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MAYOR

# CITY OF NEW ORLEANS

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CITY CIVIL SERVICE COMMISSION

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Tuesday, October 25, 2016

Mr. Leonard Bowman

Re: **Leonard Bowman VS.  
Sewerage & Water Board  
Docket Number: 8541**

Dear Mr. Bowman:

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 - 10/25/2016 - 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 must conform to the deadlines established by the Commission's Rules and Article X, Sec.12(B) of the Louisiana Constitution. Further, any 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 "Doddie K. Smith".

Doddie K. Smith  
Chief, Management Services Division

cc: Cedric S. Grant  
George R. Simno III  
Brendan M. Greene  
file

**CIVIL SERVICE COMMISSION**

**CITY OF NEW ORLEANS**

LEONARD BOWMAN	
vs.	DOCKET Nos.: 8541
SEWERAGE & WATER BOARD	

**I. INTRODUCTION**

Appellant, Leonard Bowman, brings the instant appeal pursuant to Article X, §8(A) of the Louisiana Constitution and this Commission’s Rule II, §4.1. The Appointing Authority, the Sewerage and Water Board for City of New Orleans, (hereinafter “S&WB”) does not allege that the instant appeal is procedurally deficient. Therefore, the Commission’s analysis will be limited to whether or not the S&WB disciplined Appellant for sufficient cause. At all times relevant to the instant appeal, Appellant served as a Water Purification Operator I for the S&WB and had permanent status as a classified employee.

**II. FACTUAL BACKGROUND**

**A. Alleged Misconduct**

The S&WB suspended Appellant for three days effective Monday, May 9, 2016 due to allegations that Appellant failed to adequately perform his duties on March 22, 2016. (H.E. Exh. 1). Specifically, the S&WB alleged that Appellant did not collect and analyze water samples during a period of time when the facility at which Appellant worked lost power. *Id.* The S&WB further alleged that Appellant had received training and instructions on how to collect samples in the event of a power outage. Because no S&WB employee collected and analyzed samples for

an approximately six-hour time period on March 22, 2016, the Louisiana Department of Health and Hospitals found the S&WB to be in violation of state and federal regulations.

**B. Appellant's Duties with S&WB**

Chad Lavoie, the Acting Water Purification Superintendent for the S&WB, oversaw the operations of the S&WB's two water purification plants. These plants take in water from the Mississippi River and run it through a series of filters and treatments that render the river water potable. (Tr. at 9:4-20). Mr. Lavoie testified that both state and federal regulations governed the operation and monitoring of water purification/filtration facilities like the ones operated by the S&WB.

While the Parties did not agree as to how long Appellant had been working for the S&WB, it is clear that he has spent more than fifteen years as an employee of the S&WB. On March 22, 2016, Appellant served as a Water Purification Operator I (hereinafter Operator I). As an Operator I, Appellant's primary job duty was to monitor the performance of the water filters located within the Sycamore Filter Gallery. *Id.* at 12:12-15. While the S&WB usually operates equipment that continuously monitors the filters' performance, Operators Is, like Appellant, pull water samples from various spigots throughout the filter gallery and analyze the samples using "bench top" equipment to verify the readings of the continuously operating equipment. *Id.* at 13-14.

At issue in the matter now before us were two types of analyses that state and federal regulations require. The first was "filter effluent turbidities." In laymen's terms, an operator performing an analysis on "filter effluent turbidities" can determine how cloudy the water coming out of the filters is and monitor how much suspended substances remain in the water after filtration. *Id.* at 13:15-21. This analysis must be performed on individual filters as well as

the combined output of the whole filter gallery. The other type of analysis is known as “combined effluent chlorine residual.” The purpose of this analysis is to determine how much of the chemical disinfectants used to treat the Mississippi water filtered through the facility remains in the end product. State and federal regulations govern how often a municipality must perform the above analyses. *See id.* at 26:24-27:3. The S&WB has developed a set of operating procedures that codify the regulations in S&WB policy. (S&WB Exh. 2). According to Mr. Lavoie and Elizabeth Jones (a water purification operator IV) supervisors distributed these operating procedures to operators within the Sycamore facility on or about 2010. (Tr. at 76:1-16). Within those procedures are requirements regarding the testing and monitoring of filters when the power to automated testing is inoperable:

- Please be aware that individual filter effluent turbidity, combined filter effluent turbidity, and clear well disinfectant residual concentration must always be monitored whenever the process is operational. In the event that the continuous monitoring instrument is not functioning properly, manual sample collection and analysis ***must*** be substituted at the time intervals required by State regulatory standards.
- If there is a failure in the continuous turbidity monitoring equipment [for combined filter effluents], the system ***shall*** conduct grab sampling every two (2) hours in lieu of continuous monitoring, but for not more than five working days following the failure of the equipment.
- If there is a failure in the continuous turbidity monitoring equipment [for individual filter effluents], the system ***shall*** conduct grab sampling every four (4) hours in lieu of continuous monitoring, but for not more than five working days following the failure of the equipment.
- If there is a failure in the continuous disinfectant residual monitoring equipment [for combined filter effluents], the system ***shall*** conduct grab sampling every two (2) hours in lieu of continuous monitoring, but for not more than five working days following the failure of the equipment.

S&WB Exh. 2 (emphasis added). Appellant could not recall receiving this policy, but did not deny the possibility that his supervisors had distributed it.

In order to collect manual grab samples, an Operator must walk down a series of steps to the “basement” level of the Sycamore facility. The Operator would then lower a plastic bottle through a manhole into water that had passed through the gravity-fed filter system. Because none of the automated or bench-top testing equipment had electricity on March 22nd between the hours of 9:00 and 1:00, Operators would have had to bring the samples to a building adjacent to the filter gallery in order to analyze the sample. Both Appellant and Raymond Stokes (Operator I called by Appellant) testified that they had not received training on the collection of manual grab samples. (Tr. at 128:7-13). Ms. Carol Carrie, another Operator I assigned to the Sycamore Filter Gallery testified that she was familiar with the manual collection of samples but did not receive any instructions on such collection on March 22nd.

### **C. March 22, 2016**

The Parties agree that on March 22, 2016 the Sycamore Filter Gallery lost power as a result of what was originally thought to be routine maintenance. At approximately 8:30 a.m. on March 22, 2016, Timothy Hood, a Networks Maintenance Technician spoke with the Operator Is and IIs at the Sycamore facility and notified them that the S&WB had scheduled maintenance on the gallery’s electric system. Mr. Hood estimated that the facility would be without power for approximately one hour. The Operators had already taken scheduled samples and performed the required analysis in accordance with the schedule, so there was little concern that the electric work would impair the Operators’ monitoring duties. However, Mr. Hood was unable to restore power to the facility within the time he originally quoted. In fact, it was not until approximately 1:00 p.m. that Mr. Hood was able to restore the power.

During the period of time when the power was out at the Sycamore Filter Gallery there were two Operator Is on duty (Appellant and Mr. Starks) and two Operator IIs, (Dwight Forrest

and Lawrence Brue). None of the Operators collected samples during the four-hour period when the power was out at the Sycamore facility. Appellant testified that he believed that the only action required of the Operators was to note that the electricity was out. He based at least part of this understanding on the conduct of the two Operator IIs. Mr. Forrest testified that he directed the Operator Is to note that the electricity was out, but did not provide any further instructions regarding the manual collection and analysis of grab samples. (Tr. at 23:14-20).

As a result of the four-hour window during which the S&WB failed to record the performance of the filters at the Sycamore Filter Gallery, the Louisiana Department of Health and Hospitals found the S&WB to be out of compliance with state regulations and required the S&WB to issue a public notice to approximately 140,000 customers. This notice informed customers that the S&WB's water quality monitoring failed to meet state requirements.

### III. LEGAL STANDARD

Appointing authorities may discipline permanent employees in the classified service provided that there is sufficient cause for such discipline. La. Con. Art. X, § 8(A). If an employee believes that his/her discipline was issued without sufficient cause, he/she may bring an appeal before this Commission. *Id.* It is well-settled that, in an appeal before the Commission pursuant to Article X, § 8(A) of the Louisiana Constitution, an Appointing Authority has the burden of proving, by a preponderance of the evidence; 1) the occurrence of the complained of activity, and 2) that the conduct complained of impaired the efficiency of the public service in which the appointing authority is engaged. *Gast v. Dep't of Police*, 2013-0781 (La. App. 4 Cir. 3/13/14), 137 So. 3d 731, 733 (La. Ct. App. 2014)(quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094 (La. Ct. App. 2007)). If the Commission finds that an appointing authority has met its initial burden and had sufficient cause

to issue discipline, it must then determine if that discipline “was commensurate with the infraction.” *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15, 7); 165 So.3d 191, 197 (citing *Walters v. Dep't of Police of City of New Orleans*, 454 So.2d 106, 113 (La. 1984)). Thus, the analysis has three distinct steps with the appointing authority bearing the burden of proof at each step.

#### IV. ANALYSIS

##### A. Occurrence of the Complained of Activities

The S&WB based its decision to issue Appellant a three-day suspension upon Appellant’s failure to manually collect grab samples on March 22, 2016 during the time when the Sycamore Filter Gallery lost power. Appellant defended his actions by claiming that, 1) he was not aware of the requirement to collect manual samples during a power outage, 2) he was not trained to take manual samples, and 3) his supervisors failed to provide him any guidance. The S&WB challenged Appellant’s assertions by pointing out that Appellant failed to ask any of his supervisors what the proper process was when the monitoring equipment lost power.

The Commission is concerned about the role of the Operator IIs at the Sycamore facility on March 22nd. Both Operator IIs were apparently aware that the electricity was not functioning at the Sycamore facility, but failed to provide any guidance to the Operator Is whom they supervised. Ultimately, all of the Operators present at the Sycamore facility on March 22nd bear responsibility for adhering to the requirements established by S&WB policy and state regulations. Appellant’s assumption that he could simply indicate that the testing equipment was offline and be in compliance with policy and regulations is not reasonable in light of the essential nature of the facility in which he worked. Based upon the above, the Commission finds that the



S&WB established that Appellant violated S&WB policy and state regulations when he failed to manually take samples and have those samples analyzed.

**B. Impairment of Efficient Operation of Appointing Authority**

Appellant's failure to follow S&WB's policy with respect to the manual collection of water samples unquestionably impacted the efficient operations of the S&WB. As a preliminary matter, the primary responsibility of the water purification operators within the Sycamore Filter Gallery is to monitor the functioning of the facility to ensure that the water flowing from the gallery to the people of New Orleans is safe. Citizens rely upon attentive and dedicated S&WB personnel every time they turn their taps. For a four-hour period on March 22nd, the S&WB could not guarantee its customers that the drinking water coming from the Sycamore filter gallery met safety standards. Appellant's actions also resulted in a mandate from the Louisiana Department of Health and Hospitals that required a notice to 140,000 customers. It is more likely than not that such a notice diminished the S&WB's image and compromised the general public's trust in this essential piece of infrastructure. Based upon the above findings, the S&WB has established that Appellant's actions compromised the efficient operation of the S&WB.

**C. Discipline Commensurate with Offense**

In conducting its analysis of the final stage, the Commission must determine if the Appellant's discipline was "commensurate with the dereliction;" otherwise, the discipline would be "arbitrary and capricious." *Waguespack v. Dep't of Police*, 2012-1691 (La. App. 4 Cir. 6/26/13, 5); 119 So.3d 976, 978 (citing *Staehle v. Dept. of Police*, 98-0216 (La. App. 4 Cir. 11/18/98), 723 So.2d 1031, 1033).

The S&WB acknowledged that Appellant was a reliable employee but emphasized the serious nature of his misconduct in its justification for the three-day suspension. The



Commission recognizes that the health and safety of New Orleans's drinking water depends upon strict adherence to the state and federal guidelines embodied in the S&WB's standard procedures. The electrical work at the Sycamore filter gallery on March 22, 2016 was scheduled well in advance and none of the Operators should have been surprised that the monitoring equipment was off line longer than anticipated. The entire team should have discussed a contingency plan and reviewed the proper steps for taking manual samples. While Appellant bears a portion of the blame for the failures of March 22nd, he is by no means alone.

We find that the three-day suspension was commensurate with the serious nature of Appellant's misconduct, but stress that Appellant's supervisors should have been far more active in planning for the loss of power.

#### **V. CONCLUSION**

As a result of the above findings of fact and law, the Commission hereby DENIES the Appellant's appeal.

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**Signatures appear on the following page.**


L. Bowman  
Nos. 8541

Judgment rendered this 24th day of October, 2016.

CITY OF NEW ORLEANS CIVIL SERVICE COMMISSION

  
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MICHELLE D. CRAIG, CHAIRPERSON

10/24/2016  
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DATE

  
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RONALD P. McCLAIN, VICE-CHAIRMAN

10/24/16  
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DATE

  
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JOSEPH CLARK, COMMISSIONER

Oct. 24, 2016  
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DATE