

RECEIVED

FEB 16 2006

**PUBLIC SAFETY CIVIL
SERVICE COMMISSION**

**CITY OF SEATTLE
PUBLIC SAFETY CIVIL SERVICE COMMISSION**

In the matter of the appeal of

ARIEL VELA,

Appellant

v.

SEATTLE POLICE DEPARTMENT,

Respondent

**ORDER GRANTING
RESPONDENT'S MOTION TO
DISMISS**

PSCSC No. 05- 002

Having considered Respondent's Motion to Dismiss, Appellant's Response, documents filed with the motion and response, oral argument, and the entire file in this matter, the Commission enters the following Findings of Fact, Conclusions of Law, and Order:

I. INTRODUCTION

1. On February 17, 2005, Sergeant Ariel Vela (Appellant) filed this appeal of his February 7, 2005 transfer by the Seattle Police Department ("Respondent", "SPD"). In that appeal, Appellant alleges that the transfer constituted a disciplinary action without just cause.

2. On December 2, 2005, Respondent Seattle Police Department filed a Motion to Dismiss, arguing that the transfer was not disciplinary and that in any event the Commission does not have jurisdiction to hear an appeal of a transfer.

APPEAL OF ARIEL VELA
PSCSC Appeal No. 05-002

Public Safety Civil Service Commission
700 5th Avenue, Ste. 1670
PO Box 94729
Seattle, WA 98124-4729

1 3. On December 21, 2005, the Commission entered an "Order for Schedule on Motion to
2 Dismiss" ("Order"). The Order, served on both Respondent and Appellant, provided:

- 3 a) Respondent SPD's Motion to Dismiss was filed on December 2, 2005;
4 b) Appellant Vela's Response to the motion was due Jan. 6, 2006; and
5 c) The Commission would hear brief oral arguments on the motion at its January 19, 2006
6 regular meeting beginning at 10:00 a.m.

7 4. Appellant filed a Response to the Motion to Dismiss on Jan. 10, 2006.

8 5. On January 19, 2006, as scheduled in its prior Order, the Commission was
9 prepared to hear oral argument on the Motion to Dismiss.

10 6. Respondent SPD appeared. Appellant did not appear or provide any notice to the
11 Commission that he did not intend to appear. The Commission addressed other agenda items
12 out of order in order to give Appellant additional time to appear. When he had still not
13 appeared, the Commission heard brief oral argument from Respondent SPD on their Motion to
14 Dismiss.

15 II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

16 1. Appellant Vela alleged that he was involuntarily transferred in February 2005 from the
17 Street Vice Unit of the Seattle Police Department to the Patrol Bureau.¹ Sergeant Vela further
18 alleged that SPD's transfer was motivated by disciplinary reasons but without just cause.

19 2. Respondent Seattle Police Department (SPD) responds that the transfer was for
20 operational reasons and had nothing to do with Sergeant Vela's performance.¹

21 3. In its Motion to Dismiss, Respondent also argues that the Commission does not have
22 jurisdiction to hear appeals of transfers.

23 4. The City of Seattle has enacted a separate civil service system for public safety
24 employees pursuant to Charter Article XVI Sec. 3 to accomplish the purposes of state law. See
25 SMC 4.08.020. Under this system the Commission is empowered to "Make suitable rules to

¹ Notice of Appeal.

1 carry out the purposes of this chapter and for examination, appointments, promotions, transfers,
2 demotions, reinstatements, suspensions, layoffs, discharges, and any other matters connected
3 with the purposes of this chapter.” SMC 4.08.070(A). The Commission also may “hear appeals
4 or complaints respecting the administration of the” Public Safety Civil Service system. SMC
5 4.08.070(C).

6 5. The Commission’s rules interpret the extent of this power to hear appeals. See SMC
7 4.08.070(A); Public Safety Civil Service Rules of Practice and Procedure (Rule) 1.01 & 1.02.
8 Rule 6.01 provides:

9 HEARINGS – APPEALS.

- 10 a. Any regular employee who is demoted, suspended, or terminated
11 may appeal such action to the Commission.
12 b.
13 c. Any employee, or department, who is adversely affected by an
14 alleged violation of Article XVI of the Charter of The City of Seattle, the
15 Public Safety Civil Service Ordinance or the Public Safety Civil Service
16 Commission Rules may appeal such violation to the Commission.

17 6. Thus, the Commission’s jurisdiction to hear appeals is limited to a) demotions,
18 suspensions, and terminations; and b) alleged violations of the City Charter, the Seattle
19 Municipal Code, and Public Safety Civil Service Rules.

20 **Demotions: PSCSC Rule 6.01(a)**

21 7. It is uncontested that Sergeant Vela was not suspended or terminated, but rather was
22 transferred. The only question under Rule 6.01(a) then is whether the transfer was a
23 “demotion”. PSCSC Rule 3.19 defines a “demotion” as: “Removal of an employee from a higher
24 to a lower class of employment.”

25 ¹ For purposes of this case, SPD conceded that there were no deficiencies in Sergeant Vela’s performance as a Vice Unit member and that he did not engage in any misconduct.

1 8. It is also uncontested that Appellant Vela was transferred from one assignment to
2 another in the same class. Therefore, Vela was not "demoted" as that term is defined in
3 the PSCSC Rules.

4 9. Since Appellant was not demoted, Rule 6.01(a) cannot be the basis for
5 Commission jurisdiction over this appeal.
6

7 **City Charter, Municipal Code, and PSCSC Rules: Rule 6.01(c)**

8 10. The next issue is whether there are any facts to support a finding that the transfer
9 violated any other provisions of the City Charter, Municipal Code, or Rules of this
10 Commission, as provided in Rule 6.01(c).

11 11. There is no reference to in the City Charter to transfers.

12 12. The only reference to transfers in the Seattle Municipal Code sections governing the
13 Public Safety Service Commission is language allowing the Commission to promulgate rules for
14 transfers that shall be followed unless there are inconsistent collectively bargained procedures.
15 See SMC 4.08.070. Violation of these rules could be appealed to the Commission. See SMC
16 4.08.070(C); Rule 6.01(c).

17 13. However, the only PSCSC rule relevant to Sergeant Vela's transfer is procedural only.
18 Rule 14(b) states:

19 Intra-departmental transfers: An appointing authority may transfer an
20 employee from one position to another position in the same class in his
21 department without prior approval of the Secretary but must report any
such transfer to the Public Safety Civil Service Department within five
days of its effective date.

22 15. Notice to the Commission is not an issue in this appeal.

23 14. Appellant Vela has not alleged any violation of the City Charter, Municipal Code, or
24 Code or PSCSC Rule.
25

1 15. PSCSC Rule 6.1(c) cannot therefore serve as a basis for Commission jurisdiction over
2 this appeal.

3 16. In his Response, Appellant Vela argues that his transfer violates the collective
4 bargaining agreement (CBA) between Respondent SPD and the Police Officers Guild.
5 However, even if the transfer was inconsistent with the CBA (a question on which the
6 Commission takes no position) that would not afford the Commission jurisdiction over this
7 appeal. The proper forum and remedy for an alleged violation of the CBA is a creature of the
8 language of the CBA itself. An alleged violation of the CBA cannot serve as the basis for
9 Commission jurisdiction over this appeal.

10 17. Because the uncontested facts demonstrate that Appellant's transfer is not a demotion
11 and does not violate the City Charter, the Municipal Code, or a PSCSC Rule, the Commission
12 does not have jurisdiction to hear this appeal.

13
14 **III. ORDER**

15 For all the reasons described above,

16 IT IS HEREBY ORDERED that:

- 17 1. Respondent's Motion to Dismiss is **GRANTED**; and
18 2. The appeal is therefore **DISMISSED WITH PREJUDICE**.

19 Signed at Seattle, Washington this 16th day of February 2006.

20 **PUBLIC SAFETY CIVIL SERVICE COMMISSION**
21 **OF THE CITY OF SEATTLE¹**

22 
Commissioner Joel Nark, Chair

2-16-06
Date

23 
Commissioner Herb Johnson

2-16-06
Date

24
25
¹ Commissioner Bown did not participate in deciding the Motion to Dismiss.