

**NOT DESIGNATED FOR PUBLICATION**

**TIMOTHY BAYARD** \* **NO. 2008-CA-0502**  
**VERSUS** \* **COURT OF APPEAL**  
**DEPARTMENT OF POLICE** \* **FOURTH CIRCUIT**  
\* **STATE OF LOUISIANA**  
\*\*\*\*\*

APPEAL FROM  
CITY CIVIL SERVICE COMMISSION ORLEANS  
NO. 7339

\*\*\*\*\*  
**Charles R. Jones**  
**Judge**  
\*\*\*\*\*

(Court composed of Chief Judge Joan Bernard Armstrong, Judge Charles R. Jones,  
and Judge Max N. Tobias, Jr.)

*ARMSTRONG, C.J., CONCURS*

Gary M. Pendergast  
GARY M. PENDERGAST, L.L.C.  
1515 Poydras Street, Suite 2260  
New Orleans, LA 70112

**COUNSEL FOR PLAINTIFF/APPELLANT**

Nolan P. Lambert, Chief Deputy City Attorney  
Penya M. Moses-Fields, City Attorney  
Victor L. Papai, Jr., Assistant City Attorney  
1300 Perdido Street  
City Hall - Room 5E03  
New Orleans, LA 70112

**COUNSEL FOR DEFENDANT/APPELLEE**

**AFFIRMED**

The Appellant, Police Captain Timothy Bayard, seeks review of a Civil Service Commission (CSC) decision upholding the Appointing Authority's issuance of a Letter of Reprimand for violating an internal rule regarding professionalism. We affirm.

Captain Bayard is a captain with the New Orleans Police Department. He attended a meeting on July 10, 2006, regarding a federal investigation of two (2) police officers who were under investigation for robbing a massage parlor—Bangkok Spa—in the French Quarter. Furthermore, a federal grand jury subpoena was issued to Capt. Bayard on Friday, July 7, 2006, to appear in Federal Court on Wednesday, July 12, 2006, in connection with the aforementioned investigation.

Capt. Bayard ordered a raid on Bangkok Spa for alleged prostitution activity on July 11, 2006. Of the persons arrested at the spa, two (2) were victims of the aforementioned robbery and were scheduled to testify before a federal grand jury on July 12, 2006, about the robbery.

As a result of this incident, the Appointing Authority conducted an internal investigation which resulted in Capt. Bayard receiving a Letter of Reprimand for his conduct. Capt. Bayard appealed the Appointing Authority's decision to the CSC, which upheld the Appointing Authority's decision. It is from the CSC's decision that Capt. Bayard timely filed the instant appeal.

Capt. Bayard raises one assignment of error on appeal: the CSC erred in dismissing his appeal.

In *Bannister v. Department of Streets*, 95-0404, p. 8 (La. 1/16/96), 666 So.2d 641, 647, the Louisiana Supreme Court explained that the standard of review in Civil Service cases requires multifaceted review:

In civil service disciplinary cases, an appellate court is presented with a multifaceted review function. *Walters v. Department of Police of the City of New Orleans*, 454 So.2d 106 (La.1984). First, as in other civil matters, deference will be given to the factual conclusions of the Commission. *Id.*; *Newman, supra*. Hence, in deciding whether to affirm the Commission's factual findings, a reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review. *Walters, supra*; see also *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978).

Second, in evaluating the Commission's determination as to whether the disciplinary action is both based on legal cause and commensurate with the infraction, the court should not modify the Commission's order unless it is arbitrary, capricious, or characterized by abuse of discretion. *Walters, supra*; *Newman, supra*; cf. La.R.S. 49:964. "Arbitrary or capricious" means the absence of a rational basis for the action taken. *Shields v. City of Shreveport*, 579 So.2d 961 (La.1991), *citing Bicknell v. United States*, 422 F.2d 1055 (5th Cir.1970).

Employees with permanent status in the classified civil service may be disciplined only for cause expressed in writing. La. Const. art. X, § 8(A). "Cause" for the dismissal of such a person includes conduct prejudicial to the public service involved or detrimental to its efficient

operation. *Walters, supra*, and authorities therein. Stated differently, disciplinary action against a civil service employee will be deemed arbitrary and capricious unless there is a real and substantial relationship between the improper conduct and the “efficient operation” of the public service. *Newman, supra*

Capt. Bayard’s sole assignment of error is that the CSC erred in dismissing his appeal. He contends that the CSC overlooked that the Appointing Authority disciplined him for allegedly disregarding the instructions of Assistant U.S. Attorney Michael McMahon. Capt. Bayard asserts that it was clear from the evidence that Mr. McMahon never gave him instructions. Capt. Bayard contends that the CSC, however, justified that the penalty imposed was issued because the raid that Capt. Bayard authorized brought discredit to the NOPD.

He further asserts that the CSC decision should not be allowed to stand because it penalizes him for reasons not stated in the September 20, 2006 letter. Additionally, he contends that there was no evidence for the Commission to conclude that his actions brought discredit upon the NOPD since the raid he authorized was lawful due to the illegal activity occurring at Bangkok Spa.

In the Letter of Reprimand, the Appointing Authority explained that Capt. Bayard admitted that the timing of the raid was poor. The letter further set forth that prior to Capt. Bayard authorizing the July 11, 2006 raid on Bangkok Spa, at least two events had transpired:

1. On July 7, 2006, a federal grand jury subpoena was issued to him to appear in federal court for Wednesday, July 12, 2006; and
2. He was advised of and subsequently attended a meeting, which had been requested by Assistant United States Attorney Michael McMahon at the Public Integrity Bureau Office on July 10, 2006.

Consequently, the Appointing Authority explained in the Letter of Reprimand that Capt. Bayard's conduct in authorizing a raid on Bangkok Spa constituted a violation of the Rules of the Civil Service Commission and of Professionalism.

According to the CSC report, the timing of Capt. Bayard's raid created an appearance of impropriety. The CSC determined that "[a]lthough the Appellant's (Capt. Bayard) decision to authorize the raid had nothing to do with the grand jury testimony, the timing created suspicion, which the Appointing Authority determined brought discredit to the police department."

There is nothing in the Letter of Reprimand that states that Capt. Bayard was reprimanded for failing to follow instructions that he had received from Assistant U.S. Atty. Michael McMahon. Moreover, the CSC determined that "[w]hether the Appellant's error in judgment justified minor disciplinary action is debatable. However, the undisputed facts do not support a conclusion that the Appointing Authority abused his discretion by reprimanding the Appellant because the Appointing Authority was concerned with public perceptions." We agree. The CSC's reasoning for upholding the disciplinary action imposed is not at odds with the explanation given by the Appointing Authority.

The CSC understood that Capt. Bayard's conduct of authorizing a raid, which would foreseeably interfere with a federal investigation, reflected negatively on the New Orleans Police Department. Thus, the CSC did not err in upholding

the Appointing Authority's decision to issue Capt. Bayard a Letter of Reprimand.

This assignment of error is without merit.

**DECREE**

For the foregoing reasons, the decision of the Civil Service Commission is affirmed.

**AFFIRMED**