



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

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DIRECTOR OF PERSONNEL

Wednesday, September 29, 2021

Mr. Ernest L. Jones  
2317 Canal Street  
New Orleans, LA 70119

Re: **Gary Hardy VS.  
Juvenile Justice Intervention Center  
Docket Number: 9165**

Dear Mr. Jones:

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 - 9/29/2021 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, New Orleans, Louisiana.

If you choose to appeal this decision, such appeal must conform to the deadlines established by the Commission's Rules and Article X, 12(B) of the Louisiana Constitution. Further, any such appeal shall be taken in accordance with Article 2121 et. seq. of the Louisiana Code of Civil Procedure.

For the Commission,

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

Doddie K. Smith  
Chief, Management Services Division

cc: Kyshun Webster  
Renee E. Goudeau  
Jay Ginsberg  
Gary Hardy

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**GARY HARDY,  
Appellant**

**Docket No. 9165**

v.

**JUVENILE JUSTICE INTERVENTION  
CENTER,  
Appointing Authority**

**DECISION**

Appellant, Gary Hardy, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his April 29, 2020, termination. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Maintenance Engineer Second Class. (Tr. at 7; HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on August 17, 2020. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the Hearing Examiner's report dated January 9, 2021, and controlling Louisiana law.

For the reasons set forth below, Hardy's appeal is DENIED.

**I. FACTUAL BACKGROUND**

At all relevant times, Gary Hardy served as a Maintenance Engineer Second Class at the Juvenile Justice Intervention Center (JJIC). (Tr. at 7). Mr. Hardy's job duties included ensuring that the chillers and air conditioning were functioning properly. (Tr. at 7). Two separate automated air conditioning systems cool the original building, which is five years old, and the new building. (Tr. at 27).

The JJIC suspended Mr. Hardy on April 20, 2020, for seven days. (Tr. at 8). Dr. Webster, Mr. Shaun Lewis, and Debra Calderon met with Mr. Hardy to inform him of the suspension before lunch on April 20, 20220. (Tr. at 10). According to Mr. Hardy, he informed Dr. Webster, Mr. Lewis, and Ms. Calderon that he needed relief at the end of the meeting. (Tr. at 11). Neither Dr. Webster nor Mr. Lewis recalled this statement from Mr. Hardy. (Tr. at 39, 63). In addition, Mr. Hardy never informed Mr. Lewis, his supervisor, that he intended to shut down the air conditioning system, even though Mr. Lewis was on-site all day on April 20. (Tr. at 24).

Before leaving for the day on April 20, Mr. Hardy admitted he went to the roof and shut down the chillers, boilers, and all gas because his “license was on the line.” (Tr. at 11-12). The chillers provide air conditioning to the JJIC. (Tr. at 12). According to the City of New Orleans Code of Ordinances, an engineer should be on the premises at all times when the building is using chillers. (Tr. at 17-19). Mr. Hardy was one of two engineers on staff at the JJIC, but the other engineer was on civil leave. (Tr. at 24).

Dichelle Williams, the Superintendent on Residential Life, who was on-site on the evening of April 20, notified Shaun Lewis, the Superintendent of Building and Maintenance, that the building was warm about 7:45 PM. (Tr. at 22, 29, 81). Mr. Lewis testified this call was between 6:30 and 7:00, and that he returned to the JJIC about 7:30. (Tr. at 25-26). Mr. Lewis contacted the City’s Director of Property Management about a mechanical contractor by email at 7:45 PM. (Tr. at 26). The Deputy Director of Department of Property Management in turn contacted an outside contractor. (Tr. at 29).

When Mr. Lewis reported to the JJIC, the building was hot. (Tr. at 27). The computer system was showing high temperatures across the board. (Tr. at 27). A JJIC Plant Attendant

informed Mr. Lewis that Mr. Hardy was on the roof about 4:00, and that he later noticed during his inspection that all the chillers were in the off position.<sup>1</sup> (Tr. at 31-32).

Based on this information, Mr. Lewis turned the chillers on, and the computer showed water flow through the pipes, so the air conditioning started working. (Tr. at 32). Mr. Lewis also discovered that the chillers had been turned off in the new building as well as the old building. (Tr. at 36). The outside contractors reported to the building to verify that there was no other problem with the equipment. (Tr. at 33, 54).

Ms. Williams moved the residents who were quarantined because of Covid-19 exposure. (Tr. at 82). According to Ms. Williams, the building was still warm the following day. (Tr. at 84-85).

Dr. Kyshun Webster, the Director of the JJIC, testified that Mr. Hardy admitted turning off the chillers because the JJIC needed a licensed engineer. (Tr. at 60). According to Dr. Webster, the lack of appropriate air conditioning increased the risk of infection, increased the overtime expenses for the JJIC, and required the JJIC to have contractors visit the building. (Tr. at 61). Dr. Webster viewed shutting off the air conditioning as “intentional and retaliatory.” (Tr. at 62).

As reflected in the letter of termination, the regulations of the Louisiana Department of Children and Family Services contain housing standards for the JJIC, including appropriate cooling without unhealthy extremes. (Tr. at 75; Ex. HE-1). Compliance with these regulations is necessary for the JJIC to retain its license. (Tr. at 80).

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<sup>1</sup> Mr. Lewis later confirmed Mr. Hardy’s presence on the roof through video. (Tr. at 35).

The City of New Orleans Code of Ordinances requires that a stationary engineer be present when air conditioners of a certain tonnage are in operation. (Ex. City-1). Sterling Higgins, the Plant Engineer for the Department of Property Management testified that an engineer must be present at all times when the equipment is in operation, and that if no one were present to relieve him, the equipment would have to be turned off. (Tr. at 92).

## II. ANALYSIS

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 suspending and terminating the classified employee and, if so, whether such discipline was commensurate with the dereliction. *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).

The Appointing Authority has carried its burden of proving that Gary Hardy intentionally turned off the air conditioning system at the JJIC on April 20, and that this action was in retaliation for the suspension imposed on April 20. If Gary Hardy's main concern were compliance with the City's ordinance requiring an engineer to be on the premises, he would have informed his

supervisor and/or the Director in clear and uncertain terms that he intended to shut off the air conditioning because no engineer would be present.

Although an ordinance does require the presence of an engineer, and it may have been appropriate to shut down the system temporarily until an engineer could arrive on site, Mr. Hardy's intention was to interfere with the operation of the JJIC. The individuals who suffered from Mr. Hardy's retaliation were the residents of the JJIC. In addition to the extra expenses caused by the absence of air conditioning, the JJIC was out of compliance with state regulations requiring appropriate cooling of the physical plant. (Tr. at 75, 80). Therefore, the Appointing Authority has carried its burden of showing that Mr. Hardy's actions impaired the efficient operation of the JJIC. The undersigned Commissioners further find that the penalty is commensurate with the violation.

Hardy's appeal is DENIED.

This the 29<sup>th</sup> day of September, 2021

WRITER:

Ruth White Davis  
Ruth Davis (Sep 25, 2021 11:36 CDT)

RUTH WHITE DAVIS, COMMISSIONER

CONCUR:

CJ Moore  
CJ MOORE (Sep 28, 2021 17:34 CDT)

CLIFTON J. MOORE, JR., VICE-CHAIRPERSON

Mark C. Surprenant  
Mark C. Surprenant (Sep 15, 2021 16:46 EDT)

MARK SURPRENANT, COMMISSIONER