



# CITY OF NEW ORLEANS

DEPARTMENT OF CITY CIVIL SERVICE  
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CITY CIVIL SERVICE COMMISSION  
BRITTNEY RICHARDSON, CHAIRPERSON  
JOHN H. KORN, VICE-CHAIRPERSON  
CLIFTON J. MOORE, JR.  
MARK SURPRENANT  
RUTH WHITE DAVIS

AMY TREPAGNIER  
DIRECTOR OF PERSONNEL

Monday, September 11, 2023

Mr. Eric Hessler  
PANO 320 N. Carrollton Avenue #202  
New Orleans, LA 70119

Re: **Jonathan Burnette VS.  
Department of Police  
Docket Number: 9324**

Dear Mr. Hessler:

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 - 9/11/2023 - 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: Michelle M. Woodfork, Interim  
Jonathan Adams  
Jay Ginsberg  
Jonathan Burnette

file

**CIVIL SERVICE COMMISSION  
CITY OF NEW ORLEANS**

**JONATHAN BURNETTE,  
Appellant**

**Docket No. 9324**

**v.**

**DEPARTMENT OF POLICE,  
Appointing Authority**

**DECISION**

Appellant, Officer Jonathan Burnette, brings this appeal pursuant to Article X, § 8(A) of the Louisiana Constitution and this Commission's Rule II, § 4.1 seeking relief from his five-day suspension beginning December 5, 2021. (Exhibit HE-1). At all relevant times, Appellant had permanent status as a Police Officer. (Ex. HE-1). A Hearing Examiner, appointed by the Commission, presided over a hearing on January 1, 2022. 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 submitted by the parties, the Hearing Examiner's report dated April 25, 2022, and controlling Louisiana law.

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

**I. FACTUAL BACKGROUND**

Appellant stipulated that the facts in the November 3, 2021, letter of discipline from NOPD (Ex. HE-1) are accurate. (Tr. at 5). The underlying facts concern Officer Burnette's post on Lt. St. Germain's Facebook page. Lt. St. Germain posted a photo on Facebook from the conference Fighting Crime in Major Cities, tagging Sheraton New Orleans Hotel. (Ex. NOPD-1). Officer

Burnette commented on this post: “Ask them when they plan on implementing a crime fighting plan. Because I’ve been here for 20+ years and haven’t seen a crime fighting plan yet. All I see is ‘get stats.’” (Ex. NOPD-1).

Appellant does not concede that the penalty was commensurate with the violation. (Tr. at 5). Appellant also argues that his conduct is protected by the First Amendment. (Tr. at 28; Appellant’s Post-Hearing Brief).

## II. ANALYSIS

The Commission will first address the threshold issue of whether Appellant’s Facebook post was speech protected by the First Amendment. Although the undersigned Commissioners find that Burnette was commenting on a matter of public concern as a private citizen, we find that Burnette’s speech is not protected by the First Amendment because the City’s interest as an employer, in promoting the efficiency of the public services it performs through its employees, outweighs the interests of Burnette. *Burkart v. New Orleans Police Dep’t*, 2003-1699 (La. App. 4 Cir. 3/31/04), 871 So. 2d 1229, 1234; *Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205, Will Cty., Illinois*, 391 U.S. 563, 568, 88 S. Ct. 1731, 1734–35, 20 L. Ed. 2d 811 (1968). “When performing this balancing test, courts consider ‘whether the statement impairs discipline by superiors or harmony among co-workers, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary[.]’” *Graziosi v. City of Greenville Miss.*, 775 F.3d 731, 740 (5th Cir. 2015) (quoting *Rankin v. McPherson*, 483 U.S. 378, 388, 107 S.Ct. 2891, 97 L.Ed.2d 315 (1987)). “Because ‘police departments function as paramilitary organizations charged with maintaining public safety and order, they are given *more* latitude in their decisions regarding discipline and personnel regulations than an ordinary government employer.’” *Graziosi*, 775 F.3d at 740 (quoting *Nixon v. City of Houston*, 511 F.3d 494, 498 (5<sup>th</sup>

Cir. 2007)). Burnette's post on his superior's Facebook page is likely to have a detrimental impact on the police officer's close working relationships.

It is well-settled that, in an appeal before the Commission 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). 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 suspending the classified employee and, if so, whether such discipline was commensurate with the dereliction. *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).

Officer Burnette stipulated that the underlying conduct occurred. The undersigned Commissioners find that Officer Burnette's speech impaired the efficiency of NOPD. One audience of the post was the Sheraton and any Facebook user who follows the Sheraton. The Sheraton donated the space for the conference and was tagged in the post. (Tr. at 13-14). Deputy Superintendent Paul Noel testified that Burnette's criticism of crime fighting organization in a public way may affect the public's confidence in NOPD. (Tr. at 13-14). Chief Noel emphasized the importance of the community's trust for NOPD to accomplish its mission. (Tr. at 14).

The undersigned Commissioners also find that the penalty is commensurate with the violation, as Chief Noel testified NOPD imposed the presumptive penalty under its disciplinary matrix. (Tr. at 15).

The appeal is DENIED.

This the 11<sup>th</sup> day of September, 2023.

WRITER:

Ruth White Davis  
Ruth Davis (Sep 9, 2023 12:07 CDT)

RUTH DAVIS, COMMISSIONER

CONCUR:

J H Korn  
J H Korn (Sep 8, 2023 12:43 CDT)

JOHN KORN, VICE-CHAIRPERSON

Mark C. Surprenant  
Mark C. Surprenant (Sep 8, 2023 12:49 EDT)

MARK SURPRENANT, COMMISSIONER