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CIVIL SERVICE COMMISSION

BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE

IN RE THE APPEAL OF: )

DONNA COUSINS, )  
Appellant, )

vs. )

CITY OF SEATTLE, )  
Respondent )

No. 00-01-017

FINDINGS OF FACT, CONCLUSIONS  
OF LAW, AND DECISION

Donna Cousins, an Administrative Specialist I for the City of Seattle Legislative Department appeals her termination from employment. The specific issues identified at a prehearing conference in January of 2001 were as follows:

1. Whether the City had justifiable cause to place the appellant in the corrective action process;
2. Whether the City and/or the appellant complied with the rules and code governing the use of the corrective action process;
3. Whether a failure by the City and/or the appellant to comply with the corrective action process warrants termination; and
4. Whether due process was followed in the administration of the corrective action process and/or termination process.

Order, Issues, and Schedule, January 10, 2001.

This matter came on for hearing on January 24, 2002, and continued January 25 and 28.

Appellant represented herself, but had assistance on one day from Charles Oliver of the NAACP.

1 The City of Seattle Legislative Department (hereinafter, "the Department") was represented by  
2 Jeffrey Julius, of Aitchison & Vick, Inc., Attorneys at Law.

3 Department's Position:

4 The Department contends that it was justified in initiating the corrective action process  
5 for appellant, followed all appropriate procedures required in said process, and afforded  
6 appellant due process in her termination. The Department alleges that appellant failed to comply  
7 with the requirements of the corrective action process, and that the process failed to correct her  
8 insufficiencies, warranting termination.

9 Appellants' Position:

10 Appellant maintains that there was nothing wrong with her work or her behavior, and that  
11 the Administrative Manager was out to get her, micromanaging her work. She alleges that she  
12 did everything required of her in the corrective action process, but that the Department had  
13 determined to fire her, and so nothing was ever good enough.

14 The Hearing Examiner, having heard the testimony and the arguments of the parties and  
15 counsel, and having reviewed the evidence in this case now makes the following:

16 **FINDINGS OF FACT**

17 1. Donna Cousins, formerly an Administrative Specialist I for the Legislative Department,  
18 had held that position since August, 1997, and had been with the City since June of 1987. Notice  
19 of Appeal.

20 2. It is undisputed that prior to the events at issue in this appeal, appellant was hospitalized  
21 for an emergent medical situation, and was off work for at least six weeks. Although appellant's  
22 absenteeism had been a concern for the Department prior to initiating the corrective action  
23 process, the problem had been corrected, and was not a reason for the termination.  
24



1 3. Over the course of a year commencing in March 1999 or before<sup>1</sup>, Appellant's supervisor,  
2 Thyra Brooks, counseled appellant both orally and in writing about problems with her  
3 performance. Perceived problems included complaints of inappropriate and rude behavior,  
4 failure to follow correct procedures, invoicing, postal meter problems, absences from the office,  
5 poor customer service, poor communication, poor work product, poor attitude, failure to follow  
6 instructions, and failure to take responsibility or accountability for her mistakes. Testimony of  
7 Thyra Brooks, Barbara Hadley, Carmen Valerio Eric Ishino, Patricia Robledo. Exhibits 3, 6, 8,  
8 10,12, 13, 14, 16, 20, 22, 23, 24, 25, 26.  
9

10 4. As a result of the above problems, and a perceived lack of improvement, the Department  
11 initiated a corrective action process. By memo dated April 7, 2000, Brooks informed appellant of  
12 the need to begin this process, and outlined the authority for doing so. Appellant's input was  
13 solicited. Testimony of Brooks and Hadley. Exhibit 27.  
14

15 5. A written Corrective Action Plan was presented to appellant on April 7, 2000, identifying  
16 specific areas of concern and goals. The last sentence of the first paragraph of these documents  
17 states, "A final meeting will be set *subsequent to* the close of the evaluation period to discuss  
18 next *steps*." (Emphasis added.) Appellant wrote on this document as follows:

19 I have read and received a copy of this Corrective Action Plan on  
20 April 7, 2000. It is clear the Path (sic) the Legislative Dept has  
21 chosen to take regarding future employment w/the Leg Dept. I will  
22 do everything in my power and with God's Grace to follow this  
23 plan and improve according to the rules and regulations of the  
24 Legislative Dept so that can (sic) maintain employment.

Exhibit 28.

Appellant signed the document.

5 <sup>1</sup> The Exhibits submitted by the Department commence with a note dated March 22, 1999 to appellant's file, and the Department concedes that this is the approximate beginning date of the events at issue in this hearing.

1 6. While it would be normal to have one mid-term meeting between the supervisor and the  
2 employee during the course of a corrective action plan, Thyra Brooks and Carmen Valerio  
3 agreed to meet with appellant weekly over the eight-week period that the plan would be in effect.

4 Testimony of Brooks, Valerio, appellant. Exhibits 34, 37,

5 7. It is undisputed that over the eight-week period of the plan, appellant was late to at least  
6 three meetings and missed three entirely. Exhibits 37, 45, 47.

7 8. Appellant continued to have problems with work product, and, in particular, with word  
8 processing, on which she had been trained, following instructions, and communication skills.

9 Testimony of Brooks, Hadley, Valerio, Patricia Robledo, Judith Pippin, Exhibits 30, 31, 33, 35,  
10 36, 38, 39, 40, 41, 42, 43, 44.

11 9. On May 24, 2000, Brooks sent an email to appellant that, *inter alia*, advised her that she  
12 was "entitled to seek the services of the Employee Assistance Program (EAP)." A brochure was  
13 apparently provided to her on that date. Exhibits 45, 46.

14 10. On June 7, 2000, Brooks addressed a memo to Hadley regarding appellant's corrective  
15 action plan. Brooks outlined the areas of improvement needed by appellant, and her failure to  
16 improve in all but one area (attendance). The memo concluded:

17  
18 At this time, I do not see any reason to grant an additional  
19 evaluation period. I am requesting that you, as appointing  
20 authority, initiate the next steps to bring closure to this process.

21 There is no indication that this document was provided to appellant at that time.

22 Exhibit 47.

23 11. On June 12, 2000, Hadley sent a memo to appellant indicating she had received "an  
24 evaluation of the Corrective Action (CAP) (sic) period that has just expired." Hadley did not  
5 identify the specific concerns of the Department, other than to indicate that the Corrective Action



1 plan period was “an opportunity to improve deficiencies in essential aspects of your job.” Hadley  
2 did not advise appellant that a failure to correct her performance could result in her discharge,  
3 although she stated, “This is a very serious process whose outcome affects your employment  
4 status . . .” The memo gave appellant the opportunity to make an appointment with Hadley, and  
5 advised appellant that they were “now at the Final Action (Section 8.2.300) section of this plan.”

6 Exhibit 49.

7  
8 12. On June 26, 2000, Hadley wrote a memo to Councilmember Margaret Pageler outlining  
9 the background of appellant’s performance problems, and stating, *inter alia*:

10 It is my recommendation to you, as the Council President, per the  
11 memo to the ESD Personnel Division that retains terminating  
12 authority for such positions with the Council Presidency, that Ms.  
13 Donna Cousins be separated from employment with the Legislative  
Department as soon as possible. If Ms. Cousins should choose to  
resign in lieu of dismissal, I recommend the Department support a  
brief period of paid time to allow her to seek other employment.

14 Exhibit 55.

15 13. Councilmember Margaret Pageler, President of the Seattle City Council and appointing  
16 authority for the department during the relevant time period, sent appellant a letter dated June 30,  
17 2000, informing her of her termination, and offering her the opportunity to resign in lieu of  
18 dismissal. This letter provides no reasons for appellant’s termination. Exhibit 57.

19 Councilmember Pageler sent another letter to appellant on July 17, 2000, in response to a letter  
20 from appellant. This second letter also provided no reasons for the termination. Exhibit 59.

21  
22 14. The City of Seattle Personnel Rules, Section VIII, subsection 2 describes the corrective  
23 action process. This process was established “to promptly (sic) address performance problems  
24 and minor acts of misconduct by a means other than the traditional Progressive Discipline  
25 process . . . It is intended that the appointing authority will apply either the Corrective Action

1 Process or the Progressive Discipline Process to address the issue at hand, but not both processes  
2 . . .” Personnel Rule 8.2.100.

3 15. The Corrective Action process follows four steps: Informal notification/counseling;  
4 Follow-up counseling; Corrective Action Plan; and Decision Making Opportunity. At the third  
5 step, a *failure to reach agreement* on the corrective action plan (hereinafter, “the plan”), allows  
6 the supervisor “to recommend to the appointing authority that the matter proceed directly to final  
7 action . . .” The failure of an employee *to comply* with the agreed-upon corrective action plan  
8 requires proceeding to step four, the decision making opportunity. At step four, “the supervisor  
9 *shall* inform the employee that the employee’s failure to correct the performance deficiency or  
10 behavior within the time frame specified may result in discharge. The supervisor *shall* prepare a  
11 written plan specifying the changes required, the time frame, and reaffirming that discharge may  
12 result unless performance meets the stated supervisory expectations. If appropriate, the  
13 employee *shall be* referred to the Employee Assistance Program or other assistance.” (Emphasis  
14 added.) Thus, a *failure to reach agreement* on a plan allows the appointing authority to proceed  
15 to step four, Final Action, while a *failure to comply* with the plan requires another plan. PR  
16 8.2.200.<sup>2</sup>

18 16. The Department never reached step four, as contemplated by PR 8.2.200.

19 17. Personnel Rule 8.2.300 states, in relevant part, as follows:  
20

21 Failure by the parties to reach agreement upon a corrective action  
22 plan shall permit the appointing authority to proceed with whatever  
23 action the appointing authority deems appropriate.

24  
25 <sup>2</sup> The full text of PR 8.2.200 is attached to this Decision.



1 Further incident(s) shall trigger discharge unless the appointing  
2 authority determines that a demotion or suspension without pay  
and/or last chance alternative is more appropriate.

3 18. The City of Seattle Charter states, in Article XVI, Section 7, as follows:

4 SUSPENSION OR DISMISSAL: No member of the civil service  
5 may be suspended or dismissed from employment except for  
6 justifiable cause. *A written statement of the reasons for suspension  
or dismissal shall be delivered to the employee by the head of the  
7 department and filed with the [Civil Service] Commission. Any  
employee who is suspended or dismissed shall be entitled to an  
8 appeal to the Commission except as provided in Section 6.  
(Emphasis added.)*

9 19. No document was introduced at hearing demonstrating compliance with the Charter  
10 requirement of delivering to the employee a written statement of the reasons for her dismissal.

11 Based upon the above Findings of Fact, The Hearing Examiner now makes the following:

12 **CONCLUSIONS OF LAW**

13 1. Based upon appellant's problems regarding communications, work product, customer  
14 service, and following instructions, the Department had justifiable cause to place appellant in the  
15 corrective action process.

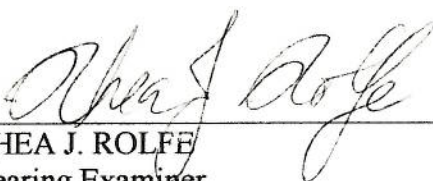
16 2. Both the Department and the appellant agreed to the Corrective Action Plan drafted by  
17 the Department.

18 3. Appellant did not correct all of her performance deficiencies as outlined in the plan, and  
19 therefore did not comply with the plan.

20 4. The Department failed to follow the corrective action procedures outlined by the  
21 Personnel Rules, since it did not proceed to step four, Decision Making Opportunity, but  
22 proceeded to Final Action, without ever informing appellant in writing that her discharge might  
23 result.  
24

- 1 5. The Department failed to give appellant due process by failing to follow the Personnel  
2 Rules for the Corrective Action Process, and failing to give appellant the written notice required  
3 by the Charter, identifying the reasons for her termination.  
4 6. Appellant should be reinstated with back pay and benefits.  
5

6  
7 2-12-02  
8 DATE

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11 RHEA J. ROLFE  
12 Hearing Examiner  
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1  
2 **DECISION**  
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4 This case turns on the interpretation and the correct application of the corrective action  
5 process, as described in The City of Seattle Personnel Rules, Section VIII, subsection 2, copy  
6 attached.

7 The Department followed the Personnel Rules relating to the Corrective Action Process  
8 up until the last stages. During the hearing, it was apparent that counsel for the Department  
9 understood this failure to follow all the steps of the process. He did an excellent job of trying to  
10 establish the Department's position taken *at the hearing* that appellant *never agreed* to the  
11 Corrective Action Plan in the first place. He elicited testimony from several credible witnesses,  
12 including Thyra Brooks, Barbara Hadley, and Carmen Valerio, all of whom testified that at some  
13 point they *concluded* that appellant had *never agreed to* the Corrective Action Plan that was  
14 drafted by Brooks, and signed by appellant (Exhibit 28). Their post-event "conclusion" that  
15 appellant had not agreed to the plan appears to be a retrospective attempt to justify their failure to  
16 follow the entire corrective action process as laid out in the rules, and flies in the face of the  
17 written instrument itself, signed by the appellant. Their belief that appellant's behavior would not  
18 improve, while it may have been correct, led them to take a short cut not contemplated by the  
19 rules. The rules exist for a reason, and may not lightly be disregarded.

20 Hindsight is always 20/20. The Corrective Action Plan is a written contract between the  
21 employee and the employer. It must be interpreted as the parties viewed it at the time it was  
22 agreed to. Appellant's hand-written statement on the document when she received a copy of the  
23 plan clearly demonstrates an intention to follow the plan. The fact that Valerio and Brooks set  
24 aside time every week for eight weeks demonstrates that they also intended to see the plan  
25 through.

1 There is a difference between whether or not a contract exists and whether or not it is  
2 followed. The rules contemplate different treatment and a separate step based upon that  
3 difference. In this case, the parties agreed to the plan. Appellant apparently did not comply with  
4 the plan. Her failure to comply with the Corrective Action Plan would, by the clear language of  
5 the rule, require moving to step four of the process, the Decision Making Opportunity, not  
6 skipping step four entirely.

7 The Corrective Action Plan is not a last chance agreement, which could have been  
8 implemented at a later stage of the process.<sup>3</sup> The Corrective Action Plan is an intermediate step  
9 which must be followed prior to getting to the point of contemplating whether or not a last  
10 chance agreement will be utilized. There are notable differences between a Corrective Action  
11 Plan and a last chance agreement (see attached). One difference is that a last chance agreement  
12 requires that a specific time frame must be identified for the agreement. In a Corrective Action  
13 Plan, no such time frame is required (and, indeed, appellant was told that there was no time  
14 frame: see Exhibit 27). Pursuant to the rules, all of the steps must be followed unless there is a  
15 failure of the parties to agree to the Corrective Action Plan. Here, there was no failure to agree,  
16 only a failure to comply.

17 The Department failed to notify appellant with specificity, as prescribed by the rules, that  
18 she could be discharged as an end result of the process. Telling her that there would be  
19 consequences that could affect her employment status is not specific enough to comply with the  
20 rule. It may be that if appellant had been told specifically that her failure to improve could result  
21 in her discharge, she might have received the motivation necessary to improve.

22 Further, the Department failed to notify appellant of the reasons for her discharge in her  
23 termination letter, as required by the City Charter. While the Department may have provided  
24

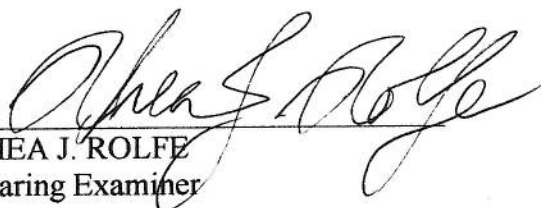
5 <sup>3</sup> There are distinct differences between a Corrective Action Plan and a Last Chance Agreement, as delineated in the rules.



1 copies of documents to appellant at various times that identified her performance problems that  
2 would not have satisfied the requirements of the Charter, as quoted above.

3 Appellant must be reinstated with back pay and benefits. Any legislation necessary to  
4 accomplish this purpose should be drafted by counsel for the Department.

5  
6 2-12-02  
DATE

7  
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9  
10 RHEA J. ROLFE  
Hearing Examiner

**- Attachment -**



## VIII. EMPLOYEE RELATIONS

### **Section 1 - Authority**

#### 8.1.100      Authority

SMC 4.04.040, and subsequent revisions thereto  
SMC 4.04.050, and subsequent revisions thereto  
SMC 4.04.070, and subsequent revisions thereto  
SMC 4.04.230, and subsequent revisions thereto  
SMC 4.04.235, new

Administration  
Rule-making authority  
Rights of employees  
Progressive Discipline  
Corrective Action Process

### **Section 2 - Corrective Action Process**

#### 8.2.100      Application

The Corrective Action Process is intended to promptly address performance problems and minor acts of misconduct by a means other than the traditional Progressive Discipline process described in Rule 8.3.

The Corrective Action Process shall be used in place of verbal warnings and written reprimands to address an employee's performance problems, which may or may not be intentional acts by the employee, and minor acts of misconduct.

Even though the Corrective Action Process is "progressive" in that it may conclude with a resignation in lieu of discharge or a discharge in some cases, it is a process completely separate from the Progressive Discipline process.

The Corrective Action Process is not to be applied in situations involving major disciplinary offenses such as the examples listed in Rule 8.3.100B, and the Progressive Discipline Process (Rule 8.3) is not to be used to address employee performance problems or minor acts of misconduct which normally warrant a verbal warning or written reprimand.

It is intended that the appointing authority will apply either the Corrective Action Process or the Progressive Discipline Process to address the issue at hand, but not both processes; nor will it be appropriate to switch from one process to the other while seeking resolution to a given issue.

#### 8.2.200      Corrective Action Steps

- A. Informal notification/counseling. As soon as practicable, supervisors should bring performance issues or behaviors that do not meet supervisory expectations to the employee's attention, either by verbal comment or in writing, inquiring of the employee his/her reasons for the cause of such performance or behavior problems. Documentation of any such action shall remain in the supervisor's file.
- B. Follow-up Counseling. If the issue(s) is not resolved through informal counseling, the supervisor and the employee shall meet to review the problem, its cause, and potential remedies. This meeting may result in a counseling memorandum or note of concern from the supervisor to the employee that identifies the problem and reflects the agreed-upon, expected change and/or improvement. The employee shall sign and date the counseling memorandum or note of concern to acknowledge receipt. The counseling memorandum or note of concern shall remain in the supervisor's file.
- C. Corrective Action Plan. If the issue(s) is not resolved through the follow-up counseling, the supervisor and employee shall meet to review the problem(s), effects, and the change required and shall attempt to reach agreement on a joint corrective action plan.

The employee shall be offered supervisory assistance and help through the Employee Assistance Program, if appropriate.

The employee and supervisor shall sign any agreed-upon corrective action plan. The corrective action plan shall be retained in the supervisor's file, and a copy shall be provided to the employee.

Failure to reach agreement on a corrective action plan shall permit the supervisor to recommend to the appointing authority that the matter proceed directly to Final Action described in Rule 8.2.300, below.

Failure of the employee to comply with the agreed-upon corrective action plan shall result in the supervisor scheduling a decision-making opportunity as provided below.

- D. Decision Making Opportunity. The supervisor shall inform the employee that the employee's failure to correct the performance deficiency or behavior within the time frame specified may result in discharge.

The supervisor shall prepare a written plan specifying the changes required, the time frame, and reaffirming that discharge may result



unless performance meets the stated supervisory expectations. If appropriate, the employee shall be referred to the Employee Assistance Program or other assistance.

The employee shall be given at least three (3) working days from the date of receiving the written corrective action plan from his/her supervisor to consider the plan, and may suggest modifications, if any, to the supervisor. However, the final terms of the plan shall be at the discretion of the appointing authority or his/her designee.

The final plan shall be signed by both the employee and the supervisor.

### 8.2.300      Final Action

Failure by the parties to reach agreement upon a corrective action plan shall permit the appointing authority to proceed with whatever action the appointing authority deems appropriate.

Further incident(s) shall trigger discharge unless the appointing authority determines that a demotion or suspension without pay and/or last chance alternative is more appropriate.

A summary of past correspondence and related information upon which the decision is based shall be attached and incorporated into a letter to the employee advising of the appointing authority's decision. A copy of the letter, all correspondence and related documentation shall be placed in the employee's personnel file.

- A. Last chance alternative. The appointing authority shall state the following in a last chance alternative:
  - 1. The specific change in his/her behavior that is required for the employee to remain in the position; and
  - 2. The outcome of the employee's failure to change his/her behavior/performance shall be demotion or dismissal with no additional opportunity to change his or her behavior or performance.
  
- B. Resignation in lieu of dismissal. A determination to discharge shall result in a letter from the appointing authority to the employee and the employee's personnel file, providing an opportunity for the employee

to resign in lieu of discharge. All supporting correspondence shall be attached to the letter.

In the event the final action is a suspension without pay, demotion or discharge the employee shall be provided notice and an opportunity to respond ("Loudermill" hearing), and will be notified of appeal rights in accordance with provisions of Seattle Municipal Code 4.04.260, Appeals to Civil Service Commission.

### ***Section 3 - Progressive Discipline***

Some disciplinary offenses are of such severity that the corrective action process described in Personnel Rule 8.2 will not be followed. These major disciplinary offenses are acts of misconduct of such severity that, absent mitigating circumstances, substantial discipline in the form of suspension, demotion or discharge will be warranted. A list of such major disciplinary offenses is presented in Rule 8.3.100b, below. In the event such a major disciplinary offense is committed by an employee, the provisions of this section should be applied.

#### **8.3.100      Order of Severity of Discipline**

- A.      The order of severity of progressive discipline, the least severe being listed first, shall be as follows:
1.      A verbal warning, accompanied by a notation in the employee's personnel file;
  2.      A written reprimand, a copy of which must be placed in the employee's personnel file;

NOTE: The foregoing reprimands are applicable only when the appointing authority determines there are sufficient mitigating factors to warrant such discipline.

3.      Suspension up to thirty days for a single occurrence;
4.      Demotion;
5.      Discharge.

Which disciplinary action is taken depends, in the appointing authority's judgment, upon the seriousness of the affected employee's conduct and the usefulness of the action for remedying



