

**PAULA C. DOVE**

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**NO. 2017-CA-0193**

**VERSUS**

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**COURT OF APPEAL**

**PLAQUEMINES PARISH**

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**FOURTH CIRCUIT**

**CIVIL SERVICE**

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**COMMISSION**

**STATE OF LOUISIANA**

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APPEAL FROM  
PLAQUEMINES PARISH CIVIL SERVICE COMMISSION  
NO. 16-005

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**Judge Rosemary Ledet**

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(Court composed of Judge Rosemary Ledet, Judge Sandra Cabrina Jenkins, Judge Regina Bartholomew Woods)

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**AFFIRMED**

**OCTOBER 11, 2017**

This is a civil service commission case. This case is unusual in two respects. First, the employee, Paula Dove, was employed by the Plaquemines Parish Civil Service Department (“CSD”); the CSD’s Appointing Authority is the Plaquemines Parish Civil Service Commission (the “Commission”).<sup>1</sup> The Commission thus has the dual role of being the constitutionally created, administrative board that heard the underlying appeal and the Appointing Authority.<sup>2</sup>

Second, the employee, Ms. Dove, was removed as a result of the Plaquemines Parish Council (the “Council”) defunding her position. In response to the Council’s action, the Appointing Authority instructed that a layoff process be implemented. As a result of the purported layoff, Ms. Dove was removed from her position. Ms. Dove appealed the layoff action to the Commission. The

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<sup>1</sup> For ease of reference, we limit the use of the term the “Commission” to its role as an administrative board; we use the term “Appointing Authority” to refer to the Commission in its other role as the CSD’s Appointing Authority.

<sup>2</sup> The CSD’s Director, Ellen Barrois, explained the difference between the Commission and the CSD as follows: “the Commission is a board that’s created by the Louisiana Constitution and they serve as my Appointing Authority. [Ms. Barrois] acts as a secretary to them but [is] . . . the director of the department.”

Commission found that the Appointing Authority failed to meet its burden of proving that Ms. Dove's removal was a layoff and thus ordered her reinstated to her position with full back-pay. From that decision, the Appointing Authority appeals to this court. For the reasons that follow, we affirm the Commission's decision.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On July 6, 2015, Ms. Dove became a full-time employee of the Plaquemines Parish Government ("PPG"). Her first position was in the Finance Department as a secretary, a classified civil service position. From June 28, 2016, to July 12, 2016, the CSD posted an advertisement to PPG's employees for the position of Civil Service Administrator, also a classified civil service position. Ms. Dove applied for the position; she and two other applicants interviewed for the position. Because she was the highest scoring applicant, she was selected.

To facilitate Ms. Dove's transfer from the Finance Department to the CSD, the CSD's Director, Ms. Barrois, sent a memorandum, dated July 22, 2016, to the Plaquemines Parish President, Edward Theriot. Mr. Theriot signed the memorandum, approving Ms. Dove's transfer. On August 1, 2016, Ms. Dove began work as a Civil Service Administrator.

At the time of Ms. Dove's transfer to the CSD, the CSD had three employees—two Civil Service Administrators (Ms. Dove and another employee) and a CSD Director (Ms. Barrios). The CSD also had a fourth position that was

vacant (a scanning clerk position). The two Civil Service Administrators reported directly to the Director.

On September 8, 2016, slightly over a month after Ms. Dove's transfer to the CSD, the Council adopted, and the Parish President signed, Ordinance No. 16-97 (the "Ordinance"). The preamble of the Ordinance stated that it was being offered "due to reductions in the 2016 operating revenue" and "after a review of the 2016 Manpower Structure was performed." The Ordinance expressly referenced and defunded "Civil Service Administrator 535-1162-02"—Ms. Dove's unique employee job number. In response to the Ordinance, the Commission, at its September 23, 2016 meeting, adopted the following motion: "Ordinance 16-97 passed by the Plaquemines Parish Council deleted the funding for personnel in the Civil Service Department. Because we have not received notice from the Plaquemines Parish Council instructing how they want to process the vacancy incurred by Ordinance 16-97, the director [Ms. Barrois] is instructed to initiate the layoff process."

Attempting to implement the layoff process set forth in Plaquemines Parish Civil Service Rule XIII, Section 1.1,<sup>3</sup> Ms. Barrois prepared a spreadsheet comparing the overall performance evaluation scores of the two Civil Service Administrators. After determining that Ms. Dove had the lowest overall average

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<sup>3</sup> For ease of reference, we refer to the Plaquemine Parish Civil Service Rules as the "Civil Service Rules." Civil Service Rule XIII, Section 1.1 ("Section 1.1") provides:

In the event of a reduction in the work force of an organizational unit or division thereof for fiscal or other valid reasons, in each class to be reduced, the employee having the lowest average service rating for the last three (3) years of the employee's service immediately preceding the proposed layoff date, or for the entire period of the employee's service of less than three (3) years, shall be laid off. The method prescribed elsewhere in these Rules for determining an average rating shall be followed.

score, Ms. Barrois prepared a letter (the “Notification of Layoff”) to inform Ms. Dove of the layoff. The letter, dated September 26, 2016, read as follows:

The Plaquemines Parish Council passed Ordinance Number 16-97 at its meeting on September 8, 2016 un-funding the filled Civil Service Administrator position number 535-1162-02. The Finance Department has notified me they have removed to [sic] funding form Civil Service Department salary budget. I have asked the Council Secretary to instruct me in writing how the Council wants to process the vacancy in order to remove the employee from the filled position. As of today’s date, I have not received a reply.

As a classified employee of the Plaquemines Parish Civil Service System, our Rules only allow removing an employee from the service under Rule X Disciplinary Actions and Rule XIII Layoffs. You have not had any violations to warrant disciplinary actions under Rule X. Therefore, the Civil Service Commission has instructed me to process a layoff of a Civil Service Administrator in accordance with Rule XIII.

I have reviewed both Civil Service Administrators’ average service ratings, and you were determined to be the employee having the lowest average service rating. I regret to inform you that you will be laid off at close of business October 8, 2016.

All layoff actions will be taken in accordance with Rule XIII of the Civil Service Rules. . . . Permanent employees who are negatively impacted by the application of these rules *may* have the right to file an appeal to the Civil Service Commission in accordance with Rule XIII. . . . (Emphasis in original).

The last paragraph of the letter reads as follows: “I regret that these layoff actions are necessary to comply [with] the Ordinance 16-97 adopted by the Parish Council and that you are affected by it.”

Ms. Dove appealed to the Commission. On December 6, 2016, a hearing was held before a Hearing Examiner appointed by the Commission.<sup>4</sup> On February 1, 2017, the Commission granted Ms. Dove’s appeal, finding that the Appointing Authority failed to meet its burden of proving that Ms. Dove’s removal

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<sup>4</sup> The Commission recessed the initial hearing, held on November 15, 2016, until an independent attorney could be retained to represent the Appointing Authority to defend Ms. Dove’s appeal.

was a layoff. In so finding, the Commission reasoned that the September 26, 2016 letter—the Notification of Layoff—“*prima facie* fails to establish that the Appellant [Ms. Dove] was the subject of a layoff properly initiated and implemented.” Continuing, the Commission noted that “the evidence is overwhelming in favor of granting the Appellant’s appeal.” Indeed, the Commission enumerated the following undisputed facts that it found supported its decision:

- [A]t the time that Ordinance 16-97 was introduced, the Appellant’s position was approved by Ms. Barrois, the Finance Department, and the Parish President, and that the Appellant’s position was budgeted and funded for the 2016 budget.
- [P]rior to the introduction of Ordinance 16-97, Ms. Barrois and the CSD in fact had a position that was unfunded for the 2017 budget, which could have been eliminated.
- [A]s a matter of course the Council was not defunding budgeted, funded positions to deal with the Parish’s fiscal issues.
- [P]rior to the introduction of Ordinance 16-97, neither Ms. Barrois as the Director of the CSD, nor the Civil Service Commission, nor the Parish President nor anyone in his administration was contacted or consulted regarding the elimination of any position in the CSD.
- [T]he Council does not have the authority to unilaterally terminate a Civil Service employee. Further, there was no evidence educed at the hearing whatsoever that the Council had the authority to unilaterally defund the Appellant’s budgeted, funded position in the manner that it did.<sup>5</sup>

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<sup>5</sup> The Commission noted that it made no legal determination as to whether the Plaquemines Parish Charter for Local Self-Government, Article 4, Section 4.04(C), was violated by the PPG; rather, it stated that “it is simply a matter of fact that the Council lacks the authority to unilaterally remove Civil Service employees.” The Commission further noted that the constitutional issue of whether “the Council’s action violates the State Constitution by failing, or deliberately refusing to fund the Civil Service system voted into place by the citizens of the Parish” likewise was not before it.

- [T]he proper procedures and protocols for initiating and instituting layoffs were not followed.<sup>6</sup>
- [B]ecause of the Council’s unilateral action eliminating the Appellant’s position, the CSD is unable to meet the demands placed on it.<sup>7</sup>
- [T]he reason offered by some of the Councilmembers for voting to adopt Ordinance 16-97, that the CSD rushed the Appellant’s hire in contravention of proper protocol, is for naught; it is entirely untrue. The Appellant was qualified for, and duly hired to fill the position.<sup>8</sup>
- [I]t was only after the passage of Ordinance 16-97, when the Commission was unsure how to implement Ordinance 16-97, that the Commission decided to call the action a “layoff.” . . . Furthermore, the letter to the Appellant notifying her that she was dismissed [the Notification of Layoff], particularly the first two and the final paragraphs, make this fact plain.

Accordingly, the Commission vacated Ms. Dove’s termination, ordered that she be restored to her position, and ordered that she be paid “all back-pay and emoluments due.” From that decision, the Appointing Authority appeals to this court.

### **STANDARD OF REVIEW**

In a civil service commission case, a “multifaceted” standard of review applies. *McMasters v. Dep’t of Police*, 13-0348, p. 9 (La. App. 4 Cir. 5/15/15), 172

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<sup>6</sup> The Appointing Authority contests this statement. For ease of discussion, the Commission’s reasoning for this statement is set forth elsewhere in this opinion.

<sup>7</sup> It was stipulated that “as a consequence of the layoff it has caused a hardship for the department as to those employees that remain employed by the department.”

<sup>8</sup> The record reflects that the CSD’s process of filling the Civil Service Administrator position spanned seventy-one days—from the initiation of employment to the day it was filled. The record reflects, as the Commission noted, that the process was not too expeditious and that all the required steps were followed and approvals, including that of the Parish President, secured before Ms. Dove was approved for the position. The Commission also notes that Ms. Dove “ascribes personal and political reasons for the Council’s action” and that “[t]he record speaks for itself and is replete with evidence that there were personal and political motives at stake. However, these issues are not before the Commission in the present appeal.”

So.3d 105, 113, *writ denied*, 15-1159 (La. 9/18/15), 178 So.3d 151 (citing *Walters v. Dep't of Police of New Orleans*, 454 So.2d 106, 113-14 (La. 1984)).

Summarizing the multifaceted standard of review, this court in *Russell v. Mosquito Control Bd.*, 06-0346, pp. 7-8 (La. App. 4 Cir. 9/27/06), 941 So.2d 634, 639-40, stated as follows:

First, the review by appellate courts of the factual findings in a civil service case is governed by the manifest error or clearly erroneous standard. Second, when the Commission's decision involves jurisdiction, procedure, and interpretation of laws or regulations, judicial review is not limited to the arbitrary, capricious, or abuse of discretion standard. Instead, on legal issues, appellate courts give no special weight to the findings of the trial court, but exercise their constitutional duty to review questions of law and render judgment on the record. A legal error occurs when a trial court applies the incorrect principles of law and such errors are prejudicial. Finally, a mixed question of fact and law should be accorded great deference by appellate courts under the manifest error standard of review. *See Stern v. New Orleans City Planning Comm'n*, 03-0817, pp. 5-6 (La. App. 4 Cir. 9/17/03), 859 So.2d 696, 699-700.

*Id.*

## DISCUSSION

On appeal, the Appointing Authority asserts the following three assignments of error:

1. The Civil Service Commission committed legal error by finding that Dove's termination of employment was not a layoff.
2. The Civil Service Commission erred in ruling that Dove's termination was in violation of Civil Service rules regarding layoffs.
3. The Civil Service Commission erred in ruling that the Department of Civil Service failed to meet its burden of proof.

We separately address each issue.

### *Legal error in failing to classify the termination as a layoff*

The Civil Service Rules define a layoff as "the termination of an employee because of lack of work or financial appropriation, abolition of position, or any



other cause which is not of a disciplinary nature and does not warrant an appeal.” Civil Service Rule I, Section 1 (35); *see also Maradiaga v. Univ. of New Orleans*, 546 So.2d 579, 582 (La. App. 4th Cir. 1989) (noting that “[a] layoff is a lawful removal of an employee from his position for a nondisciplinary reason.”). The Appointing Authority contends that the Commission legally erred in failing to classify Ms. Dove’s removal as a layoff given that her removal falls within the broad definition of the term “layoff” in the Civil Service Rules.

Ms. Dove counters that the broad definition of layoff is of no moment in her case; she contends that the Council completely contrived her so-called “lay-off” and that the Council likewise forced the anomalous procedure used in her case upon the CSD. She contends that “defund” is a euphemism for removing her from her job by revoking its funding and attempting to cloak the unconstitutional usurpation of the CSD’s authority with an air of financial necessity by labeling it a “layoff.” Ms. Dove suggests that the defunding issue presented here is analogous to the privatization issue presented in *Civil Service Com'n of City of New Orleans v. City of New Orleans*, 02-1812, 02-1815 (La. 9/9/03), 854 So.2d 322.<sup>9</sup> According to Ms. Dove, “[w]hile in this case the modus operandi for getting rid of employees was not a privatization contract, but a ‘defunding ordinance,’ the result was the same.” She thus contends that the Commission “has the same authority as the New

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<sup>9</sup> In the *Civil Service Com'n of City of New Orleans* case, the Louisiana Supreme Court addressed the issue of whether the New Orleans Civil Service Commission had the authority to review a privatization contract. Finding the New Orleans Civil Service Commission had limited authority to do so, the Supreme Court reasoned that “the mayor and city council do not have the unfettered discretion to potentially decimate the civil service system by eliminating all civil servant positions through privatization, and, therefore, we find that checks on that discretion are necessary and authorized by the Constitution.” *Civil Service Com'n of City of New Orleans*, 02-1812 at p. 18, 854 So.2d at 335. The Supreme Court concluded that “[i]n order to exercise its authority to protect the civil service under the Constitution, we find that the Commission has the right to review all contracts that directly affect civil service employees within a reasonable period of time, prior to the contract’s implementation.” *Id.*

Orleans Civil Service Commission to determine whether the action was taken for legitimate economic reasons or for a nefarious political one.” She contends that the Commission correctly decided that issue in her favor.

At the outset, we find unpersuasive the Appointing Authority’s attempt to couch the issue of whether Ms. Dove’s removal was a layoff as an issue of law by narrowly focusing on the broad definition of that term in the Civil Service Rules. The question of whether Ms. Dove’s removal was a layoff must be determined in the context, not in a legal vacuum. In deciding this issue, it is necessary, as the Commission recognized, to examine the facts surrounding Ms. Dove’s removal. This is a factual issue, not a legal one. Indeed, the Appointing Authority’s counsel, at the outset of the hearing, correctly characterized the issue before the Commission as a factual one, stating: “[o]ur burden is to show that the appellant’s removal was a layoff, that there was no—we weren’t trying to get rid of someone for some other ulterior motiv[es] but *in fact* by definition it was a layoff.” (Emphasis supplied).

We also note that the issue of whether Ms. Dove’s removal was a proper layoff or an improper termination was properly before the Commission. As this court has recognized, “[t]he authority to review the basis for a termination of a civil servant’s employment and decide whether it was in accordance with law is expressly and unambiguously assigned to the CSC [Civil Service Commission], subject to the right of judicial review, in Section 12(A) of Article X [of the Louisiana Constitution].” *Reimer v. Med. Ctr. of Louisiana at New Orleans*, 95-2799, p. 4 (La. App. 4 Cir. 1/29/97), 688 So.2d 165, 168 (citing *Bass v. Dep’t of Public Safety & Corrections*, 94-1974, p. 2 (La. App. 1 Cir. 5/5/95), 655 So.2d

455, 456); *see also Civil Service Com'n of City of New Orleans*, 02-1812 at p. 18, 854 So.2d at 335.

*Factual error in finding violation of Civil Service Rules regarding layoffs*

Layoffs are governed by Civil Service Rule XIII. Civil Service Commission Rules have the effect of law. *See Jack A. Parker & Assoc., Inc. v. State of Louisiana*, 454 So.2d 162, 165 (La. App. 1st Cir. 1984) (holding that “[t]he rules of the Commission have the force and effect of law.”). In determining whether Ms. Dove’s removal was a layoff, one of the facts the Commission properly considered was whether the Civil Service Rule governing layoffs was followed. The Commission found as an undisputed fact that “the proper procedures and protocols for initiating and instituting layoff were not followed.” In so finding, the Commission reasoned as follows:

Rule XIII, Section 1.1 of the Civil Service Rules for Classified Service for the Parish of Plaquemines (Rules) provides that “[I]n the event of a reduction in the work force of an organization unit or division thereof for fiscal or other valid reasons, in each class to be reduced, the employee having the lowest average service rating... shall be laid off.” Rule XIII, Section 2.1 provides that “[T]he Appointing Authority having jurisdiction over the organization unit affected, or his authorized representative, shall designate the class to be reduced...” Rule XIII, Section 4.1 provides that “no layoff shall be effected until the Director has approved the names submitted for layoff.” Pursuant to the Plaquemines Parish Government Job Description for the job of Director of Civil Service, the Civil Service Director “oversees and enforces procedures for layoff.” Here, again, the Appellant’s position was unilaterally eliminated by legislative action. Ms. Barrois, the CSD, the Civil Service Commission, and the Parish administration, were all entirely left out of the process by which the Appellant’s position was eliminated. Further, had the process for initiating and instituting layoffs been adhered to, it is likely that the Appellant’s position would *not* have been eliminated because Ms. Barrois and the CSD was already short an employee and had a position that was unfunded for the 2017 budget that could have been eliminated.

On appeal, the Appointing Authority contends that the Commission erred in finding that Ms. Dove’s termination violated the Civil Service Rule regarding layoffs. According to the Appointing Authority, “[o]nce a layoff is authorized, the administration of the layoff is straight forward”; Section 1.1 (of Civil Service Rule XIII) delineates the steps required to implement a layoff. The Appointing Authority emphasizes that it is undisputed Section 1.1 was followed; Ms. Barrois prepared a spreadsheet to compare the performance of her two employees who were subject to the layoff and determined that Ms. Dove had the lowest overall service rating. The Appointing Authority thus contends that Ms. Dove was designated for removal consistent with the Civil Service Rule.

The Appointing Authority further contends that “[i]t is immaterial that the Council failed to allow the Appointing Authority, in this case the Commission, to designate the class to be reduced as set forth in Civil Service Rule XIII, Section 2.1 [“Section 2.1”<sup>10</sup>] because there was only one class off [sic] employees within the department that could have been subject to a layoff.”<sup>11</sup> That class was the class that Ms. Dove and her co-worker held—Civil Service Administrator. The Appointing

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<sup>10</sup> Civil Service Rule XIII, Section 2.1 provides, in pertinent part, as follows:

[T]he Appointing Authority having jurisdiction over the organization unit affected, or his authorized representative shall designate the class to be reduced. The class thus designated shall include all the employees in the organizational unit who are currently employed in the class or who are on authorized leave from the positions in the class.

<sup>11</sup> The Appointing Authority also states in its brief the following:

It is immaterial that Dove’s position was budgeted and funded for the 2016 fiscal year. It is immaterial that a vacant part-time position could have been eliminated. It is immaterial that the elimination of an occupied position was unprecedented. It is immaterial that the Council acted unilaterally without input from other branches of government prior to passing the ordinance eliminating Dove’s position.

Hence, the Appointing Authority does not dispute the accuracy of the Commission fact finding; rather, it contends these facts are immaterial.

Authority thus contends that the Council's failure to first ask the Appointing Authority to designate the only class in the CSD with current employees cannot form the basis for granting Ms. Dove's appeal.<sup>12</sup>

Ms. Dove does not dispute that Section 1.1 was followed. She, however, disputes the Appointing Authority's contention that Section 2.1 is inapposite. Again, the Appointing Authority's position is that because Ms. Dove was one of only two employees in the class that the Appointing Authority could have designated, Section 2.1 is inapposite. Ms. Dove contends that this is an erroneous statement for two reasons. First, the Ordinance specified, defunded, and abolished her job and no one else's, which is "tantamount to saying that the ends justify the means." Second, "the [Council] did not make a proper budgetary reduction after an evaluation of the CSD's budget and manpower needs, they performed no such review." Although the preamble of the Ordinance claimed to be a reaction to budgetary concerns, Ms. Dove emphasizes that the Ordinance made no mention of a budget or manpower review having been conducted. She maintains that her position was targeted for elimination for "ulterior motives and reasons unrelated to any budget concerns."<sup>13</sup> She thus submits that Section 2.1, which has the effect of

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<sup>12</sup> The Appointing Authority contends that it is immaterial that the CSD had a vacant position that the Council could have eliminated because layoffs only apply to currently employed individuals, not to vacant positions.

<sup>13</sup> Ms. Dove contends that the defunding of her position was done in retaliation for the fact that the Commission sued the PPG objecting to an ordinance requiring the civil service office to move to Port Sulphur, Louisiana. She points out that she had nothing to do with the filing of that suit and contends that she is simply "a pawn/victim in the years'-old ongoing political war between the politicians of the Parish Government and the representatives of civil service." We note that the appeal in the Commission's suit against the PPG is referenced in the record of this case. We further note that the appeal in that case is currently pending before this court. *Plaquemines Parish Civil Service Commission v. Plaquemines Parish Government*, 17-CA-0449. We, however, agree with the Commission's statement, quoted earlier in this opinion, that "[t]he record speaks for itself and is replete with evidence that there were personal and political motives at stake [in Ms. Dove's removal]. However, these issues are not before the Commission in the present appeal." Likewise, these issues are not before this court in the present appeal.

law, was circumvented and that the authority it vests in the CSD to make its own personnel decisions was usurped.

The record supports the Commission’s factual finding that “the proper procedures and protocols for initiating and instituting layoff were not followed.” Ms. Dove was singled out for elimination by legislative fiat. Indeed, one of the councilmembers who voted against the Ordinance, William Beau Black, testified at the hearing that the reason he did so was because he felt that Ms. Dove was being targeted.<sup>14</sup> He testified that the word “terminate” would be more accurate than the word “layoff” to describe the result of the Ordinance. He also distinguished defunding a position from a layoff. He explained that defunding a position refers generally to the process of enacting an ordinance to abolish vacant positions in order to avoid future layoffs. He explained that he had sponsored ordinances to

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<sup>14</sup> Mr. Black voted against the ordinance. He explained his reasons for his vote:

So I was the one who drafted most and all legislation to defund any position. And the reason why is because we were in a budget crisis. . . . But my plan was to defund vacant positions. And I would wait to do ten, twenty at a time. And we would defund the vacant positions that were funded to put the money back into the emergency fund so we can pull money from the emergency fund and replenish the general fund at the budget hearings. That was my philosophy on it and I think it was well thought out and it actually worked for us at the last budget hearings. Never in my time on the Council have we ever defunded one position and we haven’t defunded one single position since then. To me and from hearing discussions that I just spoke about before it seemed that it was targeted; therefore, I did not want to do that. If we wanted to defund the position well then put it with my ordinance, which I’m not sure if I had an ordinance on the table at the time, I would have to look at the agenda. But I think I carried ordinances to defund vacant positions probably from the early summer on. And we’ve had quite a few of those. So my position was just to put it — instead of having it in a separate ordinance put it within my ordinance and then we can discuss it or amend that ordinance.

Mr. Black, when further questioned, testified:

Yeah, the optics of [the Ordinance] to me were totally different. I mean the optics were bad for me. I have never defunded a filled position. That’s not how we were practicing as a council. We were defunding vacant positions in groups, groups of ten, twenty, et cetera or we would have layoffs.

defund vacant positions in batches and that the Ordinance clearly did not fit that pattern.<sup>15</sup>

The councilmember who introduced the Ordinance, Jeff Edgecombe, testified that the reason he introduced it was “budgetary issues.” Continuing, he testified that “we had tried different ways of stopping or slowing down processes that were being done and it didn’t work. And talking amongst a couple of colleagues they said if we defund the position, you know, it might start a trend and get things back on track. And nothing against Ms. Paula.” He acknowledged, however, that Ms. Dove was “caught in the middle because of everything that was pretty much coming to a head how Civil Service is administered.” He also acknowledged that he did not consult with anyone in the CSD before introducing the Ordinance.

The CSD Director, Ms. Barrois, similarly testified that she was not consulted regarding the Ordinance. She testified that she was surprised to learn of the Ordinance, explaining that “no one from the Council came to me to speak to me in reference to this reduction of my budget or my manpower, especially because I had a vacant position—well an employee on leave without pay since January of this year and I had excess funding in my salaries already.” She further testified that the Ordinance was the first time that she had ever seen a funded position be unfunded. She explained that on one prior occasion a previous Council unfunded a position thought to be vacant, but promptly reversed its action upon discovering that it was not a vacant position.

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<sup>15</sup> Another councilmember who abstained from voting on the Ordinance, Kirk Lepine, explained that he did so because he was unsure who was correct—the Council or Civil Service. He further explained that he “wanted a little bit more information.”

As noted earlier, the Ordinance expressly specified Ms. Dove's unique employee job number—Civil Service Administrator 535-1162-02. Ms. Barrois testified that the Ordinance listed “the department code, the classification, and her [Ms. Dove's] position code.” Ms. Barrois acknowledged that the Ordinance could only have been referring to Ms. Dove's particular position as the one being defunded. Ms. Barrois further acknowledged that the normal layoff procedure was not followed here; she explained “[t]his was different because we did not have any input on the classification that was being reduced out of our department.”

In sum, the record supports the Commission's factual findings that Ms. Dove's position was “unilaterally eliminated by legislative action” and that “the proper procedures and protocols for initiating and instituting layoff were not followed.”

*Failure to meet the burden of proof*

The Civil Service Rules provide that “[t]he burden of proof on appeal, as to the facts, shall be on the Appointing Authority.” Civil Service Rule II, Section 4.1. Here, the Commission held that the Appointing Authority “did not meet its burden of proof . . . ‘to show that the appellant's removal was a layoff.’” We read the Appointing Authority's final assignment of error to be that the Commission erred in finding that it failed to meet its burden of proof in establishing that Ms. Dove's termination was a layoff.<sup>16</sup>

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<sup>16</sup> The Appointing Authority's final assignment of error is that the Commission “erred in ruling that the Department of Civil Service failed to meet its burden of proof.” The Appointing Authority's argument is simply that “[t]he Department of Civil Service had established by a preponderance of evidence that it laid off Paula Dove pursuant to and in compliance with all rules of the Plaquemines Parish Civil Service Commission.” Ms. Dove counters that the burden of proof should be a high one. In support, she cites *Davidson v. Mun. Yacht Harbor*, 384 So.2d 579, 581 (La. App. 4th Cir. 1980), for the proposition that “a position cannot be abolished simply for the purpose of terminating an employee in the classified service, and the Civil Service



Despite the broad definition of the term “layoff” in the Civil Service Rules, which arguably encompasses the present situation, we conclude that the Commission did not err in finding—given the facts and circumstances of this unusual case—that Ms. Dove’s removal fell outside the scope of a layoff. The record supports the Commission’s finding that the Appointing Authority failed to carry its burden of proving that Ms. Dove’s removal was a layoff. We thus find no manifest error in the Commission’s finding.

The Commission’s finding that Ms. Dove’s removal was not a layoff, which we affirm, is dispositive. The Civil Service Rules only allow removing an employee from the service under either Rule X, which governs disciplinary actions, or Rule XIII, which governs layoffs. It is undisputed that this is not a disciplinary action. Ms. Dove was neither accused of doing anything wrong, nor was she terminated for cause. Indeed, it was stipulated that her performance was satisfactory and would not have warranted a removal for cause. Thus, given that Ms. Dove’s removal was not a layoff, it was an improper termination.

### **DECREE**

For the foregoing reasons, the judgment of the Plaquemines Parish Civil Service Commission is affirmed.

### **AFFIRMED**

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Commission has properly observed that: ‘To hold otherwise would defeat the entire system.’” *Id.* (quoting *State v. Board of Com'rs*, 149 La. 1095, 90 So. 417 (1922)).