

CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Friday, January 20, 2023

Mr. Eric Hessler
PANO 320 N. Carrollton Avenue #202
New Orleans, LA 70119

Re: **Norvel Orazio, et al VS.
Department of Police
Docket Number: 7893**

Dear Mr. Hessler:

Attached is the Commission's decision of the Petition for Back Pay and Future Pay for Captains and Majors following the Fourth Circuit's remand of the matter.

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 - 1/20/2023 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Amoco Building, New Orleans, Louisiana.

If petitioners 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,



Doddie K. Smith
Chief, Management Services Division

cc: Michelle M. Woodfork, Interim
William R. H. Goforth
Jay Ginsberg
Norvel Orazio, et al
4116 W. Esplanade Ave S Metairie LA 70002
file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

<p>NORVEL ORAZIO, et al. Appellant,</p> <p>vs.</p> <p>DEPARTMENT OF POLICE, Appointing Authority.</p>	<p>DOCKET NO. 7893</p>
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DECISION

I. INTRODUCTION

The Commission denies the Petition for Back Pay and Future Pay for Captains and Majors filed on June 24, 2019, (Jt. Ex. 22), based on the record evidence that Commanders performed more onerous duties than Petitioners. Petitioners, classified Captains and Majors, seek compensation equal to unclassified Commanders. (Jt. Ex. 22). The Commission originally denied the Petition for Back Pay on February 20, 2020. Following an appeal by Orazio et al, in May of 2021, the Fourth Circuit Court of Appeal remanded this matter to the Commission “for a full evidentiary hearing on two issues: (i) whether the duties of Commander and Captain were different; and (ii) when the Captains first made a claim for back pay given the three-year prescriptive period in Rule IV, § 15.1.” *Orazio v. Dep’t of Police*, No. 2021-0032 (La. App. 4 Cir. 5/19/21), *writ denied*, No. 2021-C-00994 (La. 11/5/21) (“*Orazio 4*”). The Fourth Circuit noted that the parties disagreed about whether the job duties of Captains and Commanders were different. *Id.* NOPD’s attorney acknowledged that “there was very little evidence in the record regarding the duties of the respective positions.” *Id.*

In accordance with the Court's order, a hearing officer appointed by the Commission conducted an evidentiary hearing limited to these issues on February 15, 2022, and on April 19, 2022. A more complete record is now available to the Commission and to the Fourth Circuit to resolve the disputed factual issues highlighted by the Court. With the benefit of the evidentiary hearing and the focus of the inquiry of the Court, the Commission supplements its original decision as follows.

II. FINDINGS OF FACT

The Commission now has the benefit of a fully developed factual record in this wage claim. Based upon that record, the Commission makes the following factual findings which are not to be disturbed in the absence of manifest error:¹

1. Because the rules in the classified pay plan do not apply to unclassified positions, after the Commission approved the Commander position as an unclassified position in 2017, NOPD then had the discretion to pay the Commanders a higher rate of pay than classified Captains. (4/19/22 Tr. at 344).
2. On April 20, 2017, the City Council authorized a rate of pay for unclassified Commanders between \$81,999 to \$107,770 under new class code U-7114. (Jt. Ex. 14).
3. NOPD also had almost complete discretion about the officers selected to serve as Commanders. Robert Hagmann, Personnel Administrator for the Department of Civil

¹ A reviewing court gives "deference . . . to the factual conclusions of the Commission. *Bannister v. Dep't of Streets*, 95-0404 (La. 1/16/96), 666 So. 2d 641, 647. "A reviewing court should not disturb the factual findings of the Commission in the absence of manifest error." *Gaspar v. Dep't of State Civil Service*, 634 So. 2d 14, 16 (La. App. 4 Cir. 1994). "On factual issues, deference should be given to CSC's factual conclusions. A reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review." *Morrison v. New Orleans Police Dep't*, 2022-0051 (La. App. 4 Cir. 7/13/22), 344 So. 3d 259, 265

Service, testified that “for the most part, the selection was political.” (4/19/22 Tr. at 388).

4. The classified position of most unclassified Commanders was Lieutenant. (4/19/22 Tr. at 76).
5. NOPD then assigned most classified Captains to positions better suited for Lieutenants and/or Sergeants. (4/19/22 Tr. at 358). At this time, NOPD had over 30 Captains and six Majors. (4/29/22 Tr. at 379-81).
6. The job duties performed by Commanders fall within the job description of a Captain. (Jt. Ex. 17).
7. The Commanders were performing more onerous job duties than Captains or Majors, even if the Captains and Majors were qualified and ready, willing, and able to perform the job duties of Commander.
8. The Captains seeking back pay were not tasked with the same level of supervision, span of control, or administrative duties as the officers serving in the position of Commander.
9. Petitioners failed to request back pay based on Commanders’ rate of pay before the petition filed on June 24, 2019. (Jt. Ex. 22).
10. By November 7, 2019, all Captains received the same rate of pay.

III. CONCLUSIONS OF LAW

In 2019, the Fourth Circuit reversed the Commission’s August 18, 2018, reauthorization of the Commander position. *Orazio v. Dep’t of Police*, 2019-CA-0230 (La. App. 4 Cir. 6/19/19), 275 So. 3d 340, 352 (“*Orazio 3*”). In 2018, the Fourth Circuit had found no error in the Commission’s original authorization of the unclassified position in reliance on NOPD’s

representations to the Commission about the job duties of Commanders. *Orazio v. Dep't of Police*, 2017-1035 (La. App. 4 Cir. 5/23/18), 248 So. 3d at 752 (“*Orazio 2*”).

The Louisiana Constitution requires the State of Louisiana and City of New Orleans Civil Service Commissions to adopt a uniform pay and classification plan. La. Const., art. X, § 10(A)(1). Article X, § 10 provides as follows:

Each commission is vested with broad and general rulemaking and subpoena powers for the administration and regulation of the classified service, including the power to adopt rules for regulating employment, promotion, demotion, suspension, reduction in pay, removal, certification, qualifications, political activities, employment conditions, compensation and disbursements to employees, and other personnel matters and transactions; *to adopt a uniform pay and classification plan*; to require an appointing authority to institute an employee training and safety program; and generally to accomplish the objectives and purposes of the merit system of civil service as herein established.

(emphasis added). “[A]ll employees covered by Civil Service of the City of New Orleans, and this includes Sewerage and Water Board employees who are so protected, must be paid according to One uniform pay plan so that ‘* * * the same schedule of pay may be equitably applied to all positions in the same class.’” *Sewerage and Water Board of New Orleans v. Barnett*, 225 So. 2d 381, 384 (La. App. 4 Cir. 1969). “[A] uniform pay plan requires that the same schedule of pay must apply to all positions in the *same class*.” *Clark v. State*, 434 So. 2d 1276, 1281 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 152 (La. 1983) (relying on *Thoreson v. Dept. of State Civil Service*, 433 So. 2d 184, 204 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 726, 727 (La. 1983), *infra*, and *Barnett, supra*). The First Circuit, after quoting at length from *Barnett, supra*, held that “[t]he intent of the 1921 Constitution, the framers of the 1974 Constitution, and our jurisprudence has been to have the same schedule of pay for members of the same class.” *Thoreson v. Dept. of State Civil Service*, 433 So. 2d 184, 204 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 726, 727 (La. 1983). In dicta, the Fourth Circuit recently recognized classified employees’ appeal rights based

on unequal application of the pay plan: “[A]n appeal may be made to the commission by any person who alleges he/she has been discriminated against by the application of a pay plan . . .” *Hellmers v. Dept. of Fire*, No. 2019-CA-0420, p. 10 n.13 (La. App. 4 Cir. 10/30/19), *writ denied*, 347 So. 3d 875 (La. 2/26/20) (quoting *Thoreson*, 433 So. 2d. at 187). Therefore, classified employees have a right of appeal based on unequal application of the schedule of pay for positions in the City of New Orleans uniform pay plan. The comparators must hold positions in the same classification. *Marie v. City of New Orleans*, 612 So. 2d 244, 246 (La. App. 4 Cir. 1992). “[U]niformity does not require that all individuals within the same class receive the exact same pay.” *Ramirez v. Dep’t of Social Services*, 96-1448 (La. App 1 Cir. 5/9/97), 694 So. 2d 1157 (holding that additional pay based on a master’s degree for social workers was permissible). *See also France v. City Civil Service Comm’n of New Orleans*, 411 So. 2d 695 (La. App. 4 Cir. 1982). The burden of proof is on the Appellant to show unequal application of the schedule of pay. *See Fuentes v. Dep’t of Civ. Serv.*, 2019-1045 (La. App. 4 Cir. 5/13/20), 300 So. 3d 40, *writ denied*, 2020-00766 (La. 10/6/20), 302 So. 3d 531 (holding classified employee failed to carry burden of proof to show unequal application of pay plan under Civil Service Rule authorizing adjustments).

A. Claim for Parity based on Uniform Pay and Classification Plan

1. Character of Relief Sought by Petitioners

Petitioners seek back pay and front pay based on performance of equal job duties for lower pay. (Jt. Ex. 22). The Commission finds that the claim for front pay by Captains is moot based on the special rate of pay authorized by the Director of Personnel on November 7, 2019, for all Captains and the Commission’s order of the same date allowing an exception to the requirement for special rate of pay. (Jt. Ex. 28). The Commission further notes that on September 29, 2021,

the Commission approved a higher rate of pay for Captains and Majors.² Under the Pay Plan,³ the hiring rate for Captains is \$90,567, and the hiring rate for Majors is \$95,181.

2. Prescription

NOPD argues that the claim for back pay has prescribed. Rule IV, § 15.1 provides as follows:

Any claim for back pay brought by an employee in the classified service based upon the application of the Pay Plan or the rules regarding classification and compensation must be submitted in writing, to the Personnel Director no later than three years from the date that the employee knew, or should have known, about the facts giving rise to the claim. Any award of back pay shall not extend beyond the three years immediately preceding the employee's written submission to the Personnel Director.

Nothing in this section shall modify or reduce back pay awards arising out of appeals filed pursuant to Civil Service Rule II or Article X, Section 8 of the Louisiana Constitution. Furthermore, nothing in this rule shall modify or otherwise impact the deadlines contained in Rule II for filing appeals.

i. Assertion of back pay claim before 2019

Petitioners failed to request back pay based on Commanders' rate of pay before the petition filed on June 24, 2019. (Jt. Ex. 22). Petitioners argue that the Fourth Circuit's recognition of a request for "the approval of an equal pay increase and plan to "ICO's" was a request for pay equal to Commanders. *Orazio v. City of New Orleans*, 2012-0423 (La. App. 4 Cir. 1/16/13), 108 So. 3d 284 (*Orazio 1*). However, in their July 7, 2011, petition, ICO's were seeking the 10% special rate of pay provided to Public Integrity Bureau officers. (See Jt. Ex. 18 at ¶¶ 40-41). Classified Captains

² The minutes of the Commission's September 29, 2021, meeting are available publicly at <https://nola.gov/getattachment/Civil-Service/Commission/Meetings/2021/9-29-2021-10-00-00-AM/Minutes.pdf/>

³ Available publicly at [https://nola.gov/getattachment/Civil-Service/Classification-and-Compensation/Pay-Plan-\(1\)/CS-Pay-Plan-Feb-2022.pdf/?lang=en-US](https://nola.gov/getattachment/Civil-Service/Classification-and-Compensation/Pay-Plan-(1)/CS-Pay-Plan-Feb-2022.pdf/?lang=en-US).

working as ICO's eventually received the 10% premium provided to officers assigned to the Public Integrity Bureau. (Plaintiffs' Post-Trial Memorandum in Support of Back Pay at 3).

3. Whether Commanders' Job Duties were the Same as Captains or Majors

In practice, the Commanders were performing more onerous job duties than Captains or Majors, even if the Captains and Majors were qualified and ready, willing, and able to perform the job duties of Commanders.⁴ Although the job description for Captain states that Captains were expected to engage in “[v]ery responsible supervisory police work directing a police district or specialized division, or in administrative or technical duties of comparable responsibility; and related work as required,” (Ex. Orazio-2), the Captains seeking back pay were not tasked with the same level of supervision, span of control, or administrative duties as the officers serving in the position of Commander. Even if the job descriptions were indistinguishable, as the below record evidence indicates, the actual work performed was different in character.

The Civil Service Staff's April 3, 2017, investigation into the job assignment of Commander noted in the background section that the assignment of Commander was “challenging” and more difficult than the other Police Captain assignments, so that special assignment pay was warranted:

The special assignment pay was utilized to (1) recognize the *difficulty of the district assignment above the other Police Captain assignments*, (2) incentivize Police Captains to accept the *challenging assignment*, (3) equate the salary of the acting District Commander to the salary of the next highest ranking job classification of Police Major, (4) encourage retention in the position, and (5) provide the Superintendent with the flexibility to rotate or reassign Police Captains to act in this capacity based upon his discretion.

(Jt. Ex. 16 at 3) (emphasis added).

⁴ Robert Hagmann testified that Captains and Majors were qualified to do Commander work. (4/19/22 Tr. at 323-24).

As for the specific differences in job duties, Chief of Staff Dante Bidwell testified that each Commander reported directly to a Deputy Chief, and that a Commander supervised each of the eight police districts, in addition to the Public Integrity Bureau, the Management Services Bureau, and the Special Operations Division. (4/19/22 Tr. at 9). Other Captains and Majors did not enjoy the same level of responsibility. For example, from September 21, 2014, to November 10, 2019, Captain Joseph Waguespack supervised either the Juvenile Section or the Homicide Section, and based on the organizational charts in evidence, would have reported to the Commander of the Criminal Investigations Division, who reported to the Deputy Chief of the Investigations and Support Bureau. (2/15/22 Tr. at 124-25; 4/19/22 Tr. at 38-39, 187-88, 197; Stipulated Facts; Ex. NOPD-1, NOPD-12). Captain Michael Glasser testified that he served as Night Supervisor of the Field Operations Bureau for about one and one-half years, with no supervisory responsibility. (4/19/22 Tr. at 221).⁵ Captain Glasser then served on the staff of the Chief of Detectives for about three years, with no supervisory responsibility. (4/19/22 Tr. at 223-24). Beginning in about 2016, Captain Glasser then managed Narcotics, reporting to the Commander over Special Investigations. (2/15/22 Tr. at 50-51, 69; Ex. NOPD-1). Captain Glasser supervised one Sergeant, one Lieutenant, and about a dozen detectives. (2/15/22 Tr. at 225). Major Burkart managed the Administrative Duties Division, supervising two civilians and a Sergeant. (2/15/22 Tr. at 36, 79).

Chief Deputy Superintendent Christopher Goodly served as a Commander of the Fifth District. (2/15/22 Tr. at 84). Illustrating the level of supervision and responsibility, Chief Goodly supervised Captain Tami Brisset and the three lieutenants over the three watches, in addition to the lieutenant over investigations. (2/15/22 Tr. at 84-85). John Thomas, Director of Public Safety

⁵ The parties stipulated that Captain Glasser was assigned to the Field Operations Bureau from September 23, 2012, until January 31, 2016. (Stipulated Facts).

and Homeland Security, served as a Commander of the Third Police District, running the day-to-day operations and supervising Lieutenants. (2/15/22 Tr. at 27). Illustrating the span of control of a Commander, Deputy Superintendent Paul Noel testified he served as the Commander of Criminal Investigations, supervising Lieutenants over homicide, sex crimes, and property crimes. (2/15/22 Tr. at 124-25).

Chief Noel supervised all eight districts when he was promoted to Deputy Superintendent of the Field Operations Bureau in December of 2015. (2/15/22 Tr. at 132). Addressing the administrative duties of a Commander, Chief Noel testified that Commanders of districts also attended community meetings and were responsible for the District Investigative Unit. (2/15/22 Tr. at 145).

Petitioners offered testimony about performing public integrity duties,⁶ but these assignments ended before June 24, 2016.⁷ Importantly, these officers eventually received a 10% special rate of pay for the time they spent performing PIB duties. So, during this time period, these officers received the same pay as Commanders, receiving a 10% special rate of pay. (Plaintiffs' Post-Trial Memorandum in Support of Back Pay at 3).

⁶ NOPD assigned a number of classified Captains to the Administrative Support Unit performing Public Integrity Bureau investigations. (See 4/19/22 Tr. at 232, 244-45). These duties could have been performed by a Patrolman or a Sergeant. (4/19/22 Tr. at 300). In this role, Captains supervised no other employees. (4/19/22 Tr. at 283). NOPD housed the classified Captains assigned to ASU in a trailer in City Park. (4/19/22 Tr. at 284). This trailer lacked a restroom (4/19/22 Tr. at 299). According to Major Raymond Burkart, the officers, including Burkart, assigned to the trailer were "targeted for extinction." (4/19/22 Tr. at 379). At one time, NOPD also assigned one Captain to each district as an Integrity Control Officer (ICO), performing internal investigative duties and supervising no other employees. (See 4/19/22 Tr. at 269 (Mendoza), 282 (Hargrove), and 297 (Adams)). Witnesses characterized the duties of an ICO as Patrolman or Sergeant work. (4/19/22 Tr. at 297).

⁷ Raymond Burkart testified he left the Administrative Services Bureau in 2014. (4/19/22 Tr. at 381). Major Burkart also testified that a holiday photo of the ASU officers with a port-o-let pressured NOPD to move the officers out of ASU in 2013 or 2014. (4/19/22 Tr. at 381). The photograph is dated 2013. (Ex. Orazio-5).

Historically, because serving as a Commander was challenging and more difficult, as mentioned above, Civil Service Staff approved special assignment pay for Captains serving in this position. Robert Haggmann, a Personnel Administrator supervising Classification and Compensation in the Department of Civil Service, testified that the special rate of pay for Captains in charge of a district was a 10% premium. (4/19/22 Tr. at 339). According to the Civil Service Rule in effect in 2011, Rule IV, section 2.2, authorizing a special rate of pay, read as follows:

Subject to the prior approval of the Director, an appointing authority may grant an increase within the pay grade to any employee given a special assignment for a limited term within his class of positions, provided that there shall be a corresponding pay reduction at the completion of the special assignment. A written notice of the intention to effect a reduction in pay on the completion of the special assignment shall be given to the employee when the increase is granted. Increases and reductions in pay shall be reported to the Director in such manner as she may prescribe.

Mr. Haggmann testified that the Civil Service Staff did not have a problem with the 10% special rate of pay when the position was staffed by a classified Captain prior to March 2011. (4/19/22 Tr. at 341). Likewise, Petitioners recite in their July 7, 2011, Petition that, at the time the Commander position was implemented with a special rate of pay in 2011, a special rate of pay was already in effect for Captains. (Jt. Ex. 18). According to paragraph 20 of the July 7, 2011, Petition, this special rate of pay applied to Captains who supervised police districts. (Jt. Ex. 18). Therefore, Petitioners have conceded that a police officer supervising a police district (whether called a Captain, Major, or Commander) merited a higher rate of pay.

The Fourth Circuit in *Orazio 3* held that the position of Commander, as then-implemented, did not meet any of the three factors set forth in Rule III, § 7.1; the Commission's rule applicable to approval of unclassified positions. *Orazio 3*, 275 So. 3d at 352. Petitioners seek to expand this ruling to create a basis for back pay based on the Fourth Circuit's observation that the NOPD did

not dispute that “the job description for the unclassified Commander position is indistinguishable from the job description for the classified Captain position.” *Orazio 3*, 275 So. 2d at 351. The Commission finds that the job duties performed by Commanders fall within the job description of a Captain. Captains and Majors were qualified and able to perform the job duties of Commanders. However, because the duties were more onerous than the duties performed by other Captains and Majors, the request for back pay is denied. The remaining front pay claims are also denied on the same basis. Likewise, the request for attorneys’ fees is denied.

4. Discrimination Claim

To the extent Petitioners assert discrimination claims distinct from claims based on unequal application of the uniform pay plan, the Commission denies these claims at this time based on the record before it.

New Orleans, Louisiana this 20th day of January, 2023.

Mark C. Surprenant
Mark C. Surprenant (Jan 14, 2023 00:00 CST)

MARK SURPRENANT, COMMISSIONER
WRITER

Brittney Richardson
Brittney Richardson (Jan 19, 2023 16:46 CST)

BRITTNEY RICHARDSON, CHAIRPERSON

J. H. Korn
J. H. Korn (Jan 13, 2023 15:56 CST)

JOHN KORN, VICE-CHAIRPERSON

Ruth White Davis
Ruth Davis (Jan 13, 2023 21:04 CST)

RUTH DAVIS, COMMISSIONER

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

NORVEL ORAZIO, <i>et al.</i> Appellant, vs. DEPARTMENT OF POLICE, Appointing Authority.	DOCKET NO. 7893
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DISSENT

In June of 2019, the Fourth Circuit Court of Appeal decided *Orazio v. Dept of Police*, No. 2019-CA-0230 (La. App. 4 Cir. 6/19/19), 275 So. 3d 340, *writ denied* (La. 10/15/19) (“*Orazio 3*”). In *Orazio*, the Fourth Circuit held that the Commander position, as then-implemented, did not satisfy the requirements for unclassified status, and that the Commission manifestly erred in reauthorizing the position. *Orazio 3*, 275 So. 3d at 351. In reaching this conclusion, the Fourth Circuit noted that NOPD “**does not dispute** the CSD staff’s finding that the job description for the unclassified Commander position is **indistinguishable** from the job description for the classified Captain position.” *Orazio 3*, 275 So. 3d at 351 (emphasis added).

The Louisiana Constitution requires the City of New Orleans Civil Service Commission to adopt a uniform pay and classification plan. La. Const., art. X, § 10(A)(1). Classified employees have a right of appeal based on unequal application of the schedule of pay for positions in the City of New Orleans uniform pay plan. *Sewerage and Water Board of New Orleans v. Barnett*, 225 So. 2d 381, 384 (La. App. 4 Cir. 1969); *Clark v. State*, 434 So. 2d 1276, 1281 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 152 (La. 1983); *Thoreson v. Dept. of State Civil Service*, 433 So. 2d 184, 204 (La. App. 1 Cir. 1983), *writ denied*, 440 So. 2d 726, 727 (La. 1983); *Hellmers v. Dept. of Fire*, No. 2019-CA-0420, p. 10 n.13 (La. App. 4 Cir. 10/30/19), *writ*

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denied, 347 So. 3d 875 (La. 2/26/20) (quoting *Thoreson*, 433 So. 2d. at 187). The comparators must hold positions in the same classification.

As the NOPD conceded before the Fourth Circuit in *Orazio 3*, Commanders' job descriptions were "indistinguishable" from Captains' job descriptions, so the comparators' classification should have been the same. In fact, the position of Commander should have been filled by classified Captains. Under the authorities cited above, the pay for classified Captains and Commanders should have been the same. Now, all 16 Commanders have been working as Captains, either because the former Commander returned or was promoted to that classified rank or because the former Commander was appointed as a Captain provisionally under our Rules. (2/15/22 Tr. at 46, 74). Therefore, NOPD conceded before the Fourth Circuit that the job descriptions of Commanders were indistinguishable from Captains, and when required to place the Commanders in their classified positions, placed the former Commanders in the position of Captain.¹

Commanders began performing the job duties formerly performed exclusively by Captains in March 2011. Former Commander John Thomas testified his job duties were the same as a Captain supervising the Public Integrity Bureau in 2010 and as a Commander supervising the Public Integrity Bureau in 2011. (2/15/22 Tr. at 64). Likewise, Deputy Superintendent Paul

¹ When addressing whether Captains' job duties are the same as Commanders' job duties, the majority opinion discusses only the position of District Commander, not the other eight unclassified Commander positions. (Majority Opinion at 5-6). All 16 Commanders are now in the rank of Captain, whether on a permanent or provisional basis. The majority opinion relies on ¶ 20 of the July 2011 Petition and Petitioners' concession that Captains tasked with supervising a police district or overseeing special tasks or operations received a special (higher) rate of pay before the creation of the unclassified Commander position. Assuming, *arguendo*, that Petitioners have conceded that the eight District Commanders merited a higher rate of pay, Petitioners have not conceded that the other eight unclassified Commander positions merited the same rate of pay.

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Noel testified that the entities under his supervision, including the eight police districts, would have been headed by Captains prior to March 2011. (2/15/22 Tr. at 148).

Following *Orazio 3*, as of November 7, 2019, all Captains (including former Commanders) received a pay increase to the salary unclassified Commanders were receiving. Petitioners seek an equivalent pay increase retroactively.

I would award back pay to all affected Captains beginning June 26, 2016, under Rule IV, § 15.1, which provides that “[a]ny award of back pay shall not extend beyond the three years immediately preceding the employee’s written submission to the Personnel Director.”

I agree with the majority of the Commissioners that attorneys’ fees are not warranted under Civil Service Rule II, § 11.4 or Civil Service Rule II, § 4.21.

New Orleans, Louisiana this 20th day of January, 2023.


CJ MOORE (Jan 15, 2023 10:53 CST)

CLIFTON MOORE, JR., COMMISSIONER