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

7 IN RE THE APPEAL OF:

8 ERIC WERNER

9 Appellant,

10 vs.

11 SEATTLE POLICE DEPARTMENT,
12 CITY OF SEATTLE

13 Respondent/Employer.

No. 09-006

DECISION AND ORDER

14 **I. INTRODUCTION**

15 This case is before the Commission after an appeal to the Court of Appeals. The Court of
16 Appeals affirmed the superior court ruling and remanded to this Commission to decide whether
17 Werner's termination is unfair in light of his unblemished record. *Seattle v. Werner*, 163
18 Wn.App. 899, 910, 261 P.3d 218, 224 (2011). The Commission considered the briefs of the
19 parties and the letters submitted by the appellant. A hearing was held on February 17, 2012 at
20 which the Commission heard the oral arguments of the parties.

21 After reviewing the findings of fact that were not invalidated on appeal and that were
22 previously entered by this Commission on January 21, 2010, and considering the arguments of
23

1 the parties and their representatives, the Commission enters the following Conclusions and order.

2 II. DECISION

3 The Court of Appeals remanded to this Commission for the Commission to exercise its
4 unique expertise, and the authority conferred upon it by ordinance, to determine the appropriate
5 discipline based upon the facts that have already been determined. *See Seattle v. Werner*, 163
6 Wn.App. 899, 910, 261 P.3d 218, 224 (2011). The Court struck down the Commission's finding
7 relating to evenhandedness because it was not supported by the record. The Commission was
8 left with one question, whether Officer Werner's prior record, which contained no previous
9 discipline, was a sufficient reason to modify the Chief's termination of Officer Werner.

10 The law requires that the Chief make a decision "in good faith for cause." The members
11 of this Commission are not Chiefs of Police. Both common sense and the law require that we
12 give some deference to the Chief's decision. The Chief carries the burden of managing the
13 Police Department under the City Charter and the issue before us is not what we, as individuals
14 might do, but, rather, whether our thorough review demonstrates that the Chief acted "in good
15 faith for cause."

16 It must be remembered that this officer lied when asked several times in the course of an
17 interview by OPA, after being warned of the consequences of not answering questions, as to
18 whether he struck a citizen. Subsequently, he developed a rather convoluted version of some
19 type of temporary memory lapse that the Commission found not credible.

20 None of this is intended to suggest that this is an easy decision. The Commission is well
21 aware of the impact of termination from employment for a police officer. Police officers are
22 critically important to the community and their work is entitled to the highest respect from
23 citizens. Part of that foundation of trust, though, must be premised on the assumption that they

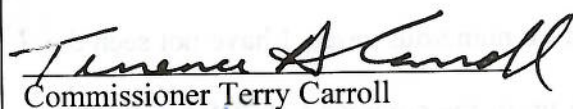
1 will tell the truth – especially in a circumstance where the striking of a citizen is involved. In
2 sum, then, the evidence is undeniable that the Chief carefully weighed the evidence and his
3 options in this matter and acted ‘in good faith for cause’. We should therefore not only sustain
4 his opinion on the facts of the dishonesty here but the discipline as well. The integrity of the
5 discipline system demands that result. There is insufficient reason to modify Officer Werner’s
6 termination.

7 III. ORDER

8 The Commission affirms the termination imposed by the Seattle Police Chief.

9 Dated this ___ day of March, 2012.

10 PUBLIC SAFETY CIVIL SERVICE COMMISSION 11 OF THE CITY OF SEATTLE

12 
13 Commissioner Terry Carroll

12 7/20/12
13 Date

14 
15 Commissioner Christian Haliburton

14 7/8/12
15 Date

16 DISSENT

17 A majority of the original panel of this Commission reduced Officer’s Werner’s
18 termination to a 30-day suspension, because they felt that the termination was not even-handedly
19 applied to similar misconduct and because Officer Werner had an unblemished record prior to
20 this charge of dishonesty. On remand this Commission may only consider Officer Werner’s
21 unblemished record. With this tenant in mind, I am still of the belief that his termination should
22 be reduced to a 30-day suspension and “last chance” agreement.

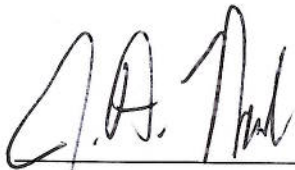
23 This Commission has an independent duty to review the discipline imposed by the Police

1 Chief. If we believe that the discipline violates any of the principles of just cause, we should not
2 defer to the Chief's judgment but instead exercise our powers to modify the discipline as
3 appropriate. My fellow Commissioners have a strong belief that if the Chief makes a decision "in
4 good faith for cause" then they should back him. This belief was previously adjudicated at the
5 appeal court level and declined as deciding factor when used as an appeal basis by the city in a
6 prior case. This Commission also had another case where the Chief made a decision that
7 included discipline and a transfer "in good faith for cause". Although the Commission felt the
8 Chief's decision was correctly made under the circumstances presented to him, this decision was
9 overturned 3-0 due to the Chief only having some/partial facts of the case. It was decided/proven
10 that only certain facts had been provided by his command staff. The point I am trying to make is
11 that we are not a "rubber stamp Commission" for the Chief of the Seattle Police Dept.

12 In my 9 years on the Commission and having sat on numerous cases, I have not seen the
13 level of support expressed in this case from officers on up to the command staff for an officer
14 who has been terminated by the Police Chief. In the course of the investigation and on appeal to
15 this Commission, many fellow officers commended Officer Werner as a good and honest police
16 Officer and FTO. Additionally, Terminating Officer Werner will effectively end his entire
17 police officer career based on a single act.

18 Although dishonesty in this case was proven and dishonesty may well be a cause for
19 termination, termination is not the appropriate discipline for Officer Werner given the facts and
20 circumstances in this specific case. In ten years this officer had an exemplary record with many
21 accolades. A 30 day suspension of duties without pay, and a "last chance" agreement is more
22 appropriate when considering the nature of the offense and Officer Werner's previously
23 unblemished record.

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Commissioner Joel Nark

7.13.2012

Date

