

Under Section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew.” Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006) and cases cited. The role of the Commission 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.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997). See also City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, 792 N.E.2d 711, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Department of Boston v. Collins, 48 Mass.App.Ct. 411, 721 N.E.2d 928, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass App.Ct. 473, 477, 648 N.E.2d 1312 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983).

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.” Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346 (1971); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, 682 N.E.2d 923, rev.den., 426 Mass. 1102, 687 N.E.2d 642 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427 (1928). The Commission determines justification 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, 684 N.E.2d 620, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514, 451 N.E.2d 408 (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, 857 N.E.2d 1053, 1059 (2006) and cases cited.

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there." Tucker v. Pearlstein, 334 Mass. 33, 35-36, 133 N.E.2d 489 (1956).

“The commission’s task, however, is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether ‘there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision’”, which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006). See Town of Watertown v. Arria, 16 Mass. App. Ct. 331, 334, 451 N.E.2d 443, rev.den., 390 Mass. 1102, 453 N.E.2d 1231 (1983) and cases cited. “Likewise, the ‘power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.’ ” Town of Falmouth v. Civil Service Comm’n, 61 Mass. App. Ct. 796, 800, 814 N.E.2d 735 (2004) quoting Police Comm’r v. Civil Service Comm’n, 39 Mass.App.Ct. 594,600 659 N.E.2d 1190 (1996) Unless the Commission’s findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a

penalty on the basis of essentially similar fact finding without an adequate explanation” E.g., Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006).

The facts of this case are relatively straightforward. The Appellant, then serving as Acting Sergeant for the Pittsfield Police Department, responded to an emergency call at a residence in Pittsfield on January 19, 2008. When he arrived, he encountered a somewhat chaotic scene in the basement of the home, where Officer Megaro, was already present along with Fire and EMS personnel and occupants of the home. Fire and EMS personnel were attempting to place an unconscious male (James) on a board and transport him to the hospital when the male awoke, became belligerent, and refused to be transported. Fire and EMS personnel wanted to transport the patient over his objection under the principle of “implied consent”. Officer Megaro agreed with Fire and EMS personnel. The Appellant, his superior officer, did not.

The Appellant, a certified “first responder” believed the better course of action was to convince the citizen to be transported voluntarily. He took reasonable steps to make that happen, including seeking the assistance of the citizen’s wife and calmly trying to convince the citizen that it was in his best interest to be examined at the local hospital. As a result, the citizen, without force and under his own volition, was transported to the hospital and examined.

Based on a careful review of the testimony and documentary evidence, I conclude that the verbal and physical confrontation that ensued between the Appellant and Officer Megaro was primarily the result of Officer Megaro’s unwillingness to accept the decision of his superior officer.

The City’s argument that the Appellant should have ceded to the advice of the “better-trained” Officer Megaro is misguided. In a paramilitary structure of a police department, chain

of command on the scene is paramount. The individual cloaked with that authority has to be able to exercise that authority for better or for worse. Acting Sergeant Kennedy performed to the best of his ability when controlling an Officer [Megaro] in a rage. Likewise, Officer Megaro's insubordination remains an uncontested fact and was self-admitted when questioned by his supervising Lieutenant. By every account, Officer Megaro disagreed with Acting Sergeant's assessment and judgment and actively argued in an attempt to persuade and alter Acting Sgt. Kennedy's decision.

Despite the fact that his insubordination and aggressive behavior precipitated the subsequent confrontation, Officer Megaro only received a written reprimand: to be removed from his files within six months, while the Appellant was suspended for three (3) days. The City has shown no justification to issue a harsher penalty to the Appellant, as discussed further below.

First, the City's decision to rely on prior alleged misconduct by the Appellant that it acknowledges were in many cases "unfounded or not investigated" was improper and it was troubling to see them referenced in the City's thirty-four (34) page investigative report.

Second, for all the reasons referenced in the findings, I do not believe that the Appellant was untruthful when he told the City that Officer Megaro was the aggressor regarding the incident in question, a primary reason for charging the Appellant with untruthfulness. Moreover, given the divergent testimony regarding this chaotic situation, I was also troubled by the City's unequivocal assessment of the Appellant as untruthful. Two officers presented the Department with divergent, but somewhat similar accounts of what happened on the day in question. Believing Officer Megaro's version of events to be more accurate, the City charged the Appellant with untruthfulness, one of the more serious charges that can be made against a police officer whose job duties require him to testify under oath in a court of law. The City has not

shown, by a preponderance of the evidence, that the Appellant was untruthful in his statements to the Pittsfield Police Department.

Thus, the only two remaining charges against the Appellant are the same charges for which Officer Megaro was found to have violated: Conducting Unbecoming an Officer and Criticism of Officers. While, based on all of the testimony and evidence, I have concluded that Officer Megaro was insubordinate and was the aggressor regarding this incident, I have also concluded that the Appellant likely criticized Officer Megaro in public. Further, it is clear that both officers, to some degree acted unprofessionally as they engaged in a verbal and physical dispute with EMS and Fire personnel and occupants of the home looking on. For these reasons, I conclude that the City has shown, by a preponderance of the evidence, that the Appellant violated Department Rules related to Conduct Unbecoming and Officer and Criticism of Officers.

For all of the reasons stated above and in order to insure a uniform penalty, the Appellant's appeal is hereby *allowed in part*. The Appellant's 3-day suspension is hereby reduced to a written reprimand, effective the same date as that of Officer Megaro, also to be removed from his personnel file after six (6) months of that date.

Civil Service Commission

Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on January 8, 2009.
A true record. Attest:

Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Rebecca Lee Mitchell, Esq. (for Appellant)

Fernand Dupere, Esq. (for Appointing Authority)