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MAY 30 2006

PUBLIC SAFETY CIVIL  
SERVICE COMMISSION

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

In the matter of the appeal of )  
)  
**DARRELL CHARLES,** )  
)  
Appellant )  
)  
v. )  
)  
**SEATTLE POLICE DEPARTMENT,** )  
)  
Respondent )

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

**PSCSC No. 05-008**

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**I. INTRODUCTION**

This matter was heard pursuant to a Notice of Appeal filed on June 30, 2005 by Sergeant Darrell Charles appealing a disciplinary transfer dated July 5, 2005.<sup>1</sup> A full evidentiary hearing was held on April 19, 2006, before Commissioners Bown, Johnson, and Nark, with Commissioner Nark acting as Presiding Officer.

Sergeant Charles represented himself. Mark McCarty, Police Department Legal Advisor, represented the Department. After considering the evidence in this case,

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<sup>1</sup> Sergeant Charles and a SPOG representative met with the Chief of Police on June 20 to discuss the possible discipline. Sergeant Charles apparently filed the appeal before receiving the Chief's formal written decision. The Commission accepted the appeal, although it was technically premature. The Commission would not, however, accept an appeal filed late – i.e. more than 10 days after the written notice of discipline.

1 including the testimony, documentary evidence, and arguments of the parties and their  
2 representatives, the Commission by unanimous vote enters the following Findings of  
3 Fact, Conclusions of Law, and Order.

## 4 II. JURISDICTION

5 The Commission must, as a threshold matter, consider its jurisdiction over this  
6 appeal.

### 7 **A. The Disciplinary Transfer**

8 In its recent decision in *Vela v. Seattle Police Department*<sup>2</sup>, the Commission held  
9 that it did not have jurisdiction to hear an appeal of the transfer at issue in that case.  
10 PSCSC Rule 6.01(a) provides that "Any regular employee who is demoted, suspended,  
11 or terminated may appeal such action to the Commission." Rule 6.01(c) provides that  
12 an employee may also appeal an alleged violation of Article XVI of the City Charter, the  
13 Public Safety Civil Service Ordinance, or a PSCSC Rule.

14 The transfer in *Vela*, like the transfer in this case, was not a demotion and Rule  
15 6.01(a) was therefore not applicable. The *Vela* transfer also was not a disciplinary one  
16 – i.e. the Department did not justify its decision to transfer Sergeant *Vela* on the basis of  
17 any performance issues or misconduct. Rather, the Department justified its decision  
18 solely on the basis of the needs of the Department. The Commission found that the  
19 Notice of Appeal in *Vela* did not state a violation of the Charter, the Ordinance, or a  
20  
21  
22

23 \_\_\_\_\_  
<sup>2</sup> *Vela v. Seattle Police Department*, PSCSC 05-002, Order dated February 16, 2006.

1 PSCSC Rule, and so the Commission did not have jurisdiction to hear the appeal of his  
2 non-disciplinary transfer.<sup>3</sup>

3 The transfer in this case is fundamentally different. The Department from the  
4 outset justified the transfer as disciplinary in nature – i.e. it was based upon Sergeant  
5 Charles' alleged failure to follow a directive from his superiors. The CBA expressly  
6 states that an employee may appeal a disciplinary transfer to either the Disciplinary  
7 Review Board or to the Commission.

8 Article 3.5.G of the CBA provides:

9 If a suspension, demotion, termination, or a transfer identified by the City  
10 as disciplinary in nature is challenged, the discipline may be challenged  
11 through the Public Safety Civil Service Commission or through the  
12 Disciplinary Review Board (DRB), but not through both. A suspension,  
13 demotion, termination, or transfer identified by the City as disciplinary in  
14 nature cannot be challenged through the grievance procedure. If the guild  
15 believes that a transfer not identified by the City as disciplinary in nature is  
16 in fact disciplinary, the Guild's challenge to the transfer shall be handled  
17 through the grievance procedure.

18 The Commission reads the Charter, the PSCSC Ordinance, and its Rules  
19 together with any applicable CBA language.<sup>4</sup> The Commission finds no conflict  
20 between the SPOG CBA language cited above and the language of the Charter, the  
21 PSCSC ordinance, or the PSCSC Rules. Accordingly, the Commission reads Article  
22 XVI of the City Charter and the CBA together to provide that the Commission has  
23 jurisdiction to hear this appeal of a disciplinary transfer.<sup>5</sup>

## 20 **B. The Letter of Reprimand**

21 <sup>3</sup> The Commission in its decision also noted that the collective bargaining agreement (CBA) between the City and  
22 the Seattle Police Officers Guild (SPOG) governed situations in which a SPOG member contended that a transfer  
justified for business reasons was in fact for disciplinary reasons.

23 <sup>4</sup> The City authorizes execution of CBA's by ordinance. For, example the relevant City-SPOG CBA was authorized  
by Ordinance No. 121725.

<sup>5</sup> The Commission's jurisdiction is concurrent with the DRB. The member must timely elect a forum, either the  
Commission or the DRB.

1 In his Notice of Appeal, Sergeant Charles lists "disciplinary transfer and written  
2 reprimand" on page one under the "basis for the appeal". He does not, however,  
3 mention the written reprimand in the "Remedy Sought" section of the Notice of Appeal.  
4 It is therefore not apparent from the face of the Notice of Appeal whether Appellant is  
5 asking the Commission to assert jurisdiction over an appeal of the letter of reprimand or  
6 not. In any event, the Commission finds that it should address the issue here in order to  
7 provide guidance to both Departments and future potential appellants.

8 Applying the same analysis as that applied to disciplinary transfers, the  
9 Commission concludes it does not have jurisdiction to hear appeals of Police  
10 Department letters of reprimand issued to SPOG members.

11 The City Charter, PSCSC Ordinance, and PSCSC Rules do not mention written  
12 reprimands. Nothing in the Charter, Ordinance, or Rules suggests that the Commission  
13 has jurisdiction to hear appeals of letters of reprimand. Article 3.2 of the City-SPOG  
14 CBA provides:

15 "Written reprimands shall be subject to the grievance procedure of the  
16 Agreement."

17 Reading the applicable CBA language together with the Charter, Ordinance and  
18 Rules, the Commission concludes that it would not have jurisdiction to hear an appeal of  
19 the letter of reprimand in this case.

### 20 III. BURDEN OF PROOF

21 PSCSC Rule 6.21 provides:

22 **BURDEN OF PROOF.** At any hearing on appeal from a demotion,  
23 suspension, or termination, the disciplining authority shall have the burden  
of showing that its action was in good faith for cause. At any other

1 hearing, the petitioner or appellant shall have the burden of proof by a  
2 preponderance of the evidence.

3 This appeal does not concern a demotion, suspension, or termination. The  
4 appellant therefore bears the burden of proof. The Commission holds that in a  
5 disciplinary transfer case the appellant bears the burden of proving by a preponderance  
6 of the evidence that the disciplinary transfer was not in good faith for cause.<sup>6</sup>

#### 7 IV. FINDINGS OF FACT

##### 8 **A. Undisputed Facts**

9 Most of the important facts are uncontested. The following timeline summarizes  
10 the undisputed facts and notes when witnesses testified differently about material facts.

##### 11 **1. The Investigation of a Possible Fraud Scheme at SPU Transfer Stations**

12 a. Wednesday, April 20, 2005. Detective Heidi Traverso received a voice-mail  
13 message from Joanne Peterson, Human Resources Director at Seattle Public Utilities  
14 (SPU), stating that Ms. Peterson wanted to meet with her to discuss a case.

15 b. Thursday, April 21. Detective Traverso contacted Ms. Peterson Thursday  
16 morning. Ms. Peterson told Detective Traverso that there was a meeting scheduled at  
17 2:00 p.m. that day to discuss a case and asked her to attend. Detective Traverso did  
18 not at that time know the purpose of the meeting, but assumed it was regarding a  
19 current investigation she was working on involving SPU. Detective Traverso told  
20 Sergeant Charles about the meeting. Sergeant Charles normally worked from 6:00 a.m.  
21 to 2:00 p.m., but had scheduled an hour of vacation and planned to leave at 1:00 p.m.

22 \_\_\_\_\_  
23 <sup>6</sup> The Commission considers this Rule language to be consistent with the SPOG-City CBA which provides in Article 7.4.1: "Disciplinary Transfer – A disciplinary transfer is a permanent change in unit of assignment that is imposed as discipline and shall be subject to the requirement of just cause."

1 that day.<sup>7</sup> Sergeant Charles told Detective Traverso that he would not be in the office at  
2 2:00 p.m. and so would not attend the meeting. Sergeant Charles also told Detective  
3 Traverso to let him know what happened at the meeting.

4 When Detective Traverso arrived at the 2:00 p.m. meeting, she was surprised to  
5 see many other people there and realized then that it was not just another meeting  
6 about the already pending investigation. The subject of the meeting was instead a new  
7 investigation of possible fraud at SPU Solid Waste Transfer Stations. At the meeting,  
8 Detective Traverso learned, among other things, that there might be up to \$100,000  
9 involved, that as many as six to nine SPU employees might be involved, and that the  
10 Mayor's office was interested in the progress of the investigation.<sup>8</sup>

11 c. Friday, April 22. Detective Traverso met with Sergeant Charles in the morning  
12 between 9:00 a.m. and 11:00 a.m. and described the meeting to him. She testified she  
13 provided him with an update, but did not testify that she informed him at that time about  
14 the potential losses, the number of employees potentially involved, or the interest  
15 expressed by the Mayor's office. He asked her to send him an e-mail memo  
16 summarizing the meeting held the previous afternoon. Detective Traverso at that time  
17 did not consider the investigation to be a major one or see any time pressure to prepare  
18 the e-mail immediately. She testified that a \$100,000 in potential losses was not a large  
19 amount for her unit, given that her most recent investigation involved over a million  
20 dollars. Detective Traverso prepared the e-mail and sent it to Sergeant Charles at 3:21  
21  
22

23 <sup>7</sup> Stipulated Exhibit 8.

<sup>8</sup> The investigation eventually concluded that no fraud was present.

1 p.m. Friday afternoon.<sup>9</sup> Sergeant Charles had left for the day and therefore did not see  
2 the e-mail until the following Monday morning.

3 d. Monday, April 25. Sergeant Charles read Detective Traverso's e-mail early  
4 Monday morning. He called Detective Traverso, who was attending training out of the  
5 office, at about 7:00 a.m. before her training started. He asked her for some additional  
6 information about the way in which the possible fraud may have been conducted. He  
7 then prepared a written memorandum to his superior, Lieutenant Mount, based on  
8 Detective Traverso's e-mail and the additional information he had received from her.<sup>10</sup>

9 Sergeant Charles testified he carried the memorandum, which was stamped  
10 "Confidential", into Lieutenant Mount's office sometime late Monday morning, that  
11 Lieutenant Mount was talking on the telephone, and that he therefore left the memo in  
12 Lieutenant Mount's in-box. Sergeant Charles did not indicate to Lieutenant Mount,  
13 either by words or gestures, that the memorandum was urgent. Sergeant Charles also  
14 did not inform Lieutenant Mount later that day that the memo was urgent.

15 Lieutenant Mount testified he did remember Sergeant Charles delivering the  
16 memo. He did not remember being on the phone when Sergeant Charles brought it in,  
17 but testified that he may have been doing something else at his desk at the time. He  
18 also testified that he thought it must have been in the afternoon because he normally  
19 checked his in-box once a day in the morning. Since he didn't find the memo until  
20 Tuesday morning, Lieutenant Mount believed Sergeant Charles must have delivered it  
21 Monday afternoon after he had checked his in-box that morning.

22  
23 <sup>9</sup> Stipulated Exhibit 3.

<sup>10</sup> Stipulated Exhibit 4.

1 e. Tuesday, April 26. Lieutenant Mount read the memo early Tuesday morning,  
2 realized that the new investigation could be a high-profile matter, and informed his  
3 superior, Captain Mike Fann, at about 7:00 a.m. about the new investigation. Captain  
4 Fann called Detective Traverso three times that day, including once on her personal cell  
5 phone that evening after she was off-duty, to ask her questions about the new SPU  
6 investigation, particularly about what Sergeant Charles knew and when he knew it.  
7 Concerned about the unusual calls from her Captain, she asked Captain Fann if she  
8 was in trouble. Captain Fann replied "No, you're not, your sergeant is".

9 Detective Traverso testified that Captain Fann also told her not to tell Sergeant  
10 Charles about his calls and said at one point, "This phone call never happened".

11 Captain Fann testified he may have asked Detective Traverso not to tell  
12 Sergeant Charles about the calls but that he did not recall ever saying to her "This  
13 conversation never happened".

14 f. Wednesday, April 27. Sergeant Charles and Detective Traverso attended a  
15 follow-up meeting regarding the new investigation. Detective Traverso wrote an e-mail  
16 summarizing that meeting.<sup>11</sup> The e-mail indicated that the group agreed to meet again  
17 on May 11.

18 g. Thursday, April 28. Sergeant Charles prepared a memorandum to Lieutenant  
19 Mount dated April 28 that summarized the April 27 meeting.<sup>12</sup>

20 h. Sergeant Charles' Performance Review. Lieutenant Mount prepared a  
21 Performance Review for Sergeant Charles covering the period between April 12 and  
22

23 <sup>11</sup> Stipulated Exhibit 5. The e-mail is date stamped April 27 but is entitled "SPU Meeting 4/28". Detective Traverso testified she sent the e-mail on April 27 but simply put the wrong date in the subject line.

<sup>12</sup> Stipulated Exhibit 6.



1 August 23, 2005.<sup>13</sup> The four page document rates Sergeant Charles' performance in a  
2 wide range of areas. Sergeant Charles was rated "Fully Competent" or "Exceeds  
3 Expectations" in every category. The Performance Review contains one apparent  
4 reference to the SPU Transfer Station matter:

5 Sergeant Charles typically provides the necessary updates to his chain of  
6 command, however, in one instance, the method of notification was  
inappropriate, based on the possible significance of the concern.<sup>14</sup>

## 7 **2. March 2005 Meeting Between Captain Fann and Sergeant Charles**

8 Sergeant Charles and Captain Fann both testified that the two of them had  
9 discussed in March 2005 the importance of keeping the chain of command informed of  
10 cases, particularly high profile cases. The context was an earlier SPU fraud case.

11 Neither Captain Fann or Sergeant Charles documented the content of the conversation.

12 Captain Fann testified that he informed Sergeant Charles that he needed to  
13 always keep the chain of command informed in all high profile cases so they could offer  
14 assistance and support. He testified he told Sergeant Charles that he needed to be  
15 closely involved with his staff and aware of what they were doing in high profile cases.

16 Sergeant Charles testified the discussion was more particular than simply  
17 keeping his chain of command informed about all high profile cases. He testified he  
18 was told that he should inform his superiors about an investigation, especially when he  
19 needed backup – for example support to obtain cooperation from reluctant City  
20 employees.

21  
22  
23 <sup>13</sup> Stipulated Exhibit 10.

<sup>14</sup> Exhibit 10, page 2.

1           **3. The Departmental Investigation of Sergeant Charles' Performance**

2           The Department conducted an investigation of Sergeant Charles' performance in  
3 the second SPU investigation. As discussed above, Captain Fann called Detective  
4 Traverso and questioned her. Captain Fann also spoke with other individuals involved  
5 in the matter, including Lieutenant Mount. On May 5, Captain Fann sent Assistant Chief  
6 Cynthia Miller a memorandum summarizing the investigation of Sergeant Charles'  
7 handling of the SPU transfer station investigation.<sup>15</sup>

8           **4. Chief Kerlikowske's Decision**

9           Chief Kerlikowske met with Sergeant Charles on June 20<sup>th</sup> regarding the  
10 Department's investigation of Sergeant Charles' performance in the SPU investigation.  
11 Chief Kerlikowske sent Sergeant Charles his disciplinary decision letter and attached  
12 Disciplinary Action Report (DAR), both dated July 5.<sup>16</sup>

13           Sergeant Charles testified that at the June 20 meeting, also known as a  
14 *Loudermill* hearing, Chief Kerlikowske said, "You'd think if you knew about a \$100,000  
15 theft and possible public corruption, you'd find a way to make it to a meeting." Chief  
16 Kerlikowske corroborated that testimony, answering "Right, that's probably so" when  
17 asked if he made such a statement at the *Loudermill* hearing.

18           Chief Kerlikowske's disciplinary decision letter sustained the disciplinary transfer  
19 of Sergeant Charles from the Fraud and Forgery Unit. Chief Kerlikowske's letter and  
20 the DAR both refer to "misconduct" on the part of Sergeant Charles. Chief Kerlikowske,  
21 Captain Fann, and Lieutenant Mount all testified that there was no allegation of  
22

23 <sup>15</sup> Stipulated Ex. 7.

<sup>16</sup> Stipulated Ex. 2.

1 misconduct and that the investigation was in fact about Sergeant Charles' performance  
2 – in particular whether he met performance expectations regarding keeping his  
3 superiors informed about high-profile cases.

#### 4 V. ANALYSIS AND CONCLUSIONS OF LAW

- 5 1. The Public Safety Civil Service Commission has jurisdiction to hear Sergeant  
6 Charles' appeal of the disciplinary transfer.
- 7 2. Sergeant Charles has the burden of proving by a preponderance of the  
8 evidence that his disciplinary transfer was not in good faith for just cause.
- 9 3. "In good faith for cause" means for just cause, i.e. "for a fair and honest cause  
10 or reason, regulated by good faith on the part of the employer". *Baldwin v.*  
11 *Sisters of Providence*, 112 Wn.2d 127, 139 (1989)
- 12 4. The Commission finds "Just Cause: The Seven Tests", a leading treatise on  
13 the subject of the application of the just cause standard, useful in applying  
14 the just cause standard in this case.<sup>17</sup>
- 15 5. In particular, the Commission finds the following seven factors instructive in  
16 this case, including: 1) was there reasonable notice to the employee; 2) is  
17 rule or order at issue reasonable; 3) did the employer conduct a reasonable  
18 investigation; 4) was the investigation conducted fairly; 5) did the employer  
19 base the decision on substantial evidence that the employee had in fact  
20 violated the rule or order; 6) has the employer treated similar cases similarly;  
21 and 7) is the penalty reasonably related to a) the seriousness of the  
22

23 <sup>17</sup> Adolph Koven and Susan Smith, Just Cause: The Seven Tests, , The Bureau of Nat'l Affairs (1992).

1 employee's proven performance deficiencies or misconduct and b) the  
2 employee's record of service.

3 6. The seven factors are just that – factors to be considered under the totality of  
4 the circumstances. The absence of one factor does not necessarily mean  
5 the decision was not for just cause. Some misconduct, for example, would  
6 justify immediate disciplinary action without prior notice.

7 7. The Commission applies the factors to this case as follows:

8 **a. Reasonableness of Rule or Order.** The Commission finds that the  
9 performance expectation at issue here, i.e. "keep your superiors informed about  
10 high-profile cases" is reasonable. The Department must be able to require  
11 employees to keep the chain of command informed about cases that the  
12 Department considers significant. The Commission finds that this factor supports  
13 a finding of just cause.

14 **b. Notice.** The notice the Department provided Sergeant Charles that his  
15 performance was inadequate is in dispute. Captain Fann did not document the  
16 March conversation with Sergeant Charles. The Commission is left with  
17 somewhat conflicting testimony regarding the content of that conversation. It is  
18 undisputed that the conversation, even if it constituted notice to Sergeant Charles  
19 that his performance in the earlier SPU investigation was inadequate, was rather  
20 general in nature. The Department did not suggest any way to identify which  
21 cases were "high profile" or any training or other guidance to assist Sergeant  
22 Charles in making that determination. All Departmental witnesses praised  
23 Sergeant Charles performance in general and emphasized that this particular

1 issue – informing superiors of high-profile cases – was his only performance  
2 problem. The Commission finds that under these circumstances, the informal  
3 and undocumented conversation between Captain Fann and Sergeant Charles  
4 was not adequate notice to Sergeant Charles of a performance deficiency. The  
5 Commission finds that the notice factor supports a finding that the disciplinary  
6 transfer was not for just cause.

7 **c. Investigation.** It is uncontested that the Department conducted an  
8 investigation. Sergeant Charles claims that the CBA requires that the  
9 investigation be conducted as an Internal Affairs investigation. That is not an  
10 issue for the Commission to decide. The Commission finds that the Department  
11 did conduct an investigation and that factor supports a finding that the  
12 disciplinary transfer was for just cause.

13 **d. Fairness of Investigation.** There are undisputed irregularities in the  
14 Department's investigation. The file contains several references, including in the  
15 final disciplinary decision letter and DAR that the issue in the case was one of  
16 "misconduct".<sup>18</sup> At the hearing, the Department admitted that those references  
17 are simply wrong – that the issue was solely one of the adequacy of Sergeant  
18 Charles' performance.

19 One document that was part of the file reviewed by Chief Kerlikowske  
20 erroneously states: 1) that Detective Traverso knew prior to the April 21 meeting  
21 that the subject was a "new SPU fraud case"; 2) that Detective Traverso  
22 "suggested to Sergeant Charles that this could be another high profile case"; and

23  

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<sup>18</sup> Stipulated Exhibit 2.

1 3) that she "further suggested that he attend the meeting". It is uncontested that  
2 the document is wrong on all three points.<sup>19</sup>

3 The investigation apparently did not include written interview notes or  
4 other documentation that would assist the Commission in resolving differing  
5 testimony or questions regarding the basis for factual statements included in  
6 some exhibits.

7 The Commission finds that the investigation was not conducted as  
8 professionally or fairly as it should have been and therefore that this factor  
9 supports a finding that the disciplinary transfer was not for just cause.

10 **e. Decision based on substantial evidence.**

11 Chief's Kerlikowske's decision may have been based on an erroneous  
12 understanding of the facts. Chief Kerlikowske's comment at the *Loudermill*  
13 hearing indicates he believed then that Sergeant Charles failed to attend a  
14 meeting after he knew that the investigation involved possible losses of  
15 approximately \$100,000 and several public employees, and that the Mayor's  
16 office was interested in the progress of the investigation.

17 While Chief Kerlikowske might well have had just cause to transfer  
18 Sergeant Charles had the Sergeant failed to attend a meeting after knowing that  
19 information, it is uncontested that Sergeant Charles did not know that information  
20 before the April 21 meeting. It is also uncontested that after he learned that  
21 information from Detective Traverso he did go to the April 27 meeting .  
22

23 <sup>19</sup> The document is the text of an e-mail, without the "To:", "From", "Date", etc. information. It is page 7 of Exhibit  
7, Lieutenant Mount's May 4, 2005 Memorandum to Assistant Chief Miller.

1           If Chief Kerlikowske was properly informed of this fact before making his  
2 final decision, that is not reflected in the disciplinary transfer letter or the DAR.

3 The DAR for example states:

4           On April 21 a detective in your unit notified you that new information  
5 had been received regarding a possible fraud case that was either  
6 connected with a current high profile case or would be a new case  
7 of a similar nature and that a meeting was scheduled for that  
8 afternoon. You did not attend the meeting.

9           The DAR suggests again that Sergeant Charles failed to attend a meeting  
10 he knew was regarding a possible new high profile case. That does not square  
11 with the uncontested evidence that prior to arriving at the April 21 meeting  
12 Detective Traverso had assumed it was about the already ongoing SPU  
13 investigation, and that she never suggested anything to the contrary to Sergeant  
14 Charles. The DAR goes on:

15           The next day the detective notified you that the case had potential  
16 to be significant, and you did not notify your lieutenant that day.

17           That also dos not square with the uncontested evidence that Sergeant  
18 Charles first learned about that the meeting involved a new investigation with  
19 possible high profile status when he read Detective Traverso's e-mail on Monday  
20 morning.

21           The DAR goes on:

22           On Monday, April 25<sup>th</sup>, you transferred an email from the detective  
23 into memo form and placed it in the lieutenant's in-box without  
making any effort to notify him of the potential significance of the  
case.

1 This does square with the uncontested testimony.

2 The Commission finds that Sergeant Charles' only performance deficiency  
3 was that he failed to inform Lieutenant Mount on April 25 that the memorandum  
4 he left in the lieutenant's in-box that morning concerned a potential high profile  
5 case.

6 The Commission finds that mistaken information was contained in the  
7 investigative file, and that the mistaken information appears to have been relied  
8 on in the final decision. This factor supports a finding that the disciplinary transfer  
9 was not for just cause.

10  
11 **f. Similar Cases Treated Similarly.** Sergeant Charles contends that the  
12 evidence shows that the Department treated his investigation differently than  
13 other similar investigations, in particular that the Department's investigation here  
14 was not conducted as an Internal Affairs investigation. The Commission finds  
15 that some similar investigations were conducted as Internal Affairs investigations  
16 and that others were not, that Sergeant Charles has not proven dissimilar  
17 treatment, and that this factor favors a finding of just cause.

18 g. Penalty. Was the penalty, a disciplinary transfer, reasonably related to: a) the  
19 seriousness of the employee's proven performance deficiencies; and b) the  
20 employee's record of service.

21 All witnesses agreed that Sergeant Charles was otherwise a good to  
22 excellent performer. The Department contends only that his performance as  
23 Detective for the Fraud and Forgery Unit, particularly his alleged failure to keep



1 his superiors adequately informed regarding high-profile cases, makes him a  
2 poor fit for that particular position. The Commission has concluded that Sergeant  
3 Charles failed to notify his superior (Lieutenant Mount) that the memorandum he  
4 left in Lieutenant Mount's in-box was regarding a high profile case and required  
5 his immediate attention. The issue then is whether the penalty (involuntary  
6 transfer) fits the proven performance failure (failure to notify Lieutenant Mount  
7 that the memorandum was urgent).

8 Sergeant Charles' overall record is quite good. All Department witnesses  
9 praised his performance. He was rated for the relevant period as "fully  
10 competent" or "exceeds expectations" in every category in his performance  
11 evaluation. Even in the area where the reference to the SPU Transfer Station  
12 investigation is noted ("Problem Solving/Decision Making"), he was rated as "fully  
13 competent".

14 Given Sergeant Charles' relatively minor proven performance error, the  
15 Commission finds that this factor favors a finding that the disciplinary transfer  
16 was excessive and not for just cause.

17  
18 8. Because the Department's notice to Sergeant Charles was inadequate and  
19 did not clearly communicate to him the performance expectation, because the  
20 investigation was not thorough and fair and contained erroneous "evidence"  
21 that nevertheless found its way into the final decision and DAR, and because  
22 the disciplinary transfer was excessive in light of his relatively minor proven  
23 performance error and overall good to excellent performance and record, the

1 Commission concludes that the Department's disciplinary transfer of Sergeant  
2 Charles was not for just cause.

3 **VI. REMEDY**

4 Having concluded the disciplinary transfer was not for just cause, the  
5 Commission addresses the issue of remedy. The Commission concludes that Sergeant  
6 Charles should be reinstated to his former assignment as Sergeant of the Fraud and  
7 Forgery Unit.

8 **VII. ORDER:**

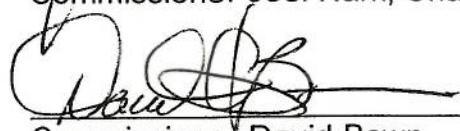
9 IT IS HEREBY ORDERED that the disciplinary transfer of Sergeant Charles from his  
10 assignment as Sergeant of the Fraud and Forgery Unit is reversed.

11  
12 Signed at Seattle, Washington this 30<sup>th</sup> day of May, 2006.

13 **BY THE PUBLIC SAFETY CIVIL SERVICE COMMISSION**  
14 **OF THE CITY OF SEATTLE**

15   
16 \_\_\_\_\_  
17 Commissioner Joel Nark, Chair

5-22-06  
Date

17   
18 \_\_\_\_\_  
19 Commissioner David Bown

5/18/06  
Date

19   
20 \_\_\_\_\_  
21 Commissioner Herb Johnson

5/20/06  
Date