



## Tacoma Civil Service Board Meeting Minutes

**Date and Time:** September 23, 2021 at 5:00 PM  
**Location:** By Zoom teleconference  
**Chair:** Beckie Summers  
**Coordinator:** Wendy Hobson

### **Call to Order:**

Chair Summers called the meeting to order at 5:00PM. All board members were present, except Board Member Heller who was excused. Also present was Deputy City Attorney Martha Lantz.

**Chair Summers:** We are here to discuss new business which is the hearing of Mr. Zebulah Farrow. So, the Board has now convened the Appeal Hearing of Appellant Mr. Zebulah Farrow. Mr. Farrow's appeal dated May 26, 2021, states that he was wrongfully terminated from his position with Tacoma Power on May 19, 2021 and seeks remedy of reinstatement of employment including wages and benefits. The state of basis of the appeal is violation of Tacoma Municipal code 1.24.940 for failure to show cause for termination. Due to the on-going emergency prohibition of in-person meetings for the City of Tacoma's governing bodies and its Boards, Commissions, and Committees, this hearing will be conducted remotely using Zoom. The proceeding is being recorded, and minutes are being taken. This proceeding is part of an open public meeting and members of the public, and other interested parties are welcome to attend this proceeding, but there will not be a public comment period. Only the parties, the representatives, witnesses and Board Members, and any staff members or others called upon by the Board's Chair will be allowed to speak in this proceeding. Do not use the chat function to make any comments or statements during this proceeding. That also is being recorded. If you have not been called upon, but have need to address the Chair and the Board, please the "Hand Raise" function, Ms. Fritz will be monitoring the Zoom function and will assist the Chair in making sure the raised hands are acknowledged. Everyone, including the parties, representatives, witnesses, Board Members, and staffs must mute their audio unless speaking. As Chair, I reserve the right to adjourn or suspend this hearing if it is disrupted in any way. I further reserve, and as you've seen, the right to suspend or adjourn the proceeding to address any audio or visual or other technical difficulties, but none of us have ever seen that on Zoom. Um, this matter will proceed following the Board's rules of procedure for adjudication hearing. Each party shall have the right to call and examine witnesses and to cross-examine opposing witnesses and to introduce exhibits and documentary evidence. The exhibits and documents included in the party's pre-hearing submissions to the Board are hereby admitted into the record. Admission of other exhibits and documents not readily... already submitted will be at the discretion of the Board, subject to the rules of adjudication of hearings. Because this is a hearing on appeal from a termination, the disciplinary authority, City of Tacoma, has the burden of showing by a preponderance of the evidence that the termination was in good faith and for cause. The City will present its evidence first, followed by the Appellant. Following the examination and cross-

examination of each witness, Board Members may ask additional questions of that witness. I will call on each Board Member at the close of cross-examination of each witness to see if they have any questions. Following the presentation of the witnesses, I will call on each party to make a closing.... Following the presentation of all witnesses, I will call on each party to make closing arguments, if desired. The Board will recess to an Executive Session to deliberate prior to ruling on the appeal. The final decision of the Board will be made in open session by a motion and a vote. We will now move forward with argument and presentation of evidence. Will the parties and their representatives please introduce themselves for the record, beginning with the City. Mr. Goulding.

**Attorney Paul Goulding:** I don't know if you got that... Paul Goulding, on behalf of the City. Sorry.

**Chair Summers:** Thank you. Um, and I did see the Appellant and his representative if you would introduce yourselves please. Oh, there you are.

**Byron Allen:** Byron Allen, IBEW Local 43 on behalf of the Appellant, Mr. Zebulah Farrow who's with me as well.

**Chair Summers:** Some of you have to be masked, so speak as loudly as you possibly can because I had a problem hearing you Mr. Allen, so please speak as loudly as you can. At this time, um, you may... Mr. Allen and Mr. Goulding, starting with Mr. Goulding, may present an opening statement if you desire. Again, we will begin with Mr. Goulding.

**Attorney Paul Goulding:** Thank you Chair Summers and Board Members. Just so you know, preliminarily we've submitted declarations for some of the witnesses in our Exhibit R4, we don't necessarily plan to call those witnesses to testify today. But they have been subpoenaed, they are here in the meeting in case Mr. Farrow or the Board has questions for them. Our goal, again, is to help streamline the process. The City has provided facts related to Mr. Farrow's termination in its briefing. Safety is the number one priority at Tacoma Power. Power cannot properly and effectively function if the employees are under the influence of drugs or alcohol. On March 24, 2021, around 1pm, Tacoma Power employees Rich Weber and Roger Kaiponen went to the Bridgeport Substation to check on the battery charger. They noticed upon arrival, that someone was already there. When they entered the substation, they both immediately noticed a strong odor of marijuana coming from inside and agreed that it smelled like marijuana. The switch-gear doors were open all the way and the ventilator was on as if trying to air out the station. They briefly spoke with Mr. Farrow who was at the station in the middle of his work shift. They noted that he seemed nervous and guilty. After completing their task, the employees exited the substation. They noted that they did not smell marijuana outside the building. The employees reported this incident to their supervisor. Mr. Weber said he did not like reporting this incident, but that he and his coworkers rely on system operators for their safety. And, again, you can see our Exhibit R4 for their full statements. Supervisors Cullen Ritchie and Harley Johnson were notified about the incident with Mr. Farrow. At that time, dispatch informed them that Mr. Farrow had the tide flats area and appeared to be headed back to TPU. The supervisors asked Mr. Farrow to return to Tacoma Public Utilities and meet them at their offices. A reasonable suspicion checklist was completed for Mr. Farrow and he was

transported to Allenmore Hospital for drug and alcohol testing. Mr. Farrow was then picked up from work by a family member. Mr. Farrow's actions violated City's policies on drug and alcohol usage, um, namely PNP 165 and personnel rules under 1.24.940 G for Carelessness and Negligence, and L for Conduct Unbecoming of a City Employee.

Mr. Farrow will argue that he should get his job back for several reasons.

Number one: that the urine test for drugs was not sufficient under state law, so the City cannot show that Mr. Farrow was intoxicated. Uh, Washington, the State of Washington did pass a law in 2012, I-502, legalizing the recreational use of marijuana and establishing standards for Washington State Patrol and other law enforcement to do blood testing on drivers who may be using marijuana. As explained in the City's response brief, the blood testing standard does not apply to employees in the workplace. The City, in this case, used the tried and true Department of Transportation procedures for drug testing, which came back positive for marijuana. The City also documented many indicators that Mr. Farrow was under the influence of marijuana. This is sufficient to show he violated the City's policy against drug use at work. In addition, the MRSC, or the Municipal Research and Services Center, cited to by Mr. Farrow as requiring blood testing, simply explains the difference between blood and urine testing. But, also confirms that I-502 has no impact on drug testing for employees in the workplace. Many cities have a law enforcement arm that would look to the MRSC for advice on the new requirements for drugs and DUI enforcement, but this applies to driving and not to employees in the workplace. You can see our response in Exhibit R8 for more information on that.

Number two: Mr. Farrow argues that no one saw him using marijuana. The City has ample evidence of Mr. Farrow's drug use at work. Strong circumstantial evidence. With the strong smell of marijuana, not a cigarette smell from inside the substation, nervous or guilty behavior, slow speech, drowsy, withdrawn, bloodshot eyes, and generally not acting normally. This was sufficient for reasonable suspicion drug test, which confirmed drug use. These confirm that not only was Mr. Farrow impaired by drug use at work, but the evidence shows that he was using drugs AT work, which in and of itself is a violation the policy. Mr. Farrow tries to claim that his behavior was due to working long hours, high pollen, or wearing a mask. None of which explain his behavior.

Number three: Mr. Farrow will argue that PNP 165 is outdated and not compliant with state law. PNP 165 is valid and does not violate state law. Mr. Farrow has not been able to explain why the policy violates state law.

Number four: Mr. Farrow will argue that supervisors have not received training on reasonable suspicion drug testing. At this time, the City's Safety Department does not require reasonable suspicion testing for non-CDL supervisors. They follow DOT, or Department of Transportation, guidelines, which only require training for CDL supervisors. Thankfully, issues related to employees using drugs, or being intoxicated at work, are rare at the City. Even when supervisors have received training, they should connect with the Safety Department to be guided through the process. This is what happened in this case.

Number five: Mr. Farrow will argue that he had no active metabolites in his system. Mr. Farrow admits that he's a recreational user of marijuana. This is why he tested positive, but these were non-active metabolites. Mr. Farrow's claim that he had no active metabolites is completely unfounded and not supported by any test, or other evidence. The City does not do invasive blood tests on its employees to measure metabolites.

This is a relatively new technology compared to the tried and true methods used by the

Department of Transportation urine testing over many decades. Blood testing is simply not required for employees in the workplace.

Number six: Mr. Farrow will argue that PERC has ruled that using a urine test for discipline against non-CDL employees is improper. PERC has not ruled on this issue. Mr. Farrow refers to a disciplinary hearing where an arbitrator held that a positive urine test alone was not sufficient for discipline. This arbitration has no precedential value and is not binding on the Board.

Lastly, Mr. Farrow tries to paint this as a case of him legally using marijuana while not at work, then being unfairly tested at work resulting in a positive drug test. This is not that case. He showed signs of impairment at work, which led to a reasonable suspicion drug test. City employees are still prohibited from using drugs at work, or from being impaired by the use of drugs at work. As Chair Summers mentioned, the City bears the burden of proof here by preponderance of the evidence. Preponderance means 51%. Meaning you only need to find more likely than not that Mr. Farrow violated city code and policies. The Board's rules to determine whether the City properly imposed discipline under the Code and Charter. Thank you.

**Chair Summers:** Thank you Mr. Goulding. Mr. Allen, would you like to make an opening statement?

**Byron Allen:** Yes, I do. Madam Chair, if you don't mind, I will remove my mask while talking, both Mr. Farrow and I have been vaccinated. I will, however, put it back on once I am not talking. In the interest of everyone clearly hearing me, as you have already said, it is difficult to understand what I am saying and I'm sure it sounds rather muffled when I'm wearing a mask.

So, good evening members of the City of Tacoma's Civil Service Board. I want to thank you for your time and your understanding of the importance of this termination appeal hearing of Zebulah Farrow. You all have had the opportunity to read both briefs and response briefs submitted by both parties, and to review the Exhibits submitted with each. I am certain that it is apparent to you that the union's position is that the employer has failed to provide a clear and convincing argument to support the termination of Mr. Farrow. The matters of discipline, as you pointed out, the employer bears the burden of showing by preponderance of the evidence that the alleged misconduct occurred. That the discipline was proportionate to the offense. And that the elements of due process were observed in the process. Now, without going into, uh, one ticking off every single point here as my esteemed colleague, Mr. Goulding, has just done for you. We will take this through the process with the witnesses, and we will show as we go through this process that the City has chosen to utilize vehicle operations standards, those are the CDL testing standards, on one hand. But, on the other hand, ignoring vehicle operations standards, those of the state of Washington - Washington State Patrol standards for determining intoxication. It seems as though the City is asking to have it both ways, and I believe that we will show that as we proceed through this process. So, we are asking you to view the evidence and the testimonies through the lens of what is the due process and a clear, preponderance of evidence in this case. Thank you.

**Chair Summers:** Thought I hit it. So, I am the technical difficulty, so you all know. At this time, the City may call its first witness.

**Attorney Goulding:** Thank you. We'd like to first call Mr. Cullen Ritchie.

**Chair Summers:** Okay. I'm having a difficult time seeing Mr. Ritchie. There you are. Thank you. Thank you for waving. I appreciate that. Will you please raise your right hand?

Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Cullen Ritchie:** I do.

**Chair Summers:** Actually, it's just so help you. So, I don't know why I put that other part in. Too many Perry Mason movies. Sorry. Okay, Mr. Goulding, if you would, please.

**Attorney Goulding:** Thank you. Mr. Ritchie can you give us your full name and job title, please?

**Cullen Ritchie:** Yes, sir. My name is Cullen B. Ritchie. I am the TND Operation Supervisor with the City. That's Power Supervisor III.

**Attorney Goulding:** And, can you explain your job duties for us?

**Cullen Ritchie:** My job duties are to oversee the staff that performs the 24/7 job function of operating the power grid from the energy control center.

**Attorney Goulding:** And are you familiar with events that led to the termination of Mr. Farrow?

**Cullen Ritchie:** I am.

**Attorney Goulding:** Were you Mr. Farrow's supervisor at the time?

**Cullen Ritchie:** That is correct.

**Attorney Goulding:** And, can you tell us what happened on March 24, 2021?

**Cullen Ritchie:** Uh, sure. Be glad to. On March 24, 2021, I was actually on PTO that day for wife's birthday and at approximately 1325, I received a phone call from Sean Veley, who, uh, left me a voicemail asking me to get back with him. I was driving at the time of this call. As soon as possible, I returned his call. And he reported to me that a wire crew had arrived at the Bridgeport Substation, finding both doors to the cubicle were open, and that there was a very strong smell of marijuana present. He could not tell me who the substation operator, or the person was that they believed to be a substation operator. So, I assured Mr. Veley that I would follow up on this information. Um, I contacted my Transmission Coordinator, Rick Johnson, who is now retired, because he maintains the schedule for our represented employees. And asked him what substation operator was on shift. We conversed and determined it was most likely Zeb Farrow that would have been the sub-op on duty at the given time at the given location. Since I was on PTO and showing up to an event with my wife, I reached out to my manager, Harley Johnson to forward the information. I was able to get in touch with

him just a little bit before 3 p.m. and we had a brief conversation where I relayed the information and he would be following up to figure out what next steps we needed to take and how we should proceed. Harley re-contacted me at about 1600 hours, about a little after 4 p.m. to let me know that we needed to proceed to the Energy Control Center, which is our normal work location, to discuss this event and to interview Mr. Farrow. While Harley actually picked me up on his way into the Energy Control Center, I rode with him in and during that time I contacted my on-duty staff at the Energy Control Center to verify if they could tell me where Mr. Farrow was, or where they thought he might be. Which, as you've already heard, he was down in our tide flats area and it was believed he was in route to the Energy Control Center already. So, I asked them to contact him, have him come to the ECC and standby for Harley and me to get there. When we arrived at the Energy Control Center, um, Mr. Harley Johnson and I brought Zeb into my office. I explained to him there was a concern about earlier that day at Bridgeport substation and that a substation operator was present at the time. I told him that due to the nature of the complaint, I needed to investigate the concern. He did reply, his reply was a bit lengthy, but he did confirm that he was at the station at 1100 and 1300 hours, approximately. So, I informed him that the timing was consistent with the concern that was raised. I continued to and told him it was reported that a wire crew arriving at the substation, finding a substation operator there with both doors to the station open and the crew members reported to their supervisor that there was a very strong odor of marijuana present upon entry. I asked Mr. Farrow if he had noticed the smell or had any idea why they may have made such a report. He responded again, in a very quiet lengthy answer, summary being that he did not notice the smell and the only thing he could think of was the presence of a porta-potty out in front of the station and a skate park nearby. He did state that he saw the wire crew, he named Rich Weber as one of the crew members and he did not know who the other crew member was. So, I asked Zeb if he smoked and if he was smoking at the station at this time or had been smoking anything that would have caused the reported smell. He stated that he had not smoke anything that would have caused the smell. So, I again asked him if he had been smoking at the station, which he stated he had. Um, Harley asked a few questions of Zebulah, after which we asked him to give us a few minutes in private to discuss our findings and discuss our thoughts.

During my conversation with Zebulah, Zebulah Farrow, I noticed that his eyes were quite bloodshot, his eyelids were very droopy, his speech was slow, and he seemed very relaxed almost to the point of seeming withdrawn. This concerned me quite a bit, because normally Zeb is a very energetic person and is quite animated with his conversations. He did not seem very concerned about the accusation made, and overall, he did not seem concerned – but only slightly curious about us having this sudden meeting after hours. Upon Zeb leaving – or upon Zeb's exit from my office, Harley had shared his observation of Zeb and I shared mine. We both felt that Zeb was not acting in accordance with his normal behavior and that we needed to proceed with testing. We contacted Milton Eng to discuss and explore our observations further and arrange for a test. I then contacted Alissa McLain to inform her of the events and confirm our next actions, which were to go to Allenmore for the drug – drug and alcohol test.

**Attorney Goulding:** Let me, let me stop you there.

**Cullen Ritchie:** I was going to ask if you wanted me to.

**Attorney Goulding:** Thank you. Um, I want to refer you to the City's Exhibit R5. I'll allow the Board to look that up. Do you have that in front of you Mr. Ritchie?

**Cullen Ritchie:** Yes, sir. I believe I do. That is the statement that I made?

**Attorney Goulding:** No, it's the reasonable suspicion form.

**Cullen Ritchie:** Ah, thank you. Give me just a moment and I'll put that up. Okay, I have it.

**Attorney Goulding:** And, uh, tell us what this form is.

**Cullen Ritchie:** So, this is the City of Tacoma Reasonable Suspicion Form, uh, that was provided to us from Milton Eng. And Milton briefed us on the form and how to fill it out.

**Attorney Goulding:** So, you filled it out?

**Cullen Ritchie:** Yes, sir. I did.

**Attorney Goulding:** And then Harley Johnson was there, and he signed off on it as well.

**Cullen Ritchie:** That is correct.

**Attorney Goulding:** Based on your observations, did you determine that Mr. Farrow should be tested for drugs and alcohol?

**Cullen Ritchie:** That is correct.

**Attorney Goulding:** So, tell us what happened after filling out the form.

**Cullen Ritchie:** So, after filling out the form, um, brought Zeb back into my office, um, I had already talked to Milton a bit, and HR. And one thing that they made very clear to me was the statement on the bottom of the form. "No test will be conducted without the employee's consent. Refusal to test is considered admission of violation of the City's substance abuse policy and procedure and may lead to discipline up to and including termination of employment." And I, that particular statement... I made sure Zeb, I had Zeb's attention and let him know that I needed to inform him of this, and I read the statement directly off of the form to him. I asked him if he understood the statement and if he had any questions on it. Zeb did state that he had some questions, but just as he made this statement Milton recontacted me to confirm the tester was in route to Allenmore. So, I needed to take out for 20-30 seconds to take his call. When I returned, I asked Zeb what his questions were, to which he replied that he believed he needed to ask them of his union representative. And so, Harley worked with Zeb to get him in contact with the shop steward, and ultimately the union. Um, once that was done, I had

contacted Alissa to see if there were any additional actions that I needed to take regarding Zeb's desire to speak with union representation. Um, she took our questions and made some contact and the answer that came back to me was that he obviously could contact his union representative, but we were not to delay the test any further. So, Harley and I let Zeb know that we were going to be proceeding to Allenmore at that time to get him tested, which we did.

**Attorney Goulding:** And did he... did he complain about having to be tested?

**Cullen Ritchie:** He did not want to be tested. Uh, he had asked Harley and I if there was any way we could, uh, do something different. He wanted to know what type of test he would be taking, and he had anxiety about taking the test. And, um, one statement that he did make that he was concerned about taking the test because he was afraid that he may be positive because he may have used marijuana recreationally at some point in the past.

**Attorney Goulding:** Thank you. And was he eventually transported up to Allenmore Hospital for a drug test?

**Cullen Ritchie:** He was, yes.

**Attorney Goulding:** So, he was tested and then what, what happened after the testing?

**Cullen Ritchie:** So, he, uh, his testing was done, after which Harley and I returned back to the Energy Control Center with Zeb and had him make contact, um, for someone to pick him up. I did let him know that under the circumstances I could not allow him to drive any further that night or allow him to use a company vehicle... or, excuse me, to allow him to go home in his own vehicle. That we could get him a cab, a ride share, or someone could pick him up, or if needed, I could take him home personally. And he opted to have someone pick him up.

**Attorney Goulding:** So, he had a family member, or someone pick him up.

**Cullen Ritchie:** I believe it was a family member, it might have been an acquaintance. Uh, but the person picked him up at about ten minutes until 9 p.m.

**Attorney Goulding:** Okay. And then, um, based on the information gathered that day, do you believe Mr. Farrow was smoking marijuana at the Bridgeport station?

**Cullen Ritchie:** I believe he was.

**Attorney Goulding:** Tell me why.

**Cullen Ritchie:** First of all, the report that I received with the strong smell of marijuana observed the two wire crew members let me to, you know, first of all to have some suspicion. Secondly, my observation of Mr. Farrow during his interview. The way he

reacted, the way his personality was coming forth, which was very out of character. The physical signs that I observed. And then finally, the positive drug test results.

**Attorney Goulding:** And, do you agree with the decision to terminate Mr. Farrow? And if so, why?

**Cullen Ritchie:** I do agree with the decision to terminate Mr. Farrow. Uh, I was asked for my recommendation and that was my recommendation. The reason that I agree with this decision or support the decision is multifaceted. The first facet of which is safety. My team is charged with, including our substation operators, are charged with the high voltage switching and establishment of clearances for our field workers. We put a system in a safe condition prior to those workers going hands on to test it for deenergized and subsequently imply shorts and grounds and begin their work. These are lethal energy systems. You do not get a second chance on this. Not doing this job properly and safely can have very – or have life ending effects on an individual. Secondly, we're charged with, as part of that switching, part of that routine operation, with maintaining safety and reliability of our electric system. A mis-operation could result in anything from a simple outage affecting a few customers, to multi-day outages affecting hundreds of thousands of customers. A very good example is 2011 Southwest Blackout that put the San Diego basin in the dark for 24 hours. It was a result of a substation operator misoperating a device. He opened the wrong switch and he was in full control of his faculties at the time. As an end result, the San Diego basin was put into a 24 hour plus blackout. And it ended up with a \$34 million dollar fine to the utility involved. That is the impact of what we do. And I, first of all, cannot safely put someone in the field to do this work if I feel like they're under the influence of drugs or alcohol. Secondly, I cannot look at those who rely on my team, the linemen, the wiremen, the high voltage electrical workers, and the other employees of Tacoma Power, and confidently state that I am doing everything to provide for their safety if I do not take this action and recommend termination.

**Attorney Goulding:** So, is it accurate that a mistake by someone in this kind of position could very well lead to serious injury or death of this employee or coworkers?

**Cullen Ritchie:** That is correct.

**Attorney Goulding:** Thank you. I have no more questions.

**Chair Summers:** Mr. Allen did you have questions?

**Byron Allen:** Yes, Madam Chairwoman, thank you. So, um, Mr. Ritchie, good evening. Um, sorry to take up your time this evening, for this. So, uh, when you received a voicemail from supervisor Sean Veley, you said it was about 1:25, is that correct?

**Cullen Ritchie:** That is correct.

**Byron Allen:** And then you called Mr. Johnson at about 2:45 or so, about a quarter to three is what I believe you said. Is that right?

**Cullen Ritchie:** That was when Mr. Johnson returned my call.

**Byron Allen:** And then you and Mr. Johnson spoke again at 4 o'clock?

**Cullen Ritchie:** Approximately, yes.

**Byron Allen:** Okay. Um, and then at that time, the decision was made between the two of you to proceed to the ECC, is that right?

**Cullen Ritchie:** Somewhat correct. Mr. Johnson informed me that we would be proceeding to the ECC.

**Byron Allen:** And then after getting to the ECC and conferring with each other and ultimately talking to Mr. Farrow, looking at the Reasonable Suspicion Test documentation that the City has provided in their evidence that Mr. Goulding's just referencing, this was filled out at it says 1800, that would be 6:00 p.m. for us civilians, is that right?

**Cullen Ritchie:** That is correct, yes.

**Byron Allen:** So, is it a fair statement to say that between 1:25 in the afternoon and 6 p.m. when this document was filled out, um, that Mr. Farrow was still doing his job. Was that right?

**Cullen Ritchie:** That would be somewhat accurate. I did fill out the form after my conversations and interview with Mr. Farrow. So, that took... that probably took not quite an hour.

**Byron Allen:** Okay. And you had... you had mentioned that you had, at some point, you had contacted a supervisor that you said is now retired. Um, that... trying to find out where Mr. Farrow was at. Is that right?

**Cullen Ritchie:** Uh, that's not a supervisor, that was the Transmission Coordinator, another represented person, who maintains our schedule. But that is correct.

**Byron Allen:** Okay. So when you initially heard from Mr. Veley at 1:25 and then when you ultimately had conversations with Mr. Harley Johnson, Manager Johnson, during that whole period of time, you had no idea where Mr. Farrow was at or what he was doing. Is that right?

**Cullen Ritchie:** That would be correct.

**Byron Allen:** Okay. So, in terms of safety, I appreciate the concern for safety. Having been a tradesman working in the field my entire career, I understand the importance of that. I also understand the importance of double and triple checking things. But, during that entire time, up until when you finally had Mr. Farrow report to the ECC, he was still in the field he was still performing his work duties and he was still driving a city vehicle. Is that correct?

**Cullen Ritchie:** That is correct.

**Byron Allen:** And, yet during that time, by your own statements here, you indicated that you had a strong feeling that he was smoking marijuana while at work and that this was an extreme safety hazard.

**Cullen Ritchie:** I did not make that statement. The statement that I made was after interviewing Mr. Farrow and observing him personally, at that point I had very strong feelings that he was under the influence of drugs or alcohol.

**Byron Allen:** Okay. But, when you first got the voicemail from Mr. Veley, Supervisor Veley, at 1:25 and it said that two of his workers had reported to him that they thought they had smelled marijuana at the Bridgeport Substation, you initiated a call to Mr. Manager Johnson to start a process. Is that a fair statement?

**Cullen Ritchie:** Fair statement.

**Byron Allen:** Okay. And, so during that time you knew that there was a possibility, I'm sure you thought there was a possibility, or you wouldn't have started the process. Is that a fair statement?

**Cullen Ritchie:** There was a possibility that there was a City of Tacoma employee or Tacoma Power employee that had been at the substation smoking marijuana, and there was a possibility it was Mr. Farrow. That had not been confirmed until I met with Mr. Farrow.

**Byron Allen:** Okay. So, again, going back to the safety aspect of it. We all understand the need for safety, and we understand the need for people to be fully aware of what they're doing. Yet, Mr. Farrow was allowed to continue to perform his regular work duties and drive a city vehicle back to the ECC during the entire time that the process was being under... was underway to determine if he was indeed under the influence.

**Cullen Ritchie:** That would be correct...

**Byron Allen:** Okay. Thank you.

**Cullen Ritchie:** After the fact.

**Byron Allen:** So, um, now this happened in, um, March of this year. And, we've been going through the pandemic and all of the safeguards and everything with the pandemic for quite some time and in the ECC, I believe you guys up there have taken this quite seriously and – from the very beginning. What were some of the things that you did to ensure the safety of your operators at sub—the dispatchers and also the substation operators?

**Cullen Ritchie:** So, we removed all non-essential personnel and had them go to a working-from-home environment. That included myself and Mr. Johnson for periods of

time. In fact, we are still both working from home more than we are in that office. We locked -- we did what we call a lockdown of the second and third floors of the Energy Control Center and the elevator which are the areas where our systems operation staff are located. We implemented, of course, the City and the Utilities guidance for COVID-19. For our substation operators in particular, we relocated where their gear and where their bands were located, to our upper parking lot. So that they would not have to transit to the first floor, which was an area that had not been locked down. And, um, beyond the City mandated guidelines, I don't really know what else you might be looking for.

**Byron Allen:** Well, I -- and thank you. Again, that's very -- it's all appreciated because it's done a great job keeping people safe.

Um, so, you've been working from home for, primarily, this whole time. I'm sure there are occasions that you go in, but not very often. Is that right?

**Cullen Ritchie:** Right.

**Byron Allen:** So, prior to March 24<sup>th</sup>, I believe it was, um, the date that Mr. Farrow was given the reasonable suspicion test. Prior to that March 24<sup>th</sup>, could you give me an idea of when was the last time you had seen Mr. Farrow? Actually, in person and talked to him.

**Cullen Ritchie:** I would not be able to give you a good date. It had obviously been some time that year. Probably within 30 days of that date.

**Byron Allen:** Okay. That's fair. So, your interactions with Mr. Farrow were very intermittent at best.

**Cullen Ritchie:** That is correct.

**Byron Allen:** And, so, how Mr. Farrow appeared, or how he sounded, isn't something you experienced every day.

**Cullen Ritchie:** It would not be something that I experience every day, but it is something that I have experienced for many years. And through very frequent conversations, check-ins, one on ones, and just in routine passing.

**Byron Allen:** And these conversations that you've had with Mr. Farrow, did they always have... were they held when he was wearing a mask?

**Cullen Ritchie:** Not often, no.

**Byron Allen:** Thank you. Um, I do want to point out one thing, when you had utilized an incident that happened in San Diego as what can happen in a system, has anything like that ever happened in the City of Tacoma system?

**Cullen Ritchie:** There have been misoperations in the City of Tacoma system before.

**Byron Allen:** Has it resulted in a, um, a city-wide blackout?

**Cullen Ritchie:** Not in a city-wide blackout.

**Byron Allen:** So, the incident you referred to having happened in San Diego was an extreme incident and it's not an everyday occurrence?

**Cullen Ritchie:** Thankfully not.

**Byron Allen:** Thank you. Um, that is all I have, thank you.

**Chair Summers:** At this time, if any Board Members have any questions, I will call on each of you and if you have questions, this is your time to ask them. And, I will start with Board Member Sexton.

**Board Member Sexton:** Thank you, Madam Chair. Um, looking for the witness, uh... is it uh, Mr. Ritchie?

**Cullen Ritchie:** That is correct, Board Member Sexton.

**Board Member Sexton:** Thank you. There you are. Thank you very much. Um, I'm not good with abbreviations, and, so, um, you said you were on, I believe, PT- something. I don't know what that is.

**Cullen Ritchie:** PTO, which stands for Paid Time Off, which is vacation.

**Board Member Sexton:** Okay. And you, I'm glad that you, uh, clarified the times there, because, you know, you're jumping in and out of the military time and back and forth was very confusing to me. And, I think I've got the timeline figured out now, I think. But it was very confusing when you went through it originally.

**Cullen Ritchie:** Well, my apologies for that. What clarification could I provide for you?

**Board Member Sexton:** Well, uh, I think he just did. I think. I think it's clear. It's clear now, you were talking about, um, events that happened at 11 a.m., I believe, and then, I believe you met with Mr. Farrow around 1 p.m.?

**Cullen Ritchie:** That's not correct, sir. The event was reported to me at, would you prefer military time or standard?

**Board Member Sexton:** Well, just stick with one. Just stick with one.

**Cullen Ritchie:** Okay. I'd be happy to. So, the event – Mr. Veley reported to me at 1:25 p.m. with his concerns. My conversation with Mr. Johnson was at 2:47 p.m. approximately. My conversation when Mr. Johnson contacted me to let me know that we needed to go to the ECC to discuss the event was at 4:18 approximately. And, Mr. Farrow was taken to Allenmore for testing at 7 p.m. approximately.

**Board Member Sexton:** Could you tell me... uh thank you, that clarifies that. I think it was – it helped a lot before. What are his regular hours?

**Cullen Ritchie:** So, he was on a double shift that day. He had volunteered to cover overtime. So, on that day, his working hours were from 6:18 a.m. to 10:30 p.m.

**Board Member Sexton:** Great. Thank you very much.

**Cullen Ritchie:** No problem.

**Chair Summers:** Mr. Hansen – Board Member Hansen.

**Board Member Hansen:** Okay. Thanks. So, um, Mr. Ritchie, you testified that Mr. Farrow told you he was smoking at the substation. Is that what your testimony is?

**Cullen Ritchie:** That's correct, sir.

**Board Member Hansen:** Okay. Did he tell—and you kind of left it at that. You didn't... did you follow up and say "what were you smoking" when he said that.

**Cullen Ritchie:** I had asked him if he was smoking originally. And if he was smoking anything that had could have caused that odor. And, he originally kind of deferred from the question. I asked him again if he was smoking at the station and he said he was. I did not ask him what he was smoking beyond that point.

**Board Member Hansen:** Okay, so you don't know – when he said he was smoking, you don't know what he was smoking?

**Cullen Ritchie:** I – at that time, he did not tell me what he was smoking, sir.

**Board Member Hansen:** Okay. I guess, why didn't you follow up on that question?

**Cullen Ritchie:** I couldn't tell you.

**Board Member Hansen:** Okay. Um, do you know – do you have any training in what the urine test that was administered to Mr. Farrow measures?

**Cullen Ritchie:** I do not have training on what that urine test measures for, or how it is conducted other than taking him to a hospital and having....

**Board Member Hansen:** Okay, and have you had any training in, uh... in signs of intoxication from marijuana or other drugs?

**Cullen Ritchie:** I have not from the City of Tacoma. However, I was fifteen years in the military, including a tour as an independent duty recruiter, where we received quite a bit of training about signs of intoxication and signs of drug use.

**Board Member Hansen:** And then, just to clarify, I guess it was your testimony that you don't know what Mr. Farrow was doing between 1 o'clock when he was contacted by Weber and Kaiponen and when you met with him, I believe it was 6:30 that evening.

**Cullen Ritchie:** That would be correct, sir.

**Board Member Hansen:** Okay. I don't have any other questions.

**Chair Summers:** Thank you. Um, Board Member Andrews?

**Board Member Andrews:** Yes, thank you. Mr. Ritchie?

**Cullen Ritchie:** Yes, ma'am.

**Board Member Andrews:** After you received the report at 1:25, did you consider sending someone else to the substation to follow up?

**Cullen Ritchie:** At that time, I did not. No.

**Board Member Andrews:** And, during your conversation with Mr. Farrow, were you wearing masks?

**Cullen Ritchie:** I was, yes.

**Board Member Andrews:** Was he?

**Cullen Ritchie:** Yes, ma'am.

**Board Member Andrews:** Okay. Those were my only questions.

**Chair Summers:** And I have no questions. So, if that will end your testimony at this time, you're free to... but I would, please, not go far, if there are more questions. Thank you.

**Cullen Ritchie:** Thank you Chair Summers.

**Attorney Goulding:** Uh, you're on mute Chair Summers. Would you like the next witness?

**Chair Summers:** Yes, Mr. Goulding, please.

**Attorney Goulding:** Thank you. Our next witness is Milton Eng.

**Chair Summers:** Yes, I... you've been here all along. Thank you, Mr. Eng. Please raise your right hand. Do you affirm or swear to tell the truth, the whole truth, and nothing but the truth?

**Milton Eng:** I do.

**Chair Summers:** Thank you. You may proceed.

**Attorney Goulding:** Thank you. Mr. Eng, can you tell us your job title?

**Milton Eng:** Uh, I'm a Safety Officer with the Tacoma Safety Office.

**Attorney Goulding:** And, can you explain to us your job duties?

**Milton Eng:** I support the City's safety program and I administer the City's Drug and Alcohol Testing Program.

**Attorney Goulding:** And are you familiar with the Drug and Alcohol testing for Mr. Farrow earlier this year?

**Milton Eng:** I am.

**Attorney Goulding:** And what was the involvement of yourself and the Safety Department?

**Milton Eng:** I was consulted regarding the process for reasonable suspicion drug and alcohol screening. And then my involvement was to help schedule any requested reasonable suspicion drug and alcohol test. And then also provide resulting when results were finalized.

**Attorney Goulding:** And, can you look at the City's Exhibit R5 please and identify that document for us.

**Milton Eng:** This is the City of Tacoma's Reasonable Suspicion Test documentation form.

**Attorney Goulding:** And what is the purpose of that form?

**Milton Eng:** This form is provided as a guide for supervisors to determine if they need to, um, you know, order a Reasonable Suspicion Drug and Alcohol test.

**Attorney Goulding:** And do you, does safety train supervisors for these types of situations?

**Milton Eng:** Uh, the safety office does train CDL supervisors.

**Attorney Goulding:** And were these two supervisors, were they CDL supervisors?

**Milton Eng:** I do not believe Mr. Ritchie or Mr. Johnson are CDL supervisors currently.

**Attorney Goulding:** So, they would not have received the training required by Department of Transportation.

**Milton Eng:** Correct.

**Attorney Goulding:** And this Exhibit R5, so this was the form used for Mr. Farrow?

**Milton Eng:** It looks to be. Yes.

**Attorney Goulding:** And looking at the form, in your opinion, or is this sufficient to justify a reasonable suspicion drug or alcohol test?

**Milton Eng:** Looking at the form and what they checked out, it was up to the supervisors to determine. I can't base the decision based on the form alone. I wasn't there observing or interviewing Mr. Farrow, so... this is just based on the information that they saw and the information they got from interviewing him.

**Attorney Goulding:** Okay. Now I want you to look at City's Exhibit R6 and please identify that document for us.

**Milton Eng:** That's a specimen results certificate.

**Attorney Goulding:** And is your name on this form?

**Milton Eng:** It is.

**Attorney Goulding:** So, you're the POC, or Point of Contact, for the MRO for these tests?

**Milton Eng:** Correct.

**Attorney Goulding:** And what was the results of the urine test for drugs?

**Milton Eng:** On this form, it was a positive for marijuana.

**Attorney Goulding:** And, is this a Department of Transportation look alike or mirror test?

**Milton Eng:** That was what was ordered. Yes.

**Attorney Goulding:** Can you explain to us what that is and why we do that with non-CDL testing?

**Milton Eng:** Uh, the practice here at the City of Tacoma is to use either the DOT test for our DOT personnel or a mirror, a DOT mirror or look alike test. So that all of our drug tests are handled the same. And, in addition, the mirror for the DOT will also provide a review by medical review officer for any potential positive tests.

**Attorney Goulding:** And do these test results give any indication of metabolites, active or inactive or otherwise?

**Milton Eng:** Uh, I do not believe so. But I am not the individual who analyzes the specimens.

**Attorney Goulding:** Uh, and does the City do blood testing for drugs?

**Milton Eng:** We do not.

**Attorney Goulding:** And why is that?

**Milton Eng:** The DOT test that we do, we have been using urine for the DOT screens. And that's what we been using all throughout for our testing process. We have not adopted to use blood tests. And as far as I know it is not approved for use for the DOT tests.

**Attorney Goulding:** And would you consider those, the blood tests, to be very invasive?

**Milton Eng:** I believe that blood tests would be invasive.

**Attorney Goulding:** And have you, have you asked other cities if they use blood testing for employees?

**Milton Eng:** I have contacted some other cities regarding this, and so far, none have reported that they've used blood tests for drug and alcohol testing.

**Attorney Goulding:** And, lastly, has our testing facility been reviewed lately by Joint Labor?

**Milton Eng:** Yes, it has.

**Attorney Goulding:** And can you tell me when that occurred?

**Milton Eng:** Off the top of my head I do not recall, but I would say within the last month or two. I can get you an exact date if you give me a few moments to look it up.

**Attorney Goulding:** Yeah, can you look up the date?

**Milton Eng:** It was July 12<sup>th</sup>, 2021.

**Attorney Goulding:** Great. Thank you. Uh, I have no more questions.

**Chair Summers:** Thank you. Mr. Allen?

**Byron Allen:** Thank you Madam Chairwoman. Good evening Milton, how are you?

**Milton Eng:** Doing well Byron, how are you?

**Byron Allen:** I'm doing well. You've got a little change in hairstyle. I haven't seen that yet.

**Milton Eng:** It's been a little while.

**Byron Allen:** Uh, so I, uh, would like to kind of follow-up on some of the questions that Mr. Goulding asked you. So, uh, you indicated that you used the Department of Transportation testing protocol. Is that correct?

**Milton Eng:** Correct.

**Byron Allen:** Okay. And you use that protocol for all testing for drugs and alcohol?

**Milton Eng:** We use that protocol for all of our DOT and reasonable suspicion testing.

**Byron Allen:** Okay. So, if I was to go in for reasonable suspicion testing and, um, under what you just said, and I, as part of that testing, I do an alcohol analysis, a breathalyzer. Is that right?

**Milton Eng:** Correct.

**Byron Allen:** And so, if I go in for that as a reasonable suspicion and I am not a CDL holder, uh... am I subject to the CDL limits of .04?

**Milton Eng:** No.

**Byron Allen:** Okay, then reasonable suspicion is not the same as DOT.

**Milton Eng:** So, the reason – the DOT testing process that we follow is to allow for them to follow through the chain of custody, processing, making sure the samples are handled and taken in accordance with the DOT, you know, procedures. And also, for positive results, so that the medical review officers can review those for drug screens.

**Byron Allen:** Okay, so then the DOT testing is followed as a means of making sure the process is done correctly and that the, you know, chain of custody, as you indicated, is followed. So that's a process that the City of Tacoma follows the DOT testing. Is that right?

**Milton Eng:** Correct. For the process.

**Byron Allen:** Okay. But in terms of determining intoxication, there's – is it the same for all CDL and non-CDL holders? Both the drugs and alcohol.

**Milton Eng:** So, for drugs and alcohol the standards are different for CDL holders and non-CDL holders.

**Byron Allen:** Okay. So, in the case – in Mr. Farrow's case, he doesn't have a CDL. And for those of – maybe I'm using again, Board Member Sexton. I apologize for using

initials here. CDL being Commercial Driver's License. Um, so the... in this case, Mr. Farrow does not have a Commercial Driver's License and yet he was subjected to a Commercial Driver's License test. Is that correct?

**Milton Eng:** He was subjected to a mirrored test where the process is handled the same. With the chain of custodies and medical review.

**Byron Allen:** Okay, so it's a mirrored test in terms of chain of custody and medical review, but, again, the, um, determining intoxication is what I'm looking for here. Does the DOT test, Department of Transportation test, indicate intoxication?

**Milton Eng:** Byron, I'm going to try to... I'm a little confused the way you are asking because it was a drug screen, not an alcohol screen that he was positive for.

**Byron Allen:** Okay. Does that test.... Okay let's go to the drug screen and when Mr. Goulding asked you if it indicated positive active metabolites or inactive metabolites, you indicated you weren't aware what it indicated. That you only knew that it came back positive. Is that correct?

**Milton Eng:** Correct. It hit the threshold for a positive result on a drug screen.

**Byron Allen:** And, so, in your position, uh, with the City of Tacoma, then determining whether a person is under the influence or not, you cannot say whether that test actually shows that or not.

**Milton Eng:** I only report back what the lab brings back as a result on their test analysis.

**Byron Allen:** Okay. And, the lab, the MRO if we refer back to, I believe it was number six of the respondent's examples—exhibits here. That's the specimen results certificate. I think we were just looking at that. It's a Medical Review Officer that that is the one that reviews these. Is that correct?

**Milton Eng:** That will review the results, yes.

**Byron Allen:** Right. And the Medical Review Officer is who says if it is positive or it's not a positive?

**Milton Eng:** Correct.

**Byron Allen:** And, so, does the Medical Review Officer actually see the individual?

**Milton Eng:** With his own eyes? No.

**Byron Allen:** Okay because this Medical Review Officer is in Kansas City. Is that right?

**Milton Eng:** That is correct.

**Byron Allen:** So, um, so the Medical Review Officer, according to the City's Drug and Alcohol Policy, which it's going to take me a second here, I believe it was in the... okay. Personal Management Policy 165, that would be number R4 in your file there. Under that Policy, it says on page two, item number six: The Medical Review Physician, I think that's the same thing here, we're using the same... is that the same person? Physician/Officer?

**Milton Eng:** Which page again Byron?

**Byron Allen:** Page two of R4. That's the PMP 165.

**Milton Eng:** On my R's it's on R3.

**Byron Allen:** Okay. Sorry, R3. My bad. So, R3, thank you. So, if you look at the second page.

**Milton Eng:** Yup. I'm on the second page.

**Byron Allen:** So, is that Medical Review Physician, is that the same person that we're referring to on the specimen results certificate as the Medical Review Officer? Is that the same person?

**Milton Eng:** Byron, I'm sorry, maybe we are looking at different documentation. Oh, are you talking about point number six?

**Byron Allen:** Yes, I am. Thank you.

**Milton Eng:** The Medical Review Officer is the same as a Medical Review Physician, I guess, in this case.

**Byron Allen:** Well, it would not just in this case.

**Milton Eng:** Okay. Well, in all cases the Officer and Physician are the same. Yes.

**Byron Allen:** That's what I'm asking. Okay, thank you, thank you. I appreciate that. Uh, so it says... on that number six that the Medical Review Physician will be utilized to review and interpret the test results. It says that they must examine alternate medical explanations for any positive test result that may include conducting a medical interview with the affected employee, review of the employee's medical history, and review of any other relevant biomedical factors. The Medical Review Physician must review all medical records made available by the test employee when it confirmed positive test could have resulted by legally prescribed medication. So, basically what this is telling us is that this Medical Review Physician AKA Officer is charged with conducting a fairly thorough examination when there's any positive test. Is that a fair statement?

**Milton Eng:** It is the Medical Review Officer's job to make the evaluation.

**Byron Allen:** So, when the City of Tacoma hires an individual in Kansas City, MO, to do this review, their expectation, the expectation of the City of Tacoma, is that they are going to perform all of these tasks?

**Milton Eng:** The Medical Review Officer is going to follow the process that they have set for reviewing their drug screen results, yes.

**Byron Allen:** Well, uh, Milton, I'm not trying to be difficult here, but I'm just trying to understand. This is, um, PMP 165 is cited as reason for Mr. Farrow's termination and I'm just trying to determine whether PMP 165 was actually carried out and adhered to in this case. And you know, do you get any confirmation from the Medical Review Physician AKA Officer, do you get any indication from them that they have done all of this when the City of Tacoma pays them for having followed this process?

**Milton Eng:** As I understand the process when there is any potential positive drug screen, the Medical Review Officer contacts the donor, in this case Mr. Farrow, and has an interview with them. And then after that interview, they make a determination to confirm the drug test results. That process occurs before any positive result is released to us.

**Byron Allen:** Okay. Got it, got it, got it. Any idea what that interview looks like? What it entails at all?

**Milton Eng:** That's between the donor and the doctor.

**Byron Allen:** So, um, got it. So, there's no indication of, you get no indication at all that an interview took place. You're just under the assumption that it did based upon the fact that they came back and gave you a positive result.

**Milton Eng:** And that's the process that's required by DOT and even when we do a mirror. Yes.

**Byron Allen:** Okay. Again, that's the DOT process that the City of Tacoma has adopted and has put into place for... well, according to PMP 165, it says on the cover page that it was affective 2002. Are you aware of any changes to this policy since that time?

**Milton Eng:** Uh, that's our current PMP at this point.

**Byron Allen:** Okay. So, this is the one that's been in place for 19 years. Okay, alrighty. Um, so again, then, um, from, for, from your knowledge and your understanding, um, the test is not, is the testing, is the DOT testing for active metabolites? Do you know?

**Milton Eng:** I do not know.

**Byron Allen:** Okay. Do you know anything about the metabolites? Are you familiar with that at all in your position with a, as a... what was your position again?

**Milton Eng:** I'm a Safety Officer.

**Byron Allen:** Okay. And you oversee this DOT testing, right? That's part of...

**Milton Eng:** I administer the testing process.

**Byron Allen:** Alright, so as part of your role do you have any understanding at all, have you looked into, do you have any knowledge of the difference between what is referred to active or inactive metabolites?

**Milton Eng:** I have not looked into that.

**Byron Allen:** Okay, alright. Um, and then, so then, when the State of Washington legalized, the voters of the State of Washington legalized the use of marijuana recreationally, some, what about nine years ago now, I guess. Was there any... were you in this position at that time?

**Milton Eng:** Yes.

**Byron Allen:** Okay. And was there any concern at all that, that this is going to have somewhat of an impact on non-CDL holders being subjected to CDL guidelines?

**Milton Eng:** My part of this is to help administer our program based on the policies that are developed by, you know, HR and, you know, the City's other, other leaders and things like that. So, I'm just administering our process and our procedures based on that guidance that we have and what DOT has out there.

**Byron Allen:** Okay. That's fair. So, this is above your pay grade.

**(Milton Eng nods)**

**Byron Allen:** Okay. Alright, okay, so um, lastly then, Milton, again, going back to... I know we are talking about a marijuana test here, but I just want to be really clear on it. So, when it comes to alcohol tests though, the City of Tacoma makes a distinction between whether a person is a CDL holder or a non-CDL holder. Is that right? In terms of the levels.

**Milton Eng:** For alcohol, we would make a determination.

**Byron Allen:** That's not my question...

**Milton Eng:** Or distinction, sorry.

**Byron Allen:** Okay. Thank you. That's all I have. Thank you, Mr. Eng. Appreciate it.

**Chair Summers:** Um, thank you Mr. Allen. And for witnesses, please always answer out loud, because we cannot record a nod.

**Milton Eng:** My apologies.

**Chair Summers:** Not a problem. I am now calling on Board Members. We will start with Board Member Sexton. Board Member Sexton, you are on mute. Remove your mute.

**Board Member Sexton:** Um, I'm good.

**Chair Summers:** You're good. Okay. Board Member Hansen?

**Board Member Hansen:** Um, let's see. So, Mr. Eng, under PMP 165 that we've been talking about, there's also a requirement that the chain of custody procedure and testing requirements be followed. Do you know if that provision was complied with in this particular case? In Mr. Farrow's case?

**Milton Eng:** I believe it was.

**Board Member Hansen:** And why is that your belief?

**Milton Eng:** Uh, the chain of custody process, we used our standard process even though it was a mirrored test. We generated a passport and they filled out the paperwork and because it ended up being reviewed eventually by the MRO, we followed that entire chain of custody process with the sample making it to the lab.

**Board Member Hansen:** Okay. So, then I am assuming you then reviewed the paperwork that documented the chain of custody process?

**Milton Eng:** I did not review the chain of custody; I reviewed the results certificate when I received the result.

**Board Member Hansen:** Okay.

**Milton Eng:** Without the rest of that chain of custody process, we wouldn't get a result... we would probably have a lost sample or something else along the way.

**Board Member Hansen:** Did anyone else, any other employee with the City review the chain of custody? Do you know?

**Milton Eng:** I do not believe so.

**Board Member Hansen:** Um... I think that's... I think that's all I have. Um, yeah, that's all I have.

**Chair Summers:** Thank you. Board Member Andrews.

**Board Member Andrews:** Here I am. Yes, Mr. Eng? I'm looking at the Reasonable Suspicion documentation, which is R5. And I'm also considering the testimony of the two individuals that first brought it to the attention of management from the substation. So, in your training, Mr. Eng, do you ask the trainees to label their observation or are expected to just describe what they see, smell, or hear?

**Milton Eng:** We... in my training, I ask them to provide a specific detail, or as many specific details of what they see, hear, and observe when they're writing statements.

**Board Member Andrews:** Okay. So, based on the information received, the conversation between those two employees, and I'm paraphrasing, it smells like marijuana. So, is that a label or is that an observation of what is seen, smelled, or heard? Based on your-

**Milton Eng:** So, Board Member Andrews, I did not train any of these individuals on this, so their statements are how they chose to describe what they observed. I did not give them any guidance on what to write.

**Board Member Andrews:** So, in your training, though, would saying it smells like marijuana be a label or would it be, from your experience, a description of what they saw or heard or smelled relative to scent.

**Milton Eng:** I think that would be dependent on individuals, you know, understanding of what they're writing. If it's either a label for them or a description for them.

**Board Member Andrews:** So, since they used the term marijuana, would you believe they know what it smells like?

**Milton Eng:** I would believe that's what they believe it smells like, yes.

**Board Member Andrews:** Okay. Thank you. I have no other questions.

**Chair Summers:** Thank you. And, I do have a couple of questions. Because it does say that you helped them to fill out, or it was stated earlier, the Reasonable Suspicion Test documentation. And, how exactly did you help—aid them in filling out this form?

**Milton Eng:** I provided the form, and I coached them along how they can use the form to document their observations. You know, I coached them to have a private conversation, to use it as a guide and to make sure that they had the signatures and descriptions of things they needed to write down. Just making sure they were able to fill out the form and you use check boxes if they felt any of that information applied. And then to make sure to have signatures, and then, to also make sure that they filled out the section about transporting the employee to the clinic. And the statement down at the bottom to make sure the individual understands that no test would be conducted without their consent. But that a refusal could be admission of violation and of the City Substance Abuse Policy and Procedures may lead to discipline up to/including termination of employment. So, I coached them on those aspects.

**Chair Summers:** Okay. So, you didn't coach them on saying things like "he was not acting like normal." That wouldn't be something that you would tell them to put down.

**Milton Eng:** No. No.

**Chair Summers:** Okay.

**Milton Eng:** It's his observations or their observations. I'd say write down whatever observations that you see, in your words.

**Chair Summers:** Okay. Perfect. That's pretty much all I needed to know, and I thank you and I also nod a lot, so please don't take it as a criticism. Thank you.

**Milton Eng:** That's alright.

**Chair Summers:** We are going to move back then to Mr. Goulding and your next witness please.

**Attorney Goulding:** Chair Summers, I was hoping that I could add one more question for Mr. Eng. Just to clarify something that he discussed if that's okay.

**Chair Summers:** Make it quick because I do want to move through this as swiftly as possible.

**Attorney Goulding:** Yes, ma'am. Mr. Eng, looking back at PMP 165, page 2, 6, talking about the MRO, or the Medical Review Physician, it says he'll be utilized to review and interpret positive drug test results and examine alternate medical explanations. So, isn't it true, they're looking for, uh, for example if someone comes up positive for oxycodone, they might check with the doctor to see if he has a prescription? But, if he comes up positive for an illegal substance, that's not going to be legal anywhere, like marijuana or cocaine or heroin, that's where the review ends because it's an illegal, a federally illegal substance. Is that accurate?

**Milton Eng:** That's what I believe to be accurate, yes.

**Attorney Goulding:** Okay. Thank you. No more questions.

**Chair Summers:** Um, Mr. Allen, did you want to follow up on that?

**Byron Allen:** Yes, I do, thank you Chairwoman Summers. So, Mr. Eng, is marijuana legal in the state of Washington?

**Milton Eng:** Yes.

**Byron Allen:** Is it legal for a non-CDL holder to use marijuana privately, in the comfort of their own home, in the state of Washington?

**Milton Eng:** As far as I understand, yes.

**Byron Allen:** Thank you, that's all I have Chairwoman Summers.

**Chair Summers:** Thank you. And thank you for keeping it brief. I will allow, if necessary, a clarification question and a follow-up. But I would like to move this process

along, it's going to be a long night. We will take a recess probably about 7:15 so people can take a break and take care of personal matters and come back. But I'm not going to go tit-for-tat throughout this meeting. So, I want that understood. But Mr. Goulding is now back to you. Your next witness, please.

**Attorney Goulding:** Thank you. That would be Cheryl Bidleman.

**Chair Summers:** Hello Cheryl. Um, will you please raise your right hand? Do you swear to tell the truth, the whole truth, and nothing but the truth?

**Cheryl Bidleman:** I do.

**Chair Summers:** Thank you. Please proceed.

**Attorney Goulding:** You want to swear her in?

**Chair Summers:** Already done Mr. Goulding, did you fall asleep?

**Attorney Goulding:** Oh, okay. Thank you. Um, Ms. Bidleman, can you tell us your job title?

**Cheryl Bidleman:** My job title is Assistant HR Director.

**Attorney Goulding:** And can you tell us... can you describe your job duties?

**Cheryl Bidleman:** I oversee Talent Services for the City of Tacoma. So, that includes recruiting and employee relations.

**Attorney Goulding:** And, are you familiar with the events that led to the termination of Mr. Farrow?

**Cheryl Bidleman:** I am.

**Attorney Goulding:** And are you familiar with PMP 165, which is the City's Exhibit R3?

**Cheryl Bidleman:** Yes, I am.

**Attorney Goulding:** And, does the policy allow for termination in a case like this?

**Cheryl Bidleman:** Yes, it does.

**Attorney Goulding:** Does it also allow for rehabilitation?

**Cheryl Bidleman:** Yes, it does.

**Attorney Goulding:** Can you tell us why termination would be appropriate under the policy in this case?

**Cheryl Bidleman:** Well, um, so, PMP 165 says that employee should be aware that any violation of the PMP could result in termination of employment. And, I think it even underlines "any." And, you know, it also says we'll take into account the nature of the violation, including the risk to safety created by the violation when we decide on discipline. Um, it also says, you know, normally a first offence would result in rehabilitation. Um, but I think, you know, my opinion is that normally is there for a reason because if we refer back to, you know, the risk to safety and the details of the violation, I think that this is not a normal situation where we would consider rehabilitation.

**Attorney Goulding:** Thank you, and, in this case, HR also prepared a list of comparable discipline under our Exhibit R7. Uh, can you speak to those cases and what happened with them?

**Cheryl Bidleman:** Um, you know, I can speak briefly to them. You know, a number of them occurred before I came to the City, but I can look at the record that was provided and interpret that. So, there were five cases. Um, starting in 2016 across TPU and General Government that were violations of PMP 165 and in each of those, they were issued a notice of intent to term and in each of those cases, the termination was upheld.

**Attorney Goulding:** Thank you. And, do you agree with the decision to terminate here? And if so, why?

**Cheryl Bidleman:** You know, I do agree, um, with the decision. Um, I, um, I think the situation, as Mr. Ritchie described, of the safety sensitive nature of the role definitely comes into play. I think that, you know, based on the observations, I think that, you know, people involved in the decision-making believe that he was, um, smoking marijuana at work and that's just based on what the witnesses said about the strong odor, the doors being propped open, and then when they did the Reasonable Suspicion Violation.. excuse me, observation that, you know, they noted behaviors, appearances, and speech. Um, things that led them to believe that he was under the influence. And so, you know, a person can smoke marijuana in the evening, in their recreational time, as long as they're not working. But the fact that he was showing behaviors that would lead them to believe that he was under the influence, and, you know, the other details of what was happening in that environment leads me to believe that it's a justified termination.

**Attorney Goulding:** Thank you. I have no other questions.

**Chair Summers:** Mr. Allen?

**Byron Allen:** Thank you, Chairwoman Summers. Um, good evening, uh, Ms. Bidleman. How are you?

**Cheryl Bidleman:** I'm well, thank you Byron.

**Byron Allen:** So, uh, how long have you been, um, with the City of Tacoma?

**Cheryl Bidleman:** I've been with the City of Tacoma since 2018.

**Byron Allen:** Okay. Thanks. And, so referencing back to, I believe it was R7 that Mr. Goulding referenced just moments ago. All five of the incidents that were provided by Mr. Goulding in this exhibit, do you have any idea or any knowledge as to whether any of these were CDL holders?

**Cheryl Bidleman:** Um, let me just look at the record. Yeah, I can't... I don't know from looking at that record.

**Byron Allen:** Okay. So, so we can't determine whether they were or were not then.

**Cheryl Bidleman:** Not from look at that record.

**Byron Allen:** Okay. Alright, And, um, now do you know of any other incidences where a City of Tacoma employee was tested under Reasonable Suspicion for marijuana and was found to be positive, but was not terminated?

**Cheryl Bidleman:** Sorry, I'm tapping my memory banks for a moment here. Um, off the top of my mind I can recall one.

**Byron Allen:** I don't want to use names because of the public nature...

**Cheryl Bidleman:** Of course.

**Byron Allen:** of our hearing here. Um, it would not be fair to the individual, but I believe you were very closely involved with an incident that happened in 2019. Uh, involving a customer service employee.

**Cheryl Bidleman:** Of course, yes.

**Byron Allen:** Do you recall that now?

**Cheryl Bidleman:** I do recall that and that's the one that I was thinking of.

**Byron Allen:** Oh, okay, so this list that was provided by, um, Mr. Goulding in his exhibits is not an exhausted list.

**Cheryl Bidleman:** This is a list of people who were terminated for violations of PMP 165.

**Byron Allen:** Okay, so it's not just violations of 165, but actual terminations.

**Cheryl Bidleman:** Correct.

**Byron Allen:** Is it fair to say then, there could be others then besides the one that we just talked about that happened in 2019? There may be others, but we won't know because the list doesn't show us that.

**Cheryl Bidleman:** I wouldn't disagree with that; I couldn't answer that definitively though.

**Byron Allen:** Okay, so, I mean, for the sake of time, uh, I think, I think it's fair to say then that the list only represents what is being shown were those that were terminated, but not represent those that were not terminated, the number of which we have no idea how many there are.

**Cheryl Bidleman:** I think that's correct.

**Byron Allen:** Um, so, you said you're over, uh, employee... what was it? What areas are you over as Assistant HR Director now?

**Cheryl Bidleman:** Um, recruiting and employee relations.

**Byron Allen:** Got it, recruiting. Okay, thank you. So, in the recruiting policy for the City of Tacoma, uh, do they use the same Drug and Alcohol testing?

**Cheryl Bidleman:** I, can you clarify?

**Byron Allen:** For non-CDL positions, I should clarify.

**Cheryl Bidleman:** Um, so we don't have a recruiting policy, so I'm not sure what you... what you mean.

**Byron Allen:** Uh, okay. New hire, I'm offered a position as a widget maker for the City of Tacoma, it is not a CDL position, am I subjected to drug and alcohol testing prior to starting my job?

**Cheryl Bidleman:** There are some positions that, um, require drug and alcohol testing. That's correct.

**Byron Allen:** What are those positions?

**Cheryl Bidleman:** I couldn't tell you off hand, I don't have that in my memory bank.

**Byron Allen:** Okay, are they mainly CDL positions?

**Cheryl Bidleman:** Uh, no. I believe there are some that are non-CDL positions.

**Byron Allen:** And, have you altered your policy, or what you're looking for in terms of marijuana use for these new hires in non-CDL positions? Or is it the same in regard to its either a positive or not positive?

**Cheryl Bidleman:** Um, no. But I also want to clarify, so that test result that you see for Mr. Farrow, if you look at the test result it's a non-CDL... err excuse me, a non-DOT

test. It says right on... so referring to R6, it says non-DOT, so it is not a DOT test that we're using.

**Byron Allen:** Oh, oh, okay then. Then, what is it? I guess I'm now- I'm confused. Because going back to Mr. Eng's testimony he made it very clear that it is a mirrored test of the DOT. So, but you're telling me that it's not a DOT test, so what test is it?

**Cheryl Bidleman:** It's a non-DOT test. I mean, that's... they will refer to it at the clinics as a DOT test or a non-DOT test.

**Byron Allen:** Okay, so, basically that's just semantics then because it is a DOT test in everything else: it walks like it, it talks like it, it quacks like it's a DOT test.

**Cheryl Bidleman:** I- I don't think that that's the case, but I'm not your DOT expert here.

**Byron Allen:** That's fair, that's fair. So, um, when were you made aware of the incidents that happened on March 24th?

**Cheryl Bidleman:** Um, it was the afternoon or evening of the 24<sup>th</sup>. I got a call from Alissa McLain, who is the HR Analyst who supports Tacoma Power and she described to me the circumstances, much of which you've heard here, which is that there were two employees who observed, smell, doors propped open, and that the, um, supervisors had done a Reasonable Suspicion evaluation and that they wanted to send the person for testing. And I asked her a few questions about what they had observed and, you know, I have an awareness from, not from training that I've received at the City, but from a previous role. Training about substance abuse, observations, and DOT, and when she checked off the, you know, behavior, appearance, speech and then adding that with what observed about the smell of marijuana. I felt like it warranted that. And, you know, the PMP says that the HR Director, or designee needs to agree to, or approve, I don't know the exact words are... approve that test. And so, I did agree to that. And then Alissa did pass that word back to the supervisors.

**Byron Allen:** So, you were contacted by Ms. McLain prior to the test happening.

**Cheryl Bidleman:** That's correct.

**Byron Allen:** Okay, and, um, did you know at that time that Mr. Farrow was still working in the field?

**Cheryl Bidleman:** Um, by the time that I was contacted, he was, I belie--- you know, again, this is recollection, um, he – he, well it was. He was already there, and they had already done the observation. So, I wasn't aware of the time leading up to that.

**Byron Allen:** Okay. So, um, going back to PMP 165, I believe that was number three as I've been made aware of. So, um, are you – are you fairly familiar with this? PMP 165?

**Cheryl Bidleman:** I am.

**Byron Allen:** Okay. And, um, so if you're – if you're on page 2 of the document under Prohibited Practices, uh, it, uh, talks about the term use or using, Uh, and that's in reference to, um, the, somebody being in violation. It says the term use or using shall be deemed to include under the influence of any drug and/or the physical act of taking the drug. So, are you saying then that the sole determiner for someone being under the influence is an observation of their speech and their eyes? Or, um, or do you see it being more than that?

**Cheryl Bidleman:** Well, so if you, if you look at the next item there on that same document, under procedures. Um, it talks about employees may be requested to undergo a drug screen test if the City has a reasonable suspicion that an employee has used or is using a drug. "Reasonable Suspicion" shall mean that articulable facts or information exists which appear reliable and discloses facts or circumstances which, when taken together... you can read the rest of it, but would convince an ordinary, reasonable person that the suspected person is under the influence of a drug. So, the form that we use, um... I can't remember what the number of your item... oh, it's, uh, I'm sorry, I don't know what the form is. But that reasonable suspicion form that you looked at, the reason that we use that form and that Milton coaches the managers before they go into that situation, is so that, you know, they -they- it's not just like somebody's personal, you know, opinion of what might be, you know, reasonable suspicion. They need to, um, see items... sorry my screen just. Oh. Okay. I'm still on, sorry. Um, they need to see, and have observations and things that they see on that form in order for it to qualify for reasonable suspicion.

**Byron Allen:** Okay. So, um, back to that, um, reasonable suspicion test documentation form. That's the one you're referencing right?

**Cheryl Bidleman:** Uhm hmm. (nodding)

**Byron Allen:** Um, would you say that if I had not seen you in a month or more and I'm seeing you at a time that you are working a double shift and I'm wearing a face mask. Would you say then that-that describing me as being drowsy, sleepy, or lethargic or withdrawn, having slow speech and bloodshot eyes – could that be mistaken for somebody who has put in a double shift? And is, uh, wearing a mask. Now, you haven't seen me in over a month, as Mr. Ritchie testified.

**Cheryl Bidleman:** You know, um, it's really, you know, Mr. Ritchie was the one there making the observation. I mean, I think people that I know... I feel like you are asking my personal opinion here. You know, of people that I know, if it had only been a month since I saw them, I think I would observe sleepy eyes. I can see their eyes if they are wearing a mask. I think I could observe, um, you know, somebody being slow or slurred. I don't slur when I wear a mask. Um, I think they observed being withdrawn. I think that, um, it seems like it would be a behavior and not something you would see on somebody's face necessarily.

**Byron Allen:** Okay, so, but those, again, those are all very subjective observations. Is that-is that a fair statement?

**Cheryl Bidleman:** They are observations that are on that list that say that if a reasonable person observes these things, combined with a strong smell of marijuana.

**Byron Allen:** Well, excuse me, but under body odors, this list does not have marijuana on his clothes as checked. It does not indicate anywhere on this reasonable suspicion document that there's a strong smell.

**Cheryl Bidleman:** Well, I was referring to, so they have these observations of Mr. Farrow, combined with other employees reporting the strong smell of marijuana in the work area.

**Byron Allen:** I understand that part, I get that. Thank you. Uh, but what I'm getting at is the reasonable suspicion test documentation does have a checkmark for, a box for the smell of marijuana and it's not checked. It's not even mentioned throughout the entire, um, interview here. So, everything that's checked on this is a subjective view of what they thought they saw. Is that fair?

**Cheryl Bidleman:** I think it is their observation.

**Byron Allen:** Okay, they're observation. That's another way of answering the question. Thank you. That's all I have. Thank you.

**Chair Summers:** Thank you. I will now proceed to the Board Members. Board Member Sexton?

**Board Member Sexton:** Thank you Madam Chair. Um, the, uh, Assistant to HR Director, I believe that's your title... Um, uh, I apologize, we're meeting for the first time and I didn't get your name.

**Cheryl Bidleman:** Uh, Chair Sexton.. we've actually met before, back in the day when we used to meet in the auditoriums and things like that. Uh, my name is Cheryl Bidleman.

**Board Member Sexton:** Ah, thank you. Bidleman, okay. Um, wanted to ask you about, um, a couple a things that you testified to. Um, does the – the urine test, um, tell you if someone is under the influence of drugs?

**Cheryl Bidleman:** Um, well the – the urine test as I understand it, shows you if they're positive for marijuana. It's the reasonable suspicion observation that gets you to that test even happening. Because if they didn't have those, uh, observations...

**Board Member Sexton:** Alright, I believe – I believe your statement earlier was that you test to see if you're under the influence of drugs. I believe that's what you said. Also, did you meet with, um, Mr. Farrow?

**Cheryl Bidleman:** No, I did not meet with Mr. Farrow. And, if I said that that's not what I meant.

**Board Member Sexton:** So, so, so you're... so you're reporting to us what was reported to you.

**Cheryl Bidleman:** That is correct.

**Board Member Sexton:** And someone reported to you that his speech was slurred.

**Cheryl Bidleman:** That is correct.

**Board Member Sexton:** Alright, alright. I didn't catch that anywhere else. Um, so, you know, I think all of us have seen a few intoxication cases where we had employees drunk or drinking on the job, and those were handled immediately. And you say this is a safety issue. Right, right? He had to be terminated, he had to be terminated, this was a special case because of the severe safety of this incident. That's what I believe you're saying.

**Cheryl Bidleman:** That is what I am saying.

**Board Member Sexton:** You're nodding your head; I'm not getting what you're saying.

**Cheryl Bidleman:** I followed that up with that is what I said. Correct.

**Board Member Sexton:** We're being recorded, so, you know, a yes or a no or that is correct would be much better than nodding your head. So, it seems like, uh, to me, that the cases we've seen were people drinking on the job were handled completely differently than this case. It seems like the cases we've seen where someone was believed to be or accused to be or suspected of being drunk or drinking on the job. Those were handled immediately. When were you notified of this?

**Cheryl Bidleman:** I was notified around the time that the observation took place.

**Board Member Sexton:** That morning...

**Cheryl Bidleman:** No, the observation took place...sorry, let me clarify what I was saying. So, the, um, after the supervisor met with Mr. Farrow, and they had the observation, they spoke to him...

**Board Member Sexton:** I—I'm confused. We're talking about 11 o'clock that morning?

**Chair Summers:** Dan if you would let her...

**Board Member Sexton:** I'm confused, I'm confused, I'm confused.

**Chair Summers:** Dan if you would let her answer the question. I mean, Board Member Sexton. Please let her finish her answer. Please let her finish her answer. Thank you. Please continue.

**Cheryl Bidleman:** Thank you. So, the approximate timeline and I think that uh, Mr. Ritchie laid the timeline out, but I think it started...

**Board Member Sexton:** Oh. Oh... you're talking about when Mr. Ritchie met with Mr. Farrow. Is that what you're talking about?

**Cheryl Bidleman:** Yes.

**Board Member Sexton:** Oh okay. Okay. I believe he said that was like 1:30.

**Cheryl Bidleman:** That is correct.

**Board Member Sexton:** Okay. That was when you were notified.

**Cheryl Bidleman:** No. So, okay. I'll give you a real high level.

**Board Member Sexton:** Sorry to interrupt. Please.

**Cheryl Bidleman:** I'm sorry, now I didn't hear what you said.

**Board Member Sexton:** I'm sorry. I was just apologizing for interrupting you the previous time.

**Cheryl Bidleman:** It's okay. I understand this virtual world is a little complicated. Um so, yes. Some time had passed between the time that they, um, that there was the observation in the, um, substation and the time that they were finally able to talk to Mr. Farrow. And, um, you know that's not ideal. I don't think that any of us would have wanted it happen that way, but it was the circumstances of, you know, the manager's on vacation, they're trying to get ahold of him, they're making phone calls. And then they're trying to find out who it was and where they were and he's no longer at the substation, he's now in another location. So, it all took a while for it to all transpire, including the amount of time it took for them to interview him and then call their HR Analyst and say we need permission to do this. What do we need to do? And then at that point, the HR Analyst calls me, as the designee, and we talk through what they're observations are. And then I tell them they can go ahead and do the test.

**Board Member Sexton:** Do you—do you know what time that was?

**Cheryl Bidleman:** I don't know what time that was.

**Board Member Sexton:** Alright, um, thank you Madam Chair. I think I'm good.

**Chair Summers:** Thank you Board Member Sexton. Board Member Hansen?

**Board Member Hansen:** Ms. Bidleman, at this point and unless I'm mistaken, the City hasn't offered any evidence that the urine test measures whether or not someone's intoxicated at the time that they take the drug test. Um, from the documentation that we have, indicates that the blood test will measure whether or not someone is intoxicated at

the time that they take the test, but that the urine test does not measure whether someone is intoxicated at the time they take the test. Do you know if Mr. Farrow was offered the option of taking a blood test so that he could attempt to prove that he was not intoxicated and under the influence of marijuana when he was on the job?

**Cheryl Bidleman:** I don't believe he would have been offered that. That's not part of our protocol. You could probably have asked him, but I don't think that would have happened.

**Board Member Hansen:** Okay. Do you think that would be a good policy of the City to offer that to employees, to have another test besides the urine test?

**Cheryl Bidleman:** I think you're asking my opinion again. My personal opinion is that it sounds extremely invasive, um, and you know, I'm not up to speed on, I think I heard our Attorney, Mr. Goulding, say that that's not valid for, um, this situation.

**Board Member Hansen:** If that is the City's position, if you force somebody to take a blood test that's too invasive but someone agreeing voluntarily to have a blood test is a whole different issue. Do you agree with that?

**Cheryl Bidleman:** I think it would be different if somebody agreed.

**Board Member Hansen:** Okay, alright. Let's see.... okay, I don't believe I have any other questions. Thanks.

**Cheryl Bidleman:** Thank you.

**Chair Summers:** Board Member Andrews?

**Board Member Andrews:** Yes, Ms. Bidleman? Is Mr. Farrow's position one that is identified as safety sensitive?

**Cheryl Bidleman:** You know, I ...we have a list of those safety sensitive positions, but I don't have it in front of me.

**Board Member Andrews:** So, you don't know if at the time the determination was made, that the testing was appropriate? Did you know whether his position was identified as safety sensitive?

**Cheryl Bidleman:** I didn't know that but that is not what the decision was about. The decision was about whether they had done the reasonable suspicion evaluation and whether the observations seemed to warrant that he could be under the influence, and therefore if he is, we grant the test.

**Board Member Andrews:** I am not looking at it right now but I believe what I saw in the letter of termination was a reference to he being in a safety sensitive position so that is why I was asking.

**Cheryl Bidleman:** I understand. Yeah, I think it is referring to the nature of the job as Mr. Ritchie described it; like the potential risk to coworkers and the public of a job like that going wrong.

**Board Member Andrews:** In your conversation with Mr. Ritchie, he did contact you directly. Is that accurate?

**Cheryl Bidleman:** No, slightly different than that. Mr. Ritchie contacted the HR Analyst who is Alissa McLain, described the situation to her and then she called me.

**Board Member Andrews:** So, in those conversations, did anyone say whether they actually observed him at that point and time to assess the degree of influence, and I'll say smoking marijuana because that's what was recorded. Did anyone go to his work site and make a direct observation of the effect of any type of smoking or inhaling at that point and time on his ability to do the job before it was determined to represent influence, inappropriate influence?

**Cheryl Bidleman:** No, but that is not part of our reasonable suspicion evaluation.

**Board Member Andrews:** So, define what does under the influence mean relative to any particular position.

**Cheryl Bidleman:** So, it's the reasonable suspicion observations so that; I don't know if somebody can tell me what the item number is of the document that's the reasonable suspicion form.

**Board Member Andrews:** It's R5.

**Cheryl Bidleman:** R5. If you were to look at that form, a supervisor is advised to go down that list and see if they observe any of those things or any number of those things. They are also advised to have a partner with them and in this case, that was Mr. Johnson. A partner in the observation, after they go down the list and they check the boxes, if there are boxes checked, they reasonably believe that based on their observation that that person is under the influence they request the drug test.

**Board Member Andrews:** My understanding is at the point this form was completed, they were not at Mr. Farrow's worksite and relating their observations and behaviors to his ability to perform the duties he is required to at that point and time

**Cheryl Bidleman:** They were not observing him at his workplace at that time.

**Board Member Andrews:** Is there a policy since the State of Washington legalized marijuana in twelve, and the City's policy uh ... I think is reviewed every five, ten years before plus or minus. I think in the material I read it said that it did not address non CDL employees. Does the City have a policy, since recreational marijuana is legal; is there a policy that says how much time must the employee be free from smoking marijuana or drinking alcohol before the shift, during the shift and after the shift. Since it is again, legal. Is there any policy like that?

**Cheryl Bidleman:** There isn't anything that prescriptive because I believe it would be different for everyone, right. If I have a glass of wine, it's going to take me a little bit longer to feel differently than somebody else. It's really, I believe it's accounted for in the reasonable suspicion observation because having observations of being under the influence then that's enough time and that is going to be different for everyone.

**Board Member Andrews:** I am not disagreeing with you but for me, I work 8 to 5, Monday through Friday and the job that I have I could be called in at a different time, would there be a policy, an expectation; an explicit policy that says two to three hours before my shift since I don't know whether I'll be called in or not to two to three hours after my shift because I don't know if I will be held over for overtime. Is there anything like that without specific regard to exactly my definite work schedule. Is there anything like that?

**Cheryl Bidleman:** No

**Board Member Andrews:** Thank you, I don't have any other questions.

**Chair Summers:** I have no questions for you but thank you so much for testifying. I think this is a good time for us to take a break and then come back. I would like us to come back at 7:20 PM. Feel free to take a break, we're in recess.

I call this meeting back to order. Mr. Goulding, if you would continue with your next witness.

**Attorney Goulding:** Thank you, we next call Chris Robinson

**Chair Summers:** Thank you, will you raise your right hand please. Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

**Chris Robinson:** I do.

**Chair Summers:** Thank you. Please proceed.

**Attorney Goulding:** Thank you. Mr. Robinson, can you tell us your job title?

**Chris Robinson:** Power Superintendent

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

**Chris Robinson:** Yes

**Attorney Goulding:** I want you to look at the City's exhibits R1 and R2. Can you please identify these documents for us?

**Chris Robinson:** Yes. Are you asking me to identify what documents they are?

**Attorney Goulding:** Yes

**Chris Robinson:** Hold on one moment please I have to enter the password back into my computer. Can you repeat the numbers of the documents please?

**Attorney Goulding:** R1 and R2

**Chris Robinson:** R1 is a Notice of Intent to Terminate dated April 7, 2021 which is signed by myself, Ms. Bidleman and Mr. Johnson. R2 is a discipline determination letter dated May 18, 2021 signed by myself.

**Attorney Goulding:** Thank you. So, both signed by you, right?

**Chris Robinson:** Yes

**Attorney Goulding:** As the Superintendent of Power, why did you decide to terminate here?

**Chris Robinson:** Largely for the reasons already shared by others, for safety concerns. Safety is the number one priority for the utility. Many of the jobs that our employees do at the electric utility have significant safety or inherent safety risks associated with them. In this case Mr. Farrows job entails high voltage switching that if not done correctly or effectively can result in serious injury or death to himself or other employees. If this equipment is not switched correctly the employees working on the equipment are potentially at great risk of being electrocuted. I believe no employee should be using drugs in the workplace, it is particularly dangerous in this case because of the duties associated with the job and the risk to other employees and potentially the public. The bottom line is that I felt that returning Mr. Farrow to his job would put him and fellow employees such as the gentlemen that originally reported the incident, Mr. Webber and Mr. Kaeponen, and their peers at risk. That was primarily the rationale.

**Attorney Goulding:** Thank you. Do you believe Mr. Farrow should be reinstated to his position?

**Chris Robinson:** No

**Attorney Goulding:** Do you have any other reasoning for why that should not happen?

**Chris Robinson:** For the reason I just stated. We take safety very seriously and being not 100% mind and doing this particular job is extremely dangerous for both the person doing the job and for fellow employees who are assuming switching has been done appropriately.

**Attorney Goulding:** Do you consider it to be unacceptable for an employee to be using or under the influence of drugs at work?

**Chris Robinson:** Yes, I would say that it is unacceptable for any employee to be under the influence of drugs or alcohol or using drugs and alcohol at the workplace.

**Attorney Goulding:** Thank you. No more questions.

**Chair Summers:** Mr. Allen

**Byron Allen:** Thank you, Madam Chair. Good evening, Chris. How are you?

**Chris Robinson:** I'm good, how are you Byron?

**Byron Allen:** Are you aware; have you ever been made aware of any safety concerns regarding Mr. Farrow before this issue?

**Chris Robinson:** No

**Byron Allen:** Have you ever had any reason to believe at all that there was a problem at the substation regarding any work that has been done there; have there been any mistakes made in the switching that you're aware of?

**Chris Robinson:** Not that I can recall.

**Byron Allen:** You related that the work that a Substation Operator performs in switching at substations is critical in nature and I wholeheartedly agree with that. Are you aware of other safeguards that are employed by workers that are downline from that substation to ensure that things were done correctly?

**Chris Robinson:** I don't have the expertise to answer that. I don't know the answer to that.

**Byron Allen:** Okay, would it be safe to say that there are safe work practices in place at Tacoma Power to ensure that mistakes that were made by one individual would not have a drastic impact on others; grounding, testing, any others?

**Chris Robinson:** Yeah, I would hope so.

**Byron Allen:** I have no other questions, thank you.

**Chair Summers:** Vice Chair Sexton, do you have any questions?

**Vice Chair Sexton:** Thank you. I think I would have maybe one question. Mr. Robinson, I'm curious, you know; I'm mostly curious about the same line of questioning I've asked earlier; you said this was a safety issue, safety concern that he had to be terminated for this. What time were you notified of this?

**Chris Robinson:** I don't recall exactly what time I was notified but it is highly unlikely it would have been the same day.

**Vice Chair Sexton:** So, how did you describe this event; a major safety incident?

**Chris Robinson:** Yeah, I would say it was a major safety incident if you want my opinion.

**Vice Chair Sexton:** Is that how you described it before, or you can describe it that way now. I don't care; but that's what you're calling it. You're calling this a major safety incident and it's fine to notify you eventually, the next day.

**Chris Robinson:** I don't think I referred to it as a major or minor event.

**Vice Chair Sexton:** There is a difference isn't there?

**Chris Robinson:** I don't know. Again, I didn't refer to it as major or minor. What I was trying to say earlier is having an employee in this role in the organization doing this type of work is a significant safety risk. Having somebody who's not of 100% of mind doing switching, is potentially very dangerous because you could do switching incorrectly, or do it out of order and there is risks to both the person doing the switching and to those who are relying on the switching if it is not done correctly. That's what I was trying to say.

**Vice Chair Sexton:** And that's based on the reporting that was done to you we think maybe the next day.

**Chris Robinson:** That's based on everything we discussed tonight, and reporting done to me and the counsel of experts in our organization; Electrical Engineers and such in our organization.

**Vice Chair Sexton:** And you believe that Mr. Farrow was smoking marijuana on the job that morning?

**Chris Robinson:** Base on the witnesses you heard from today and their declarations and testimony, yes, I believe that.

**Vice Chair Sexton:** Thank you. One other thing, if I may. You talked a little bit about your expertise. What exactly is your expertise?

**Chris Robinson:** I'm an Economist by trade but my role is to lead the management of the electric utility. So, I would say my expertise at this point in my career is around leadership.

**Vice Chair Sexton:** And you are satisfied with the leadership, um, on this issue?

**Chris Robinson:** I am extremely satisfied with the leadership on this issue.

**Vice Chair Sexton:** Okay. Great. Thank you.

**Chair Summers:** Board Member Hansen

**Board Member Hansen:** I have no questions.

**Chair Summers:** Board Member Andrews

**Board Member Andrews:** Mr. Robinson, did you interview Mr. Farrow?

**Chris Robinson:** No, Ma'am

**Board Member Andrews:** So, did you ask someone to specifically ask him if he was smoking marijuana during his shift?

**Chris Robinson:** No, I did not ask anyone to ask him if he was smoking marijuana. That was done by the others before I was even made aware of this happening.

**Board Member Andrews:** In the exhibit R1, there is a statement page 2, second sentence where it says that he denied consuming marijuana at the substation control house or on city property. What caused you to believe that was not accurate?

**Chris Robinson:** What caused me to believe that was not accurate was the fact that the declarations of the two gentlemen who had visited that substation and smelled marijuana at that substation; and there was only one individual at the substation at the time. Then, the subsequent interview that day by the manager or supervisor and in their opinion, they filled out the document; um, in their opinion they filled out the reasonable suspicion for a marijuana test and then the third part would be an actual marijuana test that day that came back positive for marijuana.

**Board Member Andrews:** Thank you. On page 2 of R1, the conclusion. That's where I read that the use of drugs while performing a safety sensitive job while (inaudible...). So, the position that Mr. Farrow held, is that specifically identified as a safety sensitive?

**Chris Robinson:** Yes, it is definitely a safety sensitive position. There is a lot of risk to him; I'm sorry, I didn't mean to interrupt.

**Board Member Andrews:** I know, and I (inaudible). Finish your thoughts, please.

**Chris Robinson:** There's a lot of jobs at the utility that I would say are safety sensitive, this being one of them. He works daily around high voltage which is inherently dangerous, and he has to be extremely careful in everything he does in order to keep himself safe and his colleagues safe.

**Board Member Andrews:** So are the positions that fall into that category that you identify as safety sensitive; are they written out. Are they exclusively identified in writing?

**Chris Robinson:** Not that I am aware of. I think that the reference to that in that letter was a generalization. I'm not aware of any list that categorizes some positions in the utility as safety sensitive and others as not.

**Board Member Andrews:** So, the basis for the drug test is just filling out the assessment form.

**Chris Robinson:** My understanding is the basis for the drug test was that we had two witnesses that smelled marijuana in the vicinity of this individual in addition to the assessment that you mentioned.

**Board Member Andrews:** Thank you, no other questions.

**Chair Summers:** I have no questions at this time, thank you for your testimony.

**Vice Chair Sexton:** Madam Chair

**Chair Summers:** Vice Chair Member Sexton

**Vice Chair Sexton:** If I may follow up, Mr. Robinson?

**Chris Robinson:** yes, sir.

**Vice Chair Sexton:** Do you believe that the urine test showed that Mr. Farrow smoked marijuana on job that day?

**Chris Robinson:** I believe the urine test indicated; again, I don't have expertise in urine tests or marijuana tests but just reading the test, what it indicates to me is that there was marijuana in his system because it came back positive. I think in combination with that and the other things I shared with witnesses and the physical observations by two other individuals both supervisor and manager; I think those things combined indicate to me that he did use marijuana during the work day at the substation and was physically impacted as a result.

**Vice Chair Sexton:** Thank you.

**Chair Summers:** Thank you. Mr. Goulding, if you would continue.

**Attorney Goulding:** We have no more witnesses, thank you.

**Chair Summers:** Thank you, at this time we will proceed to the Appellant's case. Mr. Allen if you would provide your first witness.

**Byron Allen:** Thank you, Madam Chair. I would like to call Rich Webber.

**Chair Summers:** Mr. Webber if you would raise your right hand please. Do you swear to tell the truth, the whole truth and nothing but the truth?

**Rich Webber:** I do

**Byron Allen:** It's been a long night so far and a long day too, thanks for hanging in there. Could you tell us your position with the City of Tacoma?

**Rich Webber:** I am a Senior Wire Electrician. My job entails working as an Electrician in substations. I am a Crew Leader.

**Byron Allen:** How long has you held that position?

**Rich Webber:** As a Crew Leader since 2008. As a Substation Electrician, I topped out in the Apprenticeship in 2000

**Byron Allen:** Do you know Mr. Farrow?

**Rich Webber:** I do. Not very well, but I know him.

**Byron Allen:** Have you ever encountered him at substations before?

**Rich Webber:** We did some work down on the tide flats one time and that was my first (inaudible) to him

**Byron Allen:** When would you say that was?

**Rich Webber:** Oh, I don't know. (inaudible) maybe 2018 or so

**Byron Allen:** On the day in question, March 24, 2021, could you tell us why you were at the Bridgeport substation?

**Rich Webber:** (inaudible) Yes, so my current responsibility in the wire shop is caring for back up of direct current systems; batteries, in order for us to make sure batteries operate properly we have to test them on occasion so part of that testing is making sure that we put the batteries on live charge and then come back and make sure they are now in (inaudible) and I know that this doesn't make much sense to some people. Once that's achieved you can go ahead and do your capacity test. The capacity test is basically the tell all if this battery will work when it's called (inaudible).

**Byron Allen:** A substation battery is basically a back-up power source for the substation, is that correct?

**Rich Webber:** That is correct

**Byron Allen:** Thank you. In charging the batteries, what type of batteries are at the Bridgeport Substation? Are they a lead acid, or what are they?

**Rich Webber:** They are lead acid

**Byron Allen:** Is that the same type of battery you would find in your vehicle?

**Rich Webber:** Somewhat, basically. It's in a see through; they call them jars (inaudible) and also service them; easier than a car battery and of course much larger.

**Byron Allen:** When these lead acid batteries are being charged, is there any type of gas that is being produced?

**Rich Webber:** There is. Hydrogen.

**Byron Allen:** Does hydrogen gas have a smell?

**Rich Webber:** Hydrogen gas does not have a smell.

**Byron Allen:** So, you are saying that there is no smell at all to be detected when you are charging a lead acid battery?

**Rich Webber:** If you were to pull the caps off of the electrolytes, the tops of the batteries (inaudible) add water to the tops of them; yes, you could smell sulfuric type fumes. You can't really smell the batteries when they are in their natural state.

**Byron Allen:** So, if there were a smell related to the battery, if that were to happen, it would be a pungent type of odor then

**Rich Webber:** Um, you would have to be really close in order to smell that; you would have to be right over the top of it in order to smell

**Byron Allen:** In your testimony, R4 I believe it is you indicated you entered the substation switch gear and immediately noticed a pungent odor. How big is that building that the batteries are contained in? Approximately. We're not going down to the inch.

**Rich Webber:** Probably no more than 15 feet wide with a corridor that; a narrow corridor in it, no more than about 8 feet from the front of the breakers to the back of the switch gear.

**Byron Allen:** You are pretty much; and the batteries take up a fair amount of space. Is that an accurate description?

**Rich Webber:** Roughly, about 2 feet. It was a tight deal. We only have 24 cells in there. It's about 2 feet deep by 4 feet high at the max. There's enough room for us to get through there comfortably.

**Byron Allen:** Okay and it's a fairly confined space though, right?

**Rich Webber:** Yes.

**Byron Allen:** In your statement that you made again, referring to R4, you indicated that the switch gear doors were open to their maximum and that the ventilation system was working. That ventilation system, is that an automatically switched system, do you know?

**Rich Webber:** Yes, it is. It is on a timer and it can also be used as a way to cool the switch gear when it gets too warm.

**Byron Allen:** Is it unusual to enter a building such as this substation and have the fan on?

**Rich Webber:** It is not.

**Byron Allen:** So, the observation of the fan being on is basically is just that. It's an observation of what you saw but really it wasn't out of the norm to have the fan going.

**Rich Webber:** Correct.

**Byron Allen:** As far as the doors being propped open, have you ever been at a switch block house; I'm sorry I'm old school, that is what we used to call them and not sure exactly the terminology today but have you ever been there when Mr. Farrow has been there and found the doors to be open?

**Rich Webber:** No

**Byron Allen:** Have you ever been at a substation blockhouse when Mr. Farrow has been there? Or is there a time, excuse me.

**Rich Webber:** Can't say that I (inaudible)

**Byron Allen:** I'm sorry?

**Rich Webber:** I cannot say that I have been.

**Byron Allen:** Okay, that's fair. So basically your observation then that the fan was on and the door was open; the fan was on could have happened at any substation and that the door was open uh, you not having been; to your knowledge not having been around Mr. Farrow, you don't do if that was his normal practice.

**Rich Webber:** I don't know that, no.

**Byron Allen:** Okay, so do you have a commercial driver's license?

**Rich Webber:** I do.

**Byron Allen:** Do you know what the difference is in drug testing standards is for CDL and non CDL employees at the City of Tacoma; I mean you've been sitting here through this whole testimony and probably you do now but did you know prior to tonight if there was a difference?

**Rich Webber:** I did not.

**Byron Allen:** Have you gone through drug and alcohol testing awareness; recognition awareness or anything like that?

**Rich Webber:** I am sure I have read literature on it. I can't tell you exactly where I have but yeah, I am aware of it.

**Byron Allen:** Alright. Last question Mr. Webber, and that is did you see Mr. Farrow using marijuana at the Bridgeport Substation on March 24, 2021?

**Rich Webber:** I did not.

**Byron Allen:** Thank you. That is all I have.

**Chair Summers:** Mr. Goulding

**Attorney Goulding:** Thank you. Mr. Webber, do you know the difference between a cigarette odor and marijuana odor?

**Rich Webber:** Yes, I do.

**Attorney Goulding:** Do you think it's okay for an employee to smoke marijuana at work?

**Rich Webber:** No, I do not.

**Attorney Goulding:** Are you comfortable having someone who is using drugs switching the power on and off when coworkers are working on the grid?

**Rich Webber:** No, I'm not.

**Attorney Goulding:** No other questions.

**Chair Summers:** Thank you. Vice Chair Sexton.

**Vice Chair Sexton:** No questions.

**Chair Summers:** Board Member Hansen.

**Board Member Hansen:** Mr. Webber, have you; I am not trying to embarrass you or anything but this is a termination and of course, we all know the stakes are very high in this situation uh, have you been in the presence of burning marijuana?

**Rich Webber:** I've smelled it before, but I can't say that I have actually been in the presence of it.

**Board Member Hansen:** Okay, so you haven't actually been in a place where someone is actually smoking marijuana or burning marijuana?

**Rich Webber:** I have seen people that have used it just before they've come up to me; something like that. I'm not usually in a group that does that, no.

**Board Member Hansen:** Okay, now the ventilation system in the substation; does that suck in air from the outside?

**Rich Webber:** I believe it exhausts the air and I believe what we're trying to do is; in this case regulate temperature in the environment of the switchgear and also to make the hydrogen gas ventilate in there so that it doesn't create an explosive environment.

**Board Member Hansen:** I see, okay. Did you smell; did you say that you thought you smelled pot in the building? Did you smell pot outside the substation building?

**Rich Webber:** I did smell it inside the building. I did not smell it before I entered it, nor after I left it. I went in from one side of the switchgear and then I exited the opposite end of the switchgear.

**Board Member Hansen:** Okay, so you were on two different sides of the building on the outside?

**Rich Webber:** Yes.

**Board Member Hansen:** Okay. I guess I; I don't have any other questions.

**Chair Summers:** Thank you. Board Member Andrews

**Board Member Andrews:** Mr. Webber, were you wearing a mask that particular day March 24<sup>th</sup> when you went into the substation?

**Rich Webber:** I probably was.

**Board Member Andrews:** Much like you are wearing that one?

**Rich Webber:** Yes. Whenever we're; Roger and I are both on the same crew and our proper; part of our personal protective equipment is to make sure we are wearing protective masks when we're in close proximity; and so being; having been in the vehicle there I probably had a mask on.

**Board Member Andrews:** When you encountered Mr. Farrow, how close were you to him?

**Rich Webber:** When I first saw him, he was outside of the building and then he entered the building. He was probably about at least 6 feet away.

**Board Member Andrews:** Did you smell any marijuana; I'll use that term, on his person?

**Rich Webber:** I did not. It was just in the switchgear.

**Board Member Andrews:** I have no other questions.

**Chair Summers:** I have no questions. Thank you for your testimony. Moving on, Mr. Allen your next witness please.

**Byron Allen:** Thank you, Madam Chair. We had requested that Mr. Kaiponen be here as well but I believe that Mr. Webber has provided answers to all the questions I would be asking Mr. Kaiponen so in the interest of time, I have no questions to ask of him.

**Chair Summers:** Do you have any other witnesses to present?

**Byron Allen:** Yes, we have one last witness we would like to call and that is Mr. Dylan Carlson.

**Chair Summers:** Mr. Carlson, nice to see you. Your picture is great though. Will you please raise your right hand? Do you swear or affirm to tell the truth, the whole truth and nothing but the truth?

**Dylan Carlson:** I do.

**Byron Allen:** Good evening, Dylan

**Dylan Carlson:** Good evening, Byron.

**Byron Allen:** First question is how long have you been in your current position with the City of Tacoma and what is that position?

**Dylan Carlson:** I have been the City of Tacoma's Senior Labor Relations Manager since June of 2018, a little over three years.

**Byron Allen:** Okay, can you tell me what is Tacoma Joint Labor?

**Dylan Carlson:** The Tacoma Joint Labor Committee is a coalition of trade unions that negotiates collective bargaining agreements and personnel policies with the City of Tacoma. The majority of the City's employee unions participate at Joint Labor but not all of them do.

**Byron Allen:** Do you participate at Joint Labor?

**Dylan Carlson:** Since I have been with the City, I have been the Chief Spokesperson for the City at that table.

**Byron Allen:** And prior to you being with the City did you participate in Tacoma Joint Labor?

**Dylan Carlson:** Prior to working at the City of Tacoma I was a representative for the Washington State Council of County and City Employees Local 120. I sat on the union side of the table.

**Byron Allen:** When did you start that position with Local 120?

**Dylan Carlson:** I started on January 1, 2011. It's an easy day to remember.

**Byron Allen:** Yeah, it is. You mentioned that Tacoma Joint Labor is empowered with; and tasked with writing and working with the city updating policies, is that correct?

**Dylan Carlson:** I would say that when the City has changes to personnel rules or policies that it wishes to implement, we have a statutory obligation to provide notice to our unions to bargain with the unions of our employees so we generally provide notice to the Tacoma Joint Labor Committee and then have those conversations there if the union wants to bargain impacts or just ask questions. It's a collaborative process.

**Byron Allen:** With your term with the City and also prior to that do you recall the issue of the City of Tacoma Drug and Alcohol Policy ever coming up?

**Dylan Carlson:** Yes.

**Byron Allen:** Can you recall off the top of your head when that first started.

**Dylan Carlson:** No.

**Byron Allen:** Would 2016 sound about right

Attorney Goulding: Chair Summers, I have an objection.

**Byron Allen:** I wasn't aware that we were able to do objections.

**Chair Summers:** I will hear what you have a complaint about Mr. Goulding but as you know we don't generally observe objections. This is a quasi-judicial hearing so what is your complaint Mr. Goulding?

**Attorney Goulding:** You can do what you want with the objection, but I have to object to this line of questioning as to lack of relevance.

**Byron Allen / Attorney Goulding** speaking over one another.

**Attorney Goulding:** We are here to decide what happened to an employee based on existing policies at the time of the incident, not some future speculative policy. That is my objection.

**Chair Summers:** Thank you. Thank you for that. Mr. Allen I would observe that he has a valid concern and that this questioning may not present further evidence of value to your participant at this time.

**Byron Allen:** The value Madam Chair is that the City of Tacoma's policy for testing for drugs and alcohol is a policy that is not fairly administered with regards to the laws in the State of Washington that change some 9 years ago. This has been brought to the City's attention on numerous occasions over the years as I stated since 2016, and Mr. Carlson was a participant in both as a union representative and as a representative of the City with regards to the problems of this policy. This policy with all of its failures and its flaws is being utilized to terminate an employee; one of our members; and therefore, I believe it does have relevance.

**Chair Summers:** Are you going to be making a closing statement and is any of that in your closing statement?

**Byron Allen:** You will hear this again, yes.

**Chair Summers:** Then you move very quickly through any other questions that you have.

**Byron Allen:** Certainly

**Chair Summers:** Of this witness, thank you.

**Byron Allen:** Absolutely. Mr. Carlson, are you aware of whether the City of Tacoma drug and alcohol testing protocol will indicate whether a person is under the influence of marijuana?

**Dylan Carlson:** That's not my specific area of expertise. I know that the policy has been long-standing; was negotiated by the parties in good faith and any deviation or changes from that policy require collective bargaining which has not yet occurred. Our task at the City is to follow the policy as written and enforce it reasonably and fairly.

**Byron Allen:** And again, back to my earlier question which you have eluded to in your answer, has it been a request made to the City of Tacoma to bargain to update that policy?

**Dylan Carlson:** Yes.

**Byron Allen:** Thank you. No other questions.

**Chair Summers:** Thank you. Vice Chair Sexton, do you have any questions?

**Attorney Goulding:** Can I ask a few questions, Chair Summers?

**Chair Summers:** Yes, I am sorry Mr. Goulding, of course. I apologize.

**Attorney Goulding:** That's okay. Mr. Carlson, based on your position with the City you have some expertise with labor laws, is that correct?

**Dylan Carlson:** I'd like to think so.

**Attorney Goulding:** And have you seen the Fife case mentioned by Mr. Farrow?

**Dylan Carlson:** I have read it, yes.

**Attorney Goulding:** And is this a Perc ruling?

**Dylan Carlson:** I don't think it is fair to characterize it as a Perc ruling.

**Attorney Goulding:** Is it fair to say it is not binding or precedential over this proceeding?

**Dylan Carlson:** That's definitely the case, it is a narrow ruling by an Arbitrator on specific facts of one specific case with the City of Fife, it's collective bargaining agreement with its employee unions and its own drug testing policy. They have a different policy than us and they have a different bargaining agreement than us. I think it would be inappropriate to apply that narrow ruling to us. It is not a ruling on any state statutes, it is a ruling on that employer's contract and personnel policies.

**Attorney Goulding:** Thank you. Do you consider the City's current policy PMP 165 to be invalid?

**Dylan Carlson:** I do not. It is the policy in effect, and it is our task to follow it until the parties mutually agree to something else.

**Attorney Goulding:** Is it fair to say that the policies from time to time that many could be improved?

**Dylan Carlson:** Yes. I think personnel rules are like good communication or even a great novel. The great American novel could always be a little bit better but at some point, you have to call it good and publish it and start running with it.

**Attorney Goulding:** Do you have a problem with a policy that holds an employee responsible for being impaired by drugs or alcohol at work?

**Dylan Carlson:** No, I think employees need to be held responsible for their actions at work.

**Attorney Goulding:** And you've been asked about efforts to create a new policy about drugs and alcohol at the City. Do you know of any proposals from Joint Labor to assist with this process?

**Dylan Carlson:** I'm not aware of any specific written proposals from the Joint Labor Committee. I know we've had a number of conversations, both on and off the record about the party interests, but the parties have not engaged in any formal negotiations at this point.

**Attorney Goulding:** Thank you. That is all I have.

**Vice Chair Sexton:** Madam Chair

**Chair Summers:** Thank you, Mr. Goulding. Vice Chair Sexton, do you have any questions?

**Vice Chair Sexton:** If I may follow up on that. Mr. Carlson, do you believe that Mr. Farrow was impaired?

**Dylan Carlson:** I have not seen enough of the specific facts of this particular case to weigh judgement on that in the way that the other witnesses you have heard here today. I defer judgement to those folks closest to the case.

**Vice Chair Sexton:** Okay, thanks so much.

**Chair Summers:** Board Member Hansen

**Board Member Hansen:** I have no questions.

**Chair Summers:** Board Member Andrews

**Board Member Andrews:** No questions.

**Chair Summers:** Okay, I think we're all getting tired, not just me. Are there any questions either party would like to bring before us? Hearing none, you are both allowed the opportunity to make your closing statement at this time. Again, beginning with Mr. Goulding if you would please.

**Attorney Goulding:** Thank you, Chair Summers. As you have heard previously, it is the City's burden under the Civil Service Board rules to show by a preponderance of evidence that it acted in good faith and for cause here. Preponderance means more probable than not that the City acted in good faith and for cause. This is not a beyond a reasonable doubt standard or even a clear and convincing standard. The City's evidence simply must outweigh evidence to the contrary not based on volume but being more credible and convincing to the mind. You only need to determine that it is more likely than not that Mr. Farrow used marijuana at work or was impaired by that usage. Employees smelled a strong odor of marijuana. Mr. Farrow was acting strangely and then tested positive for marijuana. The evidence points to the reasonable conclusion that Mr. Farrow used drugs at work or was impaired by that usage. The excuses and explanations to the contrary are not credible; not supported by the evidence and should not be relied upon. Mr. Farrow's actions violated City policy on drug and alcohol usage, PMP 165 and personnel rules 1.24.940 (g) for carelessness or negligence and (l) conduct unbecoming of a City employee which the Notice of Intent listed. Mr. Farrow violated these by carelessly or negligently operating or using City property while using and or being under the influence of drugs and showing conduct unbecoming by using and or being under the influence of drugs while at work. Management also cited two violations of Personal Management Policy 165 which is our exhibit R3. The term used or

using shall be deemed under that policy to include being under the influence of any drug or the physical act of taking a drug into the body. We submit that the City properly terminated Mr. Farrow under the code and City policies. In response to arguments to the contrary, it has been argued that our policies are outdated or invalid. Mr. Farrow has not been able to articulate how City policies are invalid. City policies may need updating from time to time, but even a new policy would not excuse Mr. Farrow's use of marijuana at work and impaired state while working on high voltage equipment. Mr. Farrow violated the policy in effect at the time of the violation. Urine testing for drugs: Mr. Farrow failed to articulate how urine testing is no longer legal or invalid. I-502 and current state law do not apply to drug testing in the workplace, it applies to criminal DUI enforcement which is currently confirmed by MRSC. Again, you can look at our exhibit which explains that. It shows the difference between blood and urine testing but right on that same page, it says that cities can continue with their current policies since this does not apply to the workplace. Mr. Farrow fails to show any evidence showing analysis of active metabolites which is not relevant employee testing anyway. Mr. Farrow has already conceded that he is a marijuana user and does not appear to contest the positive drug test results. No reasonable suspicion: Mr. Farrow suggests that his odd behavior could have been caused by working long hours, allergies or wearing a mask. Mr. Farrow also suggests that cigarette smoke or odor could have been mistaken for marijuana. These are not credible or legitimate explanations for his behavior. We submit that the City had sufficient cause to perform a reasonable suspicion test. There is also the claim that nobody saw him using marijuana. This is simply not required. The City has strong circumstantial evidence that Mr. Farrow used drugs at work based on the strong odor of marijuana, his behavior, and a positive test. We do not claim that anyone saw him using drugs at work but submit that you already have enough evidence to determine that he did use marijuana while at work. It has also been mentioned in Mr. Farrow's response brief that another employee at TPU recently tested positive for marijuana from Customer Service but was not terminated. Unlike Mr. Farrow, this is not a safety sensitive position; this is someone in an office at a desk and it could have been a good candidate for rehabilitation; not someone who is turning power on and off for line workers and there is no evidence for that employee that they were actually using drugs at work. There's a couple of things that I want to respond to that have come up during the hearing; the slow timing from the time employees observed him at the substation to the time that he connected with supervisors and got to be tested. That took some time and it is unfortunate that it took so long but they had to put some things together. Some supervisors were out but the point I'd like to make is even after all that time even if a few hours had gone by, he was still exhibiting signs to a supervisor that he should get a reasonable suspicion test. Chain of custody has been brought up. Chain of custody is not an issue in this case. The testing document you have is a self-certifying document. What does that mean? That means when that document is submitted, it means that everything has been followed properly and if it wouldn't have, they would have told us; but that is a document that is self-certifying and is admissible in a court of law. Also, there has been some discussion about whether he was under the influence or not and this is the part where the Fife case comes into play. If you read that, it is a case about an employee who was in an auto accident, was tested, and came up positive for marijuana; but he was not exhibiting any signs of being impaired; none at all. Even the responding officer that came on the scene did not notice any impairment at all. I would submit to you that that is how we show impairment at the City for a drug test. If we test

for cocaine, marijuana, heroin, or anything else, all we're going to get is a positive. We don't get a level. We have to show that there is reasonable suspicion that they were acting strangely, and we have a positive test. Those two things together show impairment. One without the other is not sufficient. I'd also note that it has been mentioned that marijuana is legal in the State of Washington. Remember, that is just for recreational use. It is not legal in the workplace. We're still obligated to follow the drug free workplace act and marijuana is still on the controlled substance list as an illegal substance. Safety is the top priority for Tacoma Power. Tacoma Power cannot in good conscience return an employee to work in such a highly safety sensitive position. Reinstatement of this employee erodes management's ability to keep employees and the public safe and discourages employees from reporting bad behavior. How does it look to the public if an employee that was smoking marijuana at work and impaired by that drug is now allowed to return to work on the power grid? We again ask that you deny the appeal. Thank you.

**Chair Summers:** Thank you, Mr. Goulding. Mr. Allen, do you have a closing statement?

**Byron Allen:** I do Madam Chair, thank you. I do again want to thank the members of the Civil Service Board. This has been kind of a long evening and think we all suspected that it might; thank you very much for your diligence and paying close attention this case. You have heard the arguments that have been put forth by the employer. The arguments are based on assumptions made by two workers as to Mr. Farrow's demeanor and odor that they smelled. We've shown in testimony that Mr. Webber had limited contact with Mr. Farrow; couldn't remember when he had actually been in a substation with Mr. Farrow before, yet the workers were able to determine Mr. Farrow's demeanor at the time; that he was acting nervous. I am not sure how I would know that having hardly ever met someone before. The batteries that were being charged that they were checking on; by their own testimony, the fans that were running are there to exhaust battery fumes that can become explosive so the fans are on a timer, they can be turned on automatically but they are on a timer and they were on when Mr. Farrow was there and that's not unusual according to the testimony. Mr. Farrow continued to work after the initial call was made to Mr. Webber and Kaiponen's supervisor for several hours continued to stay in the field after that report had been made to the supervisor and to the manager. Nothing was done about that; apparently there was not enough of a safety concern at that time to bring somebody in from the field based upon their saying that they thought they smelled marijuana in the switchgear area. The manager and supervisor have had no record of training and in fact, by Mr. Eng's testimony that he gave, he coached them on the filling of the reasonable suspicion document. The term coaching carries with it lots of connotations; we don't know exactly what level of coaching that was but it does indicate that they needed help in filling that out so it makes one wonder exactly if those were their observations or if those were observations that were implied when they were getting their coaching. The drug and alcohol testing that was conducted on Mr. Farrow was utilized using the commercial driver's license or CDL guidelines, although Mr. Farrow does not hold a CDL. It was indicated in the questioning of Mr. Webber who does have a CDL when asked if he knew there was a difference between the guidelines for CDL holders and non CDL holders, he did not know. Neither would Mr. Farrow know going into this; he having consumed marijuana at home there is no hiding that fact. He would be assuming going

into work that it wouldn't be a problem because he is no longer under the influence however, the City relies upon a commercial driver's license test for CDL holders to determine intoxication even though that test by everyone's statements here tonight does not determine intoxications. My battery is running low, uh oh, this is not good. So, I'll move quickly here. The employer utilizes the need for compliance with the drug free workplace act; they have done so with the drug and alcohol policy. They have done so with a policy. That policy is outdated. That policy has not been brought up to current standards. As Mr. Carlson pointed out, the great American novel at some point you have to go with it but that doesn't mean that it cannot be amended from time to time to make it even better which is what has been asked of Tacoma Joint Labor time and again to amend that policy and update it but they have not done so. No one witnessed Mr. Farrow taking in marijuana into his system. The statements made by individuals that his behavior was out of the norm; were made by people that had not seen him by their own testimony for quite some time. And so it seems like it would be a statement that doesn't carry a lot of weight. Last spring, Mr. Farrow was engaging in the home use of marijuana as allowed by state law. His off work uses of a legal substance much like the same as having a beer is protected by law. Since he is not a CDL holder he would not have had the expectation of being held to that standard of drug testing. Is it the City of Tacoma's position that all employees refrain from the legal activity of using marijuana on their free time? That seems to be the case here as the City has failed to update their testing policy to meet the standards set forth by the State of Washington for intoxication. The test of just cause has not been met by the employer. Non CDL employees would not expect to be held to the same standards of CDL employees and if so, does that mean that a non CDL employee is subject to the same CDL blood alcohol level of .04 instead of the non CDL of .08. The investigation by the employer was incomplete as it did not provide a level of detectable active marijuana metabolites and as such did not indicate that Mr. Farrow was under the influence as required by the City of Tacoma Substance Abuse Policy. The employer did not apply the penalty even handedly and we've shown in 2019 another City of Tacoma employee tested positive for marijuana under a reasonable suspicion test and returned to work after complying with the requirements of the substance abuse professionals. In that information that was provided by the City seemed to be one sided in that it only showed those that were terminated and did not show those that actually returned to their job. The employer has based the determination on the argument of safety yet on the date of the alleged incident Mr. Farrow was allowed to remain in the field doing his full scope of duties for several hours after his employer was made aware of the assumption of marijuana use. The termination of Mr. Farrow is based upon assumptions of his conduct, and suspicions of drug use and not seen or proven and inaccurate data collected under an outdated drug and alcohol policy. Members of the board, we ask that you take all of this into consideration and find that the City of Tacoma has failed to meet the burden of proof to support the decision to end Zebulah Farrow's employment and that Mr. Farrow be reinstated to his position of Substation Operator Senior and that he be made whole. Thank you. Now, I'm going to have to relocate to get my battery charged.

**Chair Summers:** Thank you. And thank you for presenting this briefing as briefly as possible. This is a very difficult place to have a hearing of any sort and I appreciate all of you being... taking into consideration a hard time. At this point, the board will move into an executive session which means that we will be going to another room with our

legal advisor. We will do that and try to make it back by 8:52PM. If we need to extend that we will but we will try to be back by 8:52PM. Ms. Fritz if you would take us to another room.

Entered executive session at 8:22PM

Returned from executive session at 8:53PM

**Chair Summers:** Is Board Member Andrews back?

**Board Member Andrews:** I am

**Chair Summers:** Do I hear a motion from the Board?

**Martha Lantz:** Chair Summers, if you want to call the meeting back into open session and make sure everybody is present.

**Chair Summers:** We are resuming our meeting. Do I hear a motion from my board?

**Vice Chair Sexton:** Madam Chair

**Chair Summers:** Vice Chair Sexton

**Vice Chair Sexton:** I move that we grant the appeal and find for the relief requested of reinstatement and back pay.

**Chair Summers:** Do I hear a second?

**Board Member Andrews:** Second

**Chair Summers:** It has been moved and seconded. May I have a roll call taken by the Coordinator?

A VOICE VOTE WAS TAKEN: 4 AYES, 0 NAYS. THE APPEAL WAS GRANTED WITH RELIEF REQUESTED.

**Chair Summers:** The Facts and Findings will be distributed...we will be spending a little more time on them but at this point, the board has ruled for the Appellant. I do want to thank everybody for their presentations and keeping it brief. This is just a very difficult forum to do hearings in and I appreciate all of the cooperation and patience from everybody. Without any further comments this meeting is adjourned.

**Martha Lantz:** Chair Summers, I just wanted to state that the board's findings and conclusions; they will be working on drafting them, but they will be adopted at a future meeting. So, that will be on an agenda.

**Chair Summers:** You will be notified of when that meeting will be, and it will probably be a Zoom meeting. Hearing no other comments, we are adjourned.

**Meeting Adjourned: 8:56PM**