

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Paul Janos, Appellant

v.

Department of Planning and
Development, City of Seattle,
Respondent

**DECISION AND ORDER ON
ISSUE OF JURISDICTION**

CSC No. 06-07-008

FACTUAL BACKGROUND

Appellant Janos filed a First Step Grievance February 7, 2006, with Cheryl Waldman alleging violations of policies and procedures in the selection process for a "Land Use Senior appointment," and requesting the remedy of "appropriate recognition for all qualified employees who were passed over in the recent appointment." The City failed to respond as required in PR 1.4.3.B.1(C).

Appellant then filed a Second Step Grievance on March 9, 2006 with Bob Laird. After meeting with appellant on March 28, 2006, Mr. Laird issued a Level 2 Grievance decision (April 7, 2006) which determined "he was concerned" with how the out-of-class hiring assignment was made and communicated to staff, and directed that a new selection process be conducted if the assignment continued.

Mr. Janos did not file a 3rd Step Grievance in accordance with PR 1.4.3.B.3, but did file an appeal with the Civil Service Commission on April 20, 2006, alleging improper hiring procedures, and seeking "Appropriate recognition of those passed over during questionable process." In his appeal, Appellant states that the remedy proposed by Mr. Laird, a new selection process, is inadequate. Appellant includes in his allegations the City's failure to respond to his Step 1 Grievance, and lack of clarity of qualifications for promotion to Land Use Senior Planner.

The Commission provided Appellant 14 (fourteen) days to supplement his appeal with specific citations to establish jurisdiction. Appellant submitted a letter in May 2006 outlining citations supporting subject matter jurisdiction. In June 2006 the Commission assigned the appeal to a Hearing Officer for the purpose of determining the issue of jurisdiction.

The Hearing Officer initially requested that the matter be determined by briefing in accordance with CSC Rule 5.14, and directed appellant to file a brief on this matter by September 1, 2006. The appellant failed to submit briefing to support his appeal by September 1, 2006.

The Hearing Officer then issued a preliminary order finding jurisdiction based upon the May 26, 2006 filing by Appellant, and provided the Respondent (City) an opportunity to oppose the finding. The City failed to timely respond (instead filing a brief in a different matter involving Mr. Janos—CSC 06-05-005), but was permitted to file late materials. On November 13, 2006, the city filed materials challenging procedural jurisdiction, specifically appellant's failure to exhaust Step 3 of the Grievance process outlined in the Personnel Rules. In the alternative, the city argued that the remedy requested had been provided in the Step 2 Grievance response.

Appellant Janos filed a late response on November 20, 2006, citing an email sent to him from the Commission in a different appeal. Appellant argued he was told that when his "internal grievance process" was completed, he could appeal to the commission, and was not required to complete the Employee Grievance procedure outlined in SMC 1.4.3. That matter involved a performance evaluation process.

This Hearing Officer has considered all filings, despite the untimeliness, in preparing this decision.

FINDINGS OF FACT

City of Seattle employees may grieve disputes concerning violations of the Seattle Municipal Code Chapter 4.04 or Personnel Rules and any policies or procedures adopted pursuant thereto. Personnel Rule (PR) 1.4.3. The Employee Grievance procedures are outlined in PR 1.4.3.B.1, which requires 3 (three) steps in the employee grievance process before an employee is permitted to file an appeal to the Civil Service Commission. The employee shall file grievances first to his supervisor, then to the division manager, and finally to the “head of the department for a written decision if necessary.”

If a matter is not resolved, or is denied at Step 2, the Employee is permitted to proceed to file a Step 3 grievance. PR 1.4.3.B.2/3. If an Employee “exhausts this grievance procedure and remains dissatisfied with the outcome, he or she may file an appeal with the Civil Service Commission in accordance with the Seattle Municipal Code Section 4.04.260.”

In the 1st and 2nd step grievances, and supplement filed on May 26, 2006, Appellant Janos identifies a number of problems related to an out of class appointment/selection process, specifically:

- Negative impact on the competitive position of those not chosen for the assignment (“inequity in upward mobility”);
- Qualifications for the out of class assignment were not identifiable;
- The opening was not advertised;
- Management do not follow rules and procedures; and
- Management did not announce the job opportunity or selection until the winter of 2006 (filled in Spring 2005, work began in Fall 2005).

Finding of Fact Number 1:

Appellant satisfied subject matter jurisdiction by alleging violations of SMC 4.04.070, “Employees have the right to compete openly for positions on the basis of knowledge, skills,

and ability;" SMC 4.04.150A, "The Personnel Director shall approve selection procedures for upward movement of current City employees . . . ;" SMC 4.04.150 C (2), "Employees shall be notified of all regular position vacancies through internal City advertisement;" SMC 4.04.150 (D), "The appointing authority of an employing unit shall specify the essential job functions, skills and availability requirements of a vacant position;" and SMC 4.04.210A and B, "To assist interested employees in competing for better positions; and To assist departments in identifying employees who are interested in upward mobility and in encouraging their progress."

Finding of Fact Number 2:

Mr. Laird's Step 2 Grievance decision constitutes a finding in Appellant's favor and provided a remedy, even though it failed to cite specific violations. The remedy ordered was "another selection process if there is to be a continued out-of-class assignment."

Finding of Fact Number 3:

Appellant's citations demonstrate familiarity with the Grievance procedures required. The lack of clarity in the Step 2 Grievance decision, and direction provided by the CSC in Appellant's performance evaluation appeal may have caused him confusion, but the decision in this matter is not impacted by the failure to file a Step 3 Grievance.

CONCLUSIONS OF LAW

1. The substance of the appeal as supplemented by appellant in May 2006 satisfied conditions of subject matter jurisdiction.
2. The City failed to comply with the requirements of PR 1.4.3.B when it failed to respond to the 1st Step Grievance.
3. The Step 2 Grievance decision, although not clearly written, found violations in the selection process that was grieved. This constitutes a finding in Appellant's favor.

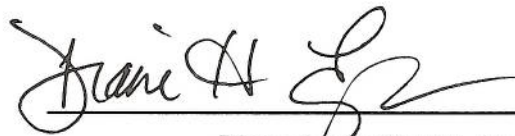
4. The Step 2 Grievance decision provided an adequate remedy to Appellant's Grievance. The remedy sought by Appellant is vague. (Recognition for employees passed over in the improper selection process). Appellant does not specify how to remedy "The impact on upward mobility" caused by the improper process. The remedy provided in the 2nd Step Grievance response, a new selection process, is the closest practical fit for the remedy requested given the information in the record.
5. Issues related to policy and procedure violations in the second selection process, if any, should be the subject of a different and separate appeal. "Unclear Standards" may have been an issue that existed in the second selection process and could constitute the subject of a new appeal challenging that process.
6. The matter was never ripe for a Step 3 grievance, as the matter was resolved in Appellant's favor at Step 2.

ORDER

IT IS ORDERED THAT the appeal on the challenge to the procedures followed in the selection process for an out of class assignment **IS HEREBY DISMISSED** because the matter was concluded in Appellant's favor at Step 2 of the Employee Grievance Procedure.

Dated this 5th day of February 2007

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Diane Hess Taylor, Hearing Officer

**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 7th day of February, 2007, I deposited in the U.S. mail, postage prepaid,
a copy of **DECISION AND ORDER ON ISSUE OF JURISDICTION** to:

Paul Janos
5249 17th Avenue NE
Seattle, WA 98105

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

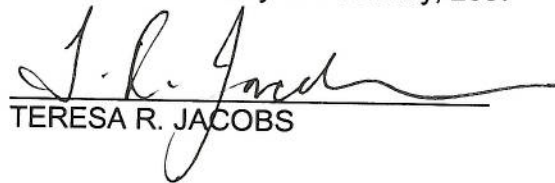
Bob Laird, Operations Director, DPD
Felecia Caldwell, HR Manager, DPD
Diane Hess Taylor, Hearing Officer, CSC

In the appeal of:

Paul M. Janos v. Department of Planning and Development

CSC Appeal No. 06-05-005

DATED this 7th day of February, 2007


TERESA R. JACOBS

BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

Paul Janos, Appellant

V.

Department of Planning and
Development, City of Seattle,
Respondent

DISMISSAL ORDER

CSC No. 06-07-008

BACKGROUND

At its February 21, 2007 meeting the Commission reviewed and affirmed the decision and order issued by Hearing Officer Diane Hess Taylor, February 5, 2007.

This appeal was filed on April 20, 2006. On February 5, 2007 Hearing Officer Diane Hess Taylor issued a *Decision and Order on Issue of Jurisdiction*. Neither party filed a Petition for Review of the order. In the order the Hearing Officer found that "...the matter was concluded in Appellant's favor at Step 2 of the Employee Grievance Procedure."

CONCLUSION

Whereas neither party requested a review of the decision and the decision was affirmed by a majority of the Commission,

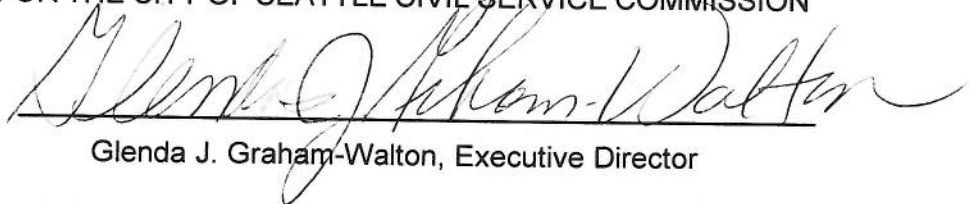
The Executive Director enters the following order for the Civil Service Commission

ORDER

The Appeal is hereby dismissed with prejudice.

Dated this 27th day of February, 2007

FOR THE CITY OF SEATTLE CIVIL SERVICE COMMISSION



Glenda J. Graham-Walton, Executive Director

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 27th day of February, 2007, I deposited in the U.S. mail, postage prepaid, a copy of **DIMISSAL ORDER** to:

**Paul Janos
5249 17th Avenue NE
Seattle, WA 98105**

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

Mark McDermott, Director, Personnel Department
Bob Laird, Operations Director, DPD
Felecia Caldwell, HR Manager, DPD
Diane Hess Taylor, Hearing Officer, CSC

In the appeal of:

Paul Janos v. Department of Planning and Development

CSC Appeal No. 06-05-005

DATED this 27th day of February, 2007



TERESA R. JACOBS