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CITY CIVIL SERVICE COMMISSION

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CHAIRPERSON
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LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, February 24, 2017

Leola M. Anderson
935 Gravier St.
New Orleans, La 70112

Re: **Wanda Johnson VS.
Department of Finance
Docket Number: 8539**

Dear Anderson:

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 - 2/24/2017 - 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 must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Norman S. Foster
Elizabeth S. Robins
Brendan M. Greene
Wanda Johnson

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CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

WANDA JOHNSON vs. DEPARTMENT OF FINANCE	DOCKET No.: 8539
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I. INTRODUCTION

Appellant, Wanda Johnson, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Department of Finance for City of New Orleans, (hereinafter the “Appointing Authority”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the Appointing Authority disciplined Appellant for sufficient cause. The undersigned Commissioners have reviewed the transcript of the hearing that occurred on August 23, 2016, exhibits accepted into evidence by the hearing examiner, and the report filed by the hearing examiner. Based upon our review of these items, we now render the following findings and judgment.

II. FACTUAL BACKGROUND

A. Alleged Misconduct

The Appointing Authority notified Appellant that it was suspending her for two days via letter dated June 6, 2016. (H.E. Exh. 1). Based upon a review of the June 6th letter, it appears that the Appointing Authority relied on Appellant’s alleged unprofessional behavior during a Staff

meeting that occurred on May 18, 2016 and three Helen Brett Jewelry shows. *Id.* On August 23, 2016, the same day as the instant appeal hearing, the Appointing Authority issued a revised disciplinary letter indicating that the two-day suspension was now based entirely on Appellant's alleged misconduct during a May 20, 2016 staff meeting. (A.A. Exh. 1).¹ The Appointing Authority alleges that, during the May 20th staff meeting, Appellant "had a loud outburst," and "angrily paced back and forth demanding information from her supervisor." Further, when Appellant's supervisor directed Appellant to retake her seat, she responded in an unprofessional manner. *Id.* According to the Appointing Authority, Appellant's actions during the May 20th meeting were insubordinate. *Id.*

B. May 20, 2016 Staff Meeting

Appellant was a permanent, classified employee serving in the capacity of Management Development Analyst in the Appointing Authority's Revenue Bureau at all times relevant to the instant appeal. Jimmie Brown was Appellant's supervisor and occupied the position for Revenue Collection Supervisor at the time of Appellant's alleged misconduct. (Tr. 14:9-18). Mr. Brown testified that he held weekly staff meetings with tax collection staff, including Appellant. During these meetings, Mr. Brown gave the staff an opportunity to address issues that arose during the week. *Id.* at 16:23-17:5. On May 20, 2016, Appellant used this opportunity to question Mr. Brown regarding the staff's responsibilities vis-à-vis walk-in customers. *Id.* at 17:18-24. The focus of Appellant's concern was an incident between her and a co-worker, Karen Fortuna, that occurred two weeks earlier. *Id.* at 71:11-14.

¹ The Commission is very concerned about the late amendment to the disciplinary letter. It was reasonable for Appellant to assume that the Appointing Authority based its decision to issue the two-day suspension on Appellant's alleged misconduct during the staff meeting and jewelry shows. Thus, Appellant's preparation was likely adversely impacted by this late change. However, the revised notice does not add any allegations to the original notice. Therefore, we will base our review of this matter on the revised notice. In issuing this judgment, the Commission strongly counsels all appointing authorities to avoid such confusing tactics in the future.

The Commission observes that revenue collection personnel cycle through assignments either in the field or in the office. *Id.* at 17:24-18:6. On the day in question, Appellant was working in the office and Ms. Fortuna was preparing to enter the field when an individual approached Appellant with questions regarding a subpoena he had received. Appellant examined the subpoena and noted that Ms. Fortuna had issued it. *Id.* at 71:14-15. At that point, she asked Ms. Fortuna to assist the individual in addressing the requirements of the subpoena. *Id.* at 71:15-16. According to Appellant, Ms. Fortuna initially resisted rendering any assistance because she was preparing to go into the field. The interaction troubled Appellant because she felt that Ms. Fortuna should have been more accommodating given that Ms. Fortuna had issued the subpoena and was familiar with the circumstances surrounding its issuance. *Id.* at 71:11-17. Appellant claims that she approached Mr. Brown about this incident and asked him to address it at the May 20th meeting.

As was his usual practice, Mr. Brown provided the staff an opportunity to express thoughts, concerns or questions during a portion of the May 20th staff meeting. Appellant claimed that Ms. Fortuna used this opportunity to present Mr. Brown with a hypothetical that bore a striking resemblance to the interaction between Ms. Fortuna and Appellant two weeks earlier. *Id.* at 73:9-13. At this point in the meeting, Appellant states that she tried to interject what she viewed as corrections to Ms. Fortuna's account. Appellant acknowledges that she raised her voice, but claims that it was necessary to do so in order to be heard over Ms. Fortuna. *Id.* at 73:16-17. Mr. Brown, Ms. Fortuna and Mr. Michele Sigur – a senior revenue field agent who also attended the meeting – recalled Appellant's conduct in very different light.

Mr. Brown understood that Appellant believed that Ms. Fortuna should have delayed her field work in order to address the customer she had specifically subpoenaed. *Id.* at 18:6-13. However, Mr. Brown claimed that Appellant disrupted the meeting with a raised voice and

demanded that Mr. Brown put the work assignment policy in writing. *Id.* at 18:20-25. Similarly, Ms. Fortuna testified that Appellant loudly addressed Mr. Brown and demanded certain procedures be reduced to writing. *Id.* at 27:10-20. Finally, Mr. Sigur recalled that Appellant became very irate when Mr. Brown refused Appellant's request to put certain policies in writing. *Id.* at 42:22-43:3.

III. LEGAL STANDARD

Appointing authorities may only discipline permanent employees in the classified service for sufficient cause. La. Con. Art. X, § 8(A). If an employee believes that an appointing authority issued discipline without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an appointing authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause to issue discipline, it must then determine if that discipline "was commensurate with the infraction." *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

IV. ANALYSIS

A. Occurrence of the Complained of Activities

Appellant was clearly bothered by the interaction between herself and Ms. Fortuna regarding the best way to address a walk-in customer. And, both Appellant's and Ms. Fortuna's frustration over the situation appears to be a product of a misunderstanding of certain work assignment protocols in the office. To her credit, Appellant appeared to have tried to address the matter with Mr. Brown prior to the May 20th staff meeting.

However, the Commission finds that when Appellant chose to loudly address Mr. Brown and Ms. Fortuna during the May 20th staff meeting her conduct was disruptive and unprofessional. Pounding one's fist while demanding that your supervisor put something in writing is not conducive to a professional work environment. While Mr. Brown encouraged employees to voice concerns or questions during a portion of each staff meeting, it was not a license for employees to engage in confrontational and aggressive conduct. Based upon the record before us, the undersigned Commissioners find that Appellant did engage in the alleged misconduct.

B. Impairment of Efficient Operation of Appointing Authority

Norman Foster, the Director of the Department of Finance, was responsible for the decision to issue Appellant a two-day suspension. He stated that his decision was based primarily on the need for staff in the tax collection bureau to model professional and courteous behavior at all times. This is true whether the staff are interacting with customers or among themselves. Mr. Foster observed that employees in the tax collection bureau often have to deal with very tense and confrontational situations and must be able to work through disputes in a calm and reasoned manner. (Tr. at 57:20-58:1). Mr. Foster believed that Appellant's conduct during the May 20th meeting represented a dramatic departure from the standards of professionalism he and his

management team attempt to engender among the staff. To a lesser extent, Mr. Foster also expressed a concern that Appellant's outburst distracted other employees from performing their duties and working through other issues. Based upon the foregoing, we find that Appellant's conduct did adversely impact the efficient operations of the Appointing Authority.

C. Discipline Commensurate with Offense

In conducting its analysis, the Commission must determine if Appellant's suspension was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033). The Commission makes such a determination independently based upon the facts presented during the hearing. *Morris v. City of Minden*, 50,406 (La.App. 2 Cir. 3/2/16)(citing *Walters v. Dept. of Police of New Orleans*, 454 So.2d 106 (La.1984); *City of Bossier City v. Vernon*, 12-0078 (La.10/16/12), 100 So.3d 301)(emphasis added).

Mr. Foster testified that his decision to issue Appellant the two-day suspension was based entirely upon her conduct at the May 20th meeting. The Commission finds that the Appointing Authority has an interest in promoting a high level of professionalism and courtesy among all employees, but particularly among those who interact on a daily basis with taxpayers. Furthermore, we find that the Appointing Authority's expectation that employees model professional and courteous behavior among themselves is reasonable.

While the Appointing Authority had other options available to it when addressing Appellant's unprofessional conduct, we do not find that a relatively short suspension to be so punitive as to constitute an arbitrary or capricious action.

V. CONCLUSION

Based upon the foregoing, the Commission hereby DENIES Appellant's appeal.

Judgment rendered this 24th day of February, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

Ronald P. McClain
RONALD P. McCLAIN, VICE-CHAIRMAN

2-21-17
DATE

Joseph S. Clark
JOSEPH S. CLARK, COMMISSIONER

2-24-17
DATE

Tania Tetlow
TANIA TETLOW, COMMISSIONER

2-22-17
DATE