

Civil Service Commission Minutes

On March 11, 2020, the Civil Service Commission of the City of Amarillo met at 8:30 am at City Hall, 601 S Buchanan, Amarillo, TX, 79101, in the City Council Chambers for a Regular Meeting.

	Present	No. Meetings Held Since Appointment	No. of Meetings Attended
David Hurt, Chairman	Yes	47	45
Sally Jennings, Vice Chairman	Yes	22	21
Lawrence Walker	Yes	44	44

Also in attendance were the following:

Mitchell Normand, Dir of Human Resources
Marcus Norris, Asst City Attorney
Jeff Greenlee, Fire Chief
Jacob Diaz, Fire Marshal
William Ray, Fire Inspector
Chad Parsons, Fire Investigator/Inspector II

Tyler Smith
Jim Jopling, Attorney
Charles Jones, Fire Investigator/Inspector
Sheryl Chavez, Fire Inspector
John Woodward
Terry McKinney

David Hurt
Call to order. ~~Lawrence Walker~~ established a quorum and called the regularly scheduled meeting of the Civil Service commission to order at 8:30 am.

ITEM 1: Motion made to approve minutes from January 8, 2020. There were no comments or questions asked regarding the minutes. Lawrence Walker presented the motion to approve, seconded by Sally Jennings. Motion passes.

ITEM 2: Review and consider the approval the list of new employees, step increases, transfers, promotions, demotions, bypasses, temporary assignments and disciplinary actions. Lawrence Walker presented the motion to approve, Sally Jennings seconded. Motion passes.

ITEM 3: Motion was made to approve the Firefighter eligibility register. Sally Jennings presented the motion to approve, Lawrence Walker seconded. Motion passes.

ITEM 4: Disciplinary appeal by Tyler Smith.

All witnesses were sworn in at one time by David Hurt.

First witness called to stand William Ray. Marcus Norris questioned the witness about his work history. Marcus asked William Ray to describe what happened the date of the event. Ray described an event where Tyler rubbed his butt on their way out of the office. He stated about a year earlier Tyler slid his finger up Ray's butt crack.

Marcus presented two exhibits: photos of the office. Ray described the layout of the office and where he and his coworkers were standing when the even occurred. Exhibits were presented to the commission. Ray described the first time he reacted to this event about a year ago. The most recent occurrence he documented. He wanted to hit him and the touch was offensive to Ray. Chuck and Cheryl were present during the event.

Marcus presented the emailed complaint Ray sent to Jacob and Chad Parsons. Ray read the complaint aloud. Ray described he expected the matter would be handled and that the action would stop.

On the 28th Ray attended a staff meeting and when sitting down, Smith flipped Rays nipple.

Marcus presented exhibit which was a screenshot of text sent to Ray from Smith. Marcus asked several questions. Marcus provided opposing counsel list of witnesses. Marcus presented Ray another exhibit

(5). Ray read the exhibit. It was his statement of the event. Marcus questioned the employee about what an order is.

Marcus passed the witness 0852

Jopling introduced himself and began questioning the witness.

Jopling presented exhibit 4 (the screen shot). Confirmed Ray responded with "we are good".

Jopling asked if Ray ever confronted Charles about his behavior.

Jopling asked Ray if he ever engaged in verbal horseplay at work. Ray confirmed sometimes he engages in this horseplay with Kevin Clayton, Charles Jones and occasionally Sheryl. Jopling clarified the verbal horseplay may be of a sexual nature and referred to acts of sexual contact. Jopling confirmed this only occurred with the three named. Ray stated to best of his knowledge.

Jopling questioned Ray on the context of the text message from Smith. Jopling asked why Ray didn't respond back to Tyler text with something other than "were good". Jopling continued questioning Ray about his response to Tyler's text.

Witness was passed to Marcus. Marcus questioned witness.

No further questions.

Jopling asked if Ray would be been okay if Diaz would've just told Smith to stop. Ray would've been okay with that. Ray was released to wait in 305.

John Woodward arrived and was sworn in and sent to wait in room 305.

Marcus requested T. Smith to stand. Jopling asserted the City has burden of proof and not rely on his client to meet burden of proof.

Sheryl Chavez was called to the stand.

Marcus questioned Chavez about her employment with the City and prior work history.

Chavez described what she saw the day of the event. She, Chuck and ray were talking about their day. Chavez saw Smith walk by and dip as he passed by. After smith passed and walked out. Ray said to Chavez and chuck that he couldn't believe smith stuck his finger up his butt.

Marcus presented two pictures of the office to Chavez and questioned Chavez about the office layout and how the event took place. Because of the wall she could not see his hand. She stated she didn't think anything of him dipping.

Marcus asked if there was any delay in Rays reaction after Smith passed by. Chavez described Ray as standing up straight and looking as though something just happened. Chavez described Rays emotions as not happy and that Ray stated this was not the first time this happened.

Marcus asked Chavez if she thinks she understands an order when she hears one and asked her to define what that means. Marcus clarified if a supervisor has to use the word "this is an order". Chavez stated it does not need to be clearly stated as an order to be an order.

Marcus asked had she seen touchy feely horseplay. Chavez stated she had seen people goofing off.

Marcus asked had she seen Ray touching people inappropriately. Chavez stated no.

Marcus asked if Chavez had anything to do with the grievance. Chavez confirmed no.

Marcus passed the witness.

Jopling retrieved the office photos from the commission then introduced himself to Chavez.

Jopling approached the witness and asked questioned about the office layout and positioning of each of the witnesses present during the event. Joplin got clarification on how Ray was leaning on the wall.

Jopling asked Chavez at what point was she ordered not to speak about this case. The day she prepared the statement she was asked not to speak about it.

Witness was passed.

Marcus asked how wide she believe the walkway was. Marcus presented Chavez's statement to her and asked her to read aloud. Marcus then presented the statement to the commission. Marcus questioned

Chavez about the event that occurred during the staff meeting following the incident.

Witness passed.

Jopling asked Chavez if she couldn't see his hands because of the wall or because she was watching his hands. Jopling confirmed Chavez could not testify whether Smith was carrying anything or not.

Witness was passed. No further questions by Marcus.

Marcus Called Chuck Jones to the stand. Marcus asked Jones about his work history with the City and outside the City.

Marcus asked Jones to describe what occurred the day of the event. Jones states he sees Smith's hand movement towards Ray's butt. Jones didn't think anything of it. Ray asked "did you see what he fucking done". Jones said it looked like he slapped him on the butt. Ray said that Jones stuck his finger up his butt. Jones clarified he did not see the actual contact, but the general action. Jones described Ray as "pissed".

Marcus questioned him about the event at the staff meeting on the following Tuesday. Jones did not see this event.

Marcus questioned Jones if Jones spoke to Smith. Jones confirmed he spoke to Smith after the staff meeting. Smith asked Jones if he saw what happened. Jones said he saw the action but didn't see it. Smith told him he was under investigation and not supposed to talk about it. Smith asked if Ray had communicated to Jones if he was mad at him and if it was good idea to speak out Ray to apologize. Smith proclaimed he didn't touch Ray's butt. Jones stated Smith confirmed he didn't touch his butt. Smith admitted he flipped Ray's nipple.

Marcus questioned Jones about conversation.

Marcus presented the photos of the office layout to Jones and questioned about approximate dimensions of the office layout.

Marcus asked if Jones had seen any unwanted or offensive conduct from Smith directed towards Ray. Marcus asked if he recalled iced tea event. Marcus asked him to describe what occurred. An iced tea was thrown on Ray. Marcus asked Jones what an "order" is and had Jones define it.

Witness passed.

Jopling introduced himself. Jopling got clarity from Jones on what an order is. Jopling questioned Jones about when he provided his statement. Jones clarified when his two statements were prepared.

Jopling questioned Jones about the day of the event and requested clarity of what he meant by he saw the action. Jones said he saw movement of his hand. Jopling asked why he is claiming he saw the action.

Recessed at 9:50. Session resumed 9:55. Jopling resumed questioning Jones.

Witness was passed.

Marcus resumed questioning Jones. Jones clarified he saw gesture of hand but not actual contact.

Marcus questioned Jones about his meeting with Smith. And questioned him about his statement about what Smith said in his meeting with Smith.

Witness passed

Jopling questioned Jones about his statement. Questioned him about his first and second statement.

Witness passed.

Marcus presented exhibit 5, Jones statement, to the commission.

Marcus questioned Jones about the reason for the second statement. The reason for the statement was Diaz investing Smith speaking about the investigation during the investigation.

Jopling resumed questioning.

Jopling asked Jones if Diaz did not like Smith. Jones believes from observation that Diaz does not like

Smith.

Witnessed passed.

Marcus asked if Diaz dislike for Smith caused him to flip Rays nipple.

Witness dismissed.

Chad Parsons on the stand. Marcus asked Parsons questions about his work history with the City and prior to. Marcus questioned witness:

Parsons was not present during the occurrence and became aware of it the following Monday. Ray told him this was the second time his butt had been touched by Smith. Ray told him he was going to make complaint and Parsons advised him to make the complaint via email as Diaz was out of the office.

Smith asked Parsons if he was aware of the situation. Parsons confirmed he was included on an email about it and that was pretty much the conversation.

Marcus asked if there was anything noteworthy during the meeting with Smith and Diaz. Tyler denied the incident and there was back and forth about what an order is. There was semantics about what an order was.

Marcus asked if the relationship between Smith and Diaz was justification for Smith to flip Rays nipple or run his finger up Ray's butt.

Marcus presented Parsons with photos of the office and asked him questions about the dimensions. Also asked him questions about how close two grown men need to be for his pistol to touch the rear end of the other butt.

Witness passed.

Jopling questioned parsons about gun holster he was wearing. Asked him about different tools carried on a belt and if it was possible to brush up against someone with their belt.

Questioned about the meeting on the 29th. Was this date Diaz placed Smith on admin leave? Parsons believes so, but doesn't recall for certain.

Jopling asked if he was not surprised others weren't asked to speak about this case until the 30th. Parsons never ordered anyone not speak about the case. Questioned parson about his familiarity with Smith and comfortability working with him.

Witness passed.

Marcus asked if Parsons is familiar with the incident with Smith threw a cup of iced tea on Ray. Parsons was familiar. Asked if this was considered professional. Would you agree average person would distinguish between a finger up their but versus something brushing up against him. Questioned how far out items on duty belt stick out. Parsons described experience wearing duty belt and ability to avoid brushing up against people/things while wearing it.

Marcus stated there is testimony that Smith and Diaz do not get along. Does this drive the actions of the employee?

Witness passed.

Jopling questioned relationship of Diaz and Smith. Jopling asked if Diaz wanted Smith out of the office. Parsons could not confirm this. Parsons confirmed if someone was walking real close to each other, the duty belt could rub against a person.

Questioned about iced tea incident. Jopling asked him about whether it was a full cup of iced tea. Parsons stated Ray wasn't soaking wet. Parsons heard Smith apologize to Ray and state that wasn't intended to happen. No further questions.

Diaz is next witness called.

Marcus questioned when Jacob first became aware of the incident. Diaz stated the email was his

notification of the event. Also questioned about photos of the workspace. Diaz provided dimensions. After receipt of complaint, Diaz interviewed Ray.

Diaz was questioned about his follow up actions and conversation with Smith about the incident. Diaz instructed him to not speak to anyone or Ray about the incident. In course of the conversation Smith indicated he was aware he should not be speaking with anyone during the investigation. This conversation was between 0900 and 1000. It was brought to Diaz attention that there was communication from Smith to Ray at 1240. The purpose of the text was to show Smiths communication to Ray.

Diaz confirmed he questioned Smith again on the 29th.

Marcus presented exhibit 6. These are the questions Diaz asked Smith. Black ink are Diazs 'questions and red are Smiths answers. Diaz read questions and Marcus responded with Smiths responses.

Marcus presented there is testimony that Smith and Diaz did not get along. Diaz stated there was in the past, but there isn't from his side. Marcus asked if the investigation was not out of spite; Diaz confirmed. Questions presented about grievance topic which was about reporting structure.

Marcus asked about distinguishing between finger and gun. Diaz confirmed.

Marcus asked if Diaz consulted with Greenlee on decision to terminate. Diaz stated it was ultimately Greenlees decision to issue discipline to Smith.

Marcus presented exhibit 7,8,9 to Diaz and the commission. Diaz stated 7 is a personnel complaint filed against Smith by Diaz. This document was issued by Greenlee on February 4th at 1600. Exhibit 8 is notice of contemplation of indefinite suspension to Smith from Greenlee on February 5th at 0820. Exhibit 9 is to Smith from Greenlee and is the notice of indefinite suspension issued on 5th at 0830.

Marcus states Smith claims he was not afforded the opportunity to respond. Marcus asked if Smith ever offered a defense. Diaz stated "no". Diaz confirmed Smith was offered an opportunity to resign. Diaz confirmed the insubordination was that Smith spoke to Ray even though Diaz said not to.

Witness passed.

Jopling questioned Diaz about the office layout and where the occurrence took place.

Jopling questioned the Diaz about the complaint exhibit. Did you know you were going to terminate his employment when the notice of complaint was issued; Diaz: no. Jopling asked if Diaz was aware of what the meeting was about. Confirmed the first time Smith was notified of contemplated termination was ten minutes between notice of contemplation.

Jopling questioned why Smith wasn't formally notified of investigation when he first became aware of the incident and why it was the day before contemplated termination. Diaz states this is when the Legal process began.

Jopling questioned Diaz about exhibit 6. Confirmed Chad parson was present during this meeting. Jopling states Parsons didn't state these questions were asked.

Jopling doesn't recall testimony of what Diaz exact orders were. Diaz said he did tell Smith to not speak to anyone. Jopling asked if this was the only incident of insubordination that the reason to terminate was based on. Diaz responded that Smith spoke to Jones and Parsons. Jopling stated testimony reveals Diaz didn't tell others to not speak about this until the 30th.

Jopling brought up other incidents that were brought up. Iced Tea, nipple flick, previous butt touch. Confirmed there were no other incident Smith was terminated for. Jopling asked if there was no insubordination would Diaz have still terminated. Jopling stated if this case only had the touching and no other elements, would Diaz have considered lesser discipline. Diaz confirmed this is true.

Jopling confirmed Diaz discussed with Greenlee and he is the ultimate decision maker. Diaz confirmed he recommended termination and Greenlee agreed.

Jopling questioned Diaz about his relationship with Smith. Confirmed Diaz knowledge that Smith had a good reputation. Diaz confirmed he had completed his appraisals in the past.

Recess at 11:15. Resume at 11:22

Jopling continued questioning Diaz. Asked Diaz questions about the witness statements. Jopling stated Jones has changed his statement and will not confirm he saw Smith touch his butt.

Witness passed.

Marcus asked clarifying questions about the statements.

Witness passed.

Jopling clarified when Diaz took measurements of the walkway. Confirmed Diaz ruled out possibility that duty belt touched Ray. Diaz stated belt ruled out based on touching pattern in addition to Jones and Chavez witness accounts of what happened. Jopling questioned Diaz on how he ruled the belt out.

No further questions of witness.

Jeff Greenlee called to witness stand.

Marcus questioned Greenlee on his work history with the City. Proceeded to ask questions about exhibits 7, 8 and 9. Confirmed Greenlee obligation to respond to the complaint and his objectivity reviewing results of the investigation. Marcus read charges.

Marcus asked about meeting on the 30th. Greenlee confirmed the complaint was issued on the 30th. Marcus asked Greenlee to describe what happened on the 5th. Greenlee asked did he have any pertinent information after presenting the notice of contemplation. Smith stated he did not. Greenlee confirmed no additional info presented and he would've given more time if Smith requested. Greenlee stated he provided Smith an opportunity to resign and Smith never offered a resignation.

Marcus asked if this could've been handled differently. Chief responded "yes". And described alternatives. Stated untruthfulness couldn't be tolerated. Marcus introduced hypothetical scenario for Greenlee to consider if Smith had admitted the incident.

Marcus introduces Smith's allegation that termination was because of grievance. Confirmed this grievance had nothing to do with events of January 24. Marcus asked questions about the sexual harassment policy.

Introduced exhibit 10. This is an acknowledgment of the receipt of COA handbook.

Marcus introduced additional exhibit. This is a list of training Smith has received which include workplace harassment prevention and sexual harassment prevention in January 2018 and 2019.

Witness passed.

Jopling asked Greenlee how long he has known Smith and his familiarity with Smith. Greenlee is not aware of anything like this happening in the past.

Jopling asked series of questions to Greenlee on the allegations, credibility of witnesses.

Jopling asked if Smith had resigned would that have been an admission. Greenlee could not confirm.

Witness passed.

Marcus questioned Greenlee. Witness passed.

Joplin asked question of Greenlee. No further questions.

Joplin called first witness. Terry McKinney

Jopling asked how he knew Smith. Knows him from working in Canyon and from applying for the FMO. McKinney was FM from 95-2015, for about 19 years. Confirmed McKinney knows reason he is present.

Asked if he was surprised by allegations; confirmed he was surprised. Has only know Smith to tell the truth. As Smith's supervisor, Smith was never insubordinate to McKinney. McKinney is only aware that when Smith was interviewed for the job, that Diaz did not want to hire Smith.

Knows there were disagreements between Diaz and Smith that were presented to him as FM.

Witness passed.

Marcus began questioning witness about Diaz objection to hiring Smith.

Marcus questioned McKinney. Identified something changed in 2020 to cause Smith to be fired since he was not fired in the years preceding 2020. Marcus presented exhibit 6 (QA document) to McKinney. Had McKinney read several questions and responses. McKinney acknowledged good people can make

mistakes and can act out of character based on his 19 years experience as a supervisor.

Witness passed.

Jopling asked on scale of 1-10 (least to most out of character) how out of character would it have to be for Smith to be insubordinate. McKinney said 9 or 10. To touch someone it would be a 10.

Witness passed.

Marcus confirmed McKinney is not a witness to the event nor a participant in the investigation. Confirmed McKinneys testimony is as a friend and a former supervisor. It has been 5 years since he last supervised him.

Recessed at 12:23. Resumed at 12:26.

John Woodard called to witness stand. Jopling questioned about how he is familiar with Smith. Worked together in Canyon and then at FMO. Confirmed knowledge of him is from work and outside of work. Has known Smith to be truthful and honest and has not known him to lie. Stated his reputation to perform his duties is that he capable. Knows Smith to obey chain of command and not be insubordinate. Has known him to stand up for his beliefs but not be insubordinate.

Woodard has limited knowledge of the conduct that cause Smith to be dismissed. Was surprised of sexual misconduct as reason for dismissal. Believes Smith would have followed an order from his boss. From 1-10, is at a 10 (shocked) this has happened. Based on knowledge of department does not have any knowledge of a reason anyone has to make up an allegation.

Describes Diaz relationship with Smith as tense. Tyler grew a dislike for Diaz. Jopling stated one of the witnesses stated there is unfair treatment by Diaz. Woodard is not surprised by this because his history with Diaz is that Diaz does not like to be challenged and can become aggressive when his authority is challenged. Joplin clarified if this was respective to all employees; Woodard confirmed.

Witness passed 1233

Marcus asked years of employment 2008-2016. Woodard has not been in the office for about four years and confirmed things can change in four years. Affirmed one person can allow by gones be and the other not.

Marcus questioned Woodard on whether he is surprised Smith offensively touched someone. Woodard stated this was a case by case based on the individual. Marcus asked is there a difference between running a finger up someone's butt crack versus a gun rubbing against someone.

Marcus asked if good people act out of character. Marcus questioned if its unusual for an supervisor to not be challenged. Woodard said no. Woodards current nature of work is contract work for life and safety. Marcus discuss Woodards understanding of an order.

Witness passed.

Jopling clarified that Woodard would believe that Smith would admit to not following an order.

Jopling began discussion of Diaz reaction to being challenged. Woodards experience is that Diaz is not receptive to opposition and can be intimidating. Woodard could believe the witnesses would be fearful of Diaz.

Witness passed.

Marcus asked if Diaz intimidation could cause smith to lie to Diaz. Woodard testifies that Smith wouldn't be intimidated to lie, but the other employees might be intimidated. Woodard doesn't think Smith would lie. Stated Smith's back is against the wall. Marcus moved to strike Woodards testimony. Jopling sated Woodard is familiar with personnel. Woodard was released.

Jopling called Tyler Smith to stand at 12:43.

Smith provided background on his education and employment history.

Jopling asked if Smith had ever been in trouble at any of the agencies he previously worked for. Smith confirmed this is accurate.

Jopling questioned Smith on the incident of January 24th. Smith first heard about it the Tuesday following the date of the incident. After staff meeting, Jacob spoke with Tyler and told him Rays accusations.

Jopling had Smith recount his memory of what occurred on the 24th. He recalls having a large yeti cup in left hand and ballistic vest on right arm. Joplin stated there was a discrepancy in testimony and requested Smith's recollection. Smith recalls Jones leaning against the wall by the door and Ray leaning against the wall with his butt sticking out. Smith was wearing regular uniform with full duty belt. On his left he was wearing gun, handcuffs, asp (expandable baton).

Smith does not recall in anyway making physical contact with Ray. The way he was holding his cup there is no way he was able to run his thumb Rays butt.

Jopling asked if this is something he would've done. Smith does not believe so. Smith states he has never touched Ray like this in the past.

Smith described the iced tea incident:

While at Tea Time near the mall, Smith attempted to throw his cup at Kevin from his unit and it unintentionally went through the window and splashed on Ray. The cup was empty and about half full of ice. His intention was to throw it at the door of the car, not in the car. Smith confirmed horseplay is everyday in the office for everyone except Diaz.

Jopling asked if there is somewhat of a fraternal order to the law enforcement and asked if the iced tea incident was apart of that atmosphere. Also asked if jokes and dirty jokes were apart of this atmosphere. Smith confirmed they are. Smith states he keeps his hands to himself.

Jopling specifically asked about inappropriate touching and if Smith has ever witnessed touching of buttocks. Smith said there is a photo of him and Kevin that looks like Kevin is standing is behind him.

Jopling clarified that what he is trying to get at is that are any employees subject to hostile sexual environment. Smith said no. Smith also stated he has not inappropriately touching anyone.

Smith doesn't recall flicking Rays nipple the day of the staff meeting.

Jopling referred back to the date of the event. Asked what was Rays reaction when Smith walked by. Smith just said bye on his way out and nothing out of usual occurred. No confronted Smith about what had happened.

Smith stated that night Jones and Parson and himself were together performing occupancy patrols of bars. No one indicated anything was wrong during that time. They all continued working together subsequent to the inspections.

Jopling asked if either Jones or Parsons approached Smith after this event. Smith confirmed this was accurate.

Smith had conversation with Diaz and discussed pay and his outstanding grievance. Parson said he'd look into both. At this time it was introduced that there was a complaint that Smith stuck his finger in Rays butt. Smith stated Diaz never had the conversation with him about not speaking to anyone about the incident. Smith doesn't recall anything that could've been understood as an order not to talk about this cased during this conversation. After meeting with Diaz, Smith went to Jones and had conversation with him. Smith claims he was always intimidated by Diaz and stated Jones and Smith would state they didn't trust Diaz based on the pending fire litigation.

Smith stated he and Ray had a good relationship and would think that Ray would've come to him if Smith had done something to him. Smith states Jones, Ray and Smith are close.

In conversation with Jones, Smith told him that ray asserts he stuck his finger up his butt. Jones didn't know anything about the complaint but stated Ray said Smith hit him on the butt.

When Smith approached Parsons, parsons acknowledged he knew about the complaint, but they did not have a conversation about it.

Jopling asked if Chavez and Jones may have had a reason to lie. Smith didn't think so. Smith doesn't have any reason to believe the witness testimony of Chavez and Jones to be false.

Diaz questioned Smith about his conversations with Jones, ray and parsons. In that conversation Diaz was irate and told Smith he should've known not to speak to anyone.

Jopling reintroduced exhibit 6.

Smith states the questions asked were presented in an aggressive manner and he was caught off

guard. Smith states the questionnaire is not accurate account of that conversation. Smith states nothing was provided in writing. Smith confirmed Parsons did not participate in the conversation and was just present in the meeting. Smith stated that Diaz twists words and acknowledges there was an exchange between he and Diaz about semantics.

Jopling asked if Smith is calling FM Diaz a liar. Smith said yes. Smith states he knows Diaz to be liar from seven years of working with him. At recent Christmas party he stated Diaz lied about who won employee of the year. The office voted for one person, but Diaz claimed he couldn't find all the votes. Also stated that Diaz lies and blames it on Greenlee.

Smith describes relationship with Diaz as really bad early on. Diaz rode him around 2013 and called Smith a silver spoon kid. Terry had him write a letter to save and Smith claims Diaz was supposed to be fired but doesn't know why he wasn't terminated. Smith doesn't have any doubt that Diaz wouldn't lie to have Smith fired.

Jopling redirected to text message sent from Smith to Ray. Smith stated he sent this text because Ray was one of the guys and it was meant to just ... Smith had no reason to believe he was prohibited from sending the text. Smith was surprised of the allegation and that Ray didn't approach him about him.

Jopling redirected to when Smith met with Diaz and Diaz issued the formal notice of the complaint. Smith claims Diaz refused to give Smith a ride home and he stood outside waiting on his wife to pick him up.

Jopling addressed Smith's grievance and his allegations that his termination was retaliation for the grievance. Smith gave an overview of the reason for the grievance.

Jopling introduced exhibits (Smith's PAs) and presented them to Smith. Discussed PA scores. Jopling also asked if Smith was asking for reinstatement

Recess at 1:35. Resumed at 1:42

Witness was passed to Marcus Norris.

Marcus stated it strikes him that Smith is claiming everyone else is wrong and he is correct. Smith said this isn't correct and that this is just his recollection. Marcus proceeded to ask questions.

Marcus addressed allegations that Diaz is willing to lie to fire Smith.

Marcus questioned Smith on several items that had been addressed in other employee testimony.

Marcus asked Smith if Smith's written statements and testimony was truthful.

Recessed for M. Normand to make copies of Smith's initial appeal document submitted to HR that was subsequently rescinded by Smith.

Marcus asked Smith to identify the document. Marcus pointed out page 2 of document and read a portion of the document. Marcus confirmed Smith had vivid recollection that he did not make contact with anyone on his way out.

Exhibit 13 introduced by Marcus. Marcus identified a discrepancy in Smith's statement and his appeal. One states he has a vivid recollection. The second document states he does not recall making physical contact.

Marcus referenced initial appeal document. Statement that he was not provided an opportunity to respond to the allegations of the notice of contemplation. Smith states he was told on Thursday when the charges were given to him, he was told to go home and think about it and think about his career. When he returned the next day, he was issued the notice of contemplation. Marcus asked Smith did he take any extra time to rebut the allegations.

Smith stated he doesn't have knowledge of the procedure of termination. Smith confirmed he read the three documents provided to him by the chief.

Marcus questioned Smith about his conversation with Jones. Smith stated that he believes a lot of things will change when Greenlee retires in a few days.

Witness passed.

Jopling confirmed that Ray threw a baby shower for Smith. Proceeded to ask questions.

Smith described Diaz leadership being called into question by Greenlee. Smith claims he approached chief about illegal things Diaz was doing and Greenlee assigned Baucorn to oversee Diaz. Stated

Baucom made statement that union would take care of Diaz. Smith states McKinney was best boss he had and that Greenlee was good boss at that time.

Jopling referred back to conversation with Greenlee when Greenlee advised him that he needed to look at his future.

Witness passed.

Marcus asked why Smith believes Baucom was assigned to oversee Diaz. Confirmed Greenlee doesn't owe anyone explanation for his organizational decisions.

Witness passed.

Smith states Baucom said he was assigned to oversee Diaz to mentor Diaz.

Witness passed.

Marcus stated there was nothing further. Smiths representative had no further questions.

All witnesses released at 2:22. Closing arguments.

Marcus presented closing arguments first.

Joplin presented closing arguments.

Recessed to executive session at 2:50. Resumed session at 3:21.

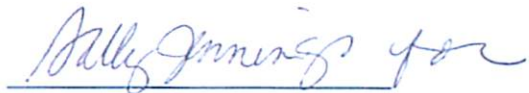
Walker motioned to uphold termination. Sally seconded. 3-0. No objections from any commission.

Commission Requested Marcus complete an order affirming everything as presented.

Meeting adjourned at 3:23.



Mitchell Normand, Civil Service Director



David Hurt, Chairman