

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

PAUL STONE,
Mr. Stone

v.

CASE NO: D-10-255

CITY OF LYNN,
Respondent

Mr. Stone’s Attorney:

Maureen Medeiros, Esq.
AFCME Council 93
8 Beacon Street
Boston, MA 02108

Appointing Authority’s Attorney:

David Grunebaum, Esq.
60 William Street
Boston, MA 02981

Commissioner:

Paul M. Stein¹

DECISION

The Appellant, Paul Stone (hereinafter Mr. Stone), a Senior Custodian at the Connery Elementary School, acting pursuant to G.L. c. 31, §43, duly appealed to the Civil Service Commission (Commission) actions of the City of Lynn, the Appointing Authority, suspending him for one (1) day for insubordination after he failed to report for work on May 28, 2010. A Full Hearing was held on January 20, 2011. The hearing was declared public and witnesses were not sequestered. Twelve (12) exhibits were received in evidence. The hearing was digitally recorded. CDs were provided to the parties, and a copy of the hearing is retained by the Commission. The parties submitted post hearing proposed decisions.

¹ The Commission acknowledges the assistance of Law Clerk Emily Shumsky in the drafting of this decision.

FINDINGS OF FACT

Based on the exhibits, the testimony of Paul Stone, Richard Germano, Richard Connick, Supervisor of Custodians and Maintenance for the City of Lynn, and Michael Donovan, Director of Inspectional Services, and inferences reasonably drawn from the evidence as I find credible, I make the findings of fact set forth below.

The Appellant's Background

1. The Appellant, Paul Stone, was hired on October 21, 1997 by the City of Lynn. He is a full-time tenured Senior Custodian at Connery Elementary School.
2. Mr. Stone is the only person assigned to the 6:30 AM to 3PM shift at the Connery Elementary School. Other employees work the 11AM to 7 PM shift. (*Testimony of Richard Mr. Connick*)
3. Mr. Stone has been a member of the Jehovah's Witnesses for thirty (30) years. (*Exhibit 3, Testimony of Stone*)
4. Each year the Jehovah's Witnesses host a three (3) day convention at a date and location that is disclosed to its members in late January of each year. Mr. Stone testified that there is no way to discover the date of the convention before the congregation receives the letter from the National Headquarters. (*Testimony of Stone*)
5. Mr. Stone testified that while there are always many Jehovah's Witnesses conventions around the country, members of a specific congregation only attend their assigned convention because they worship together as a "spiritual family." (*testimony of Stone*)
6. Richard Connick (hereinafter "Mr. Connick") is the Supervisor of Custodians and Maintenance for the City of Lynn. He became Mr. Stone's direct supervisor in 2008. He was aware that Mr. Stone is a Jehovah's Witness. (*Testimony of Mr. Connick*)

Disciplinary History

7. On October 8, 2008, Mr. Stone was issued a written warning after he failed to remain in phone contact with the principal of Connery Elementary School as instructed. (*Exhibit 8*)
8. On October 13, 2009, Mr. Stone was given a written warning for violating the Departmental procedure for locking up dangerous chemicals, and for failing to clean the closet floors. (*Exhibit 8*)
9. On October 15, 2009, Mr. Stone was issued a written warning for taking sick time without notifying his supervisor. (*Exhibit 8*)
10. On December 15, 2009, Mr. Stone was issued a verbal warning because he had asked another employee to come in early and cover for him while he attended a meeting with Mr. Connick. (*Exhibit 8*)
11. Dennis Mr. Camilo (hereinafter “Mr. Camilo”) is the Assistant Supervisor of Maintenance and Custodians for the City of Lynn. (*Exhibit 8*)
12. On April 16, 2010, Mr. Stone was notified that Mr. Camilo would conduct an in-depth inspection of the Connery Elementary School on April 23, 2010, because on April 14, 2010 he had inspected the school and found it severely lacking in cleanliness. (*Exhibit 8*)

Mr. Stone’s One Day Suspension

13. On February 19, 2010, Mr. Stone requested vacation leave for May 26 to 28, 2010 and also for June 1 to 4, 2010. The request for May 26-28, 2010 was denied. The request for June 1 to 4, 2010 was approved. (*Exhibit 3, Testimony of Mr. Connick, and Testimony of Stone*)
14. Per the Memorandum to the Collective Bargaining Agreement (CBA) between the City of Lynn and Local 1736 of AFSCME Council 93,AFL-CIO, minimum staffing levels of custodians must be maintained. No more than twelve (12) custodial employees may be out on vacation at a given

time while school is in session. May 26 to 28, 2010 was part of the Memorial Day weekend, and was a popular time for custodians to request leave. Mr. Stone's request was denied because the threshold number of twelve (12) custodians had already received leave for that weekend.

(Exhibits 3, 9, testimony of Richard Mr. Connick, Testimony of Donovan)

15. As of January 2010, there were one hundred and ten (110) maintenance workers and Custodians in the City of Lynn. *(Testimony of Donovan)*
16. On average, there are twelve (12) people on vacation, two (2) sick, and two (2) personal days on any given day. *(Testimony of Donovan)*
17. February 24, 2010, Mr. Stone submitted a second request for May 26 to 28, 2010 leave after speaking to Mr. Connick. Mr. Stone said that he had to attend a "very important religious convention." *(Exhibit 3)*
18. March 2, 2010, Mr. Stone wrote Mr. Connick and suggested coverage of his shift by another custodian. He gave the reason of a Jehovah's Witness Convention. Mr. Stone also said that he had booked hotel rooms for the Convention in mid-January, 2010. This was the first time that the school department knew of the reason for his request. *(Exhibit 3, Testimony of Stone)*
19. When asked why he had not submitted the vacation request as soon as he knew the dates of the convention, Mr. Stone cited two emergency surgeries that prevented him from doing so. He also stated that he could not have faxed the vacation request from his home because he did not have a copy of the relevant form. Mr. Stone testified that he does own a fax machine. *(Testimony of Stone)*
20. Mr. Stone provided Mr. Connick with pages from *The Watchtower*, the Jehovah's Witness magazine, showing the dates and locations of all of the Conventions planned for that year. There

was another Convention scheduled for June 4 to 6, 2010, in Portland, ME. Mr. Stone had already requested and been granted those days off. (*Exhibit 3, Testimony of Mr. Connick*)

21. Michael Donovan (hereinafter “Donovan”) is the Director of Inspectional Services, a position which includes oversight of School Custodians. (*Exhibit 7*)

22. When asked why he did not give Mr. Stone the time off to attend the convention, Mr. Donovan said that it was because the convention continued into the following week, and Mr. Stone was already approved for that time off. (*Exhibit 3 and Testimony of Donovan*)

23. Mr. Stone testified that he would never attend a convention other than his own and furthermore, he had no hotel reservations for the second Portland convention. He already had plans to spend the rest of his vacation time (June 1 to 4, 2010) in New Hampshire, nowhere near the convention site. (*Testimony of Stone*)

24. Mr. Connick responded in a March 9, 2010 letter that the suggested coverage was unacceptable because it would leave another shift short-handed. Mr. Connick also wrote that if the request had been made earlier, it was most likely that Mr. Stone would have been granted the requested vacation days. (*Exhibit 3, Testimony of Mr. Connick*)

25. Mr. Donovan has provided religious accommodation to employees, Mr. Stone included, in the past. For example, although flag duties are part of the duties of a senior custodian Mr. Stone is not required to raise and lower the American flag because it is against Jehovah’s Witness beliefs. Mr. Donovan has also worked with two (2) other employees to accommodate their need to attend Jehovah’s Witness meetings at a time that conflicted with their normal work hours. (*Testimony of Donovan*)

26. Mr. Donovan testified that he was not biased against Mr. Stone. (*Testimony of Donovan*)

27. Per the CBA, employees are required to submit a vacation request form via fax to Mr. Connick's office. May vacation must be requested by January 15th, of that year in order for seniority to count. After January 15th, vacation is granted on a first come first served basis. (*Exhibits 4, 12; Testimony of Mr. Connick, Testimony of Donovan*)
28. Custodians must submit vacation requests to Judy Callahan (hereinafter "Callahan"), Mr. Connick's administrative assistant. Ms. Callahan approves the request if there are fewer than (twelve) 12 people out already, but denies it if there are twelve (12) or more requests already granted. (*testimony of Mr. Connick*)
29. Mr. Stone later discovered that the May 26 and 27, 2010 dates had become available, and he requested and was approved for vacation on those days. (*Exhibits 3,5, 6; Testimony of Mr. Connick, Testimony of Stone*)
30. Pursuant to Article 20 §F of the CBA, "In the case of emergency, employees may utilize (1) single vacation day per year without the aforesaid notification requirement applying." Mr. Stone testified that after the denial of May 28 as a vacation day, he believed that he had no choice but to use an emergency day to attend the convention. (*Exhibits 9, 10; and Testimony of Stone*)
31. Mr. Stone had resolved even without the contractual rights, that he would not attend work on May 28, 2010. (*Testimony of Stone*)
32. Richard Germano (hereinafter "Germano") is the President of Local 1736. (*Testimony of Germano*)
33. Mr. Germano spoke with Mr. Stone on multiple occasions concerning his interest in having May 28, 2010 as a vacation day. Mr. Germano testified that Mr. Stone was very upset and interested in doing what he could to get the day off. He does not remember specifically reminding the Mr. Stone about the emergency day. (*Testimony of Germano*)

34. Tom Kench (hereinafter “Kench”) is the Assistant Supervisor of Custodians and Maintenance for the City of Lynn.
35. Sometime between May 25 and 28, 2010, Mr. Stone spoke with Mr. Camilo and Mr. Kench and told them he would use his emergency day on May 28, 2010. (*Testimony of Stone*)
36. Mr. Stone testified that Mr. Kench told him that his position would be covered if he took the emergency day off, as long as he called into the attendance line. Based on this conversation, Mr. Stone believed that it was acceptable for him not to attend work on May 28, 2010. (*Testimony of Stone*)
37. “Floaters” are full time custodians not assigned to a specific location. (*Testimony of Mr. Connick*)
38. Generally when a person is out on vacation one of the “floaters” is assigned to cover the absentee’s shift. On May 28, 2010, when Mr. Stone used an emergency day, one of the “floaters” had to be used. (*Exhibit 11 and Testimony of Mr. Connick*)
39. Sometimes, due to sick leave and personal day requests, only one (1) custodian is on duty. However, this situation is never deliberately created or scheduled. (*Testimony of Mr. Connick*)
40. On Friday May 28, 2010, Mr. Stone called an emergency day into the attendance line. (*Testimony of Donovan, Testimony of Mr. Connick, Testimony of Stone*)
41. Mr. Donovan testified he did not believe the Mr. Stone had an emergency situation because he knew about the Jehovah’s Witnesses convention for four (4) months. Mr. Donovan testified that no one has ever tried to use an emergency day to take off a day previously denied for vacation. He testified that in order to qualify as an emergency, the situation must be similar and serious such as a car breakdown, plumbing problem, or lack of a babysitter. (*Testimony of Donovan*)
42. Emergency vacation days are tracked by the payment clerks. (*Testimony of Donovan*)

43. The Daily Attendance Log for Connery School shows Mr. Stone was signed out as absent from May 26 to June 4, 2010. The reason given was “vacation.” (*Exhibit 11*)
44. Mr. Stone testified that he should have been granted May 28, 2010 vacation as a religious accommodation for “sincerely held religious beliefs.” (*Exhibit 10, Testimony of Stone*)
45. Mr. Connick testified that in order to conduct business there must be at maximum (twelve) 12 custodians out on vacation on a given day or the remaining custodians on duty cannot fulfill the needs of the schools and government buildings that they are assigned to. (*Testimony of Mr. Connick*)
46. Connery School had to find a custodian to cover for Mr. Stone when he failed to attend work on May 28, 2010. Because the school is an important location, the Appointing Authority was forced to shuffle custodians. This shuffle caused the Respondent to be shorthanded in another location. The situation was further exacerbated when another custodian was required to leave to attend to an actual emergency situation, leaving the custodial staff even more stretched. (*Exhibits 3 & 11: Testimony of Connick*)
47. On June 15, 2010, Mr. Stone was placed on a one (1) day suspension for insubordination for using May 28, 2010 as an emergency day after being told at least four (4) times that he could not do so. (*Exhibit 3*)
48. On June 16, 2010, Mr. Stone requested a hearing on his one (1) day suspension. (*Exhibit 2*)
49. On June 21, 2010, the Mayor of Lynn appointed Michael J. Marks, Esq. to conduct a hearing to determine if just cause existed for his suspension. The hearing was conducted on July 13, 2010. Attorney Marks recommended that Mr. Stone’s one (1) day suspension be upheld. Mayor Flanagan Kennedy accepted the recommendation. Exhs. (*Exhibits 1 and 7*)
50. On September 23, 2010, Mr. Stone duly filed an appeal with the Commission. (*Claim of Appeal*)

CONCLUSION

A person aggrieved by 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.” Falmouth v. Civil Serv. 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." Cambridge v. Civil Serv. 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, 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 Dep’t 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 Serv. Comm’n, 38 Mass. App. Ct. 473, 477, 648 N.E.2d 1312 (1995); 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 Serv. v. Municipal Ct., 359 Mass. 211, 214, 268 N.E.2d 346

(1971); Cambridge v. Civil Serv. 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 Serv. 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.'" Falmouth v. Civil Serv. 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). See also Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) The Commission must take account of all credible evidence in the entire administrative record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001). "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,

which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006). See 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. The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification... in the circumstances found by the commission to have existed when the appointing authority made its decision." Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006). See 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.’ ” Falmouth v. Civil Serv. Comm'n, 61 Mass. App. Ct. 796, 800, 814 N.E.2d 735 (2004) quoting Police Comm'r v. Civil Serv. 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., Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 823, 857 N.E.2d 1053, 1059 (2006).

Applying these principles to this appeal, the Commission concludes that the City of Lynn met its burden to establish just cause for discipline imposed on Paul Stone.

Emergency Day

Mr. Stone argues that he was not insubordinate when he was absent from work on May 28, 2010 because he used his Collective Bargaining Agreement (CBA) right to an emergency day. The Commission is not the forum in which to seek a definitive interpretation of the terms and conditions of a collective bargaining agreement, save when the agreement arguably conflicts with Mr. Stone's rights under civil service law, which is not the case here. If the refusal to allow the use of an emergency day is a violation of collective bargaining rights, the proper means to vindicate that right is through the grievance process provided by the CBA and Chapter 150A.

As a matter of civil service law, common sense clearly established that the Mr. Stone had no reasonable basis to believe that his situation was truly an emergency. Mr. Stone testified that he was determined all along to attend the Jehovah's Witnesses Convention on May 28, 2010. He had made financial commitments that he did not want to forfeit. He testified that he was reminded of the emergency day provision in his contract by Mr. Germano, however Mr. Germano has no specific memory of discussing the emergency day. It is also not credible that Mr. Stone was cleared to take the day off by his supervisor so long as he found another employee to take his shift, even if that employee was already scheduled and expected to work elsewhere. Scheduling and staffing is the prerogative of management; it is not within Mr. Stone's rights to exercise his own personal judgment about such staffing issues. Given his prior disciplinary record, Mr. Stone should have known the rules by which he was expected to abide. The plain truth of the matter is that, having failed to take advantage of his seniority rights in a timely manner, which would have given him the time off, Mr. Stone made his own unilateral decision to absent himself without regard to the consequences. The substantial evidence established that he had known all along that he would do so. His attempt to rely on the emergency day rule was

nothing more than a post hoc attempt to find some justification for an otherwise pre-determined decision. The Commission cannot find that the one day suspension meted out for this behavior in unjustified.

Religious Discrimination

Although the Commission's decision does not turn on the issue, and the Commission is not the primary agency charged with enforcement of the discrimination laws, Mr. Stone's contention that his rights to religious freedom were infringed does not appear well-founded. G.L.c.151B. §4(1A) states that employers "shall make reasonable accommodation to the religious need of such individual...as shall not cause undue hardship in the conduct of employer's business."

In order to prove discrimination based on religion, the complainant must meet three prongs: (1) the employee must establish that the employer required them to violate a required religious practice; (2) the employee must "demonstrate that he or she gave the employer notice of the religious obligations;" (3) if the employee meets the preceding two conditions, the employer must "prove that accommodation of the employee's religious obligations would impose...an undue hardship." See New York & Mass. Motor Serv., Inc. v. Massachusetts Comm'n Against Discrimination, 401 Mass. 566, 575-576 (1988).

The statute defines "undue hardship" as "the inability of an employer to provide services which are required by and in compliance with all federal and state laws ... or where the health or safety of the public would be unduly compromised by the absence of such employee or employees, or where the employee's presence is indispensable to the orderly transaction of business and his or her work cannot be performed by another employee of substantially similar qualifications during the period of absence, or where the employee's presence is needed to

alleviate an emergency situation.” Brown v. F.L. Roberts & Co., Inc. 452 Mass. 674 (2008) quoting G.L. c. 151B, § 4(1A).

Although it appears that Mr. Stone could make the prima facie showing that he met the first two prongs, the evidence presented to the Commission leaves no reasonable expectation that he could meet the third prong – a lack of undue hardship to his employer.

It is likely that Mr. Stone could show that his attendance at the annual Jehovah’s Witness Convention is a “required religious practice” and that he gave the appropriate ten (10) days statutory prior notice of his religious obligations. The convention is a three (3) day meeting during which all members attend large scale seminars based on the faith. Congregants are told when and where to attend their convention during a local congregation meeting. As a long term member of a specific congregation in Massachusetts, Mr. Stone was supposed to attend the Portland, Maine convention on May 28 to 30, 2010. Thus, it does appear that, if Mr. Stone were to fail to attend, he would violate a required religious practice of which he did give the statutory required notice. See New York & Mass. Motor Serv., Inc. v. Massachusetts Comm’n Against Discrimination, 401 Mass. 566, 575-576 (1988). See also Brown v. F.L. Roberts & Co., Inc., 452 Mass. 674, 678 (2008). (Court held that plaintiff’s refusal to cut his hair was based on a sincerely held religious belief.) The other available Convention dates were not alternative dates for Mr. Stone, rather they were dates for other congregations and the public.

Although he met the religious practice and notice requirement, Mr. Stone’s claim to religious accommodation is likely to founder on the issue of undue hardship. Because of the popularity of that weekend, and the late time he submitted his request, other custodians had received permission to be away. The Mr. Stone’s request would have placed the school department below safe and proper staffing levels. As such, the dates that Mr. Stone requested

were not available when he submitted the form, given that there were already twelve (12) custodians scheduled to be away on vacation.

The City of Lynn, in conjunction with Local 1736, decided on the maximum number of employees out on vacation based on the number below which they would be understaffed and unable to fulfill their duties fully in all locations. An Appointing Authority can prove an undue hardship based on an inability to “provide services which are required by and in compliance with federal and state law...where the health and safety of the public would be unduly compromised by the absence of such employee...” Massachusetts Bay Transp. Authority v. Massachusetts Comm’n Against Discrimination. 450 Mass. 327, 330 (2008). See also, Pielech v. Massasoit Greyhound, Inc. 441 Mass. 188 (2004).

Mr. Stone had a reasonable time under the terms of his employment rights in which to notify his employer of his need for days off in such a way as to have avoided the undue hardship he created. It would constitute an undue burden to require the school department to allow Mr. Stone a day off at the last minute. Indeed, the ten (10) day prior notice requirement stated in Chapter 151B, Section 4(1A), seems to contemplate that “last minute” accommodations are implicitly an “undue burden”. Thus, except in extraordinary circumstances, accommodating a required religious practice on an “emergency basis” does not seem to be something that fits within the contemplation of Chapter 151B as a general rule. The City of Lynn did not discriminate against Mr. Stone, as it could not allow him the vacation day without following normal procedure which would have been an undue burden on their ability to service their buildings and a potential violation of the collective bargaining rights of others. Mr. Stone’s dilemma was entirely of his own making and was due solely to Mr. Stone’s tardiness in filing his vacation request in

accordance with the reasonably established practice in the school department of which he was well aware.

In sum, based on his testimony that he had resolved to take the day off anyway, Mr. Stone did not reasonably believe that May 28, 2010 was an emergency. The City of Lynn was justified to consider his claim that the day in question was an emergency to be insubordinate behavior, and, given his previous disciplinary reprimands, a one (1) day suspension is appropriate. The appeal of the Appellant, Paul Stone, filed under Docket No. D-10-255 is hereby *dismissed*.

Civil Service Commission

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis [Absent], McDowell, and Stein, Commissioners) on July 28, 2011.

A True Record. Attest:

Commissioner

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 as stated below.

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 To:
Maureen Medeiros (for Mr. Stone)
David Grunebaum (for Appointing Authority)
John Marra, Esq. (HRD)