

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

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CHRISTOPHER VILLA,
Appellant/Employee

Vs.

CITY OF SEATTLE, DEPARTMENT OF
PLANNING AND DEVELOPMENT (DPD),
Respondent/Employer

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND HEARING DECISION

CSC No. 14-07-005

BEFORE HEARING OFFICER
DONNA LURIE

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3 This matter came before the Civil Service Commission upon the filing of an
4 Appeal by the Appellant, Christopher Villa, regarding a Performance Management
5 memorandum that he received in January, 2014 from a manager in the Department of
6 Planning and Development (hereafter "DPD"). Both parties agreed that the Appeal was
7 properly before the Civil Service Commission.

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I. PROCEDURAL BACKGROUND

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On July 29, 2014, Christopher Villa filed a Notice of Appeal with the Civil Service Commission, appealing a January 14, 2014 memorandum that he had received from Program Manager Richard Alford (*Joint Exhibit 1*). The undersigned Hearing Officer conducted a Pre-Hearing Conference on August 27, 2014. Mr. Villa attended and represented himself. Felecia Caldwell, Administration Division Director, represented the Department of Planning and Development (DPD). The parties discussed the issues on appeal and agreed upon a process and timetable for the exchange of exhibits, witness lists, and requested information. Both parties agreed that the Appeal met the procedural requirement for the exhaustion of an intradepartmental grievance review procedure. Based on Seattle Municipal Code 4.04.260 and Personnel Rule 1.3.2(D), the Hearing Officer determined that the sole issue for review by the Commission was as follows:

1 *Did the January 14, 2014 memorandum of Richard Alford violate personnel Rule 1.5? If*
2 *so, what is the appropriate remedy?*

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4 The parties agreed to mark the January 14, 2014 memorandum as *Joint Exhibit 1*
5 and the grievance procedure packet of documents as *Joint Exhibit 2*. Mr. Villa provided
6 names of witnesses and a lengthy list of documents and legal references at the Pre-
7 Hearing Conference. In accordance with CSC Rule 5.31, the Hearing Officer ruled that
8 Mr. Villa had the burden (responsibility) to prove that Personnel Rule 1.5 had been
9 violated and that he had to support his Appeal with a preponderance of the evidence.
10 Both parties were instructed to exchange witness lists and potential exhibits by
11 September 8, 2014. The Hearing Officer issued a Statement of Issue and Scheduling
12 Order on August 29, 2014.

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14 The Civil Service Commission received a timely packet of materials and a
15 witness list from DPD on September 5, 2014. In response to an inquiry from the Civil
16 Service Commission office, Mr. Villa stated that he had been reassigned to a new work
17 assignment and requested additional time to submit his exhibits and witness list. Mr.
18 Villa submitted several documents, names of witnesses, and requests for information on
19 September 19, 2014. Upon receiving copies of these materials, DPD objected to the
20 lateness of the filing and requested that any new exhibits be excluded from evidence.
21 After reviewing the documents filed by Mr. Villa on August 27 and on September 19 and
22 considering the concerns raised by DPD, the Hearing Officer concluded that most of the
23 late-filed materials were copies of documents already disclosed to DPD on August 27.
24 Certain exhibits were excluded on the grounds of relevance and lack of probative value.
25 Mr. Villa's request for information and documentation for the Greenwood heating issue
26 and the permits issued to the Red Lion hotel were judged to be logical extensions of the
27 material discussed on August 27 and constituted a reasonable request for information
28 necessary for Mr. Villa to present his appeal. The Hearing Officer directed DPD to
29 provide the requested information to Mr. Villa by September 25. A Preliminary Ruling

1 on Exhibits and Witnesses was issued by the Hearing Officer on September 20, 2014
2 and subpoenas were issued for Andrew Worline and Larry Leet.

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4 The Appeal Hearing was held on September 30 and October 1, 2014. Both parties
5 were able to present their respective cases through a number of witnesses and exhibits.
6 The following individuals presented testimony under oath at the Appeal Hearing:

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- 8 1. Christopher Villa, the Appellant
 - 9 2. Andrew Worline, a fellow Pressure Systems Inspector
 - 10 3. Richard Alford, DPD's Electrical, Signs and Pressure Vessels Program Manager
 - 11 4. Larry Leet, DPD's Chief Pressure Systems Inspector and Supervisor of Mr. Villa
 - 12 5. Sarah Butler, Labor Relations Advisor for the City of Seattle

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14 Both parties were given the opportunity to offer rebuttal evidence. At the conclusion
15 of the Hearing, Mr. Villa requested additional time to file a written Closing Statement.
16 The Hearing Officer issued a Post-Hearing Ruling on October 1, 2014 that instructed
17 both parties to exchange written Closing Statements on October 13, 2014 and to submit
18 their Closing Statement to the Commission office by 3:00 PM on October 13. The
19 Hearing record was closed upon receipt of the parties' Closing Statements on October
20 13, 2014. The Hearing Officer notes that the Civil Service Commission maintains
21 copies of all exhibits entered into evidence, copies of Closing Statements, and any other
22 materials submitted by the parties of record, as well as a copy of a digital recording of
23 the Hearing.

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25 Based on the record established at the Hearing, the undersigned Hearing Officer
26 provides the following Findings of Fact, Conclusions of Law, and Hearing Decision.

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II. FINDINGS OF FACT

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3 1. Christopher Villa has been employed as a Pressure Systems Inspector for DPD
4 since September 5, 1995 (*Notice of Appeal; Testimony of Villa*).
- 5 2. The general job responsibilities and performance expectations for Pressure
6 Systems Inspectors are set forth in a Classification Specification document
7 (*Respondent Exhibit 3*).
- 8 3. Pressure Systems Inspectors are expected to: a) Independently inspect a wide
9 variety of boilers, pressure vessels and pressure systems to determine
10 compliance with codes, regulations and safety standards; b) Inspect and certify
11 new systems upon installation and annually re-inspect and certify existing
12 systems for continuing operation; and c) Provide technical enforcement and
13 safety information regarding pressure vessels and boilers to owners, operators
14 and other members of the general public (*Respondent Exhibit #3*).
- 15 4. Pressure Systems Inspectors are expected to enforce the Seattle Boiler and
16 Pressure Vessel Code (*Appellant Exhibit #3*) and the Boiler and Unfired Pressure
17 Vessel Laws (*Appellant Exhibit #4*).
- 18 5. Section 100 of the Seattle Boiler Code exempts certain boilers from compliance
19 with the Code, including electric boilers that meet all of these specifications:
20 1) Having a vessel volume not exceeding one and one-half cubic feet; and
21 2) Having a maximum allowable working pressure of 100 psi; and
22 3) If constructed after June 10, 1994, constructed to the American Society of
23 Mechanical Engineers Boiler and Pressure vessel Code, or listed or otherwise
24 certified by a nationally recognized testing agency or recognized foreign
25 testing laboratory (*Appellant Exhibit #3, Section 100-A and J*).
- 26 6. DPD processes approximately 25,000 permits per year through the Over-the-
27 Counter (OTC) division of the department (*Testimony of Alford*). Applicants for a
28 permit are responsible for compliance and knowledge of all code and rule
29 requirements, regardless of the general language provided in DPD's Tip Sheet

- 1 #104 on Getting an Over-the-Counter Permit (*Testimony of Alford, Leet, and*
2 *Villa; Appellant Exhibit #12*).
- 3 7. Operators or owners may request a safety inspection for exempt equipment for
4 reasons other than compliance with the Seattle Boiler Code (*Testimony of Alford*
5 *and Leet*).
- 6 8. Christopher Villa has conducted previous installation inspections that involved
7 equipment exempt from the Seattle Boiler Code (*Testimony of Villa*).
- 8 9. On December 12, 2013 Greenwood Heating applied for a permit to replace an
9 electric boiler in a Seattle residence and Permit #6396845 was issued by DPD on
10 that same date (*Appellant Exhibit #9; Testimony of Villa*).
- 11 10. The inspection for Permit #6396845 was assigned to Christopher Villa
12 (*Testimony of Villa, Alford and Leet*).
- 13 11. A representative from Greenwood Heating contacted Christopher Villa and
14 sought to schedule an installation inspection of the electric boiler (*Testimony of*
15 *Villa and Leet*). Villa asked the representative if she was aware of the exemptions
16 for inspection and discussed exemptions for residential electric boilers
17 (*Testimony of Villa*). The representative checked with a Greenwood Heating
18 technician standing nearby and informed Villa that the company felt that the
19 particular boiler fit exemption parameters in the Seattle Boiler Code (*Testimony*
20 *of Villa*).
- 21 12. Villa testified that he relied on Greenwood Heating's competent track record to
22 accept their representation that the boiler was exempt from inspection
23 requirements, as well as his 25 years of experience as a private and a public
24 Pressure Systems Inspector (*Testimony of Villa*). Villa stated that he offered to
25 conduct an inspection after discussing exemption provisions with Greenwood
26 Heating (*Testimony of Villa*).
- 27 13. Following his telephone conversation with Greenwood Heating, Villa sent an
28 email dated January 2, 2014 that listed the specific exemptions in the Seattle
29 Boiler and Pressure Vessel Code (*Appellant Exhibit #9; Testimony of Villa*).

- 1 14. Greenwood Heating canceled their permit request and filed a request for a refund
2 that stated, "Electric Boiler is exempt from needing a permit, per Chris Via" (sp)
3 (*Appellant Exhibit #9*).
- 4 15. The refund request came to the attention of Supervisor Larry Leet, DPD's Chief
5 Pressure Systems Inspector for the past 14 years. Mr. Leet spoke with Villa
6 about the refund request. Villa told Leet that he was being pro-active and
7 independently determined that an inspection was not needed (*Testimony of*
8 *Leet*). Leet then contacted Greenwood Heating and learned that Greenwood
9 Heating was told that the boiler did not need to be inspected (*Testimony of Leet*).
- 10 16. Leet conducted a follow-up inspection for Permit #6396845 and determined that
11 the electric boiler was exempt from any re-inspection requirements (*Testimony of*
12 *Leet*). A partial refund was issued to Greenwood Heating (*Appellant Exhibit #9*).
- 13 17. Leet provided uncontroverted testimony that he had discussed previous concerns
14 with Villa over Villa's offering to help customers with researching and evaluating
15 permitting paperwork and refund requests (*Testimony of Leet; Appellant Exhibit*
16 *#1; Testimony of Villa on Children's Hospital situation and another residential*
17 *electric boiler belonging to a Chinese owner*).
- 18 18. Testimony from Villa, Worline, Leet and Alford all established that the DPD policy
19 was to conduct an inspection for boilers or pressure vessels that had been
20 issued a permit and to note on the inspection report any exemption from re-
21 inspection requirements (*Testimony of Villa, Worline, Leet and Alford; Worline*
22 *would go to the site and conduct an inspection even if the equipment appeared to*
23 *be exempt from the Seattle Boiler Code*). Any exception to this policy was
24 supposed to be discussed with the supervisor prior to any communication with
25 the party requesting the permit (*Testimony of Worline, Alford and Leet; Worline*
26 *consulted with his supervisor on the Red Lion permits before contacting the*
27 *customer and taking any action; Appellant Exhibit 10*).
- 28 19. Leet spoke with Program Manager Alford and requested that DPD issue a written
29 reprimand for failure to conduct an inspection for Permit #6396845 (*Testimony of*
30 *Leet and Alford*).

1 20. Rather than issuing a written reprimand, Alford decided to hold a meeting with
2 Villa and review department expectations on inspection responsibilities for Villa
3 as a Pressure Systems Inspector (*Testimony of Alford*). Alford told Villa that
4 when there is a permit and a request for inspection, an inspection is required to
5 be done (*Testimony of Alford*). Alford told Villa that he was expected to discuss
6 any exceptions or concerns about an inspection with his supervisor (*Testimony of*
7 *Alford*).

8 21. Alford issued a follow-up memorandum that summarized DPD's performance
9 expectations and concerns with Villa's job performance (*Joint Exhibit #1*).

10 22. Christopher Villa challenged the Performance Management memorandum
11 through the parties' grievance procedure (*Joint Exhibit #2*). The grievance
12 remained unresolved, and Mr. Villa filed a timely and legitimate Appeal with the
13 Civil Service Commission on July 29, 2014 (*Notice of Appeal*).

14 15 **III. CONCLUSIONS OF LAW**

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17 1. Did Christopher Villa have the authority to independently determine whether or
18 not an inspection was needed for Permit #6396845?
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20 Mr. Villa based his Appeal on his genuine belief that he was being directed to
21 conduct what he independently determined to be an illegal inspection in violation of the
22 Seattle Boiler Code (*Appellant Exhibit #3*) and the State of Washington Boiler and
23 Unfired Pressure Vessel Laws (*Appellant Exhibit #4*). He argued that department policy
24 did not explicitly address potentially exempt equipment under permit, that DPD needed
25 to establish a formal rule regarding the inspection of potentially exempt equipment
26 under permit, and that no such formal rule existed. Villa pointed to his Classification
27 Specification to support his belief that he was responsible for "accurate, appropriate,
28 and truthful representations" and that he had the authority to independently determine
29 how to properly implement established law - including the decision of whether or not to
30 conduct an inspection for equipment under permit (*Respondent Exhibit #3*). The

1 paragraph cited by Villa in *Respondent Exhibit #3* refers to responsibilities resulting from
2 “inspection findings”. The Hearing Officer notes that one has to conduct an inspection
3 in order to have “inspection findings” (*Respondent Exhibit #3*).
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5 The Seattle Boiler and Pressure Vessel Code is a 24-page document that serves as
6 the primary source of regulations for Pressure Systems Inspectors (*Appellant Exhibit*
7 *#3*). Villa cites Sections 20 and 100 of the Seattle Boiler Code to argue that the
8 exemptions listed in Section 100 of the Code exempt certain boilers and pressure
9 equipment from any inspection and not just re-inspection. Section 20 states that
10 exemptions listed in Section 100 of the Code are exempt from requirements for
11 construction, erection, installation, operation, inspection, repair, maintenance, etc. of all
12 boilers and pressure vessels (*Appellant Exhibit #3, p. 2*). There is a distinct difference
13 between a “requirement” versus an “unlawful” action. According to the Merriam-Webster
14 Dictionary, the term “requirement” means “something essential to the existence or
15 occurrence of something else”. In contrast, the term “unlawful” means “not allowed by
16 the law”. In examining the language in Sections 20 and 100, the Hearing Officer
17 concludes that an inspection of an exempt boiler or pressure vessel is neither required
18 nor prohibited by Sections 20 and 100 of the Seattle Boiler Code. Neither Section 20
19 nor Section 100 of the Seattle Boiler Code clarifies how to handle situations involving
20 boilers or pressure equipment specifically under permit (*Appellant Exhibit #3*).
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22 Villa cites RCW 70.79.080 (10), RCW 70.79.095, and RCW 70.79.240 (*Appellant*
23 *Exhibit #4*) as further support for the proposition that residential electric boilers are
24 exempt from inspection of their “construction, installation, condition and operation” and
25 an inspection of exempt equipment would be an unlawful act (*Appellant Exhibit #4*).
26 RCW 70.79.095 specifically bars a city from enforcing any law regulating espresso
27 machines and “any electric boiler exempt from this chapter by RCW 70.79.080 (10)”
28 (*Appellant Exhibit #4, p. 3*). The legislative intent focuses on small low-pressure boilers
29 found in espresso coffee machines and cleaning equipment (*Ibid, p. 3*). The boiler in
30 question was not part of an espresso machine. Villa testified that all of the residential

1 electric boilers that he had previously inspected had been exempt and he had “good
2 reason to believe” that the boiler in Permit #6396845 met the exemption requirements
3 and should not have been inspected at all. Chief Inspector Leet confirmed that the
4 electric boiler under Permit #6396845 turned out to be exempt from Code requirements
5 for re-inspection (*Testimony of Leet*). Villa argues that DPD does not always require a
6 field inspection to verify compliance with the Seattle Code, and he cited steam piping as
7 another example. There is a distinct difference between an item being “exempt” from
8 requirements versus a “prohibition” of that item being reviewed or inspected upon
9 request by a customer or a contractor with a permit. The instant case involved a
10 request for an inspection from a contractor with a permit. Villa needed to respond to the
11 request for an inspection. Villa’s “reason to believe” that a boiler is exempt does not
12 rise to the same level of certainty as the physical examination of a boiler to verify that it
13 is exempt from the Seattle Boiler Code.

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15 Villa cites Section 190 of the Seattle Boiler Code to argue that Permit #6396845 was
16 invalid and could not be enforced (*Appellant Exhibit #3*). Section 190.5.2 provides that
17 the issuance of a permit cannot be construed to approve any violation of the Seattle
18 Boiler Code or other pertinent laws (*Appellant Exhibit #3, p. 14*). Chief Inspector Leet
19 and Manager Alford acknowledged that some of the 25,000 permits are issued by
20 mistake and that a field inspection verifies whether a boiler or pressure vessel is exempt
21 or subject to the requirements of the Seattle Boiler Code (*Testimony of Leet and Alford*).

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23 Further, Villa argues that Section 30.2 of the Seattle Boiler Code authorizes him to
24 act as a deputy director to determine how to enforce the Seattle Boiler Code and decide
25 whether or not to conduct an inspection on a boiler under permit. He raises a concern
26 over inadvertently damaging a piece of equipment and exposing the City to liability
27 during an inspection of what he deems likely to be exempt equipment.

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29 A well-established principle in employment law and labor arbitration requires
30 employees to “work now and grieve later”, How Arbitration Works, Elkouri and Elkouri,

1 6th Edition (2003), pp. 262-267, citing *Amax Lead Co.*, 70 LA 1 (Norman, 1978).
2 Employees are expected to obey orders and carry out their assignments. Rather than
3 take matters into their own hands, employees are expected to grieve or challenge a
4 directive through the administrative procedures provided for review of that directive. In a
5 discussion of this principle, the Merit Systems Protection Board relied on *Walker v.*
6 *Birmingham*, 388 U.S. 307, and interpreted the U.S. Supreme Court as providing the
7 following:

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9 “The case stands for the proposition that individuals do not have the unfettered right
10 to disregard a law, rule or regulation merely because substantial reason exists
11 regarding the constitutionality or validity of that law, rule or regulation...

12 Applying the foregoing to the present case, appellant was obliged to obey the
13 agency’s order while taking whatever necessary steps he thought appropriate to
14 challenge the ultimate validity of the order and policy. To find otherwise would have
15 the effect of undermining the statutory scheme established to preserve employee
16 rights without unreasonably preventing agencies from carrying out their missions.”

17 *Gragg v. U.S. Air Force*, #DA 07528010134, 11 MSPB 546, 13 M.S.P.R. 296, 1982
18 MSPB Lexis 435 (1982).

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20 “Employees do not have an unfettered right to disregard supervisory instructions.
21 Rather, an employee must obey the agency order, even if he believes it to be
22 improper, and protest the propriety of the order later.”

23 Merit Systems Protection Board in *Howarth v. U.S. Postal Service*, #PH-0752-96-0202-
24 I-1, 77 M.S.P.R. 1 at 5, 1997 MSPB Lexis 1422 at 15 (1997).

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26 The Department of Planning and Development (DPD) argues that RCW 70.79.080
27 (8) provides DPD with the authority to enact requirements that are equal to or higher
28 than those provided by Washington State law (*Appellant Exhibit #4*). Further, RCW
29 70.79.110 provides the Chief Inspector with the authority and responsibility to “take
30 action necessary for the enforcement of the laws of the state governing the use of

1 boilers and unfired vessels” and interpret the meaning and application of State law to
2 the City of Seattle operations. Section 30 of the Seattle Code states that the DPD
3 Director determines the enforcement of the Seattle Code and may authorize others to
4 carry out the functions specified by the Code (*Appellant Exhibit #3*). Testimony by
5 Alford, Leet, and Worline established that the Director authorized Chief Inspector Leet
6 to determine certain department policies and that these policies were communicated to
7 the Pressure Systems Inspectors in staff meetings and through email messages.
8 Equipment under permit was to be inspected and exemptions from the Code were
9 interpreted as exemptions from the annual requirement for re-inspection (*Testimony of*
10 *Alford, Leet, and Worline*).

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12 Did the Director of DPD delegate the decision of whether or not to inspect equipment
13 under permit to Pressure Systems Inspectors? Villa says “yes”. The Department says
14 “no”. DPD provided compelling testimony that the Director delegated this decision to
15 the Chief Inspector, and the Chief Inspector did not delegate his legal interpretation
16 responsibilities over the necessity of inspections to the Pressure Systems Inspectors
17 (*Testimony of Alford and Leet*). On the contrary, department witnesses and another
18 Pressure Systems Inspector testified that the spoken department policy was to inspect
19 any equipment under permit and to note any exemptions on their inspection report
20 (*Testimony of Alford, Leet, and Worline*). Inspectors were expected to consult with the
21 Chief Inspector if there was any question about whether or not they should conduct an
22 inspection (*Testimony of Alford, Leet, and Worline*). With four DPD Pressure Systems
23 Inspectors, the department does not have the personnel or sufficient information to
24 second-guess the 25,000 permits that are issued by the OTC division (*Testimony of*
25 *Alford and Leet*). A permit appearing to be issued by mistake does not equate to an
26 unlawful permit. Practically speaking, an inspector would not have any certainty about
27 the exempt nature of a piece of equipment without conducting a field inspection for
28 equipment under permit (*Testimony of Alford and Leet*). The City of Seattle would be
29 liable if unsafe equipment was allowed to operate as a result of the failure to act on a
30 permit and conduct a safety inspection (*Testimony of Alford and Leet*).

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As an employee of the Department of Planning and Development, Christopher Villa is obligated to follow department policies and expectations, even when he disagrees with them. He is not an independent contractor, nor does he have the authority to ignore or disregard department policies and expectations that have been communicated to him and his fellow Pressure Systems Inspectors. Villa is not authorized to engage in self-help and decide which equipment under permit should or should not be inspected. WAC 296-104-020 specifically requires that a "boiler and pressure vessel installation/reinstallation permit," as defined in WAC 296-104-010 shall be submitted by the owner or designee on a form approved by the chief inspector. WAC 296-104-010 defines the "certificate of inspection" as a certificate issued by the chief boiler inspector to the owner/user of a boiler or unfired pressure vessel upon inspection by an inspector. After reviewing WAC 296-104 in its entirety, the Hearing Officer concludes that the City Chief Inspector determines the necessity and the validity of inspections. WAC 296-104-018 provides deputy inspectors with the opportunity to seek clarification in a dispute over the interpretation and/or application of the rule(s) by the Chief Inspector and may ask the Board of Boiler Rules (Board) for its interpretation. This WAC provision does not impart deputy inspectors with the authority to ignore or countermand the City Chief Inspector's interpretations of law.

The weight of the testimony established that the policies and expectations surrounding inspection of boilers or pressure equipment under permit were communicated to Villa and his peers by Chief Inspector Leet (*Testimony of Alford, Leet, and Worline*). Christopher Villa did not have the authority to independently determine whether or not an inspection was needed for Permit #6396845. Once the permit was issued, Villa had an obligation to conduct a field inspection. In the alternative, Villa should have consulted with Chief Inspector Leet if Villa believed that an inspection was unnecessary or inappropriate.

1 2. Did the January 14, 2014 Performance Management Memorandum direct Villa to
2 commit illegal or unlawful actions?

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4 Christopher Villa argues that the directives in the January 14, 2014 Performance
5 Management memorandum compel him to commit unlawful actions. As noted above,
6 the Hearing Officer finds that Villa was lawfully required to conduct a field inspection of
7 a boiler under permit. He was lawfully expected to note his findings on an inspection
8 report and indicate whether or not the boiler was exempt from the annual re-inspection
9 requirements of the Seattle Boiler Code. Mr. Villa is particularly concerned about the
10 following directive in Mr. Alford's memorandum:

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12 "Any code violations on the installation should be noted in your inspection report
13 and the corrections should be completed prior to the permit being closed,
14 regardless of any exempt status a device may be entitled." (*Joint Exhibit #1*)

15
16 Both Inspectors Worline and Villa testified that they could provide recommendations
17 to parties owning an exempt boiler, but that they could not use the Seattle Boiler Code
18 to mandate corrections (*Testimony of Worline and Villa*). Worline testified that the
19 nature of the dangers or hazards presented would determine his next steps (*Testimony*
20 *of Worline*). The language in the Performance Management memorandum used the
21 word "should" rather than "must" (*Joint Exhibit #1*). The term "should" is compatible with
22 making recommendations for corrections rather than mandating them. As long as the
23 intent of the memorandum is to have Pressure Systems Inspectors recommend
24 corrections to the owners of exempt equipment, then this language does not direct Villa
25 to engage in unlawful conduct. The Hearing Officer suggests that Mr. Villa consult with
26 his supervisor on how to handle situations involving safety hazards posed by exempt
27 equipment that has been inspected. Based on the statutory and regulatory authority of
28 the Chief Inspector, Mr. Villa is obligated to comply with the decisions and directives of
29 his supervisor, Chief Inspector Leet.

1 3. Did the January 14, 2014 Performance Management Memorandum comply with
2 Personnel Rule 1.5?

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4 Christopher Villa asserts that DPD violated Personnel Rule 1.5 in issuing the
5 January 14, 2014 Performance Management Memorandum. Specifically, Villa
6 questions the documentation of supervisor job expectations in his personnel file under
7 Personnel Rule 1.5.3(D) in *Appellant Exhibit #6*. He asserts that DPD did not comply
8 with the provisions of Personnel Rule 1.5.5 for Communicating Performance
9 Deficiencies (*Appellant Exhibit #6*). Specifically, Villa argues that his manager failed to
10 assess the causes of the job performance deficiencies in PR 1.5.5 (A)(3) and did not
11 clearly communicate job expectations to Villa in PR 1.5.5 (B)(2) prior to receiving the
12 January 14, 2014 Memorandum. Lastly, Villa challenges the issuance of the Job
13 Performance Management Memorandum to him and argues that DPD should have
14 issued a department-wide statement of expectations to all Pressure Systems
15 Inspectors.

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17 An in-depth review of Personnel Rule 1.5 can be found in *Taylor v. Seattle City*
18 *Light*, CSC No. 10-07-005. Hearing Officer Christopher Mathews found the use of the
19 word “should” in Personnel Rule 1.5 established an “*expectation*” for certain personnel
20 practices rather than a “*requirement*” for such practices (*Taylor decision*, p. 4). As
21 Sarah Butler testified at the Villa hearing, the language in Personnel Rule 1.5 is
22 “aspirational” as opposed to mandatory. The only mandatory aspects of Personnel Rule
23 1.5 can be found in 1.5.3 (D) which requires documentation of job expectations to be
24 maintained in the supervisor’s file, with a copy to the employee (*Taylor decision*, p. 5).
25 Sarah Butler explained at the Villa Hearing that the “supervisor file” is actually a subset
26 of the employee’s personnel file and is kept in the same place at DPD (*Testimony of*
27 *Butler*). Her testimony is supported by Personnel Rule 10.1.1(E) which defines the
28 “personnel file” as “the compilation of records regarding employees that consists of
29 three separate composite components designated as employment, confidential, and
30 supervisor files”. For all practical purposes, a copy placed in the supervisor’s file at

1 DPD equates to a copy placed in Mr. Villa's personnel file. The Hearing Officer finds
2 that DPD did not violate Personnel Rule 1.5.3(D) by placing a copy of the Performance
3 Management memorandum in Christopher Villa's personnel file.
4

5 Did Richard Alford fail to assess the cause of Villa's job performance deficiencies?
6 Testimony by Alford and Leet established that Villa had been counseled in the past to
7 refrain from evaluating the validity of permits and/or advising customers on the
8 necessity of having an installation inspection (*Testimony of Alford and Leet*). Testimony
9 concerning a previous annual review verified that Villa was directed to "follow workplace
10 guidelines and contact me (Leet) immediately when issues arise" as a result of several
11 incidents involving inspections and refunds (*Testimony of Leet; Respondent Exhibit #1,*
12 *issued and revised through dispute resolution efforts*). As discussed earlier, Villa should
13 have known from previous communications that he was expected to respond to a
14 request for an installation inspection and conduct a field inspection for any equipment
15 under permit. Villa failed to consult with his supervisor and discuss his concerns about
16 the necessity of the inspection. Instead, he engaged in self-help and pursued his
17 personal interpretation of State law by providing an assessment that led the customer to
18 request a permit refund. The causes of Villa's job performance deficiencies included his
19 decision to disregard his supervisor's directives and discuss legal exemptions rather
20 than conduct a field inspection, as well as his decision not to consult with his supervisor
21 prior to advising a customer that an inspection was unnecessary. The Hearing Officer
22 concludes that Richard Alford accurately assessed the causes of Villa's job
23 performance deficiencies and communicated those deficiencies to him in compliance
24 with Personnel Rule 1.5.5 (A)(3).
25

26 The weight of the testimony establishes that DPD's spoken department policy
27 was to inspect any equipment under permit and to note any exemptions on their
28 inspection report (*Testimony of Alford, Leet, and Worline*). Inspectors were expected to
29 consult with the Chief Inspector if there was any question about whether or not they
30 should conduct an inspection (*Testimony of Alford, Leet, and Worline*). These specific

1 job expectations were communicated to Villa and his fellow Pressure Systems
2 Inspectors in staff meetings and in email messages prior to the issuance of the January
3 14, 2014 Performance Management memorandum (*Testimony of Worline, Alford and*
4 *Leef*). The Hearing Officer finds no violation of Personnel Rule 1.5.5 (B) (2).

5
6 Christopher Villa questions the necessity for the issuance of a Performance
7 Management Memorandum to him rather than the issuance of a department-wide
8 communication to all Pressure System Inspectors. Testimony at the hearing
9 established that at least one other Pressure Systems Inspector clearly understood the
10 department policies and expectations regarding installation inspections for potentially
11 exempt equipment. "Any time that an installation permit is issued, the expectation is to
12 go and inspect the equipment even if it appears to be exempt" (*Testimony of*
13 *Worline*). Good management practices require counseling of individual employees
14 who fail to follow department policies rather than sending out a general
15 communication to those employees who are in compliance. DPD is following
16 good management practices by clearly communicating job performance
17 expectations and job performance concerns to Christopher Villa. The Department
18 is giving Villa an opportunity to correct his failure to follow supervisory directives
19 prior to taking any disciplinary action.

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22 **IV. HEARING DECISION**
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25 After careful consideration of the exhibits, testimony, arguments, laws, rules,
26 and regulations provided by the parties, the Hearing Officer finds that the City of
27 Seattle Department of Planning and Development did not violate Personnel
28 Rule 1.5 when it issued a January 14, 2014 Performance Management
29 memorandum to Christopher Villa that summarized specific concerns regarding
30 his job performance as a Pressure Systems Inspector and restated specific job
31 expectations for his position. The Appeal of Christopher Villa is hereby
32 dismissed.

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ISSUED this 20th day of October, 2014

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Donna Lurie, Hearing Officer

NOTE: The Decision of the Hearing Officer in this case is subject to review by the Civil Service Commission. Parties may request that the Commission review the Decision, by filing a Petition for Review of the Hearing Officer's Decision and asking the Commission to consider specific issues and facts. 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 the Civil Service Commission Rules.