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BEFORE THE PUBLIC SAFETY CIVIL SERVICE COMMISSION  
OF THE CITY OF SEATTLE

IN RE THE APPEALS OF: )  
)  
BROWN, Debra (#6214), BARTLEY, Ross )  
(#5107), MONSON, Clay (#4904), )  
MORAN, William (#5243), STEVENS, )  
Sharon (#6059), et al.; )  
)  
STEVENS, Sharon; )  
)  
)  
MONSON, Clay; and )  
)  
)  
SEATTLE POLICE OFFICERS' )  
GUILD, et al. )  
)  
Appellants, )  
)  
vs. )  
)  
CITY OF SEATTLE, McKinney, Norma )  
Director, City of Seattle Personnel )  
Department, et al., )  
)  
Respondent/Employer. )  
)

MEMORANDUM DECISION

**PROCEDURAL BACKGROUND**

These disputes arise from allegations of cheating during the assessment center, or oral examination portion, of the 2002 Police Sergeant promotional examination within the Seattle Police Department ("Department") and the subsequent decisions of the Personnel Director in light of such allegations.

Four separate appeals were filed against the City of Seattle, the City's Personnel Department and the City's Personnel Director ("Respondents") in September 2002 challenging

1 the decisions of the Personnel Director. They are (1) the Appeal of Officers Brown, Bartley,  
2 Monson, Moran and Stevens ("Brown Bartley Appeal"); (2) the Appeal of Officer Sharon  
3 Stevens ("Stevens Appeal"); (3) the Appeal of Officer Clay Monson ("Monson Appeal"); and  
4 (4) the Appeal of the Seattle Police Officers' Guild ("Guild Appeal").

5 Respondents filed a Motion to Stay and Consolidate and a Motion to Dismiss the appeals.  
6 A hearing on the Brown Bartley Appeal was held on September 30 and October 1, 2002. The  
7 Commission issued a majority decision on October 9, 2002 ordering the Personnel Director to  
8 post the results of a certified listing of eligible candidates.<sup>1</sup> Respondents then filed a Motion for  
9 Reconsideration of the Commission's October 9, 2002 decision.

#### 10 MEMORANDA AND PLEADINGS CONSIDERED

11 The Commission considered the following pleadings, memoranda, and exhibits attached  
12 thereto:

- 13 1. Appeal filed by Brown, Bartley, Monson, Moran, Stevens, dated 7/19/02 ("Brown Bartley  
14 Appeal");
- 15 2. Appeal filed by Stevens dated 9/24/02 ("Stevens Appeal");
- 16 3. Letter Appeal filed by the Seattle Police Officers' Guild dated 9/26/02 ("Guild Appeal");
- 17 4. Letter Appeal filed by Officer Monson dated 9/25/02 ("Monson Appeal");
- 18 5. Respondent City of Seattle's Motion to Dismiss Brown Bartley Appeal, dated 9/24/02;
- 19 6. Appellant Seattle Police Officers' Guild's Response to Respondent's Motion to Dismiss, dated  
20 10/24/02;
- 21 7. Respondent City of Seattle's Reply in Support of Motion to Dismiss, dated 11/21/02;
- 22 8. Respondent City of Seattle's Motion to Stay and Consolidate dated 9/26/02;
- 23 9. Respondent City of Seattle's Motion for Reconsideration of Commission's Decision on  
Brown Bartley Appeal, dated 10/21/02;
10. Affidavit of Clay Monson in Rebuttal of Motion for Reconsideration by the City of Seattle,  
dated 11/25/02;
11. Rebuttal to Motion for Reconsideration filed by Appellant Bartley dated 11/8/02;
12. "Testimony of Detective Ross Bartley #5107 Public Safety Civil Service Commission  
Hearing, September 30<sup>th</sup>, 2002," dated 10/24/02;

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<sup>1</sup>Commissioners Bown and Fossos joined in the majority decision of the Commission. Commissioner Skagen  
dissented and issued a minority opinion.



1 before July 15, 2002, the scheduled date for posting the promotional register. (McKinney  
2 Declaration of 9/24/02). On July 11, 2002, she notified the candidates in writing of this decision.  
3 (McKinney Declaration of 9/24/02). Later, despite the fact that the investigation was still  
4 ongoing and had not yet been completed, the Personnel Director decided to nullify the  
5 assessment center portion of the exam and administer a new assessment center, based on her  
6 understanding that the oral examination "appeared to be compromised." (McKinney Declaration  
7 of 9/24/02). She notified the candidates of this decision in writing on September 19, 2002,  
8 giving them approximately 45 days to prepare for a new assessment center, stating that she had  
9 received "sufficient information to conclude that Personnel Department's standards of integrity"  
10 had not been met. (McKinney Declaration of 9/24/02; Exhibit B to McKinney Declaration of  
11 9/24/02). After an appeal was filed challenging her September 19 decision, the Personnel  
12 Director issued a new letter dated October 10, 2002, postponing the retest indefinitely.  
13 (McKinney Declaration of 10/15/02). In her letter, the Personnel Director asks the candidates to  
14 "[p]lease disregard the correspondence that set out the October 28 – November 2 schedule for re-  
15 testing." (Exhibit B to McKinney Declaration of 10/15/02).

16 To date, the internal administrative investigation into the cheating allegations has not yet  
17 been completed. (Declaration of Sam Pailca of 1/14/03). In a declaration filed at the request of  
18 the Commission, the Director of the Department's Office of Professional Accountability  
19 estimated that the investigation should be completed by late February 2003. (Declaration of Sam  
20 Pailca of 1/14/03).

1 CONCLUSIONS OF LAW AND ORDER

2 **I. Jurisdiction of the Commission**

3 SMC 4.08.070(C) sets forth the powers and duties of the Commission and mandates that  
4 the Commission shall... "hear and determine appeals or complaints respecting the administration  
5 of this chapter and Section 4.04.040(C) of the Seattle Municipal Code." Moreover, SMC  
6 4.08.020 sets forth the general purpose behind the establishment of the Commission and states  
7 that one of these purposes was to establish a Commission to hear appeals of employees regarding  
8 promotional testing. All of the appeals consolidated herein are within the jurisdiction of the  
9 Commission.<sup>2</sup>

10 **II. Consolidation of Appeals**

11 All four of the above-referenced appeals are related to the same course of events -- the  
12 2002 Sergeant's promotional examination, allegations of cheating during the exam, and the  
13 decisions made by the Personnel Director as a result of those allegations. The Commission  
14 therefore concludes that the Brown Bartley Appeal, the Stevens Appeal, the Monson Appeal and  
15 the Guild Appeal should be consolidated.<sup>3</sup>

16 **III. Mootness**

17 In the Stevens Appeal, Appellant Stevens alleges that the Personnel Director violated the  
18 PSCSC Rules by issuing the September 19, 2002 letter decision nullifying the oral assessment  
19 and scheduling a new exam. On October 10, 2002, however, the Personnel Director gave the  
20 applicants notice that she was postponing indefinitely any retest. (Exhibit B to McKinney  
21 Declaration of October 15, 2002) In the letter she asks the applicants to "disregard the

22 \_\_\_\_\_  
23 <sup>2</sup> All Commissioners join in this decision.

<sup>3</sup> All Commissioners join in this decision.

1 correspondence that set out the October 28 – November 2 schedule for retesting.” (Exhibit B to  
2 McKinney Declaration of October 15, 2002). The Personnel Director argues in her Motion to  
3 Dismiss that the October 10 letter constitutes a retraction of the September 19 letter. Appellant  
4 Stevens argues that the act of sending the September 19 letter constituted a violation. The  
5 Commission concludes that the October 10 letter constitutes a retraction of the Personnel  
6 Director’s decision to schedule a retest and nullify the oral assessment portion of the exam. As  
7 such, Appellant Stevens’ appeal is moot. The Commission concludes that this does not  
8 constitute an action that is capable of repetition yet evading review. The Stevens Appeal is  
9 hereby dismissed.<sup>4</sup>

10 The portion of the Guild's Appeal that challenges the decision of the Personnel Director  
11 to issue a re-test and her alleged failure to abide by the timeframes set forth in the PSCSC Rules  
12 is likewise moot.<sup>5</sup>

13 **IV. Authority of the Commission to investigate**

14 In the Guild Appeal, Appellant Seattle Police Officers' Guild (the "Guild") argues that the  
15 Commission has authority to investigate and ascertain whether SMC Chapter 4.08 and the  
16 PSCSC Rules are being obeyed, and therefore, the Commission should investigate the actions of  
17 the Personnel Director and IIU for violating PSCSC Rules by interfering with the examination  
18 process. Under the circumstances of this case, the Commission declines to conduct an  
19 investigation into the actions of either the Personnel Director or the Seattle Police Department  
20 for allegedly violating PSCSC Rules.<sup>6</sup>

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22 <sup>4</sup> Commissioners Skagen and Bown join in this decision. Commissioner Fossos dissents.

23 <sup>5</sup> Commissioners Skagen and Bown join in this decision. Commissioner Fossos dissents.

<sup>6</sup> Commissioners Skagen and Bown join in this decision. Commissioner Fossos dissents.

1 The Commission is deeply troubled by the delay in the investigation into the allegations  
2 of cheating. However, because an investigation is in progress and because the Commission has  
3 adequate ordinance-based authority to remedy any harm done to the Guild and the other  
4 appellants as a result of the actions of the Personnel Director, the Commission concludes that a  
5 Commission-conducted investigation into the allegations of cheating is unnecessary at this time.  
6 The Guild's request for relief in the Guild Appeal is denied.<sup>7</sup>

7 **V. The Functions of the Personnel Director pursuant to Ordinance No. 120658**

8 In the Guild Appeal, the Guild also argues that the Personnel Director usurped the  
9 authority of the Secretary and Chief Examiner to order examinations. The Commission does not  
10 agree. Pursuant to Ordinance No. 120658 enacted in 2001, the City Council made organizational  
11 changes to the City's Public Safety Civil Service system by transferring some functions  
12 previously performed by the Secretary and Chief Examiner to the Personnel Department. SMC  
13 4.04.040(C) now gives the Personnel Director certain duties, including several with respect to the  
14 Public Safety Civil Service system. Her duties, among other things, now include classifying  
15 positions, preparing and administering examinations, providing notice of the time and place of  
16 examinations, keeping a record of examinations, preparing a register for each class of positions,  
17 and certifying eligible registers -- the very actions at issue in this case. As a result of Ordinance  
18 No. 120658, the Personnel Director must perform these Public Safety Civil Service System  
19 functions.

20 Pursuant to SMC 4.04.040(C), the Personnel Director is also obligated to comply with  
21 "the applicable portions of the Rules of Practice and Procedure of the Public Safety Civil Service  
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23 <sup>7</sup> Commissioners Skagen and Bown join in this decision. Commissioner Fossos dissents.

1 Commission" until such time that she adopts new rules. She has not yet adopted new rules. To  
2 the extent the current PSCSC Rules, which predate Ordinance 120658, still identify duties and  
3 responsibilities of the "Secretary and Chief Examiner" that have since been transferred to the  
4 Personnel Director, and as a result, conflict with the Ordinance, the language of the Ordinance  
5 prevails. Those previous duties of the Secretary and Chief Examiner, since transferred, are now  
6 duties of the Personnel Director by operation of the ordinance, regardless of language of the  
7 current Rules. The Commission concludes that the Personnel Director has performed functions  
8 mandated by ordinance and therefore, has not usurped the authority of the Secretary and Chief  
9 Examiner.<sup>8</sup> The Guild's appeal is dismissed.<sup>9</sup>

10 **VI. The Personnel Director's decision not to post the Register**

11 The PSCSC Rules provide for certain remedies in the event of cheating with respect to  
12 examinations, namely, the removal of an eligible from a register for fraudulent conduct in  
13 connection with any examination. Rule 10.13(a) "Cancellation of Eligibility" provides as  
14 follows:

15 Anyone's name may be removed from an eligible register for... fraudulent conduct or  
16 false statements by the eligible or by others with the eligible's collusion, in connection  
with any ... examination for, or securing of an appointment.

17 Rule 10.3(f) further provides that "such action contemplated by this Rule may also be taken for  
18 "other material reasons." In addition, Rule 8.07(e) permits the Personnel Director to reject any  
19 applicant for a promotional exam or withhold from a register or from certification an eligible, or  
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22 <sup>8</sup> Ordinance No. 120658 did not, however, alter the jurisdiction of the Commission to hear appeals concerning  
23 promotional testing.

<sup>9</sup> Commissioners Skagen and Bown join in this decision. Commissioner Fossos dissents.



1 remove an eligible from a register if the applicant or eligible "[h]as made any material false  
2 statement or has attempted any deception or fraud in connection with this or any other civil  
3 service examination." The Personnel Director is authorized to do the same if the applicant or  
4 eligible "[h]as ... in any other manner secured confidential information concerning such  
5 examination which might give an unfair advantage over other applicants in the examination."  
6 Rule 8.07(g).

7 The PSCSC Rules contemplate the rejection of individual applicants and eligibles for  
8 cheating on promotional examinations. However, they do not expressly address the situation at  
9 issue in these appeals, namely, what procedure should apply when the Personnel Director  
10 believes that an entire examination process has been tainted by cheating. In the first instance, the  
11 Commission concludes that a decision not to post a register and to nullify an examination is  
12 within the purview of the Personnel Director, inherent to and consistent with her duties to  
13 administer examinations and certify registers. Such decisions, however, are subject to appeal  
14 and review by this Commission. Absent proof of fraudulent behavior and a showing that  
15 cheating did occur or the entire test was, in fact, compromised, a decision by the Personnel  
16 Director not to post or to nullify a register, is arbitrary -- and contrary to the spirit of the Rules.

17 It would not be reasonable to afford a group of applicants fewer protections when the  
18 Rules clearly provide standards and protections for individuals accused of the very same  
19 behavior. An appeal to the Commission regarding the appropriate application of Rule 8.07  
20 would necessarily involve evidentiary proof of the applicant's fraudulent behavior to support any  
21 decision to remove an individual from a register. The Commission concludes that such a  
22 showing is also necessary to support the Personnel Director's decision in this case to refuse to  
23 post the register based on mere allegations of cheating.

1 It is undisputed that the Personnel Director refused to post the register, nullified the  
2 original oral assessment, and scheduled a new exam before the investigation was completed. At  
3 hearing, the Personnel Director testified that there were many "allegations" of cheating during  
4 the examination – indeed, enough to cast "suspicion" on the entire examination process to such  
5 an extent that she felt obligated to refer the matter for an investigation. While the Personnel  
6 Director testified that she had "sufficient information" to conclude that the assessment center had  
7 been compromised, she did not testify as to what that information consisted of, or what  
8 additional evidence she was privy to. As a result, she did not offer the Commission or appellants  
9 any details regarding the information she had received.

10 There is no evidence in the record to substantiate the allegations of cheating, other than  
11 the personal belief of the Personnel Director and the Director of the Office of Professional  
12 Accountability. The Commission concludes that the decision of the Personnel Director to refuse  
13 to post the register in advance of the completion of the IIU investigation is premature, arbitrary,  
14 and not supported by the facts presented to the Commission. In the absence of any evidence to  
15 support the Personnel Director's decision, it remains the opinion of a majority of this  
16 Commission that the Personnel Director had no basis to refuse to prepare and post the register.  
17 Her later action rescinding the scheduling of a new oral assessment and her decision to nullify  
18 the original oral assessment does not cure her refusal to prepare and post the register.<sup>10</sup>

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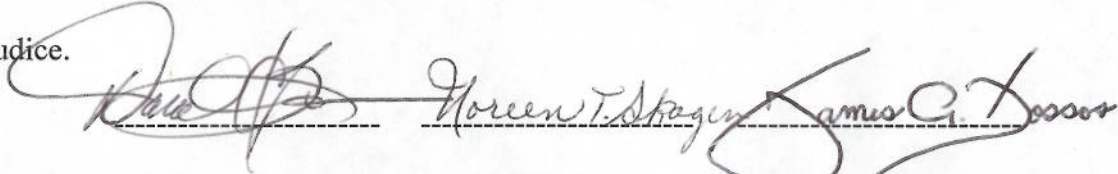
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<sup>10</sup> Commissioners Bown and Fossos join in this decision. Commissioner Skagen dissents.

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ORDER

The Commission's majority decision dated October 9, 2002 is withdrawn. The above-referenced appeals are consolidated. The appeal of Brown, Bartley, Monson, Moran, Stevens, et al. and the appeal of Clay Monson are sustained. The Personnel Director is hereby ordered to prepare, certify, and post a register from the results of the 2002 sergeants' promotional examination, including the oral assessment portion. The appeal of Appellant Stevens is dismissed with prejudice. The appeal of the Seattle Police Officers' Guild is dismissed with prejudice.



David C. Bown

Noreen Skagen

James A. Fossos