

ANNOTATED MINUTES

*Tuesday, October 11, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFING

- B-1** *Department of Community Corrections Supervision of Sex Offenders.
Presented by Tamara Holden and Michael Haines.*

**TAMARA HOLDEN, MICHAEL HAINES, MAGGIE MILLER, TOM GRINNELL AND CARY HARKAWAY
PRESENTATION AND RESPONSE TO BOARD
QUESTIONS AND DISCUSSION.**

- B-2** *Early Childhood Development/Ready to Learn Benchmark Plan, Parents as Teachers Program. Presented by Multnomah Commission on Children and Families, Pauline Anderson, Cornetta Smith, and Helen Richardson.*

**HELEN RICHARDSON AND CAROL WIRE
PRESENTATION AND RESPONSE TO BOARD
QUESTIONS.**

*Tuesday, October 11, 1994 - 1:30 PM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

PLANNING ITEMS

Chair Beverly Stein convened the meeting at 1:36 p.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

- P-1** CS 6-94 *Review the August 24, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, a Change in Zone Designation from MUA-20 to MUA-20, C-S, (Multiple Use Agriculture-20, Community Service) for a Group Care Facility in an Existing Dwelling, for Property Located at 3745 SE 317TH AVENUE, TROUTDALE*

DECISION READ, NO APPEAL FILED, DECISION STANDS.

- P-2** C 10-94 *First Reading of a Proposed ORDINANCE Amending the Comprehensive Framework Plan Policies and Significant Environmental Concern (SEC) Section of the Zoning Code to Protect Significant Wildlife Habitat, Scenic Views and Streams in the West Hills and Howard Canyon*

Areas, in Fulfillment of Periodic Review Remand Order Requirements

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF FIRST READING. SCOTT PEMBLE PRESENTATION AND RESPONSE TO BOARD QUESTIONS. CHARLES CIECKO, DONNA MATRAZZO, JOHN SHERMAN, ARNOLD ROCHLIN AND THOMAS NASH TESTIMONY AND RECOMMENDATIONS CONCERNING VARIOUS AMENDMENTS TO PROPOSED ORDINANCE. JIM EMERSON TESTIMONY IN SUPPORT OF PROPOSED ORDINANCE. NANCY FICK, DONIS McARDLE AND JOSEPH KABDEBO TESTIMONY IN OPPOSITION TO PROPOSED ORDINANCE DUE TO ZONING LIMITATIONS FOR WEST HILLS PROPERTY OWNERS. CHAIR STEIN DIRECTED STAFF TO PROVIDE AREA MAPS AT FUTURE BOARD HEARINGS. AT THE SUGGESTION OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6412(C) BE AMENDED FROM 10 TO 30 DAYS. UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6418 BE AMENDED TO ADD "LIGHTING, AND TIMING OF CONSTRUCTION AND RELATED ACTIVITIES." UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6422(C) BE AMENDED TO ADD "THIS SECTION IS ONLY APPLICABLE FOR WETLAND RESOURCES DESIGNATED 3-C". UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6428 BE AMENDED TO ADD "THIS SECTION IS ONLY APPLICABLE FOR STREAM RESOURCES DESIGNATED 3-C". UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER COLLIER, IT WAS UNANIMOUSLY APPROVED THAT SECTION 11.15.6428(F)(1) BE AMENDED TO ADD "...MINIMUM WIDTH NECESSARY TO ALLOW PASSAGE OF PEAK WINTER FLOWS...". BOARD COMMENTS AND DISCUSSION. JOHN DuBAY, GORDON HOWARD AND SANDY MATHEWSON

COMMENTS AND RESPONSE TO ISSUES RAISED DURING PUBLIC TESTIMONY. MR. HOWARD AND MS. MATHEWSON RESPONSE TO BOARD QUESTIONS AND DISCUSSION. COMMISSIONER COLLIER MOVED AND COMMISSIONER SALTZMAN SECONDED, AN AMENDMENT TO PAGE 18, ADDING "AND SHALL BE CONSIDERED IN MAKING A DETERMINATION OF VISUAL SUBORDINATION INCLUDE:". BOARD COMMENTS. AMENDMENT UNANIMOUSLY APPROVED. MR. HOWARD AND MR. SHERMAN RESPONSE TO BOARD QUESTIONS CONCERNING FENCING. CHAIR DIRECTED STAFF TO PREPARE PROPOSED AMENDMENTS AND INFORMATION REGARDING FENCING; THE DEFINITION OF LOT OF RECORD; MINIMUM SETBACK; AND THE IF AVAILABLE FOR PURCHASE ISSUES. CHAIR STEIN DIRECTED MR. PEMBLE TO WORK WITH THE SOIL AND CONSERVATION SERVICE AND THE MULTNOMAH COUNTY SOIL AND WATER CONSERVATION DISTRICT AND TO PREPARE AN AGRICULTURE USES ACTION PLAN AND POSSIBLE FUNDING PACKAGE FOR BOARD BRIEFING WITHIN SIX WEEKS. FIRST READING UNANIMOUSLY APPROVED, AS AMENDED. SECOND READING SCHEDULED FOR TUESDAY, OCTOBER 18, 1994.

P-3

C 11-94 First Reading of a Proposed ORDINANCE Amending Comprehensive Framework Text Plan Policy 16 - B and MCC 11.15 Regarding the Regulation of Surface Mining and Nearby Surrounding Land Uses in Partial Fulfillment of Periodic Review Work Program Tasks Required to Bring Multnomah County's Land Use Program into Compliance with Statewide Planning Goal 5

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF FIRST READING. MR. PEMBLE PRESENTATION. CHARLES CIECKO, SKIP ANDERSON, ARNOLD ROCHLIN AND CHRIS FOSTER TESTIMONY AND RECOMMENDATIONS CONCERNING VARIOUS AMENDMENTS TO PROPOSED ORDINANCE. BOARD COMMENTS. GARY CLIFFORD RESPONSE TO ISSUES RAISED IN PUBLIC HEARING. STAFF DIRECTED TO PROVIDE SPECIFIC INFORMATION AND PREPARE PROPOSED AMENDMENTS PRIOR TO SECOND READING. MR. CLIFFORD RESPONSE TO BOARD QUESTIONS AND DISCUSSION. AT THE

REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT THE RECLAMATION PLAN BE AMENDED TO INCLUDE DOGAMI AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY. MR. CLIFFORD RESPONSE TO BOARD DISCUSSION REGARDING EXEMPTIONS, HILLSIDE AND EROSION CONTROL MEASURES. COMMISSIONER KELLEY MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF PROTECTION CONCEPT IN FARM USE AND ZONES OTHER THAN FOREST. MR. CLIFFORD RESPONSE TO BOARD QUESTIONS. BOARD DISCUSSION. MOTION UNANIMOUSLY APPROVED, WITH STAFF DIRECTED TO PROVIDE SPECIFIC LANGUAGE PRIOR TO SECOND READING. STAFF DIRECTED TO DRAFT PROPOSED LANGUAGE CONCERNING QUARRY OPERATION IN RURAL RESIDENTIAL AND RURAL CENTER ZONED AREAS PRIOR TO SECOND READING. DISCUSSION REGARDING INVENTORY PROTECTION. PLANNING STAFF AND COUNTY COUNSEL DIRECTED TO RESPOND TO MR. CIECKO AND MR. ROCHLIN RECOMMENDED AMENDMENTS PRIOR TO SECOND READING. AT THE REQUEST OF CHAIR STEIN AND UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER SALTZMAN, IT WAS UNANIMOUSLY APPROVED THAT PAGE 26 BE AMENDED TO INCLUDE "NOISE AND DUST SENSITIVE LAND USES". MR. FOSTER DISCUSSED THE PLANNING COMMISSION'S THOUGHTS REGARDING INVENTORY PROTECTION AND ESEE ANALYSIS. FIRST READING UNANIMOUSLY APPROVED, AS AMENDED. SECOND READING SCHEDULED FOR TUESDAY, OCTOBER 18, 1994.

There being no further business, the meeting was adjourned at 4:30 p.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**



Deborah L. Bogstad

Thursday, October 13, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

MERIT SYSTEM CIVIL SERVICE COUNCIL
APPEAL HEARING

Chair Beverly Stein convened the hearing at 9:32 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

PH-1 Pursuant to Personnel Rule 23.04 and Multnomah County Code Chapter 3.20.430, the Board of Commissioners Will Conduct a Hearing on the Appeal of the August 22, 1994 Merit System Service Council Remand Decision Concerning Judith May. Upon Conclusion of the Hearing, the Board May Affirm the Council's Decision, Deny the Appeal, or Grant the Appeal But Frame a Different Remedy.

CITY ATTORNEY ANNA KANWIT, LEGAL COUNSEL FOR THE BOARD OF COMMISSIONERS, INTRODUCED COUNSEL AND ADVISED EACH SIDE HAS 20 MINUTES, WITH 10 MINUTES FOR BOARD DELIBERATIONS. COUNTY COUNSEL STEVE NEMIROW, REPRESENTING RESPONDENT MULTNOMAH COUNTY, PRESENTED TESTIMONY IN OPPOSITION TO THE BOARD AFFIRMING THE COUNCIL'S DECISION. ATTORNEY DON WILLNER, REPRESENTING APPELLANT JUDITH MAY, PRESENTED TESTIMONY IN SUPPORT OF THE BOARD AFFIRMING THE COUNCIL'S DECISION. MR. NEMINROW AND MR. WILLNER REBUTTAL TESTIMONY. MS. KANWIT EXPLANATION IN RESPONSE TO BOARD QUESTIONS REGARDING THE PARAMETERS FOR A FINDING OF BIAS AND THE DEFINITION OF SUBSTANTIAL EVIDENCE. COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, TO AFFIRM THE COUNCIL DECISION. BOARD COMMENTS AND DISCUSSION. MS. KANWIT RESPONSE TO BOARD QUESTION CONCERNING RETROACTIVITY ISSUE. MR. NEMINROW AND MR. WILLNER RESPONSE TO BOARD QUESTION REGARDING EVIDENCE OF BIAS. BOARD COMMENTS. MS. KANWIT RESPONSE TO BOARD QUESTION REGARDING SUBSTANTIAL EVIDENCE. MOTION AFFIRMING COUNCIL DECISION UNANIMOUSLY APPROVED.

There being no further business, the hearing was adjourned at 10:31 a.m.

*Thursday, October 13, 1994 - 10:30 AM
(Or Immediately Following Appeal Hearing)*

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

Chair Beverly Stein convened the meeting at 10:40 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present.

CONSENT CALENDAR

**UPON MOTION OF COMMISSIONER KELLEY,
SECONDED BY COMMISSIONER HANSEN, THE
CONSENT CALENDAR (ITEMS C-1 THROUGH C-10)
WAS UNANIMOUSLY APPROVED.**

DEPARTMENT OF HEALTH

- C-1** *Ratification of Intergovernmental Agreement Contract 200825 Between the State of Oregon, Office of Medical Assistance Programs and Multnomah County, on Behalf of CareOregon, Providing CareOregon Direct Inquiry Only On Line Access to Oregon Health Plan Eligibility Data System to Confirm Client Eligibility, for the Period Upon Execution through June 30, 1999*

SHERIFF'S OFFICE

- C-2** *Ratification of Intergovernmental Agreement Contract 800515 Between Multnomah County and David Douglas School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Eight Elementary Schools, for the Period September 12, 1994 through June 30, 1995*
- C-3** *Ratification of Intergovernmental Agreement Contract 800525 Between Multnomah County and Reynolds School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Eight Elementary Schools, for the Period September 12, 1994 through June 30, 1995*
- C-4** *Ratification of Intergovernmental Agreement Contract 800535 Between Multnomah County and Orient School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in One Elementary School, for the Period September 12, 1994 through June 30, 1995*
- C-5** *Ratification of Intergovernmental Agreement Contract 800545 Between*

Multnomah County and Parkrose School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Four Elementary Schools, for the Period September 12, 1994 through June 30, 1995

C-6 *Ratification of Intergovernmental Agreement Contract 800555 Between Multnomah County and Corbett School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in Two Elementary Schools, for the Period September 12, 1994 through June 30, 1995*

C-7 *Ratification of Intergovernmental Agreement Contract 800565 Between Multnomah County and Riverdale School District, Wherein the Sheriff's Office Will Provide D.A.R.E. (Drug Abuse Resistance Education) Program Services in One Elementary School, for the Period September 12, 1994 through June 30, 1995*

C-8 *Ratification of Intergovernmental Agreement Contract 800575 Between the Oregon State Marine Board and Multnomah County, Providing Marine Board Funding for the Sheriff's Office River Patrol to Conduct Marine Law Enforcement Activities for the Period July 1, 1994 through June 30, 1995*

DEPARTMENT OF COMMUNITY CORRECTIONS

C-9 *Ratification of Amendment 1 to Intergovernmental Agreement Contract 900374 Between the State of Oregon Department of Corrections and Multnomah County, Transferring the Responsibility of Subsidy Payments to the County, Including Transfer of the Related Funds, for the Period July 1, 1993 through June 30, 1995*

C-10 *Budget Modification DCC 2, Requesting Authorization to Appropriate Revenue from the State of Oregon Department of Corrections to the DCC Program Development Budget, for the Purpose of Providing Financial Support to Inmates for Release Needs Which May Exceed the Funds They Have Accumulated*

REGULAR AGENDA

NON-DEPARTMENTAL

R-1 *Presentation of "Director's Award" from Oregon Emergency Management Department of State Police, in Recognition of the Participation and Contribution of Multnomah County for Establishment and Support of the Regional Emergency Management Group*

**PENNY MALMQUIST PRESENTATION AND
SUBMITTAL OF PLAQUE AND CERTIFICATE.**

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 *PUBLIC HEARING to Consider Recommendations of the Technical Review Committee for the Multnomah County Affordable Housing Development Program and BOARD DECISIONS Regarding the Transfer of Tax Foreclosed Property at the Request of the Following Non-Profit Housing Agencies: Habitat for Humanity, Human Solutions, Inc., Christian Women Against Crime, HOST Development, Inc., Rose CDC, Portsmouth Project, Housing Our Families, Sabin CDC, Hacienda CDC and Miracle Revivals, Inc.*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF TECHNICAL REVIEW COMMITTEE RECOMMENDATIONS. H.C. TUPPER EXPLANATION. ROBERT HARDIES, DORIS SCOTT, NICK SAUVIE, VINCE CHIOTTI, GRETCHEN DURSCH, CHRIS PIERCE, MARINA VELASQUEZ (VIA INTERPRETER MARIA ORONA) AND LORA CRESWICK TESTIMONY IN SUPPORT OF TRANSFERS. MS. CRESWICK RESPONSE TO BOARD QUESTIONS CONCERNING PORTSMOUTH PROJECT. MR. TUPPER RESPONSE TO BOARD QUESTIONS. CHAIR STEIN ACKNOWLEDGED CONCERNS OF HACIENDA CDC AND ADVISED SHE WILL INITIATE A REVISIT OF THE CHAS GOALS. MOTION UNANIMOUSLY APPROVED. [ORDER 94-195]

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-3 *Request for Approval of a Notice of Intent to Apply for a Cooperative Demonstration Program (Correctional Education) Grant from the U.S. Department of Education, to Provide Vocational Training, Placement Assistance, and Job Retention Services for Community Corrections Clients at the Donald H. Londer Center for Learning*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. CARY HARKAWAY EXPLANATION. NOTICE OF INTENT UNANIMOUSLY APPROVED.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-4 *RESOLUTION in the Matter of Relinquishing Responsibility for the Multnomah County Fair to the Friends of the Multnomah County Fair*

COMMISSIONER COLLIER MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-4. BETSY WILLIAMS EXPLANATION. RICK PAUL

TESTIMONY. MS. WILLIAMS AND BOARD RESPONSE TO ISSUES RAISED BY MR. PAUL. BOARD COMMENTS. RESOLUTION 94-196 UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

R-5 ORDER in the Matter of Property Tax Forgiveness for Real Property Donated to the City of Portland for Park Purposes

COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-5. SUSAN HATHAWAY-MARKER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. ORDER 94-197 UNANIMOUSLY APPROVED.

R-6 RESOLUTION in the Matter of Adjusting Salaries for the County Chair and Commissioners to Amounts Less Than Recommendations of the 1994 Salary Commission

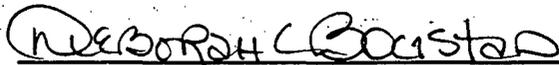
COMMISSIONER SALTZMAN MOVED AND COMMISSIONER COLLIER SECONDED, APPROVAL OF R-6. DAVE WARREN EXPLANATION. BOARD COMMENTS. RESOLUTION 94-198 UNANIMOUSLY APPROVED.

PUBLIC COMMENT

R-7 Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.

There being no further business, the meeting was adjourned at 11:47 a.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**



Deborah L. Bogstad



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS		
BEVERLY STEIN •	CHAIR •	248-3308
DAN SALTZMAN •	DISTRICT 1 •	248-5220
GARY HANSEN •	DISTRICT 2 •	248-5219
TANYA COLLIER •	DISTRICT 3 •	248-5217
SHARRON KELLEY •	DISTRICT 4 •	248-5213
CLERK'S OFFICE •	248-3277 •	248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

OCTOBER 10, 1994 - OCTOBER 14, 1994

- Tuesday, October 11, 1994 - 9:30 AM - Board Briefings Page 2*
- Tuesday, October 11, 1994 - 1:30 PM - Planning Items Page 2*
- Thursday, October 13, 1994 - 9:30 AM - Appeal Hearing Page 3*
- Thursday, October 13, 1994 - 10:30 AM - Regular Meeting Page 3*
(Or Immediately Following Appeal Hearing)

FUTURE MEETING CHANGES/CANCELLATIONS

- Tuesday, 11/15/94 - Cancelled/AOC Conference*
- Thursday, 11/17/94 - Cancelled/AOC Conference*
- Tuesday, 11/22/94 - 9:30 AM Regular Meeting Scheduled*
- Thursday, 11/24/94 - Cancelled/Holiday*

Thursday Meetings of the Multnomah County Board of Commissioners are taped and can be seen by Paragon Cable subscribers at the following times:

- Thursday, 6:00 PM, Channel 30*
- Friday, 10:00 PM, Channel 30*
- Saturday, 12:30 PM, Channel 30*
- Sunday, 1:00 PM, Channel 30*

INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.

Tuesday, October 11, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

BOARD BRIEFING

- B-1 Department of Community Corrections Supervision of Sex Offenders. Presented by Tamara Holden and Michael Haines. (1 HOUR REQUESTED.)
- B-2 Early Childhood Development/Ready to Learn Benchmark Plan, Parents as Teachers Program. Presented by Multnomah Commission on Children and Families, Pauline Anderson, Cornetta Smith, and Helen Richardson. (15 MINUTES REQUESTED.)
-

Tuesday, October 11, 1994 - 1:30 PM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

PLANNING ITEMS

- P-1 CS 6-94 Review the August 24, 1994 Hearings Officer Decision APPROVING, Subject to Conditions, a Change in Zone Designation from MUA-20 to MUA-20, C-S, (Multiple Use Agriculture-20, Community Service) for a Group Care Facility in an Existing Dwelling, for Property Located at 3745 SE 317TH AVENUE, TROUTDALE
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- P-3 C 11-94 First Reading of a Proposed ORDINANCE Amending Comprehensive Framework Text Plan Policy 16 - B and MCC 11.15 Regarding the Regulation of Surface Mining and Nearby Surrounding Land Uses in Partial Fulfillment of Periodic Review Work Program Tasks Required to Bring Multnomah County's Land Use Program into Compliance with Statewide Planning Goal 5
-

Thursday, October 13, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

MERIT SYSTEM CIVIL SERVICE COUNCIL
APPEAL HEARING

PH-1 Pursuant to Personnel Rule 23.04 and Multnomah County Code Chapter 3.20.430, the Board of Commissioners Will Conduct a Hearing on the Appeal of the August 22, 1994 Merit System Service Council Remand Decision Concerning Judith May. Upon Conclusion of the Hearing, the Board May Affirm the Council's Decision, Deny the Appeal, or Grant the Appeal But Frame a Different Remedy. (1 HOUR REQUESTED.)

Thursday, October 13, 1994 - 10:30 AM
(Or Immediately Following Appeal Hearing)

Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland

REGULAR MEETING

CONSENT CALENDAR

DEPARTMENT OF HEALTH

C-1 Ratification of Intergovernmental Agreement Contract 200825 Between the State of Oregon, Office of Medical Assistance Programs and Multnomah County, on Behalf of CareOregon, Providing CareOregon Direct Inquiry Only On Line Access to Oregon Health Plan Eligibility Data System to Confirm Client Eligibility, for the Period Upon Execution through June 30, 1999

SHERIFF'S OFFICE

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DEPARTMENT OF COMMUNITY CORRECTIONS

- C-9 *Ratification of Amendment 1 to Intergovernmental Agreement Contract 900374 Between the State of Oregon Department of Corrections and Multnomah County, Transferring the Responsibility of Subsidy Payments to the County, Including Transfer of the Related Funds, for the Period July 1, 1993 through June 30, 1995*
- C-10 *Budget Modification DCC 2, Requesting Authorization to Appropriate Revenue from the State of Oregon Department of Corrections to the DCC Program Development Budget, for the Purpose of Providing Financial Support to Inmates for Release Needs Which May Exceed the Funds They Have Accumulated*

REGULAR AGENDA

NON-DEPARTMENTAL

- R-1 *Presentation of "Director's Award" from Oregon Emergency Management*

Department of State Police, in Recognition of the Participation and Contribution of Multnomah County for Establishment and Support of the Regional Emergency Management Group

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 *PUBLIC HEARING to Consider Recommendations of the Technical Review Committee for the Multnomah County Affordable Housing Development Program and BOARD DECISIONS Regarding the Transfer of Tax Foreclosed Property at the Request of the Following Non-Profit Housing Agencies: Habitat for Humanity, Human Solutions, Inc., Christian Women Against Crime, HOST Development, Inc., Rose CDC, Portsmouth Project, Housing Our Families, Sabin CDC, Hacienda CDC and Miracle Revivals, Inc. (30 MINUTES REQUESTED.)*

DEPARTMENT OF COMMUNITY CORRECTIONS

- R-3 *Request for Approval of a Notice of Intent to Apply for a Cooperative Demonstration Program (Correctional Education) Grant from the U.S. Department of Education, to Provide Vocational Training, Placement Assistance, and Job Retention Services for Community Corrections Clients at the Donald H. Londer Center for Learning*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-4 *RESOLUTION in the Matter of Relinquishing Responsibility for the Multnomah County Fair to the Friends of the Multnomah County Fair*

NON-DEPARTMENTAL

- R-5 *ORDER in the Matter of Property Tax Forgiveness for Real Property Donated to the City of Portland for Park Purposes*
- R-6 *RESOLUTION in the Matter of Adjusting Salaries for the County Chair and Commissioners to Amounts Less Than Recommendations of the 1994 Salary Commission*

PUBLIC COMMENT

- R-7 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

Meeting Date: 10/13/94

Agenda No.: PH-1

(Above Space for Board Clerk's Use *ONLY*)

AGENDA PLACEMENT FORM

SUBJECT: Merit System Civil Service Council Appeal Hearing

BOARD BRIEFING: Date Requested:
 Amount of Time Needed:

REGULAR MEETING: Date Requested: October 13, 1994
 Amount of Time Needed: 1 Hour

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Anna Kanwit TELEPHONE: X- 823-4047
 City Attorney BLDG/ROOM: ~~106/1410~~ 131/315

PERSON(S) MAKING PRESENTATION: Anna Kanwit, Steve Nemirow and Don Wilner

ACTION REQUESTED:

INFORMATIONAL ONLY POLICY DIRECTION APPROVAL OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if available):

Pursuant to Personnel Rule 23.04 and Multnomah County Code Chapter 3.10.430, the Multnomah County Board of Commissioners Will Conduct a Hearing on the Appeal of the August 22, 1994 Merit System Civil Service Council Remand Decision Concerning Judith May. Upon Conclusion of the Hearing, the Board May Affirm the Council's Decision, Deny the Appeal, or Grant the Appeal But Frame a Different Remedy.

1994 SEP 12 AM 9:28
BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
OR
DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Office of the Board Clerk at 248-3277 or 248-5222.

WILLNER & HEILING, P.C.

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

FAX (503) 228-4261

Don S. Willner
Dean Heiling
James Dodge
Matthew U'Ren

Legal Assistants

Maida Kelly
Diane McKay

October 18, 1994

The Honorable Beverly Stein, Chair
The Honorable Gary Hansen, Commissioner
The Honorable Tanya Collier, Commissioner
The Sharon Kelley, Commissioner
The Dan Saltzman, Commissioner
Board of Multnomah County Commissioners
1120 SW Fifth, Room 1510
Portland, OR 97214

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 OCT 19 PM 12:48

Re: Judith May Appeal Remand

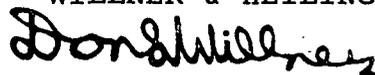
Dear Commissioners:

My client and I very much appreciate your unanimous vote denying the appeal from the decision of the Merit System Council. Judith May spent 12 years in the Animal Control Division of Multnomah County and has since worked in the Vancouver Humane Society. She has had a perfect record and understands the importance of good interpersonal relations. She pledges to do her part to put the past differences behind her and do the best possible job for Multnomah County.

During the hearing, the Assistant County Counsel told you that he had not been served with a copy of my brief. I am enclosing a copy of the invoice of Transerv Package Express which shows that the briefs left my office at 1:25 the afternoon before the hearing and someone at Mr. Nemirow's office receipted for his copy at 1:43. Obviously the County Counsel has a large office and Mr. Nemirow's copy could have been mislaid once it was delivered to his office, but I did want you to know that it was delivered.

Sincerely,

WILLNER & HEILING, P.C.



Don S. Willner

DSW:mk

C:\DATA\AFSCHE\MAY\COMMISS\101894(356)

Enclosure

cc: Steven Nemirow
Marianna Kanwit
Susan Ayers

INVOICE COPY



(503) 241-0484

NON-NEGOTIABLE AIRBILL SHIPPER'S AGENT
PICKUP TIME AND DATE

1:25 10/12
M-15

PDX 942542

CGR:

DATE: 10/12/94

DECLARED VALUE \$

ACCT. NO. 851153

DRIVER

NAME MK	TELEPHONE (503) 228-4000	NAME Steven Nemirow	TELEPHONE ()
FROM: COMPANY NAME Willner & Heiling		TO (FROM): COMPANY NAME Multnomah County Counsel	
ADDRESS 111 S.W. Front Avenue, Suite 303		ADDRESS 1120 SW Fifth Avenue	
CITY Portland	STATE OR	ZIP 97204	ZIP REQUIRED 97214
REFERENCE May	DEPT./ORDER NO.		

TRANSERV CANNOT DELIVER FOR BOX

THIRD PARTY BILLING	NAME	ADDRESS	CITY	STATE	ZIP
	MUST BE CURRENT CUSTOMER				

NO. PCS.	DESCRIPTION	WEIGHT	RATE	AMOUNT																				
	<table border="0"> <tr> <td><input type="checkbox"/> AIR EXPRESS</td> <td><input type="checkbox"/> LOCAL DELIVERY</td> <td colspan="3" rowspan="6">SPECIAL INSTRUCTIONS</td> </tr> <tr> <td>NEXT DAY A.M. (DELIVER WEEKDAY) <input type="checkbox"/> EXPRESS LETTER (UP TO 8 oz.)</td> <td><input type="checkbox"/> SUPER RUSH <input checked="" type="checkbox"/></td> <td>ADVANCED FEES</td> </tr> <tr> <td>INTERNATIONAL <input type="checkbox"/> EXPRESS ENVELOPE (UP TO 2 lbs.)</td> <td><input type="checkbox"/> DIRECT (1 HOUR DEL.)</td> <td>WRONG ADDRESS</td> </tr> <tr> <td>*NEXT DAY BY 9 <input type="checkbox"/> CUSTOMER PACKAGE (OVER 2 lbs.)</td> <td><input type="checkbox"/> DEFERRED (3 HOUR DEL.)</td> <td>WAITING TIME</td> </tr> <tr> <td>*SATURDAY SVC. <input type="checkbox"/> OVERNIGHT TUBE</td> <td><input type="checkbox"/> ROUND TRIP</td> <td>OTHER</td> </tr> <tr> <td>*SAME DAY <input type="checkbox"/> LATE PICKUP <input type="checkbox"/></td> <td><input type="checkbox"/> ROUTE</td> <td>ATTEMPT</td> </tr> </table>	<input type="checkbox"/> AIR EXPRESS	<input type="checkbox"/> LOCAL DELIVERY	SPECIAL INSTRUCTIONS			NEXT DAY A.M. (DELIVER WEEKDAY) <input type="checkbox"/> EXPRESS LETTER (UP TO 8 oz.)	<input type="checkbox"/> SUPER RUSH <input checked="" type="checkbox"/>	ADVANCED FEES	INTERNATIONAL <input type="checkbox"/> EXPRESS ENVELOPE (UP TO 2 lbs.)	<input type="checkbox"/> DIRECT (1 HOUR DEL.)	WRONG ADDRESS	*NEXT DAY BY 9 <input type="checkbox"/> CUSTOMER PACKAGE (OVER 2 lbs.)	<input type="checkbox"/> DEFERRED (3 HOUR DEL.)	WAITING TIME	*SATURDAY SVC. <input type="checkbox"/> OVERNIGHT TUBE	<input type="checkbox"/> ROUND TRIP	OTHER	*SAME DAY <input type="checkbox"/> LATE PICKUP <input type="checkbox"/>	<input type="checkbox"/> ROUTE	ATTEMPT			
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LATE PICKUP	
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SEE REVERSE SIDE FOR CONDITIONS OF CARRIAGE; LIMITATIONS OF LIABILITY.

WILLNER & HEILING, P.C.

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

BOARD OF
COUNTY COMMISSIONERS

1994 OCT 12 PM 1:11

MULTNOMAH COUNTY
OREGON

FAX (503) 228-4261

Don S. Willner
Dean Heiling
James Dodge
Matthew U'Ren

Legal Assistants

Maida Kelly
Diane McKay

October 12, 1994

Ms. Debbie Bogstad
Office of the Board Clerk
Board of Multnomah County Commissioners
1120 SW Fifth, Room 1510
Portland, OR 97214

Via Messenger

Re: Judith May Appeal

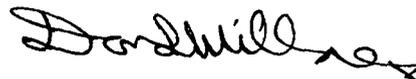
Dear Ms. Bogstad:

Enclosed please find an original and five copies of the Brief of Judith May for Second Hearing. Please arrange to have the copies hand delivered to the Board Members as early as possible today so that they have sufficient time to read the enclosed briefs before tomorrow morning's 9:30 a.m. hearing.

We appreciate your continuing courtesy and cooperation.

Sincerely,

WILLNER & HEILING, P.C.



Don S. Willner

DSW:mk

C:\DATA\AFSCME\MAY\BOG.4\101294(1101)

Enclosure

cc: Steven J. Nemirow (hand delivered)
Marianna Kanwit (hand delivered)
Susan Ayers (hand delivered)

1994 OCT 12 PM 1:11

MULTNOMAH COUNTY
OREGON

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

Re: Judith May Appeal)
) BRIEF OF JUDITH MAY FOR SECOND
) HEARING
)
)
)

A. INTRODUCTION

The Merit System Council by a 2 to 1 vote on May 10, 1994 found bias in the hiring process and ordered Judith May be given the position of Animal Control Officer with back pay to February 1, 1994. The County appealed. On June 30, 1994 this Board, by a 3 to 1 vote remanded the case back to the Merit System Council.

B. ISSUES REMANDED TO MERIT SYSTEM COUNCIL

1. Commissioner Kelly moved to have the case remanded for an interview of the people responsible for the hiring process, plus stating the basis for the award of retroactive pay back to February 1, 1994, plus more specific findings of fact and conclusions of law. (Page 49 of transcript.)

2. Commissioner Saltzman agreed with these three reasons for the remand. (Page 50 of transcript.)

3. Commissioner Collier supported the motion for remand asking for additional findings of fact and conclusions of law,

1 and a clarification of the back pay issue. (Page 51 of
2 transcript.)

3
4 **C. ACTION TAKEN BY MERIT SYSTEM COUNCIL**

5 The Merit System Council held a full hearing on August 15,
6 1994, took testimony from all members of both hiring panels
7 except one who was on vacation. By the same two to one vote it
8 then took this action:

9 Reaffirmed the earlier decision that there was bias in
10 the hiring process and ordered Judith May be given the Animal
11 Control Officer position. The Council then modified its earlier
12 decision that Judith May be given back pay to February 1, 1994 by
13 deducting the pay and benefits that she had received from her
14 present job with the Vancouver Humane Society. The Council then
15 held a second hearing on August 22, 1994 and adopted the attached
16 detailed Findings of Fact and Conclusions of Law, and Order that
17 has been submitted to this Board.

18 The County has again appealed.

19
20 **D. ISSUES NOW BEFORE THIS BOARD**

21 The issue before this Board is whether the Merit System
22 Council complied with the instructions given by you in the remand
23 motion. It is undisputed that the Council took the testimony of
24 the interview panels, modified the back pay award, and made
25 detailed findings of fact and conclusions of law.

1 **E. STANDARD OF REVIEW**

2 This Board, like any appellate body, does not take testimony
3 of witnesses, but relies on the record made before the
4 administrative agency that conducted the hearings, here the Merit
5 System Council. It is customary for the appellate body to accept
6 the findings of fact of the jury, trial judge or the
7 administrative agency because they observed the witnesses and
8 their demeanor in testifying and based their decision upon those
9 observations. An administrative agency's findings are to be
10 accepted if "supported by substantial evidence in the whole
11 record." ORS 34.040. It is customary for an appellate body to
12 give great weight to the conclusions of law of the administrative
13 agency because the agency has developed expertise in its subject
14 matter, here the workings of the Merit System. The only
15 exception is if the agency makes an illegal or unconstitutional
16 decision. ORS 34.040. The duty of the Merit System Council is,
17 based upon its expertise, to provide the "appropriate ruling,
18 order, sanction, or relief." MC 3.10, 3.80(D)(2).

19 It would be inconsistent with administrative law principles
20 for this Board acting in your appellate capacity to re-do the job
21 of the Merit System Council.

22 The attached Findings of Fact have been annotated with the
23 place in the record which contains the supporting evidence. The
24 Conclusions of Law are based upon the Findings of Fact.

25 The dissent of member Wight is based on faulty premises.
26 Contrary to Member Wight, the attached appeal request of Judith

1 May did appeal the decision to hire her for the Animal Control
2 Division positions. Contrary to Member Wight, the hiring
3 decisions were made by the supervisors and not by the interview
4 panels (see transcript references after Findings of Fact 6) and
5 it is the bias of the supervisors which Judy May challenged. The
6 evidence showed that hiring decisions by the supervisors were
7 often made with help by interview panels and sometimes made
8 without interview panels. By interesting coincidence both
9 supervisors in this case, Mr. Flagler and Ms. Middleton, obtained
10 their supervisor positions without the participation of interview
11 panels. (August 10, 1994 Tr. p. 64, line 17 - p. 66, line 2; p.
12 95, lines 6-25.) Commissioner Wight's inferences from the
13 evidence are entitled to no more weight than the inferences of
14 dissenting jurors. The facts are found by the majority in all
15 trial level proceedings.

16
17 **F. CONCLUSION**

18 The Council has now held three hearings on the Judith May
19 case before the first appeal and two more hearings after the
20 remand. Through its remand instructions the Board has required
21 the Merit System Council to make the decision that has been
22 entrusted to the Council in a more detailed and systematic way.

23 ///

24 ///

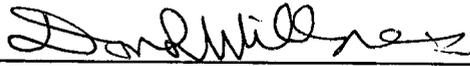
25 ///

26 ///

1 The decision of the Merit System Council should be unanimously
2 affirmed because they have done what you asked them to do.

3
4 Dated: October 12, 1994

Respectfully submitted,
WILLNER & HEILING, P.C.

5
6
7 By 
8 DON S. WILLNER, OSB #52114
9 Attorneys for Judith May
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**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND ORDER OF MERIT SYSTEM COUNCIL**

A. FINDINGS OF FACT

1. Judith May had been employed in the Animal Control Division of Multnomah County for 12 years and had a good record. She was a union shop steward. She went on leave of absence in April, 1992. (March 10, 1994 Tr. p. 2, lines 24-25; p. 6, lines 5-14; p. 15, lines 12-15.)

2. During the time she was a union shop steward there was friction between her and her supervisor David Flagler over the way she was performing her union shop steward duties. (March 10, 1994 Tr. p. 11, line 23 - p. 14, line 8; p. 49, line 25 - p. 50, line 5.)

3. In July, 1993, she was still on the reinstatement list and applied for an open funded position in animal control, but Mr. Flagler decided not to fill the position and hired a temporary employee to do the work. (March 10, 1994 Tr. p. 3, line 11 - p. 5, line 23; p. 47, lines 10-12; April 12, 1994 Tr. p. 12, line 12 - p. 14 line 19.)

4. In September, 1993, jobs were posted for Animal Control Officer and Animal Control Technician. (March 10, 1994, Tr. p. 5, lines 11-15.)

5. Judith May applied for both jobs and placed number one on both lists, forwarded to all hiring managers. (March 10, 1994 Tr. p. 5, line 24 - p. 6, line 20.)

6. The hiring decision was made by David Flagler for the officer position and by his subordinate supervisor Sharyn Middleton for the technician position. Mr. Flagler was then Interim Director of the Animal Control Division and soon to be Director. (August 10, 1994 Tr. p. 39, lines 22-23; March 10, 1994 Tr. p. 7, lines 11-12; p. 43, lines 8-10.)

7. Mr. Flagler appointed an interview panels to assist him in connection with the officer position and supervisor Sharyn Middleton appointed an interview panel to assist her in connection with the technician position. (August 10, 1994 Tr. p. 28, lines 4-7; p. 81, lines 7-10.)

8. The members of the interview panels were all subordinates of Mr. Flagler. (August 10, 1994 Tr. p. 34, lines 8-14.)

9. Shortly before the interview, Mr. Flagler told Officer Madeline Davalos that he was not going to hire Judith May because

of all the trouble she had caused before. (March 10, 1994 Tr. p. 9, lines 4-13; p. 52, lines 6-16; p. 53, lines 11-17.)

10. Management provided the interview panels with the questions to be asked which focused on interpersonal skills. (March 10, 1994 Tr. p. 39, line 22 - p. 40, line 3; August 10, 1994 Tr. p. 40, line 23 - p. 41, line 4; p. 44, line 10 - p. 45, line 17; p. 62, lines 16-22.)

11. There was no emphasis upon interpersonal skills in either job announcement. (Job Announcements and March 10, 1994 Tr. p. 59, line 12 - p. 60, line 17.)

12. The prior conflict between Mr. Flagler and Judith May was known to many members of the interview panels. (August 10, 1994, Tr. p. 55, line 10 - p. 56, line 11; p. 64, lines 8-16.)

13. In addition to the general questions asked of other applicants, at the technician interview Judith May and one other applicant were asked by Sharyn Middleton how are you going to deal with being under the control or direction of David Flagler. (March 10, 1994, Tr. p. 7, lines 6-15; p. 33, line 20 p p. 34, line 5.)

14. Judith May did not place at the top of either interview list and was not given either position. (March 10, 1994 Tr. p. 8, lines 14-17.)

15. Judith May made a timely appeal of her rejection for the Animal Control Officer and Animal Health Technician positions. (See attached Appeal Notice.)

16. The failure to reinstate Judith May and the hiring of the temporary employee in July, 1993 showed bias against Judith May by Mr. Flagler. (Entire transcripts, especially references given in par. 3.)

17. The decisions of David Flagler and Sharyn Middleton not to choose Judith May for either the Animal Control Officer or Animal Health Technician positions were because Mr. Flagler believed that Judith May had caused trouble when she was a union shop steward. (Entire transcripts, especially references given in par. 9.)

18. The animal control officer would have been on the payroll by February 1, 1994. (May 10, 1994 Tr., p. 9, lines 8-10; p. 10, lines 3-5.)

B. CONCLUSIONS OF LAW

1. The decisions not to hire Judith May for either the Animal Control Officer or Animal Health Technician position

of all the trouble she had caused before. (March 10, 1994 Tr. p. 9, lines 4-13; p. 52, lines 6-16; p. 53, lines 11-17.)

10. Management provided the interview panels with the questions to be asked which focused on interpersonal skills. (March 10, 1994 Tr. p. 39, line 22 - p. 40, line 3; August 10, 1994 Tr. p. 40, line 23 - p. 41, line 4; p. 44, line 10 - p. 45, line 17; p. 62, lines 16-22.)

11. There was no emphasis upon interpersonal skills in either job announcement. (Job Announcements and March 10, 1994 Tr. p. 59, line 12 - p. 60, line 17.)

12. The prior conflict between Mr. Flagler and Judith May was known to many members of the interview panels. (August 10, 1994, Tr. p. 55, line 10 - p. 56, line 11; p. 64, lines 8-16.)

13. In addition to the general questions asked of other applicants, at the technician interview Judith May and one other applicant were asked by Sharyn Middleton how are you going to deal with being under the control or direction of David Flagler. (March 10, 1994, Tr. p. 7, lines 6-15; p. 33, line 20 p p. 34, line 5.)

14. Judith May did not place at the top of either interview list and was not given either position. (March 10, 1994 Tr. p. 8, lines 14-17.)

15. Judith May made a timely appeal of her rejection for the Animal Control Officer and Animal Health Technician positions. (See attached ^{Appeal} Special Notice.)

16. The failure to reinstate Judith May and the hiring of the temporary employee in July, 1993 showed bias against Judith May by Mr. Flagler. (Entire transcripts, especially references given in par. 3.)

17. The decisions of David Flagler and Sharyn Middleton not to choose Judith May for either the Animal Control Officer or Animal Health Technician positions were because Mr. Flagler believed that Judith May had caused trouble when she was a union shop steward. (Entire transcripts, especially references given in par. 9.)

18. The animal control officer would have been on the payroll by February 1, 1994. (May 10, 1994 Tr., p. 9, lines 8-10; p. 10, lines 3-5.)

B. CONCLUSIONS OF LAW

1. The decisions not to hire Judith May for either the Animal Control Officer or Animal Health Technician position

because of her previous activity as union shop steward were violations of MCC 3.10.015 and Rule 1.02 in that the decisions were based upon prohibited bias and not upon merit.

2. The decisions not to hire Judith May for either the Animal Control Officer or Animal Health Technician position were facilitated by the following procedures which violated Merit System principles contained in MCC 3.10.015 and Rule 102:

(a) Management provided the questions to the interview panels which focused on interpersonal skills even though there was no emphasis upon interpersonal skills in the job announcement.

(b) In addition to the general questions asked of other applicants, at the technician interview Judith May and one other applicant were asked by Sharyn Middleton how are you going to deal with being under the control or direction of David Flagler.

3. This is the appropriate remedy under MCC 3.10.380(D)(2):

(a) Judith May should now be offered the Animal Control Officer position - with a seniority date of February 1, 1994.

(b) Judith May should be awarded back pay at the Animal Control Officer rate of pay from February 1, 1994 until she starts work as an Animal Control Officer minus the pay that she received during this period of time from her present position in the Animal Control Office in Vancouver, Washington.

(c) Since Judith May received no retirement benefits in her Vancouver job, PERS contributions should be paid on her behalf effective February 1, 1994.

(d) Her six month probationary period should start on the date that she starts work as an Animal Control Officer.

C. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law the Merit System Council makes the following ORDER:

1. Judith May shall now be offered the Animal Control Officer position - with a seniority date of February 1, 1994.

2. Judith May shall be awarded back pay at the Animal Control Officer rate of pay from February 1, 1994 until she starts work as an Animal Control Officer minus the pay that she received during this period of time from her present position in the Animal Control Office in Vancouver, Washington.

3. PERS contributions shall be paid on her behalf effective February 1, 1994.

4. Her six month probationary period shall start on the date that she starts work as an Animal Control Officer.

C:\DATA\AFSCME\MAY\FINDINGS.3\101294(1036)

January 28 1994

To Susan Aires and
all parties concerned:

On Tuesday 1-25-94, I attempted phone contact with Susan Aires. Being unable to reach her I left a voice mail message to inform her I intended to utilize the Merritt system to challenge the filling of both the Animal Control Officer and Animal Health Technician positions. I again left a phone message to the same effect on 1-26-94 and later that date learned that she was out sick. On 1-27-94, at about 1:00p.m. I talked to Don Winkley and informed him I intended to challenge the final selection of both positions and wanted the process started. This conversation was in response to a phone message to contact Don Winkley left earlier that same date. Don Winkley stated he would get back with Susan Aires and inform her I intended to challenge the hiring. As I have not had further response as of 1-28-94, I am writing this to inform you that I am challenging the hiring and obtaining legal council regarding personal/individual discrimination from Chief Field Supervisor Dave Flagler. My challenge was addressed to the personal dept. Merritt System with-in four days of notice regarding the filling of the Animal Care Technician position and two days of the hiring notification regarding the Animal Control Officer position. I will be anticipating a timely response from your department.

Thank You
Judith R. May

Judith R. May

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing BRIEF OF JUDITH MAY FOR SECOND HEARING on October 12, 1994, by hand delivering to said interested parties a true and correct copy thereof, hereby certified by me as such, contained in a sealed envelope addressed to said interested parties' last known address, as listed below, on said day:

Marianna Kanwit
Deputy City Attorney
Office of the City Attorney
1220 SW Fifth Avenue
Portland, OR 97204

Steven Jay Nemirow
Multnomah County Counsel
1120 SW Fifth Street
P.O. Box 849
Portland, OR 97207


DON S. WILLNER

C:\DATA\AFSCME\MAY\BRIEF\101294(1106)



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

October 7, 1994

Bw
RECEIVED

OCT 11 1994

BEVERLY STEIN
MULTNOMAH COUNTY CHAIR

/
DON S WILLNER
WILLNER & HEILING
ATTORNEYS AT LAW
SUITE 303
111 SW FRONT AVENUE
PORTLAND OR 97204

Del

RE: Judith May Appeal

Dear Mr. Willner:

This confirms my telephone conversation with your Legal Assistant, Maida Kelly, informing her that Steve Nemirow has a transcript of the proceeding and to contact Mr. Nemirow's secretary in order to obtain, and pay for, the transcript.

This will also confirm my disagreement with certain statements contained in your October 6, 1994 letter. Although I did tell Ms. Kelly that since we had Findings of Fact and Conclusions of Law, I did not think a written transcript was necessary for the Board of County Commissioners, I did not indicate that the Board of County Commissioners would accept the findings and conclusions of the Merit System Council as being adequately supported in the record. I have assumed, and continue to assume, that you and opposing counsel will present information from the record in order to convince the Board of County Commissioners of your respective positions. As you know, there is a dissenting opinion and County Counsel disagreed with many of the findings of fact and conclusions.

I hope this clarifies any misunderstandings that may have arisen from my discussion with Ms. Kelly.

Sincerely,

Marianna Kanwit

Marianna Kanwit
Legal Advisor to the Board

BOARD OF
COUNTY COMMISSIONERS
1994 OCT 12 PM 4:42
MULTNOMAH COUNTY
OREGON

AK/bf

pers\county\willner

c: Steve Nemirow B106/R1530
Debbie Bogstad-B106/R1400

Debbie:

Steve is providing me with a transcript which I will give to you to hand out to the Commissioners. I frankly don't know whether they will have the time or desire to read it.

AK

WILLNER & HEILING, P.C.

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

PORTLAND, OREGON 97204-3500

(503) 228-4000

FAX (503) 228-4261

Don S. Willner
Dean Heiling
James Dodge
Matthew U'Ren

Legal Assistants

Maida Kelly
Diane McKay

October 6, 1994

Ms. Debbie Bogstad
Office of the Board Clerk
Board of Multnomah County Commissioners
1120 SW Fifth, Room 1510
Portland, OR 97214

Via Telefax & Mail

Re: Judith May Appeal

Dear Ms. Bogstad:

Since writing and faxing my earlier letter to you of this date, Marianna Kanwit called my legal assistant and told her that since there are findings of fact and conclusions of law made by the Merit System Council she does not believe it necessary to transcribe the hearings that took place before the Merit System Council after the remand from this Board. You have now called me to say that the Board will not have the transcript before it when it considers the appeal.

Normally as an attorney in an appellate proceeding I would be prepared to support the findings and conclusions with citations to the record. Since neither the Board of County Commissioners nor the Merit System Council are preparing a transcript of the evidence, I will assume that the Board of County Commissioners will accept the findings and conclusions of the Merit System Council as being adequately supported in the record.

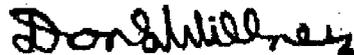
BOARD OF
COUNTY COMMISSIONERS
1994 OCT - 6 AM 11: 18
MULTNOMAH COUNTY
OREGON

Ms. Debbie Bogstad
October 6, 1994
Page 2

Thank you for your courtesy and cooperation.

Sincerely,

WILLNER & HEILING, P.C.



Don S. Willner

DSW:mk

C:\DATA\AFACR\MAX\802.5\100694(1049)

Enclosure

cc: Steven J. Nemirow (via fax & mail)
Marianna Kanwit (via fax & mail)
Susan Ayers (via fax & mail)

WILLNER & HEILING, P.C.

ATTORNEYS AT LAW

SUITE 303

111 S.W. FRONT AVENUE

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Maida Kelly
Diane McKay

October 6, 1994

Ms. Debbie Bogstad
Office of the Board Clerk
Board of Multnomah County Commissioners
1120 SW Fifth, Room 1510
Portland, OR 97214

Via Telefax & Mail

Re: Judith May Appeal

Dear Ms. Bogstad:

On September 1, 1994, Marianna Kanwit, counsel to the Board, wrote me the enclosed letter telling me the County's appeal of the decision of the Merit System Council in favor of my client Judith May would be heard at 9:30 a.m. on Thursday, October 13, 1994. As you know, this is the second time that this matter has been before the Board of County Commissioners. The Board, of course, reviews appeals based on the record made before the Merit System Council.

I have been waiting for a copy of the transcript so that I can review it and submit a pre-hearing brief to the Board. It is now one week before the hearing and I still have not received a transcript. I have been trying to reach Ms. Kanwit and have left messages on her voice mail. She has advised my legal assistant to talk to Susan Ayers, Executive Secretary of the Merit System Council. My legal assistant then talked to Susan Ayers and she knows of no plans to provide a transcript.

My plan had been to read the transcript this weekend and yet the matter of providing a transcript seems to have fallen between the cracks. Would you please give this matter your immediate attention?

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1994 OCT - 6 11:10:36

- Ms. Debbie Bogstad
October 6, 1994
Page 2

Thank you for your courtesy and cooperation.

Sincerely,

WILLNER & HEILING, P.C.



Don S. Willner

DSW:mk

C:\DATA\AFSCME\NAV\BOG.2\100694(933)

Enclosure

cc: Steven J. Nemirow (via fax & mail)
Marianna Kanwit (via fax & mail)
Susan Ayers



CITY OF

PORTLAND, OREGON

OFFICE OF CITY ATTORNEY

Jeffrey L. Rogers, City Attorney
1220 S.W. 5th Avenue
Portland, Oregon 97204
(503) 823-4047

September 1, 1994

STEVEN J NEMIROW
MULTNOMAH COUNTY COUNSEL
1120 SW 5TH AVENUE
PO BOX 849
PORTLAND OR 97207

✓ DONALD S WILLNER
WILLNER & HEILING PC
ATTORNEYS AT LAW
SUITE 303
111 SW FRONT AVENUE
PORTLAND OR 97204-3500

RECEIVED
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RE: Judith May Appeal

Gentlemen:

The appeal of the Merit System Civil Service Council's decision in the above matter will be heard before the Board of County Commissioners on October 13, 1994 at 9:30 a.m.

Sincerely,


Marianna Kanwit
Deputy City Attorney

AK/bf
pers\county\nem

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BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)

Petitioner)

v.)

MULTNOMAH COUNTY CO.)

Respondent.)

NOTICE OF APPEAL AND REQUEST
FOR HEARING

Pursuant to Personnel Rule 23.04, MCC 3.10.430,
Respondent Multnomah County appeals the decision of the Civil
Service Commission in the above-captioned matter, made on remand on
August 22, 1994, and requests a hearing on all issues of law and
fact.

Dated this 29th day of August, 1994.

Respectfully submitted,
LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By Steven J. Nemirow
Steven J. Nemirow, OSB #86254
Assistant County Counsel
Of Attorneys for Respondent
Multnomah County

F:\DATA\COUNSEL\WPDATA\TWELVE\FORMS\APPEAL.BCC\SJN

MULTNOMAH COUNTY COUNSEL
1120 S.W. Fifth Avenue, Suite 1530
P.O. Box 849
Portland, Oregon 97207-0849
(503) 248-3138

1994 AUG 31 AM 9:51
MULTNOMAH COUNTY
OREGON
COUNTY CLERK
DANNY GARDNER

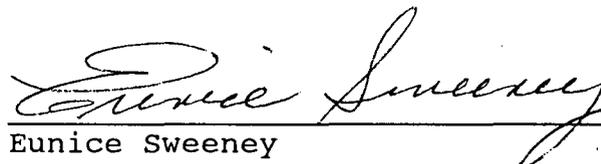
CERTIFICATE OF SERVICE

I do hereby certify that on this 29th day of August, 1994, I mailed the within Notice of Appeal and Request for Hearing, by depositing in the United States Post Office at Portland, Oregon, a full, true, and correct copy thereof, by first class mail, with postage prepaid, addressed to the following:

Don Willner
Willner & Heiling
Suite 303
111 S W Front Avenue
Portland, Oregon 97204

Anna Kanwit
City Attorney
City Hall
1220 S W 5th Avenue
Portland, Oregon 97204

Board of County Commissioners
1120 SW 5th Avenue
Room 1510
Portland, Oregon 97204


Eunice Sweeney



Clerk/Board

MULTNOMAH COUNTY OREGON

BEVERLY STEIN
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

(503) 248-5170 TDD

PORTLAND BUILDING
1120 S.W. FIFTH, 14TH FLOOR
P.O. BOX 14700
PORTLAND, OREGON 97214

PURCHASING, CONTRACTS
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(503) 248-5111

2505 S.E. 11TH, 1ST FLOOR
PORTLAND, OREGON 97202

MEMORANDUM

TO: Beverly Stein, Chair
 Gary Hansen, Commissioner
 Tanya Collier, Commissioner
 Sharron Kelley, Commissioner
 Dan Saltzman, Commissioner

FROM: *S. Ayers*
 Susan Ayers, Executive Secretary
 Merit System Civil Service Council

DATE: August 26, 1994

SUBJECT: JUDITH MAY APPEAL REMAND

BOARD OF
 COUNTY COMMISSIONERS
 1994 AUG 26 AM 9:09
 MULTNOMAH COUNTY
 OREGON

At its June 30, 1994, hearing on the Judith May Appeal, the Board passed a motion to remand the appeal back to the Merit System Civil Service Council for further review and action and directed the Council to complete this process by September 1, 1994.

Pursuant to this motion, the Merit System Civil Service Council is forwarding the following documents to the Board of County Commissioners:

- 1) Findings of Fact and Conclusions of Law and Order of Merit System Council which were adopted by the Council, two members voting in favor and one member voting against.
- 2) Dissenting Opinion to the Decision Regarding Judith by the Merit System Council.

Attachments

c: Don S. Willner
 Steve Nemirow
 Anna Kanwit
 Clerk of the Board
 Merit System Civil Service Council

**FINDINGS OF FACT AND CONCLUSIONS OF LAW
AND ORDER OF MERIT SYSTEM COUNCIL**

A. FINDINGS OF FACT

1. Judith May had been employed in the Animal Control Division of Multnomah County for 12 years and had a good record. She was a union shop steward. She went on leave of absence in April 1992.

2. During the time she was a union shop steward there was friction between her and her supervisor, David Flagler, over the way she was performing her union shop steward duties.

3. In July 1993, she was still on the reinstatement list and applied for an open funded position in Animal Control, but Mr. Flagler decided not to fill the position and hired a temporary employee to do the work.

4. In September 1993, jobs were posted for Animal Control Officer and Animal Control Technician.

5. Judith May applied for both jobs and placed number one on both lists forwarded to the hiring managers.

6. The hiring decision was made by David Flagler for the Officer position and by his subordinate supervisor, Sharyn Middleton, for the Technician position. Mr. Flagler was then Interim Director of the Animal Control Division and soon to be Director.

7. Mr. Flagler appointed an interview panel to assist him in connection with the Officer position and Supervisor Sharyn Middleton appointed an interview panel to assist her in connection with the Technician position.

8. The members of the interview panels were all subordinates of Mr. Flagler.

9. Shortly before the interview, Mr. Flagler told Officer Madeline Davalos that he was not going to hire Judith May because of all the trouble she had caused before.

10. Management provided the interview panels with the questions to be asked which focused on interpersonal skills.

11. There was no emphasis upon interpersonal skills in either job announcement.

12. The prior conflict between Mr. Flagler and Judith May was known to many members of the interview panels.

13. In addition to the general questions asked of other applicants, at the Technician interview, Judith May and one other applicant were asked by Sharyn Middleton, "how are you going to deal with being under the control or direction of David Flagler?"

14. Judith May did not place at the top of either interview list and was not given either position.

15. Judith May made a timely appeal of her rejection for the Animal Control Officer and Animal Health Technician positions.

16. The failure to reinstate Judith May and the hiring of the temporary employee in July 1993 showed bias against Judith May by Mr. Flagler.

17. The decisions of David Flagler and Sharyn Middleton not to choose Judith May for either the Animal Control Officer or Animal Health Technician positions were because Mr. Flagler believed that Judith May had caused trouble when she was a union shop steward.

18. The Animal Control Officer would have been on the payroll by February 1, 1994.

B. CONCLUSIONS OF LAW

1. The decisions not to hire Judith May for either the Animal Control Officer or Animal Health Technician position because of her previous activity as union shop steward were violations of MCC 3.10.015 and Rule 1.02 in that the decisions were based upon prohibited bias and not upon merit.

2. The decisions not to hire Judith May for either the Animal Control Officer or Animal Health Technician positions were facilitated by the following procedures which violated Merit System principles contained in MCC 3.10.015 and Rule 1.02:

(b) Management provided the questions to the interview panels which focused on interpersonal skills even though there was no emphasis upon interpersonal skills in the job announcement.

(a) In addition to the general questions asked of other applicants, at the Technician interview, Judith May and one other applicant were asked by Sharyn Middleton, "how are you going to deal with being under the control or direction of David Flagler?"

3. This is the appropriate remedy under MCC 3.10.380(D) (2):

(a) Judith May should now be offered the Animal Control Officer position - with a seniority date of February 1, 1994.

(b) Judith May should be awarded back pay at the Animal Control Officer rate of pay from February 1, 1994 until she starts work as an Animal Control Officer minus the pay that she received during this period of time from her present position in the Animal Control Office in Vancouver, Washington.

(c) Since Judith May received no retirement benefits in her Vancouver job, PERS contributions should be paid on her behalf effective February 1, 1994.

(d) Her six month probationary period should start on the date that she starts work as an Animal Control Officer.

C. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Merit System Council makes the following ORDER:

1. Judith May shall now be offered the Animal Control Officer position - with a seniority date of February 1, 1994.
2. Judith May shall be awarded back pay at the Animal Control Officer rate of pay from February 1, 1994 until she starts work as an Animal Control Officer minus the pay that she received during this period of time from her present position in the Animal Control Office in Vancouver, Washington.
3. PERS contributions shall be paid on her behalf effective February 1, 1994.
4. Her six month probationary period shall start on the date that she starts work as an Animal Control Officer.

Dissenting Opinion to the Decision Regarding Judith May
by the Merit System Council

The appeal by Judith May was originally directed towards the failure of the Animal Control Division to reinstate her to her prior position in July 1993. During one of the prior hearings, when members of both of the selection panels were available to testify before the Merit System Council, I specifically asked Judith May if she were alleging that there was any bias on behalf of the selection panels. She responded in the negative and therefore Council did not take testimony at that hearing from the members of the selection panels.

The decision not to reinstate Judith May was suspicious because: (1) the evidence that there was conflict between Judith May and Dave Flagler that arose out of her activities as a union shop steward; (2) the decision of the Animal Control Division not to fill an open ACO position when Judith May applied for reinstatement shortly before her one-year reinstatement period ran out; and (3) the decision of the Animal Control Division to advertise for a new position in September 1993, only three months after they decided not to fill a similar position by reinstating Judith May. Judith May could not have known of any discriminatory motive until after the decision to fill the new position was made.

The focus of this member's inquiry was whether or not the Animal Control Division could state a non-discriminatory reason for their decision not to fill the position by reinstatement in July 1993 and the ability of the Animal Control Division's stated non-discriminatory reason to withstand the scrutiny of the hearing before the Council.

From the testimony given, it was this Council Member's decision that the reason for not filling the position by reinstatement in July 1993 was based on valid budgetary reasons. I will not review that evidence because the focus of this proceeding is now on the new positions announced in September. However, the evidence shows that the reasons for not filling the vacant position in July no longer existed in September 1993. Because of the County Commission's decision regarding funding of positions in the Animal Control Division, it was possible for the Division to hire two new people in September.

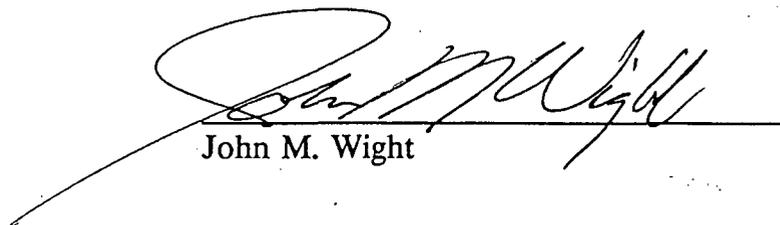
Because the evidence showed the reasons for not filling the Animal Control Officer position of July 1993 was not based upon a discriminatory motive and because Judith May did not allege any discrimination in the selection process for the new positions, I voted to deny her appeal.

On remand, both the county and the appellant have focused their attention on the decision of the selection panels. Following the Board's remand order, we took testimony from all except one of the members of the selection panel. That one member was on vacation and unavailable for testimony. I believe that testimony from the members of the selection panel indicates that there was no bias against Judith May as a result of any influence from Dave Flagler or anyone else. While the majority places some emphasis on

the fact that interpersonal skills were not mentioned in the job-vacancy announcement, I believe that deficiency goes to the whole selection process as opposed to proving any kind of discriminatory motive against Judith May. The independent recommendation of all those serving on the selection panels was to select someone other than Judith May for each of the positions. In both positions, Judith May was not even among the top three candidates.

I believe it is the obligation of the Merit System Council to vigorously protect job applicants and existing employees from decisions based upon factors other than Merit-System principles. I do not believe this is such a case. For these reasons, I dissent from the majority decision.

DATED this 22nd day of August, 1994.



John M. Wight

ANNOTATED MINUTES

*Thursday, June 30, 1994 - 9:30 AM
Multnomah County Courthouse, Room 602*

MERIT SYSTEM CIVIL SERVICE COUNCIL
APPEAL HEARING

Vice-Chair Tanya Collier convened the hearing at 9:35 a.m., with Commissioners Sharron Kelley and Dan Saltzman present, and Commissioner Gary Hansen and Chair Beverly Stein excused.

PH-1 Pursuant to Multnomah County Code 3.10.430, the Board of Commissioners Will Conduct a Hearing in the Matter of the Merit System Civil Service Council Appeal of Judith May. Upon Conclusion of the Hearing, the Board May Affirm the Council's Decision, Deny the Appeal, or Grant the Appeal But Frame a Different Remedy.

IN RESPONSE TO A REQUEST OF VICE-CHAIR COLLIER, CITY ATTORNEY ANNA KANWIT, LEGAL COUNSEL FOR THE BOARD OF COMMISSIONERS, COUNTY COUNSEL STEVE NEMIROW, REPRESENTING RESPONDENT MULTNOMAH COUNTY, AND ATTORNEY DON WILLNER, REPRESENTING APPELLANT JUDITH MAY, DISCUSSED RESPONDENT'S MOTION FOR SET-OVER ON THE GROUNDS OF LACK OF SUFFICIENT RECORD; WHETHER THE HEARING SHOULD BE RESCHEDULED WHEN A FULL BOARD IS PRESENT, OR HELD WHEN COMMISSIONER HANSEN ARRIVES AT 10:30 TODAY. CONSENSUS REACHED.

The hearing was recessed at 9:45 a.m. and reconvened at 10:26 a.m., with Vice-Chair Tanya Collier, Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present, and Chair Beverly Stein excused.

AT THE REQUEST OF VICE-CHAIR COLLIER, MS. KANWIT OUTLINED THE PROCESS FOR TODAY'S HEARING.

MR. NEMIROW PRESENTED TESTIMONY IN SUPPORT OF RECOMMENDATION THAT BOARD REMAND MATTER BACK TO COUNCIL ON THE GROUNDS THAT THE COUNCIL FAILED TO ISSUE FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY COUNTY CODE; WITH INSTRUCTIONS THAT THE COUNCIL REOPEN THE RECORD AND REACH A

DECISION CONSISTENT WITH THE FACTS OF THE CASE, THE PERSONNEL RULES AND THE COUNTY CODE. MS. KANWIT AND MR. NEMIROW RESPONSE TO BOARD QUESTIONS.

MR. NEMIROW, MR. WILLNER AND MS. KANWIT DISCUSSION CONCERNING MAY 10 COUNCIL HEARING TRANSCRIPT CONTAINING TESTIMONY ATTRIBUTED TO DAVE FLAGLER INSTEAD OF AFSCME REPRESENTATIVE JIM SMITH. AT THE REQUEST OF THE BOARD, MR. FLAGLER TESTIFIED HE DID NOT ATTEND THE MAY 10 HEARING.

MR. WILLNER PRESENTED TESTIMONY IN SUPPORT OF COUNCIL DECISION FOR REINSTATEMENT AND BACK PAY DUE TO ITS FINDING THERE WAS EVIDENCE OF BIAS AGAINST MS. MAY IN NOT HIRING HER FOR ONE OF TWO AVAILABLE ANIMAL CONTROL POSITIONS. MR. WILLNER REBUTTAL TO RESPONDENT'S TESTIMONY; AND RESPONSE TO BOARD QUESTIONS. MS. KANWIT AND MR. WILLNER RESPONSE TO BOARD DISCUSSION REGARDING BACK PAY ISSUE.

MR. NEMIROW REBUTTAL TO APPELLANT'S TESTIMONY; TESTIMONY IN SUPPORT OF REMAND; AND RESPONSE TO BOARD QUESTIONS.

MR. WILLNER RESPONSE TO BOARD QUESTIONS. TESTIMONY COMPLETED.

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, TO REMAND CASE BACK TO MERIT SYSTEM CIVIL SERVICE COUNCIL. COMMISSIONER KELLEY COMMENTED IN SUPPORT OF HER MOTION, ADVISING SHE WANTS MORE INFORMATION REGARDING THE ISSUE WHETHER THERE WAS UNDUE BIAS BY MR. FLAGLER'S STANDING ON AT LEAST ONE OF THE HIRING PANELS AND THE APPROPRIATENESS OF AWARDING RETROACTIVE SALARY.

AT THE REQUEST OF VICE-CHAIR COLLIER, COMMISSIONER KELLEY MOVED, SECONDED BY COMMISSIONER SALTZMAN, TO AMEND MOTION TO REMAND CASE BACK TO MERIT SYSTEM CIVIL SERVICE COUNCIL FOR FINDINGS OF FACTS AND

CONCLUSIONS OF LAW; DIRECTING COUNCIL TO PROVIDE CLARIFICATION OF ITS FINDING OF BIAS OVER THE HIRING PROCEDURE; DIRECTING COUNCIL TO INTERVIEW THE TWO HIRING PANELS; AND DIRECTING COUNCIL TO PROVIDE INFORMATION REGARDING JUSTIFICATION AS TO WHY A BACK PAY DATE OF FEBRUARY 1 WAS CHOSEN.

COMMISSIONER HANSEN COMMENTED IN OPPOSITION TO THE MOTION, ADVISING HE FEELS THERE WAS ADEQUATE EVIDENCE PRESENTED AND EXPRESSING CONCERN FOR CLOSURE OF THE CASE AT THIS POINT.

VICE-CHAIR COLLIER COMMENTED IN SUPPORT OF THE MOTION TO REMAND BACK TO THE COUNCIL, ADVISING SHE WISHES CLARIFICATION ON HOW IT CAME TO ITS DECISION AND THE BACK PAY ISSUE.

COMMISSIONER SALTZMAN COMMENTED IN SUPPORT OF COMMISSIONER HANSEN'S CONCERN REGARDING TIMELY COMPLETION OF THE REMAND PROCESS.

MS. KANWIT AND SUSAN AYERS RESPONSE TO BOARD QUESTION CONCERNING NEXT COUNCIL MEETING.

BOARD CONSENSUS TO FURTHER AMEND MOTION TO REQUIRE THE REMAND PROCESS BE COMPLETED BY NO LATER THAN SEPTEMBER 1, 1994.

MOTION APPROVED, AS AMENDED, WITH COMMISSIONERS KELLEY, SALTZMAN AND COLLIER VOTING AYE, AND COMMISSIONER HANSEN VOTING NO.

There being no further business, the hearing was adjourned at 11:42 a.m.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**

Deborah L. Bogstad
Deborah L. Bogstad

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

In the Matter of the Appeal of)
JUDITH MAY.)

TRANSCRIPT OF PROCEEDINGS

August 15, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

CARLA FLOYD, Commissioner
D'NORGIA PRICE, Commissioner
JOHN WIGHT, Commissioner

ALSO PRESENT:

JUDITH MAY, Petitioner
STEVE NEMIROW, Appearing for Multnomah County
DON WILLNER, Appearing for Petitioner

Transcribed from electronic recording by

Morgan Verbatim, Inc.

Patricia Morgan
16360 S. Neibur Road
Oregon City, OR 97045

(503) 631-8885

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1 COMMISSIONER WIGHT: On the agenda today is the
2 remand from the County Board of Commissioners on the Judith
3 May appeal. I've read the County Commissioners, the minutes
4 of the County Commissioner meeting. I have not gone back
5 and reviewed all the minutes of our meeting, but since I am
6 the minority vote on this, maybe I can summarize where I
7 think we are, and then maybe counsel can give us some
8 guidance if they think that it's in somewhat different
9 posture.

10 The matter was remanded from the County. In reading
11 their minutes, my understanding is they wanted us to take
12 testimony from those people who were on the interview
13 panels. And, by the way, this remand was based upon a
14 motion by the County to remand it, and suggesting that we
15 needed to interview those people. I think they were
16 concerned that we needed to develop some findings of fact
17 and conclusions of law. And I think they were concerned
18 about the remedy issue and wanted us to focus on that a
19 little more and tell them why we had sought that particular
20 remedy.

21 So the matter is now before us, I think, to continue
22 the hearing to address those matters. The County has filed
23 a motion to dismiss, and I guess we can take a look at that.
24 I'm a little surprised because I think we need to follow the
25 remand instructions from the County as much as we can.

1 I should say, partly because, maybe -- I was the
2 minority vote on this, but my focus, actually, at the
3 original hearing was different than what it's come to be
4 from the two attorneys. So let me describe where I think we
5 were -- at least where I thought we were and where we are
6 now.

7 My understanding of the ~~original appeal by Judith May~~
8 ~~was that she had asked for reinstatement,~~ that had been
9 denied, and that the County had subsequently, fairly shortly
10 thereafter, said, no, we actually need some people and we're
11 reopening the hiring process. I believe the County takes
12 the position that she could not have appealed that denial of
13 her reinstatement. I guess I didn't view it that way
14 because I think quite frequently in these processes if
15 there's been something that's been improper, someone may not
16 find out about it until a subsequent action.

17 So what I viewed is there appeal was really on the
18 issue of the reinstatement, and it didn't become apparent to
19 Ms. May until the County turned around a few months later
20 and said, "Hey, we're hiring to fill this position."

21 Having read the briefs of both County Counsel and Ms.
22 May's attorney, I think they are now focused on the issue of
23 whether or not there was any bias or improper motive in the
24 hiring for the two new positions. And I think Ms. May's
25 position is that the prior activities can be evidence of

1 that bias, but what we're really trying to decide is whether
2 or not there was any kind of bias or inappropriate standards
3 applied in that hiring process for the new position.

4 COMMISSIONER FLOYD: And I guess what I would say is
5 after -- there were three meetings over which this
6 particular appeal was heard, and unfortunately I wasn't able
7 to be at the middle one, but at the end of the first meeting
8 I would have agreed with you, but we seemed to be at that
9 time focusing on the reinstatement. By the time we actually
10 did the ruling, after I'd had the chance to go back and re-
11 read my notes, and also some of the information we'd been
12 given in between, when I voted my vote, it was on the fact
13 that Ms. May was not hired in the January time frame.

14 That is why we come to remedy -- we want some
15 information on why we chose February 1st, and that the
16 failure to reinstate was, in my mind, proof of bias; that it
17 was just -- that their failure to reinstate in and of itself
18 was no longer timely. Because we did have testimony at the
19 first hearing where we talked about the actual interview
20 portion of the test. And interpersonal skills -- there were
21 some places where interpersonal skills and whether that was
22 part of the job description, et cetera.

23 So at the time I actually voted, and I understand
24 this is a little bit convoluted -- I actually felt I was
25 voting on the hire, not the decision to reinstate. That was

1 just--

2 COMMISSIONER WIGHT: Okay.

3 COMMISSIONER FLOYD: -- a piece of evidence that to
4 me, in my judgment at that time, proved bias.

5 MR. WRIGHT: Okay. And that -- I think that's the
6 position of both sides at this point that that's the focus.

7 I think the County, on the issue of the reinstatement
8 and the back pay from February , the County was -- one of
9 the things I read in the minutes was, well, what if she was
10 working there. That's sort of double pay.

11 COMMISSIONER FLOYD: We can deal with that.

12 MR. WRIGHT: That may be an issue that's out there.

13 Now that we get into this, I think we ought to open
14 it up and probably get some opening statements from both
15 counsel, and then ought to proceed from taking testimony
16 from the interviewing panels. There's some interesting
17 issues that may develop, and maybe we ought to talk about
18 them before we start.

19 Typically if you're talking about a discrimination
20 case, there's no direct evidence of discrimination. It's
21 often indirect evidence. ~~And I think Ms. May may be in a~~
22 ~~position of trying to say there is direct evidence of~~
23 ~~discrimination here,~~ and that may be a significant factor,
24 and I'll mention that in minutes. But typically there are
25 kind of two different ways of proving discrimination. One

1 of them is you say, "I've been discriminated against," and
2 you establish a prima facie case, and I won't go into that
3 detail at this point.

4 And then the employer comes back and says, "No, this
5 is the reason you weren't hired." ~~In this case they're~~
6 ~~saying that there are those who were interviewed and who had~~
7 ~~better interpersonal skills.~~ And if the employee then
8 proves that that was not the real reason for the decision,
9 then you are allowed to find discrimination; you're not
10 required to, but you are allowed to.

11 The other method is by some direct evidence of
12 discrimination, and I think in Mr. Willner's findings, he
13 says that there was this conversation that indicates there
14 was direct bias against Judith May. Most courts have held
15 that if there's evidence of direct bias, then the burden of
16 proof shifts to the employer to prove that there was not
17 discrimination. And that's an issue we've never dealt with
18 before either is ~~who's got the burden of proof.~~ And I think
19 normally we've assumed that the burden of proof is on the
20 employee bringing the appeal. But that's an issue that
21 we've never decided here.

22 And I'm saying by analogy with discrimination law
23 that if we -- if you find -- I think I'm sort of out of the
24 voting cycle on this thing -- that if you find there is
25 direct evidence of discrimination you might then place the

1 burden on the County to prove that, in fact, the
2 discrimination did not bias the process. So you might keep
3 that in mind as we take testimony from those people who
4 conducted the interviews.

5 COMMISSIONER FLOYD: I would also say, though, that
6 part of what the ~~Board of Commissioners asked us to do is to~~
7 ~~recite some specifics.~~ And so if there are provisions in
8 the Merit System, Chapter 3.10, that we feel are violated,
9 that it would be incumbent upon us to look at see what, if
10 any, of those violations may have --

11 COMMISSIONER WIGHT: Right. ~~And one thing that Mr.~~
12 ~~Willner has provided you with is some proposed findings of~~
13 ~~fact and conclusions of law.~~ And if you choose to go down
14 that line, then you might take a look at those and see how
15 you might want to expand or modify those. It might be a
16 starting point in any event.

17 COMMISSIONER FLOYD: Actually, I've already went
18 through it myself.

19 COMMISSIONER WIGHT: Okay, you've got 14 pages.

20 Okay, I wanted to kind of set the background for us
21 and maybe for the participants here. Are we ready to take
22 some statements? I don't know who should go first here.
23 It's on remand. Do you have preferences as to who should go
24 first?

25 COMMISSIONER PRICE: I believe the County had some

1 witnesses?

2 MR. NEMIROW: Just a procedural question. As I
3 understand it Ms. May's attorney has subpoenaed some
4 witnesses. We have not heard about it until just now.

5 COMMISSIONER WIGHT: That may be true. I don't know.
6 I signed subpoenas. I asked that they be issued, and I
7 signed them, and there were no names on them, so I don't
8 know if they were issued or not.

9 MR. NEMIROW: Having practiced almost exclusively in
10 courts, generally subpoenas are (indiscernible) to both
11 sides.

12 COMMISSIONER WIGHT: Not for a trial setting. You
13 wouldn't know -- the only time you'd have notice is if there
14 was a deposition or something like that.

15 MR. WILLNER: Mr. Wight -- Mr. Nemirow made this copy
16 for you. In 43 years of my practice in state courts, I've
17 never seen a situation where parties have notified the other
18 party of subpoenas -- witnesses subpoenaed for trial. Ever.

19 COMMISSIONER WIGHT: That's not my experience either.
20 But there may be people here subpoenaed or not. I mean,
21 that's just a way of getting witnesses here to testify.
22 It's available under the rules, and he asked for it.

23 MR. NEMIROW: Very good.

24 COMMISSIONER WIGHT: Do you have a preference as to
25 who goes first here?

1 MR. WILLNER: You tell us.

2 MR. NEMIROW: I have no preference.

3 COMMISSIONER WIGHT: Well, I think it's back to us on
4 remand on your motion, so why don't you go ahead and go
5 first. I've read your memorandums, I don't know if
6 everybody else has, too.

7 MR. NEMIROW: (Indiscernible). Let me identify
8 myself for the record. My name is Steve Nemirow. I'm
9 assistant county counsel for Multnomah County.

10 COMMISSIONER FLOYD: Would you speak up. We need to
11 make sure --

12 MR. NEMIROW: Is there some way to tell whether
13 that's --

14 COMMISSIONER PRICE: No, there is not.

15 MR. NEMIROW: Okay. (Indiscernible).

16 ~~The relevant facts here are that in September 1993~~
17 ~~the Board of County Commissioners approved an Animal Control~~
18 ~~Division reorganization that created two new positions: an~~
19 ~~Animal Care Technician position called an ACT for short, and~~
20 ~~an Animal Control Officer, an ACO.~~

21 ~~Ms. May applied for both vacancies and placed first~~
22 ~~on both lists of certified eligible candidates that were~~
23 ~~generated by county personnel. In January 1994, the~~
24 ~~division conducted two hiring interview processes, one for~~
25 ~~each vacant position. The hiring recommendations were made~~

1 by two separate unbiased panels of employees made up
2 primarily of union members, with a management member on each
3 panel, too.

4 Each panel conducted job-related interview tests and
5 reached unanimous consensus on the candidates they each
6 rated first. The candidates that were rated first were
7 invited to take the jobs, and both first-rated candidates
8 accepted the invitations and took the jobs.

9 Today you'll hear testimony from the people who made
10 the hiring decisions on the panels -- the actual panel
11 members who are here today -- ~~that interpersonal skills and~~
12 ~~problem-solving abilities as demonstrated by the candidates~~
13 ~~in front of the interview panels were the deciding factors~~
14 ~~that the unanimous panels relied on.~~ You will see and
15 understand that Flagler had absolutely no influence
16 whatsoever on any of the panel members' decision, nor did
17 Sharyn Middleton.

18 Ms. May will be able to produce no credible evidence
19 that either Flagler or Middleton influenced any of the other
20 seven -- five other panel members who made the decisions for
21 the two jobs.

22 The two hiring decisions were made by unanimous panel
23 decisions. The members of the panels are here today to
24 testify to this. You will see and judge for yourself that
25 they are not biased. Moreover, Ms. May will be able to

1 present no credible testimony that they were biased. Ms.
2 ~~May herself has already admitted in your hearing on April~~
3 ~~12th that she's unconcerned with the question of the panel's~~
4 ~~bias.~~ I've noted in my brief the passage in the record
5 where she says it's not an issue that's concerning here.

6 Now, as I've said in my brief, it's black letter law
7 that an agency is a creature that's established and
8 empowered by a legislative act. And its range of discretion
9 is controlled by the enabling enactment. And I cite
10 numerous authorities. The point of the citations is that if
11 this council thinks it needs remedies in addition to those
12 that are expressly set forth in the Multnomah County code,
13 such as reinstating people who were never fired, or issuing
14 back pay orders for people who were never disciplined, then
15 it should look to the Board of County Commissioners to amend
16 the vote. It's not the proper office of the Merit Systems
17 Council of the Civil Service Commission to invent new
18 remedies that are not expressly set out, even for the best
19 purposes.

20 Mr. Willner's letter, August 11th, to this council
21 tries to make my statements before the Board of County
22 Commissioners an issue in this hearing. This is only to be
23 expected from Mr. Willner because there really are no other
24 issues that he can present. For example, even Mr. Willner's
25 proposed findings contain no facts to show that the hiring

1 panels were biased.

2 His proposed conclusions of law point to nothing
3 ~~expressly in the code but allows this council to reinstate a~~
4 ~~former employee who is not fired but who resigned of her own~~
5 ~~free will to take a better paying job with another~~
6 ~~municipality.~~

7 Nor does he cite to anything in the code that allows
8 back pay awards for persons who were never disciplined or
9 deprived of pay in the first place, or suspended or never
10 terminated. Again, since Mr. Willner has nothing in fact of
11 law to support his client's claim, it's no wonder he seeks
12 to make an issue out of the lawyers.

13 With that said I would like to call my first witness
14 who is Dave Flagler, a panel member, who was the panel
15 member -- a member of the panel that decided on the hiring
16 of the Animal Control Officer.

17 MR. WILLNER: May I have a chance --

18 COMMISSIONER WIGHT: Yes, I think before we do that,
19 one, I think we'll see if there are questions here on
20 anything you said, and then we'll give you an opportunity to
21 make an opening statement, and then we'll get to witnesses.

22 Any questions of --

23 COMMISSIONER FLOYD: Not right now.

24 COMMISSIONER WIGHT: I do have -- one of them may be
25 a technical issue, but the hiring decision, was that

1 actually made by the panel or was that just a recommendation
2 on the rating?

3 MR. NEMIROW: You'll hear testimony today that for as
4 long as anybody can remember, and definitely in the last
5 five years, ~~it has been the understanding and the practical~~
6 ~~practice at Animal Control that every hiring decision is~~
7 ~~made by a panel, and it's done by consensus.~~ And you'll
8 also find out that every person on that -- on both panels
9 were themselves hired into Animal Control by such panels,
10 and they were all unanimous.

11 COMMISSIONER WIGHT: Okay, I just wanted to clarify.
12 The hiring decision itself was made by the panels.

13 MR. NEMIROW: Was made by the panels, yes.

14 COMMISSIONER WIGHT: Okay. On the issue of remedy,
15 what remedies, what powers do you think this Board has in
16 terms of remedies?

17 MR. NEMIROW: Well, to reinstate people who are
18 terminated, you can direct the hiring of persons who were
19 wrongfully deprived of hiring. You can --

20 COMMISSIONER WIGHT: And -- okay, let's take that.
21 If it is this council's decision that Ms. May was wrongfully
22 deprived of the hiring, then we can direct that she be --

23 MR. NEMIROW: Yeah. ~~Oh, assuming that you can show~~
24 ~~that there was something in violation of the Multnomah~~
25 ~~County Code that deprived her of being hired.~~

1 COMMISSIONER WIGHT: Okay. I understand that. And
2 that's the issue here.

3 MR. NEMIROW: Right.

4 COMMISSIONER WIGHT: And if she is hired, do you
5 believe the Board has the power to set the effective hire
6 date?

7 MR. NEMIROW: That's an issue I haven't fully
8 briefed. I can speculate, though. And just using a federal
9 model, I think if you set a hiring date, you have to look at
10 all kinds of adjustments to that date. First of all, if she
11 was employed in another job, what you're implying is whether
12 you can imply a remedy of back date.

13 COMMISSIONER WIGHT: Yeah.

14 MR. NEMIROW: And our position is you can't really
15 start to imply remedies. One of the authorities we cite
16 says that there's no more unwholesome doctrine could be
17 suggested than that such a body is vested with discretion to
18 ignore or transgress these limitations even to accomplish
19 what it may deem to be laudable ends.

20 COMMISSIONER WIGHT: Well --

21 MR. NEMIROW: What I'm saying is the rule is that a
22 commission that's created by statute or ordinance has just
23 those powers that's given to it. You're not -- if you can
24 imply back pay, then you can imply -- there's no end to it.
25 Once you're allowed to imply powers that you've defeated the

1 close limitation that the Oregon Supreme Court has uniformly
2 applied to government-created commissions.

3 If it seems to be grossly unfair and hobbling of your
4 powers that you can't award back pay, then you should ask
5 the Board of County Commissioners to amend the County Code
6 to allow express -- an express language of what -- to allow
7 the award effect date.

8 COMMISSIONER WIGHT: But the code doesn't
9 specifically say that we are entitled to order the hiring of
10 a person that was wrongfully deprived --

11 MR. NEMIROW: It says when there's been discipline,
12 it's expressly provided that --

13 COMMISSIONER WIGHT: But this isn't a discipline.
14 Outside of a discipline --

15 COMMISSIONER FLOYD: Actually, when I went through
16 this, I found three different things that basically the
17 Board had the ability to do. One is very specific towards
18 discipline so it doesn't really, at least in my mind, apply
19 in this case.

20 The other was that you have the right to suggest a
21 remedy.

22 COMMISSIONER WIGHT: What section is that?

23 COMMISSIONER FLOYD: I'm looking for it. I think
24 it's 3.10.4.2, something --

25 COMMISSIONER WIGHT: 4.2.0?

1 COMMISSIONER FLOYD: 4.2.0.

2 MR. NEMIROW: That's the provision I rely on for the
3 authority to reinstatement to discipline.

4 COMMISSIONER PRICE: It's .370 (indiscernible) --

5 COMMISSIONER FLOYD: Yeah, final action by council.

6 ~~The final decision shall be in writing and should include~~
7 ~~the following: findings of fact and conclusions of law and~~
8 ~~all materials presented in the appropriate ruling, order,~~
9 ~~sanction or relief.~~

10 COMMISSIONER WIGHT: So is the issue, then, what
11 appropriate ruling, order, sanction or relief is?

12 MR. NEMIROW: It's left to the Board of County
13 Commissioners, and they should expressly provide --

14 COMMISSIONER WIGHT: But they have authorized us to
15 make a decision on this.

16 MR. NEMIROW: Well, to reduce the argument to
17 absurdity, if you decide that a death penalty is appropriate
18 because there's been some heinous unlawful employment
19 practice, that's certainly not appropriate. I don't think
20 this code is implying that -- or should be read to imply
21 that the county -- the Merit Systems Council can decide, of
22 all the remedies in the world, those which are appropriate
23 for any given action.

24 COMMISSIONER WIGHT: Well, I don't know the answer to
25 the issue you've raised. I'm just saying it seems to me that

1 either we have the right to have a hearing a make a decision
2 and not have any remedy -- because I don't see any remedy
3 spelled out in here -- or we get to decide what is an
4 appropriate order, sanction or relief. And then if the
5 Board disagrees with us or if some court disagrees with us,
6 they can do that.

7 I think it's either one or the other. I don't see
8 any in-between ground.

9 MR. NEMIROW: I think that 3.10.4.20 provides that if
10 you had a discriminatory discipline then you can reinstate
11 and there should be no loss in pay. And that, I think,
12 should go --

13 COMMISSIONER FLOYD: ~~That's the only place in the~~
14 ~~code that specifically tells you what the remedy would be if~~
15 ~~you find -- is in disciplinary action.~~

16 MR. NEMIROW: Right.

17 COMMISSIONER FLOYD: And not every case that we hear
18 involves disciplinary action. We've certainly heard a
19 number of cases where no one was disciplined. That's not
20 the issue at hand.

21 So while I agree with you that 4.20 specifically says
22 what you do in the case of disciplinary action, nowhere else
23 is it addressed on any other type of situation. So you go
24 back to 3.80 which says that the appropriate ruling,
25 sanction, order or relief.

1 MR. NEMIROW: That may be the case. I --

2 COMMISSIONER FLOYD: And we may disagree on what
3 "appropriate" is --

4 MR. NEMIROW: Yes.

5 COMMISSIONER FLOYD: -- understanding that that's
6 subjective, but I believe that is the section that allows us
7 to remedy, if we feel there's been a violation of the code.

8 MR. NEMIROW: Well, you may want to consult with
9 counsel, but it's generally understood that civil service
10 commissions do not award back pay. For example the Portland
11 Civil Service Board does not award back pay. It can order
12 placement in a job. I can also order the end -- the --

13 COMMISSIONER WIGHT: Okay, and my question to you is
14 what is appropriate remedies available to this body? And
15 what you said was order that the person be granted a
16 position --

17 MR. NEMIROW: That's correct.

18 COMMISSIONER WIGHT: And I'm just wondering if
19 there's anything beyond that?

20 MR. NEMIROW: Well, put them on a list. You can
21 order --

22 COMMISSIONER WIGHT: Put them on a list, okay.

23 MR. NEMIROW: -- seniority, superseding seniority.
24 I don't know that -- not having been asked to brief the
25 issue, and I --

1 COMMISSIONER WIGHT: Okay, well, you're the one who
2 raised the issue, so I was looking for some guidance is all.

3 MR. NEMIROW: It's our reading that you can't -- that
4 you don't have authority to award reinstatement of back pay
5 in instances where there's been no discipline. And I can
6 reason that because where there is discipline it's expressly
7 provided.

8 COMMISSIONER WIGHT: All right. I just wanted to
9 understand you.

10 COMMISSIONER FLOYD: And I can sort of counter that
11 by saying that throughout the entire code it talks about
12 issues other than discipline. If we weren't supposed to
13 hear issues other than discipline, I don't think that the
14 county code would provide for it.

15 MR. NEMIROW: Well --

16 COMMISSIONER WIGHT: Well, let's not get into an
17 argument. I just wanted to know what their position was.

18 Mr. Willner.

19 MR. WILLNER: Yes. Members of the Council. We have
20 issues of procedure, fact and law. Let me see if I can be
21 helpful and go over them one at a time. I agree that you
22 should take testimony from the interview panels. I do not
23 think that includes the two who have already testified.

24 Mr. Flagler and Ms. Middleton have already testified
25 at some length. And what the Board of Commissioners said to

1 you is take testimony of those who did not testify. And
2 that is, I believe, three others. I think it's appropriate
3 to listen to them.

4 MR. NEMIROW: Could you please speak up. We can't
5 hear you.

6 MR. WILLNER: Yes, I'm sorry. I said it's quite
7 clear from my reading of the Board of Commissioners, you
8 should take testimony from those who were not heard, not
9 they should have a chance they should have a second chance
10 with Flagler or Middleton who testified at some length. And
11 there are three of those present, as I understand, and I
12 think you should hear from those.

13 And then I have a couple witnesses who are going to
14 -- who I will call to impeach the testimony of the members
15 of the panel. I think that's proper.

16 Then I think you have -- once you've done that, I
17 think you need to make more detailed findings of fact and
18 conclusions of law, and I've offered you a model to at least
19 start from. As I said in my brief, I very much regret that
20 this council has to get into the business of making findings
21 of fact and conclusions of law. I said that makes it a much
22 more formalistic situation, and if that's what the
23 commissioners want in this case, I've given you a starting
24 point.

25 The third thing that's before you is the issue of

1 remedy. What the council was talking about -- what the
2 commission was talking about was fairly narrow. They were
3 talking about the issue of basically whether there should be
4 an offset. In other words, back pay was ordered back to
5 February 1st, and Commissioner Collier was asking the
6 question: Should that be offset -- should there be offset
7 against that, whatever money, Judith May may elsewhere have
8 earned? That I think that's what your issue is there.

9 I would emphasize, and I've said this in my briefs,
10 and in listening to Commissioner Wight's statements, I
11 (indiscernible) disagree; I agree. The commissioners were
12 narrowly focused in terms of what they wanted you to do.
13 They did not disagree with the findings. They said they
14 wanted -- they thought additional people should be heard.
15 They thought there should be clear findings of fact,
16 conclusions of law, and you should address this offset
17 issue.

18 Nowhere did they challenge your legal right to adopt
19 an appropriate remedy as you saw it; and appropriate ruling,
20 order, sanction or relief, you have that right. That wasn't
21 what they were challenging. They were challenging, should
22 you offset against giving Judith May back pay back to
23 February 1st which she may have earned.

24 Couple statements on the facts. Commissioner --
25 management makes the decision on a new hire. It may be that

1 in the past that members of this final interview panel have
2 agreed with management. Management makes the decision. The
3 members of the bargaining unit who are on the panel did not
4 make the decision; they were subordinates of management, and
5 they were appointed by management. And management gives
6 weight to what they do. The decisions were made by Ms.
7 Middleton and Mr. Flagler.

8 It seems to me that on this burden of proof issue, of
9 course, there's ample evidence in the record of direct
10 discrimination. The key statement was made by Ms. Davalos.
11 She was talking to Mr. Flagler, and then that's when I found
12 out that Judy had also applied. And I asked if she's going
13 to become an officer because of her past experience, and he
14 said, quote, "No, there's no way that he's going to hire her
15 because of all the trouble that she had caused before,"
16 close quote. That's about as direct evidence of denial of
17 merit system principles as you're going to get.

18 I do a lot of civil rights work, and rarely do I get
19 what's a smoking gun statement. Usually I have to prove by
20 circumstantial evidence. And then later on Ms. Davalos was
21 asked when this statement took place with Mr. Flagler, and
22 she said just before the interviews. And Mr. Flagler was
23 asked in her testimony, and he said he didn't remember this.

24 So you have very direct evidence which I assume is a
25 factor to the two-person majority of the board, and I hope

1 the minority will also think about that statement. You
2 don't get it that strong very often.

3 So basically what I'm saying is you should summarize;
4 you should hear the three panel members; hear any witnesses
5 I have in terms of impeachment. Nobody said that Mr.
6 Flagler and Ms. Middleton were to get a second chance.
7 That's not what the council said. They said they should
8 listen to those who were not called.

9 Incidentally, I told the commissioners and I guess
10 agreed, I said, the County could have called them if they
11 wanted to. It wasn't their responsibility to call
12 witnesses, ~~but the County felt you should listen to them, so~~
13 ~~let's listen to them.~~ It's our position that the effective
14 decision was made by Mr. Flagler, the acting director of
15 Animal Control. You have direct evidence of his bias, that
16 he was biased against Judith May because of friction when
17 she was a shop steward. And he said there's no way he's
18 going to hire her because of all the trouble she caused
19 before him.

20 And Mr. Flagler admitted in his testimony that there
21 was friction with Judith May because she'd been a union shop
22 steward. It's our position which I'm assuming was the basis
23 for the majority ruling that there was ample evidence of
24 discriminatory conduct here. And that the further evidence
25 that earlier on they didn't reinstate her, as one of you

1 said in the transcript, was just additional evidence of
2 bias.

3 So I hope what you'll do is do as the commissioners
4 have asked you to do is listen to those three witnesses,
5 listen to the two that I'm briefly going to have to
6 channel -- challenge panel credibility, and I hope you'll
7 then reaffirm your decision, and I hope you'll look at my
8 findings of fact and conclusions of law, and use them for
9 whatever value they have to you, but I think they clearly
10 want you to be more specific than you were.

11 In terms of this offset issue -- I assume we can
12 argue that later. I just want to identify it now -- but
13 there your question -- a question frequently comes up as to
14 whether you offset other earnings. This often comes up in
15 union arbitrations. One argument is that you offset other
16 earnings so the victim does not get duplicate payment.
17 That's one argument.

18 The other argument and the argument we make is unless
19 you do that there's been no sanction. Unless you provide
20 Judith May back pay back the day she should have had the job
21 or either of the jobs, then you haven't deterred the County
22 from doing this again. Because the only sanction that
23 amounts to anything is back pay. And in your discussion,
24 the first issue was raised as to whether that should go back
25 to July '93 when she was not reinstated, and then the

1 majority concluded, no, February 1, because -- which we're
2 really talking about is if they're to get these two new
3 jobs. Or either of them. That goes back to February 1.
4 But if you don't provide the back pay remedy, look at the
5 next case down the line.

6 The County can discriminate for any reason and if --
7 at this point we're talking now, what, six, seven months
8 later if it's overturned, that there is no sanction at all.
9 There's no reason why the County shouldn't do it again.
10 That's what I think the issues are here, and I look forward
11 to the testimony of the three panel members.

12 COMMISSIONER WIGHT: Well, I don't think we're
13 limited to just the three. I think we can -- it's remanded
14 back to us to take the testimony of the people who were on
15 the interview panel, and that can include all of them.
16 Despite the example set by Representatives Gonzales
17 recently, I don't believe in group testimony.

18 And what might be appropriate, particularly given the
19 length of time that's gone by, I think it's possible that
20 people's recollection of what happened may be influenced by
21 what they heard somebody else say. So if we're going to
22 take the whole panel, maybe we ought to exclude them and
23 take them one at a time, get their testimony, so we get
24 their fresh recollection as fresh as it can be at this late
25 stage, and let the County proceed with the order it wants

1 to. But let's have one witness at a time and maybe ask the
2 other witnesses to wait outside until we do that.

3 Do you think that's appropriate?

4 COMMISSIONER FLOYD: I don't have an objection to
5 listening to testimony from Mr. Flagler and Ms. Middleton.

6 COMMISSIONER WIGHT: I don't either.

7 So are you going to start with Mr. Flagler?

8 MR. NEMIROW: Yeah.

9 COMMISSIONER WIGHT: Who are the other witnesses,
10 then, who are -- the four of you?

11 MR. NEMIROW: And Ms. Middleton.

12 COMMISSIONER WIGHT: Yeah, would you wait outside,
13 too. We'll try to proceed along as rapidly as we can.

14 I think it picks up the sound pretty well, doesn't
15 it?

16 MR. NEMIROW: Okay by me.

17 COMMISSIONER WIGHT: If he wants to move up a little
18 closer, maybe the next chair up.

19 MR. NEMIROW: Are you going to swear witnesses?

20 COMMISSIONER WIGHT: Yes, I am.

21 MR. NEMIROW: Should the subpoenaed witnesses also
22 leave also, the (indiscernible)?

23 MR. WILLNER: No. I have persons present who will be
24 witnesses. Do you want them excluded?

25 COMMISSIONER WIGHT: Is there testimony on what took

1 place on --

2 MR. WILLNER: No.

3 COMMISSIONER WIGHT: Who are your witnesses?

4 That's --

5 MR. WILLNER: My probable witnesses, depending on how
6 these go, are Judith May, Sheila Pendleton, and Nancy
7 Vanmeter. None of them were present at the panel sessions,
8 but all of them are prepared to testify about other
9 statements made by panel members as to why they did what
10 they did.

11 COMMISSIONER WIGHT: You can move to exclude them if
12 you want to, but it sounds like they're not going to be
13 testify --

14 MR. NEMIROW: Actually, I'd move to exclude.

15 COMMISSIONER WIGHT: Does the rest of the group have
16 a feeling? I don't have a problem with asking them to wait
17 outside?

18 COMMISSIONER FLOYD: Yeah. There's some more room
19 right out there, too.

20 DAVID FLAGLER,

21 called as a witness by the County, having been first duly
22 sworn, was examined and testified as follows:

23 COMMISSIONER WIGHT: Please state your name and
24 position.

25 THE WITNESS: I'm Dave Flagler, the director of

1 Animal Control.

2 DIRECT EXAMINATION

3 BY MR. NEMIROW:

4 Q Mr. Flagler, did you appoint the panel that
5 (indiscernible) members who interviewed applicants for the
6 Animal Control Officer?

7 A I did.

8 Q Can you tell us why you chose to use a panel?

9 A Well, the people on the panel are going to be either
10 working with the person that is hired or will be directly
11 supervising the person that is hired. I believe that their
12 input into the hiring decision is critical.

13 Q Is it a uniform practice and your experience at
14 Animal Control that hiring's done by these panels?

15 A It is the method that we have hired ever since I've
16 been there.

17 Q Were you hired after an interview with a panel like
18 this?

19 A A panel was involved in my hiring.

20 Q Do you know of any exceptions in your experience
21 where there's been a hiring done without a panel reaching
22 consensus first?

23 A I'm not aware of any exception.

24 Q Did you assume or can you assume that all the
25 employees on the panel were also hired by consensus panels?

1 A I believe that they were.

2 Q Did you attempt to convince any of the members of the
3 panel that listened -- that interviewed applicants for
4 Animal Control Officer that they should favor any particular
5 applicant?

6 A I made no attempt to influence any of the panel
7 members.

8 Q Did you talk to any of the people on the panel about
9 any of the various applicants at any time prior to the
10 interviews?

11 A I did not.

12 Q Did you talk to any of the panel members on the panel
13 that interviewed applicants for Animal Care Technician?

14 A I did not.

15 Q Did you try to influence any of those panel members
16 about their selection -- (indiscernible) selection of any of
17 the candidates?

18 A I made no attempt to influence any of the panel
19 members.

20 Q Are you aware that Ms. Davalos' statement that you
21 said, "There was no way Judith May would get her -- be hired
22 back"?

23 A I was there when Officer Davalos made that statement.
24 I was really quite shocked by the statement. It is true
25 that I had a conversation with Officer Davalos, but there

1 was nothing in that conversation that would cause her to
2 make a quote like that.

3 Q Did any other employees ask you if Ms. May had a
4 chance of coming back as an Animal Control Officer?

5 A I had a number of employees that inquired if Judy had
6 a chance of coming back. And I gave them the same answer
7 that I gave Officer Davalos, that they were not to worry
8 about the process, that we had a selection panel that would
9 hire the most qualified applicant.

10 Q Did you select people on the panel because they were
11 malleable?

12 A No. On the contrary. If you -- once you get to hear
13 the testimony of these folks, you'll see that these folks I
14 picked because they have a mind of their own. They're not
15 going to tolerate me trying to mold them.

16 Q Would you characterize any of them stooges for
17 management?

18 A Not at all.

19 Q Would you characterize any of them as toadying your
20 favor?

21 A Absolutely not.

22 Q Do you recall being present at a Merit Systems
23 Council meeting on April 12th?

24 A I do.

25 Q Do you remember hearing Ms. May say that she was not

1 making -- she was not contending that your panel was biased?

2 A I remember that. It was right after I attempted to
3 get this commission to hear testimony from the panel.

4 Q Can you characterize for the commission what the
5 reaction of your employees was --

6 MR. WILLNER: I object to the question. That's not
7 really an issue.

8 COMMISSIONER WIGHT: You're asking him to testify as
9 to their reaction?

10 MR. NEMIROW: Well, what they told him about their
11 feelings about not being able to testify on this question.

12 COMMISSIONER FLOYD: They're going to be here to
13 testify.

14 COMMISSIONER WIGHT: Yeah --

15 MR. NEMIROW: Okay, we can move on.

16 Q (By Mr. Nemirow) Is there reason -- were you trying
17 to suggest what the panel should decide?

18 A I'm sorry?

19 Q Do you have reasons why you avoided talking to the
20 panel members about how they should decide which candidate
21 was best suited?

22 A I believe that because of the applicants on this
23 particular hire that it stood a chance of being volatile. I
24 purposely stayed out of it.

25 Q I'd like to ask you some questions about the

1 temporary field aide position that's also been made a matter
2 of contention. Do you remember hiring a position in July of
3 '93 for a temporary field aide?

4 A I do.

5 Q Did Ms. May apply for that job?

6 A She did not.

7 Q Can you describe to the commission what that job is?

8 A Every summer, to help deal with the overload of dead
9 animals that are on the roadways, and because our field aide
10 goes on vacation, that we hire a temporary field aide. The
11 position is slated for affirmative action. It is intended
12 to be an entry level position so that a person that is hired
13 into that position has a better chance of becoming qualified
14 for an Animal Control Officer position should one of those
15 positions become open.

16 Q Now, who did you hire for that position?

17 A I hired a gentleman by the name of Willy Bue (ph).

18 Q Was that a regular hire?

19 A It was an affirmative action hire.

20 Q Was that person a regular employee of Multnomah
21 County or were they temporary?

22 A It was a temporary position.

23 Q Did they work full time or did they work part time?

24 A We started a position as a 40-hour-a-week position
25 while we needed coverage for the absence of our -- our field

1 aide being on vacation. And then the intent was to move him
2 into a 20-hour-a-week position to just help on weekends.

3 Q Now, also around the same time of July of '93,
4 there's been testimony earlier in this case that there was
5 an empty -- a vacancy in a funded position or what was
6 called a funded position for Animal Control Officer. Do you
7 recall that testimony?

8 A I do.

9 Q Why was that position empty?

10 A I'm sorry. Why was it empty?

11 Q Why was it not --

12 A Oh, why was it not filled?

13 Q Yeah.

14 A As stated in previous hearings that we were going
15 through budgetary period, it is my understanding that that
16 position was frozen by the DES department director, Betsy
17 Williams, and that we were not allowed to fill that
18 position.

19 Q Did you have authority to fill that position
20 (indiscernible)?

21 A I did not.

22 Q Okay. Did anybody in Animal Control have authority
23 from DES to fill those positions?

24 A No one in Animal Control had authority to fill that
25 position.

1 MR. NEMIROW: I have no other questions.

2 COMMISSIONER WIGHT: Cross-examination -- or any
3 questions of the commissions?

4 COMMISSIONER FLOYD: No.

5 COMMISSIONER WIGHT: Okay, cross-examination.

6 CROSS-EXAMINATION

7 BY MR. WILLNER:

8 Q Mr. Flagler, did you have the authority to discipline
9 or fire the members of the interview panel?

10 A Did I have the authority to discipline --

11 Q Yes.

12 A -- or fire the members?

13 Q Yes.

14 A It is within my authority. For due cause.

15 Q When Sharyn Middleton was appointed to her present
16 job, was there an interview panel?

17 A I don't recall

18 COMMISSIONER WIGHT: I'm sorry. What was the question
19 again?

20 MR. WILLNER: The question is when Sharyn Middleton
21 was appointed to her present job was there an interview
22 panel.

23 Q (By Mr. Willner) And your answer is you don't
24 recall?

25 A I was not the hiring manager at Animal Control.

1 Q Were you in Animal Control at that point?

2 A I was.

3 Q And you don't know whether or not there was an
4 interview panel in connection with Sharyn Middleton getting
5 her job?

6 A I don't immediately remember.

7 Q All right. How about -- do you know Sheila Pendleton
8 [End Side 1, Tape 1].... Sheila Pendleton?

9 A I met her once.

10 Q And was she formally an employee of Animal Control in
11 Multnomah County?

12 A Not during my time.

13 Q And do you know whether she had an interview panel
14 when she was -- when she got her job?

15 A Like I said, I -- she wasn't there during my time.

16 Q Do you know whether Judith May had an interview panel
17 when she got her job, previous job?

18 A Judith May was already there when I came into the
19 agency.

20 Q It is true, isn't it, that you had friction with
21 Judith May when she was formally employed by Multnomah
22 County because of her job as shop steward?

23 A We had moments of friction, yes.

24 Q And was that over her role as union shop steward?

25 A I suppose so. I mean, I don't believe we had any

1 more friction than any other shop steward would have with
2 management anywhere else in the county.

3 Q Did you have a chance to review your testimony the
4 last hearing before you came here today?

5 A I -- I can remember what I said.

6 Q Well, my question is did you have a chance to read it
7 over before you came here for today's testimony?

8 A I haven't read it over.

9 Q Do you remember Commission Wight asking you, "But you
10 have indicated there was some friction there and that was in
11 the role, then, as her -- as shop steward, then; is that
12 right?"

13 "MR. FLAGLER: Quite possibly." And then you go on.

14 A Okay.

15 Q Do you remember, did you give that test -- that
16 answer to that question --

17 A I imagine --

18 Q -- at the time of the previous hearing?

19 A -- I did.

20 Q When you appointed the panel for this --

21 COMMISSIONER WIGHT: What page was that on?

22 MR. WILLNER: Forgive me. That was page 40 -- bottom
23 of page 49, line 24. Forgive me. Through -- the part I
24 quoted ends on line 2 of page 50 of the March 10th
25 transcript because they start numbering over again each

1 time.

2 COMMISSIONER WIGHT: Thank you.

3 Q (By Mr. Willner) At the time you appointed this
4 panel for these interviews for the Animal Control Officer
5 job, were you concerned that Judith May might feel the panel
6 was biased?

7 A No, I didn't feel that she would feel the panel was
8 biased.

9 Q Were you concerned that you might so feel? Were you
10 worried about that?

11 A No, I was not.

12 Q Do you remember page -- bottom of page 44 of the
13 April -- the March 10th transcript, that you gave this
14 testimony, and again this is part of an answer of a question
15 asked by Commissioner Wight, line 24:

16 "And upon the completion of the day, the panel met
17 together. At that time we were going to determine who we
18 felt was the best candidate for the position. I suspected
19 Ms. May's concern about me being on that panel."

20 Did you give that testimony under oath at the March
21 10th hearing?

22 A I believe that I did.

23 Q Yes, you did. All right.

24 COMMISSIONER WIGHT: Just to move things along here.
25 The record is here. You haven't had an opportunity to cross-

1 examine this witness before, but this is the fourth hearing,
2 and --

3 MR. WILLNER: I'm almost done.

4 COMMISSIONER WIGHT: -- and it may be, if you're just
5 pointing out his previous testimony, you might just want to
6 do that without going through the rhetoric of asking whether
7 he remembers it or not, because I think we've got the
8 transcript.

9 MR. WILLNER: All right. I have just one last
10 question.

11 COMMISSIONER WIGHT: All right.

12 Q (By Mr. Willner) And isn't it true that you do not
13 recall the conversation or the context of the conversation
14 that Officer Davalos' testified to?

15 A I do recall the context of the conversation that
16 Officer Davalos indicated.

17 Q And this is my last time. Page 52 of the March 10th
18 transcript:

19 "COMMISSIONER WIGHT: You recall the conversation
20 that Madeleine -- and I can't pronounce your last name --

21 "MS. DAVALOS: Davalos.

22 "COMMISSIONER WIGHT: -- Davalos testified to where
23 she asked you about --

24 "MR. FLAGLER: Yeah, I don't recall the conversation
25 nor the context of the conversation."

1 Did you give that testimony under oath on March 10th?

2 A I gave that testimony, and I was still in shock from
3 what Davalos had said, that what I had intended to say is
4 that I did not recall any conversation that would cause her
5 to have me make that kind of quote.

6 Q Yeah, aside from what you may have intended, did you
7 so testify under oath?

8 A And I'm telling you now and so testifying that the
9 statements that Officer Davalos said were incorrect.

10 MR. WILLNER: No further questions.

11 COMMISSIONER WIGHT: Question at this point of Mr.
12 Flagler?

13 EXAMINATION

14 BY COMMISSIONER FLOYD:

15 Q Were you the hiring officer pursuant to Code
16 3.10.010.W?

17 A You've got me on the code. I'm going to assume I'm
18 the hiring manager.

19 Q Were you the hiring manager for both positions or
20 just the animal care technician or that of control officer?

21 A Depending on how that's used in the personnel manual,
22 I would assume that I was the hiring manager for both
23 positions.

24 Q Then were you acting also as personnel officer for
25 the county?

1 A I think not.

2 Q Because Code 3.10.160.B states that the personnel
3 officer's the one that makes up the test which shall be
4 competitive job related and shall be of such character as to
5 the determine the qualifications, competence and ability of
6 the person tested asked to perform the duties in the class
7 of positions.

8 It also later on says that the county personnel
9 officer is the one who would appoint a panel?

10 A Okay.

11 Q So were you taking -- did you have authority from the
12 personnel officer to do that?

13 A I would assume that that -- those duties were done by
14 Don Winkley.

15 Q So --

16 A But I'd have to ask him.

17 Q So Mr. Winkley's the one who made up the questions on
18 the interview?

19 A The questions for the Animal Control Officer
20 interview was made up from previous exams that we've given.

21 Q By whom?

22 A I'm sorry?

23 Q By whom? Where did these questions come from?

24 A Some of them existed before I arrived at the agency.
25 Others were developed during the years that I was there, and

1 they were developed by the interview panel.

2 Q So some were questions used before and some were new?

3 A That's correct. I do not recall any new questions
4 that were specifically used for this selection panel.

5 Q Okay. Are you the one -- did you send out the notice
6 of the job vacancy or did Mr. Winkley?

7 A The vacancy, I believe, is sent out by Mr. Winkley.

8 Q But again you did appoint the panel Mr. Winkley
9 (indiscernible)?

10 A I did. I appointed the panel from members that had
11 served on previous panels.

12 COMMISSIONER PRICE: That's all I have.

13 COMMISSIONER WIGHT: Questions?

14 Do you have any redirect?

15 REDIRECT EXAMINATION

16 BY MR. NEMIROW:

17 Q Did you tell the panel members before they
18 interviewed the candidates that their decision would be the
19 final hiring decision?

20 MR. WILLNER: Object to the form of the question.
21 He's leading the witness and beyond the scope of direct --
22 or of rebuttal testimony.

23 COMMISSIONER WIGHT: I'm going to let him go ahead
24 and answer it.

25 THE WITNESS: I didn't specifically tell them that

1 that was it -- that their decision would be final, because I
2 just believed that that was assumed in the process; that's
3 the way we've always done it.

4 Q (By Mr. Nemirow) Is it your understanding that
5 there's a difference between the civil service exam and the
6 department interview panel questions that are both parts of
7 the hiring questions?

8 A You're referring to the first process by personnel
9 and then the final selection process?

10 Q Yes.

11 A Yes, we view the first process as to be a pool of
12 applicants. Once we have that pool that we run through the
13 final selection. The final selection, our intent is to make
14 sure that an applicant is a good fit for the agency, and
15 that they have the proper skills, that they can work with
16 the other members of the agency.

17 Q And is it your understanding that Employee Services
18 obligates questions for one part and not for the other?

19 A That's correct. The one part really has little
20 effect on the other, other than that if you pass the first
21 part you are automatically considered for the process of the
22 final selection.

23 Q And the final selection part has questions that are
24 usually put together by the hiring agency?

25 MR. WILLNER: Does the council want me to object on

1 the ground of leading or do you prefer --

2 COMMISSIONER WIGHT: Well, I prefer not.

3 MR. WILLNER: I'll be glad --

4 COMMISSIONER WIGHT: I'll give you the same leeway.

5 THE WITNESS: The initial process that the personnel
6 office goes through is to make sure that the people that
7 they send are the highest qualified people from their list.
8 They're looking to make sure that they have the necessary
9 job skills and experience. And then from that list, we
10 interview the final applicants, the top rated applicants to
11 see that they're a good fit for the agency.

12 COMMISSIONER WIGHT: I guess I would admonish both
13 counsel that we're here to hear the testimony of these
14 people and to the extent that you can ask more general
15 questions that will elicit their testimony rather than -- I
16 mean, if they've forgotten something and you need to
17 redirect their attention, that's fine. But we can go on a
18 long time here with a lot of questions and answer stuff.
19 We're really trying to find out what took place there.

20 COMMISSIONER PRICE: I want to ask a question.

21 COMMISSIONER WIGHT: Sure.

22 COMMISSIONER PRICE: What do you mean by good fit?

23 THE WITNESS: Well, there are certain skills that
24 we're looking for when we hire an Animal Control Officer
25 that you may have your own stereotype of what a animal

1 control officer is. But it's our position that we're trying
2 to find people that can work well with the public, that they
3 can work well with animals. We're looking for people that
4 have problem-solving skills, where they're not going to go
5 out into the public and beat up dog owners because they're
6 having a problem, but that they're willing to work with the
7 dog owner and help the dog owner come to the solutions. And
8 these are the type of skills that we're looking for in our
9 final applicants.

10 COMMISSIONER PRICE: So the good fit is part of the
11 skills and knowledge and abilities that are already
12 identified?

13 THE WITNESS: Right. And with the philosophy of the
14 agency, of working with pet owners.

15 COMMISSIONER PRICE: The philosophy meaning?

16 THE WITNESS: Meaning the manner in which we address
17 problems in our community.

18 COMMISSIONER PRICE: Is that spelled out in the job
19 description?

20 THE WITNESS: Indirectly it is.

21 COMMISSIONER PRICE: But not directly.

22 THE WITNESS: It's not possible to place every aspect
23 in the job description.

24 COMMISSIONER PRICE: So what do you use to identify
25 the good fit?

1 THE WITNESS: We're looking for --

2 COMMISSIONER PRICE: What's the criteria?

3 THE WITNESS: I believe that each panel member may
4 have different criteria, but when I'm looking, I'm looking
5 for someone that is able to think quickly and is thinking in
6 a way of problem solving and not thinking in the manner of
7 enforcement.

8 COMMISSIONER PRICE: Now, were the instructions of
9 what a good fit is given to the panel members?

10 THE WITNESS: I believe that the panel members just
11 intuitively know what is going to make a good fit. They see
12 that the direction that our agency is going. And they are
13 looking for employees that are going to further the agency
14 in this direction.

15 COMMISSIONER PRICE: But that direction is not
16 identified in the beginning?

17 THE WITNESS: No, it is not.

18 COMMISSIONER WIGHT: Next witness.

19 MR. NEMIROW: Larry Crabb.

20 COMMISSIONER WIGHT: Let me just say, we're kind of
21 proceeding this way. I don't see these people as
22 necessarily being the County's witnesses of Ms. May's
23 witnesses. They are people that the Board wanted us to talk
24 to and take their testimony and this is just a handy way of
25 proceeding, but I don't necessarily see it as one side's

1 witness.

2 COMMISSIONER FLOYD: I'm sorry, I didn't get this
3 gentleman's name.

4 THE WITNESS: Larry Crabb, C-r-a-b-b.

5 MR. WILLNER: If Mr. Flagler is staying, will we
6 assume he will not be further called as a witness?

7 COMMISSIONER WIGHT: Well, possibly not. But I think
8 -- once they testify they can stay unless the rest of the
9 council feels differently. But there may be something he
10 comes back on.

11 MR. WILLNER: If he's going to be further called then
12 I think he should be excluded like everybody.

13 COMMISSIONER FLOYD: If there's a chance that --
14 we've excluded witnesses. If there's a chance that they can
15 be recalled they should leave the room. If there's no
16 chance of them being recalled, then I don't have an
17 objection to them staying.

18 COMMISSIONER WIGHT: Do I get to decide this as
19 chair?

20 COMMISSIONER PRICE: I don't care.

21 COMMISSIONER FLOYD: That's just my opinion.

22 COMMISSIONER WIGHT: Let's let them stay. After
23 they've testified they'll let them stay. It's possible --
24 I'm not looking forward to having anybody testify again.
25 We're going to be going on for quite a while here, but it's

1 possible that somebody might have to add something. Go
2 ahead.

3 LARRY CRABB,

4 called as a witness by the County, having been first duly
5 sworn, was examined and testified as follows:

6 COMMISSIONER WIGHT: State your name and your
7 position.

8 THE WITNESS: Larry Crabb, C-r-a-b-b. I'm Field
9 Supervisor, Multnomah County Animal Control.

10 DIRECT EXAMINATION

11 BY MR. NEMIROW:

12 Q You were on the hiring panel?

13 A I was.

14 Q Which one?

15 A The position for the officer position.

16 Q And you knew that that panel was going to make the
17 hiring decision?

18 A It was given to us as -- we would review the
19 information, the scores that we gave people. We would
20 discuss at that time where we had everybody, and it would be
21 a general consensus by the panel.

22 Q Did you believe that you were going to make the final
23 controlling decision as to which person would be selected as
24 Animal Control Officer?

25 A The panel would. I wouldn't personally.

1 Q Now, why did you believe that the panel would?

2 A Well, I've been here since 1978 and that's the way
3 it's been since I've been here, and I've set on three or
4 four panels.

5 Q Prior to your decision as to which applicant was most
6 suited for the Animal Control Officer position, did Mr.
7 Flagler talk to you at all about the various candidates for
8 the position?

9 A No.

10 Q Did he try at all to try to encourage you to select
11 one from the others?

12 A No. As a matter of fact, I was running around that
13 day because I was doing several other things, setting up the
14 video camera for the scenario that we had. I didn't get a
15 chance to talk to him at all. He hadn't asked to talk to me
16 about anything prior to the interviews of the scenario that
17 we ran.

18 Q Would you expect Mr. Flagler to try to influence your
19 selection of the candidates?

20 A No, I wouldn't.

21 Q Do you feel that you were trying to reflect the
22 philosophy of the management in your selection?

23 A I think that that's -- I don't know how you can ask
24 me to reflect management's position. I know that I'm not --
25 I've sat on panels before during this process. And it has

1 never been any of the management positions to try to
2 influence any of the employee's decisions as to who they
3 were going to pick. I'm a very strong-willed person, and I
4 do argue with Dave on occasions. And if I felt that I did
5 not have the choice of making a decision that I chose I
6 would not have been on the panel.

7 Q Were you hired by a panel like this?

8 A Yes, I was, in 1978.

9 Q What do you see the use of a hiring panel?

10 A Well, the purpose of the panel is to review the
11 applicant's abilities based on the questions and information
12 that we're trying to get out.

13 Q Do you recall the interviews that the panel did with
14 the candidates with the officer position?

15 A For this position?

16 Q Yes.

17 A I remember it.

18 Q Do you recall having scored the candidates?

19 A I don't remember the numbers, the scores that I gave
20 them. I remember that we had -- the person that we did hire
21 was number one. There was a gentleman from, I believe it
22 was Milwaukie or Gladstone was number two. There was
23 another candidate who was from San Francisco who was number
24 three, and then there was Ms. May and a gentleman from San
25 Francisco who were like tied for fourth.

1 Q So she wasn't really a contender for that position?

2 A Well, not in the category that I placed them in, no.

3 COMMISSIONER WIGHT: You were just -- then you were
4 just talking about your classification, not the group's
5 classification?

6 THE WITNESS: That's my -- that was my scoring of
7 them.

8 COMMISSIONER WIGHT: Okay, thank you.

9 Q (By Mr. Nemirow) You talked to the other panel
10 members at the interviews and compared the scores?

11 A Once we came to -- I came to that conclusion, there
12 was -- Tammy Sorenson, Dave Flagler and myself went -- did
13 the scenario part of it, and then we went in and had an
14 interview with the individual people. And that was on
15 Friday, I believe it was. Doug Carpenter who's the other
16 supervisor that works the opposite end of the week of me was
17 not able -- because of scheduling was not able to be there
18 on like Monday. He was given a copy of the videotape or the
19 videotape to review. And then on Wednesday we sat down and
20 went over our own scores and discussed where we had
21 categorized everybody in the group, and came to pretty well
22 the same conclusions.

23 Q Did your union shop steward tell you anything about
24 this current dispute?

25 A My shop steward?

1 Q Yeah, have you talked to your shop steward about this
2 dispute?

3 A My shop steward has not talked to me at all. I
4 understand that he has talked to several members on the
5 panel, but he hasn't talked to me at all.

6 MR. NEMIROW: I have no further questions.

7 CROSS-EXAMINATION

8 BY MR. WILLNER:

9 Q You're now a field supervisor. Is there a chief
10 field supervisor position that's about to be opened?

11 A No, there isn't.

12 Q Who is the chief field supervisor?

13 A Who is?

14 Q Yeah.

15 A There is not a chief -- there was a reorganizational
16 that was accepted by the County Commissioners as of July
17 1st, I believe it was, of this year, and that restructuring
18 the chief field supervisor's position was eliminated. And
19 part of those duties, Doug Carpenter and myself, are
20 accepting part of those duties and responsibilities.

21 Q You and Doug Carpenter have greater duties and
22 responsibilities now than you did at the time Judith May was
23 interviewed?

24 A Some, yeah.

25 Q When you were first hired, were you hired part time?

1 A When I was first hired -- when I was first hired to
2 work as Animal Control Officer, I was hired as CETA officer.
3 And I walked into the office, and Mike McGuinn asked me if I
4 wanted the job. It was through Oregon State Employment. It
5 was through CETA.

6 Q Through CETA.

7 A Through CETA. And then a year after that I applied
8 for a position that came open, and that's when I went
9 through the hiring process.

10 Q When you first started there was no interview panel,
11 but a year later you had an interview panel, is that right?

12 A Yes. The CETA position was a position made by the
13 U.S. government to help people who had no job skills based
14 on particular jobs to help them to gain those skills. The
15 position was half paid for by the government, half paid for
16 by the county.

17 Q As I understand, it's your belief is that this panel
18 made this final decision --

19 A I feel --

20 Q -- on who to choose for the job?

21 A I feel that the recommendations that we gave the
22 management followed. So if you're asking in the true
23 perspective, did we hire the person -- in the true
24 perspective, no, we did not hire the person. But our
25 recommendation, the joint recommendation of all of us is the

1 recommendation that management followed to hire a person.

2 Q Did the four of you have discussions about the people
3 that should be hired?

4 A At what point?

5 Q Well, you interviewed the people?

6 A Yeah.

7 Q And then did the four of you meet to discuss your
8 impressions?

9 A Doug Carpenter was not there so it couldn't -- he
10 couldn't have been there.

11 Q Did you and Tammy and Mr. Flagler meet to discuss
12 your impressions?

13 A The following week we did, yes, when all four of us
14 were there after Doug Carpenter had an opportunity to review
15 the tape; we then at that time discussed our scorings and
16 where we had placed everybody as far as we were concerned --
17 where they fell on the list of the top five candidates.

18 Q And did all four of you participate in that
19 discussion?

20 A As much as I can remember, yeah, we did.

21 Q And Mr. Flagler was one of those participants in
22 those discussions?

23 A Yes, he was.

24 Q What did Mr. Flagler tell you in that discussion
25 about his views?

1 A As far as I can remember, Mr. Flagler waited till
2 everybody else was done.

3 Q And then what did he tell you?

4 A He just wanted to know where we placed everybody.

5 Q Right. And what did he say in the discussion?

6 A Bear with me.

7 Q I'm just asking a question.

8 A At the time -- at the time that we came up showing
9 that the young lady that we wanted to hire, he asked that --
10 were we sure that that was who we wanted to hire, and we
11 said yes. And he pointed out that there was Mrs. May who
12 had been Animal Control Officer and was a more experienced
13 person, and we felt that we were still making the right
14 choice.

15 Q Did you work in Animal Control when Ms. May was
16 there?

17 A Yes, I did.

18 Q Do you remember her being the union shop steward?

19 A Yes, I do.

20 Q And do you yourself -- weren't you in fact a little
21 critical of the union?

22 A Yeah, I'm kind of critical of the union. I'm kind of
23 critical of the union right now for having you represent
24 her. It's something that irritates me to no end.

25 Q And did you know that there was friction between Mr.

1 Flagler and Judith May working as shop steward back when she
2 was shop steward?

3 A Friction? Well, I was the shop steward, and I know
4 that I had discussions with management, myself, when I was
5 the shop steward, and the friction that I had with Mike
6 Oswald, I don't know if -- I'm not quite sure I understand
7 what you mean. I mean, we had conversations and we had
8 disagreements. Would it be enough for -- I guess what
9 you're asking me, do I know -- let me see if I'm --

10 Q My question was did you know that there was friction
11 between Mr. Flagler and Judith May when she was shop
12 steward?

13 A I don't know what you mean by friction.

14 Q Did you ever hear Judith May talk about difficulties
15 she had with Mr. Flagler back when she was shop steward?

16 A Mm-hmm.

17 Q Your answer's yes?

18 A Yes.

19 Q Did you ever hear Mr. Flagler talk about difficulties
20 he had with Judith May back when she was shop steward?

21 A No, because she was shop steward, no.

22 Q What did he tell you about his difficulties with
23 Judith May?

24 A Well, most of the conversations that I was privy to
25 -- and you have to realize that I'm not an exempt supervisor

1 so I'm not privy to all of his conversations or the
2 conversations he has more with the director -- but mostly
3 just things -- he had an argument with her about something.

4 Q And were some of those arguments about what she was
5 doing as shop steward?

6 A Might have been. I mean, I -- I just remember him
7 saying he had had arguments with her about -- but I have
8 arguments with her. I mean, I had arguments with him. I
9 still have arguments with him. But that doesn't -- the
10 friction -- I guess I'm still not understanding what you're
11 meaning friction.

12 MR. WILLNER: I have no further questions.

13 COMMISSIONER WIGHT: Any redirect?

14 Questions by the commissioners?

15 EXAMINATION

16 BY COMMISSIONER FLOYD:

17 Q Were you the hiring officer?

18 A Officer?

19 Q Hiring manager?

20 A For this.

21 Q For either one of the jobs?

22 A No. I'm a union member. I am not an exempt
23 employee.

24 COMMISSIONER WIGHT: Do we have any more questions?

25 I guess we'll need to take a quick break.

1 (Recess)

2 COMMISSIONER WIGHT: Let's deal with this later,
3 okay. Let's try and get these witnesses in here.

4 MR. NEMIROW: Okay, let me get my pad over here at
5 the table.

6 MR. NEMIROW: Do you want to look at MCC --

7 COMMISSIONER WIGHT: No, let's get the witnesses in
8 here.

9 MR. NEMIROW: Doug Carpenter will be the next
10 witness.

11 COMMISSIONER WIGHT: Does anybody have any deadlines
12 tonight in terms of --

13 COMMISSIONER FLOYD: Gee, I'd like to say I do, but I
14 don't.

15 COMMISSIONER WIGHT: Please.

16 UNIDENTIFIED: NYPD Blues at 10:00.

17 DOUG CARPENTER,

18 called as a witness by the County, having been first duly
19 sworn, was examined and testified as follows:

20 COMMISSIONER WIGHT: Please state your name and your
21 position.

22 THE WITNESS: Doug Carpenter, field supervisor with
23 Multnomah County Animal Control.

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DIRECT EXAMINATION

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BY MR. NEMIROW:

Q Mr. Carpenter, how long have you been an employee of the County?

A I've been employed by Animal Control for 24 years.

Q And are you a member of the union?

A Yes, I am.

Q And when were you hired as an Animal Control Officer?

A February 6th, 1972.

Q Were you hired by a panel?

A Yes, I was.

Q Were you involved in the panel that ended up making the recommendation to hire Ms. May -- no, to not hire Ms. May but to hire someone else?

A Yes. I was part of the panel, yes.

Q Can you explain to the commission your role --
COMMISSIONER PRICE: Can you say which panel this is.

Q (By Mr. Nemirow) Oh, this is for Animal Control Officer.

A Myself and Larry Crabb and Dave Flagler sat down together and I had been given some videotape of part of the process that Judith May and the other people had gone through for this ACO position. And I had viewed that and looked at it and wrote down some information on the sheet that Dave Flagler had given me to look for certain things of

1 each person. And there was five people on the video. And I
2 was to look at certain things, and I did that. And then
3 that was on a Tuesday.

4 And the next day which was Wednesday, the three of us
5 sat down and talked about the applicants and made the
6 determination at that point who the best qualified person
7 for that position was.

8 Q Why did you use -- why did you look at the video
9 instead of participating?

10 A I was --

11 Q I'm sorry, go ahead.

12 A I was -- that part of the hiring process had happened
13 on my days off. I work a Sunday through Wednesday shift,
14 and they had done that, I believe, on a Friday. And the
15 following Monday, Dave Flagler had given me the recording to
16 watch, and I looked at it on the Tuesday the next day.

17 Q Did Flagler try to influence your scoring of the
18 applicants?

19 A No, he didn't. He didn't -- the only thing he gave
20 me was the recording to -- the videotape to look at the
21 paper to write my notes down. And he said to keep an open
22 mind on my observations and what I observed.

23 Q Have you sat on panels in prior years?

24 A Yes, I have. I've sat on three or four of them in my
25 tenure at Animal Control.

1 Q Have you ever had management try to influence your
2 scoring on any of the panels?

3 A No, I have not. They've always told me to keep an
4 open mind and to put down things that I observed, either the
5 person said or didn't say when the question was answered,
6 and it's been for different positions at the shelter.

7 Q Did you know what the scoring was by the other panel
8 members when you did your scoring of the applicants?

9 A No, I did not. I did not see any score sheets or
10 anything until the three of us got together on that
11 Wednesday.

12 Q What did you discover when you compared notes with
13 the others?

14 A The information that I had observed, and looking at
15 the other sheets, they were pretty close to being the same.

16 Q Did you all agree on the first --

17 A Yes, we all agreed on the way that people ended up on
18 the list, yes.

19 Q Now, did you show up at a meeting on April 12th to
20 give testimony?

21 A Yes, I did.

22 Q And were you allowed --

23 A This panel here.

24 Q Were you prepared to testify that day?

25 A Yes, I was.

1 Q What would your testimony have been then --

2 MR. WILLNER: Well, I --

3 A The same. What I'm hearing right now.

4 COMMISSIONER WIGHT: Is that it?

5 MR. NEMIROW: Yeah, that's it.

6 COMMISSIONER WIGHT: Cross-examination.

7 CROSS-EXAMINATION

8 BY MR. WILLNER:

9 Q Mr. Carpenter, were you on the first panel that
10 graded Judy May?

11 A When the -- I believe there were 11 people that came
12 before, yes. I was with Mike Oswald and Sheila Augustine
13 were the other two people --

14 Q This was the first -- before you got to the interview
15 there was a first panel that --

16 A That's correct.

17 Q And in that first panel was Judith May placed number
18 one?

19 A After -- from what I observed on the list, that's
20 where she ended up, yes.

21 Q And you're a member of that group that made that
22 decision?

23 A Yes, sir.

24 Q All right. Then after that you were appointed to a
25 second panel, the one that conducted these interviews you

1 just testified about. Did Mr. Flagler appoint you to the
2 panel?

3 A No, because my days off fell when that --

4 Q No, but was he the one that appointed you to be on
5 that group?

6 A The first group? Yes.

7 Q How about the second group?

8 A The second group I wasn't part of until afterwards.
9 The people -- when she did her -- the deal that was
10 videotaped and the second interview fell on my days off, and
11 I wasn't involved in that. I was given the videotape after
12 that -- those interviews were over with.

13 Q But was it Mr. Flagler who asked you to look at the
14 videotapes?

15 A Yes, Mr. Flagler, yes.

16 Q Yes. And did Mr. Flagler -- you said, gave you a
17 sheet of what to look for?

18 A A sheet of -- there was some things to look at what
19 -- how they interacted with this person that they were
20 interviewing at the door. If this question was asked, what
21 did I observe; what did they do when this happened? I
22 believe there were five questions.

23 Q Did Mr. Flagler tell you when he made that up? Did
24 he make it up after the videotaping was done?

25 A No, it was the same set from a prior hiring.

1 Q I see. And then you say the three of you, Larry
2 Crabb, Mr. Flagler and yourself, discussed the applicants,
3 is that right?

4 A We went and sat down and talked about what our
5 observations were and how we came to the conclusions that we
6 came to on that -- on our sheets.

7 Q And all three of you gave your base of how you
8 reached your conclusions?

9 A That's correct, sir.

10 Q Did you know Judith May when she was a shop steward
11 for the union?

12 A Yes.

13 Q You haven't had a chance -- you didn't talk to Larry
14 Crabb, did you, before he testified?

15 A No, I did not.

16 Q And was there any friction between Judith May as shop
17 steward and Mr. Flagler?

18 A I can't really say that I observed anything.

19 Q Did you ever hear Judith May when she was a shop
20 steward tell you she was having friction or difficulties or
21 problems with Mr. Flagler?

22 A She made statements that she was having problems with
23 Mr. Flagler. When it had to do with the union or the job or
24 whatever, I can't really say.

25 Q And did you ever hear Mr. Flagler when Judith May was

1 shop steward say that he was having problems or difficulties
2 or friction with Judith May?

3 A The only observation I would have is if she had had a
4 conversation with him concerning there was a problem with
5 one of the officers or something was wrong that way, and he
6 would come and say, "Okay, Judy came and talked to me about
7 this, and we need to address it or something."

8 Q Yeah, but did -- isn't it fair to say, that Mr.
9 Flagler had some friction or difficulties with Judy while
10 she was performing her role as shop steward?

11 A Like I say, I don't know if it was from her being in
12 the shop steward or whether, you know, as an Animal Control
13 Officer, I can't say.

14 Q Right, but did you observe that there was friction
15 between the two of them when she was shop steward?

16 A I guess you're stating it that way, yes.

17 Q Did you apply for the job of chief field supervisor
18 at the time that Mr. Flagler received the positioning?

19 A Yes, I had applied for it.

20 Q And what was the ranking order going into the final
21 selection of the people who applied?

22 A I can't really say, sir. I didn't see the list.

23 Q Were you and Larry Crabb and Judith May all ranked
24 higher than Mr. Flagler?

25 A I can't really say. I never saw the list.

1 Q And was there an interview process, interviewing you
2 and Judith May and Mr. Crabb and Mr. Flagler before Mr.
3 Flagler got the position of chief field supervisor?

4 A I believe there was two things that happened when
5 that chief field supervisor position; they went through one
6 set of interviews and found out there wasn't even enough
7 qualified people or whether there wasn't enough people so
8 they opened it up again.

9 Q And the second time it was opened up --

10 A Yes.

11 Q -- at the time Mr. Flagler was chosen to be chief
12 field supervisor over you and others, isn't it true that all
13 of the candidates were not interviewed?

14 A I can't really say. I wasn't interviewed after the
15 first time.

16 Q And do you know that Mr. Crabb wasn't interviewed
17 after the first time?

18 A I don't know that for a fact.

19 Q Have you heard Mr. Crabb tell you that?

20 A No.

21 Q You were not -- you got through the first round; you
22 were not -- you wanted the job of chief field supervisor;
23 you were not interviewed, Mr. Flagler got the job; is that
24 right?

25 A Mm-hmm.

1 Q Your answer was yes?

2 A Yes.

3 MR. WILLNER: No further questions.

4 COMMISSIONER WIGHT: Any redirect?

5 MR. NEMIROW: None.

6 COMMISSIONER WIGHT: Questions by the commissioners?

7 EXAMINATION

8 BY COMMISSIONER FLOYD:

9 Q Were you the hiring manager?

10 A No, I was just on the panel.

11 COMMISSIONER WIGHT: Any other questions?

12 COMMISSIONER FLOYD: No.

13 COMMISSIONER WIGHT: Thank you. You're free to go.

14 MR. NEMIROW: Could you send in Nora Stevens, please.

15 When you want to deal with the question of the
16 affidavit. This is the original. I gave (indiscernible) a
17 copy.

18 COMMISSIONER WIGHT: Okay. Let's try and take it on
19 at the end here so we don't interrupt the flow of the
20 testimony so we can get these people out of here if we can.

21 NORA STEVENS,

22 called as a witness by the County, having been first duly
23 sworn, was examined and testified as follows:

24 COMMISSIONER WIGHT: Will you state your name and
25 your position?

1 THE WITNESS: I'm Nora Stevens. I'm an office
2 assistant for Animal Control.

3 COMMISSIONER WIGHT: Thank you.

4 DIRECT EXAMINATION

5 BY MR. NEMIROW:

6 Q Ms. Stevens, are you a member of the union?

7 A Yes, I am.

8 Q How long have you worked for Animal Control?

9 A Five years.

10 Q Have you been on interview panels prior to the one
11 we're discussing here today?

12 A Yes, I have been.

13 Q And you were on the interview panel for the Animal
14 Care Technician position, isn't that right?

15 A That's right.

16 Q Can you tell us whether -- well, tell us about --
17 tell the commissioners what you did from the beginning to
18 the end. Instead of asking a long series of questions,
19 maybe you can (indiscernible) --

20 A Sharyn Middleton asked if I would be on the panel to
21 pick the animal care person, and I told her I would be glad
22 to help. She -- we had talked previously, everyone in the
23 shelter, about what they wanted in a person who would be
24 working with us, because we all worked together. And she
25 said, well, we'll have this list of questions that was made

1 up from the things that everybody has come up with. And she
2 said, "There is one thing I do want to caution you of,
3 because you do know two of the people on the panel that are
4 being interviewed. You cannot let any personal knowledge
5 affect any decision we make in this group. You do have to
6 go on the answers to the questions, the way the questions
7 are answered."

8 So we had the interviews of five people. We had a
9 page for each one, and each one was scored as to our
10 perception of the way they answered the questions.

11 And at the end of this time, the three of us sat down
12 and gave our high scores, who our first, second, third, and
13 fourth pick were, and we compared them, and we came out with
14 the same three people, within a few points, one way or the
15 other, pretty much the same way.

16 Q Now, did you help work up the questions that the
17 interview panel asked the candidates?

18 A They were all discussed by everyone in the Animal
19 Care and the OA too.

20 Q Were you influenced in your scoring by Sharyn
21 Middleton?

22 A I was not influenced by anyone except my own opinion.

23 Q Did Dave Flagler try to influence your scoring?

24 A At no time did Dave Flagler speak with me at all
25 about this panel.

1 Q When you were hired, did I ask if you were hired by a
2 panel like this?

3 A Yes, I was hired by a panel.

4 Q Is it your understanding going into this exercise
5 interviewing the candidates that the panel's decision would
6 be the person -- the panel selection would be the person
7 that management hired?

8 A What Sharyn told us was that our decision, our group
9 decision would be the hiring decision for the person -- for
10 the Animal Care position.

11 Q Has that always been the procedure out there at
12 Animal Control?

13 A As far as I know. In the other cases where I was on
14 a panel, our recommendation was what was accepted.

15 MR. NEMIROW: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. WILLNER:

18 Q When were you last on a panel?

19 A It's been, hmm, within a year. Or maybe a little
20 over a year.

21 Q And that was before the panel for Judith May?

22 A Yes.

23 Q In the interview with Judith May isn't it a fact that
24 Sharyn Middleton asked Judith May how she would get along
25 with David Flagler?

1 A She did not ask Judith May that in front of us. Not
2 to my recollection.

3 Q Do you know whether she asked Judith May that
4 question any other time?

5 A I believe she did ask her if she would be able to
6 work with Dave. She did say she was going to ask this of
7 the two people that were on the panel that we knew had
8 worked with Dave.

9 Q All right. And did she tell you about any friction
10 between David Flagler and Judith May?

11 A No.

12 Q Did you know Judith May was the shop steward?

13 A Yes. She was the shop steward while I was there.

14 Q And did Judith May ever tell you of any friction she
15 had with Mr. Flagler while she was shop steward?

16 A Nothing specific. I've overheard conversations where
17 I know she did not care particularly for Dave. I do not
18 know what the friction was about.

19 Q And have you heard Mr. Flagler talk about the fact
20 that he had some friction with Judith May?

21 A Not particularly.

22 Q Did you hear any conversations where Mr. Flagler --
23 in which he talked about how he had some frictions or
24 difficulties with Judith May?

25 A None that I recall.

1 Q In terms of -- you said the three of you then
2 participated in kind of reviewing the matter. And who were
3 the three?

4 A It was Michael Matthew, Sharyn Middleton and myself.

5 Q And did all three of you participate in that
6 discussion?

7 A Yes.

8 Q What did Sharyn Middleton say at that discussion?

9 A She asked us what our scores were.

10 Q And what did you say about her opinions?

11 A After we gave her our scores, she said, "Your scores
12 are very similar to what mine are." We'd leave them side by
13 side, we looked at the total scores, and they were within a
14 point or two. I mean, I think I gave a little higher point
15 in one section than somebody else did, but the overall score
16 was --

17 Q Sharyn Middleton was the one that asked you to be on
18 this panel?

19 A Yes.

20 Q She was your supervisor?

21 A No, she is not my supervisor.

22 Q Who was your supervisor?

23 A Pardon me?

24 Q Who was your supervisor?

25 A My supervisor is Jolene Brockmueller (ph).

1 Q And both of them reported to Acting Director Flagler
2 at that point?

3 A Yeah, I would imagine, mm-hmm.

4 MR. WILLNER: No further questions.

5 COMMISSIONER WIGHT: Redirect?

6 MR. NEMIROW: No. I have no further questions.

7 COMMISSIONER WIGHT: Question -- wait just a minute.

8 Commissioners may have questions for you.

9 EXAMINATION

10 BY COMMISSIONER FLOYD:

11 Q You were not the hiring manager?

12 A No.

13 Q The kinds of questions that were asked of the people
14 that were interviewed, could you give me an example of the
15 type of questions?

16 A In a confrontation between you and [End Side 2, Tape
17 1].... example of how you have settled a disagreement, not
18 necessarily at work. An did believe one of them was how you
19 would settle a dispute with a supervisor. And then there
20 was, I believe, a question as to your goals. Right off the
21 top of my head, those are the last thing I can remember
22 (indiscernible) general (indiscernible).

23 COMMISSIONER FLOYD: Thank you very much.

24 COMMISSIONER WIGHT: Any other questions?

25 COMMISSIONER PRICE: No.

1 COMMISSIONER WIGHT: Thank you very much.

2 MR. NEMIROW: Could you ask Mr. Matthew.

3 COMMISSIONER WIGHT: Unless someone thinks of it, we
4 will not need Ms. Stevens again, so you are free to go.

5 THE WITNESS: Oh, thank you.

6 COMMISSIONER WIGHT: Who's the next witness?

7 MR. NEMIROW: Michael Matthew.

8 MICHAEL MATTHEW,

9 called as a witness by the County, having been first duly
10 sworn, was examined and testified as follows:

11 COMMISSIONER WIGHT: Please state your name and your
12 position.

13 THE WITNESS: My name is Michael Matthew, Michael
14 Arlen Matthew. I'm an Animal Care Technician at the
15 Multnomah County Animal Control.

16 COMMISSIONER WIGHT: Thank you.

17 DIRECT EXAMINATION

18 BY MR. NEMIROW:

19 Q Mr. Matthew, can you tell the commission how long you
20 worked at Multnomah County?

21 A I've been there six years all told. First year was
22 on call, and I've been there five years since I've been
23 hired; a little over five years.

24 Q Have you participated in more than one hiring panel
25 to select a candidate to fill an opening at Animal Control?

1 A This is the first hiring panel I've been on, but I've
2 been through three different hiring panels myself.

3 Q How was that?

4 A First time I applied to them as a care position. I
5 was seventh in position downtown. I was called in for an
6 interview, for the second interview, and I did not get
7 hired. And that job came open again. I was -- they called
8 off the same panel, the same people. I came -- I was
9 seventh on the list when I went in the first time; I went to
10 third. Then they called me in for the second go-round.
11 When that person was fired, I came off third off the list to
12 take the job -- get the job.

13 Q Can you explain to the commission was your experience
14 was as a participant on the panel that interviews Ms. May
15 for the Animal Care Technician?

16 A Would you repeat that please.

17 Q Tell the commission what you did as part of the
18 interview panel that interviewed Ms. May and the other
19 candidates for the Animal Care Technician?

20 A I was one of the people that was on the interview
21 board. We had a set list of questions that we were asking
22 each one of the candidates, and we each took turns asking
23 questions, a particular (indiscernible). One of us would
24 ask a question, the next one would ask a question, and then
25 Sharyn would ask a question. And we just rotated until all

1 the questions were expired.

2 Q Did you score on the --

3 A Yes, we did.

4 Q Could you explain to the commission how you scored
5 the individual candidates?

6 A You mean first, second, third, like that?

7 Q Yeah, did you on paper or --

8 A Yeah, we did on paper. We had a sheet -- for each
9 candidate we had a sheet, and we would score each candidate
10 individually. I don't remember what the scoring was. We
11 had a certain amount of points for the whole scoring system.
12 And I don't remember on the paper what each question scored,
13 but each question had a certain amount of points for it.

14 Q Did you use -- were you trying to please anybody but
15 yourself in your scoring?

16 A I wasn't trying to please anybody. I was scoring
17 based on the answers they gave.

18 Q Were you approached by Sharyn Middleton at any time
19 and told to score any particular way?

20 A No, I was not.

21 Q Do you take kindly to suggestions that you score some
22 particular way?

23 A No, I'm really offended that we're being accused here
24 -- I'm being accused of scoring. If somebody come up to me
25 and asked me if -- anybody that knows me at Animal Control,

1 knows that I wouldn't take lightly to something like that.
2 Nobody has ever approached me in any manner whatsoever and
3 asked me to score any certain way.

4 Q And the scores that you ended up with after
5 interviewing the candidates, did you compare them to the
6 other panel members?

7 A Not until we were completely done.

8 Q What happened then?

9 A We went and sat in a room and compared them after all
10 the scoring was done, and all of us came within a point or
11 two of each other's same scores.

12 Q Did you have the same ranking of the --

13 A Yes, we did.

14 Q Was Ms. May ranked first?

15 A No, she was not.

16 Q What was her ranking, if you recall?

17 A Third.

18 Q Do you feel it's necessary to have these hiring
19 panels interview the candidates?

20 A Yes, I do.

21 Q Why is that?

22 A Because they pull them in from the field and from the
23 positions like mine, from the front office. They call
24 people from the front office in the Animal Care positions,
25 from the field, because we're the people that have to work

1 with the ones that are being hired, and I think it's good
2 that they have the hiring panels made up of the people that
3 will be working with those individuals.

4 Q Was there any detectable prejudice on the part of the
5 panel that you could see?

6 A No, absolutely not.

7 MR. NEMIROW: I have no further questions.

8 CROSS-EXAMINATION

9 BY MR. WILLNER:

10 Q You worked with Judith May when Judith May was shop
11 steward?

12 A No, I did not.

13 Q Did you know that Judith May was shop steward?

14 A Yes, I did.

15 Q Do you recall a time when Judith May -- well, I'm
16 sorry, and had Judith May ever helped you with any union
17 grievances?

18 A Not a grievance, no.

19 Q Had she talked to the union for you on matters of
20 concern to you?

21 A No.

22 Q Had you ever discussed union matters --

23 A Yes, I did.

24 Q All right. Do you recall a conversation in which
25 Judith May asked you in effect "how come we haven't seen you

1 in the union lately; you haven't been talking to us," and
2 your answer was, "I made a deal with Sharyn Middleton that
3 if I stayed away from the union things would go better for
4 me."

5 A That's a lie. That's an outright lie.

6 Q Did you have any conversation with Judith May
7 concerning --

8 A (Undiscernible).

9 Q Let me finish, please. -- concerning what Sharyn
10 Middleton said to you?

11 A Not that I can recall. I never had a conversation
12 based on anything like that.

13 Q Is it fair to say that for the last several years
14 that you've been very critical of Local 88?

15 A No, I haven't -- no, not till just the other day.

16 Q And up to that, isn't it fair to say there was a
17 period of time when you were seeking Local 88's help, and
18 there was a time came when you decided to stay away from
19 them?

20 A No, it is not. I did have Local 88 help me fight a
21 grievance. I won the grievance. They helped me win the
22 grievance. I've never stayed away from them for any reason.
23 I haven't had no need to call them for anything.

24 Q Do you know Jim Smith, council representative of
25 Local 88?

1 A Yes, I do.

2 Q Is he sitting in the room?

3 A Yes.

4 Q Isn't it true that last week you told Jim Smith that
5 he was part of the Mafia and he should go back to Chicago?

6 A That was my own personal opinion.

7 Q Did you tell that to Jim Smith?

8 A Yes, I did.

9 MR. WILLNER: No further questions.

10 COMMISSIONER WIGHT: Redirect?

11 REDIRECT EXAMINATION

12 BY MR. NEMIROW:

13 Q Why did you say that to Mr. Smith?

14 A Well, I didn't tell him he was part of the Mafia. I
15 said he had Mafia tactics and he needed to go back to
16 Chicago where they use those kinds of tactics is what I
17 said.

18 Q What brought that on?

19 A I called asking why the union was representing
20 something that I felt was a non-union issue because Ms. May
21 was not a member of the union when she came before the
22 hiring board. And I was offended that my union dues were
23 going to defend someone that I felt was not a union person.
24 And I'm still offended by it. I don't think it's right that
25 the union should put out our money to defend somebody that's

1 not a union member.

2 Q Did Mr. Smith take exception over that?

3 A He got mad over it. An argument incurred. He said
4 some things, and I said -- I told him what I thought of him.

5 MR. NEMIROW: I have no further questions.

6 MR. WILLNER: One additional one.

7 RECROSS EXAMINATION

8 BY MR. WILLNER:

9 Q How long has Mr. Smith been the council
10 representative for Local 88, approximately?

11 A I don't know. I couldn't even tell you. He was
12 there when I came there.

13 MR. WILLNER: No further questions.

14 COMMISSIONER WIGHT: Questions by the commissioners?

15 EXAMINATION

16 BY COMMISSIONER FLOYD:

17 Q Were you the hiring manager?

18 A No, I was not.

19 COMMISSIONER WIGHT: Thank you very much.

20 MR. NEMIROW: Could you please send in Sharyn
21 Middleton.

22 SHARYN MIDDLETON,

23 called as a witness by the County, having been first duly
24 sworn, was examined and testified as follows:

25 COMMISSIONER WIGHT: Would you please state your name

1 and your position.

2 THE WITNESS: Sharyn M. Middleton, and I'm the Animal
3 Care Supervisor; also the Shelter Operation Supervisor,
4 titles are interchangeable.

5 DIRECT EXAMINATION

6 BY MR. NEMIROW:

7 Q Ms. Middleton, did you select a panel to interview
8 candidates for the Animal Control Animal Care Technician
9 position?

10 A Yes, I did.

11 Q What's the purpose of the panel?

12 A The purpose of the panel is to make sure that we get
13 the best possible candidate and that we also have a
14 candidate that staff can work with.

15 Q Would the panel work up its own questions and answers
16 it was looking for from the --

17 A What we did initially was everyone that was an Animal
18 Care Technician or an Animal Health Technician, I asked them
19 to write up questions that they would like a panel to
20 consider asking an interviewee. What we did is after Nora
21 and Michael accepted the position on the panel, we went
22 through those questions, and we put together, I believe, six
23 questions.

24 Q Tell the commission how many applicants were there
25 for the ACT position?

1 A Initially there were approximately 80 people that
2 applied. Out of those 80 people that applied, I personally
3 knew 15 of them.

4 Q Did you take any special precautions because you knew
5 15 of the applicants?

6 A Yes. What I did is I went to a class that was
7 conducted by the County on how to conduct a hiring
8 interview, because I had some concerns because I knew so
9 many people. I wanted to make sure that anything that I did
10 was strictly above board and that everyone got a fair
11 chance, because I was concerned, because I'm friends with
12 some of those people.

13 Q Why are you friends with some of those -- I mean, why
14 do you know so many people?

15 A Because I've been with Multnomah County, I'm in my
16 15th year. I'm associated with a lot of different
17 organizations. I attend a lot of meetings, so I knew a lot
18 of people. Plus some of the people that were on the list, I
19 work with, or I did work with.

20 Q Did you work with Judy May?

21 A Yes, I did. I -- Judy and I were hired actually on
22 the same day except I had one day seniority on her back in
23 1980. And I worked with her as an Animal Care Technician
24 until she became an officer.

25 Q What did you tell the panel members about the issue

1 of personal friendship or knowledge with the applicants?

2 A Because I also knew that some of the panel members
3 knew some of the people that were going through the hiring
4 process, what I told them was that any personal knowledge we
5 had, good or bad or whatever, was not to be taken into
6 consideration. The only thing that they could consider were
7 the answers that they gave us during the interview process,
8 and only those answers.

9 Q Did you ask Ms. May if she'd have problems working
10 with Dave Flagler?

11 A What I asked Ms. May was I told her that there was a
12 chance that Dave was going to be named as director of the
13 shelter, and if that happened, I knew that she had some
14 problems with him and would she have a problem if he were
15 the director, and she said no.

16 Q How did you know that Ms. May had problems with Dave
17 Flagler?

18 A Because of statements that she had made to me in the
19 course of the years we've known each other. She's said
20 things to me at work, and she said things to me -- we have a
21 campout once a year where all the girls get together; we
22 kind of let our hair down and kind of whatever we say, we
23 just say what we think. And she had -- she has said over
24 the past that she doesn't believe in what Dave is doing.
25 She doesn't like the way that he does things. And she has

1 made the statement that she would participate in whatever it
2 would take to get rid of him.

3 Q Did she ever say that Dave Flagler was stupid?

4 A Yes. And that his decisions weren't sound.

5 Q Did she say he didn't belong in this position?

6 A Yes. And she's also stated that she could do a
7 better job at it.

8 And I have to say that some of the decisions that he
9 made, I mean, I don't always agree with every decision that
10 he makes either, and I might not agree with him and I might
11 think that they're stupid, but I would never consider saying
12 that I would do what it takes to get rid of him because I
13 don't like his decisions.

14 Q Did you try to influence the members of the panel
15 to --

16 A Did I?

17 Q Yes, did you?

18 A No. What I did was I went to them based on the fact
19 that I know that they both think independently, and I asked
20 them if they would like to be on a panel. I told them that
21 some of the people that they would be interviewing they
22 would know, and that what we have to do is conduct a fair
23 interview and that any knowledge of anything they had about
24 those people, whether it was good or bad could not be
25 brought into it. They could only judge them on what they

1 said in the interview process and that our decision would be
2 made that way.

3 Q Can you describe the interview process then and how
4 you ended up scoring --

5 A What we did is we had approximately five points for
6 each question, and we scored independently. And we would
7 take turns asking the questions, and that when we were all
8 done we would all tally up our points. When the whole
9 process was done, after we had talked to the five
10 candidates, I asked Michael and Nora to put their candidates
11 in their ranking, and I put mine in my ranking, and then we
12 discussed where everyone was. And Peter Cringle was first;
13 Steve Dunn was second; Judy May was third; Sherry Anderson
14 was fourth; and -- I'm sorry, Gregg Haggert was fifth.

15 Q Did you ask any other candidates the question if
16 they'd have a problem working with Dave Flagler?

17 A Yes, I did. I asked Sherry Anderson because she was
18 a personal friend of his, and she was currently employed at
19 the shelter as a temporary.

20 Q To your knowledge did any of the other candidates
21 know Dave Flagler?

22 A To the best of my knowledge, no. And when I went
23 through my training process, they said that I could ask a
24 question if I knew that there was more than one person that
25 knew a particular person. Because I was concerned, because

1 I knew so many people, and I wanted to make sure that
2 everything I did was above board.

3 Q Did you work with Judy May before she left Animal
4 Control to go to work for the City of Portland?

5 A Yes, I did. As I stated, I worked with her as an
6 Animal Care Technician, and then when she became an officer,
7 I didn't see her actually that much. I'd see her in the
8 shelter and just say hello and sometimes talk for a few
9 minutes.

10 Judy, when she -- the last campout that I attended
11 last year, she had just -- when she came to the campout she
12 had just finished her boot camp -- I guess that's what they
13 call it -- for the police, and she had said that she was
14 really glad that she was out of the hell hole and that she
15 never wanted to come back. And she also made that statement
16 at work.

17 Q I'd like you to take a look at a document that is
18 marked as Exhibit 1.

19 MR. NEMIROW: This is a copy of Mr. Willner's
20 correspondence of August 11th, and what we'll be asking her
21 to testify about is those findings of fact and conclusions
22 of law.

23 COMMISSIONER FLOYD: This?

24 MR. WILLNER: She's going to give her conclusions?

25 MR. NEMIROW: No, she's going to comment on the

1 facts. I think she's entitled to do that.

2 COMMISSIONER WIGHT: Show her the document and ask
3 your questions and we'll see what they are.

4 MR. WILLNER: I realize we're getting late in the
5 day, but I think it's the job of the council to determine
6 what the facts are and --

7 COMMISSIONER WIGHT: Well, I know, but if she has
8 comments on the facts, I suppose we can hear them. Let's
9 move along.

10 Q (By Mr. Nemirow) Have you had a chance to look at
11 those findings of fact and conclusions of law?

12 A Yes, I have.

13 Q Could you comment on any of them.

14 COMMISSIONER FLOYD: Could you tell us what page
15 you're on.

16 MR. NEMIROW: We're on the last two pages of the
17 correspondence.

18 Q (By Mr. Nemirow) You can refer to the paragraph by
19 number?

20 A Number 3, it says that Mr. Flagler decided not to
21 fill the position and a temporary was hired to do the work.
22 A temporary Animal Control Officer was not hired. The
23 person who was hired was the usual summer dead pickup
24 person.

25 COMMISSIONER PRICE: A dead person?

1 THE WITNESS: Field aide. Sorry. Well, every summer
2 we hire a temporary to pick up the deads.

3 Q (By Mr. Nemirow) Would you comment on paragraph No.
4 7.

5 COMMISSIONER WIGHT: What are they called? The field
6 what?

7 THE WITNESS: The field aide.

8 A Okay. Okay, on No. 7, besides having my name spelled
9 wrong, I did -- I, myself --

10 COMMISSIONER WIGHT: What is the correct spelling of
11 your name?

12 THE WITNESS: S-h-a-r-y-n.

13 MR. WILLNER: I'm sorry? S-h --

14 THE WITNESS: -- a-r-y-n.

15 A I appointed my own panel. I didn't go to Mr. Flagler
16 or anyone else for any type of input onto who I should have
17 on my own panel. I didn't go to Mr. Flagler or anyone else
18 for any type of input onto who I should have on my own
19 panel. I did that all by myself.

20 Q Did you look at the panel's recommendation as a
21 recommendation that you were free to ignore or did you feel
22 you were controlled by their determination?

23 A The panel?

24 Q Yes.

25 COMMISSIONER FLOYD: I'm sorry. I didn't hear your

1 whole question. Could you say it again.

2 Q (By Mr. Nemirow) The question was whether or not she
3 felt she was committed to follow the panel's recommendation
4 or whether she was free to ignore it?

5 A I felt that if I didn't agree with them, we'd
6 probably have some pretty heated discussions as to why. But
7 the hiring decision was a unanimous decision. We spent
8 about a half -- 20 minutes, half hour, maybe a little bit
9 longer, talking about the two top candidates because they
10 were rather close, and we all came to the consensus that
11 Peter Cringle would be as suited for the position. And I
12 asked them -- now, I said, "This is the person you feel is
13 best suited for the position. Is it a unanimous decision
14 for me to go to Dave and to tell Dave that this is our
15 selection?" and they both said yes.

16 Q Would you please look at paragraph No. 13. Comment
17 on it if you have problems?

18 A Well, I have to tell you that it sort of ticks me off
19 a little bit, because this paragraph implies that Mr.
20 Flagler influenced me not to choose Judy May. It was my own
21 choice. It troubles me that Judy -- I feel like I'm being
22 used by Judy to be manipulated by her because of our
23 friendship that something took place that didn't. It was
24 one of the hardest decisions that I ever had to make in my
25 whole entire life. It would have been very easy to just

1 tell Judy, "The job is yours," just because she worked
2 there.

3 But that isn't what I was there to do. I was there
4 to put the best candidate in based on the performance. And
5 I really do feel that -- like I'm being used by Judy, and I
6 don't like it, and I don't appreciate it.

7 MR. NEMIROW: I have no more questions.

8 CROSS-EXAMINATION

9 BY MR. WILLNER:

10 Q You know Nancy Vanmeter?

11 A Yes, I do. She was my roommate for three years.

12 Q And a close friend?

13 A Very close.

14 Q Before you became a supervisor, did you have only
15 favorable comments about Judy May to Nancy Vanmeter?

16 A I talked to Nancy about everything. I probably had
17 good comments and I probably had negative comments about
18 Judy.

19 Q Before you became supervisor your testimony is that
20 you were not -- you were making negative comments about Judy
21 to Nancy Vanmeter?

22 A I'm saying it's a possibility. I'm not saying that
23 everything that I've ever said to Nancy about any person
24 that I've ever known prior to becoming a supervisor is all
25 positive or everything that I've ever said after I became a

1 supervisor was negative.

2 Q After you became a supervisor, did you start to tell
3 Nancy Vanmeter that you had criticisms with Judith May?

4 A I wouldn't call them criticisms. I would say I had
5 some concerns.

6 Q And did those concerns --

7 A But -- let me finish. The concerns that I had
8 weren't so much for Judy as they were for me, because I knew
9 I was making a major hiring decision, my very first one.
10 And I knew that, because of all the years that I've been in
11 this business that there were going to be people that I knew
12 that were applying for the position. And I had some
13 concerns. I mean, you can't -- you can't make everyone
14 happy, and you have to do what's fair. And that's why --
15 Nancy knows that I'm an honorable person. Judy knows that I
16 am. And they all -- they know that I would not do anything
17 to hurt anyone deliberately.

18 I did what I thought was best to be totally fair and
19 unbiased as anything that I knew about Judy May, about
20 Sherry Anderson, about anyone else. Lisa Hubner who's still
21 currently employed by me. Anything that I knew about them
22 did not come into play. It had to be only what they did in
23 that interview because that was the only way to be fair.
24 Because you can't assume because you work for someone for a
25 number of years that you're automatically entitled to a

1 position. That's not the way it's supposed to be. If
2 you're supposed to do something that's unfair -- that is
3 fair and biased, then you can't bring anything into it.

4 And what I talked to Nancy Vanmeter about were my
5 concerns for me to make sure that what I did was fair and
6 unbiased.

7 Q Do you know Sheila Pendleton?

8 A Yes, I do.

9 Q Before this interview process started for the Judith
10 May job, did you have only favorable comments to Sheila
11 Pendleton about Judith May?

12 A I have said negative things to Sheila Pendleton also
13 about Judy, about things that I might not like about her.

14 Q And was that said before this interview process
15 started?

16 A Yes.

17 Q And did you tell Sheila Pendleton that you very much
18 hoped that Judith May would come back to work for the County
19 and Animal Control?

20 A I told her that if Judy came back to work I would be
21 glad to work with Judy, but that Judy had to go through the
22 process. And I did talk to Sheila because I do trust
23 Sheila. Sheila has very good judgment, very sound judgment.
24 And I was -- when this whole thing started because I was a
25 new supervisor, I wanted to make sure that I was doing what

1 was right. And so the people that I trusted I talked to to
2 make sure that what I was doing was going to be correct.
3 And one of the things that she told me was that if Judy did
4 not perform, Judy did not deserve the job. And that if Judy
5 was a good friend of mine she would understand that.

6 And she also said that that would go for anyone else
7 that I knew.

8 Q Now, you said there were two people who were to be
9 interviewed who -- you asked the question could they get
10 along with Mr. Flagler?

11 A I asked Sherry Anderson and Judy, too.

12 Q And was Sherry Anderson dating Mr. Flagler at that
13 time?

14 A I don't know about that. I know that they were
15 friends.

16 Q Sure. And you knew in asking her there was obviously
17 going to be no problem?

18 A Well, that doesn't always mean that there isn't.

19 Q Did you know Judith May when she was shop steward?

20 A Mm-hmm.

21 Q You need to give us an answer --

22 A Yes. Yes, I did. Sorry.

23 Q And did Judith May ever tell you there was any
24 friction between her and Mr. Flagler while she was shop
25 steward?

1 A Judy said that she had some problems with Dave. From
2 the conversations that I had with Judy it was clear to me
3 that she had no respect for Dave, for whatever reason.

4 Q Did you have conversation with Mr. Flagler while Judy
5 May was shop steward in which he said that he had some
6 friction with Judith May doing a job of shop steward?

7 A Dave Flagler never said anything to me about Judy May
8 at all. Period. Even when -- until this whole thing was
9 over and he came and told me that Judy had filed a
10 grievance. And then he said that she was filing a grievance
11 because of unfair hiring practices and that we were biased
12 against her and because of her union activities, and that's
13 the only thing that Dave Flagler has ever said to me about
14 Judy May.

15 Q Other than things he may have said, did you observe
16 any friction between Mr. Flagler and Judith May back when
17 she was union shop steward?

18 A No, because I'm not privy -- I wasn't privy to what
19 her union activities were or, you know, any grievances that
20 may have been filed with him because I wasn't -- I wasn't
21 the supervisor then.

22 Q When you were first hired for Animal Control, was
23 there an interview panel?

24 A In all honesty, I really don't remember. I was so
25 nervous through the whole thing, the only thing I remember

1 was talking to Doug Fakima. But I do know that subsequently
2 after that any interview that I had been on or position that
3 I had been considered for I went through a panel interview.

4 Q When did you become a panel supervisor?

5 A In September of last year, 1993.

6 Q And was there an interview panel for picking you as a
7 supervisor?

8 A For that? No, what -- how that transpired was that I
9 applied for a lead worker position, and I went through a
10 panel interview for that. And what they did, because there
11 was a restructuring of the organization and because no one
12 else applied for it, they chose between the two of us that
13 had gone through that interview process.

14 Q When did you become a lead person?

15 A Oh, golly, I really couldn't tell you. It was
16 probably two or three years. I was a lead worker for two or
17 three years.

18 Q And just so we're clear, there was no interview panel
19 that interviewed you when you became a supervisor, right?

20 A My position was reclassified. My lead worker
21 position was reclassified to an exempt position.

22 Q There was no interview process?

23 A Not for that.

24 Q In that choice?

25 A No.

1 MR. WILLNER: No further questions.

2 COMMISSIONER WIGHT: Redirect?

3 MR. NEMIROW: No, I have no questions.

4 COMMISSIONER WIGHT: Questions by the commissioners?

5 EXAMINATION

6 BY COMMISSIONER FLOYD:

7 Q Were you the hiring manager?

8 A For this position?

9 Q For the Animal Care Technician position?

10 A Mm-hmm, yes.

11 Q And you mentioned earlier in your testimony that you
12 went to some sort of training?

13 A Yes.

14 Q Because you hadn't done this and you were also
15 concerned because you --

16 A Right.

17 Q -- knew some of the candidates?

18 A Right.

19 Q Who put on the training?

20 A The County did.

21 Q And when they put on the training did they go through
22 the personnel rules --

23 A Mm-hmm.

24 Q -- and how they worked?

25 A Yes. And then during the question and answer period,

1 I told them that I would be facing probably one of the
2 greatest challenges of my life because I knew so many people
3 who were applying for the position, and I wanted to make
4 sure that I was completely fair to everybody who went
5 through it.

6 Q And how long did this training take?

7 A If I remember correctly, it was either half day or
8 all day. You know, sometimes they seem to be all day but
9 they're only half day.

10 Q Okay.

11 COMMISSIONER WIGHT: Sort of like these hearings.

12 THE WITNESS: Yeah, right.

13 COMMISSIONER WIGHT: Is that all?

14 Thank you very much.

15 Were you going to call any other witnesses?

16 MR. NEMIROW: I think that's all the panel members.

17 COMMISSIONER WIGHT: Now, we have an affidavit of a
18 panel member who is not present today, is that right?

19 MR. NEMIROW: That's correct. (indiscernible)
20 affidavit?

21 MR. WILLNER: (Indiscernible) have here?

22 COMMISSIONER WIGHT: Just a second. My understanding
23 is that Mr. Willner has not seen this before today; is that
24 correct?

25 MR. NEMIROW: That's correct, as far as I know.

1 COMMISSIONER WIGHT: Mr. Willner is objecting to the
2 introduction of it. My feeling is that since he hasn't had
3 an opportunity to see it or question him we shouldn't accept
4 it and we ought to just go with the testimony we have and
5 not --

6 COMMISSIONER FLOYD: I would agree.

7 COMMISSIONER WIGHT: I think for future reference,
8 and we haven't run into this issue before; I don't
9 necessarily have a problem with taking testimony by
10 affidavit -- it may be very efficient at times, but I think
11 in those situations you need to provide it to the other
12 attorney in advance so they can have an opportunity to
13 review it and get counter-affidavits or whatever. So we're
14 going to --

15 MR. WILLNER: We're talking about the future. You
16 might want to look at MCC 3.10-3.60 which preserves our
17 right of cross-examination.

18 COMMISSIONER WIGHT: 3 point what?

19 MR. WILLNER: 3.10-3.60. That says every party shall
20 have the right to present its case by all documented
21 evidence, to submit rebuttal evidence and to conduct such
22 cross-examination as may be required for a full disclosure
23 of the facts. As well as you might want to look at MCC
24 3.10-050.C which says the deposition of the witnesses shall
25 be taken in the matter prescribed by --

1 COMMISSIONER WIGHT: You've won the issue.

2 MR. WILLNER: I know but --

3 COMMISSIONER WIGHT: You've one -- but --

4 MR. WILLNER: -- (indiscernible) further applicants
5 before you, you've got to have cross-examination.

6 COMMISSIONER WIGHT: If there's information that
7 needs to be brought to us, and each side's had an
8 opportunity to see it and even take a deposition of a
9 witness or something like that, it's -- one, it's a practice
10 before the -- in the arbitration -- Multnomah County
11 Arbitration to do that, and it seems to me it may promote an
12 efficient use of our time. But I guess we'll deal with that
13 question in the future.

14 MR. WILLNER: Right.

15 COMMISSIONER WIGHT: But for the time being, this
16 affidavit is excluded.

17 COMMISSIONER FLOYD: Counsel just made a point to us
18 that because of the remand from the Board of Commissioners
19 was to listen to the panel members, there may be some
20 question as to whether or not we have to continue the
21 hearing until such time as this witness is available. Is
22 that paraphrased correctly?

23 MR. WILLNER: In these rules they have a right to
24 take a prior deposition. And 3.10-050.C you talk about the
25 right to take a deposition of a witness in the manner

1 described by Oregon law or administrative proceedings the
2 manner prescribed by Oregon law --

3 COMMISSIONER WIGHT: Okay, well, just a second before
4 we --

5 MR. NEMIROW: May I offer one thing?

6 COMMISSIONER WIGHT: Well --

7 MR. NEMIROW: It's to this issue actually.

8 COMMISSIONER WIGHT: In a minute.

9 COMMISSIONER FLOYD: The point that's raised is when
10 the remand came back to us, is there somehow in that remand,
11 I would think, an obligation to speak to every member of the
12 panels. And I take it there's this one member who's not
13 available this week because she's on vacation or something.

14 COMMISSIONER WIGHT: Right.

15 COMMISSIONER FLOYD: And I'd have to --

16 COMMISSIONER WIGHT: Well, I looked at them a few
17 minutes ago, and I don't see that they either limited one
18 way or the other.

19 COMMISSIONER FLOYD: No, and --

20 COMMISSIONER WIGHT: And generally my feeling is we
21 set this time for hearing. The person's not available. And
22 I suppose, you know, someone could have asked for a reset of
23 the hearing or whatever if they really felt they were
24 necessary. I would say that we're not going to postpone it
25 further, subject to the decision of the council here --

1 COMMISSIONER FLOYD: Yeah.

2 COMMISSIONER WIGHT: -- but that would be my
3 recommendation.

4 MR. NEMIROW: May I be heard for a moment?

5 COMMISSIONER WIGHT: Just a second. Let's see if
6 there are any other comments here.

7 COMMISSIONER FLOYD: Well, the only other comment is
8 that part of the remand is also to get this done by
9 September 1st.

10 COMMISSIONER WIGHT: Right.

11 COMMISSIONER FLOYD: Which we're running up against
12 very quickly.

13 COMMISSIONER WIGHT: Right.

14 COMMISSIONER FLOYD: So that also could create a
15 problem, (indiscernible).

16 COMMISSIONER WIGHT: Yes, go ahead.

17 MR. NEMIROW: We offered the affidavit in order to
18 meet what we thought was the intent of the Board of County
19 Commissioners to get testimony from all the panel members.
20 I can respect Mr. Willner's inability to respond with
21 counter-affidavits because he hasn't had a chance to look at
22 it.

23 One possible solution might be that he could accept
24 this affidavit into evidence and keep the record open for
25 any counter-affidavits that Mr. Willner might want to

1 submit, but that's one -- that's one possibility.

2 The affiant, Tamara Sorenson, was earlier asked to
3 present herself to testify at the April 12th hearing and was
4 available there and was told not to testify. And so that is
5 just another facet in this (indiscernible).

6 MR. WILLNER: From my point of view this is -- the
7 law provides a system for taking her testimony. This is set
8 out in your rules and provides for my right of cross-
9 examination. That isn't met by giving me a chance to
10 counter affidavits.

11 Your rules provide that a deposition may be taken in
12 the manner prescribed by law. The law says they can take
13 prior depositions if they know a witness is not going to be
14 available. There's a procedure there. An affidavit and even
15 counter-affidavits do not give me the right of cross-
16 examination.

17 COMMISSIONER WIGHT: Have you taken a position on the
18 issue of whether or not we need to hear her to be able to
19 complete our proceeding.

20 MR. WILLNER: My position is you do not because they
21 had the opportunity of taking her deposition and did not do
22 it.

23 COMMISSIONER WIGHT: Okay, subject to objections from
24 the rest of the council I would rule that we are not going
25 to delay the hearing to take any further testimony.

1 All right, Mr. Willner.

2 MR. NEMIROW: The witnesses are not excluded in the
3 long run --

4 MR. WILLNER: Well, look --

5 COMMISSIONER WIGHT: Mr. Flagler is the only one
6 here, right?

7 MR. NEMIROW: What about Sharyn?

8 UNIDENTIFIED: They're coming back (indiscernible).

9 MR. WILLNER: I'm concerned. If these witnesses are
10 going to be testifying about something that Sharyn Middleton
11 has told them, and I'm concerned that you defeat the purpose
12 of the exclusion if Sharyn Middleton can be here and then be
13 allowed to further testify. These witnesses are not allowed
14 to be present --

15 COMMISSIONER WIGHT: Well, we've ruled on that, and
16 we're going to proceed.

17 SHEILA PENDLETON,

18 called as a witness by the Petitioner, having been first
19 duly sworn, was examined and testified as follows:

20 COMMISSIONER WIGHT: Would you state your name and
21 your position, please.

22 THE WITNESS: My name is Sheila Pendleton. I'm
23 Director of Shelter Operations with Vancouver Humane
24 Society, former employee of Multnomah County Animal Control.

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DIRECT EXAMINATION

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BY MR. WILLNER:

Q Ms. Pendleton, how long did you work for Multnomah County Animal Control?

A Five years.

Q And when did you cease being a Multnomah County Animal Control?

A I left in October of '89, I believe.

Q And since then have you had further dealings with Multnomah County Animal Control?

A Just on a professional basis with Sharyn Middleton. We talk occasionally on the phone when things come up. I also was asked to be on the interview panel for the Animal Care position.

Q That was the panel which was Judy May's first choice?

A To my understanding, correct.

Q Have you had discussions with Sharyn Middleton about Judith May?

A A couple occasions. One in June of '93, there was a get-together with several of the gals, and she had commented regarding that she would like to have Judy back working for them; that she enjoyed working with them and she would look forward to it. And the other one was a position opened for the Animal Care. She called me and let me know about the position and wanted me to let Judy know if I talked to her.

1 assistant.

2 THE WITNESS: Senior fiscal assistant.

3 COMMISSIONER PRICE: Fiscal?

4 DIRECT EXAMINATION

5 BY MR. WILLNER:

6 Q Ms. Vanmeter, I'm Don Willner. You and I have talked
7 by telephone. Is it true that you're here in response to a
8 subpoena that I served upon you?

9 A Yes.

10 Q And is it true that you expressed concern to me that
11 there might be retaliation against you if you testified
12 here?

13 A I was concerned in testifying, yes. I don't know if
14 retaliation is the right word.

15 Q Right, but you had concerns?

16 A Yes.

17 Q And I'm hoping that the members of the council can
18 assure you that if there's any conceivable retaliation that
19 you report it to this council.

20 Do you know Sharyn Middleton?

21 A Yes.

22 Q And were you and Sharyn Middleton in fact -- did you
23 in fact rent a room from her at one point?

24 A Actually she rented one from me.

25 Q Yes, you lived in the same house?

1 A Mm-hmm.

2 Q Have you had occasion to discuss -- do you know
3 Judith May?

4 A Yes.

5 Q Have you had occasion to discuss Judith May with
6 Sharyn Middleton?

7 A Yes.

8 Q Were there discussions before Sharyn Middleton became
9 a supervisor?

10 A I think both before and after.

11 Q All right. What did Sharyn Middleton say about
12 Judith May before she became a supervisor?

13 A Well, the discussion we had was when Judy finally
14 left Portland Police, and we were discussing that one night
15 and discussing that it must have been really hard for her,
16 and we know Judy, and Judy really sticks things out, and
17 Judy -- you know, Judy would not leave a place unless it had
18 been really bad for her, so we were discussing that.

19 And in the course of talking about that, we were
20 discussing what we thought Judy might be doing at this
21 point, you know. And she did say that she'd really like to
22 have her back at Animal Control.

23 Q All right, and did you have discussions with Sharyn
24 Middleton about Judith May after Sharyn Middleton became a
25 supervisor?

1 A We had a discussion about the choice that was made
2 for the shelter position.

3 Q All right. And what did Sharyn Middleton tell you at
4 that point?

5 A Well, I'd ask her, I said, "What, Judy wasn't picked?
6 How come? I really thought she was going to get the job,
7 you know." And she said, "Well" -- all she told me is that
8 the panel had done the selecting and there was one guy that
9 came through for the interview that was really outstanding.
10 And Judy hadn't done that well, as well as she had hoped
11 she would.

12 Q After Sharyn Middleton became the supervisor, did she
13 tell you that -- did she have any criticisms of Judith May?

14 A No, at least nothing she said to me.

15 Q Had you heard a statement attributed to Mr. Flagler
16 that no way would he allow Judith May to come back to work
17 at Animal Control?

18 A No.

19 Q I'm not talking about statements from Mr. Flagler.
20 Had you heard anybody tell you about such a statement?

21 A That Mr. Flagler would not want Judy back at Animal
22 Control?

23 Q Yes.

24 A No, I didn't hear that.

25 Q Did you ever say that to Jim Smith, the counsel --

1 representative of Local 88?

2 A No.

3 MR. WILLNER: No further questions of this witness.

4 MR. NEMIROW: I have no questions of this witness.

5 COMMISSIONER WIGHT: Questions of council -- by the
6 council?

7 Thank you very much.

8 MR. WILLNER: You may be excused. Thank you.

9 I'll call Judith May.

10 COMMISSIONER WIGHT: You can stay there if you want
11 to.

12 JUDITH MAY,

13 called as a witness in her own behalf, having been first
14 duly sworn, was examined and testified as follows:

15 COMMISSIONER WIGHT: Would you state your name and
16 your current employment?

17 THE WITNESS: Judith R. May, Shelter Lead Worker for
18 Vancouver Humane Society.

19 DIRECT EXAMINATION

20 BY MR. WILLNER:

21 Q Ms. May, did you have a conversation with Michael
22 Matthews in which the subject of the union and Sharyn
23 Middleton came up?

24 A Yes, I did.

25 Q Approximately when was that conversation?

1 A Early in '92, January, February, somewhere along in
2 that time frame.

3 Q Was anyone else present?

4 A There was. It was back in the hallway, but I don't
5 recall who. [End Side 1, Tape 2]...

6 COMMISSIONER WIGHT: Okay, go ahead.

7 Q (By Mr. Willner) Ms. May, what was said in that
8 conversation between you and Michael Matthews?

9 A Well, Michael Matthews has been a consistent contact
10 for me as shop steward. If I was off and he couldn't reach
11 me at home he'd call Jim Smith at the County. He was
12 continuously asking for shop steward assistance, union
13 assistance, because of problems with co-workers, because of
14 problems with management. And then it just stopped.

15 I said, "Gee, Mike, you must have made amends,
16 because I haven't heard from you anymore. Life must be
17 doing better." And he said, in effect, "Well, Sharyn and I
18 had a long discussion, we talked about it, and she said
19 she'd make sure that she dealt with it as I wasn't
20 (indiscernible) union."

21 Q By Sharyn, who --

22 A That was the conversation.

23 Q -- was he referring to?

24 A Sharyn Middleton.

25 Q Ms. May, during the 12 years that you were with

1 Multnomah County Animal Control, did you have any adverse
2 comments placed in your file?

3 A No.

4 Q Did you have commendations placed in you file?

5 A Yes.

6 Q Any idea how many?

7 A You've got my file. I would venture anyplace from
8 six to a dozen. I don't know. It covered 12 years.

9 MR. NEMIROW: Counsel, we've had this testimony.

10 MR. WILLNER: No further questions --

11 COMMISSIONER PRICE: We've testimony from some of the
12 others too.

13 MR. WILLNER: That's fine. That's all my questions.

14 COMMISSIONER WIGHT: Cross-examination?

15 MR. WILLNER: That concludes --

16 COMMISSIONER WIGHT: Do you have questions?

17 EXAMINATION

18 BY COMMISSIONER WIGHT:

19 Q This Michael Matthews, where is he now?

20 A He was on the panel. He was the gentleman in the
21 blue shirt.

22 Q Oh, okay, that's right.

23 COMMISSIONER WIGHT: I don't have any questions. So
24 we have in addition --

25 COMMISSIONER PRICE: Do you have any more witnesses?

1 MR. WILLNER: That concludes Judith May's case.

2 COMMISSIONER WIGHT: In addition to the remand to
3 discuss -- or take testimony from the interview panel, we
4 had some concern about the remedy. And maybe we should get
5 into that a little bit although we haven't decided the case.
6 I think some of the concerns that were expressed was whether
7 or not the fact they would -- the fact that they would
8 compensate Judith May.

9 Q (By Mr. Wight) So I guess I'm curious to know: Have
10 you been employed during this time -- well, since February
11 of '94 until now?

12 A Correct, I have.

13 Q Is it at a higher or lower salary than --

14 A Much lower.

15 Q Much lower. What's your hourly pay where you're
16 working?

17 A When I started? Seven --

18 Q From February on?

19 A Seven dollars an hour.

20 Q Seven dollars an hour. And it's changed?

21 A It's up to eight.

22 Q When did it change?

23 A Month ago, I guess.

24 Q July --

25 COMMISSIONER FLOYD: So it changed July 1?

1 THE WITNESS: Right close to then, yeah.

2 EXAMINATION

3 BY COMMISSIONER FLOYD:

4 Q What is the pay rate for Animal Care Technician?

5 A I believe it's ten something to start.

6 Q How about Animal Control Officer?

7 A Twelve something to start.

8 EXAMINATION

9 BY COMMISSIONER WIGHT:

10 Q Is there a difference in benefits? I imagine there
11 is.

12 A Considerably.

13 Q Do you get medical?

14 A I get medical. That was after 90 days of employment.
15 So the first three months -- well, actually, I did, because
16 I'm part time. So my medical started -- actually it did
17 start February the 1st.

18 Q But different retirement?

19 A There is no retirement.

20 Q There is no retirement.

21 A I work forever.

22 MR. NEMIROW: You're talking now Vancouver?

23 COMMISSIONER WIGHT: Right.

24 Q (By Mr. Wight) Other differences in benefits?

25 A That's all there is. That's all they offer is

1 medical; it's the only benefit they have.

2 Q Okay, but compared to Multnomah County?

3 A I would say retirement and guaranteed step increases
4 in pay are the only two things that I'm aware of.

5 Q If you were reinstated as of a certain effective
6 date, then step increases would come --

7 A Every six months.

8 Q -- anyway?

9 A Yes.

10 COMMISSIONER FLOYD: Before we go too much longer, I
11 would like to have that bathroom break we talked about.

12 COMMISSIONER WIGHT: Why don't we take a ten-minute
13 break here.

14 (Recess)

15 COMMISSIONER WIGHT: My understanding that's all the
16 witnesses we're to hear, correct?

17 MR. WILLNER: That's, yes, all of Judith May's
18 witnesses.

19 COMMISSIONER WIGHT: We'll close the testimony at
20 this point. I think probably the first issue is to decide
21 whether or not -- to kind of decide the case and then work
22 towards findings of fact and conclusions of law and address
23 the remedy issue in that.

24 COMMISSIONER FLOYD: There's one other issue I'm a
25 little confused about, and that is the dismissal?

1 COMMISSIONER WIGHT: The motion to dismiss?

2 COMMISSIONER FLOYD: Yeah. I mean, we have a motion
3 to dismiss from the County in response from -- do we deal
4 with that after we've dealt with the other things or?

5 COMMISSIONER WIGHT: Well, my understanding of the
6 motion to dismiss is essentially it gets to the fact issue.
7 On page 4, top of the page, it says "May's appeal is
8 unsupported by any evidence," and essentially they're saying
9 there's no evidence to support that there was any bias. And
10 I think that's an issue that we have to decide. And then
11 they raise the remedy issue, and that's an issue I think we
12 need to decide.

13 So I don't know that it brings up any issue that we
14 weren't going to address anyway.

15 Just a second.

16 The first argument is that there's no evidence to
17 support any finding of discrimination except with regard to
18 the reinstatement. And, again, I think that's an
19 evidentiary issue we need to make a decision on. So we
20 voted on this once, and I'm glad to state my position again,
21 if you want me to lead off.

22 Well, my view is not essentially changed as a result
23 of this hearing. My understanding of the appeal,
24 originally, it really had to do with the reinstatement issue
25 and that the bias did not become apparent until the position

1 was announced for -- that there was a position vacant later
2 on. I thought I had confirmed that with Ms. May at the time
3 of one of the other hearings when I asked her if she was
4 contending that there was any bias on the part of the panel,
5 and she said, no, that was not a contention.

6 Now, I don't think you were here during that --

7 COMMISSIONER PRICE: I read the testimony.

8 COMMISSIONER WIGHT: -- hearing, but that was my
9 understanding of the case, and I came to my own conclusion
10 that I didn't think that the reinstatement was caused by any
11 bias against her for lawful activity.

12 I think the cases come back to us, and maybe we had
13 different views because of the different hearings we had,
14 but the cases come back to us to focus on the decision to
15 hire for these two positions, and I still don't -- well, I
16 think there's evidence from one -- and it's contested
17 evidence, but I think there's evidence that someone could
18 say that Dave Flagler was biased against Judith May as a
19 result of her union activities. I don't say I agree with
20 that, but I think there's some evidence in the record.

21 On the other hand, we've heard from all except one of
22 the members of the panel, and I guess my interpretation of
23 the testimony is that there's no indication if there was
24 such a bias that it got passed along. So to me, even
25 assuming that he was biased, would the result have been

1 changed any if he hadn't been biased, and I don't see that
2 there is. It seems to me everyone testified that they did
3 their own independent evaluation, and they seemed to reach
4 the same result regardless of how they felt, and there was
5 no indication that any dispute -- previous disputes with Mr.
6 Flagler influenced them.

7 Now, I guess you have to take into consideration that
8 these are all employees that worked for Mr. Flagler, so it's
9 an imperfect system. And I appreciate the difficulty of
10 trying to find people who will testify against their own
11 employer. And that's why I wanted to exclude witnesses, at
12 least through the initial term so we could at least see if
13 there were any inconsistencies in their stories, and I
14 didn't detect any.

15 Now, you seem to have an issue down there about who's
16 the hiring person, and I'm not sure I quite understand what
17 that issue is. But I guess I don't -- I think Mr. Flagler
18 was probably the person who ultimately made the decision,
19 but it's also apparent to me that he seemed to delegate that
20 authority to the group in this situation. But I think
21 technically he had the right to make that decision. But, as
22 it turned out, I think they all sort of came to the same
23 decision anyway, regardless of any particular feelings they
24 may have had about Ms. May.

25 So my vote will remain the same, but I will do what I

1 can to support the council in coming up with a decision if
2 I'm not in the majority on this, as I have not been. So
3 that's my view of the case.

4 COMMISSIONER PRICE: Well, you know, looking at the
5 facts, I really still look at the issue of reinstatement.
6 You know, I look at the issue now of the panel. And I do
7 think that that was done fairly, but when I first voted it
8 was the issue of reinstatement. And I think there was a
9 flaw there and I still do.

10 COMMISSIONER WIGHT: Well, but I think both sides
11 have agreed that that issue is not appealed and is not
12 before us.

13 COMMISSIONER PRICE: Yeah. And -- well, like I said,
14 I do believe that the panel was not influenced. I somehow
15 still feel that -- I'm not going (indiscernible) -- and I
16 feel that they were not told "you have to hire someone other
17 than Ms. May." But the unspoken influence was still there
18 because everybody understood there was a conflict.

19 I'll defer for a moment to you, Carla.

20 COMMISSIONER FLOYD: Well, I spent a lot of time this
21 weekend rereading all of the testimony and trying to make
22 sure that my memory actually was correct based on what was
23 written down. And then, for good or bad, I spent a lot of
24 time going through both the 3.10 county rules and also the
25 personnel rules just to see how they compared with what

1 actually happened in this case.

2 And I actually found a number of things that
3 technically were done incorrectly. And if you want to be a
4 technocrat. The reason I continued to ask questions about
5 the hiring manager is that the rules are very specific, that
6 the hiring manager is the one who makes the decision now. I
7 don't disagree with you that that hiring manager could say,
8 "Okay, D'Norgia, you get to make it for me," but ultimately
9 the hiring manager is the one that's responsible for that.

10 It goes beyond that, though. It also talks about
11 policies and principles of the Merit System. And 3.10.015.B
12 talks about merit based on merit principles and professional
13 methods. B.1 says on basis of relative ability, knowledge,
14 skills, including open consideration of qualified
15 applications. 3 says in partial treatment of applicants in
16 all aspects of personnel administration, without regard to
17 political, and it goes on to talk about race, sex, et
18 cetera, discrimination.

19 And while if there is evidence of discrimination in
20 this case, it's not necessarily listed in here. It is on
21 the basis of union activities which is protected activity
22 under the state of Oregon law. And I sort of ask counsel
23 because I'm not used to dealing with private sector, but she
24 thinks it's ORS 2.43. I'm not real familiar with it. But I
25 know that both state and federal law talks about it's

1 illegal to discriminate against someone because of union
2 activities.

3 COMMISSIONER WIGHT: Well, and it would at least be a
4 violation of the merit --

5 COMMISSIONER FLOYD: Right. Right. Then as you go
6 on and read in the 3.10, it talks about how the personnel
7 officer's the one that is responsible for making up tests,
8 and that they're competitive, job related, et cetera. And
9 then it also says in 3.10.160.F, "Qualifications shall be
10 specified at the time of the announcement," and it's
11 referring specifically to the announcement of the job.

12 And this goes to the issue of the kind of questions
13 and the kind of things that people use to make their
14 decision on who was hired. Several of the witnesses
15 testified that the list of questions were given to them by
16 management. When I asked one of the witnesses what type of
17 questions, they were questions basically around
18 interpersonal skills: conflict resolution, how do you deal
19 with a co-worker you're not getting along with, that sort of
20 thing.

21 There's been no evidence by the County that any of
22 that information was on the announcement. And in fact in
23 the earlier testimony I specifically asked -- is it Winkley?
24 -- whether or not that was part of it, and he said, no, you
25 couldn't get everything on the announcement.

1 And, again, today, someone asked Mr. Flagler whether
2 those things were on the job announcement, and again we were
3 told not everything could be put on the announcement. And I
4 agree, you can't. You'd have a 30-page announcement. But
5 if it's something that's so important that it's going to be
6 the basis of whether or not you're going to be hired, you
7 think you'd mention it.

8 COMMISSIONER WIGHT: That's an issue that goes to the
9 whole test, not just to Judith May.

10 COMMISSIONER FLOYD: Right. And I don't disagree
11 with that. But if I don't know up front what you're looking
12 for, I don't necessarily know -- how to behave. And when
13 you get into the personnel rules, it's very specific about
14 oral examination questions, because we do have a situation
15 here where we're dealing with more than one type of exam.
16 We've got several preliminary civil service type exams.
17 There's testimony that there was a previous panel, and then
18 there's this panel.

19 And it is specific that each applicant shall be asked
20 questions similar in content to those --

21 COMMISSIONER WIGHT: Which rule are you looking at
22 now?

23 COMMISSIONER FLOYD: 10.04, page 16 of the personnel
24 rules. And it says everyone's going to be asked basically
25 the same questions, however, you can do follow-up in

1 clarifying questions. Well, in this case, in at least one
2 of the oral examinations, Ms. May and another person were
3 asked a question that the other three applicants weren't
4 asked. And weren't -- while those questions weren't asked
5 in the presence of the entire panel, the fact that those
6 questions were going to be asked was something that the
7 panel was aware of --

8 MR. FLAGLER: May I clarify --

9 MR. WILLNER: Well, pardon me, this is not time for
10 further evidence.

11 COMMISSIONER WIGHT: Right.

12 COMMISSIONER FLOYD: I'm just saying what I've seen
13 when I went through the evidence.

14 It also said that the personnel officer promulgates
15 rules to guarantee integrity of tests. There's been
16 testimony, slightly contradictory, but basically that these
17 questions came in one case from previous questions that have
18 been asked, sort of an amalgamation of things that have been
19 asked throughout the years. In other case, they used input
20 from people who had been working with this particular
21 person, what they wanted to see.

22 So that's another concern that I have that I believe
23 that the decision that the hiring panels made, whether
24 biased or not, were made on a criteria that wasn't even part
25 of the job announcement. And that's the testimony that

1 we've got before us.

2 I believe that the reinstatement issue, had it been
3 appealed in a timely basis -- you know, I don't know what we
4 would have come out with, but that was not a timely appeal
5 from the evidence I got. All it shows to me is that there's
6 evidence of bias on Mr. Flagler's part.

7 And then the testimony of Ms. Davalos that was made
8 at the very first hearing, there's no reason for her to
9 testify to a comment by Mr. Flagler if it wasn't true. In
10 fact, it's to her detriment to testify to that. I mean, I
11 certainly wouldn't be comfortable testifying publicly
12 against my boss who said something that would be that
13 important in a hearing of this kind, which tells me, I don't
14 know what motive she would have had not to tell the truth.
15 So I've got to give great weight to that.

16 So, I mean, when you sort of look at this, I can go
17 through, and I wrote down tons of little rules that I
18 thought were probably violated by the whole process, just
19 because nobody's been crossing their t's and dotting their
20 i's. And I don't know that that's the way we really want to
21 do business, but since we were told by the commissioners
22 specifically that they wanted particular findings of fact
23 and particular violations of rules or law, I felt that that
24 was -- it's incumbent on me to see if there had been
25 violations. And I could spend a lot of time going through

1 and reading ones that I felt may have been violated. And
2 then after hearing this, I've crossed some of them out after
3 the testimony today, but there's a number of them that were
4 still violated in my opinion.

5 MS. KANWIT: May I make a comment on that?

6 COMMISSIONER WIGHT: Sure.

7 MS. KANWIT: I think that in terms of Ms. May's
8 appeal, any technical errors that weren't brought up in the
9 appeal and may have been apparent in the evidence now are
10 beyond the scope of the appeal. The rules state findings of
11 fact and conclusions of law which you're required to do is
12 recite here what facts -- what the facts are and what the
13 conclusions are based on those facts --

14 COMMISSIONER WIGHT: Related to the appeal issues
15 filed.

16 MS. KANWIT: Right. Related to the appeal,
17 (indiscernible) get into the procedural, the whole exam.
18 She didn't appeal the exam, (indiscernible) hiring decision,
19 so I think it's beyond the scope of the appeal.

20 COMMISSIONER WIGHT: I agree with that, and had that
21 been the focus we might have gotten different testimony that
22 might have answered some of those questions.

23 COMMISSIONER FLOYD: But some of these were raised by
24 Mr. Willner in the letter he wrote us. I actually went way
25 beyond what he wrote us, but there were issues that were

1 raised in previous testimony. Maybe nobody cited 3.10.
2 whatever ever, but they were raising those issues.

3 COMMISSIONER WIGHT: But I think the issue she raises
4 is whether or not there was some violation of the Merit
5 System principle in making this selection. And --

6 COMMISSIONER FLOYD: And I believe there was.

7 COMMISSIONER WIGHT: And specifically that in filling
8 these positions her union activities were used against her
9 in making that decision.

10 And like I say, without agreeing or disagreeing --

11 COMMISSIONER FLOYD: Right.

12 COMMISSIONER WIGHT: -- I think there's evidence
13 there -- the testimony of Mrs.-- how do you pronounce her
14 name -- Davalos? Yeah, they could show that, but on the
15 other hand, even if it were true, I don't see how that bias
16 got translated into that decision.

17 So I would still come to the same conclusion: You
18 had these people who were making a selection who's rated
19 presumably based upon the questions that were asked, and
20 there's no indication that their decision would have been
21 different without that bias, even assuming it was there, and
22 some of them were not even aware that there was any
23 conflict, I think. Some of them were and some of them
24 weren't.

25 So I would still come down to the same place. And I

1 don't know if you've decided which way you're going to go on
2 this or not.

3 COMMISSIONER FLOYD: Well, I think -- if you want to
4 look at the broadest point that was appealed which was that
5 the hiring decision was flawed because of bias and because
6 of violation of merit principles, I believe that there are
7 findings of fact that point to that, specifically the issues
8 around the interpersonal skills, specifically the testimony
9 of Ms. Davalos, specifically the testimony of some of the
10 witnesses who stated that the questions they asked were
11 given to them by management, slanted towards interpersonal
12 skills, and specifically the fact that at least some of the
13 members of the panel were aware of friction.

14 I don't think you can ever crawl inside somebody's
15 head and decide exactly why someone made a decision, but
16 given the emotion in this room during some of the testimony,
17 I've got to believe that there was a great deal of awareness
18 of conflict between Ms. May and management.

19 COMMISSIONER WIGHT: Okay.

20 COMMISSIONER FLOYD: So I feel bad -- the basic
21 things that I wrote down as -- were the issues, at least
22 from my point of view, were I believe that it's a violation
23 of the laws to discriminate because of union activities; I
24 believe that there's a showing of bias in the failure to
25 reinstate. While I understand we can't rule on that, I do

1 believe that there's a showing of bias, and I think because
2 of the timing -- when I went back and tried to figure out
3 the time line and I think the County probably provided this,
4 I think it was a very confused situation towards the 1st of
5 July 1993, but there's testimony in the record of Mr. Oswald
6 that says at the time she requested reinstatement, there was
7 funding.

8 And the question asked by Ms. Middleton about how you
9 work with Mr. -- how could you work with Mr. Flagler. I
10 believe that that showed bias and was against the code.

11 So for those reasons, I would say that the hiring
12 process was flawed.

13 COMMISSIONER PRICE: I do agree with Carla. I think
14 that it was flawed, and again, going back to not being
15 reinstated, saying that they weren't going to fill the job,
16 and then within two months or three months opening the
17 position up, the questions -- the criteria for making the
18 selection of the panel was written criteria for a good fit.
19 The skills were identified, and the -- evidently the first
20 panel. And that panel looked at just skills, I assume, and
21 in the second oral panel, having no written criteria to
22 identify what a good fit was, but with people knowing there
23 was conflict already. I just -- I believe there was bias
24 from the very beginning, going back to a position being
25 there, and a person who had been in that position eligible

1 for reinstatement not being allowed to do that, to be
2 reinstated.

3 COMMISSIONER WIGHT: I have two suggestions. One is
4 that -- well, let's deal with the remedy issue, and then Mr.
5 Willner has developed some proposed findings of fact and
6 conclusions of law. I think we could either take those and
7 work on them or, based upon the comments that you've made
8 here, you could ask Mr. Willner to try and draft some others
9 that he would provide both to the counsel and to us at the
10 next meeting, and we could see if we could adopt some at
11 that point rather than try and write them this evening.

12 But I think we need to deal with the remedy issue
13 since that's going to come up again, and I guess, you know,
14 we can -- you two are going to be the deciding issue on
15 that. I guess I would -- well, I think that the County Code
16 authorizes us to craft a variety of remedies. It says the
17 appropriate ruling, order, sanction and relief. And
18 actually uses the word "sanction."

19 I think there was some concern expressed at the
20 County Commissioner level about whether or not someone who's
21 going to be compensated twice. I think Mr. Willner was
22 arguing whether there should be a sanction in there, and
23 whether or not you call it compensation or not. So I think
24 that's one issue that needs to be decided is whether you're
25 just trying to equalize the compensation or whether you are

1 actually trying to impose the sanction, and back pay may or
2 may not be the most appropriate sanction.

3 Yes?

4 UNIDENTIFIED: Yeah, we were scheduled the room for
5 7:00, and it doesn't look like you're about to leave. Was
6 there a mixup or -- I'm trying to figure out what to do.

7 COMMISSIONER PRICE: I had reserved the room till
8 7:00.

9 UNIDENTIFIED: Maybe I could find an alternative
10 room --

11 UNIDENTIFIED: That would be fine. Well, if we could
12 figure out a way to put a sign on the door.

13 COMMISSIONER PRICE: I didn't think we'd be here that
14 long. I just reserved it till 7:00.

15 COMMISSIONER WIGHT: We have a man who's solving the
16 problem for us. Thank you.

17 So I think we need to have some discussion of the
18 remedy issue and what you want to do with that.

19 COMMISSIONER FLOYD: And I think the issue of remedy
20 was a valid concern that the commissioners had. And teach
21 us, perhaps, not to make -- when someone brought up the
22 issue of back pay, quite frankly, I presumed giving a lot of
23 thought which is, obviously, a mistake. It would not be my
24 intent, personally, that any back pay, if it was awarded,
25 would be over and above what she would have earned or

1 benefits she would have had had she been employed by the
2 County from February 1st on.

3 Now, the February 1st date was picked because we felt
4 -- I believe we knew, actually, that the people who were
5 hired were on the payroll by that date, because the hiring
6 process took place in January. So at least it certainly
7 wasn't my intent that the back pay and/or benefits would be
8 more than what she would have earned had she been in the
9 employ of the County.

10 What that normally means is you look at what the
11 person has earned and what benefits they've received and
12 subtract that from what the wage and benefits would have
13 been had she been employed by the County.

14 I believe what the County is raising, though, is the
15 issue of whether or not we have the right --

16 COMMISSIONER WIGHT: I think that's right, yeah.

17 COMMISSIONER FLOYD: -- over and above what it looks
18 like -- whether or not we even have the right to order back
19 pay. And, admittedly, the language in the code is fairly
20 broad. It says we can suggest a remedy, I believe, or
21 something similar to that.

22 COMMISSIONER WIGHT: The appropriate ruling, order,
23 sanction or relief.

24 COMMISSIONER FLOYD: Or relief, yeah. So, I mean,
25 that's fairly broad and doesn't give us a whole lot of

1 guidance, even of itself, but it would mean, at least to me,
2 that you would decide whether or not reinstatement or -- in
3 this case, reinstatement, I think, was the wrong term. I
4 think hiring is the correct term -- is appropriate. And
5 then secondly, what sanction or remedy or -- excuse me,
6 relief.

7 I would propose that it would be the difference
8 between wages and benefits that she would have received had
9 she been in the employ of the County.

10 COMMISSIONER PRICE: And I would concur.

11 COMMISSIONER WIGHT: I just -- I think it's possible
12 for someone to make a calculation on the wages. We can find
13 out what the wages -- the benefits become a little trickier,
14 particularly with contributions to PERS and that sort of
15 thing.

16 COMMISSIONER FLOYD: I guess what I'd say is her
17 seniority date would be whatever the February 1st date is as
18 opposed to what date she would actually start, which means
19 that perhaps contributions to PERS or whatever would be
20 based on having began February 1st rather than whatever the
21 actual date she would begin is.

22 And in the range of medical benefits, I'm not
23 completely familiar with what the Vancouver office versus
24 the County, but unless she could prove that there was an
25 out-of-pocket expenditure that would have been covered --

1 MR. WILLNER: Medical benefits cost.

2 COMMISSIONER FLOYD: Right. If she'd had a \$50
3 medical bill or something like that, I would say maybe that
4 would be reimbursable.

5 COMMISSIONER WIGHT: Okay, so essentially it's a
6 February 1 hire date and a calculation of wages based upon
7 the difference between what she got paid and what she would
8 have been paid?

9 MS. KANWIT: Two (indiscernible)?

10 COMMISSIONER FLOYD: Yeah, the question is what
11 position should she have been hired into?

12 MS. KANWIT: And you also you need to -- I think
13 maybe this should be on the record (indiscernible) what
14 portion of the code authorizes you to (indiscernible).

15 COMMISSIONER WIGHT: Okay, well, I think we're
16 talking about Section 3.10.380.D.2.

17 UNIDENTIFIED: May I ask your counsel the remedy, the
18 probation period that all new hires are required six-month
19 period.

20 COMMISSIONER FLOYD: That's a good one.

21 COMMISSIONER WIGHT: I wouldn't try and change
22 anything on that.

23 COMMISSIONER FLOYD: Correct me if I'm wrong. I'm
24 assuming what you're saying is if had I been hired on a job
25 as of February 1st, I would have had a probationary period

1 during which the rules are slightly different than if I was
2 a regular employee.

3 UNIDENTIFIED: Correct.

4 COMMISSIONER FLOYD: So is your question that we
5 somehow skip past that period for Ms. May because, in our
6 opinion, she should have been put on the payroll February
7 1st? Is that what you're asking?

8 UNIDENTIFIED: I'm asking what does that mean for
9 (indiscernible) serve a six-month period when she's actually
10 on the job?

11 COMMISSIONER WIGHT: I would think so. I don't know.
12 I mean, if they -- the difference may be that they can
13 terminate without cause, but if they can come back with the
14 determination during the six-month period, I think we would
15 look at it very carefully.

16 COMMISSIONER FLOYD: My only concern would be --

17 MR. NEMIROW: I don't think you have the authority to
18 supersede a collective bargaining agreement.

19 MR. WILLNER: Let's not get --

20 MR. NEMIROW: Well, Mr. Willner, unless you have
21 authority --

22 COMMISSIONER WIGHT: Okay, okay --

23 MR. NEMIROW: -- (indiscernible) they can supersede
24 it by --

25 COMMISSIONER WIGHT: All right, guys, hold it.

1 COMMISSIONER FLOYD: And it's certainly not my intent
2 to supersede a collective bargaining agreement.

3 My only concern would be what you were talking about,
4 that you could be discharged without cause. Other than
5 that, I think that the probationary period that would
6 normally be called --

7 COMMISSIONER WIGHT: But you can't be discharged for
8 prohibitive reasons.

9 COMMISSIONER FLOYD: Right. Which would be illegal
10 as opposed to --

11 COMMISSIONER WIGHT: All right.

12 COMMISSIONER FLOYD: So given that, I don't see why
13 -- had the individual been hired and put on the payroll,
14 they would have gone through a six-month probation period.
15 I don't see any reason to waive that.

16 MR. NEMIROW: They would have gone through a
17 chronological, yes, the time would have passed. But the
18 purpose of the probationary period would not have been
19 addressed with --

20 COMMISSIONER FLOYD: But what I'm saying is --

21 COMMISSIONER WIGHT: But what we're saying is a
22 probationary period would run from the time she's employed--

23 COMMISSIONER FLOYD: Right.

24 COMMISSIONER WIGHT: -- not from February 1.

25 COMMISSIONER FLOYD: Not from February 1, yes.

1 COMMISSIONER PRICE: So which job are we talking
2 about?

3 COMMISSIONER FLOYD: The original decision was for
4 the animal officer -- the control officer.

5 COMMISSIONER WIGHT: On the reinstatement?

6 COMMISSIONER FLOYD: Right. And I don't have any
7 reason to change that. In fact, indeed, if there -- I don't
8 see any reason to change that in any way.

9 COMMISSIONER PRICE: And that's the higher pay?

10 COMMISSIONER FLOYD: Yeah.

11 MR. WILLNER: (indiscernible).

12 COMMISSIONER FLOYD: I'm sorry, what?

13 MR. WILLNER: I was asking Commissioner Wight if the
14 issues are finished.

15 COMMISSIONER WIGHT: I think so. I would suggest --

16 COMMISSIONER FLOYD: We're still talking --

17 COMMISSIONER WIGHT: Yeah, I think we ought to ask
18 Mr. Willner to develop findings based on this discussion
19 we've had here and present them at our next meeting rather
20 than try and write them up here tonight.

21 MR. WILLNER: I'd suggest that because we've said a
22 lot of things.

23 COMMISSIONER WIGHT: Right.

24 MR. WILLNER: My only concern is we're under a time
25 table by the County --

1 COMMISSIONER WIGHT: We're having a meeting next
2 Monday.

3 MR. WILLNER: Oh, all right.

4 COMMISSIONER FLOYD: Next Monday. And we're just
5 thrilled.

6 MR. WILLNER: Okay, I will have that before then, and
7 I'll have them served on the council. What time is that
8 meeting?

9 COMMISSIONER WIGHT: 3:30.

10 COMMISSIONER FLOYD: 3:30. Same time, same place.

11 COMMISSIONER WIGHT: Yeah, if you can actually have
12 them to us before then --

13 MR. WILLNER: I'll have them before then, and I'll be
14 here in case there are questions. And I'll get them to Ms.
15 Kanwit, of course.

16 MS. KANWIT: Yeah, please.

17 MR. WILLNER: You're kind of hiding (indiscernible).

18 Can I (indiscernible) run make a copy of a portion of
19 the tape that was a portion of your discussion.

20 MS. KANWIT: I can do a tape. I'm not sure I can do
21 a portion.

22 MR. WILLNER: Okay. That's fine.

23 MS. KANWIT: It would be the second tape.

24 MR. WILLNER: That's fine. It would be helpful -- it
25 would be easier for me to try to in your words --

1 MR. NEMIROW: Can I get a tape of all the tapes that
2 Mr. Willner gets?

3 MS. KANWIT: Certainly.

4 COMMISSIONER WIGHT: Any more business? Oh, we
5 didn't sign the minutes from the last meeting.

6 COMMISSIONER FLOYD: I did.

7 COMMISSIONER PRICE: I did.

8 COMMISSIONER WIGHT: I didn't.

9 MR. WILLNER: Thank you very much for your patience.

10 COMMISSIONER WIGHT: Wait a minute, we have another
11 matter.

12 (Proceedings concluded.)

13

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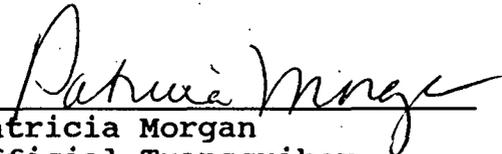
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(A) I am an Official Transcriber for State of Oregon, Multnomah County, and an Official Transcriber for the United States Court Administrator;

(B) that I personally transcribed the electronic recording of the proceedings had at the time and place hereinbefore set forth;

(C) that the foregoing pages, consisting of pages 1 through 137, represent an accurate and complete transcription of the entire record of the proceedings, as requested, to the best of my belief and ability.

WITNESS my hand at Oregon City, Oregon this 20th day of September, 1994.



Patricia Morgan
Official Transcriber