

Civil Service Commission Minutes

Cincinnati, Ohio

July 12, 2012

The Civil Service Commission met in regular session in Room 307, Council Chambers, on Thursday, July 12, 2012. Commissioners in attendance were Mr. James Robinson, Chair; Ms. Deborah Gaines; and Mr. Robert Braddock. Commission staff present included, Ms. Georgetta Kelly, Civil Service Secretary; Ms. Debra Schoenig and Ms. Ornita Brown, Recording Secretary.

Since minutes from the June 28, 2012 meeting had been circulated among the members, a motion to dispense with a reading of the minutes was passed and the minutes were approved.

The Civil Service Commission has scheduled a hearing for Anthony Arnold for August 2, 2012 at 8:30 a.m. concerning his dismissal from the Water Works Department.

SPECIAL EXAMINERS

- Gina Ruffin Moore, Ella Topham, and Steve Pacella for the Administrative Specialist exam
- Maria Menke- Sunderhaus, Vanessa Smedley, and Paul Humphries for the Senior Administrative Specialist exam

Jasmine Wright Decision

This matter came before the Civil Service Commission on the appeal of Jasmine Wright, a Water Works Truck Driver, from a dismissal for Insubordination, Failure of Good Behavior, and Neglect of Duty. Both parties were represented.

City employee Jasmine Wright has appealed her discharge, which was effective July 19, 2011. Ms. Wright, an eleven-year employee of the City, was for the last six years employed in the classification of Truck Driver in the repair section of the Distribution Division of the Greater Cincinnati Water Works Department (GCWW). As a truck driver, she typically went out in the field as a member of a three- or four-person crew which installed branch lines or repaired branch lines or water mains. The truck driver, at the work site, generally serves as a kind of utility person or as a flagger if a flagger is needed.

Ms. Wright was discharged on the following specifications:

Specification 1:

On February 25, 2011 at 8:59am, Ms. Wright made an unauthorized stop while driving a city vehicle, in a city uniform, and while employed on city time. This constitutes Neglect of Duty.

Specification 2:

On February 25, 2011, Ms. Wright flipped her middle finger to a passing motorist who complained about the traffic pattern she was working in. This constitutes Failure of Good Behavior.

Specification 3:

On February 25, 2011, Ms. Wright flipped her supervisor the middle finger and spoke to him in a derogatory manner in response to his request that she not give the middle finger to the driver of a car who had just driven past her jobsite. This constitutes Failure of Good Behavior.

Specification 4:

On February 25, 2011, Ms. Wright failed to flag traffic from the proper location after her supervisor had specifically requested her to flag from a position outside of the traffic pattern so that she was visible to vehicular traffic. This constitutes Neglect of Duty.

Specification 5:

On February 25, 2011, Ms. Wright threw her hardhat at her supervisor and could have caused bodily harm. This constitutes a violation of Administrative Regulation 49, Violence in the Workplace.

Specification 6:

On February 25, 2011, Ms. Wright refused to perform her assigned duty. Her supervisor gave her a legal, safe, and direct order to get out of her GCWW dump truck and return to flagging vehicular traffic. Ms. Wright did not verbally respond; she rolled up her window and did not speak to her supervisor. She did not return to work for 36 minutes. This constitutes Insubordination

The City first gave Ms. Wright notice of these charges against her in a pre-disciplinary notice that it issued to her on June 3, 2011. Ms. Wright and her union, AFSCME Ohio Council 8, contend that five of the six charges are time-barred by the terms of the Union's collective bargaining agreement with the City. Specifically, Article XVI (H) of that agreement provides:

Article 16 – Corrective Action

H. Time lines and notifications:

1. The charging supervisor must make a request for a pre disciplinary meeting not later than twenty-five (25) working days from the date upon which he/she becomes aware of the precipitating incident(s), except in cases involving violations of Administrative Regulations 25 (Sexual Harassment), 44 (Residency), 49 (Workplace Violence), 55 (Offensive/Derogatory Comments), this time frame will be up to eighty-five (85) working days. In cases involving an investigation by a law enforcement agency, there will be no time limit for completion of the investigation. The supervisor's request for a pre-disciplinary meeting must be forwarded to the agency and copied to the Union Staff Representative.

2. ...Failure to comply with these time lines will result in dismissal of the allegations against the employee.

No notice as to Specifications 1, 2, 3, 4, and 6 was given within 25 working days, and the appellant contends that they are thus untimely and must be dismissed. Specification 5, as to workplace violence, comes clearly under the contract exception for Administrative Regulation 49 (Workplace Violence) – which in fact expressly covers “throwing objects” – and there is no contention that the notice of it was untimely.

Jermaine Bolton is a Field Supervisor in GCWW, responsible for the direction of several crews working in different sites at a time. He knew Jasmine Wright as a coworker for approximately 10 years, and in early 2011 she was transferred to a crew under his supervision. He testified that he had no close personal relationship with her.

On the morning of February 25, 2011, Mr. Bolton assigned Ms. Wright to work as a flagger in a four-person crew repairing a water-main leak on Section Road. He told her to put on work boots, and made a comment about her bare feet. She drove a truck to Section Road on work time, making an unauthorized short stop at a bakery on the way.

Later in the morning, Mr. Bolton came to the Section Road work site. He testified that he saw Ms. Wright leaving in a truck, and that he flagged the job himself for about 20 minutes, after which time she returned in the truck and remained sitting in the truck. He further testified that he motioned her over and directed her to start flagging and she did so. He testified that with Crew Leader Ronald Berry present, he saw Ms. Wright get in an argument with a passing motorist who told her that he couldn't see her, and saying to him “didn't I fucking tell you to stop?”, and that she gave the motorist the finger as he drove off. He testified he told Ms. Wright to flag on the other side of the road to be more visible, that she should not give people the finger, and he would write her up if she did so again. Mr. Bolton further testified that Ms. Wright said she would give him the finger, and did so, telling him that she had a pen up her ass that he could use to write her up with.

Mr. Bolton left the site, and according to his account discussed Ms. Wright's conduct with other supervisors, and then returned to the site an hour or so later. He testified that no one was flagging when he got there, and Ms. Wright was warming her hands at the air compressor. He ordered her to go across the street and flag, and she complained that “these mother fuckers ain't relieving me” and he again ordered her to go and flag immediately. He stated she remained at the compressor, and he again ordered her to go across and flag, saying that it was a “safe and legal and direct order,” to which she said “You on some bullshit” and went to talk to Tremaine Willis, another member of the crew who was a crew leader also. Mr. Bolton further testified that he told her again to go across and flag, and she argued that Mr. Willis was giving her more time and continued her refusal, and he told her once again to go across and flag, emphasizing that he was her supervisor. Mr. Bolton further testified that he told Ms. Wright at that point that she had five minutes to take over the flagging and she told him she would stand there at the compressor for 45 minutes or as long as she wanted to. Mr. Bolton next testified that he told her again she had five minutes, and she said, “You on some bullshit” and threw her hardhat at him, missing his head by half a foot and hitting the backhoe behind him. Mr. Bolton's testimony continued as follows: he got angry, but

controlled himself, and told her she still had five minutes; she got in the truck and sat there, and after 10 or 15 minutes, he went to the truck and knocked and told her, her time was up, and she rolled the window back up and sat there a few more minutes before getting out and flagging.

Ms. Wright's testimony about the relationship with Mr. Bolton and the flagging at Section Road was substantially different from Mr. Bolton's. She characterized her relationship with Mr. Bolton as "sexual" in nature, but without any cohabitation and without ever having had any workplace problems with him prior to February 25, 2011. She testified that she did not give the finger to a motorist or to Mr. Bolton. According to her, Mr. Bolton came up later when she was briefly warming her hands and told her to get her "mother fucking ass across the street and flag from across the street." Instead of complying she told him that she was going to speak to Crew Leader Willis - - who, like her, was subordinate to Mr. Bolton - - and Mr. Willis told her she would have 15 minutes, and she went to the truck. She objected that Mr. Bolton "didn't want to allow me to take, you know, little brief trips to the air compressor." Ms. Wright denied ever throwing her hardhat, testifying that it happened to slip to the ground from her hand as she climbed into the truck.

Employee Zebra Primus was a coworker of Ms. Wright's with a family relationship to her, and testified as a subpoenaed witness for the City at the hearing in this matter. It is undisputed that Ms. Wright called her after the argument with Mr. Bolton on February 25, about getting union representation. Ms. Primus testified that Ms. Wright said in the course of the call that she had thrown her hardhat at Mr. Bolton; Ms. Wright denies having said this. We credit Ms. Primus' testimony on this point. Employee Ronnie Berry, working in the hole at the job site, thought he heard a hardhat hit, although he did not see it in motion.

Where Ms. Wright's testimony differs from Mr. Bolton's, we credit Mr. Bolton. He impressed us as a straightforward and reliable witness, and Ms. Wright did not. Ms. Wright's behavior at the worksite on February 25 was profane, insolent, insubordinate and ultimately violent. Ms. Wright has a poor work record, and was returned to work after a long suspension only a few months before February 25, 2011.

Specification 1, concerning an unauthorized stop at a bakery away from the work site, involves a claim of a discrete offense which was untimely under the terms of the collective bargaining agreement; and it is dismissed.

Specifications 2, 3, 4, and 6, involving the same continuous misbehavior with the same supervisor over a short period at one work site, are inextricably linked with the allegations of workplace violence in Specification 5, which was indisputably timely; and we consider them all together as charging misconduct which we find in fact occurred. We, therefore, sustain Specifications 2, 3, 4, and 6 and find that discharge is appropriate. Indeed we find that discharge would be and is appropriate on Specification 5 alone, the violence involved being intolerable.

For the foregoing reasons, the appeal is granted as to Specification 1, the appeal is denied as to Specifications 2, 3, 4, 5, and 6. Therefore, it is the unanimous decision of the Commission to uphold the charges and penalty of the appointing authority of dismissal without modification.

CITY MANAGER'S OFFICE/EMERGENCY COMMUNICATIONS CENTER

Request from the Emergency Communications Center for the transfer of Carolyn Neiheisel from the Metropolitan Sewer District as an Administrative Technician

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that all parties are agreeable to the transfer.

ENTERPRISE TECHNOLOGY SOLUTIONS

Request from the Enterprise Technology Solutions Department for the temporary promotion of Mark Brown from a Computer Systems Analyst to an Information Technology Assistant Manager

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that the temporary promotion is needed to assist with the Greater Cincinnati Water Works billing project for Lexington and Mr. Brown meets the qualifications for the temporary promotion.

HEALTH

Request from the Health Department for the exceptional appointment of Derek Dudley as an Environmental Safety Specialist

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that Mr. Dudley is qualified and the Commission previously approved this title for exceptional appointment.

Request from the Health Department for the exceptional appointment of Denise Saker as a Pediatrician

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that Ms. Saker is qualified and the Commission previously approved this title for exceptional appointment.

POLICE

Request from the Police Department for the transfer of Tamieka Gray from the Health Department as a Clerk Typist 3

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that all parties are agreeable to the transfer.

PUBLIC SERVICES

Request from the Public Services Department for the exceptional appointment of Richard Hartman as a HVAC Specialist

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that Mr. Hartman is qualified and the Commission previously approved this title for exceptional appointment.

AGENDA ITEMS

Request from Sandra Coleman to appeal her rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Ms. Coleman does not meet the minimum qualifications.

Request from Louise Shields to appeal her rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Ms. Shields does not meet the minimum qualifications.

Request from Ken Finan to appeal his rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Mr. Finan does not meet the minimum qualifications.

Request from Alan Butler to appeal his rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Mr. Butler does not meet the minimum qualifications.

Request from Sharon Wiehe to appeal her rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Ms. Wiehe does not meet the minimum qualifications.

Request from Kevin Mercier to appeal his rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that the classification of Industrial Investigator has been approved as a qualified classification to take the promotional exam.

Request from Ronetta Engram to appeal her rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Ms. Engram does not meet the minimum qualifications.

Request from Steven Predmore to appeal his rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission approved the request to be placed back into the Administrative Specialist process pending additional information. Please note the exam will not be graded until the information is reviewed and a final decision is made.

Request from Rhonda Adkins to appeal her rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Ms. Adkins does not meet the minimum qualifications.

Request from Natasha Ruff to appeal her rejection from the Administrative Specialist promotional exam

The staff recommended denial of the request. After review and discussion, the Commission denied the request. The decision was based on the fact that Ms. Ruff does not meet the minimum qualifications.

Request for approval of new and/or revised classification specifications

- Nursing Director – open
- Director of Public Services – unclassified
- Health Counseling Supervisor (Communicable Disease) – open
- Health Counseling Supervisor – open

After review and discussion, the Commission approved the request.

Request from the Emergency Communications Center to add an Administrative Technician position to their table of organization

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that the duties and responsibilities are consistent with the proposed title and the deletion of an Operator and Dispatcher.

Request from the Law Department to add a Support Services Specialist position to their table of organization

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that the duties and responsibilities are consistent with the proposed title and the deletion of a Clerk Typist 3.

Request from the Metropolitan Sewer District to add a Building Maintenance Worker, a Wastewater Collection Supervisor, and two Water Customer Service Representative 2 positions to their table of organization

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that the duties and responsibilities are consistent with the proposed titles and the deletion of a Plant Maintenance Worker.

Request from the Police Department to add a Computer Systems Analyst position to their table of organization

The staff recommended approval of the request. After review and discussion, the Commission approved the request. The decision was based on the fact that the duties and responsibilities are consistent with the proposed title.

Pending:

Appeals to be scheduled:

Joseph Lee
David Johnson
Anthony Harper
James Roper
Lester McEwen
Alice Folson
Curtis Boykins (2)
Veronica Barnes