

LESLIE BURNS et al.

DOCKET NUMBER: S-17934

v.

LSU HEALTH SCIENCES CENTER -
SHREVEPORT

CIVIL SERVICE COMMISSION

STATE OF LOUISIANA

MOTION FOR APPEAL

NOW COMES Appellants, through their undersigned counsel, who respectfully move the Civil Service Commission for an order of appeal to the Court of Appeal, First Circuit, State of Louisiana, from the decision rendered in this case on April 6, 2016 by the Civil Service Commission.

The Appellants respectfully assign as errors:

1. The Civil Service Commission erred in its April 6, 2016 decision denying the Appellants' Civil Service appeal.
2. The former Director of the Louisiana Department of Civil Service and the Civil Service Commission erred in approving the Cooperative Endeavor Agreement ("CEA") regarding the Huey P. Long Medical Center ("Medical Center") and the resulting layoffs in question without complying with the rules set forth by the Louisiana Supreme Court in *Civil Service Commission v. City of New Orleans*, 02-1815 (La. 09/09/03), 854 So.2d 322, in the following respects:
 - a. by failing to provide any meaningful protection or mitigation to classified employees against dismissal for politically motivated reasons even though the likelihood of political motivation in this situation should be obvious. Indeed, former Governor Jindal's national political agenda, which touted his privatization schemes and the purported resulting reduction of state spending,

were, or certainly should have been, red flags to the Director and the Civil Service Commission and should have caused them to thoroughly explore the issues as to whether the privatization agreement and the resulting layoffs in this case were politically motivated and driven by this political agenda.

- b. by failing to require LSU Health Sciences Center- Systems ("LSUHSC-S") to turn over all documents or evidence which would have enabled the Commission to determine whether the CEA was entered into for reasons of efficiency and economy and not for politically motivated or other non-arbitrary and capricious reasons;
 - c. by failing to make any findings that the CEA was entered into for reasons of efficiency and economy and not for politically motivated reasons;
 - d. by failing to require the LSUHSC-S to submit the CEA and all evidence regarding the privatization of the Medical Center to the Director of the Department of Civil Service for her review prior to the approval or disapproval of the privatization and layoffs, instead of afterwards.
 - e. by failing to hold any public hearing on the privatization proposal after the CEA and other evidence regarding the privatization had been submitted to the Director or Commission for approval, but before the privatization proposal/layoff was approved.
3. The Civil Service Commission violated Civil Service Rule ("CSR") 2.9(h) by failing to approve or disapprove the CEA "prior to its effective date," by failing 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 discriminatory dismissal of classified employees."

4. The Civil Service Commission also violated CSR 2.9(h) by placing the burden of proof on the former employees when CSR 2.9(h) clearly places this burden on the appointing authority.
5. The former Civil Service Director violated CSR 3.1(o) by her failure to approve or disapprove the CEA prior to its effective date and by failing to "insure such contract is being let for reasons of efficiency and economy and not as a pretext for discriminatory practices against classified employees." The Civil Service Commission compounded this error by affirming the former Civil Service Director's violation of CSR 3.1(o).
6. The Civil Service Commission erred in ratifying the former Civil Service Director's violation of CSR 3.1(o) in purportedly ratifying her previous action *after* the CEA went into effect even though her previous action was expressly prohibited by the applicable Civil Service rules and was contrary to public policy. See *Acadian Production Corp. of La v. Savanna Corp.*, 222 La. 617, 63 So.2d 141 (La. 1953).
7. The Civil Service Commission violated its substantive legal obligations under La C.C.P. art. 1844 to not ratify an action which impairs the rights of third parties (in this case 123 classified employees who were improperly dismissed from their employments).
8. The appointing authority violated the Due Process clauses of the 14th Amendment to the United States Constitution and La. Const. Art. I, § 2 by:

- a. failing to provide individual written notices to the employees who lost their jobs when their names and addresses were known to the appointing authority;
- b. failing to provide individual written notices to the employees who lost their jobs informing them of why they had been chosen to be terminated, as opposed to the 21 other employees who were not chosen to be terminated;
- c. by failing to provide the Appellants with meaningful pre-termination hearings; and
- d. by failing to provide the Appellants with meaningful post-termination hearings.

The Director and the CSC erred in approving the aforesaid violations of the Constitution.

9. The Civil Service Commission erred in "ratifying" the approval of the privatization contract on September 13, 2014 *ex parte* and without notice to the Appellants or their counsel, even though the appellants' appeals from the layoffs had been previously docketed by the Civil Service Commission;
10. The Director and/or the Civil Service Commission overlooked the critically important procedural facts that Senate Concurrent Resolution 48 of 2014, the legislative instrument that purportedly authorized the closure of the Medical Center, had previously been determined to be unconstitutional and illegal in *Parker et al. v. Senate of State of Louisiana*, No. C 360,969, 19th Judicial District Court, and the State's appeal of this decision was dismissed by the Louisiana First Circuit Court of Appeal in *Parker et al. v. Senate of State of Louisiana*, 2015-CA-0048 (9/21/15).

11. The Civil Service Commission erred in its incongruous conclusion that "While it certainly would be preferable for the LSUHSC-S to obtain the Commission's approval of the CEA before submitting its proposed layoff plan to Director Templet", when the applicable Civil Service Rules mandate that this approval be obtained in before the effective date of the contract.

The Appellants desire that the entire record of this matter be included as the record on appeal.

Baton Rouge, Louisiana, this 21 day of April, 2016.

Respectfully submitted,



J. Arthur Smith, III (#07730)
J. Murphy Delaune (#34512)
SMITH LAW FIRM
830 North St.
Baton Rouge, LA 70802
Telephone: (225) 383-7716
Facsimile: (225) 383-7773
email: jasmith@jarthursmith.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing Motion for Appeal has this date been served by U.S. Mail, properly addressed and postage prepaid by facsimile and/or e-mail upon all counsel of record as follows:

Ms. Lenore Feeney
Mr. William Norfolk
TAYLOR, PORTER,
BROOKS & PHILLIPS, LLP
8th Floor Chase Tower South
451 Florida Street
Baton Rouge, LA 70821
Fax: (225) 346-8049

Ms. Adrienne Bordelon
Louisiana Department of Civil Service
P.O. Box 94111
Capitol Station
Baton Rouge, LA 70804-9111
Fax: (225) 342-0966

Baton Rouge, Louisiana, this 21 day of April, 2016.



J. ARTHUR SMITH, III

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ORDER

The foregoing being considered,

IT IS ORDERED that an appeal be and hereby is granted to the Appellants, Leslie Burns, et al, returnable to the Court of Appeal, First Circuit, State of Louisiana, as provided by law.

Baton Rouge, Louisiana, this _____ day of _____, 2016..

CIVIL SERVICE COMMISSION