

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION

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Friday, September 07, 2012

Mr. Eric Hessler
PANO 2802 Tulane Avenue #101
New Orleans, LA 70119

Re: **Harry Mendoza VS.**
Department of Police
Docket Number: 7911

Dear Mr. Hessler:

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 - 9/7/2012 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg

MATTHEW PATIN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7910

CONSOLIDATED WITH

HARRY MENDOZA

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7911

CONSOLIDATED WITH

FREDERICK MORTON

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7916

CONSOLIDATED WITH

JOSEPH CATALANOTTO

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7925

Police Officer Matthew Patin, Police Captain Harry Mendoza, Police Captain Frederick Morton and Sergeant Joseph Catalanotto ("Appellants") are employed by the Department of Police ("Appointing Authority") with permanent status. The Appellants each received three day suspensions for violation of the Appointing Authority's internal regulation concerning Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that the Appellants violated Chapter 2.8.10, Paid Details, paragraph 43 of the Appointing Authority's internal rules, which provides as follows:

Members of this department are prohibited from forming any corporation, company, trust, fund, or cooperative banking account for the purpose of billing, receiving compensation, or offering services of paid details.

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. The hearing was held on February 9, 2012. The testimony presented at the hearing 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.

The matters were consolidated because the Appointing Authority determined through its investigations that the Appellants each formed limited liability corporations for the purpose of administering paid details. The Appellants all acknowledged that they created limited liability corporations to administer paid details. All of the Appellants testified that they formed limited liability corporations primarily for payroll purposes. To accommodate the actual employers of the police officers working the paid details, the Appellants received a single check made payable to Limited Liability Corporation ("LLC"), which the Appellants would deposit into the LLC's bank account. The Appellants would then pay themselves and the other police officers working the paid detail from the LLC's bank account.

The Appellants contended that they were unaware of the internal rule, and that they created the LLC's at the behest of their clients for better record keeping and accountability. Officer Patin testified that he created his LLC at the direction of then Asst. Supt. Anthony Cannatella who actually operated the detail. Officer Patin stated that Asst. Supt. Cannatella delegated to him the responsibility for all of the paperwork including payroll.

Superintendent Ronal Serpas and Commander James Treadaway both explained the purpose of the rule. Supt. Serpas acknowledged that the rule had not been well enforced. He testified that once he learned of the violations, he determined that disciplinary action was appropriate because all police officers are required to be aware of all internal rules; including paid details, which is a particularly important concern for the New Orleans Police Department.

Commander Treadaway testified that he was involved in revising the Appointing Authority's internal rules concerning paid details in the mid 1990's. He testified that the purpose of the rule regarding LLC's was to prevent situations where police officers were paid by other police officers to perform police work. According to Commander Treadaway, if a police officer administers a paid detail through an LLC, those working the paid detail are employed by another police officer instead of the third party seeking police protection.

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 of proof 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.*

CONCLUSION

The Appointing Authority has established that the Appellants violated an internal rule prohibiting police officers from operating LLC's to administer paid details. The Appointing Authority further established that the rule serves a legitimate purpose and that its violation undermines the efficient operation of the department. While an LLC may be more convenient for the ultimate customer, the potential for abuse still exists and justifies the creation and enforcement of a rule preventing such activity.

Further, although a warning or counseling may have been sufficient to address the

M. Patin, H. Mendoza, R. Morton & J. Catalanotto
#7910, 7911, 7916 & 7925

general unawareness of the rule and resolve the issue, we cannot say that the Appointing Authority abused its discretion by taking formal disciplinary action.

Considering the foregoing, the Appellants' appeals are DENIED.

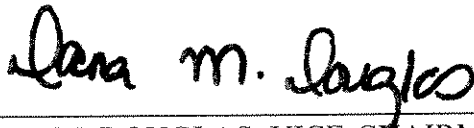
RENDERED AT NEW ORLEANS, LOUISIANA THIS 7TH DAY OF
SEPTEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



DANA M. DOUGLAS, VICE-CHAIRMAN



JOSEPH S. CLARK, COMMISSIONER