



CIVIL SERVICE COMMISSION

City of Tucson

Minutes

**Jose Olivares
Appeal of Termination
Tucson Police Department
May 4, 2016**

A quorum of the Civil Service Commission of the City of Tucson met at 9:00 a.m. on Wednesday, May 4, 2016, at the Community Resources Center, Sentinel Building, 320 S. Commerce Loop Park in Tucson, Arizona for an Appeal of Termination filed by Jose Olivares from the Tucson Police Department.

Present were Chair Max Parks, Commission Members Marion Pickens and Malcom Pavey. Staff present: Barry Corey, Legal Counsel; Kristie Nelson, HR Manager; and Armida Saufley, Executive Assistant of Human Resources as Recording Secretary.

Mr. Michael Storie represented Officer Olivares; Mr. Baird Greene, Principal Assistant City Attorney, represented the Tucson Police Department. Assistant Chief Mark Timpf was also present.

Per Exhibit A, the actions and behaviors of Officer Jose Olivares #36552 are fully documented in the Office of Professional Standards (OPS) file #15-0677, and incorporated herein providing just cause for termination and are synopsisized as follows:

I. Behavior Officer Olivares knew or reasonably should have known would result in disciplinary action.

On October 19, 2015, Officer Jose Olivares was working a Special Duty Assignment in the areas of N. Silverbell Road and W. St. Mary's Road from 1900-0530 hours the following morning. He was dressed in full uniform and driving a marked Tucson Police Department patrol vehicle.

At approximately 0042 hours, on October 20th, Officer Olivares entered the Viva Burrito at 1372 W. St. Mary's Road and placed an order for a burrito and a drink at the front counter. The cashier, Isaias Madero, entered the order into the register which totaled \$7.22. The register has a forward facing display screen that illuminates the total for the ordering customer. Madero verbally told Officer Olivares the total amount due two separate times and provided Officer Olivares his order once it was ready. Officer Olivares picked up the order and exited the business without paying for his order. The entire incident is captured on surveillance video. Madero relayed what had occurred to the cook, Rafael Gonzalez. Gonzales reported this to Lieutenant Pegnato the following evening who subsequently forwarded the information to OPS.



Isaias Madero was interviewed by OPS on November 9, 2015. Madero told OPS that both times he told Officer Olivares the total due, Officer Olivares would "avoid" the conversation and ask additional questions trying to change the subject. During his interview with OPS Madero stated that he does not know Officer Olivares and never told him his order was free.

Rafael Gonzales was interviewed by OPS on November 9, 2015 and stated that he heard Madero tell Officer Olivares the total amount due. Gonzales also told OPS that he observed Officer Olivares touching his pockets and the belt but never produced any money. Gonzales was later told by Madero that Officer Olivares left the business without paying for the items he ordered.

Officer Olivares was interviewed by OPS on November 24, 2015 and acknowledged that after he entered the business he ordered a burrito and a drink. He added that he was given an additional burrito that the employees made by "mistake" for another customer which was not entered with the original order. In this interview with OPS, he initially stated that he did not remember if he paid for this order or not. Officer Olivares was then allowed to view the surveillance footage, after which time he acknowledged that he in fact did not pay for the order he placed. He stated that the clerk "might have" given him the amount due for his order but he could not recall the amount and explained that he forgot to pay and it was not intentional. He also admitted in his interview the employees never told him the meal was free or being paid for by them. Surveillance footage from this incident reveals that on at least four occasions, Officer Olivares reaches towards his pockets but never produces any form of payment which is a standard course of business.

II. Violations of Department Policy and General Orders

1330.2 Obedience to General Orders, Procedures and Policies Required

All members shall observe and obey all laws, City Administrative Directives, Department General Orders, Department procedures and policies, as well as any procedures and policies established by their Commanders.

1330.7 General Standards of Expected Conduct

Members shall not engage in any conduct, whether on or off duty, which is unbecoming or detrimental to their duties, position, or the Department.

1330.10 Criminal Conduct Prohibited

Members shall not engage in any conduct, whether on or off duty, regardless of their whereabouts, which is in violation of the law, Criminal conduct, in and of itself, is



sufficient grounds for disciplinary action against a member, regardless of whether or not the member is cited, indicted, tried and/or convicted for any particular offense.

1330.11 Compliance with the Code of Ethics and Department Values Required

All officers shall abide by the standards of the Law Enforcement Code of Ethics, which is incorporated in this manual. All members shall be familiar with and strive to model the Department's values in all actions.

After reviewing this matter, Lieutenant Hand wrote:

"Officer Olivares indicates that what occurred was unintentional, but is readily apparent to me by his physical actions in the video that he considered removing his wallet to a several times during the transaction."

Assistant Chief Timpf:

"...With a determination that Officer Olivares committed theft under Arizona law while in uniform and on duty, I believe there is a critical adverse impact on the professional image of the department."

III. Prior Discipline

Officer Olivares has no disciplinary history in the last five years.

IV. Disciplinary Action

Based on a review of the Tucson Police Department Management, the Chief of Police has determined that Officer Olivares violated the above listed General Orders and committed a Type E, Level 8 violation. Office Olivares' actions and listed violation constitute just cause for Termination.

This appeal was held in Open Session.

Witnesses present were sworn:

Mark Timpf

Jennifer Pegnato

Jose Olivares

9:05 – 9:12 City's Exhibits entered as evidence

9:12 – 9:16 City's opening statement



9:16 – 9:27 Appellant's opening statement

City's Exhibits Admitted

Exhibit A Tabs 1 – 4 Admitted with No Objection

- Tab 1 – Notice of Intent to Discharge dated February 16, 2016
- Tab 2 – Notice of Decision dated February 24, 2016; and related Attachment A, signed February 24, 2016
- Tab 3 – PARF effective February 25, 2016
- Tab 4 – Appeal letter from TPOA received February 24, 2016

Exhibit B Tabs 1 – 10 Admitted with No Objection

- Tab 1 – Notice of Administrative Internal Investigation
- Tab 2 – Investigation Summary Report OPS Sgt. Kerlin
- Tab 3 – Investigative Employee Case File History
- Tab 4 – Email of Lt. Pegnato
- Tab 5 – Statement of Isaias Madero
- Tab 6 – Statement of Rafael Gonzalez
- Tab 7 – Statement of Ofc. Jose Olivares
- Tab 8 – Case Summary Report
- Tab 9 – Special Duty Hours paperwork
- Tab 10 – Email of Kyle Robinson to Craig Kerlin

Exhibit C Tabs 1 – 9 Admitted with No Objection

- Tab 1 – Personnel Report of Sgt. Terrence O'Hara
- Tab 2 – Personnel Report of Lt. Frank Hand
- Tab 3 – Personnel Report of AC Mark Timpf
- Tab 4 – GO1330.2 Obedience to General Orders, Procedures and Policies Required;
GO1330.7 General Standards of Expected Conduct;
GO 1330.10 Criminal Conduct Prohibited;
GO 1330.11 Compliance with the Code of Ethics and Department Values Required
GO 1330.17 Gifts, Gratuities, Fees, Rewards, Loans, Etc. Prohibited Law
Enforcement Code of Ethics
- Tab 5 – A.R.S. §13-1801 – Definitions (selected parts);
A.R.S. §13-1802 – Theft; classification; definitions (selected sections);
A.R.S. §13-1805 – Permissible inferences (in part)
- Tab 6 – TC Ch. 10, 10-3 Just Cause defined
- Tab 7 – TPD Discipline Matrix
- Tab 8 – HR File Jose Olivares
- Tab 9 – TPD HR File Jose Olivares

9:28 – 9:33 Break



Appellant's Exhibit Admitted

None

City called first witness, Lieutenant. Jennifer Pegnato

9:34 – 9:37 Lt. Jennifer Pegnato gave testimony and witness was excused

City called second witness, Assistant Chief Mark Timpf

9:38 – 9:55 AC Mark Timpf gave testimony

9:55 – 10:20 AC Timpf was cross examined

10:20 – 10:28 AC Timpf gave testimony on redirect

10:28 – 10:35 Break

10:35 – 10:52 AC Timpf continued testimony on redirect; the Commission asked clarifying questions and witness was excused

10:52 City Rests

Appellant called first witness, Officer Jose Olivares

10:52 – 11:30 Ofc. Jose Olivares gave testimony

11:30 – 11:32 Ofc. Olivares was cross examined

11:30 Appellant Rests

11:30 – 12:30 Lunch Break

12:35 – 12:43 City Closing Argument

12:43 – 1:04 Appellant Closing Argument

1:04 – 1:12 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 1:12 p.m. Commissioner Parks made a motion to go into Executive Session, the motion was seconded by Commissioner Pickens and the Civil Service Commission went into Executive Session. The Commission resumed the open meeting at 1:20 p.m.

1:20 – 1:45 Civil Service Commission Deliberations



Minutes of: Jose Olivares
Appeal of Termination / Tucson Police Department

Date: May 4, 2016

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 that the appeal of Jose Olivares be sustained and that he be reinstated to his position of employment with the City of Tucson with full back pay except for a suspension without pay for a period of 80 hours, for the reason that while there was evidence that Officer Olivares engaged in improper conduct, which the Commission finds that Officer Olivares knew or should have known could lead to disciplinary action, there was not just cause for the discipline which was imposed. Commissioner Pickens seconded the motion. The vote was unanimous, 3-0.

Hearing Adjourned at 1:45 p.m.

Max Parks, Chair
Civil Service Commission

07/19/16

Date