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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
DEBRA S. NEVEU
AMY L. GLOVINSKY
JOSEPH S. CLARK

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 07, 2013

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Chadwick Taylor VS.
Department of Police
Docket Number: 7923**

Dear Mr. Hessler:

Attached is the decision of the City Civil Service Commission in the matter of your appeal.

This is to notify you that, in accordance with the rules of the Court of Appeal, Fourth Circuit, State of Louisiana, the decision for the above captioned matter is this date - 5/7/2013 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Russell B. Ramsey
Jay Ginsberg

CHADWICK TAYLOR

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7923

The Department of Police (“Appointing Authority”) employed Chadwick Taylor (“Appellant”) as a Police Officer with permanent status. By letter dated September 31, 2011, the Appointing Authority suspended the Appellant for twenty days for violation of internal rules regarding Unauthorized Force and terminated his employment for violation of internal rules regarding Honesty and Truthfulness. The justification for the disciplinary action is contained in the second paragraph of the disciplinary letter which provides as follows:

The investigation has determined that on Friday, September 24, 2010, at approximately 6:50 a.m., while on duty you attempted to affect an arrest. Without justification you kicked the arrested subject several times after he stopped resistance. You denied kicking the arrested subject during the incident and clearly stated in your administrative statement that you never kicked the subject. However, several witnesses confirmed that you kicked the arrested subject after he complied with arrest. As such, you violated Rule 2: Moral Conduct, paragraph 6 – Unauthorized Force and Rule 2: Moral Conduct, paragraph 3 – Honesty and Truthfulness.

The matter was assigned by the Civil Service Commission to a Hearing Examiner pursuant to Article X, Section 12 of the Constitution of the State of Louisiana, 1974. The hearing was held on May 23, 2012 and June 21, 2012. The testimony presented at the hearing was transcribed by a court reporter. The three undersigned members of the Civil Service Commission have reviewed a copy of the transcript and all documentary evidence.

The parties agreed to protect the identity of the arrested juvenile by referring to him as the “Arrested Subject”. The parties also agreed to stipulate that the Arrested

Subject was arrested and convicted of battery on a police officer and resisting arrest. Thus, any force used by the Appellant prior to compliance is not the basis for the disciplinary action.

Appointing Authority's Witnesses

Sgt. Darryl Watson, assigned to the Public Integrity Bureau, investigated the incident that resulted in the Appellant's termination. Sgt. Watson testified that the Appellant was part of an undercover plainclothes operation investigating whether a student enrolled at Warren Easton Charter High School was selling marijuana outside of a nearby corner store. According to Sgt. Watson's investigation, the Appellant witnessed a drug transaction and attempted to arrest the Arrested Subject after identifying himself as a police officer and showing the Arrested Subject his badge. While the Appellant was escorting the Arrested Subject towards his partners, who were located in an unmarked police unit, the Arrested Subject began resisting and struck the Appellant with a closed fist in the face.

A physical altercation ensued. Officer Russell Green, also participating in the undercover operation, was the first officer to come to the Appellant's assistance. He grabbed the Arrested Subject, but his attention was diverted when another student tried to intervene. Officers Angela Joanos and Nigel Daggs arrived momentarily after Officer Green. By this time, the Appellant and the Arrested Subject were on the ground fighting. According to Sgt. Watson, Officer Joanos came to the Appellant's assistance and helped him place the Appellant in handcuffs. Sgt. Watson acknowledged that the Appellant's use of force was not excessive prior to the forced compliance of the Arrested Subject

through handcuffing. However, Sgt. Watson testified that he determined that the Appellant kicked the Arrested Subject while he was lying helplessly on the ground after being subdued and handcuffed.

Sgt. Watson's determined that the police officer who kicked the Arrested Subject was the Appellant based upon his footwear – a certain kind of boot that only the Appellant by his own admission was wearing at the time of the incident (“Timberland Boots”). Sgt. Watson testified that several interviewed witnesses stated that the police officer that kicked the Arrested Subject was wearing Timberland Boots.

When giving his statement, the Appellant denied kicking the Appellant. Sgt. Watson stated that he found the Appellant to be untruthful based upon various statements provided by a number of witnesses who allegedly stated that the Appellant kicked the Arrested Subject after Officer Joanos walked away. Sgt. Watson was unable to identify who specifically he relied upon in reaching this conclusion. He deduced that this could only have occurred after the Arrested Subject was handcuffed and the Appellant was able to stand up. Sgt. Watson acknowledged that he reached this conclusion even though the alleged victim of the Appellant's unauthorized actions never complained that the Appellant kicked him after he was placed in handcuffs.

While none of the police officers on the scene stated that the Appellant kicked the Arrested Subject, Sgt. Watson justified his conclusions by testifying that the attention those police officers was diverted by crowd control requirements, giving the Appellant an opportunity to kick the Arrested Subject unobserved.

Joseph Guillot was the only subpoenaed witness called by the Appointing Authority who witnessed the events. He was also identified by Sgt. Watson as a primary and credible witness who he relied on in reaching his conclusions. Mr. Guillot was employed as the Assistant Principal at Warren Easton Charter High School. He testified that he observed what he thought was a fight and did not initially realize that he was observing a police action until uniformed police officers arrived on the scene. As he came closer, he observed the Arrested Subject on the ground being restrained by several plainclothes police officers who were telling the Arrested Subject he was being restrained. He never observed the Arrested Subject complying with the Police Officers. Instead, he observed the Arrested Subject continuing to struggle.

Mr. Guillot's testimony did not support Sgt. Watson's version of events. Although he stated that he observed a boot make contact with the Arrested Subject's head while several police officers were struggling with Arrested Subject, he specifically stated that the Appellant was not simply standing over the Arrested Subject kicking him in the head. Instead, he testified that any kicking he observed was part of the restraining process. Further, Mr. Guillot did not recall whether or not the Appellant was standing when the kicking occurred and he could not say whether the contact of the boot to the Appellant's head was an intentional or unintentional act.

Appellant's Witnesses

The Appellant testified that the Arrested Subject was the target of an undercover investigation. While in plain clothes, he observed a hand-to-hand drug transaction involving the Arrested Subject. He radioed Officer Gus James of his intention to arrest

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the subject and signaled to Officer Russell Green that he was about to make his move. He approached the Arrested Subject and identified himself as Detective Taylor of the New Orleans Police Department. He showed him his badge and directed him to come with him. The Appellant started walking up the street. After approximately ten paces, the Arrested Subject started to resist and pulled away from him. He tried to calm the Arrested Subject down, but instead the Arrested Subject struck him in the side of the face with a closed fist. In response, the Appellant grabbed the Arrested Subject and a struggle ensued with the participants falling to the ground. The Appellant testified that he repeatedly instructed the Arrested Subject to stop resisting. Instead, the Arrested Subject continued to throw punches and resist.

The Appellant managed to turn the Arrested Subject onto his stomach and attempted to handcuff him. He testified that Officer Joanos assisted by sitting on the Arrested Subject's legs. With Officer Joanos' assistance, the Appellant was eventually able to pull the Arrested Subject's arms from underneath his torso and handcuff him.

At this point, the Appellant left the subject to the other police officers who escorted him to an awaiting police unit. The Appellant denies kicking the Arrested Subject in the head. He stated that the only reason he was fighting with the Arrested Subject was in self-defense and to get the Arrested Subject to stop resisting.

Officer Angela Joanos was assigned to the same undercover operation. She was in an unmarked police unit observing the Appellant and Officer Green and serving as their backup. She observed the transaction that resulted in the Arrest and observed the Arrested Subject strike the Appellant with a closed fist. She left her vehicle and came to

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the Appellant's assistance. Upon her arrival, she observed the Appellant kneeling over the Arrested Subject who was lying face down on the ground and resisting. The Arrested Subject was refusing to place his hands behind his back, and Officer Joanos helped the Appellant handcuff the subject. She testified that Officer Gus James immediately picked the Arrested Subject up and escorted him to the nearby police unit. She never observed the Appellant or anyone else kick the Arrested Subject.

Officer Russell Green was the Appellant's immediate backup. He testified that he observed the Arrested Subject swing at the Appellant, which caused him to run to the altercation displaying his badge and shouting that he was the police. Once he arrived, he observed the Appellant trying to get the Arrested Subject on his stomach. He also observed Officer James arrive in a police unit and remove the Arrested Subject who was by this time handcuffed. He testified that he never saw the Appellant kick the Arrested Subject.

Officer Gus James was tasked with manning a marked police unit just in case he was needed to transport a prisoner. After receiving a communication from the Appellant that he was needed, Officer James drove the three blocks to the scene. Upon his arrival, he observed the Appellant and Officer Joanos attempting to handcuff the Arrested Subject, who would not stop resisting. When the Appellant and Officer Joanos finished handcuffing the Arrested Subject, Officer James stated that he immediately grabbed the Arrested Subject and took him into custody. According to Officer James, they are trained to not leave handcuffed subjects lying on the ground and, because this is what he did, the

Appellant would have had no opportunity to kick the Arrested Subject. We found Officer James to be a particularly credible witness.

LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service except for cause expressed in writing. LSA Const. Art. X, sect. 8(A); *Walters v. Department of Police of New Orleans*, 454 So. 2d 106 (La. 1984). The employee may appeal from such a disciplinary action to the city Civil Service Commission. The burden of proof on appeal, as to the factual basis for the disciplinary action, is on the appointing authority. *Id.*; *Goins v. Department of Police*, 570 So 2d 93 (La. App. 4th Cir. 1990).

The Civil Service Commission has a duty to decide independently, based on the facts presented, whether the appointing authority has good or lawful cause for taking disciplinary action and, if so, whether the punishment imposed is commensurate with the dereliction. *Walters v. Department of Police of New Orleans, supra*. Legal cause exists whenever the employee's conduct impairs the efficiency of the public service in which the employee is engaged. *Cittadino v. Department of Police*, 558 So. 2d 1311 (La. App. 4th Cir. 1990). The appointing authority has the burden of proving by a preponderance of the evidence the occurrence of the complained of activity and that the conduct complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSIONS

The Appointing Authority has failed to meet its burden of proof that it disciplined the Appellant for just cause. There is no evidence that supports the allegations contained in the disciplinary letter that the Appellant kicked the Arrested Subject after he was subdued or that he was untruthful during the internal investigation. All first-hand testimony supports the Appellant's version of events, which was corroborated by every police officer on the scene who testified. Not one of the police officers on the scene observed the Appellant kick the Arrested Subject. More importantly, according to the consistent and credible testimony of the officers on the scene, once restrained, the Arrested Subject was immediately removed from the scene and therefore never vulnerable to attack.

Further, the Appointing Authority's only fact witness testified that he never saw the Arrested Subject stop resisting, and that he never saw the Appellant intentionally kick the Arrested Subject. At best, the witness stated with minimal certainty that he may have observed a boot likely belonging to the Appellant strike the Arrested Subject in the head while police officers were struggling to subdue a non-compliant subject.

There is no reliable evidence to suggest that the Appellant did anything meriting discipline. His appeal is GRANTED and the Appointing Authority is ordered to return

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the Appellant to his previous position with all back pay and emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 7th DAY OF MAY,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



AMY L. GLOVINSKY, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER