



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J.,  
CHAIRMAN  
DEBRA S. NEVEU  
AMY L. GLOVINSKY  
JOSEPH S. CLARK

LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Friday, April 26, 2013

Mr. Eric Hessler  
PANO 2802 Tulane Avenue #101  
New Orleans, LA 70119

Re: **Nathan Phillips VS.  
Department of Police  
Docket Number: 7965**

Dear Mr. Hessler:

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 - 4/26/2013 - 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: Ronal Serpas  
Victor Papai  
Jay Ginsberg

**NATHANIEL PHILLIPS**

**CIVIL SERVICE COMMISSION**

**VERSUS**

**CITY OF NEW ORLEANS**

**DEPARTMENT OF POLICE**

**NO. 7965**

Nathaniel Phillips (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a three day suspension for violation of the Appointing Authority’s internal regulation concerning Neglect of Duty. Specifically, the Appointing Authority determined that the Appellant failed to arrest a subject for simple battery after receiving instructions from a supervisor to do so. Instead, he released the subject.

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 31, 2012. 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.

Sgt. Hudson Cutno testified that he was the Assistant Bourbon Street Commander during the New Year’s Eve celebration on Bourbon Street on December 31, 2011. At approximately 1:00 am, Sgt. Hudson arrived at the 200 block of Bourbon Street, where several police officers were handling an incident in front of a lingerie shop. Sgt. Hudson stated that he spoke to the lingerie shop clerk, who informed him that certain subjects were involved in a fight. Sgt. Hudson instructed the Appellant to prepare an affidavit and arrest a third subject who was identified by the store clerk as a participant in the altercation involving two other parties who were brawling in the store and on the street. Sgt. Cutno later learned that the Appellant released the third subject instead of arresting

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him as instructed. As related by Sgt. Cutno, the Appellant informed him that he released the third subject because he did not do anything to justify his arrest.

Police Officers Theresa Morris and Michael Brooks confirmed that Sgt. Cutno instructed the Appellant to prepare the arrest affidavit. They further testified that the Appellant informed them that he was not going to prepare an affidavit and that they could do it if they wanted. Because no affidavit was prepared by the Appellant, the third subject was released.

The Appellant did not testify.

#### LEGAL PRECEPTS

An employer cannot discipline an employee who has gained permanent status in the classified city civil service 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, 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

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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

The Appointing Authority has established by a preponderance of evidence that it disciplined the Appellant for just cause. He released a subject that his superior officer instructed him to arrest. If the Appellant had reason to believe that arrest was not justified, he should have discussed it with Sgt. Cutno before taking unilateral action.

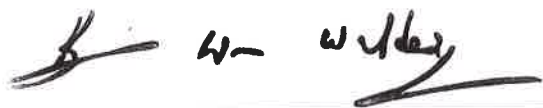
Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF APRIL,  
2013.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION

  
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JOSEPH S. CLARK, COMMISSIONER

CONCUR:

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

  
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AMY L. GLOVINSKY, COMMISSIONER