MELANIE DAVIS	CIVIL SERVICE COMMISSION
VS.	CITY OF NEW ORLEANS
NEW ORLEANS DEPARTMENT OF RECREATION	NOS. 7789, 7814 & 7831

The New Orleans Department of Recreation ("Appointing Authority" or "NORD") employed Melanie Davis ("Appellant") as a Recreation Center Manager III for girl's athletics with permanent status. The Appointing Authority terminated the Appellant by letter dated February 9, 2011, following a determination that she attacked a co-worker without justification. The co-worker, Terresyna Lee, required medical attention and missed a number of days of work. The Appellant pled no contest to a battery charge, which resulted in a suspended sentence, a fine, and restitution to Ms. Lee.

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 April 27, 2011. 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.

Ms. Lee testified that she was previously the Appellant's supervisor. While acting as her supervisor, Ms. Lee informed the Appellant that she could not use her accrued sick leave while absent working her second job as a NCAA basketball official. Instead, the Appellant was required to use her accrued annual leave.[1] Ms. Lee stated that she no longer had any responsibility regarding the Appellant's schedule or leave usage at the time of the incident. However, the Appellant testified that she believed that Ms. Lee

[1] The primary distinction between annual leave and sick leave is that upon separation of employment any accrued annual leave is paid to a City employee in full, while accrued sick leave is paid in part.

was communicating negatively behind her back to her supervisors regarding her use of leave.

On December 2, 2010, the Appellant confronted Ms. Lee outside NORD's St. Bernard Center regarding the leave issue. At the time Ms. Lee was speaking to another NORD employee, Barbara Garnheart. An argument ensued and Ms. Lee contends that the Appellant punched her in the face without any provocation. Ms. Garnheart corroborated Ms. Lee's version of events. Ms. Garnheart gave the same version of events to the police when they responded to the complaint. The Appellant testified that Ms. Lee pushed her and that she responded by punching Ms. Lee in the face. Rudolph Brown, a retired NORD worker, testified that Ms. Lee bumped up against the Appellant several times before the Appellant punched her. Mr. Brown testified that he was present during the altercation, but he did not give a statement to the police.

The Appellant received a municipal citation and pled no contest to a battery charge. She testified that she agreed to admit to the charges because she wanted to put the matter behind her. She contends that she struck Ms. Lee in self-defense as she thought Ms. Lee was going to hit her. The Appellant acknowledged that she was stronger and more athletic than Ms. Lee. She offered several character witnesses and referred to her long employment record that revealed no previous incidents of workplace violence.

Victor Richard, the Director of NORD, testified that termination was the appropriate penalty because of the serious nature of the offense, regardless of the Appellant's past employment record.

LEGAL PRECEPTS

An employee who has gained permanent status in the classified city civil service cannot be subjected to disciplinary action by his employer 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, from 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 that 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.

The Appointing Authority has established by a preponderance of evidence that it terminated the Appellant for good cause. The Appellant lost her temper and struck another employee with enough force to cause serious physical harm. While the Appellant

may have felt provoked, her actions were not justified and her claim of self- defense is not credible. Ms. Lee never struck her and, given the Appellant's superior size and strength, her assertion that she considered Ms. Lee a threat carries little weight. Moreover, the Appellant admitted in open court that she was guilty of the crime for which she was convicted. Finally, we agree with the Appointing Authority's conclusion that the offense was serious enough to justify termination notwithstanding the Appellant's otherwise clean employment record.

Based upon the foregoing, the Appellant's appeal is DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 13th DAY OF APRIL, 2012.

CIVIL SERVICE COMMISSION
CITY OF NEW ORLEANS

Joseph S. Clark

JOSEPH S. CLARK, COMMISSIONER

CONCUR:

I concur with the majority opinion. While I believe that it is possible to feel threatened by a person of "superior size and strength," the facts of this case do not lend themselves to a justifiable argument of self-defense. Therefore, I concur with the majority that the Appointing Authority has established by a preponderance of the evidence that it terminated the Appellant for cause because Appellant lost her temper and struck another employee with enough force to cause her harm and because the Appellant admitted in open court that she was guilty of the battery charge for which she was convicted on the facts related to this incident.

Dana M. Douglas

DANA M. DOUGLAS, VICE-CHAIRMAN

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