

MINUTES
MULTNOMAH COUNTY BOARD OF COMMISSIONERS
MARCH 3, 1992 MEETING

Vice-Chair Sharron Kelley convened the meeting at 9:32 a.m., with Commissioners Pauline Anderson, Rick Bauman and Gary Hansen present, and Chair Gladys McCoy excused.

B-1 Review of the Agenda for Regular Meeting of March 5, 1992.

The Board had no questions concerning consent calendar items C-1 through C-4 or regular agenda item R-1.

County Counsel Laurence Kressel and Assistant County Counsel Jacqueline Weber discussed the quasi-judicial hearing process for regular agenda item R-2. Mr. Kressel requested that Board questions concerning specifics of the case be held until Thursday when appellants' attorney is present.

In response to a question of Commissioner Hansen, Mr. Kressel advised that a 2 to 2 Board vote would probably affirm the Merit System Civil Service Council decision.

Ms. Weber explained that the Board is required to make a determination of the January 16, 1992 Merit System Civil Service Council proceedings by Thursday or Friday. Ms. Weber recommended that the Board read both written transcriptions of the tape recorded hearing and listen to the tape, in addition to reviewing the submitted briefs.

In response to a question of Commissioner Hansen, Mr. Kressel reported the Board could affirm, reverse or remand the Merit System Civil Service Council decision and reiterated the need for a timely Board determination on Thursday.

There being no further business, the meeting was adjourned at 10:50 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By NEBORAH L. BOGISTAD

MINUTES
MULTNOMAH COUNTY BOARD OF COMMISSIONERS
MARCH 5, 1992 MEETING

Chair Gladys McCoy convened the meeting at 9:30 a.m., with Vice-Chair Sharron Kelley, Commissioners Pauline Anderson, Rick Bauman and Gary Hansen present.

- C-1 Request for Approval in the Matter of the Transfer of Found/Unclaimed or Unidentified Property on List 92-2 to the Department of Environmental Services, Purchasing Division, for Sale or Disposal Pursuant to Multnomah County Code 7.70
- C-2 In the Matter of the Recommendation for Approval of a Package Store, Change of Ownership Liquor License Application for the Sunshine Market to be Called THE POWELL SUNSHINE MARKET, 13580 SE Powell Boulevard, Portland
- C-3 In the Matter of the Appointments of Al Armstrong to the Department of Community Corrections Citizen Budget Advisory Committee and Debora Leopold to the District Attorney Citizen Budget Advisory Committee
- C-4 In the Matter of the Appointment of Janice R. Wilson to the Community Corrections Advisory Committee, District Court Judge Position

UPON MOTION of Commissioner Bauman, seconded by Commissioner Kelley, the consent calendar (C-1 through C-4) was UNANIMOUSLY APPROVED.

- R-1 Second Reading and Possible Adoption of an ORDINANCE Amending the Multnomah County Code, Section 5.10, Relating to Fees Assessed to Recover the Costs of Dishonored Checks

The Clerk read the proposed ordinance by title only. Copies of the complete document were available for those wishing them. A hearing was held, no one wished to testify.

UPON MOTION of Commissioner Hansen, seconded by Commissioner Anderson, ORDINANCE NO. 713 was UNANIMOUSLY APPROVED.

- R-2 QUASI-JUDICIAL HEARING on the Appeals of AFSCME, Local 88 and Linda D. Bedell in the Matter of the January 16, 1992 Merit System Civil Service Council Decision Regarding Violations of Personnel Rules by Unilaterally Putting Probationary Employees in Another Classification

Assistant County Counsel Jacqueline Weber explained her role is advisor to the Board and Assistant County Counsel Steve Nemirow is advisor to the Sheriff's Office.

At the request of Ms. Weber, appellants' attorney Don Willner confirmed that he waives any objection to Ms. Weber's role as County advisor.

Ms. Weber reported that the Board was provided with two different transcripts of the proceedings before the Merit Council,

in addition to briefs submitted by the parties. Ms. Weber stated that Mr. Willner has chosen to present argument for ten minutes and take five minutes for rebuttal and that Ms. Janet Jaron of the Sheriff's Office has fifteen minutes for argument. Ms. Weber explained that the Board is required to make a decision within 45 days of receipt of the January 22, 1992 notices of appeal, which would be Friday, March 6, 1992. Ms. Weber reported that an issue raised by the Sheriff's Office at the Merit Council level and in respondent's brief is whether either of the appellants have standing to bring an appeal before the Merit Council and therefore before the Board. Ms. Weber advised that the Board may or may not wish to hear arguments on that issue before they get to the merits.

In response to a question of Chair McCoy, Ms. Weber explained that the Merit Council decided that both parties had standing and regarding the issue that Linda Bedell was a temporary employee and therefore did not fit within the parameters of who may appeal to the Merit Council, the Merit Council decided it would interpret the term applicant broadly enough to include her. Ms. Weber added that MCC 3.10.225(d), which states that temporary employees shall have no appeal rights within the County, was not mentioned by the Merit Council or by either party and that she does not know whether they were aware of it.

In response to direction of Chair McCoy, Ms. Weber advised that following today's discussion, the Board may either affirm, reverse or remand the Merit Council decision.

In response to a request of Commissioner Bauman, Ms. Weber suggested that the Board allow the parties to make their arguments and that they may ask them to address the standing issue during their fifteen minute time limit.

Attorney Don Willner, representing AFSCME Local 88 and Linda Bedell, explained the appeal is on behalf of two temporary employees, Bedell and Collins, and two regular employees, Sines and Gustafson. Mr. Willner directed the Board to pages 12 and 13 of the transcript he prepared of the January 16, 1992 proceedings in which Merit Council Chair John Wight discussed the standing issue.

Mr. Willner advised that the transcript of proceedings submitted by the County was 66 pages versus the 97 page transcript submitted by the Court Reporter hired by his office, and expressed concern that a false transcript was submitted to the Board due to omissions and reversed or changed answers on key questions. Mr. Willner gave examples of instances where the transcribed versions differed and requested on behalf of his clients that the Board ask the District Attorney to investigate a possible violation of the Federal Civil Rights Act.

Mr. Willner explained that a merit system gives everyone the right to compete for a job, and stated that State law and the Multnomah County Charter, personnel rules and Code, which provide that the purpose of personnel rules on recruiting, appointing and promoting employees on the basis of their relative ability, knowledge and skills, including open consideration of applicants for initial appointment, were not followed in this case because Bedell, Collins, Gustafson and Sines would have liked to apply for

the job but were not given the opportunity because there was no competitive examination. Mr. Willner explained that under a merit system with an open, competitive examination, a probationary period and a regular appointment after time, Mr. Teed and Mr. Foster and the four individuals he represents would have had an opportunity to compete. Mr. Willner urged the Board to allow the appeal.

Janet Jaron, Sheriff's Office Manager for Personnel, Payroll and Training, reported that Steve Nemirow advised her a transcript was prepared for the County by an independent Court Reporter and that when she reviewed it, she noticed some items missing or incorrectly identified people. Ms. Jaron advised that she hand wrote corrections she could remember without benefit of the tape and returned it to Mr. Nemirow. Ms. Jaron advised that Mr. Nemirow informed Mr. Willner there were errors in the transcript and Mr. Willner requested to have a copy of it anyway.

Ms. Jaron reported that there are similarities between Civil Deputy and Corrections Officer jobs and some similarities in the testing process. Ms. Jaron stated that when the Merit Council asked if the positions were part of a promotional line, she said no, but that she believes the Employee Services Division would have allowed Civil Deputy experience to be qualifying to apply for a Corrections Officer job.

In response to a request of Ms. Jaron, Ms. Weber explained that only the appellant has opportunity for rebuttal.

Ms. Jaron reported that six months ago, Michael Teed and William Foster completed the full testing process and were hired from the Corrections Officer list and six weeks later the Corrections Officer positions were cut from the budget. Ms. Jaron explained that the Multnomah County Corrections Officers Association contract calls for placement on a layoff list and that consistent with past experiences, the Sheriff's Office looked for places within the department for Mr. Teed and Mr. Foster. Ms. Jaron explained that at the time this happened, two of four vacant Civil Deputy positions were cut and that Mr. Teed and Mr. Foster were placed into the other two positions. Ms. Jaron advised that three and a half months ago, Corrections Officer positions were restored to the budget and Mr. Teed and Mr. Foster were notified of a recall from the layoff list, but they were pleased with the Civil Deputy positions and after checking with the Employee Services Division and Labor Relations, the joint consensus was that Mr. Teed and Mr. Foster had the right to remain in the Civil Deputy positions. Ms. Jaron stated that when Mr. Teed and Mr. Foster stayed in the positions, Local 88 filed an appeal with the Merit Council, as did Linda Bedell, who was a temporary employee working as a Civil Deputy, and that the primary complaints were that Mr. Teed and Mr. Foster made one salary step more than three other Civil Deputies and that temporary employees had not been given an opportunity to compete for the Civil Deputy positions.

Ms. Jaron discussed the standing of the Union to bring an appeal, advising that the County Code and personnel rules allow an employee to bring an appeal if there is no contractual grievance process available. Ms. Jaron pointed out that neither Mr. Sines nor Mr. Gustafson filed an appeal with the Merit Council.

Ms. Jaron discussed the issue of timeliness, advising that the Merit Council did not rule on the Sheriff's Office question concerning the ten day rule for filing an appeal. Ms. Jaron stated that this was a highly unusual situation and that the Sheriff's Office regrets any hard feelings but the department was not prepared to let two highly qualified criminal justice professionals go or force them out of positions they really wanted and appeared to be entitled to.

Mr. Willner reported that the Board is not being asked to compare the relative merits of Mr. Teed and Mr. Foster and the four individuals he represents, but to look at whether there is a merit system in Multnomah County. Mr. Willner suggested that the Sheriff's Office could leave Mr. Teed and Mr. Foster as temporaries while an exam takes place and stated that all his clients are asking is that everyone be given the opportunity to compete for the positions and that it is not too late to follow the merit system of promotion.

At the request Commissioner Bauman, Ms. Weber stated that it seems fairly clear under the ordinance that a temporary employee, which Ms. Bedell was, has no appeal rights within the County. Ms. Weber stated that she does not think the Merit Council looked at that particular provision. Ms. Weber advised it was her understanding that two separate appeals were filed, one by Ms. Bedell separately and one by Local 88, and that apparently Local 88 filed its appeal stating that it was representing employees of its Union who would have been interested in this job had it been posted.

Chair McCoy stated that she does not feel Ms. Bedell had standing or any right to appeal.

In response to a question of Commissioner Bauman, Ms. Weber reported that Code section 3.10.025, entitled appeals from personnel actions, states there shall be a right of appeal by any employee of and applicants for the classified service. Ms. Weber advised that the Merit System Council interpreted that language broadly enough to include people who were anticipating applying had it opened up for applicants and to allow the Union to appeal. Ms. Weber advised that the Board had the option to either accept the Merit Council interpretations or it could read the ordinance language more narrowly.

Ms. Jaron commented that the concept of the Merit Council for represented employees is that it is a right of review if their contract doesn't offer any remedy or grievance process.

Ms. Weber reported she checked with Labor Relations and their position is if the contract itself is not violated, which in this case it was not, there is not a grievance procedure available.

Mr. Willner commented that the Merit Council ruled Bedell had standing as a potential applicant, not as a temporary employee and that Local 88 had standing to represent regular employees and Union members Sines and Gustafson.

Chair McCoy suggested that the only decision to be made by the Board is whether Ms. Bedell has standing.

In response to comments of Chair McCoy, Mr. Willner reported that traditionally throughout the United States where there is no remedy under a contract, the Union has represented its members in civil service hearings, before the National Labor Relations Board, before the State Employment Relations Board, in court cases and in many ways which are not part of the grievance clause, and that every time Local 88 files an unfair labor practice with the State Employment Relations Board, Local 88 is not following the grievance clause of the contract.

In response to questions of Commissioners Bauman and Anderson, Ms. Weber advised that the Board needs to be clear that there are two different parties whose standings are being challenged separately, and that the Board may either address the standing issue or go on to the merits when formulating its motion.

Commissioner Bauman moved and Commissioner Hansen seconded, to reverse the decision of the Merit System Council.

In response to a question of Commissioner Anderson, Ms. Jaron advised that the Sheriff's Office rationale for the cross transfer was that the jobs were sufficiently similar, had similar requirements in some respects, that there were some similarities in the testing process and that every indication was that they were well qualified to do a Civil Deputy job.

In response to Vice-Chair Kelley's request to hear the arguments from the maker and second of the motion, Commissioner Bauman stated that the Board's job is not to decide what is fair but what is right under the merit system and that it seems very clear a decision of convenience was made which opposes procedural rights under the merit system.

Commissioner Hansen advised that his feeling on seconding the motion and supporting the appeal, is that there are two separate jobs in which the County has set up a system with two different tests, and that all new Civil Deputies, temporary or full-time, should take the Civil Deputy test.

In response to questions of Commissioner Anderson, Ms. Jaron reported that there is only one vacancy for Corrections Officer at this time and that if the appeal is supported, the County would have to design and give a test for the Civil Deputy jobs. Ms. Jaron expressed concern over what would happen to Teed and Foster when they about three weeks away from becoming permanent employees.

In response to a question of Vice-Chair Kelley, Ms. Jaron advised she is not sure what will happen if the appeal is supported.

Mr. Willner stated that it is not the Union's fault a mistake was made months ago, as it acted immediately to try to correct it. Mr. Willner suggested that one of the employees might go back to the Corrections Officer position and the County could make the other one a temporary Civil Deputy until such time as the County could have an examination, create a list and select the best qualified person for the job.

Chair McCoy stated that it is not our place this morning to determine whether we create some positions or not. Chair McCoy advised that everyone acted in good faith and that she feels the Merit Council did its job and she is going to support its recommendation and will not support the motion for reversal because she feels it would be grossly unfair to everybody to start the process all over again.

In response to questions of Commissioner Hansen, Ms. Jaron advised it would take several months to create the Civil Deputy test, administer it and prepare the results and that she does not know whether a Corrections Officer position would open up during that interim.

Reversal of the Merit System decision was APPROVED with Commissioners Anderson, Bauman and Hansen voting aye and Commissioners Kelley and McCoy voting no.

In response to questions of Chair McCoy, Ms. Weber reported that the Board does not have another role to determine what will happen to these employees or what the Sheriff's Office will do in order to go back and essentially reopen the job under the merit system procedures. Ms. Weber advised there is a further right of appeal from this Board should the Sheriff's Office choose to take that route, in that they can appeal on a Writ of Review to the Circuit Court.

Commissioner Bauman requested that the Chair direct a letter to the District Attorney asking him to review what happened to the transcripts in this case and report back to the Board at his convenience.

Ms. Weber stated that the Chair should be aware the record of the Merit Council was simply a tape recorder placed on a table, there was not a Court Reporter or any other official recorder and two people who were unrelated to that process transcribed a tape in which they listened to various people talking who did not identify themselves.

Chair McCoy stated she would check it out.

Commissioner Anderson complimented Ms. Jaron on her presentation of the case.

There being no further business, the meeting was adjourned at 10:32 a.m.

OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON

By Rebecca L. Bocast



GLADYS McCOY, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
Portland, Oregon 97204
(503) 248-3308

M E M O R A N D U M

TO: Office of the Board Clerk
Board of County Commissioners

FROM: Gladys McCoy *GM*
Multnomah County Chair

DATE: February 6, 1992

RE: Absence from Board Meeting

I will be attending the National Association of Counties Legislative Conference on Tuesday, March 3, 1992 and will miss the Board meeting that day. I will be back for the Thursday, March 5, 1992 Formal session.

BOARD OF
COUNTY COMMISSIONERS
1992 FEB 10 AM 10:22
MULTNOMAH COUNTY
OREGON

GM:ddf
8392G

PAULINE ANDERSON
Multnomah County Commissioner
District 1



605 County Courthouse
Portland, Oregon 97204
(503) 248-5220

February 3, 1992

To: Office of the Clerk of the Board
Board of County Commissioners

From: Pauline Anderson *pa*

I will be at a Children's Defense Fund conference
March 4-7 and will therefore miss the Thursday, March 5
meeting of the BCC.

BOARD OF
COUNTY COMMISSIONERS
1992 FEB - 6 AM 10 50
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

MARCH 2 - 6, 1992

Tuesday, March 3, 1992 - 9:30 AM - Agenda Review.Page 2

Thursday, March 5, 1992 - 9:30 AM - Regular MeetingPage 2

Thursday Meetings of the Multnomah County Board of Commissioners are recorded and can be seen at the following times:

Thursday, 10:00 PM, Channel 11 for East and West side subscribers

Friday, 6:00 PM, Channel 22 for Paragon Cable (Multnomah East) subscribers

Saturday 12:00 PM, Channel 21 for East Portland and East County subscribers

Tuesday, March 3, 1992 - 9:30 AM

Multnomah County Courthouse, Room 602

AGENDA REVIEW

B-1 Review of the Agenda for Regular Meeting of March 5, 1992.

Thursday, March 5, 1992 - 9:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

JUSTICE SERVICES

SHERIFF'S OFFICE

C-1 Request for Approval in the Matter of the Transfer of Found/Unclaimed or Unidentified Property on List 92-2 to the Department of Environmental Services, Purchasing Division, for Sale or Disposal Pursuant to Multnomah County Code 7.70

C-2 In the Matter of the Recommendation for Approval of a Package Store, Change of Ownership Liquor License Application for the Sunshine Market to be Called THE POWELL SUNSHINE MARKET, 13580 SE Powell Boulevard, Portland

NON-DEPARTMENTAL

C-3 In the Matter of the Appointments of Al Armstrong to the Department of Community Corrections Citizen Budget Advisory Committee and Debora Leopold to the District Attorney Citizen Budget Advisory Committee

C-4 In the Matter of the Appointment of Janice R. Wilson to the Community Corrections Advisory Committee, District Court Judge Position

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 Second Reading and Possible Adoption of an ORDINANCE Amending the Multnomah County Code, Section 5.10, Relating to Fees Assessed to Recover the Costs of Dishonored Checks

R-2 QUASI-JUDICIAL HEARING on the Appeals of AFSCME, Local 88 and Linda D. Bedell in the Matter of the January 16, 1992 Merit System Civil Service Council Decision Regarding Violations of Personnel Rules by Unilaterally Putting Probationary Employees in Another Classification 9:30 AM
TIME CERTAIN - 40 MINUTES REQUESTED

Meeting Date: MAR 0 5 1992

Agenda No.: C-1

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: The transfer of found and unclaimed property

AGENDA REVIEW/
BOARD BRIEFING _____ REGULAR MEETING March 12, 1992
(date) (date)

DEPARTMENT Sheriff's Office DIVISION Executive

CONTACT Larry Aab-Sheriff's Exec. Asst. TELEPHONE 251-2489

PERSON(S) MAKING PRESENTATION Robert G. Skipper, Sheriff

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: _____

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

To approve the transfer of found/unclaimed property to the Dept. of Environmental Services for the sale or disposal as provided for within the listed ordinance, Code 7. Code 7.70.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Bob Skipper
(Sheriff)

Or

DEPARTMENT MANAGER _____

MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS
1992 FEB 26 AM 11:49

(All accompanying documents must have required signatures)



Multnomah County Sheriff's Office

12240 N.E. GLISAN ST., PORTLAND, OREGON 97230

ROBERT G. SKIPPER
SHERIFF

(503) 255-3600

MEMORANDUM

TO: GLADYS MC COY
Chair of the Multnomah County Board

FROM: ROBERT G. SKIPPER,
Sheriff 

DATE: February 17, 1992

SUBJECT: FOUND/UNCLAIMED PROPERTY - 92-2

Attached is a listing of found/unclaimed or unidentified property. This property has been in the Sheriff's possession for over 30 days. All attempts to establish the rightful owners of the listed property have proven negative.

To comply with Multnomah County Code 7.70, I am requesting that this listing of property be placed on the Board of County Commissioners' agenda for approval of the transfer of these items to the Department of Environmental Services for the sale or disposal as provided for within the listed ordinance.

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
72-1028	Ithaca .22 rifle, #490368122	Destroy
76-12885	H & R revolver, #AJ1564	
76-23861	S & W .22 revolver, #M76269	
77-21399	Colt .45 revolver, #58464-LW	
80-1902	R.G. .22 revolver, #327114	
82-26889	Colt. 25 handgun, #OD72357	
83-4800	Remington 30.06 rifle, #6814364	
83-7827	Titan .380 pistol, #B073773	
	Ruger .22 handgun, #38742	
83-19564	Winchester 12 gauge shotgun	
83-20268	Mossberg 12 gauge shotgun, #G488477	
83-25818	Ruger .357 revolver, #150-14391	
	Krag 30.40 rifle, #444041	
	Winchester .22 rifle	
	Costo shotgun	
	H & R shotgun, #AR256821	
	Hi-Standard .22 revolver, #449917	
	Iver Johnson pistol .32, #61677	
	Colt .357 revolver, #23843	
	Stevens 30.30 rifle	
	Iver Johnson .22 pistol, #H79904	
84-22666	Winchester 30.30 rifle #2083302	
85-9703	Revelation 12 gauge shotgun	
	Pawnee's .22 revolver, #33108	
85-11224	Coast to Coast 23 gauge shotgun, #H702550	
86-1832	Titans .25 handgun, #279798	
86-2218	S & W .38 revolver, #57903	
86-5999	Military type weapon, #156044	
86-7909	Ruger 10/22 rifle, #120-25560	
87-2290	Crossman pump BB rifle/model 766	
87-3252	Parker Bros. 12 gauge shotgun, #14582	
	Winchester .220 rifle, #325801	
	R.G. .38 pistol, #Q163076	
	Remington .22 rifle	
	Ruger .22 rifle, #126-19578	
	Marlin .22 rifle, #23525407	
	Winchester 12 gauge shotgun, #351865	
	Benj. Franklin .22 pistol, #B135028	
	Savage .308 rifle, #2937AS	
	Winchester rifle, #163968	
	Powermaster BB gun, #875005371	
	Erma-Werke .22 hand gun, #303206	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
87-4786	H & R . 22 pistol, #AY088544 Ruger .22 pistol, #1502696 S & W .357 Revolver, #6K28692 C.B.C. .22 rifle, #GR59183 Remington .22 rifle, #2179130 Remington 12 gauge shotgun, #T280590M Stevens 16 gauge shotgun Glenfield .22 rifle, #18306447	
87-6152	Jennings .22 pistol, #156084	
87-7234	Savage 340 rifle, #C721080	
87-9285	BB gun, .338 auto.	
87-10858	Marksman BB gun, #6E521529	
87-11130	Colt .38 revolver, #H03658	
87-12291	Browning shotgun, #04812PZ152	
87-13032	Hamden .38 Derringer, #008012	
87-13228	Crossman pellet rifle, #D80272567	
87-13546	Revelation .410 gauge shotgun, #P590173	
88-143	Dan Wesson .357 pistol, #77899 Jennings .22 pistol, #362781	
88-1580	Marksman BB pistol, #40161315	
88-1842	BB pistol	
88-1881	Ruger .22 pistol, #11-52681	
88-1987	Raven Arms .25 pistol, #1146064 J.C. Higgins .22 pistol, #943733	
88-2321	S & W .38 revolver, #K625994	
88-2645	Beretta .380 pistol, #B35682Y	
88-3124	Ruger .22 pistol, #1496990	
88-3878	S & W revolver, #61909	
88-4111	Tanfoglio .25 pistol, #G96380	
88-4178	Raven Arms .25 pistol, #1152793 Ruger .45 revolver, #45-09403 Ruger .357 revolver, #155-95773	
88-4193	Jennings .22 pistol, #428297	
88-4413	Charter Arms .22 pistol, #A258145 Hawes .45 revolver, #2737/5	
88-4960	Stevens 12 gauge shotgun, #B505228	
88-5193	Browning handgun, #77C52477	
88-5279	BB gun, model 840 Daisy BB Gun, model 105-B	
88-5882	Colt .380 handgun, #MU16280	
88-6742	AMT .380 pistol, #B17923	
88-6862	Excamb .22 revolver, #C36806 Remington .22 rifle, #2434843	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
88-7166	5 shot .32 revolver, #3104 Dan Wesson .357 revolver, #SD007831 Western Field 20 gauge shotgun	
88-7644	Jennings .22 pistol, #303031	
88-7747	DeGuerre .32 pistol, #46446	
88-8587	Winchester 30.30 rifle, #4889500	
88-8669	Sterling .22 pistol, #A73948 Freedom Arms .22 pistol, #A06994 North American Arms .22 pistol, #V19473 Raven Arms .25 pistol, #1187171 North American Arms .22 pistol, #V19469 Raven Arms .25 pistol, #1277964 Sturm Ruger .357 pistol, #161-77960 Taurus 9mm pistol, #TGK04025 Ruger .22 pistol, #513627 Remington 12 gauge shotgun, #T440290M	
88-8816	Colt .32 revolver, #157766	
88-8863	R.G. .22 revolver, #1B24156	
88-9016	Iver Johnson .25 pistol Secret Serv. Special .32 pistol R.G. .38 revolver, #X043285	
88-9101	Astra .22 pistol, #73302	
88-9482	Crossman BB gun, #D18205079	
88-9508	Colt .357 revolver, #159-55730 Mach II .380 pistol, #3808597	
88-9565	Ruger .22 pistol, #214-36179 Armi 7.65mm pistol, #206353 Western .357 derringer, #1882 Mossberg 12 gauge shotgun, #K189324 .22 caliber rifle, #C347658	
88-9600	Winchester 20 gauge shotgun, #278655 Hi-Standard .22 pistol, #687602 Davis .22 Derrigner, #064960	
88-9611	Colt .38 pistol, #N15052	
88-9625	Astra 9mm pistol, #57803 Jennings .22 pistol #283530 S & W .38 pistol, #K365230 Crossman pellet pistol, #D78212600	
88-10144	Stevens RGA shotgun, #E475859	
88-10550	Mauser rifle, #K6810	
88-10716	Ruger .357 revolver, #34-58708	
88-11003	J.C. Higgins 12 gauge shotgun	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
88-11082	Jennings .22 pistol, #218161	
88-11540	Double Deuce .22 pistol, #73095	
88-11916	Mossberg shotgun	
88-11958	S & W .32 revolver, #264035	
88-11986	Colt .22 pistol, #308236S	
	Winchester 30.30 rifle, #992610	
	Ruger .22 revolver, #60-93800	
	Ruger .357 revolver, #152-14459	
	S & W .38 revolver, #16320	
88-12175	Springfield .22 rifle	
88-12288	Liberty 21 .22 pistol, #021096	
88-12374	Llama .22 pistol, #765110	
89-190	Colt .45 pistol	
89-273	H & R sawed off shotgun, #BA568311	
89-452	Interarms 99mm pistol, #1041285	
89-460	Savage .22 rifle, #E752315	
89-753	Armi .25 pistol, #G76473	
89-764	S & W .357 revolver, #E1855921	
89-1770	S & W .22 revolver, #3K-71710	
89-1907	BB rifle, 760-C model	
89-1999	Colt .357 revolver, #L12812	
89-2095	H & R 12 gauge rifle, #AT297512	
89-2140	S & W .38 revolver, #133444	
89-2463	Ranger .22 rifle	
89-2543	S & W 9mm pistol, #A389108	
89-2980	S & W .38 revolver	
	Beretta .25 pistol, #BT122152V	
89-3055	FIE .22 revolver, #22842	
89-3105	Mauser Werke .380 pistol, #0110678	
89-3263	Sterling .22 pistol, #A94588	
89-3397	Colt .25 pistol, #OD80580	
89-3495	Garcia pistol, #1110896	
89-3539	Browning .25 pistol, #453995	
89-3609	Sawed off shotgun, 20 gauge	
89-3651	Savage .380 pistol, #17483B	
89-3729	Colt .38 revolver, #35138	
89-4393	Remington 12 gauge shotgun, #L519034V	
89-4521	R.G. .22 revolver, #L676047	
89-4568	S.W.D. 9mm M-11 handgun, #85-0003201	
89-4731	Marlin 12 gauge shotgun, #B439	
89-4908	Davis .32 handgun, #P056100	
	Ithaca 12 gauge shotgun, #764713-4	
	Marlin .22 rifle, #15736377	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
89-4909	Hawes .25 pistol, #90169	
89-4910	Hi-Standard .22 pistol, #1816150	
	Arminius 9 shot revolver, #120935	
89-4911	Raven .25 pistol, #1318318	
89-4921	Raven Arms .25 pistol, #1187489	
89-5468	Iver Johnson 410 gauge shotgun, #49288	
89-5508	Hawes .22 pistol, #54826	
89-6259	Taurus model 66, #5251040	
89-6479	Rossi .38 revolver, #101402	
89-6484	Amado .38 revolver, #207466	
89-6491	Jennings .22 pistol, #246090	
89-6516	Hi-Standard .22 revolver, #1955840	
89-6659	Ruger .42 magnum revolver, #47-02137	
89-6762	Marlin .22 rifle, #17336905	
89-6932	Davis .22 pistol, #133038	
89-7043	Daisy BB gun, #9A08095	
89-7047	Hi-Standard 20 gauge shotgun, #3100646	
89-7053	Glenfield .22 rifle, #19739505	
89-7165	Hi-Standard 2 shot Derringer, #1853721	
89-7269	Crossman pellet rifle, #265276	
89-7330	Jennings .22 pistol, #433236	
89-7946	World Arms .22 Derringer, #W2896	
	Pocket Knife	
89-8187	Coleman pellet pistol, #N88219175	
	Crossman pellet pistol, #789942	
89-8381	Hi-Standard .22 pistol, #G14220	
89-8410	S & W 9mm pistol, #A795307	
89-8410	Glenfield .22 rifle, #19421408	
89-8587	Raven Arms .25 pistol, #1114310	
	Marlin .22 rifle, #15253285	
89-8667	Iver Johnson .32 revolver, #27785	
89-9099	J.C. Higgins .22 revolver, #15342	
89-9135	Crossman pellet gun, #2802242669	
89-9283	Marlin .22 rifle, #23332500	
89-9372	Colt .357 revolver, #40825	
89-9499	Western Field 16 gauge shotgun	
	.22 rifle, #20332218	
89-9525	Stevens .22 rifle, #D887927	
89-9553	Colt .38 revolver, #S13299	
89-10048	Noble 16 gauge shotgun	
89-10188	Winchester 30.30 rifle, #4434004	
89-10580	Stevens .22 rifle, #E750003	
89-10600	Jennings .22 pistol, #036288	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
89-10604	Browning pistol, #655PT08470 Smith & Wesson .38, #619648 Smith & Wesson .38, #958740	
89-10714	Jennings .22 pistol, #311931 H & S .22 revolver, #321794 American .32 revolver H & R .22 revolver, #72051 Colt .38 revolver	
89-10784	Remington .22 rifle Savage Arms 300 rifle, #596674 Ruger semi-auto pistol Winchester 12 gauge shotgun, #199552A Winchester 30.30 rifle, #2915971 Western Field 12 gauge shotgun, #D07458	
89-10858	Wacker Intn. .22 pistol, #501039 Great Western Arms .38 pistol, #3120	
89-10961	Hi-Standard .22 pistol, #528716	
89-10980	Burgo .22 revolver, #109046	
89-11619	Marksman pellet gun, #9104177	
89-11884	Ruger .22 rifle, #128-92455	
89-11959	J.C. Higgins .22 Revolver, #579765 S & W .32 pistol, #111509 Sterling .22 pistol, #A19705	
89-12149	Medalist .22 BB gun, #788241156	
89-12241	Jennings .22 pistol, #586711	
90-708	Beretta .22 handgun, #BER02645T	
90-2207	Raven .25 pistol, #1185224	
90-2335	Colt .25 pistol, #95691	
90-2479	J.C. Higgins 12 gauge shotgun	
90-3069	Jennings .22 handgun, #62206	
90-3112	Kurz 9mm pistol, #M13169	
90-3195	Jennings .22 handgun, #408835 H & R revolver, #AU112323	
90-3440	AMT .22 pistol, #M02876 S & W .22 pistol, #TCK8930 Ruger .223 rifle, #183-32761 Ithaca 12 gauge shotgun, #140478 Browning .22 rifle, #04553PN146 Heckler & Koch 9mm pistol, #88320	
90-3526	Savage 20 gauge shotgun, #E357083	
90-3846	Taurus 9mm pistol, #TIB71044	
90-4622	S & W .357 handgun, #F2689364	
90-5497	Pellet gun partially assembled	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
90-5561	Colt .38 revolver, #312027	
90-5910	Raven .25 pistol, #1012987	
90-6183	Raven Arms .25 pistol, #823228	
90-7107	Rossi .38 pistol	
90-7713	Taurus .38 revolver, #1E86641	
	Hi-Standard .22 pistol, #2277737	
	Remington 5mm sawed off shotgun, #1115944	
	Sterling .22 pistol, #A72227	
	Sturm Ruger .357 revolver, #158-59970	
	Walter 9mm pistol, #K005624	
	Merwin-Hulbert .32 pistol, #CPD450	
	Charter Arms .38 revolver, #470262	
	S & W .38 revolver, #981J20	
	Ruger .357 revolver, #170-27482	
	Charter Arms .357 revolver, #951509	
	Raven Arms .25 handgun, #1554972	
	S & W .38 revolver, #83952	
	Sterling .22 pistol, #A61685	
	Remington .22 rifle	
	Winchester 30.06 rifle w/scope #G262902	
90-7757	Raven .25 handgun, #1683618	
90-8412	Beretta .380 frame and slide, #L31469	
90-10387	Eastfield 12 gauge shotgun, #B87163	
90-10966	Remington model 20 rifle, #2927	
90-10979	Jennings .22 pistol, #431036	
90-11453	Winchester 12 gauge shotgun	
90-11545	M-1 carbine 30mm rifle, #109154	
90-12012	Pellet gun pistol, #589527418	
90-12295	Marksman BB gun, #7E090482	
91-96	Winchester 30.30 rifle, #3797924	
91-233	American .32 revolver	
91-926	Raven Arms .25 pistol, #1007253	
91-1537	Raven Arms .25 handgun, #466385	
	Folding knife	
91-2823	BB rifle, #589212863	
91-3224	Vanguard starter pistol	
91-4038	H & R 20 gauge sawed off shotgun	
91-4426	Walter 9mm pistol, #238072	
91-4976	Hi-Standard .22 pistol, #D57611	
91-5945	Raven Arms .25 handgun, #993861	
91-6068	Ruger .22 pistol, #211-97168	
91-6150	Colt .357 revolver, #81518	

MULTNOMAH COUNTY
SHERIFF'S OFFICE
FOUND/UNCLAIMED PROPERTY FOR DISPOSAL
LIST - 92-2

FILE NUMBER	PROPERTY DESCRIPTION	DISPOSITION
91-6681	H & R .38 revolver, #AN103087 R.G. .22 pistol, #Z002298	
91-8124	Derringer .38 handgun, #023722	
91-8265	Champion 410 gauge shotgun	
91-8275	Dan Wesson .357 handgun, #339402	
91-8801	American .22 derringer, #2142	
91-10825	Titan .25 handgun, #D810932 Homemade pipe gun Inter-Arms .38 revolver, #D792041 Horkins-Allen .32 pistol, #D18968T Hawes .22 revolver, #15625/2 CDM Product Inc. .22 revolver, #187847 H & R .38 revolver, #68 S & W .38 revolver, #D732079 Taurus .38 revolver, #RH802559 Colt .38 revolver, #8976 Mossberg rifle Browning 16 gauge shotgun, #X38463 Wards 20 gauge shotgun, #H822371 Winchester 12 gauge shotgun, #L2387337	
91-11080	Marksman BB gun, #9032653	
91-11445	LA Fury .25 handgun, #71422	
91-11798	Pellet gun, #N88533323	

238-AEQU

DATE SUBMITTED: February 27, 1992

(For Clerk's Use)
Meeting Date MAR 05 1992
Agenda No. C-2

REQUEST FOR PLACEMENT ON THE AGENDA

Subject: LIQUOR LICENSE

Informal Only* _____
(Date)

Formal Only _____
(Date)

DEPARTMENT Sheriff's Office

DIVISION _____

CONTACT Sergeant Kathy Ferrell

TELEPHONE 251-2431

*NAME(S) OF PERSON MAKING PRESENTATION TO BOARD Sergeant Kathy Ferrell

BRIEF SUMMARY Should include other alternatives explored, if applicable, and clear statement of rationale for the action requested.

Attached is the Package Store, Change of Ownership Application for the Sunshine Market which will henceforth be called The Powell Sunshine Market. The applicant(s) Johnnie D. Kinnaman and Jin O. Kinnaman have no criminal record and we recommend that the application be approved.

ACTION REQUESTED:

() INFORMATION ONLY () PRELIMINARY APPROVAL () POLICY DIRECTION () APPROVAL

INDICATE THE ESTIMATED TIME NEEDED ON AGENDA Consent Agenda

IMPACT:

PERSONNEL

() FISCAL/BUDGETARY

() GENERAL FUND

Other _____

3/5/92 original to Sgt Ferrell

BOARD OF
COUNTY COMMISSIONERS
1992 FEB 27 PM 2:13
MULTNOMAH COUNTY
OREGON

SIGNATURES:

DEPARTMENT HEAD, ELECTED OFFICIAL, OR COUNTY COMMISSIONER: K. Ferrell

BUDGET / PERSONNEL _____ / _____

COUNTY COUNSEL (Ordinances, Resolutions, Agreements, Contracts) _____

OTHER _____
(Purchasing, Facilities Management, Etc.)

NOTE: If requesting unanimous consent, state situation requiring emergency action on back.

no CC#4

APPLICATION

STATE OF OREGON
OREGON LIQUOR CONTROL COMMISSION

Return To:

GENERAL INFORMATION

A non-refundable processing fee is assessed when you submit this completed form to the Commission (except for Druggist and Health Care Facility Licenses). The filing of this application does not commit the Commission to the granting of the license for which you are applying nor does it permit you to operate the business named below.

(THIS SPACE IS FOR OLCC OFFICE USE)	(THIS SPACE IS FOR CITY OR COUNTY USE)
Application is being made for: <input type="checkbox"/> DISPENSER, CLASS A <input type="checkbox"/> DISPENSER, CLASS B <input type="checkbox"/> DISPENSER, CLASS C <input checked="" type="checkbox"/> PACKAGE STORE <input type="checkbox"/> RESTAURANT <input type="checkbox"/> RETAIL MALT BEVERAGE <input type="checkbox"/> SEASONAL DISPENSER <input type="checkbox"/> WHOLESALE MALT BEVERAGE & WINE <input type="checkbox"/> WINERY <input type="checkbox"/> Add Partner <input type="checkbox"/> Additional Privilege <input type="checkbox"/> Change Location <input checked="" type="checkbox"/> Change Ownership <input type="checkbox"/> Change of Privilege <input type="checkbox"/> Greater Privilege <input type="checkbox"/> Lesser Privilege <input type="checkbox"/> New Outlet <input checked="" type="checkbox"/> APPLICATION RECEIVED	NOTICE TO CITIES AND COUNTIES: Do not consider this application unless it has been stamped and signed at the left by an OLCC representative. THE CITY COUNCIL, COUNTY COMMISSION, OR COUNTY COURT OF <u>MULTNOMAH COUNTY</u> <small>(Name of City or County)</small> RECOMMENDS THAT THIS LICENSE BE: GRANTED <input checked="" type="checkbox"/> DENIED _____ DATE <u>MARCH 5, 1992</u> BY <u>Gladys McCoy</u> <small>(Signature)</small> TITLE <u>GLADYS MCCOY, COMMISSION CHAIR</u>
OTHER: <u>Receipt # 2680</u> <u>\$50.00</u> <u>Larry Jackson</u> FEB 19 1992 OREGON LIQUOR CONTROL COMMISSION REGULATORY DIVISION	

CAUTION: If your operation of this business depends on your receiving a liquor license, OLCC cautions you not to purchase, remodel, or start construction until your license is granted.

1. Name of Corporation, Partnership, or Individual Applicants:

- 1) Johnnie D Kinnaman 2) Jim O. Kinnaman
- 3) J 4) _____
- 5) _____ 6) _____

(EACH PERSON LISTED ABOVE MUST FILE AN INDIVIDUAL HISTORY AND A FINANCIAL STATEMENT)

- 2. Present Trade Name SUNSHINE MARKET
- 3. New Trade Name POWELL SUNSHINE MARKET Year filed 1992
with Corporation Commissioner
- 4. Premises address 13580 S.E. POWELL BLVD. PORTLAND, MULTN. ORE. 97236
(Number, Street, Rural Route) (City) (County) (State) (Zip)
- 5. Business mailing address SAME AS ABOVE
(P.O. Box, Number, Street, Rural Route) (City) (State) (Zip)
- 6. Was premises previously licensed by OLCC? Yes No _____ Year 1992 PACKAGE STORE
- 7. If yes, to whom: JANE R. KINNAMAN Type of license: PACKAGE STORE
- 8. Will you have a manager: Yes _____ No Name N/A
(Manager must fill out Individual History)
- 9. Will anyone else not signing this application share in the ownership or receive a percentage of profits or bonus from the business? Yes _____ No
- 10. What is the local governing body where your premises is located? Multnomah
(Name of City or County)
- 11. OLCC representative making investigation may contact: Johnnie D. Kinnaman 012552
13116 S.E. POWELL #4 H. 760-6899 B. 761-4141
(Address) (Name) (Tel. No. — home, business, message)

CAUTION: The Administrator of the Oregon Liquor Control Commission must be notified if you are contacted by anybody offering to influence the Commission on your behalf.

DATE 2-7-92

Applicant(s) Signature (In case of corporation, duly authorized officer thereof)

- 1) Johnnie D Kinnaman
- 2) Jim O Kinnaman
- 3) _____
- 4) _____
- 5) _____
- 6) _____

Meeting Date: MAR 0 5 1992

Agenda No.: C-3

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: APPOINTMENTS

BCC Informal _____ BCC Formal March 5, 1992
(date) (date)

DEPARTMENT Non-departmental DIVISION Chair's Office

CONTACT Kathy Millard TELEPHONE 248-3308

PERSON(S) MAKING PRESENTATION _____

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: Consent Calendar

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

Appointment to:

Citizen Budget Advisory Committees

Al Armstrong, DCC CBAC, Position 1, expires 9/92

Debora A. Leopold, DA CBAC, Position 1, expires 9/94

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL *Bladep McCoy*
Or

DEPARTMENT MANAGER _____

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 FEB 27 AM 11:51



MULTNOMAH
COUNTY

KM
GLADYS McCOY
MULTNOMAH COUNTY CHAIR
1021 S.W. 4th, ROOM 134
PORTLAND, OREGON 97204

Citizen Involvement Committee

2115 SE MORRISON

PORTLAND, OREGON 97214

248-3450

February 20, 1991

MEMORANDUM

To: Chair Gladys McCoy
From: Gloria Fisher
Office of Citizen Involvement
Re: CBAC appointments

Please make the following appointments to Citizen Budget Advisory Committees:

Al Armstrong DCC CBAC Position 1 Expires 9/92
replaces Douglas Tracey who resigned due to job changes

Debora A. Leopold DA CBAC Position 1 Expires 9/94

Note: Isadore Maney will join the DCC CBAC in position 5 as soon as we receive his interest form. We still have vacancies on the Non-Departmental CBAC and one vacancy on the Sheriff CBAC which is to be filled by the Sheriff.

CBAC

Called 11/8 invited to 11-11 CIC
req. ltr of Endorsement
J.



MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
VOLUNTEER INTEREST FORM

NAME Al Armstrong
HOME ADDRESS 3717 N.E. Broadway
PLACE OF EMPLOYMENT Allied Health Service
OCCUPATION Drug counselor / Small Business owner
HOME PHONE 284-2793 WORK PHONE 226-2203
VOLUNTEER/BOARD/COMMITTEE EXPERIENCE N/A.

OTHER RELATED EXPERIENCE I'm a good speaker. I know how to reach the people that I'm speaking to. On Tuesdays I try to attend County Commission meetings.

AREAS OF INTEREST:

Human Services _____ Youth _____
Education Justice Services _____ Aging _____
Environmental Services _____ Health _____
Planning, Development _____ Education _____
Facilities, Transportation _____ Other _____

OPTIONAL: Age 33 Sex male
Ethnicity: African American Native American _____
Hispanic _____ Asian/Pacific Islander _____ White _____

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBER OF TWO REFERENCES:
1. Arlo Jean Boyle, 3264 N.E. 156th AVE, Portland, OR 97230 226-2203
2. Frances D. Egan, 6437 N.E. Wiggant St, Portland Oregon 97218

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST WITH ANY COUNTY DEPARTMENT? N/A.

SIGNATURE Al Armstrong

Please mail to: OFFICE OF CITIZEN INVOLVEMENT
2115 S.E. MORRISON STREET,
PORTLAND, OREGON 97214
Telephone: 248-3450

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME Debora A. Leopold ARM, CPIW

HOME ADDRESS 520 N. Lombard Portland, Or ZIP 97217 PHONE 289-2315

EMPLOYER Sedgwick James of Oregon Inc.

OCCUPATION Licensed commercial insurance agent

OPTIONAL: Age 36 Sex F
African American X Native American _____ Hispanic _____
Asian/Pacific _____ White _____ Other _____

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES X NO _____

AREAS OF INTEREST:

Human Services X Youth X
Justice Services _____ Aging X
Environmental Services _____ Health X
Facilities, transportation _____ General government _____
Other _____

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE 3 yrs. board member of Northwest Pilot Pro-
ject; volunteer fundraiser for 5 years - Northwest Pilot Project; Past President

Insurance Women of Portland, International; Chairman Ockley Green Local School
Advisory Committee; Mentor Jefferson Financial Academy; Member Jefferson LSAC

OTHER RELEVANT EXPERIENCE have chaired various regional committees for Insurance
Women International; National Speakoff Winner for Insurance Women International - 1986
Fundraiser Chairperson for Ockley Green 8th grade Washington D.C. Trip
Sedgwick James United Way Employee Volunteer; Boys Scouts of America Volunteer

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

- Jane Malarkey, Volunteer Coordinator Northwest Pilot Project 1137 SW Broadway 227-5605
- Alcena Boozer, Principal Jefferson High School N. Kerby 280-5180

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY

DEPARTMENT? not to my knowledge

SIGNATURE Debora Leopold DATE 2/10/92

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

Meeting Date: MAR 05 1992

Agenda No.: C-4

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: APPOINTMENTS

BCC Informal _____ BCC Formal March 5, 1992
(date) (date)

DEPARTMENT Non-departmental DIVISION Chair's Office

CONTACT Kathy Millard TELEPHONE 248-3308

PERSON(S) MAKING PRESENTATION _____

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: Consent Calendar

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

Appointment to:
Community Corrections Advisory Committee
Janice R. Wilson, District Court Judge Position, expires 7-30-92

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL *Gladys McCoy*
Or

DEPARTMENT MANAGER _____

(All accompanying documents must have required signatures)

BOARD OF
COUNTY COMMISSIONERS
1992 FEB 27 AM 11:51
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

GLADYS MCCOY
MULTNOMAH COUNTY CHAIR
1021 S.W. 4th ROOM 134
PORTLAND, OREGON 97204
2/12/92

DEPARTMENT OF COMMUNITY CORRECTIONS
421 S.W. 5TH, SUITE 600
PORTLAND, OREGON 97204
(503) 248-3701
FAX (503) 248-5376

GLADYS MCCOY
COUNTY CHAIR

February 11, 1992

Ms. Kathy Millard
Commissioner McCoy's Office
1021 SW Fourth Avenue
Portland, Oregon 97204

Re: Community Corrections Advisory Committee Membership
Appointment

Dear Kathy:

Enclosed is an Interest Form completed by Judge Janice Wilson. Also enclosed is the County Boards & Commissions Vacancy Form for Judge Wilson's appointment. Currently, the mandated District Court Judge position is vacant and Judge Wilson has volunteered to serve.

Thank you for your attention to this matter. Do not hesitate to contact my assistant, JoLynne, if you have questions.

Very truly yours,

Robert A. Jackson

Robert A. Jackson
Director

/j1z
Enclosures
cc: Doug Bray, CCAC Chair

E. Please list all current and past volunteer/civic activities.

Name of Organization	Dates	Responsibilities
See attached resume		

F. Please list post-secondary school education.

Name of School	Dates	Degree/Course of Study
Willamette University College of Law	1976-79	JD (Law)
Willamette University	1972-76	BA (International Studies)

G. Please list the name, address and telephone numbers of two people who may be contacted as references who know about your interests and qualifications to serve on a Multnomah County board/commission.

Claire Argow	1500 SW Park #202 Portland, OR	228-0032
Harley Leiber	1120 SW 3rd Ave. Portland, OR	248-5642

H. Please list potential conflicts of interest between private life and public service which might result from service on a board/commission.

none

I. Affirmative Action Information

~~F~~ / Caucasian sex / racial ethnic background Yes No disabled Yes No veteran

birth date: Month 04 Day 14 Year 54

My signature affirms that all information is true to the best of my knowledge and that I understand that any misstatement of fact or misrepresentation of credentials may result in this application being disqualified from further consideration or, subsequent to my appointment to a board/commission, may result in my dismissal.

Signature Michael W. Date 1/20/92

JANICE R. WILSON
1021 SW Fourth Avenue
Portland, Oregon 97204
503/248-3069

BAR MEMBERSHIPS: Oregon Supreme Court (1979)
United State District Court, District of Oregon
(1979)
United State Court of Appeals, Ninth Circuit
(1980)

EDUCATION: J.D., summa cum laude (1/121) Willamette
University College of Law, Salem, Oregon, 1979.

B.A., cum laude, Willamette University, 1976.

LEGAL EMPLOYMENT: District Court Judge, Department 10, Multnomah
County, March 29, 1991 to present.

Ater Wynne Hewitt Dodson & Skerritt: Of
Counsel, August 1990 to March 1991.

Lindsay, Hart, Neil & Weigler: Partner, January
1986 through July 31, 1990; Associate, October
1981 through December 1985.

Law Clerk to the Honorable Otto R. Skopil, Jr.,
United States Court of Appeals for the Ninth
Circuit (October 1979 to September 1981), and
United States District Court for the District
of Oregon (August to October 1979).

**BAR COMMITTEES and
ACTIVITIES:**

Multnomah Bar Association Court Liaison
Committee, July 1990 to present.

Multnomah Bar Association Judicial Selection
Committee, January 1987 to February 1990
(Chair, January 1988 to February 1990).

Volunteer Lawyers Project, Board of Directors,
May 1982 to November 1990 (Treasurer, May 1984
to April 1985; Secretary, April 1985 to
February 1986; Vice President, February 1986 to
June 1988; President, June 1988 to June 1989).
Volunteer lawyer service.

Co-author, Oregon State Bar CLE on 1989
Legislation (Labor and Employment).

Senior Law Project, volunteer attorney, 1982 to
1990.

**OTHER COMMUNITY
ACTIVITIES:**

Special Prosecutor (volunteer), Multnomah County District Attorney's Office, Spring 1990.

Arbitrator (volunteer), Better Business Bureau (consumer disputes), 1987 to March 1991.

Willamette University College of Law, Board of Visitors, 1988 to present.

Our New Beginnings, Inc. (rehabilitation services for women offenders), Board of Directors, 1982 to 1985; Advisory Board, September 1989 to March 1991; volunteer lawyer, 1982 to March 1991.

American Civil Liberties Union of Oregon: Board of Directors, May 1987 to March 1991; Lawyers' Committee, May 1987 to March 1991; Chair, Commission on Lesbian and Gay Rights, 1987 to 1990; Vice President for Litigation, May 1990 to March 1991; cooperating attorney, 1981 to March 1991.

Multnomah County Community Corrections Advisory Committee, August 1983 through July 1987 (Chair, June 1985 to September 1986).

Meeting Date: ~~FEB 27 1982~~ MAR 05 1992

Agenda No.: R-4 R-11

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: Setting Fees for Dishonored Checks

BCC Informal 2/25/92 BCC Formal 2/27/92
(date) (date)

DEPARTMENT Nondepartmental DIVISION Budget Office

CONTACT Ben Buisman TELEPHONE 248-3575

PERSON(S) MAKING PRESENTATION Patty Shaw & Ben Buisman

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 5 minutes

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

Adjusts fees charged for dishonored (NSF, account closed, etc.), checks to cover actual expenses.

*3/5/92 copies to Ben Buisman & Patti Shaw
3/6/92 copies to ordinance distribution list*

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER *Ben Buisman*

(All accompanying documents must have required signatures)

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 FEB 19 AM 9:22

ORDINANCE FACT SHEET

Title: An Ordinance Relating to Fees for Dishonored Checks; Amending MCC 5.10 Date: Feb 1992

Brief statement of purpose of ordinance (including rationale for adoption of ordinance, a description of persons benefitted, and other alternatives explored).

Multnomah County does not uniformly and consistently attempt to recover charges and fees that result from the processing of checks returned as not payable. This ordinance establishes a consistent fee sufficient to recover costs incurred in most cases. Currently bank charges for NSF checks are \$15 (\$25 for foreign items) With an additional \$12.50 to recover internal processing costs, the fee assessed to most persons paying for County goods or services with a check subsequently dishonored will be \$27.50, comparable to what is charged by local enterprises. (Note: Our bank raised it charges by \$7.50 January 1, 1992.)

What other jurisdictions in the metropolitan area have enacted similar legislation?

The Multnomah County Board of County Commissioners recently approved an ordinance establishing similar fees for the Assessment and Taxation Division.

What has been the experience in other areas with this type of legislation?

Many businesses impose a cost-recovery charge on NSF check accounts.

What authority is there for Multnomah County to adopt this legislation? (State Statute. Home Rule Charter?) Are there constitutional problems?

Authority is granted under the Home Rule Charter.

Fiscal Impact Analysis

A & T estimates annual collections at \$5,000. Other County agencies could collect another \$2,000.

SIGNATURES:

Office of County Counsel _____

Department Head _____

The image shows two handwritten signatures in black ink. The first signature is a circular scribble, likely representing the Office of County Counsel. The second signature is a more legible cursive name, likely representing the Department Head. Both signatures are written over horizontal lines that serve as baselines for the signature fields.

1 BEFORE THE BOARD OF COUNTY COMMISSIONERS

2 MULTNOMAH COUNTY OREGON

3 ORDINANCE NO. 713

4
5 An ordinance amending the Multnomah County Code, Section
6 5.10, relating to fees assessed to recover the costs of
7 dishonored checks.

8 (Language in brackets [] is to be deleted; underlined language is new).

9
10 Multnomah County ordains as follows:

11
12 Section I Findings

13 Multnomah County has checks returned to various County
14 agencies as unrecoverable because of, among other reasons,
15 insufficient funds, and closed or no account. Bank charges and
16 other general fund costs incurred in handling these dishonored
17 checks are often not recovered.

18 Section II Purpose

19 The purpose of this amendment is to defray County expenses.
20 Fees assessed and recovered for costs associated with dishonored
21 checks will be returned to the general fund. The recovered value
22 of the original check will be returned to the County organization
23 or program that initially received the dishonored check.

24 Section III Amendment

25 MCC Chapter 5.10 is amended by adding the following:

26 5.10.090 Fees for recovering costs of dishonored checks.

27 (A) For any check, draft, or order of payment in money given
28 to the County by any person in payment of taxes or fees for any
29 service listed herein, which check, draft, or order of payment in
30 money is dishonored for any cause, including but not limited to
31 non-sufficient funds, closed account or no account, there shall
32 be a fee assessed in the amount of then-current charge made to
33 County by the bank from which the check was returned, plus an
34 additional \$12.50 to cover internal costs, such as extra data
35 entry, processing time, and unavailability of the revenues
36 represented by the original check.

37
38 (B) At the discretion of the Department which originally
39 accepted the dishonored check, the fee assessed may be reduced to
40 cover only the County's payment to the bank involved. The
41 accepting Department shall be responsible for the \$12.50 not
42 assessed.

43
44 (C) Said fee is collectible by the County in any lawful
45 manner, including but not limited to, filing of appropriate
46 proceedings pursuant to statute, or such other means as may be
47 legally pursued.

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Section IV Adoption

ADOPTED this 5th day of March, 1992,
being the date of its second reading before the Board of
County Commissioners of Multnomah County, Oregon.



BY Gladys McCoy
Gladys McCoy, Chair
Multnomah County, Oregon

REVIEWED:

By Laurence Kressel
Laurence Kressel, County Counsel
For Multnomah County, Oregon

Also see 5.10.160 (d) as amended October 3, 1991 (Agenda Item R-3).

Meeting Date: MARCH 5, 1992

Agenda No.: R-2

(Above space for Clerk's Office Use)

AGENDA PLACEMENT FORM
(For Non-Budgetary Items)

SUBJECT: MERIT SYSTEM CIVIL SERVICE COUNCIL DECISION APPEALS

BOARD BRIEFING MARCH 3, 1992 REGULAR MEETING MARCH 5, 1992
(date) (date)

DEPARTMENT NON-DEPARTMENTAL DIVISION CHAIR GLADYS McCOY

CONTACT JACQUELINE A. WEBER/COUNTY COUNSEL TELEPHONE 248-3138

PERSON(S) MAKING PRESENTATION JACQUELINE WEBER, JANET JARON, DON WILLNER

ACTION REQUESTED: QUASI-JUDICIAL DECISION ON APPEALS

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL

ESTIMATED TIME NEEDED ON BOARD AGENDA: 40 MINUTES

CHECK IF YOU REQUIRE OFFICIAL WRITTEN NOTICE OF ACTION TAKEN: _____

BRIEF SUMMARY (include statement of rationale for action requested, as well as personnel and fiscal/budgetary impacts, if applicable):

THE APPEALS OF AFSOME, LOCAL 88 AND LINDA BEDELL IN THE MATTER OF THE JANUARY 16, 1992 MERIT SYSTEM CIVIL SERVICE COUNCIL DECISION REGARDING VIOLATIONS OF PERSONNEL RULES BY UNILATERALLY PUTTING PROBATIONARY EMPLOYEES IN ANOTHER CLASSIFICATION.

9:30 AM TIME CERTAIN REQUESTED.

2/28/92 2:30pm STEVE NEMIROV ADVISED HIS CLIENT JANET JARON WISHES TO PRESENT ORAL ARGUMENT.

(If space is inadequate, please use other side)

SIGNATURES:

ELECTED OFFICIAL _____

Or

DEPARTMENT MANAGER  _____

(All accompanying documents must have required signatures)

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 FEB 25 PM 1:07

GENERAL PROVISIONS

3.10.005. Title.

This chapter shall be known as the Personnel Ordinance of Multnomah County and may be so pleaded and referred to.

[Ord. 89 § 1 (1974)]

3.10.010. Definitions.

As used in this chapter, unless the context requires otherwise:

- (A) *Affirmative action* means identifying existing or potential discriminatory conditions and making specific goal oriented corrective actions to eliminate and prevent unlawful discrimination.
- (B) *Appeal* means a request for hearing filed with the executive secretary of the merit system civil service council.
- (C) *Appointing authority* means any elected official having the authority to make an appointment, including the county executive, members of the board, the county auditor, the district attorney, and the presiding judges of the circuit and district courts.
- (D) *Appointment* means all methods of selecting or employing any person to hold a position in county service.
- (E) *Bargaining agent* means the person designated to represent the exclusive representative.
- (F) *Bargaining unit* means the unit designated by the board to be appropriate for the purpose of collective bargaining.
- (G) *Board* means the board of county commissioners.
- (H) *Cause* means misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.
- (I) *Charter* means the Multnomah County home rule charter.
- (J) *Class or classification* means a group of positions in the county classified service sufficiently similar in duties, authority and responsibility to permit grouping under a common title which would call for similar qualifications and the same schedule of pay.
- (K) *Classification plan* means a document which embodies all classes that have been established, and the specifications or descriptions of these classes.
- (L) *Classified service* means those county positions designated to be held by classified employees.
- (M) *Council* means the merit system civil service council established by MCC 3.10.030.
- (N) *County executive* means the county executive of Multnomah County, Oregon.
- (O) *County service* means in the employ of the county.
- (P) *Discrimination complaint* means a complaint that a personnel action was motivated by discrimination on the basis of race, religion, sex, age, marital status, national origin, physical or mental handicap or political affiliation.
- (Q) *Eligible* refers to a person whose name is on the list of persons certified to be qualified for employment.
- (R) *Employment list* means a list of persons who have been found qualified for appointment to a position in a particular class.
- (S) *Entrance test* means a test for a position in a particular class, which position requires no previous or equivalent experience with the county.
- (T) *Exclusive representative* means the labor organization which has the right to be the bargaining representative of all employees in an appropriate bargaining unit.
- (U) *Executive secretary* means the executive secretary of the merit system civil service council.
- (V) *Grievance* means a complaint filed pursuant to the terms of an existing collective bargaining agreement.

- (W) *Hiring manager* means a county manager to whom authority has been delegated to make appointments in the classified service.
- (X) *Layoff* means a reduction of the county work force.
- (Y) *Layoff list* means a list of persons who have been laid off in a position in a particular class who are entitled to have their names certified for appointment to a position in that class.
- (Z) *List* means an employment list, promotion list, transfer list or layoff list.
- (AA) *Managerial employee* means a person who formulates policy or has a major role in the administration of policy which requires the exercise of independent judgment; provided that such role is not of a routine clerical nature.
- (BB) *Personnel action* means any action taken on behalf of the county with reference to an employee, an applicant for the classified service or a classified position.
- (CC) *Personnel officer* means the county executive.
- (DD) *Personnel rule* means a prescribed guide for conduct or action in order to implement and maintain the provisions of this chapter.
- (EE) *Probationary period* means a working test period during which a classified employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of the duties of that position.
- (FF) *Promotion list* means a list of persons who have been found qualified by a promotion test for appointment to a position in a particular class.
- (GG) *Promotional examination* means a test for a position in a particular class, which position requires previous or equivalent experience with the county.
- (HH) *Reclassification* means the assignment of an existing position from one to another class of work.

- (II) *Regular employee* means the status a classified employee acquires after successful completion of the probationary period for the particular position to which the employee was appointed.

[Ord. 89 § 2 (1974); Ord. 248 § 1 (1980); Ord. 448 § 1 (1984); Ord. 461 Rpld. Ord. 448 (1985)]

3.10.015. Policy and purpose; merit principles.

(A) It is the purpose of this chapter to designate those county employees in classified service, to set forth the rights and privileges of those employees and those persons desirous of being considered for classified service and to state the county's obligations in establishing and maintaining a merit system of classified service.

(B) The board has determined the necessity of establishing a merit system of personnel administration as provided by section 7.40 of the charter based on merit principles and professional methods governing the appointment, tenure, promotion, transfer, layoff, separation, discipline and other incidents of employment relating to county employees. These merit principles include:

- (1) Recruiting, appointing and promoting employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applications for initial appointment;
- (2) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected;
- (3) Assuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, religion, color, sex, age, physical or mental handicap, marital status or national origin, and with proper regard for their privacy and constitutional rights as citizens; and
- (4) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of inter-

fering with or affecting the result of an election to or a nomination for office.

[Ord. 89 § 3A, B (1974); Ord. 248 § 2 (1980); Ord. 448 § 2 (1984); Ord. 461 Rpld. Ord. 448 (1985)]

3.10.020. Labor organizing; fair share agreements.

The board recognizes the rights of public employees to organize or refrain from organizing and recognizes and affirms the principle of collective bargaining to establish wages, hours and working conditions. Nothing in MCC 3.10.015 and this section prohibits the county and bargaining representatives from executing fair share agreements. [Ord. 89 § 3C (1974)]

3.10.025. Appeals from personnel actions.

In addition to any appeal right granted elsewhere in this chapter, there shall be a right of appeal by any employee of and applicants for the classified service regarding personnel actions including complaints of discrimination, directly to the council in the manner prescribed by MCC 3.10.300(C). [Ord. 231 § 1 (1980)]

CIVIL SERVICE COUNCIL; ADMINISTRATION*

3.10.030. Merit system civil service council; officers; membership; facilities and staff.

(A) The civil service commission established by county charter consists of a board of three members known as the merit system civil service council. Members of the civil service commission as of December 31, 1974, are continued as the first members of the council to the end of the terms of their appointment. Subsequent appointments to the council shall be made by the board according to the provisions of the charter. A person appointed to fill a vacancy occurring prior to the

*Charter reference—Civil service commission, 7.20.

expiration of the term of any member shall be appointed for the remainder of that term.

- (B) (1) The council shall elect one of its members presiding officer. It shall meet at such times and places as are specified by call of the presiding officer or any two members of the council. Two members of the council shall constitute a quorum and the votes of any two members concurring shall be sufficient to make a decision.
- (2) No member of the council shall hold any other public or official position with Multnomah County government.
- (3) No member of the council shall receive compensation for services rendered.

(C) A member of the council may be removed from office by the board for incompetency, dereliction of duty or other good cause after being given a copy of the charges and an opportunity to be heard publicly on the charges before the board.

(D) The board shall provide the council with sufficient staff, office space, supplies and equipment in accordance with county budget procedures. [Ord. 89 § 4 (1974)]

3.10.040. Duties of the council.

The council shall:

- (A) Designate one of its staff as its executive secretary and delegate to that person such administrative duties as may be necessary.
- (B) Adopt such rules and hold such hearings as it finds necessary in order to perform the duties and responsibilities vested in it by sections 7.20 and 7.30 of the charter and this chapter.
- (C) Submit periodic reports to the board regarding the activities of the council and the application of merit principles in county personnel management.
- (D) Review and comment on any personnel rules or revisions thereof, other than those referred to in subsection (B) of this section, submitted to it by the personnel officer.

among those submitted to hiring managers in cases of historic underutilization of such persons. [Ord. 89 § 15 (1974); Ord. 248 § 15 (1980)]

EMPLOYMENT

3.10.200. Provisional appointments.

No person shall be appointed or promoted to a position in the classified service unless certified as eligible, except on a temporary basis as provided by this chapter. Vacancies in the classified service shall be filled only by appointment of an eligible candidate certified from a list or by provisional or emergency appointment or by transfer or demotion of a regular employee. No appointment or promotion to any position in the classified service shall be made except in the manner provided in this section.

[Ord. 89 § 16A (1974); Ord. 248 § 16 (1980)]

3.10.210. Limited duration appointments.

[Ord. 89 § 16B (1974); Rpld. by Ord. 248 § 27 (1980)]

3.10.220. General appointment.

The appointment from a certified eligible list to a permanent budgeted position in the classified service shall be a general appointment.

[Ord. 89 § 16C (1974)]

3.10.225. Temporary appointment.

The appointment of a person to a position for a limited or uncertain duration, whether or not the position is budgeted, shall be a temporary appointment.

- (A) Such appointments shall not exceed six months in duration, and shall not be made without prior approval of the personnel officer.
- (B) Persons temporarily appointed who are to perform duties normally performed by classified employees shall meet the minimum requirements established for the classification.

(C) Whenever possible eligible lists shall be used in the appointment of temporary employees.

(D) Temporary employees may be discharged at any time by the appointing authority, shall have no appeal rights within the county, and shall be notified of their status upon appointment.

(E) Successive temporary appointments of the same employee may not be made which, taken together, would extend that person's employment beyond six months.

(F) The personnel officer shall prescribe additional appropriate rules concerning the use of employees on an intermittent or irregular "on call" basis.

[Ord. 248 § 18 (1980)]

3.10.230. Probationary period; training programs.

(A) Except as provided in subsection (C) of this section, every person who receives a general appointment to a position in the classified service shall serve a probationary period not to exceed 18 months for deputy sheriff; one year for other law enforcement and correction personnel, property appraisers and bridge operators; and six months for all other employees.

(B) A probationer may be discharged at any time during probation if, in the opinion of the appointing authority, continuance in county service is not in the best interest of the county.

(C) Training programs may be established for the developing of skills or knowledge necessary for competent job performance. An employee may be required to train under a program for a period not exceeding six months and the probationary period for the employee shall be the length of time of the approved training program, plus the time prescribed in subsection (A) of this section.

(D) When any person who has been appointed to a position in a higher classification or grade on probation does not qualify for the position in the higher classification or grade within the probationary period, that person shall not lose seniority in the lower classification or grade from which

WILLNER & ZABINSKY

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

DON S. WILLNER
ZACHARY ZABINSKY
ROSEMARIE CORDELLO
REBECCA E. SWANSON

FAX (503) 228-4261

March 2, 1992

BOARD OF
COUNTY COMMISSIONERS
1992 MAR -2 AM 11:15
MULTNOMAH COUNTY
OREGON

Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 S.W. Fourth Avenue, Room 606A
Portland, Oregon 97204

RE: Merit System Appeal of AFSCME, Local 88
and Linda D. Bedell

Dear Ms. Bogstad:

In accordance with the amended Notice of Hearing, I am enclosing an original plus nine copies of the Memorandum of AFSCME, Local 88 and Linda D. Bedell. I am also enclosing one copy of a corrected transcript of the hearing before the Merit System Civil Service Council. I am causing a copy of the Memorandum and transcript to be hand delivered, simultaneously, to Jacqueline A. Weber, Multnomah County Counsel, and Janet Jaron of the Sheriff's Office. (Ms. Weber has instructed me to deliver the opposing party copies to Ms. Jaron rather than to the County Counsel Office).

In accordance with the amended Notice of Hearing, I am hereby notifying you, and by copy of this letter, all other parties at the same time, that appellants, AFSCME, Local 88 and Linda D. Bedell, request 15 minutes of oral argument.

Sincerely,

WILLNER & ZABINSKY



Don S. Willner

DSW/gjb
Enclosures
cc: Jacqueline A. Weber
Janet Jaron

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF MULTNOMAH COUNTY

BRIEF OF AFSCME LOCAL 88

AND LINDA BEDELL

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 MAR - 2 AM 11:16

A. STATEMENT OF FACTS (Based upon the official transcript)

Linda D. Bedell was hired in August, 1991 and Scott E. Collins was hired in July, 1991, as temporary civil deputies in the Sheriff's Civil Division. Both were told that they could not become regular civil deputies without passing the test and winning the position under Civil Service Rules and then successfully completing the probationary period. (Tr.58, 1.16-21) David Sines and Richard Gustafson are County employees who have also been trying to get on the Civil Service list for civil deputy. (Tr 7, 1.6-10)

The definition of the job is:

"To serve and enforce orders, writs, and notices issued by the circuit or district courts or to take custody of and escort individuals who are alleged to be mentally ill to court hearings or detainment facilities."
(From Job Description)

The probationary period for civil deputies is six months.
(Rule 14.0)

Michael A. Teed and William S. Foster were hired on August 19, 1991 by the County through Civil Service procedures as corrections officers. (Tr.25, 1.6-8) The probationary period for corrections officers is one year. (Rule 14.02) Duties of this position are:

"This is work in the custody, care and humane treatment of adult male or female inmates in a jail or other detention environment." (From Job Description)

On October 11, 1991 as a result of reductions in force for corrections officers, Mr. Teed and Mr. Foster were transferred to the civil deputies position at a rate of pay lower than their pay as corrections officers, but higher than the pay of many civil deputies. (Tr 28-30) Employee Services Manager Curtis Smith admitted that he knew of no other time when laid off probationary employees were given any transfer rights (Tr 38, 1.20-25) Local 88 was very concerned, but was told that this transfer was temporary until they could be transferred back to the corrections officer position. (Tr 7, 1.17-19; Tr 14, 1.3-10) A few weeks later, on November 25, 1991, the two corrections officer positions were again available. (Letters in evidence.) Mr. Teed and Mr. Foster were told by the County that they could return to the corrections officer position, or seek to become regular civil deputies, subject to satisfactory completion of their probationary period. They chose to stay as civil deputies, and were given general appointments by the County. (Tr 20)

Mr. Teed and Mr. Foster have never taken the test or gone through the other parts of the Civil Service procedures to become civil deputies. The County has not conducted a test or other Civil Service procedures for the civil deputy position. Ms. Bedell, Mr. Collins, Mr. Sines and Mr. Gustafson were never given the opportunity of competing to become regular civil deputies. This record shows that temporary civil deputy Linda Bedell has excellent

qualifications.¹ The qualifications of the others could be demonstrated in a Civil Service exam.

The matter was appealed to the Merit System Civil Service Council two or three days after Local 88 was informed that Mr. Teed and Mr. Foster were permanently assigned as civil deputies. (Tr 14, 1.19-21) The Council held a hearing on January 16, 1991. The County Counsel made numerous technical objections which were denied or ignored by the Council, after which the Chair of the Council, Portland attorney John Wight, voted to support the appeal, saying,

"MR. WIGHT: My view is that there is a system here that requires testing, a list, and hiring people off that list. And I don't think these are positions in a promotional line, and that's the testimony we've had here tonight. So I think the proper method that should have been followed is that these two gentlemen could have been placed in this job temporarily, but a test should have been given, and the list made, and people hired off that list. And they may have been on the list, they may not have been on the list. We don't know that. But I think that's the method that should be, because that's the only way you know you have a civil service system that's working. And they may have all the qualifications in the world, but what you're trying to do is compare them to somebody else that might have applied for that job. And as we've heard, at least some people who would be interested in that job are very well qualified. There may be people out there we don't even know about that would be even better qualified. And the idea of a Civil Service System is to get the best qualified employee. I understand what the County's trying to do, and that's not put people out on the street. And that's a commendable approach. But my own view is there is a way to handle that, and they could have put them in there as temporaries and gotten a list. If they were on the list,

¹ She has a degree in criminal justice; is a graduate of the Oregon Police Academy with high grades; was a sworn police officer for Salem; an ordinance enforcement officer for Lake Oswego where she served court process, and is a sergeant in the Multnomah County reserve. Her qualifications are far greater than Mr. Foster, but she never was given the opportunity of competing for the job. (Tr. 50-51)

they could have been hired off the list. If they weren't, then they'd have the choice of either going back to their old positions, that they applied for. I mean, that was the job they wanted. Or they'd have to take their choice. My view would be that we've got to create a list here, and I would support the appeal and say that we've got to create a list and hire off that list..."

(Tr. p. 61, l. 24 - p. 63, l.2.)

Council member Carla Floyd had earlier said,

"MS. FLOYD: ...To me, the bottom line is, even though I see the total unfairness to Scott and Linda, a permanent employee who has tested -- even though it was for a different job; a higher ranking job, passed those tests and all the evaluations, in my mind takes priority over a temporary employee."

(Tr. p. 61, l. 4-9)

and after Mr. Wight's summary of position, she responded,

"MS. FLOYD: I think if it was earlier in the process I might agree with you, but right now there aren't jobs for them, necessarily to go back to in the Corrections Department."

(Tr. p. 63, l. 18-21)

Council Member D'Norgia Price also voted against the appeal on the grounds that such transfers would be allowed in the City of Portland. (Tr. p.61, l.13-23)

Section 3.10.430 of the Code allows an appeal to this Board if the Council's decision, as in this case, was not unanimous. This Board reviews upon the record made before the Council. The statutory writ of review procedure is followed, which provides that the appeal shall be allowed if the Council "made a finding or order not supported by substantial evidence in the whole record," or, "...improperly construed the applicable law." (ORS 34.040)

The applicable provisions of state law, the County Charter,

the Merit System Ordinance, and the Personnel Rules are set forth in the Appendix.

B. THE TRANSCRIPT OF THE HEARING SUBMITTED BY THE EMPLOYEE SERVICES DIVISION IS SHOCKINGLY INACCURATE AND DECEPTIVE.

After noticing numerous omissions in the Employee Services Division transcript, we submitted the official tapes to an official transcriber for the United States Court Administrator, Patricia Morgan, and the enclosed transcript is the result. The Employee Services Division transcript is 66 pages in length; the Official Transcriber transcript is 97 pages in length.

Here are two examples of the difference on key issues in this case:

1a. Employee Services Division Transcript p. 21, 1.10.

"MR. WIGHT: ...and someone could not hire off -- a civil deputy off of the Corrections list, is that...."

MR. FLOYD: Did they move because of the possibility of the two jobs?"

1b. Official Transcriber Transcript p. 29, 1.6-10.

"MR. WIGHT: ...and someone could not hire off a civil deputy officer and a corrections officer list; is that ..."

MS. JARON: Yes, we have not done that."

[The damaging answer was omitted]

2a. Employee Services Division Transcript p. 42, 1.10-12.

"MR. WIGHT: Okay. Do you consider these a promotional line, then?"

MS. JERREN: They'd have to be."

2b. Official Transcriber Transcript p. 62, 1.15-17.

"MR. WIGHT: Okay. Do you consider these a promotional

line, then?

MS. JARON: Probably not. To answer you quite honestly."

[The damaging answer is reversed.]

C. ISSUE

Should Multnomah County fill the position of regular civil deputy from a list resulting from examination and other procedures of the civil service system?

D. ARGUMENT

1. Summary of Argument

The basic principle of a merit system has been violated in this case - the position of civil deputy was not filled by competitive examination. Mr. Teed and Mr. Foster, who received the positions by transfer without competitive examination, may be the most qualified applicants. Or Ms. Bedell, Mr. Collins, Mr. Sines, Mr. Gustafson, or others that might respond to a notice of a Civil Service exam might be the best qualified applicants. No one will ever know, if this Board does not allow the appeal and reverse the two-to-one decision of the Merit System Civil Service Council.

If employees like Mr. Teed and Mr. Foster, who held other different probationary jobs, can end up with regular civil deputy jobs without competitive examination, this opens the door to favoritism. Is the Sheriff preferring his friends in these two non-competitive appointments, and ignoring a well qualified woman, Linda Bedell, and others. No other probationary employees have been allowed to transfer to other classifications, and then lock

into regular jobs without competitive examination. We do not know why this unprecedented procedure was followed in these cases. But, it is precisely to avoid the possibility of favoritism that the Civil Service System was developed in America.

Merit System Civil Service Council Chair, John Wight, voted to uphold the appeal. Council member Floyd stated as her reason for not joining Chair Wight, "I think if it was earlier in the process I might agree with you..."

It is never too late to do right.

2. Corrections Officer and Civil Deputy are different positions

Corrections officers work with inmates in a jail or other detention environment. This is sensitive work in a difficult environment, and requires a one year probation period.

Civil deputy is also an important job. Serving legal papers and escorting allegedly mentally ill persons to court requires skill, but not the same skills as corrections officer. There is a six months probationary period for civil deputy. There is not a promotion line from civil deputy to corrections officer.² They are in a separate bargaining unit (Tr 14, 1.22-24; Tr 26, 1.12).

Each job has its own Civil Service examination and list³ (Tr. 21, 1.6-9). The two jobs are different classifications (Tr. 25, 1.14-19; Tr. 32. 1.7-11).

3. The transfer of Mr. Teed and Mr. Foster to the position of civil deputy was a temporary expedient.

² and ³ These are the key points upon which the Employee Services Division submitted a false transcript to this Board.

Mr. Teed and Mr. Foster had just passed their Civil Service examination to become corrections officers and were in the first few weeks of their one year probationary period when the County had to lay them off temporarily. The County argues that it was desirable to keep them in County employment for the short period of time before they could return to their corrections officer jobs. An unprecedented temporary place was found for them as civil deputies.

Since corrections officers are paid more than civil deputies, under County practice they were paid the rate closest to their corrections officer rate during this temporary assignment. This was more pay than received by experienced regular civil deputies, and caused grumbling, but the County provided assurances that this was a temporary expedient.

4. Giving Mr. Teed and Mr. Foster general appointments as civil deputies without a competitive examination violates the Merit System.

A few weeks later when their corrections officer jobs were again available, instead of just transferring them back to Corrections, the County, in flagrant violation of Merit System principles, offered them the option of staying as civil deputies, even though they had never taken an examination for the civil deputy position. They surprised the Personnel Officer by accepting the civil deputy positions. Merit System Civil Service Council Chair, John Wight, says that this is when the violation of Merit System principles occurred. He says that the County should then have given Mr. Teed and Mr. Foster temporary civil deputy

appointments, and conducted a Civil Service examination for the regular positions. Mr. Teed and Mr. Foster, as well as others, could have applied. Instead, they were given probationary appointments to the position without examination, and all others were denied the opportunity of competing for the positions.

There is no specific County Civil Service rule which precisely deals with this situation. The closest is Layoff Rule 20.03 -

"Employees without regular status who are laid off will not be placed on layoff lists and do not have displacement rights."

Mr. Teed and Mr. Foster were only weeks into their probationary period as corrections officers and were almost a year away from regular status. Under Layoff Rule 20.03 they had no rights at all. The County made the technical argument before the Merit System Civil Service Council that no one was displaced by their transfer to civil deputy. No one was displaced on the day of their temporary transfer since temporary civil deputies Linda Bedell and Scott Collins were working under temporary appointments that could not exceed six months. The displacement came a few weeks later when Mr. Teed and Mr. Foster were given civil deputy general appointments, displacing everyone who wanted to compete for the position.

The analagous provision of state law for County Civil Service makes this point clear. ORS 241.415(2) says there can be no transfer to a position where there is:

"an examination involving essential tests or qualifications different from...those required for original appointment to the position held by such persons." [Corrections officer]. (Emphasis added)

In other words, state law makes clear that transfer would only be allowed to a lower position in the same promotional ladder.

Although the state law providing Civil Service for county employees is superseded by the system established under the Multnomah County Home Rule Charter, there is no reason to believe that any change was intended in this basic Merit System principle.

The scope of the County Personnel Rules states that they should be considered as a total rather than each phrase being considered in isolation and out of context.

The purpose of the Personnel rules is for:

"Recruiting, appointing, and promoting employees on the basis of their relative ability, knowledge and skills, including open consideration of applicants for initial appointment."

There was no consideration of the relative ability, knowledge and skills of Linda Bedell, Scott Collins, David Sines, Richard Gustafson, and others who might have sought consideration for initial appointment. The applicable law which requires choosing among applicants by competitive examinations was not followed.

E. CONCLUSION

The basic principle of the Merit System having been violated, the appeal should be allowed.

Dated 2nd day of March, 1992.

Respectfully,

WILLNER & ZABINSKY

By: Don S. Willner
Don S. Willner, OSB #52114
Attorneys for AFSCME, Local 88
and Linda Bedell

APPENDIX

APPLICABLE LAW AND REGULATIONS

A. State Law

"ORS 241.205 - Basis of appointment and promotion generally. Except as otherwise expressly provided in ORS 241.020 to 241.990, the appointment and promotion of all persons to or in all positions subject to the provisions of ORS 241.020 to 241.990 shall be made solely upon merit, efficiency and fitness, which shall be ascertained by open competitive examination and impartial investigation."

"ORS 241.415(2) No transfer or reinstatement shall be made from a position in one classification or grade to a position in another classification or grade, nor shall a person be transferred to or reinstated in a position for entrance to which there is required by ORS 241.020 to 241.990 or the regulations adopted pursuant thereto, an examination involving essential tests or qualifications different from or higher than those required for original appointment to the position held by such person."

B. The County Charter

Section 7.40 of the County Charter provides:

"7.40 RIGHTS AND DUTIES OF PERSONNEL.

(1) The status of persons in the classified service shall, within the limitations of this charter,

(a) be based on merit and fitness and

(b) be governed by the civil service ordinance and rules promulgated thereunder."

C. The Code

The Civil Service ordinance or code provides:

"(B) The board has determined the necessity of establishing a merit system of personnel administration as provided by Section 7.40 of the Charter based on merit principles and professional methods governing the appointment, tenure, promotion, transfer, layoff, separation, discipline and other incidents of employment relating to county employees. These merit principles include:

(1) Recruiting, appointing and promoting employees on the basis of their relative ability, knowledge and skills, including open consideration of qualified applications for initial appointment;"
(Code 3.10.015 B)

"(II) 'Regular employee' means the status a classified employee acquires after successful completion of the probationary period for the particular position to which the employee was appointed."

(Ordinance 3.10.010 (II))

"3.10.200 Provisional appointments. No person shall be appointed or promoted to a position in the classified service unless certified as eligible, except on a temporary basis as provided by this chapter. Vacancies in the classified service shall be filled only by appointment of an eligible candidate certified from a list or by provisional or emergency appointment or by transfer or demotion of a regular employee. No appointment or promotion to any position in the classified service shall be made except in the manner provided in this section."

"3.10.225 Temporary appointment. The appointment of a person to a position for a limited or uncertain duration, whether or not the position is budgeted, shall be a temporary appointment.

(A) Such appointments shall not exceed six months in duration, and shall not be made without prior approval of the Personnel Officer."

D. The Personnel Rules

The Personnel Rules provide,

"It is the purpose of these rules to establish a system of uniform and appropriate personnel policies and procedures that shall improve the quality of personnel administration consistent with such merit principles as:

1) Recruiting, appointing, and promoting employees on the basis of their relative ability, knowledge and skills, including open consideration of applicants for initial appointment;"

(1.02 Purpose, p. 1)

"It is the intent of these rules that they be interpreted broadly as a fair and reasonable approach to specific problems and situations; that they be considered as a total rather than each phrase being interpreted in

isolation and out of context; and, that the general principles stated will serve as a basis for personnel policy for Multnomah County."

(1.03 Scope)

"Except as provided below for training programs and trainee classifications, every person who receives a general appointment to a position in the classified service shall serve a probationary period, not to exceed the full time equivalent of:

- 1) Eighteen (18) months for deputy sheriff:
- 2) One (1) year for other law enforcement and Corrections personnel;
- 3) Six (6) months for all other classified employees."

(14.02 Duration)

"Employees without regular status who are laid off will not be placed on layoff lists and do not have displacement rights.

(20.03 Layoff Rules)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing true copies of the BRIEF OF AFSCME LOCAL 88 AND LINDA BEDELL and the corrected TRANSCRIPT was hand delivered to the following, or their designated representative, on March 2, 1992, at approximately the same time as the originals were delivered to the Board Clerk.

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MARCH 2, 1992

WILLNER & ZABINSKY



Don S. Willner, OSB # 52114
Of Attorneys for AFSCME Local 88
and Linda D. Bedell

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR THE COUNTY OF MULTNOMAH

In the Matter of the Appeal)
by Local 88.)

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED That the above-entitled matter came on regularly for hearing before the Multnomah County Civil Service Commission on January 16, 1992, Portland, Oregon and the following represents a transcript of the electronically recorded proceedings of said matter.

APPEARANCES

JOHN WIGHT, Councilman
CARLA FLOYD, Councilwoman
D'NORGIA PRICE, Councilwoman

JIM SMITH

JANET JARON

SUSAN AYERS

BOARD OF
COUNTY COMMISSIONERS
1992 MAR - 2 AM 11:16
MULTNOMAH COUNTY
OREGON

Transcribed from electronic recording by

Soft-Tech

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MR. WIGHT: Your agenda says "Appeal by Local 88," ASFCME. We have two letters in here by individuals: Scott Collins and --

MS. AYERS: Those were received after the initial appeal.

MR. WIGHT: I see. Is there an original appeal document that's different than those letters?

MS. AYERS: Yes, that was --

MR. WIGHT: Did I give it to you?

MS. AYERS: -- handed out out at the last meeting --

MR. WIGHT: Oh, okay.

MS. AYERS: -- along with the Rich Stoel thing.

MR. WIGHT: Somehow I missed that.

Anyway, we are the Multnomah County Civil Service Commission. I'm John Wight. Carla Floyd and --

MS. PRICE: D'Norgia.

MR. WIGHT: -- and Ms. D'Norgia Price.

MS. AYERS: This is an extra copy.

MR. WIGHT: Our meetings are fairly informal, and we're still developing our policies and procedures. I've written down some notes here. We allow no guns, no smoking, and from now on we're going to swear witnesses, although I forgot to do it the last time. But we're -- we try to be fairly informal. Normally we will allow the appellant to go

1 first; we'll have a response from the County, and then a
2 chance for rebuttal by the appellant.

3 We do have a request by the County Attorney for a
4 postponement.

5 COUNTY COUNSEL: I think I'd like to hold that off.
6 I'd like to make a motion at the outset for a closed
7 hearing.

8 MR. WIGHT: You want to exclude witnesses; is that --

9 COUNTY COUNSEL: Yes.

10 MR. SMITH: Absolutely not. Under the rules of the
11 State of Oregon that's the people's choice, and the people--

12 MR. WIGHT: Let me try to find the issue here. What
13 they're asking is that witnesses be excluded from the
14 hearing until they're called. It's something that's often
15 done in court procedures to prevent witnesses sort of
16 listening to one another and then building on their stories.

17 MS. FLOYD: How many witnesses --

18 MR. WIGHT: How many witnesses do we have here?

19 MS. FLOYD: In the sense that you're going to testify
20 witnesses.

21 MR. SMITH: Well, I think people are -- all people
22 are going to testify to is -- well, all of the people are
23 going to testify to their date of hire, their rate of pay,
24 and how they got their job. And you're going to have two
25 people testify as to -- one person testify to how she was

1 told that she would get on the list when an opening came.
2 Other than that -- of course, I don't know that the County's
3 testimony is going to be but I can assume that --

4 MR. WIGHT: Well, I don't know how this fits with the
5 open meetings law. I know that in a number of administrative
6 hearings I've been allowed to exclude witnesses, although
7 this is a situation where we're not talking about, you know,
8 was the light red or was the light green or something like
9 that. Is there some more complicated sort of testimony that
10 we expect to hear, Steve?

11 COUNTY COUNSEL: Actually, in addition to the issues
12 brought up by the Union, there's been some unpleasant --
13 this is an issue that has to do with an ongoing employment
14 situation in the workplace where there's been some
15 unpleasantries already. We'd like to keep those to a
16 minimum. After this hearing's over and the issue's been
17 resolved, we continue to have a workforce in the workplace,
18 and we think if we can reasonably reduce the amount of
19 friction that [indiscernible] by handling this in a
20 somewhat more discrete manner than having the whole room
21 jam-packed with people. The Union will be ably represented
22 by its representatives and so will the County.

23 MR. WIGHT: Well, it's possible, though, that even if
24 someone weren't testifying, they could just want to sit in
25 on the meeting, and there might be people in that workforce,

1 and we probably have no right to exclude them.

2 COUNTY COUNSEL: Well, I know, but the Union has also
3 -- has already indicated that everybody that's sitting here
4 from the Union is here to testify.

5 MR. WIGHT: Yeah.

6 COUNTY COUNSEL: Who's here for the County? There's
7 Mr. Skophammer? As representatives? And Ms. Jaron and
8 myself.

9 MR. SMITH: All of these folks are representatives of
10 the Union.

11 MR. WIGHT: Well, does the Council have a preference?

12 My feeling here would be not to exclude witnesses. I
13 think there may be times when it's appropriate, but I don't
14 think that this is one of those. I appreciate the County
15 position, but I think whatever is going to come out is going
16 to come out here. And I can see some benefits in some
17 situations where there really is a factual issue that needs
18 to be determined, but I don't perceive that that's going to
19 be the case here. So we're going to deny that motion.

20 Now, on your motion for postponement, you say you're
21 going to hold off on that?

22 COUNTY COUNSEL: Yeah.

23 MR. WIGHT: Are you concerned that you may want to
24 present some legal arguments to us at a later date or --

25 COUNTY COUNSEL: Well, I'd like to first -- I don't

1 know in what order you're going to take evidence and
2 argument. I understand that you don't run by the Rules of
3 Civil Procedure here.

4 MR. WIGHT: Right.

5 COUNTY COUNSEL: I will be making some jurisdictional
6 arguments at the outset. In the event that you proceed
7 beyond those and rule against me, against those arguments,
8 then I will seek a postponement on the [indiscernible].

9 MR. WIGHT: Okay.

10 COUNTY COUNSEL: I think it's the posture of the
11 hearing can change significantly [indiscernible].

12 MR. WIGHT: Our normal procedure has been to get some
13 kind of summary from both sides at the beginning and then
14 take testimony. But I think if there are some
15 jurisdictional issues we ought to hear that first and get
16 that decided. So if you want to present that information
17 now, I think it would be appropriate.

18 COUNTY COUNSEL: The first thing that should be made
19 clear to the Commission is that this is really a dispute
20 between the employees. The management really doesn't have a
21 place in it. We have here some employees trying to displace
22 other employees among -- and we're not in a position to push
23 anybody out of their jobs and put in people who want to be
24 there.

25 The Union has brought this action, this dispute, to

1 your forum, but they really have no standing to do so. It's
2 argued -- it's arguable that a union may in some
3 circumstances represent probationary employees, but there's
4 no authority for the proposition that the Union can
5 represent temporary employees who will never become union
6 members in their position and who do not hold positions that
7 are represented by the Union.

8 Also, of some significance, which is relatively --
9 made cloudy by your comments in the preceding case, under
10 the rules --

11 MR. WIGHT: We operate under a cloud.

12 COUNTY COUNSEL: -- Rule 23, "Who May Appeal," it
13 says that, "Any regular employee who is reduced in pay,
14 demoted, suspended or dismissed, and who does not have
15 available a grievance procedure for the particular issue in
16 dispute shall have the right to appeal the action directly
17 to the Council."

18 MR. WIGHT: You're looking at the rule now?

19 COUNTY COUNSEL: Yes, Rule 23.01.

20 It goes on to say, "Any classified employee who does
21 not have available a grievance procedure for a particular
22 issue in dispute, and any applicant for the classified
23 service, shall have the right to appeal personnel actions
24 including complaints of discrimination directly to the
25 Council."

1 What this does not say is that a union can bring an
2 action on behalf of temporary employees who have not applied
3 for a job. There are no applicants here. The job has not
4 been open for applications. No one has filled an
5 application for such a job, and we have no applicants,
6 unless you were to resort to a perjured reading of the word
7 "applicant"; you simply have no jurisdiction to hear this
8 case.

9 And finally, the management really is -- we're a
10 little at a loss what we're supposed to be doing. You'll
11 see that the Union who has claimed to represent all these
12 employees, really, there's -- doesn't represent -- I don't
13 think the Union can show us any authority where you
14 represent temporary employees. Given that, in that there
15 are no complaining union members that I'm aware of, the
16 Union lacks standing, and without standing the employee
17 lacks jurisdiction before the Court -- the Commission.

18 MR. WIGHT: All right, this may be one of those
19 interesting questions of whether there's a conflict between
20 the rules and the statutes. I'd just like --

21 MR. SMITH: Maybe if we lay it out why we're here.

22 MR. WIGHT: Well, just a minute. The ordinance is --
23 the code is Section 310.320, I think. Unlike the rule, it
24 doesn't seem to spell out in any detail who's entitled to a
25 hearing.

1 MR. SMITH: All right, see, what the Council --

2 MS. FLOYD: 310.205.

3 MR. SMITH: What the Council is arguing is the
4 personnel rules, and the personnel rules do vary somewhat
5 from the other rules that we use.

6 MR. WIGHT: Okay, and if we look at 310.305,
7 "Classified employees who do not have available a grievance
8 procedure for a particular pursuit -- dispute pursuant to a
9 collective bargaining agreement, and applicants for
10 classified civil service shall have a right to appeal
11 directly to the Council regarding personnel actions,
12 including complaints of discrimination."

13 MR. SMITH: That's why we're here.

14 MR. WIGHT: Yeah, my understanding is that there have
15 been two people placed in a vacant -- in vacant positions --
16 classified vacant positions, and the question is whether or
17 not they were properly placed in that position.

18 MR. SMITH: You denied the others the right to
19 [indiscernible] under the hiring procedures of Multnomah
20 County.

21 MR. WIGHT: Do you want to respond any more to that
22 particular issue?

23 MR. SMITH: Yes. I would just like to say that,
24 number one, there is two county employees that have been
25 deprived of these positions. One of them is David Sines

1 (ph) who's been trying to get on the list and been told the
2 list would come up, and the other one is Richard Gustafson,
3 who has also been told that a list would come up that he
4 could get on. Neither one, apparently, being civil
5 deputies.

6 There are two temporary employees that have been told
7 by management that they can get on the list for permanent
8 hire, and the list would soon come to be. And that's why
9 we're here. This has happened to two employees that were
10 hired in another bargaining unit in September, I believe --
11 or August or September of 1991, and who were then laid off
12 and put into the civil deputy position on a temporary basis,
13 and whom I called and talked to Janet Jaron. She told me it
14 was temporary and they would go back, and then later were
15 told that it would be permanent.

16 When they were made permanent -- now, bear in mind,
17 these are two new employees. I have nothing against these
18 employees, because I want everybody to make the most they
19 can make, but the system sort of rots, because here's two
20 employees who have been county employees for less than six
21 months, that are a higher stage of pay from employees that
22 have been here for four and five years. They had no
23 standing. They were probationary --

24 MR. WIGHT: Well, let's not get into the merits.

25 MS. FLOYD: Yeah.

1 MR. WIGHT: The only issue we're dealing with now is,
2 I guess, one -- yeah, one, whether there's any standing --

3 MR. SMITH: We have no remedy under our labor
4 agreement, I think.

5 MR. WIGHT: Okay. And --

6 MS. FLOYD: Are these --

7 MR. WIGHT: But he's saying that, one, the Union has
8 no standing; only individuals can file an appeal to this
9 body. And secondly, under the -- at least under the rule
10 that the items that can be appealed are limited to someone
11 who's reduced in pay, demoted, suspended, dismissed, or who
12 does not have a -- for a particular issue in dispute. But
13 they're talking about an employee. Now, some of these
14 people are not employees; is that correct?

15 MR. SMITH: All of these people are employees
16 [indiscernible] parties. Some of them [indiscernible] --

17 MS. FLOYD: There's only two people you named.

18 COUNTY COUNSEL: The two people he named who are
19 taking [indiscernible] --

20 MR. WIGHT: Well, let's not get into arguing. I
21 just -- we want to get some facts. Now, the two people that
22 signed the letters are not employees; is that --

23 COUNTY COUNSEL: That's right. They're not. They're
24 temporaries. They have no --

25 MR. SMITH: They've been a temporary longer than

1 these people have been employees.

2 COUNTY COUNSEL: You claim to represent them?

3 MR. SMITH: They've asked me to represent them.

4 COUNTY COUNSEL: And you [indiscernible]?

5 MR. SMITH: I'm not representing them as an attorney,
6 no.

7 MR. WIGHT: Well --

8 COUNTY COUNSEL: You're representing them as the
9 Union?

10 MR. SMITH: I'm representing them as a citizen that's
11 been asked to represent them.

12 MR. WIGHT: Before we get into too many arguments
13 here, this is an issue we've struggled with -- not this
14 particular issue -- but the -- there is a certain lack of
15 clarity in the ordinance and the rules, and I think what we
16 try to do is some justice to the meaning of the rules.

17 When I look at the ordinance itself, it says,
18 "Classified employees who do not have available a grievance
19 procedure for a particular issue, and applicants for
20 classified civil service...", and I think the word
21 "applicant" can be fairly broad. It seems to me that if the
22 County were to say, "We're not -- we're not going to open up
23 any position; we're not going to allow anybody to apply,
24 therefore, only people that are already in the system can
25 get jobs," and completely ignore the whole process of

1 competitive hiring, that would undo the whole civil service
2 process here.

3 And I think what's intended here is that there's a
4 process set up for competitive applications and for people
5 to be put on the list and selected off that list, and that
6 we need to have these appeals available to people who would
7 participate in that process, and I would interpret the term
8 "applicant" to include people who are interested in taking
9 those jobs as well as current employees.

10 It would be my recommendation to the Council here
11 that we turn down the motion to dismiss this because we lack
12 jurisdiction. There is, I guess, a second question of
13 standing here, and we do have letters from two individuals.
14 I guess I'm not too hung up on that particular issue myself
15 that if we can get a union representative to come in and
16 present a group of people's position, I'm just as
17 comfortable with that as having a whole group of people file
18 individual appeals.

19 COUNTY COUNSEL: Commissioner?

20 MR. WIGHT: Yes.

21 COUNTY COUNSEL: The Union is legally entitled
22 because it's been recognized that it's the sole and
23 exclusive bargaining agent for its members to represent the
24 members. The two people that the Union claims to represent
25 are not union members. They have not shown us they have the

1 authority under either the state or federal law to decide
2 for the sake of some convenience of their own that they can
3 now represent people who have not been initiated into the
4 union and paid their dues.

5 MR. WIGHT: Are those people here?

6 MR. SMITH: One of those persons is here.

7 MR. WIGHT: Who is that? Scott Collins?

8 MR. SMITH: Linda Bedell.

9 MS. JARON: Scott Collins is not here.

10 MR. WIGHT: Scott Collins is not here. And where is
11 Linda?

12 MS. BEDELL: I'm right here, sir.

13 MR. WIGHT: Oh, okay.

14 MR. SMITH: She would be very happy to represent
15 herself after we present our portion of it; is that correct?

16 COUNTY COUNSEL: But do you have some standing if she
17 represents herself?

18 MR. SMITH: Oh, yes, we certainly do. We didn't --
19 this is --

20 COUNTY COUNSEL: I thought --

21 MR. WIGHT: Wait a minute. We understand the issue,
22 and my recommendation is that we deny the County's motion,
23 and we'll go on with the hearing at this point.

24 MS. FLOYD: Second.

25 MS. PRICE: Agreed.

1 MR. WIGHT: Are there any other jurisdictional issues
2 that we have to discuss?

3 And if there is a less than a unanimous decision from
4 this Board, people are free to appeal these decisions to the
5 County Commissioners. We have tried to make an effort to
6 give people their day in court here, though, and we will try
7 to interpret the rules to do that.

8 COUNTY COUNSEL: Actually, if I can slip this in, I
9 think that we'd also like for the record to go on record as
10 offering a timeliness argument so I understand you made it
11 clear in today's proceedings that you're not going to
12 dismiss timeliness argument [indiscernible] --

13 MR. WIGHT: Well, I haven't made that clear.

14 COUNTY COUNSEL: Well, we would object --

15 MR. WIGHT: I think we have done that in the past --

16 MS. FLOYD: In the past.

17 MR. WIGHT: -- though.

18 COUNTY COUNSEL: I'd like to go on the record as
19 making that [indiscernible].

20 MR. WIGHT: And --

21 MS. PRICE: Based on?

22 MR. WIGHT: Give me a quick rundown of the facts.

23 MS. FLOYD: Why it's not timely.

24 MR. WIGHT: Yeah.

25 COUNTY COUNSEL: I think this will become clear once

1 Ms. Jaron [indiscernible] the chronology. The chronology is
2 somewhat complicated.

3 MS. PRICE: I assume when you say it's not timely, it
4 wasn't filed within the ten days.

5 COUNTY COUNSEL: Within the ten days from the time of
6 the occurrence?

7 MR. WIGHT: And what is the occurrence?

8 MS. PRICE: What is the date of the occurrence?

9 COUNTY COUNSEL: The date of the occurrence was when
10 the Multnomah County Sheriff's Office Personnel Manager
11 confirmed that the two employees who had become civil
12 deputies and would remain as civil deputies --

13 MR. WIGHT: And when was that?

14 COUNTY COUNSEL: Both November 27th, 1991.

15 MS. FLOYD: Now was that when people received
16 notification or when notification was sent?

17 COUNTY COUNSEL: I'm not certain on that.

18 MS. FLOYD: Was it mailed or --

19 COUNTY COUNSEL: It was verbal.

20 MS. FLOYD: Oh, it was verbal? Okay.

21 MR. SMITH: And if you look at our letter it was well
22 within the ten working days. It was December 13th, even
23 though his statement is not factual.

24 MS. FLOYD: You're talking about [indiscernible]?

25 MR. SMITH: That's correct.

1 MS. FLOYD: And I assume you're referring to the
2 letters from Mr. Collins and Ms. Bedell that are -- well,
3 one's --

4 MR. WIGHT: Well, if it's November 27 it would be
5 more than ten days even on December 13th.

6 MR. SMITH: Ten working days.

7 MS. FLOYD: Is it working days?

8 MR. WIGHT: No, I don't think so.

9 MS. PRICE: No.

10 MS. FLOYD: It's just ten days.

11 COUNTY COUNSEL: Just ten days.

12 MR. WIGHT: Everything in the County's ten working
13 days.

14 MS. FLOYD: Yeah, I understand that, but he says
15 [indiscernible] ten days.

16 MR. SMITH: Well, there's your personnel person. Ask
17 her.

18 COUNTY COUNSEL: I'd be very happy to bring up a
19 county person and ask her all these questions --

20 MR. WIGHT: The Rules of Civil Procedure would be
21 that it's ten days. Anyway. We have got that motion here,
22 and my sense is that Council would at least want to postpone
23 any decision on that if we're going to make one at all.

24 Okay. Will the Appellant give us a brief summary of
25 the situation and what the appeal is about? We'd like to

1 have the County respond to that, and then we will lead into
2 the testimony in detail. But we would like sort of a brief
3 summary of --

4 MR. SMITH: All right, this is being recorded, isn't
5 it?

6 MR. WIGHT: Yes.

7 MR. SMITH: First of all, I would like to state that
8 ASFCME Council 75, Local 88, would like a copy of the
9 proceedings.

10 MR. WIGHT: Also, and I said this at the last
11 hearing, if each person that speaks, at least the first time
12 if you could identify yourself and what your job is so we'd
13 know for the record.

14 MR. SMITH: I'm Jim Smith, Council representative,
15 Council 75. I'm not a lawyer. I don't profess to be a
16 lawyer, and I don't want to be accused of being a lawyer
17 [indiscernible].

18 This case came to be as a result of two probationary
19 employees hired, I believe, 8-19-91 by the County into a
20 Corrections Officer position. They were laid off as a
21 result of a reduction in force. Right after that, around
22 the first of the month following that action -- layoff, I
23 called Janet Jaron, because there was a rumble in our group
24 as to these folks coming back and retaining their rate of
25 pay while our folks were being paid less, even though they

1 had been county employees longer, performing the function --

2 MS. FLOYD: When were they laid off?

3 MR. SMITH: They were laid off, I believe, in October
4 or November. I'm not sure. It may be the last day of
5 October.

6 COUNTY COUNSEL: We have -- we've prepared a
7 chronology [indiscernible] --

8 MR. SMITH: I don't know what the chronology is and
9 [indiscernible].

10 MS. FLOYD: Of '91?

11 MR. SMITH: Of '91.

12 MS. PRICE: Can I ask a question? Were the people in
13 the same classification as the people making a lower salary?
14 Were they all in the same classification?

15 MR. SMITH: No, the -- they were in a higher
16 classification. They were laid off. And the County put
17 them -- or the Sheriff's Office put them into a position of
18 civil deputy, which is a lower rated job.

19 MR. WIGHT: And what was their classification?

20 MR. SMITH: Their classification was Corrections
21 Officers.

22 Now, when they came into the unit, I had rumbles from
23 our folks that all of a sudden new county employees that
24 hadn't served but a month or two were being paid higher than
25 people that had been here for several years and were

1 qualified civil deputies. That's where the rumble first
2 came to me.

3 As a result of that, I called Janet Jaron --

4 MR. WIGHT: I don't want all the details of all the
5 calls back and forth --

6 MR. SMITH: Well, I'm trying to give you --

7 MR. WIGHT: I just want kind of a succinct statement
8 of what --

9 MR. SMITH: I sort of have to tell you the story as
10 it goes to give you that, and it won't take that long. When
11 I called Janet Jaron, I said, "Janet, there's a problem
12 here." She said, "Oh, there's no problem. These folks'
13 jobs have been eliminated. However, there's going to be a
14 Corrections Officers positions available, and when that
15 happens they will have to go back to that position."

16 I said, "Okay. Then I will put the rumble to sleep,"
17 which I did.

18 Then the president of the Local, Joe DeFlemick,
19 became involved with it to the extent --

20 MR. WIGHT: I'm sorry. Who got involved with it?

21 MR. SMITH: DeFlemick. Joe DeFlemick, the president
22 of the local union. And which Janet said, "Well, we can't
23 send these people back because the corrections officers will
24 kill them."

25 So Joe called me and I said, "I don't know. I think

1 that's B.S. I can't imagine Janet saying that."

2 But in any case, then sometime two or three days
3 prior to me appealing this letter to this Merit System
4 Council, [indiscernible] we're going to have the contract,
5 we were informed that they were permanently assigned.

6 MS. FLOYD: Now, the corrections officers, are they
7 part of the bargaining unit?

8 MR. SMITH: No.

9 MS. FLOYD: And neither is --

10 MR. SMITH: In fact I have the job description.
11 They're not even related in any way, shape, or form.

12 MS. FLOYD: Okay. Are civil deputies part of the
13 bargaining unit?

14 MR. SMITH: Yes.

15 MS. FLOYD: Civil deputies are part -- are
16 represented by ASFCME?

17 MR. SMITH: Yes.

18 MS. FLOYD: And that was the job that these people
19 were moved into after their layoff in October or November of
20 1991?

21 MR. SMITH: Yes. And I -- I would like permission to
22 have these two job descriptions. You can see that they're
23 not even remotely related.

24 MR. WIGHT: Okay, we'll get to that.

25 MR. SMITH: So what we're saying to you is that the

1 County has effectively by-passed the hiring process. They
2 have not put a position out where folks can be on a list so
3 you can consider hiring. They had hired these people at
4 higher rates of pay than existing employees.

5 MR. WIGHT: What do you mean? Are they getting paid
6 at their corrections officer's rate?

7 MR. SMITH: They're getting paid at the highest rate
8 of pay of civil deputies.

9 MS. FLOYD: So they're higher up in a progression
10 scale?

11 MR. SMITH: Yes.

12 MS. FLOYD: And are these progression scales merit or
13 seniority?

14 MR. SMITH: They're by seniority.

15 MS. FLOYD: And these people were hired on 8-19-90 as
16 corrections officers?

17 MR. SMITH: '91.

18 MS. FLOYD: Oh, '91. I'm sorry. And where are they
19 in the progression scale for civil deputy?

20 MR. SMITH: The top. Close to the top.

21 MS. FLOYD: And what is the progression? Two years?
22 three years? Four years?

23 MR. SMITH: Six.

24 MS. FLOYD: Six years?

25 MS. AYERS: Five.

1 MS. FLOYD: Five years?

2 MR. SMITH: Five?

3 MS. AYERS: Start at step one.

4 MS. FLOYD: Okay.

5 MR. WIGHT: So normally they would still be at the
6 first step?

7 MR. SMITH: Well, normally when you hire somebody in
8 Multnomah County -- at least they're supposed to -- if you
9 put out a request for position, and folks have an
10 opportunity to apply, show their qualifications, get on a
11 list and get rated and get hired. And we -- that's the
12 reason that we are here. There is --

13 MR. WIGHT: I understand that, but I'm just saying if
14 that had happened they would still be -- and even if they
15 had been hired as a civil deputy in August of '91, they
16 would still be at the first step; is that right?

17 MR. SMITH: That's correct.

18 MR. WIGHT: Instead of Step 5?

19 MR. SMITH: That's correct. We're not asking
20 anybody's pay be cut.

21 MR. WIGHT: Well, I'm just --

22 MR. SMITH: That's not why we're here.

23 MR. WIGHT: -- trying to get some information. I
24 understand that. Okay.

25 MR. SMITH: By the action taken by the Sheriff, after

1 the Sheriff's representative telling me it would not happen,
2 that they would go back, we had two people in our bargaining
3 unit that are current county employees, Richard Gustafson
4 and David Sines, who were told that this would be coming up
5 and they get an opportunity to get on the list. They never
6 had that opportunity. In addition, we have two temporary
7 people that were told as temporary employees that they would
8 get on the list, that there would be lists coming up, and
9 they would be considered to get on the list.

10 MS. FLOYD: The temporary employees are not
11 represented by us.

12 MR. SMITH: That's correct.

13 MS. FLOYD: But the two people, Gustafson and the
14 other person, are represented by us?

15 MR. SMITH: That's correct.

16 MR. WIGHT: And there is no Civil Deputies list right
17 now?

18 MR. SMITH: That's correct.

19 MR. WIGHT: Do we know -- are there Correction
20 Officer positions that are vacant?

21 MR. SMITH: Yes, there is. And there's been several
22 filled while these folks are here as civil deputies.

23 MS. PRICE: And how are they filled? From --

24 MR. SMITH: They're filled by the process, the normal
25 process of --

1 MS. PRICE: From a list?

2 MR. SMITH: From a list, yes.

3 MS. PRICE: Okay.

4 MR. WIGHT: Okay. And the objection is that these
5 two individuals were placed in this position without going
6 through the normal process of being placed on a list and
7 having the openings and selecting off that list and that
8 normal process?

9 MR. SMITH: This denied folks the opportunity --

10 MR. WIGHT: The opportunity to compete for those
11 jobs?

12 MR. SMITH: That's correct.

13 MR. WIGHT: That's the issue that you're asking us to
14 decide?

15 MR. SMITH: Yes. Yes.

16 MR. WIGHT: And the remedy that you're asking us is
17 to --

18 MR. SMITH: Is that a list be established and the
19 most qualified folks be hired.

20 MR. WIGHT: And in effect, if those people are not on
21 the list and aren't selected, then they would be removed
22 from their jobs when someone else is selected? A civil
23 deputy?

24 MR. SMITH: They can always -- you can always order
25 them back to corrections officer.

1 MR. WIGHT: Okay, I'm not -- I'm just asking you what
2 you want us to do. Is that --

3 MR. SMITH: I want the folks to have the right to
4 compete.

5 MR. WIGHT: All right.

6 MS. PRICE: So you're asking that these two people
7 also compete for the exam?

8 MR. SMITH: If they apply and they otherwise qualify,
9 yeah.

10 MR. WIGHT: I think we've got that issue framed. Can
11 you succinctly give us the County's position on this issue?

12 MS. JARON: I'm Janet Jaron. I'm Fiscal Manager of
13 the Sheriff's Office. These people were hired on --

14 MR. WIGHT: Which people are you --

15 MS. JARON: These two people right here, Michael Teed
16 and William Foster as corrections officer off the
17 Corrections Officer list into permanent regular positions,
18 and, again, I have the details. I'll save it for later.

19 We had the misfortune shortly after that happened to
20 do layoffs from being in a hiring mode to totally
21 unexpectedly being in [indiscernible] mode. We did the same
22 thing that we had typically done in those rare circumstances
23 where we had to deal with it as -- we're just trying to find
24 jobs for everyone. And that, of course, assumed that they
25 would be placed in jobs for which they would also be

1 qualified to do those jobs, but that we would try and find
2 them jobs.

3 It is a typical option in our system to allow people
4 to voluntarily demote to another job, [indiscernible] laid
5 off their job. That's what happened in these two cases, and
6 the formal action that took these people to Civil Deputy was
7 on October 1st. We followed the rules for voluntary
8 demotions that are not related to cause, not related to a
9 disciplinary kind of activity as far as setting their pay.
10 And that's Personnel Rule 1804. They were also placed on
11 the Corrections Officer layoff list.

12 Sequentially the next thing that happened is that
13 they received a notification from Susan Ayers in the
14 Employment Services Division indicating that as of October
15 1st they had been hired as civil deputies; their status was
16 probationary, and they would serve a six-month probationary
17 period.

18 On November 25th, I notified them that we had had
19 positions restored to our budget. Because of their status
20 on the layoff list they had the option to return to
21 corrections officer, and I gave them five days to respond.
22 They notified me that it was their preference to remain as
23 civil deputies. And they understood and elected to give up
24 their rights to return under the layoff list to a
25 Corrections Officer position which, incidentally, is another

1 represented position but represented by a different
2 bargaining unit.

3 Two days later I confirmed with them, after talking
4 with some other people in the system once again, that they
5 would remain as civil deputies. And then the next step was
6 that Local 88 filing for this particular -- for a hearing on
7 this issue. We're going to be stating that we acted in good
8 faith by trying to take care of employees and making sure
9 that no one got laid off; that the people that were
10 impacted, which are these two people to my left, in good
11 faith believed that they had the option to remain as civil
12 deputies. They are in fact well qualified to be civil
13 deputies, and they have material related to that. And they
14 elected that option to do so.

15 It's not -- it's a very uncommon situation. It's
16 true that in the past, when people have had an opportunity
17 to return to higher paying jobs they have elected to do
18 that. So at the point at which they said, "We really think
19 we would prefer to stay here," that's an unusual situation.
20 Generally people would return. But given that they were
21 notified that they were permanently placed there; it did
22 appear that they had that option which they had exercised,
23 and we'll argue that they should be allowed to stay at the
24 rate of pay that they have now, and we'll deal with future
25 openings as we ordinarily would, that that would be

1 [indiscernible].

2 MR. WIGHT: Okay and -- normally if you had openings
3 for both corrections officer and civil deputy, you would
4 have potentially two different lists; is that correct?

5 MS. JARON: Yes.

6 MR. WIGHT: And someone could not hire off a Civil
7 Deputy Officer and a Corrections Officer list; is that --

8 MS. JARON: Yes. We have not done that.

9 MS. PRICE: Did they move because of the possibility
10 of the two jobs?

11 MS. JARON: They moved because it was a position at a
12 lower level for which they met the minimums. They were
13 satisfactory to the hiring supervisor. And it was what we
14 had vacant at the time. The option was for them to have no
15 job.

16 MR. WIGHT: And it's your position that this is
17 covered by Rule 1804, then?

18 MS. JARON: As far as how that happened with a
19 voluntary demotion, yes.

20 MS. FLOYD: Do you have [indiscernible]?

21 MR. WIGHT: Yeah, I've got some copies. Can we pause
22 for a minute here while we go through our documents.

23 MS. FLOYD: Which rule is that?

24 MR. WIGHT: 1804. You're well organized.

25 MS. JARON: There are actually two references.

1 There's one in the Personnel Rules under Voluntary Demotion
2 and [indiscernible] Layoff, and then the other one is in a
3 separate section that relates to salary setting, and that's
4 the quote that I just gave you, 1804.

5 MS. FLOYD: Is that 1804?

6 MS. JARON: Yeah, the 1804 is a salary setting on a
7 voluntary demotion; it's not for cause. And the other
8 regulation is --

9 MS. FLOYD: Well, Rule 20 is seniority
10 [indiscernible].

11 MS. JARON: Okay, it would be in that section
12 [indiscernible].

13 MR. SMITH: Well, I think you'll find that the
14 seniority clause in layoff rules in both labor agreements
15 supersede these rules.

16 MR. WIGHT: Well, if that's --

17 MS. FLOYD: These people weren't represented by
18 ASFCME.

19 MR. SMITH: But they were represented by another
20 union that has layoff rules also.

21 MS. JARON: And they have --

22 MR. WIGHT: Which may not have jurisdiction.

23 MS. JARON: Yeah, and we followed those rules in
24 laying them off. And the business about --

25 MR. SMITH: Yeah, but you demote to a job in the same

1 -- that has to be determined by the Personnel Director that
2 it's a promotional line. That's what you demote to.

3 MR. WIGHT: Well, let's not get into argument. We're
4 just trying to find the right rules to review here. Have we
5 figured that out yet?

6 MS. JARON: I think it's 2003 --

7 MR. SMITH: And there is another case --

8 MR. WIGHT: Just wait a minute.

9 MS. JARON: 2004.

10 MR. SMITH: There is a case you should look at and
11 the name --

12 MR. WIGHT: Can you wait a minute?

13 MR. SMITH: -- [indiscernible] --

14 MR. WIGHT: Can you wait a minute?

15 MS. FLOYD: Can we read this first?

16 [Pause]

17 MR. WIGHT: Yeah, I was just going to look at the
18 Code here and see if it covers any of this same territory.

19 [Pause]

20 MR. WIGHT: Code Section 310.250 covers layoffs, but
21 it doesn't --

22 MS. FLOYD: There's more to [indiscernible].

23 MR. WIGHT: It doesn't talk about demotion there.

24 MS. FLOYD: It talks about demotion in the layoff
25 portion.

1 MR. WIGHT: I think we're ready for the appellants
2 now to go ahead and give us the detail.

3 MR. SMITH: I would refer you also to Rule 101.3
4 which assures impartial treatment of applicants. I think
5 that's something that should take a look at. And also, in
6 the layoff --

7 MR. WIGHT: I'm sorry, say that again, Rule what?

8 MR. SMITH: Rule 101.3, I think it is.

9 MR. WIGHT: I don't think I have a rule book.

10 MR. SMITH: 102.3, excuse me. Objective and
11 [indiscernible] ensuring impartial treatment of applicants
12 and employees in all aspects of personnel administration
13 [indiscernible].

14 MR. WIGHT: Which rule, 1 --

15 MS. FLOYD: It's on page 1 --

16 MR. WIGHT: 1.03?

17 MS. FLOYD: Yeah.

18 MR. WIGHT: Oh, okay, I thought you said one oh.

19 MR. SMITH: And the other thing is 20.03, which shows
20 very clearly that these people do not have status. They
21 were probationary employees, so they didn't have a status.
22 They didn't have a right to come back. It says, within a
23 classification apart from temporary probation other
24 employees do not have regular status with laid-off
25 employees. It doesn't say how they get recalled or the

1 right to be --

2 MR. WIGHT: Are you saying the employment contract
3 also covers some of these issues?

4 MR. SMITH: It doesn't cover the issue from
5 bargaining unit to bargaining unit at all.

6 MR. WIGHT: Okay.

7 MS. FLOYD: Only within the bargaining unit?

8 MR. SMITH: Right.

9 MR. WIGHT: And what happens within the bargaining
10 unit.

11 MR. SMITH: Within the bargaining unit people have
12 the right -- first of all, if they're laid off, the
13 Personnel Department will match a classification if
14 they're -- if they eligible or qualified to perform, they
15 will notify us of that --

16 MR. WIGHT: What section of the --

17 MR. SMITH: That's in the layoff -- the seniority
18 section of the contract.

19 In this case here there was absolutely no match, and
20 that's why I brought up to you the situation of a
21 corrections officer by the name of Ed Hall. Now, Ed Hall
22 was a person that was also cut back for a different reason,
23 and he was allowed to demote in the Local 88 bargaining
24 unit, and we signed a special letter to that effect.
25 Otherwise he couldn't do it, and that's a matter of public

1 record. I'm sure Susan has it. I don't have that with me,
2 because I didn't know that issue was going to come up.

3 MR. WIGHT: Okay, let me just look at the --

4 MS. JARON: What Jim said about Ed Hall, I would say
5 is unfair [indiscernible].

6 MR. WIGHT: Okay, I --

7 MR. SMITH: I'd be very happy to go out and get a
8 copy of that because it is correct.

9 MR. WIGHT: Is it relevant to be looking at these
10 bargaining agreements at all --

11 MS. JARON: The bargaining agreements, as far as the
12 language under each of their seniority and layoff sections,
13 is perfectly consistent with what we've done and what the
14 rules say.

15 MR. SMITH: And they've always been within the
16 bargaining unit.

17 MS. JARON: They talk about voluntary demotion. They
18 talk about the notification to the employee and the language
19 is fairly identical [indiscernible].

20 MR. WIGHT: Well, I'm just asking whether these
21 provisions are applicable. Do you think they are?

22 MR. SMITH: I think the personnel rules is going to
23 apply in this case. I think all we're saying to you is an
24 unfair situation happened here which denied people rights to
25 employment. There are --

1 MR. WIGHT: Yeah -- before we get into that, see, my
2 problem is that see who -- we've got to start with the
3 agreements and the ordinance. They may or may not be fair,
4 and that be something that we bargained for, so we've really
5 got to know what the rules are, and then we can talk about
6 fairness.

7 MR. SMITH: We --

8 MR. WIGHT: I just want to make sure we all agree as
9 to what the rules --

10 MR. SMITH: We have no --

11 MR. WIGHT: -- that we're dealing with.

12 MR. SMITH: -- copy of anything that's ever been
13 provided to us that these people voluntarily demoted. You
14 can't voluntarily demote --

15 MR. WIGHT: Well, we'll get into that in a minute. I
16 just want to know --

17 MR. SMITH: To this day, there has not been a change
18 of status --

19 MR. WIGHT: Stop. Stop. I just want to make sure
20 that as far as both sides are concerned we're not looking at
21 the bargaining agreements. It's only under the rules and
22 ordinances. Are those the ground rules that we're dealing
23 with here?

24 MR. SMITH: That's fair.

25 MS. JARON: I would -- a good deal of what the Union

1 has to say relates to the areas on testing and selection,
2 and those aren't covered in the contract. So that's a major
3 reason the personnel rules were developed.

4 And the other areas, I don't think there's any
5 conflict between the two. So these are going to speak to
6 half of the issues, and on the other half I they're
7 consistent, so I wouldn't want to just toss them out
8 altogether because I think they --

9 MR. WIGHT: Well, let's talk about the other half of
10 the issue. Yeah, not the selection list and stuff, but the
11 procedural aspects that you say are consistent. Are they
12 the same as the personnel rules?

13 MS. JARON: I have to look.

14 MS. FLOYD: Well, there was a reference made to Rule
15 20.03.

16 MR. SMITH: Hm-hmm, the second paragraph. Within --

17 MS. FLOYD: Right, within a classification in
18 department, temporary and probationary, and other employees
19 who do not have regular status will be laid off before
20 employees with regular status. Employees without regular
21 status who are laid off will not be placed on layoff lists
22 and so not have displacement rights.

23 MR. SMITH: Right.

24 MS. FLOYD: Later on it says a regular employee who
25 is subject to layoff may transfer to a lower classification,

1 et cetera, et cetera.

2 MR. SMITH: Yeah, what we're saying to you, under the
3 personnel rules, these were not --

4 MS. FLOYD: Regular.

5 MR. SMITH: -- employees. Because it very clearly
6 says, within a classification -- department -- "Temporary,
7 probationary and other employees who do not have regular
8 status."

9 MS. FLOYD: I guess I'd ask the representative for
10 the County, if you were hired on 8-19-91, were they still
11 probationary employees in October of '91?

12 MS. JARON: Hm-hmm, yes, they were. I -- again, I'm
13 representing the Sheriff's Office and Curtis Smith as
14 Personnel Director --

15 MS. FLOYD: Oh, I'm sorry.

16 MS. JARON: That's okay. -- to the County decisions
17 related to this, but, again, as a matter of policy, and I
18 don't know if [indiscernible] the language is still in this
19 last version of the ASFCME contract, but traditionally the
20 County has always tried not to lay people off when they've
21 had cuts. We've tried to find them jobs.

22 MR. SMITH: But not probationary employees. They are
23 not regular employees, even by the personnel rules --

24 MR. WIGHT: Well --

25 MR. SMITH: -- by the labor rules --

1 MR. WIGHT: -- but isn't it also your position they
2 aren't in the classification -- are these different
3 classifications in different departments also?

4 MR. SMITH: They're in different classifications,
5 absolutely. I mean, if both things apply, a corrections
6 officer is not within the classification. These people were
7 not employees as described here; therefore employees without
8 regular status who are laid off will not be placed on their
9 list and do not have displacement rights.

10 MR. WIGHT: Okay, now, I understood. I'm still
11 trying to find out whether or not we need to look at these
12 other documents, the collective bargaining agreements.

13 MS. JARON: Well, Jim, if you're comfortable with it,
14 we could just let that go and [indiscernible] --

15 MR. WIGHT: Well, it's not a question of my comfort.

16 MS. JARON: Well, again, the language in the contract
17 doesn't relate to --

18 MR. WIGHT: What language in the --

19 MS. JARON: Okay. The Corrections Officer contract--

20 MR. WIGHT: Well, I don't have that one. I've got
21 the other one.

22 MS. JARON: Well, I think they're the same. I mean--

23 MR. WIGHT: Okay, where --

24 MS. JARON: They both require 15 days' notice of
25 layoff.

1 MR. WIGHT: Okay, I saw that language.

2 MS. JARON: Employees in the bargaining unions, Local
3 88, may be subject to layoff or demotion in lieu of layoff,
4 and they should be notified in writing within at least 15
5 calendar days. The notice should state the reason and
6 further state the action does not replace [indiscernible] on
7 the employees.

8 And the Corrections Officer contract, it says, "An
9 employee that's subject to layoff [indiscernible] offered a
10 transfer, demotional option, will indicate a preference
11 within five days; failure to do so will be deemed as
12 accepting layoff status. The language in the --

13 MR. WIGHT: Does it talk about demotion in lieu of
14 layoff?

15 MS. JARON: Yes.

16 MS. FLOYD: Does it talk about whether you are a
17 regular or a probationary employee?

18 MS. JARON: It just says "employee" in this text.
19 Now, whether or not under the Definition sections that would
20 be any different than what they're calling employees.
21 Certainly it wouldn't include temporary people. But I would
22 have to -- I don't see that they describe what employee
23 means, at least not in that section.

24 MS. FLOYD: Now, is that -- the yellow paper is --

25 MS. JARON: This is the Corrections Officer's --

1 MS. FLOYD: -- is the Corrections Officer's; the
2 white is ASFCME.

3 MS. JARON: That's correct.

4 MS. FLOYD: Is there a definition in the Corrections
5 Officer contract of "employee"? Or "probationary"?

6 MS. JARON: I'm looking. Once again, I don't see
7 that they've given a definition of what they mean when they
8 drafted the word "employee." They've given definitions for
9 probationary employees, supervisory employees and permanent
10 employee. But when they actually get to the section, the
11 only word they use is "employee." Their contract says
12 "probationary employee means a permanent employee serving,
13 in their case, a 12-month period to determine their
14 suitability for continued employment. They should be
15 included within a bargaining unit except that they shall
16 have the rights under the agreements [indiscernible]
17 discharge."

18 MR. SMITH: I think 20.03 is very, very, very clear.
19 And I think that's where you have the jurisdiction is over
20 the rules. I think the contract supersedes the rules, and
21 if there's something in the contract that gives people
22 superior rights you use them, but in this case there is no
23 remedy in the contract. That's why this was brought before
24 you. We think that it's -- the Sheriff's Office has
25 superseded the county rules.

1 MS. JARON: But not the [indiscernible].

2 MR. SMITH: Well, they make the determination of the
3 [indiscernible], do that.

4 MS. FLOYD: I know we asked this but I didn't write
5 down the answer. In the Correction Officer's contract, does
6 it speak to demotion in lieu of layoff?

7 MS. JARON: Yes.

8 MS. FLOYD: Does it speak to demotion in lieu of
9 layoff in -- only within their bargaining unit, or does
10 it --

11 MS. JARON: They don't specify. They just use these
12 generic terms that in these -- if there's -- those options
13 will be presented, but they don't say that it's only within
14 the bargaining units, so that becomes interpretive.

15 MS. FLOYD: It certainly is [indiscernible]. The
16 temporary employees under the ASFCME contract are not
17 represented by ASFCME [indiscernible].

18 MR. SMITH: That's right. This person
19 [indiscernible]?

20 MS. FLOYD: Right. I understand.

21 MS. JARON: Although appeals [indiscernible] in the
22 past, ASFCME has certainly taken up the causes of people who
23 were in a probationary position --

24 MR. WIGHT: Okay, but that's somebody who was
25 previously employed which you go back to the previous

1 position, but --

2 MS. FLOYD: Oh, this is promotional?

3 MR. WIGHT: Yeah.

4 Do we need some more testimony on this issue?

5 MR. SMITH: Well, what I would like to do is I would
6 like to start with Stan and that's -- have him give his name
7 and -- Stan, will you give your name -- I think we should
8 swear him in because I'm also going to call Janet Jaron.

9 MR. WIGHT: Will everybody who's going to testify
10 raise your right hand.

11 Do you swear the testimony you will give here at this
12 hearing is the truth, nothing but the truth, so help you
13 God?

14 ALL WITNESSES: Yes.

15 **STAN HOUSTON, Appellant's witness, testified:**

16 **EXAMINATION**

17 BY MR. SMITH:

18 Q Stan Houston?

19 A Stan, what's your job title?

20 A My job title is Civil Deputy.

21 Q How long have you been a civil deputy?

22 A Seven years and five months.

23 Q What's your rate of pay?

24 A Thirteen ten an hour.

25 Q Okay, and how did you get your job as a civil deputy?

1 A I was promoted. I took a test, and -- I was a county
2 employee previous to my hire as civil deputy, and I took a
3 test and was hired in August of 197' -- no, excuse me, July
4 of '85.

5 **GREG MIDLER, Appellant's witness, testified:**

6 **EXAMINATION**

7 BY MR. SMITH:

8 Q Greg Midler?

9 A My name is Greg Midler.

10 Q Can you tell the Board what your classification is?

11 A I'm classified as a civil deputy. I've been here 13
12 years and two months. I was hired by taking an exam, going
13 through the complete process of hiring, both the
14 psychological exam and oral reviews -- oral interviews,
15 physical and everything else involved with that.

16 Q What's your rate of pay?

17 A Thirteen ten an hour.

18 **MARSHALL ROSS, Appellant's witness, testified:**

19 **EXAMINATION**

20 BY MR. SMITH:

21 Q Marshall Russ?

22 A I'm Marshall Ross, Civil Deputy.

23 Q How long have you been here?

24 A I've been here for three years, seven months.

25 Q How did you get hired?

1 A I answered an ad in the Oregonian, applied, took a
2 test, board interviewed by another in the Sheriff's Office,
3 and then [indiscernible], psychological exams
4 [indiscernible].

5 Q And after three years, what's your rate of pay?

6 A Twelve thirty-six an hour.

7 Q Okay.

8 **JOHN HEFNEIDER, Appellant's witness, testified:**

9 Q John Hefneider?

10 A My name's John Hefneider. I've been a Civil Deputy
11 for three years and approximately three months. I was hired
12 through filling out applications, going through an oral
13 interview procedure, psychological testing, medical test.
14 My rate of pay right now is \$12.36 an hour.

15 Q Okay, are you having some problem with people coming
16 in starting at day one at the same rate of pay or more than
17 you're making?

18 A My understanding is two individuals that came in
19 started at the rate of pay of about twelve seventy-four an
20 hour?

21 **LORETTA FROMAN, Appellant's witness, testified:**

22 Q Loretta?

23 A Loretta Froman. I'm a Civil Deputy. I've worked
24 with the County since March of 1980; started as a Public
25 Safety Aide. I've been a civil deputy for three years and

1 seven months. I was a Mental Health Attendant prior to the
2 Civil Deputy's merger with Mental Health [indiscernible].

3 Q What's your rate of pay?

4 A Twelve thirty-six an hour.

5 MR. SMITH: And I would like to ask Janet one
6 question. Janet, did you and I discuss this layoff of these
7 two corrections officers by telephone?

8 MS. JARON: I think we did [indiscernible]. I tried
9 to reach [indiscernible] [indiscernible].

10 MR. SMITH: Did you tell me it was temporary?

11 MS. JARON: I told you that we had placed them there
12 because we always tried to save employees and that when we
13 had openings for corrections officers they would be
14 offered --

15 MR. SMITH: Did you tell me --

16 MS. JARON: -- the job.

17 MR. SMITH: -- specifically that it was temporary?

18 MS. JARON: I told you what I just said, Jim.

19 MR. SMITH: Are you saying you didn't tell me it was
20 temporary?

21 MS. JARON: I told you they were placed there like we
22 always place people in similar circumstances, and that as
23 soon as there was a corrections officer vacancy, they would
24 be offered the opportunity to go back to corrections
25 officer.

1 MR. SMITH: Do you recall if you told me they were
2 temporary?

3 MS. JARON: I -- no. This is what I remember
4 telling you, that you would -- as soon as there was a
5 vacancy for corrections officer they would be offered the
6 opportunity to go back.

7 MR. SMITH: And when we had that conversation, was it
8 your anticipation that they would go back?

9 MS. JARON: Yes.

10 MR. SMITH: Okay. Did you later have a conversation
11 with Joe DeFlemick over the same issue?

12 MS. JARON: I probably had talked -- I've talked with
13 Joe about this several times.

14 MR. SMITH: Did you ask Joe not to process them
15 because there would be great problems if they went back?

16 MS. JARON: I talked to Joe about whether or not we
17 could reach an agreement which is fairly common when we have
18 outstanding issues to see if there was something that would
19 satisfy both sides of the agreements and proposals
20 [indiscernible].

21 MR. SMITH: So you did propose to the Union to try to
22 resolve this?

23 MS. JARON: Yes. Yes.

24 MR. SMITH: Okay. Is there any relation between a
25 civil deputy and a corrections officer?

1 MS. JARON: I would say that there was some
2 relationship, yes.

3 MR. SMITH: Is this the Civil Deputy job description?

4 MS. JARON: Yeah, I gave it to you.

5 MR. SMITH: Is that it?

6 MS. JARON: Yes.

7 MR. SMITH: Okay. Is this the Corrections Officer
8 job description?

9 MR. SMITH: Hm-hmm.

10 MR. SMITH: I would like to put these into evidence,
11 please. I only have the one copy. I can get more. And I
12 have no further questions.

13 MR. WIGHT: Do you have any further testimony?

14 MR. SMITH: No.

15 MR. WIGHT: Is there -- I think I tried to cover this
16 before. Is there any discussions about -- dispute about
17 whether or not these are the same classifications or these
18 are different classifications?

19 MS. JARON: They're definitely different
20 classifications. There's no dispute about that.

21 MS. FLOYD: What -- you mentioned in your testimony
22 that you made some options that you try to resolve issues
23 for everyone. What was some of those proposals? Or what
24 were those proposals?

25 MS. JARON: Before I answer your question I'll give

1 you something in the way of background, that this whole
2 thing is a very complicated situation, so let me add some
3 more of the complications.

4 At the time that -- we found out very unexpectedly
5 that we had to cut some positions, and that was in early
6 September. And again, these -- we've been -- there had been
7 a number of Corrections Officer positions funded in a levy,
8 and I was hiring like crazy. And my boss walked in one day
9 and said, "We're going to have to make some cuts." When
10 that happened --

11 MR. WIGHT: Why did that happen?

12 MS. JARON: Measure 5. But we already -- we had a
13 budget shortfall.

14 MR. WIGHT: All right.

15 MS. JARON: And what was coming in in revenues wasn't
16 anticipated to last [indiscernible] what they had planned
17 on, so after a couple months into the fiscal year, we had to
18 save several million dollars.

19 So the first thing that happened is we looked agency-
20 wide for vacant positions. Among other things, there were
21 two vacant Civil Deputy positions. And they weren't cut.
22 They were offered out as part of the things that we
23 [indiscernible]. And we were able in our total package --
24 actually there were a total of vacancies. Two got offered
25 up in that cut. That was driven by the desire to not impact

1 those people. In other words, before we lay off people,
2 even if maybe the job they're doing isn't as critical as the
3 civil deputy job, we'll freeze vacant positions.

4 So two of them were lost to that process. The other
5 two were the two that these people went into on layoff.

6 Now, coming back to answer your question, I had
7 suggested that, first of all, one of the issues is that
8 there are people that would like to be considered for civil
9 deputy who didn't have an opportunity to be considered for
10 civil deputy. We haven't done the civil deputy test for
11 some time. I think there hasn't been a vacancy until these
12 four appeared, and then we had all this other activity that
13 made that moot.

14 So I offered -- I suggested that we -- you know, that
15 I do a new test and that they would test. So those people
16 who were interested in getting on a list and being
17 considered for future vacancies could be, even though we
18 didn't have an actual vacancy at this moment in time. I
19 suggested that perhaps we could -- ordinarily a list of that
20 kind would be issued for six months. I suggested that
21 perhaps we could have an agreement that we use it for at
22 least two years so that would increase the opportunity that
23 somebody would be placed from that.

24 And I -- and I suggested that I would talk with the
25 Chief Deputy of Law Enforcement. We really couldn't afford

1 to lose those two deputy positions. We're understaffed.
2 That's why we have temps. And that's why -- you know, that
3 situation results from the fact that they cut positions
4 because they didn't have people in them, but it didn't mean
5 that the work wasn't there to be done. And so the third --

6 MR. WIGHT: You're talking about the Civil Deputy
7 position?

8 MS. JARON: Yeah. So the third thing I suggested was
9 that I would talk to the Chief Deputy and see if I could
10 confirm that he would be asking for those two cut positions
11 back in our budget. And, again, he couldn't guarantee that
12 we could [indiscernible], but I could guarantee that we
13 would ask if that -- if we could reach agreement on that,
14 and that's what we suggested to the union president.

15 MS. FLOYD: Thank you.

16 MR. WIGHT: Does the County have any more response to
17 this appeal?

18 MS. JARON: I have -- yeah, I want to call some
19 people and ask some questions. And I have some written
20 material that --

21 MR. WIGHT: Okay. Well, let's do that.

22 MS. JARON: Jim, did you want to say something?

23 MR. WIGHT: Well, I think he's sort of through for
24 now. He'll be given a chance for some rebuttal at the end.

25 MS. JARON: Okay.

1 This is the chronology that I was talking about, and
2 to the degree that they're supporting documentation it's all
3 attached. And there's your copy, Sue, and there's three for
4 the Board.

5 And we'll be referring to some things in here. I
6 think I've gone over the chronology sufficiently so you know
7 what has occurred, so I'm not going to come back to that.

8 I do want to give you this handout, too. This shows
9 you the entire Civil Deputy unit and where people are placed
10 as far as their step placement. And I have one other
11 handout, and I think I'd like to give it to you now although
12 we might be talking about it later, but then I won't have to
13 disrupt us to hand out more papers.

14 This piece of paper takes from that Civil Deputy
15 description that Jim submitted, the minimum qualifications,
16 and repeats them word for word, and then it talks about the
17 qualifications of the two people that were placed in those
18 positions. So we'll talk about that later.

19 I would like to have Curtis Smith address some
20 questions and then there are the two people that went into
21 those positions, and then Sergeant Mike Skophammer, and none
22 of them are lengthy.

23 MR. WIGHT: Okay.

24

25

1 CURTIS SMITH, County's witness, testified:

2 EXAMINATION

3 BY MS. JARON:

4 Q Okay, I guess you can state you who are?

5 A I'm Curtis Smith, Employee Services Manager.

6 Q What can you tell us regarding the past and present
7 practice of the County regarding the placing of employees
8 facing layoff?

9 A We try to avoid layoffs by finding alternative
10 positions for them. Sometimes in other classifications.

11 Q Was the action taken regarding Michael Teed and
12 William Foster when they accepted voluntary demotions to
13 Civil Deputy done in regulation fashion?

14 A Yeah, and I believe that it was done correctly, and I
15 believe it's [indiscernible].

16 Q Would you explain the personnel rule governing salary
17 when there is a voluntary demotion not for cause and state
18 whether that was the guiding regulation for setting that
19 pay?

20 A Yeah, the personnel rule says that you fit the
21 employee into the new range where the employee is going to
22 be assigned to a new range -- a new range in a lower
23 classification, and you place that person at the highest
24 step that you can without giving the person a raise. My
25 research indicates that was done.

1 Q In the packet that I gave you that has the chronology
2 on the front, several pages in, so on the attachments --
3 one, two, three, four -- the fifth and sixth attachments
4 which are identical, and they're letters from Curtis Smith's
5 division, signed by Susan Ayers. One's addressed to Michael
6 Teed and the other one's addressed to William Foster.

7 Curtis, are you familiar with this form letter that
8 they received from your staff?

9 A Yes.

10 Q And are you confident that those were in fact sent to
11 these two people by your staff?

12 A Yes.

13 Q When is a letter like this sent?

14 A Soon after the person enters probationary status.

15 Q And what does it mean?

16 A It indicates that they're on a trial period, and
17 there's a possibility that if they follow through the
18 probationary service satisfactorily they can become
19 permanent.

20 Q Is it correct that --

21 MR. WIGHT: We're looking at the September 15
22 letters?

23 MS. JARON: No, these are --

24 MS. FLOYD: October.

25 MS. JARON: -- October 31st.

1 MR. WIGHT: Sure, go ahead.

2 MR. SMITH: Do I do that now?

3 MR. WIGHT: Yeah, go ahead.

4 EXAMINATION

5 BY MR. SMITH:

6 Q Curtis, how long have you been an employee of
7 Multnomah County?

8 A Since 1990.

9 Q What month in 1990?

10 A December.

11 Q So just a little over a year; is that correct?

12 A Hm-hmm.

13 Q Were you here when these rules were promulgated?

14 A No.

15 Q Can you tell me -- you are the Personnel Director
16 that enforces the personnel rules?

17 A Yes.

18 Q Can you tell this -- the Commission what 20.03,
19 second paragraph, says or means?

20 A Did you say the second paragraph?

21 Q The second paragraph in 20.3.

22 A It's two sentences long, and it's basically two
23 points. The first sentence makes the first point, and that
24 is that temporary, probationary and other employees who
25 aren't regular would be laid off before employees with

1 MR. WIGHT: Oh, okay. All right.

2 MS. JARON: Okay?

3 Q (By Ms. Jaron) Is it correct to say that returning
4 these employees to Corrections Officer at this point in time
5 could be called a forced promotion?

6 A It certainly could be termed that if they don't want
7 a promotion.

8 Q What would you believe the side effect of that to be?

9 MR. SMITH: I would object. I don't think it makes
10 any difference what he believes.

11 MR. WIGHT: Well, we've given people pretty broad
12 range here. So go ahead.

13 A I'm -- I'm not aware that there's a personnel rule
14 that requires management to impose a promotional move on an
15 employee. If an employee [indiscernible] good personnel
16 administration. I'm not sure that it's ever good practice
17 to require an employee to accept a promotion
18 [indiscernible]. Involuntary promotions always carry the
19 possibility of the person being [indiscernible] controversy.
20 And I think that's probably one in my [indiscernible]
21 require a [indiscernible].

22 Q Anything else related to this that I [indiscernible]?

23 A I can't think of anything at this point.

24 MS. JARON: Okay. I'm ready for the Board.

25 MR. SMITH: I have a couple questions.

1 regular status. I don't think that's an issue here and
2 before the Commission.

3 The second sentence indicates that employees without
4 regular status who are laid off will not be placed on layoff
5 lists and do not have displacement rights.

6 Q What does that mean?

7 A If a person doesn't have regular status and is facing
8 layoff, that person doesn't go onto a layoff list and does
9 not have displacement rights.

10 Q In other words, he has no employment rights with
11 Multnomah County. Is that correct?

12 A I wouldn't agree with that. It says --

13 Q Tell me what it says.

14 A I don't think that that person can displace another
15 regular employee.

16 MS. JARON: Can I ask a question? Or are you done?

17 MR. SMITH: I just have one other question.

18 Q (By Mr. Smith) Tell me the name of one other
19 probationary employee that's been laid off by Multnomah
20 County, that's had any rights whatsoever other than these
21 two since you've been here. I want you to go back to since
22 you've been here.

23 A I'm not aware of any.

24 Q Has there been any to your knowledge?

25 A I don't know of any.

1 Q Is it possible that there's been none and these are
2 the first two. Is it possible?

3 A I don't know.

4 Q You know of all the layoffs [indiscernible]?

5 A Yes.

6 Q Have there been any more?

7 A Well, that was months ago, and I don't remember
8 [indiscernible]. Sorry.

9 MR. WIGHT: You have a question?

10 MS. FLOYD: Yeah. What takes precedence, a
11 collective bargaining agreement, or the personnel rules?

12 THE WITNESS: In what matter?

13 MS. FLOYD: Well, [indiscernible]?

14 THE WITNESS: [indiscernible] collective bargaining
15 [indiscernible].

16 MR. WIGHT: You see a particular conflict here that
17 you're asking about? Or --

18 MS. FLOYD: Well, the issue I see is that the rules
19 appear to say that probationary employees don't have
20 displacement rights. And later on, [indiscernible] regular
21 employees being transferred to a lower classification. And
22 I haven't looked at, and I will later request to look at,
23 the collective bargaining agreement of Correction Officers.
24 But what I've been told up to this point, and I see
25 differently [indiscernible], is that the word "employee" was

1 used there, without definition as probationary. That's the
2 conflict I see.

3 MR. SMITH: 103 --

4 MR. WIGHT: I think it's the County's position that
5 no one was displaced here. Is that right? They were put
6 into vacant positions. So this sentence would not be
7 applicable. I think that's your position that what it says
8 it says, but it just doesn't happen to apply to this
9 particular situation.

10 MS. PRICE: May I ask a question?

11 MR. WIGHT: Sure, go ahead.

12 MS. PRICE: Was there an eligibles list in effect
13 when these two men --

14 MS. JARON: (No audible response)

15 MS. PRICE: -- so you would have had to have gone
16 outside and found somebody, and they didn't displace anybody
17 when they came in?

18 MS. JARON: No.

19 MS. PRICE: Okay.

20 MR. WIGHT: I'm not saying there isn't a conflict
21 there. I'm just saying --

22 MS. JARON: Yeah, I understand what --

23 MR. WIGHT: -- that's their position is --

24 MS. PRICE: That no one was displaced?

25 MR. SMITH: I have one further question.

1 MS. PRICE: It's [indiscernible] regular employee
2 subject to layoff be transferred to a lower classification
3 in the same promotional [indiscernible]. That would
4 indicate that the regular employee is not someone on
5 probation as defined up here.

6 MR. WIGHT: Hm-hmm.

7 MS. PRICE: That's what I'm looking at.

8 Q (By Mr. Smith) The final question for
9 [indiscernible]: Were there temporary Civil Deputies
10 employed by Multnomah County when this happened?

11 A I'd have to look at the list.

12 Q All right. If there were temporary Civil Deputies
13 employed by Multnomah County, how long can you keep the
14 person in a temporary position without firing them?

15 A It's normally sixty days.

16 Q But under the personnel rules, isn't it a maximum of
17 six months?

18 A Yes.

19 Q Okay. So those temporary employees that were Civil
20 Deputies, if they were such a person, would automatically be
21 fired at the conclusion of in six months. And there were --

22 A Actually, you can let a temporary employee go at any
23 time.

24 Q But it's mandated by the personnel on temporary
25 employees, to terminate them within six months. Is that

1 correct?

2 A Which one are you referring to, Jim?

3 Q I will tell you the exact one if you'll hold on a
4 second.

5 MS. FLOYD: 13.04.

6 Q 13.04 was the [indiscernible]. Would you look at
7 13.04.

8 A The second paragraph says temporary employees shall
9 receive the equivalent of six months' full time service,
10 successive temporary employments of the senior employee may
11 not be made [indiscernible] taken together [indiscernible]
12 in [indiscernible].

13 Q So if there were people such as that that were told
14 there would be a list they could get on, these people would
15 not get on the list unless they were terminated. Is that
16 correct?

17 A I'm sorry. I didn't follow you.

18 Q If there were temporary employees --

19 A Temporary employees.

20 Q -- in Civil Deputy positions, that six months were
21 expiring, they would have to be fired because there was no
22 list. Is that correct?

23 A According to this rule, it says that they can't be
24 employed longer than six months.

25 Q But if they can't be employed what's the County do

1 with them?

2 A I don't know.

3 MR. SMITH: I have no more questions.

4 MR. WIGHT: Any more questions by members of the
5 Commission?

6 MS. FLOYD: Well, the question I have is: The Civil
7 Deputy job would seem to [indiscernible] as a Corrections
8 Officer.

9 THE WITNESS: I think probably that that's best asked
10 of Janet. I think the County's position is that it's
11 reasonable -- it was a reasonable position into which to
12 demote a Corrections Officer.

13 MS. FLOYD: Can we define "promotional line"? It
14 happens to be a term I haven't really heard of before. So

15 MS. AYERS: It's in the seniority rule.

16 MS. FLOYD: It's in the seniority rule? Okay, I'll
17 look it up.

18 THE WITNESS: Which rule are you looking at, Sue?

19 MR. SMITH: [indiscernible] ask a few questions not
20 [indiscernible]?

21 THE WITNESS: Sure.

22 MR. SMITH: I hope [indiscernible] say yes and
23 they're all promoted to the next position.

24 MR. WIGHT: Sue, you're talking about 20.02.

25 MS. AYERS: Excuse me, maybe it's in the definitions.

1 Yes. Excuse me, it's in the definitions on page 4.

2 MR. WIGHT: Let's try and clarify that. This says
3 "promotional line" means a classification series in the same
4 occupational field in which service in the lower
5 classification qualifies the employee for the higher
6 classification. I thought I had asked this question twice,
7 but my understanding is that is not the situation with these
8 two classifications. They're separate classifications in
9 occupation -- one is not necessarily lower than the other
10 here. Is that right? I mean --

11 MS. JARON: Yes, the Civil Deputy is a lower than the
12 Corrections Officer.

13 MR. WIGHT: Lower because it's lower paid?

14 MS. JARON: Yes.

15 MR. WIGHT: Okay. Do you consider these a
16 promotional line, then?

17 MS. JARON: Probably not. To answer you quite
18 honestly. We have been very [indiscernible] and the County
19 as a whole has been very [indiscernible] in terms of placing
20 people that were qualified to do jobs.

21 MR. WIGHT: All right, I understand. All right.
22 Janet.

23

24

25

1 MICHAEL TEED and WILLIAM FOSTER,

2 County's witnesses, testified:

3 EXAMINATION

4 BY MS. JARON:

5 Q Would you state your names?

6 A My name is Michael Teed, Sr.

7 A My name is William Foster.

8 MS. JARON: These are the two people that were hired
9 as corrections officers and displaced.

10 I had some questions that really just kind of confirm
11 the facts we've already talked about, that because I don't
12 think anybody is disputing that they were hired off the
13 regular list without testing process, so we'll skip that.
14 And rather than question them separately, I think maybe the
15 few questions I have we'll just do sequentially. One can
16 answer and then the other; is that --

17 MR. WIGHT: Sure.

18 MS. JARON: Okay.

19 Q (By Ms. Jaron) At the time that you were hired for
20 Corrections Officer you did undergo a psychological and
21 physical exam as part of the testing process.

22 A (Teed) Yes.

23 Q How would you describe your interest in or enthusiasm
24 for Corrections Officer work with Multnomah County at the
25 time you got hired?

1 A (Teed) Mike Teed. It was just a wonderful job,
2 actually. It was good solid work, and I was only able to
3 work there for six weeks before I was let go, but --

4 A (Foster) Again, I'd have to agree with Mike. It was
5 a very enjoyable job. It took me long time to get in the
6 position, and I did enjoy it, and unfortunately,
7 [indiscernible], I was also laid off.

8 Q At the time that you were hired, did you have any
9 idea that a layoff was around the corner?

10 A (Teed) There had been talk amongst some of the
11 sergeants that there was problems in the foreseeable future,
12 but we -- I was told not to let it worry me at all. It was
13 very probably just going to be something that was handled,
14 and we would be fine.

15 Q (Foster) Yeah, again, I agree with Mike. Yeah, we
16 did hear talk about [indiscernible].

17 Q And then you elected to take a voluntary demotion as
18 Civil Deputy rather than lose your jobs?

19 A Yes, ma'am.

20 Q Michael, did you quit another job to take this job?

21 A I did not.

22 Q Did you quit another job to take this job?

23 A (Foster) Yes, I did.

24 Q Did somebody explain to you how your salary was set
25 as Civil Deputy?

1 A (Teed) Yes.

2 A (Foster) Yes.

3 Q What was your understanding of the salary rate?

4 A (Teed) That in accepting a voluntary demotion my
5 salary would be in whatever unit we were assigned to to be
6 at least -- the highest paid possible below what you were
7 making in our Corrections positions.

8 Q Did you take a cut in salary?

9 A (Teed) A substantial one.

10 A (Foster) Yes.

11 Q I'm back to these letters from Susan Ayers, on or
12 about 10-31, did you receive these letters from the Employee
13 Services Division?

14 A (Teed) Yes.

15 Q (Foster) Yes.

16 Q What did you think the letter meant?

17 A (Teed) Well, at the time we were a little bit in a
18 quandary because we didn't know for sure. We did go speak
19 with Ms. Ayers, and basically it was my belief that we had
20 been let go from the Corrections unit. The letter did say
21 our positions had been done away with, and that we were now
22 Civil Deputies.

23 Q (Foster) Yes, we did go speak to Susan Ayers, and
24 she did explain it to us.

25 Q Had you ever seen a letter like this before?

1 A (Teed) Yes.

2 Q When?

3 A (Teed) Shortly after being hired with the
4 Corrections section, they had a very similar form letter
5 [indiscernible] that I received informing me that I was at
6 that time a Corrections Officer on probationary duty.

7 MR. WIGHT: Are we confused -- weren't they
8 testifying about the September 15 letter, rather than the
9 October --

10 MS. JARON: No. The 10-31.

11 MR. WIGHT: That just notifies them that they're a
12 Civil Deputy. That has nothing to do with a reduction.

13 MS. JARON: Yeah, but what I'm asking them is if they
14 had seen a similar form letter before this, saying, yes,
15 when they were hired as Corrections Officer, they got
16 exactly the same thing as that [indiscernible] Corrections
17 Officer.

18 MR. WIGHT: Okay.

19 Q (By Ms. Jaron) Have you had any feedback on your
20 performance so far as a Civil Deputy?

21 A (Teed) Yes.

22 Q What have you been told?

23 A I'm told I'm coming along quite well, and I'm pulling
24 my share of the work, and my supervisor believes I will do
25 quite well.

1 A (Foster) Same thing: told I'm doing well and I
2 follow through with all my work, and I get things done in a
3 timely manner, and I follow through and do well.

4 Q You did get the notification signed on November 25th
5 saying that Corrections Officer positions were available and
6 that you had five days to respond?

7 A (Teed) Yes.

8 Q What did you do?

9 A (Teed) Spoke with you. And I told you at that time
10 of it being a possibility and it was my understanding that I
11 was able to do it and it was not a problem, that I chose to
12 stay with the Civil Deputy work.

13 Q Why was that?

14 A (Teed) Well, it's very similar to work I did in the
15 past, and I find I am more comfortable doing this type of
16 work. The Corrections Officer position -- they make more
17 money, and they earn it. They honestly do. And this is a
18 major point, you know, that I had to think over for some
19 time, because I am -- in accepting this position, I do give
20 up some long-range benefits and advancement possibilities
21 that do not exist in this unit. But personally, I find I am
22 happier here and I really enjoy doing the work.

23 Q (Foster) Same thing. It was a difficult decision to
24 want to go or not. I did speak with Janet Jaron about this.
25 It was my understanding that we could stay if we wanted to.

1 And, again, it was a difficult decision. There was very
2 little -- almost nonexistent promotion positions in the
3 Civil section. I gave those up. I gave up benefits. But I
4 do enjoy the work. I enjoy being out on the road and
5 talking with people and dealing with the people as opposed
6 to being in Corrections.

7 Q As of today, what is it that you want to do?

8 A (Teed) I'd like to remain in Civil.

9 Q (Foster) Me too.

10 Q What do you believe would occur if you were required
11 to return to a Corrections Officer position when there was a
12 vacancy?

13 A (Teed) I've had a problem with this. It's one
14 reason why in accepting this lower position, I tried to make
15 it basically my -- to myself what I would do when the time
16 came and there was going to be a call-back. I tried not to
17 make my decision known until it was clear, at least wise in
18 my mind that, yes, I did have the choice to keep this job.
19 Then I explained to Janet Jaron that I would like to keep
20 this job.

21 Now, I foresee that if I should be put back in the
22 Corrections field, I would have no problem working with the
23 people I worked with. I would get along with them just
24 fine. But in the future, when, everything being equal,
25 another man with my time and whatnot, were ready for a

1 promotion or whatever, the other person coming up through
2 the -- not having gone through this experience, if you
3 will -- he's going to have an upper hand over me, because on
4 my background is going to be the fact that I chose, before
5 in the past, not to work there and to actually work in what
6 the County or whoever considers to be a lower position. I
7 foresee that it would be a real problem for me to be
8 comfortable if I should go back to the jail. Just basically
9 for that.

10 Q How does that affect your probationary term?

11 A (Teed) My probationary time in the Corrections
12 section -- I was there for six weeks and we were transferred
13 here. I would have to complete -- well, add the six weeks
14 up to make a complete year to get through the probation for
15 the Corrections section. As it is, I've worked double that
16 time, since I've been working for Multnomah County, I've
17 worked over three months now at the Civil section, and we
18 have two and a half months before our probation is
19 completed, the six-month probation.

20 Q (Foster) My answer reflects Mike's. If I had to go
21 back, I'd have no problem doing the job. However, like he
22 said, people coming in behind us may have an edge over us in
23 any type of future promotions. Beyond that, it would be
24 [indiscernible].

25 MR. WIGHT: Anything else? What's the status of the

1 Correction Officer situation now?

2 MS. JARON: There is one vacancy.

3 MR. WIGHT: And have people been hired since these
4 two gentlemen were laid off?

5 MS. JARON: Yes. When they turned down the
6 opportunity to return, they gave up their rights. Their
7 names were taken off the layoff list, and we filled from the
8 regular list.

9 MR. WIGHT: And so there's one vacancy as of now; --

10 MS. JARON: Yes --

11 MR. WIGHT: -- what's the anticipation in the future?

12 MS. JARON: I never know.

13 MR. WIGHT: Well, you make some pretty -- I mean, you
14 have some guesses, though.

15 MS. JARON: The only vacancy that I have is one -- It
16 really is hard to predict, because sometimes we'll have
17 several things happen that create vacancies, and sometimes
18 we'll go several months with no turnover.

19 MR. SMITH: Excuse me, back on [indiscernible].
20 They're not on that layoff list. There was a layoff list
21 [indiscernible].

22 I have some questions.

23 MR. WIGHT: Sure. Go ahead.
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EXAMINATION

BY MR. SMITH:

Q First, of Michael Teed. Mike, you said that you were employed before --

A I was working part time at the time. I didn't have a full-time job.

Q Is there anything in your mind that would make you believe that you couldn't get on a list and score well as a Civil Deputy?

A No, I have no problem with that. If I had known about it -- I didn't know this even existed until we were placed into it.

Q If this Board would rule that they should create a list, would you want to get on it?

A Yes, I would.

Q Now, you said that you would have a problem going back because of promotional opportunities; is that correct?

A Yes.

Q But at the same time, you came into this unit without any experience with Multnomah County and perhaps the people in [indiscernible] --

A Well, yeah, I --

Q -- [indiscernible] hire another --

A That's correct.

Q Now, it says here that you were a Deputy Sheriff in

1 Oregon. Where was that at?

2 A Columbia County.

3 Q And it says that you were involved in civil process
4 responsibilities.

5 A Yes, very much.

6 Q What were those civil process responsibilities? Were
7 you a process server?

8 A Basically so. It was part of the duty of being Deputy
9 Sheriff.

10 Q Did you have to take any kinds of tests to be this
11 civil process portion or as deputy sheriff?

12 A Well, I had full deputy sheriff powers, so --

13 Q They don't have a civil process people in Columbia
14 County?

15 A There's one administrator, but other than that, the
16 deputies do all of the work.

17 Q So all the work is done by either the police officers
18 or [indiscernible] Columbia County?

19 A Yes.

20 Q So when you say you had civil process responsi-
21 bilities, that was just part of your responsibilities as
22 Deputy Sheriff --

23 A Yes.

24 Q -- not specifically civil process?

25 A That's correct.

1 Q You said you would be willing to [indiscernible] --

2 A I would. Absolutely [indiscernible].

3 Q And Michael Teed, let me ask you questions -- I'm
4 sorry, [indiscernible], Mr. Foster. You said you quit a
5 job. What was that job you quit?

6 A (Foster) Corrections Officers [indiscernible].

7 Q Did you quit that job or were you laid off?

8 A I quit that job. I took that job on a probationary
9 -- ended my probation to come -- I tested with Multnomah
10 County [indiscernible].

11 Q And why did you quit that job?

12 A To come here. It was a better city to work for;
13 there was more of a chance of being out on the road.

14 Q Well, why did you quit that job and come -- did quit
15 one Corrections Officer job, take another Corrections
16 Officer job.

17 A I was explaining that. This was a better opportunity
18 to get out on the road. It's a better department to work
19 for. There's a higher rate of pay. There's better working
20 conditions.

21 Q And you worked there for one full year?

22 A Yes, sir.

23 Q Okay. Would you be willing to get on the list of
24 Civil Deputy if that's what this Board rules?

25 A I have no problem with that.

1 Q Have you ever before performed any functions that are
2 in the Civil Deputy classification, description?

3 A Such as?

4 Q The work you're doing now.

5 A The work I'm doing now? As serving civil process,
6 no; [indiscernible], law enforcement [indiscernible],
7 traffic officer [indiscernible] State of Oregon,
8 [indiscernible].

9 Q Any of that have anything to do with civil process?

10 A Yes, I did.

11 MR. SMITH: I don't have any more questions at this
12 time.

13 MR. WIGHT: Any questions by members of the
14 commission?

15 Do you have any rebuttal to anything?

16 MR. SMITH: We do have a person that wants to put her
17 case on since you made it clear that I shouldn't use --

18 MR. WIGHT: I didn't say that.

19 MR. SMITH: I mean, I would be very happy to
20 [indiscernible] -- I think it would be better just rolling
21 from her, because what she's going to tell you is she's not
22 going to have her job as a result of this because
23 [indiscernible].

24 MR. WIGHT: Go ahead and tell us.

25 MS. JARON: Well, I have somebody else --

1 MR. WIGHT: Oh, I'm sorry. I thought you were
2 through. I'm sorry.

3 MS. JARON: Jim was asking questions that were
4 reflective of these little bios that I gave you on this one
5 sheet, and I just wanted to make a comment about that. If
6 you look at the requirements up above, these two people
7 clearly meet the minimum requirements for Civil Deputy. And
8 in Michael Teed's case, he is extraordinarily well qualified
9 for this job having done this job before.

10 MR. WIGHT: Okay.

11 SGT. SKOPHAMMER: I'm Sergeant Mike Skophammer. I'm
12 the Administrative Sergeant to the Chief Deputy of
13 Corrections, Multnomah County Sheriff's Office.

14 **MIKE SKOPHAMMER, County's witness, testified:**

15 **EXAMINATION**

16 BY MS. JARON:

17 Q Sergeant Skophammer, would you just real quickly tell
18 people how long you've been in Corrections and what your
19 current role is as far as your job is concerned?

20 A I've been in Corrections since November of 1971.
21 I've been with Multnomah County since January of 1973, and
22 been a Corrections Sergeant for two and a half years. I've
23 been the Administrative Sergeant to the Chief Deputy since
24 May of 1991.

25 Q What's your role regarding new hires?

1 A After the training sergeant is done with the
2 orientation and the field training portion of their first
3 six weeks, they're basically turned over to me for
4 assignment. I assign them to shifts and days off.

5 Q Do you remember when Michael Teed and William Foster
6 were hired in August 19th?

7 A I do.

8 Q At the time that we made those hire offers to them,
9 to your knowledge did we believe we were going to be laying
10 people off?

11 A No.

12 Q Are you familiar with the other facts regarding these
13 hires, their voluntary demotion to Civil Deputy, and their
14 recall from the layoff list and decision to remain in Civil
15 Process?

16 A I'm familiar with it.

17 Q Okay. In general, what is your reaction to the idea
18 of forcing these people to promote to Corrections Officer?

19 A Twenty years of corrections tells me that when you
20 put a Corrections Officer in a place that he doesn't want to
21 be, he's not going to be as effective as someone who wants
22 to be there.

23 Q If these employees were required to return to
24 Corrections Officer positions when there were vacancies,
25 would you have any concern about that placement?

1 A I'd be concerned about their willingness to be there,
2 and that would be my major concern.

3 MS. JARON: That's all I have of Mike.

4 MR. WIGHT: Do you have --

5 MR. SMITH: Yes, I do.

6 EXAMINATION

7 BY MR. SMITH:

8 Q If they were to return -- I think you heard both
9 their testimonies; one sort of [indiscernible] -- their
10 testimony was in essence that if they went back they
11 wouldn't have the same opportunities as other Corrections --

12 MR. WIGHT: Can I interrupt? It's 6:15 now and we've
13 all been here a long time. I don't know -- this testimony
14 is not helping me a lot in making this decision. I don't
15 know if it's helping other members. I think we have some
16 other issues, so I think I really want to cut it down.

17 MR. SMITH: Well --

18 MR. WIGHT: I don't know if there's any information
19 we're getting from this other than some personal background
20 here --

21 MR. SMITH: Well, the point --

22 MR. WIGHT: -- and we've got the picture, I think.

23 MR. SMITH: The only thing I want to correct is this
24 both of these did [indiscernible] to the fact that they
25 wouldn't be treated equally with other Corrections Officers

1 if they went back. And I think that he will testify that
2 that's untrue, that they would. And that's what I'm going
3 to ask him, and then I'll be done with him.

4 MR. WIGHT: Does anybody think the decision is going
5 to make any difference on that point?

6 MS. FLOYD: No.

7 MR. WIGHT: Let's --

8 MR. SMITH: I would like them to have that assurance.
9 And I think that the only way I can get it is to ask that
10 question in this hearing.

11 MS. FLOYD: [indiscernible].

12 MR. WIGHT: Okay.

13 Q (By Mr. Smith) If these folks went back, would you
14 or any of the management treat these folks any differently
15 than any other of such class?

16 A No.

17 MR. SMITH: No further questions.

18 MS. JARON: I just had one last thing,
19 [indiscernible], and that is if you look at this, we don't
20 have anybody at the first three steps. So the majority of
21 the people are at the top step of Civil Deputy, and then
22 Teed and Foster, based on that voluntary demotion rule were
23 placed at Step 5, and then three of the people that are
24 present are at Step 4. I also added their anniversary
25 dates, so what this means, for instance, is that come next

1 March the Civil Deputy Ross, for instance, will go to Step
2 5.

3 MS. FLOYD: Are these [indiscernible]?

4 MS. JARON: Yes.

5 MR. SMITH: And taking five years to get there. We'd
6 stipulate that, too.

7 MS. FLOYD: Linda Bedell?

8 MR. WIGHT: Yeah, I thought we had decided at the
9 beginning of this that we were allowing everybody to proceed
10 here at once. And Linda, if you thought that you weren't
11 included in this, and you have something additional to tell
12 us, will you go ahead?

13 **LINDA BEDELL testified:**

14 THE WITNESS: Certainly. My name is Linda Bedell. I
15 am currently the temporary Civil Deputy assigned to the
16 Mental Health Transport Unit. I've been in that capacity
17 since 8-14 of '91. I have been in this temporary capacity
18 coming up six months. My six months will be up February
19 14th and I will be one of the 6.6 percent of Oregonians
20 unemployed. I have no job to go to. I will be on
21 unemployment.

22 I was told on coming aboard with this unit within the
23 Civil Division that the only way I would ever become a
24 permanent regular County employee, Civil Deputy specifically
25 at that time, was if I took a test and went through a

1 testing process [End Side B, Tape 1; Begin Tape 2].... I
2 wanted to apply. I didn't worry about it, and then I found
3 out they'd become permanent county employees.

4 And you're right, I'm here on my own. I have no
5 representation. Just me, myself and I.

6 MR. WIGHT: Counsel?

7 THE WITNESS: Also, I'd like to correct Ms. Jaron.
8 I'm Step 1. I'm making eleven thirty-four an hour.

9 MS. JARON: She is not an employee. She's a
10 temporary.

11 MR. WIGHT: Steve.

12 COUNTY COUNSEL: I note for the record that Ms.
13 Bedell says she's not represented here and again cast out on
14 the Union's standing --

15 MR. SMITH: Well --

16 MR. WIGHT: Okay, wait a minute.

17 MR. SMITH: For the record --

18 MR. WIGHT: Stop. Stop --

19 MS. FLOYD: Stop.

20 MR. WIGHT: Stop. Stop. We don't want any --

21 MR. SMITH: Let them come flopping in and out of
22 here.

23 MR. WIGHT: Stop. We're not getting into that.

24 MR. SMITH: Jesus Christ.

25 MR. WIGHT: Janet, what happens to that temporary

1 position if it's -- come the end of the six months. Is
2 there still going to be a temporary position there that has
3 to be filled by somebody else?

4 MS. JARON: This is the problem I was trying to
5 explain. And it's true; this is not a very ideal situation.
6 I'm not trying to present it as anything else. We had four
7 vacancies. Going back, just like these two people, didn't
8 have any idea when we could offer them a bona fide offer of
9 employment or if we were going to turn around and lay them
10 off six weeks later.

11 We anticipated we were going to have a test for Civil
12 Deputy. In fact, we had more vacancies than we'd ever had
13 in that job class before, to my knowledge. And then these
14 two activities occurred. The first one where we lost two of
15 them, and the other two when we wanted to place layoff
16 people in some kind of jobs. So this is one --

17 MR. WIGHT: But you had a temporary position also?

18 MS. JARON: Yeah. There isn't really any such thing,
19 to me, as a temporary position. What happened was, the work
20 was there. The unit -- the management in the unit felt that
21 there's no way that the Sheriff could meet his legal
22 obligations if they didn't have more staff than what we were
23 funded to have. So the Chief Deputy would determine that
24 somewhere out of this budget he was going to find enough
25 money to cover a temporary position. And in circumstances

1 like that, if there's a list, we see if anybody there wants
2 to take a job in those circumstances, because there's no
3 guarantees, there's no benefits, there's no nothing.

4 If we don't have a list, we just start looking around
5 to see if we can find someone, which is what we did in this
6 case. And we found two people who were interested in taking
7 those temporary jobs on those terms, knowing that there were
8 no benefits, that they hadn't been placed, there was no
9 employment guarantee. And the last, Linda, to the best of
10 my knowledge, she didn't quit another job to take this.

11 THE WITNESS: Yes, I did. Yes, I did. Can I --

12 MR. WIGHT: Go ahead.

13 THE WITNESS: Ms. Jaron has also presented the
14 qualifications of both Mr. Teed and Mr. Foster. Would the
15 Board be interested in hearing my qualifications as a
16 prospective applicant to this position were it to be opened
17 up?

18 MR. WIGHT: Sure.

19 THE WITNESS: I hold a two year Associate's Degree in
20 criminal justice from Clackamas Community College,
21 [indiscernible] three quarters. I'm a graduate of Oregon
22 Police Academy, took the basic police officer's course,
23 Class No. 152, a grade point of 95.2. I have received
24 certification and completion of certifications in the
25 following courses. Hazardous Materials Technician I,

1 Ordinance [indiscernible] Dispatch, Oregon Uniform Crime
2 Reporting, LEDS, NCIC terminal work and criminal work,
3 Management of Public Records, Metropolitan Police Academy;
4 [indiscernible] 320 hours basic police training; CPR and
5 first aide. I've also been a sworn police officer for the
6 City of Salem; held that capacity for seven months. I also
7 was an Ordinance Enforcement Officer for the City of Lake
8 Oswego. My duties there included subpoena service and
9 municipal court service process. I've also been a County --
10 Multnomah County reserve for four years, one month, as a
11 sergeant for the last year.

12 That's a brief rundown. The total hours with basic
13 -- with BPST is 1750 hours, 1,750 hours. Those are my
14 qualifications, and based on what Ms. Jaron has presented to
15 you about Mr. Foster, I think those qualifications supersede
16 his. As a respective competitive applicant, those items
17 would have been reviewed and a testing process, written,
18 oral and further, and also on a one-to-one basis with
19 [indiscernible] supervisor.

20 And when I accepted this position I was contacted by
21 Glenn Pos [indiscernible], and he called me in for a formal
22 interview with him. I then a formal interview that lasted
23 approximately an hour and a half with the [indiscernible]
24 Seitz (ph), the lieutenant in the position at that time
25 where all this information was reviewed. My reserve record

1 was reviewed, and it was stated -- and I will agree with
2 Janet -- that this was taken on a temporary basis for
3 anywhere from three to six months, and with no guarantee.

4 But I had a guarantee from the supervisor while in
5 this that, "You'll take a test again, later. You'll take a
6 test to get hired. Don't worry about it." And these two
7 gentlemen -- I have nothing personally against these
8 gentlemen, just the way they got in here. They came in,
9 they took the two open positions the County had left, and
10 now there's no reason to test for any positions. There's no
11 more Deputy positions open.

12 So myself, and Mr. Collins' six months was up last
13 week. His six months as a temporary employee was up last
14 week. Mine comes up February 14th. We're both unemployed.
15 We don't even have the opportunity to try for the job.
16 We've been doing this as temporary employees within the
17 Civil Division longer than these two gentlemen, Scott
18 [indiscernible].

19 MR. WIGHT: Any questions?

20 MS. JARON: Did you have some more? I'll wait.

21 THE WITNESS: Do you want me to elaborate on the job
22 I quit?

23 MS. JARON: Well, I'll ask you some questions. I
24 just want to know if there's anything more you want to say?

25 THE WITNESS: I was employed with Northwest

1 [indiscernible] Service out of Salem, Oregon. Those duties
2 included insurance fraud investigation; also store security.
3 I was getting nine seventy-five an hour for that position.
4 And in the eight months I worked there, my [indiscernible]
5 status was [indiscernible] with one [indiscernible].

6 MR. WIGHT: Is that all?

7 THE WITNESS: Yes.

8 MR. WIGHT: Do you have some questions?

9 MS. JARON: Yes, just a couple. And Mr.
10 [indiscernible] has one question.

11 THE WITNESS: Okay.

12 EXAMINATION

13 BY MS. JARON:

14 Q Linda, the job that you quit, why did you choose to
15 quit that job and take this temporary job?

16 A Because being a Multnomah County reserve, I've worked
17 the capacity with Multnomah County [indiscernible] people; I
18 chose to trust them and support them, and I want to be on
19 [indiscernible] with Multnomah County reserve; good
20 organization. I was also tired of being [indiscernible].

21 Q And were you ever promised a permanent position?

22 A No, ma'am, I was not. It says [indiscernible].

23 Q And [indiscernible]?

24 A That's correct.

25 Q When I -- given the facts as you know them, does it

1 appear to you that the circumstances around our planning to
2 test changed because of having to eliminate positions
3 [indiscernible]?

4 A No. I don't believe that had any effect on your
5 decision. There was never a test -- my understanding from
6 the [indiscernible] was that the testing process had not
7 been decided on. It went back and forth between a two year
8 college degree, to high school, to some experience, back to
9 a two year degree. There was never a separate requirement
10 what type of applicants could apply for this position prior
11 to testing.

12 Q Okay. Those requirements are set by the job
13 specifications --

14 A I still -- I still to this day do not know who can
15 apply for the position after what I heard. It went back and
16 forth so many times between the two-year degree, high school
17 education or experience; I still wasn't told what the final
18 offering was.

19 MS. JARON: I don't have any more questions of this
20 witness.

21 EXAMINATION

22 BY MR. SMITH:

23 Q You said that you were told that the only way that
24 you could ever become a regular Civil Deputy was by testing
25 for it?

1 A That's correct, sir.

2 Q When were you told that?

3 A I was told that I can't tell you how many times. I
4 was told at least --

5 Q Okay, do you remember by who you were told?

6 A It was Glenn Pos.

7 Q Okay, and [indiscernible] told you?

8 A This was a daily basis. This was like August 16th,
9 two days after I was hired because I began to enjoy the job.
10 I said, "I know I'm temporary. I know this isn't permanent.
11 How do I become full time?" Because, yes, I would like some
12 benefits. I'm just making that hourly wage. And I was told
13 over and over again.

14 Q Did you decline any other offers of employment during
15 the last -- during the time you have been employed as a
16 temporary employee?

17 A I have not personally declined. But I have been
18 declined.

19 Q You have declined no offers of employment?

20 A That's right.

21 Q You've foregone no other employment --

22 A I'm not sure what you're asking. I've been applying
23 for --

24 MR. WIGHT: Okay, I don't think this is going to lead
25 us anywhere.

1 MR. SMITH: Just looking forward to the lawsuit.

2 MR. WIGHT: Let me ask you this, Janet. Assuming
3 that nothing changed, would the Multnomah County Sheriff's
4 Office continue with some temporary positions there to
5 handle the work load? I mean, are they going to find some
6 money to do the work that Linda and Scott are doing right
7 now?

8 MS. JARON: I can't answer that question
9 unequivocally. I can tell you what I think. I think --
10 and I haven't seen the budget. I'd have to check. I would
11 be extremely surprised if the Chief Deputy isn't trying to
12 restore those two cut positions as far as what we have
13 available.

14 MR. WIGHT: But you're talking about the budget for
15 next July 1?

16 MS. JARON: Right.

17 MR. WIGHT: What about between now and July?

18 MS. JARON: I don't know what he intends to do. He
19 hasn't indicated anything to me. Jim's correct that they
20 all say six months. To me, honest to God, to be honest with
21 you, just like we didn't want to lay two people off and have
22 them --

23 MR. WIGHT: Well, but there isn't even a position
24 here.

25 MS. JARON: There's not. That's true.

1 MR. WIGHT: There's not even --

2 MS. JARON: But there may be -- if he has the money
3 and he has the need, I don't know.

4 MR. WIGHT: But he hasn't told you at this time
5 whether he either has the money or the need? We don't know
6 that?

7 MS. JARON: He hasn't told me that, and I think that
8 it's -- I don't think anybody's questioning that he has the
9 need. But I don't know --

10 MR. WIGHT: And, Linda, have you actually been laid
11 off at this point?

12 MS. BEDELL: Not at this point. But my job is a day-
13 to-day basis. I never know tomorrow if they need me or not.
14 The lead worker that I work with, she can testify to a need
15 in our certain division. At this point, in my view, doing
16 the mental commitment hearings we do, they need me. But I
17 still, I go to work every morning and Glenn Pos has always
18 so jokingly said, "How long have you worked here? You're
19 putting in the rest of today." Makes me feel
20 [indiscernible].

21 MR. SMITH: Let me -- Can I add one last thing? The
22 union contract says that temporary employees can only be
23 used to fill the budgeted position for sixty days unless the
24 employer has actively recruited, and then that expands it up
25 to six months.

1 We even played dead in this, because we knew there
2 were two budgeted positions vacant that we kept anticipating
3 the process would start and it never started. Had the
4 process started at the conclusion of their sixty days, these
5 folks would not be having to be laid off.

6 MR. WIGHT: Is there any other testimony or comment?

7 MS. JARON: I think you've probably heard --

8 MS. FLOYD: [indiscernible] is looking for the
9 Corrections Officer contracts.

10 MR. WIGHT: All right. Do you want to break for a
11 couple of minutes?

12 [Recess; off-the-record whispering]

13 MR. WIGHT: Well, let's open it up for discussion,
14 then. The hearing is terminated.

15 MS. JARON: Excuse me. Can I address -- there's one
16 issue I'd like to reflect?

17 MR. WIGHT: Quickly.

18 MS. JARON: I don't want to see these two gentlemen
19 unemployed. That's my motive in this hearing. I'd like to
20 see them returned to Corrections in higher pay.

21 MR. WIGHT: Okay.

22 Commissioner, do you have something?

23 MS. FLOYD: This is an unusually difficult case.
24 There's a lot of really conflicting rules and contracts and
25 it's sort of hard to trace what the proper way things should

1 be done is. I feel especially bad for the two temporary
2 employees, one who's already been laid off, and the other is
3 facing layoff.

4 MS. JARON: The other one hasn't been laid off.

5 MS. FLOYD: Oh, I thought he was.

6 MS. JARON: He's working. His six months is already
7 up, but he's still employed at this point.

8 MS. FLOYD: Hm-hmm. Okay.

9 MS. JARON: Unless, of course, we [indiscernible].

10 MS. FLOYD: Yeah, I understand.

11 Like I say, it's a real complicated case. To me, the
12 bottom line is, even though I see the total unfairness to
13 Scott and Linda, a permanent employee who has tested -- even
14 though it was for a different job but it's a higher ranking
15 job, passed those tests and all the evaluations, in my mind
16 takes priority over a temporary employee.

17 MR. WIGHT: Well, I guess I don't see it as a
18 question of who has priority. You have -- I guess your
19 views are somewhat similar. Is that right?

20 MS. PRICE: I know in the City of Portland, if a
21 person has comparable knowledge, skills, and ability, and
22 they're facing a layoff or termination in one area, they are
23 considered for that other area as long as it's not a
24 promotion. As long as it's not an increase in pay. And if
25 they meet the minimum qualifications in the other area, it's

1 acceptable as long as it's agreed upon by the Personnel
2 Director. And that's a practice of the City. I don't know
3 if that's a practice of Multnomah County, if it's a
4 documented practice. And it appears to be a legitimate
5 practice as long as it doesn't cost any more to move that
6 person from one place to another.

7 MR. WIGHT: My view is that there is a system here
8 that requires testing, a list, and hiring people off that
9 list. And I don't think these are positions in a
10 promotional line, and that's the testimony we've had here
11 tonight.

12 So I think the proper method that should have been
13 followed is that these two gentlemen could have been placed
14 in this job temporarily, but a test should have been given,
15 and the list made, and people hired off that list. And they
16 may have been on the list, they may not have been on the
17 list. We don't know that. But I think that's the method
18 that should be hired, because that's the only way you know
19 you have a civil service system that's working is -- and
20 they may have all the qualifications in the world, but what
21 you're trying to do is compare them to somebody else that
22 might have applied for that job.

23 And as we've heard, at least some people who would be
24 interested in that job are very well qualified. There may
25 be people out there we don't even know about that would be

1 even better qualified. And the idea of a civil service
2 system is to get the best qualified employee.

3 Now, I understand what the County's trying to do, and
4 that's not put people out on the street. And that's sort of
5 a commendable approach. But my own view is there is a way
6 to handle that, and they could have put them in there as
7 temporaries and gotten a list. If they were on the list,
8 they could have been hired off the list. If they weren't,
9 then they'd have the choice of either going back to their
10 old positions, that they applied for. I mean, that was the
11 job they wanted. Or they'd have to take their choice.

12 My view would be that we've got to create a list
13 here, and I would support the appeal and say that we've got
14 to create a list and hire off that list. These are not
15 positions in the same classification, and the rules don't
16 seem to -- people have cited rules, but none of them are
17 directly applicable to this situation. And so I think when
18 they aren't applicable, you have to go back to the basic
19 policy, and that is you create a list and you hire off that
20 list.

21 I can see some difficulties in trying to get that
22 done, because of a lot of water under the bridge here, but
23 it sounds to me like it's possible within the County budget
24 that these people could be left in the position, and the
25 temporary employees could be left there a while the list is

1 created, and then the hiring process carried out as it
2 should be. I don't know how long it takes to create a list,
3 but it sounds like it couldn't take too long if they've been
4 promising a test for the last four or five months. So
5 that's what I would propose to do.

6 MS. FLOYD: I think if it was earlier in the process
7 I might agree with you, but right now there aren't jobs for
8 them, necessarily, to go back to in the Corrections
9 Department. Their contract with the Corrections Department
10 did allow them to demote to save their jobs.

11 MR. WIGHT: But not -- not necessarily outside --

12 MS. FLOYD: Yeah, there is some questions about it
13 being another bargaining unit that I think would probably be
14 the bigger issue.

15 I have to go back and say that a regular employee has
16 precedence over a temporary employee.

17 MR. WIGHT: I guess I don't agree with that. I just
18 don't see that it applies here. They haven't created a
19 list, and these people aren't entitled to go to different
20 classifications. I don't disagree with your conclusion, I
21 just don't think it applies to this particular situation. I
22 haven't [indiscernible] my authority here.

23 MS. PRICE: I think that the County should honor
24 their offer to the men in those positions. And again, you
25 know, I see that the skills, knowledge and abilities on both

1 positions are comparable. And if they were offered the new
2 positions because of that, I really feel that that should be
3 honored, and then also, do a test for other positions that
4 are open for those other people who are like waiting. I
5 think that should be done. But I don't think that it should
6 include the gentlemen here. Because I think they have
7 already passed a test and have become employees of the
8 County.

9 MS. FLOYD: I would like hear just one other issue,
10 and that's for those who mentioned that they came in at a
11 higher wage rate. I understand the concern about that.
12 I've had that happen to me, actually, where someone came in
13 with a lot less service and a higher wage rate doing the
14 same job. It is a very difficult thing to accept, and I'm
15 not sure what the resolution is, as long as you offer people
16 protection in layoff situations.

17 MR. WIGHT: Do we have a motion?

18 MS. PRICE: Go ahead, John.

19 MR. WIGHT: Well, I don't think my motion will pass.

20 MS. FLOYD: Okay. I make a motion that we do not
21 uphold the appeal. Or, we deny the appeal.

22 MR. WIGHT: All in favor, say "aye."

23 MS. PRICE: Aye.

24 MS. FLOYD: Aye.

25 MR. WIGHT: All opposed, say "aye." Aye.

1 MR. SMITH: It is now appealable, as I understand it,
2 to the County Commissioners. Is that correct?

3 MS. FLOYD: It's not a unanimous decision.

4 MR. WIGHT: Before everybody gets away, I just
5 want --

6 You people can go.

7 We had one other agenda item. I don't want to get
8 into it tonight. I did prepare some things, and what I
9 would like to do is give them to you. Maybe take a look at
10 it, and I think they're issues that need to be addressed,
11 whether they come again or not, maybe we could schedule what
12 I hope would be a fairly brief meeting within a week or so.
13 I don't know how your calendars look, but I see it being,
14 you know, maybe from 4:30 to 5:00 or something like that?

15 MS. PRICE: Oh, that sounds like a wonderful meeting.

16 MR. WIGHT: And what I'd like to do is take a look at
17 this. You may have your own ideas, add some comments to it,
18 and then we'll get together and talk about it and see where
19 we want to go from here on these issues. I've already
20 thought of some other things I'm going to add, and you may
21 think of things as a result of these hearings.

22 Tuesday, the 28th? I think I could do it on the
23 28th. 4:30?

24 I'll give you -- I've written out a memo, here, and
25 I'll give you each a copy of that, so you can take a look at

1 that. I've also drafted a letter to the District Attorney
2 asking for some legal advice on this issue since, and we
3 will take a look at those questions. And then maybe we can
4 talk about both of these in two weeks when we get back
5 together. And I'd appreciate any comments from the staff,
6 too. My idea was that we would talk about it and give the
7 staff an opportunity to comment.

8 Any other matters?

9 We're adjourned.

10 (Proceedings concluded.)

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY

LINDA BEDELL &
AFSCME LOCAL 88
Appellant

v.

MULTNOMAH COUNTY
SHERIFF'S OFFICE BRIEF ON
APPEAL OF CIVIL SERVICE
COMMISSION'S DECISION

MULTNOMAH COUNTY SHERIFF'S OFFICE
Respondent

This appeal stems from arguments regarding:

- 1) Treatment of Sheriff's Office employees facing layoff;
- 1) Pay rates for persons placed in Civil Deputy positions; and
- 2) The status of temporary workers.

The following outlines the actions related to the voluntary demotions in-lieu-of layoff of Michael Teed and William Foster:

8/19/91

Teed and Foster were hired as Corrections Officers from the Corrections Officer certified list. Both employees completed the full testing process for Corrections Officer, including written/oral tests and physical/psychological exams. Both employees were placed into full-time, permanent positions at the first step of Corrections Officer pay, 12.89 per hour.

All merit system rules and regulations were followed in these placements.

BOARD OF
COUNTY COMMISSIONERS
1992 FEB 28 PM 2:52
MULTNOMAH COUNTY
OREGON

Page /2

9/15/91

Teed and Foster were notified of pending layoff due to unforeseen budget cuts. The relevant rules were:

Personnel Rules - 20.03, Layoff Rules says, in part,

Within a classification and department, temporary, probationary and other employees who do not have regular status will be laid off before employees with regular status. Employees without regular status who are laid off will not be placed on layoff lists and do not have displacement rights.

At the Merit Council hearing, Curtis Smith, Employee Services Director, indicated that this rule spoke to displacing regular employees. He said that, since no regular employees were displaced, this rule had not been violated.

Labor Agreement, Multnomah County and Multnomah County Corrections Officer Association, Art. 2 DEFINITIONS, A. says, in part,

For purposes of this Agreement, 'probationary employee' means a permanent employee serving a twelve (12) month period to determine his or her suitability for continued employment. Probationary employees shall be included in the bargaining unit except that they shall have no rights under the grievance mechanism for purposes of discipline or discharge. Such probationary period shall begin on the date of appointment from a list certified by the Employee Relations Division.

Article 14, Seniority and Layoff consistently refers to "an employee" being laid off. There are no modifiers. Significantly, 14.3.B.(2).d.iii, Probationary employees, says,

Time spent on layoff will not count toward the probationary period.

Page /3

This specific reference to probationary employees on layoff confirms that the contract covering Teed and Foster did require their placement on the Corrections Officer Layoff List.

9/20/91 - 9/23/91

Teed and Foster were offered vacant Civil Deputy positions as a voluntary reduction in lieu of layoff. This is consistent with long-standing County policy to try and save jobs for employees facing layoff.

They both exceeded the minimum qualifications for Civil Deputy and had appropriate credentials to fill these positions. Attachment A shows the minimum qualifications for Civil Deputy and outlines Teed and Foster's backgrounds.

10/1/91

Teed and Foster were formally reduced to Civil Deputy in lieu of layoff. Their salary, \$12.73 per hour, was set according to Personnel Rule 18.04, and both employees were placed on the Corrections Officer Layoff List. No other employee was displaced as a result of these actions.

While Teed and Foster are making 3% more than three of the other 11 Civil Deputies due to Personnel Rule 18.04; all three will be at the same pay level within six months - Attachment B.

A second option for placement would have been to restore Teed and Foster to the Corrections Officer regular list, as well as the Corrections Officer Layoff List, and then use that list as a "related list" under Personnel Rule 11.02:

The Personnel Officer may certify eligibles from one or more eligible lists for positions equal to or higher than the position in which the vacancy occurs, providing applicants with the requisite qualifications are available.

Page /4

The Employee Services Division had determined that the Corrections Officer list was satisfactory for filling these two Civil Deputy positions.

In either case, Teed and Foster were well-qualified to be Civil Deputies and had been through a difficult and related testing process prior to hire.

10/31/91

Teed and Foster were notified by Susan Ayers, Employee Services Division, of their 10/1/91 hires as Civil Deputies and status as probationary employees serving a 6 month probationary period - Attachment C.

Teed and Foster will complete their 6 month probation as Civil Deputies on April 1, 1992. If returned to Corrections Officer, both employees would need to complete 10 1/2 months of a 12 month probation. None of the time spent as Civil Deputies would count against this requirement.

11/25/91

Teed and Foster were notified of recall from the Corrections Officer Layoff List to newly budgeted Corrections Officer positions. Both employees notified the Sheriff's Office of their election to remain Civil Deputies and give up rights of return to Corrections Officer. Prior to this notification, these employees confirmed once again through the Employee Services Division that they had the option to remain as Civil Deputies.

11/27/91

Following confirmation by their supervisor that both employees were performing very well, Teed and Foster were notified that they would remain in the Civil Deputy positions.

The challenge from Local 88 stems from this event, according to Jim Smith's letter requesting a hearing, Attachment D. Mr. Smith states there was "no problem" until Teed/Foster were "recalled and refused."

These two employees may be the first choosing to remain in a voluntary reduction rather than be restored to the higher-level position. Forcing these employees to return to Corrections Officer positions would be a forced promotion - a strange concept with no precedent in Multnomah County, and no provision in either the Personnel Rules or the MCCOA bargaining agreement.

At the same time, if Corrections Officer positions hadn't become vacant within the six months probationary period of their placement as Civil Deputies, these employees would unquestionably have had permanent status as Civil Deputies.

Conclusion

Linda Bedell, a temporary Civil Deputy in the Sheriff's Office, petitioned the Merit Council under the Personnel Rules allowing "applicants" to file appeals. Due to the budgetary loss of two Civil Deputy positions and placement of layoffs in the other two vacant Civil Deputy positions, no examination was opened or given at any time. There is no current list, nor is Ms. Bedell on the last expired list. How does she have status as an "applicant" or rights to file with the Merit Council?

Regardless, Ms. Bedell admitted at the hearing that she fully understood the nature of her hire, and that she had not been promised a permanent job and had no systemic rights to a permanent position.

The Merit Council found for the County, essentially, because Teed and Foster were hired through a regular process and then laid-off. The majority of the Council held that standard practice and Multnomah County rules and regulations give preference to regularly-hired employees over temporaries. They also recognized the requirements of the MCCOA bargaining agreement, and the fact that contractual agreements are binding. The majority of Merit Council members concluded that the actions taken by the County were correct.

Page /6

In the 1992-93 budget, the Sheriff's Office is requesting restoration of the two Civil Deputy positions which were vacant and then cut in the 10/1/91 actions. If these positions are restored, a test can be given in May or June of this year to fill the positions, opening opportunities for current employees interested in promotion, as well as temporary employees, to apply and compete.

In the interim, Local 88 and Bedell proposals are untenable. Teed and Foster should not be forced to return to Corrections Officer. (At this writing, there are no vacant Corrections Officer positions.)

While Local 88 did not argue for a reduction in pay, following the rules for placement on voluntary demotion did not create a great disparity with existing workers. There is no justification for lowering Teed's or Foster's rate of pay at this time.

These employees should not be deprived of the 5 months probationary time served as Civil Deputies, nor penalized for consistently inquiring regarding their status and acting on the information provided in writing and verbally by County authorities. They would have no benefit coverage if they were not continued in a permanent position as a legitimate placement.

The option to all of the above actions would have been to terminate two employees hired in good faith into regular, permanent positions with benefits and put them out of work.

Respectfully submitted,

ROBERT G. SKIPPER
SHERIFF

By:


Janet Jaron, Manager
Personnel, Payroll and Training

MULTNOMAH COUNTY SHERIFF'S OFFICE
TEED/FOSTER QUALIFICATIONS

Minimum Qualifications for Civil Deputy:

Experience: One year of experience involving public contacts in such areas as collections or investigations, or one year experience in law enforcement, or one year dealing with patients in a psychiatric or mental health treatment facility or related area.

Training: Equivalent to completion of the twelfth grade. The following additional training is desirable: law enforcement, such as police reserves or college level courses in law enforcement or, in social work or psychology.

MICHAEL TEED

3 years of college, Administration of Justice
BPST certified with an advanced certificate in law enforcement
4 years, Sgt., Law Enforcement Specialist, US Air Force
11 years as a Deputy Sheriff in Oregon
including public relations and civil process responsibilities
2 years, Safety/Security Agent including public relations

WILLIAM SCOTT FOSTER

High School graduate
2 years - Portland Police Reserve Officer
1 year - Corrections Officer, State of Oregon
1 year - ambulance driver
3 years - Traffic Officer, State of Oregon, including public relations

urrent Civil Deputy Salaries

CIVIL DEPUTY SALARY RANGE	Step 1 \$11.34	Step 2 \$11.67	Step 3 \$12.00	Step 4 \$12.36	Step 5 \$12.73	Step 6 \$13.10
PLACEMENT & ANNIVERSARY DATE				Ross (5/23) Froman (6/13) Hefeneider (8/8)	Gross (12/14) Teed (10/1) Foster (10/1)	Clausen Huston Mettler Shirley Woodward
CIVIL DEPUTY/LEAD	Step 1 \$12.25	Step 2 \$12.60	Step 3 \$12.96	Step 4 \$13.36	Step 5 \$13.74	Step 6 \$14.15
						Baker Michel



MULTNOMAH COUNTY OREGON

GLADYS MCCOY
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

(503) 248-5015
(503) 248-3312
(503) 248-5135
(503) 248-3883
(503) 248-3797

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

William Foster
PO Box 2153
Gresham OR 97030

October 31, 1991

This is to notify you that effective October 1, 1991, you were hired as a Civil Deputy. Your employment status is probationary. Your probationary period is 6 months from the effective date of appointment; you will achieve permanent status upon satisfactory completion of the probationary period.

MULTNOMAH COUNTY EMPLOYEE SERVICES DIVISION

Approved: *S. Ayers*

1626E2/1

ATTACHMENT C-1



MULTNOMAH COUNTY OREGON

GLADYS MCCOY
COUNTY CHAIR

EMPLOYEE SERVICES
FINANCE
LABOR RELATIONS
PLANNING & BUDGET
RISK MANAGEMENT

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P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
& CENTRAL STORES

(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

Michael Teed Sr.
69878 Walker Rd
Rainier, OR 97048

October 31, 1991

This is to notify you that effective October 1, 1991, you were hired as a Civil Deputy. Your employment status is probationary. Your probationary period is 6 months from the effective date of appointment; you will achieve permanent status upon satisfactory completion of the probationary period.

MULTNOMAH COUNTY EMPLOYEE SERVICES DIVISION

Approved: *S. Ayers*

1626E2/2

ATTACHMENT C-2



OREGON AFSCME

2545 SW SPRING GARDEN ST., SUITE 201, PORTLAND, OR 97219 (503) 244-4686

*Rec'd ESD
12/11/91*

December 13, 1991

Susan Ayers
Personnel Manager
MULTNOMAH COUNTY
PO Box 14700
Portland, OR 97214

Dear Susan:

The Union requests a hearing before the Merit System Counsel. The purpose of the meeting is to present facts on the filling of Civil Deputy positions by Corrections Officers without proper competing tests or use of list.

Several Local 88 employees would choose to test for and fill the position, but the Sheriff decided to circumvent the procedure.

Several Corrections Officers were laid off to Civil Deputy. No problem. They were recalled and refused. This creates the problem.

There is no remedy under the contract. Please call the Council together to hear the facts and make a determination of the application of County rules.

Thanks you for your assistance.

Very truly,

Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75

JS/ss

cc: Joe Devlaeminck
Richard Gustafson
Stan Huston

ATTACHMENT D

CERTIFICATE OF SERVICE

I hereby certify that I served the within NOTICE OF HEARING to the following individuals:

Linda D. Bedell
1167 NW Wallula Avenue, #289
Gresham, Oregon 97030

Don S. Willner
Attorney at Law
111 SW Front Avenue, #303
Portland, Oregon 97204-3500

Rosemarie Cordello
Attorney at Law
111 SW Front Avenue, #303
Portland, Oregon 97204-3500

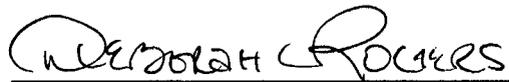
Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75
2545 SW Spring Garden, #201
Portland, Oregon 97219

Jacqueline A. Weber
Multnomah County Counsel
1120 SW Fifth, Room 1530
Portland, Oregon 97204

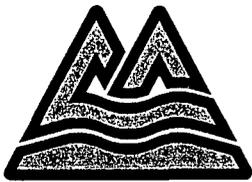
Janet Jaron
Sheriff's Office
12240 NE Glisan, Room 229
Portland, Oregon 97230

by mailing to each a true and correct copy thereof, on the 13th day of February, 1992, placed in sealed envelopes with postage prepaid, addressed as above and deposited in the Post Office at Portland, Oregon.

Dated this 13th day of February, 1992.



Deborah Rogers, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277



MULTNOMAH COUNTY OREGON

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GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

February 27, 1992

Linda D. Bedell
1167 NW Wallula Avenue, #289
Gresham, Oregon 97030

Re: AFSCME, Local 88 and Linda Bedell Appeals

Dear Ms. Bedell:

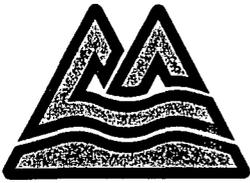
Enclosed please find an amended notice of hearing and certificate of service concerning the captioned appeals of the January 16, 1992 Merit System Civil Service Council Decision.

Please accept my apologies for the confusion relating to prior notices in this matter. Thank you.

Sincerely,

Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

dr
enclosure



MULTNOMAH COUNTY OREGON

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SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

February 27, 1992

Don S. Willner
Attorney at Law
111 SW Front Avenue, Suite 303
Portland, Oregon 97204-3500

Re: AFSCME, Local 88 and Linda Bedell Appeals

Dear Mr. Willner:

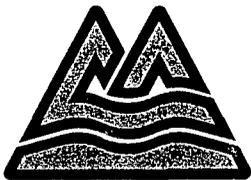
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February 27, 1992

Rosemarie Cordello
Attorney at Law
111 SW Front Avenue, Suite 303
Portland, Oregon 97204-3500

Re: AFSCME, Local 88 and Linda Bedell Appeals

Dear Ms. Cordello:

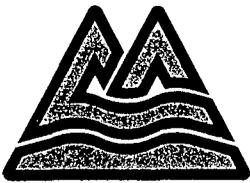
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February 27, 1992

Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75
2545 SW Spring Garden, #201
Portland, Oregon 97219

Re: AFSCME, Local 88 and Linda Bedell Appeals

Dear Mr. Smith:

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Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
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(503) 248-3277

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February 27, 1992

Jacqueline A. Weber
Multnomah County Counsel
1120 SW Fifth, Room 1530
Portland, Oregon 97204

Re: AFSCME, Local 88 and Linda Bedell Appeals

Dear Ms. Weber:

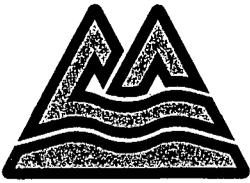
Enclosed please find an amended notice of hearing and certificate of service concerning the captioned appeals of the January 16, 1992 Merit System Civil Service Council Decision.

Please accept my apologies for the confusion relating to prior notices in this matter. Thank you.

Sincerely,

Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

dr
enclosure



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

February 27, 1992

Janet Jaron
Multnomah County Sheriff's Office
12240 NE Glisan, Room 229
Portland, Oregon 97230

Re: AFSCME, Local 88 and Linda Bedell Appeals

Dear Ms. Jaron:

Enclosed please find an amended notice of hearing and certificate of service concerning the captioned appeals of the January 16, 1992 Merit System Civil Service Council Decision.

Please accept my apologies for the confusion relating to prior notices in this matter. Thank you.

Sincerely,

Deborah Bogstad, Staff Assistant
Office of the Board Clerk
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1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

dr
enclosure



MULTNOMAH COUNTY OREGON

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SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

AMENDED
NOTICE OF HEARING

PLEASE TAKE NOTICE THAT AT 9:30 AM ON THURSDAY, MARCH 5, 1992, THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS WILL HEAR THE FOLLOWING APPEALS:

In the Matter of the Merit System Civil Service Council Decision Appeals of AFSCME, Local 88 and Linda D. Bedell Regarding Violations of Personnel Rules by Unilaterally Putting Probationary Employees in Another Classification.

The Board of Commissioners will not take additional evidence. Board Review shall be in the nature of a Writ of Review based on the January 16, 1992 record of the proceedings before the Merit System Civil Service Council and such legal argument as the Board requests.

Any party wishing to file written argument with the Board must do so by delivering a memorandum and nine copies thereof to the Office of the Board Clerk, no later than 12:00 PM on Monday, March 2, 1992. Any memorandum must be 10 pages or less in length and simultaneously delivered to all other parties in order to be considered by the Board.

Any party wishing to present oral argument before the Board must notify the Office of the Board Clerk and all other parties at the same time that written memoranda are due.

Oral argument shall be limited to 15 minutes per party.

Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

CERTIFICATE OF SERVICE

I hereby certify that I served the within AMENDED NOTICE OF HEARING on the following individuals:

Linda D. Bedell
1167 NW Wallula Av., #289
Gresham, Or. 97030

Don S. Willner
Attorney at Law
111 SW Front Av., #303
Portland, Or. 97204-3500

Rosemarie Cordello
Attorney at Law
111 SW Front Av., #303
Portland, Or. 97204-3500

Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75
2545 SW Spring Garden, #201
Portland, Or. 97219

Jacqueline A. Weber
Multnomah County Counsel
1120 SW Fifth, Room 1530
Portland, Or. 97204

Janet Jaron
Sheriff's Office
12240 NE Glisan, Room 229
Portland, Or. 97230

by mailing to each a true and correct copy thereof, on February 27, 1992, placed in sealed envelopes with postage prepaid, addressed as above and deposited in the Post Office at Portland, Oregon.

I hereby certify that I served previous Notices of Hearing by mailing to each a true and correct copy thereof, on February 13 and February 25, 1992, placed in sealed envelopes with postage prepaid, addressed as above and deposited in the Post Office at Portland, Oregon.

Dated this 27th day of February, 1992.



Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
PAULINE ANDERSON • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
RICK BAUMAN • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT AT 9:30 AM ON THURSDAY, MARCH 5, 1992, THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS WILL HEAR THE FOLLOWING APPEAL:

In the Matter of the Merit System Civil Service Council Decision Appeal of AFSCME, Local 88 Regarding Violations of Personnel Rules by Unilaterally Putting Probationary Employees in Another Classification.

The Board of Commissioners will not take additional evidence. Board Review shall be in the nature of a Writ of Review based on the January 16, 1992 record of the proceedings before the Merit System Civil Service Council and such legal argument as the Board requests.

Any party wishing to file written argument with the Board must do so by delivering a memorandum and nine copies thereof to the Office of the Board Clerk, no later than 12:00 PM on Monday, March 2, 1992. Any memorandum must be 5 pages or less in length and simultaneously delivered to all other parties in order to be considered by the Board.

Any party wishing to present oral argument before the Board must notify the Office of the Board Clerk and all other parties at the same time that written memoranda are due.

Oral argument shall be limited to 5 minutes per party.



Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

CERTIFICATE OF SERVICE

I hereby certify that I served the within NOTICE OF HEARING on the following individuals:

Linda D. Bedell
1167 NW Wallula Av., #289
Gresham, Or. 97030

Don S. Willner
Attorney at Law
111 SW Front Av., #303
Portland, Or. 97204-3500

Rosemarie Cordello
Attorney at Law
111 SW Front Av., #303
Portland, Or. 97204-3500

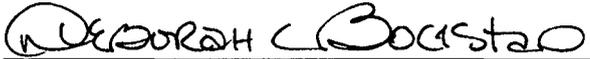
Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75
2545 SW Spring Garden, #201
Portland, Or. 97219

Jacqueline A. Weber
Multnomah County Counsel
1120 SW Fifth, Room 1530
Portland, Or. 97204

Janet Jaron
Sheriff's Office
12240 NE Glisan, Room 229
Portland, Or. 97230

by mailing to each a true and correct copy thereof, on the 25th day of February, 1992, placed in sealed envelopes with postage prepaid, addressed as above and deposited in the Post Office at Portland, Oregon.

Dated this 25th day of February, 1992.


Deborah Bogstad, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

WILLNER & ZABINSKY

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

DON S. WILLNER
ZACHARY ZABINSKY
ROSEMARIE CORDELLO
REBECCA E. SWANSON

FAX (503) 228-4261

February 19, 1992

Deborah Rogers, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 S.W. Fourth Avenue, Room 606A
Portland, Oregon 97204

Dear Ms. Rogers:

I am the attorney for AFSCME, Local 88 and Linda D. Bedell. My clients previously filed appeals of the Merit System Civil Service Council decision. I have received a Notice of Hearing for Thursday, March 5, 1992, at 9:30 a.m. for Linda Bedell, but I have received no Notice of Hearing for the appeal of AFSCME, Local 88. I assume this is an oversight. Will you please send me a Notice of Hearing at the same time and place for AFSCME, Local 88.

Sincerely,

WILLNER & ZABINSKY

Don S. Willner/gjb

Don S. Willner

DSW/gjb
cc: Jacqueline A. Weber
Multnomah County Counsel

BOARD OF
COUNTY COMMISSIONERS
1992 FEB 20 AM 10 51
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

BOARD OF COUNTY COMMISSIONERS
ROOM 606, COUNTY COURTHOUSE
1021 S.W. FOURTH AVENUE
PORTLAND, OREGON 97204

GLADYS McCOY • CHAIR • 248-3308
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CLERK'S OFFICE • 248-3277

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT AT 9:30 AM ON THURSDAY, MARCH 5, 1992, THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS WILL HEAR THE FOLLOWING APPEAL:

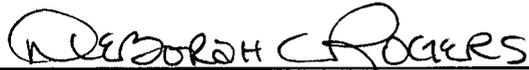
In the Matter of the Merit System Civil Service Council Decision Appeal of Linda Bedell Regarding Violations of Personnel Rules by Unilaterally Putting Probationary Employees in Another Classification.

The Board of Commissioners will not take additional evidence. Board Review shall be in the nature of a Writ of Review based on the record of the proceedings before the Merit System Civil Service Council and such legal argument as the Board requests.

Any party wishing to file written argument with the Board must do so by delivering a memorandum and nine copies thereof to the Office of the Board Clerk, no later than 12:00 pm on Thursday, February 27, 1992. Any memorandum must be 5 pages or less in length and simultaneously delivered to all other parties in order to be considered by the Board.

Any party wishing to present oral argument before the Board must notify the Office of the Board Clerk and all other parties at the same time that written memoranda are due.

Oral argument shall be limited to 10 minutes per party.



Deborah Rogers, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

CERTIFICATE OF SERVICE

I hereby certify that I served the within NOTICE OF HEARING to the following individuals:

Linda D. Bedell
1167 NW Wallula Avenue, #289
Gresham, Oregon 97030

Don S. Willner
Attorney at Law
111 SW Front Avenue, #303
Portland, Oregon 97204-3500

Rosemarie Cordello
Attorney at Law
111 SW Front Avenue, #303
Portland, Oregon 97204-3500

Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75
2545 SW Spring Garden, #201
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Jacqueline A. Weber
Multnomah County Counsel
1120 SW Fifth, Room 1530
Portland, Oregon 97204

Janet Jaron
Sheriff's Office
12240 NE Glisan, Room 229
Portland, Oregon 97230

by mailing to each a true and correct copy thereof, on the 13th day of February, 1992, placed in sealed envelopes with postage prepaid, addressed as above and deposited in the Post Office at Portland, Oregon.

Dated this 13th day of February, 1992.


Deborah Rogers, Staff Assistant
Office of the Board Clerk
Multnomah County Courthouse
1021 SW Fourth Avenue, Room 606A
Portland, Oregon 97204
(503) 248-3277

WILLNER & ZABINSKY

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

DON S. WILLNER
ZACHARY ZABINSKY
ROSEMARIE CORDELLO
REBECCA E. SWANSON

FAX (503) 228-4261

February 7, 1992

Office of the Board Clerk
Board of County Commissioners
1021 S.W. Fourth, Room 134
Portland, Oregon 97204

Dear Board Clerk:

I am the attorney for AFSCME Local 88, and Linda Bedell. On January 17, 1992, my clients filed a Notice of Appeal of the two to one Merits System Decision against them, which was entered on January 16, 1992. The Notices of Appeal were delivered to you on January 21, 1992. Your Ordinance 3.10.430, Appeals to the Board, says,

"(A) There shall be no appeal of the council's decision if unanimous. If the decision is not unanimous it may be appealed to the board by an party by filing written notice of appeal with the clerk of the board within 10 days from the date of the council's decision.

(B) Board review shall be in the nature of a writ of review based on the record of the proceedings before the council and such legal argument as the board requests. The board shall render its decision within 45 days from date of receipt of notice of appeal, based upon those decision guidelines established for the council by this chapter.

(C) Board decisions may be appealed by an party in accordance with ORS 34.010 to 34.100 and not otherwise. [Ord. 89 s. 23 F, G (1974)]"

The reference to the Writ of Review proceeding in Oregon Revised Statutes is confusing because ORS 34.020 and 34.030 discuss reviews to the circuit court and provide for a 60-day time for the filing of the Petition. Since this is a ten-day period for the Notice of Appeal, and the Appeal goes to the Board of County Commissioners, I interpret the reference to the Writ of Review proceeding to be the grounds for review set forth in ORS 34.040. As I further interpret your procedure, you should arrange to have the record of the proceedings before the Merit System Council

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CLERK OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON

Page 2

transcribed, and then hear oral argument which will help clarify the issues.

Since it will undoubtedly take some time to transcribe the testimony, and working against a 45-day deadline, which expires either on March 3rd or March 7th, depending upon whether the starting date is the mailing of the Notice of Appeal or the receipt of the Notice of Appeal, I suggest that you schedule oral argument during the last week of February or the first week of March. I would be available on February 24, 25, the afternoon of February 26, or February 27th, and on March 2, 4 and 5.

Would you please advise me as soon as possible, the date and time of the oral hearing?

Sincerely,

WILLNER & ZABINSKY

A handwritten signature in cursive script that reads "Don S. Willner" followed by a small mark that appears to be "gjs".

Don S. Willner

DSW/gjb

cc: Susan Ayers, Personnel Mgr.

(E) A copy of the council's final decision shall be delivered mailed to each party and to each party's attorney of record, to the employee's department head, to the appropriate bargaining agent and to the director of the Personnel Division of the Department of General Services.

[Ord. 130 s. 4 B (1976)]

3.10.390 Record of hearing. The record of each hearing shall include:

- (A) All written materials;
 - (B) Evidence and testimony received and considered;
 - (C) Matters officially noticed;
 - (D) Questions and offers of proof, objections and rulings thereon;
 - (E) The recommended decision of the administrator;
 - (F) Any other matter submitted to the administrator or the council in connection with the hearing;
 - (G) The final decision of the council; and
 - (H) The recording of the hearing made under MCC 3.10.400.
- [Ord. 130 s. 4 C (1976)]

3.10.400 Recording of hearings. A verbatim written or mechanical record shall be made of all proceedings. The record need not be transcribed unless requested for purposes of rehearing or court review. The council may charge the party requesting transcription the cost of transcription, unless the party files an appropriate affidavit of indigency.

[Ord. 130 s. 4 D (1976)]

3.10.410 Ex parte contacts prohibited. Unless required for the disposition of ex parte matters authorized by law, members of the council and the administrator shall not communicate, directly or indirectly, in connection with a hearing with any person or party or their representative, except upon notice and opportunity for all parties to participate.

[Ord. 130 s. 4 E (1976)]

3.10.420 Reinstatement; modification of disciplinary action.

(A) If the council finds that the disciplinary action was discriminatory, as defined in MCC 3.10.270, was an unlawful employment practice described by applicable state law, or was not for cause, the employee shall be reinstated to the prior position and shall not suffer any loss in pay.

(B) The council may modify a disciplinary action being appealed if it finds that the action was taken in good faith for cause, upon a finding of mitigating circumstances, by directing suspension without pay for a specified period with subsequent restoration of status or demotion in classification, grade or pay.

(C) Any other personnel action appealed to the council from a decision of the appointing authority shall be affirmed unless a finding is made that it violates this chapter.

[Ord. 89 s. 23 D, E (1974)]

3.10.430 Appeals to the board.

(A) There shall be no appeal of the council's decision if unanimous. If the decision is not unanimous it may be appealed to the board by any party by filing written notice of appeal with the clerk of the board within 10 days from the date of the council's decision.

(B) Board review shall be in the nature of a writ of review based on the record of the proceedings before the council and such legal argument as the board requests. The board shall render its decision within 45 days from date of receipt of notice of appeal, based upon those decision guidelines established for the council by this chapter.

(C) Board decisions may be appealed by any party in accordance with ORS 34.010 to 34.100 and not otherwise.

[Ord. 89 s. 23 F, G (1974)]

WRIT OF REVIEW

34.010 Former writ of certiorari as writ of review. The writ heretofore known as the writ of certiorari is known in these statutes as the writ of review.

34.020 Who may obtain review; intermediate orders reviewable. Except for a proceeding resulting in a land use decision or limited land use decision as defined in ORS 197.015, for which review is provided in ORS 197.830 to 197.845, any party to any process or proceeding before or by any inferior court, officer, or tribunal may have the decision or determination thereof reviewed for errors, as provided in ORS 34.010 to 34.100, and not otherwise. Upon a review, the court may review any intermediate order involving the merits and necessarily affecting the decision or determination sought to be reviewed. [Amended by 1979 c.772 §8; 1981 c.748 §38; 1983 c.827 §42; 1991 c.817 §18]

34.030 Jurisdiction to grant writ; petition for writ; time limit. The writ shall be allowed by the circuit court, or, in counties where the county court has judicial functions, by the county court wherein the decision or determination sought to be reviewed was made, upon the petition of the plaintiff, describing the decision or determination with convenient certainty, and setting forth the errors alleged to have been committed therein. The petition shall be signed by the plaintiff or the attorney of the plaintiff, and verified by the certificate of an attorney to the effect that the attorney has examined the process or proceeding, and the decision or determination therein, and that it is erroneous as alleged in the petition. A writ shall not be allowed unless the petition therefor is made within 60 days from the date of the decision or determination sought to be reviewed. [Amended by 1979 c.772 §9a]

34.040 When allowed. The writ shall be allowed in all cases where the inferior court including a district court, officer, or tribunal other than an agency as defined in ORS 183.310 (1) in the exercise of judicial or quasi-judicial functions appears to have:

- (1) Exceeded its jurisdiction;
- (2) Failed to follow the procedure applicable to the matter before it;
- (3) Made a finding or order not supported by substantial evidence in the whole record;
- (4) Improperly construed the applicable law; or
- (5) Rendered a decision that is unconstitutional,

to the injury of some substantial interest of the plaintiff, and not otherwise. The fact that

the right of appeal exists is no bar to the issuance of the writ. [Amended by 1965 c.292 §1; 1973 c.561 §1; 1979 c.772 §13]

34.050 Plaintiff's undertaking. Before allowing the writ, the court shall require the plaintiff to give an undertaking to its approval, with one or more sureties, in the sum of \$100, to the effect that the plaintiff will pay all costs and disbursements that may be adjudged to the defendant on the review. [Amended by 1977 c.515 §3; 1979 c.772 §9]

34.055 [1977 c.515 §2; repealed by 1979 c.772 §26]

34.060 To whom directed; return. The writ shall be directed to the court, officer, or tribunal whose decision or determination is sought to be reviewed, or to the clerk or other person having the custody of its records or proceedings, requiring return of the writ to the circuit court, with a certified copy of the record or proceedings in question annexed thereto, so that the same may be reviewed by the circuit court. The court allowing the writ shall fix the date on which it is to be returned, and such date shall be specified in the writ. [Amended by 1959 c.638 §9]

34.070 Stay of proceedings. In the discretion of the court issuing the writ, the writ may contain a requirement that the defendant desist from further proceedings in the matter to be reviewed, whereupon the proceedings shall be stayed accordingly. [Amended by 1977 c.515 §4; 1979 c.772 §10]

34.080 Issuance and service of writ. Upon the filing of the order allowing the writ, and the petition and undertaking of the plaintiff, the clerk shall issue the writ, as ordered. The writ shall be served by delivering the original, according to the direction thereof, and may be served by any person authorized to serve a summons. A certified copy of the writ shall be served by delivery to the opposite party in the suit or proceeding sought to be reviewed, at least 10 days before the return of the original writ.

34.090 Order for further return. If the return to the writ is incomplete, the court may order a further return to be made.

34.100 Power of court on review; appeal. Upon the review, the court shall have power to affirm, modify, reverse or annul the decision or determination reviewed, and if necessary, to award restitution to the plaintiff, or to direct the inferior court, officer, or tribunal to proceed in the matter reviewed according to its decision. From the judgment of the circuit court on review, an appeal may be taken in like manner and with like effect as from a judgment of a circuit court in an action. [Amended by 1973 c.197 §2; 1981 c.178 §2]



OREGON AFSCME

2545 SW SPRING GARDEN ST., SUITE 201, PORTLAND, OR 97219 (503) 244-4686

January 17, 1992

CERTIFIED MAIL P 129 752 571

Office of the Board Clerk
Board of County Commissioners
1021 S.W. Fourth, Room 134
Portland, OR 97204

This notice is to appeal the decision of the Merit System Council to the Board of County Commissioners.

The action of the Council is the matter filed by myself and AFSCME on violations of personal rules of unilaterally putting probationary employees in another classification. The case was heard January 16, 1992 and the Merit System upheld the Counties violation 2 to 1.

I have engaged the law firm of Willner, Zabinsky, Dorsay and Cordello. Please communicate with Rosemary Cordello directly at 111 S.W. Front Avenue, Suite 303, Portland, OR 97204-3512. Her phone number is 228-4000.

Very truly,

Linda D. Bedell
1167 N.W. Wallula Avenue #289
Gresham, OR 97030

JS/ss

cc: Jim Smith
Rosemary Cordello
Susan Ayers

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1992 JAN 31 PM 3:49

BCC ✓



OREGON AFSCME

2545 SW SPRING GARDEN ST., SUITE 201, PORTLAND, OR 97219 (503) 244-4686

January 17, 1992

CERTIFIED MAIL P 876 735 652

Office of the Board Clerk
Board of County Commissioners
1021 S.W. Fourth, Room 134
Portland, OR 97204

BOARD OF
COUNTY COMMISSIONERS
1992 JAN 21 AM 9:46
MULTNOMAH COUNTY
OREGON

This notice is to appeal the decision of the Merit System Council to the Board of County Commissioners.

The action of the Council is the matter AFSCME filed on violations of personal rules of unilaterally putting probationary employees in another classification. The case was heard January 16, 1992 and the Merit System upheld the Counties violation 2 to 1.

The Union has engaged the law firm of Willner, Zabinsky, Dorsay and Cordello. Please communicate with Rosemary Cordello directly at 111 S.W. Front Avenue, Suite 303, Portland, OR 97204-3512. Her phone number is 228-4000.

Very truly,

Jim Smith
Jim Smith
Council Representative
OREGON AFSCME COUNCIL NO. 75

JS/ss

cc: Joe Devlaeminck
Rosemary Cordello
Susan Ayers



MERIT SYSTEM CIVIL SERVICE COUNCIL

January 16, 1992

EXCERPT OF PROCEEDINGS

* * *

1
2 MR. WIGHT: The agenda says "Appeal by Local 88." We
3 have two letters in here by individuals: Scott Collins and

4 -- → *John Bedell*

5 MS. FLOYD: Those were received after the initial
6 appeal. *Sue Floyd*

7 MR. WIGHT: I see. Is there an original appeal
8 document that's different than those letters?

9 *Sue Floyd*
~~MS. FLOYD:~~ Yes. That was [indiscernible]

10 MR. WIGHT: Somehow I missed that. We are the
11 Multnomah County Civil Service Commission. I'm John Wight,
12 Carla Floyd and --

13 MS. PRICE: D'Norgia.

14 MR. WIGHT: Ms. D'Norgia Price.

15 *Sue Floyd*
~~MS. FLOYD:~~ This is an extra copy.

16 MR. WIGHT: Our meetings are fairly informal, and we're
17 still developing our policies and procedures. I've written
18 down some notes here. We allow no guns, no smoking and from
19 now on we're going to swear witnesses, although I forgot to
20 do it the last time. But we try to be fairly informal.
21 Normally we will allow the appellant to go first. Then
22 we'll have a response from the County, and then a chance for
23 rebuttal by the appellant.

24 We do have a request by the County Attorney for a
25 postponement.

26 COUNTY COUNSEL: I'd like to make a motion at the

1 outset that this is a closed hearing.

2 MR. WIGHT: You want to exclude witnesses, is that --

3 COUNTY COUNSEL: Yes.

4 Absolutely. It's under the rules of the State of
5 Oregon that that's the people's choice, and --

6 MR. WIGHT: All right. Let me try to find the issue
7 here. What they're asking is that witnesses be excluded
8 from the hearing until they're called. That's something
9 that's often done in court procedures to prevent witnesses
10 sort of listening to one another and then building on the
11 stories.

12 How many witnesses do we have here?

13 MR. SMITH Well, I think people are -- all people are
14 going to testify to is -- well, all of the people will
15 testify to their date of hire, their rate of pay, and how
16 they got their job. And you're going to have two people
17 testify as to -- one person testify how she was that she
18 would get on the list in Multnomah County. Other than that
19 -- of course, I don't know what the County's testimony is
20 going to be.

21 COUNTY COUNSEL: Well, I don't know how this fits with
22 the [indiscernible] meeting law. I know that in a number of
23 administrative hearings I've been we've been allowed to
24 exclude witnesses, although this is a situation where we're
25 not talking about, you know, was the light red, or was the
26 light green, or something like that. Is there some more

Stume?

1 complicated sort of testimony that we expect to hear?

2 ~~MR. SMITH~~ In addition to the [indiscernible] There's
3 been some unpleasantness. This is an issue that has to do
4 with an ongoing employment situation in the workplace where
5 there has been some unpleasantries already. We'd like to
6 keep those from even happening. When the meeting is over,
7 and the issue has been resolved, they continue to have a
8 workforce in the group place, and we think we can reasonably
9 reduce the amount of friction by handling this in a somewhat
10 more discreet manner. The Union would be ably represented
11 by its representative, and so would the County.

12 MR. WIGHT: Well, it's possible, though, that even if
13 someone weren't testifying, they could just want to sit in
14 on the meeting, and they might be people in that workforce
15 and we probably have no right to exclude them.

16 MR. SMITH Well, I know, but the union has already
17 indicated everybody that's sitting with the union is here to
18 testify. Who's here for the County? [indiscernible]

19 MR. WIGHT: Well, does the Council have a preference?

20 My feeling here would be not to exclude witnesses. I
21 think there may be times when it's appropriate, but I don't
22 think that this is one of those. I appreciate the County
23 position, but I think whatever is going to come out is going
24 to come out here. And I can see some benefits in some
25 situations where there really is a factual issue that needs
26 to be determined, but I don't perceive that that's going to

1 be the case here? So we're going to deny that motion.

2 Now, on your motion for postponement: you say you're
3 going to hold off on that?

4 *Steve* ~~MR. SMITH~~ Yeah.

5 MR. WIGHT: Are you concerned that you may want to
6 present some legal arguments to us at a later date, or --

7 *Steve* ~~MR. SMITH~~ Well, I'd like to first -- I don't know what
8 order you're going to take evidence or argument. I
9 understand you don't necessary run by the Rules of Civil
10 Procedure here.

11 MR. WIGHT: Right.

12 *Steve* ~~MR. SMITH~~ I will be making some jurisdictional
13 arguments at the outset. In the event that you proceed
14 beyond those, and rule against us, then I will seek this
15 postponement.

16 MR. WIGHT: Okay. Our normal procedure has been to get
17 some kind of summary from both sides at the beginning, and
18 then take testimony, but I think if there are some
19 jurisdictional issues, we ought to hear that first and get
20 that decided. So if you want to present that information
21 now, I think it would be appropriate.

22 *Steve* ~~MR. SMITH~~ The first thing that should be made clear to
23 the Commission is that this is really a dispute between
24 employees, and management really doesn't have a ~~case~~ *place?* We
25 have here some employees trying to displace other employees,
26 and we're not in a position to push anybody out of a job.

1 The union has brought this action, this dispute, to
2 your forum, but they really have no standing to do so. It's
3 arguable that a union may in some circumstances represent
4 probationary employees, but there is no authority for the
5 proposition that the union can represent temporary employees
6 who will never become union members in their positions.
7 They do not hold positions that are represented by the
8 union.

9 Also of significance which has been cloudy by
10 [indiscernible], under the Rules --

11 MR. WIGHT: We operate under a cloud.

12 *Stu* ~~MR. SMITH~~ Rule 23 -- "Who May Appeal" -- says that any
13 regular employee who is reduced in pay, demoted, suspended
14 or dismissed, and who does not have available a grievance
15 procedure for the particular issues shall have a right to
16 appeal the action directly to the Council.

17 MR. WIGHT: You're looking at the rule, now?

18 *Stu* ~~MR. SMITH~~ Yes. Rule 23.01. It goes on to say, "Any
19 classified employee who does not have available a grievance
20 procedure for a particular issue in dispute, and any
21 applicant for the classified service, shall have the right
22 to appeal a personnel action, including complaints of
23 discrimination, directly to the Council."

24 What this does not say is that a union can bring an
25 action on behalf of temporary employees. There are no
26 applicants here. The job has not been open for

1 applications. No one has filled an application for such a
2 job, and they have no applicants. You simply have no
3 jurisdiction to hear this case.

4 And finally, [indiscernible]. You'll see that the
5 union who has claimed to represent all these employees
6 really doesn't represent [indiscernible]. Given that, the
7 union lacks standing and without standing the court lacks
8 jurisdiction -- or the Commission. ✓

9 MR. WIGHT: This may be one of those interesting
10 questions whether there's a conflict between the Rules and
11 the statutes. ✓

12 ~~MR. SMITH~~ *Stue* Maybe if we lay it out, why we're here.

13 MR. WIGHT: Well, just a minute. The ordinance is --
14 the Code is Section 310.320, I think. Unlike the Rule, it
15 doesn't seem to spell out in any detail who is entitled --

16 *Stue* ~~MR. SMITH~~ → What's the Council is arguing is the
17 personnel rules, and the personnel rules do rule somewhat ✓
18 from the other rules that we use. *Lip*

19 MR. WIGHT: Okay. If we look at 310.305: "Classified
20 as employees who do not have available a grievance procedure
21 for a particular dispute, and applicants for classified
22 civil service, shall have the right to appeal directly to
23 the Council regarding the personnel actions, including
24 complaints of discrimination." My understanding is that
25 there have been two people placed in a vacant -- in vacant
26 positions -- classified vacant positions -- and the question

1 is whether or not they were properly placed in that
2 position.

3 Do you want to respond any more to that?

4 COUNTY COUNSEL: Yes. I would just like to say that,
5 number one, there is two County employees that have been
6 deprived of these provisions. One of them is David Signs
7 who has been trying to get on the list and been told a list
8 would come up, and the other one is Richard Gustafson, who
9 has also been told that a list would come up that he could
10 get on. Neither one, apparently, being Civil Deputies.
11 There are two temporary employees that have been told by
12 management that they can get on the list for permanent hire
13 and this would soon come to be. And that's why we're here.
14 This happened to employees that were hired in another
15 bargaining unit in September, I believe -- August or
16 September -- of 1991, and who were then laid off and put
17 into the Civil Deputy position on a temporary basis. And
18 whom I talked to Janet Jerren, and she told me it was
19 temporary and they'd be back. Then later were told it would
20 be permanent. When they were made permanent -- bear in
21 mind, these are two new employees. And I have nothing
22 against these employees, because I want everybody to make
23 the most they can make, but the system sort of rots, because
24 here's two employees who have been County employees for less
25 than six months, that are at a higher stage of pay from
26 employees that have been there for four and five years.

1 They had no standing. They were probationary --

2 MR. WIGHT: Well, let's not get into the merit part.
3 The only issue we're dealing with now, is -- I guess, you
4 know, is one whether there's any standing.

5 MR. SMITH We have no remedy under our agreement.

6 MR. WIGHT: Okay. But you're saying, one, the union
7 has no standing, only individuals can file an appeal to this
8 body, and secondly, under the -- at least under the Rule,
9 that the items that can be appealed are limited to someone
10 who's reduced in pay, demoted, suspended, dismissed, for a
11 particular issue in dispute. But they're talking about an
12 employee. Now, some of these people are not employees, is
13 that correct?

14 MR. SMITH Most of these people are employees.
15 [indiscernible]

16 MR. WIGHT: Let's not get into arguing. We want to get
17 some facts. Now, the two people that signed the letters are
18 not employees? Is that --

19 COUNTY COUNSEL: They're not -- they're temporaries.

20 MR. SMITH They've been a temporary longer than these
21 people have been employees.

22 COUNTY COUNSEL: You claim to represent them?

23 MR. SMITH They've asked me to represent them. I'm
24 representing them as a citizen that's been asked to
25 represent them.

26 MR. WIGHT: Before we get into too many arguments, this

1 is an issue that we have struggled with. Not this
2 particular issue, but the -- there is a certain lack of
3 clarity in the ordinance and the rules, and I think what we
4 try to do is some justice to the meaning of the rules. When
5 I look at the ordinance itself, it says, "Classified
6 employees who do not have available a grievance procedure
7 for a particular issue, and applicants for classified civil
8 service ..." And I think the word "applicant" can be fairly
9 broad. It seems to me that if the County were to say,
10 "We're not going to open up any position. We're not going
11 to allow anybody to apply. Therefore, only people that are
12 already in the system can get jobs," and completely ignore
13 the whole process of competitive hiring, that would undue
14 the whole civil service process. And I think what's
15 intended here is that there is a process set up for
16 competitive applications and for people to be put on the
17 list and selected off that list, and that we need to have
18 these appeals available to people who would participate in
19 that process. And I would interpret the term "applicant" to
20 include people who are interested in taking those jobs, as
21 well as current employees.

22 It would be my recommendation to the Council that we
23 turn down the motion to dismiss this because we lack
24 jurisdiction. There is, I guess, a second question of
25 standing here, and we do have letters from two individuals.
26 I guess I'm not too hung up on that particular issue myself.

1 If we can get a union representative to come in and present
2 a group of people's position, I'm just as comfortable with
3 that as having a whole group of people file individual
4 appeals.

5 COUNTY COUNSEL: The union is legally entitled because
6 it's been written into [indiscernible] to represent the
7 members. The two people that the union claims to represent
8 are not union members. They have not shown us that they
9 have the authority under either state or federal law to
10 decide for the sake of the convenience of their own that
11 they can now represent these people. MR. WIGHT: Are
12 those people here?

13 MR. SMITH: One of those persons is here.

14 MR. WIGHT: Who is that?

15 MR. SMITH: Linda [indiscernible] *Bestell*

16 MR. WIGHT: Scott Collins is not here? Where is Linda?

17 LINDA: I'm right here.

18 MR. SMITH: She would be very happy to represent her self
19 after we present the first [indiscernible]. But he has
20 standing, and she doesn't have standing. We didn't -- this
21 is the --

22 MR. WIGHT: Wait a minute. We understand the issue,
23 and my recommendation is that we deny the County's motion
24 and go on with the hearing.

25 Are there any other jurisdictional issues that we have
26 to discuss?

1 If there is a less than unanimous decision from this
2 Board, people are free to appeal these decisions to the
3 County Commissioners. We have tried to make an effort to
4 give people their day in court here. We will try to
5 interpret the rules to do that.

6 Give me a quick rundown of the facts.

7 COUNTY COUNSEL: We have an additional motion to
8 dismiss based on the timeliness of the appeal.

9 MS. FLOYD: What is the date of the occurrence?

10 COUNTY COUNSEL: The date of the occurrence was in --
11 the Multnomah County Sheriff's Office personnel manager
12 confirmed that the two employees who have become the Civil
13 Deputies, and would remain the Civil Deputies.

14 MR. WIGHT: And when was that?

15 COUNTY COUNSEL: That was November 27th, 1991.

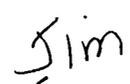
16 MS. FLOYD: Now was that when people received
17 notification, or when notification was sent? Was it mailed
18 or -- Oh, it was verbal? Okay.

19 MR. SMITH: And if you'll look at our letter it was
20 well within the ten working days. It was December 13th.
21 Even though his statement is not factual.

22 MS. FLOYD: I assume you're referring to the letters
23 from Mr. Cohen ^{Collin} and Ms. Fidell ^{Bidree} were -- well, one's --

24 COUNTY COUNSEL: Well, if it's November 27, it would be
25 more than ten days even on December 13th.

26 MR. SMITH: Ten working days.

1 MS. FLOYD: Is it working days?
2 MR. WIGHT: No. It's just ten days.
3 ✓ MR. SMITH: Well, everything in the County's ten
4 working days? 
5 MS. FLOYD: Yeah, I understand that. But it does say
6 ten days.
7 MR. WIGHT: Anyway, we have got that motion here. And
8 my sense is the Council would at least want to postpone any
9 decision on that, if they're going to make one at all.
10 Okay. Will the appellant give us a brief situation and
11 what the appeal is about? We'd like to have the County
12 respond to that, and then we will get into the testimony and
13 details. But we'd like a sort of a brief summary.
14 MR. SMITH: This is being recorded, isn't it?
15 MR. WIGHT: Yes.
16 MR. SMITH: First of all, I'd like to state that Local
17 88 would like a copy of the proceedings.
18 MR. WIGHT: Also, and I said it at the last hearing, if
19 -- as each person speaks, at the least the first time, if
20 you could identify yourself and what your job is, so that we
21 know for the record. 
22 MR. SMITH: I'm ~~Tim~~ Smith, counsel and representative
23 of Council 75. I'm not a lawyer. I don't profess to a
24 lawyer, and I don't want to be accused of being one.
25 This case came to be as a result of two probationary
26 employees hired, I believe, 8-19-91 by the County into a

1 Corrections Officer position. They were laid off as a
2 result of a reduction of force. Right after that, around
3 the first of the month following the layoff, I called Janet
4 *JARRON* Jerring because there was a rumble in our group as to these
5 folks coming back and retaining their rate of pay while our
6 folks were being paid less, even though they had been County
7 employees longer.

8 MS. PRICE: When were they laid off?

9 MR. SMITH: October or November, I'm not sure.

10 MS. PRICE: Of '91?

11 MR. SMITH: Of '91.

12 MS. FLOYD: May I ask a question? Were the people in
13 the same classification as the people making a lower salary?
14 Were they all in the same classification?

15 MR. SMITH: No. They were in a higher classification,
16 and they were laid off. And the County took them -- or, the
17 Sheriff's Office took them into a position of Civil Deputy,
18 which is a lower rated job.

19 MR. WIGHT: And what was their classification?

20 MR. SMITH: Their classification was Corrections
21 Officers. When they came into the unit, I had rumbles from
22 our folks that all of a sudden new County employees that had
23 served, let's say, a month or two, were being paid higher
24 than people that had been here for 7 years. That's where
25 the rumble first came to me. As a result of that, I called
26 Janet Jerring --

JARRON

1 MR. WIGHT: I don't want all the details of all the
2 calls, I just want a kind of succinct statement of what --

3 MR. SMITH: I sort of have to tell you the story as it
4 goes. And it won't take that long. When I called Janet, I
5 said, "Janet, there's a problem here," and she said, "Oh,
6 there's no problem. These folks' jobs have been eliminated.
7 However, there's going to be Corrections Officers positions
8 available, and when that happens they will have to go back
9 to that position." I said, "Okay. Then I will put the
10 rumble to sleep." Which I did.

11 Then the present Local became involved with it to the
12 extent -- *president of the*

13 MR. WIGHT: I'm sorry -- who got involved in it?

14 MR. SMITH: *De Flemieck, Joe DeBlumick*
15 Declamy. Bill Declamy. In which Janet
16 said, "Well, we can't send these people back because the
17 Corrections Officers will kill them." So Joe called me and
18 I said, "I don't know, but I think that's b.s. I can't
19 imagine Janet saying that."

20 But in any case, then sometime two or three days prior
21 to me appealing to this Merit System Council, we were
22 informed that they were permanently assigned.

23 MS. FLOYD: Now, Corrections Officers, are they part of
24 the bargaining unit?

25 MR. SMITH: No.

26 MS. FLOYD: And neither are --

MR. SMITH: In fact I have the job description.

1 They're not even related in any way, shape, or form.

2 MS. FLOYD: Okay. Are Civil Deputies part of the
3 bargaining unit?

4 MR. SMITH: Yes.

5 MS. FLOYD: Civil parties are represented by us?

6 MR. SMITH: Yes.

7 MS. FLOYD: And that was the job that these people were
8 moved into after their layoff in October or November of
9 1991?

10 MR. SMITH: Yes. And I -- I would like permission to
11 have these two job descriptions -- you'll see that they're
12 not even remotely related. What we're saying to you is the
13 County has effectively bypassed the hiring process. They
14 have not put a position out where people can be on a list so
15 you consider hiring. They had hired these people at higher
16 rates of pay than existing employees.

17 MR. WIGHT: What do you mean? Are they getting paid at
18 their Corrections Officer rate?

19 MR. SMITH: They're getting paid at the highest rate of
20 pay of Civil Deputy.

21 MS. FLOYD: So they're higher than a progression scale?

22 MR. SMITH: Yes.

23 MS. FLOYD: Are those progression scales merit or
24 seniority?

25 MR. SMITH: They're by seniority.

26 MS. FLOYD: And these people were hired on 8-19-90 as

1 Correction Officers?

2 MR. SMITH: '91.

3 MS. FLOYD: Oh, '91. I'm sorry. And where are they in
4 the progression scale for Civil Deputy?

5 MR. SMITH: The top. Close to the top.

6 MS. FLOYD: And what is the progression? Two years?
7 Three years? Four years?

8 MR. SMITH: Six.

9 MS. FLOYD: Six years.

10 *AWRP* MS. PRICE: Five.

11 MR. SMITH: Five years?

12 MR. WIGHT: So normally they would still be at the
13 first step.

14 MR. SMITH: Well, normally when you hire somebody in
15 Multnomah County -- at least they're supposed to -- is you
16 put out a request for a position and folks have an
17 opportunity to apply, show their qualifications, get on the
18 list and get rated, and get hired. And that's the reason
19 that we are here, is --

20 MR. WIGHT: I understand that. But I'm just saying
21 that if that had happened they would still be -- and even if
22 they had been hired as a Civil Deputy in August of '91,
23 they'd still be at the first step, is that right?

24 MR. SMITH: That's correct.

25 MR. WIGHT: Instead of Step 5.

26 MR. SMITH: That's correct. We're not asking

1 [indiscernible] *to reduce Anyra's pay.*

2 MR. WIGHT: Well, I'm just trying to get some
3 information. I understand. Okay.

4 MR. SMITH: By the action taken by the Sheriff, after
5 the Sheriff's representative telling me that would not
6 happen, that they would go back, we had two people in our
7 bargaining unit that are current County employees, Richard
8 Gustafson, and David Sines, who were told they'd get an
9 opportunity to be on the list, never had the opportunity.
10 In addition, we have two temporary people that were told, as
11 temporary employees, that they would get on the list. There
12 would be lists coming up and they would be considered to be
13 on the list.

14 MS. FLOYD: The temporary employees are not represented
15 by us?

16 MR. SMITH: That's correct.

17 MS. FLOYD: But the two people, Gustafson and the other
18 person, are represented by us.

19 MR. SMITH: That's correct.

20 MR. WIGHT: And there is no Civil Deputies list right
21 now?

22 MR. SMITH: That's correct.

23 MR. WIGHT: Do we know -- are there Correction Officer
24 positions that are vacant?

25 MR. SMITH: Yes, there is. And there's been several
26 filled while these folks were here as Civil Deputies.

1 MS. FLOYD: How are they filled?
2 MR. SMITH: They're filled by the normal process of --
3 MS. FLOYD: From a list?
4 MR. SMITH: From a list, yes.
5 MS. FLOYD: Okay.
6 MR. WIGHT: And the objection is that these two
7 individuals were placed in this position without going
8 through the normal process of being placed on a list and
9 having the openings, and selecting off that list, and that
10 normal process.
11 MR. SMITH: This denied folks the opportunity --
12 MR. WIGHT: -- to compete for those jobs.
13 MR. SMITH: That's correct.
14 MR. WIGHT: That's the issue that you're asking us to
15 decide. And the remedy you're asking us --
16 MR. SMITH: -- is that a list be established and the
17 most qualified folks be hired.
18 MR. WIGHT: And in effect, if those people are not on
19 the list and aren't selected, then they would be removed
20 from their jobs when someone else is selected -- as Civil
21 Deputy.
22 MR. SMITH: They can always order them back as
23 Corrections Officers.
24 MR. WIGHT: Okay. I'm not -- I'm just asking you what
25 you want us to do. Is that --
26 MR. SMITH: I want the folks to have the right to

1 compete.

2 MS. FLOYD: So you're asking that these two people also
3 compete for the exam?

4 MR. SMITH: If they apply and they otherwise qualify,
5 yeah.

6 MR. WIGHT: I think we've got that issue straight. Can
7 you succinctly give us the County's position on this issue?

8 *Jaron* MS. JERREN: Janet Jerren, I'm *personnel* fiscal manager of the
9 Sheriff's Office. These people were hired --

10 MR. WIGHT: Which people?

11 MS. JERREN: These two people right here. Michael
12 *Teed + Scott Collins*
~~Keene is a~~ Corrections Officer off of the Corrections
13 Officer list in ~~the~~ permanent regular positions. We had the
14 misfortune shortly after that happened to do layoffs. We
15 did the same thing that we had typically done in those rare
16 circumstances where we had to deal with [*LAYOFFS*indiscernible], and
17 that was to assume that they would be placed in jobs for
18 which they were absolutely qualified. We would try to find
19 them jobs. It is a typical option in our system to allow
20 people to voluntarily demote to another job. That's what
21 happened in these two cases, and the formal action that took
22 *these* ~~this~~ people to Civil Deputy was on October 1st, we followed
23 the rules for voluntary demotions not related to cause, not
24 related to a disciplinary action. They were also placed on
25 the Corrections Officer layoff list.

26 Sequentially, the next thing that happened is that they

1 received a notification from Susan Ayers in the Employment
2 Services Division, ^{that} and on October 1st they had ^{been} to hire ^d the
3 ^{as} Civil Deputies. Their status was probationary, and they
4 would serve a six-month probationary period.

5 On November 25th, I notified them that we had had
6 positions [indiscernible] on the layoff list. They had the
7 option to return to Corrections Officer, and we gave them
8 five days to respond. They notified me that it was their
9 preference to remain as Civil Deputies. And they understood
10 they had to give up their rights to return ^{from} under the layoff
11 list to a Corrections Officer position, which incidentally
12 is another represented position, but represented by a
13 different bargaining unit.

14 Two days later, I confirmed with them, after talking
15 with some other people in the system once again, that they
16 would remain as Civil Deputies. And then the next step was
17 [indiscernible]. We're going to be stating that we acted in
18 good faith by trying to take care of employees and making
19 sure no one got laid off, that the people that were
20 impacted, which are these two people to my left, in good
21 faith believed that they had the option to remain as Civil
22 Deputies. They are in fact well qualified to be Civil
23 Deputies, and they elected that option to do so. It's not -
24 - it's a very uncommon situation. In the past, when people
25 had an opportunity to return to higher paying jobs, they
26 have elected to do that. So at the point at which they

1 said, "We really think we would prefer to stay here," that's
2 an unusual situation. Generally people would return. But
3 given that they were notified that they were permanently
4 [indisc^{appointed}ernible] we're arguing that they should be allowed to ✓
5 stay.

6 MR. WIGHT: Okay. Normally if you had openings both
7 for Correction Officer and Civil Deputy, you would have
8 potentially two different lists? Is that correct?

9 MS. JERREN: Yes.

10 MR. WIGHT: And someone could not hire off of -- a
11 Civil Deputy off of the Corrections Officer list, is that --

12 MS. FLOYD: Did they move because of the possibility of
13 the two jobs?

14 MS. JERREN: They moved because it was a position at a
15 lower level for which they met the minimums. They were
16 satisfactory to the hiring supervisor, and it was what we
17 had vacant at the time. And now she wants for them to have
18 no jobs.

19 MR. WIGHT: And it's your position that this is covered
20 by Rule 1804, then?

21 MS. JERREN: As far as how that happened with a
22 voluntary demotion, yes.

23 Now, the 1804 is on salary setting, on voluntary
24 demotion that's not for cause. And the other regulation is
25 -- well, Rule 20 on seniority --

26 MR. SMITH: There is another case that we should look

1 at --

2 MR. WIGHT: Wait a minute. Can you wait a minute?

3 [Pause]

4 MR. WIGHT: Code Section 310.250 covers layoffs, and it
5 doesn't talk about demotion.

6 I think we're ready for the appellants now to give us
7 the details.

8 COUNTY COUNSEL: I would refer you also to Rule 101. I
9 think that's something that we should take a look at, and
10 also --

11 MR. WIGHT: I'm sorry. Say that again. Rule what?

12 *Smith* COUNTY COUNSEL: [indiscernible]

13 MR. WIGHT: 1.03?

14 *Smith* COUNTY COUNSEL: And the other thing is 20.03, which
15 shows very clearly that these people do not have status.
16 They were probationary employees, so they didn't have a
17 status. They didn't have a right to --

18 MR. WIGHT: Are you saying the employment contract also
19 covers some of these issues?

20 MR. SMITH: It doesn't cover the issue from bargaining
21 unit to bargaining unit at all.

22 MR. WIGHT: Okay. And what happens within the
23 bargaining unit?

24 MR. SMITH: Within the bargaining unit, people have a
25 right -- first of all, if they're laid off, the Personnel
26 Department will match a classification if they're eligible -

1 - or qualified to perform, they will notify --

2 MR. WIGHT: What section of the --

3 MR. SMITH: That's in the layoff -- the seniority
4 section of the contract. In this case here there was
5 absolutely no match. And that's why I brought up to you the
6 situation of a Corrections Officer by the name of Ed Hall.
7 Now, Ed Hall was a person that was also cut back for a
8 different reason, and he was allowed to demote in the Local
9 88 bargaining unit, and we signed a special letter to that
10 effect. Otherwise he couldn't do it. And that's a matter
11 of public record. I don't have that with me, because I
12 didn't know that issue was going to come up.

13 MR. WIGHT: Okay. Let me just look at the -- Is it
14 relevant to be looking at these bargaining units at all? Do
15 you think that these provisions are applicable.

16 MR. SMITH: I think all we're saying to you is there
17 was an unfair situation which happened here which denied
18 people rights to employment.

19 MR. WIGHT: But before we get into that, see, my
20 problem is we have to start with the agreements, and they
21 may or may not be fair, and that may be something that was
22 bargained for. So we've really got to know what the rules
23 are, and then we can talk about fairness. I just want to
24 make sure we all agree as to what the rules are that we're
25 dealing with.

26 MR. SMITH: We have no copy of anything, it's never

1 been provided to us, that these people voluntarily demoted.

2
3 MR. WIGHT: Well, we'll get into that in a minute. I
4 just want to know -- I just want to make sure that as far as
5 both sides are concerned we're not looking at the bargaining
6 agreements. It's only under the Rules and Ordinances. Are
7 those the ground rules that we're dealing with?

8 MS. JERREN: ^{Am} I would -- a good deal of what the unit
9 has to say relates to testing and selection, and those
10 aren't covered in the contract. So that's a major reason
11 the personnel rules were developed. And the other areas, I
12 don't think there's any conflict between the two. So these
13 are going to speak to the issues, so I wouldn't want to just
14 toss them out altogether, because I think --

15 MR. WIGHT: Well, let's talk about the other half of
16 the issue. Not the procedural aspects. Are they the same
17 as the personnel rules?

18 MS. FLOYD: There was a reference made to Rule 20.03.
19 Within a classification temporary, probationary and other
20 employees who do not have regular status will be laid off
21 before employees with regular status. Employees without
22 regular status who are laid off will not be placed on the
23 layoff list and do not have [indiscernible] rights.

24 MR. SMITH: Right.

25 MS. FLOYD: Later on it says a regular employee who is
26 subject to layoff, they transfer to a lower classification,

1 et cetera, et cetera.

2 MR. SMITH: What we're saying to you, under the
3 personnel rules, these were not employees, because it very
4 clearly says, "Temporary, probationary and other employees
5 who do not have regular status."

6 MS. FLOYD: I guess I'd ask the representative for the
7 County, if they were hired on 8-19-91, were they still
8 probationary employees in October of '91?

9 MS. JERREN: Yes, they were. Again, as a matter of
10 policy, traditionally the County has always tried not to lay
11 people off when we make cuts. We try to find them jobs.

12 MR. SMITH: But not probationary employees. They are
13 not regular employees.

14 MR. WIGHT: But isn't it also your position they aren't
15 in the classification -- are these different classifications
16 in different departments, also?

17 MR. SMITH: They're in different classifications,
18 absolutely. Both things apply. A Corrections Officer is
19 not within the classification. These people were not
20 employees as described here, therefore employees without
21 regular status who are laid off will not be placed on the
22 list and do not have displacement rights.

23 MR. WIGHT: Okay. I'm still trying to find out whether
24 we need to look at these other documents, the collective
25 bargaining agreements.

26 MS. JERREN: Again, the language in the contract

1 doesn't relate to --

2 MR. WIGHT: What language?

3 MS. JERREN: Okay. The Corrections Officer contracts -

4 -

5 MR. WIGHT: Well, I don't have that one. I've got the
6 other one.

7 MS. JERREN: Well, I think they're the same.

8 MR. WIGHT: Okay.

9 MS. JERREN: They both require fifteen days notice of
10 layoff.

11 MR. WIGHT: Okay. I saw that language.

12 MS. JERREN: In the Corrections Officer contract, it
13 says an employee that is subject to layoff [indiscernible].

14

15 MR. WIGHT: Does it talk about demotion in lieu of
16 layoff?

17 MS. JERREN: Yes.

18 MS. FLOYD: Does it talk about whether or not you are a
19 regular or a probationary employee?

20 MS. JERREN: This says "employees" in this text. Now,
21 whether or not under the definition sections, that would be
22 any different -- I would have to -- I don't see that they
23 describe what employee means, at least not in that section.

24 MS. FLOYD: Is there any definition in the Correction
25 Officer contract of an employee?

26 MS. JERREN: Once again, I don't see that they've given

1 any information on what they mean when they drop to the word
2 "employee." They've given definitions for probationary
3 employee, supervisory employee, and permanent employee. But
4 when they actually get to this section, the only word they
5 use is "employee." Their contract says probationary
6 employee means a permanent employee serving, in that case, a
7 12-month period to determine their suitability for
8 continuing employment. And it says they shall have the
9 rights under the agreement.

10 MR. SMITH: Well, I think 20.03 is very, very, very
11 clear. And I think that's where you have the jurisdiction
12 is over the Rules. I think the contract supercedes the
13 rules, and there's something in the contract that gives
14 people superior rights, but in this case there is no remedy
15 in the contract. That's why this was brought before you.
16 And we think that it's -- the Sheriff's Office has
17 superceded the County rules.

18 MS. FLOYD: I know we asked this, but I didn't write
19 down the answer. In the Correction Officers contract, does
20 it speak to demotion in lieu of layoff?

21 MS. JERREN: ^{JARM} Yes.

22 MS. FLOYD: Does it speak to demotion in lieu of layoff
23 only within their bargaining unit, or does it --

24 MS. JERREN: They don't specify. They don't say that
25 it's only within the bargaining unit, so that becomes
26 interpretive.

1 MS. FLOYD: The temporary employees are not represented
2 --
3 MR. SMITH: What I would like to do is I would like
4 with Stan and have him give his name, and --
5 MR. WIGHT: Will everybody who's going to testify raise
6 your right hand?
7 Do you swear the testimony you will give here at this
8 hearing is the truth and nothing but the truth, so help you
9 God?
10 ALL WITNESSES: Yes.
11 MR. SMITH: Stan, can you state your name for the
12 record?
13 MR. HOUSTON: Stan Houston.
14 MR. SMITH: Stan, what's your job title?
15 MR. HOUSTON: My job title is Civil Deputy.
16 MR. SMITH: How long have you been a Civil Deputy?
17 MR. HOUSTON: Seven years and five months.
18 MR. SMITH: What's your rate of pay?
19 MR. HOUSTON: 13.10 an hour.
20 MR. SMITH: How did you get your job?
21 MR. HOUSTON: I was promoted, and I was a County
22 employee previous to my hire as Civil Deputy, and was hired
23 in July of '85.
24 MR. SMITH: Greg Midler?
25 THE WITNESS: My name is Greg Midler.
26 MR. SMITH: Can you tell the Board what your

1 classification is?

2 THE WITNESS: I'm classified as a Civil Deputy. I've
3 been here thirteen years and two months. I was hired by
4 taking an exam and going through the process of hiring, with
5 a psychological exam and interviews, physicals, everything
6 else involved with that.

7 MR. SMITH: What's your rate of pay?

8 THE WITNESS: 13.10 an hour.

9 MR. SMITH: Marshall Ross.

10 THE WITNESS: I'm Marshall Ross, Civil Deputy. I've
11 been here for three years, seven months.

12 MR. SMITH: How did you get hired?

13 THE WITNESS: I applied, took a test, an interview with
14 the Sheriff's Office.

15 MR. SMITH: And after three years, what's your rate of
16 pay?

17 THE WITNESS: 12.36 an hour.

18 MR. SMITH: Okay. John Hefneider.

19 THE WITNESS: My name's John Hefneider. I've been a
20 Civil Deputy for three years and approximately three months.
21 I was hired through filling out applications, going through
22 an oral interview procedure, psychological testing, medical
23 test. My rate of pay right now is 12.36 an hour.

24 MR. SMITH: Are you having some problems with people
25 coming in starting at the same rate of pay or more than
26 you're making?

1 THE WITNESS: My understanding is two individuals have
2 came in and started at a rate of pay of about 12.74 an hour.

3 MR. SMITH: Loretta?

4 THE WITNESS: Loretta [indiscernible]. I'm a Civil
5 Deputy. I've worked with the County since March of 1980 and
6 started as a Public Safety Aide. I've been a Civil Deputy
7 for three years and seven months. I was a Mental Health
8 Attendant prior to the Civil Deputy.

9 MR. SMITH: And what's your rate of pay?

10 THE WITNESS: 12.36 an hour.

11 MR. SMITH: And I would like to ask Janet one question.
12 Janet, did you and I discuss this layoff of these two
13 Corrections Officers by telephone?

14 *Janet* MS. JERREN: I think we did.

15 MR. SMITH: And did you tell me it was temporary?

16 MS. JERREN: I told you that we had placed them there
17 because we always try to save the employees, and that
18 [indiscernible]

19 MR. SMITH: Did you tell me specifically that it was
20 temporary?

21 MS. JERREN: I told you what I just said.

22 MR. SMITH: Are you saying you didn't tell me it was
23 temporary?

24 MS. JERREN: I told you they were placed there like we
25 always place people in similar circumstances, and that as
26 soon as there was a Corrections Officer opening, they would

1 be offered --

2 MR. SMITH: Do you recall if you told me they were
3 temporary?

4 MS. JERREN: No. This is what I remember telling you,
5 that we would -- as soon as there was a vacancy for a
6 Corrections Officer, they would be offered the opportunity
7 to go back.

8 MR. SMITH: And when we had that conversation, was it
9 your anticipation that they would go back?

10 MS. JERREN: Yes.

11 MR. SMITH: Okay. Did you later have a conversation
12 with Joe [*De Flemick* [indiscernible]] over the same issue?

13 MS. JERREN: I probably had talked with Joe -- I talked
14 with Joe about this several times.

15 MR. SMITH: Did you ask Joe not to process them because
16 there would be big problems if they went back?

17 MS. JERREN: I talked to Joe about whether or not we
18 could reach an agreement which is fair --

19 MR. SMITH: So you did propose to [indiscernible]. Is
20 there any relation between a Civil Deputy and a Corrections
21 Officer?

22 MS. JERREN: I would say that there was some
23 relationship, yes.

24 MR. SMITH: Is this the Civil Deputy job description?

25 MS. JERREN: Yeah.

26 MR. SMITH: Is this the Corrections Officer job

1 description?

2 MS. JERREN: Uh-huh.

3 MR. SMITH: I would like to put these into evidence. I
4 only have the one copy. I can get more.

5 MR. WIGHT: Do you have any further testimony?

6 MR. SMITH: No.

7 MR. WIGHT: Is there any dispute about whether or not
8 these are the same classification or these are different
9 classifications?

10 MS. JERREN: They're definitely different
11 classifications. There's no dispute.

12 MS. FLOYD: You mentioned that you made some options to
13 try and resolve issues for everyone. What were those?

14 MS. JERREN: Before I answer your question, I will give
15 you something in the way of background. This whole thing is
16 a very complicated situation, so let me add some more of the
17 complications.

18 At the time that -- we found out quite unexpectedly
19 that we had to cut some positions, and that was in early
20 September. Again, there had been a number of Corrections
21 Officer positions funded in a levy, and I was hiring like
22 crazy. And my boss walked in one day and said, "We're going
23 to have to make some cuts." When that happened --

24 MR. WIGHT: Why did that happen?

25 MS. JERREN: Measure 5. And a couple months into the
26 fiscal year we had to save several million dollars. So the

1 first thing that happened is we looked agency wide for
2 vacant positions. Among other things, there were two vacant
3 Civil Deputy positions. And they were offered. And we were
4 able in our total package -- actually, there were a total of
5 four vacancies. Two got offered out in the cut. That was
6 driven by the desire to not impact ~~those~~ people. In other ✓
7 words, before we lay off people, even if maybe the job
8 they're doing isn't as critical as a Civil Deputy job, we'll
9 freeze vacant positions. So two of them were lost through
10 that process. The other two were the two positions that
11 these two people went into on layoff.

12 Now, coming back to answer your question, I had
13 suggested that, first of all, one of the issues is that
14 there are people that would like to be considered for Civil
15 Deputy who didn't have an opportunity to be considered. We
16 haven't done a Civil Deputy test for some time. So I
17 suggested that we -- that I do an [^{exam}indiscernible] so that ✓
18 those people who are interested in getting on a list and
19 being considered could be, even though we didn't have an
20 actual vacancy at this moment in time. I suggested that
21 perhaps we could -- ordinarily, a list of that kind would be
22 issued for six months. I suggested that perhaps we could
23 have an agreement that would give people an opportunity to
24 be placed on the list. And I suggested that I would talk
25 with the Chief Deputy of Law Enforcement. We really
26 couldn't afford to lose those two Deputy positions. That

1 situation results from the fact that they cut positions
2 because they didn't have people in them, but it didn't mean
3 that the work wasn't there to be done. And so the third --

4 MR. WIGHT: You're talking about Civil Deputy
5 positions?

6 MS. JERREN: Yes. So the third thing that I suggested
7 is that I would talk to the Chief Deputy and see if I could
8 confirm that he would be asking for those two cut positions
9 back in the budget. And again, [indiscernible]

10 MR. WIGHT: Does the County have any more response to
11 this appeal?

12 MS. JERREN: Yeah. I'm going to call some people and
13 ask some questions.

14 MR. WIGHT: Okay. Let's do that.

15 MS. JERREN: This is the chronology I was talking
16 about, and to the degree that there's supporting
17 documentation, it's all attached. And we'll be referring to
18 some things in here. I think I've gone over the chronology
19 sufficiently that you know what has occurred, so I'm not
20 going to come back to that.

21 I do want to give you this handout, too. This shows
22 you the entire Civil Deputy unit and where people are placed
23 as far as their step placement. And I have one other
24 handout and I think I'd like to give it to you now. We
25 might be talking about it later, but then I won't have to
26 disrupt us to hand out more papers.

1 This piece of paper takes from that Civil Deputy job
2 description that Jim submitted, the minimum qualifications
3 and repeats them word for word, and then it talks about the
4 qualifications of the two people that were placed in those
5 positions, so we'll talk about that later.

6 I would like to have Curtis Smith address some
7 questions and then there are two people that went into the
8 positions, and then Sergeant [indiscernible] Skophammer ✓

9 MR. WIGHT: Okay.

10 THE WITNESS: I'm Curtis Smith, Employee Services.

11 n MS. JERREN: What can you tell us in regard to the past
12 and present practice of the County regarding the placing of
13 employees facing layoff?

14 THE WITNESS: We try to avoid layoffs.

15 MS. JERREN: Was the action taken regarding Michael
16 Keene^{teed} and William Foster when they accepted voluntary
17 demotions to Civil Deputy?

18 THE WITNESS: Yeah, I believe it was done correctly.

19 n MS. JERREN: Would you explain the personnel rule
20 governing salary when there is a voluntary demotion not for
21 cause, and state whether that was the guiding regulation for
22 setting their pay?

23 THE WITNESS: The personnel rule says when you fit an
24 employee into the new range where the employee is going to
25 be assigned to, the new range at the lower classification.
26 And you place that person at the highest step that you can

1 without giving the person a raise.

2 MS. JERREN: In the packet that I gave you that has the
3 chronology on the front, several pages in -- the fifth and
4 sixth attachments, which are identical. They're letters
5 from Curtis Smith's division, signed by Susan Ayers to
6 Michael Keene; ^{teed} the other one is addressed to William Foster.

7 Curtis, are you familiar with this form letter that
8 they received from your staff?

9 THE WITNESS: Yes.

10 MS. JERREN: And are you confident that those were in
11 fact sent to these two people by your staff?

12 THE WITNESS: Yes.

13 MS. JERREN: When is a letter like this sent?

14 THE WITNESS: Soon after the person enters probationary
15 status.

16 MS. JERREN: And what does it mean?

17 THE WITNESS: It indicates that they're on a trial
18 period and the possibility that if they complete the
19 probationary service satisfactorily, they'll be permanent.

20 MS. JERREN: Is it correct that --

21 MR. WIGHT: We're looking at the September 15 letters,
22 or --

23 Okay.

24 MS. JERREN: Is it correct to say that returning these
25 employees to Corrections Officer at this point in time could
26 be called a forced promotion?

1 THE WITNESS: It certainly could be termed that if they
2 don't want the promotion.

3 MS. JERREN: What would you believe the side effect of
4 that to be?

5 THE WITNESS: I'm not aware that the personnel rule
6 requires management to impose a promotion or a move on an
7 employee. I'm not sure that it's ever good practice to
8 require an employee to accept a promotion they don't want.
9 Involuntary promotions always carry the possibility of the
10 person being [indiscernible].

11 MR. SMITH: Curtis, how long have you been an employee
12 of Multnomah County?

13 THE WITNESS: Since 1990.

14 MR. SMITH: What month in 1990?

15 THE WITNESS: ~~Witness.~~ ?

16 MR. SMITH: All right. So just a little over a year.
17 Is that correct?

18 THE WITNESS: Uh-huh.

19 MR. SMITH: And were you here when these rules were
20 promulgated?

21 THE WITNESS: No.

22 MR. SMITH: Can you tell me -- you are the personnel
23 director?

24 THE WITNESS: Yes.

25 MR. SMITH: Can you tell the Commission what 20.03,
26 second paragraph, says and means?

1 THE WITNESS: It's two sentences long, and it's
2 basically two points. The first sentence makes the first
3 point, and that is that temporary, probationary and other
4 employees who aren't regular would be laid off before
5 employees with regular status. I don't think that's an
6 issue here. The second sentence indicates that employees
7 without regular status who are laid off will not be placed
8 on layoff lists and do not have displacement rights.

9 MR. SMITH: What does that mean?

10 THE WITNESS: If a person doesn't have regular status
11 and is facing layoff, that person doesn't go on a layoff
12 list and does not have displacement rights.

13 MR. SMITH: In other words, he has no employment rights
14 with Multnomah County. Is that correct?

15 THE WITNESS: I don't agree.

16 MR. SMITH: Tell me what it says.

17 THE WITNESS: I don't think that that person can
18 displace another regular employee.

19 MS. JERREN: Can I ask a question? Or are you done?

20 MR. SMITH: I just have one other question. Tell me
21 the name of one other probationary employee that's been laid
22 off by Multnomah County, that's had any rights whatsoever
23 other than these two since you've been here. Has there been
24 any to your knowledge?

25 THE WITNESS: I don't know of any.

26 MR. SMITH: Is it possible that there's been none and

1 these are the first two. Is it possible?

2 THE WITNESS: I don't know.

3 MR. SMITH: You know of all the layoffs.

4 THE WITNESS: Well, that was months ago, and I don't
5 remember. Sorry.

6 MR. WIGHT: You have a question?

7 MS. FLOYD: Yeah. What takes precedence, a collective
8 bargaining agreement, or the personnel rules?

9 THE WITNESS: Collective bargaining agreement.

10 MS. FLOYD: Well, the issue I see is that the rules
11 appear to say that probationary employees don't have
12 displacement rights. And I haven't looked at, and I will
13 later request to look at, the collective bargaining
14 agreement of Correction Officers. But what I've been told
15 up to this point is that the word "employee" was used there,
16 without definition as probationary.

17 MR. WIGHT: I think it's the County's position that no
18 one was displaced here. Is that right? They were put into
19 vacant positions. So this sentence would not be applicable.

20 MS. FLOYD: Was there an eligibles list in effect when
21 these two men -- so you would have had to have gone outside
22 and found somebody, and they didn't displace anybody when
23 they came in?

24 MS. JERREN: No.

25 MS. FLOYD: Okay.

26 MR. SMITH: I have one question. Were there temporary

1 Civil Deputies employed by Multnomah County when this
2 happened?

3 THE WITNESS: I'd have to look at the list.

4 MR. SMITH: All right. If there were temporary Civil
5 Deputies employed by Multnomah County, how long can you keep
6 the person in a temporary position without firing them?

7 THE WITNESS: It's normally sixty days.

8 MR. SMITH: But under the personnel rules, isn't it a
9 maximum of six months?

10 THE WITNESS: Yes.

11 MR. SMITH: Okay. So those temporary employees that
12 were Civil Deputies, if they were such a person, would be
13 fired in six months. And there were --

14 THE WITNESS: Actually, you can run a temporary
15 employee --

16 MR. SMITH: But it's mandated by the personnel on
17 temporary employees, to terminate them within six months.
18 Is that correct?

19 THE WITNESS: Which one are you referring to now?

20 MR. SMITH: I will tell you the exact one if you'll
21 hold on a second. 13.04.

22 THE WITNESS: The second paragraph says temporary
23 employees shall receive the equivalent of six months full
24 time service, successive temporary employments may not be
25 made [indiscernible].

26 MR. SMITH: So if there were people such as that that

1 were told there would be a list they could get on, these
2 people would not get on the list unless they were
3 terminated. Is that correct?

4 THE WITNESS: I'm sorry. I didn't follow you.

5 MR. SMITH: If there were temporary employees in Civil
6 Deputy positions, that's six months were expiring, they
7 would have to be fired because there was no list. Is that
8 correct?

9 THE WITNESS: According to this rule, it says that they
10 can't be employed more than six months.

11 MR. WIGHT: Any more questions by members of the
12 Commission?

13 MS. FLOYD: Well, the question I have is: The Civil
14 Deputy job would seem to [indiscernible] as a Corrections
15 Officer.

16 THE WITNESS: I think that that's best asked of Janet.
17 Janet's position is that it was a reasonable position into
18 which to demote a Corrections Officer.

19 MS. FLOYD: Can we define "promotional line"? It's in
20 the seniority rule? I'll look it up.

21 MR. WIGHT: You're talking about 20.02.

22 MS. FLOYD: It's in the definitions on page 4.

23 MR. WIGHT: Let's try and clarify that. This says
24 "promotional line" means a classification series in the same
25 occupational field in which service in the lower
26 classification qualifies the employee for the higher

1 classification. I thought I had asked this question twice,
2 but my understanding is that is not the situation with these
3 two classifications. They're separate classifications. One
4 is not necessarily lower than the other here. Is that
5 right?

6 MS. JERREN: The Civil Deputy is a lower
7 classification.

8 MR. WIGHT: Lower because it's lower paid?

9 MS. JERREN: Yes.

10 MR. WIGHT: Okay. Do you consider these a promotional
11 line, then?

12 MS. JERREN: They'd have to be.

13 MR. WIGHT: All right.

14 FIRST WITNESS: My name is Michael Keene, Sr. *Just*

15 SECOND WITNESS: My name is William Foster.

16 MS. JERREN: These are the two people that were hired
17 as Corrections Officers and displaced. I had some questions
18 that really just kind of confirm the facts we've already
19 talked about, but because I don't think anybody is disputing
20 that they were hired off the regular list without testing
21 process, we'll skip that. And rather than question them
22 separately, I think maybe the few questions I have we'll
23 just do sequentially.

24 MR. WIGHT: Sure.

25 MS. JERREN: At the time that you were hired for
26 Corrections Officer you did undergo a psychological and

1 physical exam as part of the testing process.

2 THE WITNESS: Yes.

3 MS. JERREN: How would you describe your interest in or
4 enthusiasm for Corrections Officer work with Multnomah
5 County at the time you got hired?

6 FIRST WITNESS: It was just a wonderful job, actually.
7 And I was only able to work there for six weeks before I was
8 let go, but --

9 SECOND WITNESS: I'd have to agree with Mike. It was a
10 very enjoyable job.

11 MS. JERREN: At the time that you were hired, did you
12 have any idea that a layoff was around the corner?

13 FIRST WITNESS: There had been talk amongst some of the
14 sergeants that there was problems in the foreseeable future,
15 but we -- I was told not to let it worry me at all. It was
16 very probably just going to be something that was handled,
17 and we would be --

18 SECOND WITNESS: Yeah, we did hear talk about it as
19 soon as we were hired.

20 MS. JERREN: And then you decided to take a voluntary
21 demotion as Civil Deputy rather than lose your jobs.

22 THE WITNESSES: Yes, Ma'am.

23 MS. JERREN: Michael, did you find another job --

24 THE WITNESS: I did not.

25 MS. JERREN: Did you quit another job to take this job?

26 THE WITNESS: Yes, I did.

1 ^h MS. JERREN: Did somebody explain to you how your
2 salary was set as Civil Deputy?

3 THE WITNESS: Yes.

4 ^h MS. JERREN: What was your understanding of the salary
5 rate?

6 THE WITNESS: That in accepting a voluntary demotion my
7 salary would be in whatever unit we were assigned to to be
8 at least -- the highest paid possible below what you were
9 making in your Corrections position.

10 ^h MS. JERREN: Did you take a cut in salary?

11 THE WITNESS: A substantial one.

12 ^h MS. JERREN: Going back to these letters from Susan
13 Ayers, on or about 10-31, did you receive these letters from
14 the Employee Services Division?

15 FIRST WITNESS: Yes.

16 SECOND WITNESS: Yes.

17 ^h MS. JERREN: What did you think the letter meant?

18 FIRST WITNESS: Well, at the time we were a little bit
19 in a quandary because we didn't know for sure. We did speak
20 with Ms. Ayers, and basically it was my belief that we had
21 been let go from the Corrections unit. The letter did say
22 our positions had been done away with, and that we were now
23 Civil Deputies.

24 SECOND WITNESS: Yes, we did go speak to Susan Ayers,
25 and she did explain it to us.

26 ^h MS. JERREN: Had you ever seen a letter like this

1 before?

2 FIRST WITNESS: Yes.

3 MS. JERREN: When?

4 FIRST WITNESS: Shortly after being hired with the
5 Corrections section, they had a very similar form letter
6 that I received informing me that I was at that time a
7 Corrections Officer on probation.

8 MR. WIGHT: Are we confused -- weren't they testifying
9 about the September 15 letter, rather than the October --

10 MS. JERREN: No. The 10-31.

11 MR. WIGHT: That just notifies them that they're a
12 Civil Deputy. That has nothing to do with reduction.

13 MS. JERREN: But what I'm asking them is if they had
14 seen a similar form letter before this, saying, yes, we're
15 going to hire you as a Corrections Officer.

16 MR. WIGHT: Okay.

17 MS. JERREN: Have you had any feedback on your
18 performance so far as a Civil Deputy?

19 FIRST WITNESS: Yes. My supervisor told me I'm doing
20 well, doing my work, and I get things done in a timely
21 manner.

22 MS. JERREN: Did you get a letter on November 25th
23 saying that Corrections Officer positions were available and
24 that you had five days to respond?

25 FIRST WITNESS: Yes.

26 MS. JERREN: What did you do?

1 FIRST WITNESS: Spoke with you. And I told you at that
2 time that it was my understanding that I was able to do it
3 and it was not a problem, I chose to stay with the Civil
4 Deputy group.

5 MS. JERREN: Why was that?

6 FIRST WITNESS: Well, it's very similar to work I did
7 in the past, and I find I am more comfortable doing this
8 type of work. The Corrections Officer position -- they make
9 more money, and they earn it. They honestly do. And this
10 is a major point, you know, that I had to think over for
11 some time, because I am -- in accepting this position, I do
12 give up some long-range benefits and advancement
13 possibilities that do not exist in this unit. But
14 personally, I find I am happier here and I really enjoy
15 doing the work.

16 SECOND WITNESS: Same thing. It was a difficult
17 decision. I do enjoy the work. I enjoy being on the road
18 and talking with people as opposed to being in Corrections.

19 MS. JERREN: As of today, what is it that you want to
20 do?

21 FIRST WITNESS: I'd like to remain in Civil.

22 SECOND WITNESS: Me too.

23 MS. JERREN: What do you believe would occur if you
24 were required to return to a Corrections Officer position
25 when there was a vacancy?

26 FIRST WITNESS: I had a problem with this. It's one

1 reason why in accepting this lower position, I tried to make
2 it basically to myself what I would do when the time came
3 and there was going to be a call back. I tried not to make
4 my decision known until it was clear in my mind that, yes, I
5 did have the choice to keep this job. Then I explained to
6 Janet Jerren^{Jam} that I would like to keep this job. Now, I
7 foresee that if I should be put back in the Corrections
8 field, I would have no problem working with the people I
9 worked with. I would get along with them just fine. But in
10 the future, everything being equal, another man with my time
11 or whatever, the other person coming up through the -- not
12 having gone through this experience, if you will -- he's
13 going to have an upper hand over me, because on my
14 background is going to be the fact that I chose, before in
15 the past, not to work there and to actually work in what the
16 County considers to be a lower position. I foresee that it
17 would be a real problem for me to be comfortable if I should
18 go back to the jail. Just basically for that.

19 V MS. JERREN: How does that affect your probationary
20 term?

21 FIRST WITNESS: My probationary time in the Corrections
22 section -- I was there for six weeks and we were transferred
23 here. I would have to complete a year to get through the
24 probation for the Corrections section. As it is, I've
25 worked double that time in the Civil section, and we have
26 two and a half months before our probation is completed.

1 SECOND WITNESS: My answer reflects Mike's. If I had
2 to go back, I'd have no problem doing the job. However,
3 like he said, people coming in behind us may have an edge
4 over us for future promotions. Beyond that, it would be
5 satisfactory.

6 MR. WIGHT: Anything else? What's the status of the
7 Correction Officer situation now?

8 ^v MS. JERREN: There is one vacancy.

9 MR. WIGHT: And have people been hired since these two
10 gentlemen were laid off?

11 ^v MS. JERREN: Yes. When they turned down the
12 opportunity to return, they gave up their rights.

13 MR. WIGHT: And so there's one vacancy as of now plus
14 the anticipation in the future?

15 ^v MS. JERREN: I never know.

16 MR. WIGHT: Well, you make some predictions.

17 ^v MS. JERREN: It really is hard to predict, because
18 sometimes we'll have several vacancies, and sometimes we'll
19 go several months with none.

20 MR. SMITH: I have some questions.

21 MR. WIGHT: Sure. Go ahead.

22 MR. SMITH: First, of Michael Keene. ^{Teed} Mike, you said
23 that you were employed before --

24 THE WITNESS: I was working part time at the time.

25 MR. SMITH: Is there anything in your mind that would
26 make you believe that you couldn't get on a list and score

1 well as a Civil Deputy?

2 THE WITNESS: No, I have no problem with that. I
3 didn't know this even existed until we were placed into it.

4 MR. SMITH: If this Board would rule that they should
5 create a list, would you want to be on it?

6 THE WITNESS: Yes, I would.

7 MR. SMITH: Now, you said that you would have a problem
8 going back because of promotional opportunities. But at the
9 same time, you came into this unit without any experience
10 with Multnomah County and perhaps the people -- Now, it says
11 that you were a Deputy Sheriff in Oregon. Where was that
12 at?

13 THE WITNESS: Columbia County.

14 MR. SMITH: And it says that you were involved in civil
15 process.

16 THE WITNESS: Yes.

17 MR. SMITH: What were those civil process
18 responsibilities.

19 THE WITNESS: It was part of the duty of being Deputy
20 Sheriff.

21 MR. SMITH: When you say you had civil process
22 responsibilities, that was just part of your
23 responsibilities as Deputy Sheriff, not specifically civil
24 process?

25 THE WITNESS: That's correct.

26 MR. SMITH: Did you quit that job?

1 THE WITNESS: I quit that job. I took that job on a
2 probationary -- and I tested with Multnomah County at that
3 time.

4 MR. SMITH: And why did you quit that job -- quit one
5 Corrections Officer job, take another --

6 THE WITNESS: I was explaining. This was a better
7 opportunity to get out on the road. There's a higher rate
8 of pay. There's better working conditions.

9 MR. SMITH: And you worked there for one full year?

10 THE WITNESS: Yes.

11 MR. SMITH: Okay. Would you be willing to get on the
12 list of Civil Deputy if that's what this Board rules?

13 THE WITNESS: I have no problem with that.

14 MR. SMITH: Have you ever before performed any
15 functions that are in the civil deputy classification,
16 description?

17 THE WITNESS: Such as?

18 MR. SMITH: The work you're doing now.

19 THE WITNESS: The work I'm doing now? [indiscernible]

20 MR. SMITH: Any of that have anything to do with civil
21 process?

22 THE WITNESS: Yes, they did.

23 MR. SMITH: I don't have any more questions at this
24 time.

25 MR. WIGHT: Any questions by members of the commission?
26

1 Do you have any rebuttal?

2 MR. SMITH: We do have a person that wants to say that
3 she's not going to have a job as a result of this.

4 MR. WIGHT: Go ahead and tell us.

5 MS. JERREN: Well, I have another question.

6 MR. WIGHT: Oh, I'm sorry. I thought you were through.

7 MS. JERREN: ^{Jim} Tim was asking the question -- and I just
8 wanted to make a comment about that. If you look at the
9 requirements up above, these two people clearly meet the
10 minimum requirements for Civil Deputy. And in Michael
11 ^{Teed} Keene's case, he is extraordinarily well qualified for this
12 job, and he'd done this job before.

13 THE WITNESS: I'm Sergeant Mike ^{Skophammer} [indiscernible], and
14 I'm the Administrative Sergeant to the Chief Deputy of
15 Corrections.

16 MS. JERREN: Would you just real quickly tell people
17 how long you've been in Corrections and what your current
18 role is as far as your job?

19 THE WITNESS: I've been in Corrections since November
20 of 1971. I've been with Multnomah County since January of
21 1973, and been a Corrections Sergeant for two and a half
22 years. I've been the Administrative Sergeant to the Chief
23 Deputy since May of 1991.

24 MS. JERREN: What's your role regarding [indiscernible]

25 THE WITNESS: After the training sergeant is done with
26 the orientation and the field training portion of their

probationary Correctional Officers

1 first six weeks, they're basically turned over to me for
2 assignment. I assign them to shifts and days off.

3 MS. JERREN: Do you remember when Michael Keene and
4 William Foster were hired in August?

5 THE WITNESS: I do.

6 MS. JERREN: At the time that we made those hire offers
7 to them, to your knowledge did we believe we were going to
8 be laying people off?

9 THE WITNESS: No

10 MS. JERREN: Are you familiar with the other facts
11 regarding these hires that were demotion to Civil Deputy,
12 and their recall from the layoff list and decision to remain
13 in Civil Process?

14 THE WITNESS: I'm familiar with it.

15 MS. JERREN: Okay. In general, what is your reaction
16 to the idea of forcing these people to promote to
17 Corrections Officer?

18 THE WITNESS: Twenty years of corrections tells me that
19 when you put a Corrections Officer in a place that he
20 doesn't want to be, he's not going to be as effective as
21 someone who wants to be there.

22 MS. JERREN: If these employees were required to return
23 to Corrections Officer positions when there were vacancies,
24 would you have any concern about that placement?

25 THE WITNESS: I'd be concerned about their willingness
26 to be there, and that would be my major concern.

1 MS. JERREN: That's all I have.

2 MR. SMITH: If they were to return -- their testimony
3 was that if they went back they wouldn't have the same
4 opportunities as other Corrections --

5 MR. WIGHT: Can I interrupt? It's 6:15 now and we've
6 all been here a long time. This testimony is not helping me
7 a lot in making this decision. I don't know if it's helping
8 other members. I think we have some other issues, so I
9 think I really want to cut it down. I don't know if there's
10 any information we're getting from this other than some
11 personal background here, and we've got the picture, I
12 think.

13 MR. SMITH: The only thing I want to correct is this
14 fact that they wouldn't be treated equally with other
15 Corrections Officers if they went back. And I think that he
16 will testify that that's untrue, that they wouldn't. And
17 that's what I'm going to ask him, and then I'll be done with
18 him.

19 MR. WIGHT: Does anybody think the decision is going to
20 be any different on that point?

21 MS. FLOYD: No.

22 MR. WIGHT: Let's --

23 MR. SMITH: I would like them to have that assurance.
24 And I think that the only way I can get it is to ask that
25 question in this hearing.

26 MR. WIGHT: Okay. One question.

1 MR. SMITH: If these folks went back, would you or any
2 of the management treat these folks any differently than any
3 other of such class?

4 THE WITNESS: No.

5 MR. SMITH: No further questions.

6 MS. JERREN: I just had one last thing, and that is if
7 you look at this, we don't have anybody at the first three
8 steps. So the majority of the people are at the top step of
9 Civil Deputy, and then Keene^{ted} and Foster, based on that ✓
10 voluntary demotion were placed at Step 5, and then three of
11 the people that ^{are} present are at Step 4. So what this ✓
12 means, for instance, is that come next March the Civil
13 Deputies that testified will go to Step 5.

14 MR. WIGHT: I thought we had decided at the beginning
15 of this that we were allowing everybody to proceed here at
16 once. And Linda, if you thought that you weren't included
17 in this, and you have something additional to tell us, will
18 you go ahead?

19 THE WITNESS: Certainly. My name is Linda
20 [indiscernible^{bidell}]. I am currently the temporary Civil Deputy
21 assigned to the transport unit. I've been in that capacity
22 since 8-14 of '91. I have been in this temporary capacity
23 coming up six months. My six months will be up February
24 14th and I will be one of the 6.6 percent of Oregonians
25 unemployed. I have no job to go to. I will be on
26 unemployment. I was told on coming aboard with this unit

1 within the Civil Division that the only way I would ever
2 become a permanent regular County employee was if I took a
3 test and went through a testing process. And also, I'd like
4 ~~to~~ correct Ms. Jerren. I'm Step 1. I'm making 11.34 an
5 hour.

6 MR. WIGHT: Janet, what happens to that temporary
7 position if it's -- come the end of the six months. Is
8 there still going to be a temporary position there that has
9 to be filled by somebody else?

10 \ MS. JERREN: This is the problem I was trying to
11 explain. This is not a very ideal situation. I'm not trying
12 to present it as anything else. We had four vacancies. We
13 anticipated we were going to have a test for Civil Deputy.
14 In fact, we had more vacancies than we'd ever had in that
15 job class before, to my knowledge. And then these two
16 activities occurred. The first one where we lost two of
17 them, and the other two when we wanted to place layoff
18 people in some kind of jobs.

19 MR. WIGHT: But you had a temporary position also?

20 \ MS. JERREN: Yeah. There isn't really any such thing,
21 to me, as a temporary position. What happened was, the work
22 was there. The unit -- the management in the unit felt that
23 there's no way that the Sheriff could meet his legal
24 obligations if they didn't have more staff than what we were
25 funded to have. So the Chief Deputy would have determined
26 that somewhere out of this budget he was going to find

1 enough money to cover a temporary position. And in
2 circumstances like that, if there's a list, we see if
3 anybody there wants to take a job in those circumstances,
4 because there's no guarantees, there's no benefits, there's
5 no nothing. If we don't have a list, we just start looking
6 around to see if we can find someone, which is what we did
7 in this case. And we found two people who were interested
8 in taking those temporary jobs on those terms, knowing that
9 there were no benefits, that they hadn't been placed, there
10 was no employment guarantee. And the last witness, to the
11 best of my knowledge, she didn't quit another job to take
12 this.

13 THE WITNESS: Yes, I did. Yes, I did. Ms. Jerren has
14 also presented the qualifications of both Mr. Keene and Mr.
15 Foster. Would the Board be interested in hearing my
16 qualifications as a prospective applicant to this position
17 would it be opened up?

18 MR. WIGHT: Sure.

19 THE WITNESS: I hold a two year Associate's Degree in
20 justice from Clackamas Community College. I'm a graduate of
21 Oregon Police Academy, took the basic police officer's
22 course with a grade point of 95.2. I have received
23 certification in these courses. I've also been a sworn
24 police officer for the City of Salem, I was in that capacity
25 for seven months. I also was an Ordinance Enforcement
26 Officer for the City of Lake Oswego. My duties there

1 included municipal court service process. I've also been a
2 Multnomah County reserve for four years, as a sergeant for
3 the last year. That's a brief rundown. Those are my
4 qualifications, and based on what Ms. Jerren has presented
5 to you about Mr. Foster, I think those qualifications
6 supercede his. And when I took this position it was stated
7 that I was taken on a temporary basis, three to six months,
8 and with no guarantee. But I had a guarantee from the
9 supervisor while in this that "You'll take a test again,
10 later. You'll take a test to get hired. Don't worry about
11 it." And these two gentlemen -- I have nothing personally
12 about these gentlemen, just the way they got in here. They
13 came in, they took the two open positions the County had to
14 offer, and now there's no reason to test for any positions.
15 There's no more Deputy positions open. So myself, and Mr.
16 Collins' six months was up last week. His six months as a
17 temporary employee was up last week. Mine comes up February
18 14th. We're both unemployed. We don't even have the
19 opportunity to apply for the job. We've been doing this as
20 temporary employees within the Civil Division longer than
21 these two gentlemen.

22 MR. WIGHT: Any questions?

23 *JAK* MS. JERREN: Why did you choose to quit your Columbia
24 County position and take this temporary job?

25 'THE WITNESS: Because being a woman in the County
26 reserve, I was working [indiscernible]

1 MS. JERREN: And were you ever promised a permanent
2 position?

3 THE WITNESS: No, Ma'am, I was not.

4 MS. JERREN: When I -- given the facts as you know
5 them, does it appear to you that the circumstances around
6 our planning to test changed?

7 THE WITNESS: No. I don't think that had any effect.
8 There was never a test -- the testing process had not been
9 decided on. It went back and forth between a two year
10 college degree, to high school, to some experience, back to
11 a two year degree.

12 MS. JERREN: Those requirements are set by the job
13 specialist --

14 THE WITNESS: I still to this day do not know who can
15 apply for the position.

16 MS. JERREN: I don't have any more questions of this
17 witness.

18 MR. SMITH: You said that you were told that the only
19 way that you could ever become a regular Civil Deputy was by
20 testing for it?

21 THE WITNESS: That's correct, Sir.

22 MR. SMITH: When were you told that?

23 THE WITNESS: I was told that I can't tell you how many
24 times. I was told at least -- this was like two days after
25 I was hired. I said, "I know I'm temporary. I know this
26 isn't permanent. How do I become full time?" Because, yes,

1 I would like some benefits. I just make that hourly wage.
2 And I was told over and over again.

3 MR. SMITH: Did you decline any other offers of
4 employment during the last -- during the time you have been
5 employed as a temporary employee?

6 THE WITNESS: I have not personally declined.

7 MR. SMITH: You have declined no offers of employment?

8 THE WITNESS: That's right.

9 MR. WIGHT: Let me ask you this, Janet. Assuming that
10 nothing changed, would the Multnomah County Sheriff's Office
11 continue with some temporary positions there to handle the
12 work load? I mean, are they going to find some money to do
13 the work that Linda and Scott are doing right now?

14 ~~MS. JERREN~~: I can't answer that question. I think --
15 I would be extremely surprised if the Chief Deputy isn't
16 trying to restore those two cut positions.

17 MR. WIGHT: You're talking about the budget for next
18 July 1?

19 ~~MS. JERREN~~: Right.

20 MR. WIGHT: What about between now and July?

21 ~~MS. JERREN~~: I don't know what he is going to do. He
22 hasn't indicated anything to me.

23 MR. WIGHT: But he hasn't told you at this time whether
24 he either has the money or the need? We don't know that?

25 ~~MS. JERREN~~: He hasn't told me that, and I think that
26 it's -- I don't think anybody's questioning that he has the

1 need.

2 MR. WIGHT: And, Linda, have you actually been laid off
3 at this point?

4 THE WITNESS: Not at this point. But my job is a day-
5 to-day basis. I never know tomorrow if they need me or not.
6 At this point, in my view, they need me. But I still, I go
7 to work every morning --

8 MR. SMITH: Can I add one last thing? The contract
9 says that temporary employees used to fill the position for
10 sixty days unless the employer has actively recruited, and
11 then that expands it up to six months. We even played dead
12 in this, because we knew there were two budgeted positions
13 vacant that we kept anticipating the process would start.
14 Had the process started at the conclusion of their sixty
15 days, these folks would not be having to be laid off.

16 MR. WIGHT: Is there any other testimony or comment?
17 Shall we take a break?

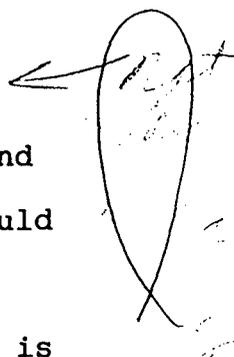
18 [Pause]

19 MR. WIGHT: Well, let's open it up for discussion,
20 then. The hearing is terminated.

21 *ms. Floyd* ~~Ms. Jerren~~, do you have something?

22 *FLOYD* MS. JERREN: This is an unusually difficult case.

23 There's a lot of really conflicting rules and contracts and
24 it's sort of hard to trace what the proper way things should
25 be done is. I feel especially bad for the two temporary
26 employees, one who's already been laid off, and the other is



1 facing -- *JAR*

2 ~~THE WITNESS:~~ The other one hasn't been laid off.

3 *Floyd* ~~MS. JERREN:~~ Oh, I thought he was. Okay. Like I say,
4 it's a real complicated case. To me, the bottom line is,
5 even though I see the total unfairness to Scott and Linda, a
6 permanent employee who has tested -- even though it was for
7 a different job; a higher ranking job, passed those tests
8 and all the evaluations, in my mind takes priority over a
9 temporary employee.

10 *mo. D'Noyan* MR. WIGHT: Well, I guess I don't see it as a question
11 of who has priority. I guess your views are somewhat
12 similar. Is that right?

13 *Price* ~~MS. FLOYD:~~ I know in the City of Portland, if a person
14 has comparable knowledge, skills, and ability, and they're
15 facing a layoff or termination in one area, they are
16 considered for that other area as long as it's not a
17 promotion. As long as it's not an increase in pay. And if
18 they meet the minimum qualifications in the other area, it's
19 acceptable as long as it's agreed upon by the Personnel
20 Director. And that's a practice of the City. I don't know
21 if that's a practice of Multnomah County. And it appears to
22 be a legitimate practice as long as it doesn't cost any more
23 to move that person from one place to another.

24 MR. WIGHT: My view is that there is a system here that
25 requires testing, a list, and hiring people off that list.
26 And I don't think these are positions in a promotional line,

1 and that's the testimony we've had here tonight. So I think
2 the proper method that should have been followed is that
3 these two gentlemen could have been placed in this job
4 temporarily, but a test should have been given, and the list
5 made, and people hired off that list. And they may have
6 been on the list, they may not have been on the list. We
7 don't know that. But I think that's the method that should
8 be, because that's the only way you know you have a civil
9 service system that's working. And they may have all the
10 qualifications in the world, but what you're trying to do is
11 compare them to somebody else that might have applied for
12 that job. And as we've heard, at least some people who
13 would be interested in that job are very well qualified.
14 There may be people out there we don't even know about that
15 would be even better qualified. And the idea of a civil
16 service system is to get the best qualified employee. I
17 understand what the County's trying to do, and that's not
18 put people out on the street. And that's a commendable
19 approach. But my own view is there is a way to handle that,
20 and they could have put them in there as temporaries and
21 gotten a list. If they were on the list, they could have
22 been hired off the list. If they weren't, then they'd have
23 the choice of either going back to their old positions, that
24 they applied for. I mean, that was the job they wanted. Or
25 they'd have to take their choice. My view would be that
26 we've got to create a list here, and I would support the

1 appeal and say that we've got to create a list and hire off
2 that list. These are not positions in the same
3 classification, and the rules don't seem to -- people have
4 cited rules, but none of them are directly applicable to
5 this situation. And so I think when they aren't applicable,
6 you have to go back to the basic policy, and that is you
7 create a list and you hire off that list.

8 I can see some difficulties in trying to get that done,
9 because of a lot of water under the bridge here, but it
10 sounds to me like it's possible within the County budget
11 that these people could be left in the position, and the
12 temporary employees could be left there a while the list is
13 created, and then the hiring process carried out as it
14 should be. I don't know how long it takes to create a list,
15 but it sounds like it couldn't take too long if they've been
16 promising a test for the last four or five months. So
17 that's what I would propose to do.

18 MS. FLOYD: I think if it was earlier in the process I
19 might agree with you, but right now there aren't jobs for
20 them, necessarily to go back to in the Corrections
21 Department. Their contract with the Corrections Department
22 did allow them to demote to save their jobs. There is some
23 questions about it being another bargaining unit that I
24 think would probably be the bigger issue. I have to go
25 back and say that a regular employee has precedence over a
26 temporary employee.

1 MR. WIGHT: I guess I don't agree with that. I just
2 don't see that it applies here. They haven't created a
3 list, and these people aren't entitled to go to different
4 classifications. I don't disagree with your conclusion, I
5 just don't think it applies to this particular situation.

6 MS. FLOYD: I think that the County should honor their
7 offer to the men in those positions. And again, you know, I
8 see that the skills, knowledge and abilities on both
9 positions are comparable. And if they were offered the new
10 positions because of that, I really feel that that should be
11 honored, and then also, do a test for other positions that
12 are open. I think that should be done. But I don't think
13 that it should include the gentlemen here. Because I think
14 they have already passed a test and have become employees of
15 the County.

16 I would like hear just one other issue, and that's for
17 those who mentioned that they came in at a higher wage rate.
18 I understand the concern about that. I've had that happen
19 to me, actually. It is a very difficult thing to accept,
20 and I'm not sure what the resolution is, as long as you
21 offer people protection in layoff situations.

22 MR. WIGHT: Do we have a motion?

23 Well, I don't think my motion will pass.

24 MS. FLOYD: Okay. I make a motion that we do not
25 uphold the appeal. Or, we deny the appeal.

26 MR. WIGHT: All in favor, say "aye."

1 MS. PRICE: Aye.

2 MS. FLOYD: Aye.

3 MR. WIGHT: All opposed, say "aye." Aye.

4 MR. SMITH: It is now appealable, as I understand it,
5 to the County Commissioners. Is that correct?

6 MS. FLOYD: It's not a unanimous decision.

7 MR. WIGHT: Before everybody gets away, I just want --
8 You people can go.

9 We had one other agenda item. I don't want to get into
10 it tonight. I did prepare some things, and what I would
11 like to do is give them to you. Maybe take a look at it,
12 and I think maybe we could schedule what I hope would be a
13 fairly brief meeting within a week or so. I don't know how
14 your calendars look, but I see it being, you know, maybe
15 from 4:30 to 5:00 or something like that?

16 MS. FLOYD: Oh, that sounds like a wonderful meeting.

17 MR. WIGHT: And what I'd like to do is take a look at
18 this. You may have your own ideas, add some comments to it,
19 and then we'll get together and talk about it and see where
20 we want to go from here on these issues. I've already
21 thought of some other things I'm going to add, and you may
22 think of things as a result of these hearings.

23 Thursday the 28th? I think I could do it on the 28th.
24 4:30?

25 I've written out a memo, here, and I'll give you each a
26 copy of that, so you can take a look at that. I've also

1 drafted a letter to the District Attorney asking for some
2 legal advice on those issues, and we will take a look at
3 those questions. And then maybe we can talk about both of
4 these in two weeks when we get back together. And I'd
5 appreciate any comments from the staff, too. My idea was
6 that we would talk about it and give the staff an
7 opportunity to comment.

8 Any other matters?

9 We're adjourned.

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DECLARATION OF TRANSCRIBER

I hereby certify that the foregoing pages, 1 through 66, inclusive, represent an accurate and complete transcription of the portion of the audio recording requested, to the best of my ability and knowledge, of the proceedings had before the Merit Systems Civil Service Council on January 16, 1992.

DATED this 13th day of February, 1992.



Ellen F. Beckett