CIVIL SERVICE COMMISSION

Ernie Tellez
Appeal of Termination
Tucson Water Department
January 22, 23, 2015

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Thursday and Friday, January 22 and 23, 2015 at the Fire Central Building, 300 S. Fire Central Place, Conference Room #266, Tucson, Arizona for an Appeal of Termination filed by Ernie Tellez from the Tucson Water Department.

Present were Chair Marion Pickens, Commission Members Malcom Pavey and Max Parks. Staff present: Barry Corey, Legal Counsel; Tameron Collins, Human Resources Deputy Director; and Armida Saufley, Executive Assistant of Human Resources (Recording Secretary).

Mr. Jeff Jacobson, Jacobson Law Firm, represented Mr. Ernie Tellez. Ms. Michelle Saavedra, Sr. Assistant City Attorney represented the Water Department. Tucson Water Director Alan Forrest was also present.

Witnesses sworn in were:

1) Cheryl Avila
2) Christine Rodriguez
3) Michael Martinez
4) David Romo
5) Alan Forrest
6) Jeffrey Mondu
7) Eddie Wise
8) Daniel Bauerelen
9) Gabriel Molina
10) Rocco DePaolo
11) Adrian Gonzales (telephonic)
12) Ernie Tellez

This appeal was held in Open Session; however, the rule was invoked.

Actions Mr. Tellez knew or reasonably should have known would result in disciplinary action:

On June 25, 2014, at approximately 10:00 a.m. a member of management was driving South on Midvale Park Road and passed Ernie Tellez heading north on Midvale Park Road. This neighborhood is in cycle 18 and in the area of Mr. Tellez's primary residence. The member of management arrived at the Tucson Water Westside facility at approximately 10:15 a.m. He proceeded to verify with Supervisor Clint Beattie what cycle the meter readers were reading. Mr. Beattie responded that his staff was on the west side, reading cycle 21.

Mr. Beattie drove to the location on Midvale Park Road and did not see Mr. Tellez in the area. He proceeded to Mr. Tellez' residence at 5767 S Olvera Pl. Mr. Beattie arrived at the residence at 10:45 a.m. and Mr. Tellez' assigned vehicle #2385 was parked in the driveway. Mr. Beattie left

and drove down the street, contacted Lead Utility Service Worker David Romo and directed him to meet Mr. Beattie. Mr. Romo met up with Mr. Beattie and they arrived at Mr. Tellez' residence and rang the doorbell at 11:15 a.m. Mr. Tellez answered the door and Mr. Beattie explained that he received a report regarding Mr. Tellez being out of his area. Mr. Tellez stated "I am eating lunch". Mr. Beattie then asked Mr. Tellez, "Why did you not call me or David Romo for permission to be out of your work area?" Mr. Tellez stated "I thought I was in my work area". Mr. Tellez is a tenured employee with Tucson Water and is very aware and familiar what constitutes the boundaries of his route.

Amplifying Information:

On September 16, 2013, Division Administrator, Chris Rodriguez met with Mr. Tellez to review his work expectations in detail. A written document was provided to Mr. Tellez with information such as the job description, duties, rules and tasks to maintain the position. Expectations that they both went over include:

E. Not leaving work site unless permission is received from the team leader or supervisor and
F. Properly checking in and out of service at the start and end of shift for all breaks greater than 30 minutes (including lunch) when performing service work.

During this meeting, Mr. Tellez was given the opportunity to ask for clarification of any information in the document. On September 16, 2013, Mr. Tellez signed as having received, read, and understood the work expectations. Mr. Tellez agreed both orally and in writing to accept responsibility in complying with these expectations and the Administrative Directives applicable to his employment with Tucson Water.

On June 26, 2014, Mr. Beattie reviewed the detailed route report from the previous day's work. The report indicated that on June 25, 2014, Mr. Tellez started his route at 5:49 a.m. and finished at 9:33 a.m. Despite ending his route at 9:33 am, there is no indication of what Mr. Tellez was doing up until the time he was spotted heading towards his neighborhood and the time he took lunch at 10:35 a.m. On June 25, 2014, Mr. Tellez entered into timekeeping system Oracle WAM a lunch period from 10:35 a.m. to 11:05 a.m. However, when Mr. Beattie had arrived at Mr. Tellez' home at 11:15 a.m., Mr. Tellez stated he was on his lunch break. A member of management originally reported Mr. Tellez in the vicinity of his home, at approximately 10:00 a.m. Based on the detailed route report, Mr. Tellez exceeded the 30 minute lunch period and falsified his time worked record by violating City Administrative Directives 2.02-5 Code of Conduct, Section II (A)(2),(4) and 2.01-15 Reporting Time Worked and Leave Use, Section IV (A)(1)(2) . Mr. Tellez is a tenured employee and aware of this directive.

Mr. Tellez is provided a City vehicle for the purpose of reading meters and performing service work. The Utility Service Worker guide book instructs that USW's are not allowed to take their City vehicles home for lunch. Mr. Tellez signed a document stating he would comply with this

directive on June 8, 2011. Mr. Tellez is aware that non-compliance would lead to discipline up to and including termination.

Additionally, Mr. Tellez was out of his assigned work area and late returning to work from lunch. Falsifying time sheet records is a violation of City Administrative Directives 2.02-5 Section II (A)(1)(2)(4)(10) and 2.01-15 Reporting Time Worked and Leave Use, Section IV (A)(1)(2). On June 25, 2014, Mr. Tellez did not accurately record his lunch time nor did he seek permission to go out of his assigned work area. The work area has been clearly defined as the geographic boundaries of the assigned route and the immediate area. These boundaries offer employees access to sanitary facilities and the ability to purchase food and refreshments. Mr. Tellez was six miles away from his assigned route and did not ask Supervisor Beattie or Lead David Romo for permission to leave his assigned area. There is 1 full hour of unaccounted time from 9:33 a.m. when Mr. Tellez finished his route to the time Mr. Tellez claims he took lunch at 10:35 am.

Confirmation and Receipt of Training:

09/16/2013 Received Work Expectations memo from Division Administrator
- Rules of Conduct-Administrative Directive
- USW Guidebook
  - Department Performance Standards
  - Major Duties, Tasks, and Critical Elements

07/11/2013 Updates to City Administrative Directives
- Reporting Time Worked and Leave Use

07/10/2013 Active Shooter Training

09/21/2012 Confirmation of Receipt-Staff Responsibilities in Adhering to City Policies
- Rules of Conduct

10/17/2011 Confirmation of Receipt-Staff Responsibilities in Adhering to City Policies
- Rules of Conduct

06/08/2011 Received the Utility Service Worker Guidebook

02/14/2007 Confirmation of Receipt-Administrative Directive 2.01-15 Reporting Time Worked and Employee Leaves

01/19/2006 Received the City of Tucson Code of Ethics and Rules of Conduct for Employees Handbook

03/29/2005 Received the City of Tucson Code of Ethics and Rules of Conduct Booklet for Employees

04/10/2000 Confirmation of Receipt-Employee Reference Guide
- Time worked and Leave Records
- Standards of Conduct; Work Expectations
- Code of Ethics
- Rules of Conduct

- City Vehicle Use
- Insubordination

Prior Discipline and Counseling:

From September 24, 2013 through October 3, 2013, Mr. Tellez served an 8-day suspension for improper conduct and insubordination.

On August 2, 2013, Mr. Tellez received a verbal counseling for viewing and listening to inappropriate gun websites. The volume was loud enough where others could hear the guns being fired, causing a sense of fear in the workplace.

On June 14, 2013, Mr. Tellez received a 1-day suspension for insubordination, detrimental actions, and inappropriate clothing and shoes during work hours.

On April 2, 2013, Mr. Tellez received a Written Reprimand for insubordination, detrimental actions, and inappropriate clothing and shoes during work hours.

On August 13, 2012, Mr. Tellez was given a letter of counseling for harassing comments he made about coworkers and questioning his supervisors' decisions.

From August 2012 through January 2013, Mr. Tellez' supervisor counseled him on several occasions of the same issues of his continued harassing behavior and inappropriate conduct.

On March 12, 2012, Mr. Tellez received his annual evaluation which addressed his harassing behavior and inappropriate conduct.

From January 18, 2012 through February 25, 2012, Mr. Tellez served a 28 day suspension and on February 27, 2012 Mr. Tellez was demoted from Meter Service Representative to Utility Service Worker for violation of Administrative Directive 2.02-5 Rules of Conduct.

Disregard for the City of Tucson Code and Administrative Directives:

<u>Administrative Directive 2.02-5, Rules of Conduct,</u> Section II: Policy Subsection A:

A. *All employees must observe the following basic principles and rules of conduct throughout their employment with the City. Failure to observe basic principles and rules of conduct, as specified in this policy and in City Code, may result in disciplinary action up to and including discharge.*

1. *Be at work on scheduled working days at the designated starting time, and remain at assigned work place during designated work hours unless permission to leave has been granted by the supervisor.*
2. *Observe department breaks and lunch periods without abuse.*
4. *Complete the required "time worked" records in accordance with instructions issued by the City.*
9. *Carry out specific orders and instructions from assigned supervisory personnel.*
10. *Perform a full day's work in an efficient manner in accordance with the methods and standards required by the City.*
11. *Conduct themselves in a manner, on and off duty, that:*
    a. *does not compromise their ability, or that of other employees to perform assigned work and or duties in an efficient, non-discriminatory, and professional manner;*
    b. *does not discredit the City or department in a manner that affects its ability to perform its mission;*
    c. *does not cause the City or department to question the employees' reliability, judgment, or trustworthiness in carrying out assigned responsibilities.*
16. *Employees shall not engage in dishonesty, falsifying or omitting information, either verbally or in written format (including electronically) on any records including but not limited to payroll records, human resources records, information prepared or provided in response to any investigation.*
22. *Adhere to those provisions of the City Charter, City Ordinances, City Administrative Directives, Department rules and regulations, and Civil Service Commission Rules that relate to their employment with the City.*
26. *Employees are prohibited from using City vehicles, eq2uipment, materials, property, or City processes for general convenience or profit, unless it is made available or provided to the general public. As an example, employees are prohibited from sending Christmas or other personal cards through the City mail system.*

Administrative Directive 2.01-15, Reporting Time Worked and Leave Use, Section II: Policy

Employees and supervisors are responsible for assuring the accuracy of the Time Worked Record/Time Sheet. Inaccurate recording of time worked for additional pay, either willful or unintentional, is subject to disciplinary action up to and including discharge from employment.

Administrative Directive 6.01-1, Responsibilities Regarding utilization of City Vehicles, Section VIII: General Rules

A. No employee of the City is authorized to use a City vehicle for other than the performance of assigned official duties, except for vehicles assigned to Mayor and Council, the City Attorney, and the City Clerk. No personal use of City vehicles is permitted.

D. Employees shall not use, or authorize the use of, any City owned vehicle or equipment for other than official purposes, or otherwise violate the provisions of assignment.

City of Tucson Water Employee Reference Guide:
Chapter 3, Working Times:
TIME WORKED AND LEAVE RECORDS
All work areas within Tucson Water require that time worked and leaves are recorded in the Utility's online Water Asset Management (WAM) system for payroll, cost-accounting, and work management-tracking purposes. Exempt employees may be asked to prepare weekly schedules that are updated regularly, and are required to track work start and stop times as well as work performed to capture project costs and staffing levels used. In addition, FLSA Non-Exempt employees are required to track start and end of shift as well as lunch period start and stop times. Your Supervisor will explain the procedures to you and tell you how maintaining the time record is a part of your responsibility, and may also require you attend WAM system training.
Refer to City of Tucson Administrative Directive 2.01-15, Reporting Time Worked and Employee Leaves (http://cms3.tucsonaz.gov/files/docs/ad/2-01-7.pdf) **and Tucson Water Departmental Procedures II.B.06, Timekeeping Procedures**
(http://drupal.ci.tucson.az.us/files/docs/water/II_B_06.pdf)
Chapter 6, Standards of Conduct; Work Expectations:
7. Code of Ethics: Tucson Water employees follow City of Tucson Code of Ethics guidelines. The policy expects you to observe, uphold, promote, and demand the highest ethical standards.
Administrative Directive 2.02-14 Ethics and Conflict of Interest (http://cms3.tucsonaz.gov/files/docs/ad/2-02-14.pdf), explains these expectations in detail.
8. Rules of Conduct: Tucson Water employees also follow **City of Tucson Administrative Directive 2.02-5, Rules of Conduct** (http://cms3.tucsonaz.gov/files/docs/ad/2-02-5.pdf).
This policy establishes basic principles you should demonstrate throughout your employment with the City. Specifically, you are prohibited from using City vehicles, equipment, materials, property or City processes for general convenience or profit, unless it is made available or provided to the general public.

City Vehicle Use
Tucson Water provides official vehicles for employees who are required to travel as part of their assigned duties. All City motor pool vehicles shall be used for official business only. Official vehicles shall not be used for travel outside of the normal assignment area or travel route. When work responsibilities require the use of a City vehicle, the vehicle can be used to travel to a rest or lunch break at an eating establishment within the normal assignment area or travel route. Inappropriate use of City time or City vehicles is not permitted.

Insubordination
Insubordination is the deliberate and willful refusal to comply with reasonable requests or demands. It involves disregard or disrespect of proper authority and a refusal to obey orders. It is a serious offense and employees may be terminated for flagrant or repeated acts of insubordination. Supervisors are responsible for giving orders or making requests that are necessary to accomplish the workload. They are also responsible for ensuring that their orders or requests do not present a clear and present danger to the work group or work area. You are responsible for complying with your supervisor's requests.

Utility Service Worker Guidebook; Section IV. Tucson Water Specific Performance Criteria:
Major Duties, Tasks, and Critical Elements:
1. Meets daily attendance schedule by:
   E. Not leaving work site unless permission is received from the team leader or supervisor.
2. Maintains good customer relations with the public and co-workers by:
   E. Volunteering to help others or assume additional assignments when day's work is completed early.

Utility Service Worker Guidebook; Section V. Utility Service Worker Rules:
4. Remember, that as a representative of Tucson Water you are always in the public eye. Conduct yourself in a manner that is beyond reproach. You should be courteous, professional, presentable, and strive to provide our customers with the best service possible.
7. Never leave your work area unless you have permission from your supervisor.
8. Always adhere to Tucson Water's lunch and rest break policy (Tucson Water Employee Reference Guide, Chapter 3).
9. Never take your City vehicle home for lunch.

Disciplinary Action
As a tenured employee with Tucson Water, Mr. Tellez knew his actions would subject him to disciplinary action. Mr. Tellez is a public servant of the community and there is an expectation that he will perform his job duties in an efficient and professional manner. Mr. Tellez' job duties primarily focus on meter reading and service activities which includes a 30 minute lunch break. This does not permit him to drive his City vehicle to his residence to eat and take an extended lunch without supervisor approval.

Rate payers are charged for water according to Tucson Water's cost of service. Timesheet data is used to calculate a portion of the cost of service. In order for Tucson Water to charge accurately, employees must enter their time truthfully or the calculations will be nullified.

For Tucson Water to successfully operate, employees must follow orders, complete tasks and respect their supervisors. Insubordinate behavior includes disobedience, resistance to authority, defiance of authority, refusal or failure to comply with reasonable instructions, insolence, disrespect and blatant rudeness. This is a serious offense and your behavior will not be tolerated. When an employee willfully and inexcusably refuses to carry out a direct and reasonable order, he/she is guilty of insubordination. Mr. Tellez exhibited a willful disregard for his Supervisor's authority.

Based on your actions detailed above, and in accordance with the City's policies and directives this is your notice that you are being terminated from your position with Tucson Water.

Pursuant to Tucson Code §10-3, Definitions, Just cause, "insubordination, conduct, while either on or off duty, tending to cause discredit to the city or the department that affects its ability to perform its mission, or the city or the department to question an employee's reliability, judgment, and trustworthiness in carrying out assigned responsibilities, violation of the ordinances of the Mayor and Council, the rules and regulations of the Commission, administrative directives of the City Manager and the rules and regulations of the department in which an employee is employed; absence from duty without leave; shall constitute just cause for discipline up to and including termination".

City's Exhibits Admitted

Exhibit A – Tabs 1 - 4
- Tab 1 – Exhibit A
- Tab 2 – Notice of Intent to Discharge dated July 14, 2014
- Tab 3 – Notice of Decision dated July 24, 2014 and PARF
- Tab 4 – Request for Appeal dated July 29, 2014

Exhibit B – Tabs 1 - 20
- Tab 1 – Michael Martinez' Tucson Water Incident Statement Form
- Tab 2 – David Romo's Tucson Water Incident Statement Form
- Tab 3 – Clint Beattie's Tucson Water Incident Statement Form
- Tab 4 – Photograph of Tucson Water truck @ Ernie Tellez' house
- Tab 5 – MapQuest printout
- Tab 6 – Ernie Tellez' Timesheet log for 6/25/14
- Tab 7 – Ernie Tellez' Route Times Report for 6/25/14
- Tab 8 – Evaluation dated 5/1/14
- Tab 9 – Performance Evaluation Response
- Tab 10 – Ernie Tellez' Evaluation Rebuttal dated 4/16/14
- Tab 11 – Evaluation dated 4/9/14
- Tab 12 – 8 day suspension PARF w/supporting documentation effective 9/24/13
- Tab 13 – PARF for transfer from Eastside Metering to Westside Metering effective 9/22/13

Tab 14 – Work Expectations Memorandum dated 9/16/13
Tab 15 – 1 day suspension reduced by Grievance w/supporting documentation (original discipline effective 6/17/13)
Tab 16 – Written Reprimand re: March 2013 incidents
Tab 17 – Evaluation dated 3/12/13
Tab 18 – Evaluation dated 5/29/12
Tab 19 – PARF for transfer from Westside to Eastside Metering effective 3/25/12
Tab 20 – Demotion w/Suspension effective 2/27/12 post Civil Service appeal of Termination w/supporting documentation

Exhibit C – Tabs 1 – 11
Tab 1 – Updates to City Administrative Directives dated 7/11/13
Tab 2 – Staff Responsibilities in Adhering to City Policies dated 8/31/12 & 10/17/11
Tab 3 – Reporting Time Worked and Employee Leaves Memorandum & Key Points dated 2/14/07
Tab 4 – Employee Reference Guide signature page dated 4/10/00
Tab 5 – Rules of Conduct 2.02-5
Tab 6 – Reporting Time Worked and Leave Use 2.01-15
Tab 7 – Responsibilities Regarding Utilization of City Vehicles 6.01-1
Tab 8 – Employee Reference Guide-November 13, 2013
Tab 9 – Sections IV & V of Tucson Water Guidebook
Tab 10 – "Just Cause" definition
Tab 11 – "Utility Service Worker" job description
Exhibit D – Aerial Map (photograph)

Appellant's Exhibits Admitted
Exhibit 1 – Tabs A – FF
Tab A – Meter Reading Monthly Report February 2014
Tab B – Meter Reading Monthly Report March 2014
Tab C – Metering Services/West Fiscal Report May 2014
Tab D – Meter Reading Monthly Report June 2014
Tab E – Gabriel Molina letter dated July 24, 2014
Tab F – Daniel Bauerelen undated letter
Tab G – Ernie Tellez cell phone records June-July 2014
Tab H – Eddie Wise cell phone records June-July 2014
Tab I – David Romo cell phone records June-July 2014
Tab J – Clint Beattie cell phone records June-July 2014
Tab K – Reference letters
Tab L – Detail Route Report for Route 2109 for June 25, 2014
Tab M – Emails regarding allegation of being out of uniform

Tab N – Not Admitted into Evidence
Tab O – June 27, 2014 email from Clint Beattie to Lanette McQueen with attachment
Tab P – June 30, 2014 email from Lanette McQueen to Christine Rodriguez, Cheryl Avila and Clint Beattie with attachment
Tab Q – July 2, 2014 email from Lanette McQueen to Christine Rodriguez, Cheryl Avila and Clint Beattie with attachment
Tab R – July 2, 2014 email from Cheryl Avila to Christine Rodriguez, Lanette McQueen and Clint Beattie with attachment
Tab S – July 2, 2014 email from Lanette McQueen to Christine Rodriguez, Cheryl Avila and Clint Beattie with attachment
Tab T – July 3, 2014 email from Christine Rodriguez to Lanette McQueen with attachment
Tab U – July 7, 2014 email from Christine Rodriguez to Lanette McQueen with attachment
Tab V – July 7, 2014 email from Lanette McQueen to Christine Rodriguez with attachment
Tab W – July 7, 2014 email from Lanette McQueen to Cheryl Avila and Clint Beattie with attachment
Tab X – July 7, 2014 email from Christine Rodriguez to Lanette McQueen with attachment
Tab Y – July 7, 2014 email from Cheryl Avila to Lanette McQueen and Clint Beattie with attachment
Tab Z – July 8, 2014 email from Elsa Quijada to Jeff Biggs and Alan Forrest with attachment
Tab AA – July 11, 2014 email from Elsa Quijada to Tameron Collins with attachment
Tab BB – July 11, 2014 email from Elsa Quijada to Lanette McQueen with attachment
Tab CC – Tucson Water Department Procedures "Appropriate Dress" effective 9/18/2000
Tab DD – Map
Tab EE – January 15, 2015 email from Petitioner's counsel to counsel for City of Tucson
Tab FF – January 15 2015 email from counsel for City of Tucson to Petitioner's counsel

At 2:20 p.m. Commissioner Parks made a motion to go into Executive Session for legal advice from Legal Counsel Barry Corey pursuant to A.R.S. §38-431.03(A)(3). The motion was seconded by Commission Pavey and the Commission went into Executive Session. The Commission resumed the open meeting at 2:35 p.m.

In open session, at the conclusion of closing statements, based on the testimony presented and the exhibits admitted into evidence, Commissioner Parks made a motion to deny the appeal of Ernie Tellez and uphold the termination for the reason that there was just cause for the disciplinary action imposed. Commissioner Pavey seconded the motion. The vote was unanimous.

Hearing Adjourned at 2:30 p.m.

Marion L. Pickens 01/28/15
Marion Pickens, Chair Date
Civil Service Commission