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BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE

CIVIL SERVICE COMMISSION

IN RE THE APPEAL OF:)
)
Israel Gregorio,)
)
Appellant,)
)
vs.)
)
SEATTLE PUBLIC UTILITIES,)
)
Respondent)

No. 99-01-012

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

Israel Gregorio, a Maintenance Mechanic Specialist for the Seattle Public Utilities Department, appeals his 40-hour suspension from employment. Although Appellant received notice of his suspension on May 6, 1999, he did not file his appeal until May 28, 1999, technically beyond the twenty day limit for filing. However, the Executive Director determined, and the Hearing Examiner confirms that due to staffing problems and absences, as well as unforeseen telephone difficulties, good cause was found to accept the appeal after the expiration of the twenty-day period. It is found that the failure to file within the time period was not the fault of the appellant, but of the Commission, and should not be held against him. The purposes of the Charter would not be served if the appeal were not allowed. Civil Service Commission Rules of Practice and Procedure, Rule 1.05.

This matter came on for hearing on October 22, 1999. Appellant represented himself, and Seattle Public Utilities Department (hereinafter, "SPU") was represented by Assistant City Attorney Danford D. Grant.

Seattle Public Utilities' Position:

**FINDINGS OF FACT, CONCLUSIONS
OF LAW & DECISION – GREGORIO**

1 SPU contends that appellant threatened to shoot another employee with a gun, in
2 conjunction with an argument with that other employee.

3 **Appellant's Position:**

4 Appellant denies the allegation, and contends that he was being harassed by the
5 other employee, and that nothing was done about it.

6 The Hearing Examiner, having heard the testimony and the arguments of the
7 parties and counsel, and having reviewed the evidence in this case now makes the
8 following:
9

10 **FINDINGS OF FACT**

11 1. Appellant Israel Gregorio has been a Maintenance Mechanic Specialist
12 with the Seattle Public Utilities Department (formerly, the Water Department) since
13 February, 1997. Notice of Appeal.

14 2. It is undisputed that on or about March 3, 1999, employees in the Water
15 Operation Unit, including appellant, were having a safety meeting involving a tripod
16 hoist used to lift personnel from street openings. It is undisputed that some bantering
17 occurred during the discussion, and that Dennis Stonehouse suggested that the hoist be
18 tested on employee Luis Ruiz, because he was the largest. Ruiz then suggested that the
19 hoist be used on appellant, as he was "low man on the totem pole."
20

21 3. It is undisputed that in response to this bantering, appellant raised his
22 middle finger on at least one occasion.

23 4. It is undisputed that after the meeting, Ruiz followed appellant out to his
24 vehicle, and continued the discussion through the parking lot, and entered appellant's
25

**FINDINGS OF FACT, CONCLUSIONS
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1 work vehicle on the passenger side, standing very close over appellant, talking down to
2 him, while appellant was in the driver's seat.

3 5. It is undisputed that Ruiz was not assigned to appellant's vehicle.

4 6. It is undisputed that Ruiz also said something to appellant to the effect
5 that if he (appellant) were to do "something like that" (e.g., raise his middle finger) to
6 someone "on the outside" (e.g., not a City employee), he would get "into a
7 confrontation". [One witness said "get hurt or beat up"; another said, "get his ass
8 kicked"; appellant said "get rolled".]
9

10 7. Ruiz testified that appellant thought he, Ruiz, was threatening appellant.
11 Ruiz testified that he is 6'2 1/2" tall, and weighs 235 pounds. Ruiz admitted that if he had
12 not followed appellant into the van, the incident would not have occurred.

13 8. Ruiz later told others that in response to his remarks, appellant told him
14 he had a gun and knew how to use it.

15 9. In all statements, appellant has consistently denied making any remark
16 about a gun, or owning a gun.

17 10. One witness, who was in the appellant's truck during the time of the
18 alleged remark, claims not to have heard the reference to a gun. Testimony of Mike
19 Hernandez.
20

21 11. One witness, who was outside the truck and heard no other part of the
22 discussion, claims to have heard the reference to the gun. This witness admits not being
23 there during the entire discussion, and states that he was unable to get into the van due to
24 Ruiz' presence. Testimony of Tracy Rose.
25

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1 **DECISION**

2 The evidence in this case demonstrates how small incidents can grow and
3 escalate in a small period of time into huge problems for a department. Although the
4 kind of bantering that occurred during the safety meeting was tolerated by some of the
5 employees, it was also used as an occasion for abuse by others.

6 It is clear and uncontroverted that Luis Ruiz first badgered appellant, who
7 responded inappropriately, then followed him out into the parking lot, continuing to
8 badger him, got into appellant's vehicle, where he had no legitimate business, and
9 apparently did everything possible to incite a confrontation. He then claimed that
10 appellant threatened him with a gun, and told everyone about that. The fact that he told
11 people appellant threatened him with a gun then appears as hearsay in other statements.
12

13 Appellant has consistently denied that he referred to a gun. The only witness to
14 any alleged gun-related remark was standing outside the vehicle, *and heard nothing else*
15 *of the conversation*. A more reliable witness, who was in the vehicle checking tools,
16 heard no reference to a gun.

17 At various stages in this situation, management might have been able to
18 intervene.

19 The City of Seattle has the following Workplace Violence Policy in the Office
20 Safety Booklet prepared by the City's Safety Unit and posted on its website:
21

22 The City does not tolerate physical, verbal, or visual harassment of City
23 employees, or the display of violent, aggressive, or threatening behavior
24 that results in physical or emotional injury to employees. The possession
25 and use of firearms and other dangerous weapons by unauthorized
employees are prohibited. You are responsible for complying with the
policy and for immediately notifying your supervisor of any apparent
violations . . .


**FINDINGS OF FACT, CONCLUSIONS
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While good-natured bantering and humor should be tolerated in the workforce, it is clear that at some point in the safety meeting, the line between bantering and harassment was crossed. Ruiz then continued on and would not let up on the appellant, who considerably smaller than Ruiz.

The City is correct to take the position that the threat of the use of a gun should be taken very seriously, and dealt with harshly. However, based upon the evidence and the context, I cannot find by clear, cogent, and convincing evidence that the threat of use of a gun ever occurred. I do find that harassment occurred against appellant, and possibly by appellant through words and gestures, and should have been addressed appropriately. That is not the issue before me, however.

The discipline should be stricken from employee's record, his pay and benefits restored, and all references to said discipline removed from his personnel file.

Dated this 28th day of December, 1999.


RHEA J. ROLFE
Hearing Examiner