

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

John Cunningham
Appellant

V.

Seattle Center
City of Seattle, Respondent

DISMISSAL ORDER

CSC No. 04-05-004

The Executive Director of the City of Seattle, Civil Service Commission hereby enters the following

DISMISSAL ORDER

I. PROCEDURAL HISTORY

Mr. Cunningham filed his Notice of Appeal on April 14, 2004. Mr. Cunningham, currently a sitting Commissioner on the Seattle Civil Service Commission, recused himself from any action involving his appeal. The two other Commissioners decided not to appoint a Commissioner pro tem and instead to sit as a two-member Commission for purposes of this motion.

A. THE NOTICE OF APPEAL

Mr. Cunningham alleges in his appeal that his March 31, 2004 performance evaluation violates SMC 4.04.070 (B), (D) and (I); and SMC 4.04.180 (A)(1), (A)(4) and (C). In Section III ("Reasons"), Mr. Cunningham alleges the performance evaluation is "grossly inaccurate and designed to condemn with faint praise".

B. THE COMMISSION'S MOTION TO DISMISS

The Commission considered this appeal at its April 28 and May 26, 2004 meetings. On May 26, the Commission notified the parties that "it appears that the appeal contests the content of a performance review. On the face, the facts as alleged do not appear to constitute a violation of any of the sections of the Seattle Municipal Code cited in the Notice of Appeal, or to be in violation of City Personnel rules. At this point, the Commission is therefore inclined to dismiss the appeal".

However, the Commission first granted both parties "the opportunity to provide written argument regarding whether the facts as alleged in the Notice of Appeal would constitute a violation of an applicable ordinance or personnel rule" and scheduled consideration of the matter for a subsequent Commission meeting.

Both parties submitted additional written materials. At its July 21, 2004 meeting, the Commission again considered the matter, including the additional submissions, and decided: 1) the Appeal does not allege facts that, if true, would constitute a violation of the Seattle City Charter, Municipal Code, Personnel Rules, or other law upon which the Commission could grant relief; and 2) the Appeal should therefore be dismissed.

ORIGINAL

II. ANALYSIS

A. STANDARD

The issue here is whether Mr. Cunningham has alleged facts that if proven at hearing would constitute a violation of applicable City law upon which the Commission could base relief. If he has, then it is appropriate to proceed to conduct a hearing to determine the facts. If he has not, however, there is no reason to have a hearing since he has not stated a claim upon which the Commission can grant any relief, and the Appeal should be dismissed. Commission Rule 5.06.D. For purposes of this motion, the Commission assumes that all the factual allegations contained in the Notice of Appeal are true.

B. APPELLANT'S ALLEGATIONS

As noted above, Mr. Cunningham alleges in his appeal that his March 31, 2004 performance evaluation violates SMC 4.04.070 (B), (D) and (I); and SMC 4.04.180 (A)(1), (A)(4) and (C). In Section III of the Appeal ("Reasons"), Mr. Cunningham alleges the performance evaluation is "grossly inaccurate and designed to condemn with faint praise". It is clear from his Appeal and other submissions that the essence of Mr. Cunningham's appeal is that he does not believe his performance evaluation accurately summarizes his performance for the period in question.

1. SMC 4.04.070(B).

SMC 4.04.070(B) reads "Employees have the right to a timely resolution of their grievances and appeals". Mr. Cunningham does not allege any facts that would implicate this section. Indeed, in his Appeal Mr. Cunningham affirmatively stated that he did not file any intra-departmental grievance regarding his performance evaluation (Appeal, Paragraph. VI.)

2. SMC 4.04.070(D).

SMC 4.04.070(D) mandates "fair and equal treatment as provided in Ordinance 102562", the Fair Employment Practices Ordinance. However, Mr. Cunningham does not allege any facts that would constitute unlawful discrimination in violation of that ordinance.

3. SMC 4.04.070(I).

SMC 4.04.070(I) protects employees' right to report "improper governmental action" (whistleblower protection). However, Mr. Cunningham has not alleged that his performance evaluation was in any way related to any reported improper governmental action, nor has he alleged any other facts that would constitute a violation of 4.04.070(I).

4. SMC 4.04.180 (A)(1).

SMC 4.04.180 (A)(1) provides that the City's performance evaluation system shall include written evaluations conducted at least annually based on job-related performance. Mr. Cunningham has not alleged his superiors failed to conduct his evaluations annually. Mr. Cunningham does allege that his evaluation was not based upon his actual performance. However, the Commission does not believe this section is intended to create a cause of action for employees who simply disagree with the accuracy of their performance evaluations. The Commission does hear cases regarding terminations, suspensions, and demotions, but does not hear cases regarding letters of reprimand. Charter, Article XVI, Section 7 and Commission Rule 5.01. Absent clear language to the contrary, it makes little sense to construe these or other provisions to require the Commission to hear cases in which employees simply disagree with the content of their evaluation (when no disciplinary action is involved).

5. SMC 4.04.180 (A)(4).

SMC 4.04.180 (A)(4) provides that the City's performance evaluation system shall include "procedures for checking the validity of the performance evaluation system". Mr. Cunningham has not alleged that the City's system does not include such procedures. It is uncontested that the performance evaluation system includes provisions for: (1) employees to provide written comments on their evaluation; (2) review by the rater's supervisor; and, (3) ultimate review by the department head. SMC 4.04.180.A(3). Appellant has not alleged any facts that would constitute a violation of this section.

6. SMC 4.04.180 (C).

SMC 4.04.180 (C) describes the phase-in of the performance evaluation system described in Section 4.04.180. Mr. Cunningham has not alleged any facts that would constitute a violation of this section.

7. Seattle City Charter Article XVI, Par. 4

Seattle City Charter Article XVI, Par. 4 ("Merit Principles") provides that the personnel system shall include an "assurance of fair treatment of applicants and employees and with proper regard for their privacy and constitutional rights as citizens." The appeal alleges no facts that would constitute a violation of this section.

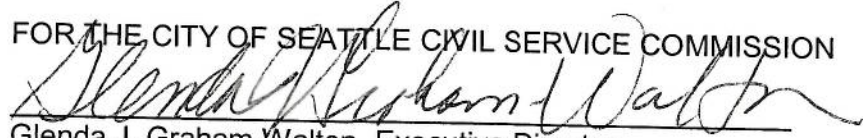
III. CONCLUSION

Mr. Cunningham clearly does not agree with the contents of his performance evaluation. However, that disagreement alone cannot constitute a violation of applicable City ordinances. The Commission is not ruling that a performance evaluation can never be the basis for an appeal. However, the Commission is ruling that Mr. Cunningham has not alleged facts that, if proven true at a hearing, would constitute a violation of the Seattle City Charter, the Seattle Municipal Code, Seattle Personnel Rules, or other applicable law the Commission has authority to enforce via the hearing procedure.

Therefore, the Appeal is hereby DISMISSED.

Dated this 26th day of July 2004.

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION


Glenda J. Graham-Walton, Executive Director

**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

**Affidavit of Service
By Mailing**

STATE OF WASHINGTON }
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 3rd day of August, 2004, I deposited in the U.S. mail, postage prepaid, a copy of **Dismissal Order** to:

John Cunningham

And copies of same via interdepartmental and U.S. mail addressed to:

Ann D. Thomas, Assistant City Attorney

In the appeal of:

Cunningham v. Seattle Center

CSC Appeal No. 04-05-004

DATED this 3rd day of August, 2004


TERESA R. JACOBS