RASHI REED	*	**NO. 2006-CA-1498**
VERSUS	*	**COURT OF APPEAL**
DEPARTMENT OF POLICE	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**
	*	
	*	

*** * * * * * ***

BELSOME, J., DISSENTS WITH REASONS.

I respectfully disagree with the majority's opinion.

Our Supreme Court has recognized that the Civil Service Commission process was instituted to protect an employee's position, an acknowledged property right, from unwarranted employer abuses. *New Orleans Firefighters Assoc. v. Civil Service Commission of the City of New Orleans,* 422 So.2d 402 (La. 1982). Potential governmental abuses are avoided through statutory regulations that must pass Constitutional muster. The protection afforded the employees in the instant case is found in Rule IX, §1.2, which mandates that the appointing authority conduct a pre-termination hearing as well as notify the employee of their infraction.

Recently, the Supreme Court has further directed us to redefine the mandatory language contained within a statute. *Marks v. New Orleans Police Department,* 2006-0575 (La. 2006), 943 So.2d 1028. In *Marks* the Court found that in the absence of any evidenced prejudice to the employee the word "shall" was directive rather than compulsory. The "shall" in *Marks* referred to a 60-day time frame in which to investigate employees' misconduct. The Supreme Court reasoned that Marks' right to due process, notice and a right to be heard had not been violated by an investigation that exceeded the mandated 60-days.

Today we are confronted with the narrow issue of whether or not a post termination hearing meets the minimum due process requirements outlined by the United States Supreme Court in *Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494. In *Loudermill* the Court addressed what process is due an employee with a constitutionally protected property right. *Id.* The *Loudermill* Court found that notice and a pre-termination hearing was the constitutionally adequate procedure to avail an employee of his/her due process rights. *Id.*

Here we are presented with employees whose hearings came months after they were deprived of their livelihood. No rational court could conclude that the Due Process Clause requirement for a hearing "at a meaningful time" was met. Presumably, the determination of constitutionally protected due process hinges on whether or not the employee is prejudiced by the delay, not whether the employer is inconvenienced by being held to the constitutional standard.

Although the employer has argued, and the majority accepts, that Hurricane Katrina created an urgency that prevented pre-termination hearings, the records are void of any such evidence. Undoubtedly, Hurricane Katrina caused challenging situations that may or may not be designated as emergency conditions. But simply put, the Hurricane Katrina banner cannot be waived every time the government seeks to circumvent the constitution. Permitting such a broad excuse in the very limited question presented today opens the door for potential governmental abuse either through intent, incompetence, or indifference of employee rights. Arguably, this decision may negate collective bargaining agreements, as well as constitutionally protected rights in contract and habeas corpus.

This writer cannot join in an opinion that ignores the prejudice created by depriving an employee of his property right without the opportunity to first be heard and defend that right. The notion that due process was protected and no

prejudice occurred when the employee was divested of his/her position first and allowed a post termination hearing months later is fictional. Allowing post termination hearings with no limitation on delays effectively abolishes the employees' constitutional right to due process.

Due process is most vulnerable when it is most warranted.

I dissent.