

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

KENNETH SIMPSON,
Appellant

v.

**BOSTON FIRE
DEPARTMENT,**
Respondent

Case No.: D-13-248

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Boston Fire Department to suspend Mr. Simpson for three (3) days is affirmed and his appeal under Docket No. D-13-248 hereby ***denied***.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman and Stein, Commissioners [McDowell – Absent]) on October 30, 2014.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chairman

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:

Angelena Bruce-Flounory, Esq. (for Appellant)

Robert J. Boyle, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Kenneth Simpson,
Petitioner

v.

Docket No. D-13-248
DALA No. CS-14-48
Date: September 12, 2014

Boston Fire Department,
Department

Appearance for Petitioner:

Angelina Bruce-Flounory, Esq.
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Appearance for Department:

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City of Boston Labor Relations
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Boston, MA 02201

Administrative Magistrate:

James P. Rooney, Esq.

Summary of Decision

The three day suspension imposed by the Boston Fire Department on a firefighter for use of threatening and abusive language is affirmed. The Department demonstrated by a preponderance of the evidence that the firefighter called a female firefighter a sexually derogatory term during a heated argument.

DECISION

Boston firefighter Kenneth Simpson timely appealed, under G.L. c. 31, § 41, a November 18, 2013 decision of the Boston Fire Department suspending him for three tours for directing “threatening and abusive language” at a female firefighter.

I held a hearing on February 7, 2014. I admitted 23 exhibits into evidence and heard testimony from Firefighters Simpson, [REDACTED] [REDACTED], Aundria Burcy, and Michelle Johnson, Lieutenants Gene Semexant and Brian Hardiman, Acting Deputy Chief

John Hasson, and Boston Human Resources official Jennifer Wexler. I recorded the hearing digitally. The record closed on March 14, 2014 when both parties submitted proposed decisions.

FINDINGS OF FACT

Based on the evidence and testimony and reasonable inferences from them, I make the following findings of fact:

1. Kenneth Simpson is a tenured civil service employee of the Boston Fire Department. He has been employed as a firefighter by the Fire Department since July 13, 1994. (Stipulation.)
2. Firefighter Simpson has worked for the last four years at Engine 49 in Hyde Park. (Stipulation.) Firefighters at this station are divided into four groups, each consisting of three firefighters and a lieutenant. ([REDACTED] testimony.) In 2013, Firefighter Simpson worked on Group 4 under Lieutenant Brian Hardiman. On March 23, 2013, his shift ended at 7:00 a.m. (Hardiman and Simpson testimony.)
3. That morning, Group 1 was scheduled to report for a 24 hour shift. Its members included Firefighters [REDACTED] [REDACTED] ([REDACTED]), Aundria Burcy, and Victor Ramirez, and Lieutenant Gene Semexant. ([REDACTED] testimony.)
4. As Firefighter [REDACTED] arrived to start her shift, Lt. Hardiman informed her that she was to report to Engine 50 in Charlestown because another firefighter was out that day. Firefighter [REDACTED] objected to this reassignment because she had previously been assigned to Engine 50 and, while there, had filed a complaint against a male firefighter. Another firefighter, Jeffrey Rhodes volunteered to take the assignment. ([REDACTED], Hardiman, and Simpson testimony.)
5. Firefighter [REDACTED] had exchanged a pleasant good morning with Firefighter Simpson before her conversation with Lt. Hardiman. Afterwards, Firefighter Simpson noticed that she looked apprehensive. (Simpson testimony.)

6. Firefighters [REDACTED] and Simpson next encountered one another in the station's kitchen. The kitchen is on the main floor next to a watch room and the bays with the fire engines. Lt. Hardiman was sitting at the table with Captain Francis Coan, who had just returned from six or seven weeks of injury leave. The lieutenant was updating the captain on developments at the station. Firefighter [REDACTED] had a conversation with another firefighter about purchasing butter for the "house fund," which she agreed to do.
([REDACTED], Hardiman, and Simpson testimony.)

7. The house fund is used to buy supplies for the station, such as coffee and sugar. Every firefighter contributes on a monthly or annual basis. Firefighter [REDACTED] was temporarily in charge of the fund while Firefighter Ramirez, also of Group 1, was on vacation. ([REDACTED] testimony.)

8. The house fund had recently been a source of controversy in the station. Supplies purchased with the fund were kept in a house fund locker. Firefighter Ramirez had started locking the locker, and he and two other members of Group 1 were the only ones with keys. Other groups were upset that they lacked keys. While Group 1 members were up to date with their monthly payments, members of the other groups were not. (Simpson testimony.) Firefighter Simpson had not paid since November 2012 because he had been injured and out of work. (Simpson testimony.)

9. On the morning of March 23, 2013, Firefighter Simpson approached Firefighter [REDACTED] and requested a key for Group 4 to the house fund locker.
([REDACTED] and Simpson testimony.) Firefighter [REDACTED] told him that access to the fund locker must be limited in order to keep control of the inventory, particularly because not all the firefighters paid on time. She told him that he was not the one to ask for a key because he had not paid for months. ([REDACTED] testimony.) He responded that she should tell Firefighter Ramirez that he was not paying until his group was given a key.
(Simpson testimony)

10. Firefighter [REDACTED] went to a house fund chart on the kitchen wall and pointed out to Firefighter Simpson that he was not up-to-date with his payments. Firefighter Simpson repeated his position that there was not much point in paying if there was no access to the supplies. (Simpson testimony.) By this point the conversation became heated, and over the next few minutes the two yelled at each other. (Burcy testimony.) Lt. Hardiman told them to cool down and the argument stopped briefly. (Hardiman testimony.) Firefighter Simpson left the kitchen in order to avoid further confrontation, but Firefighter [REDACTED] followed him and they kept on arguing. (Simpson testimony.)

11. Firefighter Simpson returned to the kitchen, approached Capt. Coan and Lt. Hardiman, and attempted to explain that he had previously paid his house fund dues in full when he had ready access to the supplies. Firefighter [REDACTED] placed herself between Firefighter Simpson and the captain. (Simpson testimony.) She told Firefighter Simpson, "Talk to me." He responded, "Don't you see me talking to the captain" and told her to leave. She replied, "It's my fire house. I'm not leaving." ([REDACTED] and Simpson testimony; Ex. 5.)

12. Firefighter Simpson walked away and reached the door to the watch room with Firefighter [REDACTED] following him and berating him about not paying. (Simpson testimony.) Firefighter Simpson responded, "Shut up, you stupid cunt." ([REDACTED] testimony.)

13. Firefighter Aundria Burcy, who was assigned to the watch and had heard the argument, came into the kitchen at this point. (Burcy testimony.) Firefighter [REDACTED] moved rapidly toward Firefighter Simpson and asked, "What did you say?" (Burcy, [REDACTED], and Simpson testimony.) Firefighter Simpson responded, "You heard what I said" and repeated himself, while at the same time raising the back of his hand. ([REDACTED] testimony; Ex. 5.) Firefighter Burcy got between the two of them and told

Firefighter [REDACTED] not to be upset, that the captain would handle the situation.

(Burcy, [REDACTED], and Simpson testimony.)

14. Firefighter Simpson left and went into the bay. Firefighter Burcy followed and told him that some of the things he said were not appropriate, particularly in a workplace. Firefighter Burcy later had a conversation with Firefighter Simpson on the second floor and told him to apologize to Firefighter [REDACTED]. At some point in one of these conversations, Firefighter Simpson called Firefighter [REDACTED] a c__t. (Burcy testimony.)

15. Firefighter [REDACTED] stayed in the kitchen and spoke to Lt. Hardiman, who told her not to let the incident ruin her day and that he would have the captain speak to those who had not paid. ([REDACTED] testimony.) Later in the day, she was still upset, and, while working with Firefighter Burcy, she told him that Firefighter Simpson had called her a c__t and she intended to report his conduct to the Department's Female Liaison. (Burcy and [REDACTED] testimony.) Firefighter Burcy spoke with Capt. Coan and told him that Firefighter [REDACTED] was upset. (Burcy testimony.) Firefighter [REDACTED] also spoke to the captain and told him she would not let anyone intimidate her. ([REDACTED] testimony.)¹

16. On March 24, 2013, Firefighter [REDACTED] met with Lt. Semexant in his office to discuss the incident. She told him that Firefighter Simpson had called her a "f__ing c__t." ([REDACTED] and Semexant testimony; Ex. 10.)

17. During this closed-door meeting, Firefighter Simpson knocked and then walked into Lt. Semexant's office asking for his pay stub. Lt. Semexant said, "Can't you see we're busy," and asked him to leave, which he did. (Semexant testimony; Ex. 10.)

¹ The Department issued Capt. Coan a verbal warning for his failure to initiate internal complaint procedures regarding the incident. (Ex. 21.)

18. Later that day, Firefighter Simpson, who spoke frequently with Lt. Semexant, called the lieutenant and told him that he did not appreciate that the lieutenant spoke rudely to him “in front of that bitch.” (Semexant testimony.)

19. The same day, Firefighter [REDACTED] met with the Department’s Female Liaison, Julia Rodriguez. Firefighter Rodriguez told her to write up an account of what occurred, which she did. In her statement, Firefighter [REDACTED] accused Firefighter Simpson of twice calling her a “stupid c__t.” ([REDACTED] testimony; Ex. 5.)

20. Deputy Chief Joseph Fleming investigated and obtained witness statements. (Ex. 23.) Firefighter Burcy submitted a statement on April 5, 2013. He did not mention anything he might have heard during the argument, claiming he could not “recall what was said or done.” (Ex. 7.) In two follow-up emails three days later, he provided no further details about what he might have heard other than that there was a “heated discussion” and that he could not say whether anyone was insulted. (Exs. 8 and 9.) Firefighter Burcy expressed concern about whether any report he made would be confidential because he was afraid of retaliation. (Burcy testimony.)

21. Deputy Chief Fleming concluded that an argument took place, but that “the specific circumstances of that argument are not obvious.” He suggested that the City’s Personnel Department follow up. He also suggested that “some type of mediation be considered” for this fire company and that officers and firefighters receive the same training about sexual harassment that Fire Chiefs receive. (Ex. 23.)

22. On April 9, 2013, Jennifer Wexler, an Employee Development Coordinator for the City of Boston, and attorney Robert Boyle of the City’s Office of Labor Relations were assigned to the investigation. They interviewed witness, including Firefighter Burcy, who they observed was reluctant to speak. The two compiled a document entitled “Investigation of [REDACTED] [REDACTED] Complaint,” which they submitted to Fire Commissioner Roderick J. Fraser, Jr. on June 10, 2013. The report recommended that Firefighter Simpson

receive a three day suspension for violation of city policies on harassment and workplace violence and that he be referred for anger management training. (Wexler testimony; Ex. 20.) Ms. Wexler proposed a three-day suspension in this case because it was in line with disciplinary actions the City had taken with first time offenders involved in similar incidents. (Wexler testimony.)

23. The Boston Fire Department charged Firefighter Simpson with violating Boston Fire Department Rule 18.44(k), which proscribes the use of “abusive or threatening language,” and suspended him for three tours. (Exs. 2 and 13.)

24. Deputy Fire Chief John F. Hasson held a section 41 hearing on September 18, 2013. (Ex. 4.) Only Firefighter Simpson appeared at the hearing. (Hasson testimony.) On September 26, 2013, Deputy Chief Hasson wrote Fire Commissioner Fraser that he could not rule on Firefighter Simpson’s appeal because the evidence obtained during the investigation had not been produced to him. He recommended that the City’s Office of Labor Relations reconsider the matter. (Ex. 4.) On November 7, 2013, he again wrote to the Commissioner, this time stating that “[a]fter conferring with the Office of Labor Relations,” he had determined to uphold the three tour suspension of Firefighter Simpson “for the good of the Department, and for the good of the service.” (Ex. 3.)

25. Firefighter Simpson timely appealed. (Stipulation; Ex. 1)

Discussion

I recommend that the decision of the Boston Fire Department be affirmed. Firefighter Kenneth Simpson’s appeal of his three tour suspension should be denied because the evidence shows that he called Firefighter [REDACTED] [REDACTED] a sexually derogatory term in violation of Boston Fire Department Rule 18.44(k).

On appeal, the Civil Service Commission must determine whether the appointing authority has met its burden to show by a preponderance of the evidence that there was a reasonable justification for its action. M.G.L. c. 31, § 43; *City of Cambridge v. Civil Service*

Comm., 43 Mass. App. Ct. 300, 303, 682 N.E.2d. 923, 925 (1997). Discipline is justified if an “employee has been guilty of substantial misconduct which adversely affects the public interest.” *School Comm. v. Civil Service Comm.*, 43 Mass. App. Ct. 486, 488, 684 N.E.2d 620, 622 (1997), quoting *Murray v. Justices of Second Dist. Ct. of Eastern Middlesex*, 389 Mass. 508, 514, 451 N.E.2d 408 (1983). When analyzing whether reasonable justification exists:

the commission must focus on the fundamental purposes of the civil service system-to guard against political considerations, favoritism, and bias in governmental employment decisions. . . . When there are, in connection with personnel decisions, overtones of political control or objectives unrelated to merit standards or neutrally applied public policy, then the occasion is appropriate for intervention by the commission. It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.

City of Cambridge, 43 Mass. App. Ct. at 304, 682 N.E.2d at 926. Ultimately, the Commission looks at whether the authority’s action 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." *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482, 160 N.E. 427, 430 (1928).

The City of Boston and the Department have promulgated regulations and policies regarding the use of threatening language in the workplace. (Ex. 9-14). The City adopted a “zero tolerance policy” for workplace violence, which it defines as “acts or threats of violent or abusive or harassing behavior against persons . . . that is sufficiently severe, offensive or intimidating . . . to create a hostile, abusive, or intimidating work environment for one or more employees.” (Ex. 13.) Boston Fire Department Regulation 18.44(k) proscribes the use of “abusive or threatening language” in the work place. In a comment following this regulation, the Department declared:

Threats and intimidating conduct jeopardize the safety or members of the department and interfere with the order and teamwork which is essential to a fire company. The

department will not tolerate threatening and abusive conduct. Disciplinary action, including discharge, will be imposed for violations or 18.44(k).

(Ex. 13.) These regulations and policies set forth what the City of Boston and the Department considers “substantial misconduct which adversely affects the public interest.”

The approach the Department takes on abusive or threatening language is similar to the approach other public employers. *Compare Boston Police Dept. v. Collins*, 48 Mass. App. Ct. 408, 721 N.E.2d 413 (2000) (male police officer suspended for five days for swearing at a male superior officer in a contentious private conversation), *Bersani v. City of Quincy*, 23 MCSR 782 (2010) (female water department employee suspended for three days for angrily calling a female co-worker a “big mouthed f__ing c__t” and a “f__ing lying trouble making bitch), and *Robertson v. Dept. of Correction*, 20 MCSR 607 (2007) (female correction officer suspended for five days for calling a male correction officer a “pussy” and a “faggot” and his wife a “f__ing rat).

Firefighter Simpsons does not question that, if he directed a sexually derogatory term at a female firefighter in the course of a heated argument, he would be subject to discipline for use of threatening or abusive language. Instead, he denies using a sexually derogatory term during his argument with Firefighter [REDACTED]. He acknowledges the argument, but says that what he said to Firefighter [REDACTED], as she persisted in berating him about his unpaid house fund dues, was, “Are you crazy? Why are you behaving like this in front of the captain?” (Simpson testimony.)

Firefighter Simpson maintains that the City’s evidence that he used a sexually derogatory slur against a female firefighter is conflicting at best. He also claims that the Department’s own actions show it thinks it has a weak case because the Department sought to impose only a three tour suspension, and Deputy Chief Hasson did not initially uphold this discipline.

The evidence of what happened during the argument between Firefighters Simpson and [REDACTED] comes primarily from their testimony. While testifying, they both acted in a mature and reasonable fashion. This does not appear to be the way they behaved during the argument. Given the one-sided manner in which each firefighter described the argument, I have not completely credited either firefighter's version of events.

The evidence of what the others heard (or did not hear) who were present during the argument is not that helpful either. Lt. Hardiman testified that he heard the two firefighters arguing about the house fund and that it became loud enough that he told them to disperse. He did not recall hearing any swearing or abusive language. (Hardiman testimony.) I do not make much of this, however, because Lt. Hardiman was mostly paying attention to his ongoing conversation with Capt. Coan in which he was informing the captain of events in the fire station during the time the captain had been out on injury leave. (Hardiman testimony; Finding of Fact 6.) Thus, I do not find significant the lieutenant's failure to hear any swearing or abusive language.

According to both Firefighters Simpson and [REDACTED], Firefighter Burcy had come into the room at the time the argument had become most heated and he had an opportunity to hear whatever was said. ([REDACTED] and Simpson testimony.) Firefighter Burcy acknowledged that he heard Firefighter Simpson yell at Firefighter [REDACTED], but testified that he recalled only that the word Firefighter Simpson used began with the letter "c." (Burcy testimony.) This would be consistent with either Firefighter Simpson's or Firefighter [REDACTED]'s version of events.

The evidence of what happened shortly after the argument proves more helpful. Within the next two days, Firefighter [REDACTED] told Firefighter Burcy, Lt. Semexant, and Female Liaison Rodriguez that Firefighter Simpson had called her a c__t during their argument. (Burcy, [REDACTED], and Semexant testimony.) Although not determinative,

this show that Firefighter [REDACTED]’s version is contemporaneous with the argument and that she remained upset by what Firefighter Simpson said to her.

During this same period, Firefighter Burcy heard Firefighter Simpson call Firefighter [REDACTED] a c__t and Lt. Semexant heard him call her a bitch. (Burcy and Simpson testimony.) Firefighter Simpson denies using such language in his private conversations with these two men, and disclaims ever using these terms. The harshest term he says he used in conversation with the two men about Firefighter [REDACTED] was to call her “that girl.” (Simpson testimony.) No credible reason was offered to show that these two witnesses were untruthful. That both men were in the same group as Firefighter [REDACTED] is not telling. Firefighter Burcy appears throughout these events to have tried to be a peacemaker and to avoid taking sides. Lt. Semexant appears to have had a long, friendly relationship with Firefighter Simpson. I thus accept their testimony as credible. Although what he said afterward does not show conclusively what Firefighter Simpson said during the argument, his willingness shortly thereafter to use sexually derogatory terms about Firefighter [REDACTED] during his private conversations with Firefighter Burcy and Lt. Semexant shows a willingness to use derogatory terms when speaking about Firefighter [REDACTED], and thus makes it more likely that he did just that during his argument with her.

The manner in which events unfolded is significant, as well. Firefighter Simpson testified that after the first time he said something to Firefighter [REDACTED] that began with the letter “c,” she charged him demanding to know what he said, and Firefighter Burcy had to hold her back. (Simpson testimony.) The vehemence of Firefighter [REDACTED]’s response is more understandable if she believed that he had just called her a c__t rather than that he had just said she was crazy.

Firefighter Burcy’s conversations with Firefighter Simpson immediately after the argument ended are similarly telling. Firefighter Burcy spoke to Firefighter Simpson in the

bay and told him that what he had said was inappropriate in the workplace, and then a short time later, on the second floor, he urged Firefighter Simpson to apologize to Firefighter [REDACTED] (Finding of Fact 14.) Firefighter Simpson denied talking to Firefighter Burcy in the bay right after the fight; he acknowledged only that, before he left the fire station, he had a brief conversation with Firefighter Burcy on the second floor. (Simpson testimony.) Firefighter Burcy's memory of these conversations is clear, and I accept his description as accurate. Although he testified that he was no exactly sure what Firefighter Simpson said during the argument with Firefighter [REDACTED], his actions after the fight suggest he feared that he heard him call her a c__t. Chastising Firefighter Simspion for language inappropriate in the workplace and suggesting he apologize were more likely actions to take if he thought he had just heard his colleague call a female firefighter a sexually derogatory term than if he had heard him call her crazy.

In sum, Firefighters [REDACTED]'s reaction to what she heard Firefighter Simpson say, her fresh report of what was said to three other firefighters, Firefighter Burcy's interactions with Firefighter Simpson after the argument ended, and the words Firefighter Simpson used to describe Firefighter [REDACTED] in conversations with Firefighter Burcy and Lt. Semexant not long after the argument all make it more likely than not that Firefighter Simpson called Firefighter [REDACTED] by a sexually derogatory term during their argument.

Firefighter Simpson contends that Firefighter Burcy's testimony should be discounted because in earlier statements he made no mention that Firefighter Simpson called Firefighter [REDACTED] a "c__t." (Exs. 7-9.) I see no reason to discount Firefighter Burcy's testimony. His earlier statements are not inconsistent with his testimony at the hearing, in which he continued to insist that he could not be sure exactly what Firefighter Simpson said to Firefighter [REDACTED] during the key moments of the argument. His testimony at the

hearing about what happened after the argument was not ground covered in his prior statements, and hence there is no inconsistency between those statements and his hearing testimony. No doubt, Firefighter Burcy was a reluctant witness. He had earlier asked whether any statement he gave would be confidential and expressed fear of retaliation. I understand why a firefighter who must continue to work alongside two firefighters involved in an argument would be reluctant publicly to choose sides over what happened. But, at most, this means only that Firefighter Burcy may know more than he is willing to say, not that what he has said he is certain of is inaccurate. Consequently, I decline to reject his testimony. I find Firefighter Burcy's testimony credible, and although I do not rely on it exclusively, I do rely on it and the testimony of the other witnesses to reach a decision.

I also reject Firefighter Simpson's contention that the Fire Department imposed only a "modest" three-day suspension because its investigation was inconclusive and it lacked evidence to support any discipline. This argument is not the typical challenge to discipline based on a claim that the discipline imposed was disproportionate to the offense charged. Rather, it is a challenge to the Department's proof of the underlying offense based on the contention that the discipline imposed was less than might have been expected, and hence shows that the Department lacked proof of the offense.

There is some evidence that the Department had difficulty determining the truth of what happened during the argument between the two firefighters. Deputy Chief Fleming concluded that an argument took place, but that "the specific circumstances of that argument are not obvious." (Finding of Fact 21.) And Deputy Fire Chief Hasson initially informed the Fire Commissioner that he could not rule on Firefighter Simpson's appeal. (Finding of Fact 24.) But the City's personnel office reached a conclusion after its investigation, and Deputy Fire Chief Hasson was at first unable to decide the appeal only because the evidence generated during the City's investigation was not produced to him. (Findings of Fact 22 and

24.) I would agree that it is not easy to determine what was said during the argument between the two firefighters, and I would not be surprised if the discipline the Department chose to impose was related not simply to the offense but to the level of proof of the offense – although there is no evidence that the level of proof actually influenced the Department's decision. Indeed, Boston Human Resources employee Jennifer Wexler's unchallenged testimony was that she recommended a three day suspension because it was in proportion to discipline the City had imposed after investigations of similar incidents involving first time offenders. But whatever difficulty the Department may have had in sorting out what happened, I have found that the evidence supports the Department's ultimate conclusion that Firefighter Simpson called Firefighter [REDACTED] a sexually derogatory term during a heated argument.

Ultimately, imposition of a modest suspension does not show that the discipline was illegitimate. According to Ms. Wexler, the discipline imposed here is consistent with discipline imposed in similar circumstances, and hence there is no evidence that Firefighter Simpson was inappropriately “singled out . . . for punishment more harsh or unusual than otherwise imposed in like circumstances.” *Police Commr. of Boston v. Civil Serv. Comm.*, 39 Mass. App. Ct. 594, 601, 659 N.E.2d 1190, 1194 (1996). Furthermore, because I have found essentially the same facts as the Department and because there is no evidence that find no evidence of political considerations, favoritism, or bias in the Department's discipline decision, I have no occasion to consider modifying the discipline imposed. *See Town of Falmouth v. Civil Serv. Comm'n*, 61 Mass. App. Ct. 796, 802-803, 814 N.E.2d 735, 740 (2004).

The Boston Fire Department had reasonable grounds for its decision to suspend Firefighter Kenneth Simpson for three tours. Accordingly, I recommend that the Department's decision to suspend Firefighter Simpson be affirmed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

James P. Rooney
First Administrative Magistrate

Dated: September 12, 2014