



MITCHELL J. LANDRIEU  
MAYOR

# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
ROOM 7W03 CITY HALL  
NEW ORLEANS LA 70112  
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## CITY CIVIL SERVICE COMMISSION

REV. KEVIN W. WILDES, S.J., PHD,  
CHAIRMAN  
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LISA M. HUDSON  
DIRECTOR OF PERSONNEL

Tuesday, January 15, 2013

Mr. Jeffrey Cross

Re: **Jeffrey Cross VS.**  
**Department of Parks & Parkways**  
**Docket Number: 7696**

Dear Mr. Cross:

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 - 1/15/2013 - filed in the Office of the Civil Service Commission in Room 7W03, City Hall, 1300 Perdido Street, 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 cursive script, reading "Germaine Bartholomew".

Germaine Bartholomew  
Chief, Management Services Division

cc: Ann McDonald  
Victor Papai  
Jay Ginsberg  
file

JEFFERY CROSS

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF PARKS  
AND PARKWAYS

DOCKET NO. 7696

The Appellant is employed as a Groundskeeper II with permanent status. The Appointing Authority suspended the Appellant for three hours by letter dated October 7, 2009, for insubordination towards his supervisor.

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 February 11, 2010. 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 Appellant is employed to maintain the City's neutral grounds. He mows grass and performs other lawn maintenance responsibilities. Michael D'Anastasio, Section Manager, is the Appellant's supervisor. Mr. D'Anastasio stated that he approached the Appellant to discuss performance issues. The Appellant was on his lunch break and informed his supervisor that he did not want to be bothered while he was on his break. Mr. D'Anastasio described the Appellant as angry. He also stated that the Appellant called him a liar. Mr. D'Anastasio dismissed the Appellant for the rest of his shift resulting in a three hours suspension.

The Appellant admitted that he did not want to talk to his supervisor, and that he felt that he had the right to be left alone during his break. He denied acting in an abusive manner.

### 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 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

Mr. D'Anastasio's testimony was credible, and he acted reasonably.  
Considering the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 15th DAY OF  
JANUARY, 2013.

CITY OF NEW ORLEANS  
CIVIL SERVICE COMMISSION



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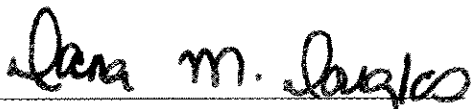
DEBRA S. NEVEU, COMMISSIONER

CONCUR:



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JOSEPH S. CLARK, COMMISSIONER



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DANA M. DOUGLAS, VICE-CHAIRMAN