

-BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Steven Bangert, Appellant

v.

Fleets and Facilities Department,
City of Seattle, Respondent

DECISION ON HEARING

CSC No. 06-01-013

I. INTRODUCTION

The hearing in this matter was held on April 25, and 26, 2007. The Fleets and Facilities Department was represented by Galen Mauden, Human Resources Manager; and Appellant Steven Bangert was represented by Melody Coffman, Local 289, International Association of Machinists and Aerospace Workers.

Mr. Bangert appeals his 3-day suspension for failure to heed his supervisor's instructions and insubordination based on conduct that occurred on August 23, 2006 (discipline received on September 11, 2006).

II. ISSUE

Whether Fleets and Facilities had just cause to impose a 3-day disciplinary suspension for Appellant's conduct on August 23, 2006?

III. FACTUAL BACKGROUND

A. Steven Bangert's Employment History

Mr. Bangert had a history of excellent mechanic work and was the highest producer for at least the past two years. Exh. U-15. During his tenure, he has expressed concern about productivity, waste and fraud. In 2005 he filed a formal complaint about falsified time sheets and overstaffing/insufficient work, which was in part substantiated by an investigator in November 2005. Changes in staffing levels and training on use of city time and equipment were implemented as a result. Exh. U-16, U-17 and testimony of Brenda Bauer.

At times Mr. Bangert's frustration or unhappiness with co-workers erupted in unprofessional communication about and to his co-workers and supervisors. Mr. Bangert was appropriately disciplined for these outbursts (inappropriate communication)

on August 20, 2004, verbal warning; and January 19, 2005, 3-day suspension. He was also given a written reprimand for using parts from salvage without permission on August 3, 2006, Exh. C-10. Mr. Bangert has grieved this matter under his union contract. In 2003, Mr. Bangert received a written reprimand for insubordination for refusing to move a Plymouth Neon when directed by a superior. Exh. C-9.

B. History related to the Offense at Issue

This appeal concerns the 3-day suspension Mr. Bangert received on September 11, 2006 from Director Dave Kerrigan, Exh. C-15 which stated, "Your failure to not heed your supervisor's instructions is repeated insubordination." Kerrigan wrote, "Because you've been given ample guidance and warning, considering the gravity of your actions and the impact it has on our work unit, and because you continue to disregard procedures and instructions, I am hereby recommending that you be suspended without pay of [sic] three work days."

Bangert's 2005 performance evaluation, Exh. C-5, includes this goal: "Leave a clean stall every day" for 2006-2007. Also in 2005, there were email communications between the day shift staff and Bangert's supervisor, Al Freeman, concerning Bangert's messy work stall. Exh. C-27. In these communications, however, Freeman apologizes for the mess that was left, states that it was not intentional, and that the staff was at work until 1:30 am "attempting to get a WSP service out that snowballed on us with the officer awaiting. Next time I guess we should put in for overtime to swab the floor." Al goes on to say that he'll speak to Steve [Bangert] again but "I have to accept some blame myself. I was there as the clock was rolling towards 2 AM, but I was thinking about going home on a Friday night and onto vacation for the next week, more than I was remembering about swabbing the floor."

In 2006, the year in which it was the employer's goal for Mr. Bangert to clean his stall every day, there were three documented events where Mr. Bangert's stall was not clean at the end of his shift. In all three situations, Nancy Bean, day shift supervisor, reported the violations to Bangert's supervisor, Al Freeman. The first, on April 4, 2006, Exh. C-24, was described as "an oily looking mop job & spots of transmission fluid left on the floor." Al Freeman defended Mr. Bangert and wrote, "In his defense, he had worked late the night before doing a C service on a WSP car."

The second event was on August 3, 2006, Exh. C-25, and was described as "a slick oily floor in stall #5 that also was splashed in stall #4. It looks like it was moped [sic] with a dirty mop." And finally, the event that gave rise to the discipline at issue, occurred on August 23, 2006, Exh. C-15, which was described as "The stall floor was slick with oil and you left an oil drain full and dripping by the work bench. The oil was tracked and splattered into the next stall. This condition constituted a safety hazard."

Directions about Using Overtime to Clean Up

The Director, and decision-maker, Mr. Kerrigan testified that one could request overtime to clean up a mess at the end of shift. Al Freeman, the supervisor, testified that overtime could only be requested in emergencies, and that it had to be approved by the customer, because it would be charged back to that customer's Department. Mr. Bangert testified that he was yelled at by a superior for leaving his shift just two minutes late. This occurred early in his tenure at the City.

Written directives to fleet employees seemed to prohibit the use of overtime for clean up. Safety meeting minutes for September 28, 2006 state: "Remember it is your responsibility to leave a clean, safe work area for the next shift. Manage your time to get this done before the end of your shift on City time." Exh. C-6, p.2. And, "All are expected to clean up after your selves [sic] before the end of every shift." Exh. C-7, p.2. August 30 [assuming 2006].

Alan Brittenham, Fleet Maintenance Manager, proposed hiring a cleanup guy as a solution to this ongoing conflict between finishing time pressured repair work and having enough time to clean up. August 25, 2006; Exh. U-2.

Bangert testified that when he left his stall dirty, it was not because he intentionally failed to clean up. He stated that when he was in a time crunch to get a vehicle operational before the end of the evening, his priority was doing the necessary mechanic work. Bangert further testified that he attempted to clean up on all these occasions, but did not have the time to do a thorough job. Bangert testified it was hard to provide good service and clean your work space immaculately every time. He said that occasionally, "one of these balls gets dropped." He felt his compliance rate was 99%. Bangert said the difficulty with requesting overtime is that you sometimes could not reach the customer, supervisors granted such requests depending on who they were and their mood. Sometimes he left late and made up for it by leaving early the next day.

Al Freeman's email communications recognize the conflict that sometimes existed between customer service, getting a vehicle ready for a waiting law enforcement officer, and having time left to thoroughly clean the work area. Exh. C-24 and C-27.

Two of the events mentioned (2005, and the 8-23-06 event for which Bangert was given the suspension) occurred right before a planned vacation, adding to the time pressure to complete mechanical repairs in progress. Bangert's testimony, Al Freeman's email, Exh. C-27.

Is this a Safety Violation

The disciplinary letter written by Dave Kerrigan does not mention safety concerns or a safety violation. Ms. Bean's email about the incident, Exh. C-26, expressed a concern about safety and noted that the initial oil mess had been tracked over a large area. Nancy Bean testified she believed the oily mess on the floor to be a slip and fall hazard. City supervisors and managers testified that safety was a serious issue and that oil on the floor posed a slip and fall risk.

John Spickelmier testified that he was not immediately asked to clean up the August 26, oily floor that is the subject of the discipline at issue. He said it was a couple of days later. He also testified it did not take 2 hours, as indicated in Nancy Bean's testimony and email communications about the event. Dave Kerrigan testified that two hours seemed excessive for such a cleanup.

Safety meeting minutes included reminder/warnings about cleaning up on September 28, 2006 (Remember it is your responsibility to leave a clean, safe work area for the next shift. Manager your time to get this done) Exh. C-6; and on August 30, 2006 (Housekeeping is a safety issue. All are expected to clean up after themselves before the end of every shift) Exh. C-7. These reminders which mention safety in connection with cleaning, occurred *after* Bangert received his 3-day suspension.

Notice to Mr. Bangert about the Rule/Policy

In one meeting prior to the messy stall at issue, on January 12, 2006, Safety meeting notes indicated that "Housekeeping is a requirement." In addition, the 2005 performance evaluation included daily cleaning of Bangert's work stall as a goal for 2006-2007. The 2005 emails between day and night shift supervisors include mention that the issue will be discussed with Bangert. Al Freeman's initial testimony was that he did not recall events prior to 2006; but his memory was refreshed when he reviewed the 2005 performance evaluation, Exh. C-5.

Consistent Enforcement of the Clean Up rule

Bangert provided exhibits showing other messes in his shop, many left by the day shift personnel. Some, but not all, included oily spills on the floor. U-3 through 14. There was testimony from Al Freeman and Mr. Bangert that an oily floor mess was left by Mr. O'Day more than one day. Al Freeman indicated he notified Mr. O'Day's supervisor of the violation. Nancy Bean, and all others who were asked whether anyone else had received discipline for leaving a messy work area, stated they were not aware of anyone else receiving discipline on this issue. There was no evidence that Mr. O'Day received a verbal warning for these events.

Mr. Freeman testified that housekeeping was an issue for everyone. There were several reminders in Safety meetings and otherwise. There was no evidence of other verbal warnings or testimony about any specific individual receiving verbal warnings or other discipline for not cleaning up their work area. Many City witnesses testified that if the issue came up, the offenders were "talked to" and the matter was resolved before more discipline was needed. But there was no specific evidence about who might have been talked to, or whether this was speculative. Al Freeman stated that he could not take action if he did not know about a messy work area. So if he was not made aware of messes via a complaint, and did not see it (he left a half hour before the end of shift for the mechanics) he could not take action. Bangert was aware of other violations but did not report them because he felt it was "petty."

Fair and Objective Investigation

Mr. Bangert testified that he reviewed Dave Kerrigan's disciplinary letter with Al Freeman and discussed inaccuracies in the letter. According to Bangert, Freeman agreed that the letter was inaccurate where it stated Mr. Bangert "ignored his supervisor's instructions" on the night of August 23, 2006. Mr. Bangert testified he was not given a directive by Al Freeman that night, and Mr. Freeman agreed. According to Bangert, Freeman said he'd email Mr. Kerrigan to get that inaccuracy changed. Exh. C-15. Mr. Bangert expected the change, but never saw any emails on this subject and the disciplinary letter was not changed. In the midst of this, the timeframe for Mr. Bangert requesting a Loudermill, passed and the final discipline issued without change in the language and without input from Mr. Bangert. The City did not rebut Mr. Bangert's testimony on these points.

IV. ANALYSIS

A. Applicable Rules

The personnel rules, SMC 1.3, provide that the disciplinary action imposed depends upon the seriousness of the employee's offense and such other considerations as the appointing authority . . . deems relevant.

Progressive discipline is required, except that in cases of "major" disciplinary offenses, a verbal warning or written reprimand are not appropriate. The order of progressive discipline is verbal warning (documented in writing), written reprimand, suspension, demotion, and discharge. SMC 1.3.3.

An exception to progressive discipline is when a "Major disciplinary offense" is involved. Major disciplinary offenses are listed in SMC 1.3.4(A), and include:

- Acts of violence
- Alcohol and controlled substance use or possession

- Falsifying documents
- Intentional damage to or theft of city property or persons
- Unauthorized absence
- Firearm possession
- Acts of harassment, discrimination or retaliation
- Use of city time, equipment or facilities for non-city purposes;
- Endangering the safety of, or causing injury to, the person or property of another through negligence or intentional failure to follow policies or procedures;
- A knowing or intentional violation of workplace rules (policies, procedures and workplace expectations); and
- Other offenses of parallel gravity.

In determining the level of discipline to impose the appointing authority shall consider factors that he or she deems relevant to the employee and his or her offense, including but not necessarily limited to:

- Employment history
- Extent of injury/damage caused
- Employee's intent
- Whether the offense constituted a breach of fiduciary responsibility or of the public trust; SMC 1.3.4(B)

The City can suspend an employee only for justifiable cause, defined as including these factors [SMC 1.3.4(C)]:

- The employee was informed of or reasonably should have known the consequences of his or her conduct;
- The rule, policy or procedure the employee has violated is reasonably related to the employing unit's safe and efficient operations;
- A fair and objective investigation produced evidence of the employee's violation of the rule, policy or procedure;
- The rule, policy or procedure and penalties for the violation thereof are applied consistently; and
- The suspension or discharge is reasonably related to the seriousness of the employee's conduct and his or her previous disciplinary history.

For Employees who are subject to a collective bargaining agreement, these personnel rules apply to the extent they do not conflict with the terms of the collective bargaining agreement. SMC 1.3.2(B) No evidence was presented regarding any such conflict. See Articles 17 and 22, Exh. J-2.

B. Whistleblower Retaliation

There was insufficient evidence of Retaliation. Mr. Bangert has the burden of proving a nexus, or connection, between the reported government misconduct and June Douglas, Nancy Bean, Al Freeman or Dave Kerrigan—those who might have

had some responsibility for the disciplinary action at issue. In addition, Mr. Bangert failed to file a complaint of Whistleblower Retaliation in a timely manner.

C. Just Cause

1. A Fair and Objective Investigation Produced Evidence of the Employee's Violation of the Rule

Mr. Bangert's testimony about the inaccuracy in the disciplinary letter was not rebutted by the City. The letter stated Bangert, "ignored his supervisor's instructions and left your work area dirty" on the night of August 23, 2006. There was no evidence that Mr. Bangert was given a directive to clean his work area that night. In fact, his supervisor typically gets off work 30 minutes before Mr. Bangert's shift ends. Mr. Freeman agreed to email Mr. Kerrigan to get the letter corrected, but this never happened. Neither Freeman nor Kerrigan rebutted this version of events.

Mr. Bangert's conduct is called "insubordination" in the letter, which in the labor relations arena generally means an employee intentionally disregards a direct order from a manager or supervisor. There was no evidence of any direct order. There was no evidence of an intention to disregard the work rule either.

2. The Suspension or Discharge is Reasonably Related to the Seriousness of the Employee's Conduct

Mr. Bangert testified that he tried as best he could to clean his work area, but given the conflicting priorities of trying to get a job completed by closing, and leaving work on time without using overtime, he couldn't do a perfect job. The evidence supports Bangert's assertion that he tried to clean up. Most of the events noted describe an oily mopping job, an unsuccessful attempt to clean up.

There was testimony that customers sought Mr. Bangert out, presumably because of his work ethic and expertise. His productivity was highest in the timeframe for which data was presented. He clearly made "bending wrenches" and pleasing his customers his highest priority. There was no evidence that Mr. Bangert was lazy and did not clean his work area because he did not feel like it. In fact, there were only three documented events in the year 2006, where Mr. Bangert did not successfully clean his stall. He was in compliance the vast majority of the time, and the exceptions were related to emergent customer service, a reasonable priority.

More than once, Al Freeman recognized the conflict and defended Mr. Bangert's choice and efforts to get a vehicle done with a customer waiting, which left not enough time for thorough clean up.

3. The Rule, Policy, or Procedure the employee violated is reasonably related to the employing unit's safe and efficient operation

The housekeeping rule on its face is reasonable: that one should clean their work area at the close of their shift to prepare for the next shift and new work. And the safety justification for avoiding fluids on the floor is reasonable, although in this case much of the safety discussion occurred after Mr. Bangert's discipline occurred. But in conjunction with the pressure not to use overtime for clean up, a conflict is created between customer service, often with customers (usually police officers) waiting for their vehicles, and having enough time leftover to clean up. Although Mr. Kerrigan testified overtime could be used for this purpose, the written directives from the work unit stated the opposite—that clean up should occur during the shift on "city time." Mr. Bangert was chastised for being only two minutes late early on in his career, likely because of the strict labor laws regarding payment for overtime.

Al Freeman, Mr. Bangert's supervisor, acknowledged this irreconcilable conflict when he explained that no one intended to leave a dirty work stall, but trying to finish a job for a customer before the end of shift left no time for clean up. (2005, 4/4/06) He defended Mr. Bangert on more than one occasion on this issue. Mr. Freeman, who testified that overtime was not to be used except in emergencies, did not see overtime as a viable option on these occasions, when he was there and could have authorized it.

Mr. Brittenham noted in an email that the Haller Lake shop had dealt with this problem by hiring a clean up person, and speculated that it might be helpful in Bangert's work shop as well.

With the current conflicting direction from the City about the use of overtime for clean up, and the occasional need for emergency customer service, the enforcement of the rule has become unreasonable in emergent situations where customer service would have to be compromised.

4. Consistent Application of the Rule

The housekeeping issue was described as "an issue for everyone," by supervisor Al Freeman. There were a number of reminders to all employees, both verbal and in writing in the form of Safety Committee Minutes, that clean up was required. The City has the burden of showing consistent enforcement of this rule. There was general testimony from City witnesses that if someone left a dirty stall, they were counseled and this took care of it. No specific individuals were identified as having received verbal counseling on this issue. At the same time, it was clear that others had left dirty work areas (including oily floors). It's reasonable that supervisors cannot enforce violations they do not know about. There was testimony that Al Freeman informed the day shift supervisor about messy floors, and there was no testimony to indicate that anyone was disciplined for this. In fact, the testimony generally established that no one was aware

of any discipline on this issue, except for Mr. Bangert. He clearly was not the only one violating the housekeeping rule, so it appears the enforcement was not consistent. The City had the burden of proving that others received verbal counseling (documented in writing per SMC personnel rules) on this issue and failed to provide evidence of specific examples.

V. CONCLUSION

The just cause standard as defined by applicable personnel rules was not met in this case because the investigation did not produce accurate results (inaccuracies in disciplinary letter), the rule was not reasonable in its application in conjunction with the policy on overtime use, and the City failed to demonstrate consistent enforcement of the rule at issue.

VII. ORDER

IT IS HEREBY ORDERED that Appellant's 3-day disciplinary suspension for conduct on August 23, 2006, is vacated. Appellant's personnel file shall be purged to reflect this action. Appellant shall be reimbursed for suspension days already served, and any related employee benefits that would accrue from being a paid employee during those three days.

Dated this *5th* day of *June* 2007

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Diane Hess Taylor", is written over a horizontal line. The signature is cursive and somewhat stylized.

Diane Hess Taylor, Hearing Officer

The decision of the Hearing Officer in this case is subject to review by the Civil Service Commission. Parties may also request that the Commission review the decision, by filing a petition of review of the Hearing Officer's decision, and asking the Commission to consider specific issues. To be timely, the petition for review must be filed with the Civil Service Commission no later than ten (10) days following the date of issuance of this decision, as provided in Civil Service Commission Rules.

**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 6th day of June, 2007, I deposited in the U.S. mail, postage prepaid, a
copy of **DECISION ON HEARING** to:

**S. Bangert
c/o Melody Coffman
9135 15th Place S.
Seattle, WA 98108**

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

Galen Mauden, HR Manager, FFD
Diane Hess Taylor, Hearing Officer, CSC

In the appeal of:

Steven Bangert v. Fleets & Facilities Department

CSC Appeal No. 06-01-013

DATED this 6th day of June, 2007


TERESA R. JACOBS

