



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
BRITTNEY RICHARDSON, CHAIRPERSON
CLIFTON J. MOORE, VICE-CHAIRPERSON
JOHN KORN
MARK SURPRENANT
RUTH WHITE DAVIS

AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Tuesday, April 13, 2021

Mr. Steven Martin

Re: **Steven Martin VS.
Recreation Department
Docket Number: 8771**

Dear Mr. Martin:

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 - 4/13/2021 - 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 "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Larry Barabino
Mary Katherine Taylor
Ramona D. Washington
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**STEVE MARTIN,
Appellant**

v.

Docket No. 8771

**NEW ORLEANS RECREATION DEPARTMENT,
Appointing Authority**

DECISION

The Hearing Examiner's attached advisory report, dated November 27, 2020, provides a very thorough summary of the key factual testimony presented at the two days of hearing on September 17, 2018 and October 10, 2018. Therefore, all of that testimony referred to therein will not be repeated in this Decision. The undersigned Commissioners refer the parties to the attached Hearing Examiner's report for a more complete summary of the key facts.

In brief, the Appellant was demoted from Recreation Administrator II to Recreation Program Manager I on March 12, 2018, because of his continued failure to perform his assigned job duties as NORDC Athletic Director. After reviewing and analyzing the key testimony provided at the two day hearing in the context of the pertinent issues for this Decision, the undersigned Commissioners find the following testimony as most persuasive:

- 1) Victor Richard III (pages 99-108) and
- 2) Shonnda Smith (pages 182, 184, 194-195).

It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v.*

Dep't of Police, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094). The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for demoting the classified employee and, if so, whether such discipline was commensurate with the infraction(s) committed. *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984).

After reviewing the record in this matter, the undersigned Commissioners find that the Appointing Authority has proved by a preponderance of the evidence: 1) the occurrence of the complained of conduct; 2) the proven complained of conduct impaired the efficiency of the operation of NORDC and 3) the discipline (demotion) was appropriate and commensurate given the infractions committed by the Appellant. Therefore, the Appellant's appeal is DENIED.

This the 13th day of April, 2021.

CIVIL SERVICE COMMISSION

WRITER:

Mark C. Surprenant

Mark C. Surprenant (Mar 24, 2021 18:08 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:

J. H. Korn

J. H. Korn (Apr 13, 2021 13:51 CDT)

JOHN KORN, COMMISSIONER

C. J. Moore

CJ Moore (Apr 13, 2021 13:56 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

STEVEN MARTIN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

RECREATION DEPARTMENT

DOCKET NUMBER 8771

HEARING EXAMINER REPORT

This matter came before the Civil Service Commission as an appeal by Steven Martin (hereinafter referred to as “Appellant”). Appellant is appealing a Notice of Disciplinary Demotion letter (dated March 12, 2018) from the New Orleans Recreation Department Commission (hereinafter referred to as the “Appointing Authority” or “NORDC”). The letter notified Appellant that he was being reclassified from Recreation Administrator II to Recreation Program Manager I, effective March 12, 2018, as a result of his continued failure to timely perform assigned duties as athletic director. According to the Notice of Disciplinary Demotion letter, Appellant demotion was based upon the following:

1. Appellant’s ongoing failure to perform assigned duties timely, and neglect of assigned duties and continuous lack of ownership and leadership, which has caused ongoing failure within the organization;
2. Appellant improperly delegated his duties to his subordinate, Jared Cook, to conduct business that is outside of Jared Cook’s responsibilities;
3. Appellant’s failure to address incidents that were brought to his attention in a timely manner to his direct supervisor;
4. Appellant continuously failing to respond timely to the appropriate NORDC administrators;

5. Appellant failing to demonstrate leadership and follow through on matters that have resulted in escalation to the Executive Team, City Council, and the City of New Orleans administration.

The Hearing Examiner exhibits consisted of HE#1 (the Notice of Disciplinary Demotion letter) and HE#2 (Appellant's Appeal Form).

The Appointing Authority had three (3) witnesses to testify at the hearing; while Appellant had four (4) witnesses to testify. The Appointing Authority's first witness was the David Hammer.

DAVID HAMMER:

David Hammer testified that he is a volunteer coach with NORDC at the Lakeview playground. (Vol. I, Tr. 18:14-15). Mr. Hammer testified that he volunteered to coach seven (7) to eight (8) year old in the 2014-2015, 2015-2016 and 2017-2018 basketball seasons. (Vol. I, *Id.* at 16-20). In the 2017-2018 season, he volunteered to coach the nine (9) to ten (10) year old team. (Vol. I, *Id.* at 21-24).

Mr. Hammer testified that as a volunteer coach for the Lakeview playground, he encountered several problems while dealing with the NORDC's Athletic Department. Mr. Hammer testified that he specifically had problems with his teams practice times, game times and scheduling. According to Mr. Hammer, they were concerned and not happy when they first received the practice schedule. (Vol. I, Tr. 20:3-7). Mr. Hammer testified that he was concerned because there were "hardly any practice time." *Id.* In the team's home gym (Gernon Brown gym), the team was only allowed two practices for the entire month of January, which was the first month of the season. (Vol. I, Tr. 20:7-10). Mr. Hammer stated that they were not happy that other teams had more indoor practices than his team. (Vol. I, Tr. 20:10-14). His team practiced outside in the

cold and rain for years. *Id.* At one point, a message was forwarded from Sam Cook stating that under no circumstances can a team practice at a time that was not assigned to practice. (Vol. I, Tr. 20:24-25, Tr. 21:1-6). However, on January 26, Mr. Hammer's team had a practice scheduled at Gernon Brown park that did not occur because there was another team practicing at the time that Mr. Hammer's team was scheduled. (Vol. I, Tr. 22:25, Tr. 23:1). Mr. Hammer stated that this occurred around the same time as the email was forwarded regarding teams practicing during scheduled times only. (Vol. I, Tr. 23:1-5). Mr. Hammer testified that he complained to the facility manager about the other team practicing outside of their time and during his team's time to no avail. (Vol. I, Tr. 23:20-25). Mr. Hammer stated that he showed the facility manager the email; but the end result was that Mr. Hammer's team had to share the gym with the other team. (Vol. I, *Id.*, Tr. 24: 1-2).

Mr. Hammer testified that if he needed to communicate with NORDC that he would communicate mostly with Sam Cooke. (Vol. I, Tr. 19:1-7). If there was a problem with scheduling, he would contact the Lakeview Boosters club or if he contacts NORDC, he would send an email to Sam Cook, possibly carbon copying Steven Martin. (Vol. I, Tr. 19:10-14).

Mr. Hammer further testified that he had problems when the Lakeview team was scheduled for games. According to Mr. Hammer, on January 27, the Lakeview team was scheduled to play a game at Milne playground against a team from Gernon Brown. (Vol. I, Tr. 24:5-8). However, when the Lakeview team arrived, they were advised that they were not on the schedule. (Vol. I, Tr. 24:14-17). Mr. Hammer stated that he was subsequently advised that his team was scheduled to play at Gernon Brown playground. (Vol. I, Tr. 24:17-23). Mr. Hammer stated that the online schedule had Milne playground listed as the location for the scheduled game. (Vol. I, Tr. 25:4-8). When the Lakeview team arrived at Gernon Brown playground, the facility manager advised the

team and Mr. Hammer that their game was earlier and that the team forfeited. (Vol. I, Tr. 26:7-10). Mr. Hammer again testified that the location for the game listed on the scheduled and on NORDC's website was Milne playground. (Vol. I, *Id.* at 18-25, Tr. 27 at 1). Mr. Hammer testified that a similar game schedule confusion occurred once before in 2016. (Vol. I, Tr. 25:12-17).

Upon suggestion, Mr. Hammer contacted Victor Richards, Susan Guidry, and Jason Williams via email regarding the scheduling mix up. (Vol. I, Tr. 28:8). In addition, Mr. Hammer stated that he complained about the teams practice experience on January 26. (Vol. I, *Id.* at 23-24). Mr. Hammer testified that after he sent the email to the City of New Orleans representatives, he received emails from the Lakeview parents expressing that they were upset and that what happened should not be happening. (Vol. I, Tr. 29:21-24).

Mr. Hammer further testified that NORD officials called a meeting with him and another Lakeview coach (who also had complaints) to discuss the matter. (Vol. I, Tr. 30:4-8). A meeting was subsequently scheduled with Shonnda Smith, Steven Martin and Victor Richard. (Vol. I, *Id.* at 8-18). At the meeting, the NORDC representatives pledge to help Mr. Hammer by having community meetings, providing support for coaching, ensuring that the Lakeview team got a makeup game for the game that they missed and that Lakeview would get more practice time at the gym. (Vol. I, Tr. 31:1-5). Steven Martin subsequently sent two (2) emails confirming the Lakeview teams new practice times and locations and the date of the rescheduled game. (Vol. I, Tr. 33:5-16, Tr. 34:2-13, 22-25, Tr. 35:1-8, Appointing Authority Exhibit Number 4 and 5). However, on February 21, 2020, when the Lakeview team arrive for the rescheduled game, no other team or official was present for the game. (Vol. I, Tr. 36:6-11). When the February game did not occur, Mr. Hammer stated that he expressed more disappointment in an email. (Vol. I, Tr. 37:20-22). Mr. Hammer testified that the NORD attempted to reschedule the game again. (Vol.

I, Tr. 38:9-18, Appointing Authority Number 5). However, he was not notified of the rescheduling and the online schedule still had the game listed for February 27. *Id.* A subsequent email was forwarded to Mr. Hammer from Shonnda Smith to address the issue. (Vol. I, Tr. 39:15-23, Appointing Authority Number 6). Ms. Smith advised Mr. Hammer that Steven Martin would contact him upon his return to the office. *Id.* Nonetheless, Mr. Hammer testified that Mr. Smith never contacted him. (Vol. I, Tr. 40:12-13).

Upon cross examination, Mr. Martin attempted to prove that Mr. Hammer complaints were a trend from year to year. Mr. Martin begin with David Hammer testifying that when he coached the 2015-2016 season, the Lakeview team had to forfeit a game because of the lack of team players required at the time of the game and not because of the game being rescheduled. (Vol. I, Tr. 42:18-24). As such, Mr. Hammer sent an email to Sam Cooke requesting that NORDC take a look at the policy requiring at least seven (7) kids at tip time to not forfeit for lack of team players because it was after school and it was tough to pick up kids. (Vol. I, Tr. 43:1-7, Tr. 44: 1-14, Appellant Exhibit Number 1). However, Mr. Hammer testified that the game forfeiture was not the result of scheduling problems. (Vol. I, Tr. 45:11-19).

Second, Mr. Martin questioned Mr. Hammer about a 2016 occurrence where the Lakeview team and another team appeared at Rosenwald playground for a scheduled game that did not occur. (Vol. I, Tr. 51:19-25). Mr. Martin questioned Mr. Hammer as to whether he had the correct information regarding the Rosenwald game. *Id.* Mr. Hammer testified that both teams showed up and were told that they were at the incorrect location. *Id.* Mr. Martin appears to be arguing that Mr. Hammer and his team have a history of forfeitures, especially for insufficient number of players. (Vol. I, Tr. 54:1-24). However, Mr. Hammer testified that over his three years as a coach,

he had to forfeit games two (2) or three (3) times for insufficient number of players. (Vol. I, Tr. 54:22-25, Tr. 55:1-2).

Third, Mr. Martin questioned Mr. Hammer regarding the establishment of practice teams. (Vol. I, Tr. 58:7-10). Mr. Martin asked Mr. Hammer if he was aware when the roster for the Lakeview team was submitted. (Vol. I, Tr. 62:13-14). Mr. Hammer testified that the Lakeview people handle that and he was not aware of the date that the roster was turned in because he did not take part in turning the roster in to NORDC. (Vol. I, Tr. 62:15-17). In addition, Mr. Hammer testified that he was not aware that the proper information was not turned in to NORDC delaying the Lakeview teams practice schedule to January. (Vol. I, Tr. 64:3-9). Hence, Mr. Hammer testified that he believed that all of the information was turned in on time and was under the impression that everything was fine. (Vol. I, Tr. 64:24-25, Tr. 65:1-7).

On cross-examination, Mr. Hammer testified that he received an email from Victor Richard regarding the revised schedule. (Vol. I, Tr. 66:24-25, Tr. 67:6-12). According to Mr. Martin's line of questioning, Mr. Hammer clearly received the revised game schedule. (Vol. I, Tr. 69:18-20). Mr. Hammer acknowledged in an email forwarded to Victor Richard that he discovered the January 8 email, which had the revised scheduled attached. (Vol. I, Tr. 68:17-25, Appellant Exhibit Number 2). However, Mr. Hammer testified that the website schedule, which the parent can see, was incorrect. (Vol. I, Tr. 69:1-4). Mr. Hammer admitted that he had received a revised schedule and that he failed to notify the parents and team of the revised game schedule change. (Vol. I, Tr. 69:18-25, Tr. 70: 1-6). In addition, Mr. Hammer admitted if he would have read the email and advised the parents the entire schedule change issue would have been "possibly" avoided. (Vol. I, Tr. 70:7-10). Mr. Hammer testified that the Lakeview team did not forfeit the January game because of lack of players but because of the NORDC schedule change. (Vol. I, Tr. 80:6-21).

Mr. Hammer testified that he did not notify the parents of the schedule change, but they were using the schedule that NORDC publicly posted for the parents and the community on its website. (Vol. I, Tr. 81:11-22).

VICTOR R. RICHARD, III:

Mr. Richard was called to testify on behalf of the Appointing Authority in support of the Appointing Authority's position that the Appellant demotion was appropriate. Mr. Richard was employed with NORDC for eight (8) years as the chief executive officer. (Vol. I, Tr. 90:21-23, Tr. 97:20-22). Mr. Richard was responsible for the hiring of Appellant as the athletic director for the City of New Orleans. (Vol. I, Tr. 96:3-6). Mr. Richard testified that Appellant's work performance at times was good, it was sometimes excellent, at certain times his performance lacked and then it started lacking even more. (Vol. I, Tr. 98:15-18). According to Mr. Richard, Appellant did not respect his bosses and had to "coach" Appellant regarding that issue. (Vol. I, Tr. 98:19-22). Appellant had issues with communications internally with his counterparts and with the subordinates that reported to him. (Vol. I, Tr. 99:4-6). Appellant also had a serious problem of letting a subordinate, Jared Cook, perform certain duties assigned to Mr. Martin. (Vol. I, *Id.* at 6-10). Appellant was reprimanded, coached, and counseled informally and formally about having Mr. Cook perform duties that were managerial duties, which were Appellant's direct duties, and not in Mr. Cook assigned duties and responsibilities. (Vol. I, *Id.* at 10-16, Tr. 99:19-25). According to Mr. Richard, Mr. Cook's job title was to recruit volunteers and aid the athletic director wherever there was a special event. (Vol. I, Tr. 101:15-17). Mr. Cook primary job was recruiting, reaching out, training and securing background checks, obtaining all of the mandated stuff and policies that the City put in place for people to be volunteers. (Vol. I, Tr. 101:22-25). In addition, Mr. Cook was not responsible for any subordinates. (Vol. I, Tr. 101:20-22).

As athletic director, Appellant was the division head. (Vol. I, Tr. 102:2-4). He was responsible for hiring, policies, rulemaking, decision making, public communications, day-to-day operations with all of his team and creating the little league activities and any other activities that fell within that athletic division to the general public, engaging parents, volunteer coaches, training of his staff internally, rule books and scheduling. (Vol. I, Tr. 102:8-18).

Mr. Richard testified that he was familiar with the incidents that surrounded Appellant's demotion. (Vol. I, Tr. 102:18-21). According to Mr. Richard's testimony, the incidents were so severe that he had to "stop what he was doing to come in to try to save face on behalf of the organization." (Vol. I, *Id.* at 21-22). Mr. Richard testified that the incidents did not have a good appearance for the organization. (Vol. I, Tr. 104:5-8). As result, Mr. Richard testified that he called a meeting with Steven Martin, Shonnda Smith, David Hammer and another Lakeview coach to discuss the incidents with the Lakeview teams. (Vol. I, Tr. 104:9-12). Mr. Richard stated that he apologized at the meeting on behalf of the City of New Orleans and the organization. (Vol. I, *Id.* at 12-14) At the meeting, Appellant, as athletic director, was subsequently given the opportunity to pick back up and rectify the matter. (Vol. I, *Id.* at 15-17). However, Mr. Richard testified that Mr. Martin "dropped the ball." (Vol. I, *Id.* at 21-25, Tr. 105:1).

Mr. Richard testified that he made the final decision to demote Appellant. (Vol. I, Tr. 105:2-6). Appellant's demotion was not based solely on the Lakeview incidents but other incidents that occurred. *Id.* When asked how Appellant's poor performance and lack of leadership affected the efficient operation of NORDC, Mr. Richard responded:

"So his lack of engagement, his lack of communications, him leading his team, the things that should be done on a weekly, monthly, daily basis hands-on training, hands on -- all of those things affected morale. We do not know what's going on or if they have a meeting it's not well planned or either they have a meeting that's not coordinated very well or presented and that was number one

(1) internally. And then that happened sometimes externally as well, and we were embarrassed. Rule books didn't get done, clinics or training that were supposed to be done internally and with volunteers, you know, after we've created proper protocol, proper business practice it just -- it's snowballed up and down, up and down." (Vol. I, Tr. 108:7-23).

Contrary to the testimony provided by Mr. Richard on direct, Appellant attempted to solicit testimony establishing his Appellant's) credibility and success level at NORDC in spite of the other things he was accused of doing, which Appellant stated has "no bearing on the total body of work." (Vol. I, Tr. 146:8-13). However, Mr. Richard testimony did not support the contention that Appellant was the initiator of, an integral factor in or instrumental in the success of different NORDC programs. Although Appellant's line of questioning attempted to solicit responses that would support his position that many of the NORDC programs were a success because of him, Mr. Richard testimony did not yield such results.

When asked on cross-examination for examples of Mr. Cook working outside of the scope of Civil Service classification, Mr. Richard testified that Mr. Cook had performed scheduling of games, made decisions relative to staffing and training. (Vol. I, Tr. 109:4-12). Mr. Richard subsequently stated, when the question was asked again, that he could not answer the question and that his testimony was based off of memory. (Vol. I, Tr. 112:6-20). Yet, on redirect, Mr. Richard testified that Mr. Cook was at one point relieved of some of his responsibilities. (Vol. I, Tr. 151:21-25, Tr. 152:1-3). According to Mr. Richard's testimony, Mr. Cook, as recreational activities coordinator, is responsible for coordinating year-round special events. (Vol. I, Tr. 155:3-11). Youth basketball is not a year-round special event. (Vol. I, Tr. 153:3-5). Hence, Mr. Cook is responsible for year-round special events and basketball in not one of them. The scheduling of day to day operations is not Mr. Cook's job, but Steven Martin's job. (Vol. I, Tr. 155:8-11). In addition, Mr. Richardson testified that Mr. Cook was not responsible for developing policies

governing youth basketball. (Vol. I, Tr. 155:20-22). The development of policies for youth basketball was the responsibility of the athletic director (Appellant), the CEO (Mr. Richard) and the city attorney. (Vol. I, *Id.* at 24-25).

SHONNDA R. SMITH:

Shonnda Smith was previously employed for approximately three (3) years with NORDC as a chief programming officer. (Vol. I, Tr. 161:23-24, Tr. 162:10-12). Ms. Smith stated that as the chief programming officer she was responsible for overseeing the directors of the different divisions, ensuring that programming was being done timely, ensuring that the marketing materials that went out to advertise about the different programs was adequately being sent out, making sure all of the division directors were doing their job properly and maintaining staff. (Vol. I, Tr. 162:15-22). Shonnda Smith supervised Steven Martin for three (3) years. (Vol. I, Tr. 163:4-7).

Ms. Smith testified that Appellant was responsible for communicating with the community and parents if there were any issues that arose above the district managers or his office assistant. (Vol. I, Tr. 166:16-20). Appellant was the first point of contact for the purposes of emergencies. (Vol. I, Tr. 169:8-15). Jared Cook's was the athletic volunteer coordinator with NORDC, in addition to becoming the booster club coordinator. (Vol. I, Tr. 168:3-7, 17-21). As such, Mr. Cook's duties included recruiting coaches, training coaches, ensuring the coaches' paperwork was completed (including background checks), filling out application, ensuring the coaches complete training, overseeing championship games, setting up championship games and activities and inventory of equipment. (Vol. I, Tr. 168:22-25, Tr. 1-7).

Ms. Smith testified that although she did not provide a recommendation to the CEO, Victor Richard, regarding the Appellant's discipline, that she was involved in the process. (Vol. I, Tr.

170:6-9, Tr. 197:5-10). Mr. Richard made the final decision regarding Appellant's disciplinary action. (Vol. I, Tr. 196:22-25). One of the issues for Appellant's disciplinary action was based upon scheduling problems with the basketball teams. Ms. Smith further testified that she was aware of an email sent from Lakeview coaches, David Hammer and Peter Gardner, regarding several issues including game scheduling. (Vol. I, Tr. 173:1-2). Mr. Hammer specifically complained about practice time, the availability of practice time that he had and that there was a change of the game schedule that he was not...he did not get a schedule and the that he saw online was the same one he had and a complaint regarding a make-up game. (Vol. I, Tr. 177:15-25). In addition, the Appointing Authority submitted into evidence two (2) emails from a parent (Eve Reardon) to Jared Cook regarding an unapproved practice and a failure to be notified of a change in the game schedule, causing a game to be forfeited. (Vol. I, Tr. 175:22-25, Tr. 176:1-6). Mr. Cook respond to Ms. Reardon's email regarding the game schedule and schedule change. (Tr. 178:23-25, Tr. 179:1-11). According to Ms. Smith testimony, it was not Mr. Cook's responsibility to communicate with parents regarding game schedules. (Vol. I, Tr. 179:13-16).

Ms. Smith testified that a meeting was held prior to meeting with the Lakeview coaches to discuss a plan of action, to make sure that the schedule was posted on the website and to discuss a make-up game. (Vol. I, Tr. 181:8-15). Several problems led to the situation with the Lakeview teams. The first problem was the failure to update the online game schedule. (Vol. I, Tr. 181:24-25, Tr. 182:1-7). The second problem was failure to address issues with the public quickly. *Id.* The last problem was allowing the escalation of issues without internally dealing with them prior to the issues being forwarded to the City Council and city members. *Id.* All of these issues were the responsibility of Appellant to manage. As the athletic director, Appellant was responsible for

ensuring that the game schedule makes sense, that the online game schedule is accurate and that the practice schedule was a priority first schedule. (Vol. I, Tr. 182:7-12, Tr. 184:6-10).

After the meeting with Mr. Hammer, Mr. Martin rescheduled the January 27 makeup game to February 22. (Vol. I, Tr. 185:4-12). However, the February game did not occur. (Vol. I, Tr. 186:11-25). David Hammer and the Lakeview team was at the Milne recreation center. (Vol. I, Tr. 189:23-25, Tr. 190:1-8). However, they were unaware that the game had been rescheduled for the second time. *Id.* Ms. Smith testified that she requested that Mr. Martin provide a written explanation by February 26 of what transpired as it pertained to the February 22 makeup game. (Vol. I, Tr. 190:12-16). Ms. Smith did not receive a response from Appellant until February 27 after a second request. (Vol. I, Tr. 192:3-5). According to Ms. Brown, Appellant did not convey to Yolanda Brown (the full-time uptown district manager) of the makeup game and the reason for the makeup game. (Vol. I, Tr. 193:19-25, Tr. 194:1). Ms. Smith later testified that Appellant was directed to forward a written apology to David Hammer. (Vol. I, Tr. 194:12-20). However, it is Ms. Smith's testimony that Appellant did not actually apologize. (Vol. I, Tr. 194:18-25, Tr. 195:1-5). Ms. Smith stated that Appellant failed to take responsibility as a leader for the miscommunications that occurred. (Vol. I, Tr. 195:24-25, Tr. 196:1-2).

When considering the appropriate disciplinary action for Appellant, Ms. Smith testified that prior corrective action or discipline was taken into consideration. According to Ms. Smith, Victor Richard (CEO) considered the counseling and written reprimands that occurred over time to determine the most comparable corrective action. (Vol. I, Tr. 198:4-10). According to Ms. Smith, Appellant had a previous person to person counseling session with Victor Richard and herself regarding communicating in a timely manner with executive staff, timely responding to email and phone responsiveness; a verbal warning stemming from Appellant's lack of

responsiveness, not sharing his calendar and failure to attend meetings; an email from Ms. Smith regarding a meeting with Ms. Smith and Maya Wyche (chief operating officer) as it pertained to communicating with Ms. Smith as a supervisor and his team, following through in a timely manner, response time to emails and the need for phone calls to be more efficient, being inclusive and more engaging in programs. (Vol. I, Tr. 198:17-25, Tr. 199:2-15, Tr. 202:8-14, 21-22, Tr. 204:11-24, Tr. 205:1-17).

Ms. Smith also testified that she completed an informal 2016 evaluation of Appellant to address Appellant's performance, which was placed in his file. (Vol. I, Tr. 206:15-20, Tr. 208:17-25, Tr. 209:1-22, Tr. 210:2-17, Tr. 211:12). According to Ms. Smith, her evaluation contained the following issues or concerns:

1. Co-workers complained about ineffective communication of the athletics department (a lot of Appellant colleagues complained that they were not being told information in a timely manner for them to do their job effectively;
2. Event timely lines are rarely met;
3. Schedules are not submitted in a timely manner;
4. Internal and external communications are not happening in a timely manner;
5. Needed improvement regarding motivation;
6. Ineffective direction provided to subordinates which resulted in challenges completing respective assignments and tasks;
7. Does not consistently and correctly hold subordinates accountable;
8. Delegation was unsatisfactory. Failed to give assignments to staff and holding them accountable for the assignments that they were being given and making sure it was

equitably given to all of the staff across the board. (Vol. I, *Id.*, Appointing Authority Exhibit Number 15).

Last, Appellant received a letter of reprimand for missing critical deadlines and lacking leadership attributes that resulted in mismanagement of staff. (Vol. I, Vol. I, Tr. 212:23-25).

Upon cross-examination, Appellant primarily focused on his mid-year evaluation. Appellant wanted to contradict the mid-year evaluation by presenting evidence and supporting documentation as it pertained to his response to the mid-year evaluation. However, the evaluation was already completed when Ms. Smith met with Appellant to discuss the evaluation. (Vol. I, Tr. 222:5-18). Hence, Appellant provided a response to the evaluation after the meeting. *Id.* Ms. Smith testified that she did not think that Mr. Martin's response to the evaluation refuted what was stated in the evaluation nor did it cover the issues in the evaluation. (Vol. I, Tr. 220:13-22).

APPELLANT'S CASE:

Appellant's first witness was Jared Cook, followed by Charelle Mack, Yolanda Brown, Aisha Kelly and last, Appellant, Steven Martin.

JARED COOK:

Mr. Cook is the recreation volunteer coordinator and presently the booster club liaison for NORDC. (Vol. I, Tr. 242:25, Tr. 243:1-2). Mr. Cook testified that his responsibilities included the training and recruitment program, planning and organizing championships, responsible for public communication; responsible for working with the marketing department to put out publications regarding volunteerism and special events. (Vol. I, Tr. 249:1-6). According to Mr. Cook's job description he was tasked with and responsible for responding to public inquiries about volunteer coaching with the NORDC athletic programs via by telephone, email correspondence,

and/or during public meetings. (Vol. I, Tr. 250:22-25, Tr. 251:1). Mr. Cook testified that his responsibilities at NORDC was to manage all volunteers within the athletic program, to ensure volunteers' certification and compliance and to ensure background checks. (Vol. I, Tr. 252:13-21).

Mr. Cook testified to the following:

1. That he never prepared game schedules. He only sent out the schedules after they were prepared by the district managers (Vol. I, Tr. 257:20-25). Mr. Cook stated that all schedule revisions would come to him to be sent out to coaches. (Vol. I, Tr. 297:8-10). Mr. Cook on cross verified via his testimony that he managed the practice schedules and distribute the game schedules. (Vol. I, Tr. 365:14-23). In addition, Mr. Cook testified that he communicated with coaches about both, the practice and the game schedules. (Vol. I, *Id.* at 23-24).
2. That he from time to time responded to parents or the general public about schedules because it was his responsibility to attempt to address concerns for the public. Mr. Cook states that responding to public complaints in a timely manner is one of the standards of behavior. (Vol. I, Tr. 258:11-21). In addition, he sometimes forwarded emails that included coaches, community members and parents, basically anyone that needed to be kept informed. (Vol. I, Tr. 270:20-25, Tr. 271:1-2). On cross-examination, Mr. Cook acknowledged that parents rarely contacted him about youth basketball or any other sport. (Vol. I, Tr. 363:25, Tr. 364:1-4). In 2018, the only parent to contact him was Ms. Reardon. (Vol. I, Tr. 364:4-7).
3. That in December 2017, David Hammer, requested information regarding the Lakeview teams practice space. (Vol. I, Tr. 262:12-13). According to Mr. Cook, once all the paperwork is turned in and requirements are met, a team is placed on the game

schedule. (Vol. I, Tr. 273:6-13). Mr. Cook advised Mr. Hammer that the Lakeview's roster was not received. Therefore, they had not yet been given practice space. (Vol. I, Tr. 262:14-16).

4. That in January 2018, a revised game schedule was sent out to coaches. (Vol. I, Tr. 288:14-16). Mr. Hammer was one of the coaches that received the revised schedule. (Vol. I, *Id.* at 17-18). As a result of the revised schedule, Mr. Hammer had a game that he and the Lakeview team did not show up for and forfeited. (Vol. I, *Id.* at 20-25). Mr. Hammer in an email acknowledged that he received the revised schedule but deleted it. (Vol. I, Tr. 289:12-15, Appointing Authority Exhibit Number 10). Mr. Cook testified that at times he referred or directed parents or coaches to other NORDC employees to respond to their question or issue and that he did not redirect David Hammer to anyone else when he had a question regarding scheduling. (Vol. I, Tr. 366:13-25, Tr. 367: 1-2).
5. Mr. Cook provided testimony to support Appellant's contention that the Lakeview coaches had a pattern of behavior of complaining. Appellant elicited testimony from Mr. Cook regarding Lakeview coach, Peter Gardner, and his complaints regarding volunteer coaches training, coach's certification, and scheduling. (Vol. I, Tr. 303:17-23, Tr. 304:1-10, Appointing Authority Exhibit Number 7).
6. In addition to the Lakeview coaches having a pattern of behavior of complaining, the Lakeview participants were being shown special favor. In support of Appellant's contention, Mr. Cook testified that although he was not involved in writing policy, he was familiar with the process regarding the selection of the rules committee because he worked closely with Appellant pertaining to the rules committee. (Vol. I, Tr. 310: 13-

15, Tr. 313:3-14, Tr. 315:6-21). Mr. Cook testified that there is a process to select rules committee members. (Vol. I, Tr. 315:23-25). Mr. Cook provided testimony that David Hammer was offered a position on the rules committee although he did not go through the normal selection process nor was, he an industry expert. (Vol. I, Tr. 316:15-21, Tr. 317:1-11). Hence, Mr. Cook testified that the request for Mr. Hammer to be on the rules committee was a special privilege being extended. *Id.*

7. As it relates to morale in the department, Mr. Cook testified that he never had any morale issues with Appellant and that he was one of the best directors that he has worked with. (Vol. I, Tr. 322:1-3, Tr. 324:1-12). According to Mr. Cook's testimony he did not have a problem with Appellant. (Vol. I, Tr. 324:16-19).
8. As it pertained to Appellant's evaluation spreadsheet, Mr. Cooke testified that events and activities were his (Mr. Cook's) responsibility. (Vol. I, Tr. 340:4-15). He was involved in helping to create or execute events and activities in the department. (Vol. I, Tr. 335:19-22). As such, Appellant was directly responsible for ensuring that Mr. Cook met deadlines that were enforced. (Vol. I, Tr. 338:24-25, Tr. 339:1-2). The deadlines would have been applicable not only for Mr. Cook but Appellant as well. (Vol. I, *Id.* at 3-5). Hence, Mr. Cook testified that he did not miss deadlines. (Vol. I, Tr. 340:22-25). Mr. Cook also testified that Appellant did not participate in any other events or activities involving another person nor were there any events or activity timelines that Appellant was involved in and not Mr. Cook. (Vol. I, Tr. 340:18-23, Tr. 341:1-7).
9. Additionally, Mr. Cook further testified that he did not believe that Appellant was ineffective with providing direction to him resulting in challenges. (Vol. I, Tr. 343:25,

- Tr. 344:1-3). Mr. Cook testified that he felt that he had an excellent working relationship with the Appellant. (Vol. I, Tr. 344:12-14).
10. Last, Mr. Cooke testified that he believed that Appellant consistently and correctly held him accountable for his work. (Vol. I, Tr. 344:15-21).
11. On cross-examination, Mr. Cook testified that he was never told by Appellant to communicate less with people. (Vol. I, Tr. 369:7-11). He was given instructions from the Appellant about when he should or should not be communicating with coaches or under what circumstances he should or should not be communicating with coaches. (Vol. I, Tr. 369:14-25).
12. Mr. Cook further testified on cross examination that Appellant did instruct him on how to schedule practices. (Vol. I, Tr. 370:6-21). Said scheduling was based on the USA Basketball requirements and NORD's protocol. *Id.*
13. On cross-examination, Mr. Cook testified that in one incident with David Hammer, he had a conversation with David Hammer regarding the league rules, whereas he advised Mr. Hammer that the league rules were not going to change. (Vol. I, Tr. 399:22-25, Tr. 400:1-3). According to Mr. Cook, Appellant had authorized him to discuss the league rules with Mr. Hammer. (Vol. I, Tr. 400:4-7).

CHARELLE MACK:

Charelle Mack testified that she is the assistant for the NORD athletic department. (Vol. II, Tr. 31:5-7). Her primary responsibility was registration. (Vol. II, *Id.* at 8). In addition, she ensured that emails and other communications are sent out. (Vol. II, *Id.* at 8-10). In some situations, Ms. Mack testified that she manages schedules of the athletic director and others in the athletic department. (Vol. II, *Id.* at 10-12). She formally reported to the Appellant as the athletic

director. (Vol. II, *Id.* at 13-15). Ms. Mack testified that she was present at a meeting with the coach for Gernon Brown Recreation Center, Paul Brown, whereas there was a discussion regarding rescheduling a game with Lakeview. (Vol. II, *Id.* at 16-25, Tr. 32:5-10). Ms. Mack testified that Mr. Brown was aware of and ok with the rescheduling of the game and the rescheduled date and time. (Vol. II, Tr. 32:11-17). In addition, Ms. Mack testified that while as Appellant's assistant she was never assign any responsibilities outside of her job description. (Vol. II, *Id.* at 24-25, Tr. 33:1-4).

YOLANDA BROWN:

At the time of the hearing Ms. Brown was the uptown district manager of the athletic department. (Vol. II, Tr. 34:6-8). As the district manager, Ms. Brown was responsible for nine (9) parks. (Vol. II, *Id.* at 9-11). Also, as district manager, Ms. Brown was responsible for all the girls' sports and scheduling for the girls' sports. (Vol. II, *Id.* at 12-16). Ms. Brown testified that if a change is made on a schedule, she would send it to Appellant for approval. (Vol. II, Tr. 35:8-12). After Appellant's approval, the schedule is sent to marketing and subsequently to the coaches. *Id.* The schedule change was also forwarded to the site facilitators to make adjustments. (Vol. II, *Id.* at 23-23). In addition, Ms. Brown testified that the coaches are to apprise the parents of the schedule change. (Vol. II, *Id.* at 20-21).

Ms. Brown testified that she had a conversation with Gernon Brown's coach, Paul Brown, and a Lakeview parent, who stated that the Lakeview coach did not know about a scheduled game. (Vol. II, Tr. 36:16-25, Tr. 37:1-3, 23-25, Tr. 38:1). As a result of the conversation with Mr. Brown and the Lakeview parent, Ms. Brown decided to reschedule the game (as a result to the Lakeview coach not knowing of the scheduled game) and contact Mr. Hammer. (Vol. II, Tr. 32:11-17, 37:23-25, Tr. 38:1) However, Ms. Brown stated that she failed to contact Mr. Hammer of the

schedule change and did not apprise Appellant of the schedule change. (Vol. II, Tr. 38:10-11). Ms. Brown stated that the Appellant was not advised of the schedule change because he was not available. (Vol. II, Tr. 38:20-25).

Ms. Brown provided further testimony that out of the 432 games that were held, she knew of very few complaints regarding scheduling or game times from any other coaches. (Vol. II, Tr. 39:12-17, Tr. 41:15-22). During the 2018, basketball season Ms. Brown testified that there were no issues regarding scheduling. (Vol. II, Tr. 43:2-3).

Ms. Brown stated that she worked with the Appellant for two years and was never assigned duties outside of her job description. (Vol. II, Tr. 43:11-17). As for Appellant's leadership style, Ms. Brown testified that under Appellant's leadership, he grew the program in participation and number of kids. (Vol. II, *Id.* at 18-25, Tr. 44:24-25, Tr. 45:1-2, Tr. 48:15-21). According to Ms. Brown, Appellant was a leader was very team oriented and allowed individuals to grow professionally. (Vol. II, Tr. 43 at 15-16). Ms. Brown stated that after Appellant was demoted there was a decline in the participation. (Tr. 48:22-25, Tr. 49:1-2).

On cross-examination, Ms. Brown admitted that although no one else was involved in scheduling, she was not always the person who distributed the schedule or directly contact the coaches or communicate with them. (Vol. II, Tr. 49:20-21, Tr. 54:12-24).

AEIDSHA KELLY:

Ms. Kelly testified that she was employed with NORDC as the athletics department program director for FitNola, a program that provided free fitness class for New Orleans citizens. (Vol. II, Tr. 71:6-9, Tr. 72:3-7). At the time, Ms. Kelly reported directly to Appellant for approximately one and a half years. (Vol. II, Tr. 71:12-17). Ms. Kelly testified that when she first

started at NORDC, the FitNola program was not well attended and the numbers were really low. (Vol. II, Tr. 71:22-25). The purpose of Ms. Kelly's testimony is to confirm and testify to Appellant's overall leadership style. According to Ms. Kelly's testimony and under the leadership of Appellant and Ms. Kelly, the FitNola program numbers drastically increased and successfully developed. (Vol. II, Tr. 74:7-25). Ms. Kelly testified that the increase was a result of what she believed was the direct correlation or result of Appellant's leadership with the program. (Vol. II, Tr. 75:5-8).

STEVEN MARTIN (APPELLANT):

Steven Martin, as appellant, begin his testimony as it relates to David Hammer. (Vol. II, Tr. 79:1-6). According to Appellant, proper NORDC protocol was followed when producing and distributing the schedule. *Id.* The schedule was developed and went through the process of approval from Appellant to Ms. Smith. (Vol. II, *Id.* at 7-10). After the approval process is complete, the schedule is subsequently forwarded to marketing for publishing on internet and forwarded to all interested parties, coaches, site facilitators, etc...., via email. (Vol. II, *Id.* at 10-16). Any schedule changes follow the same process and procedure. (Vol. II, *Id.* at 17-25). Appellant stated that once schedules are created and distributed, it is the responsibility of the coaches to know when and where their games will be played. (Vol. II, Tr. 80:8-11). As it pertains to Mr. Hammer, Mr. Hammer admitted to receiving an email notifying him of the schedule but deleted it. (Vol. II, *Id.* at 20-25, Appellant Exhibit Number 10). In addition, Appellant testified that Mr. Hammer forwarded an email acknowledging that he received an email regarding the Lakeview teams game rescheduling in his old emails. (Vol. II, Tr. 81:10-14). Appellant's contention is that Mr. Hammer receive notification to the Lakeview team of their rescheduled game. (Vol. II, Tr. 82:17-18). Appellant contends that Mr. Hammer has a history of not obtaining

information when it is sent to him, not communicating information to coaches and forfeiting games. (Vol. II, *Id.* at 21-23, Tr. 83:23-25, Tr. 84:1). Appellant submitted an email from a Lakeview parent, Eva Reardon, regarding the schedule mix up. (Vol. II, Tr. 83:1-7). In addition, Appellant testified that Mr. Hammer has a history of complaining. (Vol. II, Tr. 84:9-22, Appellant Exhibit Number 12). Hence, Appellant testified that as it pertains to Mr. Hammer, Mr. Hammer has a history of complaining about the schedule, about miscommunicating the schedule, about not getting information which he always does get information about the schedule. (Vol. II, Tr. 87:12-17).

Appellant testified that the athletic department followed proper protocol and sent the schedule the marketing department. (Vol. II, Tr. 88:4-7). Appellant states that it is not the athletic department's job to micro-manage the marketing department. (Vol. II, *Id.* at 7-11). Once the schedules are sent to the marketing department, any schedule and revisions of the schedule are expected to be timely posted. (Vol. II, *Id.* at 17-24). Hence, Appellant argues that they sent the revised schedule to the marketing department, the marketing department may have overlooked posting it and that is their responsibility and Appellant does not micromanage the marketing department. (Vol. II, Tr. 89:14-20).

As for the second game rescheduling, Appellant testifies that the second game rescheduling was unfortunate. (Vol. II, Tr. 90:14-16). Unfortunately, Yolanda Brown rescheduled the game after speaking with coach Paul Brown at Gernon Brown and she failed to notify Mr. Hammer and the Lakeview team of the rescheduling. (Vol. II, *Id.* at 16-22). Appellant testified that under normal circumstances, Ms. Brown would have contacted him to discuss the rescheduling; however, Appellant was not in the office. (Vol. II, *Id.* at 22-25). Appellant was out on suspension. (Vol. II, Tr. 91:1-2).

Appellant presented testimony and evidence as it pertains to his job duties and responsibilities being assigned to Jared Cook (i.e. Jared Cook being assigned duties outside of his job duties and responsibilities). None of Appellant witnesses testified to the contrary. (Vol. II, Tr. 92: 4-7). Appellant testified that on numerous occasions, he requested examples from Ms. Smith and Mr. Richard of what Mr. Cook was doing outside of his job description to no avail. (Vol. II, *Id.* at 12-20). However, Appellant testified that he never made such request in writing or via email. (Vol. II, Tr. 183:7-14). The question is whether Appellant consistently assigned Mr. Cook to duties outside of his job description. Appellant stated that Mr. Cook always worked within his job duties and responsibilities. (Vol. II, Tr. 92:1-3).

The Appellant testified as to the apology letter to Mr. Hammer. According to Appellant, he drafted two (2) apology letters to send to David Hammer. Appellant testified that Ms. Smith specifically requested that the letter be sent to her for approval. (Vol. II, Tr. 107:17-19). He forwarded the first letter to Ms. Smith for review and approval and received a response stating that the letter “was not an apology.” (Vol. II, Tr. 107: 9-13). Appellant testified that he drafted a second apology letter and sent it to Ms. Smith. (Vol. II, *Id.* at 13-17). Appellant testified that he did not receive a response from Ms. Smith regarding the second apology letter. *Id.* As result of not receiving Ms. Smith’s approval, he did not send the apology letter to Mr. Hammer. (Vol. II, *Id.* at 19-21).

Last, the Appellant testified as to his lack of leadership as it relates to his responsibilities. Appellant disagreed with the Appointing Authority’s contentions regarding his leadership. According to Appellant’s testimony, under his leadership at NORDC in athletics the number of kids that participated in NORDC sports increase by a minimum of ten percent every year that he was there. (Vol. II, Tr. 117:1-8). In addition, Appellant testified that his leadership also increased

the athletic programs and increased the participation. (Vol. II, Tr. 120:2-5) Under his leadership, the number increased by ten percent. (Vol. II, *Id.* at 5-6). Appellant testified that it was strategically done. (Vol. II, *Id.* at 6-7). It was done through leadership; it was done through leadership of the site facilitators along with the district managers. (Vol. II, *Id.* at 8-10). According to Appellant, under his leadership, they organized better, communicated better, and the programs and the athletic department was operated better. (Vol. II, *Id.* at 10-13).

Appellant proffered an investigative article from nola.com regarding the significantly decrease in kids' participation at NORD athletics when Mr. Brown took over as athletic director. Although I allowed Appellant to proffer this article, I am not taking this article into consideration or admitting it into evidence as it pertains to this matter. Appellant had the opportunity to subpoena the reporter or the article and question them or question Mr. Richards about the decrease when he testified or he could have obtained the stats information from the City of New Orleans regarding the numbers via public records request and subpoenaed a city employee to testify to such.

On cross-examination, the Appointing Authority wanted to establish that Appellant designated his responsibilities and the responsibilities of others to Jared Cook. According to the Appointing Authority Appellant failed to adequately supervise the scheduling of practice and game schedules and the distribution of schedules. The Appointing Authority's position was that Jared Cook was operating without direct supervision. (Vol. II, Tr. 196:16-17). Appointing authority presented the following exhibits and testimony to support is position:

1. **Appointing Authority Exhibit 20:** Email from Jared Cook to the marketing department regarding the NORDC 2018 basketball season scheduled requesting that marketing posts the schedule;

2. **Appointing Authority Exhibit 22:** Email from Appellant to district managers regarding scheduling a meeting to discuss basketball and Jared Cook was included;
3. **Appointing Authority Exhibit 23:** Email from Jared Cook to coaches regarding the 2018 revised season and practice schedule;
4. **Appointing Authority Exhibit 10:** Email from Jared Cook regarding revised game schedule makeup games (as a result of bad weather, facilities were closed);
5. **Appointing Authority Exhibit 24 (emails in globo):** Emails from Jared Cook to coaches regarding 2018 practice schedule;
6. **Appointing Authority Exhibit 25:** Email from Jared Cook to Stephanie Eurie (marketing department) regarding a revised basketball schedule;
7. **Appointing Authority Exhibit 26:** Email from Jared Cook to John James and Appellant regarding schedule practice time at Behrman Recreation Center and complaint from John James regarding accuracy of practice schedule;
8. **Appointing Authority Exhibit 27:** Email Appellant to George Haynes and Jared Cook is carbon copied regarding Lakeview practice times and rescheduled game;
9. **Appointing Authority Exhibit 29 (two emails in globo):** Email from Appellant to David Hammer regarding a game cancellation. The second email is from Jared Cook to David Hammer regarding a question as to a game cancellation notice (Appellant is carbon copied);
10. **Appointing Authority Exhibit 30:** Email to Appellant and forwarded to Jared Cook from Paul Brown regarding scheduling conflict for two different age groups at the same game. Coach Brown sends a January 31 email to Jared Cook (Appellant not carbon

copied on the later emails between Coach Brown and Cook). Jared Cook offered a solution to Coach Brown's issue;

11. **Appointing Authority Exhibit 31:** Email from Jared Cook to Todd Biever regarding make-up games;
12. **Appointing Authority Exhibit 32:** Email from Jared Cook to Melissa Brown regarding Ms. Brown coming to the office to walk through a "process";
13. **Appointing Authority Exhibit 33:** Three-page email from Jared Cook to Robbie Hughes (basketball commissioner for Carrollton and coach) regarding Cook being the point of contact for the basketball season;
14. **Appointing Authority Exhibit 34:** Email from Appellant to Shawn Wyatt, Jared Cook and Anita Clark regarding a meeting Wyatt requested Appellant attend. Appellant could not attend but testified that Yolanda Brown was to attend and could speak on behalf of the Appellant (Vol. II, Tr 207:5-13, 18-22);
15. **Appointing Authority Exhibit 35:** Email between Jared Cook and Gerado Rincon, Natasha Robertson (Appellant carbon copied) regarding conflicts surrounding rental black-out dates.
16. **Appointing Authority Exhibit 36:** Email from Jared Cook to Anthony Roman, Steven George, and Katrina Jefferson (Appellant carbon copied) regarding the closure of two recreation centers;
17. Mr. Cook would also send out game and practice schedules to coaches, etc.... (Vol. II, Tr. 146:7-11);
18. Jared Cook handle complaints from coaches. Appellant did not see or receive every complaint for coaches (Vol. II, Tr. 160:9-14);

19. Jared Cook also attended rule committee meetings. (Vol. II, Tr. 188:1-2). He would review rule book changes, transmitted the rule book to marketing for posting and occasionally send out meeting mail communications. (Vol. II, Tr. 188:2-8, 19-23).
20. Most of the communications for the NORDC 2018 basketball season went through Jared Cook. (Vol. II, Tr. 190:5-14).
21. If someone or a coach had a complaint regarding a forfeit that complaint would go to Jared Cook first and not the district managers (Vol. II, Tr. 195:11-15);
22. Jared Cook emailed coaches when there were facility closures that affected the basketball games and practices (Vol. II, Tr. 204:20-25, Tr. 205:1);
23. Jared Cook was responsible for coordinating conflicts between rentals of the recreation centers with basketball practices and game schedule (Vol. II, Tr. 209:3-10);

Appellant's testimony to counter the Appointing Authorities position that Jared Cook was performing duties and responsibilities outside of his classified job duties was that Mr. Cook was performing responsibilities and duties within his job classification, especially as a result of him working with the volunteer coaches. (Vol. II, Tr. 146:15-19, Tr. 194:10-17). Appellant testified that Mr. Cook's job was to get the information out. (Vol. II, Tr. 130:6-10). Hence, Mr. Cook communicated consistently with the marketing department. *Id.*

According to Appellant, Jared Cook's job duties and responsibilities included Mr. Cook dealing with and working with coaches, with certifications, distributing the schedule, ensuring the schedule got to the marketing department, communicating on a regular basis with coaches if there was any rescheduling issues and assisting Appellant with the championship events. (Vol. II, Tr. 186:18-20). Mr. Cook also assisted with FanFest and other things. *Id.*

Last, Appellant testified that the majority of Mr. Cook's communications were either with coaches or parents, mainly the coaches. (Vol. II, Tr. 221:11-15). Mr. Cook's responsibility is to oversee coaches and communicate with coaches. (Vol. II, *Id.* at 16-17). Appellant further testified that "when there's an email from a parent, a vendor, a constituent that comes from the outside, said email is directed to him and he has a responsibility to respond. (Vol. II, *Id.* at 19-23). Appellant stated that any emails received by Mr. Cook is discussed with Appellant, even the ones where Appellant is not carbon copied on. (Vol. II, Tr. 222:1-4).

APPOINTING AUTHORITY'S REBUTTAL WITNESS:

MAYA WYCHE:

Maya Wyche, the interim chief executive officer and chief operating officer for NORDC, was called by the Appointing Authority as its rebuttal witness to testify to a various previous witness testimonies, including but not limited to the job duties and responsibilities of the Appellant. (Vol. II, Tr. 230:17-18). Ms. Wyche testified that Appellant was responsible for the 2017-2018 boys' basketball season. (Vol. II, Tr. 235:8-10). Appellant was responsible for ensuring that all coaches received the schedule including the revised schedule, proving the schedules to the marketing department and requesting placement of the schedules on NORDC's website. (Vol. II, Tr. 235:11-17). According to Ms. Wyche, Appellant was responsible for communicating the schedule out to the coaches. (Vol. II, Tr. 238:3-6). Ms. Wyche further testified to the findings of an investigation from a grievance filed by the Appellant. According to Ms. Wyche's testimony, after the investigation, Appellant was found to have not met deadlines, did not respond to emails in a timely manner, did not communicate with his supervisor relative to projects and he did not utilize his staff in the most efficient way. (Vol. II, Tr. 255:22-25, Tr. 256:1-5). In addition, the investigation concluded that there were volunteer coaches who were

dissatisfied with the lack of consideration for their ideas and thoughts as it relates to moving the athletic program forward. (Vol. II, Tr. 257:7-13). The coaches were dissatisfied with the non-responsiveness to emails, inaccessibility by telephone and in person, and sporting events poorly planned and executed. *Id.* The investigation also found that Appellant was asked by his superiors to provide a letter of apology to Mr. David Hammer for a forfeited game. (Vol. II, Tr. 257:15-17). According to the investigation, Appellant did not provide the letter, nor did he contact Mr. Hammer. (Vol. II, *Id.* at 17-18). Hence, Mr. Richard in his capacity as Appointing Authority met with Mr. Hammer to resolve his concerns. (Vol. II, *Id.* at 18-20). Ms. Wyche also testified that there were significant problems with the track meet every year under Appellant's leadership. (Vol. II, Tr. 284:13-21).

During Ms. Wyche's rebuttal there was some line of questioning regarding Jared Cooks credibility. (Vol. II, Tr. 270-276:1-25, Tr. 277:1-3). However, this Hearing Examiner did not find that Mr. Cook was not a credible witness or lacked credibility during his testimony in this matter. Ms. Wyche further testified that since the hiring of the new NORDC athletic director, Perry Brown, she has personally witnessed praises from site facilitators stating that they are appreciative of Mr. Brown's demeanor in seeking their information and their input as decision makers. (Vol. II, Tr. 241:5-10).

ANALYSIS:

The Appointing Authority has the burden of proving by a preponderance of the evidence the occurrence of the complained activity and that the conduct complained of impaired the efficiency of the public service in which the Appointing Authority is engaged. *Gast v. Department of Police*, 2013-0781 (La. App. 4th Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014) (*Cure v. Department of Police*, 2007-0166 (La. App.4th Cir 8/0/07), 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 Department*, 2014-0993 (La. App. 4th Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walter v. Department of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). The Appointing Authority has the burden of proof of establishing each element of this analysis.

I. The Occurrence of the Complained Activity

The Appointing Authority argues that Appellant’s demotion is an appropriate disciplinary action based upon Appellant’s performance and actions as the athletic director for NORDC. According to the Appointing Authority, Appellant’s demotion was based on his multiple failures to satisfactorily perform his job duties with respect to the 2017-2018 youth basketball season. In addition, Appellant improperly delegated his own responsibilities and those of other employees to Jared Samuel Cook. Appellant was alleged to have failed to adequately supervise the scheduling of practices and games, as well as the distribution of said schedules. These failures along with Appellant’s poor communication and inadequate leadership, led to multiple basketball teams experiencing scheduling problems that prevented the teams from actually practicing or playing basketball, especially the Lakeview team. In addition, the Appointing Authority contends that Appellant failed to comply with his supervisor’s expressed instructions to forward a letter of apology to David Hammer, which would have assisted in repairing the damage relationship with the Lakeview team.

The evidence and testimony in this matter supports the failure of the Appellant to satisfactorily perform his duties as the athletic director. Sufficient evidence and testimony were provided that Jared Cook was acting well beyond his designated classified duties and

responsibilities as the recreation volunteer coordinator. Testimony was provided by the former CEO of NORDC, Victor R. Richard, III, that Appellant allowed Jared Cook to perform certain duties assigned to Appellant as the NORDC athletic director. Mr. Richard testified that at one-point Appellant was counseled and reprimanded for allowing Mr. Cook to perform managerial duties and responsibilities assigned to Appellant. According to Mr. Richard, Mr. Cook's duties included recruiting, outreach, training, securing background checks, obtaining all mandated documents, information and policies that the City of New Orleans put in place for its volunteers and aiding the athletic director during special events. Responsibilities such as scheduling and rescheduling of games, communicating with parents and coaches, resolution of conflicts and issues, and the day to day operations at NORDC were all the duties and responsibilities of the athletic director. Testimony was provided by Mr. Richard, along with the Appointing Authority's evidence, that Mr. Cook had performed scheduling of games, communicated with coaches and parents and made decisions relative to staffing and training.

Appointing Authority witness, Shonnda R. Smith, also testified in support of the fact that Appellant was responsible for communicating with the community and parents if there were issues and problems. Ms. Smith reiterated the job duties and responsibilities of Mr. Cook, which did not include scheduling of games, communicating with parents and coaches regarding scheduling and schedule changes. Additional to testimony, the Appointing Authority offered and introduced several exhibits into evidence that exhibited the communications that Mr. Cook was having with coaches, the parents and the community that went beyond his employment duties and responsibilities.

With regard to scheduling, Appellant was responsible for ensuring that the game schedules and reschedules were accurate and that accuracy of the schedules were appropriately posted on the

NORDC's website. Although, Appellant contends that the proper posting of the current and accurate game schedule was the obligation of marketing. This Hearing Examiner disagrees because the Appellant, as athletic director, is responsible for ensuring that the public is notified of NORDC's current and accurate game schedule, especially schedule revisions. Although it is the coach's duty and obligation to be aware of the date, time and location of a game, it is also NORDC's obligation and duty to ensure that there is proper posting of their games on their website. It is not unreasonable to believe that someone in the community may rely on NORDC's own game schedule on its website and have a reasonable expectancy of accuracy. The failure to ensure that the information posted is correct is not a marketing department responsibility but the athletic department's responsibility. It is NORDC, hence the athletic director's obligation, to ensure that accurate information is being disseminated to the community and its participants.

Last, Ms. Smith testified that she specifically requested that Appellant tender a written apology to Mr. Hammer. According to Ms. Smith, said apology did not occur. Appellant's argument was that he forwarded two (2) emails to Ms. Smith regarding said apology. The first email was returned from Ms. Smith with an unsatisfactory response. Ms. Smith did not respond to the second email. Therefore, Appellant contends that he did not forward the written apology to Mr. Hammer. Knowing that Ms. Smith and Mr. Richard wanted a written apology to be forwarded to Mr. Hammer to ensure that Mr. Hammer and the community or public maintain a good opinion of NORDC's reputation and standing in the community, it was Appellant's obligation to extend his actions beyond an email to obtain Ms. Smith's approval of his written apology. It is not sufficient or acceptable for the Appellant to negate his responsibility and cease his actions to apologize because he did receive a response to his email from Ms. Smith.

Therefore, this Hearing Examiner is of the belief that the occurrence of the complained activity did in fact happen.

II. Impact on the Appointing Authority's Efficient Operations

According to Appointing Authority, Appellant's actions affected the efficient operations of the Appointing Authority. Appellant's failures directly impaired NORDC's ability to offer athletic programming to the community, specifically the youth basketball program. Appellant's failures caused problems and impacted teams' ability to practice and play games. Mr. Richard testified that the issues and problems did not present a "good look" for the organization. Evidence was presented by the Appointing Authority of Mr. Hammer, as a volunteer coach, and Ms. Reardon, as a parents, dissatisfaction and disappointment with the program. Mr. Richard also testified that Appellant's failures affected the "morale" within the organization and externally, embarrassed the organization. The Appointing Authority submits that Appellant's actions also harmed an ongoing effort by NORDC to increase participation in the youth basketball program by neighborhoods and communities that traditionally had not participated in NORDC basketball. Victor Richard testified that Appellant's poor performance negatively impacted the performance of his entire team.

Therefore, it is the opinion of this Hearing Examiner that the Appointing Authority sufficiently established that the Appellant's actions, behavior, and lack thereof impacted the efficient operation of the Appointing Authority.

III. Was the Discipline Commensurate with Appellant's Offense

The Commission has the authority to "hear and decide" disciplinary cases, which includes the authority to modify (reduce) as well as to reverse or affirm a penalty. La. Const. Art. X Sec. 12; *Pope v. New Orleans Police Department*, 903 So.2d 1 (La. App. 4th Cir. 2005). However, the

authority to reduce a penalty can only be exercised if there is insufficient cause for imposing the greater penalty. *Id.* Unless the Commission determined that there is insufficient cause for the Appointing Authority to impose the discipline, the penalty must stand. *Id.*

Based upon the evidence and testimony in this matter, there is a lack of “sufficient cause” or reason to justify a decision contrary to that of the Appointing Authority’s disciplinary action, which would alter, change or reverse the disciplinary action and decision imposed by the Appointing Authority. The Appointing Authority suggests that Appellant’s failures, as the NORDC athletic director, were among a list of documented and established failures that affected the organization. The Appointing Authority argues that given the Appellant’s other disciplinary actions and considering the totality of Appellant’s failures, the appropriate disciplinary course of action as it pertained to Appellant was demotion.

Appellant as the athletic department director had an obligation and responsibility to ensure that subordinates were performing within the scope of their classified employment responsibilities and duties. In Appellant’s testimony he would continuously justify Jared Cook’s handling of certain job duties and responsibilities by stating that the actions were justified because Mr. Cook dealt with the volunteer coaches and the community. However, this Hearing Examiner agrees that Mr. Cook’s role and job responsibilities were limited. Testimony and evidence submitted substantiated that Mr. Cook performed task outside of the scope of his duties, often extending into the duties and responsibilities of the athletic director. It was Appellant’s responsibility to ensure that Mr. Cook operated within his limited employment capacity and role.

In addition, and as previously presented, Appellant had duty and obligation to ensure that a written apology was forwarded to Mr. Hammer. It was irresponsible for Appellant to negate that duty because he did not receive a response from his second email to Ms. Smith. Appellant

did not testify or present evidence that he attempted to contact Ms. Smith via alternative means regarding his email and the apology to Mr. Hammer. This Hearing Examiner finds that Appellant's demotion was not only appropriate but justifiable when taking all the evidence and testimony into consideration.

Therefore, it is this Hearing Examiner's decision that the discipline imposed on the Appellant was commensurate with the offense.

CONCLUSION:

For the foregoing reasons, it is the recommendation of this Hearing Examiner that the present appeal should be *DENED*.

SUBMITTED: NOVEMBER 27, 2020 SUBMITTED BY: RAMONA D. WASHINGTON