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DIRECTOR OF PERSONNEL

Friday, August 09, 2013

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

Re: **Gremillion et al VS.
Department of Police
Docket Number: 7992**

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 - 8/9/2013 - 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
Elizabeth S. Robins
Jay Ginsberg

**GARY GREMILLION, BRUCE ADAMS,
NORVEL ORAZIO, MICHAEL GLASSER,
HARRY MENDOZA, BRUCE LITTLE,
WILLIAM CERAVOLO, SIMON HARGROVE,
JAMES SCOTT, FREDERICK MORTON,
AND RAYMOND BURKART, JR**

CIVIL SERVICE COMMISSION

CITY OF NEW ORLEANS

NO. 7992

VERSUS

DEPARTMENT OF POLICE

I. Application of Civil Service Rule IV, Sec. 1.4

This proceeding was brought by named Complainants, who with the exception of Major Raymond Burkart, Jr., are employed by the New Orleans Police Department (“Appointing Authority”) as Police Captains. The Complainants contend that the Commission should grant to those assigned to the position of Integrity Control Officer (“ICO”) a retroactive ten percent (10%) salary adjustment pursuant to Civil Service Rule IV, Sec. 1.4, which provides as follows:

If, for one class of positions, two or more rates of pay are established to reflect equitably the difference in the unpleasant or dangerous aspects of various assignments made in the class of position, changes in assignment shall result in corresponding salary adjustments. Such salary adjustments shall not be considered either as pay increases or pay reductions but must be reported to the Director.

The Complainants argue that, because they perform essentially the same functions as police officers assigned to the Public Integrity Bureau (“PIB”), they are entitled to the same ten percent pay adjustments received by all police officers assigned to PIB. They contend that the ten percent pay adjustment serves to attract and reward police officers who are assigned unpleasant tasks. Complainants rely upon the Appointing Authority’s justification for the pay adjustment as articulated during a February 16, 1995 meeting of the Commission when the Public Integrity Division (now bureau) was originally created.¹

¹ Identified as Complainants’ No. 14; October 31, 3012 transcript Page 175:20 and attached to PL Memo Exhibit A

As reflected in the minutes of the Commission meeting, the ten percent salary adjustment was granted at the Appointing Authority's request after representations made by then Superintendent of Police Richard Pennington that salary incentives are "essential when one group of police officers are required to investigate brother officers, and the recommended pay incentives would ably assist the Public Integrity Division in attracting the best and most dedicated officers to become part of the division voluntarily." It does appear from the minute entry that the Appointing Authority persuaded the Commission to approve the pay increase as an incentive to attract police officers to an otherwise undesirable position that included unpleasant tasks, i.e. the requirement to investigate fellow police officers. Further, the Appointing Authority provided no alternative explanation for why those officers assigned to PIB would receive additional pay.

As we interpret our Civil Service Rule IV, Sec. 1.4, if one class of employees receives additional pay because of the unpleasant nature of their work assignment – in this case PIB employees - changes in assignment for other employees to the same unpleasant work assignments justify and require that those employees receive the additional pay. Thus, if in fact, the record establishes that the ICO's are performing the same tasks as those assigned to PIB, they are entitled to the same salary adjustment.

II. Work Assignments of Integrity Control Officers

Most of the material facts are not in dispute or were otherwise clearly established by the Complainants. Through FOB Policy #8 revised April 12, 2011, the Appointing Authority redefined the position of Integrity Control Officer. Prior to the revision, ICO's were police lieutenants assigned to the various police districts. If an ICO through the course of his or her assignment observed or was informed of a violation of internal rules by a police officer assigned the ICO's district, the ICO would report the violation to PIB who would either investigate the violation internally or assign the investigation to the district where the violation occurred. The ICO would not conduct the internal

investigation, but would give the investigation to a subordinate – usually a police sergeant assigned to the district. The assignments were rotated between sergeants based upon case load and experience. As a consequence, no individuals spent all or most of their time conducting internal investigations unless they were assigned to PIB.

The Complainants provided exhaustive, unrefuted testimony supported by reliable evidence that they spend a vast majority of their time conducting internal investigations. In fact, the Complainants provided ample evidence that they actually conduct more internal investigations than those individuals assigned to PIB. They are not assigned to a district and they are prohibited from assigning their investigations to subordinates. Further, regardless of the seriousness of the charges, the Complainants are prohibited from giving the investigation back to PIB.

While acknowledging that the ICO's conduct more investigations than those individuals assigned to PIB, the Appointing Authority contends that the Complainants investigate less serious allegations than those individuals assigned to PIB. The Appointing Authority also contends that the Complainants have other duties that do not involve investigating other police officers.

III. Conclusion

We find that the Complainants are entitled to the ten percent pay differential pursuant to Civil Service Rule IV, Sec. 1.4. By concentrating all internal investigations that were once spread throughout the districts and bureaus into the hands of a few individuals, the Appointing Authority has created a job assignment that is indistinguishable from those functions performed by PIB. While it may be argued by the Appointing Authority that PIB investigates “more serious” allegations, any investigation that may result in some disciplinary action is an investigation of a fellow police officer, which was the initial justification that allowed for the pay incentive in the first place.

G. Gremillion, et al
#7992

Accordingly, the Appointing Authority is ordered to pay the ten percent pay differential as part of the salary of those individuals that have performed the assignment of Integrity Control Officer retroactively to the date of the change in assignment that began on April 12, 2011.

RENDERED AT NEW ORLEANS, LOUISIANA, THIS 9th DAY OF AUGUST,
2013.

CITY OF NEW ORLEANS
CIVIL SERVICE COMMISSION


DEBRA S. NEVEU, COMMISSIONER

CONCUR:


JOSEPH S. CLARK, COMMISSIONER


AMY L. GLOVINSKY, COMMISSIONER