

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 AWARING 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

Thursday, June 30, 1994 - 10:30 AM
Multnomah County Courthouse, Room 602

REGULAR MEETING

Vice-Chair Tanya Collier convened the hearing at 11:46 a.m., with Commissioners Sharron Kelley, Gary Hansen and Dan Saltzman present, and Chair Beverly Stein excused.

CONSENT CALENDAR

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, TO REMOVE ITEMS C-20, C-22, C-24, C-27 AND C-28 FROM THE CONSENT CALENDAR. COMMISSIONER KELLEY DISCUSSED QUESTIONS CONCERNING VARIOUS CONSENT CALENDAR ITEMS. MOTION UNANIMOUSLY APPROVED.

UPON MOTION OF COMMISSIONER KELLEY, SECONDED BY COMMISSIONER HANSEN, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-19, C-21, C-23, C-25, C-26, AND C-29 THROUGH C-31) WAS UNANIMOUSLY APPROVED.

JUVENILE JUSTICE DIVISION

- C-1 *Ratification of Amendment #2 to Intergovernmental Agreement Contract 102304 Between Children's Services Division and Multnomah County, Providing Fiscal Year 1993-94 Cost-of-Living Allowance to Assessment, Intervention and Transition Program (AITP), Gang Resource Intervention Team (GRIT) and Community Based Programs Providing Services to Gang-Involved Youth*

- C-2 *Budget Modification JJS 2 Requesting Authorization to Add \$9,918 in Children's Services Division Gang Resource Intervention Team (GRIT) Funds to the Juvenile Justice Division's FY 93-94 Federal/State Program*

- C-3 *Ratification of Amendment #3 to Intergovernmental Agreement Contract 102304 Between Children's Services Division and Multnomah County, Providing Continuation and Additional Funding to Internal and Community Based Providers for Services to Gang-Involved Youth and the Consolidation of Gang Transition Services, for the Period July 1, 1993 through June 30, 1995*

AGING SERVICES DIVISION

- C-4 *Ratification of Intergovernmental Agreement Contract 102575 Between Oregon Senior and Disabled Services Division and Multnomah County, Providing Funding for Aging Services Division Administration, Long Term Care, and Contracted Community Services, for the Period July 1, 1994 through June 30, 1995*
- C-5 *Ratification of Intergovernmental Agreement Contract 105214 Between Multnomah County and Portland State University, Institute on Aging, for Project Evaluation of Federal Administration on Aging Grant "Beyond Bricks and Mortar", for the Period May 1, 1994 through June 30, 1996*
- C-6 *Budget Modification ASD-9410 Requesting Authorization to Add \$13,200 to Aging Services Division Budget, and \$13,309 to Community and Family Services Division Budget, from a Federal Administration on Aging "Beyond Bricks and Mortar" Grant*

COMMUNITY AND FAMILY SERVICES DIVISION

- C-7 *Ratification of Amendment #2 to Intergovernmental Agreement Contract 100344 Between Multnomah County and Portland Public Schools, Providing Day Treatment Educational Services for Eligible Partners Project Clients at the Nickerson Center, for the Period April 1, 1993 through June 30, 1994*
- C-8 *Ratification of Intergovernmental Agreement Contract 100505 Between Multnomah County and Oregon Commission for the Blind, Providing Employment and Alternative Services for Persons with Developmental Disabilities, for the Period July 1, 1994 through June 30, 1995*
- C-9 *Ratification of Intergovernmental Agreement Contract 100565 Between Multnomah County and the City of Portland, Parks and Recreation Bureau, Providing Employment and Alternative Services for Persons with Developmental Disabilities, for the Period July 1, 1994 through June 30, 1995*
- C-10 *Ratification of Intergovernmental Agreement Contract 100645 Between Multnomah County and Clackamas County, Providing Day Treatment Mental Health Services for Children with Mental Disabilities, for the Period July 1, 1994 through June 30, 1995*
- C-11 *Ratification of Intergovernmental Agreement Contract 100725 Between Multnomah County and Oregon Health Sciences University/Alcohol Treatment and Training Center, Providing Alcohol Diversion and Outpatient Treatment Services on a Requirements Basis, for the Period July 1, 1994 through June 30, 1995*
- C-12 *Ratification of Intergovernmental Agreement Contract 101655 Between Multnomah County and University Hospital, Providing Mental Health Evaluations and Treatment Services for Children with Mental Illnesses, for the*

Period July 1, 1994 through June 30, 1995

- C-13 Ratification of Intergovernmental Agreement Contract 101665 Between Multnomah County and University Hospital, Providing Mental Health Emergency Hold Services for People Lawfully Detained in the Hospital in Pre-Commitment Status, for the Period July 1, 1994 through June 30, 1995*
- C-14 Ratification of Intergovernmental Agreement Contract 101735 Between Multnomah County and Oregon Health Sciences University, Providing Mental Health Assessment and Treatment Services for Adults and Children, for the Period July 1, 1994 through June 30, 1995*
- C-15 Ratification of Intergovernmental Agreement Contract 102465 Between Multnomah County and Clackamas County, Providing Veterans Service Officer Services One Day a Week in North/Northeast and One Day a Week in East Multnomah County, for the Period July 1, 1994 through June 30, 1995*
- C-16 Ratification of Amendment #1 to Intergovernmental Agreement Contract 103264 Between the City of Portland and Multnomah County, Providing Additional Funds for Staff Support to the Housing and Community Development Commission for Planning, Evaluation, and Citizen Involvement Assistance*
- C-17 Ratification of Amendment #1 to Intergovernmental Agreement Contract 103324 Between the City of Portland and Multnomah County, Extending the Private Plumbing Loan Program through June 30, 1995*
- C-18 Ratification of Amendment #1 to Intergovernmental Agreement Contract 104934 Between Multnomah County, the City of Gresham, City of Portland, and the Housing Authority of Portland, Revising the Term of the Agreement, Effective July 1, 1993 through June 30, 1994*
- C-19 Ratification of Intergovernmental Agreement Contract 105264 Between the City of Portland and Multnomah County, Allocating PILOT Revenues for Housing and Support Services for Homeless and Low Income Youth, Adults, and Families, for the Period September 29, 1993 through June 30, 1995*

DEPARTMENT OF HEALTH

- C-21 Ratification of Amendment #2 to Intergovernmental Agreement Contract 200064 Between Multnomah County and Oregon Health Sciences University, for the Provision of Dental Services to HIV Positive Persons*
- C-23 Ratification of Intergovernmental Agreement Contract 200115 Between Multnomah County and Oregon Health Sciences University, for the Provision of Dental Services to Low-Income County Residents, for the Period July 1, 1994 through June 30, 1995*

- C-25 *Ratification of Intergovernmental Agreement Contract 200135 Between Multnomah County and Clatsop County, Providing State Pass-Through Funds for HIV Case Management Services to Clatsop County Residents with Disabling HIV Disease, for the Period July 1, 1994 through June 30, 1995*
- C-26 *Ratification of Intergovernmental Agreement Contract 200145 Between Multnomah County and Tillamook County, Providing State Pass-Through Funds for HIV Case Management Services to Tillamook County Residents with Disabling HIV Disease, for the Period July 1, 1994 through June 30, 1995*
- C-29 *Ratification of Intergovernmental Agreement Contract 200285 Between Washington County and Multnomah County, Providing HIV Related Client Services to Residents of Washington County, for the Period Upon Execution through June 30, 1995*
- C-30 *Ratification of Amendment #1 to Intergovernmental Agreement Contract 201203 Between Multnomah County and Oregon Health Sciences University, School of Dentistry, Providing Clinical Learning Experiences for Senior, Junior and Sophomore Dental Students in County Clinics, for the Period Upon Execution through September 1, 1997*

NON-DEPARTMENTAL

- C-31 *Ratification of Intergovernmental Agreement Contract 500083 Between Oregon Department of Administrative Services and Multnomah County, Providing Travel Management Services to County through State Department Contract, for the Period July 1, 1994 through December 31, 1996*

REGULAR AGENDA

COMMUNITY AND FAMILY SERVICES DIVISION

- R-1 *Ratification of Intergovernmental Agreement Contract 100535 Between Multnomah County and Portland Community College, Providing Employment and Alternative Services for Persons with Developmental Disabilities, for the Period July 1, 1994 through June 30, 1995*

COMMISSIONER SALTZMAN ANNOUNCED HE WOULD ABSTAIN FROM VOTING ON THIS ITEM DUE TO HIS POSITION ON THE PCC BOARD. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-1. REY ESPAÑA EXPLANATION. AGREEMENT APPROVED, WITH COMMISSIONERS KELLEY, HANSEN AND COLLIER VOTING AYE, AND COMMISSIONER SALTZMAN ABSTAINING.

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 *Budget Modification DES 17 Requesting Authorization to Transfer \$39,165 from Materials and Services to Personal Services within the Data Processing Fund*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. DOUG FISCHER EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-3 *Budget Modification DES 18 Requesting Authorization to Transfer \$50,000 from Telephone Fund Contingency to Telephone Materials and Services Budget*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-3. MR. FISCHER EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- R-4 *Ratification of Intergovernmental Agreement Contract 500035 Between Multnomah County, the Multnomah County Sheriff's Office, and the City of Portland, Regarding the Transfer of Sheriff's Deputies to the City of Portland Police Bureau*

COMMISSIONER HANSEN MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-4. BILL FARVER EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

UPON MOTION OF COMMISSIONER HANSEN, SECONDED BY COMMISSIONER SALTZMAN, CONSIDERATION OF THE FOLLOWING ITEM WAS UNANIMOUSLY APPROVED.

- UC-1 *PROCLAMATION in the Matter of Recognizing the Service and Contributions of Sheriff's Officers Transferring to the Portland Police Bureau*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF UC-1. MR. FARVER READ PROCLAMATION AND COMMENTED IN SUPPORT. BOARD COMMENTS IN SUPPORT OF OFFICERS MELISSA BISHOP, GARRY CHRISTENSEN, MICHAEL DONOHUE, MICHAEL GEIGER, BARBARA GLASS, SCOTT GRATTON, KRISTI GUSTAFSON, PHILIP HARPER, MICHAEL

MALANAPHY, ROBERT McCORMICK, WAYNE McDONNELL, LANA MOCKLER, GREGORY NADO, SAM PRONESTI, MICHAEL REESE, MARK ROMANAGGI, CESSNA SMITH, ROBERT SMITH, GARY STAFFORD, JUDY TAYLOR, DANIEL THOMPSON, WALTER VAN HOOSER AND STEVEN ZAPP. PROCLAMATION 94-124 UNANIMOUSLY APPROVED.

- R-5 *First Reading of a Proposed ORDINANCE Amending Ordinance No. 792, in Order to Add and Revise Exempt Pay Ranges*

PROPOSED ORDINANCE READ BY TITLE ONLY. COPIES AVAILABLE. COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF THE FIRST READING. NO ONE WISHED TO TESTIFY. FIRST READING UNANIMOUSLY APPROVED. SECOND READING SCHEDULED FOR THURSDAY, JULY 7, 1994.

- R-6 *Budget Modification NOND 21 Authorizing \$315,386 Increase in Transfer of Dedicated Funds from General Fund to Justice Services Special Operations Fund to Account for Actual 1992-93 Balances of Dedicated Revenues*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-6. DAVE WARREN EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-7 *Budget Modification NOND 22 Requesting Authorization to Decrease the General Fund Contingency by \$443,000 Due to BIT Pass Through to the East-County Cities Being Larger than Budgeted.*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-7. MR. WARREN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-8 *Budget Modification NOND 23 Requesting Authorization to Transfer Insurance Funds Within the Risk Management Division Budget for Accounting Purposes*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-8. JEAN MILEY EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

SHERIFF'S OFFICE

R-9 *Budget Modification MCSO 15 Requesting Authorization to Transfer \$196,747 in Budgeted Expenditures from the Levy Fund to the General Fund to Budget for the Over-Expenditure of General Fund Personal Services Line Items, and the Under-Expenditure of Levy Personal Services and Materials and Services Line Items*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-9. LARRY AAB EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-10 *Budget Modification MCSO 16 Requesting Authorization to Adjust Equipment Dollars Budgeted in Various Sheriff's Office Programs*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-10. MR. AAB EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-11 *Budget Modification MCSO 18 Requesting Authorization to Transfer \$2,192 from Contingency to the Sheriff's Enforcement Budget to Pay for the Cost of a Drug Lab Clean-Up*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-11. MR. AAB EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

R-12 *Budget Modification MCSO 19 Requesting Authorization to Transfer \$30,769 from Contingency to the Sheriff's Budget to Pay for Portland Police Bureau and Oregon State Police Communication and Maintenance Costs for the Video Imaging System*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-12. MR. AAB EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

R-13 *Budget Modification MCHD 10 Requesting Authorization to Transfer \$7,500 from Pass Through to Equipment Within the CareOregon Fund*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL

OF R-13. BILLI ODEGAARD EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

AGING SERVICES DIVISION

- R-14 *Budget Modification ASD-9411 Requesting Authorization to Add \$21,571 to Aging Services Division Budget from Federal Older American Act Funds, \$4,000 in Rentals, and \$479 in Direct Costs*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-14. KATHY GILLETTE EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

JUVENILE JUSTICE DIVISION

- R-15 *Budget Modification JJS 1 Requesting Authorization to Delete \$807,697 in Grant Funds from the Juvenile Justice Division's FY 93-94 Federal/State Budget*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-15. MARIE EIGHMEY EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-16 *ORDER in the Matter of Exempting from Public Bidding an Extension of Exemption to Contract with Swanberg & Associates for Security Guard Services*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-16. DAVE BOYER EXPLANATION. ORDER 94-125 UNANIMOUSLY APPROVED.

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

COMMUNITY AND FAMILY SERVICES DIVISION

- R-17 *Budget Modification CFSD 7 Requesting Authorization to Delete \$304,275 in Unexpended Funding for the Department of Social Services, Transfer \$279,275 in County General Funds to Community and Family Services Division and the*

Multnomah Commission on Children and Families Budgets and Return \$25,000 to General Fund Contingency

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-17. SUSAN CLARK AND BILL FARVER EXPLANATION AND RESPONSE TO BOARD QUESTIONS. CFS STAFF DIRECTED TO PREPARE AND SUBMIT MEMO CLARIFYING DIVISION EXPENDITURES. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-18** *Budget Modification CFSD 8 Requesting Authorization to Increase Budgeted Revenues in the Community and Family Services Division by a Net Total of \$1,329,069 to Reflect Changes in State Mental Health Division Revenue for Plan Amendment Approval Forms 21-29 and 31-74*

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-18. MS. CLARK AND MR. WARREN EXPLANATION AND RESPONSE TO BOARD QUESTIONS. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-19** *Budget Modification CFSD 9 Requesting Authorization to Increase Budgeted Revenue in the Community and Family Services Division and the Sheriff's Office by a Net Total of \$959,437 to Reflect Revenue Changes for the Target Cities Federal Grant Covered by Plan Amendment Approval Form 30*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF R-19. MS. CLARK EXPLANATION. BUDGET MODIFICATION UNANIMOUSLY APPROVED.

- R-20** *ORDER in the Matter of the Acquisition of Real Property for the Community and Family Services Community Development Program*

COMMISSIONER KELLEY MOVED AND COMMISSIONER SALTZMAN SECONDED, APPROVAL OF R-20. CECILE PITTS EXPLANATION. ORDER 94-126 UNANIMOUSLY APPROVED.

COMMUNITY AND FAMILY SERVICES DIVISION

- C-20** *Ratification of Intergovernmental Agreement Contract 105254 Between Multnomah County and the Portland Development Commission, Providing Weatherization Measures at the San Marcos Apartments in Northeast Portland, for the Period Upon Execution through July 31, 1994*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF C-20. BILL THOMAS EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

DEPARTMENT OF HEALTH

- C-22 *Ratification of Intergovernmental Agreement Contract 200075 Between Multnomah County and Oregon State Health Division, Providing Diagnostic Hepatitis Laboratory Testing for County Health Department Clients, for the Period July 1, 1994 through June 30, 1995*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF C-22. MS. ODEGAARD EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

- C-24 *Ratification of Intergovernmental Agreement Contract 200125 Between Multnomah County and Oregon Health Sciences University, Providing On-Line Medical Direction, Data Collection and Research to the County's Emergency Medical Services Pursuant to County Code, for the Period July 1, 1994 through June 30, 1995*

UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, C-24 WAS UNANIMOUSLY SET OVER TO THURSDAY, JULY 7, 1994.

- C-27 *Ratification of Intergovernmental Agreement Contract 200195 Between Multnomah County and Marion County, Providing Health Screening Assessment Services to Qualified Refugees Residing in Marion County, for the Period July 1, 1994 through June 30, 1995*

COMMISSIONER KELLEY MOVED AND COMMISSIONER HANSEN SECONDED, APPROVAL OF C-27. MS. ODEGAARD EXPLANATION. AGREEMENT UNANIMOUSLY APPROVED.

- C-28 *Ratification of Intergovernmental Agreement Contract 200205 Between Multnomah County and Oregon Health Sciences University, Utilizing Physician "Chest Fellows" in Training to Provide Diagnosis, Treatment, Evaluation and Medical Consultation Services in the County's Tuberculosis Clinic, for the Period July 1, 1994 through June 30, 1995*

COMMISSIONER HANSEN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF

**C-28. MS. ODEGAARD EXPLANATION AND
RESPONSE TO QUESTIONS OF COMMISSIONER
KELLEY. AGREEMENT UNANIMOUSLY APPROVED.**

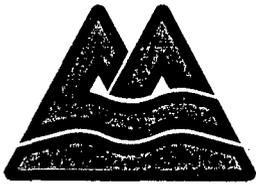
PUBLIC COMMENT

**R-21 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 12:45 p.m.

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

Deborah L. Bogstad
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

JUNE 27, 1994 - JULY 1, 1994

Thursday, June 30, 1994 - 9:30 AM - Appeal Hearing Page 2

Thursday, June 30, 1994 - 10:30 AM - Regular Meeting Page 2

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.

Thursday, June 30, 1994 - 9:30 AM

Multnomah County Courthouse, Room 602

MERIT SYSTEM CIVIL SERVICE COUNCIL
APPEAL HEARING

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. 9:30 AM TIME CERTAIN, 1 HOUR REQUESTED.

Thursday, June 30, 1994 - 10:30 AM

Multnomah County Courthouse, Room 602

REGULAR MEETING

CONSENT CALENDAR

JUVENILE JUSTICE DIVISION

- C-1 Ratification of Amendment #2 to Intergovernmental Agreement Contract 102304 Between Children's Services Division and Multnomah County, Providing Fiscal Year 1993-94 Cost-of-Living Allowance to Assessment, Intervention and Transition Program (AITP), Gang Resource Intervention Team (GRIT) and Community Based Programs Providing Services to Gang-Involved Youth
- C-2 Budget Modification JJS 2 Requesting Authorization to Add \$9,918 in Children's Services Division Gang Resource Intervention Team (GRIT) Funds to the Juvenile Justice Division's FY 93-94 Federal/State Program
- C-3 Ratification of Amendment #3 to Intergovernmental Agreement Contract 102304 Between Children's Services Division and Multnomah County, Providing Continuation and Additional Funding to Internal and Community Based Providers for Services to Gang-Involved Youth and the Consolidation of Gang Transition Services, for the Period July 1, 1993 through June 30, 1995

AGING SERVICES DIVISION

- C-4 Ratification of Intergovernmental Agreement Contract 102575 Between Oregon Senior and Disabled Services Division and Multnomah County, Providing Funding for Aging Services Division Administration, Long Term Care, and

Contracted Community Services, for the Period July 1, 1994 through June 30, 1995

- C-5 *Ratification of Intergovernmental Agreement Contract 105214 Between Multnomah County and Portland State University, Institute on Aging, for Project Evaluation of Federal Administration on Aging Grant "Beyond Bricks and Mortar", for the Period May 1, 1994 through June 30, 1996*
- C-6 *Budget Modification ASD-9410 Requesting Authorization to Add \$13,200 to Aging Services Division Budget, and \$13,309 to Community and Family Services Division Budget, from a Federal Administration on Aging "Beyond Bricks and Mortar" Grant*

COMMUNITY AND FAMILY SERVICES DIVISION

- C-7 *Ratification of Amendment #2 to Intergovernmental Agreement Contract 100344 Between Multnomah County and Portland Public Schools, Providing Day Treatment Educational Services for Eligible Partners Project Clients at the Nickerson Center, for the Period April 1, 1993 through June 30, 1994*
- C-8 *Ratification of Intergovernmental Agreement Contract 100505 Between Multnomah County and Oregon Commission for the Blind, Providing Employment and Alternative Services for Persons with Developmental Disabilities, for the Period July 1, 1994 through June 30, 1995*
- C-9 *Ratification of Intergovernmental Agreement Contract 100565 Between Multnomah County and the City of Portland, Parks and Recreation Bureau, Providing Employment and Alternative Services for Persons with Developmental Disabilities, for the Period July 1, 1994 through June 30, 1995*
- C-10 *Ratification of Intergovernmental Agreement Contract 100645 Between Multnomah County and Clackamas County, Providing Day Treatment Mental Health Services for Children with Mental Disabilities, for the Period July 1, 1994 through June 30, 1995*
- C-11 *Ratification of Intergovernmental Agreement Contract 100725 Between Multnomah County and Oregon Health Sciences University/Alcohol Treatment and Training Center, Providing Alcohol Diversion and Outpatient Treatment Services on a Requirements Basis, for the Period July 1, 1994 through June 30, 1995*
- C-12 *Ratification of Intergovernmental Agreement Contract 101655 Between Multnomah County and University Hospital, Providing Mental Health Evaluations and Treatment Services for Children with Mental Illnesses, for the Period July 1, 1994 through June 30, 1995*
- C-13 *Ratification of Intergovernmental Agreement Contract 101665 Between Multnomah County and University Hospital, Providing Mental Health*

Emergency Hold Services for People Lawfully Detained in the Hospital in Pre-Commitment Status, for the Period July 1, 1994 through June 30, 1995

- C-14 *Ratification of Intergovernmental Agreement Contract 101735 Between Multnomah County and Oregon Health Sciences University, Providing Mental Health Assessment and Treatment Services for Adults and Children, for the Period July 1, 1994 through June 30, 1995*
- C-15 *Ratification of Intergovernmental Agreement Contract 102465 Between Multnomah County and Clackamas County, Providing Veterans Service Officer Services One Day a Week in North/Northeast and One Day a Week in East Multnomah County, for the Period July 1, 1994 through June 30, 1995*
- C-16 *Ratification of Amendment #1 to Intergovernmental Agreement Contract 103264 Between the City of Portland and Multnomah County, Providing Additional Funds for Staff Support to the Housing and Community Development Commission for Planning, Evaluation, and Citizen Involvement Assistance*
- C-17 *Ratification of Amendment #1 to Intergovernmental Agreement Contract 103324 Between the City of Portland and Multnomah County, Extending the Private Plumbing Loan Program through June 30, 1995*
- C-18 *Ratification of Amendment #1 to Intergovernmental Agreement Contract 104934 Between Multnomah County, the City of Gresham, City of Portland, and the Housing Authority of Portland, Revising the Term of the Agreement, Effective July 1, 1993 through June 30, 1994*
- C-19 *Ratification of Intergovernmental Agreement Contract 105264 Between the City of Portland and Multnomah County, Allocating PILOT Revenues for Housing and Support Services for Homeless and Low Income Youth, Adults, and Families, for the Period September 29, 1993 through June 30, 1995*
- C-20 *Ratification of Intergovernmental Agreement Contract 105254 Between Multnomah County and the Portland Development Commission, Providing Weatherization Measures at the San Marcos Apartments in Northeast Portland, for the Period Upon Execution through July 31, 1994*

DEPARTMENT OF HEALTH

- C-21 *Ratification of Amendment #2 to Intergovernmental Agreement Contract 200064 Between Multnomah County and Oregon Health Sciences University, for the Provision of Dental Services to HIV Positive Persons*
- C-22 *Ratification of Intergovernmental Agreement Contract 200075 Between Multnomah County and Oregon State Health Division, Providing Diagnostic Hepatitis Laboratory Testing for County Health Department Clients, for the Period July 1, 1994 through June 30, 1995*

- C-23 *Ratification of Intergovernmental Agreement Contract 200115 Between Multnomah County and Oregon Health Sciences University, for the Provision of Dental Services to Low-Income County Residents, for the Period July 1, 1994 through June 30, 1995*
- C-24 *Ratification of Intergovernmental Agreement Contract 200125 Between Multnomah County and Oregon Health Sciences University, Providing On-Line Medical Direction, Data Collection and Research to the County's Emergency Medical Services Pursuant to County Code, for the Period July 1, 1994 through June 30, 1995*
- C-25 *Ratification of Intergovernmental Agreement Contract 200135 Between Multnomah County and Clatsop County, Providing State Pass-Through Funds for HIV Case Management Services to Clatsop County Residents with Disabling HIV Disease, for the Period July 1, 1994 through June 30, 1995*
- C-26 *Ratification of Intergovernmental Agreement Contract 200145 Between Multnomah County and Tillamook County, Providing State Pass-Through Funds for HIV Case Management Services to Tillamook County Residents with Disabling HIV Disease, for the Period July 1, 1994 through June 30, 1995*
- C-27 *Ratification of Intergovernmental Agreement Contract 200195 Between Multnomah County and Marion County, Providing Health Screening Assessment Services to Qualified Refugees Residing in Marion County, for the Period July 1, 1994 through June 30, 1995*
- C-28 *Ratification of Intergovernmental Agreement Contract 200205 Between Multnomah County and Oregon Health Sciences University, Utilizing Physician "Chest Fellows" in Training to Provide Diagnosis, Treatment, Evaluation and Medical Consultation Services in the County's Tuberculosis Clinic, for the Period July 1, 1994 through June 30, 1995*
- C-29 *Ratification of Intergovernmental Agreement Contract 200285 Between Washington County and Multnomah County, Providing HIV Related Client Services to Residents of Washington County, for the Period Upon Execution through June 30, 1995*
- C-30 *Ratification of Amendment #1 to Intergovernmental Agreement Contract 201203 Between Multnomah County and Oregon Health Sciences University, School of Dentistry, Providing Clinical Learning Experiences for Senior, Junior and Sophomore Dental Students in County Clinics, for the Period Upon Execution through September 1, 1997*

NON-DEPARTMENTAL

- C-31 *Ratification of Intergovernmental Agreement Contract 500083 Between Oregon Department of Administrative Services and Multnomah County, Providing Travel Management Services to County through State Department Contract,*

for the Period July 1, 1994 through December 31, 1996

REGULAR AGENDA

COMMUNITY AND FAMILY SERVICES DIVISION

- R-1 *Ratification of Intergovernmental Agreement Contract 100535 Between Multnomah County and Portland Community College, Providing Employment and Alternative Services for Persons with Developmental Disabilities, for the Period July 1, 1994 through June 30, 1995*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- R-2 *Budget Modification DES 17 Requesting Authorization to Transfer \$39,165 from Materials and Services to Personal Services within the Data Processing Fund*
- R-3 *Budget Modification DES 18 Requesting Authorization to Transfer \$50,000 from Telephone Fund Contingency to Telephone Materials and Services Budget*

NON-DEPARTMENTAL

- R-4 *Ratification of Intergovernmental Agreement Contract 500035 Between Multnomah County, the Multnomah County Sheriff's Office, and the City of Portland, Regarding the Transfer of Sheriff's Deputies to the City of Portland Police Bureau*
- R-5 *First Reading of a Proposed ORDINANCE Amending Ordinance No. 792, in Order to Add and Revise Exempt Pay Ranges*
- R-6 *Budget Modification NOND 21 Authorizing \$315,386 Increase in Transfer of Dedicated Funds from General Fund to Justice Services Special Operations Fund to Account for Actual 1992-93 Balances of Dedicated Revenues*
- R-7 *Budget Modification NOND 22 Requesting Authorization to Decrease the General Fund Contingency by \$443,000 Due to BIT Pass Through to the East-County Cities Being Larger than Budgeted*
- R-8 *Budget Modification NOND 23 Requesting Authorization to Transfer Insurance Funds Within the Risk Management Division Budget for Accounting Purposes*

SHERIFF'S OFFICE

- R-9 *Budget Modification MCSO 15 Requesting Authorization to Transfer \$196,747 in Budgeted Expenditures from the Levy Fund to the General Fund to Budget for the Over-Expenditure of General Fund Personal Services Line Items, and the Under-Expenditure of Levy Personal Services and Materials and Services Line Items*

- R-10 *Budget Modification MCSO 16 Requesting Authorization to Adjust Equipment Dollars Budgeted in Various Sheriff's Office Programs*
- R-11 *Budget Modification MCSO 18 Requesting Authorization to Transfer \$2,192 from Contingency to the Sheriff's Enforcement Budget to Pay for the Cost of a Drug Lab Clean-Up*
- R-12 *Budget Modification MCSO 19 Requesting Authorization to Transfer \$30,769 from Contingency to the Sheriff's Budget to Pay for Portland Police Bureau and Oregon State Police Communication and Maintenance Costs for the Video Imaging System*

DEPARTMENT OF HEALTH

- R-13 *Budget Modification MCHD 10 Requesting Authorization to Transfer \$7,500 from Pass Through to Equipment Within the CareOregon Fund*

AGING SERVICES DIVISION

- R-14 *Budget Modification ASD-9411 Requesting Authorization to Add \$21,571 to Aging Services Division Budget from Federal Older American Act Funds, \$4,000 in Rentals, and \$479 in Direct Costs*

JUVENILE JUSTICE DIVISION

- R-15 *Budget Modification JJS 1 Requesting Authorization to Delete \$807,697 in Grant Funds from the Juvenile Justice Division's FY 93-94 Federal/State Budget*

PUBLIC CONTRACT REVIEW BOARD

(Recess as the Board of County Commissioners and convene as the Public Contract Review Board)

- R-16 *ORDER in the Matter of Exempting from Public Bidding an Extension of Exemption to Contract with Swanberg & Associates for Security Guard Services*

(Recess as the Public Contract Review Board and reconvene as the Board of County Commissioners)

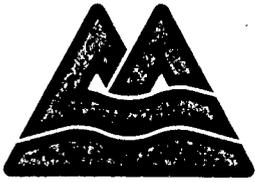
COMMUNITY AND FAMILY SERVICES DIVISION

- R-17 *Budget Modification CFSD 7 Requesting Authorization to Delete \$304,275 in Unexpended Funding for the Department of Social Services, Transfer \$279,275 in County General Funds to Community and Family Services Division and the Multnomah Commission on Children and Families Budgets and Return \$25,000 to General Fund Contingency*

- R-18 *Budget Modification CFSD 8 Requesting Authorization to Increase Budgeted Revenues in the Community and Family Services Division by a Net Total of \$1,329,069 to Reflect Changes in State Mental Health Division Revenue for Plan Amendment Approval Forms 21-29 and 31-74*
- R-19 *Budget Modification CFSD 9 Requesting Authorization to Increase Budgeted Revenue in the Community and Family Services Division and the Sheriff's Office by a Net Total of \$959,437 to Reflect Revenue Changes for the Target Cities Federal Grant Covered by Plan Amendment Approval Form 30*
- R-20 *ORDER in the Matter of the Acquisition of Real Property for the Community and Family Services Community Development Program*

PUBLIC COMMENT

- R-21 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*



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

SUPPLEMENTAL AGENDA

Thursday, June 30, 1994 - 10:30 AM

Multnomah County Courthouse, Room 602

REGULAR BOARD MEETING

UNANIMOUS CONSENT ITEM

NON-DEPARTMENTAL

UC-1 PROCLAMATION in the Matter of Recognizing the Service and Contributions of Sheriff's Officers Transferring to the Portland Police Bureau



Beverly Stein, Multnomah County Chair

Room 1410, Portland Building
1120 S.W. Fifth Avenue
P.O. Box 14700
Portland, Oregon 97204
(503) 248-3308

MEMORANDUM

TO : Commissioner Tanya Collier, Vice-Chair
 Commissioner Dan Saltzman
 Commissioner Gary Hansen
 Commissioner Sharron Kelley
 Larry Kressel, County Counsel
 Office of the Board Clerk

FROM : Beverly Stein

DATE : March 7, 1994 *BS*

RE : Absence from Board Meetings

I will be out of town Monday June 27 through Monday July 4 and will miss the June 28 and June 30 Board Meetings.

cc: Chair's Staff

BOARD OF
 COUNTY COMMISSIONERS
 1994 MAR - 8 PM 1:35
 MULTNOMAH COUNTY
 OREGON



GARY HANSEN
Multnomah County Commissioner
District 2



1120 S.W. Fifth Avenue, Suite 1500
Portland, Oregon 97204
(503) 248-5219

MEMORANDUM

To: Chair Bev Stein
Commissioner Dan Saltzman
Commissioner Tanya Collier
Commissioner Sharron Kelley

From: Commissioner Gary Hansen

Re: Thursday, June 30 BCC meeting

Date: June 28, 1994

BOARD OF
COUNTY COMMISSIONERS
1994 JUN 28 AM 9:21
MULTNOMAH COUNTY
OREGON

I will be at a community function on the morning of Thursday, June 30 and unable to attend the BCC meeting till approximately 10:30.



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
& CENTRAL STORES

(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.

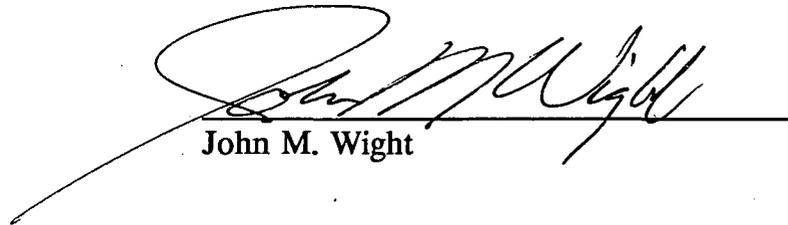
Because the evidence showed the reasons for not filling the Animal Control Officer position of July 1993 was not based upon a discriminatory motive and because Judith May did not allege any discrimination in the selection process for the new positions, I voted to deny her appeal.

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



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

COUNTY COUNSEL
LAURENCE KRESSEL
CHIEF ASSISTANT
JOHN L. DU BAY
ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
GERALD H. ITKIN
H.H. LAZENBY, JR.
STEVEN J. NEMIROW
MATTHEW O. RYAN
JACQUELINE A. WEBER

June 29, 1994

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

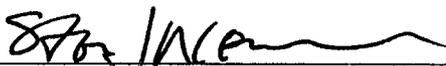
RE: Judith May v. Multnomah County

Dear Ms. Bogstad:

Enclosed please find an original and four copies of our brief in this matter, for the members of the Board of County Commissioners. I have served a copy on Don Wilner and Marianna Kanwitt by facsimile and by messenger.

Sincerely,

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Steven J. Nemirow
Assistant County Counsel

MULTNOMAH COUNTY
OREGON
JUN 29 PM 4:57
COUNTY COUNSEL
LAURENCE KRESSEL

1994 JUN 29 PM 4: 37

MULTNOMAH COUNTY
OREGON

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11 BEFORE THE BOARD OF COUNTY COMMISSIONERS
12 FOR THE COUNTY OF MULTNOMAH
13

14 JUDITH MAY,

Petitioner,

v.

17 MULTNOMAH COUNTY CO.,

Respondent.

MEMORANDUM IN SUPPORT OF
APPEAL

18
19 EXECUTIVE SUMMARY

20 May appeals two hiring decisions made by different panels who
21 selected applicants for positions in January, 1994. Her challenge
22 is based on claims that Dave Flagler, a supervisor, was biased
23 against her. However, the hiring decisions were not Flagler's.
24 They were made by two separate, unanimous panels. May did not
25 charge, and had no evidence that the panels were biased, or
26

1 - MEMORANDUM IN SUPPORT OF APPEAL

1 influenced by Flagler.

2 Moreover, the Council ordered May reinstated, which it could
3 only do if she had been fired. But she had resigned eighteen
4 months earlier. The Council also ordered an award of back pay,
5 which it has no authority to do. Finally, the Council failed to
6 produce written findings of fact and conclusions of law, as
7 required by the County Code.

8 FACTS

9 1. May resigns from the County in 1992.

10 Judy May was an employee of Multnomah County, in the Animal
11 Control Division, for 12 years--the last 7 years as an Animal
12 Control Officer. She was also a union shop steward.

13 In early 1992, May was hired by the City of Portland as a
14 police officer. She requested a six month leave of absence;
15 Animal Control granted a two month leave of absence. When her
16 leave expired she did not return to work. Under the labor
17 agreement with Local 88, her failure to return to work is
18 considered a voluntary resignation.¹

19 Animal Control manager Mike Oswald notified May by letter,
20 dated July 22, 1992, that her employment was terminated effective
21 July 13, 1992. Ms. May did not appeal this decision to the Merit
22 System Civil Service Council.

23
24 _____
25 ¹ The agreement between Local 88 and the County provides, at
26 Article 10 (1): "Any employee who has been granted a leave of
absence and fails to return to work within five days after the
expiration of said leave, shall be considered to have voluntarily
resigned his or her position."

2 - MEMORANDUM IN SUPPORT OF APPEAL

1 2. A year later, in 1993, May requests reinstatement.

2 One year later on July 1, 1993, May submitted a written letter
3 requesting to be reinstated into a vacant Animal Control Officer
4 ("ACO") position. Animal Control management, in consultation with
5 the Department of Environmental Services and Employee Services, had
6 decided not to fill the vacant position at that time, due to a
7 reduction in personnel and the potential need to lay-off current
8 employees as a result of the Board of County Commissioners
9 eliminating a permanent position in the adopted FY 93-94 budget.

10 The Division did not layoff the employee in the eliminated
11 position, but continued to fund the position by using the
12 allocation for the vacant Animal Control Officer. Employee
13 Services notified May by letter date July 14, 1993, that the Animal
14 Control Officer position was not being filled at that time. In
15 addition, the letter notified her that her one year reinstatement
16 period had expired.

17 Ms. May did not appeal any aspect of this decision to the
18 Merit System Council.

19 3. May applies for two positions in September, 1993, and places
20 first on the screening tests.

21 In September 1993, the Board of County Commissioners approved
22 an Animal Control Division reorganization that eliminated an exempt
23 position and created two new positions: an Animal Care Technician
24 ("ACT") and an Office Assistant. The Division placed the clerical
25 employee, whose position was eliminated, into the new Office
26 Assistant position. the decision was made to recruit and fill the

3 - MEMORANDUM IN SUPPORT OF APPEAL

1 two remaining vacancies, i.e., the ACO and the ACT positions. May
2 applied for both vacancies and placed first on both Lists of
3 Certified Eligible Candidates.

4 4. May is not selected by either panel after conducting
5 performance tests, and files an appeal.

6 In January, 1994, the Division conducted two hiring interview
7 processes -- one for each vacant position. Hiring recommendations
8 were made by two separate, different panels of employees made up of
9 both Union and management members. Each panel reached unanimous
10 consensus on the candidate they rated first. The jobs were offered
11 and accepted by the candidates rated first. May was not rated
12 first by either hiring panel.

13 May filed a written appeal on January 28, 1994, with the Merit
14 System Council, challenging "the filling of both the Animal Control
15 Officer and Animal Health [sic] Technician positions," on the basis
16 of "personal/individual discrimination from Chief Field Supervisor
17 Dave Flagler."

18 5. The first hearing, March 10, 1994.

19 a. The hiring decisions were made by unanimous panels.

20 At the March 10, 1994 hearing on her appeal, May contended
21 that there was animosity between her and Mr. Flagler. Sharyn
22 Middleton, a member of one of the hiring panels, testified that
23 although there may have been some animosity between May and
24 Flagler, Flagler had no influence whatsoever on her hiring
25 decision. Middleton reiterated that the person selected was the
26 unanimous decision of the entire panel. Middleton's testimony was

4 - MEMORANDUM IN SUPPORT OF APPEAL

1 unchallenged.

2 b. May did not allege, or produce evidence to establish that
3 Flagler influenced either of the panels.

4 The only evidence in the record is that interpersonal skills
5 and problem solving abilities, as demonstrated in the hiring
6 process, were the deciding factors in the selection decision. On
7 the issue of possible influence on other panel members, the only
8 evidence in the record is Ms. Middleton's testimony that Flagler
9 had no influence whatsoever on the hiring decision made by other
10 members. May presented no evidence of any kind, beyond her own
11 contentions, that Flagler's animosity towards her in any way
12 influenced the decision of any of the six other panel members who
13 made the hiring decisions for the two jobs.

14 At the conclusion of the first hearing, Commissioner Floyd
15 requested the presence at the next hearing of all persons that
16 served on the selection panels.

17 6. Commissioner Floyd fails to attend the April 12, 1994, hearing;
18 the panel members are dismissed without questioning.

19 At the second hearing on April 12, the panel members appeared,
20 as requested by the Council, to answer any questions. However, the
21 Council declined to question them as to whether they were biased in
22 their unanimous decisions. Flagler explained the panel members
23 were there to respond to May's contention "that I influenced the
24 panel in her hiring." May responded by testifying, "That is not my
25 contention." (Hrng 4/12/94 tr p 15-16).

26 7. At the third hearing, Commissioner Floyd reaches her decision

5 - MEMORANDUM IN SUPPORT OF APPEAL

1 "to reinstate" May, based on the July, 1993, decision, which was
2 not -- and could not have been -- timely appealed.

3 At the third hearing on May 10, Commissioner Floyd, who had
4 asked the panel members to be present at the second hearing, and
5 who then failed to attend herself, stated that she was in favor of
6 reinstating May as a remedy to the decision not to do so, made in
7 July, 1993.

8 However, there is nothing in the record to suggest that the
9 management decision (not to fill the vacant position) in July,
10 1993, was the basis of May's complaint, or that if it was the
11 basis, that it was in any way timely under the County's rules.

12 DISCUSSION

13 1. The Council must look for evidence of discrimination where it
14 is charged.

15 If the Council is deciding claims of discrimination in the
16 hiring process, and the hiring decisions were made by panels of
17 management and union employees, the Council must question the
18 members of the decision-making panels before reaching a decision as
19 to whether they were biased. Here, although the panel members were
20 summoned by the Council, and made themselves available for
21 questioning, the Council declined to ask them questions, and in
22 fact dismissed them.

23 2. If the Council's finding of discrimination is based on the
24 July, 1993 decision not to reinstate May, it has no jurisdiction.

25 Here, the only evidence of discrimination is the
26

6 - MEMORANDUM IN SUPPORT OF APPEAL

1 unsubstantiated claim that Dave Flagler was biased against May,²
2 and said she would never be rehired. The only hiring decision that
3 Flagler could conceivably have had controlling impact on was her
4 reinstatement request in July, 1993.³ But May did not appeal this
5 decision, and her appeal, filed in January, 1994, is not within the
6 ten-day period for filing appeals before the Council.

7 3. The council failed to produce a finding, as it is required by
8 the Code.

9 If the Council has determined that there has been
10 discrimination in hiring, it is required by MCC 3.10.420 (c) to
11 make a finding to that effect. Absent such a finding, "a personnel
12 action appealed to the council from a decision of the appointing
13 authority shall be affirmed * * *." Id. Here, no finding was made.
14 This is grounds for vacating the Council's decision.

15 4. May's appeal is unsupported by any evidence.

16 of Here, it is undisputed that May is appealing "the filling
17 both the Animal Control Officer and Animal Health [sic] Technician
18 positions." It is also undisputed that two unanimous panels made
19 these hiring decisions. However, there is absolutely no evidence -
20 - or even any accusation -- that the panels were biased. What
21 little evidence of bias there is pertains only to Flagler, but

22
23 ² Dave Flagler vigorously denies he was biased against May,
or discriminated against her, for any reason, at any time.

24 ³ To fill a position in D.E.S., a manager just have the
25 authority to do so. Neither Flagler nor any other supervisor had
26 authority to fill a vacant position in July, 1993. In fact, Mike
Oswald, Flagler's manager, was under express directions not to fill
the empty position.

7 - MEMORANDUM IN SUPPORT OF APPEAL

1 there is no evidence that Flagler made any hiring decisions on his
2 own. See, Middleton testimony, 3/10/94 hearing, pp 36-37.
3 Significantly, May herself admits she is unconcerned with the
4 question of the panels' bias. Since the only hiring decisions on
5 appeal were made by the two panels, and May admits they were not
6 biased, her appeal fails.

7 5. The Council's remedy outstrips its authority, and must be
8 vacated.

9 It is an axiom that the remedy has to correspond to the right
10 it is intended to enforce. Here, MCC 3.10.200 guarantees the right
11 to proper procedure in hiring. If the procedures are not followed,
12 the Council can order the procedures corrected.

13 MCC 3.10.270 guarantees the right to not be subjected to
14 discrimination in discipline. If such a prohibited act occurs, the
15 Council can order reinstatement.

16 But here, where Petitioner admits she is not complaining that
17 the hiring panels were biased, and there is no evidence of any
18 discipline, discriminatory or otherwise, the Council has
19 nonetheless usurped management prerogatives, and managements' right
20 to exercise its discretion, by ordering May's reinstatement (when
21 she was not fired), and awarding back pay (when she quit to take
22 another job).

23 Conclusion

24 The decision of the Merit System Council should be vacated,
25 and remanded to the Council with express instructions to reopen the
26 record and reach a decision consistent with the facts of the case,

8 - MEMORANDUM IN SUPPORT OF APPEAL

1 and with the Personnel Rules and Code of Multnomah County.

2 DATED this 29th day of June, 1994.

3
4 Respectfully submitted,

5 LAURENCE KRESSEL, COUNTY COUNSEL
6 FOR MULTNOMAH COUNTY, OREGON

7 By Steven J. Nemirow
8 Steven J. Nemirow, OSB #82044
9 Assistant County Counsel

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9 - MEMORANDUM IN SUPPORT OF APPEAL

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

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

April 12, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

D'NORGIA PRICE, Commissioner
JOHN WIGHT, Commissioner

ANNA KANWIT, City Attorney

ALSO PRESENT:

Judith May, Petitioner
Sharyn Middleton, Operations Supervisor
Dave Flagler, Animal Control Manager
Don Winkley, Personnel Analyst

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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

(503) 631-8885

1 MS. MAY: -- volunteered --

2 MR. OSWALD: -- a reorganization.

3 MS. MAY: He volunteered because of his personal life
4 in wishing to go someplace else --

5 COMMISSIONER WIGHT: When did that take place? What
6 are we talking?

7 MS. MAY: Oh, you're probably talking in May --

8 MR. WINKLEY: He didn't leave until August.

9 MS. MAY: -- somewhere around in May.

10 MR. OSWALD: That was in August. That was the
11 reorganization plan that we had developed --

12 MS. MAY: Prior to the budget being accepted?

13 MR. OSWALD: After the budget was adopted. We had to
14 change strategies because of the way in which the Board
15 refunded some positions but not all positions, and it was a
16 voluntary layoff. It was the ability for us to fill -- to
17 retain a clerical position that would have been laid off --
18 involuntarily laid off. It worked well for everybody.

19 COMMISSIONER WIGHT: Any more questions?

20 Is everyone else here because they were involved in
21 the decision or in the -- on the selection panel?

22 MR. FLAGLER: The panel, that's correct. Apparently
23 Ms. May, her contention is that I influenced the panel in
24 her hiring, so we had brought the panel forward to answer
25 your questions directly.

1 COMMISSIONER WIGHT: How many people were on the
2 panel? You've got five.

3 MS. MAY: That is not my contention.

4 COMMISSIONER WIGHT: That's not one of your
5 contentions? I think maybe -- I think it was Carla that was
6 interested in pursuing that. In fact -- but she's not here
7 today, unfortunately. But we have the panel here. Do you
8 want to talk to them about that. If that's not her
9 contention, I think maybe we ought to let these people go.

10 MS. MAY: That's not an issue for me.

11 COMMISSIONER WIGHT: Then we don't need the panel
12 here, and thank you for coming, and sorry to inconvenience
13 you and you had to come all the way over here.

14 MS. MIDDLETON: Excuse me, we did say -- I'm sorry,
15 I'm Sharyn Middleton, the hiring supervisor for Animal
16 Control. Judy did say in our last meeting that Dave did
17 influence my decision -- your decision and --

18 MS. MAY: (Indiscernible).

19 MS. MIDDLETON: -- and the implication was that
20 because he did that -- I did not hire the person alone. It
21 was a group consensus, and that's why I brought my two
22 people from the panel, because it was not my decision alone.

23 MR. FLAGLER: We have sensed that the commission has
24 gotten off track on these other issues and, you know, this
25 is a --

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

March 10, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

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

ALSO PRESENT:

Judith May, Petitioner
Sharyn Middleton, Operations Supervisor
Dave Flagler, Animal Control Manager
Don Winkley, Personnel Analyst

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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

(503) 631-8885

1 MS. MIDDLETON: He's the only one, because he was the
2 unanimous decision of all three of us.

3 COMMISSIONER WIGHT: Did you perceive that there was
4 some animosity or friction between Judith May and Mr.
5 Flagler?

6 MS. MIDDLETON: If I had to say it, it was from one
7 angle. Mr. Flagler has never said anything negative to me
8 at all, nor have I ever heard him say anything negative
9 about Judy May. Judy has not said things directly to me,
10 but in the course of our travels through the building you
11 hear things.

12 COMMISSIONER PRICE: Did you ever hear anything that
13 you said?

14 MS. MIDDLETON: Just --

15 COMMISSIONER PRICE: Or I mean directly.

16 MS. MIDDLETON: Not -- not, you know -- not directly
17 to him, but just, sometimes tone of voice, you know, that
18 sort of thing, you can tell that they're irritated. But I
19 know that she thinks that Dave influenced me on this, and
20 Dave had -- stayed completely out of it. It was the
21 decision of the panel, a unanimous decision of the panel
22 that Peter was best suited, based on the performance and
23 based on his references for the job.

24 COMMISSIONER WIGHT: What I was asking is do you have
25 any perception of any friction between the two, and your

1 answer is only that you overheard some things --

2 MS. MIDDLETON: But I wouldn't -- I just -- I don't
3 pay -- really pay a whole lot of attention to that kind of
4 stuff because people are griping all the time about things.
5 So, not -- I don't think, in all honesty, I don't think that
6 Dave -- if she -- if Dave felt she was the best' qualified
7 for the position, I do believe he would have hired her.

8 COMMISSIONER PRICE: Are you talking about for the
9 Animal Care Technician or --

10 MS. MIDDLETON: No, the one for his --

11 COMMISSIONER PRICE: -- the one he was involved with?

12 MS. MIDDLETON: Yes. We also -- I want to say, too,
13 that when I was talking to my staff, what we were looking
14 for is we wanted someone who could perform well during the
15 interview process. We didn't necessarily look at whether
16 they could clean kennels or that sort of thing. They had
17 already gone through that part through the first part of the
18 interview process.

19 We were much more interested in their interpersonal
20 skills.

21 COMMISSIONER WIGHT: When you asked that question,
22 what answer did you get?

23 MS. MIDDLETON: She told me she had no problem. And
24 I was satisfied with that.

25 I also asked the same question of Sherry Anderson

WILLNER & HEILING, P.C.

ATTORNEYS AT LAW

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

June 29, 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 v. Multnomah County

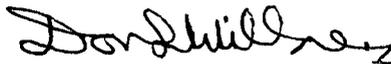
Dear Ms. Bogstad:

I am enclosing an original and four copies of our brief in the above matter, as well as copies of a partial transcript of the May 10, 1994 hearing. Please distribute copies of enclosed materials to each of the Commissioners prior to the hearing on Thursday, June 30, 1994. I have served copies of these documents on opposing counsel Steven Nemirow, as well as Marianna Kanwitt, attorney for the Commissioners.

Thank you for your courtesy and cooperation.

Sincerely,

WILLNER & HEILING, P.C.



Don S. Willner

DSW:mk

C:\DATA\AFSCHE\MAY\BOG.1\062994(1005)

Enclosures

cc: Steven J. Nemirow
Marianna Kanwit

BOARD OF
COUNTY COMMISSIONERS
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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)	
)	
Petitioner,)	MEMORANDUM IN SUPPORT OF
)	THE MERIT SYSTEM CIVIL
v.)	SERVICE COUNCIL'S DECISION AND
)	IN OPPOSITION TO THE COUNTY'S
MULTNOMAH COUNTY CO.)	MOTION FOR REMAND
)	
Respondent.)	

Statement of Facts

In April of 1992, Judith May applied for and received a leave of absence. (Tr. March 10, 1994, pages 2-3) Before then, while working for Multnomah County as an animal control specialist, she was the shop steward for the AFSCME Local 88 and was responsible for taking employee complaints and grievances to the County management. (Tr. March 10, 1994, page 3).

On or around July 1993, within the time limits imposed by the leave of absence, Judith May applied for reinstatement to an open, funded position. (Tr. March 10, 1994, page 3). She was told by the County that the position was closed because of a drop in service request calls. (Tr. March 10, 1994, page 3). One and a half months later the County re-opened the same position as well

1 as one other position. (Tr. March 10, 1994, page 4) Judith May
2 applied for both of these positions as a regular job applicant
3 although she had already put in a timely request for
4 reinstatement. (Tr. March 10, 1994, page 4). She placed number
5 one on both of the listings but was not chosen for either
6 position. (Tr. March 10, 1994, page 6).

7 Judith May appealed to the Merit System Civil Service
8 Council (hereinafter "the Council") which held three successive
9 hearings on March 10, April 12, and May 10, 1994. The Council,
10 in a two to one decision, found there was evidence that the
11 County discriminated against Judith May on the basis of her union
12 activities and that the County had closed the open, funded
13 position and then did not hire her for either of the positions
14 she subsequently applied for. (Tr. May 10, 1994, page 4). The
15 Council ordered that the County reinstate Judith May and award
16 her back pay from February, 1 1994, until the present. (Tr. May
17 10, 1994, page 10).

18 The County is appealing the Council's decision and has also
19 filed a Motion For Remand.

20 The Scope of Review

21 MCC 3.10.430 provides that "Board review shall be in the
22 nature of a writ of review based on the record before the Council
23 and such legal argument as the Board requests."

24 A writ of review, as defined in ORS 34.040, set forth five
25 situations for reviewing an agency's or tribunal's decision: 1)
26

1 exceeding agency jurisdiction; 2) failing to follow applicable
2 procedures; 3) making a finding not supported by substantial
3 evidence in the whole record; 4) improperly construing the
4 applicable law; and, 5) rendering an unconstitutional decision.
5 ORS 34.040.

6 Unless the Board finds that the Council has violated ORS
7 34.040 in one of these five manners, it should affirm the
8 Council's decision and deny the County's Motion For Remand.

9 Discussion

10 This motion will first address the issues raised in the
11 Motion For Remand filed by the Multnomah County Counsel, and will
12 discuss why the Board of County Commissioners should affirm the
13 Merit System Civil Service Council's decision.

14 The Board Should Deny the Motion For Remand

15 The County's Motion for Remand is based on two assertions:
16 First, that the Merit System Civil Service Council (hereinafter,
17 "the Council") has not issued findings of fact and conclusions of
18 law. Second, that the Council does not have the authority to
19 grant the remedy of re-instatement and back pay to Judith May.
20 Both of these assertions are wrong:

21 The Council has Properly Issued Findings of Fact and 22 Conclusions of Law

23 The County's Motion For Remand cites MCC 3.10.380, arguing
24 that the Council violated its own rules which require that "the
25 final decision of the Council shall be in writing and shall
26 include ... Findings of fact and conclusions of law on all

1 material issues presented; and the appropriate ruling, order,
2 sanction or relief...." (emphasis supplied) The County, asserts
3 that it "cannot proceed with its appeal because there is no way
4 to tell what facts or rules the Council based its decision on."
5 (County's Motion For Remand, page 1). We assert that the Council
6 has fulfilled all the requirements of MCC 3.10.380.

7 First, the Council has issued a final decision in writing.
8 The complete record of all three of the Council's sessions, March
9 10, April 12, and May 10, 1994 concerning Judith May's hearing
10 were recorded and transcribed. These transcriptions constitute a
11 written record and therefore clearly fulfill the requirements of
12 MCC 3.10.380.(D). In addition, MCC 3.10.390 (G) requires that
13 the Council's record of the hearing contain its final decision,
14 which is exactly what this record does.

15 Second, the Council has issued findings of fact. Page 4,
16 lines 8 through 15, of the May 10, 1994 transcript clearly show
17 that the Council found that the County discriminated against
18 Judith May on the basis of her activities as a union shop
19 steward. From a review of the records of all three hearings, it
20 is clear that these findings of fact are supported by substantial
21 evidence in the record as a whole.

22 Third, the Council has issued conclusions of law. Page 4,
23 lines 8 through 15, of the May 10, 1994 transcript show that the
24 Council concluded that discrimination based on union affiliation
25 was a violation of the Merit System and thus merited relief.

26 Fourth, in its decision, the Council issued the appropriate

1 relief. On page 10, lines 3 through 7, of the May 10, 1994
2 hearing the Council stated that Judith May was entitled to re-
3 instatement and back pay.

4 Clearly, the Council has fulfilled the record requirements
5 of MCC 3.10.380. The record does not contain paragraphs or
6 headings titled: "conclusions of law," or "findings of fact," but
7 there is no requirement that there be such headings. The record
8 is sufficiently clear to put the County on notice of the facts
9 and rules upon which the Council based its decision.

10 It appears the County is belatedly attempting to force the
11 Council to issues formal opinions as if it were a court of law.
12 Such procedural rigidity is contrary to the entire spirit of the
13 Merit System Civil Service Council which was designed to grant
14 aggrieved persons an informal and inexpensive hearings process
15 run by laypersons who are not remunerated for their services, and
16 who are not necessarily lawyers. The County's attorney knows
17 this and should not seek to hold the Council to the same rigid
18 and burdensome technicalities as a court of law.

19 As shown above, the Council has issued a valid final
20 decision with findings of fact and conclusions of law supported
21 by substantial evidence contained in the record as a whole. For
22 this reason, the Board should deny the Motion For Remand.

23 **Reinstatement and Back Pay are a Proper Remedy**

24 The County's second assertion in its Motion For Remand is
25 that the Council is not authorized to order reinstatement and
26 back pay in Judith May's case because the Council can only order

1 reinstatement and back pay when a County employee has been
2 disciplined. Motion for Remand, page 2, lines 21 through 23.
3 The County cited MCC 3.10.420 in support of this proposition.
4 MCC 3.10.420 states, in pertinent part:

5 (A) If the Council finds that the disciplinary action
6 was discriminatory, as defined in MCC 3.10.270, was an
7 unlawful employment practice described by applicable
8 law, or was not for cause, the employee shall be
9 reinstated to the prior position and shall not suffer
10 any loss in pay....

11 (C) Any other personnel action appealed to the Council
12 from a decision of the appointing authority shall be
13 affirmed unless a finding is made that it violates this
14 chapter.

15 (emphasis supplied). The Council has enacted the same rule under
16 23.03. However, this provision does not stand for the
17 proposition the County is asserting. This provision mandates
18 that the Council order reinstatement and back pay if the
19 disciplinary action was discriminatory, but it does not prohibit
20 the Council from ordering the same remedy when the County has
21 taken a discriminatory personnel action. In fact, aside from
22 this provision, there are no state laws, county ordinances, or
23 Council rules which specifically lay out the types of remedies or
24 relief the Council may grant in situations other than that
25 described in MCC 3.10.420 (A).

26 Does this mean that the Council is powerless to protect
County employees and applicants against unlawful and
discriminatory personnel and disciplinary actions? We would
argue that it is not so. A right without a remedy is not a true
right, and where the Council is empowered to protect a given

right it should also be able to grant the appropriate relief.

1 MCC 3.10.040 (E) provides that the Council shall:

2 Conduct hearings on appeals from classified employees
3 who do not have available a grievance procedure for
4 those particular issues in dispute pursuant to a
5 collective bargaining agreement, and applicants for the
classified service regarding personnel actions,
including complaints of discrimination.

6 And MCC 10.305 provides that:

7 Classified employees who do not have available a
8 grievance procedure for a particular issue in dispute
9 pursuant to a collective bargaining agreement, and
10 applicants for the classified service shall have the
right to appeal directly to the Council regarding
personnel actions, including complaints of
discrimination.

11 Emphasis added. In addition MCC 3.10.010 (BB) defines a
12 personnel action as: "[A]ny action taken on behalf of the county
13 with reference to an employee, an applicant for the classified
14 service or a classified position."

15 The Council's own rule, Rule 23.01 enacted pursuant to MCC
16 3.10, provide that:

17 Any classified employee who does not have available a
18 grievance procedure for a particular issue in dispute,
19 and any applicant for the classified service shall have
the right to appeal personnel actions, including
complaints of discrimination, directly to the Council.

20 Based on the above, it is clear that the Council has jurisdiction
21 to hear Judith May's appeal. The Council should also be able to
22 grant a remedy which adequately protects her rights. Anything
23 less is rewarding discriminatory conduct. In this case, the
24 Council granted the only remedy specifically provided in the
25 Multnomah County Code.

26 In addition, the County has wrongly asserted in its Motion

1 For Remand that Judith May resigned instead of taking a leave of
2 absence and then making a timely request for reinstatement. MCC
3 3.10.260 (A) provides, in pertinent part, that: "Upon expiration
4 of the leave the employee shall be reinstated to the position
5 held before the leave was granted." In light of the fact that
6 Judith May should have been reinstated in July of 1993, its seems
7 more than fair to the County for the Council to order back pay
8 only as far as February, 1 1994. (Emphasis added).

9 For the above reasons, the Board should deny the County's
10 Motion For Remand and should affirm the Council's decision.

11 Dated this 29th day of June, 1994.

12 Willner & Heiling, P.C.

13
14 

15 Don S. Willner
16 Matthew U'Ren
17 Attorneys for Judith May

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MEMORANDUM IN SUPPORT OF THE MERIT SYSTEM CIVIL SERVICE COUNCIL'S DECISION AND IN OPPOSITION TO THE COUNTY'S MOTION FOR REMAND on June 29, 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
DON S. WILLNER

*by Matthew
Willner*

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

In the Matter of the Appeal)
of:) CONTINUED HEARING
)
JUDITH MAY.)

PARTIAL TRANSCRIPT OF THE PROCEEDINGS

May 10, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

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

ANNA KANWIT, City Attorney

ALSO PRESENT:

Judith May
Sharyn Middleton
Don Winkley
Dave Flagler
Jim Smith

1 you mean when you say, "what the issue is" --

2 MR. WINKLEY: Well, the department is not going to
3 change its -- the people who were hired.

4 COMMISSIONER FLOYD: I understand --

5 MR. WINKLEY: The decision was made from a valid list,
6 went through all the processes, and there's no procedural
7 errors. We have never had to be required to hire someone
8 in this circumstance, and so that we would need to know what
9 your proposed remedy is. And if that proposed remedy taken back
10 to the department is not what they wish to do, then it may be
11 will force us to appeal to the Commission.

12 COMMISSIONER FLOYD: And I recognize you have the right
13 to appeal. Not having really discussed that with D'Norgia, I
14 would assume that our proposal would be to pick up Ms. May on
15 the payroll as a field officer.

16 COMMISSIONER PRICE: I would say so, yes.

17 MR. FLAGLER: Which date are you talking about?

18 COMMISSIONER FLOYD: Oh, you mean, you are talking
19 about back pay issues?

20 MS. MAY: I should have been reinstated on the 1st of
21 July.

22 MR. WINKLEY: No, we're not talking about
23 reinstatement. The County is not required to reinstate
24 anyone --

25 MS. MAY: Well, then I would just as soon leave it

1 at sustained and go to the County Commissioners and let
2 (indiscernible) appeal.

3 MR. FLAGLER: May I make a suggestion, that just
4 sustain it and let it be worked out between the County and Ms.
5 May's attorney?

6 COMMISSIONER FLOYD: Well, I think --

7 MS. KANWIT: We need to have a remedy.

8 COMMISSIONER FLOYD: Yeah, I think we should make a
9 recommendation.

10 MR. FLAGLER: But I would suggest that she be -- that
11 you look at the date that those last jobs were filled. So
12 January what?

13 MR. WINKLEY: Sometime in January.

14 MR. FLAGLER: And that be the position date, because
15 that's actually the one that's here on appeal anyway. In fact,
16 the others were just (indiscernible).

17 COMMISSIONER FLOYD: Quite frankly, I think I'd be
18 uncomfortable going back to July of '93.

19 MR. FLAGLER: I think the January date's
20 (indiscernible.)

21 COMMISSIONER PRICE: Could we have a, you know,
22 consultation (indiscernible)?

23 COMMISSIONER FLOYD: Uh-huh.

24 COMMISSIONER PRICE: I do believe that the remedy is
25 to put her back on the job, but the best way to do that, I'm not

1 sure.

2 COMMISSIONER FLOYD: I don't want to make decisions for
3 budgets that I don't have any input into; however, I do feel
4 that she needs to be reinstated. And I believe that it's up to
5 the County to come up with a method to do that. And I also
6 understand that the County has a right to appeal our decision,
7 because it was not unanimous.

8 My suggestion would be that she be reinstated as of
9 February 1st, 1994 and that back pay be issued to that time,
10 and that it be upon the County to come up with the method of
11 placing her in that position or to appeal, whichever.

12 MR. FLAGLER: The field officer position?

13 COMMISSIONER FLOYD: Right, the field officer position.
14 How the County chooses to find the budget dollars to accomplish
15 that, I believe, is the County's prerogative.

16 Are there further questions?

17 MR. FLAGLER: (Indiscernible)?

18 COMMISSIONER PRICE: Yes.

19 COMMISSIONER FLOYD: And I would assume if the County's
20 going to appeal, they'll notify Ms. May of that fact and give
21 her the date and where the appeal hearing will be.

22 (END OF PARTIAL TRANSCRIPT.)

23

24

25

1 STATE OF OREGON)
 2)
 3 County of Multnomah)
 4)

5 I, TRACI RITCHEY-MARTENS, hereby certify that,
 6 pursuant to request dated June 28th, 1994, by Don Willner,
 7 Counsel for Ms. May, I prepared the following partial transcript
 8 of the proceedings held on May 10, 1994 of the oral proceedings
 9 had in the foregoing matter, Pages 8 through 10, inclusive
 10 constitutes a full, true and correct record of such testimony
 11 adduced and oral proceedings had and of the whole thereof.

12 WITNESS my hand and notarial seal at Portland,
 13 Oregon, this 28th day of June, 1994.

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21 Traci Ritchey-Martens
 22 Notary Public for Oregon
 23 My commission expires: 11/94
 24
 25



MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

COUNTY COUNSEL
LAURENCE KRESSEL
CHIEF ASSISTANT
JOHN L. DU BAY
ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
GERALD H. ITKIN
H.H. LAZENBY, JR.
STEVEN J. NEMIROW
MATTHEW O. RYAN
JACQUELINE A. WEBER

June 27, 1994

Marianna Kanwit
City Attorney's Office
Room 315 City Hall
1220 SW 5th Ave
Portland, OR 97204

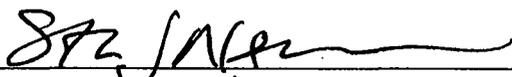
RE: Judith May v. Multnomah County

Dear Ms. Kanwit:

Enclosed please find the original Motion For Remand which was also faxed to you this date, June 27, 1994.

Sincerely,

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Steven J. Nemirow
Assistant County Counsel

Enclosure

cc: Don Willner
Board Clerk

F:\DATA\COUNSEL\WPDATA\TWELVE\KANWCOVE.LTR\sfd

1994 JUN 27 PM 1:16
MULTNOMAH COUNTY
OREGON
BOARD OF
COUNTY COMMISSIONERS

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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)
)
 Petitioner)
)
 v.) MOTION FOR REMAND
)
 MULTNOMAH COUNTY CO.)
)
 Respondent.)

EXECUTIVE SUMMARY

The merit systems council is only authorized to reinstate employees who have been disciplined. Here, it reinstated an employee who had resigned, but who had never been disciplined. This is clearly challengeable by the County.

However, the County cannot proceed with its appeal, because there is no way to tell what facts or rules the council based its decision on. The council's own rules require it to issue findings of fact and conclusions of law, but in this case it did not do so.

1 that Petitioner May has been disciplined.

2 3. Moreover, without conclusions of law, the County is
3 left to speculate as to what, if any, provisions of the Code the
4 council believes gives it authority to reinstate an employee who
5 has undisputedly resigned from County employment. Despite the fact
6 that the council ordered Petitioner May's reinstatement, it has
7 nowhere indicated what provision of the Code provides it authority
8 to do so. The County suggests that nowhere in the Code is
9 authority given to the merit systems council to reinstate employees
10 who have previously resigned.

11 Conclusion

12 The County respectfully requests this matter be remanded
13 to the merit systems council so that it may issue findings of fact
14 and conclusions of law. Specifically, the County asks the Board of
15 County Commissioners to direct the merit systems council to specify
16 what, if any, disciplinary action taken by the County it finds
17 discriminatory; and to specify what, if any, provisions of the
18 Code authorize the council to reinstate Petitioner.

19 Dated this 27th day of June, 1994.

20 Respectfully submitted,
21 LAURENCE KRESSEL, COUNTY COUNSEL
22 FOR MULTNOMAH COUNTY, OREGON

23 By Steven J. Nemirow

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

F:\DATA\COUNSEL\WPDATA\TWELVE\MAY\REMAND.MOT\SJN



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

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

June 24, 1994

DF
RECEIVED

JUN 27 1994

BEVERLY STEIN
MULTNOMAH COUNTY CHAIR

VIA FAX AND REGULAR MAIL

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

RE: Judith May Appeal

Dear Sirs:

On June 23, I received a motion from County Counsel to setover the above-referenced matter. As I understand it, the basis for the setover is lack of sufficient record, specifically an error in the transcript. My correspondence indicates that counsel for the parties was provided the transcript of the proceedings on May 26.

The next regularly scheduled meeting of the Board of County Commissioners is June 30, when this matter is scheduled to be heard.

The Board will decide on the motion for a setover on June 30, prior to the hearing on the County's appeal of the Merit System Civil Service Council's decision in the Judith May matter. If the Board grants the motion, the hearing will be rescheduled at that time. Counsel should be prepared to move forward on the merits of the case, however, should the motion be denied.

Sincerely,

Marianna Kanwit
Deputy City Attorney

AK/bf

pers\county\nem

c: Delma Farrell B106/R1410 (w/copy of Motion)

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)	
)	
Petitioner)	
)	
v.)	MOTION FOR SETOVER
)	
MULTNOMAH COUNTY CO.)	
)	
Respondent.)	

MOTION

Pursuant to Multnomah County Code 3.10.430, Respondent Multnomah County moves the Board of County Commissioners for a setover of the hearing scheduled in the above-captioned matter, now set for 9:30 A.M., June 30, 1994, on the grounds of lack of a sufficient record.

Discussion

1. Under the provisions of Multnomah County Code 3.10.430, "Board [of County Commissioners] review shall be * * * based on the record of the proceedings before the council." (emphasis supplied).

2. One of the primary issues on appeal in this matter is whether the merit systems council exceeded its authority in fashioning the remedy in this case.

3. The record of proceedings in this case is the transcript of the council hearings, supplied to the County by the Board of County Commissioners. This record is indisputably flawed, on the precise issue of the remedy. Specifically, testimony on the issue of the remedy is critically mischaracterized by improperly

attributing to Dave Flagler, head of animal control for the County, testimony of Jim Smith, the representative of AFSCME, Local 88. This error occurs in the transcript of the May 10, 1994, hearing, beginning on p. 8, line 17, and continues through p. 10, line 14.

5. I have attempted to confer with Don Willner, attorney for Judith May, petitioner before the merit systems council, on this matter, but at the time of this filing, he has not returned my telephone call.

Dated this 23rd day of June, 1994.

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

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

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

June 24, 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 v. Multnomah County

Dear Ms. Bogstad:

Enclosed please find petitioner May's Motion in Opposition
to Respondent's Motion for Setover.

Thank you kindly.

Sincerely,

WILLNER & HEILING, PC

Maida Kelly

Maida Kelly
Legal Secretary

:mk

Enclosure

Received
6/24/94
3:22 pm

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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)
)
Petitioner,) MOTION IN OPPOSITION
) TO RESPONDENT'S MOTION
v.) FOR SETOVER
)
MULTNOMAH COUNTY CO.)
)
Respondent.)

MOTION IN OPPOSITION

The hearing took place on May 10, 1994, and the County
appealed on May 16, 1994. The Multnomah County Code, 3.10.430(B)
provides, in pertinent part: "The Board shall render its decision
within 45 days from the date of receipt of notice of appeal,..."
(Emphasis supplied), which in this case is June 31, 1994. The
hearing is now set for June 30, 1994.

If the Board grants Respondent's Motion to setover the
hearing then the Board will not be able to render a decision
within the time limits imposed by MCC 3.10.430(B).

In addition, Judith May opposes a setover because this means
further delay in her receiving the reinstatement and back pay
awarded by the Merit System Council.

/////
Page

1 If the County is concerned about the accuracy of the
2 transcript it could have an independent court reporter transcribe
3 pages 8 through 10 of the May 10 hearing on Monday, June 27,
4 1994, and have the corrected pages submitted well in advance of
5 the Board's hearing.

6 A delay is not necessary, would violate the Multnomah County
7 Code and would be prejudicial.

8 DATED this 24th day of June, 1994.

9 Respectfully submitted,
10 Willner & Heiling, P.C.

11 Don S. Willner
12 Don S. Willner, OSB #52114
13 Attorney for Petitioner
14 Judith May

15 by
16 *Matthew*
17 *Willner*

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BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)
)
 Petitioner)
)
 v.) MOTION FOR SETOVER
)
 MULTNOMAH COUNTY CO.)
)
 Respondent.)

MOTION

Pursuant to Multnomah County Code 3.10.430, Respondent Multnomah County moves the Board of County Commissioners for a setover of the hearing scheduled in the above-captioned matter, now set for 9:30 A.M., June 30, 1994, on the grounds of lack of a sufficient record.

Discussion

1. Under the provisions of Multnomah County Code 3.10.430, "Board [of County Commissioners] review shall be * * *

1 based on the record of the proceedings before the council."
2 (emphasis supplied).

3 2. One of the primary issues on appeal in this matter is
4 whether the merit systems council exceeded its authority in
5 fashioning the remedy in this case.

6 3. The record of proceedings in this case is the
7 transcript of the council hearings, supplied to the County by the
8 Board of County Commissioners. This record is indisputably flawed,
9 on the precise issue of the remedy. Specifically, testimony on the
10 issue of the remedy is critically mischaracterized by improperly
11 attributing to Dave Flagler, head of animal control for the County,
12 testimony of Jim Smith, the representative of AFSCME, Local 88.
13 This error occurs in the transcript of the May 10, 1994, hearing,
14 beginning on p. 8, line 17, and continues through p. 10, line 14.

15 5. I have attempted to confer with Don Willner, attorney
16 for Judith May, petitioner before the merit systems council, on
17 this matter, but at the time of this filing, he has not returned my
18 telephone call.

19 Dated this 23rd day of June, 1994.

20 Respectfully submitted,
21 LAURENCE KRESSEL, COUNTY COUNSEL
22 FOR MULTNOMAH COUNTY, OREGON

23 By _____
24 Steven J. Nemirow, OSB #86254
25 Assistant County Counsel
26 Of Attorneys for Respondent
Multnomah County

F:\DATA\COUNSEL\WPDATA\TWELVE\MAY\SETOVER.MOT\5JN

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



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

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

June 21, 1994

ATTN: DELMA FARRELL
BOARD OF COUNTY COMMISSIONERS
ROOM 1410
1021 SW 4TH AVENUE
PORTLAND OR 97204

RE: May v. Multnomah County
(Merit System Civil Service Council Appeal)

Dear Commissioners:

On June 30, 1994 at 9:30 a.m. you will consider the County's appeal of the Merit System Civil Service Council's decision in the Judith May appeal.

To assist you in making your determination in this matter, I am providing the following information:

1. The transcript of the hearing before the Merit System Civil Service Council;
2. A copy of all the documents put into evidence; and,
3. A brief summary of the record and issues on appeal.

As you may know, by agreement between the City Attorney's Office and the Office of County Counsel, I will serve as the Board of County Commissioners' legal counsel for this appeal.

If you have any questions prior to June 30, please give me a call.

Sincerely,

Marianna Kanwit
Deputy City Attorney

AK/bf
encls.



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

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

June 21, 1994

INTEROFFICE MEMORANDUM

TO: Board of County Commissioners B106/R1410

FROM: Marianna Kanwit *Marianna Kanwit*
Deputy City Attorney

SUBJ: May v. Multnomah County
Brief Summary of the Evidence

I. The Appeal to the Merit System Civil Service Council (Council)

Judith May filed a timely appeal challenging the County's failure to hire her as either an Animal Control Officer or Animal Health Technician. The basis for Ms. May's challenge was personal/individual discrimination on the part of the Chief Field Supervisor, who at the time was Dave Flagler. Ms. May claimed this animosity stemmed from her position as union steward. (See January 28, 1994 letter from Judith May and transcript of the March 10 meeting, Tr. 7-9,15).

II. Brief Summary of the Evidence

A. Reinstatement

A former Animal Control Officer with the County, Ms. May was eligible for reinstatement under County Personnel Rule 15.01 until July 7, 1993, one year after she separated from County service. Ms. May applied for reinstatement and alleged her application was rejected because of decreases in calls for service. (March 10 meeting, Tr. 23-24). A temporary employee was hired July 5 (April 12 meeting, Tr. 21). A month and one-half later, the Animal Control position was posted (March 10 meeting, Tr. 24).

B. Budgetary Issues

Dave Flagler testified that because of the budgetary crises facing Animal Control, he elected to hold off filling any vacant positions when Ms. May applied for reinstatement. (March 10 meeting, Tr. 45). Mr. Flagler further testified that a decrease in calls for service was only one consideration in the decision not to reinstate Ms. May. (April 12 meeting, Tr. 6). Mike

Oswald, who at the time was the Director of Animal Control, testified at some length during the April 12 meeting about the budgetary process and the reorganization plan that led to the eventual hiring of an Animal Control Officer and an Animal Care Technician. The budget for 1993-94 restored all but one position. Mr. Oswald testified that instead of laying off a clerical employee, Animal Control funded that position by not filling a vacancy for an Animal Control Officer. (April 12 meeting, Tr. 8-9). In September, 1993, a reorganization plan was approved by the County Board of Commissioners which eliminated one management position (the manager voluntarily took another position) funded two staff positions (Animal Control Officer and Animal Care Technician) and funded the clerical position. (April 12 meeting, Tr. 9).

C. Filling the Two Vacant Positions

Ms. May took the examinations and placed No. 1 on the eligible list for both the Animal Care Technician and the Animal Control Officer positions. (See exhibits). There was testimony during the Council meetings concerning the reasons why Ms. May was not selected, focusing primarily on interpersonal skills of the two candidates who were selected.

As noted, Ms. May claimed she was not hired because of her union activities. A co-worker, Madeline Davalos, testified that Mr. Flagler told her Ms. May would not be hired because of all the trouble she had caused. (March 10 meeting, Tr. 9).

III. The Council's Decision

Prior to reaching a decision on this matter, Commissioner Wright first expressed his overall concerns. (April 12 meeting, Tr. 22-23). Mr. Wright stated he was concerned initially because from the testimony it appeared there was a vacant position at the time Ms. May was eligible for reinstatement and that the County apparently avoided rehiring her by not reinstating her in July. Commissioner Wright said it is improper to exclude someone because of union activity but the testimony regarding the budget and the reorganization plan made good management sense. (April 12 meeting, Tr. 23). According to Commissioner Wright, the evidence did not support discrimination based on union activity. Commissioner Price disagreed and stated Ms. May should have been reinstated in July when she requested it. A temporary employee was hired and the County went through the recruitment process when they already had a person able to do the job. (April 12 meeting, Tr. 23-24). The third Commissioner, Carla Floyd, agreed with Commissioner Price and agreed that the hiring of a temporary employee (at the time Ms. May requested reinstatement) was

evidence of prejudice against Ms. May's rehire. (May 10 meeting, Tr. 4).

Based on the 2-1 vote, the Commissioners upheld the appeal and directed the County to reinstate Ms. May as an Animal Control Officer effective February 1, 1994. The Council further directed that Ms. May receive back pay to February 1, 1994. (May 10 meeting, Tr. 8-10).

IV. Options for the Board

Jurisdiction for Ms. May's appeal apparently is found under Multnomah County Code Provisions 3.10.025 and 3.10.305, concerning appeals of complaints of discrimination to the Merit System Civil Service Council. Personnel Rule 15.01 states that:

"a regular employee who is separated from County service may be reinstated upon request in writing, with regular status to a vacant position in his/her former classification at any time within one year of separation."

There was no dispute during the Council meetings that application of Rule 15.01 is discretionary. Options for the Board include: affirm the Council's decision, deny the appeal or grant the appeal but frame a different remedy.

AK/bf
encls.



MULTNOMAH COUNTY OREGON

Anna Kanwit

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
& CENTRAL STORES

(503) 248-5111

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

June 8, 1994

Donald S. Willner
Willner & Heiling PC
Attorneys at Law
Suite 303
111 SW Front Avenue
Portland OR 97204-3500

Steven J. Nemirow
Multnomah County Counsel
1120 SW 5th Avenue
P.O.Box 849
Portland, OR 97207

RECEIVED
JUN 10 1994
CITY ATTORNEYS OFFICE

SUBJECT: May v. Multnomah County

Gentlemen:

I am responding to a request received from Marianna Kanwit, Deputy City Attorney. I am enclosing copies of the materials distributed to the participants at the various meetings of the Merit System Civil Service Council at which Ms. May's appeal was considered. These were never formally labeled as "exhibits" or given identifying numbers.

Sincerely,

Susan Ayers, Executive Secretary
Merit System Civil Service Council

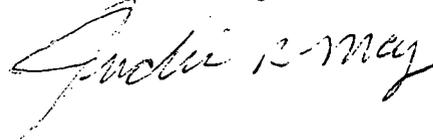
✓ Marianna Kanwit, with enclosures

January 28 1994

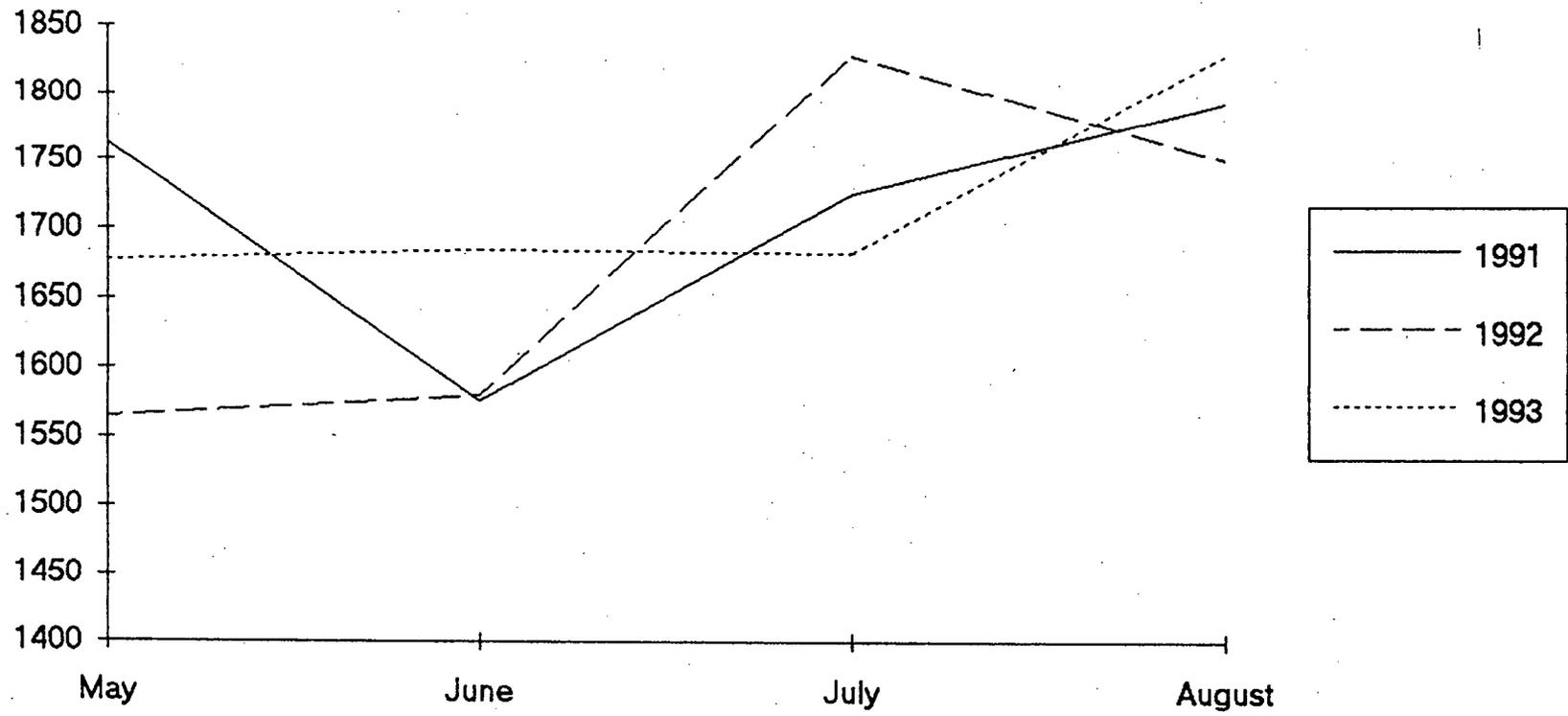
To Susan Aires and
all parties concerned:

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 merit 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. Merit 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



Service Requests



June 1, 1990

ANIMAL CONTROL OFFICER
(Nonexempt/Classified)

DEFINITION

To perform animal control law enforcement work enforcing city, county, and state domestic animal laws, investigate damage caused by animals, and respond humanely to animal emergencies. Work frequently involves dealing with emotionally upset or hostile animal owners or complainants. Work requires the handling and capture of domestic and wild animals.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from Animal Control Supervisor and an Animal Control Field Supervisor.

May exercise functional and technical supervision over other Animal Control Officers in the absence of Animal Control Field Supervisor.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

Impound stray, abandoned, or protective custody animals.

Deal with cases of dangerous animals and loose livestock.

Quarantine animals that may present a hazard to the public. Remove dead animals from public property.

Investigate, write reports, prepare evidence, accept signed citizen complaints, and testify in court acting as a Clerk of the District Court.

Serve warrants, court orders, order to show cause, search warrants, and orders to impound.

Attempt to resolve animal-caused nuisances by offering advice and persuasion.

Serve citations to ordinance violators acting as a Deputy Sheriff-Limited Commissioned Officer.

Assume control over other public agencies in situations involving dangerous animals.

Cooperate with various local and state agencies regarding animal control matters.

Inform the public concerning animal laws and responsible animal ownership practices.

Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

Laws and ordinances pertaining to dog control, animals, livestock, search, seizure, and arrest.

Animal identification and behavior and animal collection procedures.

ANIMAL CONTROL OFFICER

Page 2

QUALIFICATIONS (Continued)

Ability to:

Handle animals, livestock, and exotic breeds in emergency situations.

Meet and deal with the public under stressful situations while remaining to represent the agency in a professional manner.

Compose nuisance reports of sufficient clarity to be admitted as evidence.

Work independently and as a team member.

Work with members of other jurisdictions or agencies possibly entering a scene of crime or providing information.

Write legibly and clearly and complete large quantities of paperwork quickly and accurately.

Perform quick physical maneuvers necessary in controlling animals; routinely lift animals in excess of 50 pounds.

Run and work outdoors in inclement weather.

Drive a manual transmission (stick-shift) vehicle.

Required to work a variety of shifts and hours.

Experience and Training Guidelines:

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying: A typical way to obtain the knowledge and abilities would be:

Experience:

One year of experience working with animal control, care, or husbandry, particularly dogs and cats. Additional experience and public contact, preferably high stress public contact, is desirable.

AND

Training:

Equivalent to the completion of the twelfth grade.

License or Certificate:

Possession of, or ability to obtain, an appropriate, valid driver's license.

Must be able to meet the requirements for obtaining and maintaining a limited commission as a Special Deputy Sheriff for Multnomah County.

JOB TITLE: ANIMAL CONTROL OFFICER

WORKING TITLE: ANIMAL CONTROL OFFICER

SALARY FROM: 12.30

EFFECTIVE: 12/03/93 EXPIRES: 6/03/94

JCN/OC: 6067 / 13

EXAM #: 932123DW
LAST BATCH: 931005

PERSONNEL ANALYST: DON WINKLEY

CODES	RANK	SCORE	NAME	ADDRESS	PHONE	CODE	SALARY	TYPE	DATE
001	1	94	Judith R. May	1695 SE Regner Rd Gresham OR 97080	666-6674 256-2711				
✓ 00-	2	89	Vicki L. Havlik	18244 SE Tibbetts Court Gresham OR 97030	661-3679 665-3898				
---	3	87	Floyd T. Marl	970 Donna Lynn Way Gladstone OR 97027	657-5211				
---	4	86	Peter W. Krengel	39 Downey Street San Francisco CA 94117	(415) 665-9327 (415) 554-6364				
14-	4	86	Jose R. Lugo-Murillo	4239 N. 26th St. #1 Phoenix AZ 85016	(602) 955-3211 (602) 894-9146				
101	5	83	Matthew C. Lundquist	6606 NE Going Street Portland OR 97218	284-3811				
001	5	83	Margot I. Monti	8701-B NE 13th Vancouver WA 98665	(206) 574-4470				
00-	6	82	Sherri S. Falls	14520 SW Quail Lane #E-20 Beaverton OR 97007	579-1709 645-1141				
001	7	81	Debra A. Franciosi	6900 SW Canyon #7 Portland OR 97225	291-1970				

JOB TITLE: ANIMAL CONTROL OFFICER

WORKING TITLE: ANIMAL CONTROL OFFICER

SALARY FROM: 12.30

EFFECTIVE: 12/03/93

EXPIRES: 6/03/94

JCN/OC: 6067 / 13

EXAM #: 932123DW

LAST BATCH: 931005

PERSONNEL ANALYST: DON WINKLEY

CODES	RANK	SCORE	NAME	ADDRESS	PHONE	CODE	SALARY	TYPE	DATE
12-	7	81	Young Tran	9304 SE Boise St. Portland OR 97266	774-4323 286-2166				
100	8	80	Frances E. Cop	3531 SE 164th Portland OR 97236	665-4228 667-5494				
00-	9	78	Sheri L. Anderson	2015 NW Earl Ct. Gresham OR 97030	669-0492 248-3066				



MULTNOMAH COUNTY
ANNOUNCES A COMPETITIVE EXAMINATION FOR

ANIMAL CONTROL OFFICER

SALARY: \$12.30 per hour

DEADLINE: October 1, 1993

THE POSITION

Perform animal control law enforcement work enforcing city, county, and state domestic animal laws, investigate damage caused by animals, and respond humanely to animal emergencies. Work frequently involves dealing with emotionally upset or hostile animal owners or complainants. Work requires the handling and capture of domestic and, on occasion, wild animals.

This position requires applicants to be in good physical condition, work in adverse weather conditions, drive a manual transmission vehicle, and work on-call for emergency fill-in situations. Applicants must be willing to perform shift work, including weekends.

TO QUALIFY

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: One year of experience working with animal control, care, or husbandry, particularly dogs and cats. Additional experience and public contact, preferably high-stress public contact, is desirable.

AND

Training: Equivalent to the completion of the twelfth grade.

License or Certificate: Possession of, or ability to obtain, an appropriate valid driver's license. Must be able to meet the requirements for obtaining and maintaining a limited commission as a Special County Deputy Sheriff.

THE SCREENING AND EXAMINATION PROCESS

The applications will be screened to determine if the applicants meet the minimum qualifications and have completed the supplemental application questions. The training and experience, as shown by responses to the supplemental questions, of those applicants who meet the minimum qualifications, will be evaluated. Based on this evaluation, the most qualified applicants will be scheduled for a physical agility test. Only those applicants who pass the physical agility test will be scheduled for an oral interview. The final examination score and placement on the eligible list will be based on the physical agility test, weighted 50% percent, and the oral examination, weighted 50% percent.

THE APPLICATION

Applicants must complete a standard Multnomah County application form as well as submit responses to Supplemental Application questions. The supplemental questions should be submitted in the following format:

On a separate sheet(s) of paper, type or print your Social Security Number and the title of the examination for which you are applying and respond to each of the following examination items individually and completely; number your responses to correspond with the items; explain, or describe any experience (paid or unpaid) and training related to each item; attach the separate sheets to your application. If you do not respond to the items in this manner, your application will not be evaluated and will be disqualified from the examination process.

SUPPLEMENTAL APPLICATION QUESTIONS

1. Describe your experience in animal control work. Include when and where you received this experience, and how long you were involved in each situation.

(OVER)

2. Describe your training and experience dealing with people in stress or complaint situations; be specific, including where, when, and how long you were involved in each situation. Please summarize two stress situations only.
3. Describe your experience working outdoors in a variety of weather conditions, and your experiences in work situations that required physical activity or lifting. Include when, where, and how long you were involved in each.
4. List and describe any training, education, seminars, etc. you have attended or received that you feel are relevant to the position of Animal Control Officer.

VETERAN'S PREFERENCE

If you wish veteran's points added to your passing score, please submit a completed Veteran's Preference form along with a DD214 or Form 802 with your completed application packet; otherwise, veteran's points cannot be honored for this examination. Veterans who qualify will be granted five points preference upon successful completion of all phases of the examination process. Disabled veterans who qualify will be granted 10 points.

BENEFITS

Multnomah County benefits for employees include paid vacation and sick leave, paid health and dental insurance for employee and dependents (part-time employees share in the cost of health and dental insurance), paid life insurance, Social Security, and fully paid participation in the Public Employees Retirement System.

IMMIGRATION LAW NOTICE

Only U.S. citizens and aliens lawfully authorized to work in the United States will be hired. All new employees will be required to complete and sign an Employment Eligibility Verification form and present documentation verifying identity and employment eligibility.

EQUAL EMPLOYMENT OPPORTUNITY

Multnomah County will give consideration to all qualified applicants for appointment without regard to race, religion, color, national origin, sex, age, marital status, disability, political affiliations, sexual orientation, or any other nonmerit factor. Accommodations and/or assistance will be gladly provided for any applicant with sensory or nonsensory impairments, upon request, at the telephone numbers listed below.

WHERE TO APPLY

The standard Multnomah County application form and supplemental form, if applicable, are required and must be postmarked by the closing date. Apply in person or mail a self-addressed, stamped envelope, requesting an application for the position(s) in which you are interested. Materials will not be sent or received by FAX.

Multnomah County Employee Services
1120 SW Fifth Avenue, Room 1430
Portland, OR 97204
Mailing Address: P.O. Box 14700, Portland, OR 97214
(503) 248-5015 or 248-5170 TDD for the hearing impaired

Apply no later than 4:30 PM, Friday, October 1, 1993

NOTES: This announcement is intended as a general descriptive recruitment guide and is subject to change. It does not constitute either an expressed or implied contract.

Smoking is prohibited in all County facilities.

Don Winkley, Personnel Analyst
Animal Control Officer - EXAM No. 932123DW

09/17/93

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June 1, 1990

ANIMAL CARE TECHNICIAN
(Nonexempt/Classified)

DEFINITION

To perform manual and technical work in the area of humane care of animals that are impounded at Multnomah County Animal Control Shelter; assist the public in receiving, releasing, and adoption of pets; provide information and education regarding responsible pet ownership.

SUPERVISION RECEIVED AND EXERCISED

Receives general supervision from the Animal Care Technician Leadworker.

May exercise functional and technical supervision over other Animal Care Technicians in the absence of Leadworker.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

Clean and disinfect kennels and cat cages.

Care for and feed all types of animals impounded at the shelter.

Receive animals and release animals to the public; complete records and receipts if required; may take payments.

Interview, counsel, and approve applicants in the pet adoption program; complete associated paperwork, including animal record forms, adoption, and lost and found records.

Assist in the handling of animals and administration of medication.

Humanely euthanize and dispose of unclaimed, unwanted, sick, or injured animals.

Maintain clean euthanasia area and room.

Act as Leadworker when requested or required.

Perform related duties in shelter operations as assigned.

QUALIFICATIONS

Knowledge of:

Animal behavior, breed identification, and humane and basic animal health.

Humane care of livestock, wildlife, and exotic animals.

Dog and cat anatomy and physiology.

ANIMAL CARE TECHNICIAN

Page 2

QUALIFICATIONS (Continued)

Ability to:

Deal tactfully and effectively with a variety of people under stressful conditions.

Perform strenuous physical activities and work outdoors in inclement weather.

Humanely handle animals.

Operate computer terminals and perform related clerical tasks.

Record and maintain accurate and concise records.

Follow technical procedures performing humane euthanasia of animals by injection method without direct supervision.

Experience and Training Guidelines:

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience:

One year of work experience with animals in animal control, welfare, or animal-related fields. Six months of work experience in dealing with the public in a service-oriented job is desirable.

AND

Training:

Equivalent to the completion of the twelfth grade with additional training in animal handling or coursework in animal health is desirable.

License or Certificate:

Possession of, or ability to obtain, a Euthanasia Technician Certificate issued by the State of Oregon.

Possession of, or the ability to obtain, an appropriate and valid driver's license.



MULTNOMAH COUNTY
ANNOUNCES A COMPETITIVE EXAMINATION FOR

ANIMAL CARE TECHNICIAN

SALARY: \$10.27 per hour

DEADLINE: October 8, 1993

THE POSITION

Perform manual and technical work in the area of humane care of animals; assist the public in receiving, releasing, and adoption of pets; provide information regarding responsible pet ownership; and perform euthanasia by injection of sick or unwanted animals. The County's Animal Shelter is located near Troutdale, Oregon. Weekend and evening work and physical work outdoors in inclement weather is required.

TO QUALIFY

Any combination of experience and training that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Experience: One year of work experience with animals in animal control, welfare, or animal-related fields. Six months of work experience dealing with the public in a service-oriented job is desirable.

AND

Training: Equivalent to the completion of the twelfth grade with additional training in animal handling or course work in animal health is desirable.

License or Certificate: Possession of, or ability to obtain, a Euthanasia Technician Certificate issued by the State of Oregon. Possession of, or ability to obtain, a valid driver's license by time of appointment.

THE SCREENING AND EXAMINATION PROCESS

The application information may be used throughout the entire screening and examination process. The applications will be screened to determine if the applicants meet the minimum qualifications and have completed the supplemental application questions. The training and experience, as shown by responses to the supplemental questions, of those applicants who meet the minimum qualifications will be evaluated. Based on this evaluation, the most qualified applicants will be scheduled for a physical agility test. Only those applicants who pass the physical agility test will be scheduled for an oral interview. The final examination score and placement on the eligible list will be based on the physical agility test, weighted 50% and the oral examination, weighted 50%.

THE APPLICATION

Applicants must complete a standard Multnomah County application form as well as submit responses to Supplemental Application questions. The supplemental questions should be submitted in the following format:

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SUPPLEMENTAL APPLICATION QUESTIONS

1. Describe your work experience involving animal care, particularly dogs and cats.

2. Summarize your knowledge of animal characteristics, particularly dogs and cats.
3. a. Do you have a State Euthanasia Certificate or course work that would enable you to be certified?
b. Do you have any experience in animal euthanasia? Please summarize your experience (graphic details are not required).

VETERAN'S PREFERENCE

If you wish veteran's points added to your passing score, please submit a completed Veteran's Preference form along with a DD214 or Form 802 with your completed application packet; otherwise, veteran's points cannot be honored for this examination. Veterans who qualify will be granted five points preference upon successful completion of all phases of the examination process. Disabled veterans who qualify will be granted 10 points.

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Mailing Address: P.O. Box 14700, Portland, OR 97214
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NOTES: This announcement is intended as a general descriptive recruitment guide and is subject to change. It does not constitute either an expressed or implied contract.

Smoking is prohibited in all County facilities.

Don Winkley, Personnel Analyst
Animal Care Technician - EXAM No. 932126DW

09/24/93

N:\DATA\WP\CENTER\ANNOUNCE\LB\JA0031

JOB TITLE: ANIMAL CARE TECHNICIAN

WORKING TITLE: ANIMAL CARE TECHNICIAN

SALARY FROM: 10.27

EFFECTIVE: 12/02/93

EXPIRES: 6/02/94

JCN/OC: 6065 / 09

EXAM #: 932126DW

PERSONNEL ANALYST: DON WINKLEY

LAST BATCH: 931012

CODES	RANK	SCORE	NAME	ADDRESS	PHONE	CODE	SALARY	TYPE	DATE
00-	1	97	Judith R. May	1695 SE Regner Rd. Gresham OR 97080	666-6674 256-2711				
10-	2	92	Steven M. Duno	PO Box 1542 Bothell WA 98041	(206) 526-5936 (206) 486-9567				
10-	3	91	Greg A. Haggard	6270 N. Col Way #5 Portland OR 97203	285-0048				
✓101	4	88	Peter W. Krengel	39 Downey Street San Francisco CA 94117	(415) 665-9327 (415) 554-6364				
001	5	86	Sheri L. Anderson	2015 NW Earl Court Gresham OR 97030	669-0492 248-3066				
10-	6	85	Timothy J. Alderman	27722 SE Bartlemay Rd. Eagle Creek OR 97022	637-3408				
-01	7	84	Cameron E. Brockmueller	420 NE 24th Gresham OR 97030	492-3091 227-5521				
00-	8	82	Stephanie L. Hale	2428 NE 39th Ave. Portland OR 97212	284-4387 248-3790				
001	9	81	Margot I. Monti	8701-B NE 13th Ave. Vancouver WA 98665	574-4470				

JOB TITLE: ANIMAL CARE TECHNICIAN

WORKING TITLE: ANIMAL CARE TECHNICIAN

SALARY FROM: 10.27

EFFECTIVE: 12/02/93

EXPIRES: 6/02/94

JCN/OC: 6065 / 09

EXAM #: 932126DW

LAST BATCH: 931012

PERSONNEL ANALYST: DON WINKLEY

CODES	RANK	SCORE	NAME	ADDRESS	PHONE	CODE	SALARY	TYPE	DATE
00-	10	80	Kellye D. Lungo	25655 SW Mountain Rd. West Linn OR 97068	638-7801 246-3373				
00-	11	77	Amy M. Rojas	879 NE Hood Ave. Gresham OR 97030	669-9095 255-8139				
00-	12	75	Lisa A. Hubner	13626 SE Cora Portland OR 97236	762-1860 659-0930				
001	13	73	Lauri C. Ragina	17022 SE Taylor Portland OR 97233	252-7480 255-8139				

July 1 1993

*Transh
Rule 15*

To all parties concerned:

I am formally requesting to be reinstated as an animal control officer on this date. I left M.C.A.C as of 7-7-92, and am with-in the one year reinstatement time frame. As M.C.A.C. was fully funded and all positions restored on 6-30-93, there remains a vacant officer position.

sincerely

Judith R. May
7-1-93

cc
Mike Oswald
Dave Flagger
Jim Smith
Ken upton
Don Winkley
Betsy Williams
Labor relations

RECEIVED

JUL 09 1993

EMPLOYEE SERVICES
MULTNOMAH COUNTY

for Petra

MERIT SYSTEM CIVIL SERVICE COUNCIL MINUTES

March 10, 1994

The meeting was called to order with Commissioners Wight, Floyd and Price present and Comm. Wight presiding. The minutes of the July 19, 1993, meeting were approved and signed.

NEXT MEETING: Kevin Marshall, whose hearing is scheduled for this meeting, submitted a request for postponement until he receives material and information he had requested from the County. The Council also has three appeals that need to be scheduled for hearing.

Colette Umbras, Personnel Analyst representing the County, objected to Mr. Marshall's request for postponement on the grounds that the material he requests is irrelevant. Mr. Marshall responded that his appeal is based on the allegation that a candidate was pre-selected for the position for which he applied and that persons or materials unknown to him may have bearing on this issue.

The Council discussed what information would be helpful to the appellant but not unduly burdensome to the County. The Council ruled that Mr. Marshall should provide a list of witnesses he would need and that the County should provide Mr. Marshall with a list of applicants for the position and the notes taken during the interviews with the applicants.

The Council scheduled a meeting for **Tuesday, April 12, 1994**, to hear the appeals of Kevin Marshall and Mary Armstrong. Another meeting was set for **Thursday, April 14, 1994**, to hear the appeals of Susan Toland and Terry Chubb.

NANCY NICHOLS APPEAL: Nancy Nichols was off work due to a work-related injury and returned to work on December 6, 1993. At a meeting on December 8 she learned that the interviews for Probation/Parole Supervisor were scheduled. She had a number of telephone conversations with her supervisor during November, he knew she was interested in becoming a Supervisor and he never informed her a new eligible list was being formed.

Colette Umbras, Personnel Analyst representing the County, distributed a copy of the job announcement and the Personnel Rules relating to posting of job announcements. Ms. Umbras reviewed the exam process. There are about 100 Probation/Parole Officers; approximately 30 applied for the promotion and all were scheduled for the interviews which were held on December 15 and December 17. She received a phone call from Ms. Nichols on December 20 about taking the exam. She informed the appellant that nothing could be done since the interviews had already been held; consideration might have been given to accepting a late application if the exam was not completed by the time contact was made. Ms. Umbras also pointed out that the exam was promotional

and one of the requirements to remain on the eligible list is to be a County employee; Ms. Nichols is no longer an employee of the County.

Ms. Nichols has filed a grievance regarding her termination. When she returned from her injury, the County said they had no job she could do but they could have made her a supervisor, duties which she had performed in the past. If she is reinstated to employment she would like an opportunity to take the examination.

In discussion, the Council members agreed that they had concerns about the manner in which information is distributed but that the rules were complied with and the appeal should be denied. A motion to that effect was passed unanimously.

The Council directed that the Secretary send a copy of the Personnel Rules to each appellant when an appeal is received.

JUDITH MAY APPEAL: Judith May represented herself and had Madeline Davalos as a witness. Sharyn Middleton, Operations Supervisor; Dave Flagler, Animal Control Manager; and Don Winkley, Personnel Analyst; appeared for the County.

Judith May was an Animal Control Officer for the County for 12 years and left in April of 1992 in order to take a job with the Portland Police Bureau. The job did not suit her and she is now working in animal control in Vancouver. She was eligible for reinstatement without examination to County employment until July 7, 1993. There was a position open in July, 1993 and she talked to Mike Oswald, who was Animal Control Manager at that time. He said she was a good employee and should be reinstated but that Dave Flagler, then supervisor of field operations, would have to be consulted. Mr. Flagler told her that a drop in calls for service meant the job would not be filled.

In September, 1993, Animal Control recruited for Animal Control Officer and Animal Care Technician. She applied for both positions and placed #1 on both eligible lists. She participated in an elaborate hiring process conducted by Animal Control and was not selected for either position. During the interview for Animal Control Officer she was asked how she would deal with being supervised by Dave Flagler, a question ~~she~~ not asked of other applicants. She believes she was not selected because of her activities as a union steward during her previous tenure with Animal Control. Animal Control management is not differentiating her responsibility to process all grievances from performance issues.

Madeline Davalos testified that she asked Dave Flagler if Judith May would be rehired and that he said she would not, because of the trouble she caused when she was an employee previously.

Ms. May said her personnel file does not contain any reprimands, she has been placed

on various policy and procedure committees, and received commendations for her work. Ms. May described the animosity by citing the time she was given to accomplish a task was different than that for other Officers, and a general angry attitude and confrontations she experienced from Mr. Flagler. He wanted to change the way things were done in Animal Control but didn't go about it in the right way; he neglected to change the underlying policies and procedures before requiring employees to change the way they worked.

Don Winkley distributed the job announcements and resulting eligible lists for the two positions in question and described the examination process. Vicki Hávlik was selected for Animal Control Officer; Peter Krengel was selected for Animal Care Technician.

Sharyn Middleton, a supervisor since September, 1993, described her hiring process for Animal Care Technician which included a videotaped role play exercise and an interview. In response to Comm. Wight, Ms. Middleton said she did perceive some animosity between Ms. May and Mr. Flagler. However, Mr. Flagler had no influence on her hiring decision and the person selected was the unanimous first choice of all persons on the interview panel. When asked how she would work with Mr. Flagler, Ms. May said she work o.k. with him and Ms. Middleton accepted this as fact. The same question was asked of one other person who was a temporary employee with the agency, but it was not a relevant question for any other applicants.

Interpersonal skills and problem solving ability demonstrated in the hiring process were the deciding factors in the selection decision. The applicant selected gave a number of examples when responding to a question about resolving conflict while Ms. May stated she might just walk away from the situation. Ms. May asked Ms. Middleton if she had any past problems with her ability to resolve conflict; the response was that the decision was based on performance during the selection process, not past history.

Dave Flagler, who was Chief Field Supervisor and Acting Manager, described the hiring process for Animal Control Officer which included applicant training, a videotaped role play exercise, a written exercise, and a panel interview. The person selected was the unanimous choice of the panel before Mr. Flagler expressed any opinion about his choice. Mr. Flagler did not recall telling Ms. May that the call for service had fallen off but the funding for Animal Control was in doubt.

In response to Council questions, Mr. Flagler characterized Ms. May as being capable of doing an adequate job as an Animal Control Officer; he would place her approximately in the middle when ranked against other officers. The deciding factor in the selection process was interpersonal skills, which have become more important as the agency changes its style of operation. He believes that Ms. May had difficulty accepting him as a supervisor and may have competed for the job when he was selected. She frequently took issues over his head to the manager, but he had no problems with this if the issues

ended up being resolved. He had no recollection of the conversation about which Madeline Davalos testified.

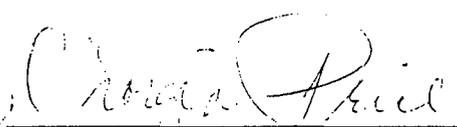
The timing of Ms. May's reinstatement request was discussed; her letter of request, delivered July 3, 1993, was presented. Since interpersonal skills are deemed important, the Council asked if employees are given any training in this area and if the job description or the job announcement reflect this importance.

The Commissioners decided that more information was needed before a decision can be made on this appeal and that, due to the late hour, the matter should be continued to the April 12 meeting. At the continuation, the Council needs the timing of the budget process, the relevant job descriptions, the normal training given Animal Control Officers, a summary of service call statistics, and the presence of Mike Oswald and all persons who served on selection panels for these hiring processes.

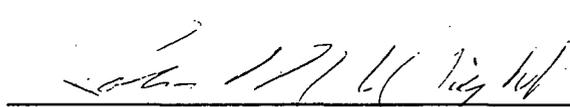
The meeting was adjourned.

MULTNOMAH COUNTY
MERIT SYSTEM CIVIL SERVICE COUNCIL

Carla Floyd, Commissioner



D'Norgia Price, Commissioner



John Wight, Commissioner

N:\DATA\EMP\SERI\WPDATA\ISJA076

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

(ON FILE WITH
BOARD CLERK)

March 10, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

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

ALSO PRESENT:

Judith May, Petitioner
Sharyn Middleton, Operations Supervisor
Dave Flagler, Animal Control Manager
Don Winkley, Personnel Analyst

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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

(503) 631-8885

for Petra

MERIT SYSTEM CIVIL SERVICE COUNCIL MINUTES

April 12, 1994

The meeting was called to order with Commissioners Wight and Price present and Comm. Wight presiding. The minutes of the March 10, 1994, meeting were approved and signed.

JUDITH MAY APPEAL CONTINUATION: The information requested by the Council at the last meeting was presented:

1) Animal Control service call data was provided and explained by Dave Flagler, Animal Control Manager. The graph showed that the number of calls did not peak in June, 1993, as it had in the June, 1992, and June, 1991. Mr. Flagler also stated that many factors, not just number of service calls, were involved in not rehiring Ms. May. Ms. May questioned the ability of available staff to adequately handle the number of service calls shown on Mr. Flagler's graph.

2) Mike Oswald, former Animal Control Manager, presented the chronology of the approval of the 1993-94 budget. In March, 1993, the Executive Budget contained a reduction of five staff, including three Animal Control Officers. During the spring there were various discussion about the level of funding for Animal Control services. The Approved Budget in June, 1993, removed two Animal Control Officers and one clerical position. The Adopted Budget of June 30, 1993, included new revenue strategies and restored all positions except the clerical one. The vacant Animal Control Officer was used to fund the clerical employee in order to avoid a lay off until a reorganization plan could be developed. The reorganization approved by the Board of County Commissioners on September 2 eliminated a management position and created a clerical position and an animal care position. The new clerical position meant that the Animal Control Officer was then available and the position was opened for recruitment.

Ms. May said that restructuring was not mentioned to her when she requested reinstatement around the first of July, 1993, and that a temporary Animal Control Officer was hired on July 5, 1993.

3) Carla Floyd, the Commissioner who had requested the presence of the interview panel members, was not present at the meeting. The Commissioners present did not have any questions involving these panel members and they were dismissed without providing testimony. Dave Flagler and Sharyn Middleton, the hiring managers, both confirmed that they did not influence the decision of the interview panels.

Comm. Wight was concerned that a vacant position was available and it was not given to Ms. May because of her previous union activity. Ms. May reminded the Council she presented testimony at the last meeting that Mr. Flagler had said she would not be rehired because of the trouble she had caused.

The Council questioned if the reinstatement personnel rule required that an employee be reinstated or if it was permissive. Don Winkley, Personnel Analyst appearing for the County, confirmed the rule was permissive.

Comm. Wight had concerns at the last meeting about discrimination based on union activity but they were eased by the testimony about the budget and the use of the Animal Control Officer position to avoid laying off another employee. Comm. Price did not agree because a temporary employee was hired when it was known that the Ms. May wished to be reinstated. Since the two Commissioners present did not agree, the matter was deferred to a time when Comm. Floyd would be available to review the testimony and vote.

KEVIN MARSHALL APPEAL: Comm. Wight and Mr. Marshall discussed the basis of the appeal and whether there was an alleged rule violation. Mr. Marshall acknowledged that no rule was violated but felt that the Council was the only avenue of appeal regarding violations of the merit principles and that it should investigate the County's practices. He cited MCC 3.10.420 (C) and MCC 3.10.015 to support his position. He alleged that the practice of selecting candidates before applications were solicited was widespread and well-known in the County. This practice discourages people from applying for positions and is a violation of the basic premises of a merit system.

Comm. Wight felt the matter could not be heard as an appeal when no rule was violated; a hearing regarding violation of a policy statement would not be fruitful. The Council could discuss whether a Council investigation and possible rule change recommendations were called for.

Colette Umbras, Personnel Analyst, and Norma Jaegar, Drug and Alcohol Program Manager, wished to be placed on record as denying the allegations and characterization of the process by Mr. Marshall. Neither the rules nor their intent were subverted by this selection process.

Comm. Wight made a motion to deny the appeal for lack of jurisdiction but to consider the broader issue at a meeting when all Council members are present. Comm. Price voted in favor of this motion and the appeal was denied unanimously.

MARY ARMSTRONG APPEAL: Ms. Armstrong summarized her appeal. She was hired as a temporary employee doing Office Assistant 2 work in Assessment & Taxation in October, 1993. Later, two openings were filled on a permanent basis. One was filled by someone who had worked temporary, one was not. Ms. Armstrong was not offered a permanent appointment and the two persons appointed scored lower on the eligible list than she did. One of the persons has a relative who works for the County. She also questioned whether the persons hired met the minimum qualifications for the Office Assistant 2 classification.

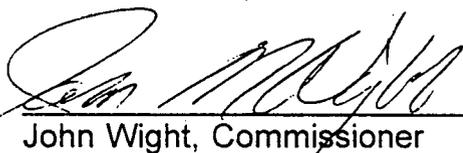
Since Comm. Wight and some potential witnesses had other time commitments, it was decided to adjourn the meeting and postpone the hearing on Ms. Armstrong's appeal to the Thursday, April 14, 1994, meeting.

The meeting was adjourned.

MULTNOMAH COUNTY
MERIT SYSTEM CIVIL SERVICE COUNCIL



D'Norgia Price, Commissioner



John Wight, Commissioner

N:\DATA\EMPSER\WPDATA\ISJA087

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

(ON FILE WITH
BOARD CLERK)

April 12, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

D'NORGIA PRICE, Commissioner
JOHN WIGHT, Commissioner

ANNA KANWIT, City Attorney

ALSO PRESENT:

Judith May, Petitioner
Sharyn Middleton, Operations Supervisor
Dave Flagler, Animal Control Manager
Don Winkley, Personnel Analyst

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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

(503) 631-8885

for Peter

MERIT SYSTEM CIVIL SERVICE COUNCIL MINUTES

May 10, 1994

The meeting was called to order with Commissioners Wight and Price present and Comm. Wight presiding. The minutes of the April 12 and April 14, 1994, meetings were approved and signed.

DOROTHY BOISE APPEAL: Dorothy Boise represented herself. Ms. Boise stated that the recent interviews for the Program Development Technician in the Adult Care Home Program raised ethics issues and that poor judgment was used in conducting them. She is currently a Senior Office Assistant and applied for the position in question. She was among the 14 applicants selected for oral interview. Kathy Milan removed herself from Ms. Boise's interview, pursuant to Personnel Rule 10.04.

Ms. Boise learned that Ms. Milan did not remove herself from the interviews of three other candidates (Amy Perkett, Judy Fowler and Sylvia Truex) who were friends of Ms. Milan's. These friends were in the top five and Judy Fowler was ultimately selected for the position. Ms. Milan also developed the questions to be used in the oral interview. Another candidate, Jolee Acevedo, did not participate in the examination but was given a final interview.

Betty Lowery, Heather Stewart and Joan Erickson, of the Adult Care Home Program, supported Ms. Boise's statements. They felt that an interviewer should not develop the interview questions or have access to them prior to the interviews.

Susan Daniell, Personnel Analyst; Steve Balog, Adult Care Home Program Manager; and Kathy Milan, Adult Care Home Program Development Specialist; appeared for the County. Susan Daniell presented Personnel Rule 10.04, the Guide for Oral Examination Board Members, the job announcement, the Rater Certification Form, a summary of the oral interview scores, and the resulting eligible list. Ms. Daniell talked with Ms. Milan regarding possible disqualification from interviewing some applicants. It was decided that Ms. Boise was the only person with which Ms. Milan currently has daily contact and the only applicant it would not be appropriate for Ms. Milan to interview.

Steve Balog gave the questions used in the previous interview, April 1992, to Ms. Milan to review. Ms. Milan asked for input from Betty Lowery and Carol, another employee of the program. The questions were finalized by Mr. Balog and delivered to Personnel just prior to the interviews. Mr. Balog advised Ms. Milan to fully disclose her knowledge of the candidates to Personnel and she did this.

Comm. Wight questioned Ms. Milan about her knowledge of the candidates in question. Ms. Milan characterized them as friendly co-workers who she has met on previous jobs or as part of the network of people involved in adult foster care.

Mr. Balog said that the oral interview panel for this position consisted of a case manager with clients in foster homes, a foster home operator and the previous position incumbent. The duties of the Program Development Technician are mainly to maintain and monitor the file of foster home violations that are identified by the field staff.

Ms. Boise said she did not expect any remedy since a final selection has been made. She would like the issue to be on record and not have similar situations occur in the future.

The Commissioners and witnesses discussed whether the removal of Ms. Milan from the interview panel meant there was no person "technically familiar with the duties of the position" left on the panel. Mr. Balog argued that a case manager with clients in foster care and a foster care operator would have enough familiarity with foster care operation to judge applicants for this job.

Ms. Boise and her witnesses asserted that Judy Fowler is Ms. Milan's best friend, shares clothing with Ms. Milan, is mentioned around the office often and has daily contact with her. Ms. Milan denied these allegations. She let her peers in the field know about the opening, as the staff was asked to do by Mr. Balog. She has contact with Judy Fowler only because she answers the phone at Ms. Milan's fiance's workplace.

Ms. Daniell said that Ms. Milan's scores were approximately the average of the other two raters. If her scores were removed from all the ratings, there would be no effect on the top five scores. Mr. Balog said that five persons and not Ms. Milan were involved in the final selection; the consensus of this group was that Ms. Fowler is the best candidate.

The hearing was closed and the Commissioners discussed the case. Comm. Price did not see anything out of order in the conduct of the examination. Oral board members generally know something about a job but aren't necessarily experts. It is also common for people involved in a field to know each other professionally. Comm. Wight felt the testimony was mixed but there was nothing specific enough to warrant a remedy. Ms. Milan did what was required by the rules in disclosing her knowledge of the applicants and letting Personnel make the determination. A motion to deny the appeal was unanimously approved.

Comm. Wight said that lately the Council has been hearing that selections are predetermined and that friends of current employees are given unfair advantage in competing for County jobs. He urged the Personnel staff not to look at these as individual cases but as a pattern that is indicative of a larger issue. The general rule of thumb in customer service is that for every complaint written on a response card, there are 25 other people with the same complaint. Since bringing an appeal to the Council is much more difficult than filling out a response card, each appeal probably represents a substantial number of complaints that are not filed. Some of these problems may be occurring because Personnel hands off the processing of applicants to managers and

the applicants don't get the feedback they need about the process and why they were not successful. The Council has not found problems in the specific issues brought before it, but the perception that there are problems is out there and needs to be addressed.

KATHY STEINMETZ APPEAL: Kathy Steinmetz appeared for herself and said she is a certified medical assistant currently working as a Health Assistant. She does not expect satisfaction but wants to point out problems similar to those in the previous hearing.

She applied for Immunization Outreach Worker but heard that the Department was looking for a minority person for the position. She was not selected for the oral examination and talked to Susan Daniell. Ms. Daniell said that her experience is clerical and does not meet the qualifications for the position. She feels that she is qualified and has daily contact with the community. There are few opportunities for advancement available, especially if you are not a minority or bilingual. Her supervisor helped her fill out the supplemental application.

Susan Daniell, Personnel Analyst, appeared for the County and submitted the job announcement, Ms. Steinmetz' application, and her letter to Ms. Steinmetz. Ms. Daniell explained that the position required two years of experience providing health information, preferably outreach experience. Outreach experience is different because it going into the community to reach people who are unaware of, or resistant to, the services. Some people have barriers to receiving service such as language or cultural difficulties. Eighty-four applications were received and fourteen were scheduled for interview. All of these had at least two years of outreach experience; the person hired, Carmen Rodriguez, has seven years of outreach experience in Clackamas and Washington Counties.

Ms. Steinmetz responded that this job was one that could be transferred into and now there is one less opportunity available. She is knowledgeable in pediatrics. She does see people in the community; clients have come up to her in Fred Meyer's or Kienow's to ask questions.

The hearing was closed. Comm. Wight explained that the Council does not decide what the important qualifications are for a job; the County is responsible for making that decision. There were no violations of rules or procedure and he moved to deny the appeal. Comm. Price concurred; the motion was passed unanimously.

The appeal received from Jeanette Tudor was distributed. The next meeting was set on June 21, 1994, at 3:30 p.m. Comm. Wight left the meeting. Comm. Floyd came in and the Council continued the meeting with Comm. Floyd and Comm. Price present.

JUDITH MAY APPEAL DECISION: The Judith May appeal was heard at the March 10 and April 12 meetings. All three Commissioners were present at the March 10 meeting.

Comm. Floyd was not at the April 12 meeting and the two remaining Commissioners were split on a motion to deny the appeal with Comm. Wight voting in favor of the motion and Comm. Price voting against the motion.

Comm. Floyd had reviewed the materials from the meeting she missed and said she had several concerns about the denial of Ms. May's reinstatement request in June of 1993. These concerns revolved around the possibility that previous union activity had influenced the decision not to reinstate, the question whether the budget approval process meant the position was available, and the hire of the temporary employee around the same time. Comm. Floyd voted to uphold the appeal and have Ms. May reinstated. The hiring of the temporary employee indicates some prejudice against Ms. May's rehire. It appears that management discretion was used improperly since the budget dollars were available. The motion made at the April 12 meeting to deny the appeal was thus defeated, with Comm. Wight voting in favor and Comm. Floyd and Comm. Price voting against the motion.

There was general discussion about how the remedy should be structured and exactly what the County would be required to do. Comm. Floyd moved that Ms. May be reinstated effective February 1, 1994, with back pay and that the County determine the best way to accomplish this. Comm. Price concurred and this motion was approved.

Ms. May asked for a copy of the tape of the meeting. She informed those present that if the decision to uphold her appeal was appealed to the Board of County Commissioners, her attorney, Don Willner, should be notified of the time and place of that hearing.

The meeting was adjourned.

MULTNOMAH COUNTY
MERIT SYSTEM CIVIL SERVICE COUNCIL

D'Norgia Price, Commissioner

John Wight, Commissioner

Carla Floyd, Commissioner

N:\DATA\EMPSER\WPDATA\ISJA092

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

(ON FILE WITH
BOARD CLERK)

May 10, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

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

ANNA KANWIT, City Attorney

ALSO PRESENT:

Judith May
Sharyn Middleton
Don Winkley
Dave Flagler
Jim Smith

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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

(503) 631-8885



CITY OF
PORTLAND, OREGON
OFFICE OF CITY ATTORNEY

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

May 24, 1994

RECEIVED

MAY 25 1994

BEVERLY STEIN
MULTNOMAH COUNTY CHAIR

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

RE: Judith May v. Multnomah County

Gentlemen:

On behalf of the Board of County Commissioners, the parties are notified that the above-referenced matter will be heard before the Board at 9:30 a.m. on June 30. The hearing has been scheduled for one hour and will take place in the Commission Board Room, Room 602, 1021 SW 4th Avenue, Portland, Oregon.

Sincerely,

Marianna Kanwit
Legal Advisor to the Board

AK/bf

pers\misc.ak\nemirow

c: Maria Rojo De Steffey B106/R1410
Sue Ayers B106/R1400
Delma Farrell, Board Clerk B106/R1410



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(503) 248-3138
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BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

May 16, 1994

COUNTY COUNSEL
LAURENCE KRESSEL

CHIEF ASSISTANT
JOHN L. DU BAY

ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
GERALD H. ITKIN
H.H. LAZENBY, JR.
STEVEN J. NEMIROW
MATTHEW O. RYAN
JACQUELINE A. WEBER

Office of the Board Clerk
Floor 15 \ Portland Building
Portland, Oregon 97207

RE: Appeal of Judith May

Dear Clerk:

Enclosed please find Notice Of Appeal And Request For Hearing.

Sincerely,

LAURENCE KRESSEL, COUNTY COUNSEL
FOR MULTNOMAH COUNTY, OREGON

By 
Steven J. Nemirow
Assistant County Counsel

cc: Don Willner
Anna Kanwit
Sue Ayers
Betsy Williams

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR THE COUNTY OF MULTNOMAH

JUDITH MAY)	
)	
Petitioner)	
)	
v.)	NOTICE OF APPEAL AND REQUEST
)	FOR HEARING
MULTNOMAH COUNTY CO.)	
)	
Respondent.)	

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 May 10, 1994, and requests a hearing on all issues of law and fact.

Dated this 16th day of May 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

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

March 10, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

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

ALSO PRESENT:

Judith May, Petitioner
Sharyn Middleton, Operations Supervisor
Dave Flagler, Animal Control Manager
Don Winkley, Personnel Analyst

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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

(503) 631-8885

1 COMMISSIONER WIGHT: If we could identify who all is
2 here. You're Judith May.

3 MS. MAY: And this is a witness, Madeline Davalos.

4 MR. WINKLEY: I'm Don Winkley, Employee Service.

5 MR. FLAGLER: I'm Dave Flagler, with Animal Control.

6 MS. MIDDLETON: Sharyn Middleton, Animal Control.

7 COMMISSIONER WIGHT: Are all of you going to testify?
8 Will all of you raise your hand, please.

9 WITNESSES MAY, FLAGLER, WINKLEY, DAVALOS, FLAGLER, MIDDLETON
10 having been first duly sworn by Commissioner Wight,
11 testified under oath as follows:

12 COMMISSIONER WIGHT: Do you want to tell us about the
13 situation?

14 MS. MAY: Sure. Start out, first of all, I'd like to
15 say, (indiscernible) I was never given the rules of the
16 game, and phone contact was haphazard at best. I think we
17 played phone tag for about four days. I finally sent a
18 registered return-receipt letter because we have a ten-day
19 time frame involved is the information I had.

20 There are two positions that I applied for, and it
21 was pretty much simultaneous, Animal Control Officer and
22 Animal Health Technician. They're pretty close to the same
23 grade. Went through the process. I'd like to backstep a
24 little bit back to April of '92. In April of '92 I applied
25 for a leave of absence, asking for six months' leave of

1 absence for a job opportunity with Portland Police
2 Department (indiscernible). I was given a time frame which
3 covered the BPST training which was approximately nine
4 weeks, and that was given by Mike Oswald and the reasoning
5 behind that was that it was concurrent with the job that I
6 was currently doing, and it also was because of my past
7 history and my employment status with Multnomah County
8 Animal Control which was a (indiscernible).

9 COMMISSIONER WIGHT: So you were in Animal Control at
10 that time?

11 MS. MAY: I was in Animal Control at that time. I
12 did go to Portland Police, and the job did not suit me. I
13 had time to be still on the reinstatement list by July the
14 7th of '93. By July the 1st of '93, it was completely
15 funded and there was an open position. At that time I did
16 apply to be reinstated. That was June 9th on the pretention
17 that there was, if I read it correctly, a lowering of
18 statistics of calls and not a need to fill it at that time.
19 I would like to have that verified. That was never verified
20 to me that there was a drop in calls or service requests,
21 especially since the year prior to shop steward, I had filed
22 a grievance for the fact that employees were not allowed
23 concurrent vacation times during the month of July because
24 of the high service request calls. And it had been that way
25 for the entire 12 years that I'd (indiscernible). To my

1 knowledge, it's still the situation.

2 A month and a half later, approximately, the job
3 opening was posted. I applied for it, and at that time the
4 Shelter Attendant position was also posted. I applied for
5 both positions.

6 I went through the process, and I received a letter
7 of the standing --

8 COMMISSIONER WIGHT: Let me --

9 COMMISSIONER PRICE: I'm a little confused.

10 COMMISSIONER WIGHT: -- get clear in my mind.

11 COMMISSIONER PRICE: What year, yeah?

12 COMMISSIONER WIGHT: The two positions were in '93,
13 right? June of '93?

14 MS. MAY: Correct.

15 COMMISSIONER WIGHT: Okay, we're in June --

16 MS. MAY: No, no, no, we're in July of '93.

17 COMMISSIONER WIGHT: July of '93.

18 MS. MAY: For reinstatement of officer position.

19 COMMISSIONER PRICE: And that was denied because of
20 the drop in calls, theoretically.

21 MS. MAY: Theoretically.

22 COMMISSIONER PRICE: That's what you were told?

23 MS. MAY: Theoretically.

24 COMMISSIONER WIGHT: I thought that was April. Why
25 did I have April --

1 MS. MAY: April of '92 --

2 COMMISSIONER PRICE: Is when she went --

3 COMMISSIONER WIGHT: Oh, okay, so July of '93 is the
4 reinstatement, okay.

5 COMMISSIONER PRICE: So a month and a half later,
6 what happened?

7 MS. MAY: Approximately a month and a half later --
8 that was in July.

9 COMMISSIONER PRICE: So was that like in late
10 September '93?

11 MS. MAY: October 1st is when the officer position
12 deadline was. It was posted in September.

13 COMMISSIONER WIGHT: That's Animal Control Officer?

14 MS. MAY: Correct; at the same time the Animal Health
15 Technician was posted. Now, a month and a half --

16 COMMISSIONER WIGHT: Okay, you applied for both.

17 MS. MAY: Correct. And in a month and a half
18 (indiscernible) being filled, although he had somebody with
19 12 years' experience who asked to be reinstated where the
20 training would be minimal, but the City went through the
21 whole hiring process again a month and a half later. Now,
22 amazingly, the drop of the high season, now you have a
23 demand for an officer position. I applied, (indiscernible).

24 On both situations, on the Animal Control Officer
25 Position, I was interviewed by Mike Oswald who was the

1 outgoing director at the time. He's now Assistant Director
2 of DES. I was also interviewed by Doug Carpenter who is the
3 past supervisor.

4 COMMISSIONER WIGHT: For that same position?

5 MS. MAY: Yes. And Sheila Augustine who was a co-
6 worker for the last 12 years. I placed number one on the
7 list.

8 My purpose in saying this is there hadn't been any
9 problem with my performance or my past (indiscernible)
10 history I would not have placed number one on the list and
11 there wouldn't have been any problem. It wouldn't have gone
12 further. Here's the letter indicating that.

13 On the Animal Health Tech position, the Care Tech, I
14 placed number one on the list. Again, I was interviewed by
15 my current employer who is the Director of Shelter
16 Operations for Vancouver Humane Society; Molly Jackson, who
17 is a co-worker, and a gentleman who does film production for
18 Multnomah County Animal Control who I've never met before in
19 my life before that interview. I placed number one on that
20 list.

21 Subsequently we went to the interview process. The
22 interview process was videoed, and there were several people
23 there which they have not, I assume, brought the video --

24 COMMISSIONER WIGHT: That involved these positions
25 again?

1 MS. MAY: Both positions again. Both of them were
2 videoed. There was some interaction that took place on role
3 playing. Those were taken care of on a videotape, which I
4 don't see the videotapes, so I assume they didn't bring
5 them.

6 Also, during the process -- and this is for the
7 Animal Care Technician -- I was asked a question that I
8 believe was not asked of any other candidate. The question
9 was is, "How are you going to deal with being under the
10 control of or under the direction of Dave Flagler, since
11 it's most likely he will be the new director of Multnomah
12 County Animal Control?" and this is before the new position
13 had been named. And I -- you can question Sharyn as to what
14 my response was, because she was the one that asked the
15 question.

16 COMMISSIONER FLOYD: Now, these taped interviews that
17 you're talking about, who conducted them?

18 MS. MAY: They were videotaped. It wasn't totally an
19 interview. It was a role playing situation. There were two
20 stages of it. There was a verbal interview that was not
21 taped.

22 COMMISSIONER FLOYD: And who conducted the verbal
23 interview?

24 MS. MAY: On the Animal Health Technician, it was
25 Sharyn Middleton, Nora and Mike. And on the Animal Control

1 Officer, it was Larry Crabb and Tammy Sorensen.

2 COMMISSIONER FLOYD: And what month of '93 are we
3 talking about? Are we still in September or --

4 MS. MAY: Oh, no --

5 COMMISSIONER PRICE: Moved on to October --

6 COMMISSIONER WIGHT: Oh, no, we're January.

7 MS. MAY: We're in January.

8 COMMISSIONER FLOYD: January of '94? Great.

9 Sorry, go ahead.

10 MS. MAY: So I assume they did not bring
11 (indiscernible) interviews so we can compare the interviews.
12 That's neither here nor there. The interview process took
13 place.

14 I was placed -- according to a letter from Mr.
15 Flagler, I was placed fourth after being number one after
16 the interview process. No explanation. Just four. No
17 placing was given by Sharyn Middleton.

18 After the posting of those positions I received
19 numerous calls, and I will name the people who called me at
20 home, to say they were certainly not surprised due to the
21 fact that I was the shop steward and represented any
22 conflict that ever took place out there for both the shelter
23 and the field that I was not considered for the position.
24 One of the people that I had a conversation with is my
25 witness, Madeline Davalos, and an interesting situation came

1 up as to a conversation between her and Dave Flagler prior
2 to those interviews. And I'll also let her tell you what
3 that conversation consisted of.

4 MS. DAVALOS: I'm Madeline Davalos. I'm an officer
5 at Animal Control. We were in the officer's room. Dave
6 Flagler was working on the computer, and I was at my desk,
7 and I -- my main interest was two other people, not Judy,
8 finding out if they'd gotten hired or gotten the position.
9 And then that's when I found out that Judy also had applied.
10 And I asked if she was going to become an officer because of
11 her past experience. And he said, "No, there's no way that
12 he's going to hire her because of all the trouble that she
13 had caused before," and we just left it at that.

14 MS. MAY: My contention is that Mr. Flagler
15 influenced the decision by Sharyn Middleton. Sharyn
16 Middleton and I have had several conversations prior to even
17 the posting of the job in which she indicated is she would
18 be more than happy to have me as an employee under her. We
19 had worked together for a 12-year period; that she felt I
20 was more than qualified. I'm doing the exact same job now
21 at the Vancouver Humane Society plus the same situation as
22 their health care examination people do, plus the same thing
23 that their adoption interview people do, plus, since it's
24 such a small shelter, I assimilate management and
25 interaction with directors and the board.

1 So my contention is that the animosity is there
2 because he cannot discern the difference between my union
3 activity and representing people who are employees there,
4 breach of policy, breach of union contract, from my work
5 performance. I'm more than happy to show you letters of
6 commendation from County Commissioners, university heads,
7 other supervisors that I've had, agency directors from other
8 animal control agencies.

9 COMMISSIONER WIGHT: When did Dave Flagler become the
10 supervisor there?

11 MS. MAY: Which supervisor?

12 COMMISSIONER WIGHT: Well, is he the -- I guess I've
13 just assumed that he would be your supervisor if you were
14 hired; is that correct?

15 MS. MAY: I was working for a period of 12 years. I
16 believe he was my supervisor for a period of approximately a
17 year and a half.

18 COMMISSIONER PRICE: But you indicated there was some
19 sort of job position that he was probably going to get?

20 MS. MAY: Yes.

21 COMMISSIONER PRICE: And what was that position and--

22 MS. MAY: Director.

23 COMMISSIONER PRICE: When?

24 MS. MAY: When was I given that information?

25 COMMISSIONER WIGHT: No, when would he --

1 COMMISSIONER PRICE: When did he become the director?

2 MS. MAY: I'd offer to let him tell you when he
3 became --

4 MR. FLAGLER: February 16th.

5 COMMISSIONER WIGHT: Of '94?

6 MR. FLAGLER: Of this year.

7 COMMISSIONER PRICE: And before that you were?

8 MR. FLAGLER: The chief field supervisor.

9 COMMISSIONER PRICE: And you would have supervised
10 whoever was hired in either one of those positions?

11 MR. FLAGLER: As director, I would not directly
12 supervise them.

13 COMMISSIONER PRICE: But as chief field supervisor?

14 MR. FLAGLER: As chief field supervisor I would have
15 directly supervised the Animal Control Officer position.

16 COMMISSIONER PRICE: But not the other? Okay.

17 MR. FLAGLER: But not the Animal Care Technician.

18 COMMISSIONER WIGHT: Did -- is there some history
19 here between the two of you that I haven't gotten yet, that
20 some kind of contention or dispute that's gone on?

21 MS. MAY: Personally between him and I?

22 COMMISSIONER WIGHT: Or professionally?

23 MS. MAY: No. The problem is his inability to
24 discern that I, as top steward, will take all the grievances
25 and represent the people, and in doing so it's a negative

1 impact on him.

2 COMMISSIONER WIGHT: Well, when did you get that
3 perception that he couldn't make that distinction? When you
4 worked for him before?

5 MS. MAY: Yes. From the very beginning. I was shop
6 steward when the past chief field supervisor was in place.
7 I had no problems. They understood directly that one was
8 dealing as a shop steward; the other was as an employee, but
9 the two had neither interaction --

10 COMMISSIONER WIGHT: And why did you have that
11 perception that Mr. Flagler couldn't make that distinction
12 whereas --

13 MS. MAY: Animosity.

14 COMMISSIONER WIGHT: That's what I'm trying to find
15 out about: what were those? Can you tell me --

16 MS. MAY: Oh, specifically? Things like the time
17 frame to get out in the field that were imposed on me and
18 not on other officers. Things like --

19 COMMISSIONER FLOYD: My Mr. Flagler?

20 MS. MAY: Mm-hmm. Things like -- some things that
21 you can't exactly say in actions but in verbal exchange and
22 an angry attitude.

23 COMMISSIONER WIGHT: Did the two of you have
24 confrontations in your role as a union representative?

25 MS. MAY: Yes. Early on --

1 COMMISSIONER WIGHT: I mean, were those heated?

2 MS. MAY: At times, yes. The basis of this was when
3 Mr. Flagler came on as chief field supervisor, he wanted to
4 change some policies and procedures. Granted, that's not a
5 problem. However, he wanted to change the action before he
6 changed the written policy and procedure, and that's where
7 the conflict came in. And I kept repeatedly saying to him,
8 "If you want to change how things operate, you need to first
9 change the policy and the procedure. Otherwise, every time
10 I have to deal with this as a shop steward," I said, "I have
11 to deal with it on the basis that you haven't changed the
12 policy and procedure. You're trying to enact a change that
13 you haven't done the first step on which is to change the
14 standing policy and procedure." And we went round and round
15 and --

16 COMMISSIONER WIGHT: Was this an ongoing thing?

17 MS. MAY: Yes.

18 COMMISSIONER WIGHT: Were there any particular
19 examples?

20 MS. MAY: Oh, vacation time ops. That was the heated
21 one. That was the big major one because of the staffing,
22 it's very difficult to get vacation time, because everybody
23 out there has four to five weeks of vacation time except
24 for, like, about two people. So that was one of the major
25 ones.

1 The other one is changing how citations were issued,
2 when they were issued. And there was written policy and
3 procedure there. Rather than change that, he would say to
4 that individual and say, "You're not going to do it this
5 way." Well, there was no retraining process; there was no
6 policy and procedure training. They would come to me. I
7 would represent them as the union steward, and, yes, it did
8 become heated.

9 COMMISSIONER WIGHT: And your testimony is that there
10 is a cycle of the work load there, and it increases during
11 the spring and summer months --

12 MS. MAY: That's correct.

13 COMMISSIONER WIGHT: And it drops off in the fall --

14 MS. MAY: That's correct.

15 COMMISSIONER WIGHT: -- and can you give me some
16 order of magnitude of what the difference is between July
17 and December?

18 MS. MAY: The last 12 years that I've worked there --
19 in fact, the last 25 years that I've been associated with
20 Animal Control in one form or another, there are the three
21 months, December, January, February, that are the lowest.
22 And then March and April starts an upswing. June, July and
23 August are peak. And that's when everybody wants to take
24 vacation time, and, again, that's why the contention over
25 the vacation sign-up policies and what was, at that time, in

1 place.

2 So the highest -- the high part of the swing is going
3 to be June, July, August, and then, again, starting to taper
4 down in September, October, November. So the bottom of the
5 swing would be -- that is the way it has been for 12 years.

6 COMMISSIONER PRICE: But in general, your allegation
7 is that you were not hired because of your previous union
8 activities --

9 MS. MAY: That's correct.

10 COMMISSIONER PRICE: -- and a perception that you
11 were a trouble-maker?

12 MS. MAY: That's correct. However, I had absolutely
13 no letters of reprimand in my personnel file. I have letter
14 upon letter of commendation. I have been on every procedure
15 and policy committee that has been in place.

16 COMMISSIONER WIGHT: Where did you end up on the list
17 of these two positions?

18 MS. MAY: Number one.

19 COMMISSIONER PRICE: That was prior to the interviews
20 of --

21 COMMISSIONER WIGHT: Prior to the interviews --

22 MS. MAY: I'm now -- on the officer position I was
23 placed four.

24 COMMISSIONER PRICE: And the other one?

25 MS. MAY: I don't know. I have no idea. There was

1 no number given.

2 COMMISSIONER WIGHT: But was there a list -- there
3 was no list prepared after that? Or did they just hire
4 people after the first --

5 MS. MAY: It's my understanding they interviewed the
6 top five, and there was nothing beyond that.

7 COMMISSIONER WIGHT: Okay, you were interviewed for
8 both of them then?

9 MS. MAY: Correct.

10 COMMISSIONER WIGHT: And someone else -- someone else
11 was selected for both those positions?

12 MS. MAY: Correct. And my contention is --

13 COMMISSIONER FLOYD: Number one --

14 MS. MAY: Yes. I was number one on both lists --

15 COMMISSIONER PRICE: Prior to the interviews?

16 MS. MAY: Correct.

17 COMMISSIONER WIGHT: But the interview was a hiring
18 interview, not a ranking interview?

19 MS. MAY: Correct.

20 COMMISSIONER WIGHT: Okay. Any more questions before
21 we hear from --

22 COMMISSIONER FLOYD: Huh-uh.

23 MR. WINKLEY: I'm Don Winkley. What I'll do is start
24 off and just quickly summarize the process and then you can
25 spend most of the time meith these hiring managers.

1 Basically, we have at issue is process, following the
2 rules, which has been some of the complaint previously, and
3 a couple of clarifications on reinstatement, and also how
4 one arrives score-wise on the initial list, not the one
5 you're hired from on the top five, but how the end result
6 was put together.

7 Basically, it's not based on any one performance.
8 The oral raters are giving a process -- are not judging
9 anyone on their prior county performance because it's an
10 open and competitive, and they really have people coming at
11 them that have a variety of backgrounds.

12 In addition, on this particular examination, in both
13 of them, there was a performance examination. So I'll just
14 go through basically that, as indicated to the
15 improvements --

16 COMMISSIONER WIGHT: Just to help me, your position?

17 MR. WINKLEY: I'm personnel.

18 COMMISSIONER WIGHT: You're personnel?

19 MR. WINKLEY: Basically you have your recruitment
20 screening, testing, and we announced that, as indicated by
21 Judy -- Ms. May -- about mid-September for both positions.
22 Now, prior to that time, Animal Control, in the past two
23 years, has been under some severe budgetary restraints. In
24 fact, about the time that Ms. May's leaving in '92, there
25 was a concept that of 43 people only nine would be remaining

1 in Animal Control. But, fortunately, those ideas were
2 overturned, and the budgets were provided for each year.

3 On the Animal Control Officer, we received 133
4 applications. Now, there's also a supplemental application
5 that we ask, along with the basic application, and a lot of
6 people, of course, are interested in animals. A lot of them
7 have animals. In fact, everybody who applies has animals,
8 or a lot of them, years ago, when they were young, worked on
9 farms. So a lot are not actually qualified to be working
10 with shelters. We're trying to find summary limits of
11 someone who's had some kind of experience working for
12 shelters and other animal control agency, humane society,
13 veterinarians. Some have had actual experience working with
14 particularly dogs and cats.

15 So of 133, 21 were selected for the performance
16 examination which you had to pass before you went on to the
17 oral. Performance examination consisted -- and this
18 included for the Animal Technicians, the first time we
19 decided to also include a performance exam for technicians.

20 We found that the performance has helped the work
21 compensation portion of having people a little more fit
22 going in to the facility. So we ran the same examination
23 for performance for both groups.

24 COMMISSIONER FLOYD: Are those written examinations?

25 MR. WINKLEY: Those are performance: did a three-

1 quarter-mile run.

2 COMMISSIONER FLOYD: Oh, physical. Okay. I've got
3 it. Okay.

4 MR. WINKLEY: And those were done the same for both
5 sections of people, and we -- and some people, of course,
6 like Ms. May, applied for both positions. So obviously we
7 only had to test them once when they go through.

8 COMMISSIONER WIGHT: Got rusty out there?

9 COMMISSIONER FLOYD: Yeah, right.

10 MR. WINKLEY: So after a three-quarter mile run, they
11 did sit-ups; a dead-dog pickup; let animals from a cage into
12 a truck. And they were looked at truck (sic), and they did
13 some driving, just in the driveway, some safety aspects of
14 handling our vehicle which is a van or a bigger truck that
15 you go out and pick up animals in.

16 From that group, due to some no-shows and from some
17 fall-out from the physical, perhaps a person not wishing to
18 go onto the oral, 13 people went on to oral examination. Of
19 that group 12 were placed on a list which you have in front
20 of you. That was the final list. Of that group five of the
21 top (indiscernible) to Animal Control.

22 COMMISSIONER PRICE: And these are the lists of which
23 Judith May is the top on both these lists, right?

24 MR. WINKLEY: Correct. And that's 50 percent of the
25 examination was based on for -- both animal care and for

1 animal control, 50 percent was based upon your performance
2 and 50 percent was based on your oral score. So there was
3 (indiscernible).

4 For animal care we had a little lesser number of
5 applicants: 29; 17 were selected from performance; 13 went
6 to the orals. All showed up and all 13 were certified to
7 the list.

8 I think it's important, however, that those
9 (indiscernible) tests and not based on anyone's past
10 performance who worked for the county. So arriving at
11 number one was not a composite of 12 years of previous
12 service. That was just a composite of the random skills
13 that the person had.

14 At that time, then, the process in the
15 (indiscernible) list were sent sometime in December to the
16 hiring managers, and then they conducted their examinations.
17 I will only allude to reinstate --

18 COMMISSIONER WIGHT: Who were the hiring managers?

19 MR. WINKLEY: (Indiscernible).

20 COMMISSIONER PRICE: Were you both on both jobs or
21 one for each?

22 MR. WINKLEY: One for each. Sharyn has the care
23 technician; Mr. Flagler has the animal control.

24 And my final thing is just to make sure you
25 understand the reinstatement. Reinstatement is something

1 that we offer as an option if a person leaves with one
2 year -- from one year of employment. They can come back.
3 They have to start all over in terms of seniority and all
4 that, but they do not need to take a civil service
5 examination. That's the only point on the reinstatement.
6 And it's strictly optional with managers, and it's not a
7 requirement, of course, to fill any vacancy in any given
8 amount of time. So being the fact that the vacancy might
9 have been there in July does not mean it had to be filled in
10 July.

11 COMMISSIONER PRICE: Let me make sure I understand
12 reinstatement, because Ms. May alluded to it. I'm assuming
13 if I leave the employ of the County, I have a certain period
14 of time where I could apply for reinstatement?

15 MR. WINKLEY: One year.

16 COMMISSIONER PRICE: One year. And if I'm not picked
17 up within that 12-month period, I now have to just apply
18 like anybody?

19 MR. WINKLEY: Yes.

20 COMMISSIONER PRICE: And Ms. May, what you're saying
21 is you applied within your one year, there was a vacancy but
22 it wasn't filled?

23 MS. MAY: Right.

24 COMMISSIONER PRICE: Okay.

25 COMMISSIONER WIGHT: I thought you implied that there

1 were some -- well, maybe --

2 MS. MAY: I did imply that. The reason given for
3 that was a -- when I first went in to apply for
4 reinstatement, I talked to Mike Oswald first who was, at
5 that time, the director. He said, "I don't see any problem
6 with it." He said, "You've been a very good employee." He
7 said, "You do realize because of budget constraints the
8 position may be cut and you're on a tenuous situation." I
9 said, "Of course I realize that. I've worked with this
10 agency for 12 years and we've had budgets up and down for
11 the whole 12 years to the tune of, in fact, I've even gotten
12 a pink slip waiting in line, and they've found the monies."
13 I said, "That's not a problem. I understand the process
14 quite well."

15 He said, "Let me talk to Dave Flagler. I'll get back
16 to you." Then two days later I went back to talk to him
17 again, and he says, "I can't get over it. I can't handle
18 the situation. You need to talk to Dave Flagler about it."
19 I said, "All right. That's not a problem. I'll talk to
20 him." That was within the time that he was telling me,
21 "Well, the numbers have dropped considerably, and we just
22 don't feel that there's a need to fill that position now" --

23 COMMISSIONER WIGHT: You're saying Mr. Flagler told
24 you this?

25 MS. MAY: Yes. So that was the situation at the

1 time.

2 I do have some questions of Don Winkley though, and I
3 would like to address those. First of all --

4 COMMISSIONER PRICE: Let's make sure Mr. Winkley is
5 done.

6 MS. MAY: Okay.

7 MR. WINKLEY: I'm finished.

8 COMMISSIONER PRICE: Okay.

9 MS. MAY: I came in sometime prior to July 1st, right
10 around the time when they were trying to make up their
11 decision as to whether or not they were going to be fully
12 funded and talked to him about the reinstatement process.
13 And he said to me basically that, yes, if they had an
14 opening that they could be reinstated if it was their
15 choice. I'm not arguing that point with him at all. He
16 also said that, "Due to the fact that you have been there
17 and your training has been extensive and that the county has
18 invested a lot of training and time into you, it's most
19 likely that you will be picked up. Know at the beginning
20 your pay scale will be someplace close to the top of your
21 pay scale." That was the conversation I had with him.

22 When I found that the county was fully re-funded back
23 up to the top level, that's when I had the conversation with
24 Mike Oswald. From there, two days later, I was asked to
25 speak to Dave Flagler. That's when I received the

1 information that the statistics were way down and they just
2 didn't seem to feel they needed to fill that position. A
3 month and a half later it's posted.

4 COMMISSIONER FLOYD: Was Mr. Flagler the hiring
5 supervisor for that reinstatement? Was that it?

6 MS. MAY: That's correct. And the fact that he says
7 prior county performance and prior county activity doesn't
8 enter into it, I don't see how anybody who is sitting on a
9 panel, three people, who I've worked under, worked for,
10 worked with, who know my performance, who know the quality
11 of my performance, how that would not in some way impact
12 their judgment. I don't -- I contest --

13 COMMISSIONER WIGHT: You were rated first anyway --

14 MS. MAY: Correct.

15 COMMISSIONER WIGHT: -- so does it make any
16 difference.

17 MS. MAY: No, it doesn't. But I just -- I'm
18 challenging the fact that he says that has no impact on --

19 MR. WINKLEY: Well, it has impact on your experience,
20 obviously.

21 MS. MAY: Right. So there was an impact there on
22 that. Also he mentioned that they were looking for somebody
23 that had --

24 COMMISSIONER WIGHT: Well, wait a minute. Wait a
25 minute. This sounds more like rebuttal rather than

1 question.

2 COMMISSIONER FLOYD: Yeah.

3 COMMISSIONER WIGHT: Do you have some questions of
4 him?

5 MS. MAY: Yeah.

6 COMMISSIONER WIGHT: You'll be given a chance to
7 debate --

8 MS. MAY: I do have a question of him. So -- I guess
9 I should address it to him rather than you.

10 COMMISSIONER FLOYD: Yes, that's correct.

11 MS. MAY: Then, Don, I understand that when you went
12 through the process that they were looking for someone who
13 had animal control or shelter or animal care experience,
14 correct?

15 MR. WINKLEY: Well, basically, as the -- as
16 publicized on the bulletin --

17 MS. MAY: Mm-hmm, so that was -- that was --

18 MR. WINKLEY: -- (indiscernible) meet those
19 requirements.

20 MS. MAY: That's what you utilized to make the
21 decisions as to who you cut and who you did not cut from the
22 final list?

23 MR. WINKLEY: Yes.

24 MS. MAY: I think that's --

25 COMMISSIONER WIGHT: Who was selected?

1 MS. MAY: Oh, also I'd like to ask him if there was
2 anything in my personnel file that is negative?

3 MR. WINKLEY: I wouldn't have -- imagine at this time
4 because you've been gone for a couple years, and it may not
5 be (indiscernible) --

6 MS. MAY: As a matter of fact --

7 MR. WINKLEY: -- (indiscernible) answer that.

8 MS. MAY: As a matter of fact I did call for and
9 receive a full copy of my entire personnel file. I'm sure
10 it's available, but there is absolutely no letters of
11 reprimand, no (indiscernible), absolutely nothing in there.

12 COMMISSIONER FLOYD: Did you bring that with you?

13 MS. MAY: I have the good stuff. I didn't bring the
14 entire thing. It's about this thick considering 12 years.
15 The stuff I did not bring are things like TARS (ph), and
16 things like when I went from shelter position to officer
17 position and when people had actions that I was involved in
18 as an officer or as a shelter attendant that was county
19 related that I represented. Nothing that pertained to me
20 personally.

21 COMMISSIONER PRICE: So when you left in '92 you were
22 an Animal Control Officer?

23 MS. MAY: That's correct.

24 COMMISSIONER WIGHT: Who was selected off the list?

25 MR. FLAGLER: For the officer position Vicki Havlik

1 was selected for the officer position, and then Peter --
2 what's Peter's last name?

3 COMMISSIONER PRICE: Krengel?

4 MR. FLAGLER: Krengel, okay, was selected for the
5 animal care position.

6 COMMISSIONER WIGHT: Would you want to testify here
7 and tell us a little more about --

8 MR. FLAGLER: Maybe it would be easier since Judy
9 feels that this is all directed towards me, maybe we can get
10 Sharyn out real quick, with her, if that's all right?

11 COMMISSIONER WIGHT: It's fine with me.

12 MS. MAY: I would like to bring a complaint that Dave
13 is Sharyn's supervisor, and at the time she made the
14 decision --

15 COMMISSIONER WIGHT: Okay, we'll get -- it's their
16 turn.

17 MS. MAY: Okay, I just wanted to --

18 COMMISSIONER WIGHT: Okay.

19 MS. MIDDLETON: I'm Sharyn Middleton. And I've been
20 an exempt supervisor since September 9th, 1993. Prior to
21 any of the interviews at all after the job was posted, I
22 went to the Animal Control and Animal Health Technician
23 staff because I felt it was important to get input from them
24 as to what type of a co-worker they wanted to work with and
25 what they considered important qualifications in a co-

1 worker. They submitted their qualifications -- some of them
2 submitted qualifications and questions to me in writing. I
3 didn't look at those questions. I put them away until we
4 had gone through the first selection and Don had selected
5 the -- you know, weeded out the candidates.

6 COMMISSIONER WIGHT: You had the list of five then?

7 MS. MIDDLETON: No, we had 18, wasn't it? Or was
8 it --

9 MR. WINKLEY: Twenty.

10 MS. MIDDLETON: Twenty-one. Okay.

11 COMMISSIONER WIGHT: In your case?

12 MS. MIDDLETON: Right. Then we selected the first
13 interview panel which was Molly Jackson who was an Animal
14 Health Technician, and she, Judy and I had worked together
15 for all our career. She'd been there six months prior to us
16 coming. Sheila Pendleton who was also a former employee of
17 Multnomah County. She was a part-time employee who was
18 currently Judy's boss. And then John Burwell, who is with
19 Multnomah Cable Television. He is the government program
20 producer. And I worked with him on a program called Hudson
21 People.

22 Then we selected a second interview panel which is
23 made up of -- which would have been the hiring panel. It
24 was Michael Matthew --

25 COMMISSIONER WIGHT: What was the purpose of the

1 first interview panel?

2 MS. MIDDLETON: To go through the first selection, to
3 weed down from the 18 to the top five.

4 COMMISSIONER PRICE: Did they do it by contacting
5 these people, or was it just a matter of looking at
6 applications and --

7 MS. MIDDLETON: No, they actually went through an
8 interview process.

9 COMMISSIONER WIGHT: Okay, but it's not just getting
10 the top five. It's ranking all 18?

11 MS. MIDDLETON: It's ranking them, right.

12 MR. WINKLEY: I think the confusion here is she is
13 discussing the interview process that was conducted by the
14 personnel office.

15 MS. MIDDLETON: They did that.

16 COMMISSIONER FLOYD: The hiring panel?

17 MS. MIDDLETON: No, that's not the hiring panel.
18 That's --

19 COMMISSIONER WIGHT: No, that's not the hiring panel
20 yet.

21 MS. MIDDLETON: This is just the first step. And
22 then they did their physical agility which is the
23 performance. And I participated in that, and my rating in
24 that was watching the person take an animal from a cage.
25 They could select from five different animals and put the

1 dog into a truck cage. Because what we were looking for was
2 good body mechanics because we wanted to make sure we have a
3 healthy candidate.

4 And then after that process, in between, I asked
5 Michael Matthew, who's an Animal Care technician, Nora
6 Stevens, who's an office assistant, if they'd be willing to
7 sit with me on the hiring interviews, and they said they
8 were.

9 COMMISSIONER FLOYD: These are not supervisors?

10 MS. MIDDLETON: No, they're not supervisors. They
11 would be co-workers of the person who was hired.

12 And then when we -- while this -- all this was going
13 on, Michael and Nora and I, we went through the questions
14 and qualifications of the Animal Control and Animal Health
15 Technicians would have liked to have seen, and we put
16 together the questions. And at that time we decided -- we
17 selected six questions and one observation exercise, and we
18 decided to rate each of those areas five points, being five
19 points, the maximum total being a 40 for a perfect
20 performance.

21 After that, I received a list of candidates, and I
22 contacted each one by phone and scheduled the interviews.

23 COMMISSIONER FLOYD: Let me make sure I understand
24 where we are. The list of candidates came from -- for
25 example, this list for Judith May happens to be on top?

1 MS. MIDDLETON: Right.

2 COMMISSIONER FLOYD: So now this was a hiring panel
3 that dealt with all these people --

4 MR. WINKLEY: No, they dealt with five --

5 MS. MIDDLETON: No, we only dealt with five. They
6 went to --

7 COMMISSIONER FLOYD: They went -- Timothy Alderman
8 wasn't interviewed --

9 MS. MIDDLETON: No.

10 COMMISSIONER FLOYD: -- but Sherry Anderson was.

11 MS. MIDDLETON: No, the -- when I got the list of the
12 top five I called them and I scheduled an appointment for an
13 interview, and then a couple days before that I called and
14 reconfirmed. And then on the actual interview date which
15 was January 7th, I saw these five candidates, Judith May,
16 Peter Krengel, Greg Haggert, Steve Dunnell and Sherry
17 Anderson. Of that -- of those five, I've known -- I knew
18 three people on that panel.

19 I then went on to explain to each of the candidates--

20 COMMISSIONER WIGHT: Is that because three of them
21 had been animal --

22 MS. MIDDLETON: Because of the years I've been in the
23 business you get to know people. Out of the whole -- of all
24 the people that applied I knew 15 of them.

25 COMMISSIONER WIGHT: Okay. But had they worked with

1 you before?

2 MS. MIDDLETON: No, they haven't worked with me, but
3 I knew them from different agencies.

4 COMMISSIONER WIGHT: So Judith May was the only one
5 that had worked with you before?

6 MS. MIDDLETON: And Sherry Anderson. Sherry, at the
7 time, was currently employed as a temporary employee. I
8 then went on, when the actual hire date -- or when they were
9 coming in for their interview -- we did the introduction of
10 the panel members, and then I told them that the interview
11 process would take approximately one hour, and I broke it
12 down with 30 minutes with the panel interview with the
13 questions, five to ten-minute talk with me which is an "add
14 anything you want" time, and then we'd give them 10 minutes
15 to prepare for a mock adoption interview, and then five to
16 ten minutes to do the actual interview, which was
17 videotaped.

18 And we had decided prior -- Nora, Michael and I had
19 decided prior to that that we were only going to review the
20 videotape if there was such a close difference between the
21 two candidates that we would need something to sort of break
22 the tie.

23 After we went through all of that, we supplied the
24 candidates with filled-out adoption application; we supplied
25 them with the Multnomah County Animal Control Adoption

1 Procedure. We gave them ten minutes to review the
2 procedure. And then they went into the actual interview.
3 And Michael, Nora and I sat in and observed Jolene
4 Brockmueller, who was the operations supervisor, play the
5 part of the adoptee, the difficult client, and Larry Crabb,
6 who we needed his assistance during the video camera, he
7 came in and helped.

8 We also asked them, prior to the beginning of the
9 interview, if they had any objections to anyone sitting on
10 the panel and that if they did, we would dismiss that
11 person; it wouldn't be detrimental to them. They had the
12 right to do that.

13 And then we also asked them if they had any questions
14 before we started. And most of them said no, and so we
15 proceeded into our interview. We also did advise them that
16 we would be taking some notes during the interview.

17 At the end of the first segment, I met with each
18 candidate between five and ten minutes and asked them if
19 they had anything that they wanted to add now.

20 Now, the question that I asked Judy about Dave
21 Flagler, I did ask her that, but I asked her that in the
22 context of not what I had observed as a supervisor but what
23 I had observed as a co-worker, because occasionally I would
24 hear her make remarks about him, and I needed to make sure
25 that she wouldn't have a problem with him if he became

1 director.

2 I went through an interview training process and was
3 told that I would have -- because I asked the man outright
4 if I could ask that question, and he told me yes. And so
5 that's why I asked that question.

6 COMMISSIONER FLOYD: The man you asked was Mr.
7 Flagler?

8 MS. MIDDLETON: No, no. The man -- I went through a
9 training process on how to conduct an interview. And the
10 reason I did that is because I knew so many people that were
11 applying for the position that I knew that I was going to
12 have to be as objective as possible, that I could not let
13 any personal prejudices or biases enter into it, and so
14 that's the reason that I also decided to have two other
15 people in the interview process was to make sure that my
16 perceptions and that these people were performing during the
17 interview. If they didn't perform they couldn't get the
18 points.

19 Anyway, then, we had our five or ten minutes
20 together, and then we gave the candidates time to prepare
21 for the mock interview, and then we went through that
22 process. During that time, neither Michael nor I discussed
23 rankings or points about any of the candidates.

24 At the end of the day, we all got together. We added
25 up our points. I asked Nora and Michael to tell me their

1 selection and why, and I let them explain all of that, and
2 we were all -- we all made the same selection. [End Tape 1,
3 begin Tape 2, Side A]. And so --

4 COMMISSIONER PRICE: That was Mr. Krengel.

5 MS. MIDDLETON: That was Mr. Krengel. And that was
6 based on his performance during the whole process.

7 What I did -- this was on a Friday. What I did is I
8 asked everyone to think about it over the weekend to make
9 sure that this person really was their selection, to review
10 their notes. We got together again on Monday, and they
11 confirmed that they were comfortable with the selection that
12 they had made. I then went and I proceeded to check the top
13 candidates' references. They were excellent. I discussed
14 the references with the other two panel members. They were
15 happy with it, and they recommended that I hired Peter and
16 that I go to Dave with that decision, and that's what I did.

17 COMMISSIONER FLOYD: The references of the top
18 candidates, were they the top five?

19 MS. MIDDLETON: Out of the top -- yeah, we
20 interviewed the top five.

21 COMMISSIONER WIGHT: But you checked the references
22 of the top five or just the one?

23 MS. MIDDLETON: I checked Peter's -- I checked
24 Peter's reference.

25 COMMISSIONER FLOYD: And he's the only one?

1 MS. MIDDLETON: He's the only one, because he was the
2 unanimous decision of all three of us.

3 COMMISSIONER WIGHT: Did you perceive that there was
4 some animosity or friction between Judith May and Mr.
5 Flagler?

6 MS. MIDDLETON: If I had to say it, it was from one
7 angle. Mr. Flagler has never said anything negative to me
8 at all, nor have I ever heard him say anything negative
9 about Judy May. Judy has not said things directly to me,
10 but in the course of our travels through the building you
11 hear things.

12 COMMISSIONER PRICE: Did you ever hear anything that
13 you said?

14 MS. MIDDLETON: Just --

15 COMMISSIONER PRICE: Or I mean directly.

16 MS. MIDDLETON: Not -- not, you know -- not directly
17 to him, but just, sometimes tone of voice, you know, that
18 sort of thing, you can tell that they're irritated. But I
19 know that she thinks that Dave influenced me on this, and
20 Dave had -- stayed completely out of it. It was the
21 decision of the panel, a unanimous decision of the panel
22 that Peter was best suited, based on the performance and
23 based on his references for the job.

24 COMMISSIONER WIGHT: What I was asking is do you have
25 any perception of any friction between the two, and your

1 answer is only that you overheard some things --

2 MS. MIDDLETON: But I wouldn't -- I just -- I don't
3 pay -- really pay a whole lot of attention to that kind of
4 stuff because people are griping all the time about things.
5 So, not -- I don't think, in all honesty, I don't think that
6 Dave -- if she -- if Dave felt she was the best qualified
7 for the position, I do believe he would have hired her.

8 COMMISSIONER PRICE: Are you talking about for the
9 Animal Care Technician or --

10 MS. MIDDLETON: No, the one for his --

11 COMMISSIONER PRICE: -- the one he was involved with?

12 MS. MIDDLETON: Yes. We also -- I want to say, too,
13 that when I was talking to my staff, what we were looking
14 for is we wanted someone who could perform well during the
15 interview process. We didn't necessarily look at whether
16 they could clean kennels or that sort of thing. They had
17 already gone through that part through the first part of the
18 interview process.

19 We were much more interested in their interpersonal
20 skills.

21 COMMISSIONER WIGHT: When you asked that question,
22 what answer did you get?

23 MS. MIDDLETON: She told me she had no problem. And
24 I was satisfied with that.

25 I also asked the same question of Sherry Anderson

1 because she was a current employee. And the other three
2 people that were interviewed didn't know Dave so I did not
3 ask them that question.

4 COMMISSIONER WIGHT: Any other questions? Do you
5 have any questions?

6 MS. MAY: Yes. Do you still have the videos?

7 MS. MIDDLETON: Mm-hmm.

8 MS. MAY: And the copy of the interviews?

9 MS. MIDDLETON: Mm-hmm.

10 MS. MAY: For officer of Animal Control?

11 MS. MIDDLETON: I have mine.

12 MS. MAY: Is the officer video still available?

13 MR. FLAGLER: It is.

14 MS. MIDDLETON: Mm-hmm. And in the video, I just
15 watched them the other day, and there's no discernible
16 difference between any of them, and the panel members never
17 saw it, so the video were never entered into the final
18 decision. We were satisfied with what we saw during the
19 performance.

20 COMMISSIONER WIGHT: You all observed what went on --

21 COMMISSIONER FLOYD: Right, originally?

22 MS. MIDDLETON: Right. And we --

23 COMMISSIONER FLOYD: And you didn't replay it?

24 MS. MIDDLETON: -- just -- No, we didn't replay it.
25 And I just watched it day before yesterday.

1 MS. MAY: So you're saying there was no difference in
2 the interview?

3 MS. MIDDLETON: Not in the interview style
4 techniques.

5 MS. MAY: Would you say I was interviewed differently
6 by Jolene and the other panel members?

7 MS. MIDDLETON: No.

8 MS. MAY: Were the other panel members interviewed
9 concerning John Dalberg --

10 MS. MIDDLETON: Mm-hmm.

11 MS. MAY: -- and certain inside jokes that took
12 place?

13 MS. MIDDLETON: There was -- there were remarks made
14 through, yeah.

15 MS. MAY: Remarks that they would (indiscernible) and
16 they would respond to?

17 MS. MIDDLETON: Right. And the interview was a very
18 laid-back type thing. And she -- she performed very well.
19 She got all five points for that. When I looked -- when we
20 looked at them, there just wasn't anything different between
21 her and the top candidate.

22 COMMISSIONER PRICE: What was the -- I guess you can
23 only speak for yourself, but what was the element that you
24 were involved in in this hiring interview that made you
25 decide that Mr. Krengel was the candidate that you wanted to

1 hire?

2 MS. MIDDLETON: His interpersonal skills and problem
3 solving. We asked some questions about to describe a co-
4 worker situation, if you had a co-worker, a conflict
5 situation that you had with a supervisor. And he went into
6 great length in great detail of [tape interruption]. I
7 called for his references. I asked his supervisor if he
8 could describe a conflict situation that he had with a co-
9 worker and a conflict situation that he may have had with
10 him, and he essentially bore out everything that the
11 candidate told us. And we were very satisfied with him.

12 COMMISSIONER PRICE: Were the other two panel
13 members, were they involved in this conversation with the
14 references?

15 MS. MIDDLETON: No, they weren't. But what I did is
16 I took some notes, and then I went back to them and talked
17 to them about it and said, "This is what I asked. This is
18 what they said."

19 COMMISSIONER WIGHT: Any additional questions? Mr.
20 Flagler?

21 Sharyn, you might want to scoot back a little so we
22 can see his face or switch places.

23 MS. MAY: I had one for Sharyn.

24 COMMISSIONER WIGHT: Oh, okay.

25 MS. MAY: Sharyn, in the 12 years that I worked with

1 you, I understand that there were (indiscernible) problems
2 or conflict situations that I dealt with. Do you have a
3 problem with how I dealt with any of the problem or conflict
4 situations?

5 MS. MIDDLETON: I think you have to be more specific
6 in terms of conflict --

7 MS. MAY: We're talking in time of 12 years of
8 interacting together and you seeing me deal with the public
9 and you seeing me --

10 MS. MIDDLETON: In all honesty? You're asking me
11 that now?

12 MS. MAY: Mm-hmm.

13 MS. MIDDLETON: Yeah, I do -- I would with some of
14 them.

15 MS. MAY: Which ones?

16 MS. MIDDLETON: Well, the one that you -- you did
17 with Tom and the dog. You know, there's a lot -- there's a
18 lot of history here, 13 years, of people going by. I can
19 only base this decision on here for this interview and what
20 you told me in the interview.

21 MS. MAY: What you're saying --

22 MS. MIDDLETON: And what you told me in the interview
23 was that you decided it wasn't worth it to you and you
24 walked away.

25 MS. MAY: Excuse me?

1 MS. MIDDLETON: I asked you to describe an
2 incident -- a conflict that you had with a co-worker, and --

3 MS. MAY: And I said --

4 MS. MIDDLETON: -- and you started to -- you
5 explained what the conflict was, and I said, "How did you
6 resolve it?" And you said, "I decided that it wasn't worth
7 it, and I walked away."

8 MS. MAY: I would question that, but --

9 MS. MIDDLETON: Well, that's what I have in my notes.

10 MS. MAY: I would question that. But needless to
11 say, over the 12 years you're saying that --

12 MS. MIDDLETON: I'm saying there are some situations,
13 and I could say that true -- situations I've observed with
14 Madeline, situations I've observed even with myself, that I
15 think should have been handled differently.

16 MS. MAY: And you think that history and the fact
17 that (indiscernible)?

18 MS. MIDDLETON: No. My decision and my scoring was
19 based strictly on the performance of that interview. I
20 really tried very hard, because of all the people that I
21 knew that were going through this, to not let any personal
22 knowledge or prejudices interfere at all. If you did not
23 give the answer, you did not get the points. That would be
24 the only fair way that I felt I could be participatory in
25 this is to take that statement.

1 COMMISSIONER WIGHT: Okay, I think you've answered
2 the question. We need to --

3 MS. MIDDLETON: Move on.

4 COMMISSIONER WIGHT: -- move along here. Mr.
5 Flaggart. Flagler. Sorry.

6 MR. FLAGLER: At the --

7 COMMISSIONER WIGHT: Your first name is?

8 MR. FLAGLER: My first name is Dave. Dave Flagler.
9 And at the time of the interviews I was the chief field
10 supervisor and the interim director.

11 The personnel office provided me a list of five
12 applicants that met the minimum requirements for the
13 position. I mailed a -- upon receiving that I mailed a
14 letter to the five applicants explaining that the remainder
15 of the process would determine their fitness for the
16 position and explained that we were looking for a person
17 with interpersonal skills, for working with citizens, co-
18 workers, supervisors. The letter explains some of the
19 agency's philosophy in the area of Animal Control
20 enforcement, and the applicant was then asked to consider
21 their fitness in the agency and to write an essay as to how
22 they felt that they would be a good fit for our agency.

23 And then several weeks later, we conducted the
24 practical examination. Now, the practical examination
25 consisted of three parts. The first --

1 COMMISSIONER WIGHT: First of all, you're talking
2 about the hiring?

3 MR. FLAGLER: The hiring, that's correct. The hiring
4 interview that consisted of three parts. The first part was
5 they would provide -- I'm sorry?

6 COMMISSIONER WIGHT: (Indiscernible) the essay?

7 MR. FLAGLER: No, this is actually the day of the
8 hiring --

9 COMMISSIONER WIGHT: You'd received this essay before
10 that?

11 MR. FLAGLER: Prior to this day, yes, sir. The first
12 half hour of the hiring interview was a half hour training
13 that was provided to each applicant so that they would be
14 prepared for the practical that occurred on the week
15 following. And then the second half hour involved a role-
16 playing exercise, and we had a panel of three people that
17 monitored that. We had one person as a role-playing dog-
18 owner, and this is the portion that was videotaped.

19 And then upon completion of the exercise we asked the
20 officer to -- or the applicant to write a report, an
21 incident report of what had occurred during the role-playing
22 exercise. And then following that we had a panel, oral
23 interview.

24 And upon the completion of the day, the panel met
25 together. At that time we were going to determine who we

1 felt was the best candidate for the position. I suspected
2 Ms. May's concern about me being on that panel, but as the
3 hiring manager, I couldn't throw myself out of that, and so
4 I kept my decision quiet while the other panel members
5 voiced their decision and the decision was unanimous among
6 the other two panel members for the person that we selected.

7 COMMISSIONER PRICE: Who were those people?

8 MR. FLAGLER: A field supervisor, Larry Crabb, an
9 Animal Control dispatcher, Tammy Sorensen.

10 Now, to make sure that the -- we included the other
11 field supervisor that we did give the videotape to the field
12 supervisor, to another field supervisor, and asked him to
13 review the videotape solely on his own, and rate the
14 candidates as to the videotape, and then have him come back
15 later and bring them and see how his ranking compared with
16 that of the panel. His ranking was consistent with the
17 panel's decision.

18 COMMISSIONER PRICE: But what about the July time
19 frame where Ms. May came to you about the funded position
20 and requested reinstatement.

21 MR. FLAGLER: I don't remember telling Ms. May that I
22 was not funding that position due to the activities in the
23 field. We were going through another period of budgetary
24 crisis, and I did choose to hold off the hiring of that
25 position until I felt the budget was more stable.

1 COMMISSIONER PRICE: What happened that made you feel
2 the budget was more stable?

3 MR. FLAGLER: Just prior to this time, our agency was
4 preparing for to be reduced to the number of nine employees.

5 COMMISSIONER PRICE: What Mr. Winkley referred to?

6 MR. FLAGLER: That's correct. And during that time,
7 of course, our budget was approved; the crisis was over; we
8 then received our funding.

9 COMMISSIONER PRICE: When was that?

10 MR. FLAGLER: The budget year goes from July to July.

11 COMMISSIONER PRICE: So by July 1 you knew you were
12 funded?

13 MR. FLAGLER: I believe so.

14 COMMISSIONER WIGHT: The budget is usually adopted
15 before that, though; it's done in the spring, right?

16 MR. WINKLEY: The budget's not adopted until July.

17 COMMISSIONER WIGHT: Well, that's when it goes into
18 effect. But the County Commissioners actually --

19 COMMISSIONER FLOYD: Vote on it.

20 COMMISSIONER WIGHT: -- vote on it in May and June,
21 don't they?

22 COMMISSIONER FLOYD: They can always change their
23 mind somewhere in the --

24 MR. FLAGLER: Yeah --

25 COMMISSIONER FLOYD: There's a lot of --

1 MR. WINKLEY: For the record, we'd like to indicate
2 though that we don't consider the July as entirely a
3 separate issue that's something that really would impact the
4 hiring decision.

5 MR. FLAGLER: It's a question of (indiscernible).

6 COMMISSIONER WIGHT: Well, I see it as evidence of
7 the other issue, not a question of whether we're making a
8 decision on the reinstatement issue, but just evidence as to
9 whether or not there was any bias at all.

10 COMMISSIONER PRICE: Yeah. So by July 1st you would
11 have known whether you were budgeted or not?

12 MR. FLAGLER: I believe so.

13 COMMISSIONER PRICE: And did you speak with Ms. May
14 before or after -- I know there's some difference in your
15 recollection about what the conversation was, but in the
16 time frame that you spoke to Ms. May about her
17 reinstatement, was that after July 1st?

18 MR. FLAGLER: I don't recall when we had that
19 conversation.

20 COMMISSIONER WIGHT: But your recollection was it was
21 just a budgetary issue and not an issue about the quantity
22 of work?

23 MR. FLAGLER: That's correct.

24 COMMISSIONER PRICE: How do you feel about Ms. May as
25 an employee?

1 MR. FLAGLER: I -- as a -- as an officer, I believe
2 Ms. May is capable of doing an adequate job.

3 COMMISSIONER PRICE: And what was the deciding factor
4 on the decision to hire -- I'm sorry, I don't have the
5 name --

6 COMMISSIONER WIGHT: Vicki Havlik.

7 COMMISSIONER PRICE: Vicki Havlik, yeah. What was
8 the -- I asked the same thing before, what was the thing
9 that made you decide that that was who should be given the
10 position?

11 MR. FLAGLER: Ms. Havlik was a very personal
12 individual; that she handled herself very well, very bright,
13 sharp. She -- just her interpersonal skills during this
14 process impressed myself and the other panel members.

15 COMMISSIONER WIGHT: In your prior work with Ms. May
16 did the two of you have some friction develop in your
17 relationship?

18 MR. FLAGLER: Ms. May had difficulty accepting me as
19 her supervisor, and she would frequently take matters
20 directly to my boss. Because of the nature of her position
21 as the union steward, I felt, you know -- I was not
22 threatened by that. I think that any issue within the
23 agency must be dealt with. So whether it's being dealt --
24 if she felt more comfortable with my boss which was Mike
25 Oswald at the time, then as long as he was resolving it to

1 her satisfaction, I had no problem.

2 COMMISSIONER WIGHT: But was there some friction
3 between the two of you?

4 MR. FLAGLER: We had some -- a little friction, yes.
5 It wasn't as to her role as shop steward. I believe that
6 she may have competed for the same position that I was hired
7 for, and she may have had difficulty accepting me because I
8 was hired and she was not.

9 COMMISSIONER FLOYD: Okay, I'm trying to separate her
10 role as shop steward.

11 MR. FLAGLER: Okay.

12 COMMISSIONER FLOYD: Did you have any friction with
13 her that was outside her role of shop steward?

14 MR. FLAGLER: Okay, you're referring to her role as
15 an officer then?

16 COMMISSIONER FLOYD: Right.

17 MR. FLAGLER: There was a layer of supervision
18 between me and Ms. May, and so most issues were dealt by the
19 field supervisors, and so I rarely had contact with her.

20 COMMISSIONER FLOYD: Unless she was in her role as
21 the union --

22 MR. FLAGLER: Generally, her role as a union steward
23 was taken to my boss, Mike Oswald.

24 COMMISSIONER WIGHT: But you have indicated there was
25 some friction there, and that was in the role, then, as her

1 role as shop steward, then; is that right?

2 MR. FLAGLER: Quite possibly. I mean, I would have
3 preferred that she be able to resolve the issues with me,
4 since I was in charge of the field. But I did not object to
5 her going to my boss to resolve the issues.

6 COMMISSIONER PRICE: Well, did she do anything
7 outside the contract in order -- in other words, not only is
8 there a set procedure for a grievance or a problem. First
9 you talk to the first field supervisor and then maybe the
10 second and the third. Did she violate any of those
11 contractual provisions --

12 MR. FLAGLER: Well --

13 COMMISSIONER PRICE: -- that you made you feel it was
14 inappropriate?

15 MR. FLAGLER: -- she generally would go straight to
16 my boss without talking to me first.

17 COMMISSIONER PRICE: Without talking to you first.

18 MR. FLAGLER: However, again, I had no problem with
19 that, because the main thing is to resolve conflict, and if
20 she could -- she felt it was difficult dealing with me, at
21 least she had someone in the agency she could talk to.

22 COMMISSIONER WIGHT: Did you write or review her
23 performance evaluations?

24 MR. FLAGLER: I -- I don't remember. Did I do a
25 performance evaluation?

1 MS. MAY: You never did a performance evaluation, no.

2 COMMISSIONER WIGHT: A minute ago when you said her
3 performance of Animal Control Officer would have been
4 adequate, in fact -- how did that compare to other Animal
5 Control officers? Where do you think she falls in this?

6 MR. FLAGLER: Ms. May is correct in that I was taking
7 the field operations into a new direction; that I wanted the
8 officers to have a gentler approach in dealing with
9 citizens. Some of the officers joked that it was a kinder,
10 gentler approach. And some of the officers adapted to that
11 readily, and others had some difficulties, and I think Ms.
12 May had some difficulties in the directions I was taking the
13 field in in the enforcement activities.

14 COMMISSIONER WIGHT: So you would -- if you're going
15 to put her in the top half or the bottom half or the top
16 third, where --

17 MR. FLAGLER: As far as her dealing with citizens in
18 her role as an officer?

19 COMMISSIONER WIGHT: Yeah, in total -- her total role
20 as an officer?

21 MR. FLAGLER: She -- it's difficult to place that
22 because she was a very -- her time in the position, she was
23 an experienced officer. And so in some areas, she would
24 excel over that of a new officer. However, the new officer
25 may be -- they treat the public in a manner that I would

1 prefer over that that she did. And so I would say I would
2 have placed her midway.

3 COMMISSIONER WIGHT: Okay.

4 MR. FLAGLER: Not as an excellent officer but not as
5 a terribly bad officer.

6 COMMISSIONER WIGHT: Do you recall the conversation
7 that Madeline -- and I can't pronounce your last name --

8 MS. DAVALOS: Davalos.

9 COMMISSIONER WIGHT: -- testified to where she asked
10 you about --

11 MR. FLAGLER: Yeah, I don't recall the conversation
12 nor the context of the conversation.

13 COMMISSIONER WIGHT: And the selection decision was
14 made when and --

15 MR. FLAGLER: Well, the actual decision was made the
16 same day. That was January 7th?

17 MS. MIDDLETON: Mm-hmm.

18 MR. FLAGLER: By the panel members.

19 COMMISSIONER WIGHT: And Mrs. Havlik's been hired,
20 and she's in that position?

21 MR. FLAGLER: That is correct.

22 COMMISSIONER WIGHT: And are you anticipating any
23 additional vacancies?

24 MR. FLAGLER: Not at this time.

25 COMMISSIONER FLOYD: Are you funded for any

1 additional vacancies? I mean, do you have every position
2 filled that you are funded for?

3 MR. FLAGLER: We have every position filled --

4 COMMISSIONER FLOYD: That you are funded for?

5 MR. FLAGLER: -- that we are funded for.

6 COMMISSIONER FLOYD: For this fiscal year?

7 MR. FLAGLER: For this fiscal year; that is correct.
8 The way Animal Control is treated in the budgetary process,
9 it's not likely that they will fund for additional
10 positions.

11 COMMISSIONER PRICE: I have a question for Madeline.
12 The conversation that you referred to with Mr. Flagler, do
13 you recall if that was before or after the hiring date, the
14 January 7th date of '94?

15 MS. DAVALOS: It was before. It was right before
16 they had the taping of the interviews that they had.

17 COMMISSIONER PRICE: Okay.

18 COMMISSIONER WIGHT: Other than the budgetary reason
19 that you testified to, is there any other reason to not go
20 through the reinstatement process and go through the vacancy
21 notice and hiring process?

22 MR. FLAGLER: You mean as going through the hiring
23 process --

24 COMMISSIONER WIGHT: Right.

25 MR. FLAGLER: -- other than hiring Ms. May back?

1 COMMISSIONER WIGHT: Right.

2 MR. FLAGLER: No, I don't think so.

3 COMMISSIONER WIGHT: Do you have any questions?

4 MS. MAY: Mm-hmm. Did you ever discuss --obviously
5 you had to defer to me as we had an evaluation which we did
6 in July -- did you ever discuss with me what your rules and
7 procedures and your changes were that you wanted to take
8 place?

9 MR. FLAGLER: Most of the discussions that I had as
10 far as changes were either done in field meetings or were
11 directed to the supervisors who then directed the activity
12 of the field officers.

13 MS. MAY: And wasn't my comment at those meetings
14 that if you wished to make those type of changes, in order
15 to do so without conflict with the policies and procedures
16 that were in place that you needed to first change those
17 policies and procedures. It wasn't the changes that was a
18 problem; it was the fact that you were getting the cart
19 before the horse? That was pretty much the gist of our
20 conversations in most cases, correct?

21 MR. FLAGLER: I think that trying to keep up with
22 policies and procedures was a continuing problem. Any of
23 the changes that we implemented were made in the form of
24 memos.

25 MS. MAY: But isn't that the guidelines that you used

1 to discipline, correct, guide, check, evaluate the
2 employees?

3 MR. FLAGLER: I don't recall that we disciplined
4 anyone over the memos.

5 MS. MAY: I'm not talking about the memos. I'm --

6 MR. FLAGLER: I guess I fail to follow where you're
7 taking this.

8 MS. MAY: When you wanted to initiate changes in the
9 way things were dealt with in the field, and I suggested at
10 several of the meetings that what you needed to do was to
11 first change the already policies and procedures that the
12 staff was trained under, was judged by, was evaluated by,
13 before you made those changes. There's a simple process of
14 changing the policies and procedures --

15 MR. FLAGLER: Okay, I understand what you're -- A
16 lot of the changes that I was attempting to implement were
17 one of the way officers treated people which were really not
18 covered, frankly, in policies and procedures. It's more of
19 the interpersonal skills that an officer has in dealing with
20 people.

21 MS. MAY: Well, one of the big issues, officer
22 discretion, which was a policy and procedure; issuing
23 citations, which was a policy and procedure; when to, when
24 not to, the guidelines in place. And wasn't that your
25 biggest problem where you were bucking heads with people

1 that I had to represent?

2 MR. FLAGLER: I don't recall the grievances that you
3 represented in this matter.

4 MS. MAY: Well, I guess --

5 COMMISSIONER WIGHT: Well, I'm not --

6 COMMISSIONER FLOYD: I'm not sure this is pertinent.

7 COMMISSIONER WIGHT: -- sure this is going to help us
8 any. Let me say one thing. We've been going two hours
9 here. Does anybody need a break or should we try and push
10 on with this? Okay. Does anybody out here need to pause?
11 Okay.

12 Is there any way that you can pinpoint for us the
13 time when this reinstatement issue came up?

14 MS. MAY: I can --

15 COMMISSIONER WIGHT: I'm asking him.

16 MR. FLAGLER: I honestly was not tracking it that
17 close. I have no objections with the times and dates that
18 Ms. May presents.

19 COMMISSIONER WIGHT: And my understanding is that was
20 sometime in July of '93; is that correct, by your
21 calculations?

22 MS. MAY: On July 1st a memo went out from Animal
23 Control of which I have a lot of social contact with still,
24 that the budget had been (indiscernible) --

25 COMMISSIONER WIGHT: Wait a minute. I just want to

1 find out about your contact with Mr. Flagler.

2 MS. MAY: That's what I'm getting to.

3 COMMISSIONER WIGHT: Okay.

4 MS. MAY: On July 1st I came in and talked to Mike
5 Oswald about it. Dave Flagler was not in that day.

6 COMMISSIONER PRICE: Mr. Oswald was Mr. Flagler's
7 boss at that time?

8 MS. MAY: That's right. He was the director. He was
9 the top supervisor that would be addressing that situation
10 on that day, and Mr. Flagler was not in. He suggested that
11 I get back to Mr. Oswald -- er, Mr. Flagler on this. I did
12 send a letter to Don, to Ken Upton, to Dave, to Betsy
13 Williams, indicating I did wish to be reinstated, and that
14 letter was received by them on July -- I could look it up.

15 COMMISSIONER FLOYD: Do you have a copyphoto with
16 you?

17 MS. MAY: Yes, I do someplace.

18 MR. WINKLEY: The closedown for the year was July
19 7th.

20 MS. MAY: Correct.

21 COMMISSIONER WIGHT: What does that mean?

22 COMMISSIONER PRICE: The new budget didn't start till
23 the 8th?

24 MR. WINKLEY: No, no, the reinstatement period would
25 have had to have ended on --

1 MS. MAY: On the 7th.

2 COMMISSIONER PRICE: Did you say you -- what was the
3 day you sent the letter?

4 MS. MAY: I think it was -- just a second, let me
5 (indiscernible). I made verbal contact on July 1. That was
6 the day that -- that's the day that Mike Oswald was notified
7 that they were totally funded.

8 COMMISSIONER FLOYD: While you're looking for that, I
9 have a question for Mr. Flagler. And actually, Mr. Winkler
10 and Ms. -- I'm sorry, Ms. Middleton.

11 A lot of what I've heard here today talks about
12 interpersonal skills, the changes that you've referred to
13 that you were trying to make really sound like interpersonal
14 skills type issues as opposed to more concrete cut-and-dried
15 process.

16 MR. FLAGLER: That's correct.

17 COMMISSIONER FLOYD: When you both of you talked
18 about the decisions that were made to hire whomever it was
19 you hired, the interpersonal skills seemed to have made a
20 huge -- or a deciding factor in that. So I guess my
21 question is, number one, Mr. Flagler, when you're trying to
22 change the behavior of employees, to change the way they
23 interact with your clients which, in this case, would be the
24 public, what training do you provide them?

25 MR. FLAGLER: We --

1 COMMISSIONER FLOYD: Other than say "be nice."

2 MR. FLAGLER: Hopefully a person is hired with those
3 skills. It is very difficult to train a person to accept
4 those skills. We just sent our -- our entire staff through
5 team building just a week or two ago in hopes that they
6 would be able to develop those skills, so training is
7 provided. However, we hope to be able to hire people who
8 already have those skills.

9 COMMISSIONER FLOYD: And I guess I'd asked Mr.
10 Winkler.

11 MR. WINKLEY: Winkley.

12 COMMISSIONER FLOYD: Winkley, I'm sorry. In looking
13 at the job posting for Animal Care Technician, and the one
14 for -- let me double check this one because I haven't read
15 it for a while -- Animal Care Officer, on the technician one
16 I don't see where interpersonal skills are really an issue
17 other than you have to assist the public in receiving and
18 releasing and adoption.

19 I do see somewhat in control officer there's some
20 things that could be interpreted as interpersonal skills.
21 But I don't see anything that says specifically what kind of
22 skills you would want. Because apparently interpersonal
23 skills seems to be the sort of thing that sort of tips hired
24 candidates over the edge. I'd be interested to know why it
25 isn't more specifically addressed in the posting?

1 MR. WINKLEY: Well, basically, you can only get so
2 much on, you know, in terms of any kind of bulletin, so the
3 bulletins are basically giving the applicants an idea of the
4 basic position and the qualifications, at least on the
5 minimum basis, that a person needs. Obviously, there are
6 descriptions of the skills and abilities in each position.

7 So it's really a matter of once the lists are
8 developed that the hiring managers have five people to
9 select from. Based upon any criteria that they wish to
10 determine as being important to the department, this mission
11 and goals is how they can arrive at their selection.

12 COMMISSIONER FLOYD: Does the job description talk
13 about interpersonal skills? The actual job description?

14 MR. WINKLEY: I don't have that in front of me, but I
15 think there's some issues in there dealing with -- you know,
16 dealing with the public and those types of things in both of
17 these.

18 COMMISSIONER PRICE: What kind of training would you
19 normally give either a control officer or technician that
20 was a new hire on how to do their job?

21 MR. WINKLEY: Well, basically we're really talking
22 about the qualifications of a person being hired which we've
23 had our discussions on.

24 COMMISSIONER PRICE: Right.

25 MR. WINKLEY: Once they're on board --

1 COMMISSIONER PRICE: Right.

2 MR. WINKLEY: -- there is a series of training given
3 to officers and technicians -- we mentioned team building --
4 but there are other things they are sent to in the course of
5 dealing with their positions, learning their procedures and
6 policies, and things like that. So there are other training
7 that goes on.

8 COMMISSIONER PRICE: Do you have any training in
9 dealing with difficult people or things like that?

10 MR. FLAGLER: During the training process that we
11 provide formal training within the shelter. Some training
12 is so critical to me that I'll provide myself. That is the
13 portion of the training on ethics. We have some officers
14 that have expertise in areas. One of our field supervisors
15 is a BPST-certified instructor in horse cruelty, so that
16 supervisor will conduct those classes.

17 We then attempt to team the officer up with officers
18 that excel in certain areas and ask them to, then, coach --
19 ask the old officer to coach the new officer into those
20 specific areas so they can learn from the example of the
21 officer while out in the field.

22 COMMISSIONER WIGHT: Did you find that letter?

23 MS. MAY: I did.

24 COMMISSIONER WIGHT: And it's marked received July
25 9th down here. So you got a copy out of their file? Is

1 that it?

2 MS. MAY: Yes.

3 COMMISSIONER WIGHT: Would that indicate, then, that
4 you didn't deliver it on the day --

5 MS. MAY: It was mailed. Some of them were hand
6 delivered -- the one to Mike Oswald, to Dave Flagler, were
7 hand delivered. The rest were mailed. And they were mailed
8 at --

9 COMMISSIONER WIGHT: Delivered to them personally?

10 MS. MAY: Yes.

11 COMMISSIONER PRICE: And it's just a copy of this
12 letter?

13 MS. MAY: That's correct.

14 COMMISSIONER PRICE: Okay.

15 MS. MAY: And the others were mailed after the
16 conversation on about the 5th with him that the numbers
17 didn't (indiscernible).

18 COMMISSIONER WIGHT: My sense right now is that
19 there's some concern about this issue among the members of
20 the board here. Quite frankly, I was interested in getting
21 -- in seeing this letter. I would also be interested in
22 getting some more information about the budget process and
23 when the budget was adopted. And I know that sometimes the
24 various portions of the budget are kind of finalized before
25 the actual approval of the budget. So I would be interested
26 in getting some information on that. And I would also like

1 to look at these job descriptions. I don't know if they
2 were available, but what I'm thinking is it's getting a
3 little late now, and I'm wondering how the rest of the panel
4 feels about this, whether they want to try and get a
5 decision tonight or even put this off until our next meeting
6 and get this additional information, and try and finish it
7 up then.

8 COMMISSIONER PRICE: Yeah, I would like to see the job
9 description.

10 COMMISSIONER FLOYD: Yeah, I would too.

11 I'd also like some sort of -- and maybe you'll have
12 this if it's available -- what are your normal training
13 procedures. And I don't need a long detail, just briefly.
14 Is it six months, is it two months, is it two weeks? And
15 what sort of things you train people in. A list would do.

16 MR. FLAGLER: Okay, we do have a training list.
17 However, the actual length of time will vary from employee
18 to employee.

19 COMMISSIONER FLOYD: Okay.

20 COMMISSIONER WIGHT: Could we get, maybe, somebody
21 from the budget office or something to tell us what the
22 timing was and (indiscernible) --

23 MR. FLAGLER: For last year.

24 MS. MAY: Could I ask Mike Oswald be here at the next
25 -- he's the one --

26 COMMISSIONER WIGHT: Is he still a county employee?

1 MS. MAY: Yes, sir, he is. He's assistant director
2 of DES.

3 COMMISSIONER WIGHT: And what's the purpose of having
4 him?

5 MS. MAY: He's the one that can confirm I had the
6 talk that, yes, they were totally funded as of July 1st.

7 COMMISSIONER WIGHT: Yeah, I think that would be --

8 COMMISSIONER PRICE: I think that's appropriate.

9 MR. WINKLEY: Is there any -- just in this line of
10 direction, though, I think we have vacancies that go on for
11 quite a long time, and the budget's not necessarily the
12 issue in filling them. It really depends on when the
13 department feels that they can go ahead and make that
14 decision.

2/12/91

COMMISSIONER WIGHT: I understand, but the budget

1 MS. MAY: Yes, sir, he is. He's assistant director
2 of DES.

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10 direction, though, I think we have vacancies that go on for
11 quite a long time, and the budget's not necessarily the
12 issue in filling them. It really depends on when the
13 department feels that they can go ahead and make that
14 decision.

15 COMMISSIONER WIGHT: I understand, but the budget
16 issue was the reason that was talked about here, so that's
17 why I think we're looking at that.

18 COMMISSIONER PRICE: The other thing I'd be
19 interested to see is just what your calls were like for that
20 summer, like June, July, August, September of '93.

21 COMMISSIONER FLOYD: Yes.

22 MS. MAY: Also I would like to state that there is a
23 vacant position -- a chief field supervisor position that is
24 currently vacant.

25 COMMISSIONER WIGHT: That's a different position than
26 these two?

1 MS. MAY: Right, but there is a budgeted position
2 where monies are available this date.

3 COMMISSIONER PRICE: And maybe when we receive the
4 budget information that would come out.

5 COMMISSIONER WIGHT: Okay. Susan, are you the
6 appropriate person to see about getting someone from the
7 budget office here?

8 MS. AYERS: I don't think so, but I'm open to
9 discussion about that.

10 MS. MAY: (indiscernible) voted on by the council?

11 COMMISSIONER WIGHT: There is, but often there's a
12 process that it goes through and, you know, at least my
13 experience is, you know --

14 MS. AYERS: There's usually lots of meetings before
15 the final vote.

16 COMMISSIONER WIGHT: Yeah, and all -- there's always
17 a chance of change before the final vote, but I'd be curious
18 to just know what the county budget process was, when it
19 started, when it ended, and when the animal control budget
20 was sort of dealt with.

21 MR. FLAGLER: Since Mr. Oswald is going to be asked
22 to attend anyway, he prepared the budget for that time
23 frame --

24 COMMISSIONER PRICE: That would be best.

25 MR. FLAGLER: -- maybe he could provide that
26 information.

1 COMMISSIONER WIGHT: Okay. Shall we take it up at
2 our next scheduled meeting on the 12th then?

3 MS. MAY: I would like a copy of all this, because I
4 need to refer back to it for my rebuttal because some of it
5 is going to be down the road. My memory does lapse
6 somewhat, so I would like a copy.

7 MS. AYERS: Okay.

8 COMMISSIONER WIGHT: Shall we be adjourned then until
9 the 12th?

10 MS. MAY: Can I make sure that that's provided for me
11 within time (indiscernible) before the next?

12 COMMISSIONER PRICE: By April 1st, would that be --

13 MS. AYERS: You can have it within a day or two --

14 COMMISSIONER WIGHT: Susan, I'm giving you the
15 letter. I only have one copy.

16 COMMISSIONER FLOYD: Do you have another copy of this
17 letter?

18 MS. MAY: I think I have the original at home. If
19 you want to keep that, you're more than welcome to do that.

20 COMMISSIONER FLOYD: I just want to make sure there's
21 another.

22 MS. MAY: I believe there is.

23 MR. FLAGLER: Your next scheduled time is 3:30?

24 COMMISSIONER FLOYD: Right, on the 12th of April.

25 MR. FLAGLER: Can I receive a copy of the letter
26 also?

1 COMMISSIONER PRICE: Sure. This letter?

2 COMMISSIONER FLOYD: You can just give it to me. I
3 probably won't be able to read it all tonight.

4 COMMISSIONER WIGHT: Make lots of copies of the audio
5 tape.

6 MS. AYERS: Okay. No problem.

7 (Proceedings concluded.)

8

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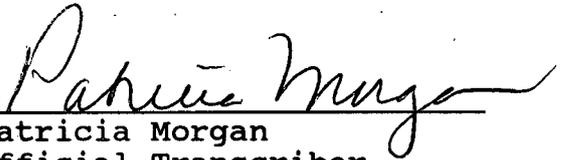
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WITNESS my hand at Oregon City, Oregon this 23rd day of May, 1994.



Patricia Morgan
Official Transcriber

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

April 12, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

D'NORGIA PRICE, Commissioner
JOHN WIGHT, Commissioner

ANNA KANWIT, City Attorney

ALSO PRESENT:

Judith May, Petitioner
Sharyn Middleton, Operations Supervisor
Dave Flagler, Animal Control Manager
Don Winkley, Personnel Analyst

Transcribed from electronic recording by

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1 COMMISSIONER WIGHT: meeting of the Multnomah
2 County Civil Service Council. We have a number of matters
3 on our agenda. We're short one of our commissioners, and we
4 probably have more people -- more items than we can handle
5 today. I need to leave by around 5 o'clock today so that's
6 also going to limit our time.

7 The first thing we have on our agenda is the
8 continuation of Judith May's hearing. Then we have a
9 hearing on the appeal of Kevin Marshall, and then we have a
10 hearing on the appeal of Mary Armstrong. And we will try to
11 take them in that order and move as expeditiously as we can.
12 But those people who aren't here for the Judith May hearing
13 might want to step outside so it doesn't get too hot in here
14 until we can get to the Kevin Marshall and Mary Armstrong
15 matters.

16 I think at the end of the last meeting, the council
17 asked for some additional information on the Judith May
18 matter. Judith, since you're here, do you want to take a
19 position at the table?

20 One of the things we asked for were records of the
21 service calls last summer. Did anyone have a chance to get
22 those and bring those forward?

23 MR. FLAGLER: Yes, sir.

24 COMMISSIONER WIGHT: Are these all the same?

25 MR. FLAGLER: They are.

1 COMMISSIONER WIGHT: Can you tell us what this
2 reflects?

3 MR. FLAGLER: I'd be happy to. Apparently there was
4 a concern as to if the reason that Ms. May was not
5 reinstated in July was due to the service requests. As I
6 stated then, it was actually many factors were involved.
7 This is just one of them. You see three separate graphs.
8 Each graph, as you see in the key, represents a different
9 year.

10 Now, the basic trend that you see is in all previous-
11 years that around June we saw a marked increase in the
12 request for service. However, in 1993, you'll see that we
13 had a flat line from May-June, and it wasn't until actually
14 during the transition between July and August that we saw an
15 increase in the service calls.

16 COMMISSIONER WIGHT: Okay, you've got a number.
17 Let's say the number is 1600, and that's been plotted on the
18 graph for a month. So, taking 1993, as an example, you're
19 saying that there were 1675 calls in the month of May? I
20 guess that would stay the same, so let's take '91. I guess
21 I'm just trying to make sure where the point is.

22 MR. FLAGLER: The point is actually -- the point for
23 June is actually the end of -- the last day of June. So the
24 June figure represents the entire month of June.

25 COMMISSIONER WIGHT: Okay, but, this is a lineal

1 graph here, and this would be the first day of May, and that
2 would be the last day of May and then the first of June. So
3 if you're plotting the total calls for the month of May,
4 say, in 1991, does that appear at the May -- at the
5 beginning of May or does that appear under June? Do you see
6 what I mean?

7 MR. FLAGLER: All of May calls would be from the 1st
8 day of May until the last day of May, which would all be
9 plotted at the May axis.

10 COMMISSIONER WIGHT: At the May axis. Okay. That's
11 what I --.

12 Thank you. I've just been reminded that we should
13 re-swear in our witnesses. Would you state your name, and
14 do you swear to tell the truth and nothing but the truth?

15 ALL WITNESSES SWORN.

16 MR. FLAGLER: I'm Dave Flagler, and yes, I do.

17 MS. MAY: Judith May, yes, I do.

18 COMMISSIONER WIGHT: So this just shows '93, it was
19 plotted. It was higher than it was in '92 for the month of
20 May and June, and then you had an upturn in July?

21 MR. FLAGLER: That's correct. During the -- we
22 hadn't actually -- we didn't see the increase until actually
23 the month of August.

24 COMMISSIONER WIGHT: But that upturn would be
25 expected in the summertime?

1 MR. FLAGLER: We -- that would have been an expected
2 increase.

3 COMMISSIONER WIGHT: Then my recollection of your
4 testimony last time was there had been an actual drop in
5 calls?

6 MR. FLAGLER: No, actually, as I recall, the calls
7 were being fairly consistent where the officers were able to
8 stay on top of them. When I evaluated the calls, I'm not
9 looking at the volume of calls; I'm looking at the officer's
10 ability to handle the calls. And the officers, at that
11 time, were able to stay on top of their calls.

12 COMMISSIONER WIGHT: Do you have any questions? Do
13 you have any comments?

14 MS. MAY: Yes, I do. The scale it shows for '92 is
15 about 150, 200 calls less for all the beginning of '93.
16 They were down one officer. It seems unlikely to me that
17 being down one officer in April, which is before this graph
18 started, through till July, that they were able to stay on
19 top of calls being down one person when the calls were
20 elevated to that extent; they couldn't stay on top --

21 COMMISSIONER WIGHT: How many officers are there?

22 MS. MAY: I believe there's 11 counting field staff.
23 So actually in the field officers, I believe there's eight,
24 (indiscernible) seven.

25 COMMISSIONER WIGHT: Is that correct? How many --

1 MR. FLAGLER: At the time Ms. May requested
2 reinstatement we were down just one position, and so we had
3 10 officers at that time.

4 COMMISSIONER WIGHT: And were all those in the field?

5 MR. FLAGLER: Generally. Yeah, during the summer
6 months, officers are taking vacations, so I cannot honestly
7 say they were all in the field. I'm sure we had a few on
8 vacation.

9 MS. MAY: There was one working as administrative
10 (indiscernible).

11 MR. FLAGLER: And as I stated, this was only one of
12 the things that we considered; that there were other issues
13 that went on at this time. This commission had asked to
14 bring Mike Oswald in to explain where the budget was at that
15 time.

16 COMMISSIONER WIGHT: Yes, and is he here?

17 MR. FLAGLER: He is here.

18 COMMISSIONER WIGHT: Mr. Oswald, do you care to be
19 sworn?

20 MIKE OSWALD,
21 having been first duly sworn, testified as follows:

22 COMMISSIONER WIGHT: Before we pass on, are there any
23 more questions or comments about?

24 MS. MAY: No, just that it was accelerated above and
25 beyond the year prior even before the upswing for summer,

1 but that was an extremely wet summer, and that would
2 validate why the upswing wasn't until later in the year.

3 COMMISSIONER WIGHT: There was some question about
4 what the budget process with the county is and when the
5 County Commission actually -- I know the budget doesn't go
6 into effect until July 1, but I don't -- the budget process
7 starts much earlier in the year, and maybe you can tell us
8 what the process was last year.

9 MR. OSWALD: Do you want me to do that from here?

10 COMMISSIONER WIGHT: It probably would be easier. As
11 long as you speak loud enough, we can pick you up.

12 MR. OSWALD: At this particular time, I was Director
13 of the Animal Control Division. And I put together -- when
14 I understood what the questions and concerns were of council
15 -- a history of what was going on with the budget at that
16 particular time. This is the development of the '93-'94
17 proposed budget that was put together in late winter, and
18 when the chair's executive budget was submitted to the Board
19 of County Commissioners, that was in -- it was about this
20 time last year; it would have been about March. And at that
21 particular time the Animal Control budget was to be reduced
22 by five employees; it was about a \$500,000 reduction, four
23 or \$500,000 reduction in the funding -- general funding
24 (indiscernible). Three of those positions were Animal
25 Control officers; one of those positions was the dispatcher,

1 and one was a clerical person. That was the proposed
2 budget.

3 Throughout the entire spring, there was a lot of
4 meetings, discussions, budget issues that came up regarding
5 the program. When it came to the budget being approved,
6 which was later in the month of June, the Board of County
7 Commissioners continued to not fund two Animal Control
8 positions and one clerical position.

9 Now, what was identified was one vacancy at the time
10 which was one Animal Control officer position. It was one
11 of those that was identified for elimination. The other was
12 the least senior officer, and one -- the clerical position
13 was a currently filled position.

14 Before the 11th hour, adopted the budget for Animal
15 Control, which is the last day of June, a number of things
16 occurred. Number one, in our efforts to try to save the
17 program and save staff, we came up with a revenue strategy
18 that would restore all but one position, and the Board
19 adopted that. And as the budget was adopted on the last day
20 of June, all positions were restored except for one. A
21 clerical position was eliminated from the budget,
22 (indiscernible) was in that position.

23 What we decided as a way of dealing with that, since
24 we had someone who had to be laid off is we held the vacancy
25 of the Animal Control officer position; we funded the

1 current employee, an office assistant employee who was
2 scheduled to be laid off; funded it with the funds from that
3 vacancy of the Animal Control officer, and we came up with a
4 reorganization plan.

5 Part of the budget that was adopted, part of the
6 strategy to generate more revenue that to support current
7 staffing, was to open additional days to the public. That
8 was expanding the hours. And the Board took that and said,
9 that's a good thing to do, but we still didn't get the --
10 the current staffing, still lost a person. So we expanded
11 the hours of operation by adding Sundays as an open day, but
12 we lost a clerical person on the staffing for working in
13 that department.

14 So what we did, not knowing what kind of impact that
15 would have, we held the officer position vacant, so we could
16 continue to fund the clerical position. We developed a
17 reorganization plan for the division which went to the Board
18 of County Commissions the 2nd of September. The
19 reorganization plan eliminated a management position and
20 created --

21 COMMISSIONER WIGHT: I'm sorry, when did that go in
22 to the County Commissioners?

23 MR. OSWALD: 2nd of September.

24 COMMISSIONER WIGHT: Okay.

25 MR. OSWALD: Eliminated a management position and

1 created two line staff positions, a clerical position and an
2 animal care position. And in doing that, the Board adopted
3 that budget modification, we then could fully fund the
4 clerical position which we needed, added another animal care
5 position which we needed because we were open an additional
6 day. And when that was adopted, then we created, in the
7 process, a new position which was the animal care position,
8 and we at that point decided that -- well, we created the
9 position. We reorganized. We were going to now go to fill
10 that position. We made a decision to fill the officer
11 position at that time because we were no longer using that
12 vacancy to fund the clerical position. And at that
13 particular time we opened up both of those positions and
14 went to the regular hiring process at the time.

15 During -- during the budget deliberations in spring
16 when we were deciding on strategies on how to salvage these
17 programs and salvage employees that we'd be laying off, we
18 -- I had asked Dave, "What's the call (indiscernible),
19 what's the work load? Is his field staff -- are they
20 keeping up with calls in that short term from when we got
21 the budget restored and the last day of June up until the
22 day which the Board approved our reorganization on the 2nd
23 of September," so we're talking July and August,
24 essentially. And Dave felt that the volume of calls and the
25 staffing was adequate to maintain until we reorganized. We

1 reorganized, and that's when we decided to -- once that was
2 resolved, we were able to move forward and fill the
3 vacancies which was the Animal Control officer vacancy and
4 the new Animal Care Technician position.

5 That way we didn't have to lay off any represented
6 staff at the time. In fact, we laid off an exempt
7 supervisor in our organization in order to create two
8 positions.

9 COMMISSIONER WIGHT: Okay. Thank you. Do you have
10 any questions?

11 COMMISSIONER PRICE: On 6-30 when you adopted the
12 budget, you still had the -- the officer position was still
13 there?

14 MR. OSWALD: Correct.

15 COMMISSIONER PRICE: And the reorg plan did not go
16 into effect until September of '93?

17 MR. OSWALD: That's when the Board approved the
18 budget (indiscernible).

19 COMMISSIONER PRICE: Were the people who -- when did
20 the people take on the jobs from the recruitment you had in
21 September?

22 MR. OSWALD: Well, what happened after -- well,
23 actually before the September 2nd date, I'm -- I changed the
24 positions. I was no longer the director, so Dave became the
25 director. Actually, he was the interim director for a

1 number of months, and I changed jobs. And when the hiring
2 process started, the normal hiring process -- I don't recall
3 the exact dates when that occurred, but I know we didn't
4 make those decisions until after the budget modifications in
5 September. Then, once the Board made changes in our program
6 and in our staffing, then that's when we (indiscernible)
7 positions.

8 Maybe Personnel could answer questions on when the
9 recruitment occurred and all that.

10 MS. MAY: (Indiscernible).

11 COMMISSIONER WIGHT: Do you have any questions?

12 MS. MAY: Yes. Do you recall my coming in to see you
13 the 1st of July and the conversation I had in your office
14 when I was formally requesting at that time to be
15 reinstated, and that I was of the understanding that you
16 were fully funded and you did have a vacant position and
17 that position was funded, and do you agree that, yes, you
18 were still fully funded; there were still some things
19 working through, but you were fully funded, and it was an
20 on-again, off-again situation and I said, "I was aware of
21 that. It always has been, and it's not a problem." And you
22 said you didn't feel it would be a problem to reinstate me,
23 and you'd get back to me.

24 And I came back in a couple days later and you told
25 me that that was kind of out of your hands at that point and

1 that I needed to discuss it with Dave, and at that point I
2 was given the information about the call load being down,
3 and that was the reason that they'd decided not to fill it.
4 None of the restructuring was ever mentioned at that time or
5 brought up.

6 Also, you mentioned that there was a letting go of an
7 exempt position. I assume you're speaking of Jerry
8 Carroll's position?

9 MR. OSWALD: Yes.

10 MS. MAY: So it's also my understanding, and I'm
11 going to ask you to verify, that he resigned that position
12 to go to another location of his own choice; that that
13 position was fully funded. Even though he thought it was
14 not, it was at the last hour fully funded, and it was
15 personal choice to make that leave; is that correct?

16 MR. OSWALD: There was -- yeah, you're correct that
17 he, Jerry, voluntarily resigned.

18 MS. MAY: Right, and so --

19 MR. OSWALD: And there was -- there was a strategy
20 during all the budget deliberations to reorganize. And
21 staff all knew that, because I had posted memos about
22 reorganizing. It was primarily the office operation in
23 Animal Care, and he said this was a strategy to save
24 positions and the strategy was to lay off the program
25 supervisor, and what happened is, you're correct. You came

1 to see me. I was under the impression we were fully funded.
2 I was told we were fully funded. It was not until August 9th
3 that I received the budget -- the adopted budget that the
4 position had been eliminated.

5 MS. MAY: So at the time the decisions were made, it
6 was your understanding that you were indeed fully funded? So
7 on July 1st and July 7th, while I still had this appointment
8 time to be reinstated, it was in your mind that it was fully
9 funded?

10 MR. OSWALD: Well, it was very clear in my mind that
11 it was not clear what was going on.

12 MS. MAY: But that you were fully funded?

13 MR. OSWALD: Well, that's what we assumed, but we
14 didn't know. We were getting different information --

15 MS. MAY: I have --

16 MR. OSWALD: -- we were (indiscernible).

17 MS. MAY: I have a written statement from Don Winkley
18 that also says you were fully funded, and you put up a memo
19 saying you were fully funded.

20 What I would like to point out is that you said you
21 had to lay off the exempt supervisor. That's incorrect. He
22 chose --

23 MR. OSWALD: That was a strategy --

24 MS. MAY: -- to leave and he --

25 MR. OSWALD: Oh, yes, it was --

1 MS. MAY: -- volunteered --

2 MR. OSWALD: -- a reorganization.

3 MS. MAY: He volunteered because of his personal life
4 in wishing to go someplace else --

5 COMMISSIONER WIGHT: When did that take place? What
6 are we talking?

7 MS. MAY: Oh, you're probably talking in May --

8 MR. WINKLEY: He didn't leave until August.

9 MS. MAY: -- somewhere around in May.

10 MR. OSWALD: That was in August. That was the
11 reorganization plan that we had developed --

12 MS. MAY: Prior to the budget being accepted?

13 MR. OSWALD: After the budget was adopted. We had to
14 change strategies because of the way in which the Board
15 refunded some positions but not all positions, and it was a
16 voluntary layoff. It was the ability for us to fill -- to
17 retain a clerical position that would have been laid off --
18 involuntarily laid off. It worked well for everybody.

19 COMMISSIONER WIGHT: Any more questions?

20 Is everyone else here because they were involved in
21 the decision or in the -- on the selection panel?

22 MR. FLAGLER: The panel, that's correct. Apparently
23 Ms. May, her contention is that I influenced the panel in
24 her hiring, so we had brought the panel forward to answer
25 your questions directly.

1 COMMISSIONER WIGHT: How many people were on the
2 panel? You've got five.

3 MS. MAY: That is not my contention.

4 COMMISSIONER WIGHT: That's not one of your
5 contentions? I think maybe -- I think it was Carla that was
6 interested in pursuing that. In fact -- but she's not here
7 today, unfortunately. But we have the panel here. Do you
8 want to talk to them about that. If that's not her
9 contention, I think maybe we ought to let these people go.

10 MS. MAY: That's not an issue for me.

11 COMMISSIONER WIGHT: Then we don't need the panel
12 here, and thank you for coming, and sorry to inconvenience
13 you and you had to come all the way over here.

14 MS. MIDDLETON: Excuse me, we did say -- I'm sorry,
15 I'm Sharyn Middleton, the hiring supervisor for Animal
16 Control. Judy did say in our last meeting that Dave did
17 influence my decision -- your decision and --

18 MS. MAY: (Indiscernible).

19 MS. MIDDLETON: -- and the implication was that
20 because he did that -- I did not hire the person alone. It
21 was a group consensus, and that's why I brought my two
22 people from the panel, because it was not my decision alone.

23 MR. FLAGLER: We have sensed that the commission has
24 gotten off track on these other issues and, you know, this
25 is a --

1 COMMISSIONER WIGHT: Let me --

2 MR. FLAGLER: -- we see this as a (indiscernible)
3 process --

4 COMMISSIONER WIGHT: Let me tell you where I think we
5 are, and if I misstate it you'll tell me, but I think we
6 ended up in the last meeting that -- and as a concern that's
7 coming up in the appeal following this is that the purpose
8 of the rules is to establish a fairly level playing field
9 for applicants for positions with the county. And I think
10 management's given a lot of discretion in making decisions
11 about who to hire; the girl that you can select from the top
12 five, for example, gives you a lot of room.

13 I know from personal experience in working for
14 government that it's fairly easy to set up a program so that
15 designated people end up in that top list. And I think our
16 concern is that the system not be manipulated. And the
17 concern particularly arose because, from the testimony it
18 appeared that there was the vacant position and Ms. May was
19 eligible for reinstatement to that position and, at least by
20 the end of the hearing the last time, we weren't sure we had
21 all the information as to exactly where that situation was.
22 But it was at least possible to think that a decision had
23 been made not to reinstate her, to say there was no
24 position, and then open the position later on which was, in
25 effect, rein -- just avoiding rehiring her by not

1 reinstating on July 12th, and then going through a hiring
2 process.

3 So I think that was our concern that there was a
4 manipulation of the system here, and that's why we wanted to
5 get some more information. Is that --

6 MS. MAY: Yes.

7 COMMISSIONER WIGHT: -- an accurate reflection of --

8 MR. WINKLEY: Don Winkley of personnel. First of
9 all, reinstatement is not anything that is required by the
10 system to happen. It is something that can be allowed one
11 year after if you leave, which she -- Judith May did
12 voluntarily.

13 Reinstatement is something we offer as an option with
14 starting all over, seniority, everything starts all over,
15 your vacation, your accrual. The only thing you don't have
16 to do is stand for a civil service examination, but there's
17 no requirement for any manager to fill any position,
18 regardless of whether they have them or not, by
19 reinstatement. In fact, it's done real rarely.

20 COMMISSIONER WIGHT: And that was a question I had
21 coming up. And it's your position, then, that someone -- if
22 there's a vacant position and somebody applies for
23 reinstatement there's no requirement to follow that. The
24 manager's completely free to say, no, I'm going to go
25 through the hiring process?

1 MR. WINKLEY: That's correct.

2 MR. FLAGLER: And, of course, that's exactly what
3 we've done, and to make this fair to Ms. May, we used a
4 panel. I didn't make the selections --

5 COMMISSIONER WIGHT: I understand.

6 MR. FLAGLER: -- based solely myself. This was a
7 group process. And that's the reason I brought these folks
8 is to explain to you that they were not influenced by me
9 when they selected another applicant over her.

10 COMMISSIONER WIGHT: Okay. Are there any other
11 witnesses, then, that we need to hear from?

12 UNIDENTIFIED: Are you asking me (indiscernible)?

13 COMMISSIONER WIGHT: Well, particularly, I guess, do
14 you have any other witnesses --

15 MS. MAY: I don't have any pertaining to what you're
16 discussing at this point. I do pertaining to the union
17 activity that took place and the extremity of the type of
18 union issues I had to represent. But I don't think at this
19 point that's what you're looking at, so I'm not going to
20 continue with that.

21 However, I do want to bring up the issue that it was
22 already stated prior to the interview process
23 (indiscernible) who testified in the last (indiscernible)
24 that I would not be hired.

25 COMMISSIONER WIGHT: I remember that testimony.

1 MS. MAY: And that person didn't come today, mainly
2 because that person has found it difficult in the work
3 situation and doesn't choose (indiscernible).

4 So basically that is what I have to -- the statement
5 I have to put in. I would ask why, if they were fully
6 funded, they didn't reinstate. And I know that the
7 restructuring situation that Mike Oswald's discussing took
8 place, to the majority (indiscernible) in anticipation that
9 they wouldn't be fully funded. And when they were fully
10 funded it was like an 11th hour party as to what do we do
11 now because now we have to reshuffle again.

12 We discussed that and in all honesty he told me the
13 possibilities of, yes, it may be for five months, yes, it
14 may be for three months; we don't know what the situation
15 was, and I told him that was not a problem whatsoever. I
16 was trained. I was able to go into the position, and I was
17 able to accept it at that point. And he said that was not a
18 problem for him either, and he would discuss it with Dave.

19 COMMISSIONER WIGHT: Does the county have any other
20 evidence that they want to get before us on this matter?

21 MR. FLAGLER: No, we have nothing further.

22 COMMISSIONER WIGHT: Maybe I can check with counsel:
23 Do you know if the statement of reinstatement is accurate?

24 MS. KANWIT: That's what I'm looking for in the
25 rules. It is accurate, but let me double check. I don't

1 know if it exactly says that straight out, but it's under
2 "Transfer," in that persons requesting reinstatement may be
3 considered along with other employees requesting to be
4 transferred, and managers may consider those lists along
5 with any eligible lists. There's not a requirement.

6 MS. MAY: (Indiscernible). As of July -- about July
7 5th they did hire a temporary to do the field service
8 because of the number of calls to pick up deads and
9 (indiscernible), temporary position, (indiscernible)
10 approximately the 5th to the 10th of July, somewhere along
11 in there. And this --

12 COMMISSIONER WIGHT: Of '93?

13 MS. MAY: -- gentleman -- of '93.

14 And also I would like to ask, was the panel's total
15 recommendation considered or was it the final consideration
16 of each department head in the final hiring process?

17 COMMISSIONER WIGHT: You're talking about hiring for
18 the vacant position?

19 MS. MAY: Yeah.

20 COMMISSIONER WIGHT: Well, I think we've decided
21 we're not going to take the testimony. Will you show what
22 you've got there on reinstatement?

23 MS. KANWIT: (Indiscernible).

24 COMMISSIONER WIGHT: But it says something about
25 reinstatement.

1 MS. KANWIT: Yes.

2 COMMISSIONER WIGHT: Well, the rule that we're
3 dealing with here is that, since there's only two of us,
4 we'll take two of us, a unanimous position, to make a
5 decision. If we don't agree, then I guess we'll have to
6 wait for the third member to make a decision.

7 I think we also decided, did we not, that if it was
8 unanimous and there were only two of us that that would be a
9 unanimous decision and there was no appeal. So if we agree,
10 I think that's the end of it. If we don't agree then we
11 will have to continue until we get a third member.

12 I'm ready to make a decision, and we can at least
13 discuss the decision. Do you want me to state my point of
14 view?

15 COMMISSIONER PRICE: Okay.

16 COMMISSIONER WIGHT: Okay. As I said before, I think
17 -- at least I am very concerned that the system be used
18 properly, and if it's used improperly to exclude somebody
19 because of their union activity or for some other improper
20 means, I think I want to do what I can to redress that
21 situation. And quite frankly, by the end of the last
22 meeting, I had some real concerns about what had taken place
23 here.

24 And I think the testimony we've heard today has eased
25 my concern a great deal. And I think although there was a

1 vacant position, at least the testimony is that what took
2 place made sense in the operation of the county government
3 as opposed to addressing whether you were going to be hired
4 or not. And that is, even though the position was funded,
5 they had a person that was going to be eliminated that was
6 already on staff, and they had to figure out how they were
7 going to do that and over a two or three-month period they
8 came up with a reorganization plan.

9 And it seems to me that that makes good management
10 sense to operate in that fashion. So my own feeling is we
11 have -- although I had some concerns, and really still have
12 some concern, I don't think I can make a decision in favor
13 of Ms. May here because I don't think I've heard enough
14 testimony to say there has been discrimination based upon
15 her union activity.

16 But certainly if we see that come up in the proper
17 case, at least on my part, I'm willing to act on it
18 immediately, but I don't think the evidence is here to
19 support it.

20 COMMISSIONER PRICE: I disagree.

21 COMMISSIONER WIGHT: Okay.

22 COMMISSIONER PRICE: And in going over the dates and
23 the times, I think that Ms. May made her intention to go --
24 to come back to work in a timely manner. She met -- she
25 came in before the deadline. She notified people the 1st of

1 July and in writing shortly after that. A temp was hired
2 right after she made her intentions known. And then the --
3 you know, and then the job is no longer there, and then they
4 go through a whole recruitment when there's a person already
5 able to do the job with no information about her inability
6 to do the job.

7 So, you know, I really think that the reinstatement
8 was in order at that time.

9 COMMISSIONER WIGHT: Okay, well, I understand it,
10 because I think, in reflecting on it I was willing to come
11 to the same conclusion until I heard the testimony today.

12 The other factor, and I wasn't sure, whether or not
13 there was any requirement to reinstate. And I don't think,
14 at least reading in here, there is. But on the other hand,
15 I think the rules are less than clear, because if you have a
16 vacant, funded position, and you have someone -- let's say,
17 you had an eligible list as well as somebody requesting
18 reinstatement, to sort of say, "hey, there's nobody on that
19 list we kind of like; let's stop and do it again," I'm not
20 sure is what these rules were intended to accomplish.

21 And if I thought more strongly that that's what was
22 going on, I guess I'd agree with you. But I think I have a
23 better understanding of what took place based upon this
24 testimony.

25 MS. MAY: I would like Mike to verify that the

1 restructuring -- that's where the confusion is coming -- the
2 restructuring activity took place before July 1st. All
3 their plans to restructure, my understanding, to have Jerry
4 voluntarily give up his position and put Sharyn into a
5 lesser but a similar position, that took place as an 11th
6 hour to save the position. And, in fact, nobody got laid
7 off. And in fact a temporary was hired --

8 COMMISSIONER WIGHT: We finished with the testimony.
9 We're not going to revisit it. We don't have a decision,
10 and we'll have to wait for our third commissioner to come up
11 with a decision. And I don't know when she's going to be
12 available. Do you know?

13 COMMISSIONER PRICE: She's planning to come to
14 Thursday's meeting.

15 COMMISSIONER WIGHT: I guess she'll have to review
16 the testimony that we've had today in order to make a
17 decision. I don't know whether she'll be able to do that by
18 Thursday or not. Yes, sir?

19 OFFICER McDUFF: Officer McDuff (ph), (indiscernible)
20 I was just wondering if I could maybe add a point of
21 clarification?

22 COMMISSIONER WIGHT: Well, I think we're through with
23 the testimony.

24 OFFICER McDUFF: I was just asking. Thank you.

25 COMMISSIONER WIGHT: So this matter is continued

1 until such time as our third commission can listen to the
2 testimony and have a vote on this.

3 Thank you very much.

4 (Proceedings concluded.)

5

DECLARATION OF TRANSCRIBER

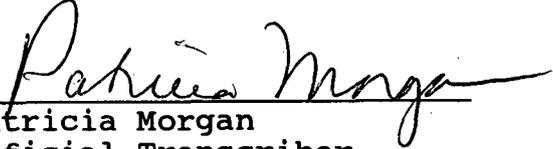
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(A) I am an Official Transcriber for State of Oregon, Multnomah County, and an Official Transcriber for the United States Court Administrator;

(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 26, 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 22nd day of May, 1994.



Patricia Morgan
Official Transcriber

BEFORE THE MERIT SYSTEM CIVIL SERVICE COUNCIL
FOR MULTNOMAH COUNTY

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

TRANSCRIPT OF PROCEEDINGS

May 10, 1994

BEFORE:

MERIT SYSTEM CIVIL SERVICE COUNCIL

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

ANNA KANWIT, City Attorney

ALSO PRESENT:

Judith May
Sharyn Middleton
Don Winkley
Dave Flagler
Jim Smith

Transcribed from electronic recording by

Morgan Verbatim, Inc.

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Oregon City, OR 97045

(503) 631-8885

1 COMMISSIONER FLOYD: This is the one that we heard
2 the last --

3 COMMISSIONER WIGHT: Well, the time before last, Judy
4 May.

5 COMMISSIONER FLOYD: Well, you heard it during two
6 meetings and --

7 COMMISSIONER WIGHT: Then we -- yeah, we heard it in
8 two meetings. This is from the April 12, and we continued
9 it.

10 COMMISSIONER PRICE: Carla was here for most of it,
11 and then you continued it and had a little bit of --

12 MS. AYERS: Yeah, she missed the second.

13 COMMISSIONER PRICE: But there was not much.

14 COMMISSIONER FLOYD: Do you want to adjourn
15 temporarily?

16 (Off the record)

17 COMMISSIONER FLOYD: This is the record. I re-read
18 the notes yesterday, and as I recall there were concerns --
19 several concerns raised by Ms. May's appeal; one of them the
20 possible impact of previous union duties, the other the
21 issue around the budget and when the budget was approved and
22 the temporary employee that was hired in the interim.

23 I'm assuming that Dave Flagler and Sharyn Middleton
24 are not here -- Sharyn's here. Okay.

25 And were you on the interview panel?

1 MS. MIDDLETON: Not the first one, but I was the
2 hiring supervisor.

3 COMMISSIONER FLOYD: You were the hiring supervisor?

4 MS. MIDDLETON: For the Animal Care Technician.

5 COMMISSIONER FLOYD: Right. And I understand that
6 you felt they didn't have any influence over the interview
7 process itself?

8 MS. MIDDLETON: They meaning who? You mean --

9 COMMISSIONER FLOYD: You had stated at the previous
10 meeting that you didn't have any influence over the hiring
11 process?

12 MS. MIDDLETON: I didn't have any influence over the
13 people that were on the panel with me. There were two
14 panels, the original first interview panel --

15 COMMISSIONER FLOYD: Right.

16 MS. MIDDLETON: -- and then the hiring interview
17 panel. And there was consensus at the end of that hiring
18 panel as to who the top candidate was, and that was the
19 person we offered the position to.

20 COMMISSIONER FLOYD: And the other questions I would
21 have has to do around the hiring of the temporary employee.

22 MS. MAY: They also hired another full-time position
23 in July -- at the end of July.

24 MS. KANWIT: Just so you know, Carla, that was
25 brought up earlier, you know. Mr. Wight made it clear we

1 closed the record, and he didn't want to bring in any
2 additional information.

3 COMMISSIONER FLOYD: No, I just -- I'm trying to
4 clarify --

5 MS. KANWIT: Right.

6 COMMISSIONER FLOYD: No, I'm not asking for
7 additional information.

8 Well, if what you need is what my vote would be, I
9 would vote to sustain the appeal and have Ms. May
10 reinstated. I feel that there -- the hiring -- I agree with
11 Ms. Price that the hiring of the temporary employee
12 indicates to me that, whether inadvertently or on purpose
13 there was some, for lack of a better term, prejudice against
14 Ms. May's re-hire, and, while I have no proof that it was
15 necessarily on purpose, the result is the same. If you
16 could have -- if a temporary employee was hired in the
17 interim that indicates there were budget dollars available.

18 MS. MIDDLETON: The temporary employee that was hired
19 was not an officer. It was a field aide position which that
20 position scrapes deads up off the street.

21 COMMISSIONER WIGHT: I thought the hearing was closed.

22 COMMISSIONER FLOYD: So I don't know if you want me
23 to say anything else.

24 MS. KANWIT: One of the things the commissioner had
25 said is if we could talk about remedies, but I don't know if

1 we do that now or --

2 COMMISSIONER PRICE: We can. I mean, what Carla says
3 for reinstatement --

4 MS. KANWIT: Which was what? Is that --

5 COMMISSIONER PRICE: What we're looking at for under
6 that time frame, she could have gotten it (indiscernible)
7 discretion of Personnel, and I'm not sure -- I don't recall
8 now what position that was that she had.

9 MS. MAY: Field officer.

10 COMMISSIONER PRICE: Field officer. That was the one
11 you had before you left the county?

12 MS. MAY: Correct.

13 COMMISSIONER FLOYD: Well, where are we now with the
14 personnel levels in that position?

15 MR. WINKLEY: Everything is filled.

16 MS. MIDDLETON: Everything is filled.

17 MR. WINKLEY: They were filled in January of this
18 year.

19 COMMISSIONER WIGHT: Is the field supervisor position
20 empty right now?

21 COMMISSIONER FLOYD: I'm sorry, say that again?

22 COMMISSIONER WIGHT: Is the field supervisor position
23 empty right now?

24 MR. WINKLEY: That position is being used to fund the
25 adoption program at Clackamas. There's no intention to fill

1 that, at least immediately.

2 COMMISSIONER WIGHT: The budgeted position is not
3 filled.

4 MR. WINKLEY: But we don't have to fill the budgeted
5 position.

6 COMMISSIONER WIGHT: Because (indiscernible)?

7 MR. WINKLEY: Right. Where we would have remedy and
8 appeals because it is the intention of the department to not
9 displace two employees who are doing very good jobs, and who
10 came through a process where there was no problem with the
11 process itself.

12 COMMISSIONER FLOYD: Well, I could be wrong, but I
13 assume the mention of the fact that there's a budgeted
14 position open is that you could move someone into that
15 position and then move Ms. May into the field officer
16 position, correct? And --

17 MR. WINKLEY: Well, they're different positions, so
18 we're looking for a field -- a superior -- we're looking for
19 a supervisor not for another officer.

20 COMMISSIONER FLOYD: I understand that, and I'm not
21 in any way proposing that Ms. May be given that job. I'm
22 saying that you could move someone who's currently a field
23 officer into that position, and that would create a position
24 that Ms. May could fill.

25 MR. WINKLEY: That would only happen if -- that could

1 only happen if an internal person was competing and was
2 promoted; otherwise you couldn't necessarily do that.
3 They're not like positions. One is a managerial position.

4 COMMISSIONER FLOYD: I understand that.

5 MS. MAY: They have two field supervisors that
6 (indiscernible) operations right now. One's Larry Crabb and
7 the other's Doug Carpenter.

8 MR. WINKLEY: They are union people, not exempts.

9 MS. MAY: That's correct.

10 COMMISSIONER FLOYD: Well --

11 MS. MIDDLETON: The exempt supervisor's position for
12 the chief field supervisor duties are being split between
13 Dave Flagler and Jolene Brockmueller and myself currently.

14 COMMISSIONER FLOYD: Well, let me ask this: What
15 would the County recommend as the most expeditious way to
16 resolve this matter?

17 MR. WINKLEY: The County needs to know what the --
18 based upon the fact that it isn't a personal rule or an
19 ordinance violation, and we've never had a condition where
20 we were required to hire someone that we did not select --
21 so this is new -- we're break -- this is new ground. So we
22 would need to know what your decision means in view of the
23 fact that the department will appeal. So we need to know
24 what the issue is.

25 COMMISSIONER FLOYD: I'm a little unclear about what

1 you mean when you say "what the issue is" --

2 MR. WINKLEY: Well, the department is not going to
3 change its -- the people who were hired.

4 COMMISSIONER FLOYD: I understand that --

5 MR. WINKLEY: The decision was made from valid lists,
6 went through all the processes, and made no procedure
7 errors. We have never had to be required to hire someone in
8 this circumstance, and so that we would need to know what
9 your proposed remedy is and if that proposed remedy, taken
10 back to the department, is not what they wish to do, then it
11 may force us to appeal to the Commission.

12 COMMISSIONER FLOYD: And I recognize you have the
13 right to appeal. And I'd be willing to discuss that with
14 D'Norgia. I would assume that our proposal would be to pick
15 up Ms. May on the payroll as a field officer.

16 COMMISSIONER PRICE: I would say so, yes.

17 MR. FLAGLER: Which date are you talking about?

18 COMMISSIONER FLOYD: You mean, what back pay issues?

19 MS. MAY: I should have been reinstated on the 1st of
20 July.

21 MR. WINKLEY: No, (indiscernible) reinstatement. The
22 County is not required to reinstate anyone --

23 MS. MAY: Then I would just assume leave it at
24 sustained and go up to the County Commissioners and let
25 (indiscernible) appeal.

1 MR. FLAGLER: Can I make a suggestion that just
2 sustain it and let it be worked out between the County and
3 the Ms. May's attorney.

4 COMMISSIONER FLOYD: Well, I think --

5 MS. KANWIT: You need to --

6 COMMISSIONER FLOYD: Yeah, I think we should make a
7 recommendation.

8 MR. FLAGLER: But I would suggest that she be --
9 maybe look at the date that those last jobs were filled. So
10 January when?

11 MR. WINKLEY: Sometime in January.

12 MR. FLAGLER: And that be the position
13 (indiscernible). Because that's actually the one that's on
14 appeal. The others were just (indiscernible).

15 COMMISSIONER FLOYD: Quite frankly, I think I'd be
16 uncomfortable in going back to July of '93.

17 MR. FLAGLER: I think the January date's
18 (indiscernible).

19 COMMISSIONER PRICE: Could we have a consultation
20 (indiscernible)? I do believe that the remedy is to put her
21 back on the job. But the best way to do that, I'm not sure.

22 COMMISSIONER FLOYD: I don't want to make decisions
23 for budgets that I don't have any input into. However, I do
24 feel that she needs to be reinstated. And I believe that
25 it's up to the County to come up with a method to do that.

1 And I also understand that the County has a right to appeal
2 our decision because it was not unanimous.

3 My suggestion would be that she be reinstated as of
4 February 1st of 1994 and that back pay be issued to that
5 time. And that it be upon the County to come up with the
6 method of placing her in that position or to appeal,
7 whichever.

8 MR. FLAGLER: The field officer position?

9 COMMISSIONER FLOYD: Right, the field officer
10 position. How the County chooses to find the budget dollars
11 to accomplish dollars to accomplish that, I believe, is the
12 County's prerogative.

13 Are there further questions?

14 MR. FLAGLER: (Indiscernible)?

15 COMMISSIONER PRICE: Yes. And I would assume if the
16 County's going to appeal, they'll notify Ms. May of that
17 fact and give her the date of where the appeal hearing will
18 be.

19 MS. AYERS: There's another appeal that came in, and
20 John suggested setting a date of June --

21 MS. MAY: Can I put it in the record that my attorney
22 will be Don Willner, and you will provide the --

23 MR. SMITH: So the records will show, her attorney is
24 Don Willner. His phone number is 228-4000. I don't have
25 his address with me, but --

1 MS. MAY: Thank you. And can I get a copy of that
2 tape, too, please, Sue?

3 MS. AYERS: Yes.

4 COMMISSIONER FLOYD: I didn't get a copy of the tape.

5 MS. AYERS: I had one for you, but I -- I'm sure if
6 you --

7 COMMISSIONER FLOYD: No, I was afraid that I'd
8 misplaced it.

9 MS. AYERS: No, you didn't.

10 (Proceedings concluded.)

11

DECLARATION OF TRANSCRIBER

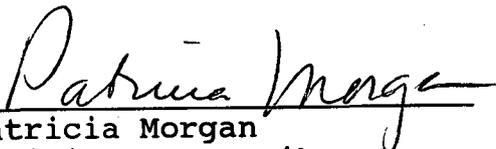
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Patricia Morgan
Official Transcriber