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2
3 **BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE**
4

5 IN RE THE APPEAL OF:

6 **DONNA COUSINS**

7 Appellant

8 v.

9 **CITY OF SEATTLE**, Legislative
10 Department

11 Respondent.

**MEMORANDUM OPINION
AND ORDER**

CSC Appeal No. 00-01-017

12
13 THIS MATTER came before the Seattle Civil Service Commission upon the Petition of
14 Respondent City of Seattle, Legislative Department (the "Department") for a review of the
15 Hearing Examiner's Findings of Fact, Conclusions of Law, and Decision dated February 12,
16 2002 in the above-captioned appeal.

17 Having reviewed the record with the exception of the information elicited from the
18 Department by the hearing examiner during the first pre-trial conference,¹ including the
19 transcript of the proceedings before the hearing examiner, the exhibits entered into evidence,
20

21
22 ¹ The Commission notes that the Department did not seek Commission review of the hearing examiner's decision
23 denying its motion to disqualify the hearing examiner from these proceedings. However, the behavior alleged to
24 have occurred at that conference is outside the Hearing Officer's proper function and the Commission condemns
such conduct. Such conduct, if true, would be the basis for a successful disqualification motion. Furthermore, the
Commission, in deliberating on the merits of this petition, has not considered any information elicited during the
course of the prehearing conference.

1 Respondent Legislative Department's Petition for Review, Appellant's Response to Petition for
2 Review, and having deliberated thereon and concluded that the Decision entered by the Hearing
3 Examiner on February 12, 2002 fails to do substantial justice under the facts presented in this
4 case, the Civil Service Commission makes the following findings and conclusions:

5 1. On April 7, 2000, the Department initiated a corrective action plan pursuant to Personnel
6 Rule 8.2.200 for the appellant, Donna Cousins.

7 2. The appellant signed and agreed to the corrective action plan formulated by the
8 Department on April 7, 2000.

9 3. The appellant, despite having agreed to the terms of the corrective action plan, failed to
10 comply with the corrective action plan. Had the appellant not been in the Corrective Action
11 Process, her conduct would have formed the basis for discipline up to and including discharge.

12 4. Once the Department and employee reach agreement on the corrective action plan and
13 the employee fails to comply with the plan, the Corrective Action Process requires an additional
14 step:

15 The supervisor shall prepare a written plan specifying the changes required, the
16 time frame, and reaffirming that discharge may result unless performance meets
17 the stated supervisory expectations. If appropriate, the employee shall be referred
18 to the Employee Assistance Program or other assistance.

19 Section 8.2.200(D). While the Commission questions the wisdom of this additional requirement
20 prior to discharge, in light of the evidence presented at hearing the Commission has no choice
21 but to conclude that the Department did not take this final step.²

22 6. The Department argues that the Appellant never agreed to the plan and, therefore, it was
23 free to move to Final Action. The Commission finds that the record does not support the
24 Department's position in that the Appellant indicated her assent to the corrective action plan by
25 her written statement:

² In light of the appellant's failure to comply with the corrective action plan, the Department may, upon her
reinstatement, place appellant back into the corrective action process at the decision making opportunity pursuant to
Personnel Rule 8.2.200.

1 I have read and received a copy of this Corrective Action Plan on April 7, 2000.
2 It is clear the Path the Legislative Dept. has chosen to take regarding future
3 employment w/ the Leg. Dept. *I will do everything in my power and with God's*
4 *Grace to follow this plan and improve according to the rules and regulations of*
5 *the Legislative Dept. so that can maintain employment.*

6 Ex. 28 (emphasis added).³

7 6. For these reasons, the Commission finds that the Department failed to follow the
8 Corrective Action Process set out in Personnel Rules, 8.2.200. The Department was not free to
9 move to Final Action without providing the additional Decision Making Opportunity. In the
10 interest of achieving substantial justice, and in light of the Appellant's duty to mitigate her
11 damages, the Commission orders as follows:

12 ORDER

13 The February 12, 2002 Decision of the Hearing Examiner is MODIFIED. Appellant
14 Cousins is hereby reinstated with six (6) months back pay less any income earned from June 30,
15 2000 through December 31, 2000.

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17 
18 _____
19 Kenneth R. Morgan, Chair

20 4/9/02
Date

21
22 
23 _____
24 Rev. Dr. Ellis H. Casson, Commissioner

4-9-02
Date

21
22 
23 _____
24 Elizabeth Ford, Commissioner

4/9/02
Date

³ The Department's failure to quote the entirety of the Appellant's statement, while not rising to the level of misconduct warranting sanctions, was misleading to the Commission.