



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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Wednesday, October 11, 2017

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Brett J. Prendergast  
4603 S. Carrollton Avenue  
New Orleans, La. 70119

Re: **Mae Bradley VS.  
New Orleans Aviation Board  
Docket Number: 8679**

Dear Mr. Prendergast:

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 - 10/11/2017 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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: Kevin Dolliole  
Michele Allen-Hart  
Jay Ginsberg  
Mae Bradley

file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

MAE BRADLEY  vs.  NEW ORLEANS AVIATION BOARD	DOCKET No.: 8679
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**I. INTRODUCTION**

Appellant, Mae Bradley, 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 Aviation Board for the City of New Orleans, (hereinafter “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. At all times relevant to the instant appeal, Appellant served as an Airport Security Manager within the Appointing Authority and had permanent status as a classified employee.

On June 22, 2017, a hearing examiner appointed by the Commission presided over an appeal hearing. The undersigned Commissioners have reviewed the transcript and exhibits from this hearing as well as the hearing examiner’s report. Based upon our review, we render the following judgment.

## II. FACTUAL BACKGROUND

### A. Alleged Misconduct

The Appointing Authority issued Appellant a letter of reprimand after substantiating an allegation that Appellant had failed to diligently oversee and administer a Cooperative Endeavor Agreement (“CEA”) between the Appointing Authority and local law enforcement entities. (H.E. Exh. 1). Pursuant to the CEA, local law enforcement agencies supplied personnel to support the security and safety needs at the Louis Armstrong International Airport (hereinafter “Airport”). Specifically, the Appointing Authority alleged that, due to Appellant’s failure to properly execute her duties as Security Manager, the Appointing Authority overpaid for law enforcement services. *Id.* According to the letter of reprimand, Appellant was responsible for the “oversight and contract management for security-related contracts and purchases.” *Id.*

### B. CEA and Appellant’s Role

#### 1. History of CEA

The Appointing Authority entered into an initial CEA on November 20, 2012. (NOAB Exh. 1). Within the “scope of work” performed by the local law enforcement agencies was the provision of “law enforcement services” to the Appointing Authority on a “24-hour per day, 7 days per week basis.” *Id.* The law enforcement agencies further committed to providing services in accordance with the approved “Airport Security Plan” or “ASP.” *Id.* Within the “chain of command” identified by the CEA, the “Airport Security Manager” served as the designated representative of the Appointing Authority in communications with the law enforcement agencies. *Id.* The 2012 CEA also empowered the “Airport Security Manager” to make changes in personnel or duty posts as she deems necessary. *Id.*

On July 5, 2016, the Appointing Authority executed a successor CEA with the same law enforcement agencies. (NOAB Exh. 2). The “chain of command” provision in the successor CEA designated the Appointing Authority’s Director of Aviation as the Appointing Authority’s representative. The Director of Aviation, or his designee, had the authority to modify personnel or duty posts. *Id.*

“Attachment B” to the CEA contains the “rate structure” that applied to law enforcement personnel assigned to the Appointing Authority pursuant to the CEA. *Id.* There are shift differentials identified by the rate structure, but other than such differentials, the hourly compensation is dependent upon the type of assignment and personnel required. *Id.* The CEA’s rate structure does not address overtime or holiday pay. *Id.*

## *2. Appellant’s Role at the Appointing Authority*

Appellant began her employment with the Appointing Authority in 1984, and in 2004 she officially assumed position of Airport Security Manager and held that title at all times relevant to the instant appeal. Between 2001 and 2004, Appellant was “under-filling” the position of Security Manager but still performed most – if not all of – the job functions. (Tr. at 42:16-43:1). As Airport Security Manager, Appellant was responsible for ensuring all Appointing Authority staff followed rules and regulations established by the Transportation Security Administration (“TSA”). (Tr. at 5:8-14). Appellant also oversaw the staffing levels of police officers and other law enforcement personnel. Regulations established by the TSA require that the Airport maintain a specific level of law enforcement presence during operating hours. *Id.* at 43:21-44:9. Therefore, Appellant’s primary focus with respect to the CEA was ensuring that the staffing levels contained within “Attachment A: Post Assignments and Staffing” were consistent with TSA regulations. *Id.* at 46:14-23. Appellant was also responsible for monitoring the payment of police officers “as far as



making sure that those payments are made and documents are forwarded to our accounting department for them to get their checks.” *Id.* at 5:17-23.

Appellant denied that she had any responsibilities with respect to the negotiation or preparation of security-related contracts. *Id.* at 6:8-13. Instead, Appellant indicated that she ensured that various security assignments made it into the contract as well as any training or certifications requirements necessary for law enforcement personnel working under the contract. *Id.* at 6:14-7:3. As Airport Security Manager, Appellant did review invoices submitted pursuant to the CEA and reviewed payments on a bi-weekly basis to ensure “everything is corresponding and correct.” *Id.* at 7:10-25.

### ***3. Holiday Pay***

Since approximately 1991, invoices submitted by the Jefferson Parish Sheriff’s Office (“JPSO”) to the Appointing Authority contained reimbursement request for hours worked by off-duty deputies. When deputies worked during a recognized holiday, the JPSO paid the deputies a premium “holiday rate” and requested reimbursement from the Appointing Authority at the same rate. *Id.* at 9:3-11. Until April 2017, the Appointing Authority had provided reimbursement at the holiday rate.

Appellant was familiar with the practice of compensating law enforcement personnel who worked at the Airport a holiday rate of pay. In her role as Security Manager, Appellant reviewed these invoices submitted by JPSO and approved payment at the “holiday rate.” *Id.* at 9:3-11. Although the CEA’s rate schedule did not provide for payments based upon a “holiday rate,” Appellant indicated that her understanding of the past practice between JPSO and the Appointing Authority provided for the payment of a “holiday rate.” *Id.* at 13:4-11. Thus, Appellant approved

the invoices with the holiday rate included and submitted them to the Appointing Authority's accounting department for payment. *Id.* at 13:11-19.

Walter Krygowski, Deputy Director and Chief Operations Officer of the Appointing Authority, directly supervised Appellant during all relevant times. *Id.* at 14:23-15:6. On or about January 2017, Mr. Krygowski discovered that the Appointing Authority had been paying law enforcement personnel a holiday rate even though such rate is not addressed in the CEA. *Id.* at 15:18-16:10. Mr. Krygowski viewed the payment of the holiday rate as an impermissible overpayment and believed that Appellant was responsible for the alleged error. Therefore, he issued Appellant a letter of reprimand. While Mr. Krygowski contemplated issuing a stricter form of discipline, he believed that Appellant's long tenure with the Appointing Authority coupled with her strong performance served as mitigating factors.

On cross-examination, Mr. Krygowski acknowledged that, even though JPSO provided the Appointing Authority with security personnel in the form of law enforcement officers prior to 2012, there was no written agreement in place. *Id.* at 21:4-10. And, when the Appointing Authority executed the CEA to cover security personnel, Appellant's job description did not change, nor did she receive any additional training on the administration of contracts. *Id.* at 21:12-24. Mr. Krygowski confirmed that the practice of paying law enforcement personnel a holiday rate was in place long before the parties to the CEA reached an agreement. The pay continued until April 2017 when the Appointing Authority took the position that it was not obligated to pay the higher holiday rate.

Captain Michael DeSalvo of the JPSO served as the "airport police commander" beginning in December 2012 up to and through the relevant period of time. *Id.* at 26:20-23, 28:6-10. In his capacity as commander, Capt. DeSalvo served as the administrator for all law enforcement

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personnel assigned to the Airport. *Id.* at 27:5-12. Prior to serving in his current role as commander, Capt. DeSalvo served as the payroll system administrator for Airport assignments and had also worked paid details at the Airport since 1993. *Id.* at 28:11-17. For law enforcement personnel, the Airport assignment was a voluntary “paid detail” or “public assignment.” *Id.* at 27:13-18. And, due to the voluntary nature of paid details, the JPSO maintains a policy that allows its personnel to receive a holiday rate of pay. *Id.* at 29:4-16. The purpose of the holiday rate is to incentivize personnel to work during a time where there is typically a shortage of available staff. *Id.* at 30:1-9.

Capt. DeSalvo testified that, prior to the Appointing Authority raising a concern regarding the holiday rates, he would enter payroll information into the Appointing Authority’s computerized payroll system. *Id.* at 34:18-2. This system is maintained by Frank Ruez, an Appointing Authority employee, and pre-populated with holiday pay rates. *Id.* at 35:3-9. Mr. Ruez adjusted the pay rates when holidays fell on different dates and provided for the higher rate of compensation. Reports generated by the Appointing Authority’s payroll system for paid detail assignments would include an officer’s gross pay, net pay and total hours. There was not a separate line item for holiday pay. *Id.* at 37:1-13.

Capt. DeSalvo confirmed that the holiday rate had been part of the compensation arrangement between the Appointing Authority and JPSO since at least 1991. *Id.* at 40:1-11. This is consistent with Appellant’s testimony that she was familiar with the holiday rate of pay through the past practice between the parties to the CEA.

### III. LEGAL STANDARD

An appointing authority may discipline an employee with permanent status 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’s primary responsibility with respect to the CEA was ensuring that law enforcement agencies provided the Appointing Authority with a sufficient level of staffing. This was of vital importance to the Appointing Authority, its employees and its customers. Appellant was also responsible for monitoring the various certifications, trainings and license maintained by law enforcement personnel working at the Airport. Had Appellant failed in either of these aspects of her job, the Appointing Authority would have had ample reason to pursue corrective action.

However, the Commission does not find that Appellant was responsible for monitoring the payroll system and ensuring that the precise compensation established by the CEA’s rate schedule



was reflected in the invoices paid by the Appointing Authority. As a preliminary matter, both JPSO and Appellant had decades of experience with a holiday rate as it pertained to the Airport's paid detail. And, apparently, the Appointing Authority's payroll system was pre-programmed with holiday rates based upon the past practice established by the Appointing Authority and JPSO. And, another Appointing Authority employee processed the payroll data and JPSO used that data to pay its personnel. The invoices paid by the Appointing Authority to JPSO were reimbursement for compensation already paid out by JPSO.

The Appointing Authority tried to establish, unsuccessfully, that Appellant was involved in the negotiations that led to the establishment of the rate schedule contained within the CEA. We agree with the hearing examiner that Appellant had no knowledge that the holiday rate benefit was eliminated through the negotiation of the 2012 CEA. We find credible the testimony of Capt. DeSalvo and Appellant when they stated that the holiday rate was never established between the JPSO and Appointing Authority in writing, but had been honored.<sup>1</sup>

## V. CONCLUSION

As a result of the above findings of fact and law, the Commission hereby GRANTS the appeal. The Appointing Authority shall rescind the written reprimand referenced in "Hearing Examiner Exhibit 1" and expunge any record of such reprimand from Appellant's files.

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<sup>1</sup> The question of whether or not the holiday rate of pay is enforceable under Louisiana contract law is an entirely different question that the Commission thankfully does not have to answer.

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Judgment rendered this 11<sup>th</sup> day of October, 2017.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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CLIFTON MOORE, JR., COMMISSIONER

10/10/2017  
DATE

  
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STEPHEN CAPUTO, COMMISSIONER

10/11/2017  
DATE

  
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