



MITCHELL J. LANDRIEU
MAYOR

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

MICHELLE D. CRAIG, CHAIRPERSON
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JOSEPH S. CLARK
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CORDELIA D. TULLOUS

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Monday, May 09, 2016

Ben Council
419 S. Salcedo Street, Suite #2
New Orleans, LA 70119

Re: **Steven Washington VS.
New Orleans Public Library
Docket Number: 8333**

Dear Mr. Council:

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 - 5/9/2016 - 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 "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Charles Brown
Elizabeth S. Robins
Jim Mullaly





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Monday, May 09, 2016

Ben Council
419 S. Salcedo Street, Suite #2
New Orleans, LA 70119

Re: **Steven Washington VS.
New Orleans Public Library
Docket Number: 8339**

Dear Mr. Council:

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 - 5/9/2016 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

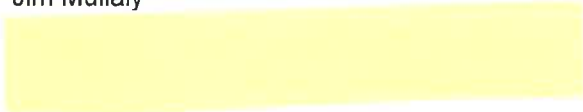
If you choose to appeal this decision, such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

A handwritten signature in blue ink that reads "Doddie K. Smith".

Doddie K. Smith
Chief, Management Services Division

cc: Charles Brown
Elizabeth S. Robins
Jim Mullaly



STEVEN WASHINGTON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

NEW ORLEANS PUBLIC LIBRARY

NO. 8333 C/W 8339

The Appellant was a Facilities Manager. This is the consolidated appeal of the Appellant's emergency suspension (No. 8333) and subsequent termination (No. 8339). The Appellant was suspended and later terminated based upon the Appointing Authority's attempt to investigate what it perceived as questionable bids submitted by the Appellant and what the Appointing Authority determined to be the Appellant's refusal to assist in the investigation.

As reflected in the disciplinary letter:

The Library Administration conducted an investigation into irregularities with several pressure-washing bids that [the Appellant] submitted for work at the Keller Library and Community Center. The Library Administration scheduled a meeting with [the Appellant] to discuss these irregularities and to determine the steps [the Appellant] took to secure th[e] bids. [The Appellant] refused to answer direct questions regarding th[e] matter or to provide a written statement to address the Library Administration's concerns. [The Appellant's] refusal to assist in th[e] investigation is a violation of [the Appellant's] duties, a violation of City Policy (No. 83) requiring prompt, thorough and courteous performance of [his] duties to the public and to co-workers and supervisors, and is a violation of Civil Service Rule IX, allowing for discipline of an employee who is unwilling or unable to perform their assigned duties.

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. Hearings were held on November 6, 2014, January 29, 2015, and April 23, 2015. The testimony presented at the hearings 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.

After a full review of the transcript of proceedings and the record evidence, we find that the Appointing Authority has met its burden of proof and the Appellant's appeal is DENIED.

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 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 from 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.*

ANALYSIS

The appointing authority proved by a preponderance of the evidence the occurrence of the complained of activity, namely that the Appellant failed to assist in the investigation of his bid submissions, which the Appointing Authority found to be questionable, if not fraudulent.

Ms. Thomas is the business manager, fiscal officer of the library system and explained the informal bid process. She testified that it is required when a purchase is over \$1000, between \$1000 and \$19,999.99, and that it requires that a city employee seeking bids for a particular service contact at least three different vendors to explain the services sought to be rendered and request that they submit a written bid. A form must be submitted, listing the three vendors and attaching their bids.

Ms. Thomas testified that it was the Appellant's work function to contact vendors; to give the information for them to bid on and to make sure that they are responsible, responsive vendors. Ms. Thomas testified that the Appellant was responsible for making sure that the quotes were very detailed and had all the information regarding the services to be rendered. The Appellant was responsible for making sure that the vendors are registered with the City and, if not to register them as new vendors.

The bids at issue in this appeal were several pressure-washing bids that the Appellant submitted for work at the Keller Library and Community Center. Ms. Thomas testified that there were three bidders listed on the bid quote form; JMD Cleaning, Uptown Cleaning, and LMAJ Estate. She explained that she became immediately concerned when she began going through each of the three informal bids attached to the bid quote in that they were all nearly identical in both form and substance. Remarkably, each of the three supposedly independent bid forms listed

Rosa D. Kelly Library as the potential job site as opposed to the actual site, Rosa K-E-L-L-E-R Library. Ms. Thomas was further stricken by the fact that the numbers on all three bids were typed identically, with a space after the comma in the bid number, and that in her 22 years as an accountant, based upon her experience, no two people write numbers the exact same way.

Ms. Thomas testified that she then contacted the United States Post Office and was able to verify that the Post Office Box Numbers listed for JMD Cleaning and Uptown Cleaning did not exist. Ms. Thomas testified that when she called the number provided for Uptown cleaning, an older gentleman answered and informed her that she had the wrong number.

Ms. Thomas testified that when she and Mr. McMorran, the Appellant's Supervisor, attempted to call the number provided for JMD Cleaning, at first there was no answer. Upon a second attempt, a gentleman answered. Ms. Thomas testified that they explained to the gentleman that they were calling in response to a bid that he had submitted for cleaning services and asked if he could verify the name of his business. She stated that the gentleman first responded that his business name was JD Uptown, then JM Uptown, then, finally, JMD Cleaning.

Ms. Thomas testified that she brought the matter to the attention of her Supervisor, Charles Brown, as well as the City procurement office. Everyone saw what she saw in terms of the problems with the bid package.

A meeting was had; in attendance were the Appellant, Ms. Thomas, Mr. Charles Brown and Mr. Charles McMorran. Ms. Thomas testified that when asked how and where he received the bids, the Appellant stated that two submitted their bids at the library, and that he had encountered the third when he observed the company performing cleaning services at another

location. Ms. Thomas stated that when asked, the Appellant would not say how he knew the two contractors that he called for bids.

Mr. McMorran is the Assistant Librarian and has been for two and a half years. He is responsible for overseeing branch operations and personnel.

Mr. McMorran testified that he was present for the meeting with the Appellant, Ms. Thomas and Mr. Brown regarding the bid package at issue. He testified that he too was “dumbfounded” by the remarkable similarities between all of the bids submitted by the three vendors. Mr. McMorran stated that when asked how he obtained these bids, the Appellant was unable to give any definitive answer. As a result, Mr. McMorran stated that a second meeting was had.

Mr. McMorran testified that at the second meeting, they wanted some more specific answers about how the vendors were contacted to submit a bid, and how the bids were submitted. He stated that the Appellant was extremely vague and did not want to answer the questions. Mr. McMorran testified that he concluded that in his mind there was no doubt that the bids were fraudulent. A pre-termination hearing was scheduled for September 4, 2014.

At the pre-termination hearing, Mr. McMorran testified that the Appellant did not provide any additional information as to how the contractors were notified about submitting a bid. With regard to how the bid letters were actually received, Mr. McMorran testified that the Appellant remained vague, adding only that one was dropped off by a spouse of a contractor and the other two were submitted directly to him.

Mr. Brown is the City Librarian and Executive Director of the New Orleans Public Library. He has been for three years.

Mr. Brown testified similarly to Ms. Thomas and Mr. McMorrان. He testified that the Appellant was responsible for the solicitation of bids from qualified vendors and that he submitted the bid package for the pressure washing job at the Rosa Keller Library. He testified that he observed the bids to be questionable and that he too was not satisfied with the Appellant's cooperativeness with the investigation into same.

Mr. Brown testified that, ideally, the Appellant should have worked with the City administration to obtain a list of vetted, approved vendors that have provided pressure washing services for the City in the past, and to contact those vendors to obtain bids.

Mr. Brown testified that at the least, he would have expected more due diligence from the Appellant in terms of certifying that the bidders were legitimate businesses when soliciting bids from them. Here, there were no Tax ID numbers, no legitimate addresses, and no legitimate phone numbers. According to Mr. Brown, more is expected from one soliciting bids involving the expenditure of public funds.

Likewise, Mr. Brown explained that he expects his employees to cooperate in internal investigations and that the Appellant did not.

Mr. Brown testified that the Appellant's actions in forwarding questionable bids impacted the integrity of the library. He explained that bid solicitation and selection is a very important area for the library because the library is in a very precarious funding situation; that it is likely to be going to the voters next year for a millage campaign and it can ill afford to have any questions about the integrity of the organization in terms of how it handles public funds.

Mr. Brown explained that the Appellant's conduct gave him serious concerns about the Appellant's honesty and integrity and his ability to perform his duties.

The Appellant was vague and nonresponsive during his testimony. The Appellant only generally stated that he answered all of the Appointing Authority's questions in the first meeting. He did not provide and specifics. Further, the Appellant admits that he refused to provide written responses to the written questions provided to him. His reasons for not doing so, because he had already answered them and because they were not on official letterhead, are unavailing.

In fact, as of this writing, the Appellant has only clearly answered one of the four critical inquiries by the Appointing Authority on this subject. The Appellant provided no clear, credible explanation for (1) how the Appellant had contacted each bidder, (2) what prior knowledge the Appellant had of these bidders, or (3) how the Appellant received the bid documents from these bidders. The only question that was answered was whether the Appellant took any action to verify the information contained in the bids after he received them from the bidders. The Appellant admits that he did not.

Further, the appointing authority proved that the Appellant's actions impaired the efficient operation of the public service. The Appointing Authority established that the Appellant's lack of cooperation in the investigation of his bidding practices concerning the allocation of public money impaired the efficient operation of the Appointing Authority.

CONCLUSION

For the foregoing reasons, the appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 6th DAY OF May, 2016.



TANIA TETLOW, COMMISSIONER

S. Washington
#8333 c/w 8339

CONCUR:


CORDELIA D. TULLOUS, COMMISSIONER


MICHELLE D. CRAIG, CHAIRPERSON