



City of Santa Clara

The Center of What's Possible

City Attorney's Office Memorandum

Date: July 3, 2018

To: Civil Service Commission

From: Sujata Reuter, Senior Deputy City Attorney

Subject: Motion for Reconsideration submitted by Richard Sandau

Introduction

Former employee, Richard Sandau (through his counsel) has submitted a Motion for Reconsideration to the Civil Service Commission in which he appears to ask the Commission to set a Board of Review hearing date to hear evidence and arguments related to the following issues:

1. Mr. Sandau's alleged termination from his classified position
2. Mr. Sandau's argument that the terms of the City's offer to "bump back" to a classified position were improper
3. Mr. Sandau's request for back pay

For a number of reasons, described below, the City Attorney's Office (on behalf of the City and the Appointing Authority) does not believe Mr. Sandau is entitled to a hearing on these issues.

Background

Mr. Sandau was employed in an unclassified position with Silicon Valley Power. He was granted an unpaid leave of absence to attend graduate school full time. As the conclusion of his leave of absence for the 2017-2018 school year approached, he was advised by SVP (on May 15th) that he was being released from his unclassified position. Then, in accordance with standard procedure, on May 24th HR informed him that he could accept severance pay under the unclassified Unit 9 MOU or revert ("bump back") to his last classified position under Charter Section 1102. On June 1st, Mr. Sandau submitted a written response stating "*both offers are hereby rejected.*" He titled the letter a "settlement offer" and did not make any mention whatsoever of desiring review by the Board of Review of any aspect of the City's decision. On June 13th, the City Attorney's Office sent a letter to Mr. Sandau's counsel with the following: (1) enclosing the severance pay the City was required to provide under the Unit 9 MOU, (2) confirming the rejection of the "bump back" offer, and (3) advising that since no request

for Board of Review hearing was submitted within 10 days of HR's May 24th letter, he had waived his right to an administrative appeal.

Discussion

First, a Motion for Reconsideration is the wrong procedural vehicle for the relief the employee seeks. Under Section 7.4 of the CSC Rules, a Motion for Reconsideration is only appropriate when *the Board of Review has taken an action* on the termination, suspension, demotion or reduction in pay of a classified employee and that action was based upon fraud or lack of jurisdiction. Here, the Board has never previously taken any action, so there is nothing for the Board to reconsider. Furthermore, there is no indication or even any argument in any of the letters submitted by Mr. Sandau that there was any fraudulent action or a lack of jurisdiction.

Second, as clearly demonstrated in the correspondence submitted by Mr. Sandau in support of his Motion, *he was not terminated from his classified position*. Mr. Sandau's release from his unclassified Unit 9 position is obviously beyond the jurisdiction of the Civil Service Commission to review (see CSC Rules 1.1 and 1.3). Mr. Sandau was offered the opportunity to return to his classified position, but he unequivocally rejected that offer in his June 1st correspondence. Therefore, the City did not terminate him – he voluntarily chose to not return to classified employment. This is neither grievable under CSC Rule 7.5, nor appealable under CSC Rule 7.3.

Lastly, it was not until the Petition for Reconsideration was sent on June 21, 2018, (nearly a month after the May 24th offer to bump back to a classified position was made) that any hearing of any type before the Board of Review was requested, which is untimely. An employee must request a Board of Review hearing within 10 days of the receipt of notice of the termination, demotion, suspension or reduction in pay (CSC Rule 7.3). As set forth above, *there was no termination from any classified position*, which is why there was no Rule 6.6 notice or other process provided. That fact alone is fatal to Mr. Sandau's request. However, even if there was such a termination, it would be deemed to occur as of HR's May 24th letter; therefore, Mr. Sandau's request for a Board of Review hearing should have been made by June 4th. No such request was made. The June 1st letter is lengthy and, in it, Mr. Sandau could easily have requested a hearing date, but inexplicably he failed to do so.

Request

Based upon the foregoing, the City Attorney's Office requests that the Commission: (1) Deny the Motion for Reconsideration and (2) Deny the Request for a Board of Review hearing.