



CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE
SUITE 900 - 1340 POYDRAS ST.
NEW ORLEANS LA 70112
(504) 658-3500 FAX NO. (504) 658-3598

CITY CIVIL SERVICE COMMISSION

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

MITCHELL J. LANDRIEU
MAYOR

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Friday, April 26, 2013

Jon V. Steele
3801 Canal Street Suite 207
New Orleans, La. 70119

Re: **Delbert Surtain VS.
Department of Public Works
Docket Number: 7877**

Dear Mr. Steele:

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: Mark D. Jernigan, P.E.
Eraka Williams
Jay Ginsberg

DELBERT SURTAIN

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF PUBLIC WORKS NO. 7877

The Department of Public Works (“Appointing Authority”) employed Delbert Surtain (“Appellant”) as a Traffic Signal Technician III with permanent status. He was employed in the Traffic Signal Shop performing maintenance on damaged and/or malfunctioning traffic signals. The Appointing Authority terminated the Appellant effective May 23, 2011, after the Appellant was arrested and charged with possession of stolen things. The arrest prompted an internal investigation by the Appointing Authority, which resulted in a determination that the Appellant improperly and without authorization used a city vehicle to transport and sell City property while on duty.

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 June 27, 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.

The material facts are not in dispute. Prior to Hurricane Katrina, the Appointing Authority contracted with a salvage company to collect and remove accumulated scrap metal. The City would receive payment from the contractor who would in turn sell the scrap that it collected. However, the City discontinued its contract after the storm and the scrap metal began to accumulate. The Appellant and three of his co-workers devised a scheme whereby the Appellant would transport the scrap metal in a City vehicle during working hours to WB Scrap Yard in St. Bernard Parish. The Appellant sold the scrap

D. Surtain
#7877

metal and divided the proceeds with his co-workers. The Appellant continued this practice on a regular basis from August 13, 2009 until May 4, 2011. During this period he collected \$15,568.87 from the sale of discarded City property. WB Scrap Yard maintained detailed records and the Appellant acknowledged their accuracy.

The Appellant's activities were detected on May 4, 2011, when WB Scrap Yard became suspicious after the Appellant sold a new roll of "15" conductor copper wire. WB Scrap Yard notified the St. Bernard Sherriff's Office and the Appellant and his co-workers were thereafter arrested by Deputy Sherriff Gary Noriea.

Detective Leonard Marlborough of the New Orleans Police conducted a follow up investigation and determined that the Appellant made approximately 135 separate sales of scrap metal that was the property of the City Of New Orleans. At the time of the hearing before this body, the matter was still in the Criminal Court system.

The Appellant admitted that he possessed and sold City property, and that he collected the money that was reflected in WB Scrap Yard's business records. He admitted that he used a City vehicle to transport the materials and that he made these deliveries while on the clock and getting paid. In his defense, the Appellant stated that he was merely following the instruction of his supervisor, Bradley Skinner, so he assumed it was all right. He also noted that during his employment he had no previous disciplinary actions taken against him.

Preston Mills, Traffic Signal Shop Supervisor (and the Appellant's actual supervisor), testified that while the material sold by the Appellant was not usable, it is contrary to City policy to possess and sell City property without authorization. Mr. Mills

D. Surtain
#7877

stated that he did not authorize the Appellant to sell the materials and that he did not have the authority to permit him to sell City property – even scrap metal. Mr. Mills further stated that Mr. Skinner was not the Appellant’s supervisor, but merely a lead man or Forman that gave him assignments. Mr. Skinner shared in the profits from the sale of the scrap metal and could not authorize the Appellant to engage in the activities for which he was terminated.

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 the occurrence of the complained of activity by a preponderance of the evidence and that the conduct

D. Surtain
#7877

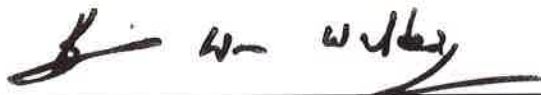
complained of impaired the efficiency of the public service. *Id.* The appointing authority must also prove the actions complained of bear a real and substantial relationship to the efficient operation of the public service. *Id.* While these facts must be clearly established, they need not be established beyond a reasonable doubt. *Id.*

CONCLUSION

The Appointing Authority has established by a preponderance of evidence that it terminated the Appellant for cause. He clearly violated the Appointing Authority's internal rules by repeatedly engaging in unauthorized activities that are contrary to city policy. Considering the foregoing, the Appellant's appeal is DENIED.

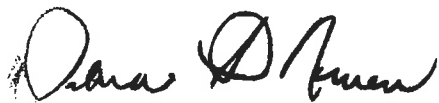
RENDERED AT NEW ORLEANS, LOUISIANA THIS 26th DAY OF APRIL, 2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION



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

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER