

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

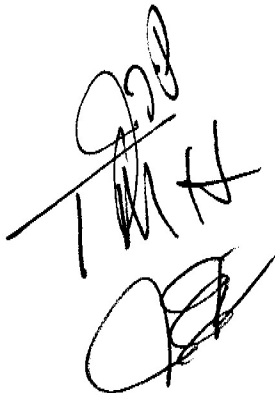
NO. 2010 CA 1434

DIONNE FORD

VERSUS

LOUISIANA STATE UNIVERSITY HEALTH SCIENCES CENTER –  
MEDICAL CENTER OF LOUISIANA AT NEW ORLEANS

**Judgment rendered February 11, 2011.**



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Appealed from the  
Civil Service Commission  
in and for the State of Louisiana  
Docket No. S-16682  
Honorable James A. Smith, Chairman

\* \* \* \* \*

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ATTORNEY FOR  
SHANNON TEMPLET, DIRECTOR  
DEPARTMENT OF STATE  
CIVIL SERVICE

\* \* \* \* \*

**BEFORE: KUHN, PETTIGREW, AND HIGGINBOTHAM, JJ.**

**PETTIGREW, J.**

In this case, plaintiff, Dionne Ford, appealed to the Civil Service Commission for the State of Louisiana ("Commission") challenging the decision by her employer, the Louisiana State University Health Sciences Center ("LSUHSC") at the Medical Center of Louisiana at New Orleans ("MCLNO")<sup>1</sup>, to terminate her employment as an Administrative Coordinator 3 in the Facility Maintenance Department of the LSUHSC.

By letter dated May 27, 2009, LSUHC notified Ms. Ford that she was being dismissed from her position effective June 1, 2009, for engaging in a physical altercation with her supervisor on April 20, 2009. LSUHSC charged Ms. Ford and her supervisor with violating MCLNO policies prohibiting violence in the workplace.<sup>2</sup>

Ms. Ford appealed her dismissal on June 11, 2009, and denied the allegations contained in her dismissal letter. Ms. Ford contended she was a victim of a hostile work environment and that the penalty imposed was excessive. After consideration of the pleadings in the record and the applicable law, Commission Referee L. Joann McAndrew issued a decision on January 12, 2010, upholding Ms. Ford's termination upon finding that Ms. Ford and her supervisor "were involved in a violent physical altercation with each other on MCLNO's premises. Based upon the forgoing [sic] reasons, I find that LSUHSC proved legal cause for discipline against [Ms. Ford's supervisor] and Ms. Ford, and that the penalty imposed against them, dismissal, is commensurate with their offenses." Thereafter, Ms. Ford applied to the Commission for review of the referee's decision. On April 8, 2010, the Commission denied Ms. Ford's application for review and adopted the referee's decision as its final decision. The instant appeal by Ms. Ford followed.

In civil service actions, the final decision of the Commission is subject to review on any question of law or fact. La. Const. art. X, §12(A). As in other civil matters, deference will be given to the factual conclusions of the Commission. Thus, in deciding whether to

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<sup>1</sup> Medical Center of Louisiana at New Orleans ("MCLNO") is also known as the Interim LSU Public Hospital.

<sup>2</sup> Ms. Ford's supervisor, Eleanora Lassere, who was also a classified civil service employee, was similarly terminated as a result of this incident.

affirm the Commission's factual findings, a reviewing court should apply the clearly wrong or manifest error rule prescribed generally for appellate review. **Bannister v. Department of Streets**, 95-0404, p. 8 (La. 1/16/96), 666 So.2d 641, 647. The present record, measured by that standard, discloses no error by the Commission. Therefore, and for the reasons assigned by the referee, which we adopt as our own and attach hereto as "Exhibit A," the judgment of the Commission is affirmed in accordance with Uniform Rules—Courts of Appeal, Rule 2-16.2A(2), (4), (5), (6), and (8). All costs associated with this appeal are assessed against Ms. Ford.

**AFFIRMED.**

**Decision**

**Filed: January 12, 2010**

State of Louisiana  
Civil Service Commission

**Docket Nos. S-16682 and S-16697**

Dionne Ford and Eleanora Lassere

Versus

Louisiana State University Health Services Center, Medical Center of Louisiana at New Orleans

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Rule(s): 12.2; 13.19(s)2

Topic(s): Dismissal; violence in the workplace; fighting; disparate treatment

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Appearances: Amanda Furst, representing Dionne Ford  
Eleanora Lassere, self-represented  
Philip H. Kennedy, representing LSUHSC, MCLNO

**Statement of the Appeal**

Dionne Ford and Eleanora Lassere were employed by the Louisiana State University Health Sciences Center (LSUHSC) at the Medical Center of Louisiana at New Orleans (MCLNO)<sup>1</sup>. Ms. Ford served with permanent status as an Administrative Coordinator 3. Ms. Lassere served with permanent status as an Administrative Manager.

By letter dated May 27, 2009, LSUHSC notified Ms. Ford that she was being dismissed from her position effective June 1, 2009, for engaging in a physical altercation with her supervisor, Ms. Lassere on April 20, 2009. By letter dated May 27, 2009, LSUHSC notified Ms. Lassere that she was being dismissed from her position effective June 4, 2009, for engaging in a physical altercation with her subordinate, Ms. Ford on April 20, 2009. LSUHSC charges Ms. Ford and Ms. Lassere with violating MCLNO policies prohibiting violence in the workplace.

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<sup>1</sup> Medical Center of Louisiana at New Orleans is also known as Interim LSU Public Hospital. It is referred to as MCLNO in this decision.

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Ms. Ford filed an appeal of her dismissal on June 11, 2009, under docket number S-16682. In her appeal, Ms. Ford denies the allegations of the dismissal letter. She contends that she is the victim of a hostile work environment and that the penalty is excessive. Ms. Ford also questions whether the proper appointing authority effectuated her dismissal. As relief, she requests reinstatement to her position, or alternately, reduction of the penalty imposed, along with expungement of her personnel record and an award of back pay.

On June 19, 2009, a referee issued a notice to LSUHSC requesting that it provide proof of appointing authority to the referee and Ms. Ford within ten (10) calendar days. LSUHSC responded to the notice on June 22, 2009, and submitted proof of appointing authority. On June 25, 2009, a referee issued a notice to Ms. Ford giving her ten (10) calendar days to notify him in writing if appointing authority was still an issue in the appeal, and if so, why, or her appointing authority claim would be summarily dismissed. Ms. Ford never responded to the June 25, 2009 notice, so I hereby summarily dismiss her challenge to appointing authority.

Ms. Lassere filed an appeal of her dismissal on June 29, 2009, under docket number S-16697. In her appeal, Ms. Lassere denies the allegations of the dismissal letter and contends she is the victim of disparate treatment. As relief, she requests reinstatement, expungement of her personnel record, and an award of back pay, benefits, medical expenses, and punitive damages in the amount of \$25,000.00. On July 1, 2009, a referee consolidated the two appeals for hearing in accordance with the provisions of Civil Service Rule 13.23.

Referee Craig B. Kimball held a public hearing on September 9, 2009, in New Orleans, Louisiana. On October 12, 2009, Referee Kimball resigned his position with the Department of State Civil Service without having rendered a decision in this appeal. The Civil Service Chief Referee reassigned this appeal to me, and provided notice to the parties of the reassignment on November 4, 2009. In accordance with the

provisions of La. R.S. 13:4209, I reviewed the entire record in this proceeding, including the testimony and exhibits received at the prior hearing held on September 9, 2009. Based upon the evidence presented and pursuant to the provisions of Article X, § 12(A) of the Louisiana Constitution of 1974, as amended, I make the following findings and reach the following conclusions.

### **Findings of Fact**

1. Dionne Ford and Eleanora Lassere were employed by the LSUHSC at MCLNO and they served with permanent status. Ms. Ford was an Administrative Coordinator 3. Ms. Lassere was an Administrative Manager and was Ms. Ford's immediate supervisor. They worked at MCLNO's Facility Maintenance Building.

2. Prior to April 20, 2009, several incidents occurred:

A. On December 6, 2007, Ms. Lassere gave Ms. Ford a score of 3.53 on her Performance Planning and Review (PPR) evaluation. Ms. Ford was upset and appealed the rating to Robert Arnold, Department Director. Mr. Arnold re-rated Ms. Ford and raised her rating to 3.72. Both ratings are "Exceeds Requirements."

B. Ms. Ford talked to Belinda Montegut, Mailroom Supervisor, about a transfer. Ms. Ford told Ms. Montegut that she felt that she was being "picked on" by Ms. Lassere, that she felt afraid and that her co-workers did not like her. Ms. Montegut suggested that Ms. Ford file a grievance against Ms. Lassere.

C. Ms. Ford wanted to be trained to work in the mailroom, but Ms. Montegut did not want Ms. Ford to receive the training because she felt it was unfair to the other employees who were already working in the mailroom. Ms. Ford ultimately received the training.

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D. Ms. Ford complained to Deborah Bartholomew, MCLNO Human Resources Supervisor, about Ms. Lassere and attempted to file a grievance against Ms. Lassere. Ms. Bartholomew told Ms. Ford that Ms. Lassere was doing her job and that Ms. Ford's complaints appeared to be work-related. Ms. Ford decided not to file the grievance.

3. In April 2009, Ms. Ford went on a cruise. While on the cruise, Ms. Ford became ill and could not return to work immediately. She consulted a doctor, who gave her a Certificate to Return to Work/School. The medical certificate provides:

*Certificate To Return to Work/School*

*Name: Dionne Summers<sup>2</sup>*

*Has been under my care from 4-17-09 to \_\_\_\_ - \_\_\_\_ and will be able to return to work/school on 4-20-09.*

*Limitations/Remarks: Due to illness*

*Minh C. Dao, M.D./Signature*

*Minh C. Dao, M.D.*

4. On April 20, 2009, Ms. Ford returned to work. She went to Ms. Lassere's office, took a seat, and gave Ms. Lassere the medical certificate and a leave slip requesting three days of sick leave. Ms. Lassere told Ms. Ford that pursuant to MCLNO policy, she would approve leave for one day, April 17, 2009, but would not approve leave for the other two days that Ms. Ford was absent because the medical certificate did not say Ms. Ford was under Dr. Dao's care on April 18, or 19, 2009.

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<sup>2</sup> Ms. Ford is also known as Dionne Summers.

5. Ms. Ford became irate and began yelling at Ms. Lassere. Ms. Ford stood up, grabbed the leave slip off Ms. Lassere's desk and continued yelling. Ms. Ford then turned and proceeded toward Ms. Lassere's office door.

6. As Ms. Ford was leaving the office, Ms. Lassere stood up from behind her desk, pointed her finger at Ms. Ford and said, "Bitch." When Ms. Ford heard the word "bitch," she stopped, turned to face Ms. Lassere, and said, "Lenora, you called me a bitch." Ms. Rozine Sampson, Administrative Coordinator 3, was in her office next to Ms. Lassere's office and heard Ms. Ford say, "Lenora, you called me a bitch."

7. Instead of leaving, Ms. Ford walked deeper into Ms. Lassere's office and stood near a chair. Ms. Lassere came out from behind her desk and told Ms. Ford, "I'm not playing with you." Ms. Ford responded, "I'm not playing with you either." Ms. Sylvia Weber, Administrative Assistant, overheard this exchange.

8. Ms. Ford attempted to pick up a nearby chair, she and Ms. Lassere began to scuffle, and a pushing match between them ensued. Ms. Cadette Jones, MCLNO employee, heard escalating voices coming from Ms. Lassere's office and went to see if there was a problem. Ms. Jones witnessed Ms. Ford's attempt to pick up the chair and she thought that Ms. Ford intended to hit Ms. Lassere with it.

9. Ms. Sampson heard loud voices and scuffling sounds, so she left her office and went to the door of Ms. Lassere's office. Ms. Sampson observed that Ms. Lassere, who is considerably larger than Ms. Ford, had Ms. Ford pinned up against the wall by the office door. Ms. Sampson also observed that Ms. Lassere had her left hand across Ms. Ford's chest and neck and that Ms. Lassere was hitting Ms. Ford with her right arm.

10. Ms. Ford told Ms. Lassere to release her or she would scratch her eyes out. When Ms. Lassere continued to pin Ms. Ford against the wall, Ms. Ford scratched Ms. Lassere's face and bit Ms. Lassere on her chest, leaving visible scratch and bite marks on Ms. Lassere.

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11. Ms. Sampson immediately went back to her office and telephoned the MCLNO Police Department to report that a disturbance was occurring in Ms. Lassere's office. Before the MCLNO police arrived, Ms. Sampson returned to Ms. Lassere's office two more times. Each time she returned to Ms. Lassere's office, she observed that the altercation was continuing, so twice she returned to her office and called the MCLNO police.

12. At approximately 10:26 a.m., the MCLNO police dispatcher notified MCLNO police officers Sergeant Cayonna Brumfield and Sergeant Ronald Young that a fight was in progress at the Facility Maintenance Building. When the officers arrived, Ms. Ford and Ms. Lassere were still engaged in the altercation, so the officers separated them.

13. Sergeant Brumfield interviewed Ms. Ford. She told Sergeant Brumfield that Ms. Lassere had refused to sign her sick leave slip, and that she (Ms. Ford) had reached across Ms. Lassere's desk, grabbed her leave slip, and stated to Ms. Lassere, "Give me my paper work if you are not going to sign it." Ms. Ford stated that she was walking out of the office door when Ms. Lassere jumped up from behind her desk, walked toward her, pointed her finger and said, "You bitch." Ms. Ford further stated that Ms. Lassere came toward her, so she pushed Ms. Lassere, and when Ms. Lassere came toward her again, she tried to pick up a chair to hit Ms. Lassere. Ms. Ford also said that Ms. Lassere pushed up against her, she warned Ms. Lassere to stop or she would gouge her eyes out, and then she grabbed at Ms. Lassere's face.

14. Sergeant Young interviewed Ms. Lassere. She told Sergeant Young that she had refused to approve Ms. Ford's leave, and that when Ms. Ford grabbed the paperwork off her desk, she had jumped up from behind her desk, pointed her finger at Ms. Ford, and called her a bitch. She said that as she was walking toward Ms. Ford, Ms. Ford pushed her in the chest, and that Ms. Ford had attempted to pick up a chair to hit her. Ms. Lassere stated that she stopped Ms. Ford from picking up the chair by holding Ms. Ford's arms. Ms. Lassere further stated that Ms. Ford had told her that if she did not let

her go, she would gouge Ms. Lassere's eyes out, but Ms. Lassere did not let her go and that was when Ms. Ford grabbed at Ms. Lassere's face.

15. Sergeant Young noticed scratches on Ms. Lassere's face and arms and what appeared to be a bite mark on her chest. He also noticed that Ms. Ford seemed to be having a breathing problem. The officers transported Ms. Lassere and Ms. Ford to MCLNO for medical treatment.

16. After arriving at the hospital, Sergeant Young and his supervisor, Captain Jonathan Holdam, re-interviewed Ms. Lassere. Ms. Lassere again related the details regarding the incident. She told them that when she refused to sign Ms. Ford's leave slip, Ms. Ford became irate and started using obscenities towards Ms. Lassere. Ms. Lassere said that she stood up, pointed her finger at Ms. Ford, and said, "You bitch," and that Ms. Ford came at her in a threatening manner, and she feared for her safety. Ms. Lassere stated that she pushed Ms. Ford away from her and that Ms. Ford attempted to pick up a chair but she held it down. Ms. Lassere further stated that Ms. Ford told her she would gouge her eyes out, and that when Ms. Lassere attempted to push Ms. Ford away, Ms. Ford scratched Ms. Lassere in the face and bit her on the chest.

17. Captain Holdam and Sergeant Young then re-interviewed Ms. Ford, who agreed with Ms. Lassere's version of the events. Ms. Ford told them that she had intended to hit Ms. Lassere with the chair but could not pick it up, and that she had intended to gouge Ms. Lassere's eyes out.

18. In light of the physical injury to Ms. Lassere and Ms. Ford's statement that she had attempted to pick up a chair to hit Ms. Lassere, Captain Holdam advised Ms. Ford of her constitutional rights, which she acknowledged and waived. Captain Holdam informed Ms. Ford that she was being charged with assault and battery. He turned Ms. Ford over to Sergeant Young for processing. The assault and battery charges were nolle prosequied by the City Prosecutor on July 23, 2009.

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19. MCLNO Policy #8015, Disciplinary Actions, Section V.13, Fighting or Creating a Disturbance on MCL Premises, provides in pertinent part as follows:

➤ Any employee who **initiates** a violent incident involving verbal and/or physical assaults and/or intimidation shall be subject to termination.

...

➤ Any employee who **encounters** a verbal and/or physical assault and/or intimidation and does not walk away but engages in a continuation of the act shall be subject to termination. Latitude may be extended to an individual acting in self defense.

...

➤ Employees who engage in the use of profanity may be subject to disciplinary action.

20. MCLNO Policy #0040, MCL Violence Prevention and Management, Section III, General Guidelines, provides in pertinent part at subsection I. as follows:

➤ Any employee or contract worker who **initiates** a violent incident involving verbal and/or physical assaults and/or intimidation shall have their employment terminated.

➤ Any employee or contract worker who **encounters** a verbal and/or physical assault and/or intimidation and does not walk away but engages in a continuation of the act shall have their employment terminated. Latitude may be extended to an individual acting in self defense.

...

➤ Employees who engage in the use of profanity in the presence of our patients, visitors, and/or staff will be subject to progressive disciplinary action.

21. MCLNO Policy 8009 regarding sick leave provides that an original, valid medical certificate from a physician/practitioner will be required when requesting three or more consecutive days of sick leave or when an incident of illness exceeds two consecutive days missed from work.

22. Harry Williams, Jr., alleges that Mr. Arnold grabbed him during working hours at MCLNO sometime between 2000 and 2001. He reported the incident to MCLNO and filed charges against Mr. Arnold with the New Orleans Police Department. To his knowledge, neither MCLNO nor the New Orleans Police Department pursued the allegations.

23. In approximately 2000, Ms. Montegut had a verbal confrontation with another employee over a requisition problem. LSUHSC did not discipline Ms. Montegut.

24. Prior to the April 20, 2009 incident between Ms. Ford and Ms. Lassere, Ms. Jones and Ms. Ford had a verbal confrontation that escalated to the point that Mr. Arnold had to intercede.

#### **Discussion and Conclusions of Law**

An employee with permanent status in the classified civil service may be disciplined only for cause expressed in writing. Cause for disciplinary action is conduct of the employee that is prejudicial to the public service or detrimental to its efficient operation. *Bannister v. Dept. of Streets*, 666 So.2d 641 (La. 1996). The right of a classified state employee with permanent status to appeal disciplinary actions is provided for in Article X, § 8(A) of the Louisiana Constitution of 1974. That section states that "[t]he burden of proof on appeal, as to the facts, shall be on the appointing authority." The appointing



authority is required to prove its case by a preponderance of the evidence, which is 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.

LSUHSC charges Ms. Ford and Ms. Lassere with engaging a physical altercation and thereby violating MCLNO policies prohibiting violence in the workplace. LSUHSC has proved these charges.

Ms. Ford and Ms. Lassere had work-related conflicts prior to the April 20, 2009 incident, including Ms. Lassere giving Ms. Ford a PPR rating below what Ms. Ford felt she deserved and Ms. Ford's feeling that Ms. Lassere was impeding her from receiving training to work in the mailroom. It is clear that the April 20, 2009 confrontation was not a sudden or an out-of-the-blue incident; it was an ongoing situation that came to a head that day.

Ms. Ford violated MCLNO policy prohibiting violence in the workplace when she grabbed the leave slip from Ms. Lassere's desk and yelled at Ms. Lassere. Ms. Ford testified that she was heading for the door when Ms. Lassere called her a bitch. Ms. Ford again violated MCLNO policy prohibiting violence in the workplace by failing to continue out the door, despite Ms. Lassere's insult. By her admission, Ms. Ford failed to walk away; instead, she escalated a verbal confrontation into a dangerous physical confrontation during which she thought about hitting Ms. Lassere with a chair.

A review of Ms. Ford's medical certificate that Ms. Lassere questioned indicates Ms. Ford was under her doctor's care on April 17, 2009. Although the doctor failed to specify the ending date of his care of Ms. Ford, the medical certificate does state that Ms. Ford was able to return to work on April 20, 2009. This, to me, clearly indicates that Ms. Ford was under her doctor's care until she returned to work on April 20, 2009; thus,

Ms. Lassere was being hyper-technical in dealing with Ms. Ford's request for leave. However, this does not mitigate or justify Ms. Ford's actions.

As previously stated, when Ms. Ford grabbed the papers off Ms. Lassere's desk and yelled at her, Ms. Ford was in violation of MCLNO's violence in the workplace policies. At that point, according to the policies, Ms. Lassere should have let Ms. Ford walk out of her office without comment and reported Ms. Ford's conduct. She did not do so. Instead, Ms. Lassere stood up, pointed her finger at Ms. Ford and called Ms. Ford a bitch, thus violating the policies by using profanity. She then continued her violation of the policies by escalating the situation into a scuffling and pushing match with Ms. Ford.

Both Ms. Ford and Ms. Lassere claim to have been intimidated by the other and that they were acting in self-defense. Ms. Lassere admitted that she pointed her finger at Ms. Ford and called her a bitch after Ms. Ford yelled at her and snatched the leave slip. Ms. Ford admitted that when Ms. Lassere called her a bitch, she confronted Ms. Lassere rather than leave Ms. Lassere's office. These are not the actions of persons who were intimidated by the other participants in the incident.

Both women claim to have acted in self-defense. Ms. Ford claims that she was fearful of Ms. Lassere because Ms. Lassere pushed her first and Ms. Lassere outweighed her considerably. Ms. Lassere claims that she was fearful of Ms. Ford because Ms. Ford attempted to pick up a chair to use as a weapon. I do not find their claims of self-defense credible. Both women could have walked away from the situation at any time. They both were verbally abusive and they both chose to approach one another in a confrontational manner. While it is unclear who made the first physical contact, it is abundantly clear that the actions of both women escalated a verbal confrontation into a physical fight.

In view of the foregoing, I find that LSUHSC has proved the charges against both Ms. Lassere and Ms. Ford. Ms. Lassere's and Ms. Ford's behavior constituted violence in the workplace. The Civil Service Commission has found that violence in the workplace

is cause for dismissal. *Lewis v. Louisiana Health Care Authority, Medical Center of Louisiana at New Orleans*, CSC No. S-11881, 2/26/97.

Ms. Ford contends that she is the victim of disparate treatment, in that other MCLNO employees had engaged in confrontations and MCLNO did not discipline them. Disparate treatment is a form of discrimination; therefore, under Civil Service Rule 13.19(s)2, Ms. Ford has the burden of proof on this issue.

Mr. Williams testified that approximately nine years ago, Mr. Arnold physically grabbed him and that nothing was done to Mr. Arnold. Ms. Jones testified that once she and Ms. Ford had an argument that escalated to a point that Mr. Arnold had to intercede. Ms. Montegut testified that she and another employee exchanged words approximately nine years ago and she was not disciplined. Except as to the incident regarding Ms. Montegut, there is nothing in the record to indicate whether LSUHSC took any action regarding these events. However, regardless of whether or not LSUHSC took action in these instances, I conclude that Ms. Ford failed to prove she is the victim of disparate treatment. Unlike the other incidents, Ms. Ford was involved in an extended physical struggle that required police intervention for it to end. Thus, the incidents with Mr. Arnold, Ms. Jones and Ms. Montegut are not even remotely comparable, a defect fatal to a finding of disparate treatment.

As to the penalty, the Civil Service Commission and its Referees have a duty to decide "whether the punishment imposed is commensurate with the dereliction." *Guillory v. Department of Transp. & Development*, 475 So.2d 368, 370-371 (La. App. 1<sup>st</sup> Cir. 1985). Ms. Lassere and Ms. Ford were involved in a violent physical altercation with each other on MCLNO's premises. Based upon the forgoing reasons, I find that LSUHSC proved legal cause for discipline against Ms. Lassere and Ms. Ford, and that the penalty imposed against them, dismissal, is commensurate with their offenses.

For the forgoing reasons, I deny these appeals.



L. Joann McAndrew

Civil Service Commission Referee