CITY OF NEW ORLEANS
DEPARTMENT OF CITY CIVIL SERVICE
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MITCHELL J. LANDRIEU
MAYOR

Friday, September 07, 2012

Mr. Donovan A. Livaccari
101 W. Robert E. Lee, Suite 402
New Orleans, LA 70124

Re: **Joseph Waguespack VS.**
Department of Police
Docket Number: 7904

Dear Mr Livaccari:

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 - 9/7/2012 - 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,

Germaine Bartholomew
Chief, Management Services Division

cc: Ronal Serpas
Victor Papai
Jay Ginsberg

JOSEPH WAGUESPACK	CIVIL SERVICE COMMISSION
VERSUS	CITY OF NEW ORLEANS
DEPARTMENT OF POLICE	NO. 7904

CONSOLIDATED WITH

OTHA SANDIFER	CIVIL SERVICE COMMISSION
VERSUS	CITY OF NEW ORLEANS
DEPARTMENT OF POLICE	NO. 7905

Police Captain Joseph Waguespack and Police Lieutenant Otha Sandifer, ("Appellants") are employed by the Department of Police ("Appointing Authority") with permanent status. The Appellants each received three day suspensions for violation of the Appointing Authority's internal regulation concerning Instructions from an Authoritative Source. Specifically, the Appointing Authority determined that the Appellants violated Chapter 2.8.10, Paid Details, paragraph 43 of the Appointing Authority's internal rules, which provides as follows:

> Members of this department are prohibited from forming any corporation, company, trust, fund, or cooperative banking account for the purpose of billing, receiving compensation, or offering services of paid details.

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 November 17, 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.

The matters were consolidated after the Appointing Authority determined through its investigations that the Appellants each formed limited liability corporations for the

purpose of administering paid details. The Appellants both acknowledged that they created limited liability corporations to administer paid details. Both Appellants testified that they formed limited liability corporations at the request of their clients.

Captain Waguespack testified that his client, the Marriot Corporation ("Marriott"), directed him to create a Limited Liability Corporation to allow Marriot to pay by single check to the Limited Liability Corporation ("LLC"). Capt. Waguespack would in turn deposit the funds into the LLC's bank account and then pay himself and the other police officers working the paid details from the LLC's bank account.

Lt. Sandifer testified that his client, the Downtown Development District ("DDD"), wanted him to have workers compensation insurance and commercial liability insurance in the event of injury. Lt. Sandifer could not provide this benefit without first forming an LLC.

Asst. Supt. Kirk Bouyelas testified that he recommended a three day suspension for both Appellants because they violated the internal rule forbidding the formation of an LLC to operate a paid detail. He stated that though there was no evidence of abuse by the Appellant's, they violated a rule that was created with the specific purpose of averting potential abuse by police officers who directly pay other police officers for working paid details.

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

The Appointing Authority has established that the Appellants violated an internal rule prohibiting police officers from operating LLC's to administer paid details. The Appointing Authority further established that the rule serves a legitimate purpose and that its violation undermines the efficient operation of the department. While an LLC may be more convenient for the ultimate client, the potential for abuse still exists and justifies the creation and enforcement of a rule preventing such activity.

Further, although a warning or counseling may have been sufficient to resolve the issue, we cannot say that the Appointing Authority abused its discretion by taking formal disciplinary action.

Considering the foregoing, the Appellants' appeals are DENIED.

RENDERED AT NEW ORLEANS, LOUISIANA THIS 7TH DAY OF SEPTEMBER, 2012.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION

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

CONCUR:

DANA M. DOUGLAS, VICE-CHAIRMAN

JOSEPH S. CLARK, COMMISSIONER