

**City of Tacoma Civil Service Board
MEETING MINUTES**

Date and Time: April 25, 2019 at 5:00PM
Location: Tacoma Municipal Building, Council Chambers
Chair: Beckie Summers
Coordinator: Wendy Hobson

Call to Order:

The Civil Service Board meeting was called to order in Council Chambers of the Tacoma Municipal Building at 5:00PM by Chair Summers. Board Members Hansen, Sexton, and Andrews were present.

Approval of Minutes:

Chair Summers called the meeting to order and indicated that she would like to move items 6 and 7 of the agenda up so the appeal will be the last item this evening.

Chair Summers asked for a motion to approve the March 7, 2019 minutes. Board Member Sexton motioned to approve. The motion was seconded by Board Member Hansen.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 1 ABS (HELLER); THE MINUTES FOR MARCH 7, 2019 WERE APPROVED AS WRITTEN.

Communication for Information:

Shelby Fritz introduced herself and advised she was filling in this evening for Coordinator Wendy Hobson. Ms. Fritz shared that the study session on the topic of Management Analyst is planned for May 2, 2019 immediately following the regular meeting.

Ms. Fritz also shared the date for the appeal hearing in the matter of Thomas Carroll which will be held on June 4, 2019. This meeting will be noticed as a special meeting due to the fact that we are moving the regular meeting of June 6th up to the 4th.

Human Resources Director Report:

Assistant Human Resources Director, Cheryl Bidleman reported on two list extensions and one list abolishment for Senior Wire Electrician, Solid Waste Worker and TVE Custodian. Ms. Bidleman then introduced Human Resources Analyst, Marisa Tetreault to present a Request for Waiver of Competitive Examination.

Ms. Tetreault presented the request for Waiver of Competitive Exam for Donald Clark, Mail and Stock Processor.

BOARD MEMBER SEXTON MOTIONED TO GRANT THE REQUEST. THE MOTION WAS SECONDED BY BOARD MEMBER HELLER.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 0 ABS. THE MOTION PASSED.

A VOICE VOTE WAS TAKEN: 3 AYES, 0 NAYS, 0 ABS. THE MOTION PASSED.

Consideration of Matters Set for Public Hearing:

Appeal Hearing in the Matter of Matthew Steelquist:

The City may proceed. Paul Goulding introduced himself on behalf of the City.

Mr. Goulding opening statement:

This case is about safety. The Water department cannot effectively function if the employees are under the influence of alcohol and drugs. On the morning of November 7, 2018, Mr. Steelquist reported for work at approximately 8am at Tacoma Water. Mr. Steelquist apparently drove his personal truck to work that morning and was observed by other employees displaying strange behavior including acting moody and distracted, had enlarged pupils, blood shot eyes, slurred speech, exaggerated enunciation and excessive talking. A reasonable suspicion checklist was completed for Mr. Steelquist and he was transported to Allenmore Hospital for drug and alcohol testing. His breath alcohol test was .194 and .212 almost three times the legal limit for driving .08 and almost five times the legal limit for CDL drivers. Due to his intoxication at work, Mr. Steelquist was transported home.

Mr. Goulding advised that some declarations have been prepared for the Board and are included in the exhibits under R6. Excerpts from those include:

Richie Shepherd said Mr. Steelquist was not talking normally, his eyes were glazed over and he was drinking an energy drink. Mr. Shepherd helped fill out a reasonable suspicion form. He did not see him drink alcohol; just thought his behavior was caused by alcohol. He noted that Mr. Steelquist would have been driving a City vehicle that day had he remained at work and noted that Mr. Steelquist has come to work before under the influence in the recent past.

Phil Gause stated that Mr. Steelquist was acting strangely that morning, not talking normally, had bloodshot eyes; he helped fill out a reasonable suspicion form with Mr. Shepherd. He knew about Mr. Steelquist's alcohol issues. He has seen Mr. Steelquist come to work in the recent past stating he'd been drinking all night.

Curtis Roland is one of the supervisors that helped transport Mr. Steelquist to Allenmore Hospital; he did allow Mr. Steelquist to contact his union rep at the time. After the test the staff at Allenmore said that Mr. Steelquist was intoxicated and could not drive. Mr. Roland told Mr. Steelquist that he was disappointed; Mr. Steelquist said I am too. Mr. Roland noted that Mr. Steelquist's blood alcohol was still going up and agreed that he should be terminated. He also noted that Mr. Steelquist was five times over the legal limit for CDL drivers. He added that we drive bigger equipment and can do a lot of damage; he also noted he was aware of Mr. Steelquist's previous DUI and that he was placed on the flagging crew while his CDL was suspended as a result of that DUI.

Mr. Goulding stated that Mr. Steelquist's actions violated City policy, mainly PMPs 165 and 166 and TMC 1.24.940 D for intoxication, E for incompetence and inefficiency, and L for conduct unbecoming of a City employee. Mr. Steelquist will argue that he should get his job back for several reasons; No.1 being the reasonable suspicion document was completed by a temporary lead with no drug and alcohol training and No. 2 that it was not properly signed. Our response was that a temporary lead Mr. Shepherd without formal training is true but he helped fill out the form with Mr. Gause; another lead who supervises employees who has been trained. Manager, Gary Gates also assisted with the form and has received periodic training. We submit this is sufficient to proceed to testing. No. 3, the reasonable suspicion document incorrectly says that Mr. Steelquist was drinking at work; witnesses confirmed that he was not drinking at work and that the behavior displayed was caused by alcohol. No. 4, the reasonable suspicion document does not notice alcohol on the breath but is listed in the notice of intent to terminate. We agree the odor was not specifically by witness accounts but there were other indicators sufficient to do the testing. Mr. Steelquist knows he has a drinking problem and did whatever he could to mask alcohol odor including drinking energy drinks, smoking, wearing cologne or chewing gum. No. 5 the termination was not solely based on witness observations; Steelquist tested positive for alcohol at nearly three times the legal limit. Thank goodness this was

reported or he may have been driving a City vehicle around that day. No. 6 we agree that PMP 166 is mostly inapplicable because it mostly covers random drug and alcohol testing and this deals with a reasonable suspicion test but it also states that CDL drivers must not drink any alcohol 4 hours prior to the beginning of their shift. Mr. Steelquist was a CDL so this applies to him; because he is a CDL he did receive a DOT test that day. He admitted to drinking after 4am on the morning he reported at 8am, this is a violation. No. 7 the termination is based on old attendance issues which were resolved. The notice of intent does show his past disciplinary history; it doesn't matter if those issues have been resolved, it shows his history. More importantly, Mr. Steelquist has a significant history of alcohol abuse; he has a DUI from 2014; although true that the DUI did not happen at work it significantly affected his work because he lost his CDL for a year. Water generously allowed him to go for treatment and to do flagging for a year until he got his CDL back. He has also showed up at work at least twice in the last couple of years in incidents that were not reported to management but came out in witness statements. No. 8, PMP 165 requires annual review of testing facilities with Joint Labor. We agree that this has not been happening in the recent past despite the best intentions of the City and Joint Labor; this does not invalidate the entire drug and alcohol program for the City who cannot allow employees to show up for work and work while intoxicated. No. 9, PMP 165 requires approval of the HR Director. The substance abuse policy and procedures submitted as the union's exhibit 11, states that the HR Director has delegated the responsibility to administer the drug and alcohol program to the Safety Manager who is here to testify tonight. No. 10, PMP 165 is inconsistent with the substance abuse policy; again claims of inconsistency do not invalidate the City's policies. No. 11, Mr. Steelquist has and continues to attend alcohol counseling but PMP 165 stresses rehabilitation. PMP 165 does talk about rehabilitation but also says that violations can justify termination. Mr. Steelquist has already had an opportunity to go through rehabilitation in 2014 and was warned then not to continue that behavior; other employees have also warned him about his behavior.

Mr. Goulding: As the Board has already stated, the City bears the burden in this case by preponderance of the evidence. The Board's role here is to determine if the City properly imposed discipline under the code and charter.

Byron Allen, Assistant Business Manager IBEW Local 483 opening statement:

Matthew Steelquist is an alcoholic. He has known this for several years; Matt's alcoholism led to his receiving a non-work related DUI in 2014 and issues of tardiness and absenteeism during that time. Like any alcoholic, Matt faces a daily struggle of maintaining sobriety. We are here today because after over four years of sobriety, on November 7, 2018, Matt lost his struggle and reported to work under the influence of alcohol. Matthew has taken full responsibility for his actions that day. He has undergone two months of rehabilitation and continues to attend AA meetings daily; he has taken every turn possible to put himself back on the long term path of sobriety which he had maintained for many years.

This appeal today is based upon the City of Tacoma's failure to follow its own policies leading up to and after the events of November 7, 2018. As a member of a protected class under the Americans with Disabilities Act, an alcoholic should be afforded the same protections under the City of Tacoma policies as anyone else. The information up for your review today will demonstrate that there was an assumption of guilt and failure to follow established procedure in policies which led to a breakdown in the application of the City of Tacoma's personnel rules Chapter 1-24-020 wherein it states: personal problems will be dealt with on a uniform and equitable basis. These failures resulted in Matthew Steelquist being denied the presumption of innocence that is a hallmark of fair and equitable treatment

Chair Summers asked if the City is ready to proceed. Mr. Goulding replied yes and called the first witness, Mr. Gary Gates.

Gary Gates was sworn in by Chair Summers.

Mr. Goulding: Mr. Gates, what is your title?

Mr. Gates: I am an Operations Manager for Tacoma Water in Operations and Distribution; our daily construction crews.

Goulding: What do you do, what are your general job duties?

Gates: I manage the supervisors and deal with personnel and the staff; work with hiring; just day to day operations. Under the supervisors we have somewhere around 90 employees under me.

Goulding: Are you familiar with the events that led to the termination of Mr. Steelquist?

Gates: Yes I am.

Goulding: Tell us what happened on November 7, 2018.

Gates: I was off-site over at Public Works asphalt plant because we had our dump trucks over there doing some work on them because we were having trouble with our electronic scales. I received a call from Ritchie and he said that Matt was not acting right and that he didn't want to go out in a vehicle; I told him to keep him in the yard, don't leave and I came back to the office and at that time Phil Gause had been near him and I talked to him and at that time we decided we should fill out the reasonable suspicion. I called Milton Eng who was not in his office that day, and got a hold of Darrell Gatchell; Milton did respond by email. We got together the three of us and filled out the reasonable suspicion form. I did not witness Matt at that time.

Goulding: Did Safety also convey to you that it was important to get him tested as soon as possible?

Gates: Yes, they did.

Goulding: I want to direct you to our form R4. What is this form?

Gates: This is the reasonable suspicion document.

Goulding: Have you been trained on drug and alcohol testing?

Gates: Yes, I have.

Goulding: Is this the form that was filled out that day?

Gates: Yes, it is.

Goulding: regarding training, if you go to the last page, it shows training records.

Gates: Yes, that's the SAP training record that shows attendance.

Goulding: You are listed there as having been trained?

Gates: In September 17th of 2015

Goulding: What about Phil Gause, is he on there as well?

Gates: Yes, he is down toward the bottom and was trained July 24th of 18 if I'm crossing the lines over correctly

Goulding: Phil Gause and Richie Shepherd; they were leads that day?

Gates: Yeah, Richie Shepherd was the direct lead for Matt that day on the flus van; Phil had been the lead on that van before.

Goulding: As leads, they are supervising other employees?

Gates: Yes

Goulding: Did you also assist in filling out the reasonable suspicion form?

Gates: Yes, I did just the informational part.

Goulding: What happened after you filled out the form?

Gates: Curt Roland and Kendall Funk went back and talked to Matt; told him they were going to take him up for the test. Anything after that would be just what I've heard; I do know that they let Matt call the union; I don't know what time they arrived but know they were there almost an hour before the test took place.

Goulding: What happened after the testing?

Gates: Curt and Kendall transported him back to our office; Matt wanted to speak to me briefly and at that time I told him he should contact EAP and speak with them and then we had Kendall take him home.

Goulding: What did he say to you?

Gates: He made mentions that "I'm not the only one that this has happened to and this has happened before." He wasn't making a lot of sense on some things.

Goulding: Was he chewing gum at the time?

Gates: He was chewing gum and he had had an energy drink earlier and had on a heavy odor of cologne.

Goulding: How did he seem otherwise?

Gates: He was a little bit disheveled; he was nervous too.

Goulding: What happened after that?

Gates: he came back out and Kendall took him home straight away.

Goulding: Did Mr. Steelquist drive to work that day?

Gates: Yes, he did.

Goulding: So he left his truck at work?

Gates: I'm not sure if it was a truck or an SUV; it was in the parking lot for a few days.

Goulding: Is Mr. Steelquist a CDL driver?

Gates: Yes, he is; all Utility Workers for the City of Tacoma Water have to have a valid CDL in order to stay employed.

Goulding: Was he scheduled to drive a City vehicle that day?

Gates: Yes, he was.

Goulding: Did you attend the Weingarten meeting with Mr. Steelquist and his union rep?

Gates: Yes, I did.

Goulding: At that meeting did Mr. Steelquist admit that he had been drinking that's night until after 4am?

Gates: He did say that he'd been drinking until after 4am

Goulding: How has it been for the employees that reported this incident?

Gates: There has been some backlash from other employees; no violence or anything like that but some comments made

Goulding: Do you think this incident may discourage employees from reporting drug and alcohol issues in the future?

Gates: Yes, I do.

Goulding: Do you agree with the decision to terminate Mr. Steelquist?

Gates: Yes, I do.

Goulding: Why?

Gates: Public safety; if it was my family out there and he hit them; or maybe even an accident that caused his injury; we're liable. I don't want that to happen.

Allen: The list of witnesses; does that mean no one else outside this list can be called?

Summers: I don't have the list; I have a list of those subpoenaed and would assume that nobody outside that list would be called.

Allen: Okay, on that list of witnesses, Mr. Gates does not appear.

Jennifer Taylor, Counsel to the Board: Just for the Board, there is no requirement in the rules that a witness not on the list can't be called, you won't find it in the rules.

Summers: What you're telling me is that the person that is before us is not on the list

Goulding: Where is this list of witnesses?

Summers: It's the one you presented Sir; it's in the Tacoma Civil Service Board in the Matter of Matthew Steelquist and it is right before the subpoenas way in the back.

Goulding: This is not a list of witnesses; this is a list of witnesses subpoenaed by the Board.

Summers to Goulding: Do you have a list of witnesses to provide to me that you will be calling? I do not have that in front of me.

Goulding: Sure. We have never provided a witness list before

Summers: You have. I have been the Chair over many of these hearings and yes, ~~that is one~~ of the things I had before me. How many witnesses do you intend to call?

Goulding: We have four

Summers: That's it?

Allen: That's four in addition to what's on this list? I would just like to know who is going to be here.

Summers: How many witnesses do you intend to call to the podium?

Goulding: Four. Again this is odd; we have never had to do this before. We will be calling Mr. Gates, Milton Eng, Cheryl Bidleman, and Scott Dewhirst.

Taylor: who prepared this list? Perhaps, it was Ms. Hobson

Summers: I have no idea who created this list; and I usually have a list. Yes, let's blame her, she isn't here.

Board Member Hansen to Counsel Ms. Taylor: has the non-disclosure of this particular witness prejudiced the appropriation of witnesses in this particular case?

Allen: We were unaware that Mr. Gates was going to be giving testimony in this; this is the first I've seen of the list and was given this tonight. I was going off this list in preparation, yes.

Summers: I am going to allow the four witnesses the City has tonight; this is not an accurate list and I'm sorry. I am more sorry for me than I am for you.

Allen: Mr. Gates, can you tell me how many employees were assigned to work on the van that Mr. Steelquist was assigned to that day?

Gates: there is never more than three; I assume there was three that day; I don't do the scheduling for each individual truck so some days it goes out with two and some days three.

Allen: what is the typical composition for the crew of that truck; it's the flushing truck, correct?

Gates: One Water Service Worker Lead and two Utility Workers with water quality experience.

Allen: Mr. Steelquist would have been one of the two Utility Workers correct?

Gates: Correct

Allen: Can you say for certain that out of the three operators that day that Mr. Steelquist would have been the operator that day?

Gates: He would have been either the operator of the van or a pick up at some point during the day.

Allen: And you know that for certain he would have been?

Gates: that is the way it's been in the past; he usually drove the pick up; I would assume that he would drive during the day that is a requirement of his job.

Allen: so that is an assumption; it is not a known fact that he would have been driving that day. You received the call from Richie Shepherd and you told him to stay there; you arrived shortly after. When you arrived, you had no conversation with Mr. Steelquist?

Gates: that is correct.

Allen: Have you filled out one of these reasonable suspicion forms before?

Gates: I have not had to, no.

Allen: R4 – four bulleted points; the first bullet says to document the steps to reasonable suspicion. Was there any documentation done at the time other than this document?

Gates: No, it says to get another supervisor to assist with the document so Richie did.

Allen: Do you see on this list where Richie Shepherd had been trained to fill out this form?

Gates: No, I don't see him on the list; that is why we had two other supervisors there that had been trained.

Allen: When you spoke with Darrell Gatchell do you recall what his instructions were?

Gates: Fill out the form; send him to Allenmore for testing.

Board Member Heller to Gates: You went to training in 2015; was that the only training you have had?

Gates: I think I've had it before that; before it was even SAP documented

Heller: Were you trained after that time?

Gates: I have not; there is not a time limit on that that I know of

Heller: So back to your filling out this form; you filled out the form even though you didn't observe the employee?

Gates: the only parts that I filled out were not an observation or of what I seen; all I put was the employee number, the 8:15am, the loading dock, the address and the store rooms. The rest, boxes up above were Phil and Richie and then Kendall who transported to Allenmore.

Heller: What time did you fill out this form approximately?

Gates: Must have been pretty close to 8:15; the transport was at about 9am so it must have been closer to that; the observation was at 8:15.

Heller: Did you sign this form?

Gates: No, I did not.

Heller: I was confused because I thought I heard you say that you had spoken to Mr. Steelquist

Gates: After he came back from the testing

Heller: Okay, and about what time was that?

Gates: probably 10:30, 10:40 at least

Heller: did you observe anything; you said he was acting nervous and chewing gum but did you observe any inappropriate behavior?

Gates: he was very talkative, made statements that didn't tie together. I suggested EAP and provided him a safe ride home.

Heller: Can you help me understand; you made a statement about backlash, can you explain how that is relevant to this issue?

Gates: the people on the reasonable suspicion are also 483 members; so they are turning in one of their union brothers. There has been talk amongst our crews; believe there has been some contact with some of our crews from Mr. Steelquist. I don't have that as fact; it is just what I have heard.

Board Member Hansen to Gates: The policy provides that employees who violate this policy will be subject to progressive discipline; a first offense that a requirement that the employee completes rehabilitation. Was Mr. Steelquist disciplined before for being intoxicated at work?

Gates: No, not for being intoxicated at work.

Hansen: Would this be the first time that he violated the policy, PMP 165?

Gates: First documented, it had come out before, Leads had talked to him, he admitted it; he was given a "get your act together talk."

Hansen: So he was not disciplined before for violating the policy?

Gates: He had previously lost his CDL on his own time; a CDL is a requirement of his job and at that time Water worked with him, gave him a hear to flag until he could get his CDL back at his own cost and get his job back.

Hansen: PMP 165 doesn't say anything about personal conduct that results in revocation of a CDL license so it just speaks specifically to being intoxicated at work? I'm assuming that it speaks to a first offense and a first offense would be disciplined before on a prior occasion for being intoxicated at work?

Gates: I think one time is enough for being intoxicated at work

Hansen: I'm just looking at this policy, if you could just walk me through this policy....so it says

Chair Summers: Mr. Goulding?

Goulding: Sorry to interrupt we will have HR and the Superintendent testify and talk about the getting more into the policies and the reasons for termination if that helps at all.

Hansen: I just have a few more questions. It appears to me that if he was not disciplined on a prior occasion that this would be his first offense and the policy seems to ask for a course of rehabilitation on a first offense; so could you tell me why that was not done in this case?

Gates: I take the case forward; I report to others. I am not the sole person in this that determines what is going to happen; I don't know, what I feel is I am not the one that made that decision but in my mind, if my family was out there; they don't get a second chance if they were in an auto accident if somebody's drunk; that's where I'm at.

Hansen: Right, I understand but appears that the City of Tacoma enacted a policy that would provide for a rehabilitation after the first offense; and then it says that if there are mitigating circumstances and the employee has a significant amount of service with the City and a work record which is otherwise reasonably good a second rehabilitation may be attempted. Assuming that the CDL and DUI outside of work was the first offense why was a second rehabilitation not attempted.

Gates: I'm not going to speak to that.

Hansen: As part of your duties can you impose discipline employees?

Gates: Yes, I can.

Hansen: I have no other questions.

Board Member Sexton to Gates: On this reasonable suspicion form which we know you did not fill out but you did add the employee number and the location; before we get to that, I want to clarify a question in my mind; what is the chain of command? You're over all of these people?

Gates: The chain of command is from the Utility Workers, they have their Lead Worker, they have their Supervisor and then there's me.

Sexton: Right. You were not there that morning, you were off site and Mr. Phil Gause; he was the Lead Worker in charge.

Gates: Actually it was Richie Shepherd that was the Lead that day.

Sexton: Richard Shepherd; he's on this list also. Mr. Kendall and Roland; did they contact you; and they decided to transport Mr. Steelquist to the hospital for testing?

Gates: Mr. Shepherd called me when I was over at Streets and Grounds; I talked with Kendall at that time and also with Richie and told them to keep the vehicles on site and not to let them leave yet and then I came back; during that time Phil went back and had observed also

Sexton: let me stop you; so you're on the phone, and then you came back

Gates: yes, I came back to the yard; like I said I was five minutes away.

Sexton: I thought you testified earlier that you were on the phone

Gates: I told him over the phone to keep him on site

Sexton: alright; you did not tell them....

Gates: to do the reasonable suspicion or transport over the phone, no.

Sexton: okay, you did that in person.

Gates: yes

Sexton: but you never saw Mr. Steelquist

Gates: No I did not

Sexton: Just to be clear you had the conversation to transport Mr. Steelquist with Mr. Funk and Mr. Roland; whose idea was it to transport Mr. Steelquist?

Gates: It's the policy, that's what we're supposed to do under reasonable suspicion. I called the Risk Management office, talked with Darrell Gatchell.

Sexton: so did you ask someone; did you tell someone or did someone tell you?

Gates: I told them to transport him.

Sexton: on the observations, under the direct observation of use, alcohol was checked.

Gates: I believe they thought when they checked that "yeah, you can tell he's used alcohol." They say they did not see him drink alcohol.

Sexton: So this is a mistake, is that what you are saying?

Gates: I'm not saying it's a mistake, I'm saying they said they did not see him drink.

Sexton: Okay so it probably should not have been marked under direct observation of use.

Gates: it was misinterpreted

Board Member Heller to Gates: You stated tonight that you didn't make the decision regarding discipline, but my question to you is did you make a recommendation regarding discipline or level of discipline?

Gates: I did not have to; the decisions are made...I mean I'm not the Superintendent of the Water Department, there's a chain of command, decisions are made higher than me; do I agree with it, yes.

Heller: So as his Manager, to your knowledge neither you, nor his immediate Supervisor made any recommendation regarding discipline?

Gates: They ask us, I don't know or don't believe that Richie Shepherd or Phil Gause recommended discipline either

Heller: Help me understand, I thought Richie Shepherd and Phil Gause were not supervisors.

Gates: they are Lead Workers they supervise in the field.

Heller: Do they supervise the work, but they are not a supervisor correct?

Gates: They supervise the Utility Workers in the field. They are the competent person on the Crew.

Heller: My question is about supervisory recommendations regarding discipline. Were there any?

Gates: In this case here, it's a violation of the policy to come to work intoxicated; what recommendations need to be made that the test didn't show?

Heller: So you reviewed the policy as you were going through this process?

Gates: Yes, and I consulted Darrell Gatchell

Heller: By the policy that you reviewed you're talking about policy 165 in the Personnel Management?

Gates: Yes, as spoken earlier

Heller: Right, but you reviewed it; did you review it the day of the incident?

Gates: Yes, we reviewed it and we also talked with Darrell Gatchell

Heller: Was there any discussion about whether or not section 8 where this would fit progressively, whether this was a first offense or a second offense; was there any discussion about that?

Gates: At that point, we had the reasonable suspicion done; there doesn't need to be any discussion of discipline at that time. I mean if it came back and it was good; then we were good.

Heller: I get that; I was just asking subsequently was there any discussion about that; with you or to your knowledge that you were involved in.

Gates: I am involved but like I said, I did not recommend a level of discipline

Heller: so you didn't recommend discipline but you were involved in discussions regarding this policy.

Gates: Correct.

Heller: subsequent to the positive test

Gates: I was involved in the recommendations that formed the discipline; I did not come up with the discipline.

Sexton: You did not set the discipline

Gates: No I did not.

Sexton: the decision to terminate; you agreed with

Gates: I was involved in that, yes.

Chair Summers: I have no questions; are there any additional questions, hearing none. Thank you for your testimony.

Chair Summers: Next.

Goulding: The Board's asking more questions of me.

Chair Summers: Yeah, we're better at it.

Goulding: Our next witness is Milton Eng.

Chair Summers placed Mr. Eng under oath.

Goulding: Can you tell us your job title

Eng: I am Safety Manager for the City of Tacoma.

Goulding: What are your job duties?

Eng: I administer the safety program for the City; I also administer the Drug and Alcohol Testing Program.

Goulding: Are you familiar with the recent drug and alcohol testing of Mr. Steelquist

Eng: I am familiar

Goulding: What was the involvement of the Safety Department in that case?

Eng: Tacoma Water contacted our department asking for some assistance with a reasonable suspicion drug and alcohol test; we provided reasonable suspicion test documentation and the testing form.

Goulding: Turn to exhibit R4. Can you tell me what this document is?

Eng: This is the Reasonable Suspicion Test Documentation Form.

Goulding: What is the purpose of this form?

Eng: This form is to serve as a guide, tool for Supervisors and other employees here at the City of Tacoma to determine if they need to do a reasonable suspicion drug and alcohol test.

Goulding: Do you train employees for these types of situations?

Eng: We do train employees from our office, yes.

Goulding: This is the form that was used for Mr. Steelquist?

Eng: Appears to be so; or a copy of one at least.

Goulding: You've seen this before?

Eng: Yes.

Goulding: Is this form sufficient to justify a reasonable suspicion test?

Eng: This form and the opinions of those individuals making the observations, yes.

Goulding: Can you go to the next form – R5 and tell us what that form is?

Eng: This looks like the U.S. Department of Transportation Alcohol Testing Form.

Goulding: So the title across the top appears this is a DOT test form and is your name on this form?

Eng: I do not believe so; oh there it is, yes.

Goulding: So it lists you here as the DER, can you tell us what that is?

Eng: That is the Designated Employer Representative

Goulding: What does that mean?

Eng: I am the individual that receives drug and alcohol testing results, and I'm also the individual that drug testing labs contact when they have questions about drug and alcohol tests of our employees.

Goulding: I know it's very faint on here but can you tell us the results of the breath alcohol test results?

Eng: The top panel says I believe .194, the middle panel says .212 and the third panel looks like their calibration check.

Goulding: and that is in the right hand column there?

Eng: Correct.

Goulding: What is the legal limit for CDL drivers?

Eng: They need to be below .04

Goulding: Why was a DOT test administered in this case?

Eng: Mr. Steelquist is a CDL holder

Goulding: If I showed up at work intoxicated, would I get a DOT test?

Eng: Are you a CDL holder?

Goulding: No

Eng: Then no, you would not.

Goulding: What would I get?

Eng: You would get a reasonable suspicion drug and alcohol test using a DOT look a like screen

Goulding: that's a similar test but not DOT

Eng: The drug panel process is a similar for but not a DOT

Goulding: Was Mr. Steelquist tested for both drugs and alcohol?

Eng: Yes.

Goulding: So the drug portion for urine I assume came back clean?

Eng: I believe that is the case.

Goulding: Take a look at exhibit R3. If you turn to Policy 166 which is three pages in, and then on page 4, there is a paragraph there called use of alcohol; can you read that for us?

Eng: Employees assigned to CDL driving assignments shall refrain from the use of any alcohol in the four hour period immediately preceding their driving assignment.

Goulding: So, this portion of the policy would apply to Mr. Steelquist as CDL?

Eng: Yes.

Goulding: If he was drinking all night and into the morning less than four hours before his shift, that could be considered a violation of this policy?

Eng: If he was drinking before that four period, yes. For the four hour period he was reporting to work, yes he would be in violation.

Goulding: No other questions.

Byron Allen, IBEW: Let's go back to the form Mr. Goulding had you looking at earlier, R5. Is there direction as to who is supposed to fill this form out?

Eng: The U.S. Department of Licensing Drug and Alcohol Test Form?

Allen: No, maybe I'm on the wrong one, it's the Reasonable Suspicion Test Documentation; maybe it is R4, I may be under the wrong tab. You teach this class right?

Eng: I am one of the Instructors

Allen: When you teach this class do you give instructions as to who is supposed to fill this out?

Eng: We teach the class to CDL holders and their Supervisors.

Allen: When you look at this form, you see a title that says Supervisor name printed and Supervisor signature, is that correct?

Eng: I see those lines.

Allen: Can you tell me when you teach this class, do you give instructions on who is supposed to sign that?

Eng: We are teaching to a class of Supervisors or Supervisors of CDL holders, could be Leads as well; we are expecting them to go ahead and sign the form.

Allen: Okay so you're not making a distinction when it comes to the term Supervisor as to how that applies so it could be anybody?

Eng: In the class, yes.

Allen: If I'm taking your class and I am a Water Utility Worker and I sign that as a Supervisor, am I considered a Supervisor then?

Eng: The class is not offered to Water Utility Workers.

Allen: Well, it must have been because Mr. Gause took that class and there were several Water Utility Workers on the SAP document that we have. I think this class is offered to everybody. Mr. Shepherd did not take the class but he did sign it as the Supervisor.

Eng: When we offer the class, we ask for departments to send in Leads and individuals or Supervisors who will be in charge of CDL holders; those are the individuals taking the class. Whatever their classification is at the time they are taking the class; I don't check.

Allen: So when you teach the class; first of all how long is the class?

Eng: I believe it is three hours.

Allen: So it's almost half a day?

Eng: Approximately.

Allen: Do you give any examples or go into descriptions with regards to behaviors to look for?

Eng: I believe there's a section that covers that, yes.

Allen: How long has it been since you have taught the class?

Eng: Good question. I don't recall.

Allen: But you believe there is a section about somebody being distracted?

Eng: I believe there is a section that covers behaviors.

Allen: Is it safe to say that when a person is judging someone's behavior that and if you look at this specific form it has a word that depress/circled, depressed/circled, and moody/circled would you consider those to be subjective or objective observations? In other words, subjective meaning their opinion or objective being based on some sort of fact.

Eng: I am not going to determine what the individuals were thinking when they filled out this form

Allen: When you teach the class, do you give instructions to your students as to how they should come to these conclusions?

Eng: We introduce this as the tool and we go over sections with typical behaviors and things to look for; do I go over each and every one of these, I can't say that I do.

Allen: So under appearance when it talks about someone who has enlarged pupils, in your opinion could that be caused by energy drinks?

Eng: I am not a good person to give an opinion on that; I am not a medical professional.

Allen: When you teach the class is it fairly clear that these are important documents that need to be filled out fairly clear because it could lead to evidentiary information in a setting like this?

Eng: We introduce this as a tool to help them make judgements to decide if they need to make reasonable suspicion drug and alcohol test.

Allen: Then if someone fills out this form incorrectly that is not a problem for you?

Eng: it's just a tool for them to use.

Allen: If you go to that same page under the second tab, under overview of the drug and alcohol testing process it talks about documenting the episode. When you teach the class, how do you describe that or do you go into that?

Eng: When we go into it, we say that this is the documentation form because it says City of Tacoma Reasonable Suspicion Test Documentation across the top of it.

Allen: So, your documentation that you are referring to is just this piece of paper? That is the only document requested to be given under reasonable suspicion to the City?

Eng: I wouldn't say that.

Allen: You just said that; if there is no other documentation then this is the only evidence.

Eng: You're saying that; I'm not saying that.

Allen: Okay then what other evidence do you have that was provided on November 7th that documents the observations that are checked off here for Mr. Steelquist's behavior?

Eng: If you are asking for a piece of paper, this is the document that they filled out. If you are asking for other evidence, you would have to ask the individuals that filled it out and what their observations were; this is just a tool that they use to help them make those decisions.

Allen: Okay. Can you restate your title again? Safety Manager, is that correct?

Eng: Correct.

Allen: As Safety Manager do you oversee the program for testing whether it's reasonable suspicion or random?

Eng: I help administer the drug and alcohol testing program, yes.

Allen: So that is under your purview?

Eng: The administration of it, yes.

Allen: Is there someone else that helps you do it or?

Eng: Overall authority of it goes to the Director of the department.

Allen: Okay, so that would be the Human Resources Director, correct? That would be Gary Buchanan, correct?

Eng: Correct.

Allen: You were not contacted on November 7th; Mr. Gates indicated it was Darrell Gatchell is that correct?

Eng: Mr. Gates did not contact me, correct.

Allen: Were you contacted on that day Nov. 7th?

Eng: I was.

Allen: Can you tell me who contacted you?

Eng: Darrell Gatchell

Allen: Did you give Mr. Gatchell any instruction at that time as to what should be done prior to taking Mr. Steelquist to the hospital for testing?

Eng: I asked Mr. Gatchell to provide Mr. Gates the reasonable suspicion drug and alcohol test document.

Allen: When you do a reasonable suspicion test, this is the only document that you use; is this used for all City of Tacoma employees if they were to be going in for a reasonable suspicion test?

Eng: The tool, yes. We send this out to our departments to use for helping them identify if someone needs to go in for a test.

Allen: Do you send them any other tools? For that purpose?

Eng: I don't believe so.

Allen: So this is the tool?

Eng: This is the test documentation form.

Allen: This is the tool, okay. This is what they have to use for a reasonable suspicion test.

Eng: ...and the training.

Allen: I'm going to take you under A4, PMP 165. Are you familiar with this document?

Eng: I have seen it before.

Allen: So it lists the effective date of this document as January 2002, is that correct?

Eng: That is what it says.

Allen: If you go to page 2 on this document under procedures, No. 5; could you read what that says please?

Eng: The testing laboratory used will be reviewed at least annually by the Joint Labor Committee; a representative of the Joint Labor Committee will participate in the selection of a laboratory.

Allen: As the Safety Manager for the City of Tacoma, and as a participant in this program, can you tell me when this last happened?

Eng: I am not aware of any time of that happening.

Allen: To your knowledge it has never happened?

Eng: To my knowledge, yes.

Allen: Go to the next page; page 3 under item 8 could you read the first sentence.

Eng: Employees who violate this policy will be subject to progressive discipline.

Allen: To your knowledge, has Mr. Steelquist ever violated PMP 165?

Eng: Not to my knowledge.

Allen: If you could go down to number 9 and read that please.

Eng: All testing requested is approved by the Human Resources Director.

Allen: Again, that is not you; that would be Mr. Buchanan, correct?

Eng: Mr. Buchanan is the Human Resources Director, correct.

Allen: Can you tell me on November 7th prior to Mr. Steelquist being taken in for testing, was Mr. Buchanan contacted on this matter and did he authorize his approval?

Eng: I do not know if he was contacted; but all the testing that we do has his approval.

Allen: So this is a blanket approval, doesn't matter who it is or what the circumstances are?

Eng: As part of the administering of the drug and alcohol testing I am the designee to approve the random tests as well as the reasonable suspicion test.

Allen: That's not what it says. It says all testing requires consultation with an approval by the Human Resources Director, correct?

Eng: That is what that sentence says.

Allen: If we go to the next tab, this would be under A5; this would be PMP 166. Can you tell me under the subject line at the very top of the page could you read what that says?

Eng: It says random drug testing.

Allen: Could you read underneath that line; it says the purpose, could you read what that says?

Eng: Random drug testing policy and procedures

Allen: On the date November 7, 2018, I realize you were not the initial contact on this but in your consultations with Mr. Gatchell, was it indicated that this was a random test that Mr. Steelquist was being sent in for?

Eng: No

Allen: Would it be your opinion that PMP 166 would apply? If we go back to the title of the page where it says random testing; was this a random test?

Eng: He did not have a random test.

Allen: That is all for me.

Hansen to Eng: If you could go to page 2 of A4; item 6 under procedures, a medical review physician will be utilized to review and interpret positive test results; he/she must examine alternative medical explanations for a confirmed positive test result; this may actually include conducting a medical interview with the affected employee; review of the employees medical history, and other pertinent factors. Do you know if that was done in this case?

Eng: Medical review officers are only used for drug screens. Per DOT regulations.

Hansen: I don't see that in the policy.

Eng: Regulations were used as reference material in creating this policy but were not included

Hansen: Can you tell me where it says it applies to just drug tests?

Eng: Would you like me to come up and put it on your computer screens?

Hansen: Just point out in the policy where it says that 6th item applies to just drug tests.

Sexton: It's at the top of the page - As used throughout this policy the term drug shall mean substance taken into the body in any form which may impair one's mental faculties and/or physical performances and shall include alcohol and any controlled substances as listed in this document under section 9 of the chain of custody testing requirements. There's a couple of other places where it says drug and alcohol will be synonymous.

Eng: In our policy, that is what it says.

Goulding to Chair Summers: If I could explain, and you can respond; tell me if I'm correct. MROs used for

Allen: Excuse me, I thought the Board was questioning the witness, I wasn't aware that Mr. Goulding had the opportunity to explain his witnesses answers; if that's the case, maybe I should be given the same opportunity.

Chair Summers: Mr. Goulding are you explaining his answers?

Goulding: I'm trying to respond to Mr. Hansen's question

Chair Summers: Mr. Hansen's question was not directed to you Mr. Goulding.

Eng: Member Hansen if I may, I'll provide an overview of how the drug and alcohol testing process happens. We send an individual in for a drug and alcohol test; say it's a random test, they have the alcohol test which is a breath test administered by a breath alcohol technician that is taken care of at the lab; then there is also a collection for the drug part which is a urine test. Because the breath alcohol test being volatile, metabolizing in the systems quicker, the breath alcohol technician performs the test, the machine confirms the test and provides the result there. There is no medical review officer required for the breath alcohol test. The drug test, for the urine sample; that is the sample that will get analyzed and then reviewed by a medical review officer; down the line a medical review officer will make the determinations on that part of the test.

Hansen: Okay, but I don't see that in the policy that we're talking about here. Is there something in the policy that supports what you just said? PMP 165.

Eng: Our policy does not break down the testing process into that level of detail.

Hansen: I have no other questions.

Heller to Eng: Can you tell me as the DER, you do all the training of the Supervisors and Managers for purposes of the drug and alcohol program correct?

Eng: I do not do all of the training.

Heller: You don't? Who else does the training?

Eng: Other Safety staff; there's a couple other Safety staff that provide the training. Previously we were under Risk Management the Risk Manager did some as well.

Heller: Do you ever contract out training for that as well as supplement?

Eng: Could you repeat that?

Heller: Does the City ever additionally contract that training out to supplement?

Eng: Not that I'm aware of.

Heller: That being the case can you tell me prior to the 2019 change in the federal requirements what has the historic requirement been for supervisors to be trained under the drug and alcohol system?

Eng: What change are you referring to on January 1, 2019?

Heller: The frequency of training required for supervisors and managers under drug and alcohol CFR. So historically, let's just scrap the change; historically, have supervisors and managers been required to have updated training for drug and alcohol programs?

Eng: I can't say that I know what the periodicity of all the training in the past has been.

Heller: To your knowledge, does the federal program require that the person making the assessment for a CDL holder to go to a reasonable suspicion testing; is that training required of the person making the assessment?

Eng: Yes. To my knowledge.

Heller: Did the people, to your knowledge that made the assessment, of whether or not to send the employee to reasonable suspicion testing; were they trained?

Eng: To my knowledge based on previous testimony at least one of those individuals were. Excuse me, two.

Heller: Who were the trained employees who did the assessment that sent the employee to testing?

Eng: I believe Mr. Gause.

Heller: When was Mr. Gause last received training to your knowledge?

Eng: If I am looking at this correctly, 7-24-18.

Heller: I'm good.

Board Member Andrews to Eng: Your training; do you have any videos as part of your training, on how to make some of these observations that are listed here?

Eng: Our current training does not include any video.

Andrews: Is there any other method offered to give people an opportunity to see what represents some of these behaviors?

Eng: In our training, we don't have any visual aids.

Andrews: So, will you describe it relative to the modules? The modules in your training is two to three hours.

Eng: I would say yes, two to three hours.

Andrews: Is it broken down into modules?

Eng: Sections, yes.

Andrews: And what are those sections?

Eng: I don't recall off the top of my head at this time.

Andrews: Is one of them how to recognize behavior of apparent speech, body odor or direct observations?

Eng: I believe there is a section on signs and symptoms.

Andrews: So it's all auditory and reading and.....

Eng: Discussion, yes.

Andrews: thank you.

Heller: Per the policy are the supervisory guidelines and substance abuse policy; we're looking at A11, says page 7. Flipping to page 8 where it says summary of activities and review the City of Tacoma Substance Abuse Policy; I'm

assuming that is referring to the policy 165 or 166 the one we've been talking about this evening; is that correct or is that a different policy?

Eng: I believe that is correct.

Heller: Were you involved; that day of this event did you review this policy with the supervisors and managers?

Eng: I was not at work that day.

Heller: That answers my questions.

Chair Summers: Hearing none, I thank you for your testimony.

Goulding: I'd like to renew my request to excuse Mr. Eng.

Chair Summers: Excused Mr. Eng

Heller: May we take a five minute break?

Chair Summers: We're taking a ten minute break.

Chair Summers: The City will call its next witness

Goulding: The City calls Cheryl Bidleman

Chair Summers: Placed Ms. Bidleman under oath.

Goulding: Can you tell us your job title?

Bidleman: Assistant Director of Human Resources

Goulding: What are your general job duties?

Bidleman: I oversee the Talent Services operations over at Tacoma Public Utilities

Goulding: Are you familiar with the events that lead to the termination of Mr. Steelquist?

Bidleman: I am.

Goulding: Have you had a chance to review PMP 165?

Bidleman: Yes.

Goulding: Can you turn to exhibit A4? Does this policy allow for rehabilitation of employees?

Bidleman: Yes, it does.

Goulding: Let's turn to page three, what are your observations from that paragraph number 8?

Bidleman: When we looked at this policy in deciding how to respond to this situation, some of the things that jumped out for example are the second sentence where it says normally a first offense will allow for rehabilitation and we really felt like given the circumstances, and the risk to the City and his co-workers and the public in general, given the level of his intoxication was not a normal circumstance. In addition to that, if you look at the paragraph just above it also says all employees should be aware that any violation may result in termination of employment. Item number 7 also says that the measures taken in response a particular violation will depend on a number of factors including the nature of the violation, the risk of health and safety created by the violation; those are some other things we took into account when deciding how to respond.

Goulding: Who runs the drug and alcohol program?

Bidleman: Milton Eng, the Safety Manager.

Goulding: Turn to exhibit A11. Tell us what this document is.

Bidleman: This is the substance abuse policy and procedure

Goulding: Can you turn to page 3 of that document and read number 9 for us at the bottom of the page?

Bidleman: All testing requires consultation with an approval by the Human Resources Director or designee. The Human Resources Director has designated the City Risk Manager or the City Safety Manager to act on their behalf.

Goulding: So the HR Director has delegated these duties to the Safety Manager.

Bidleman: Yes, that is my understanding.

Goulding: Turn to page 8 of that document; there are a couple of different spots here can you read under the first section there, D.

Bidleman: Call the Human Resources Director / Designee for consultation and approval to proceed with testing.

Goulding: Can you read the two paragraphs there at the end of that section?

Bidleman: You may use any reasonable means to contact Human Resources at any time by any means necessary to discuss and determine the type of testing normally testing for both DOT controlled substances and alcohol is recommended. If no authorizing personnel from Human Resources are available, proceed with the testing, document the entire episode thoroughly and notify Human Resources as soon as possible after the fact.

Goulding: It looks like it is fair to say that this is a team approach with Safety, Risk and Human Resources to respond to these types of incidents; is that accurate?

Bidleman: Yes. I would agree with that.

Goulding: No other questions.

Allen to Bidleman: You were consulted; can you tell me when you were brought into the conversation of the incident on November 7, 2018?

Bidleman: Can you say what you mean about being brought into the conversation?

Allen: When were you made aware of the situation?

Bidleman: I was in the office that morning when the situation was happening; I recall Rodney Croston coming to me and letting me know what was happening; I asked the questions, had they contacted Safety, had they completed the reasonable suspicion form; and he said yes.

Allen: so you became aware of what was going on after the fact; in other words the wheels were in motion.

Bidleman: It was happening at the time I became aware.

Allen: Did you at that time attempt to contact anyone over at Tacoma Water to ask what's going on, what's been done, anything?

Bidleman: No, that would not typically be my role; that would be more the consultation with Safety.

Allen: Were you aware that Mr. Eng was not at work that day and had not been contacted by Tacoma Water?

Bidleman: My recollection was I asked if they had called Safety; the answer was yes. I knew that contact had been made and that they had completed the required form.

Allen: Did you become more active in the process as it went through the determination, as it went through the items in PMP 165 that you just; I'm going to go back to page 4. In PMP 165, page 2, under number 7; When Mr. Goulding was asking you questions about this there were conversations happening; were you a part of this?

Bidleman: Yes, I was.

Allen: Was Mr. Steelquist's safety record ever brought up?

Bidleman: I don't believe so.

Allen: There was no mention or discussion of his safety record at Tacoma Water.

Bidleman: No, we were talking about the fact that he was very intoxicated at work and the potential risk of that.

Allen: Of that particular incident? So no other factors regarding his work safety record were taken into account?

Bidleman: No.

Allen: On PMP 165 there is a substance policy and procedure manual that is apparently some sort of companion document to this; the effective date on PMP 165 is when?

Bidleman: January 2002

Allen: If you look at exhibit 11, it doesn't say an effective date, I presume that is what it means, there is a date there of 2011. To your knowledge has PMP 165 ever been amended or updated to reflect the items added to the policy manual under exhibit 11?

Bidleman: To my knowledge, no.

Allen: If there is a policy and procedures manual, that is to support a document that is the actual policy, which one do you believe is the controlling document?

Bidleman: I now in the process of making the decision we looked at both documents.

Allen: They contradict each other don't they?

Bidleman: I would say they do in some places but in the place we were looking with regards to the statement about normally, they are very consistent. We did not see this as a normal situation.

Allen: What made it abnormal?

Bidleman: The level of the intoxication; the fact that he is in a safety sensitive position because he has a CDL, and he would be expected to drive his vehicle that day.

Allen: We just had a conversation earlier with Mr. Gates where he commented that there were three people on that crew and that two vehicles could have gone out and that there was no indication for sure that he was driving a vehicle that day so that's an assumption.

Bidleman: I would agree; at that level of intoxication, being at work whether you are driving or not driving presents a risk.

Allen: The level of discipline was based solely on the level of intoxication and not the fact that he was intoxicated at all?

Bidleman: It's a combination; you are making a judgement call there when making these decisions and I think the combination of the job a person has and the level of intoxication; for example a person who works at a desk all day has an incident of intoxication; you might see that as a different level of risk versus somebody you know normally drives a vehicle and is required to have a CDL; these are the things we took into account when we made that decision.

Allen: We have two policies that have been discussed this evening; PMP 165, PMP 166. PMP 166 refers to random testing, can you say which this test was done under; was it done under reasonable suspicion testing or random drug testing?

Bidleman: My understanding is that it was done under reasonable suspicion testing.

Allen: That being the case; PMP 166 has no relevance?

Bidleman: I am not real familiar with 166 so I wouldn't want to weigh in on that.

Allen: Its stated purpose is to deal with random testing; this was not a random test and was not a DOT test, as such it would not seem to have relevance.

Bidleman: that seems reasonable.

Allen: We talked earlier about documentation with Mr. Eng; he testified that the only documentation that was provided for the incident that happened that day was the one document that was filled out.

Bidleman: that was the document that was filled out to determine whether reasonable suspicion was valid.

Allen: Is it fair to say that you are an HR Professional?

Bidleman: I would say that.

Allen: As an HR Professional, do you believe it's important to have written documentation of events when they happen?

Bidleman: It is. The reason I was trying to clarify your question regarding documentation is that like Milton said, there is just the one form to determine if reasonable suspicion is appropriate; the supervisors did then follow up with documentation of their observations of what happened that day; Scott Dewhirst is going to speak and can provide more detail of documentation and what it says.

Allen: Turn to R6; you just provided testimony of documentation that witnesses provided on that day; if you look on the first one, declaration of Gary Gates can you read the last sentence where it says dated?

Bidleman: Dated the 4th day of March 2019

Allen: When did this all occur?

Bidleman: It was November, I believe.

Allen: This was the first documentation of this by Mr. Gates that you are aware of and have on file?

Bidleman: I have not seen this particular document, can't say for sure.

Allen: When the decision was made to proceed forward with the termination of Mr. Steelquist's employment rather than give him the opportunity to go through rehabilitation as it is suggested on PMP 165, this document from Mr. Gates was not in existence at that time?

Bidleman: I believe there are supervisor's notes about the incident but regardless of those details and where he was, he tested positive and tested intoxicated.

Allen: the question was did you have this document prior to making the determination of Mr. Steelquist's employment?

Bidleman: I have not seen this document.

Allen: On the next page you will see a declaration of Mr. Kurt Roland; could you read at the bottom of that page where it says dated; what that reads

Bidleman: He did this 12 day of March 2019

Allen: This is a document that would not have been available prior to your making a decision or participating in the decision to terminate.

Bidleman: To clarify, I don't make the decision, I make recommendations

Allen: Understand, you participate. Thank you. Without boring the Board further with these declarations I will submit that the declaration from Mr. Gause and Mr. Shepherd on the next two pages are likewise dated both of them on the 5th day of March 2019. Mr. Steelquist was terminated when?

Bidleman: I believe it was January....first of January....2019

Allen: The event happened on November 7th but the first written documentation we have from the witnesses were provided in March.

Bidleman: Like I said, I believe there are notes that supervisors took shortly after the incident and other might be able to speak to that.

Allen: That's all I have for you, thank you.

Heller: When you reviewed this case to make a recommendation of discipline, did you look at any similarly situated employees when you were deciding what was normal circumstances or not?

Bidleman: We took similar incidents into account from other situations but we were not aware of anyone that had been in that level of intoxication in a safety sensitive position.

Heller: When you were making that decision and trying to become aware of other situation did you talk to other HR staff; how did you go?

Bidleman: I did, and we could not recall another situation that was as egregious as this situation.

Heller: No one brought up the three ton garbage truck that rolled down Yakima Avenue?

Bidleman: I am not aware of that.

Heller: Oh, that was a notable case before the board.

Bidleman: I've been with the City about a year; I also support Tacoma Public Utilities and don't know if that happened in another part of the City.

Heller: We talked about "we looked at this policy," who was "we?"

Bidleman: Human Resources Analyst, Rodney Croston; we talked about it. I also spoke with Scott Dewhirst, the Superintendent, Paul Goulding; there were a number of conversations. We don't take these decisions lightly; we put a lot of thought into it and understand it impacts people's lives when we make decisions like this but we see this as easily being a matter of life or death for Mr. Steelquist, the public or any of our other employees.

Heller: ...and recognizing that the random testing is a very different process?

Bidleman: Yes.

Heller:but in looking at similarly situated employees did you talk to Safety or Risk about any other randoms that may have popped in a similar range so you could compare employees that tested at the same sort of levels?

Bidleman: It was more of have we seen employees in similar intoxication in safety sensitive positions.

Heller: You talked to Risk and Safety about that as well as HR?

Bidleman: It was more with Human Resources

Hansen to Bidleman: I imagine that you keep records of prior terminations; did you review prior terminations before you made a decision in Mr. Steelquist's case?

Bidleman: I don't recall if we looked at the log during discussions and before we made our decision

Hansen: I don't have anything else.

Chair Summers: I am curious; you talked about the level of intoxication. I also saw that it was extremely high and can you explain to me, would there be a level that you would not have terminated?

Bidleman: I think it is a combination of circumstances that you are taking into account; being the level of intoxication and the person's job; don't think it is just one factor.

Chair Summers: Next witness

Goulding: We next call Scott Dewhirst

Chair Summers: Placed Mr. Dewhirst under oath

Goulding: Tell us your job title

Dewhirst: Water Superintendent for Tacoma Water

Goulding: Are you familiar with the events that led to the termination of Mr. Steelquist?

Dewhirst: I am

Goulding: I want you to look at exhibits R1 and R2. What are these documents?

Dewhirst: R1 is our Notice of Intent to Terminate, R2 is the termination letter following the loudermill hearing

Goulding: Are you aware that the employees that reported this conduct were having a tough time at work?

Dewhirst: I am made aware of that, yes.

Goulding: Are you concerned about the impact this can have on current employees reporting incidences of misconduct?

Dewhirst: Absolutely

Goulding: Why is that?

Dewhirst: I think it goes without saying; it's really hard to come forward and make any accusations about anybody in some cases. I think that there is a strong teamwork ethic in that group; the fact that some individuals forward their concern takes an awful lot of courage; so I am concerned if they are not supported in what they did it's going to extinguish anyone's desire to do so again and puts us at tremendous risk because unfortunately, we can't evaluate each employee given our number of staff.

Goulding: Are you aware that Mr. Steelquist had a previous DUI in 2007?

Dewhirst: Yes, I am.

Goulding: Turn to R7. Can you tell me what that document is?

Dewhirst: This is a letter signed by the former Water Superintendent documenting that Mr. Steelquist lost his commercial driver's license for a period of one year.

Goulding: At that time he went through rehab, is that your understanding?

Dewhirst: Yes, that's my understanding.

Goulding: and Water allowed the rehab and flagging for a year until he got his CDL back?

Dewhirst: That's correct, we accommodated him in that role.

Goulding: Is it true that in that letter that it further warns of termination with any further problems of that nature?

Dewhirst: It does.

Goulding: As the Superintendent of Water, why did you decide to terminate?

Dewhirst: I went through a long process; we don't take this lightly. In the end I have to make the best decision for Tacoma Water; I consider worker safety a top priority. Mr. Steelquist coming to work intoxicated put the safety of others at risk. I reviewed his work history; I confirmed he would have been driving that day. We fully supported him to take a month off of work to attend rehab. I sincerely want Mr. Steelquist to overcome his addiction. The reasonable suspicion form was filled out; fortunately we don't fill these out every day. I reach both PMPs. It nowhere states you must be trained, it states a normal person can make the assessment; I'm a normal person; I look at this form as a something to help guide us on whether or not we test. His coworkers work with him all the time; they know him. They did the right thing; made sound judgements. They did not come to work that day knowing the outcome. Other concerns were the test and laboratories were not approved; I considered that. I raised a lot of questions at that meeting. My interpretation is we want to make sure it is a third party firm doing the testing. We have documentation that the technician has been properly trained. In the end, Mr. Steelquist was willing to sign the alcohol test form; he signed it willingly. I agonized over this decision for quite some time. In my mind when he came to work like this; that is egregious. I was concerned about what happened, what could have happened and don't believe another opportunity was warranted.

Allen: You touched on your concern for your workers to feel comfortable coming forward with issues in the workplace. Can you think of any other issues that have happened other than the issue we are discussing this evening where employees have come forward?

Dewhirst: yes, it happens; depends on the issue. As our safety culture program is being developed we encourage reporting near misses; getting employees to admit "I made a mistake" without being disciplined, that's tough.

Allen: In those circumstances people don't necessarily get disciplined; maybe they would, maybe they wouldn't? It's a what if....I guess what I'm struggling with and would like to know your thinking is why do you believe someone if they felt there was a safety issue; why they wouldn't come forward after today?

Dewhirst: I think any time you call someone out, it takes courage to do so. You have to feel safe to do that; and know that you're going to be supported. If you are not supported and what you did was in vein; that takes courage.

Allen: Correct. The impression that is being left, to me anyway is that a person won't come forward in the future with any issues if they think that the person they are reporting on is going to remain in the workplace. The person has to leave the workplace in order for me to come forward; that's the impression I'm getting.

Dewhirst: With all due respect Byron, we would have to ask individuals on that; there are different takes on that.

Allen: The incident that happened in 2007; the DUI incident that happened with Mr. Steelquist and that was the letter that was offered on May 5th of 2014; do you know if that was off the job?

Dewhirst: Yes, that was off the job.

Allen: What was he driving?

Dewhirst: I don't know what he was driving

Allen: Not in a City vehicle?

Dewhirst: No

Allen: Do you know the statement about further incidents language where it says further incidents can result in termination; do you know that to be common language?

Dewhirst: I've only done a few of these. That doesn't dilute the meaning of words to me.

Allen: I'm just pointing out the fact that it is not unusual language. Do you know in this situation that happened with Mr. Steelquist in 2014 if there are return to work agreements?

Dewhirst: I've heard of that before

Allen: Do you have an idea of what that means? It's pretty much a formal document that is signed by the individual, by the employee signed by the individual upon their return to work per PMP 165. Do you know if Mr. Steelquist's file contains anything such as that?

Dewhirst: I don't know.

Allen: So when you researched and formed the level of discipline you never came across that?

Dewhirst: No

Allen: Philosophically, I'm going to ask you a question; do you believe in second chances?

Dewhirst: Depending upon the circumstances, yes.

Allen: Do you believe that people can learn from mistakes they've made and be given an opportunity to prove they are capable of carrying forward and not doing that again?

Dewhirst: Depending on the circumstances, yes.

Allen: What circumstances would you say that would not apply to?

Dewhirst: As I stated earlier the egregious level in which this occurred, also given the prior history, I believe I took the appropriate actions.

Allen: That's all I have.

Sexton to Dewhirst: I think I have a different take on your damper situation than what you've expressed; are you above everyone else?

Dewhirst: I make final decisions, yes.

Sexton: You talked about the courage it would take to turn in a coworker; I think I'm not a brave man but I would not work with someone who is intoxicated. However you talked about putting a damper on the policy; I think if they thought they would be treated fairly, and they would have a step discipline and perhaps rehabilitation if that's what this situation called for, I wouldn't have any problem with siting a safety problem or some type of an issue but going forward, people see that someone was terminated; I don't care what the policy says over here; terminated; I think when you're talking about a damper; I think that sounds like a damper to me, I think; you know we have a risk here of people hearing this and seeing this and not wanting to come forward in the future; does any of this make any sense to you?

Dewhirst: With all due respect that is not what's being decided here; I don't feel it's appropriate to put people in that position; that's not really their role to make that determination. One statement you made and I'd like to clarify is that I did look at the policy and that is what I used to make my determination.

Hansen: There have been some statements that alluded to Mr. Steelquist retaliated against employees that made statements, are you aware of this?

Dewhirst: I can't speak to that.

Heller: Mr. Dewhirst you talked about how you relied on Policy 165 and you've covered several sections there about how you relied on that, can you talk to me about how you considered; how you reviewed section 8 of that policy?

Dewhirst: I started with number 7, then I went to number 8; I would hold to something similar to what Ms. Bidleman spoke to; I would not consider this a normal circumstance. I looked at this as egregious and took into account that he had prior discipline for attendance for various reasons and had the prior DUI. While that was not technically discipline in the sense, we accommodated him for the year. We could have said you do not have a commercial driver's license, you cannot do your job therefore you're terminated because you can't do the requirements of your job. We did not do that; we worked with him; we gave him a year to get his license back which he did. We also gave him that time off to be rehabilitated; we did talk about that the impact was not job related but it did effect his ability to do his job.

Heller: I understand he was given the time off and I've heard several times that he was allowed the time off but was there any talk about how that really shouldn't be considered or that should be set aside because he had a right to that time off under the FMLA?

Dewhirst: There is nothing that says we have to maintain his employment when he can't do his job.

Heller: I hear that and that was back in 2014; it concerns me that you're considering that circumstance that happened outside of work as a disciplinary step.

Dewhirst: What I really believe, I go back to seven; seven is really the guardrails by which I looked at this; I took the flexible approach. I did consider the prior issues but I also looked at the nature of the violation. This was not .05, .08; I mean this was .212. That is nowhere close to the limit; that is way over the line. I also looked at the level of risk; there was extreme risk here; there is extreme levels of risk with someone at that level of intoxication. I tried to take all of these factors into account; I tried to make sure we indeed followed a fair process. We took him to testing because we had reasonable suspicion to do so; we didn't just do it on a whim. He tested at the level he tested; I had nothing to do with that. I had to go with the facts that I had.

Heller: I appreciate the time you spent in reviewing this in your careful decision. When you were looking at the level that he tested at; you were considering that versus normally a first offense and you made the decision that this didn't meet the normal; in making that decision, did you talk to your Risk Management team; did you look at testing levels over the years?

Dewhirst: I consulted with Human Resources; that was all a part of the discussion; we considered numbers; I was given the responsibility to make that determination.

Heller: Right. When you talked to HR did you review levels of other similarly situated employees?

Dewhirst: Yes, I would say so.

Heller: You held up your copy of the City of Tacoma Reasonable Suspicion Test document and you had some circles on there and said these were the issues that you had marked indicating where you put value. Can you share with us what those highlights were that you called attention to?

Dewhirst: I highlighted direct observation of use; did we see him drink alcohol? The other one I highlighted was test required. There is only one box to check; only one option to check. Then I did question supervisors and I do consider our Leads to be supervisors; they are supervising staff in the field for the day. They are directing the work of other workers; I asked questions about that.

Heller: The one other document you said you put some weight on was the US Department of Transportation testing form; you mentioned he voluntarily signed that form. Were you aware that under the US Department of Transportation rules and regulations that any CDL holder that refused to sign that form is considered a positive test?

Dewhirst: Yes, I am aware.

Heller: So you still considered that a voluntary signature on that form?

Dewhirst: Yes.

Chair Summers: There seems to be no other questions; thank you for your testimony. Any other witnesses?

Goulding: No other witnesses.

Allen: We would like to call Richie Shepherd

Chair Summers: Placed Richie Shepherd under oath.

Allen to Shepherd: On the day of November 7th, 2018 did you take any handwritten notes on that day?

Shepherd: I did not.

Allen: Could you tell me how much contact; how much conversation you had with Mr. Steelquist that morning?

Shepherd: The conversation / contact I had with him that morning was getting ready for our workday; what we were going to be doing and my observations were when we were in our store room and there was abnormal behavior.

Allen: So you then went and spoke with Mr. Gause, is that correct?

Shepherd: Yes.

Allen: After you spoke with Mr. Gause can you recall what happened; there is a document here that; it's the reasonable suspicion document that you filled out or you participated in; it is R4. Does that look familiar to you?

Shepherd: Yes

Allen: Can you tell me what you filled out?

Shepherd: I check marked words that I believed he was exhibiting in behaviors

Allen: there seems to be some confusion as to who signed it as a witness and who signed it as a supervisor. You signed it; was that as a witness or a supervisor?

Shepherd: I was his supervisor for that day.

Allen: Had you been his direct supervisor prior to that day?

Shepherd: Yes, I have.

Allen: Have you ever gone through any drug and alcohol awareness with the City of Tacoma?

Shepherd: Prior to this, I had not.

Allen: Have you gone through some since?

Shepherd: Yes, I have.

Allen: Do you recall when that training was?

Shepherd: I want to say it was February.

Allen: As you go back then to R6; there are several pages here; yours would be the last page where it says declaration of Richie Shepherd.

Shepherd: I wrote a statement down and then Paul re-wrote it and put in this document.

Allen: This reflects generally what you wrote?

Shepherd: Yes.

Allen: Prior to this had you been asked to write any statement of any kind relating to the event on November 7th, 2018?

Shepherd: No

Allen: It's been talked about that there has been some intimidation or harassment or something; have you had any contact Mr. Steelquist since November 7th?

Shepherd: No I have not

Allen: Do you feel threatened in the work place?

Shepherd: Not directly, just worried about hearing what we call "dock talk."

Allen: Got it; dock talk, rumor sort of thing. That's all I've got.

Goulding: Mr. Shepherd, has this experience been difficult for you?

Shepherd: Yes.

Goulding: If you were confronted with this situation again, would you think twice about reporting someone at work?

Shepherd: Yes, I would.

Goulding: No other questions.

Heller: I hear you say something I didn't quite catch it; you said your statement was reworded?

Shepherd: for this document

Heller: Who reworded it?

Shepherd: Paul did; he formatted it to make it look more professional

Heller: But it is what you wrote?

Shepherd: Yes.

Chair Summers: How many more witnesses are there?

Allen: I would like to call Mr. Rodney Croston

Chair Summers: How many more?

Allen: That would be the only one

Chair Summers: Okay. Placed Rodney Croston under oath.

Allen: In A3, the Notice of Intent to Terminate of November 7, 2018; did you author this?

Croston: I think I co-authored it.

Allen: In here it has a statement... of; it's the fifth paragraph down where it states "it was also observed that you had a strange odor which is described as a mix of alcohol, energy drink and cigarette smoke." Can you tell me where that came from?

Croston: It's a combination of quotes from the reasonable suspicion form and I'm not certain where the odor part came in; I noticed this in reconciling that form with some of the items that were circled were used; just to get some insight on how these are drafted, I was training a colleague when this incident happened so we both drafted it and then it goes to the department Division Manager, then to Human Resources Management, then to Legal and things

are added and deleted throughout the way so I don't recall this exact sentence; I recognize components of it from the form.

Allen: so if you go to R4, that is the reasonable suspicion form there boxes; do you see any check under body odor?

Croston: No

Allen: Nothing checked; so that sentence in the Intent to Terminate was fabricated; maybe?

Croston: I wouldn't say that; I don't know where it came from.

Allen: There was no basis for it. So in the process of preparing for the Loudermill the union requests documentation; I don't know how much you were involved in this; is it standard for the union to request any supervisory notes taken that relate to the intent to terminate?

Croston: Yes, that is standard.

Allen: It's standard language; you are pretty confident that any notes taken would have been requested?

Croston: Yes, when we receive the request for information from the union we forward that to the hiring authority

Allen: Do you know if any such notes were provided?

Croston: I do not.

Allen: Lastly, I'm going to ask you to go to R7. On the first page, there is a last sentence that talks about further incidents; that language that relates to any further incidents can result in the termination of your employment; is that standard language?

Croston: Yes it is.

Allen: That's all I've got.

Goulding: Mr. Croston did you say that you were not involved in responding to the request for information?

Croston: Marisa Tetreault and I worked on it; there was a lot of information that was provided; I don't recall all the documents provided.

Goulding: That's all the questions I have.

Chair Summers: Do any Board Members have questions? You now have the opportunity to make closing statements unless you have any rebuttal witnesses you want to call.

Goulding: no rebuttal witnesses. As we've discussed the City's burden is to show by a preponderance of evidence that we acted in good faith and for cause. We submit that we did that. The notice of intent letter listed the following violations: Under the code; 1/24/940 D, intoxication or drinking liquor while on duty or being addicted to the use of narcotics; E, incompetency in or inefficiency in the performance of duties; L, conduct unbecoming of an office or employee of the City. Mr. Steelquist violated these rules by reporting for work in an intoxicated state, rendering himself incompetent to perform his duties due to his intoxication; and showed conduct unbecoming by reporting to work while intoxicated. Management also cited violations of Personnel Management Policies; PMP 165 – prohibits use of drugs or alcohol on the job. It also states that any violation may result in termination of employment. Again, we submit that he had already been through rehabilitation. Also, PMP 166 states that any use of alcohol must refrain 4 hours prior to any shift of driving assignment which happened here under his own admission. Based on that, the City properly terminated Mr. Steelquist. Even if you believe that the City's policies are lacking; Mr. Steelquist was clearly intoxicated; that alone is reason enough; on page five of our hearing brief, it allows for termination without progressive discipline if a higher level of discipline is warranted. Mr. Steelquist states he should have not been tested at all; we submit that we had reasonable cause to test as confirmed by the Safety Manager; the form was sufficient to get him there. This is someone who voluntarily reported to work under the influence; get them tested. Safety is paramount; get them tested. Employees saw strange behavior and reported it; Water employees did their job in keeping him out of a vehicle and off the road. Declarations are something prepared by me as I interview witnesses and are for the purpose of the hearing; they are not prepared immediately following the incident. Timing is extremely important; someone shows up for work intoxicated you test them right away.

Allen: Mistakes were made by both the City of Tacoma and Matthew Steelquist. Matthew should have stayed home that day. Matthew had a relapse after a long battle with alcoholism. He has taken every step possible to ensure that does not happen again. The City of Tacoma failed to follow long established procedures when it forced Matthew to undergo a reasonable suspicion test. The City of Tacoma utilized old disciplines and an unrelated DUI and unsubstantiated accounts as the basis for the termination of Matthew Steelquist. The City of Tacoma did not follow the recommendation of its own policies; when Matthew was not given a return to work agreement, after he

completed his rehabilitation. As a protected class under the ADA, Matthew should be granted the same opportunities as anyone else. We are asking that this board order the return to work of Matthew Steelquist.

Chair Summers: Thank you all for your testimonies; the board will now break into Executive Session and assuming we will be out at 8:45PM.

Hansen: Chair Summers, I move that the City's termination of the Appellant be upheld because of the evidence establishing that City Ordinance 1.24.940 subsection D was violated.

Chair Summers: Do I hear a second.

Heller: Second

Chair Summers: It has been moved and seconded; is there any further discussion, Mr. Hansen.

Hansen: I have noticed in the past several years that I have been on the Board; there has been unsubstantiated evidence of employees engaging in misconduct and in this hearing today we had some unsubstantiated allegations that the Appellant was going after individuals that reported his misconduct. I don't think that is appropriate in a hearing when we have those kinds of allegations when there is no evidence to support them. I also have a concern as well as some other people that the Human Resources Department review their records; the reason that we feel that way is employees need to feel they are being treated fairly and if they are not being treated fairly in similar circumstances they are not going to feel that way and fair and equitable treatment is an important part of employees feeling good about going to work every day. I want to convince you that that is a practice you should engage in on a regular basis. I have been involved in this business as some of you know for the past 35 years and that is I think a very good practice. Those are all the comments I have.

Heller: The Board in our discussion is also very concerned about the lack of the City's adhering to the policies that they clearly stated multiple times that they are relying on; that was Policy 165. There were enough issues there in not looking at similarly situated employees, not even reviewing the data and history of other employees that have been tested and tested positive. That along with a process and procedure of the Drug and Alcohol Program that has not been updated since 2011 even though the Federal Rules and Regulations have been updated regularly also gave us cause for concern.

Sexton: This has been a real tough evening; tough hearing. I think that we all fought long and hard and think this was the best we could do to get the City to review its policies. Thanks.

A VOICE VOTE WAS TAKEN: 4 AYES, 0 NAYS, 0 ABS. THE MOTION CARRIES.

Adjournment: 8:33 PM

ATTEST:



Wendy Hobson
Civil Service Board Coordinator



Beckie Summers, Chair