



Minutes Tempe Merit System Board July 11, 2013

Minutes of the Tempe Merit System Board Meeting, held on Thursday, July 11, 2013, 8:00 a.m., City of Tempe Council Chambers, 31 East 5th Street, Tempe, Arizona.

Board Members Present:

James P. Foley, Chair
Russell Schoeneman
Bill Munch

City Staff Present:

Renie Broderick, Human Resources Director
Susan Buck, Human Resources Specialist
David Park, Assistant City Attorney
Brad Fuller, Plant Operations Manager

Others Present:

Richard Ralph
Lindsay Leavitt
Deborah Gonzalez

Witnesses Present

Constance La Count
David Hippen
Jeremy Mikus
Greg Humphries
Amin Jafar
Luiza Yordanova
Bradley Fuller

Chair James Foley called the Meeting to order at 8:00 a.m.

Chair Foley addressed Agenda Item I, the meeting minutes from April 30, 2013. Mr. Schoeneman made a motion to approve the minutes as written; Chair Foley seconded the motion and Mr. Munch abstained from voting. Chair Foley noted the minutes were approved and clarified that Mr. Munch was abstaining due to the fact that he was not a member of the Board at that time. Chair Foley welcomed Mr. Munch to the Board.

Chair Foley then addressed Agenda Item IV, convening the Hearing on the Appeal of Richard Ralph at 8:01 am. Roll call was taken. Chair Foley instructed the Witnesses present as to the confidentiality of their testimony and informed them that they would be sworn in under oath at time of testimony. Witnesses were then excused until called upon to testify.

Chair Foley stated that Mr. Ralph requested a Public Hearing and noted that at point of deliberations Mr. Ralph would have the opportunity to stipulate that deliberations may occur in private session should he wish to do so. Chair James Foley noted that there were no Pre-Hearing Motions. He stated that the purpose of the Hearing is to review evidence, take testimony and make a recommendation to the City Manager as to the appropriateness of the disciplinary action taken against Richard Ralph. Chair Foley read a list of the sustained allegations of violations of Personnel Rules & Regulations from the disciplinary termination documents.

Chair Foley stated the conduct expected from participants during the Hearing and reviewed the Board responsibilities. He further noted that Appellant has the burden of proof and will make the first presentation and that each party has 3.5 hours to present their case, after which the Board will go into deliberations.

Mr. Leavitt gave his opening statement, indicating the key question was the purpose of discipline. He noted that the City of Personnel Rules & Regulations Section 406 states that a process of progressive discipline is followed to allow classified employees adequate opportunity to correct unacceptable behavior. Mr. Leavitt detailed Rick Ralph's combined 23 year employment history with the City of Tempe, with no prior disciplinary actions. Mr. Leavitt stated that Mr. Ralph is alleged to have violated four policies of the City in three different incidences that occurred January 8, 2013; January 29, 2013; and February 4, 2013. While Mr. Ralph disputes the allegations of the incidents on January 8 and January 29; he will not dispute that he made a mistake on February 4. Mr. Leavitt noted that in its public notification of the monitoring violation on February 4, the City of Tempe said it was an inadvertent mistake. Progressive discipline in other cities allows a written reprimand, then a suspension of varying time and then the top level is termination. The City of Tempe chose to ignore an opportunity to allow Mr. Ralph to correct his behavior and chose to terminate him immediately. Mr. Leavitt summarized by saying that Mr. Ralph was not given adequate opportunity to correct his behavior, the discipline given was excessive and the evidence presented today will clearly show that.

Mr. Park gave his opening statement, indicating the challenge of this case is in understanding the duties of a plant operator. Mr. Park noted the plant operators are often completely unsupervised and in charge of the plant, often for their entire shift and have a dual role of responsibility for public health and safety for the water supply and the tremendous trust that they will do their job while there. The City doesn't expect operators to work mistake free; in many cases progressive discipline is appropriate and you take steps to correct behavior. There are some mistakes made as an operator that are unforgivable; those are the kind of mistakes that jeopardize the public health and safety of the water supply. Mr. Park stated the evidence will show that on February 4, 2013, Mr. Ralph ignored the essential responsibilities of his job and essential rules of a plant operator and in a two week period there was a dishonesty violation, a turbidity issue and a Tier 3 monitoring violation. Mr. Park provided a PowerPoint presentation with diagrams of the water treatment process, the filtration process and the chlorine disinfection process, including the chlorine compliance meter. He provided examples of "trends" used by the plant operators, typical readings for a chlorine meter and a snapshot of the meter taken offline on February 4, 2013. Mr. Park presented images of workstations, the standard operations procedure manual and quick reference screens. He described the two Tier 3 monitoring violations the City incurred in the past 5 years. Mr. Park detailed the January 29, 2013 incident with a filter backwash and turbidity, the incident on January 8, 2013 pertaining to monitoring Filter #4, and Mr. Ralph's statements to Brad Fuller on January 22. Mr. Park summarized that there was a series of mistakes from an operator with responsibility for public health, that can't be trusted to tell the truth in an emergency situation, and who violated standard operating procedures. Mr. Park stated the February 4 incident alone would be serious enough to terminate him, definitely when combined with the other two incidents, and the City will show that today through testimony.

Chair Foley questioned Mr. Leavitt regarding a witness on his list, James Cecil. Mr. Leavitt indicated that Mr. Cecil was not available and is no longer on his witness list.

Appellant Rick Ralph was called to testify, sworn in under oath by Chair Foley and questioned by both Mr. Leavitt and Mr. Park. Mr. Ralph testified as to his background, education and licensing. He gave an overview of his work history both in water treatment and water compliance. Mr. Ralph detailed his two periods of employment with the City of Tempe totaling 23 years. He further described his job positions and promotions and his experience working at the north plant, south plant and SCADA. Mr. Ralph testified that he had no previous disciplinary history with the City and detailed the City's response to the three incidents in January and February 2013.

Mr. Ralph described the irregularities with water filters on January 8, 2013, the request from Amin Jafar to watch the control panel for Filter #4, problems with other filters, NTU readings, how quickly readings can change, turbidity meters and why he left the control room. He testified regarding trends for filters on January 8, 2013 and provided details about a subsequent plant operator meeting on January 22, 2013 and his conversation with Brad Fuller at that meeting. Mr. Ralph testified regarding filters in crisis, described the filter gallery and his actions there, his whereabouts during that time and the duties of a plant operator.

Mr. Ralph testified regarding the incident on January 29, 2013. He described backwashing filters, the difference in flow between both treatment plants, putting a filter to waste and back on line, turbidity spikes, grab samples, turbidity alarms, NTU readings, graphs, standard operating procedures and the plant operator summary card. He testified as to the various methods of alarm notifications used at the plants. Mr. Ralph detailed his conversation with his supervisor, Luiza Yordanova. He testified as to his experience backwashing filters and the frequency with which it needs to be done.

Mr. Ralph testified as to the events on February 4, explaining a chlorine meter's function, what a compliance monitoring meter is, the monitoring process, why the chlorine meter was taken offline, how to calibrate a chlorine meter, trends, how to check readings and grab samples. He testified as to his daily log, the obligations for documenting actions, how long it takes to do rounds and his log for February 4, 2013. He stated that he takes full responsibility for the incident on February 4, 2013. Mr. Ralph described how to check a filter reading, normal readings for the filters and the reading on February 4, 2013. He testified about checks and balances, communicating with the SCADA control operator and the duties of a SCADA control operator and his regret that the SCADA control operator in this instance also lost his job.

Mr. Leavitt objected to Mr. Park's question regarding previous incidents not documented in the record. Chair Foley sustained the objection and disallowed the line of questioning.

The Board asked clarifying questions regarding issues with filters on January 8, filter turbidity readings, consistency in readings, how quickly readings can change, options available when checking on filters, consequences of not checking on filters, and how to tell which filter is in crisis. They asked about the SCADA control operator's role, readings for chlorine meters, the importance of failing to notice the meter reading, the timing of disciplinary occurrences, Mr. Ralph's shift assignments and Mr. Ralph's previous discussions with supervisors about errors. The Board also asked additional questions about filter NTUs, filter turbidity, the timeframe of readings, the process of taking a meter offline, grab samples, recalibrating a meter and the time frame involved.

Mr. Park offered to print a minute by minute transcript of the readings for January 8, 2013 to clarify for the Board. Mr. Leavitt objected to adding an exhibit not previously disclosed. Chair Foley noted the clarification would be helpful for the Board and overruled Mr. Leavitt's objection. The Board will allow the City to run the transcript, provide it when ready and the Board will hear objections at that time.

Mr. Ralph was excused as a witness.

The Hearing recessed for a break 10:18 a.m. – 10:33 a.m.

Mr. Park stated the transcript copy of the trends on January 8, 2013 was ready and showed trends every 2.5 minutes. Mr. Leavitt objected that the transcript had not been disclosed in advance as dictated by the Board guidelines. Mr. Park noted that the transcript was being provided as clarification for the Board and that the Appellant had previously been provided the same information via a public records request. Chair Foley acknowledged the Board guidelines state a submittal timeline, but noted the guidelines also state the Board is not bound by strict rules of evidence. Chair Foley stated the Board raised questions regarding the discrepancies presented by testimony and if the transcript reconciles those discrepancies, then he will allow it. Chair Foley overruled Mr. Leavitt's objections and ruled to allow the transcript to be entered into the record. Mr. Leavitt noted this was a dangerous precedent. Chair Foley stated the Board will allow both attorneys to review the document during the lunch recess previous to admitting it into record.

Witness Constance La Count was called in testify, sworn in under oath by Chair Foley and questioned by both Mr. Leavitt and Mr. Park. Ms. La Count testified as to her background, her education and her employment with the City of Tempe, including her current duties as a SCADA Control Center Operator. Ms. La Count testified as to her shift on February 4-5, 2013, the many items the SCADA operator is responsible for monitoring, the readings and trends that she looks at, irregularities she noticed with the chlorine monitoring meter, and her conversation with Ted Vahovick regarding that meter. She further testified as to trends for that meter, her actions regarding the flat-lined trend, her conversations with the plant operators on shift at the time, and her analysis of the trends and graphs for February 4-5, 2013. Ms. La Count testified as to the chlorine disinfectant measuring levels, the acceptable ranges of chlorine and the trends for that time period. She read into the record a letter from Jeremy Mikus at the City of Tempe to Maricopa County Environmental Services dated February 5, 2013 notifying them of the failure to monitor that occurred on February 4, 2013. Ms. La Count interpreted the graph included in the letter.

Mr. Park objected to Mr. Leavitt's questions about employee gossip regarding employees terminated due to violations of the Personnel Rules. Chair Foley sustained the objection and ruled that as Ms. La Count was not in a supervisory capacity and did not have first-hand knowledge of employees disciplined or terminated, he would not allow testimony based on gossip.

Ms. La Count testified regarding Water Quality Reports issued by the City, monitoring failures at the City, and her knowledge of any resultant disciplinary terminations.

Mr. Park objected to Mr. Leavitt's question pertaining to Ms. La Count's personal knowledge of any employees terminated due to monitoring violations. Chair Foley overruled Mr. Park's objection and allowed the testimony.

Ms. La Count continued testifying regarding the public notification process for monitoring violations and her knowledge of any employees terminated as a result. She read into the record a letter she wrote dated April 3, 2013 in support of Rick Ralph. Ms. La Count testified as to direct responsible charge, areas of responsibility, plant operators' responsibilities, SCADA duties, the use of trends, the difference between trends and number-based readings, pins, compliance meters, chlorine analyzer readings, the chlorine compliance meter, the chlorine treatment process, the actions of the SCADA operator on February 4, 2013, best practices and trends as tools.

Mr. Leavitt objected to questioning from Mr. Park pertaining to actions taken by Ted Vahovick on February 4, 2013, indicating this hearing did not pertain to Mr. Vahovick. Mr. Park indicated the questioning pertained to changes made that would impact safety. Chair Foley overruled the objection and allowed the question.

The Board asked clarifying questions regarding disciplinary terminations of employment, her non-supervisory role, plant operator errors she is aware of, the use of trends, the role of the SCADA operator, redundant chlorine monitoring and monitoring locations. The Board thanked Ms. La Count for her testimony and she was excused as a witness.

Witness David Hippen was called in to testify, sworn in under oath by Chair Foley and questioned by both Mr. Leavitt and Mr. Park. Mr. Hippen testified as to his background, his education, his employment history with the City of Tempe and his current role as a part-time plant operator at the City of Tempe. He testified as to his professional opinion of Mr. Ralph and read his email from April, 2013 supporting Mr. Ralph into the record. Mr. Hippen stated that he had no personal knowledge pertaining to the facts surrounding the allegations.

The Board declined to question Mr. Hippen and he was excused.

Mr. Leavitt rested his case.

The Hearing recessed for lunch 11:33 a.m. until 12:30 p.m.

Witness Greg Humphries was called in to testify, sworn in under oath by Chair Foley and questioned by Mr. Park and Mr. Leavitt. Mr. Humphries testified as to his duties as a Control Center Supervisor and that he was not a direct supervisor of Rick Ralph. He described the use of SCADA systems, his employment history and his employment with the City of Tempe. Mr. Humphries explained how he became aware of the "failure to monitor" incident on February 4, 2013, his role in the investigation and the trends and logs used to identify the issue. He testified as to the role the chlorine plays in water treatment, the water plant chemical set-up, the filtration system, chlorine meters, his experience as a plant operator, the skill-based pay program, the different meters at the plant and the importance of the compliance meter. He explained the term "compliance", the significance of the numbers generated, the frequency of monitoring and the importance of chlorine. Mr. Humphries described the role of plant operator, supervisor availability, shifts worked, the role of a SCADA operator, monitoring and adjustments made to water operations. He testified as to monitoring controls, the control dashboard, graphs, the competent operation of a plant and hourly monitoring of trends. Mr. Humphries described his actions investigating the events on February 4, his contact with Jeremy Mikus and Luiza Yordanova, his review of documentation and data pulled for the notification to Maricopa County, the potential failure to monitor, state requirements, a Tier 3 violation and the consumer confidence report. He stated that he looked at pumping changes, what contributed to the issue and described the process to prove if the water is safe. Mr. Humphries testified regarding meter trends for February 4, 2013, the effects of the readings, and the results of not monitoring meters. He described the difference between residual/off gassing, the seriousness of the February 4 violation, pumping and dosing changes made by Ted Vahovick and the shared responsibility between plant operators and the SCADA control operator.

Dave Park objected to Mr. Leavitt's question pertaining to Section 406 of the City's Personnel Rules & Regulations, asking for Mr. Humphries to speculate as to the serious nature of Mr. Ralph's actions. After discussion, Mr. Park stipulated that Mr. Humphries is not in a position to be able to determine whether Mr. Ralph's failure to monitor was a serious offense under the City's Personnel Rules & Regulations.

The Board declined to question Mr. Humphries and he was excused.

The Hearing recessed for a break 1:10 p.m. -1:15 p.m.

Witness Jeremy Mikus was called in to testify, sworn in under oath and questioned by both Mr. Park and Mr. Leavitt. Mr. Mikus testified as to his employment history, his current role as Environmental Program Supervisor, and the programs he manages at the City of Tempe. He briefly described the Safe Drinking Water Act, adoption of that act by ADEQ and Maricopa County's implementation of the act. He testified as to the regulatory requirements as to monitoring chlorine in water supply, the role of chlorine in the water supply, its importance in the filtration process. He explained the role and importance of the compliance meter, the range of chlorine levels that are acceptable, the

number of chlorine meters at the water plant and their locations. He also testified as to monitoring requirements, the difference between continuous monitoring requirements and monitoring at plant level. He described how he was notified of the violation on February 4, the emergency nature of the violation and the need to determine the type of violation to know the reporting requirements. Mr. Mikus described Tier 1, Tier 2 and Tier 3 violations of the Safe Drinking Water Act. He testified as to the actions taken to determine what type of violation occurred, the employees that worked on the investigation, the public safety concerns that arose and the "belt-suspenders" approach that the City of Tempe uses. Mr. Mikus testified as to the notification letter that he sent to Maricopa County regarding the failure to monitor on February 4, 2013, his knowledge of the details pertaining to the monitoring violations listed in the 2006, 2008, 2010 and 2012 Water Quality Reports to the public and read excerpts of the reports into the record.

The Board declined to question Mr. Mikus and he was excused.

Witness Amin Jafar was called in to testify, sworn in under oath by Chair Foley and questioned by both Mr. Park and Mr. Leavitt. Mr. Jafar testified as to his current position with the City of Tempe as a Plant Operator, his education and employment history. He briefly described the role of a plant operator, the supervision provided, the need for monitoring the plant and the tools available. He described his use of trends, his training, the process for calibrating the compliance chlorine meter and the use of grab samples. Mr. Jafar testified as to the incident on January 8, 2013 and his discussion with Mr. Ralph regarding monitoring Filter #4. He described emergency text messages sent to the plant operator via City cell phones, methods of determining problems with filters, his return to the monitoring station, his visit to the filter gallery and his conversation with Mr. Ralph later that day. He described the January 22, 2013 meeting with plant operators and Mr. Ralph's statements during that meeting. Mr. Jafar testified as to the reasons why filters are flushed, the trends from January 8 and his work history with Mr. Ralph.

The Board asked Mr. Jafar clarifying questions regarding notification text messages sent to operators, other notification tools, training on using trends and if trends are a requirement. Mr. Jafar was excused as a witness.

Witness Luiza Yordanova was called in to testify, sworn in under oath, questioned by both the Mr. Park & Mr. Leavitt. She testified as to her education, her employment history and her employment with the City of Tempe. Ms. Yordanova described her role as a Plant Supervisor and noted she was Mr. Ralph's supervisor and was directly involved in the disciplinary action in this case. She testified regarding the incident on February 4, 2013, when she was made aware of the issue, the importance of health and safety in the role of a plant operator, and the significance of the violation. Ms. Yordanova described her review of Mr. Ralph's logs for that date, monitoring reports, the process to calibrate the compliance meter, graphs and trends. She testified regarding the incident on January 29, the backwash process, the turbidity meter, cleaning filters, "filter to waste", and the plant operator summary card. Ms. Yordanova described the events on January 8, her consultation with Bruce Wegner, the text alert system at the water plant, her visit to the filter gallery and the conversation on January 22 between Mr. Fuller and Mr. Ralph. She testified as to the significance of the trends on January 8, 2013. Ms. Yordanova testified as to the reasons for her recommendation of disciplinary termination. She testified as to her opinion of the safety of the water on February 4.

Mr. Leavitt objected to Ms. Yordanova's reference of previous incidents not entered into the record. Chair Foley sustained Mr. Leavitt's objection and ruled that previous incidents not entered in the record are not admissible.

The Board declined to question Ms. Yordanova and she was excused.

The Hearing recessed for a break 2:54 p.m. until 3:06 p.m.

Witness Brad Fuller was called to testify, sworn in under oath by Chair Foley and questioned by both Mr. Park and Mr. Leavitt. Mr. Fuller testified as to his employment history at the City of Tempe, his current role as Plant Operations

Manager and his educational background. He described his role in the disciplinary action, his conversations with Luiza Yordanova and Greg Humphries. Mr. Fuller testified as to the monitoring violation in 2008, the practices in place at the time, steps taken to understand that situation and the new compliance tools in effect with built in redundancy. He testified as to monitoring chlorine meters, grab samples, tools given to employees, good habits, policies pertaining to trends, the fluctuations of turbidity monitoring, fail safe systems used to reboot meters, redundancy meters, accountability and the management of risk. Mr. Fuller testified as to his view of progressive discipline and responsibilities for compliance.

The Board asked Mr. Fuller clarifying questions regarding the disciplinary termination and who made the decision to terminate Mr. Ralph's employment. Mr. Fuller was excused.

Mr. Leavitt asked for clarification regarding the order of the closing statements. Chair Foley indicated the Appellant goes first, followed by the City, as stated in the Board guidelines.

The Hearing recessed for a break from 3:49 p.m. until 4:04 p.m.

Mr. Leavitt gave his closing statement indicating the City of Tempe has a policy for progressive discipline to afford classified employees the opportunity to correct unacceptable behavior. The City of Tempe seems to view this disciplinary action as punishment, not an opportunity to correct behavior. It seems clear from testimony the discipline is based on potential violations. Mr. Ralph has 23 years of experience at the City of Tempe, 33 years of water quality experience over his life, with no prior discipline at the City of Tempe. The City is saying that progressive discipline was not necessary because the Personnel Rules Section 406 states that a serious offence may lead to immediate dismissal. Mr. Ralph made a mistake on February 4 and has fully accepted the blame. Given the opportunity to take corrective action, he would do so. There is no evidence the chlorine residual dipped below unsafe levels. This sets a bad precedent if Tempe workers can be punished for potential of harm. In the previous annual Water Quality Reports for 2006, 2008, 2010 and 2011 there were acute violations, but no employee terminations resulted. The discipline seems excessive and we need to look at precedents. There are four personnel rules he is alleged to have violated. The burden of proof is to show that it is more likely than not that he violated these policies. Rule 406.B.1 states that the employee lacks sufficient competency or efficiency, but the fact that he messed up one day at work out of a 23 year period does not suggest he lacks sufficient competency. The evidence does not support that. Rule 406.B.2 states that the employee is unsafe to himself/herself, other employees, the public or City property - but the evidence does not support this. He made one mistake but the mistake did not cause any probability of danger to the City water supply. Rule 406.B.8 states that through negligence or willful conduct the employee caused damage to public equipment or waste of public supplies. There was no damage to the meter, when it was on hold other employees had to take it off hold. If that is a waste of public supplies, we will give them that. Rule 406.B.29 states the employee has been dishonest in the course of performing his job. Listening to the testimony it doesn't make sense that Mr. Ralph would volunteer to assist then leave to go paint. Instead he left to go check on a filter; there are two entrances to the filter gallery, it is possible he was leaving when others were entering. Mr. Ralph expected a written reprimand or a suspension, but the action taken was clearly excessive. The City has indicated that they do not expect operators to work mistake free, but clearly from the action they have taken they do. It is an unreasonable and an unbelievable way to run a business or government entity to fire someone because they made one mistake.

Mr. Park gave his closing statement indicating that the role of a plant operator is unique with a tremendous amount of responsibility. The City has to have trust and confidence in the operator and doesn't expect them to work mistake free but does expect them to complete the most basic functions of their job. The mistake isn't that the chlorine meter was calibrated and he didn't put it back online, but that he never looked at it again. The drinking water was safe through dumb luck, but that is not justification for reinstatement. The comparison to the 2008 compliance issue is legitimate in the sense that there was a Tier 3 violation, but in that case the problem was with the meter itself, in this case the

operator is the issue. The shift after Mr. Ralph found the issue fifteen minutes after they started. Mr. Ralph called it a serious violation and it is not reasonable to read it as a single incident. There were three incidents close in time, with February 4 being the most important. Mr. Ralph can't be trusted in the same position of plant operator.

Chair Foley noted the evidentiary part of the hearing was at a close. Chair Foley clarified that the deliberations would occur in public session unless the Appellant requested they go into private session. Mr. Leavitt requested public deliberations.

The Board discussed the testimony and evidence presented as it pertained to each of the Personnel Rules & Regulations violations listed in the disciplinary termination documents.

Pertaining to violation 406.B.1, the Board discussed Mr. Ralph's 23 years of service with the City, with no previous disciplinary actions and noted that he appeared fully competent to perform the duties of his position. The Board did not find sufficient evidence to support this charge.

Regarding violation 406.B.2, the Board discussed the chlorine monitoring process and noted that it is one of the most important aspects of the water treatment process and is one of the main responsibilities of a Plant Operator. Based on the testimony and evidence provided, the Board found that Mr. Ralph failed to execute due diligence in performing his duties and that resulted in a potential threat to public safety and health. The Board found this charge sustained.

In discussing violation 406.B.8, the Board noted that while the testimony and evidence show that Mr. Ralph may have been negligent, the record does not support a finding that he caused any damage to public property or a significant waste of public supplies. The Board did not find evidence to sustain this charge.

For violation 406.B.29, while the Board acknowledged there was conflicting testimony, the preponderance of evidence shows that the employee was not truthful in his statements as to his whereabouts on January 8, 2013. The Board found this charge sustained.

The Board discussed the level of disciplinary action taken and determined that the serious nature of the two sustained violations are sufficient support to recommend upholding the disciplinary termination of employment.

Mr. Schoeneman moved to approve the recommendation; Mr. Munch seconded; motion approved by voice vote 3-0.

Chair Foley stated the Board will direct staff to type a letter stating this recommendation to the City Manager. Copies will be provided to both parties. Either party may appeal the recommendation by submitting a written letter to the City Manager by 5:00 p.m. on July 17, 2013. The City Manager's decision will be final.

Motion to adjourn by Mr. Schoeneman; seconded by Mr. Munch.

The meeting was adjourned at 5:02 p.m.



Renie Broderick, Merit System Board Secretary