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CIVIL SERVICE COMMISSION

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BEFORE THE CIVIL SERVICE COMMISSION FOR THE CITY OF SEATTLE

IN RE THE APPEAL OF:)
)
PATRICIA W. ENG,)
Appellant,)
)
vs.)
)
SEATTLE CITY LIGHT,)
Respondent.)

No. 00-01-025

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

Patricia W. Eng, an Electrical Construction & Maintenance Supervisor for the City of Seattle Lighting Department (hereinafter, "City Light"), timely appeals her three-day suspension from employment.

This matter came on for hearing on May 2 and 3, 2001. Appellant was represented by Sue Sampson, Attorney at Law, of Sampson & Wilson, and City Light was represented by Assistant City Attorney Paul Olsen.

City Light's Position:

City Light contends that appellant engaged in behavior "not in keeping with City of Seattle and Seattle City Light expectations for supervisors and in direct violation of City, State and Federal EEO statutes which prohibit retaliation against employees who raise complaints of harassment or discrimination." Exhibit 1.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION - ENG

1 Specifically, appellant is alleged to have issued a memo under someone else's name,
2 without authorization to do so, "demonstrating a serious lapse in supervisory judgment", and also
3 appellant is alleged to have retaliated against an employee "by requiring him to put in writing
4 why he missed the make-up class on poletop rescue on March 15, 2000."

5 Along with these specific reasons given for the discipline, City Light noted that these
6 incidents closely followed an incident that had the "appearance of retaliation" against another
7 employee. This earlier incident resulted in a documented verbal warning to appellant for
8 "insubordinate behavior in refusing to assign [an employee] to a crew." Exhibit 5.

9 **Appellant's Position:**

10 With regard to the memo, appellant admits to a lapse in judgment, and contends that she
11 thought that she was directed to issue the memo on behalf of EEO Coordinator Cheryl Angeletti-
12 Harris. Appellant denies the allegations regarding retaliation, and "appearance of retaliation."
13 Appellant admits that she does "not normally ask employees directly for written statements on
14 missed trainings." She contends that requesting the employee to put his explanation in writing
15 was a reasonable management decision under the circumstances, since she understood that she
16 would be held accountable for employees missing training. Once she had an oral explanation
17 from the employee, she withdrew her request. She denies insubordination or retaliation regarding
18 the crew assignment, since she had given the individual the option of choosing a crew, and the
19 employee had failed to do so.
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21 The parties were given additional time to submit post-hearing briefs. Appellant's written
22 closing argument was received by the Commission on August 31, 2001, and City Light's brief
23 was received by the Commission on September 14, 2001.
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1 The Hearing Examiner, having heard the testimony and the arguments of the parties and
2 counsel, and having reviewed the evidence and the briefs in this case now makes the following:

3 **FINDINGS OF FACT**

4 1. Appellant Patricia W. Eng has been an Electrical Construction & Maintenance
5 Supervisor with City Light since May 13, 1992, and an employee with the City of Seattle since
6 June 24, 1974. Notice of Appeal.

7 2. It is undisputed that on May 15, 2000, appellant was issued a “documentation of a
8 verbal warning” for “insubordination” for failing to follow her supervisor’s direction to assign
9 Lois Hairston to a crew. Exhibit 12. It is undisputed that this matter was not appealed to the
10 Commission.

11 3. There is no mention in Exhibit 12 of an “appearance of retaliation” or any other
12 kind of discrimination.

13 4. Hairston had earlier complained to appellant about race-based harassment against
14 her by another employee, and complained to Angeletti-Harris about retaliation by appellant for
15 not allowing her training and “making it difficult to attend a City-sponsored Black History
16 Month program.” Exhibit 11.

17 5. Angeletti-Harris found that there was no retaliation by appellant relating to the
18 attendance at the Black History Month program, and found an “appearance of retaliation” related
19 to the training, concluding that the potential trainer, Arthur Ybarra, “decided not to train Ms.
20 Hairston based on discussions he had with [appellant].” In the discussion referred to, according
21 to Exhibit 11, Ybarra declined to conduct the training “based on [appellant] making the training
22 specific to Ms. Hairston.” Angeletti-Harris recommended that “[m]anagement . . . take
23 appropriate action to address this issue.” Exhibit 11.
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1 6. There is no connection cited in any exhibit between making the training specific
2 to Hairston and retaliation *against Hairston*.

3 7. Ybarra testified that his decision not to train Hairston was based on a few factors,
4 but that the most important was that he was returning to his regular duties, after being on light
5 duty. Other factors included: he had wanted to train more than one person, and appellant advised
6 him the training was specific to Hairston; and also that he had a problem with appellant relating
7 to a test he wanted to take. That test conflicted with an appointment he had with a Labor and
8 Industries doctor, so he proposed to take the test at night. Appellant refused his request. He
9 testified that he did not really recall his telephone conversation with Angeletti-Harris, and that it
10 was "vague," but indicated that Angeletti-Harris' description of his statement to her (Exhibit 11,
11 pp. 11-12) "was probably a true statement at that time." Testimony of Ybarra. May 3 Transcript
12 pp. 17 – 34. Exhibit 11.

13 8. It is undisputed that Joe Andrade filed an EEO complaint on February 8, 2000
14 (mistakenly identified on the parties' joint exhibit list as February 28, 2000). This complaint
15 identifies appellant as Andrade's immediate supervisor. This complaint made no accusations
16 against appellant. Exhibit 22.

17 9. Angeletti-Harris warned appellant (and others) against any acts of discrimination
18 or retaliation following Andrade's complaint. Testimony of Angeletti-Harris.

19 10. Is it undisputed that on or about February 10, 2000, Andrade missed a mandatory
20 poletop training session.

21 11. It is undisputed that appellant asked Andrade why he had missed the training, and
22 asked him to put his reasons in writing.
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1 12. It is undisputed that it is not uncommon for employees to miss training, and that
2 other individuals missing training have not been requested to put their reasons for missing
3 training in writing.

4 13. Andrade called Angeletti-Harris on March 16, 2000, and indicated that he thought
5 he might have been the target of retaliation by appellant for having been asked to put in writing
6 his reasons for missing the training. Testimony of Andrade and Angeletti-Harris.

7 14. Following this telephone call, Angeletti-Harris telephoned appellant, and
8 appellant told her that one of the reasons she had asked Andrade to put his reasons for missing
9 the training in writing was that he had filed an EEO complaint. Angeletti-Harris initially
10 testified that this statement was made during her interview with appellant on March 14, 2000, but
11 later clarified that the statement was made during a telephone conversation on March 16, 2000.
12 During this telephone conversation, Angeletti-Harris told appellant not to get a written statement
13 from Andrade. Testimony of Angeletti-Harris. Exhibits 2, 7, and 20. May 2 Transcript, pp. 60-
14 70.

15 15. On March 17, 2000, appellant met with Andrade, Simpson, and Eddie Felder
16 regarding Andrade's reasons for missing the training. At the end of this meeting, appellant
17 withdrew her request for the reasons to be put in writing. Appellant testified that she had
18 withdrawn her request prior to being advised to do so by Angeletti-Harris, and disputes other
19 points in the alleged telephone conversation of March 16, 2000, and denies the statement that she
20 had requested the written explanation because Andrade had filed an EEO complaint. Testimony
21 of appellant. Exhibit 19.

22 16. It is undisputed that Angeletti-Harris was in charge of investigating the Andrade
23 EEO complaint. In pursuing this investigation, Angeletti-Harris contacted appellant to arrange to
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1 schedule interviews with crew members. In the memo requesting appellant to set up the
2 interviews, Angeletti-Harris notes that Joe Simpson "can no longer participate as a shop
3 steward." Testimony of Angeletti-Harris and Appellant. Exhibit 17.

4 17. Upon receiving Exhibit 17, appellant herself drafted a memo, which she attributed
5 to ("from") Angeletti-Harris, and which she distributed to various individuals to schedule them
6 for interviews relating to the Andrade EEO investigation. Pursuant to Exhibit 16, this memo
7 advised the employees that Joe Simpson would not be allowed to participate as a shop steward in
8 the interviews. It is undisputed that Angeletti-Harris did not create, review, or approve the
9 distribution of this particular memo. Exhibits 16 and 17. Testimony of Angeletti-Harris, and
10 Appellant.

11 18. The distribution of Exhibit 16 caused a "ruckus" and put Angeletti-Harris "in a
12 bad spot with the union". Angeletti-Harris raised this issue to management, but did not
13 recommend discipline against the appellant as a result of the issuance of the memo. Testimony
14 of Angeletti-Harris.

15 19. The initial recommendation for discipline for appellant was for five days
16 suspension without pay. This recommendation was reduced to three days suspension without
17 pay. Testimony of Dave Smith and Gary Zarker. Exhibits 1, 4, and 5.

18 20. City Light provided documentation of discipline given to other employees since
19 1995, many of which situations dealt with workplace conflict, conduct unbecoming an employee,
20 and similar offenses. Discipline ranged from one written reprimand to several suspensions of
21 varying lengths, to demotion, and resignation or retirement in lieu to termination. Testimony of
22 Bea Hughes. Exhibit 36.

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24 Based upon the above Findings of Fact, The Hearing Examiner now makes the following
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CONCLUSIONS OF LAW

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2 1. The evidence relating to the "appearance of retaliation" is insubstantial, and
3 unsupported by the record.

4 2. The evidence relating to the distribution of a memo under the name of the EEO
5 Coordinator is undisputed, and discipline is appropriate.

6 3. City Light had justifiable cause for disciplining appellant for retaliation against
7 Joe Andrade.

8 4. A review of discipline demonstrates that a three-day suspension is at the low end
9 of the disciplinary scale, and is justifiable under the circumstances.

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11 Dated this 27th day of December, 2001.

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14 RHEA J. ROLFE
15 Hearing Examiner

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DECISION

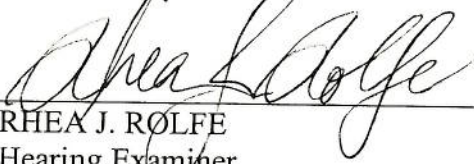
The issuance of a memo in the name of another employee is a serious lapse in judgment, especially for a supervisory employee. Appellant argued that the information contained in the memo was virtually the same as the information given to her by Angeletti-Harris. I see this fact as irrelevant. I also see the fact that there were subsequent repercussions with the union as of minor importance. Appellant could have avoided the problem by having the memo issued in her own name, or by having Angeletti-Harris approve and sign the memo. Failure to do either was inappropriate.

Regarding the retaliation against Andrade, Angeletti-Harris produced notes she made at the time of the disputed telephone conversation, as well as a response to appellant when appellant first disputed the allegation (see Exhibits 2 and 6). The appointing authority reached a reasonable and justifiable conclusion and decision concerning the disputed testimony and evidence, and chose to rely on the statements and notes of Cheryl Andretti-Harris, the EEO Coordinator.

The evidence relating to an "appearance of retaliation" is unsupported by any credible evidence, and is contradicted by the testimony of Art Ybarra, the only independent witness. His testimony tended to establish that appellant's actions were aimed at *him* (and not in a retaliatory manner), and not the complainant. This alleged "appearance of retaliation" should not be used as a basis for discipline against the appellant.

1 The decision by City Light to discipline appellant by giving her a three-day suspension
2 without pay is appropriate and justifiable, and is hereby upheld.

3 Dated this 17th day of December, 2001.

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6 RHEA J. ROLFE
7 Hearing Examiner

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