

JAMES TERRELL

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 7804

James Terrell ("Appellant") is employed by the Department of Police ("Appointing Authority") as a Police Officer I with permanent status. The Appellant received a letter of reprimand for violation of the Appointing Authority's internal regulation concerning Professionalism.

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 April 14, 2011. 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 facts are not in dispute. On November 5, 2009, the Appellant conducted a lawful traffic stop on the 700 block of Canal Street. Among other violations, the operator of the vehicle was playing his car stereo at a very loud volume and was instructed to turn his car stereo down. The Appellant issued the instruction to lower the car stereo volume multiple times, but the vehicle operator refused to comply. The Appellant's supervisor Sgt. Ernest Luster was also on the scene. He instructed the Appellant to issue the vehicle operator a citation for violation of a municipal ordinance regulating the playing of loud music from a vehicle.

The vehicle operator made complaints against the Appellant and Sgt. Luster. All allegations of the complaints were non-sustained against both the Appellant and his supervisor except one violation of the Appointing Authority's internal rule regarding

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professionalism because the Appellant failed to use a sound level meter before issuing a the citation.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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.

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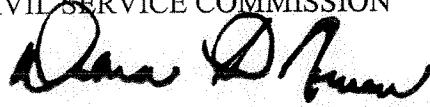
The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. First of all, given that the Appellant was instructed to issue the citation by his supervisor, it would have been insubordinate for him to have refused to do so. Further, the issuance of a citation, while perhaps technically unsustainable given the requirement of a sound meter, was neither unreasonable nor unprofessional. In light of the rude, defiant, and disrespectful behavior exhibited by the vehicle operator, we believe the Appellant's actions were restrained. On this basis we find that the Appellant's actions were not unprofessional. We also find that the Appellant's actions did not impair the efficiency of the department.

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Considering the foregoing, the Appellant's appeal is GRANTED. The Appointing Authority is ordered to remove the letter of reprimand from the Appellant's disciplinary file.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 15TH DAY OF
MARCH, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



DEBRA S. NEVEU, COMMISSIONER

CONCUR:



JOSEPH S. CLARK, COMMISSIONER



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