



MITCHELL J. LANDRIEU
MAYOR

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

LISA M. HUDSON
DIRECTOR OF PERSONNEL

Tuesday, May 07, 2013

Mr. Raymond C. Burkart, III
19407 Front Street
Covington, LA 70433

Re: **David J. Tregre VS.
Department of Police
Docket Number: 8030**

Dear Mr. Burkart, III:

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 - 5/7/2013 - 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: Ronal Serpas
Gregory Brumfield
Jay Ginsberg

DAVID TREGRE

CIVIL SERVICE COMMISSION

VERSUS

CITY OF NEW ORLEANS

DEPARTMENT OF POLICE

NO. 8030

David Tregre (“Appellant”) is employed by the Department of Police (“Appointing Authority”) as a Police Officer with permanent status. The Appellant received a two day suspension for violation of the Appointing Authority’s internal regulation concerning Instructions from an Authoritative Source. The second paragraph of the Appointing Authority’s May 9, 2012 disciplinary letter provides the factual basis for the disciplinary action:

This investigation determined that on June 16, 2011, at 8:15 pm, you worked a paid detail for Blaine Kern, Inc., for which you received a check made payable to cash as your payment. You admitted you understood the Departmental Rules and Regulations concerning cash payments or checks made to cash. You admitted in your administrative statement you cashed the check made payable to cash and received payment. As such, you violated Rule 4: Performance of Duty, paragraph 2 – Instructions from an Authoritative Source to wit: Chapter 22.8 paragraph 37, and General Order 828.

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 August 23, 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 Appellant admits that he received and negotiated a check issued payable to cash in payment for the detail outlined in his disciplinary letter. He contends that the penalty is not commensurate with the violation and that his actions did not interfere with the efficient operation of the department.

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Asst. Supt. Darryl Albert testified that he conducted the pre-disciplinary hearing and recommended a two day suspension to the Appointing Authority. Asst. Supt. Albert stated that he relied upon the Appointing Authority's disciplinary guidelines when making his recommendation and that the action recommended was within those guidelines.

He also explained that the rule prohibiting cash payments for details was promulgated to assure that all payments were properly documented and to deter circumvention of the policies regarding paid details. According to Asst. Supt. Albert, cash payments are more difficult to track and link to the individual that actually performed the work.

The Appellant contends that receiving a check made payable to cash is distinguishable from actually receiving currency as payment for a detail. He contends that a check made payable to cash provides a sufficient paper trail to establish that he received legitimate payment for work performed. He also contends that a two day suspension is not appropriate because, even if he violated the internal rule, his violation did not affect the efficient operation of the department.

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

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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 by preponderance of evidence that it disciplined the Appellant for cause. The Appellant knew or should have known that the acceptance of a check made payable to cash was violative of internal rules.

Further, the Appointing Authority is justified in enforcing a legitimate rule that protects the integrity of its detail policy. Checks made payable to cash can be cashed by anyone, while a check issued to a specific individual is more restrictive.

Finally, while a lesser penalty for the violation may have been adequate, we cannot say that the Appointing Authority abused its discretion.

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Considering the foregoing, the Appellant's appeal is DENIED.

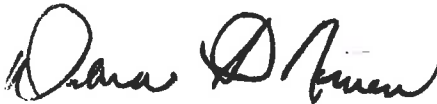
RENDERED AT NEW ORLEANS, LOUISIANA THIS 7th DAY OF MAY,

2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


AMY L. GLOVINSKY, COMMISSIONER

CONCUR:



DEBRA S. NEVEU, COMMISSIONER



JOSEPH S. CLARK, COMMISSIONER