

KIMBERLY HUNT

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

DOCKET NO. 7713

The Department of Police ("Appointing Authority") employs Kimberly Hunt ("Appellant") as a Police Sergeant with permanent status. The Appellant was first hired on July 9, 2006, and was promoted to her current class on February 22, 2008. The Appointing Authority suspended the Appellant for two days after its investigation determined that the Appellant violated internal rules regarding Professional (one day), and Courtesy (one day). According to the February 25, 2010 disciplinary letter:

This investigation determined that on Friday July 17, 2009 at approximately 3:30 p.m., during a traffic stop of a citizen, you conducted yourself in a discourteous and unprofessional manner when you snatched a citizen's vehicle documents (license, insurance and registration) from his hand that you requested. Witnesses observed you snatch the documents from the hand of the citizen as well as observed and heard you scream at the citizen...

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 20, 2010. 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.

RELEVANT FACTS

This appeal, and the underlying disciplinary action, arise out of a traffic stop of a citizen, Jacques Morial, conducted by Appellant. As Appellant explains it, Mr. Morial's vehicle made a sudden u-turn and, without yielding, turned in front of Appellant causing her to swerve her marked police car to avoid a collision. R. at p. 6, Ins. 8-23. The

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investigating officer concluded that the traffic stop was justified. R. at p. 39, Ins. 12-16. And, Mr. Morial purportedly acknowledged that he “pulled out in front of [Appellant] and almost killed her.” R. at p. 55, Ins. 21-24. Thus, the fact of a relatively serious traffic violation is uncontroverted.

At issue in the disciplinary letter is Appellant’s conduct in the course of the traffic stop. In essence, the Appellant was disciplined for “snatching” documents from, and screaming at, Mr. Morial. As Appellant explains it, she initiated the stop with her overhead lights and the public address system. She was alone in her vehicle, and observed the citizen’s driving to be “erratic,” R. at p. 12, Ins. 21-24. She also questioned whether the driver could be under the influence of something. Id

Appellant approached Mr. Morial’s car, and requested his driver’s license, registration, and insurance. She admittedly was firm with Mr. Morial, admonishing him for the potential injury he could have caused. R. at p. 7, Ins. 20-24. She acknowledges she was probably angry and excited. R. at p. 14, Ins 4-6. She “was very pointed” with the driver. R. at p. 18, ln. 2. She went into a “defensive mode because [she] didn’t know what the state of mind the driver could have been.” R. at p. 12, ln. 25 – p. 13, ln. 3. She sought to make the “violation aware of the ramifications of [his] actions . . . ,” R. at p. 15, Ins. 4-8, and to make him understand “failing to yield could have caused a catastrophic event. R. at p. 15, Ins. 23-25. Appellant denies “snatching” the documents and recalls that the driver “gave” or “handed” her the documents. R. at p. 12, Ins. 9-12.

After this exchange, Appellant noted the driver’s last name and realized he possibly was a member of the Morial family. Appellant testified that this affiliation was not relevant to her. R. at p. 7. ln. 20 – p. 8, ln. 24. Appellant returned to her car, where

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she became calmer and “deescalated.” R. at p. 18, lns. 6-12. She issued a citation to Mr. Morial and explained why he was being cited. She then went home. R. at p. 10, lns. 11-22. Appellant characterizes her behavior throughout this incident as professional and courteous. R. at p. 21, lns. 3-6. She denies snatching the document from Mr. Morial, or screaming at him. R. at p. 71, ln. 12 – p. 72, ln. 6.

The Witnesses

There were four witnesses to the incident. Two witnesses were employees of WBOK radio station, who partially observed the incident because it occurred outside of their office building, to which Mr. Morial was en route when he was stopped. Two witnesses were husband and wife, who partially observed the incident from their house, which is in the proximity of WBOK.

The WBOK witnesses cannot be considered independent because they knew Mr. Morial. Sergeant Wharton, who investigated on behalf of the public integrity division, acknowledged this determination. R. at p. 30, lns. 16-24. Further, prior to giving statements, the WBOK witnesses and Mr. Morial discussed the incident among themselves, R. at p. 24, lns. 12-24; p. 55, ln. 1 – p. 57, ln. 19; p. 65, lns. 8-23, which risks tainting their respective recollections. Notwithstanding the above, the Commission must include the testimony of the WBOK witnesses in the evidentiary mix. Mr. Gerod Stevens “couldn’t tell what was being said” and “could not hear the entire conversation” but he observed Appellant’s “excited” demeanor.” R. at p. 29, lns. 16 – 22; p. 50, lns. 15-19. He criticizes Appellant’s use of the public address system, R. at p. 30, lns. 1-3; but, that is not a basis of the disciplinary action and thus irrelevant. . Mr. Stevens admits that he did not hear Appellant screaming at Mr. Morial. R. at p. 58, ln. 24 – p. 59, ln. 6. He

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states that Appellant “snatched” and “grabbed” the documents, R. at p. 51, lns. 14-17, which is language that mirrors that of Mr. Morial, R. at p. 27, lns. 10-12, with whom he discussed the incident prior to testifying. He deemed Appellant’s conduct unprofessional because he observed her point her finger at Mr. Morial. R. at p. 53, lns. 13-18, and because she “snatched” documents. R. at p. 53, ln. 22 – p. 54, ln. 1.

The “independent,” or third-party, witnesses did not observe the traffic violation, but one of them characterized Mr. Morial’s conduct as “wrong” because he initially failed to roll down his window as the Appellant approached it. R. at p. 32, lns. 12-19. This witness observed an “excited” demeanor by Appellant that “was a little exaggerated” because of the traffic incident that had just occurred. R. at p. 33, lns. 3-6. The witness stated that Appellant’s demeanor was not unprofessional, though Appellant did “scream” right after she stopped Mr. Morial. R. at p. 46, lns. 7-17. And, while Sergeant Wharton initially recalled this witness as testifying to the “snatching,” a closer inspection of the record by Sergeant Wharton failed to locate any testimony by an independent witness confirming “snatching.” R. at p. 42, lns. 1-5.

The Underlying Investigation

It is noteworthy that the underlying investigation departed from “normal” in three visible ways. First, Sergeant Wharton could not recall “ever having respond[ed] immediately to a complaint of that nature [professionalism/traffic ticket], as expediently as [he] did.” R. at p. 37, ln. 3 – p. 38, ln. 1. Sergeant Wharton responded in less than an hour, and Chief Adams was already there (at WBOK) when Sergeant Wharton arrived. R. at p. 38, lns. 5-17. This was likewise unusual for the Chief. *Id.* Second, the fact that Appellant was relieved of her take home car after writing a traffic citation appears to have been extreme. Deputy Supt. Adams could not recall any similar situations. R. at p.

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45, Ins. 2-20. Third, the interview protocol appears to have deviated from the norm; Sgt. Wharton could not explain why Deputy Supt. Adams was already present informally discussing the complaint with the complainant and his witnesses before they were separated to give formal statements. R. at p. 25, Ins. 3 – 22.

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 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

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established, they need not be established beyond a reasonable doubt. Id.

CONCLUSION

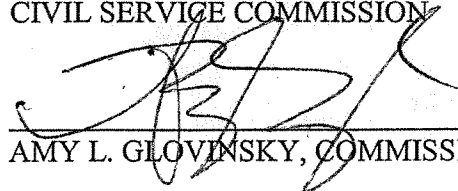
The Appellant credibly testified that she conducted a traffic stop after another vehicle pulled in front of her almost causing an accident. With regard to the screaming, the Appellant's reaction appears reasonable, perhaps even measured, under the circumstances and the gravity of the potential harm. There is no credible witness testimony to establish that Appellant "snatched" the documents. Moreover, the distinction between "snatching" and taking is minimal and cannot, under the circumstances of this incident and witness testimony, be considered sufficient grounds for discipline. Finally, and perhaps most importantly, this record strongly suggests the departure from ordinary procedure in response to the identity and political connectedness of the complainant. This Commission takes seriously its obligation to protect against unfair discipline that derives from improper, political influence, and to establish and maintain a system of employment that is objective, fair, and predictable in its application of disciplinary measures.

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The Appointing Authority has failed to establish by a preponderance of evidence that it disciplined the Appellant for cause. Considering the foregoing, the Appellant's appeal is GRANTED, and the Appointing Authority is ordered to return to the Appellant two days of back pay and all emoluments of employment.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 14TH DAY OF
FEBRUARY 2012.

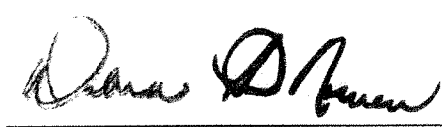
CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



AMY L. GLOVINSKY, COMMISSIONER

CONCUR:



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

DEBRA S. NEVEU, COMMISSIONER