



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
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CITY CIVIL SERVICE COMMISSION
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AMY TREPAGNIER
DIRECTOR OF PERSONNEL

Monday, August 25, 2025

Mr. Zachary Shepherd
2540 Severn Ave., Suite 400
Metairie, LA 70002

Re: **Michael Murphy VS.**
Department of Fire
Docket Number: 9697

Dear Mr. Shepherd:

Attached is the decision of the City Civil Service Commission in the above referenced 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 - 8/25/2025 - filed in the Office of the Civil Service Commission at 1340 Poydras St. Suite 900, Orleans Tower, 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, 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: Roman Nelson
Elizabeth A Weigand
Bruce Hamilton
Michael Murphy

file



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**CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS**

**MICHAEL MURPHY,
Appellant**

Docket Nos. 9697, 9698

v.

**DEPARTMENT OF FIRE,
Appointing Authority**

DECISION

Appellant, Operator Michael Murphy, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from a 12 hour suspension communicated by letter dated January 28, 2025, and a 24-hour suspension communicated by a second letter dated January 28, 2025. (Exhibits HE-1, HE-2). At all relevant times, Appellant had permanent status as a Fire Apparatus Operator. A Hearing Examiner, appointed by the Commission, presided over a hearing on April 10, 2025. At this hearing, both parties had an opportunity to call witnesses and present evidence.

The undersigned Commissioners have reviewed and analyzed the entire record in this matter, including the transcript from the hearing, all exhibits submitted at the hearing, the post-hearing briefs of the parties, the Hearing Examiner's report dated June 16, 2025, and controlling Louisiana law.

For the reasons set forth below, Operator Murphy's appeal is DENIED.

I. PERTINENT FACTUAL BACKGROUND

Operator Michael Murphy drove Fire Engine 14 without a seatbelt on December 2, 2024, and December 11, 2024, in violation of applicable law and NOFD policy. (Tr. at 11-12, 16; Ex. NOFD-5). The NOFD Samsara video monitoring system recorded the seatbelt infractions and

alerted Captain Jason Dufrene. (Tr. at 76). Samara uses artificial intelligence to monitor drivers for unsafe driving, including a failure to use a seatbelt while the vehicle is in motion. (Tr. at 76).

Deputy Chief Larry White instructed the District Chief to instruct Captain Wiltz to charge Operator Murphy with a violation of the seatbelt policy. (Tr. at 33). Captain Wiltz charged Operator Murphy on December 20, 2024, with violating the seatbelt policy, RR-55. (Exs. NOFD-1, NOFD-2). Operator Murphy prepared a special report about the seatbelt infraction, which District Chiefs Ashburn and Kuruda required him to rewrite several times. (Tr. at 94-95). Operator Murphy appeared at a pre-disciplinary hearing before a panel of Deputy Chief White and two District Chiefs on January 16, 2025. (Ex. NOPD-3).

Operator Murphy received no written Notice of Investigation, Notice of Interrogation, or Notice of Pre-Disciplinary Hearing. (Tr. at 22-24).

NOFD suspended Operator Murphy for 12 hours for the December 2 offense, the minimum penalty for the offense under NOFD policy. (Tr. at 44). NOFD suspended Operator Murphy for 24 hours for the second offense on December 11, the minimum penalty for a second offense. (Tr. at 44).

II. ANALYSIS

A. NOFD Complied with the Firefighter Bill of Rights

As a threshold issue, New Orleans Fire Department's discipline of Operator Murphy must comply with the Firefighter Bill of Rights, La. R.S. 33:2181 *et seq.* The Firefighter Bill of Rights applies to a "fire employee," defined as "any person employed in the fire department of any municipality . . . under investigation with a view to possible disciplinary action, demotion, or dismissal." La. R.S. § 33:2181(A)(1). Any discipline imposed without strict compliance with the

minimum standards is an absolute nullity. La. R.S. § 33:2181(C). The Firefighter Bill of Rights contains notice provisions for investigations and interrogations:

B. Whenever a fire employee is under investigation, the following minimum standards shall apply:

(1) Prior to commencing a formal investigation of a fire employee, the appointing authority shall notify the employee in writing of the nature of the investigation, of the identity and authority of the person conducting such investigation, and of the specific charges or violations being investigated.

(2) The fire employee being investigated shall be informed in writing at the commencement of any interrogation of the nature of the investigation, of the identity and authority of the person conducting such investigation, of the identity of all persons present during such interrogation, and of the specific charges or violations being investigated. The fire employee shall be allowed to make notes.

La. R.S. 33:2181(B). An interrogation is “any formal interview, inquiry, or questioning of any fire employee by the appointing authority or the appointing authority's designee regarding misconduct, allegations of misconduct, or policy violation.” La. R.S. 33:2181(A)(2).

Operator Murphy has taken the position that the discipline is an absolute nullity because NOFD commenced a formal investigation without providing the notice required by the Firefighter Bill of Rights. Specifically, Operator Murphy argues that the investigation began when Deputy Chief White told his District Chief to instruct Captain Wiltz to charge Operator Murphy for the seatbelt violations. (Appellant’s Post-Hearing Memorandum at 3). Operator Murphy also argues that NOFD interrogated him at his disciplinary hearing without complying with the notice provisions of the Firefighter Bill of Rights. (Appellant’s Post-Hearing Memorandum at 4).

NOFD has taken the position that no formal investigation ever occurred because NOFD was in possession of conclusive video evidence from the outset, and all inquiries to Operator Murphy were conducted by his direct supervisor. (Tr. at 54-56; Exs. NOFD-6, NOFD-7).

1. NOFD never conducted a formal investigation

This appeal presents a novel question about when NOFD's reliance on an electronic monitoring system rises to the level of an investigation and more generally if a firefighter can ever be disciplined without a formal investigation. The undersigned Commissioners find that no formal investigation ever occurred because NOFD was in possession of conclusive evidence after Captain Dufrene received an alert from the Samsara system and reviewed the video related to the offenses on December 2 and December 11. (Tr. at 79-80; Exs. NOFD-6, NOFD-7). The video evidence was gathered electronically without regard to the identity of the operator driving Engine 14. Captain Dufrene testified that all the vehicles have an alert system for seatbelt violations, so NOFD was not investigating Operator Murphy in particular in December of 2024. (Tr. at 79-80). *See Bracey v. City of Alexandria*, 2011-621 (La. App. 3 Cir. 2/1/12), 84 So. 3d 669, 671 (holding that investigation began when Fire Chief began video surveillance on Bracey). Captain Dufrene's routine review of photos or videos from an electronic monitoring system does not rise to the level of a formal investigation.

Under the circumstances of this appeal, where the misconduct was established upon receipt of routine electronic evidence and no witnesses were interviewed or required to submit special reports, NOFD performed no formal investigation. The charge, Operator Murphy's special report, and the pre-disciplinary hearing were procedures provided solely for the benefit of Operator Murphy.

This appeal is distinguishable from recent decisions of the Commission ruling that NOFD violated the Firefighter Bill of Rights. Unlike the situation in *Bruner v. Dep't of Fire*, No. 9638

(Civil Service Comm'n 5/8/2025) ¹, *appeal filed*, no NOFD Deputy Chief specifically requested video evidence from another city department about Operator Murphy following a complaint. In *Adams v. Dep't of Fire*, No. 9608 at p. 3 (Civil Service Comm'n 7/31/25),² the Commission ruled that charging a firefighter exceeded an initial inquiry, but this appeal is distinguishable from *Adams* because NOFD never informed Operator Murphy in writing that an investigation commenced when he was charged. This appeal is also distinguishable from *Clair v. Dep't of Fire*, No. 9354 (Civil Service Comm'n 6/5/2023), where NOFD provided a Notice of Investigation that failed to identify the investigator.

The Firefighter Bill of Rights does not apply because NOFD never conducted a formal investigation of Operator Murphy.

B. Legal Standard for Commission's Review of Discipline

“Employees with the permanent status in the classified service may be disciplined only for cause expressed in writing. La. Const., Art. X, Sec. 8(A).” *Whitaker v. New Orleans Police Dep't*, 2003-0512 (La. App. 4 Cir. 9/17/03), 863 So. 2d 572 (quoting *Stevens v. Dep't of Police*, 2000-1682 (La. App. 4 Cir. 5/9/01)). “Legal cause exists whenever an employee’s conduct impairs the efficiency of the public service in which the employee is engaged.” *Id.* “The Appointing Authority has the burden of proving the impairment.” *Id.* (citing La. Const., art. X, § 8(A)). “The appointing authority must prove its case by a preponderance of the evidence.” *Id.* “Disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service.” *Id.* “It is well-settled that, in an appeal before the Commission

¹ Commission decisions are publicly available at: [Civil Service - Topics - Commission - Decisions - City of New Orleans](#)

² The time for appeal of this decision has not yet expired. Civil Service Rule II, § 4.20.

pursuant to Article X, § 8(A) of the Louisiana Constitution, the 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 (quoting *Cure v. Dep't of Police*, 2007-0166 (La. App. 4 Cir. 8/1/07), 964 So. 2d 1093, 1094).

1. The Appointing Authority must show the discipline was commensurate with the infraction

The Commission has a duty to decide independently from the facts presented in the record whether the appointing authority carried its legally imposed burden of proving by a preponderance of evidence that it had good or lawful cause for disciplining the classified employee and, if so, whether such discipline was commensurate with the dereliction. *Durning v. New Orleans Police Dep't*, 2019-0987 (La. App. 4 Cir. 3/25/20), 294 So. 3d 536, 538, *writ denied*, 2020-00697 (La. 9/29/20), 301 So. 3d 1195; *Abbott v. New Orleans Police Dep't*, 2014-0993 (La. App. 4 Cir. 2/11/15); 165 So.3d 191, 197; *Walters v. Dept. of Police of the City of New Orleans*, 454 So. 2d 106 (La. 1984). The appointing authority has the burden of showing that the discipline was reasonable and not arbitrary or capricious. *Neely v. Dep't of Fire*, 2021-0454 (La. App. 4 Cir. 12/1/21), 332 So. 3d 194, 207 (“[NOFD] did not demonstrate . . . that termination was reasonable discipline”); *Durning*, 294 So. 3d at 540 (“the termination . . . deemed to be arbitrary and capricious”).

A. NOFD has Shown Cause for the Discipline of Operator Murphy

Operator Murphy does not dispute that he failed to wear a seatbelt on December 2 and December 11. Failing to wear a seatbelt impairs the efficient operation of the Department of Fire.

As Superintendent Nelson testified, NOFD requires firefighters to wear seatbelts while vehicles are in motion for their safety. (Tr. at 48). In addition, Operator Murphy was responsible for ensuring the other members of his crew were wearing seatbelts. (Tr. at 48; Ex. NOFD-5).

1. The penalty is commensurate with the violation

Superintendent of Fire Roman Nelson testified that he imposed the minimum penalty under the NOFD penalty matrix because the purpose of discipline is to correct the firefighter's behavior. (Tr. at 45). Superintendent Nelson also took into consideration that Operator Murphy was charged with two of the same type violations in a short period of time. (Tr. at 44).

Therefore, the Commission DENIES Operator Murphy's appeal.

WRITER:



John Korn, Vice-Chairperson (Aug 22, 2025 13:04:52 CDT)

JOHN KORN, VICE-CHAIRPERSON

CONCUR:



Ruth Davis, Commissioner (Aug 22, 2025 18:13:34 CDT)

RUTH DAVIS, COMMISSIONER

DISSENT BY COMMISSIONER SURPRENANT

The majority has ruled that NOFD was not required to comply with the Firefighter Bill of Rights because NOFD did not conduct a formal investigation. I disagree. The statutory language of the Firefighter Bill of Rights, La. R.S. 33:2181 *et seq.* and the decisions applying these statutes, including this Commission's decisions, dictate the granting of this appeal, even though Operator Murphy may have suffered no prejudice.

NOFD conducted an investigation of Operator Murphy without complying with the notice provisions of the Firefighter Bill of Rights. The Commission has recently held that an investigation under the Firefighter Bill of Rights commenced when a firefighter was formally charged: “Although an ‘initial inquiry’ by a direct supervisor is excepted from the definition of ‘interrogation’ under La. R.S. 33:2181(A)(2), charging a firefighter with a violation of NOFD policy exceeds an initial inquiry.” *Adams v. Dep’t of Fire*, No. 9608 at p. 3 (Civil Service Comm’n 7/31/25)³ (citing *Clair v. Dep’t of Fire*, No. 9354 (Civil Service Comm’n 6/5/23)). Because charging Operator Murphy exceeds an initial inquiry, the investigation of Operator Murphy began on December 20, 2024, at the latest,⁴ when he was charged by Captain Wiltz.

The investigation continued when the District Chief required revisions to Operator Murphy’s special reports and when Operator Murphy participated in the pre-disciplinary hearing. (Tr. at 17; Ex. NOFD-3). *See Adams* at p. 2 (holding that District Chief’s rewriting of witness’ special reports constituted an investigation). As Appellant argues in his post-hearing memorandum, the provision of the Firefighter Bill of Rights imposing a 60-day time limit for investigations suggests that a pre-disciplinary hearing is part of the investigation: “Any investigation of a fire employee which is conducted pursuant to this Subpart shall be completed within sixty days, including the conducting of any pre-disciplinary hearing or conference.” La. R.S. 2186(A). The presence of Operator Murphy’s union representative, Captain Brian Mendelson,

³ This time for appeal of this decision has not yet expired. Civil Service Rule II, § 4.20.

⁴ In this appeal, it is unclear from the record whether Deputy Chief Larry White or others reviewed the video before Operator Murphy was charged. *See Bruner v. Dep’t of Fire*, No. 9638 (Civil Service Comm’n 5/8/2025), *appeal filed* (holding that investigation commenced when Deputy Chief requested video evidence of misconduct from another City Department); *Pitre v. Dep’t of Fire*, 2021-0632 (La. App. 4 Cir. 4/20/22), 338 So. 3d 70, 77, *writ denied*, 2022-00804 (La. 9/27/22), 347 So. 3d 152 (“NOFD maintains that the investigation into Mr. Pitre’s conduct did not begin until August 7, 2020 after it reviewed the enhanced real time crime camera video footage and deciphered inconsistencies in Mr. Pitre’s version of facts”).

at the pre-disciplinary hearing on January 16 supports the conclusion that the pre-disciplinary hearing was part of an investigation, as the Firefighter Bill of Rights provides for the presence of counsel or a representative during an “interrogation in connection with the investigation.” La. R.S. 33:2181(B)(5). Inquiries by NOFD for the purpose of determining whether to aggravate or mitigate a penalty are also part of an investigation.

When deciding whether to impose discipline on Operator Murphy and the severity of the discipline, Superintendent Nelson reviewed 1) the video gathered by Captain Dufrene from the Samsara system; 2) Operator Murphy’s special report; and 3) the summary of the pre-disciplinary hearing. (Tr. at 57-58). The items constitute the product of NOFD’s investigation of Operator Murphy.

Because NOFD conducted a formal investigation between December 20, 2024, and January 16, 2025, and failed to provide Operator Murphy with a Notice of Investigation, I would rule that the discipline is an absolute nullity. La. R.S. 33:2181(C).

Mark Surprenant, Commissioner

Mark Surprenant, Commissioner (Aug 22, 2025 12:53:18 CDT)

MARK SURPRENANT, COMMISSIONER