



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,
CHAIRMAN
JOSEPH S. CLARK
MICHELLE D. CRAIG
EDWARD PAUL COHN
RONALD P. MCCLAIN

MITCHELL J. LANDRIEU
MAYOR

Tuesday, June 03, 2014

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Faye Jackson

Re: **Faye Jackson VS.
New Orleans Public Library
Docket Number: 8114**

Dear Ms. Jackson:

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 - 6/3/2014 - 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 blue ink that reads "Germaine Bartholomew".

Germaine Bartholomew
Chief, Management Services Division

cc: Charles Brown
Gregory Brumfield
Jay Ginsberg
file



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Tuesday, June 03, 2014

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Ms. Faye Jackson

Re: **Faye Jackson VS.
New Orleans Public Library
Docket Number: 8120**

Dear Ms. Jackson:

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 - 6/3/2014 - 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,

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Germaine Bartholomew
Chief, Management Services Division

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FAYE JACKSON

CIVIL SERVICE COMMISSION

VS.

CITY OF NEW ORLEANS

NEW ORLEANS PUBLIC LIBRARY NOS. 8114 & 8120

The Appointing Authority employs the Appellant as a maintenance employee with permanent status whose primary responsibility is to perform cleaning functions at the Latter Library. The Appointing Authority suspended the Appellant for ten days after determining that she made inappropriate remarks promoting religion at the workplace and that she made statements that alarmed other employees regarding attending church.

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 May 9, 2013. 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.

Missy Abbott, the manager of the Latter Library, testified that the Appellant made insensitive remarks regarding religion in front of patrons. Specifically, Ms. Abbott stated that on December 12, 2012, she heard the Appellant engaged in a conversation with a library visitor, who she assumed was the Appellant's friend, about the celebration of Christmas. At some point in the conversation, the visitor mentioned the Jewish holiday of Hanukah. Apparently the Appellant had never heard of Hanukah and knew nothing about the Jewish religion. When informed that Jews do not accept Jesus as their savior, the Appellant was mystified and, according to Ms. Abbott, began speaking in a loud voice that she had never heard of anyone not believing in Jesus and that she did not understand. Ms. Abbott stated that a patron named Mr. Cohen was nearby and she

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assumed from his name that he was Jewish. Mr. Cohen did not complain, but Ms. Abbott stated that she was embarrassed by the Appellant's conduct. Ms. Abbott counseled the Appellant to not discuss such matters in a public library because religion is personal and not appropriate conversation by public employees in a public place. Nevertheless, according to Ms. Abbott, the Appellant became obsessed with Jews not believing in Jesus and would not stop talking about it.

The Appellant also sent an email reminding co-employees that Jesus was the reason for Christmas. The Appointing Authority deemed the email inappropriate. The Appellant further stated to co-workers that she goes to Church every day to keep from hurting people. The context of the statement is unknown.

The Appellant testified that she did not intend to demean anyone and that she was just asking questions about something that she did not understand. She stated that she was not a violent person and that while she made the statement about going to church every day and doing so to keep from hurting people, she could not remember why she said it or what she was trying to communicate. Apparently, the Appellant has no history of violence, and is generally positively perceived.

LEGAL PRECEPTS

An employer cannot subject an employee who has gained permanent status in the classified city civil service to disciplinary action 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 of New Orleans 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 make an independent judgment, based on 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

We will defer to the Hearing Examiner's observations regarding the demeanor of the Appellant and the impact of her behavior on the efficient operation of the department. The Hearing Examiner did not perceive the Appellant's comments as anti-Semitic and credited her testimony. He concluded that the Appellant was clearly unsophisticated as to the beliefs of others and that her comments reflected her simple, and perhaps limited, view of the world. According to the Hearing Examiner, the Appellant's remarks, while

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inappropriate in a library setting were not intended to offend. As such, counseling was appropriate to correct the behavior.

Regarding the email, and the continuing questioning after counseling, the Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for cause. The Appellant clearly failed to listen to her supervisor and persisted in engaging in religious discussions at the workplace after being instructed to cease such behavior.

Finally, the Hearing Examiner concluded that the Appellant's statements regarding attending church were not intended to intimidate anyone and that the Appointing Authority overreacted to a stray misplaced comment taken out of context.

Considering the foregoing, the Appellant's appeal is GRANTED in part and DENIED in part. The Appellant's suspension is reduced to two days, and the Appointing

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Authority is ordered to return to the Appellant eight days of back pay and emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 3rd DAY OF June, 2014.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


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

CONCUR:


EDWARD P. COHN, COMMISSIONER


MICHELLE D. CRAIG, COMMISSIONER