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APPEALS DIVISION

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NOTICE OF DECISION

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APR 07 2016

SMITH LAW FIRM

IN RE: Leslie Burns et al vs. LSU Health Sciences Center – Shreveport
Docket No. S-17934

TO: J. Arthur Smith, III
Attorney at Law
830 North St.
Baton Rouge, LA 70802

Lenore Feeney
Attorney at Law
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Baton Rouge, LA 70821-2471

Dear Gentlemen and/or Mesdames:

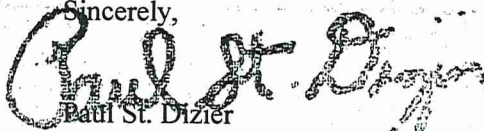
You are hereby served with a copy of the decision rendered by the Referee in the above case in which you are an attorney of record or a party. This decision was filed with the Director of the Department of State Civil Service on the date that appears below. You may file with the State Civil Service Commission an application to request the Commission to review the Referee's decision. The application for review must comply with Civil Service Rules 13.36 and 13.37 and must be either postmarked or received within fifteen calendar days of the date the decision was filed with the Director. If no application for review is filed, the decision of the Referee becomes the final decision of the Commission as of the date the Referee's decision was filed with the Director.

Your attention is also invited to Rule III of the Uniform Rules of the Courts of Appeal and Article X, § 12 of the Louisiana Constitution of 1974.

Pursuant to Civil Service Rule 13.24(c), if judicial review of this decision is sought, the party requesting a transcript shall be responsible for paying the cost of transcription. Notice of estimated costs will be sent in accordance therewith.

I hereby certify that the attached decision was filed with the Director of the Department of State Civil Service and this notice and a copy of the decision were mailed to the above listed attorneys and/or parties on **April 6, 2016**.

Sincerely,


Paul St. Dizier
Civil Service Commission Chief Referee

Attachments:

- 1) Decision

cc: Dr. Robert Barish Justin Delaune
Lisa Ebarb Leslie Burns, et al
William Norfolk

AP:PSD:srg

NOTE: We accept all filings by fax to 225-342-8058 and by email to dscs.appeals@la.gov

Decision

Filed: April 6, 2016

State of Louisiana
Civil Service Commission

Docket No. S-17934

Leslie Burns, Landry Davis, Edith Dozier, Carrie Ferguson, Jamekelea Pinkston, Linette Richard, Yarkeshala Waldon, Kimberly Walker, Kenneth Brad Ott, Edwin Ray Parker, and the American Federation of State, County, and Municipal Employees, Council 17

Versus

Louisiana State University Health Sciences Center – Shreveport, and the Department of State Civil Service

Rule(s): 2.9(h), 3.1(o), 13.19(u); 17.2; 17.12(a)
Topic(s): Layoff, general notice of impending layoff, approval of proposed state contract for personal services

Appearances: J. Arthur Smith and Justin Murphy Delaune, counsel for appellants
William A. Norfolk and M. Lenore Feeney, counsel for LSUHSC-S
Adrienne Bordelon, counsel for DSCS

Statement of the Appeal

Louisiana State University Health Sciences Center - Shreveport (LSUHSC-S) employed Leslie Burns, Landry Davis, Edith Dozier, Carrie Ferguson, Jamekelea Pinkston, Linette Richard, Yarkeshala Waldon, and Kimberly Walker (hereinafter "appellants") at the Huey P. Long Medical Center (HPLMC). Appellants were laid off from their positions at HPLMC by LSUHSC-S, effective June 30, 2014. Ms. Davis, Ms. Dozier, Ms. Ferguson, Ms. Richard, and Ms. Walker served with permanent status. Ms. Burns, Ms. Pinkston, and Ms. Waldon served with probationary status. Kenneth Brad Ott, Edwin Ray Parker and the American Federation of State, County, and Municipal Employees, Council 17 (AFSCME) were not state classified employees employed by LSUHSC-S.

On July 14, 2014, appellants, along with Mr. Ott, Mr. Parker, and AFSCME, filed an appeal postmarked July 10, 2014, regarding the layoff at HPLMC. In their appeal, they allege that: 1) LSUHSC-S failed to give general notice of the impending layoff to HPLMC

employees as required by Civil Service Rule (CSR) 17.12(a)¹, 2) the Department of State Civil Service (DSCS) Director, Shannon S. Templet², "summarily" approved LSUHSC-S's proposed layoff plan on June 10, 2014, without a hearing and refused on June 26, 2014, to rescind her approval, and 3) LSUHSC-S's layoff plan was approved without Director Templet's or the Commission's prior review and approval of a Cooperative Endeavor Agreement (CEA) involving HPLMC in violation of the Civil Service Rules. As relief, appellants request that Director Templet's approval of the layoff plan be vacated, and that they be reinstated to their positions with an award of back pay and attorney's fees.

On July 23, 2014, a referee issued a notice to Mr. Ott, Mr. Parker, and AFSCME questioning whether they had alleged a right of appeal to the Commission, as it appeared that they were not state classified employees employed by LSUHSC-S at the time of the layoff. The notice gave them fifteen (15) calendar days to amend the appeal and/or show cause in writing why their claims should not be summarily dismissed.

Mr. Ott, Mr. Parker, and AFSCME responded to the notice on August 7, 2014. In their response, they request that their claims be dismissed. The referee dismissed the claims of Messrs. Ott, Parker, and AFSCME on August 8, 2014.

On October 8, 2014, DSCS filed a motion for summary disposition. In its motion, DSCS alleges that the claims against it are moot, as on September 3, 2014, the Commission ratified LSUHSC-S's execution of the CEA involving HPLMC. On October 10, 2014, a referee issued a notice to appellants referencing the grounds alleged in DSCS's motion, and further noted that the Civil Service Rules do not require that a hearing be held before a layoff plan is approved by the DSCS Director. The notice gave appellants fifteen (15) calendar days to amend their appeal and/or show cause in writing why all claims against DSCS should not be summarily dismissed.

Appellants responded to the October 10, 2014 notice on October 27, 2014. In their response, appellants deny that their claims against DSCS are moot and assert that summary dismissal of their claims would deprive them of due process. Appellants also challenge the Commission's authority and that of Director Templet to ratify the already-executed CEA without notice to the appellants. After reviewing their response and concluding that summary dismissal was not appropriate, the referee recalled the October 10, 2014 notice on October 29, 2014, thereby referring all issues to the merits of the appeal.

We held public hearings on November 5, 2014, and February 3, 2016, in Baton Rouge, Louisiana. Based upon the evidence presented and pursuant to the provisions of Article

¹ In their appeal, appellants cite CSR 17.2(a), which concerns the review of layoff/layoff avoidance plans rather than required layoff notices, which are governed by CSR 17.12. Thus, appellants' citation of CSR 17.2(a) is clearly a typographical error.

² At all times relevant herein, Ms. Templet was the Director of the Department of State Civil Service, so we will refer to her as "Director Templet" in this decision. She presently serves as the Human Resources Director for the Louisiana House of Representatives.

X, § 12(A) of the Louisiana Constitution of 1974, as amended, we make the following findings and reach the following conclusions.

Findings of Fact

1. LSUHSC-S employed Leslie Burns, Landry Davis, Edith Dozier, Carrie Ferguson, Jamekelea Pinkston, Linette Richard, Yarkeshala Waldon, and Kimberly Walker at HPLMC. Ms. Davis, Ms. Dozier, Ms. Ferguson, Ms. Richard, and Ms. Walker served with permanent status. Ms. Burns, Ms. Pinkston, and Ms. Waldon served with probationary status.
2. On October 1, 2013, the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, along with the State of Louisiana and the Department of Health and Hospitals, entered into a CEA with two private contractors. Under the CEA, the private contractors took over the provision of certain medical services formerly provided by state classified employees working at HPLMC.
3. Although the CEA required the involuntary displacement of classified state employees working at HPLMC, LSUHSC-S did not submit the CEA to the Commission for its consideration under CSR 2.9(h) prior to the CEA's effective date of October 1, 2013. CSR 2.9(h) empowers the Commission to review proposed state contracts to determine whether they will involuntarily displace classified employees, and if so, whether the contract is being let for "reasons of efficiency and economy and not as a pretext for the discriminatory dismissal of classified employees."
4. On May 27, 2014, and as required by CSR 17.12(a), LSUHSC-S provided notice to HPLMC employees of its intention to submit a proposed layoff plan to DSCS Director Shannon S. Templet. Prior to issuing a written notice, LSUHSC-S had it reviewed and approved by DSCS staff. Karen Hemphill, HPLMC's Human Resources Director, posted copies of the written "Notice of Impending Layoff" at several places in the hospital, including outside the Human Resources Department, on the Emergency Room bulletin board, at the entrance to the hospital cafeteria, and on a nearby notification board.
5. LSUHSC-S submitted a proposed layoff plan to Director Templet for her approval on May 28, 2014. Director Templet's approval was required by the Civil Service Rules before the layoff could become effective. In the proposed layoff plan, LSUHSC-S states that the layoff is necessary due to a lack of funds to operate HPLMC. Director Templet referred the proposed layoff plan to DSCS staff for a review to determine if all requirements of the Civil Service Rules had been met.
6. On June 2, 2014, the Louisiana Legislature passed House Bill (HB) 1, the state's operating budget for fiscal year 2014 – 2015. The Governor signed HB 1 into law on June 19, 2014, as Act 15 of the 2014 Regular Session. The budget became effective on July 1, 2014, and it did not provide any funds for the operation of HPLMC.

7. After DSCS staff informed Director Templet that the proposed layoff plan met all of the requirements of the Civil Service Rules, she approved it on June 10, 2014. Her approval of the layoff plan was based on the unavailability of funding for HPLMC, and the layoff was to become effective on June 30, 2014.

8. Prior to her approval of the layoff plan on June 10, 2014, Director Templet was unaware of any CEAs involving HPLMC, including the one previously executed on October 1, 2013. The proposed layoff plan submitted to Director Templet does not reference any CEAs, and LSUHSC-S had not provided a copy of the October 1, 2013 CEA to her or submitted it to the Commission for its review under CSR 2.9(h).

9. On June 25, 2014, counsel for appellants, J. Arthur Smith, sent Director Templet a letter requesting that she vacate her approval of the layoff plan before it became effective on June 30, 2014. In the letter, Mr. Smith informed Director Templet that her approval of the layoff plan was based on an "unlawful" resolution of the Louisiana Senate regarding closure of the hospital, that she was failing to protect classified workers from politically-based "privatization," and that her approval was in violation of the Civil Service Rules and the state constitution.

10. After receiving Mr. Smith's letter, Director Templet contacted LSUHSC-S, which informed her for the first time of the October 1, 2013 CEA's existence. After determining that the CEA and the Senate resolution did not alter her previous conclusion that the layoff was based upon a lack of funds for HPLMC's operation, and finding no merit to Mr. Smith's other contentions, she declined to vacate her approval of the layoff plan in a letter to him dated June 26, 2014.

11. The layoff plan became effective on June 30, 2014, at which time all of the appellants were laid off from their positions at HPLMC.

12. By letter dated August 13, 2014, LSUHSC-S requested that the Commission review and approve the October 1, 2013 CEA regarding HPLMC.³ At its regular meeting on September 3, 2014, the Commission ratified the CEA pursuant to the provisions of CSR 2.9(h).

Discussion and Conclusions of Law

As this is a rule violation case, the appellants bear the burden of proving their claims by a preponderance of the evidence under CSR 13.19(u). A preponderance of evidence means evidence that is of greater weight or more convincing than that which is offered in opposition thereto. Proof is sufficient to constitute a preponderance when, taken as a whole, it shows the fact or causation sought to be proved as more probable than not." *Wopara v. State Employees' Group Benefits Program*, 2002-2641, (La. App. 1 Cir. 7/2/03), 859 So.2d 67.

³ We have taken judicial notice of the date of LSUHSC-S's request from our official records.

In this appeal, appellants are challenging being laid off from their positions at HPLMC. They claim that the Civil Service Rules and/or Article have been violated by: 1) LSUHSC-S's failure to give general notice of the impending layoff to its employees, 2) Director Templet's approval of LSUHSC-S's proposed layoff plan on June 10, 2014, without a hearing and her refusal on June 26, 2014, to rescind her approval, 3) Director Templet's approval of the layoff plan without the Commission's or her prior review and approval of the CEA concerning HPLMC, and 4) the Commission's ratification of the CEA after its effective date and without notice to the appellants.

LSUHSC-S' failure to give general notice of the impending layoff to its employees

Appellants contend that LSUHSC-S failed to give the "general notice of impending layoff" required by CSR 17.12(a), which provides that, "As soon as it is determined that a layoff will be necessary, the appointing authority shall make a reasonable attempt to notify all employees who may be affected that a layoff plan may be submitted to the Director. This shall be considered the general notice of impending layoff . . ."

Director Templet testified that the general notice of impending layoff given by LSUHSC-S in connection with the layoff complied with the Civil Service Rules, and that if it had not been in compliance, she would not have approved the layoff plan. She further testified that it is acceptable for the general notice to be given by posting it in writing in the facility.

Lisa Ebarb, LSUHSC-S's Executive Director of Human Resources Management, testified that she prepared a written general notice, obtained DSCS's approval of it, and sent it to William Marona, HPLMC's Assistant Hospital Administrator, along with instructions regarding its dissemination. Karen Hemphill, HPLMC's Human Resources Director, testified that the written general notice was posted timely in several places in the hospital, which was corroborated by Mr. Marona's testimony.

None of the appellants testified at the hearing, and they did not produce any evidence indicating that LSUHSC-S' efforts to give the general notice of impending layoff were unreasonable. Appellants have therefore failed to prove that LSUHSC-S violated CSR 17.12(a).

Director Templet's approval of LSUHSC-S's proposed layoff plan and her refusal to vacate her approval

Director Templet approved LSUHSC-S's proposed layoff plan on June 10, 2014. A hearing was not held prior to approval of the layoff plan, as none was required by the Civil Service Rules. Appellants have therefore failed to prove that Director Templet violated the Civil Service Rules and/or Article by approving the layoff plan without a hearing being held.

There are only two lawful reasons for laying off classified employees: a lack of funds or a lack of work (or both). After reviewing the layoff plan, Director Templet concluded that it was based on a lack of funds for HPLMC's operation, and that LSUHSC-S had complied

with all formal requirements contained in Ch. 17 of the Civil Service Rules, which governs layoffs. She then approved the layoff plan.

Appellants contend that LSUHSC-S's failure to obtain approval of the CEA before submitting its proposed layoff plan to Director Templet requires us to reverse her approval of the layoff plan. This contention is without merit.

Director Templet was unaware that the CEA regarding HPLMC had been executed when she approved the layoff plan. However, as the CEA entailed the displacement of classified employees, Director Templet did not have the authority under CSR 3.1(o)⁴ to review the CEA; only the Commission has that authority under CSR 2.9(h), and LSUHSC-S had not yet requested that the Commission review it. A review of a proposed layoff plan under CSR 17.2 by the Director and the Commission's review of a proposed contract under CSR 2.9(h) are two separate and distinct inquiries involving different purposes, issues, and standards; and the outcome in one does not necessarily affect the outcome of the other.

The proposed layoff plan reviewed by Director Templet states that a lack of funds is the reason for the layoff. Subsequent to her approval of the layoff plan, the new state operating budget came out, and it did not provide any funds for the operation of HPLMC. Director Templet testified that the layoff plan complied with the applicable requirements of the Civil Service Rules, and that even if she would have known about the CEA, it would not have had any bearing on her decision to approve the proposed layoff plan. While any layoff of classified employees is always unfortunate, the inescapable bottom line here is that no funds were appropriated to fund the operation of the hospital, regardless of whether the CEA was approved by the Commission or not.

We conclude that appellants have failed to prove that Director Templet's approval of the layoff plan or her refusal to rescind that approval constituted a violation of the Civil Service Rules or Article.

The Commission's ratification of the CEA

Appellants contend that the Commission's ratification of the CEA after its effective date and without notice to them violated the Civil Service Rules. We conclude that this contention lacks merit.

The Commission reviews proposed contracts under CSR 2.9(h) to "determine whether such contracts will result in the involuntary displacement of classified employees, and if so, to ensure that the appointing authority has demonstrated that such contract is being let for reasons of efficiency and economy and not as a pretext for the discriminatory

⁴ CSR 3.1(o) only authorizes the Director to review proposed state contracts to insure the contracts are "being let for reasons of efficiency and economy and not as a pretext for discriminatory practices against classified employees." Tellingly, CSR 3.1(o) makes no reference to the involuntary displacement of classified employees; unlike CSR 2.9(h), which establishes Commission review of proposed state contracts to "determine whether such contracts will result in the involuntary displacement of classified employees."

dismissal of classified employees.” As previously stated above, this review is separate and distinct from the Director’s review of a proposed layoff plan under CSR 17.2.

The Commission’s review of a proposed contract under CSR 2.9(h) does not require special notice to employees who may be affected by the proposed contract. A CSR 2.9(h) review is simply a normal agenda item taken up a regular meeting that is only subject to the general notice requirements of the Open Meetings Law (La. R.S. 42:11 et seq.). Appellants did not produce any evidence that the Commission failed to comply with the Open Meetings Law; thus, we reject their lack of notice claim regarding the Commission’s ratification of the CEA.

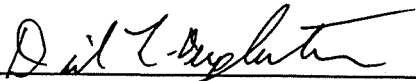
Although CSR 2.9(h) does reference the Commission reviewing contracts “prior to their effective date,” we do not find anything in that rule which precludes the Commission from ratifying such a contract after its effective date upon a finding that the applicable standard of review has been met. Therefore, we conclude that appellants failed to prove that the Commission’s ratification of the CEA violated the Civil Service Rules.

While it certainly would have been preferable for LSUHSC-S to have obtained the Commission’s approval of the CEA before submitting its proposed layoff plan to Director Templet, its failure to do so under the circumstances presented herein does not render the layoff defective under the Civil Service Rules. We also note that, given the Commission’s ratification of the CEA after this appeal was filed, that any claim regarding Director Templet’s approval of the layoff plan before the CEA was approved by the Commission is now moot.


Conclusion

In view of the foregoing, appellants have failed to prove that the HPLMC layoff was effected in violation of the Civil Service Rules or Article. Therefore, their appeal is hereby dismissed.

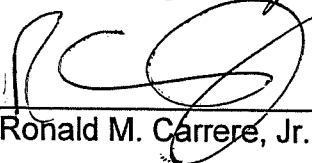
Pursuant to Civil Service Rule 13.27(b) and (c), we hereby order the Louisiana State University Health Sciences Center – Shreveport to pay a witness fee and mileage to the subpoenaed witness who is not a state employee, as follows: Karen Hemphill - \$52.20.



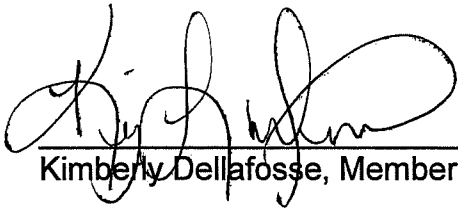
David L. Duplantier, Chairman



D. Scott Hughes, Vice-Chairman



Ronald M. Carrere, Jr., Member



Kimberly Dellafosse, Member

Commissioners G. Lee Griffin, John McLure and C. Pete Fremin were absent at the hearing held on February 3, 2016, and did not participate in this decision.