

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR MULTNOMAH COUNTY

In the Matter of the Appeal                    )  
of Officer Thomas H. Wayne                )  
regarding promotion to                    )  
Corrections Sergeant                    )  
                                                  )       ORDER UPHOLDING DECISION       #89-155  
                                                  )       OF MERIT SYSTEM CIVIL  
                                                  )       SERVICE COUNCIL

WHEREAS, MCC 3.10.430(A) provides that a non-unanimous decision of the Merit System Civil Service Council for Multnomah County may be appealed to the Board of County Commissioners for Multnomah County within ten days from the date of the Council's decision, and

WHEREAS, Thomas H. Wayne filed an appeal of a 2-0 decision of the Merit System Civil Service Council, Commissioner Torrance being absent, and

WHEREAS, MCC 3.10.430(B) provides that board review of such appeal 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 of County Commissioners requests, and

WHEREAS, the parties to the proceeding before the Merit System Civil Service Council were duly notified that the Board of County Commissioners would hear Mr. Wayne's appeal on Thursday, June 22, 1989, at 9:30 a.m., and

WHEREAS, both the employee, Thomas H. Wayne, and Multnomah County were given the opportunity to file written argument in support of their positions, and

WHEREAS, on June 22, 1989, both the appellant, Thomas H. Wayne, and the respondent, Multnomah County Labor Relations, were permitted to make oral argument on their respective positions, and

WHEREAS, the Board of County Commissioners, having considered the written argument submitted by Multnomah County Labor Relations, the oral argument advanced by each side, and the record of the proceedings before the Merit System Civil Service Council, and now being fully advised in the premises, the Board of County Commissioners hereby enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Thomas H. Wayne is a corrections officer who was passed over for a promotion to corrections sergeant.

2. Personnel Rule 11.03 requires that interviews be conducted prior to promotions to corrections sergeant.

3. Interviews were not held in accordance with Personnel Rule 11.03.

4. The vote of the Merit System Civil Service Council in this matter was 2-0, Commissioner Torrance being absent;

5. The Merit System Civil Service Council did not exceed its jurisdiction;

6. The Merit System Civil Service Council did not fail to follow the procedures applicable to the matter before it;

7. The order of the Merit System Civil Service Council was based on substantial evidence in the whole record.

#### CONCLUSIONS OF LAW

1. This Board's scope of review of the decision of the Merit System Civil Service Council is limited to those matters set out in ORS 34.040;

2. The Merit System Civil Service Council did not improperly construe the applicable law;

3. The Merit System Civil Service Council did not render an unconstitutional decision;

4. The order of the Merit System Civil Service Council was based on substantial evidence in the whole record.

5. In the alternative, the 2-0 decision of the Merit System Civil Service Council constitutes a unanimous and unappealable

decision pursuant to MCC 3.10.430(a).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the decision of the Merit System Civil Service Council is UPHELD.

IT IS SO ORDERED this 13th day of July, 1989.



BOARD OF COUNTY COMMISSIONERS  
FOR MULTNOMAH COUNTY, OREGON

By Gladys McCoy  
Gladys McCoy  
Multnomah County Chair

APPROVED AS TO FORM:

LAURENCE KRESSEL, COUNTY COUNSEL  
FOR MULTNOMAH COUNTY OREGON

By

Mark B. Williams  
Mark B. Williams  
Assistant County Counsel

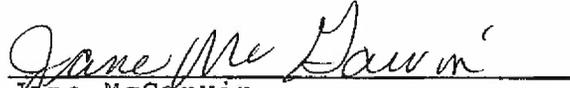
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 1989, I served a true and complete copy of ORDER UPHOLDING DECISION OF MERIT SYSTEM CIVIL SERVICE COUNCIL on the following persons by mailing a true copy thereof, certified by me as such, contained in a sealed envelope, with postage paid, addressed to the parties' last known addresses, to-wit:

Thomas Wayne  
32 SE 195  
Portland, Oregon 79233

Darrell Murray  
Department of General Services  
1120 SW 5th, Ste 1430  
Portland, OR 97204

  
Jane McGarvin  
Clerk of the Board

5087R/mw

CERTIFICATE OF SERVICE