

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

JAMES DEYERMOND,
Appellant

v.

D-14-130

DEPARTMENT OF STATE POLICE,
Respondent

Appearance for Appellant:

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Appearance for Respondent:

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Commissioner:

Christopher C. Bowman

DECISION

On June 10, 2014, the Appellant, James Deyermund (Mr. Deyermund), pursuant to G.L. c. 31, § 43 and G.L. c. 22C, § 13, as amended by Chapter 43 of the Acts of 2002, filed an appeal with the Civil Service Commission (Commission), contesting the decision of the Department of State Police (State Police) to suspend him for forty-five (45) days for violation(s) of department rules related to: unbecoming conduct, unsatisfactory performance, insubordination and untruthfulness. On July 8, 2014, I held a pre-hearing conference at the offices of the Commission. On September 11, 2014, I, along with the

parties, visited the State Police Marine Unit at 200 Beverly Street in Boston, MA. While there, I viewed approximately 2-3 hours of security video that is relevant to this appeal. A CD of the security video is maintained by the State Police and, for the purposes of the record, is considered State Police Exhibit 28. I conducted three days of full hearing at the offices of the Commission on September 15th, 16th and 17th, 2014¹. As there was no request by either party for a public hearing, the full hearing was declared private and all of the witnesses, with the exception of Mr. Deyermund, were sequestered. On November 7, 2014, both parties submitted post-hearing briefs in the form of proposed decisions. CDs were made of the digitally-recording hearing. A copy was retained by the Commission and both parties were provided with copies as well.² For the reasons stated herein, the decision of the State Police is affirmed and the appeal is denied.

FINDINGS OF FACT:

Twenty-eight (28) State Police exhibits and three (3) Appellant exhibits were accepted into evidence during the hearing. Subsequent to the hearing, the State Police submitted additional documentation related to prior discipline of other uniformed employees of the State Police which I marked as State Police exhibit 29.³

Based upon the documents entered into evidence, the testimony of:

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00 (formal rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

³ Consistent with Massachusetts Statewide Retention Schedule 02-11, Sections B5 2(b) and/or B5 3(g), these exhibits, and the entire case record, will be retained, either at the offices of the Commission, or at the State Records Center, for six (6) years after final case activity / case closure. After such time period expires, the entire case file will be destroyed. A copy of this decision, however, will be retained permanently by the Commission.

Called by State Police:

- Trooper Jeffrey Bulis, State Police Marine Unit;
- Trooper James Michael Cunningham, State Police Marine Unit;
- Sergeant Andre Thibodeau, State Police Marine Unit;
- William Gode-Von Aesch, Director of Flood Control, New Charles River Dam, Department of Conservation and Recreation (DCR);
- Nicholas Gove, Regional Director, DCR;
- Sergeant Robert Beckwith; State Police (Retired); Troop Representative, State Police Association of Massachusetts (SPAM);
- Trooper Timothy Driscoll, State Police, Office of Executive Security; Union Representative, SPAM;
- Major Richard Prior; State Police Special Operations, including oversight of State Police Marine Unit;
- Detective Lieutenant Christopher Wilcox, State Police Internal Affairs;

Called by Mr. Deyermond:

- Sergeant James Deyermond; State Police (Appellant); formerly assigned to State Police Marine Unit
- Robert McCabe, mechanic, State Police Marine Unit;
- Lieutenant William Freeman; former Commander, State Police Marine Unit (Retired);

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations, policies, and reasonable inferences from the credible evidence, I make the following findings of fact:

1. Mr. Deyermond has been employed by the State Police since 1980. He was promoted to Sergeant in 1995. He has no record of prior discipline. (Stipulated Facts)
2. Throughout his career with the State Police, Mr. Deyermond has been assigned to the Ballistics Unit, various positions at Logan Airport, the Andover barracks and the Special Tactics Operational (STOP) team. (Testimony of Mr. Deyermond)

3. Mr. Deyermund has received numerous commendations during his career with the State Police, including the Medal of Valor, Commanders' awards and civilian awards. In 2007, he was voted Trooper of the Year. (Testimony of Mr. Deyermund)
4. The State Police Marine Unit, located near the TD Garden in Boston, is attached to the Department of Conservation and Recreation (DCR) flood control plant for the Charles River. The structure has an indoor boat bay and a complete fuel and maintenance facility. (Administrative Notice: www.mass.gov/eopss)
5. The Marine Unit is staffed by one (1) lieutenant (who serves as Commander of the Unit); three (3) sergeants; nine (9) Troopers and two (2) mechanics. (Testimony of Mr. Bulis)
6. The Marine Unit has primary patrol responsibility for the Charles and Mystic rivers as well as the DCR Harbor Islands. The unit's jurisdiction also includes Logan Airport and various Massport properties in the Boston Inner Harbor. They regularly provide security for visiting cruise ships, naval vessels and LNG tankers. Troopers from the Marine Unit are also assigned to presidential and executive-diplomatic security for maritime-related details. (Administrative Notice: www.mass.gov/eopss)
7. Mr. Deyermund was transferred to the Marine Unit in 2008 or 2009. (Testimony of Mr. Deyermund)
8. At all times relative to this appeal, Lt. William Freeman, now retired, was the Commander of the Marine Unit. He oversaw the Troopers assigned to the Marine Unit who work two (2) shifts, 7:00 A.M. to 3:30 P.M. and 3:00 P.M. to 11:00 P.M. and two (2) mechanics who work from 6:00 A.M. to 2:00 P.M. (Testimony of Lt. Freeman)

9. In or about 2010, there were two (2) separate docks located outside the Marine Unit facility: one managed by DCR (the DCR Dock)⁴ and the other managed by the State Police Marine Unit (State Police Dock). (Testimony of Lt. Freeman and State Police Exhibit 11)
10. At the time, the DCR dock could be accessed by two (2) gangways [ramps]. The two (2) DCR gangways (“DCR Gangway A” and “DCR Gangway B”) both originated from a platform near land and were located next to each other, forming somewhat of a “V-shape” from the platform to the DCR dock. (State Police Exhibit 11)
11. Attached to DCR Gangway A was approximately seventy-five (75) feet of copper wire that served as a power source. (Testimony of Mr. Gode-Von Aesch). The power source served three electric meters used for the following purposes: a) a Boston Harbor Cruise vessel; b) a DCR vessel; and c) the shade structure at the top of the gangways. (Testimony of Mr. Gove)
12. On or about June 14, 2010, DCR Gangway B (which had no power source / copper wire) attached to it, collapsed into the water. (Testimony of Lt. Freeman & State Police Exhibit 24)
13. At the time DCR Gangway B collapsed, there was no damage to DCR Gangway A, which was still usable. (State Police Exhibit 24)
14. Concerned that the public, including fans leaving a Celtics or Bruins game at the nearby TD Garden would attempt to access this collapsed gangway, and likely drown, Lt. Freeman contacted William Gode-Von Aesch at DCR. (Testimony of Lt. Freeman)

⁴ This is also referred to as the Lovejoy Wharf. For simplicity it is referred to as the DCR dock throughout this decision.

15. Mr. Gode-Von Aesch has been the Director of Flood Control for DCR at the New Charles River Dam for the past eleven (11) years. He works in a DCR building that is adjoined to the Marine Unit. (Testimony of Mr. Gode-Von Aesch) Lt. Freeman considered Mr. Gode-Von Aesch to be his primary point of contact when dealing with DCR-related issues. (Testimony of Lt. Freeman)
16. Mr. Gode-Von Aesch assured Lt. Freeman that DCR would have the gangway removed from the water. During their conversation, Lt. Freeman inquired whether it would be possible for the State Police to take possession of the collapsed gangway to replace the existing State Police gangway. [The collapsed DCR gangway was wider than the gangway being used by the State Police at the time and did not have “cleats”.] (Testimony of Lt. Freeman)
17. Mr. Gode-Von Aesch told Lt. Freeman that he wasn’t authorized to transfer the collapsed gangway to the State Police, but that he would check with his superiors at DCR. In the interim, Lt. Freeman called his supervisor, Captain Burna, to ask him if he had any objection to the State Police taking possession of the collapsed gangway from DCR. Lt. Freeman told Captain Burna that the collapsed gangway probably was worth approximately \$50,000. Captain Burna told Lt. Freeman that, as long as DCR was onboard, he had no problems with the proposal. (Testimony of Lt. Freeman)
18. On June 15, 2010, Mr. Deyermond penned an email to Mr. Gode-Von Aesch confirming the State Police’s interest in taking possession of the collapsed gangway (DCR Gangway B). The email stated:

“Bill, we would like to take possession of the broken ramp at Lovejoy Wharf. We’d like to install it on our dock so that we can accommodate a medical stretcher or other wide equipment on & off our docks. Does DCR want to get ride (sic) of the eyesore? Let me know ASAP. Thanks...Jim D” (SP Ex. 23)

19. After multiple conversations between Lt. Freeman and Mr. Gode-Von Aesch, it was agreed that DCR would have a crane pull the collapsed gangway out of the water and transfer it to the State Police. Mr. Gode-Von Aesch told Lt. Freeman that the State Police Marine Unit mechanics would need to be on-hand to assist with the transfer. Lt. Freeman recalls that he worked with Mr. Deyermund on this project. (Testimony of Lt. Freeman)
20. At some point in 2010, DCR brought a crane to the area, pulled the collapsed gangway from the water and transferred it to the State Police Marine Unit with the assistance of the two Marine Unit mechanics, Robert McCabe and Edward Stilley. Lt. Freeman remembers it being a big production, with dozens of people on hand, many just observing, from both DCR and the Marine Unit. (Testimony of Lt. Freeman)
21. The collapsed gangway sat on Marine Unit property for approximately one month before a private company by the name of “KentFab” took the gangway and fabricated it so it could be used by the Marine Unit. (Testimony of Lt. Freeman)
22. During their conversations about the transfer, Lt. Freeman and Mr. Gode-Von Aesch only discussed taking possession of the collapsed gangway, which had no power source / copper wire attached to it. They never discussed taking possession of the power source / copper wire that was attached to the remaining DCR gangway (DCR gangway A). (Testimony of Lt. Freeman and Mr. Gode-Von Aesch)
23. On May 25, 2011, the Marine Unit was tasked with providing security detail for a visit to Boston by the Vice President. During the Vice Presidential security detail, Lt. Freeman and Mr. Deyermund were assigned to one vessel and Troopers Foley and

Cunningham were assigned to another vessel. (Testimony of Mr. Deyermond and Trooper Cunningham)

24. Trooper Jeffrey Bulis, who was not assigned to the detail, was doing the grocery shopping that morning for the Marine Unit. Trooper Bulis has been with the State Police for nineteen (19) years and has been assigned to the Marine Unit for nine (9) years. He has a bachelors degree and a masters degree in criminal justice. He works the 7:00 A.M. to 3:30 P.M. shift at the Marine Unit. (Testimony of Trooper Bulis)
25. At 10:47 A.M. on May 25, 2011, Trooper Foley and Trooper Cunningham left in the first vessel for the Vice Presidential detail. At 10:57 A.M. on the same day, Lt. Freeman and Mr. Deyermond left in the second vessel for the Vice Presidential detail. Trooper Bulis arrived at the Marine Unit after both vessels departed for the Vice Presidential detail. (State Police Exhibit 28)
26. Security cameras at the Marine Unit were installed as a result of a \$50,000 grant initiated by Mr. Deyermond. He was involved in the placement of the security cameras and received training from the vendor. (Testimony of Mr. Deyermond)
27. At 11:04 A.M. on May 25th, Marine Unit mechanic Robert McCabe, while in the unstaffed office area on the second floor of the Marine Unit, manually moved a security camera *from* a position where it was pointed toward the State Police boats and the DCR dock *to* a position where it was pointed at the Washington Street bridge and water. (State Police Exhibit 28 and Testimony of Mr. McCabe)

28. Mr. McCabe is the Chief Marine Mechanic at the Marine Unit. He has been with the State Police for thirty-one (31) years. On his personal time, he scraps metal and junk. (Testimony of Mr. McCabe)⁵
29. At approximately 11:07 A.M. on May 25th, Trooper Bulis arrived at the Marine Unit. (State Police Exhibit 28)
30. When Trooper Bulis entered the Marine Unit, no other uniformed members of the unit were present in the building. Trooper Bulis proceeded upstairs into the kitchen area of the Marine Unit. While unloading groceries, he heard a buzzer sound go off indicating that someone was opening the Unit door. He then looked out the kitchen window (which faces the Marine Unit dock and gangway, which are closer to the building, and the DCR dock and gangway) and observed the Marine Unit mechanics, Robert McCabe and Edward Stilley, headed down the Marine Unit gangway toward the State Police boats. Mr. McCabe was wearing gloves and carrying a “sawzall” in his hand. (Testimony of Trooper Bulis)
31. While standing in the kitchen area, Trooper Bulis observed Mr. McCabe and Mr. Stilley board a State Police boat and travel over to the DCR dock. Trooper Bulis observed the mechanics cutting down wire from the remaining DCR gangway (DCR Gangway A). (Testimony of Trooper Bulis)
32. After cutting wire from the DCR gangway, the mechanics returned to the interior bay area of the Marine Unit where they unloaded the wire from the boat onto the dock area inside the Marine Unit. (State Police Exhibit 28 and Testimony of Trooper Bulis)

⁵ At the hearing before the Commission, Mr. McCabe stated that he is currently out of work due to a work-related injury.

33. Shortly after unloading the wire onto the interior dock, Mr. McCabe proceeded to the second floor of the Marine Unit and again entered the unstaffed office where the security cameras are located. He manually repositioned the security camera, which he had previously moved to face the Washington Street bridge and water, back to a position facing the Marine Unit dock and DCR dock. (State Police Exhibit 28 and Testimony of Mr. McCabe)
34. When Trooper Bulis was observing the mechanics cut the wire from the DCR dock, he contacted Trooper Cunningham to inquire whether he or Trooper Foley had knowledge of the mechanic's actions. Neither Trooper Cunningham nor Trooper Foley was aware of why the mechanics would be cutting wire off the DCR gangway. (Testimony of Trooper Bulis and Trooper Cunningham)
35. At approximately 11:00 A.M., Lieutenant Freeman and Mr. Deyermond returned to the Marine Unit from their security detail, picked up Mr. McCabe, and departed again. (State Police Exhibit 28 and Testimony of Trooper Bulis, Mr. McCabe and Mr. Deyermond)⁶
36. At approximately 2:00 P.M., the mechanics left for the day. (Testimony of Trooper Bulis)
37. At approximately 2:46pm, Mr. Deyermond and Lieutenant Freeman returned to the Marine Unit on the State Police boat. (State Police Exhibit 28)

⁶ Conflicting testimony was offered in regard to the purpose of picking up Mr. McCabe and departing again. Also, I was unable to determine when or how Mr. McCabe made it back to the Marine Unit that day prior to leaving for the day. These issues, however, did not factor into any of my final conclusions here. Rather, they are simply unanswered questions which cannot be sufficiently addressed based on the existing record.

38. Upon their return, Lieutenant Freeman left directly from the boat bay area without coming upstairs. (Testimony of Trooper Bulis and Mr. Deyermund; State Police Exhibit 28)
39. Mr. Deyermund proceeded upstairs to the office area prior to his shift ending. (Testimony of Trooper Bulis, Trooper Cunningham, Sergeant Thibodeau and Mr. Deyermund)
40. At or about the same time that Lt. Freeman and Mr. Deyermund returned to the Marine Unit, Sgt. Andre Thibodeau, the sergeant assigned to the 3:00 P.M. to 11:00 P.M. shift, arrived at the Marine Unit. (Testimony of Trooper Bulis and Sgt. Thibodeau)
41. Trooper Bulis, who was now suspicious of the events that he observed regarding the removal of the copper wire, did not share his concerns with Mr. Deyermund, who was the sergeant on the 7:00 A.M. to 3:30 P.M. shift. Trooper Bulis believed that Mr. Deyermund and Mr. McCabe had a personal friendship and, based on this, decided to convey his concerns to the sergeant on the incoming shift, Sgt. Thibodeau. (Testimony of Trooper Bulis)
42. Sgt. Thibodeau has been with the State Police for twenty-eight (28) years and has been assigned to the Marine Unit since 2006. He is the shift supervisor on the 3:00 P.M. to 11:00 P.M. shift. (Testimony of Sgt. Thibodeau)
43. Sergeant Thibodeau, Trooper Bulis, Trooper Cunningham and Trooper Foley gathered in the kitchen area prior to Mr. Deyermund's departure. They discussed what Trooper Bulis had observed earlier in the day, but did not discuss the matter with Sgt. Deyermund before Sgt. Deyermund left for the day. (Testimony of Trooper

Bulis, Trooper Cunningham and Sgt. Thibodeau) Like Trooper Bulis, Trooper Cunningham and Sgt. Thibodeau also believed that Mr. Deyermund and Mr. McCabe had a close relationship.⁷ (Testimony of Trooper Cunningham and Sgt. Thibodeau)

44. On May 25, 2011, while Sergeant Thibodeau was working the 3:00 P.M. – 11:00 P.M. shift, he took photographs of the wire which was located on the docks inside the Marine Unit facility. (Testimony of Sgt. Thibodeau)

45. On May 25, 2011, at the conclusion of his shift, Sgt. Thibodeau observed that the moveable security camera was left in its normal position on the Marine Unit boats and the DCR dock. (Testimony of Sgt. Thibodeau)

46. On May 26, 2011, Mr. Stilley moved the wire from the floating dock. The wire was cut up and took multiple trips to be moved. The security video does not show where Mr. Stilley moved the wire to. (State Police Exhibit 28)

47. At approximately 6:20 A.M. on May 26, 2011, prior to the arrival of any uniformed officers at the Marine Unit, Mr. McCabe entered the second floor office area. At approximately 6:21AM, the camera focused on the Marine Unit boats is moved to focus on the area known as the locks. (State Police Exhibit 28)

48. After the camera is moved, Mr. McCabe proceeded downstairs and the bay area door is opened. Both mechanics left in a Marine Unit boat. A short time later, the mechanics returned in the boat and unloaded a sawzall and a metal plate. (State Police Exhibit 28)

⁷ Asked on cross-examination for examples of the close relationship between Mr. McCabe and Mr. Deyermund, Mr. Cunningham testified that he once saw Mr. Deyermund and Mr. McCabe rig the roof rack of a car that belonged to a relative of Mr. Deyermund in order to place kayaks that had been seized from a homeless person on the roof of the relative's car. Other witnesses testified to seeing Mr. Deyermund and Mr. McCabe smoking cigars together and regularly going out on missions together, despite the fact that Mr. McCabe was not a Trooper.

49. On May 26, 2011, Trooper Cunningham worked the day shift which starts at 7:00 A.M. As he was traveling into work he received a telephone call from Sgt. Thibodeau inquiring whether the wire was still on the dock behind the cement pole. He informed Sgt. Thibodeau that he would check when he arrived at work. While in the office area that morning, Trooper Cunningham noticed the moveable camera was not focused on the Marine Unit boats, but instead was focused on the locks. (Testimony of Sgt. Cunningham)
50. Sgt. Thibodeau had contacted Trooper Cunningham again that morning inquiring about the wire. While on the phone with Sgt. Thibodeau, Trooper Cunningham asked him why he did not leave the moveable camera on the Marine Unit boats. Sgt. Thibodeau told Trooper Cunningham that he had left the moveable camera on the boats prior to leaving for the night on May 25, 2011. Trooper Cunningham began to move the camera back to its normal position when he was interrupted by a telephone call by Mr. Deyermond. Mr. Deyermond advised that he was having trouble with his cruiser alarm that morning and that Mr. McCabe would be traveling to his house to assist him. (Testimony of Trooper Cunningham)
51. On May 26, 2011, shortly after 7:00 A.M., Mr. McCabe again entered the second floor office of the Marine Unit. Mr. McCabe then repositioned the security camera back to its original position on the Marine Unit boats. (Testimony of Trooper Cunningham; State Police Exhibit 28)
52. After observing Mr. McCabe move the camera and exit the office, Trooper Cunningham and Trooper Foley then reviewed the surveillance camera footage from earlier that morning, which showed Mr. Stilley making multiple trips up the Marine

Unit gangway with the cut-up wire from the day before. (Testimony of Trooper Cunningham)

53. After reviewing the video surveillance and observing Mr. McCabe's actions, Trooper Cunningham called Sgt. Thibodeau and informed him that Mr. McCabe had moved the surveillance camera. (Testimony of Trooper Cunningham and Sgt. Thibodeau)

54. On May 26, 2011, after speaking with Trooper Cunningham, Sgt. Thibodeau came in at approximately 11:45 A.M., despite his shift not beginning until 3:00 P.M., to inform Lieutenant Freeman and Mr. Deyermond about the situation and Mr. McCabe's actions. (Testimony of Sgt. Thibodeau)

55. When Sgt. Thibodeau arrived at the Marine Unit that morning, he proceeded upstairs and telephoned Mr. Deyermond. Sgt. Thibodeau asked Mr. Deyermond if they could meet him upstairs so that he could show them something. Mr. Deyermond asked Sgt. Thibodeau to come downstairs to the boat bay area. As Sgt. Thibodeau was coming down the back stairs, he heard Mr. McCabe say "he's here, he's here" and observed Mr. McCabe run away. (Testimony of Sgt. Thibodeau)

56. As part of the conversation, Sgt. Thibodeau informed both Lieutenant Freeman and Mr. Deyermond that Mr. McCabe had moved the surveillance camera prior to traveling over to the DCR dock with Mr. Stilley. (Testimony of Sgt. Thibodeau)

57. Sgt. Thibodeau further reported that the mechanics had cut copper wire from the DCR dock; that they unloaded the copper wire and that Mr. McCabe then moved the surveillance camera back to its original position. Sgt. Thibodeau told them that he believed that the wire had been taken out of the Marine Unit. (Testimony of Sgt. Thibodeau)

58. Sgt. Thibodeau also told Lt. Freeman and Mr. Deyermund that he believed the wire had been “taken to Chelsea to turn into scrap.” (Testimony of Mr. Deyermund)
59. Based on the amount of copper wire in question, Mr. Deyermund believed that its value was “definitely more than \$250.” (Testimony of Mr. Deyermund)
60. Sergeant Thibodeau then brought Lt. Freeman and Mr. Deyermund upstairs to show them the video surveillance footage. While watching the surveillance footage, Lt. Freeman said “that doesn’t look good.” (Testimony of Sgt. Thibodeau)
61. After reviewing the security video, Lt. Freeman immediately contacted Captain Daniel Risteen of the State Police and informed him of the potential that copper wire may have been stolen from the DCR gangway by the mechanics. Captain Risteen told Lt. Freeman that he would pass the information on to Major Richard Prior. (Testimony of Lt. Freeman) After receiving authorization from Captain Risteen, Lt. Freeman instructed Mr. Deyermund to initiate an investigation and report back to him. (Testimony of Mr. Deyermund)
62. To start his investigation, Mr. Deyermund reviewed policies and procedures, took out a note pad to write down what Sgt. Thibodeau had told him and went down to the boat bay. (Testimony of Mr. Deyermund) I infer from Mr. Deyermund’s comments, and I don’t believe it is disputed, that when Mr. Deyermund went down to the boat bay, he did not see the copper wire.
63. Mr. Deyermund then called Mr. McCabe on his cell phone and said words to the effect, “Bobby, I’m sorry to do this to you, but I’ve been ordered to do an investigation and it’s about you.” In response, Mr. McCabe “chuckled” and said,

“Sarge, is this about wire ... that’s from the gangway project.” (Testimony of Mr. Deyermond)

64. Mr. McCabe then told Mr. Deyermond that the wire was above the garage of the Marine Unit. Mr. Deyermond “apologized for ruining [Mr. McCabe’s] weekend” and told him that he would interview him when he returned from his (McCabe’s) vacation days. (Testimony of Mr. Deyermond)

65. Mr. Deyermond walked into the garage and observed the wire. Mr. Deyermond then called Sgt. Thibodeau on his cell phone and said, “Andy, I think we’re going to be all set with this. I’m looking at the wire right now. There’s no theft.” (Testimony of Mr. Deyermond)

66. Mr. Deyermond then called Lt. Freeman and told him he found the wire and that the wire had been taken as part of the “gangway project.” Mr. Deyermond then told Lt. Freeman that “someone saw something and it wasn’t handled right.” (Testimony of Mr. Deyermond)

67. Lt. Freeman then called Captain Risteen back and told him that the wire had been found. Lt. Freeman told Captain Risteen that he had “no idea where this wire came from or who gave them permission.” (Testimony of Lt. Freeman)⁸

68. Lt. Freeman instructed Mr. Deyermond to send out an email ordering everyone in the Marine Unit not to touch the security cameras.⁹

⁸ Importantly, Lt. Freeman’s testimony that he, even at this point, had “no idea” who gave the mechanics permission to take this wire, appears to contradict Mr. Deyermond’s testimony that, upon telling Lt. Freeman that it was part of the “gangway project”, Lt. Freeman said, “Oh for crying out loud.” [with the implication that Lt. Freeman now recalled that the copper wire was part of the gangway project.] I do not credit Mr. Deyermond’s testimony that Lt. Freeman made that statement.

⁹ During his testimony, Mr. Deyermond, referencing why Lt. Freeman wanted an order issued regarding the security cameras, stated that. “Sgt. Thibodeau showed McCabe “moving the wire on the boat.” The phrase “moving the wire on the boat” struck me as odd when I heard it at the hearing and again when I re-listened

69. On Friday, May 27th, Mr. Deyermond penned the following email to the Marine Unit:

“All Hands:

Until further notice by Lieutenant Freeman, no sworn or civilian member assigned to the Marine Unit shall operate the controls, adjust the cameras or operate the main frame computer that operates the security camera system. Only Lieutenant Freeman can access the system. As for now the system is in service and can only be used to observe what is displayed on the screen. If an emergency arises and you need to look at something previously recorded, contact me.”

Thanks... Sgt. JMD” (State Police Exhibit 8)

70. On Friday, May 29th,¹⁰ Mr. Deyermond spoke with Mr. Stilley about his

investigation. Mr. Deyermond told Mr. Stilley, “Mike, I’m sorry to do this to you, but there’s been an allegation about you and Bobby taking wire from the [DCR] dock.” Mr. Deyermond then told Mr. Stilley that certain Troopers and a sergeant had made the allegations and asked Mr. Stilley to “just tell me what happened over there the other day.” (Testimony of Mr. Deyermond)

71. Mr. Stilley then told then Mr. Deyermond that the wire “had been left there by DCR”, that they had permission to take the wire and that it was “part of the gangway project.” (Testimony of Mr. Deyermond)

72. Mr. Deyermond told Mr. Stilley that “from what it appears to me, you had a legitimate right to be over there” but to let the investigation run its course.
(Testimony of Mr. Deyermond)

to Mr. Deyermond’s testimony. I infer that Mr. Deyermond actually was starting to say “moving the camera”.

¹⁰ During his testimony, Mr. Deyermond stated that he interviewed both Mr. Stilley and Mr. McCabe on the same day: Tuesday, May 31st following the Memorial Day holiday on Monday, May 30th. Mr. Deyermond’s report to Lt. Freeman states that he interviewed Mr. Stilley on Friday, May 27th and Mr. McCabe on Tuesday, May 31st. It would appear that the report is more accurate and that Mr. Deyermond simply mixed up the dates given the lengthy period of time that has transpired here.

73. On Sunday, May 29th, Mr. Deyermund was in the office doing payroll because Lt. Freeman was away. Upon seeing Troopers Bulis and Cunningham in the office, Mr. Deyermund told the two (2) Troopers that he needed to interview them for the investigation. In response, both Troopers asked to have a union representative present during the interview. (Testimony of Mr. Deyermund)
74. Mr. Deyermund told the Troopers that, since they were only being interviewed as witnesses, they were being insubordinate by refusing to be interviewed without union representative. He did, however, agree to let the Troopers arrange for union representation at the interview. (Testimony of Mr. Deyermund)
75. Mr. Deyermund spoke to Mr. McCabe at or around 6:30 A.M. on Tuesday, May 31st. Mr. McCabe told Mr. Deyermund that the DCR dock was going to be hauled out to George's Island in the next two weeks and that he had been told by "DCR" that if there was anything that the State Police needed, "you better get it off now." (Testimony of Mr. Deyermund)¹¹
76. Mr. McCabe told Mr. Deyermund that he and Mr. Stilley had taken the copper wire and a metal plate. Mr. McCabe told Mr. Deyermund that he planned to use the copper wire for the State Police gangway or for "short power" on the State Police boats. (Testimony of Mr. Deyermund)
77. At or around 8:20 A.M. on Tuesday, May 31st, Mr. Deyermund spoke with Mr. Gode-Von Aesch of DCR. A summary of their conversation is contained in Mr.

¹¹ While it will be discussed in the analysis, for clarity, it is important to note here that the "gangway project" related to the fallen gangway, previously referenced. The transferring of the DCR dock to George's Island is a completely separate endeavor that was subsequently undertaken by DCR.

Deyermund's report to Lt. Freeman, referenced later. (Testimony of Mr. Deyermund and State Police Exhibit 15)

78. Later on May 31st, Mr. Deyermund interviewed (separately) Troopers Bulis and Cunningham. Mr. Deyermund, prior to the interviews, believed that only Trooper Timothy Driscoll, a union representative, would be sitting in on the interviews. When Mr. Deyermund walked into the kitchen area to begin the interviews, he was surprised to also see that Sgt. Robert Beckwith, union Troop representative, was also present. (Testimony of Mr. Deyermund)

79. Both Trooper Driscoll and Sgt. Beckwith were surprised by the adversarial tone of the interviews. Sgt. Beckwith felt that the interviews were more of an aggressive "interrogation" of Troopers Bulis and Cunningham rather than a fact-finding interview. (Testimony of Trooper Driscoll and Sgt. Beckwith)

80. During the interview, Sgt. Deyermund asked Trooper Cunningham if he was aware that the cameras could be operated remotely, suggesting an alternative reason as to how the cameras got moved on the days in question. Trooper Driscoll, the union representative, interjected, and asked Sgt. Deyermund if that was actually the case. Mr. Deyermund acknowledged that it was not. Trooper Driscoll found it "odd" that Mr. Deyermund would be offering an explanation (which was not true) for Mr. McCabe's behavior as part of a fact-finding interview. (Testimony of Trooper Driscoll)

81. On Friday, June 3rd, Lt. Freeman and Mr. Deyermund met with Troopers Bulis and Cunningham separately. (Testimony of Lt. Freeman, Mr. Deyermund, Trooper Bulis and Trooper Cunningham)

82. During the meeting with Trooper Bulis, Lt. Freeman told Trooper Bulis that Mr. Deyermund's report was complete; that there was no theft; and that he (Bulis) owed the mechanics an apology. Trooper Bulis was incredulous and inquired as to why Mr. McCabe moved the cameras on the days in question. (Testimony of Trooper Bulis)
83. During the meeting with Trooper Cunningham, Lt. Freeman told Trooper Cunningham that Mr. Deyermund's report was complete; that the mechanics had been "exonerated"; and that no crime had been committed. At this meeting, Mr. Deyermund told Trooper Cunningham that he was "lucky" that this matter didn't end up as an internal affairs investigation; that he could have been subject to a negative evaluation, a transfer and/or a court martial. (Testimony of Trooper Cunningham)
84. Also during the meeting, Trooper Cunningham asked why the cameras were moved. In response, Mr. Deyermund said, "Bobby likes to play jokes on me." (Testimony of Trooper Cunningham)
85. Mr. Deyermund's June 6th report to Lt. Freeman regarding this matter is seven (7) pages. It references the actions that Mr. Deyermund took related to his investigation, including a summary of his interviews with various individuals, along with his conclusions. (State Police Exhibit 15)
86. Mr. Deyermund's report includes a summary of the initial conversation between Sgt. Thibodeau, Lt. Freeman and Mr. Deyermund, with no reference to Sgt. Thibodeau stating that the cameras had been moved. (State Police Exhibit 15)
87. Mr. Deyermund's report includes a summary of his conversation and interviews with Mr. McCabe, Mr. Stilley and Troopers Bulis and Cunningham (as well as Trooper Foley). (State Police Exhibit 15)

88. Mr. Deyermond's summary of his interview with Mr. McCabe states, in its entirety:

"On 5/31/11 at 0650 hours I interviewed CMM McCabe in his office at the Marine Unit. I advised McCabe that he could have a union representative or legal counsel at the meeting if he wished. McCabe stated 'I didn't do anything wrong, I don't need anybody.' I then advised McCabe that there was an allegation being made that on May 25, 2011 between the hours of 1100 and 1130, that he and CMM Michael Stilley were involved in the theft of over five-hundred dollars worth of wire cable taken illegally from the [DCR] dock. I also advised McCabe that this incident carried over to the next day May 26, 2011 at approximately 0620 hours. I advised McCabe that this was witnessed by a Trooper assigned to the Marine Unit and that two other Troopers and a Sergeant also believe that he and Stilley were involved in the theft of the wire cable. McCabe advised this officer that he had permission from Captain Scott Berna and Lieutenant William Freeman to enter into an agreement whereby the DCR would donate a broken gangway which was attached to the [DCR] dock. The dock was broken and one end had dropped into the water. McCabe went on to say that the agreement stated that the broken dock was deemed surplus by the DCR and that it would be given to the Massachusetts State Police Marine Unit who would have it repaired and modified to then be installed onto the Marine Unit floating outside dock. McCabe stated that the DCR had allowed all the wires, cables, screws, plates and other fittings and material that was attached to the donated gangway would become property of the State Police Marine unit and that it would be re-installed onto the gangway at a later date. McCabe said that a week before this interview, he had observed two gentlemen walking around the [DCR] dock. McCabe went over to the gentlemen to ascertain what they were doing. McCabe stated that he was advised by the subjects that they were engineers employed by a private engineering firm to conduct an examination of the [DCR] dock for the DCR. McCabe stated that they advised him that the floating dock portion of the [DCR] dock was going to be removed and reinstalled at George's Island in the next few weeks. McCabe was further advised that the remaining gangway was to be scrapped due to cracks and other damage. The engineers advised McCabe not to keep walking on the gangway because it wasn't safe. McCabe stated to this officer that as a result of his conversations with the engineers and with the knowledge that the rebuilt gangway was set to be installed in the next week or two, that he decided it was best to remove all of the material that was left on the [DCR] dock that belonged to the Marine Unit and that would be utilized in the reinstallation of the rebuilt gangway onto the State Police Marine Unit dock. Mr. McCabe advised me that he and CMM Stilley planned to remove the material as soon as possible. McCabe advised me that on May 25, 2011, he and CMM Stilley took a marked State Police boat over to the DCR dock and removed wire cable and a metal plate that was needed to be reinstalled onto the new Marine Unit gangway. McCabe stated that he brought back the wire and placed it on the floating dock in the boat bay because it was very heavy. McCabe and Stilley planned to utilize an electric hoist located in the boat bay to lift the material up to the garage level. McCabe said that because he was needed by Lieutenant Freeman, he decided to wait until the next day to bring the material into the garage. On the next day, May 26th, just after arriving for work, McCabe and Stilley brought the wire cable

into the Marine Unit garage for storage. McCabe returned to the [DCR] dock and removed a flat piece of metal that attaches to the bottom of the gangway given to the Marine Unit by the DCR. McCabe advised this officer that he did not engage in any illegal act or steal anything what-so-ever from the DCR dock. McCabe stated that every piece of material removed from the DCR dock was in the Marine Unit garage and that he was very upset that members of the Marine Unit would accuse him of theft. McCabe stated to this officer that he has been the target of harassment by various members of the Marine Unit and that it is very close to being a hostile working environment. McCabe told this officer that this accusation ruined his holiday camping trip with his family and that he has been unable to sleep since being advised of the accusations made against him. I advised McCabe that when I completed my investigation, that I would be submitting it to Lieutenant Freeman and that the Lieutenant would speak to him at that time.” (State Police Exhibit 15)

89. Mr. Deyermond’s summary of his interview with Mr. Gode-Von Aesch states, in its entirety:

“On May 31, 2001 at 0820 hours, this officer met with Mr. William Gode of the DCR Flood Control Office. I advised Mr. Gode that the reason for this interview was to determine if a crime had been committed by two civilian members of the Marine Unit. I explained to Mr. Gode that allegations had been made regarding several feet of heavy wire cable reportedly being taken without permission from the DCR’s Floating [] Dock. Mr. Gode was well aware of the scope of the project involving the former DCR gangway that was donated to the State Police Marine Unit. Gode stated that he was the principle DCR employee that determined that the gangway was unusable for DCR prepossesses (sic), but that the MSP Marine Unit could make better use of the gangway. Gode stated that the donation was approved by the DCR management and that he was comfortable with the wire and metal plate as being part of the gangway donation. Gode also advised this officer that the gangway, wire and any other associated parts with the gangway were donated to the MSP and as such, they can be used by the MSP as they see fit.” (State Police Exhibit 15)

90. In regard to his interview with Trooper Cunningham, Mr. Deyermond’s summary states in relevant part:

“During further conversation with Cunningham he stated that he came into work the next day, May 26th and that he had observed the security camera that normally points to the MSP docks had been moved. Cunningham then stated that Sergeant Thibodeau called him and asked him to look at the camera system to see if the wire cable had been removed from the boat bay. Cunningham advised Thibodeau that the camera position had been moved from its usual spot. Cunningham stated that Lieutenant Freeman and Sergeant were not in the Marine Unit at this time and that he played

back the security camera system which showed McCabe and Stilley moving the wire cable off the boat bay dock and into the mechanic's garage. I informed Thibodeau of my observations. Later in the morning I observed that the security camera had been moved again." (State Police Exhibit 15)

91. Mr. Deyermund's June 6th report states, in the final paragraphs:

"That the actions conducted by CMM Robert McCabe and Michael Stilley on May 25 and May 26 of 2011, did not involve the commission of a crime. Observations made by four officers of the Marine Unit caused a chain of events to occur that resulted in the accusations of theft against CMM McCabe and Stilley. The failure of these officers involved to take immediate action rather than waiting to see how events played out, resulted in an unnecessary and time-consuming investigation. The actions of the Marine Unit Mechanics were misconstrued. To the casual observer, and with little additional information or involvement in Marine Unit administrative duties and responsibilities, the actions of the Marine Unit Mechanics would seem suspicious. The Marine Unit Mechanics were acting under the direction of the Marine Unit Commander with the approval of General Headquarters. They were acting in the best interest of the department and the Marine Unit. The matter should be closed." (State Police Exhibit 15)

92. After being informed of the results of Mr. Deyermund's reports, Troopers Bulis and Cunningham met and concluded that "things didn't add up." They sought union assistance to insure that the security video in question was preserved. (Testimony of Troopers Bulis and Cunningham) Prior to receiving the union's request to preserve the security video coverage, Mr. Deyermund had not taken any steps to do so. (Testimony of Mr. Deyermund)

93. On June 20, 2011, a letter from a Union Attorney was sent to Colonel McGovern of the State Police informing her of the mechanics' actions on May 25-26th, 2011 and the subsequent investigation that was closed. The letter also requested that efforts be made to preserve the video surveillance for the days in question since it was believed that the video footage is only stored for a limited period of time. In closing, the letter requested that the matter be referred to the Division of Internal Affairs for an

investigation to commence. (State Police Exhibit 13; Testimony of Sergeant Beckwith; Testimony of Trooper Driscoll)

94. The State Police did preserve the video at the request of the Union. (State Police Exhibit 13; Testimony of Sergeant Beckwith; Testimony of Trooper Driscoll)

95. Mr. Deyermund contacted Major Prior and informed him of the Union letter requesting preservation of the video surveillance. He informed Major Prior that the letter had been sent to the Colonel as well. Major Prior asked Mr. Deyermund why they wanted the video surveillance tapes of those days and Mr. Deyermund responded that he did not know. He told Major Prior that these Troopers were just malcontents and troublemakers. Mr. Deyermund advised Major Prior that he was going to go to the SPAM Union Board because he was very upset about the letter being sent.

(Testimony of Major Prior)

96. Upon becoming aware of the Union letter to the Colonel dated June 20, 2011, Major Prior spoke with Sergeant Beckwith. He contacted Sergeant Beckwith because the letter indicated a manipulation of the video cameras and Major Prior had never been informed of any such manipulation of the surveillance cameras. Sergeant Beckwith advised that Mr. Deyermund had conducted several interviews of the Troopers and had threatened them with transfers and lawsuits of hostile work environment. Sergeant Beckwith provided Major Prior with a description of what can be seen on the video surveillance on the two days in question and MR. McCabe's involvement with the manipulation of the moveable camera. Prior to the conversation with Sergeant Beckwith, Major Prior was unaware that the wire had been cut down from the existing DCR gangway, which was not part of the gangway donated to the State

Police Marine Unit or that the wire had been cut up into pieces. (Testimony of Major Prior)

97. On June 22, 2011, Mr. Deyermund sent Major Prior a copy of his investigation via email. This was the first time Major Prior received any written report on the matter. (Testimony of Major Prior)

98. After reviewing Mr. Deyermund's report, Major Prior found it to be inadequate, deficient, and lacking significant details. (Testimony of Major Prior)

99. On or about July 4, 2011, Major Prior was at the Marine Unit. During this time, Mr. McCabe approached Major Prior and began to discuss the wire that had been removed. He showed Major Prior the wire and the Major inquired how the wire would be used. Mr. McCabe provided an explanation of how the wire could be used, which Major Prior found questionable since the wire had been cut up into several pieces. (Testimony of Major Prior)

100. On or about July 6, 2011, Major Prior requested an Internal Affairs Investigation be conducted on members of the Marine Unit. (Testimony of Major Prior; Exhibit 19)

101. On or about July 11, 2011, Detective Lieutenant Wilcox was assigned an Internal Affairs Investigation involving the Marine Unit members. (Testimony of Detective Lieutenant Wilcox; State Police Exhibit 16)

102. Over a period of months, Detective Lieutenant Wilcox reviewed the security video in question and interviewed several individuals on the following dates:

- Trooper Jefferey Bulis: September 29, 2011;
- Sgt. Andre Thibodeau: September 29, 2011 & March 8, 2012;
- Major Richard Prior: October 19, 2011;

- William Gode-Von Aesch: October 19, 2011;
- Trooper Patrick Foley: October 19, 2011;
- Trooper Jamie Cunningham: October 19, 2011;
- Private electrician: October 28, 2011;
- Michael Stilley: November 10, 2011;
- Nicholas Gove: November 22, 2011;
- Robert McCabe: December 2, 2011;
- Captain Daniel Risteen: December 22, 2011;
- Lt. William Freeman: February 7, 2012;
- Sgt. Deyermund: February 28, 2012;
- Chelsea Scrap Yard Owners: Various Dates

103. Detective Lieutenant Wilcox learned from interviews with Trooper Bulis and Trooper Cunningham about the movement of the camera by Mr. McCabe, that there were, in fact, two gangways, and that the wire was removed from the remaining DCR gangway, rather than the gangway in the possession of the State Police. (Testimony of Detective Lieutenant Wilcox)

104. On Saturday, November 12, 2011, two (2) days after Detective Lieutenant Wilcox interviewed Mechanic Michael Stilley, Nicholas Gove [not to be confused with Mr. Gode-Von Aesch] of DCR was contacted by Mr. McCabe. Mr. McCabe told Mr. Gove that he may be contacted by a member of the State Police regarding an investigation into the pier. (Testimony of Mr. Gove)

105. Mr. Gove is a Regional Director for DCR and manages the day-to-day operations, including all DCR assets, for DCR's Boston office. He has been employed for DCR

for six (6) years. For reasons not stated at the hearing before the Commission, Mr. Gove left DCR for one (1) year between November 2011 and October 2012.

(Testimony of Mr. Gove)

106. On Monday, November 14, 2011, after talking with Mr. McCabe the previous Saturday, Mr. Gove penned an email to his supervisor, then DCR Deputy Commissioner Jack Murray, which was copied to Mr. Gode-Von Aesch and others. The email stated:

“Jack-

As discussed, I would like to memorialize the following issue that has been brought to my attention by Robert McCabe of the Massachusetts State Police.

In April of 2011, the DCR moved the Lovejoy float pier adjacent the (sic) Charles River Dam to Georges Island.

During this process, I verbally provided Mr. McCabe of the MSP approval to accept and reuse the Lovejoy float pier electric service cable and gangway at the Charles River Dam MSP Marine Unit HQ. It was my understanding that the DCR did not need these assets at either Georges Island or Lovejoy. Instead of scrapping these assets or identifying them for surplus, I felt it was appropriate and cost effective to allow the MSP Marine Unit to reuse these assets.

I did not memorialize this approval in writing at the time. However, where the DCR has care and control of the Charles River Dam, including the MSP Marine Unit HQ, I understood this action to be acceptable.

I apologize for any confusion this may have caused.

Nick Gove”
(State Police Exhibit 12)

107. Mr. Deyermund requested sanctions from the SPAM Union against the Troopers at the Marine Unit (Trooper Bulis, Trooper Cunningham, Sergeant Thibodeau, and Sergeant Fletcher) as well as the Union Representatives (Sergeant Beckwith and Trooper Driscoll). (State Police Exhibits 14 and 27)

108. A rebuttal was submitted collectively to address the request for sanctions initiated by Mr. Deyermund. No sanctions were imposed on any of the named members by the SPAM Union. (Testimony of Sergeant Beckwith; Testimony of Driscoll; State Police Exhibit 27)

109. Following an investigation by the State Police's Internal Affairs Unit, Mr. Deyermund was formally charged (Charge I) with violating Article 5.2 of the Department's Rules and Regulations. The single Specification relating to the Article 5.2 Charge alleged that the Appellant violated Article 5.2 when he failed to conduct a proper investigation and/or report relative to an allegation of theft of wire from property adjoining the Marine Unit. In addition he failed to cooperate with the subsequent Internal Affairs investigation. (State Police Exhibit 4)

110. Mr. Deyermund was also formally charged (Charge II) with violating Article 5.8 of the Department's Rules and Regulations. Two Specifications accompanied Charge II. Specification I of Charge II alleged that the Appellant failed to properly review the video recording of an alleged theft of wire reported to him. Specification II of Charge II alleged that the Appellant failed to conduct a proper investigation and failed to properly document the results. (State Police Exhibit 4)

111. Mr. Deyermund was also formally charged (Charge III) with violating Article 5.12.3 of the Department's Rules and Regulations. The single Specification relating to the Article 5.12.3 Charge alleged that Mr. Deyermund spoke inappropriately to members of the Marine Unit during and after the investigation he conducted. (State Police Exhibit 4)

112. Mr. Deyermund was also formally charged (Charge IV) with violating Article 5.27 of the Department's Rules and Regulations. Seven Specifications accompanied Charge IV. Specification I of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that he was not told by Sergeant Thibodeau on May 26, 2011 about the movement of the surveillance cameras at the Marine Unit by the mechanics. Specification II of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that while viewing the video on May 26, 2011, he did not observe the moveable camera was not aimed in the proper direction. Specification III of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that he never spoke harshly or yelled at Mechanic McCabe about moving the cameras at the Marine Unit. Specification IV of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that he did not tell the mechanics they were exonerated. Specification V of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that he did not tell the Troopers at the Marine Unit the mechanics were exonerated. Specification VI of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that he wasn't present and/or he did not tell Troopers at the Marine Unit they could be transferred and/or negatively EES regarding the alleged stolen wire investigation. Specification VII of Charge IV alleged that Mr. Deyermund was untruthful when he stated to Internal Affairs that he did not tell Troopers at the Marine Unit Mechanic McCabe could sue them. (State Police Exhibit 4)

113. On or about May 29, 2014, the Trial Board found Mr. Deyermund guilty of the following charges: Charge I, Specification I (Unbecoming Conduct), Charge II,

Specification I and II (Unsatisfactory Performance), Charge III, Specification I (Insubordination), and Charge IV, Specification I, II, IV, V, VI, and VII (Truthfulness). The Colonel approved the Trial Board's findings and recommendations and suspended Mr. Deyermond for 45 days without pay. (State Police Exhibit 1, 2 and 3)

114. The State Police found that Mr. McCabe was untruthful and misused state property (the security cameras). He was suspended for five (5) days. (State Police Exhibit 21)
115. Lt. Freeman, who waived his right to a Trial Board, forfeited fifteen (15) days of vacation time. (State Police Exhibit 22)

Legal Standard

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 (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 (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).

Under section 43, the Commission is required “to conduct a de novo hearing for the purpose of finding the facts anew,” Falmouth v. Civil Service Comm’n, op.cit. and cases cited. However, “[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 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), quoting internally from Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983) and cases cited.

Analysis

On the morning of May 25, 2011, Jeffrey Bulis, a veteran State Trooper assigned to the Marine Unit, saw something suspicious. While most of the Marine Unit was out on a

Vice Presidential security detail, the Marine Unit's two (2) mechanics, one of whom was known to trade in scrap metal, took a State Police boat over to a DCR dock, cut approximately seventy-five (75) feet of copper wire from a DCR gangway, and then brought the copper wire back to the State Police Marine Unit.

Concerned that the mechanics took the copper wire for reasons unrelated to their duties as Marine Unit mechanics, Trooper Bulis contacted two other Troopers who were out on the security detail. Like Trooper Bulis, neither of these Troopers was aware of any work-related reason for the mechanics' actions.

Mr. Deyermond, at various points, has suggested that Trooper Bulis should have immediately taken the following steps that morning: a) confront the mechanics; and/or b) arrest the mechanics if he (Bulis) believed a crime was committed; and/or c) notify Mr. Deyermond, who was Trooper Bulis's supervisor on the first shift.

Trooper Bulis chose not to make an arrest (which was wise) or confront the mechanics but, rather, report the matter to the second shift supervisor. Trooper Bulis's decision not to report the matter to Mr. Deyermond was rooted in his belief that Mr. Deyermond and Mr. McCabe had developed a close personal bond over the years. Based on the credible testimony of Trooper Bulis and other Troopers, it is clear, to me, that Mr. Deyermond and Mr. McCabe had indeed developed a friendship that justified Trooper Bulis's well-reasoned decision to bring his concerns to the second shift supervisor, as opposed to Mr. Deyermond.

I considered, and rejected, the argument that the actions of some of the Troopers was motivated by an alleged animus toward Mr. McCabe. That argument was a stretch. Put simply, Trooper Bulis observed suspicious activity and reported it.

Sgt. Thibodeau, upon receiving the information from Trooper Bulis, reviewed parts of the security video coverage and took pictures of the copper wire. The next morning, when he called a Trooper to inquire about whether the copper wire was still in the same location, he was told that the position of a security camera had been moved. Further, he learned that the copper wire was no longer in the inner bay of the Marine Unit. Armed with this information, he arrived early at the Marine Unit to brief Lt. Freeman and Mr. Deyermond about the events that had been transpired.

Sgt. Thibodeau testified that, as part of that conversation, he told Lt. Freeman and Mr. Deyermond that the security camera had been moved. Mr. Deyermond testified that Sgt. Thibodeau never raised that issue until several days later as part of a formal interview. I found Sgt. Thibodeau's testimony more credible and have credited his version of events regarding that conversation. His testimony rang more true to me. He had just been told by Trooper Cunningham a few hours earlier that Mr. McCabe had moved the position of the camera, which appears to have been one of the tipping points in Sgt. Thibodeau's decision to come in early and convene a meeting with Mr. Deyermond and Lt. Freeman. It is not plausible that Sgt. Thibodeau would then forget to mention this potentially damning information to Mr. Deyermond and Lt. Freeman. Further, shortly after that conversation, Lt. Freeman directed Mr. Deyermond to issue an order to the unit prohibiting anyone other than Lt. Freeman from adjusting the security cameras. This only reinforces that Sgt. Thibodeau told Lt. Freeman and Mr. Deyermond about the moving of the security cameras during their initial conversation on May 26th.

Lt. Freeman also directed Mr. Deyermond to conduct an investigation regarding this matter. Mr. Deyermond undertook the investigation by almost immediately calling

“Bobby” McCabe on this cell phone who, without prompting, said “Sarge, is this about the wire?” Mr. McCabe then purportedly told Mr. Deyermond that the taking of the wire was part of the “gangway project.”

Mr. Deyermond testified that, upon being told by Mr. McCabe that taking the copper wire was part of the gangway project, “a lightbulb [went off] in my head” causing him to remember that “we were given all that stuff.” That theme would carry throughout Mr. Deyermond’s investigation, including a conclusion by Mr. Deyermond that “[t]he Marine Unit Mechanics were acting under the direction of the Marine Unit Commander with the approval of General Headquarters.” Unfortunately for Mr. Deyermond, the overwhelming evidence in the record shows otherwise.

First, it is undisputed that the downed gangway that was transferred from DCR to the State Police did not have any copper wire attached to it.

Second, Lt. Freeman consistently and credibly testified before the Commission that he was *never* aware of any arrangement regarding the transfer of copper wire being transferred from DCR to the State Police at one point telling his superior, Captain Risteen, that he had “no idea where this wire came from or who gave them permission.”

Third, the only information that “General Headquarters” received about the transfer of the downed gangway was from Lt. Freeman, who never told any of his superiors about the transfer of copper wire.

Fourth, Mr. Deyermond himself was intimately involved in the transfer of the downed gangway, even penning the first email on June 15, 2010 on behalf of the State Police asking for permission to take possession of the downed DCR gangway, which had no copper wire attached it.

Nevertheless, Mr. Deyermond perpetuated this falsehood throughout a deficient, result-driven investigation that: a) misrepresented key events; b) twisted the words of individuals; and c) called into question the integrity of those state employees who appropriately reported suspicious activity.

One of the more egregious examples of this relates to Mr. Deyermond's interview with Mr. Gode-Von Aesch of DCR. Mr. Gode-Von Aesch's testimony before the Commission was unequivocal. He was aware of, and intimately involved with, the transfer of the downed gangway from DCR to the State Police. He was certain that the downed gangway had no copper wire attached to it and he was not aware that anyone at DCR had authorized anyone from the State Police to remove copper wire from the second, remaining gangway. Instead of writing this in his report, Mr. Deyermond wrote the following:

"Mr. Gode was well aware of the scope of the project involving the former DCR gangway that was donated to the State Police Marine Unit. Gode stated that he was the principle DCR employee that determined that the gangway was unusable for DCR prepossesses (sic), but that the MSP Marine Unit could make better use of the gangway. Gode stated that the donation was approved by the DCR management ***and that he was comfortable with the wire and metal plate as being part of the gangway donation.*** Gode also advised this officer that the gangway, wire and any other associated parts with the gangway were donated to the MSP and as such, they can be used by the MSP as they see fit."

The "donation" referenced by Mr. Gode-Von Aesch involved the downed gangway, which had no copper wire attached to it. Mr. Gode-Von Aesch, upon an inquiry from Mr. Deyermond, then indicated that, now, after Mr. McCabe had already taken the wire, he was comfortable with the State Police having the wire. By conflating those two different statements, Mr. Deyermond sought to give the impression that Mr. Gode-Von Aesch was aware of a pre-authorization to transfer the copper wire. He was not – and Mr.

Deyermund knew better.

Mr. Deyermund's investigation went downhill from there. Instead of conducting an objective fact-finding inquiry with Troopers Bulis and Cunningham, he engaged in an adversarial interrogation of these Troopers and, at one point, suggested that the position of the security cameras could be adjusted remotely, which he knew was not true.

Further, even if I were to accept Mr. Deyermund's argument (which I do not) that Sgt. Thibodeau did not tell him on May 16th about the movement of the security cameras, Mr. Deyermund acknowledges that Trooper Cunningham did tell him about the movement of the security cameras during his interview on June 3rd, three (3) days prior to when Mr. Deyermund finalized his report. Armed with this information, Mr. Deyermund's report never references asking Mr. McCabe why he moved the security camera and it appears, based on Mr. Deyermund's testimony and his report, that he never even reviewed the entirety of the security video. Further Mr. Deyermund never took steps to preserve the video footage in question.

As noted in the findings, Mr. McCabe, minutes before retrieving the copper wire from the DCR gangway, went into the administrative offices and changed the position of a security camera from a position aimed at the DCR dock to a position aimed at the Washington Street bridge. After retrieving the copper wire, he went back into the administrative office and re-positioned the security camera toward the DCR dock. His testimony that he wanted to look at fish and that the camera froze up on him is absurd. Mr. Deyermund's failure to properly address this issue in his report was, at best, negligent.

In November 2011, DCR Regional Director Richard Gove, after receiving a phone

call from Mr. McCabe, penned an email stating that, during a casual conversation with Mr. McCabe in the Spring of 2011, he verbally gave Mr. McCabe permission to take the copper wire. During his testimony before the Commission, Mr. Gove stated that the copper wire was attached to the downed gangway (that collapsed in 2010). It was not. It was attached to the remaining gangway which Mr. Gove testified was being removed (in 2011) as part of the transfer of portions of the DCR dock to George's Island and elsewhere. I don't know if Mr. Gove is confusing the two (2) projects and/or if he did indeed give Mr. McCabe permission to take the copper wire. However, even if he did, it has no bearing on whether Mr. Deyermund conducted a sub-par investigation here and the other related charges against Mr. Deyermund. Rather, the fact that Mr. Deyermund never even talked to Mr. Gove as part of his investigation only reinforces the deficiencies in his review.

For these reasons, I have concluded that a preponderance of the evidence shows that Mr. Deyermund, through his actions, including the submission of a deficient, misleading report on this matter, showed unsatisfactory performance and engaged in conduct that was unbecoming and untruthful.

Having determined that it was appropriate to discipline Mr. Deyermund for his misconduct, I must determine if State Police was justified in the level of discipline imposed – a 45-day suspension.

“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. Civ. Serv. Comm'n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm'r v. Civ. Serv. Comm'n, 39 Mass. App. Ct. 594, 600 (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." Falmouth v. Civil Service Commn, 447 Mass. 814, 823 (2006).

The Commission is also 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 Service Commission, 447 Mass. 814, 823 (2006) and cases cited.

Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee's discipline to ensure perfect uniformity. See Boston Police Dep't v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

I reviewed the documents submitted regarding the discipline of other State Troopers. Nothing in those documents has convinced me that the discipline imposed here, a 45-day suspension, is overly harsh given the egregious conduct exhibited here by Mr. Deyermund.

Conclusion

Mr. Deyermund's appeal under Docket No. D-14-130 is hereby *denied*.

Civil Service Commission

Christopher Bowman

Christopher C. Bowman

Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on March 5, 2015.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

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