

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

of the

**CITY OF TACOMA CIVIL SERVICE BOARD**

In the APPEAL OF

**MICHAEL SOWARDS**

The City of Tacoma Civil Service Board, having heard and considered the appeal of Michael Sowards on the dates of December 2 and December 13, 2010; Mr. Sowards being represented by and through his Local 313 representative, Vince Williams, and the City of Tacoma, Department of Public Works, being represented by Deputy City Attorney Cheryl Comer; and having considered all the evidence and information presented, does hereby make the following:

**FINDINGS OF FACT**

1. Mr. Sowards served as a Collector/Driver in the Solid Waste Division of the Department of Public Works for ten years.
2. One of the required qualifications for the position of a Solid Waste Collector/Driver is the maintenance of a valid Washington State Commercial Driver's License (CDL).
3. On or about February 3, 2010, Mr. Sowards submitted a written request to Public Works Director Dick McKinley requesting a leave of absence from February 15, 2010 to January 31, 2011.
4. Subsequent to receiving the request for leave of absence, Mr. McKinley learned from Division Manager Kenneth Tross that Mr. Sowards' CDL was to be suspended for a year.
5. Mr. Sowards' CDL was suspended by the Department of Licensing for one year.
6. Mr. McKinley testified that he considered a number of factors, including training issues and backfill options, in deciding whether or not granting the requested leave of absence was in the "best interest of the City" as required by Tacoma Municipal Code 1.24.870.
7. Mr. McKinley testified that he determined that granting Mr. Sowards' request was not in the best interest of the City.

8. Mr. Sowards, due to the suspension of his CDL, no longer met the minimum qualifications of his position.
9. Mr. Sowards was provided with a Notice of Intent to Terminate Employment on February 18, 2010, which was based on his failure to maintain the minimum qualifications for his position.
10. The Notice of Intent to Terminate Employment included notice of the right to respond to the charges.
11. Mr. Sowards requested and received, on March 2, 2010, an administrative review of the termination recommendation.
12. Mr. Sowards was notified by the Director of Public Works by letter dated March 9, 2010, of his decision to uphold the termination decision, based on Mr. Sowards' failure to maintain the minimum qualifications for his position.
13. Mr. Sowards' employment was terminated effective March 19, 2010.
14. Mr. Sowards submitted an appeal of his termination to the Civil Service Board on March 22, 2010.

Based on these facts, the Civil Service Board makes the following:

#### CONCLUSIONS OF LAW

1. The Civil Service Board of the City of Tacoma has jurisdiction to hear the appeal of the termination of Michael Sowards.
2. Mr. Sowards timely filed his notice of appeal of his termination.
3. The Notice of Intent to Terminate Employment dated February 18, 2010, which was timely served on Mr. Sowards, satisfies the notice requirements of TMC 1.24.940.
4. TMC 1.24.870 provides that the appointing authority has the discretion to determine whether a requested leave of absence is in the best interests of the City.
5. The Director of Public Works did not abuse his discretion when he determined that granting the requested leave of absence was not in the best interests of the City. See Finding of Fact No. 6.
6. Based on Mr. Sowards' inability to maintain the minimum qualifications for the position of Collector/Driver, Solid Waste Division, the City of Tacoma has met its burden of showing that the decision to terminate Mr. Sowards' employment was in good faith and for cause.


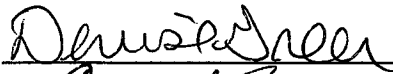

DECISION

On a vote of three affirmatives, one negative (cast by Board Member Dan Sexton), and one abstention (Beckie Summers), the Civil Service Board of the City of Tacoma denies the appeal of Michael Sowards.

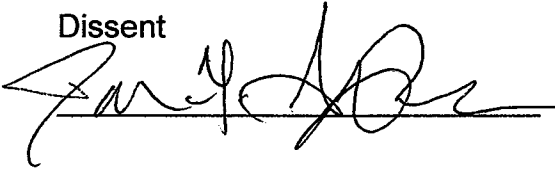
Done this 6<sup>th</sup> day of January, 2010.

Signatures:

Affirm

  
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Dissent

  
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Abstain

  
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