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Before Hearing Officer
Gary N. McLean

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CITY OF SEATTLE

AUG 21 2006

CIVIL SERVICE COMMISSION

BEFORE THE CIVIL SERVICE COMMISSION
FOR THE CITY OF SEATTLE

KATHLEEN JOHNSEN,

Appellant,

CSC No. 05-01-008

vs.

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

SEATTLE CITY LIGHT,

Respondent / Employer.

This matter arises from an appeal filed with the Seattle Civil Service Commission by Appellant, Kathleen Johnsen, seeking review of a one-day disciplinary suspension issued against her by the Seattle City Light Superintendent. Following review and consideration of the testimony and evidence presented at the hearing, applicable law, and detailed briefing submitted by attorneys for each party (copies of which are maintained in the Commission's file), Appellant's appeal before the Commission is hereby denied and her one-day disciplinary suspension is upheld.

I. PROCEDURAL BACKGROUND

There is no dispute that Appellant initiated this matter in a timely manner by filing a Notice of Appeal with the Commission on September 07, 2005, following receipt of a letter

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1 dated August 16, 2005 from Superintendent Jorge Carrasco, explaining his decision to
2 impose a one-day disciplinary suspension against the Appellant.¹ Following a pre-hearing
3 conference, the parties agreed that the sole issue before the Hearing Officer would be
4 whether there was just cause to impose the challenged disciplinary action. Initially, the
5 hearing date was set for January of this year. Given scheduling conflicts and unanticipated
6 events that generated requests for delays and rescheduling by both parties, the hearing did
7 not commence until April 27th, with continuation of the hearing through May 2nd and May
8 12, 2006. At the hearing's conclusion, counsel for each party requested the right to submit
9 post-hearing briefs, which were each received in a timely manner.

10 11 **II. ISSUE PRESENTED**

12 **Whether there was just cause to impose a one-day disciplinary suspension against**
13 **the appellant, Kathleen Johnsen?**

14 15 **III. FINDINGS OF FACT**

16 Appellant, Kathleen Johnsen, has been employed as a Crew Chief for Seattle City
17 Light since 1998 or 1999.² She was initially hired in 1988 as a pre-apprentice line worker
18 and completed her apprenticeship in 1992, when she attained the journey-level status of line
19 worker. Witnesses for both parties recognized that Ms. Johnsen's elevation to Crew Chief
20 made her the first female employee to hold such position at City Light.

21
22 ¹ The Notice of Appeal is maintained in Commission files and was also submitted by Appellant in the hearing
23 as Exhibit No. A5. The Superintendent's disciplinary letter on appeal was submitted as a City Exhibit and is
identified as City Exhibit No. 9.

24 ² The exact date is not particularly relevant, and is difficult to firmly establish. See Yamashita Memo re:
25 Interview of Ms. Johnsen, dated April 8, 2005, City Exhibit No. 2, p. 4, stating that Johnsen became a crew
26 chief in 1998 or 1999; City's Prehearing Brief at p. 2 stating that her crew chief promotion occurred in 1999;
Appellant's Prehearing Brief at p. 2 explaining that her promotion occurred in late 1998; and Johnsen's
testimony at the hearing, during which she explained that she has been a crew chief since 1998.

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1 Although Appellant's briefing papers attempt to minimize the leadership and
2 supervisory roles expected of a Crew Chief, at one point explaining that "*Crew Chiefs, by*
3 *definition, are not supervisors, and are in fact members of the same bargaining unit, Local*
4 *#77 of the IBEW, as their subordinates*" (Appellant's Pre-Hearing Brief, p. 4), the same
5 document specifically concedes and acknowledges that the position of Crew Chief is a job
6 that includes supervisory responsibilities: "*Throughout her close to a decade of*
7 *employment with City Light as a Crew Chief, Ms. Johnsen has supervised diverse crews*
8 *composed of older white males as well ethnic minorities and females. She has supervised*
9 *individuals at all phases of experience and knowledge of the electrical workers' trade, i.e.*
10 *Pre-apprentices, Apprentices, journey-level line workers. She has supervised Hispanics,*
11 *African-Americans, Caucasians and males and females. She has supervised crews that*
12 *range in size from three individuals to twenty persons, depending on the length of the*
13 *project.*" (Appellant's Pre-Hearing Brief, pp. 2-3).

14 More significantly, and not surprisingly, line workers assigned to work under Ms.
15 Johnsen perceived her as their leader, testifying that she was their "crew chief," boss," or
16 "foreman," (Testimony of Bob Hernandez), and another tenured line worker called to
17 testify on behalf of Ms. Johnsen, who has more than eight years experience in such position
18 at City Light and another public utility, testified that a Crew Chief holds a leadership
19 position to which higher standards apply than those for regular line crew members (
20 Testimony of Wade Ogg). Absent such testimony, the Hearing Officer could take judicial
21 notice that Crew Chief's hold leadership positions while working with their crews. This
22 clearly-established fact is relevant, in that perceptions, effects, and repercussions of acts or
23 comments attributed to a Crew Chief can have a significant impact on the work force.
24 Simply put, more is asked of a Crew Chief than a regular line worker, regardless of union
25 membership or other similarities.

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1 During her testimony, Ms. Johnsen explained that she believes she is to be the
2 leader for her crew and acknowledged various supervisory duties associated with serving as
3 a crew chief, including without limitation, “laying out” and assigning work to crew
4 members involved in a particular project; completing timesheets; completing evaluations
5 for apprentices and other line workers; and maintaining a watchful eye over her crew
6 because she is responsible for the safety of her crew and safety is “hammered home” all the
7 time. (Johnsen testimony).

8 While Ms. Johnsen generally questioned the quality and amount of training she
9 received on the supervisory aspects of her job as a Crew Chief, she acknowledged that she
10 has attended some training, that she is familiar with City Light Workplace Expectations,
11 that she got “on-the-job” training in the form of advice from fellow crew chiefs, and that
12 she feels she is able to fulfill her duties as a Crew Chief without need for special training.
13 (Johnsen testimony).

14 At some point in or about 2002, Dannie Salter joined Ms. Johnsen’s crew as a line
15 worker. Mr. Salter remained a member of Ms. Johnsen’s crew through the time frame
16 leading up to incidents and facts that give rise to this appeal, 2002 through early 2004.
17 (Salter testimony; Yamashita Report). In or about January of 2004, Mr. Salter was no
18 longer the “junior” person on Ms. Johnsen’s crew, meaning that he held a bit more tenure
19 on the crew than at least one other member. (Johnsen and Salter testimony; Yamashita
20 report). Nevertheless, when asked to “bump” a then-current member of her crew, Ms.
21 Johnsen sought to “bump” Mr. Salter. Mr. Salter was upset with Ms. Johnsen’s decision,
22 partly because he felt that he “had a home” with Ms. Johnsen’s crew, and that he did not
23 want to move “down the dock,” presumably requiring him to relocate his tools and work
24 items and report to work with a different crew. (Salter testimony). Salter confronted Ms.
25 Johnsen when he learned that he was being bumped. He admits to saying something like

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1 “is this some of your white supremacist bull sh ___ ___?” (Salter testimony; Yamashita
2 report). Ms. Johnsen recalls that Salter called her a white supremacist and a racist.
3 (Johnsen testimony; Yamashita report). Whatever the case, the comment was wrong and
4 violated workplace expectations. Management employees met directly with Johnsen and
5 Salter in an attempt to resolve the matter. (John Harris, Johnsen, and Salter testimony).
6 Ms. Johnsen now explains that the hug between her and Mr. Salter after management
7 concluded its initial review into Mr. Salter’s remarks should not be construed as a sign that
8 she felt her concerns were appropriately resolved. However, there is no dispute that Ms.
9 Johnsen never filed an EEO or other official complaint against Mr. Salter for his
10 inappropriate remark.

11 Even though Ms. Johnsen did not file a formal complaint against Mr. Salter, the
12 City took prompt action to review the facts, and even included the incident as part of the
13 thorough investigation conducted following receipt of Mr. Salter’s official complaint
14 against Ms. Johnsen.

15 In or about April of 2004, a line worker (who happens to be white) complained to
16 management that Ms. Johnsen was harassing Mr. Salter, but did not allege that the
17 treatment was racially motivated. (Yamashita Report; other City witnesses). Shortly after,
18 Salter came forward with a race discrimination complaint against Ms. Johnsen. (Yamashita
19 Report).

20 The Investigation Report issued in the matter describes the Salter complaint as
21 follows:

22 *“Dannie Salter, an African American journey line worker with Seattle City Light*
23 *filed a complaint which stated that his Crew Chief, Kathleen Johnsen, treated him poorly*
24 *and discriminated against him on the basis of race. Mr. Salter claimed that Ms. Johnsen*
25 *had spoken to him in a demeaning manner, mistreated minority employees, and made race-*

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1 based comments which led him to believe that she dislike African-American employees. He
2 also alleged that Ms. Johnsen threatened that if he did not get off her crew, "things would
3 get much worse." (See City Exhibit No. 1, on page 1 of the Investigation Report, which
4 Exhibit is previously and subsequently referenced as the "Yamashita Report).

5 The parties agree that the City initially assigned the matter to be investigated by
6 Stephanie Lieberman, and that due to her unanticipated and extended absences from the
7 workplace, Ms. Lieberman was not able to complete the investigation. So, in February of
8 2005, the City retained Laura Yamashita to review, assess and finalize the investigation into
9 Mr. Salter's complaint. (Yamashita Report; Yamashita testimony). Based on her review of
10 the file notes, Ms. Yamashita observed that Ms. Lieberman conducted more than 20
11 interviews of 18 employees. Ms. Yamashita interviewed 11 employees. She met at least 3
12 times with Ms. Johnsen. (Johnsen and Yamashita testimony).

13 Ms. Lieberman's records indicate that she was likely to find that Ms. Johnsen
14 discriminated against Mr. Salter. (Yamashita report and testimony). In contrast, in her
15 final report, Ms. Yamashita concluded that there "is not enough evidence to infer that Ms.
16 Johnsen discriminated against Mr. Salter on the basis of race." (Yamashita report, p. 3 of 4
17 from Summary).

18 While Ms. Yamashita cleared Ms. Johnsen on the discrimination complaint, she did
19 find that Johnsen's conduct towards Mr. Salter was inappropriate, that she spoke to him in a
20 demeaning manner, that witnesses believed Johnsen would unfairly "ride" Salter, and that
21 "overall, Ms. Johnsen's treatment of Mr. Salter appears to violate the City's Workplace
22 Expectation for Mutual Respect which directs all employees not to engage in behavior that
23 demeans, devalues, or is disrespectful to another employee." (Yamashita Report, p. 3 of 4
24 from Summary). Further, Ms. Yamashita found that the evidence supported the allegation
25 that Johnsen made race-based comments and jokes at work, noting that with the evidence of

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1 racial comments, “*Ms. Johnsen’s conduct violates the City’s Personnel Rule 1.1*
2 *(Workplace Harassment) which prohibits slurs, negative stereotyping related to race and*
3 *any verbal conduct based on race.* (Id.)

4 Based on the Yamashita Report, Ms. Johnsen’s Director, Dave Smith, recommended
5 that she be suspended without pay for five (5) working days, noting that her behavior
6 violated Personnel Rules and Workplace Expectations, specifically:

- 7 • *Personnel Rule 1.1 (Workplace Harassment)* which prohibits “epithets,
8 slurs, and negative stereotyping; threatening, intimidated or hostile acts;
9 related to or directed at an individual or group because of race, color. . . “
- 10 • *Seattle City Light Workplace Expectations entitled “Excellence”* which
11 states that department staff should “Manage employees using a positive and
12 constructive focus rather than a controlling or critical approach.”
- 13 • *Seattle City Light Workplace Expectations, entitled “Mutual Respect”* which
14 reads in part, “Do not engage in, or condone any behavior, whether verbal or
15 physical, that insults, demeans, slanders, embarrasses, harasses, or is
16 disrespectful to another employee.” (See City Exhibit No. 6).

17 Ms. Johnsen attended her Loudermill meeting with Superintendent Jorge Carrasco
18 on July 14, 2005, along with her union representative, Joe Simpson, and other City Light
19 officials, including Berle Hardie, whose type-written notes of the meeting were introduced
20 without objection or credible challenge as City Exhibit No. 8.

21 Again, Ms. Yamashita’s Investigation Report found that Ms. Johnsen made
22 inappropriate racial remarks in the workplace. Ms. Johnsen did not challenge this finding,
23 or ask for specific revisions in the Report’s discussion of material findings, despite the fact
24 that Ms. Yamashita gave Ms. Johnsen the opportunity to do so.³ Similarly, Ms. Johnsen did
25 not challenge such finding during her Loudermill meeting with the Superintendent. Joe
26 Simpson, now a business representative with Ms. Johnsen’s union, attended her Loudermill

³ Ms. Yamashita’s notes, reflected in City Exhibit No. 2, at pages 2 and 3 of her interview notes from a May 18, 2005 follow-up meeting with Ms. Johnsen, detail that Ms. Johnsen’s specific examples of inaccurate facts in the investigation findings were immaterial, such as whether she owns property in Oregon.

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1 meeting, and testified at the hearing that he believes Ms. Johnsen took responsibility for
2 telling racial jokes at her Loudermill meeting with the Superintendent.⁴

3 Mr. Hardie's notes from the Loudermill meeting indicate that Ms. Johnsen said
4 something to the effect that she "Probably said things that were taken the wrong way," that
5 she "didn't mean that," and that she "take[s] responsibility". (City Exhibit No. 8). The
6 same notes indicate that Ms. Johnsen also took responsibility for getting frustrated with
7 Dannie Salter and that she agreed she spoke with him in a demeaning manner.

8 The Superintendent issued his decision to suspend Ms. Johnsen for one day through
9 a letter dated August 15, 2005. (City Exhibit No. 9). Thereafter, Ms. Johnsen filed her
10 appeal.

11 During her testimony at the hearing in this appeal, Ms. Johnsen admitted that she
12 repeated "the gist" of racist jokes in the workplace, including one suggesting that a black
13 person should wear "antler helmets" while hunting, with "the gist" of the so-called joke
14 being that a person named Kirk (whom she described as a black man) would be a target for
15 the hunters. In the same testimony, Ms. Johnsen admitted that her coworkers know that she
16 likes to hunt recreationally, and that she has told some coworkers that the group of people
17 she hunts with includes some people who are racists. Johnsen also admits that she has
18 joked that she cannot see black employees at night, recalling that she made such remark
19 while just "ribbing back and forth" with "Kirk", a coworker who happens to be black.

20 Although during her hearing testimony Ms. Johnsen denied making a particular
21 comment recalled by Mr. Hernandez, to the effect of "what is wrong with all of the black
22

23 ⁴ Mr. Simpson's testimony also addressed the L 150 truck assignment issue, vaguely cited by the
24 appellant as somehow related to the instant appeal. While the Hearing Officer finds that the L 150 truck
25 assignment has no relevance or bearing on the matter at hand, the testimony provided by Mr. Simpson, Ms.
26 Johnsen's own witness, establishes that her own union took the position that the truck should stay with the
crew who use it, rather than running with a crew chief who might be assigned to work with a new crew.

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1 guys, they can't do the work," the Hearing Officer finds such testimony is contradicted by
2 other, more credible evidence and testimony. Ms. Yamashita's report expressly describes a
3 comment to this effect. Ms. Johnsen was given the opportunity to review the report and to
4 request changes before disciplinary decisions were made. Although Johnsen requested that
5 Ms. Yamashita make certain edits and changes, or gave additional explanations on other
6 subjects, it appears as though she did not question Ms. Yamashita's account of Mr.
7 Hernandez' recollection of events until the hearing on this matter. None of the witnesses
8 could recall Ms. Johnsen challenging Ms. Yamashita's finding that Ms. Johnsen made such
9 remark during her Loudermill meeting with the Superintendent.

10 Mr. Hernandez corroborated Ms. Johnsen's admissions that she occasionally talked
11 about her hunting party with her coworkers, explaining that she described them as
12 "rednecks" and that she claimed her friends thought that Martin Luther King's birthday
13 should not be a holiday.

14 Ms. Johnsen testified that Mr. Hernandez "is a fair guy." She testified that she
15 hugged Mr. Hernandez during a short break, even after she heard his negative testimony
16 about her behavior. Ms. Johnsen's own witness, Wade Ogg, testified that Bob Hernandez
17 was very level headed, and that Hernandez' told Ogg that Ms. Johnsen made some racial
18 remarks. Throughout his testimony, Hernandez appeared reluctant and embarrassed to
19 describe Ms. Johnson's offensive remarks. He was complimentary of Ms. Johnsen's
20 abilities. He appeared very credible, with no reason to denigrate Ms. Johnsen for personal
21 reasons or other biases.

22 Ms. Johnsen admitted that the sort of comment recounted by Mr. Hernandez (about
23 black guys not being able to do the work) would not constitute "banter," that it would be
24 wrong, and that such a remark should not be said.

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1 Ms. Johnsen admitted that Ms. Yamashita conducted a fair investigation into
2 allegations against her. She acknowledged that she met with Ms. Yamashita at least 3
3 times. Finally, Ms. Johnsen attended some sort of interview of Ms. Yamashita, conducted
4 by her attorney, presumably as part of preparing for the hearing in this matter. When
5 questioned at the hearing, Ms. Johnsen admitted that she hugged Ms. Yamashita at the end
6 of such interview, and that she did so again at the conclusion of Ms. Yamashita's testimony
7 in the hearing on this appeal. The Hearing Officer finds that such actions are not
8 particularly consistent with those of a person who has serious or well-grounded reservations
9 about the accuracy of negative reports authored by the recipient of her affectionate gesture.

10 According to Ms. Johnsen, Dannie Salter was a problem employee. His work
11 performance likely disrupted the effectiveness and efficiency of the workplace, particularly
12 the crews he worked on. (Johnsen testimony; Yamashita Report). The IBEW Local 77
13 Assistant Business Manager, John Cunningham, testified that he occasionally worked on
14 Ms. Johnsen's crew and that he felt Mr. Salter was "inattentive." Another witness who
15 worked as a crew chief for about 30 years with City Light, Joe Simpson, is now employed
16 with Local 77 as a Business Representative. Mr. Salter and Ms. Johnsen are members of
17 the same union, IBEW Local 77. Mr. Simpson testified that he worked side by side with
18 Ms. Johnsen as a crew chief, and observed that Mr. Salter was mediocre as a line worker.
19 Mr. Simpson also testified that Mr. Salter once told him that Ms. Johnsen was
20 micromanaging and backbiting him, telling racial jokes, and that he (Salter) was tired of it.

21 Ms. Johnsen's testimony established that she knew how to provide detailed
22 performance evaluations and that she gave substantive evaluations to apprentice workers.
23 Despite the ability to write negative evaluations, and the basis to do so according to her
24 version of events, Ms. Johnsen's only written evaluation of Mr. Salter presented at the
25 hearing rated Mr. Salter as "meets expectations" in all categories, including

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1 “accomplishment of job tasks,” “communication,” “job reliability/initiative,” “positive
2 working relations (team building),” and “safety.” (See City Exhibit No. 11, the Employee
3 Performance Review of Dannie Salter, submitted by his Crew Chief, Ms. Johnsen). The
4 Hearing Officer finds that such performance assessments are inconsistent with those of a
5 supervisor who has substantive concerns regarding an allegedly insubordinate, difficult,
6 lazy, inattentive, or mediocre employee.

7 Appellant generally argued that she was being treated unfairly, because others
8 engaged in conduct similar to her behavior without consequences. As part of this general
9 assertion, some witnesses implied that racial jokes were a long-standing part of life on a
10 City Light work crew. Despite such remarks, there was no specific, credible evidence that
11 Superintendent Carrasco, or any other Superintendent for that matter, was aware of conduct
12 by a crew chief similar in nature to Ms. Johnsen’s and that such crew chief was not held
13 accountable for their actions.

14 The record clearly established that Superintendent Carrasco has held another
15 employee in a leadership role accountable for misconduct very similar to Ms. Johnsen’s.
16 Specifically, Appellant’s Exhibit No. A-27 details the one-day suspension of an employee
17 in a leadership position after she told a joke about Mexican women being short because
18 they clean toilets, admitted telling the joke, then excused it as just reporting a comment
19 made by her boyfriend and about which she did not approve.

20 IV. CONCLUSIONS OF LAW

21 You are known for the company you keep. This common phrase has and should be
22 given particular meaning in this appeal. Here, Ms. Johnsen was obviously and justifiably
23 proud of her crew chief status. As a leader, Ms. Johnsen set the tone for her crew. She held
24 the ability to influence how she would be viewed by her crew. By her own admission, she
25 let her crew know that she enjoyed the company of friends who were racists and she

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1 emphasized her disparaging characterization of her friends by repeating parts of their racist
2 comments to her crew, which included minority and other employees who could reasonably
3 find her remarks and comments to be insensitive and inappropriate in the work place. She
4 brought the seeds of her own negative image into the workplace. Whether intended or not,
5 she provided minority employees with a basis to question or have concern about her
6 motivations whenever she made decisions or directed crew members to take particular
7 actions. Perceptions of mistreatment raised by a minority employee gave rise to this appeal.
8 Ms. Johnsen is responsible for those allegations and should be disciplined even though the
9 investigation found insufficient evidence to support a discrimination complaint.

10 Appellant's appeal appears largely based on an assumption that her jokes and
11 comments about racial issues have no impact on the workplace. Such is not the case,
12 especially when the conduct reflects badly on an employee in a leadership position such as
13 a crew chief. Even assuming Ms. Johnsen's so-called "hunting buddies" were kind-hearted,
14 well-meaning, thoughtful but misunderstood people who slept through the civil rights
15 movement and all of its lessons, she did them (and herself) no favors by sharing their racial
16 jokes with her coworkers or by describing her hunting companions to coworkers as
17 "rednecks" and/or "racists." Appellant's conduct did not enhance the respect her crew
18 might have for her. This applies to minority and white members of her crew alike. After
19 all, a white employee was the first to complain about her conduct towards Dannie Salter.
20 Ms. Johnsen's remarks tend to undermine morale and serve as a basis to call her actions
21 into question. Though cleared of any findings of discriminatory conduct against her
22 subordinate Mr. Salter, the appellant's conduct still crossed the line, in violation of
23 reasonable and appropriate workplace expectations of the City of Seattle.

24 Ms. Johnsen essentially argues that while she was willing to accept responsibility at
25 her Loudermill meeting with the Superintendent, she prefers not to suffer the consequences

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1 associated with doing so now that she knows the consequence – even if it is a one-day
2 instead of a five-day suspension. Such a form of “responsibility” borders on disingenuous.
3 Appellant’s testimony and demeanor at the hearing reflected few, if any, signs of contrition
4 or remorse for exercising poor judgment. Instead, she seemed to regret the fact that she got
5 caught doing something that she shouldn’t have done – which is very different than
6 appreciating and recognizing the wrong in one’s conduct whether or not there is a negative
7 repercussion associated with it.

8 Ms. Johnsen’s conduct towards and her failure to substantiate her alleged concerns
9 with the performance of her crewmember, Mr. Salter, exposed herself, her crew, her
10 supervisors, her employer, and the taxpayers who fund her salary, to the very serious risk of
11 a discrimination lawsuit. Such risk could be more difficult to overcome given Appellant’s
12 admittedly deliberate failure to write accurate, substantive and meaningful performance
13 evaluations for the line workers on her crew, particularly Dannie Salter. The record in this
14 appeal contains credible testimony and documentary evidence such as the Yamashita report,
15 confirming some of Mr. Salter’s performance problems, which, if more fully explained,
16 could be sufficient to overcome any potential complaints that adverse employment
17 decisions were motivated by race or some other legally-prohibited basis. Regrettably, the
18 type of racially-offensive remarks made by Appellant, her repeated demeaning conduct
19 towards a minority employee, combined with her poor documentation of his alleged
20 performance deficiencies, creates a ‘perfect storm’ for trouble in the workplace. The
21 Superintendent’s decision to impose a one-day disciplinary suspension against Appellant is
22 thoroughly supported by just cause evidenced in the record, including without limitation but
23 with special emphasis, the Yamashita Report and Appellant’s own testimony.

24 The Hearing Officer takes special notice of the Superintendent’s concern for the
25 number of discrimination lawsuits generated within his department. This circumstance

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1 emphasizes the genuine need to have the cooperation of all employees in eliminating
2 comments and conduct in the workplace that could give rise to such lawsuits. Ms.
3 Johnsen's conduct towards Mr. Salter and her admitted racial comments in the workplace
4 was wrong. It warrants a disciplinary suspension, and would have been sufficient cause to
5 support the entire 5 day suspension initially recommended by her Director.

6 Appellant generally alleges that failure to consider and implement one of the lesser
7 disciplinary measures other than a suspension is a violation of PR 1.3.4, entitled
8 "Application of Discipline." As a matter of law, Appellant's position on this issue must
9 fail. PR 1.3.4(A) (16) expressly provides that "acts of harassment" are included on the list
10 of "major disciplinary offenses" for which a verbal warning or written reprimand will not
11 be appropriate in the absence of mitigating circumstances. Because the rule expressly
12 permits suspension or termination without need for first issuing a verbal warning or written
13 reprimand for acts of harassment, there is no basis to read additional "progressive-
14 discipline" requirements into such section. The rule permits any form of discipline to be
15 taken with just cause and the appointing authority clearly retains the discretion to discipline
16 an employee without prior discipline. See *Drobny v. Boeing Co.*, 80 Wash.App. 97, 907
17 P.2d 299 (1995) (because employer retained discretion to dismiss an employee without
18 prior discipline, progressive discipline policy was not an enforceable promise).

19 Based on the findings of fact set forth above, and the evidence and interviews
20 summarized in the Yamashita Report, the undersigned Hearing Officer concludes that, as a
21 matter of law, Appellant's behavior was in violation of Personnel Rule 1.1, prohibiting
22 workplace harassment, and City Light Workplace expectations, including without limitation
23 those entitled "Excellence" and "Mutual Respect." The City had just cause to suspend Ms.
24 Johnsen, and fully satisfied each of the elements for "just cause" contained in Personnel
25 Rule 1.3.3(C): 1) Ms. Johnsen was aware of or reasonably should have known the
26 consequences of her conduct; 2) the City's anti-harassment policy and expectations
encouraging mutual respect are obviously reasonably related to safe and efficient operations

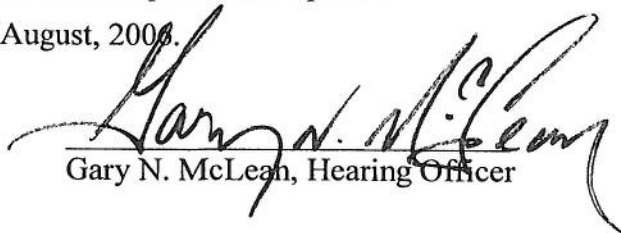
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1 within City Light work crews, such as the one lead by Ms. Johnsen; 3) Ms. Yamashita
2 conducted a fair and objective (and quite exhaustive) investigation into Ms. Johnsen's
3 behavior, and Ms. Johnsen acknowledged that it was fair; 4) the record shows that the
4 Superintendent has applied similar discipline for similar conduct by another employee; and
5 5) Ms. Johnsen's one-day suspension is reasonably related to the seriousness of her
6 misconduct. Repeating racially offensive jokes or comments in the workplace and "riding"
7 a coworker without documenting their alleged performance deficiencies is not conduct that
8 should be tolerated from a crew chief. The Superintendent fairly considered all of the
9 factors involved in determining the appropriate level of discipline, set forth in Personnel
10 Rule 1.3.4. Based on such considerations, he mitigated the recommended discipline,
11 reducing it from 5 days to a single day. Given the record established in the hearing on this
12 matter, the Superintendent would have had sufficient cause to support the full five day
13 suspension. There is no excuse for Appellant's behavior. It should not be repeated. It
14 should not be tolerated from her or any other crew chief.

15 V. DECISION AND ORDER

16 For the reasons set forth above, the undersigned Hearing Officer finds that just
17 cause exists to support Appellant's one-day disciplinary suspension. Accordingly, the
18 instant appeal is denied and Appellant's suspension is upheld.

19 ISSUED this 21st day of August, 2008.

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21 Gary N. McLean, Hearing Officer
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BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Kathleen Johnsen
Appellant

v.

Seattle City Light
City of Seattle, Respondent

DISMISSAL ORDER

CSC APPEAL No. 05-01-008

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

DISMISSAL ORDER

WHEREAS Presiding Officer, Gary McLean issued a Decision regarding the appellant's appeal, on August 21, 2006.

WHEREAS the Appellant did not file a Petition for Review of the Presiding Officer decision (due no later than August 31, 2006).

WHEREAS the Commission reviewed, discussed and voted to affirm the Presiding Officer's decision, at its September 20, 2006 meeting.

The Civil Service Commission hereby dismisses this appeal with prejudice.

Issued this 20th day of *September, 2006*

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Glenda J. Graham-Walton, Executive Director

Note: Commission decisions are final and conclusive unless a party of record makes application for a writ of review to the Superior Court of the State of Washington for King County within fourteen days of issuance

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