



CITY OF NEW ORLEANS

CITY CIVIL SERVICE COMMISSION

DEPARTMENT OF CITY CIVIL SERVICE
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Tuesday, August 19, 2014

Mr. Raymond C. Burkart, III
19407 Front Street
Covington, LA 70433

Re: **Gremillion et al VS.
Department of Police
Docket Number: 7992**

Dear Mr. Burkart, III:

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 - 8/19/2014 - 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
Shawn Lindsay
Jay Ginsberg

CIVIL SERVICE COMMISSION FOR THE CITY OF NEW ORLEANS

DOCKET NO. 7992

GARY GREMILLION, ET AL

Versus

NEW ORLEANS POLICE DEPARTMENT

On August 9, 2013, the Department of City Civil Service released a decision of the Civil Service Commission for the City of New Orleans (Commission) dated August 9, 2013, in which this Commission held that a ten percent (10%) pay differential was due the Complainants Gary Gremillion, et al, (Complainants) for performing their assigned “Integrity Control Officer” (ICO) job duties on grounds that the ICO job duties did not differ from the duties of the NOPD personnel assigned to and performing similar duties in the Public Integrity Bureau (PIB), who are receiving such a pay differential.

On September 6, 2013, the City filed a Notice of Appeal of the August 9, 2013, decision appealing the matter to the Louisiana Fourth Circuit Court of Appeal.

On November 4, 2013, the Complainants filed a “Motion to Enforce Judgment” before the Commission seeking enforcement of the Commission’s August 9, 2013, decision.

However, on November 14, 2013, while its appeal to the Fourth Circuit was pending, the City filed a “Petition to Nullify Judgment” before the Commission seeking nullification of the August 9 decision and a hearing *de novo* of this matter on grounds that:

- 1) The decision issued on August 9, 2013, was rubber stamped with the Commissioners' signatures contrary to the requirements of LSA-C.C.P. art. 1911 which requires an original signature; and that,

- 2) The decision issued on August 9, 2013, was not actually signed by all of the Commissioners Debra S. Neveu, Joseph S. Clark, and Amy Glovinsky, on August 9, 2013, and therefore a nullity; and that,
- 3) The decision was actually signed by Commissioners Glovinsky and Neveu after the effective dates of their resignations rendering the August 9, 2013, decision a nullity.

The Petition for Nullity came before the Commission at its regular meeting of November 18, 2013, at which time oral argument was heard and the matter was taken under advisement.

Both the Complainant's "Motion to Enforce" and the City's "Petition for Nullity" were on the Commission's rule docket at the Commission's regular monthly meeting of December 16, 2013. Oral argument was heard from both the counsel for City and counsel for the Complainants after which the matters were again taken under advisement.

On December 23, 2013, the Louisiana Fourth Circuit Court of Appeal ordered the City to show cause why its appeal should not be dismissed for want of jurisdiction if, in fact, no valid "judgment" had been issued. The City replied to the Order by filing a "Response" in the Court of Appeal on January 15, 2014.

On January 16, 2014, the Louisiana Fourth Circuit Court of Appeal, pursuant to its supervisory power, dismissed the City's appeal, holding that the August 9, 2013, was a "purported judgment", not a "final and appealable judgment", and remanded the matter to the Commission.

With regard to the City's "Petition for Nullity", the Fourth Circuit's January 16, 2014, decision in this matter instructs that there is no "judgment". Therefore, there is nothing nullify and the request to "nullify" the August 9, 2013, opinion is moot.

The City also requests a *de novo* hearing on grounds that the then-"hearing examiner", Jay

Ginsberg, is now employed with the NOPD, thereby creating a “conflict of interest” which prevents the Commission from relying on his “recommendations regarding NOPD issues.”

As the City correctly observes on page 8 of its Memorandum in Support of Petition to Nullify Judgment”, the “referees” (hearing examiners) appointed by this Commission have no power to decide removal and disciplinary cases, their sole powers being to “take testimony, with subpoena power and power to administer oaths to witnesses”. La. Const. Art 10, Sec 12(B).¹ Mr. Ginsberg recommendations are simply that, recommendations, and have no binding effect on the Commission. The City has not alleged that any particular act by Mr. Ginsberg prejudiced its case. That the City has chosen to hire Mr. Ginsberg is indicative of its agreeing with our own assessment of his competence.

The City has not alleged nor demonstrated that there is any new factual evidence germane to this matter that was unavailable to it during the hearing. As the City had the opportunity to present the facts of its case on two different occasions, we find a rehearing of the matter unnecessary and the request to conduct a hearing *de novo* is denied.

The undersigned Commissioners have reviewed the transcripts, exhibits and pleadings in this matter and find as follows:

This proceeding was brought by named Complainants, who with the exception of Major Raymond Burkart, Jr., are employed by the New Orleans Police Department ("Appointing Authority") as Police Captains. The Complainants contend that the Commission should grant to

¹ As correctly observed by Mr. Ginsberg at the commencement of the hearing in this matter, this is not a disciplinary appeal but a hearing conducted pursuant to the Commission’s investigatory powers. (Transcript of Hearing, Oct 18, 2012, pg. 8, l. 22 – pg. 9, l. 2)

those assigned to the position of Integrity Control Officer ("ICO") a retroactive ten percent (10%) salary adjustment pursuant to Civil Service Rule IV, Sec. 1.4, which provides as follows:

If, for one class of positions, two or more rates of pay are established to reflect equitably the difference in the unpleasant or dangerous aspects of various assignments made in the class of position, changes in assignment shall result in corresponding salary adjustments. Such salary adjustments shall not be considered either as pay increases or pay reductions but must be reported to the Director.

The Complainants argue that, because they perform essentially the same functions as police officers assigned to the Public Integrity Bureau ("PIB"), they are entitled to the same ten percent pay adjustments received by all police officers assigned to PIB. They contend that the ten percent pay adjustment serves to attract and reward police officers who are assigned unpleasant tasks.

Complainants rely upon the Appointing Authority's justification for the pay adjustment as articulated during a February 16, 1995, meeting of the Commission when the Public Integrity Division (now "Public Integrity Bureau") was originally created.

As reflected in the minutes of the Commission meeting, the ten percent salary adjustment was granted at the Appointing Authority's request after representations made by then Superintendent of Police Richard Pennington that salary incentives are "essential when one group of police officers are required to investigate brother officers, and the recommended pay incentives would ably assist the Public Integrity Division in attracting the best and most dedicated officers to become part of the division voluntarily." It does appear from the minute entry that the Appointing Authority persuaded the Commission to approve the pay increase as an incentive to attract police officers to an otherwise undesirable position that included unpleasant tasks, i.e. the requirement to investigate fellow police officers. Further, the Appointing Authority provided no alternative

explanation for why those officers assigned to PIB would receive additional pay.

As we interpret Rule IV, Sec. 1.4, if one class of employees receives additional pay because of the unpleasant nature of their work assignment – in this case PIB employees - change in assignment for other employees to the same unpleasant work assignment justifies and requires that those employees receive the additional pay. If the record establishes, as it does, that the ICOs are performing the same tasks as those assigned to PIB, they are entitled to the same salary adjustment. This is consistent with the “fundamental notion that employees who perform equal work should receive equal pay.” Thoreson v. Department of State Civil Service, 433 So.2d 184, 195 (La. App. 1 Cir., 1983)

Most of the material facts are not in dispute or were otherwise clearly established by the Complainants. Through FOB Policy #8 revised April 12, 2011, the Appointing Authority redefined the position of Integrity Control Officer. Prior to the revision, ICO's were police lieutenants assigned to the various police districts. If an ICO through the course of his or her assignment observed or was informed of a violation of internal rules by a police officer assigned the ICO's district, the ICO would report the violation to PIB which would either investigate the violation internally or assign the investigation to the district where the violation occurred. The ICO would not conduct the internal investigation, but would give the investigation to a subordinate - usually a police sergeant assigned to the district. The assignments were rotated between sergeants based upon case load and experience. As a consequence, no individuals spent all or most of their time conducting internal investigations unless they were assigned to PIB.

Over the course of two days of hearings the Complainants provided exhaustive, unrefuted testimony supported by reliable evidence that they spend a vast majority of their time conducting

internal investigations.

In fact, the Complainants provided ample evidence that they actually conduct more internal investigations than those individuals assigned to PIB. They are not assigned to a district and they are prohibited from assigning their investigations to subordinates.

Further, regardless of the seriousness of the charges, the Complainants are prohibited from giving the investigation back to PIB.

While acknowledging that the ICO's conduct more investigations than those individuals assigned to PIB, the Appointing Authority contends that the Complainants investigate less serious allegations than those individuals assigned to PIB. The Appointing Authority also contends that the Complainants have other duties that do not involve investigating other police officers.

We find that the Complainants are entitled to the ten percent pay differential pursuant to Civil Service Rule IV, Sec. 1.4. By concentrating all internal investigations that were once spread throughout the districts and bureaus into the hands of a few individuals, the Appointing Authority has created a job assignment that is indistinguishable from those functions performed by PIB. While it may be argued by the Appointing Authority that PIB investigates "more serious" allegations, any investigation that may result in some disciplinary action is an investigation of a fellow police officer, which was the initial justification that allowed for the pay incentive in the first place.

The original opinion in this matter "ordered" that the Appointing Authority pay the ten percent pay differential as part of the salary of those individuals that have performed the assignment of Integrity Control Officer retroactively to the date of the change in assignment that

began on April 12, 2011. We reiterate that order and call again to the City's attention the law in this Circuit that holds that there is no suspensive appeal from a decision of the Civil Service Commission and that immediate compliance with the orders of the Commission is commanded by its rules. Danforth v. Department of Public Works, 845 So.2d 650 (La. App., 4th Cir. 2003).

With respect to the "Motion to Enforce", the Commission lacks the constitutional power to issue writs in aid of its jurisdiction in enforcement of its decisions. The remedy of mandamus in the district court is available to the Complainants in the event they seek immediate compliance with the Commission's decision. See, Achord v. City of Baton Rouge, 542 So.2d 574 (La. App. 1 Cir., 1989).

NEW ORLEANS, LOUISIANA, August 15, 2014.



REV. KEVIN W. WILDES S.J., CHAIRMAN



MICHELLE D. CRAIG, COMMISSIONER



RONALD P. MCCLAIN, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER



EDWARD PAUL COHN, COMMISSIONER