



CITY OF NEW ORLEANS

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DIRECTOR OF PERSONNEL

Monday, April 14, 2025

Brett J. Prendergast
4603 S. Carrollton Avenue
New Orleans, La. 70119

Re: **Lora Johnson VS.
City Council
Docket Number: 9607**

Dear Mr. Prendergast:

Attached is the decision of the City Civil Service Commission in the above-referenced 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 - 4/14/2025 - 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 purple ink that reads "Stacie Joseph".

Stacie Joseph
Management Services Division

cc: Justyn Hawkins
William R. H. Goforth
Jay Ginsberg
Lora Johnson

file

**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**LORA JOHNSON,
Appellant**

Docket No. 9607

v.

**CITY COUNCIL,
Appointing Authority**

DECISION

Appellant, Lora Johnson, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from the City Council's termination of her employment on May 2, 2024. (Exhibits HE-1). At all relevant times, Appellant had permanent status as the Clerk of Council (2013 to 2024) or Deputy Clerk of Council (2006 to 2013). (Tr., Vol. II, at 16). A Hearing Examiner, appointed by the Commission, presided over a hearing on September 9, 2024, and September 20, 2024. 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, all exhibits attached to previously filed motions, the Hearing Examiner's report dated January 22, 2024, and controlling Louisiana law.

For the reasons set forth below, Ms. Johnson's appeal is GRANTED.

I. FACTUAL BACKGROUND

On May 2, 2024, the City Council terminated Ms. Johnson's employment as Clerk of Council for the following reasons:

The termination of your employment is the result of multiple incidents of inappropriate behavior by you towards other employees of the New Orleans City

Council. During the second quarter of 2023, you touched Anita Bernard inappropriately on the back. Between 2016 and 2018, you touched Angela Sarker inappropriately on multiple occasions. You touched Tiffany Domino inappropriately on three occasions while she was working in the Clerk's office from 2015 to 2018, and again on February 14, 2019. Multiple times during the course of Naomi Marks' employment with the New Orleans City Council, she was the subject of inappropriate comments and physical contact by you. It is also alleged that you have intimidated these individuals in various ways, such as using demeaning language towards Angela Sarker and discouraging other departments from hiring Tiffany Domino.

(Ex. HE-1).

Most importantly on April 1, 2024, , just one month prior to her termination, Paul Harang, Chief of Staff for the City Council, gave Ms. Johnson a performance rating of "exceeds expectations." (Ex. Appellant-7). Mr. Harang was the City Council employee who did the investigation as to Ms. Johnson's alleged improper actions dating back to 2015.

A. Sexual harassment investigation

CAO Policy Memorandum 141(R) requires an Appointing Authority that becomes aware of harassment "is obligated to immediately report the allegation of complaint to the alleged harasser's Appointing Authority or initiate an investigation if the alleged harasser works within the same department or agency." (Ex. Appellant-3 at 3). CAO Policy Memorandum 141(R) also requires complainants to complete the sexual harassment complaint form. (Ex. Appellant-3 at 3). The Appointing Authority is required to notify the alleged harasser of the complaint: "The Appointing Authority shall, as soon as practically possible, notify (in-person and in writing (by certified mail) the alleged harasser that he or she has been named in a harassment complaint and that an investigation is being conducted." (Ex. Appellant-3 at 3). "It shall be the city's objective to complete all

investigations within 60 days unless compelling circumstances require additional time.”

(Ex. Appellant-3 at 4).

Mr. Harang performed a sexual harassment investigation following a July 7, 2023, complaint by Anita Bernard who completed the City of New Orleans Sexual Harassment or Discrimination Complaint Form, alleging that “Lora Johnson walk up behind me and ran her fingers up me back.” (Ex. Appellant-2). Mr. Harang is no longer employed by the City of New Orleans, and he did not testify at the hearing of this matter. Mr. Harang failed to notify Ms. Johnson of the complaint or the investigation until December 5, 2023, five months after he started the investigation. (Ex. Appellant-5). Mr. Harang also failed to complete the investigation within 60 days. Only one of the complainants ever completed a sexual harassment complaint form.

A. Complaints of inappropriate behavior

1. Tiffany Domino (2016-2019)

Tiffany Domino testified that Ms. Johnson touched her behind on four separate occasions between 2016 and 2019. (Tr., Vol. I, at 16, 26, 29). On the last occasion, February 14, 2019, Ms. Domino no longer worked in the Clerk of Council’s office. (Tr., Vol. I, at 10, 29). Ms. Domino testified Ms. Johnson touched her behind when she was leaving the kitchen and then apologized in 2016. (Tr., Vol. I, at 20). Ms. Domino testified that about five months later, Ms. Johnson ran her hand down Ms. Domino’s braids and touched her behind. (Tr., Vol. I, at 23). Ms. Domino testified Ms. Johnson put her full palm on Ms. Domino’s behind and again apologized in 2017. (Tr., Vol. I, at 27). Demetrius Barrow testified she witnessed Ms. Johnson grazing Ms. Domino’s behind with her hand in about 2017. (Tr., Vol. I, at 43, 45). On February 14, 2019, when Ms. Domino was in the City Council Chambers, Ms. Domino testified that Ms. Johnson again placed her full palm on her behind. (Tr. at 30).

Following the February 14, 2019, incident, which occurred on a Thursday, Ms. Domino testified she confronted Ms. Johnson in her office the following Monday. (Tr., Vol. I, at 31). Ms. Domino testified Ms. Johnson at first denied the incident. (Tr. at 32). Then, when Ms. Domino informed her of the witness, Ms. Johnson began crying. (Tr. at 32).

Ms. Johnson testified that Ms. Domino came to her office in February 2019, and Ms. Domino informed Ms. Johnson someone was asking Ms. Domino to file a sexual harassment complaint against Ms. Johnson. (Tr., Vol. II, at 18). Ms. Johnson testified Ms. Domino was crying, so she also started crying. (Tr., Vol. II, at 18-19). Ms. Johnson further testified that Ms. Domino told her that she had touched Ms. Domino. Ms. Johnson was unaware she had engaged in any offensive conduct. (Tr., Vol. II, at 19). Even though Ms. Domino no longer reported to Ms. Johnson, Ms. Domino did not complain about the February 14, 2019, incident until she was interviewed more than four years later by Mr. Harang in August of 2023. (Tr., Vol. I, at 33-35). Ms. Domino never submitted a written sexual harassment complaint. (Tr., Vol. I at 35).

2. Naomi Mark (Prior to 2014)

Naomi Mark testified that Ms. Johnson “popped” her on her behind when Ms. Johnson was Deputy Clerk of Council, and Ms. Johnson also regularly used the word “sexy.” (Tr. ,Vol. I, at 61-62). Ms. Mark also testified that Ms. Johnson made comments comparing her own behind to other employees’ behinds. (Tr., Vol. I, at 66).

3. Angela Sarker (2016, 2018)

Angela Sarker testified that Ms. Johnson grazed her behind once in 2016 and once in 2018. (Tr., Vol. I, at 79-80, 82). Ms. Sarker reported these incidents to Mr. Harang when she was complaining to Mr. Harang about how Ms. Johnson talked to her. (Tr. at 84). Ms.

Sarker thought the 2016 incident was an accident, and she was unsure whether the 2018 was also accidental. (Tr. at 81, 91).

4. Anita Bernard (2023)

Anita Bernard testified that Ms. Johnson put her hand on Ms. Bernard's spine, and Ms. Bernard, who does not like to be touched, told her, "Don't do that." (Tr., Vol. I, at 97-103).

II. ANALYSIS

A. Legal Standard for Commission's Review of Discipline

"Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A)." *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). "Legal cause exists whenever an employee's conduct impairs the efficiency of the public service in which the employee is engaged." *Id.* "The Appointing Authority has the burden of proving the impairment." *Id.* (citing La. Const., art. X, § 8(A)). "The appointing authority must prove its case by a preponderance of the evidence." *Id.* "Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the "efficient operation" of the public service." *Id.* "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).

1. The Appointing Authority must show the discipline was commensurate with the infraction

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 disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *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 the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

B. The City Council has failed to carry its burden of showing cause

Whether Ms. Johnson’s sporadic touching of co-workers was intentional or accidental, the Commission finds that the City Council has carried its burden of showing that Ms. Johnson engaged in instances of inappropriate behavior over an 11-year period.

The City Council has failed to carry its burden of showing that the complained-of conduct impaired the efficient operation of the Clerk of Council’s office.. Most importantly, Mr. Harang,

who conducted the investigation as to Ms. Johnson, rated Ms. Johnson as “exceeds expectations” on April 1, 2024, one month before her termination. This job performance evaluation necessarily took into consideration the complaints of inappropriate behavior, all of which allegedly occurred in 2023 or before that year dating back to 2015. (Exhibit 4 to City Council’s Opposition to Motion for Summary Disposition). If the employees in the Clerk of Council’s office were experiencing an abusive environment because of Ms. Johnson’s conduct, how could she have ever received in 2024 right before her termination an “exceeds expectations” review in her management of the office? *Nicholas v. Hous. Auth. of New Orleans*, 477 So. 2d 1187, 1191 (La. App. 1 Cir 1985), *writ denied*, 480 So. 2d 744 (La. 1986) (holding that discipline prior to positive performance evaluation could not form basis for termination). That performance evaluation is compelling evidence leading this Commission to conclude that the City Council failed to carry its legally imposed burden of proving by a preponderance of the evidence that Ms. Johnson’s alleged inappropriate conduct impaired the efficient operation of the Clerk of Council’s office. The City Council never called Mr. Harang as a witness at the hearing in person or by telephone deposition to explain this “exceeds expectations” rating.

The City Council also failed to notify Ms. Johnson as soon as practically possible that she was named in a harassment complaint, as required by CAO Policy Memorandum 141(R). Ms. Johnson failed to receive any notice until the December 5, 2023, email from Paul Harang. (Ex. Appellant-5). Even though CAO Policy Memorandum 141(R) requires that investigations of sexual harassment be concluded within 60 days absent compelling circumstances, the investigation of Ms. Johnson lasted from July 21, 2023, to March 27, 2024. Three of the complainants failed to complete a sexual harassment complaint form, as required by CAO Policy Memorandum 141(R).

As Ms. Johnson argues in her post-hearing brief, the testimony of the individual complainants fail to support the City Council's position that Ms. Johnson's conduct was severe enough to impair the efficient operation of the Clerk of Council's office. The sole employee who filed an official complaint, Ms. Bernard, informed Mr. Harang that Ms. Johnson's touching of her back was not sexual harassment. (Tr., Vol. I, at 101). Ms. Sarker, who testified to incidents in 2016 and 2018, was unsure whether Ms. Johnson accidentally or intentionally touched her behind. (Tr., Vol. I, at 91). Naomi Marks' complaints about inappropriate touching occurred over 10 years before the investigation began.

The remaining witness, Tiffany Domino, was "not a credible witness," according to the hearing examiner, who found her testimony about "old events . . . hyperbolic" and "lacking in detail." Therefore, the Commission credits Ms. Johnson's testimony that Ms. Domino told her in 2019 that someone was soliciting a formal complaint against Ms. Johnson. Ms. Domino failed to complain informally or formally in 2019, even though Ms. Domino no longer reported to Ms. Johnson. Generally, the absence of any complaint over a 10-year period of inappropriate conduct suggests that the conduct was not severe enough to warrant a complaint.

1. In the alternative, the discipline is not commensurate with the violation

Even if the conduct at issue impaired the efficient operation of the Clerk of Council's office, the City Council failed to engage in progressive discipline of a 34-year employee with no prior discipline. *Durning*, 294 So. 3d at 540 ("the Commission disagreed that the NOPD established sufficient aggravating circumstances to warrant termination of an eleven-year veteran for the first-time violation of the rule against use of alcohol while on duty"); *Crayton v. Sewerage & Water Bd. of New Orleans*, 2023-0728 (La. App. 4 Cir. 7/9/24), 398 So. 3d 68, 79 (reducing termination of six-year employee with no prior disciplinary history). In 2020, Mr. Harang stated

in Ms. Johnson’s performance evaluation that “she typifies the position of Clerk of Council for New Orleans, and she excels in the capacity.” (Ex. Appellant-5). In 2016, Ms. Johnson received an evaluation of “outstanding.” (Ex. Appellant-5). “Disciplinary action is taken not only to punish but also to instruct the wayward employee as to appropriate behavior in the workplace.” *Roby v. Dep’t of Fin.*, 496 So. 2d 1096, 1099 (La. App. 4 Cir. 1986). None of the incidents at issue, including the complaints about Ms. Johnson’s statements when supervising employees, was so severe that termination was appropriate, and, overall, the conduct spanning over 10 years was not severe or pervasive. *Faragher v. City of Boca Raton*, 524 U.S. 775, 788, 118 S. Ct. 2275, 2283, 141 L. Ed. 2d 662 (1998) (‘isolated incidents (unless extremely serious) will not amount to discriminatory changes in the “terms and conditions of employment.”’).

Ms. Johnson’s appeal is GRANTED.

The City Council shall reinstate Ms. Johnson with backpay and all emoluments of employment from May 2, 2024, to present.

WRITER:



Mark C. Surprenant (Apr 14, 2025 12:47 CDT)

MARK SURPRENANT, COMMISSIONER

CONCUR:



Brittney Richardson (Apr 14, 2025 10:33 CDT)

BRITTNEY RICHARDSON, CHAIRPERSON



Ruth Davis (Apr 14, 2025 10:50 CDT)

RUTH DAVIS, COMMISSIONER