

1 FINDINGS OF FACT

2 In early 2004, Seattle City Light (“City Light”) embarked on a hiring process to fill
3 positions in its Hydroelectric Maintenance Mechanic Apprenticeship (“HEMMA”)
4 program. Vincent Gorjance, the Appellant in this matter, applied for one of these
5 positions.

6 Before beginning the hiring process, City Light engaged in a comprehensive
7 review of its apprenticeship hiring procedures to ensure that they were fair and accurately
8 measured job-related functions. This review was universally referred to as “validation.”
9 The City engaged a consulting firm, Biddle and Associates, to assist with the validation
10 process and to provide ongoing support and statistical analysis in the hiring process itself.

11 To ensure fairness, City Light set a rigid method for evaluating candidates for the
12 HEMMA positions. The HEMMA hiring process consisted of a written test, a working
13 test, a first round interview and a second round interview. The candidate must pass one
14 phase in order to be eligible for the next. Once completed, however, performance in the
15 previous phase had no bearing on a candidate’s standing in the subsequent phase.

16 The allegations of this appeal focus on City Light’s conduct in the first round
17 interview. By all accounts, the first round interview was highly structured. Each panelist
18 was assigned pre-scripted questions to ask the candidates. In each interview the same
19 panelist asked the same questions. City Light provided the panelists explicit and detailed
20 instructions as to how to ask questions and score responses. Chief among these
21 instructions were to treat each of the candidates in the same manner.

1 The panelists were given careful instruction regarding scoring the candidates.
2 Each panelist was to score the candidate separately. Once initial scores were entered the
3 panelist then may share their scores and, if there was a major discrepancy between
4 panelist's scores, they then discuss the possible sources of the difference. They may, but
5 are not required, to make adjustments after that conversation.

6 The interview panel consisted of five members: one representative of
7 management; one representative of labor; one representative from the Apprenticeship
8 office and two individuals with subject-matter expertise. Ross McConnell, Machinist
9 Crew Chief for City Light represented Labor. Tauna Hood, Apprenticeship Coordinator
10 for the City, represented the Apprenticeship Office. Daniel Kirschbaum, Mechanical
11 Engineering Supervisor and David Morovics, a Machinists for the City, both served on
12 the panel. Finally, Oren Wilson, Generation Supervisor at Ross Power House was
13 appointed to the interview panel.¹

14 According to Nettie Dokes, Apprenticeship Coordinator, the selection of panelist
15 was made by local management who first sought volunteers and then "vetted" each
16 volunteer to ensure that he or she had "no EEO complaints, disciplinary actions, no job
17 issues." (Dokes Direct Examination) Ms Dokes further testified that Ms. McClure was
18 then to review personnel and litigation records and inform Ms. Dokes of any issues. Ms.
19 McClure described her duties slightly differently indicating that she would "contact HR,
20 EEO and Labor relations" in order to make sure there were no "issues."

¹ The record was not clear as to which of these final three was the management representative.
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1 As Generation Supervisor, Mr. Wilson had been Appellant's direct supervisor
2 since 2000. Appellant and Mr. Wilson agree that there was conflict between them. Mr.
3 Wilson testified that the conflict arose from his having instituted a performance
4 improvement plan in relation to the Appellant's work. Appellant described an ongoing
5 conflict surrounding Mr. Wilson's style of management and lack of expertise in running
6 the Ross Powerhouse. Appellant described a series of complaints initiated by the staff at
7 Ross Powerhouse. Shop Steward, Ramsey Wood, also described the conflict between
8 Appellant and Mr. Wilson and the complaints and grievances that flowed from it.
9 Although descriptions of the conflict were made in colorful terms no further evidence of
10 grievances, lawsuits or other complaints was provided at hearing.

11 Having applied and successfully completed the written and working tests, the
12 Appellant was eligible to participate in the first round interview. The interviews were
13 held in mid-February, 2005.

14 On or about February 9, before the interview process began, Ramsey Wood
15 contacted Ms. McClure by telephone to express concerns regarding Mr. Wilson's
16 participation on the interview panel in light of his conflicts with the Appellant. On or
17 about that same time, Mark Stewart another employee familiar with the situation called
18 Ms. McClure to express his concern about Mr. Wilson serving on the interview panel.

19 Ms. McClure testified that she reported these concerns to Nettie Dokes, the Hiring
20 Authority. Ms. McClure testified that she left the decision as to what to do to Ms. Dokes.

1 Ms. Dokes decided to move on with the interviews. Neither Ms. Dokes nor Ms. McClure
2 performed any additional investigation.

3 Mr. Wilson himself was alerted to the concerns sometime before the interviews
4 began. Mr. Wilson testified that right after he was notified that he would be serving on
5 the panel, “[Appellant] approached me and told me that the complaints that I should not
6 be on the panel would not be from him.” Mr. Wilson does not appear to have done
7 anything with this information.

8 Some time after the telephone calls to Ms. McClure, Mr. Wood visited Tauna
9 Hood to express the same concerns about Mr. Wilson serving on the interview panel for
10 Appellant. Ms. Hood reported this conversation to Ms. Dokes. Ms. Hood testified that
11 the report to Ms. Dokes occurred “long enough [before the interviews began] that I forgot
12 about it.” Ms. Dokes, on the other hand, testified that she believed the contact happened
13 the day of Appellant’s interview.

14 In response to the conversation with Ms. Hood, Ms. Dokes and Ms. McClure
15 contacted Dan Biddle. Mr. Biddle is a principle of the consulting firm assisting the City
16 with this hiring process. Ms. Dokes and McClure described the complaints and asked for
17 his advice.

18 Mr. Biddle advised that the City could excuse Mr. Wilson for Appellant’s
19 interview and create a statistically comparable score for Appellant by substituting the
20 missing score with the average of the four remaining scores.

1 To ensure that selection processes are conducted in fair and reasonable
2 manner, each employing unit will provide a copy of its current selection
3 procedure to the Personnel Director. The appointing authority must file
4 revisions to its selection procedures with the Personnel Director within 30
5 days of adoption by the employing unit.
6

7 P.R 4.1.6.A.

8 This is more than simply a filing obligation but requires the Department to
9 operate its hiring process in accordance with its guidelines. The stated purpose of the
10 rule is to ensure fairness and reasonableness, a goal that filing a document would not
11 achieve. Moreover, the rule requires amendments to be filed as well. If there were no
12 substantive obligation to abide by the guidelines there would be no purpose served in
13 requiring a department to file changes. Changes could simply be made at the
14 Department's option.

15 In accordance with Rule 4.1.6.A, City Light developed a set of Hiring Guidelines
16 which provide, in relevant part:

17 The Department will:

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19 Evaluate all applicants on a *consistent* and fair basis using
20 selection criteria that are job related, address critical job elements,
21 and are appropriate to the level of the position. Assure that
22 processes are administered *consistently* and in compliance with
23 applicable laws, bargaining unit contracts, and regulations.
24

25 Seattle City Light Hiring Guidelines, Ex. A-2 (emphasis added).

26 With respect to the HEMMA interviews, City Light went to some lengths to
27 structure the process with high degree of rigidity. City Light was careful to set the
28 interview panel with five participants, each having a particular role to fill. City Light was

1 | certainly free to set the panel at four, but it was set at five. Each and every other
2 | candidate for the HEMMA position was interviewed before a panel of five. Appellant,
3 | however, was interviewed by a different panel consisting of four interviewers. In light of
4 | its commitment to consistency, City Light is not free to change a material and significant
5 | element of the process for only one candidate.

6 | Had there been some emergent, or even urgent, circumstance which necessitated a
7 | substitution or removal of a panel member during the course of an interview process,
8 | such a change would not violate City Light's requirement of consistency. No such
9 | circumstance existed here. Ms. McClure and Ms. Dokes knew of complaints about Mr.
10 | Wilson's participation at least five days before the interviews began. Mr. Wilson,
11 | himself a representative of City Light management, knew right after he was appointed to
12 | the panel that concerns would be raised about his participation. At this point there was
13 | ample time to conduct any further investigation necessary and, if appropriate, remove Mr.
14 | Wilson from the panel altogether or replace him with another panelist.

15 | It was not until Ms. Hood brought the same information – a complaint from Mr.
16 | Wood – to Ms. Dokes' attention that the decision to "recuse" Mr. Wilson for Appellant's
17 | interview was made. The justification for removing Mr. Wilson from this, and only this,
18 | interview was that interviews were underway and it was too late to remove or replace him
19 | altogether. First, I credit Ms. Hood's testimony that her concern was brought to Ms.
20 | Dokes' attention before the interview process began. Second, even if Ms. Hood's
21 | concern was raised the same day as Appellant's interview, Ms. Dokes and Ms. McClure

1 already had the same information directly from Mr. Wood. If a change needed to be
2 made, it could have been made when the information was first received.

3 Ms. Dokes testified that no change was made as the result of the earlier
4 conversations because there was no evidence of wrongdoing on Mr. Wilson's part.
5 However, if the removal was not justified at the earlier point when a replacement could
6 have been arranged, it is hard to conceive of what changed at the later point. There was
7 certainly no new evidence regarding the conflict between Appellant and Mr. Wilson.²
8 Thus, the removal of Mr. Wilson for only one of the interviews was a material and
9 significant change to the hiring procedure unjustified by emergent circumstances and thus
10 violated City Light's commitment to consistency in its hiring process.

11 The remedy for this violation is a more difficult question. In other circumstances
12 in which the court has found portions of a hiring process invalid, damages are not
13 awarded where the candidate was not harmed. *See Seattle Police Officers Guild v. City*
14 *of Seattle*, 113 Wash. App 431 (2002) (invalidating the "rule of 25%" used in selection
15 procedure for promotions but finding no harm resulted to the candidates). Here,
16 Appellant would have needed a perfect score from the missing panel member in order to
17 have advanced to the next round of interviews. Given the scores of the other panelists, it
18 is virtually impossible that this would have occurred. Thus, damages for Appellant are
19 not awarded.

² I do not hold that Mr. Wilson's selection as a panelist violated the Personnel Rules. Indeed, there was insufficient evidence at hearing demonstrating the conflict between Mr. Wilson and Appellant was sufficiently severe to have interfered with the fairness of the interview.

1 For these reasons, I issue the following Conclusion:

2 CONCLUSION

- 3 ▪ The Civil Service Commission has jurisdiction over this appeal.
- 4 ▪ The issue appealed is whether the City's hearing process for the HEMMA
- 5 positions violated Personnel Rule 4.1.6.A.
- 6 ▪ Personnel Rule 4.1.6.A requires Departments to file and follow their hiring
- 7 guidelines.
- 8 ▪ The removal of one of five assigned interview panelists for one interview, in
- 9 the absence of emergent circumstances, violates City Light's Hiring
- 10 Guidelines and, therefore, violates Personnel Rule 4.1.6.A.
- 11 ▪ By removing Mr. Wilson, one of the five panelists, only from the Appellant's
- 12 interview City Light violated Personnel Rule 4.1.6.A

13 Whereas the violation of the rules relating to selection procedures did not cause harm

14 to the appellant, no damages are due.

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16 Issued this *12th* day of *September 2005*.

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Glenda Graham-Walton, Executive Director for
Elizabeth Ford, Hearing Officer

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2 **CONCERNING FURTHER REVIEW**
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5 The decision of the Hearing Officer in this case is subject to review by the Civil Service
6 Commission. To be timely, a petition for review must be filed with the Civil Service
7 Commission no later than ten (10) days following the date of issuance of this decision, as
8 provided in Civil Service Commission Rules 7.01 and 7.03 (per Commission rules
9 adopted 4/28/2004).

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11 It is the responsibility of the person seeking to appeal the Hearing Officer's decision to
12 consult Code sections and other appropriate sources to determine applicable rights and
13 responsibilities.
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BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Vincent Gorjance
Appellant

v.

Seattle City Light
City of Seattle, Respondent

DISMISSAL ORDER

CSC APPEAL No. 05-04-002

The Executive Director of the City of Seattle, Civil Service Commission hereby enters the following

DISMISSAL ORDER

WHEREAS Presiding Officer, Elizabeth Ford issued a Decision regarding the appellant's appeal, on September 12, 2005.

WHEREAS the Appellant did not file a Petition for Review of the Presiding Officer decision (due no later than September 22, 2005).

WHEREAS the Commission reviewed, discussed and voted to affirm the Presiding Officer's decision, at its September 21, 2005 meeting.

The Civil Service Commission hereby dismisses this appeal with prejudice.

Issued this *28th* day of *September, 2005*

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION


Glenda J. Graham-Walton, Executive Director

Note: Commission decisions are final and conclusive unless a party of record makes application for a writ of review to the Superior Court of the State of Washington for King County within fourteen days of issuance

ORIGINAL

**CITY OF SEATTLE
CIVIL SERVICE COMMISSION**

**Affidavit of Service
By Mailing**

STATE OF WASHINGTON }
COUNTY OF KING }

TERESA R. JACOBS, deposes and states as follows:

That on the 28th day of September, 2005, I deposited in the U.S. mail, postage prepaid, a copy of **DISMISSAL ORDER** to:

Vincent Gorjance
PO Box 521
Sedro-Woolley WA, 98284

And copies of same via interdepartmental and U.S. mail addressed to:

Norma McKinney, Director, Personnel
Patsy Taylor, Acting Labor Relations Coordinator, City Light
Elizabeth Ford, Hearing Officer, CSC

In the appeal of:

Vincent Gorjance v. City Light

CSC Appeal No. 05-04-002

DATED this 28th day of September, 2005


TERESA R. JACOBS