CIVIL SERVICE COMMISSION

City of Tucson **Minutes**

Brett Bradshaw
Appeal of Demotion
Tucson Fire Department
June 17, 18, 2015

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Wednesday, June 17, 2015, and 10:00 a.m. on June 18, 2015, at the Community Resources Center, Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for an Appeal of Demotion filed by Brett Bradshaw from the Tucson Fire Department.

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

Mr. Bradshaw represented himself; Ms. Sivan Korn, Principal Assistant City Attorney, represented the Tucson Fire Department. Fire Chief Jim Critchely was present for a majority of the hearing and Deputy Chief Chris Anderson concluded the attendance.

Per Exhibit A, Mr. Bradshaw has been charged as follows:

I. Actions Mr. Bradshaw knew or reasonably should have known would result in Disciplinary Action:

On August 4, 2013 Mr. Bradshaw called in sick to allow Mr. Herbert Oxnam the ability to work extra duty. Results of a TPD and TFD investigation determined that Mr. Bradshaw was paid by Mr. Oxnam to call in sick.

On September 13, 2014 Mr. Bradshaw called in sick to coach his son's football game. When Mr. Bradshaw's Captain questioned him about his involvement with the Herbert Oxnam investigation, Mr. Bradshaw lied and told his captain that he was not involved. Mr. Bradshaw's Captain also told him that it was improper to call in sick to coach a game specifically since Mr. Bradshaw was involved in the Oxnam case.

II. Violations of City of Tucson Administrative Directives and Tucson Fire Department Rules and Regulations:

City of Tucson Administrative Directive 2.02-5, Rules of Conduct, II. Policy:

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

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 employee's reliability, judgment or trustworthiness in carrying out assigned responsibilities.

12. Truthfully give all pertinent facts and information to supervisors on any matters involving or concerning City employment. 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.

City of Tucson Administrative Directive 2.01-7B, Sick Leave, Section C:
…lists events or circumstances for which sick leave usage is appropriate. Mr. Bradshaw's use of sick leave in order to coach his son's football team and allow another individual to increase his overtime is deemed inappropriate.

Tucson Fire Department, Manual of Operations, Discipline Policy 214, Section 214.4:
1. All Members…
    a. Every member of the TFD, regardless of rank or position, is expected to behave in a professional manner, on and off duty, which reflects the department's mission, values, and purpose. Every member is responsible for observing the Rules of Conduct as listed below. Failure to do so may result in disciplinary action ranging from verbal counseling to discharge.
    c. Rules of Conduct
    The following list of Rules of Conduct is not all inclusive. All members shall:
        i. Follow all Tucson Fire Department, City of Tucson, and Civil Service Rules and Regulations, Administrative Directives and policies.
        iv. Always conduct oneself in a manner on and off duty that will not discredit the Department.

x. Obey the law. It is against the law to assist an individual to increase retirement payout by creating overtime opportunities

III. Prior Disciplinary Actions

No discipline that pertains to the current issue.

IV. Discipline

Pursuant to Tucson Code §10-3, Definitions, Just Cause, "Just cause. The following shall constitute just cause for discipline up to and including termination, although enumeration thereof shall not exclude other causes, namely: fraud in securing appointment; incompetence; inability to perform essential functions of assigned position with or without reasonable accommodation; dishonesty, insubordination; inattention to duties; discourteous treatment of the public, supervisors, or fellow employees; violation of the ordinances of the mayor and council, the rules and regulations of the commission, administrative directive of the city manager, and the rules and regulations of the department in which an employee is employed; absence from duty without leave; intoxication on duty; violation of the city's directives on drug and alcohol use; addiction to the use of narcotics; conviction of a crime involving violence, moral turpitude, or the aggravating circumstances described in A.R.S. § 13-702(c)(15) [relating to "hate crimes"]; and 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. In no case shall any political or religious belief of affiliation of any indefinite or vague charges, such as for the good of the service, be considered just cause."

Upon considering all the evidentiary materials, Mr. Bradshaw's actions as detailed above and in accordance with the Tucson Fire Department's Progressive Discipline Matrix and with the City's policies and directives fall under the following and the following discipline will be imposed:

1. Major Violation, 1st Offense, Presumptive Sanction of twenty days suspension for calling in sick to allow an individual to increase his overtime.

2. Major Violation, 1st Offense, Maximum Sanction of demotion to the rank of fire fighter for lying to supervisor regarding his involvement in an illegal act effective immediately.

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

Witnesses present were sworn:
Jim Critchley
Brett Bradshaw
Edward Harper
Brad Olson
Jeff Thompson

9:10 – 9:25 Ms. Korn's opening statement

9:25 – 9:35 Mr. Bradshaw's opening statement

9:40 – 9:50 Ms. Korn moved to admit City's Exhibits; Appellant's Exhibits also entered into the record as follows:

City's Exhibits Admitted

Exhibit A Tabs 1 – 4 Admitted with No Objection
Tab 1 – Notice of Intent to Discipline dated April 14, 2015
Tab 2 – Exhibit A
Tab 3 – Response to Intent to Discipline dated April 17, 2015
Tab 4 – Notice of Decision dated April 17, 2015; PARF dated April 19, 2015
Tab 5 – Appellant's Notice of Appeal dated April 27, 2015

Exhibit B Tabs 1 – 6 Admitted with No Objection
Tab 1 – Tucson Police Department Incident/Investigation Report re: Case Number 1404090151 dated September 11, 2014
Tab 2 – Tucson Police Department Incident/Investigation Report Supplement Notes re: Case Number 1404090151 dated November 24, 2014
Tab 3 – Cpt. Edward Lopez Employee Counseling Form dated September 13, 2014 (handwritten)
Tab 4 – Cpt. Edward Lopez Employee Counseling form dated September 13, 2014
Tab 5 – Cpt. Edward Lopez's Memorandum to Deputy Chief Chris Anderson dated March 30, 2015
Tab 6 – Cpt. Edward Lopez's Memorandum to Deputy Chief Jeff Thompson dated May 5, 2015

Exhibit C Tabs 1 – 8 Admitted with No Objection
Tab 1 – City Administrative Directive Sec. 2.02-4
Tab 2 – Tucson Fire Department's Progressive Discipline Matrix
Tab 3 – City Administrative Directive Sec. 2.02-5; and Tucson Fire Dept. Manual of Operations Sec. 214

Tab 4 – Tucson Fire Deparment Manual of Operations Sec. 214.10
Tab 5 – City Administrative Directive Sec. 2.02-16
Tab 6 – City Administrative Directive Sec. 2.01-7B
Tab 7 – City of Tucson Job Descriptions: Fire Fighter, Paramedic
Tab 8 – "Just Cause" definition, Civil Service Rules and Regulations, Rule X, Sec. 10-3

Appellant's Exhibit Admitted

Exhibit 1 – Exhibit A, AA B – R excluding exhibits that were objected to and not admitted into evidence as noted

Exhibit A – Hearing Notice
Exhibit AA – Captain Pena's Memo
Exhibit B – Not Admitted
Exhibit C – Not Admitted
Exhibit D – Not Admitted
Exhibit E – Job Title Change Email
Exhibit F – Not Admitted
Exhibit G – Not Admitted
Exhibit H – Not Admitted
Exhibit I – Response to Discipline
Exhibit J – Telestaff Email
Exhibit K – Telestaff Calendar April 2015
Exhibit L – Not Admitted
Exhibit M – Cpt. Lopez's Captain Notes and IT Creation Dates
Exhibit N – Cpt. Dashiell Screen Shot

City called first witness, Detective Edward Harper

9:50 – 10:05 Det. Harper gave testimony
10:05 – 10:10 Det. Harper was cross examined
10:10 – 10:15 Det. Harper gave testimony on redirect; the Commission asked clarifying questions and witness was excused

10:15 – 10:25 Break

City called second witness, Captain Edward Lopez

10:25 – 10:46 Cpt. Lopez was sworn and gave testimony
10:46 – 11:40 Cpt. Lopez was cross examined; the Commission asked clarifying questions and witness was excused

11:40 – 12:45 Lunch Break

City called third witness, Chief Brad Olson

12:45 – 1:20 Chief Olson gave testimony
1:20 – 1:50 Chief Olson was cross examined
1:50 – 2:10 Chief Olson was cross examined; the Commission asked clarifying questions and witness was excused

2:10 – 2:20 Break

City called fourth Witness, Chief Jim Critchley
2:20 – 2:35 Chief Critchley gave testimony
2:35 – 2:53 Chief Critchley was cross examined; the Commission asked clarifying questions and witness was excused
2:53 City Rests

Appellant called first Witness, Chief Jeff Thompson
2:55 – 3:14 Chief Thompson gave testimony
3:14 – 3:15 Chief Thompson was cross examined
3:15 – 3:16 Chief Thompson gave testimony on redirect; the Commission asked clarifying questions and witness was excused

Appellant called second Witness, Captain Sloan Tamietti
3:18 –3:29 Cpt. Tamietti gave testimony and witness was excused

Appellant called third Witness, Captain Chris Conger
3:30 – 3:44 Cpt. Conger gave testimony and witness was excused

Appellant called fourth Witness, Captain Josh Campbell
3:55 – 4:00 Cpt. Campbell gave testimony
4:00 – 4:01 Cpt. Campbell was cross examined and witness was excused

Appellant called fifth Witness Captain L'Heureux
4:00 – 4:13 Cpt. L'Heureux gave testimony
4:13 – 4:13 Cpt. L'Heureuz was cross examined
4:13 – 4:16 Cpt. L'Heureuz gave testimony on redirect; the Commission asked clarifying questions and witness was excused

Appellant called sixth Witness Captain Christopher Pena
4:20 – 4:26 Cpt. Pena gave testimony
4:26 – 4:26 Cpt. Pena was cross examined
4:26 – 4:30 Cpt. Pena gave testimony on redirect; the Commission asked clarifying questions and witness was excused

Appellant called seventh Witness Paramedic Steve Gaugher
4:30 4:40 Paramedic Gaugher gave testimony and witness was excused

4:40 Civil Service Commission adjourned the hearing to resume for day 2 on Thursday, June 18, 2015 at 10:00 a.m.

10:30 Thursday, June 18, 2015

A quorum of the Civil Service Commission of the City of Tucson met at 10:30 a.m. on Thursday, June 18, 2105, at the Community Resources Center, Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for day two of an Appeal of Demotion filed by Brett Bradshaw from the Tucson Fire Department.

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

Mr. Bradshaw represented himself; Ms. Sivan Korn, Principal Assistant City Attorney, represented the Tucson Fire Department. Fire Chief Jim Critchely was present for a majority of the hearing and Deputy Chief Chris Anderson concluded the attendance.

Appellant called eighth Witness Captain Ray Dashiel
10:35 – 10:45 Cpt. Dashiel gave testimony
10:45 – 10:47 Cpt. Dashiel was cross examined; the Commission asked clarifying questions and the witness was excused

Appellant called ninth Witness Chief Paul McDonaugh
10:48 – 11:10 Chief McDonaugh gave testimony
11:10 – 11:15 Chief McDonaugh was cross examined
11:15 – 11:25 Chief McDonaugh gave testimony on redirect; the Commission asked clarifying questions and the witness was excused

11:25 – 11:35 Break

Appellant called tenth Witness Firefighter Brett Bradshaw
11:35 – 12:00 Mr. Bradshaw gave testimony
12:00 – 12:10 Mr. Bradshaw was cross examined
12:10 – 12:15 Mr. Bradshaw gave testimony on redirect; the Commission asked clarifying questions and the witness was excused

12:00 Appellant Rests

12:15 – 1:00 Lunch Break

1:05 – 1:21 City Closing Argument

1:21 – 1:38 Appellant Closing Argument

1:40 – 1:46 Rebuttal Argument

During the hearing, the Commission went into Executive Session for legal advice from Legal Counsel Barry Corey pursuant to A.R.S. §38-431.03(A)(3).

At 1:46 p.m. Commissioner Pavey made a motion to go into Executive Session, the motion was seconded by Commissioner Elias and the Civil Service Commission went into Executive Session. The Commission resumed the meeting at 2:11 p.m.

2:11 – 2:39 Civil Service Commission Deliberations

In open session, Commissioner Pickens made a motion to sustain the appeal of Brett Bradshaw and that he be reinstated to his position of Paramedic with the City of Tucson with full back pay except for a 20-day suspension without pay for the reason that, while there was evidence that he engaged in improper conduct, which the Commission finds that the Appellant knew or should have known could lead to disciplinary action, there was not just cause for the discipline which was imposed; however, the motion died for lack of a second.

Commissioner Elias made a motion to deny the appeal of Brett Bradshaw for the reason that he knew or should have known that his conduct could lead to disciplinary action and affirmed the demotion of Mr. Bradshaw for the reason that there was just cause for the disciplinary action imposed. Commissioner Pavey seconded the motion. Roll call for the vote: Commissioner Pavey Aye, Commissioner Elias Aye, Commissioner Pickens Nay. The vote was 2-1 with Commissioner Pickens dissenting.

Hearing Adjourned at 2:40 p.m.

Marion L. Pickens 08/12/15

Marion Pickens, Chair
Civil Service Commission

Date