

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

TONY REGO,
Appellant

v.

D1-11-209

TOWN OF MAYNARD,
Respondent

Appearance for Appellant:

Joseph A. Padolsky, Esq.
Louison, Costello, Condon & Pfaff,
LLP
101 Summer Street, 4th Floor
Boston, MA 02110

Appearance for Respondent:

David Felper, Esq.
Christine S. Collins, Esq.
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Commissioner:

Cynthia A. Ittleman, Esq.¹

DECISION

The Appellant, Tony Rego (hereafter “Appellant” or “Officer Rego”), pursuant to G.L. c. 31, § 43, duly appealed to the Civil Service Commission (hereafter “Commission”) on June 28, 2011, opposing the decision of the Town of Maynard (hereafter “the Town,” “Appointing

¹ This case was heard by Commissioner Daniel Henderson, whose term expired before drafting a decision. Pursuant to 801 CMR 1.01(11)(e), this case was reassigned to Commissioner Cynthia Ittleman, who reviewed the CD, notes, and exhibits, and drafted a decision.

Authority,” or “Respondent”), terminating him from employment at the Town Police Department (hereafter “the Department”). A prehearing conference was held on July 19, 2011.

Following the prehearing conference, the Appellant propounded discovery in the form of document requests 1 and 2 (8/22/11 and 8/31/11, respectively). On September 28, 2011, the Appellant filed a motion to compel discovery alleging that the Respondent failed to respond to the 8/22/11 document request and objected to the documents sought by the 8/31/11 document request. In the 8/22/11 document request, request #11 sought documents that the Respondent would subpoena and request #12 sought,

“information regarding comparative discipline. This information should include the following information: a. the names of other employees (oe) who were previously disciplined by the town of Maynard for violating the same rule and regulation violations that the grievant allegedly violated[.]”

On October 4, 2011, Commissioner Henderson conducted a phone conference regarding the motion to compel discovery. Shortly thereafter, Commissioner Henderson issued an order indicating, *inter alia*, that, pursuant to request #11,

“... the respondent agrees to further produce documents relating to the police chief’s practice and procedure for issuing orders directly or through a subordinate, either verbal or written; and the subsequent recall, modification or rescinding of those orders, for the period of January, (sic) 1, 2004 through April 30, 3011. The police chief should also familiarize himself with his past practice and procedure for that period, for testimonial purposes.”

With regard to request #12, the order provides,

“Parties agree these documents will be produced for the period of January 1, 2004 to the present.”

Pursuant to the order, the pertinent documents were to be produced by October 31, 2011.

The order also states,

“No order is issued on the second request dated August 31, 2011, which stated six (6) numbered requests, different and distinguishable from the first request, (exhibit c) (sic).”

On November 1, 2011, the Appointing Authority delivered a response to the Appellant concerning the 8/22/11 document request.² With regard to the part of the Order relating to request #11 requiring the production of documents relating to the Chief Corcoran's practice and procedure for issuing orders, the Appointing Authority responded, "the town states that *it has no records in its possession that are responsive [....]*" (emphasis added) The Appointing Authority responded, regarding request no. 12, "The town refers to its response to request no. 4 and exhibit 1, hereto."

A full hearing was held on December 5, 2011. The witnesses were sequestered during the full hearing, with the exception of the Appellant. As no notice was received from either party, the hearing was declared private. The full hearing was recorded and a copy of the recording was sent to each of the parties and was made part of the record. For the reasons stated herein, the Respondent had just cause to discipline the Appellant but we reserve determining whether the Appellant's conduct warranted termination of his employment pending the Order entered below.

On January 9, 2012, before the parties filed recommended decisions, the Commission received the Appellant's motion for order of the Commission. On January 17, 2012, the Appointing Authority filed an opposition to the motion for order of the commission. There was no ruling on this motion so it is addressed here.

The Appellant's Motion for Order argues that the Appointing Authority failed to produce the documents sought by document requests ##11 and 12 and pursuant to the Commission's October 4, 2011 order. For this reason, the Appellant urges that the Commission should either grant his appeal or strike evidence that the Respondent failed to produce. Specifically, the Appellant asserts that Chief Corcoran and Lt. Dawson testified at the hearing that the Chief had a

² The Appointing Authority did not file a copy of its response with the Commission but a copy of the response is attached to the Appellant's motion for order of the Commission filed January 9, 2012, after the December 5, 2011 hearing.

practice of issuing and recalling orders directly or through a subordinate and that a central document in this case, Exhibit 6, was consistent with the Chief's practice despite the fact that the Appointing Authority indicated in its response to the document request that it had no such documents in its possession. Further, the Appellant asserts that the Respondent also failed to produce documents of discipline of other employees.

The Appointing Authority argues first that the Appellant's post-hearing motion is untimely. Next, the Appointing Authority argues that if the Appellant believed that its response to the request for documents regarding the Chief's practice and procedure for issuing orders through subordinates was inadequate, the Appellant could have contacted the Appointing Authority to verify its response. Further, the Appointing Authority avers that the testimony of Chief Corcoran and Lt. Dawson "are not inconsistent with the town's response to the production request." Specifically, the Appointing Authority argues that, "Chief Corcoran certainly may have a practice or procedure for issuing orders but it is plausible that he has not created any document ..." in this regard. In relation to the issue of comparative discipline, the Appointing Authority urges that the Appellant could have cross-examined Chief Corcoran at the hearing. Also, the document request for comparative discipline did not seek any and all discipline; rather, it sought information about other employees "... who were previously disciplined by the Town of Maynard for violating the same rule and regulation violations that the grievant allegedly violated [...]"

Rule 801 CMR 1.01(8)(g)(i) provides,

"Motion for Order Compelling Discovery. A Party may file with the Presiding Officer, subject to 801 CMR 1.01(7)(a), a motion to compel discovery is a discovery request is not honored, or only partially honored, or interrogatories or questions at deposition are not fully answered. If the motion is granted and the other party fails without good cause to obey an order to provide or permit discovery, the Presiding Officer before whom the

action is pending may make orders in regard to the failure as are just, including one or more of the following:

1. An order that designated facts shall be established adversely to the Party failing to comply with the order; or
2. An order refusing to allow the disobedient Party to support or oppose designated claims or defenses, or prohibiting him or her from introducing evidence on designated matters.”

801CMR 1.01(8)(g)(i). In this case, the Commission has already issued an Order compelling discovery and the Appellant alleges that the Order was violated. In response to the Order issued earlier in this case, the Respondent indicated that it did not have any documents in its possession regarding the Chief’s practice and procedure for issuing/recalling orders through subordinates. However, at the hearing, Chief Corcoran and Lt. Dawson testified that the email message telling officers not to move the cameras (Exhibit 6) was consistent with the Chief’s practice and procedure. Respondent’s counsel asserts that the failure to produce documents about the Chief’s practice and procedure for issuing orders through subordinates is not inconsistent with the Chief’s and Lt. Dawson’s testimony since the Chief’s practice and procedure could be unwritten. The Commission cannot condone a party’s failure to produce documents concerning a practice and procedure pursuant to an order when it then offers testimony of that a document is consistent with a practice and procedure. Therefore, the Appellant’s Motion for Order in this regard is granted such that the Chief’s and Lt. Dawson’s testimony that Exhibit 6 is consistent with the Chief’s practice and procedure is hereby stricken.

In response to the earlier Order in this case, the Respondent produced documents relating to discipline of other employees of the Department for violation of the same rules and regulations.³ Specifically, the documents that the Respondent produced include written reprimands of Sgts.

³ It is not clear which documents were produced in response to which document requests as there was no marking in that regard in the attachment to the Appellant’s Motion for Order received by the Commission on January 9, 2012. In addition, it appears that the Respondent did not file with the Commission a copy of his response to the Order compelling production.

Neufell and Noble in May 2011 for moving the cameras at issue in the instant case, noting that the Sergeants did not have any previous recorded discipline. Although Sgt. Neufell copied Town Manager Sullivan on an email message he sent to Chief Corcoran and others in the Department, it does not appear to have been factored into his discipline, even though one of the bases of the Town's termination of Officer Rego's employment was that he disseminated Department information to a Town official in violation of Department Rules and Regulations and SOPs. The Respondent also produced other disciplinary documents:

- 1) a notice of disciplinary hearing for a sergeant who allegedly interfered with an investigation and asked subpoenaed officers to perjure themselves by not testifying in a criminal case about a relationship he had with a certain person; there is no documentation of the sergeant's discipline but Officer Rego testified here that he believes the sergeant resigned and or retired;
- 2) a two (2) day suspension of an officer who did not report in the log a call about an altercation because a sergeant asked him not to report it, he was untruthful during the investigation, he disclosed the investigation to the sergeant who asked him not to report the altercation, he was insubordinate and failed to follow orders, rules and regulations; and
- 3) a couple of email messages from Chief Corcoran or Lt. Dawson to different officers requiring them to submit written reports about events such as a patrol car stuck in the mud and failing to properly log officers for dispatch duty.

The Respondent's opposition adds, "Moreover, as no other police officers in the Department were terminated during this timeframe, the Town had no documents demonstrating that officers were subjected to discipline comparable to Rego for any charge or violation and thus produced none." Opposition to Motion for Order, p. 4 (footnote not included). Thus, the Respondent has provided certain disciplinary documentation and the Appellant's Motion for Order in this regard is denied.

Officer Rego's testimony offered other examples of discipline: 1) an officer was suspended for two (2) days for withholding evidence in his locker; and 2) an officer was suspended for five

(5) days, required to undergo psychological evaluation, and attend anger management classes after he was observed yelling and/or screaming at people when he responded to a domestic disturbance.

Following the Appellant's Motion for Order and the Respondent's opposition thereto, the parties submitted their respective proposed decisions. For the reasons stated herein, the appeal is granted in part, denied in part, and the discipline is modified.

Based on the twenty-six (26)⁴ exhibits entered into evidence and the testimony of:

For the Appointing Authority:

- James F. Corcoran, Chief, Maynard Police Department (hereinafter "Chief Corcoran");
- James Dawson, Lieutenant, Maynard Police Department (hereinafter "Lt. Dawson");

For the Appellant:

- Tony Rego, Appellant (hereinafter "Officer Rego" or "Appellant");

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

1. Officer Rego was hired by the Town of Maynard ("Town" or "Appointing Authority") in the position of Patrolman on or about November 2, 2005. (Stipulation) Previously, Officer Rego was an officer at the Hudson Police Department, from which he resigned during the probationary period following citizen complaints which were investigated and determined to be unfounded. During the background investigation of Officer Rego for his application for employment at the Maynard

⁴ Notations on the exhibits suggest that Exhibit 27 is the Appointing Authority's response to the document request. However, the same document appears as Exhibit 25. Therefore, I count twenty-six exhibits. In addition, some of the Exhibit numbers have been changed to accurately reflect the record. Specifically, documents marked Ex. 21 are actually the last six pages of Ex. 20; the exhibit marked 22 is Ex. 21; the exhibit marked Ex. 23 is Ex. 22; the exhibit marked 25 is Ex. 24.

Police Department, the Hudson Chief of Police indicated that he would not rehire Officer Rego but other superior officers who had worked with Officer Rego said that they would rehire him. (Ex. 26)

2. At the time of his hire by the Town, Mr. Rego signed written acknowledgments of his receipt of the Department's Standard Operating Procedures (hereinafter "SOPs" and Police Department (hereinafter "Department") Rules and Regulations. (Stipulation; Exs. 1, 2, 4, 5)
3. At all pertinent times, the Appellant was the President of the Union for the Maynard Police Department. In this capacity, the Appellant reviewed records kept by the Union, which records included disciplinary matters. The Union records file was kept in a cabinet in the Maynard Police Station. (Rego Testimony)
4. The Appellant is aware of and understands the duties of a Maynard patrolman and the specific duties of an officer assigned to dispatch. (Rego Testimony)
5. Chief Corcoran has been Chief of Police in the Town of Maynard for over twelve (12) years and he has been a member of the Maynard Police Department for thirty-two (32) years. (Corcoran Testimony) The SOPs provide that, "It is the duty and responsibility of the Chief of Police to: ... g. Promulgate all general and special orders of the department and issue on his own authority orders, written or oral, not inconsistent with his power, duties and responsibilities." (Ex. 4, p. 2)
6. Lt. Dawson is a Lieutenant in the Maynard Police Department, where he has been employed as an officer for twenty-nine (29) years. As a Lieutenant, Lt. Dawson has performed approximately twenty-five (25) internal affairs investigations. (Dawson

Testimony) Among the Lieutenant's duties and responsibilities is that he must "Perform such duties as may be assigned by the Chief." (Ex. 4, p. 2)

7. The local hearing preceding appeal to the Commission was conducted May 11, 2011. The basis of the hearing was Chief Corcoran's allegation, contained in a letter from the Chief to Officer Rego dated April 20, 2011, that Officer Rego's conduct violated Rules and Regulations 7.0 regarding Orders, 7.01 regarding insubordination, 6.9 regarding truthfulness, 6.7 regarding dissemination of official information, 6.13 regarding use of department records, reports and communications, 6.14 regarding dealing with local officials, and Town Police Department SOPs, including GO. 101 2/12/91 regarding unauthorized and improper dissemination and protecting Department information. (Ex. 12)
8. The Maynard Police station has twenty-six (26) inside fixed cameras, two (2) outside fixed cameras, and, at all pertinent times, two (2) front and rear pan, tilt, zoom cameras (hereinafter "PTZ cameras") The camera system was installed in February, 2009 to provide security at the police station regarding police, prisoners, and town officials. (Corcoran Testimony)
9. The PTZ cameras are located at the front and back of the Police Station. (Corcoran Testimony, Dawson Testimony, Exhibit 10 (Internal Investigation Report dated April 20)). The PTZ camera angles are not fixed and can be manually adjusted to zoom in and out, look up and down, and left and right. (Corcoran Testimony; Dawson Testimony)
10. The PTZ cameras are manually controlled with a joystick located in each of four locations at the Maynard Police Station: Dispatch, the technical room, Chief Corcoran's

office and Lt. Dawson's office. (Corcoran Testimony; Dawson Testimony) The technical room is not usually staffed. (Corcoran Testimony)

11. Movements of each PTZ camera are visible on each of the monitors. (Corcoran Testimony) (Rego Testimony)
12. It is general knowledge within the Department that the PTZ cameras have a recording function. The recordings are copied and brought to court by Inspector Craven for use in OUI cases. At all pertinent times, the recordings were maintained for thirty (30) days, following which new material was recorded. (Dawson Testimony)
13. Prior to December 16, 2010, some officers in the Police Department, including Officer Rego, moved the PTZ cameras from their preset positions. (Rego Testimony) The PTZ camera in the back of the police station shows the place where Officer Rego and others parked their cars. (Dawson Testimony; Rego Testimony)
14. In early December, 2010, Chief Corcoran noticed when he arrived at work at approximately 6:00 a.m. that the PTZ cameras were not set at their preset positions. (Corcoran Testimony)
15. At Chief Corcoran's instruction, on December 16, 2010, Lt. Dawson sent an email message to the entire Police Department, communicating an Order from Chief Corcoran that the PTZ cameras were not to be moved. (Corcoran Testimony; Dawson Testimony, Exhibit 6)
16. The December 16, 2010 Order was a Special Order. (Corcoran Testimony). A Special Order is a temporary written order issued by the Police Chief or his designee outlining instructions covering particular situations. Special Orders are automatically canceled when their objective is achieved. (Ex. 5 regarding Rule 7.05.1 and *infra*)

17. The December 16, 2010 Order states, “Per Chief Corcoran no one is (sic) move or change the location of the front and rear pan, tilt, zoom (PTZ) cameras from the controls at dispatch. They are to remain in the preset viewing areas. Supervisors please cover at roll call.” (Exhibit 6)
18. Officer Rego received the email Order on or about the date it was issued. (Ex. 10, p. 12)
19. “Many members of the [Maynard Police Department] have expressed displeasure with the [December 16, 2010] order among themselves.” (Ex. 10, p. 16)
20. After Sgt. Noble received the December 16, 2010 Order, he covered it at roll call with officers on his shift, including Officer Rego. (Ex. 10, p. 4 and Attachment to Ex. 10 regarding Sgt. Noble Dec. 16, 2010 roll call report)
21. On December 31, 2010, Sgt. Neufell sent an email message to Chief Corcoran, Lt. Dawson, Inspector Craven, Sgt. Jones, Officer Balzotti, Sgt. Noble, Officer Rego, and Sgt. Quinlan, with a copy to Town Manager Sullivan, with the subject entitled, “Front and back PTZ Camera’s” (sic), stating,

“As a supervisor (and member of the Public Safety Building Committee), I feel the cameras (front/back/booking/cell areas) were put in for the SAFETY of ALL members of the Maynard Police Department. There IS a need to move such cameras (catching prisoner leaving back of station, observing subjects in front parking lot ... ie: child custody exchanges, domestics-which have occurred out front in past). I am not aware of exactly why such **order** was issued, but if there is/was an issue, that should be addressed. Ordering NOT moving cameras seems to negate their purpose.
Sgt. Neufell”

(Ex. 10, Attachment)(upper case letters in original; bolded and underlined letters added here)
22. Chief Corcoran did not rescind or change the December 16, 2010 Order. (Corcoran Testimony; Dawson Testimony)

23. On February 2, 2011, Chief Corcoran ordered Lt. Dawson to perform an internal investigation with Inspector Craven into Officer Rego's conduct in moving the PTZ cameras on various dates and times in January and February 2011. (Stipulation)
24. Lt. Dawson and Inspector Craven conducted the requested investigation; they are members of the same Union as Officer Rego. The investigation was based on thirteen (13) dates and times Chief Corcoran told Lt. Dawson he believed Officer Rego had moved the cameras on his shift when assigned to dispatch. Lt. Dawson reviewed the dates and times cited by Chief Corcoran; reviewed pertinent records and recordings of the PTZ camera movements; and interviewed Officer Rego, several other officers, a Department civilian employee, and Mr. Sullivan, the Town Manager. (Ex. 10; Corcoran Testimony; Dawson Testimony)
25. Lt. Dawson has no animus toward Officer Rego. (Lt. Dawson Testimony)
26. On February 23, 2011, Lt. Dawson sent an email message to Officer Rego stating, "Inspector Craven and I have been ordered by Chief Corcoran to conduct an internal investigation. You are required to meet with us on Thursday, February 24, 2011 at 5:00 p.m. You may have Union Representation with you." (Ex. 9)
27. Officer Rego was upset about the notice of the February 24, 2011 meeting; it gave him too little time to prepare for it. (Rego Testimony)
28. Officer Rego attended the February 24th meeting with Lt. Dawson and Inspector Craven; Det. Maria, for the Union, attended with Officer Rego. Officer Rego and Lt. Dawson had a loud, verbal altercation during which Lt. Dawson believed Officer Rego waived a Weingarten rights card⁵ to exercise his Weingarten rights and initially refused to obey orders to be seated. The meeting ended after the investigators told Officer Rego what the

⁵ See NLRB v. J. Weingarten, Inc., 420 U.S. 251 (1974).

investigation was about, asked if he would answer their questions, and Officer Rego refused to participate further in the meeting. After the meeting, Officer Rego discussed it with Det. Maria. Thereafter, Officer Rego apologized to Lt. Dawson. (Exs. 9 and 10; Rego Testimony; Dawson Testimony)

29. On February 25, 2011, Lt. Dawson reported to Chief Corcoran what occurred at the meeting the day before. (Ex. 9) By letter dated February 25, 2011, Chief Corcoran placed Officer Rego on paid administrative leave based on Officer Rego's conduct at the February 24 meeting, stating that Officer Rego was "loud, argumentative and hostile towards the investigators." (Ex. 8)
30. Officer Rego and his attorney met with Lt. Dawson and Inspector Craven in regard to the investigation at the office of Officer Rego's attorney on March 22, 2011. (Ex. 10)
31. On February 25, 2011, Chief Corcoran notified Officer Rego that he was placing him on administrative leave with pay, effective 5:00 p.m. that day, based on a February 25, 2011 memorandum from Lieutenant Dawson to Chief Corcoran regarding a meeting with Officer Rego on February 24, 2011. (Stipulation; Exs. 8 - 10)
32. On April 10, 2011, Lieutenant Dawson (hereinafter "Lt. Dawson") and Inspector Craven submitted a memorandum to Chief Corcoran entitled, "Internal Investigation/Officer Tony Rego/Surveillance Cameras," summarizing the internal investigation (hereinafter "Investigation Report"). (Stipulation)
33. Officer Rego did not request permission to move the PTZ cameras after the December 16, 2010 Order, nor did he, after moving the cameras, notify a superior officer. (Ex. 10, pp. 12, 17; Corcoran Testimony) Nor did Officer Rego go to anyone to seek to revise the Order. (Rego Testimony)

34. At the March 22, 2011 investigation meeting, Officer Rego admitted he moved the PTZ cameras between ten and fifteen times after the December 16, 2010 Order, though he did not recall specific dates and times, and that he recorded the PTZ camera movements using his cell phone in November, 2010, though he did not recall certain details, stating that they might be possible. (Ex. 10)
35. During Officer Rego's shifts and assignments to dispatch, he moved the rear PTZ cameras at the following dates and times when he was on duty and on dispatch duty:
- January 7 - 8, 2011 at 12:43am (shift 5pm to 1am, dispatch duty 10:41pm to 1am)
- January 13 - 14, 2011 at 12:45am (shift 5pm to 1am, dispatch duty 10:30pm to 1am)
- January 15, 2011 at 9:09am (shift from 7am to 3pm, dispatch duty 9:06am to 11:34am)
- January 19 - 20, 2011 at 10:52pm and 12:42am (shift from 5pm to 2am, dispatch duty 10:30pm to 1am)
- January 20 - 21, 2011 at 10:44pm (shift 5pm to 1am, dispatch duty 10:30pm to 1am)
- January 25 - 26, 2011 at 12:54am (shift 5pm to 1am, dispatch duty 10:30pm to 1:01am)
- January 26 - 27, 2011 at 12:18am (shift 5pm to 1am, dispatch duty 10:59pm to 1am)
- January 27 - 28, 2011 at 6:07pm (shift 5pm to 1am, dispatch duty 5:00pm to 7:00pm)
- January 31 - February 1, 2011 at 11:02pm and 12:56am (shift 5pm to 1am, dispatch duty 10:35pm to 1am) (Ex. 10, pp. 1, 2)
36. In the course of the investigation, the investigators also determined that Officer Rego recorded footage from the dispatch monitors on his personal cell phone camera on November 10, 2010. The footage he recorded showed that someone was moving a PTZ camera to observe Ms. A⁶ at the cruiser port while an officer was installing an infant car seat. Officer Rego averred that the footage inappropriately "zoomed in close to her face

⁶ Ms. A is a private citizen whose name is irrelevant here.

and on every move she made[]”, that he (Officer Rego) was not moving the PTZ cameras at dispatch, that no one was in the technical room who could have moved the PTZ cameras, and that he believed Chief Corcoran was moving the PTZ cameras because he had seen Chief Corcoran in his office. (Exs. 10, 11)

37. Exhibit 11 is a copy of Officer Rego’s recording of the PTZ camera movement relating to Ms. A on November 10, 2010. I viewed the recording and did not observe or detect anything untoward in the recording with regard to Ms. A. (Ex. 11; Administrative Notice)
38. On another occasion, in the summer of 2010, Officer Rego alleged that he observed, this time with Sgt. Quinlan, that someone moved the PTZ cameras to observe Ms. A outside the police station in an inappropriate manner. Officer Rego asserted that he believed Chief Corcoran was the one who moved the PTZ cameras on this occasion as well. Officer Rego did not record the PTZ camera movements on that occasion. (Ex. 10)
39. Officer Rego brought the November 2010 recording of Ms. A to the attention of Town Manager Michael Sullivan. Officer Rego also showed the recording to family members and close friends. Officer Rego heard that someone had also used the PTZ cameras to observe a female civilian employee of the Department in an inappropriate manner but he had not seen it. (Ex. 10)
40. Officer Rego did not inform the Department that he intended to disseminate Department records. Officer Rego should have brought his allegations of sexual harassment (moving the PTZ cameras to inappropriately monitor Ms. A and the Department civilian employee) to the Chief directly, not Mr. Sullivan, and that he (the Chief) would have removed himself from any investigation thereon. (Corcoran Testimony)

41. Mr. Sullivan told the investigators that Officer Rego visited him at the Town Building and showed him the November 10, 2010 recording. Officer Rego implied to Mr. Sullivan that Chief Corcoran was moving the cameras to inappropriately observe Ms. A and that Chief Corcoran had also moved the PTZ cameras to inappropriately observe the Department civilian employee. Mr. Sullivan reported further that Officer Rego told him that the civilian employee was bothered by being watched with the PTZ cameras but she was afraid to do anything about it. Officer Rego told investigators that the civilian employee was bothered by being watched with the PTZ cameras but that she was too afraid to do something about it. (Ex. 10)
42. Mr. Sullivan asked Officer Rego if a formal complaint was filed concerning use of the PTZ cameras to inappropriately observe Ms. A and the civilian employee but that he never heard from Officer Rego again. Mr. Sullivan told investigators, “If I thought it was something of a sexual nature I would have done something about it. It didn’t seem to warrant a full scale investigation.” (Ex. 10, p. 9) Mr. Sullivan never spoke to Chief Corcoran about the matter. (Ex. 10)
43. During the investigation, Lt. Dawson showed the Department civilian employee a video recording from the PTZ cameras showing her walking in the back of the police station and another video recording of Ms. A from the same cameras. The civilian employee said neither recording bothered her. She also told investigators that she did not tell Officer Rego that the recording of her bothered her. (Ex. 10)⁷

⁷ The Appellant’s post-hearing Proposed Decision recounts that he testified it was not clear that the recording Lt. Dawson showed the civilian employee was the same one he had seen since the one he had seen was recorded by the video system beyond the thirty-day life of the camera recordings. There was no further evidence in this regard.

44. Based on their internal investigation, Lt. Dawson and Inspector Craven found that Officer Rego violated Rule 7.0 of the Rules and Regulations (pertaining to Orders) by moving the PTZ cameras after the Order was issued. (Stipulation)
45. Based on their internal investigation, Lt. Dawson and Inspector Craven found that Officer Rego violated Rule 7.1 of the Rules and Regulations (pertaining to Insubordination) by his conduct during his first interview with Lt. Dawson and Inspector Craven on February 25, 2011. (Stipulation)
46. Based on their internal investigation, Lt. Dawson and Inspector Craven found that Officer Rego violated Rule 6.9 of the Rules and Regulations (pertaining to Truthfulness) by communicating to Town Administrator Michael Sullivan that a female employee was very concerned about the use of the PTZ cameras which the investigators found to have contradicted statements provided by the female employee and Mr. Sullivan during the internal investigation. (Stipulation)
47. Based on their internal investigation, Lt. Dawson and Inspector Craven found that Officer Rego violated Rule 6.7 of the Rules and Regulations (pertaining to Dissemination of Official Information) by using his personal iPhone to make a recording of the Department's surveillance cameras (hereinafter "Recording"), removing the Recording from the Police Station, and showing the Recording to "family and friends."
(Stipulation)
48. Based on their internal investigation, Lt. Dawson and Inspector Craven found that Officer Rego violated Rules 6.13 and 6.14 of the Rules and Regulations (pertaining to Use of Department Records and Dealing with Local Officials, respectively) and the SOPs

(pertaining to Unauthorized and Improper Dissemination of the Department's Official Business, GO.101 2/12/91, and Protecting Police Department Information). (Stipulation)

49. Chief Corcoran reviewed the Investigation Report and sent a letter to Officer Rego dated April 20, 2011 informing him that disciplinary hearing would be held before the Board of Selectmen (hereinafter "Board") on May 11, 2011 for his violation of various Department Rules and Regulations and SOPs. (Stipulation)
50. During the investigation of Officer Rego, Sgt. Neufell told Lt. Dawson and Inspector Craven that he (Sgt. Neufell) moved the PTZ cameras after the December 16, 2010 Order. Sgt. did not recall how many times he moved the cameras but stated that sometimes when he arrived for work, the cameras were not where they were supposed to be so he adjusted them. (Ex. 10, p. 7)
51. On May 10, 2011, Sgt. Neufell was given a written reprimand for moving the cameras in violation of the December 16, 2010 order and in consideration of his past performance and lack of recorded disciplinary action. The reprimand states that it will be removed from Sgt. Neufell's file on July 1, 2011 if there were no other violations. It does not appear that Sgt. Neufell was disciplined for sending Town Manager Sullivan the December 31, 2010 email message concerning the December 16 Order. (Exs. 10 and 14)
52. During the investigation of Officer Rego, Sgt. Noble told Lt. Dawson and Inspector Craven that he moved the cameras after the December 16, 2010 Order. He reported that he moved the cameras but only if he needed to see the registration number on a car, if there was glare or something like that; he stated that he never moved the PTZ cameras out of position. (Ex. 10, pp. 4 - 6)

53. On May 10, 2011, Sgt. Noble was given a written reprimand for moving the cameras in violation of the December 16, 2010 order and in consideration of his past performance and lack of recorded disciplinary action. The reprimand states that it will be removed from Sgt. Noble's file on July 1, 2011 if there were no other violations. (Exs. 10 and 14)
54. The Board conducted Officer Rego's disciplinary hearing on May 11, 2011. Officer Rego was represented at the May 11, 2011 disciplinary hearing by Union Counsel, Brian P. Fitzsimmons. The Town was represented by Town Counsel, David M. Felper.
(Stipulation)
55. The basis of the hearing was Chief Corcoran's allegation, contained in his letter to Officer Rego dated April 20, 2011, that Officer Rego's conduct violated Rules and Regulations 7.0 regarding Orders, 7.01 regarding insubordination, 6.9 regarding truthfulness, 6.7 regarding dissemination of official information, 6.13 regarding use of department records, reports and communications, 6.14 regarding dealing with local officials, and Town Police Department SOPs, including GO. 101 2/12/91 regarding unauthorized and improper dissemination and protecting Department information. (Ex. 12)
56. On June 27, 2011, the Board unanimously voted to terminate Officer Rego's employment. (Stipulation)
57. Mr. Rego appealed the Board's June 27, 2011 vote to the Commission on June 28, 2011.
(Administrative Notice)
58. Maynard Police Rules and Regulations (hereinafter "Rules and Regulations"), 7.0, entitled "Orders," provides,

"An order is defined as a command or instruction, oral or written, given by one member of the Department to another member of lesser rank. It is

essential to the proper operation of a policy (sic) agency that officers promptly obey all lawful orders. Every officer of the Department shall promptly obey, without reservation, the rules, regulations, policies and procedures of the Department and all lawful commands of a Superior Officer including those commands relayed from a superior (sic) by an officer of the same or lesser rank.” (Ex. 5, p. 25)

59. The Rules and Regulations section 7.01, entitled “Insubordination,” provides,
“Officers shall not be insubordinate. Insubordination shall include:
- a) any failure or deliberate refusal to obey a lawful order (written or oral) given by a Superior Officer or as otherwise specified above.
 - b) It shall also include any disrespectful, mutinous, insolent, or abusive language or action toward a superior whether in or out of the presence of the superior.” (sic)(Ex. 5)
60. The Rules and Regulations section 7.02, entitled, “Conflicting Orders,” provides,
“Should any order be given by a superior conflict with any previous departmental order, the officer to whom such order is given will call attention to the conflict. If the person responsible for issuing said order does not change his order to avoid such conflict, his order will be obeyed, but the officer obeying such order shall not be held responsible for disobedience of the previous order. It should later be reported to the Chief of Police, through the chain of command, for clarification.” (Ex. 5)
61. The Rules and Regulations section 7.03, entitled, “Unjust or Improper Orders,” provides,
“When lawful orders which appear to be unjust or improper are given, the officer to whom the order is given shall respectfully notify the superior officer issuing such order of its impropriety. If the order is not corrected then it is to be carried out. After carrying out the order, the officer to whom the order was given may file a written report to the Police Chief via the chain of command indicating the circumstances and the reasons for questioning the order, along with a request for clarification of departmental policy. After complying with the Section, an officer who carries out an order found to be unjust or improper by the Chief will not be held responsible for carrying out such order.” (Ex. 5)
62. The Rules and Regulations section 7.05.1, entitled, “Types of Orders,” provides,
“General Orders are permanent written orders issued by the Chief of Police outlining policy matters which affect the entire Department. A General Order is the most authoritative written order the Police Chief issues, and may be used to

amend, supersede or cancel any previous order. General Orders remain in full effect until amended, superseded or rescinded by the Police Chief.” (Ex. 5)

63. The Rules and Regulations section 7.05-2, entitled, “Special Orders,” provides, “Special Orders are temporary written orders issued by the Police Chief or his designee outlining instructions covering particular situations. Special Orders are automatically canceled (sic) when their objective is achieved.” (Ex. 5)
64. Neither a Lieutenant nor a Sergeant has authority to rescind or modify Chief Corcoran’s order. (Dawson Testimony)
65. The Rules and Regulations section 6.9, entitled, “Untruthfulness,” provides, “Officers shall speak the truth at all times. In (sic) case in which an officer is not allowed by the regulations of the Department to divulge facts within his knowledge, he will decline to speak on the subject.” (Ex. 5)
66. The Rules and Regulations section 6.7, entitled, “Dissemination of Official Information,” provides, in pertinent part,
“Officers shall treat as confidential that information which is confided to them personally. They shall disclose such information only as required in the proper performance of their duties.
Officers shall neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties.
Officers shall treat as confidential all matters relating to investigation, internal affairs, and personnel.
Officers shall treat the official business of the Police Department as confidential and shall conform to the following guidelines:
a) Information regarding official business shall be disseminated only to those for whom it is intended in accordance with established departmental procedures.
b) Access to departmental files, records and reports shall be limited to those officers and employees authorized by the Police Chief.
c) Official records or reports shall not be copied, or removed from a police facility except in accordance with established departmental procedures.
d) The identity of any person giving confidential information to the department or to any officer thereof in the performance of his duties, shall not be divulged except with the prior approval of the Police Chief or by operation of law....
g) Officers shall not communicate to the public, news media or to any other agency or person information connected with the department or its personnel except as authorized by the Police Chief or by statute” (Ex. 5)
67. The Rules and Regulations section 6.13, entitled, “Use of Department Records (sic) Reports and Communications,” provides,

“All communications to municipal officials shall be forwarded through the Chief of Police, unless specifically authorized otherwise.” (Ex. 5)

68. The Rules and Regulations section 6.14, entitled, “Dealing with Local Officials,”

provides,

“Officers shall not confer with or forward communications to local officials on police matters without first notifying the Police Chief, except as otherwise provided by statute.” (Ex. 5)

69. Maynard Police Department SOPs, #GO.101 (dated 2/12/91), entitled, “Unauthorized and

Improper Dissemination of the Department’s Official Business,” provides, in pertinent

part,

“This General Order is in addition to any other Department Rules and Regulations or Policy and Procedure already in force.

Protecting Police Department Information – Any member of the Department shall not divulge to any unauthorized person, out of the department – i.e. one who does not have official need-to-know, any information concerning the business of the department, nor talk for publication, be interviewed, make speeches on police business, or impact information relating to official business of the dept. unless authorized by the Chief.

For purposes of clarification and to assure that all personnel of the dept. full understand the meaning and intent of this rule, “police business and information” includes all matters concerning the operation of the dept., as well as, information which deals with the administration of the department.

Therefore, all personnel shall desist from divulging any information, whatsoever, regarding the operation and administration of the dept. information concerning the total manning force, such as the total cruiser or beat officers, the number of cruisers being operated, any traffic posts covered, detectives and shift personnel on duty, and etc., for the dept. as a whole or any give shift, shall NOT be divulged, either by radio, telephone, or conversation outside of the department at any time. Any inquiries of such matters shall be referred to the Office of the Chief. ...

The above department order shall be strictly enforced. ...” (Ex. 4)(emphasis in original)

70. The Rules and Regulations section 7.02, entitled, “Unjust or Improper Orders ,” provides,

“When lawful orders which appear to be unjust or improper are given, the officer to whom the order is given shall respectfully notify the superior officer issuing such order of its impropriety. If the order is not corrected then it is to be carried out. After carrying out the order, the officer to whom the order was given may file a written report to the Police Chief via the chain of command indicating the circumstances and the reasons for questioning the order” (Ex. 5, p. 25)

71. On October 20, 2009, Officer Rego was suspended for five (5) days for his conduct on Railroad Street on July 10 and 11, 2009, which suspension was reduced to a written reprimand on January 7, 2011 specifically for failing to follow policies and procedures in the Police Department SOPs and Rules and Regulations when he (1) did not call off on his radio when he arrived at the location; (2) did not inform his supervisor of his actions while on duty; and (3) misrepresenting his actions on July 10 and 11, 2009. (Exs. 16 - 18)
72. An agreement between the Town, the Union, and Officer Rego regarding Officer Rego's actions on July 10 and 11, 2009 indicates that Officer Rego served the five-day suspension, that Officer Rego would withdraw his then-pending appeal at this Commission, that the Town shall remove from Officer Rego's records documentation of the suspension by September 17, 2010 provided that Officer Rego was not disciplined for engaging in any conduct that violates any SOP or Rule or Regulation by that date. (Ex. 18)
73. On May 23, 2008, Officer Rego was suspended by Chief Corcoran for five (5) days for his conduct on Wilson Circle on April 20, 2008 regarding a report of minors drinking alcohol for violating various rules, which suspension was reduced to a three (3) day suspension by the Town Board after a local hearing, and then further reduced to a written reprimand on January 7, 2011. Chief Corcoran's May 23, 2008 letter specifically asserted that Officer Rego violated Rules and Regulations and SOPs by, *inter alia*, withholding evidence, filing inaccurate police reports, violating evidence procedures, neglecting duty, improper police conduct, and conduct unbecoming an officer pursuant to an investigation. (Exs. 19 – 21)

74. An agreement between the Town, the Union, and Officer Rego regarding Officer Rego's conduct on April 20, 2008 (*see* Finding of Fact # 73) indicates that Officer Rego shall serve a three (3) day suspension, that Officer Rego would withdraw his then-pending appeal at this Commission, that the Town shall remove from Officer Rego's records documentation of the suspension by December 31, 2009 provided that Officer Rego was not disciplined for engaging in any conduct that violates any SOP or Rule or Regulation by that date. (Ex. 21)

DISCUSSION

Applicable Law

G.L. c. 31, § 43, 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.”

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. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (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, *rev.den.*, 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)

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 (1956).

It is well established that, "[t]he commission's task...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 17 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. Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006). *See* Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev.den.*, 390 Mass. 1102 (1983) and cases cited.

Under Section 43 of G.L. Chapter 31, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (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 Service Comm'n, 43 Mass.App.Ct. 300, 304, *rev.den.*, 426 Mass. 1102, (1997). *See also* Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev.den.*, 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, *rev.den.* (2000); McIsaac v. Civil Service Comm'n, 38 Mass.App.Ct. 473, 477 (1995); Town of

Watertown v. Arria, 16 Mass.App.Ct. 331, 390 Mass. 1102 (1983).

G.L.c.31, Section 43 also vests the Commission with the authority to affirm, vacate or modify the penalty imposed by the appointing authority. The Commission has been delegated with "considerable discretion", albeit "not without bounds", to modify a penalty imposed by the appointing authority, so long as the Commission provides a rational explanation for how it has arrived at its decision to do so. *See e.g.*, Police Comm'r v. Civil Service Comm'n, 39 Mass.App.Ct. 594, 600 (1996) and cases cited; Falmouth v. Civil Service Comm'n, 61 Mass.App.Ct. 796, 800 (2004); Faria v. Third Bristol Div., 14 Mass.App.Ct. 985, 987 (1982) (remanded for findings to support modification)

Analysis

The only person to testify for the Appellant was the Appellant himself. Some of his testimony was corroborated by the Investigation Report, while other parts of his testimony contradicted the Report and the testimony of Chief Corcoran and Lt. Dawson. He admits that he moved the PTZ cameras ten to fifteen (10 – 15) times but not until Sgt. Neufell's December 31, 2010 email message disagreeing with the Order was sent, which Officer Rego understood to indicate that the December 16 Order was no longer in effect. However, there was no indication, pursuant to Rule 7.05-2, that the objective of the Order had been achieved such that the Order (a Special Order, as Chief Corcoran testified) would have been automatically terminated. The objective was not achieved because Officer Rego repeatedly violated it. As further justification for violating the December 16 Order, the Appellant testified that the Order was not an Order because it was an email message from Lt. Dawson, not Chief Corcoran. However, the email message from Lt. Dawson to the Department begins, "Per Chief Corcoran ..." and Sgt. Neufell's Dec. 31 email message refers to the December 16 email message from Lt. Dawson as the "Order." A Police Department is a paramilitary organization requiring officers to follow orders.

There is no evidence that the Order was rescinded by Chief Corcoran or that a Sergeant could rescind or cancel the order of a superior officer. In addition, the Rules and Regulations, SOPs, and common sense make it clear that the email message constitutes an Order to be obeyed by the Officers. Although at least some did not like it, other officers were aware of the Order. The Rules and Regulations also provide for circumstances in which there may be a question about an Order but it requires the questioning Officer to contact his superiors, which Officer Rego did not do. Neither did Officer Rego ask anyone for permission to move the cameras; indeed, he testified that he did not feel that he needed to do so. As a result, there was just cause to discipline Officer Rego's conduct in this regard for violating the pertinent Rules and Regulations and SOPs cited by the Respondent and Officer Rego's justifications are unavailing.

Officer Rego admits that he recorded the movement of the PTZ cameras showing Ms. A in November 2010 and that he showed it to his family and friends. As justification for his actions in this regard Officer Rego asserts that he sought their opinions about the footage. While it is creditable to admit to so doing, it is not credible that Officer Rego merely intended to obtain the opinions of his friends and family in this regard. There is no evidence that Officer Rego's friends or family members could provide anything more than subjective comments, rather than objective assessments. I find it more likely that Officer Rego showed the recording to friends and family to suggest there was wrong-doing at the Department and to embarrass the Department. Moreover, Officer Rego asserted to Mr. Sullivan that Chief Corcoran used the PTZ cameras to inappropriately observe a civilian Department employee, though Officer Rego had not seen such a recording and was reporting it based on rumor and innuendo. These matters undermine Office Rego's credibility. Therefore, Officer Rego's justifications are unavailing and

there was just cause to discipline him in these regards for violating the pertinent Rules and Regulations and SOPs cited by the Respondent.

Officer Rego admits that he showed the recording of Ms. A to Mr. Sullivan, alleging that the Chief was the person moving the PTZ cameras to view her in an inappropriate manner, and stating that a female civilian employee had been inappropriately observed with the cameras. As justification therefor, Officer Rego argues that he was reporting inappropriate conduct.⁸ Again, while it is creditable to make this admission, it is questionable to assert that what Officer Rego was reporting was Chief Corcoran's inappropriate conduct. The PTZ cameras could be moved by controls in four places: dispatch, the technical room, Lt. Dawson's office and the Chief's office. Officer Rego asserts that he did not move the monitor in dispatch the day that he recorded the PTZ camera movements, that no one was in the technical room, and that he had recently seen Chief Corcoran in his office. However, someone could have used the monitor in Lt. Dawson's office to inappropriately observe Ms. A and the civilian employee. In addition, Mr. Sullivan told investigators that he had no concerns about the video and said he heard nothing further before or after against the Chief in this regard. Further, my review of the recording (Exhibit 11) revealed nothing untoward. Department Rules, Regulations and SOPs make it clear that officers are not to make copies of Department information and that information is not to be disseminated to Town officials. Therefore, there was just cause to discipline Officer Rego's conduct in this regard for violating the pertinent Rules and Regulations and SOPs cited by the Respondent and Officer Rego's justifications are unavailing.

⁸ Officer Rego asserted that the Chief also used the PTZ cameras in August, 2010 to inappropriately observe Ms. A's body but there was no other evidence in this regard. Officer Rego avers that Chief Corcoran's conduct in these regards constitutes sexual harassment. (Ex. 10) Officer Rego did not refer to the Chief's alleged conduct as sexual harassment but he does so here. There was no evidence of a complaint of sexual harassment against Chief Corcoran relating to these matters. In fact, Chief Corcoran testified that he has not been the subject of a sexual harassment complaint.

Officer Rego was also disciplined for being untruthful in the course of the investigation. The Investigation Report indicates that Officer Rego reported that the Department civilian employee was bothered by reports that the PTZ cameras were used to observe her inappropriately. Lt. Dawson showed her the recording of her in the back of the police station. Lt. Dawson also showed her Officer Rego's recording of the PTZ camera movements observing Ms. A. The investigators reported that the civilian employee said she was not bothered by either video. Mr. Sullivan told investigators that he never heard from anyone else at the Department in these regards and he did not view the recording of Ms. A to be of any concern. Therefore, I find there was just cause to discipline Officer Rego's conduct in this regard for violating the pertinent Rules and Regulations and SOPs cited by the Respondent and Officer Rego's justifications are outweighed by the evidence.

Officer Rego was disciplined for being insubordinate in the course of the investigation. Specifically, at the February 24, 2011 investigation meeting with Officer Rego, which was scheduled by a February 23 email message, Officer Rego and Lt. Dawson had a loud, verbal altercation and Officer Rego initially refused to obey orders to be seated. Thereafter, Chief Corcoran placed Officer Rego on paid administrative leave. While Officer Rego was frustrated at the limited time he was given to prepare, that did not entitle him to engage in a loud argument with the investigators and disobey their orders. That said, Lt. Dawson noticed that Officer Rego was asserting his Weingarten rights and, although the Commission has no authority in that regard, Lt. Dawson should have acknowledged the rights asserted by Officer Rego promptly and ended the meeting. Therefore, I find that there was insufficient cause to discipline Officer Rego for insubordination.

The testimony of the Respondent's witnesses was generally credible. Lt. Dawson has been an officer for many years and his testimony evidenced his knowledge of his job and the Department. Lt. Dawson has significant experience conducting investigations and his investigation in this case pursued the evidence to a logical end and the Investigation Report made supportable decisions based on the evidence. Lt. Dawson's testimony was also supported by the testimony of Chief Corcoran. Chief Corcoran has also been on the force for many years and displayed the broad range of his knowledge of the Department and managing it. Chief Corcoran repeatedly testified that Officer Rego had been disciplined a number of times. However, Officer Rego said that other discipline issued by Chief Corcoran had been overturned by the Board of Selectmen, who determined discipline was unwarranted. Chief Corcoran also testified that Officer Rego should have brought his allegations of sexual harassment to the Chief directly, not Mr. Sullivan, and that he (the Chief) would have removed himself from any such investigation. This indicates that there was an internal method to address Officer Rego's concerns, however difficult it may have been, and supports Chief Corcoran's credibility.

I now address the question of comparative discipline. The Respondent issued a written reprimand to Sgt. Neufell for his acknowledgement of having moved the PTZ cameras, noting a lack of previous discipline, but that it appears that the Respondent did not discipline Sgt. Neufell (who also acknowledged moving the cameras) for having sent Mr. Sullivan a copy of the email message he (Sgt. Neufell) sent to Chief Corcoran and others in the Police Department on December 31, 2010 asserting his disagreement with the December 16, 2010 Order. Given the severe discipline given to Officer Rego for, in effect, publishing a video recording of Ms. A at the police station, one would have expected more discipline of Sgt. Neufell than a written reprimand. Nonetheless, Officer Rego did not only show the video of Ms. A, reference an

unseen video of the Department civilian employee to Mr. Sullivan and allege that Chief Corcoran was responsible for both, he also showed the video to family and friends and implied to Mr. Sullivan that the Department civilian employee was bothered by the recording of her movements while the civilian employee told investigators she was not bothered by it. By publishing the video to his friends and family, Officer Rego subjected the Department, whose charge it is to uphold the law based on the public trust, to public ridicule thereby meriting further discipline.

In addition, unlike Sgt. Neufell, the Appellant's record included previous discipline. Specifically, the record shows that the Respondent suspended Officer Rego for five (5) days for violations on April 20, 2008 but, ultimately, by agreement, it was reduced to a three (3) day suspension, record of which would be removed from Officer Rego's record on December 31, 2009 if there were no further violations. For his conduct on July 10 and 11, 2009, the Respondent was suspended for five (5) days, he served the five (5) day suspension but it was agreed that the suspension would be reduced in Officer Rego's record to a written reprimand if there were no further violations of the SOPs or the Rules and Regulations by September 17, 2010.

Although the Respondent produced documentation of discipline for violation of the same Rules and Regulations and SOPs during discovery, there is limited evidence of other discipline in analogous matters with which to compare the Appellant's employment termination and the Respondent indicated that there were no other employment terminations beginning in 2004. *See* discussion of the disciplinary evidence adduced in this proceeding, *supra*. That said, the longest discipline (other than retirement and or resignation) of which we have evidence is the five (5) day suspension, which included the requirement of a psychological evaluation and attendance at

anger management classes, for an officer who was observed yelling and or screaming at individuals when he responded to a domestic disturbance. Like that officer, the Appellant displayed conduct to others outside the Department that was embarrassing and inappropriate, although it was not while he was on duty, and it did not involve losing his temper in a high stress situation involving the public. Rather, Officer Rego's conduct exhibited a failure and or refusal to follow orders regarding internal operations at the police station. In addition, Officer Rego's previous disciplines were reduced. Further, Mr. Sullivan had no concerns about recording that Officer Rego showed him. There is no credible evidence that Chief Corcoran knew that Officer Rego had recorded the PTZ camera movements and showed the recording to Mr. Sullivan until the investigation had begun.⁹ Moreover, although Officer Rego's repeated violations of the order not to move the PTZ cameras and issues involving the recording of the PTZ camera movement warrant considerable discipline, there appears to be no precedent in the pertinent period for terminating an officer's employment therefor, or for analogous conduct. Nearly two years have passed since the Appellant's employment was terminated on June 27, 2011, which is an adequate disciplinary period to address his violations in the absence of evidence of analogous conduct and discipline.

Conclusion

Based on the findings of fact, the law and analysis herein:

- 1) the appeal is hereby ***granted*** as to the discipline for insubordination;
- 2) ***denied*** as to the remainder of the discipline; and

⁹ To the extent that the Appellant raises a question of retaliation, pursuant to G.L. c. 149, § 185 (the Massachusetts Whistle Blower statute), over which the Commission does not have jurisdiction, we note that the statute requires an employee to provide written notice to the employer to provide the employer a reasonable opportunity to correct the alleged wrongful activity, policy or practice; there is no evidence here that Officer Rego provided such written notice. (The Appellant's disclosure of the recording to his family and friends would not likely be covered by G.L. 148, § 185.) The Appellant's post-hearing Proposed Decision similarly asserts that a policy of Policy 96-2 of the Mass. Commission Against Discrimination (hereinafter "MCAD") bars retaliation against a person who complains about sexual harassment. The Commission is not in the position to enforce this MCAD policy and we are unaware of any related action pending at MCAD.

- 3) the discipline is hereby *modified* from employment termination to a suspension beginning June 28, 2011 and ending April 30, 2013.

The Commission earnestly hopes that Officer Rego has duly reconsidered his violations of the Rules and Regulations and SOPs, that he understands further violations will not be tolerated and, should he continue to violate the Rules and Regulations and SOPs, he does so at his own peril.

Civil Service Commission

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman – No; Ittleman, Commissioner – Yes; McDowell, Commissioner – Yes; Marquis, Commissioner – No; Stein, Commissioner – Yes) on April 4, 2013.

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 this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days from the effective date specified in this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Douglas I. Louison, Esq., and Joseph A. Padolsky, Esq. (for Appellant)
David M. Felner, Esq., and Christine S. Collins, Esq. (for Respondent)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

TONY REGO,
Appellant

v.

D1-11-209

TOWN OF MAYNARD,
Respondent

OPINION OF CHRISTOPHER BOWMAN AND DONALD MARQUIS

We voted no as we believe there is just cause to terminate Mr. Rego.

Mr. Rego disobeyed a lawful and unambiguous order of the Police Chief not to move certain security cameras. He then violated Department rules by recording the video on his own recording device and showing the video to friends and family members. Most disturbingly, it is clear to us that Mr. Rego's purpose in doing so was to make false, unfounded allegations that the Police Chief was engaging in sexual harassment of a private citizen. Mr. Rego then, at best, fudged the truth by making allegations that a female employee was disturbed by a recording of her in the Police Department that Mr. Rego ties to the Police Chief. In fact, the employee had no such concerns.

Together, these events paint the picture of a police officer trying to undermine the authority of the Police Chief by disobeying his orders and spreading false, unsubstantiated allegations against him. These actions, coupled with his prior discipline, more than justify Mr. Rego's termination.