

**BEFORE THE HEARING EXAMINER FOR THE CITY OF SEATTLE  
UNDER DELEGATION FROM THE CIVIL SERVICE COMMISSION**

**KATEE LOU MEADE**

Appellant

v.

**SEATTLE POLICE DEPARTMENT**

Respondent

File: CSC 13-01-006

**ORDER ON DEPARTMENT'S  
MOTION TO DISMISS APPEAL**

Katee Meade appealed to the Civil Service Commission (CSC) a decision by the Seattle Police Department (Department) to terminate her employment with the Department. Ms. Meade's Notice of Appeal also alleges that the Department violated numerous Personnel Rules. In an order dated March 20, 2014, the CSC delegated the matter to the Office of Hearing Examiner "to conduct additional fact finding and legal analysis for a determination" of whether the CSC has jurisdiction over the appeal. The Department filed a motion to dismiss the appeal as time barred, and the motion was fully briefed by both parties. The briefing addressed the issue of whether Ms. Meade's appeal was timely but also touched on the issue of whether she was a probationary employee when she was discharged. Both issues relate to the CSC's jurisdiction over the appeal. Therefore, following oral argument on the motion, the parties submitted supplemental briefing on Ms. Meade's probationary status.

Facts

On September 17, 2008, Ms. Meade was hired by the Department in the Pawnshop Unit as a temporary worker in a less than half-time (LHT) assignment as an Administrative Specialist I (AS I). Her schedule was "two days a week (under 20 hours per week)". Declaration of Linda Bailey in Support of Respondent's Supplemental Brief (Bailey Declaration), Exhibit B. SMC 4.04.030(35) defines temporary workers as both temporary and less than half time employees, including a person employed in:

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d. a less than half-time assignment for seasonal, on-call, intermittent or regularly scheduled work that normally does not exceed one thousand forty (1,040) hours in a year, but may be extended up to one thousand three hundred (1,300) hours once every three (3) years and may also be extended while the assignment is in the process of being converted to a regular position;

Personnel Rule (PR) 11.2.P notes that a "[t]emporary worker" may be "hired for one or more temporary assignments." PR 11.2.N.3 define a LHT assignment as a type of "temporary

assignment" that may be for "regularly scheduled work that may be ongoing or recur from year to year but does not exceed 1040 hours per year except as provided by this Rule." PR 11.2.Q defines "year" as "26 consecutive pay periods unless otherwise specified." PR 11.9 addresses LHT assignments more fully and provides that they must be managed to no more than 1040 hours in each year, but that the Personnel Director may approve the extension of a LHT assignment "to a maximum of 1300 hours in 1 year during any 3 consecutive years" if the Director agrees with the Department that the need for the extension was unforeseen and will not recur, and "there is no viable alternative to continuing the temporary assignment." PR 11.9.A and 11.9.D.

Ms. Meade's temporary LHT assignment, #000049718, was extended for an additional year each year in 2009, 2010, and 2011. Bailey Declaration, Exhibits C and D. Exhibit E to the Bailey Declaration includes an email dated August 23, 2011 from the Department's Personnel staff notifying Ms. Meade of the 2011 one-year extensions of her temporary assignment.

On October 12, 2011, Ms. Meade began a second temporary assignment, #000067164, for the Department as an Administrative Specialist II in the Department's Public Records Unit. Bailey Declaration, Exhibit F. However, because all hours from both assignments within the Department accrued to the primary LHT assignment, the second assignment would cause Ms. Meade to exceed the 1040 hour limit on LHT assignments. Therefore, it was terminated on October 25, 2011, and the Department sent Ms. Meade a confirming letter on November 18, 2011. *Id.* Ms. Meade's dual assignment resulted in her working 1168.5 hours during her LHT assignment of September 2011 to September 2012, and the Department sought and received approval for the additional hours through a "Temporary Assignment 1300 Hour Management Plan". Bailey Declaration, Exhibit G.

In mid-May of 2012, an employee in the Department's Fraud, Forgery & Financial Exploitation Unit (Fraud Unit) left her full-time Administrative Specialist I position. Ms. Meade had performed well in her temporary LHT assignment, and some members of the Department were anxious to find a permanent position for her. Declaration of Appellant, Ms. Katee Meade in Support of Appellant's Supplemental Response to the City's Supplemental Briefing (Second Meade Declaration), Exhibit F. However, the Department was not given authority to fill the Fraud Unit's AS I position in 2012, and so did not initiate a hiring process for the position or request an interim position vacancy assignment.<sup>1</sup> Declaration of Gregg Caylor in Support of Respondent's Supplemental Brief at 2. Ms. Meade's primary job duties remained with the Pawnshop Unit. A full-time regular AS I was assigned to the Fraud Unit, but Ms. Meade also performed work on some cases for that unit. Declaration of Gregg Caylor in Support of Respondent's Supplemental Brief at 2; Second Meade Declaration, Exhibit D.

Ms. Meade's original temporary LHT assignment was extended for an additional year in 2012. On August 31, 2012, she was notified by email from the Department's Personnel staff that her

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<sup>1</sup> An interim position vacancy assignment is a type of temporary assignment of up to one year to a vacant regular position "to perform work associated with a regularly budgeted position that is temporarily vacant and has no incumbent." PR 11.2.N.1. "The appointing authority may request a position vacancy assignment only when he or she has initiated the hiring process to make a regular appointment to the position." PR 11.7.

“temporary AS I Assignment in the Pawnshop Unit is approved for 26 pay periods”. Bailey Declaration, Exhibit E.

The Department received permission to fill the vacant, full-time AS I position in the Fraud Unit in 2013. Following a competitive hiring process for the position, Ms. Meade was selected to fill it. The Department's employment letter, dated May 13, 2013, stated that her appointment to the position would be effective June 5, 2013. It also noted that, in accordance with the PRs, Ms. Meade's “hours of temporary employment as an Administrative Specialist I” would be calculated in determining her initial step placement, and that “[y]ou will serve a twelve (12) month probationary period.” Declaration of Teresa Jones in Support of Respondent's Motion to Dismiss [attached to Respondent's Reply] (Jones Declaration), Exhibit A. The notice of Ms. Meade's appointment to a bargaining unit position also states that the appointment is from a TES (temporary employment service) to a permanent position. Declaration of Amy Lowen in Support of Respondent's Motion to Dismiss (Lowen Declaration), Exhibit A. Ms. Meade asked to delay her start date in the new position to June 19, 2013, for personal reasons, and the Department agreed.

On June 25, 2013, the Department opened an internal EEO investigation after Ms. Meade made a comment to Lt. Caylor about some of the language used in the office. Lowen Declaration, Exhibit C. After talking with Ms. Meade, the officer conducting the investigation determined that her comment had referred to a single conversation and not to ongoing offensive language in the workplace. *Id.*

On August 27, 2013, Lt. Caylor met with Ms. Meade and informed her that her probationary employment in the Administrative Specialist position was not working out and that she could resign or would be terminated effective September 4, 2013. In accordance with the applicable collective bargaining agreement's requirements for terminating probationary employees,<sup>2</sup> Ms. Meade was placed on paid administrative leave for five working days in advance of separation. First Caylor Declaration, Exhibit B. Lt. Caylor gave her a copy of an Order administratively reassigning her to “Home” effective August 28, 2013. Second Meade Declaration, Exhibit 7, First Caylor Declaration, Exhibit B. A Department order terminating Ms. Meade effective September 4, 2013 was dated August 29, 2013, but a copy was not sent to her. First Caylor Declaration, Exhibit C; First Meade Declaration at 3. The Department sent Ms. Meade a letter of termination dated August 29, 2014. Lowen Declaration, Exhibit B. Ms. Meade states that she received it on September 6, 2013, and produced the front of an envelope addressed to her from the Department's HR office which was postmarked September 4, 2013. First Meade Declaration, Exhibit 10.

SMC 4.04 240.A requires the Personnel Director to “establish rules for the presentation of non-exempt employee grievances in succession, to an employee's immediate supervisor, to the division manager, and to the head of the department for a written decision if necessary.” PR 1.4.2.A provides that a “regular, trial service or probationary employee may initiate a grievance

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<sup>2</sup> City of Seattle's collective bargaining agreement with PTE Local 17. See Declaration of Gregg Caylor in Support of Respondent's Motion to Dismiss (First Caylor Declaration), Exhibit A; First Meade Declaration, Exhibit 8.

when there is a disagreement between the employee and his or her supervisor or employing unit concerning the proper application of provisions of the Seattle Municipal Code Chapter 4.04 or Personnel Rules and any policies or procedures adopted pursuant thereto" with certain exceptions not applicable here. PR 1.4.2.B states that the employee grievance procedure is to consist of three steps. "In an effort to expedite the grievance process, grievances shall be filed at the step in which there is authority to adjudicate, provided that the supervisor(s) be notified of any step that is skipped. If the employee and the department are not able to agree on which step the grievance shall be initiated, the employee shall file the grievance at Step One." At step one, the employee is to "present a written request for a meeting with his or her immediate supervisor within 20 calendar days following the grievable incident."

On September 26, 2013, Ms. Meade filed an employee grievance via email to Assistant Chief Nicholas Metz with a copy to Acting Chief James Pugel "for unlawful termination of my employment," stating that she was "starting with step two of the process under Personnel Rule 1.4.2.B.2 because you are listed as my division director." Lowen Declaration, Exhibit E. Ms. Meade did not notify her immediate supervisor of her decision to start the process at Step 2. The grievance listed numerous PRs that Ms. Meade alleged had not been followed and stated that she was also grieving being denied union representation and retaliation against her for reporting bullying and participating in an EEO complaint, all of which "resulted in the unfair and unlawful termination of my employment." *Id.* After receiving no response to the grievance within the 14 days allotted under PR 1.4.2.B, Ms. Meade filed a Step 3 Grievance with Lt. Michael Teeter on October 23, 2013, stating "[p]lease see the enclosed grievance for the unlawful termination of my employment." Lowen Declaration, Exhibit F. PR 1.4.2.C allows an employee to proceed to the next step in the grievance process if management does not respond within required timelines.

In a letter dated November 6, 2013, Assistant Chief Metz responded to the Step 2 grievance with a letter stating that Ms. Meade's grievance was untimely because it was not filed within 20 calendar days of the grievable incident, as required by PR 1.4.2.B. The letter indicated that the grievable incident occurred on the effective date of Ms. Meade's termination, September 4, 2013, and stated that Lt. Caylor had notified her of that date when she met with him and was placed on home assignment. The letter also reminded her that she had been terminated pursuant to SMC 4.04.290.B, which allows the employer to terminate a probationary employee without cause. Lowen Declaration, Exhibit I.

Ms. Meade contacted the Civil Service Commission's Executive Director concerning the Department's lack of response and was advised to send the Step 3 grievance to the City's Personnel Director. The Personnel Director received the grievance on November 13, 2013, and responded on November 22, 2013, with a memorandum addressed to Acting Chief Pugel and Ms. Meade. Lowen Declaration, Exhibit C. The memo recites all of Ms. Meade's grievance claims, including her statements that she was subjected to a hostile work environment through coworkers' negative emails and use of vulgar language, and that after her EEO complaint, she was ostracized by coworkers, given an unsubstantiated performance review on August 26, 2013, and terminated. *Id.* at 1-2. The memo states that a payroll report shows that Ms. Meade's hours worked in her temporary LHT position "were within the maximum allowable hours for a less than halftime temporary employee," as provided in SMC 4.04.030.35(d), and concludes that she

“was not ever placed in an interim assignment to a vacant regular position as a temporary employee”. *Id.* at 2-3. The memo also concludes that Ms. Meade was serving a probationary period at the time of her termination, *id.* at 1-2, and states that her personnel file includes unspecified “documentation of interpersonal challenges with coworkers in her work unit” and “an undated performance review (presumably the same review provided to her on August 26, 2013) that notes some performance deficiencies.” *Id.* at 3. The memo assumes that the Department provided Ms. Meade with written notice on August 29, 2013, of her termination effective September 4, 2013. *Id.* at 2. Thus, the memo concludes that Ms. Meade’s grievance was not timely because it was not filed within 20 days of the “grievable incident,” Ms. Meade’s termination on September 4, 2013. *Id.* at 3.

In accordance with PR 1.4.2.B.3, Acting Chief Pugel sent Ms. Meade a letter dated November 26, 2013, denying the Step 3 grievance of her termination because it was not filed within 20 days of the effective date of the termination, and reiterating that she had never had the status of an interim temporary employee and was within her probationary period when terminated. Lowen Declaration, Exhibit J. Ms. Meade filed this appeal on December 6, 2013.

In accordance with SMC 4.04.260, which governs appeals to the CSC by regular employees, PR 1.4.3 and 1.4.4 provide that a regular employee who exhausts the grievance process and remains dissatisfied with the outcome concerning a suspension, demotion or termination may file an appeal with the Civil Service Commission within 20 calendar days of the delivery of the Step 3 grievance response. In addition, CSC Rule 5.01.A provides that “[a]ny regular employee who is demoted, suspended, or terminated may appeal such action to be Commission.” A “regular employee” is defined in the Code as “an employee who has been appointed to a position within the classified service and who has completed a one (1) year probationary period of employment.” SMC 4.04.030(27).

CSC Rule 5.01.B provides that “[a]ny employee alleged to be probationary by the disciplining department may appeal to the Commission the question of the employee’s probationary status and whether the procedures for discharge of probationers, as found in the Personnel Rules, were properly followed. PR 1.3.2.E states that a probationary employee may be suspended, demoted or discharged without just cause, and that a written statement of the action “shall be provided to the Personnel Director and the Civil Service Commission.” SMC 4.04.290.C provides that “an employee may be dismissed during their probationary period after having been given written notice five (5) working days prior to the effective date of dismissal.”

### Motion

Although denominated a motion to dismiss, the Department’s motion is actually one for summary judgment, as both the Department and Ms. Meade included sworn declarations and attached documentary evidence with their briefs. “[A] legislatively created agency or board, when acting in a quasi-judicial capacity, may employ summary procedure if there is no genuine issue of material fact.” *ASARCO Inc. v. Air Quality Coalition*, 92 Wn.2d 685, 695-698, 601 P.2d 501 (1979). See *Kettle Range Conservation Grp. v. Dep’t of Natural Res.*, 120 Wn.App. 434, 456, 85 P.3d 894 (2003); *Eastlake Community Council v. City of Seattle*, 64 Wn.App. 273, 276,

823 P.2d 1132 (1992). With a motion for summary judgment, the facts, and all reasonable inferences are reviewed in the light most favorable to the nonmoving party. *Kettle Range Conservation Grp. v. Department of Natural Res. supra.*

### Analysis

#### Grievance

PR 1.4.2.A authorized Ms. Meade to file her grievance. The timeliness of the grievance depends upon the identification and date of the “grievable incident” as that term is used in PR 1.4.2.B. “Grievable incident” is not defined in the PRs, but it plainly refers to the incident, i.e., the happening or occurrence, that the employee is seeking to have reviewed. In this case, Ms. Meade was seeking review of her termination which, according to City records, took effect on September 4, 2013. It is clear from the Department’s actions that it was not treating the termination as disciplinary action taken against a regular employee for just cause under the procedures prescribed by PR 1.3.2. Ms. Meade was treated as a probationary employee. Both parties agree that Lt. Caylor gave Ms. Meade a reassignment to home, effective August 28, 2013, and told her that she could resign or she would be terminated effective September 4, 2013. For purposes of PR 1.4.2, that combination of action and statement by the Department was sufficient to establish that the “grievable incident” occurred on September 4, 2013. The 20 days for Ms. Meade to file a grievance seeking review of the termination expired on September 24, 2013. Consequently, Ms. Meade’s September 26, 2013 filing was not timely. And even if the grievance were timely, the CSC would lack jurisdiction over Ms. Meade’s appeal of the grievance decision because she was a probationary, not a regular employee. *See* SMC 4.04.260; PR 1.4.3 and 1.4.4; CSC Rule 5.01.A.

#### Probationary Status

Ms. Meade asserts that she was a temporary employee working in a vacant, regularly budgeted AS I position for over one year and thus, had already served her 12-month probationary period when she was appointed to the position on June 19, 2013. PR 11.7.H provides that if “a temporary worker is assigned to a single-position vacancy assignment for over 1 year, he or she shall be regularly appointed to the position and shall not serve a probationary period.” However, all employment entries for Ms. Meade indicate that in 2012, she remained in a LHT temporary assignment for the Department. Under PR 11.2.9.C, “[a]ll hours accumulated by a temporary worker in a [LHT] assignment ... accrue to the primary assignment, regardless of differences in job codes or locations.” There is no evidence that she was placed in an interim assignment for a position vacancy in the Fraud Unit. In addition, because the Department had no authority to fill the AS I position in that unit, they could not initiate a hiring process to make a regular appointment to the position, which is a prerequisite to requesting an interim position vacancy assignment. *See* PR 11.7.<sup>3</sup>

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<sup>3</sup> Ms. Meade points to a “Certificate of Appointment” from the Department dated May 15, 2013 as a promotion letter indicating that she had completed her probationary period as of that date. *See* Second Meade Declaration, Exhibit B. The “Certificate of Appointment” is unsigned and conflicts with Ms. Meade’s appointment letter, Exhibit A to Jones Declaration, which confirms Ms. Meade’s appointment to the regular AS I position effective June 19,

Further, PR 11.2 prescribes a procedure for a temporary worker to appeal if the worker believes that his or her LHT temporary assignment should be converted to a regular position. If the temporary worker can establish that he or she has worked one year or more in a vacant regular position, the worker "shall be appointed to the position and shall not be required to fulfill a probationary period." PR 11.2.D. However, the appeal must be filed while the temporary worker is still in the assignment or within 10 days of leaving it. PR 11.2.B.2. As a temporary worker, Ms. Meade was provided with a copy of the Temporary Worker Program Handbook, which includes information on such appeals. Bailey Declaration at 4; Bailey Declaration, Exhibit I at 12. She did not file an appeal seeking to have her LHT temporary position in the Department converted to a regular position while she was in the position, or within 10 days of leaving it. The appeal is both untimely and addressed to the wrong forum.

Under CSC Rule 5.01.B, an employee "alleged to be probationary by the disciplining department may appeal to the Commission the question of the employee's probationary status and whether the procedures for discharge of probationers, as found in the Personnel Rules, were properly followed." Ms. Meade's appeal to the CSC could be construed to be an appeal under this Rule, but the basis for the appeal would be the same as that discussed above, i.e., Ms. Meade's contention that she was a temporary employee working in an interim position vacancy for over a year and thus, had already served her 12-month probationary period when she was appointed to the position. Having failed to avail herself of the appeal process provided by PR 11.2 for addressing this claim, Ms. Meade cannot raise it collaterally under CSC Rule 5.01.B. However, the CSC would have jurisdiction under that Rule to address the issues of whether the requirements of SMC 4.04.290.C and PR 1.3.2.E for discharge of probationary employees were properly followed and if not, how that may impact the Department's termination of Ms. Meade.<sup>4</sup>

### Conclusions

1. The CSC lacks jurisdiction over Ms. Meade's appeal of the Department's denial of her Step 3 grievance of her termination because the grievance was untimely, and Ms. Meade was a probationary employee.
2. The CSC lacks jurisdiction over Ms. Meade's appeal of her claim that she was a temporary employee working in an interim position vacancy for over a year and had already served her 12-month probationary period. PR 11.2 establishes an appeal process specifically designed for resolving such claims, and Ms. Meade failed to timely file such an appeal despite being told in numerous communications with the Department through mid-2013 that she was a temporary employee.

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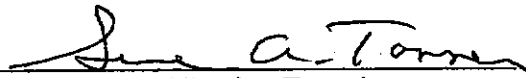
2013. The Certificate, being dated two days after the appointment letter, appears ceremonial in nature. The Examiner gives it no weight.

<sup>4</sup> Ms. Meade also claims that her termination violated the requirement of the Collective Bargaining Agreement between Local 17 and the City requiring that a probationary employee be given five working days' notice prior to the effective date of a termination. Nothing in the Code grants the CSC jurisdiction over disputes under the Collective Bargaining Agreement.

3. If Ms. Meade's appeal is considered under CSC Rule 5.01.B, the CSC has jurisdiction to address the issues of whether the requirements of SMC 4.04.290.C and PR 1.3.2.E for discharge of probationary employees were properly followed and if not, how that may impact Ms. Meade's termination.

The CSC's referral order provided that once a determination on jurisdiction was made, the CSC would "conduct a further review of the appeal to determine what additional actions or referrals will be taken." Therefore, the Examiner leaves a final decision on the Department's summary judgment motion to the CSC.

Submitted this 11<sup>th</sup> day of June, 2014.

  
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